

CONFIRMED MINUTES

**FOR THE
GREATER SHEPPARTON CITY COUNCIL**

DEVELOPMENT HEARINGS PANEL

Meeting No. 2/2013

**HELD ON
THURSDAY 14 FEBRUARY 2013
AT 9.58AM**

**AT THE COUNCIL BOARD ROOM
90 WELSFORD STREET**

CHAIR

Claire Tarelli

COMMITTEE MEMBERS PRESENT: **Claire Tarelli, Cr Les Oroszvary, Rob Frame, Braydon Aitken, Michael MacDonagh**

OFFICERS: **Ronan Murphy – Senior Statutory Planner
Tim Watson – Statutory Planner
Steve Bugoss – Timer and Minute Taker**

1. ACKNOWLEDGEMENT

“We the Greater Shepparton City Council, begin today’s meeting by acknowledging the traditional owners of the land which now comprises Greater Shepparton. We pay respect to their tribal elders, we celebrate their continuing culture, and we acknowledge the memory of their ancestors”.

2. APOLOGIES

Simon Rose, Colin Kalms, Jonathan Griffin

3. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Confirmation of the minutes of the meeting held on 10 January 2013 have been held over to the next meeting, as there were not two committee members that attended that meeting present at today’s meeting.

4. DECLARATIONS OF CONFLICTS OF INTEREST

None

5. MATTERS FOR CONSIDERATION

Two items listed for consideration.

6. LATE REPORTS

None

7. NEXT MEETING

28 February 2013

INDEX

<u>Application No.</u>	<u>Subject Address:</u>	<u>Proposal:</u>	<u>Page No.</u>
2012-122	270 McLennan Street, Mooroopna	Use for Motor Vehicle Sales and Materials Recycling (Car Recycling)	3
2012-368	907 Goulburn Valley Highway, Congupna	Development of land for a telecommunications facility to include a 40metre monopole with antennas and associated ground facilities	27

Application Details:

Responsible Officer:	Ronan Murphy
Application Number:	2012-122
Applicants Name:	Mgoter Motors
Date Application Received:	3 May 2012
Statutory Days:	
Land/Address:	270 McLennan Street MOORoopna VIC 3629
Zoning and Overlays:	Business 4 Zone (B4Z) Abuts a Road Zone Category 1 Part Urban Floodway Zone (UFZ) Land Subject to Inundation Overlay (LSIO) Part Public Acquisition Overlay 10(PAO10)
Why is a permit required (include Permit Triggers):	34.04-1 Use in the Business 4 Zone for car sales and Materials recycling. Variation to clause 52.14 of the Planning Scheme.
Are there any Restrictive Covenants on the title?	Nil

Proposal

An application was made on April 30 2012 for the use of part of the site for a car sales yard. The site is currently in used for motor repair and panel beating.

Pursuant to Clause 34.04-1 of the Planning Scheme a Planning Permit is required for the use of the land for car sales.

Further to this pursuant to Clause 34.04-1 of the Planning Scheme a Planning Permit is also required for Materials Recycling.

A Planning Permit is not required for motor repairs or panel beating pursuant to the provisions of the Business 4 Zone.

Planning officers undertook a site visit on May 30 2012 at which it was noted that a portion of the site was being used to store cars in association with a materials recycling operation.

The applicant was requested to amend the application to include materials recycling.

The subject lands are within the Business 4 Zone and partially within the Public Acquisition Overlay (Schedule 10), and the Land Subject to Inundation Overlay.

At present the subject lands are being used for car repairs and panel beating within the existing structure on site. This is an important consideration in this case as the majority of the objections concern the visual amenity of the area and the impact that the proposal would have on the emerging development of the Mooroopna West Growth Corridor (in particular the Finnborough lands to the north of the subject lands).

Having regard to this the following points are considered pertinent to the evaluation of the proposal:

- The subject lands are within the Business 4 Zone. The use of lands for materials recycling is a Section 2 use (discretionary use). It is therefore considered that the proposed use is appropriate to the zoning;
- The subject lands are currently used for Panel Beating and Mechanical Repairs from the existing building. The proposed use would not alter the use of the existing building and as such the appearance of the site would not alter should the panel seek to refuse the application;
- It is considered that the issue of a permit would be beneficial to both the applicant and the objectors as a Permit would allow the appearance of the site to be enhanced by appropriate landscaping and fencing which would screen the site from surrounding uses. At present there is no way to compel the land owner to undertake screening works. It is considered that a permit which would apply specific conditions requiring screening and landscaping would improve the appearance of the site which would benefit the owner and the objectors;
- With regard to the Finnborough lands to the north of the site, it is noted that a Urban Floodway Zone (of approximately 100m) would provide a more than adequate buffer between the subject lands to any future residential development. Further to this a possible solution would be for the applicant and the objector (Finnborough) to come to an agreement with regard to landscaping on the northern boundary of the site, where one of two potential outcomes could be achieved, 1. The applicants could landscape a certain proportion of the lands in the Urban Floodway Zone or 2. The applicants could pay an agreed amount for the objector (Finnborough) to plant appropriate landscaping in the future. It is considered that either outcome would be mutually beneficial.

Having regard to the foregoing it is considered that the proposal is acceptable in planning terms subject to the implementation of the conditions attached to the Notice of Decision.

Summary of Key Issues

A Planning Permit application was made on 30 April 2012 to use the lands for car sales.

The site is currently used as a motor mechanics and panel beating, within the existing shed on site. The application for car sales would be located to the front area of the site.

It was noted on various site visits that the lands also included a large number of cars which are used for materials recycling.

The applicant was advised that a Planning Permit would be required for the use of the land for materials recycling and as a result the application was amended to include the materials recycling.

The application was notified to the public and two objections were received. The main points of the objections were as follows:

Ground of objection	Officers response
<ul style="list-style-type: none"> The operators of the site have been using the site as a car wreckers without any permits 	<p>The applicants have not been wrecking cars on site. The applicant have been removing engine parts (materials recycling) and disposing of the car parts which are not required.</p> <p>The use of the lands for materials recycling is not prohibited in the Business 4 Zone, however a Planning Permit is required for the use. The amended application includes materials recycling.</p>
<ul style="list-style-type: none"> The applicants erected a 2 metre high fence without a Planning Permit; 	<p>A planning permission is not required for a fence in the Business 4 Zone.</p>
<ul style="list-style-type: none"> The business is occupying two different titled blocks; 	<p>The submitted title shows that the applicants are operating within allotments on the same title.</p>
<ul style="list-style-type: none"> The site is located on a major approach to Mooroopna and is directly adjoining a residential growth corridor; 	<p>The subject lands are located within a Business 4 Zone, a Planning Permit is not required to use the land for motor repairs/ panel beating pursuant to Clause 34.04-1 of the Greater Shepparton Planning Scheme as the purpose of a motor repairs business is included in the definition of 'Industry'.</p>
<ul style="list-style-type: none"> The applicants are currently operating illegally 	<p>The applicants are not operating the motor repairs and panel beating illegally, these uses do not require a Planning Permit pursuant to the provisions of Clause 34.04-1 of the Planning Scheme.</p> <p>With regard to the materials recycling element of the site, the applicants have amended the permit to include materials recycling, this is considered acceptable.</p>
<ul style="list-style-type: none"> Application documentation incomplete. 	<p>The applicants have now provided a layout plan which demonstrates how the site will operate in terms of the motor vehicle displays, staff and customer parking and the area which would be used for the</p>

	<p>materials recycling element of the proposal.</p>
<ul style="list-style-type: none"> Visual amenity, the application does not adequately address its appearance from Mooroopna's main arterial entrance. 	<p>The applicants are running an existing car mechanics/ panel beating business. In this regard an existing shed is being utilised by the operators of the site. It is considered that the proposal would not have an additional visual impact.</p> <p>Further to this, the materials recycling element of the application can be screened from the Midland Highway to mitigate the appearance of the use.</p> <p>It is considered that appropriate landscaping and screening would provide an appropriate planning outcome for the site.</p>
<ul style="list-style-type: none"> Interface with existing and planned adjoining sensitive uses. The application does not address visual amenity, glare and light spill, emissions, noise etc, considering that it is adjacent to a master planned residential neighbourhood and directly adjoining a planned regional park. 	<p>The applicants will be requested to screen the use of the lands from interface areas to mitigate any potential visual amenity issues.</p> <p>This is considered to be an appropriate outcome, having regard to the existing use which is being undertaken on the site.</p>
<ul style="list-style-type: none"> Provision of Infrastructure, the application does not cater for vehicle access from the Midland Highway, including workers, customers and delivery vehicles. The application does not include any potential impacts on stormwater quality or rate of discharge from the site. 	<p>It is considered that the subject lands can cater for parking and appropriate site access.</p> <p>The applicants have provided a site plan which demonstrates that the site can provide adequate areas for parking for customers and staff.</p>
<ul style="list-style-type: none"> On-site amenity provisions, the application does not cater for heavy vehicles to enter the site, load/unload, manoeuvre and exit the site is a forward motion. 	<p>It is considered that the subject lands can cater for access and loading and unloading of trucks.</p>

<ul style="list-style-type: none"> The application does not include a concrete washing bay as required by clause 52.14 of the Planning Scheme. 	<p>The subject lands include a concrete washing bay to the east of the existing building. Further to this, the applicants have demonstrated that a triple interceptor pit can be accommodated on site.</p>
<ul style="list-style-type: none"> Potential environmental impacts and water management. Does the proposal include a trade waste agreement with Goulburn Valley Water 	<p>The application was referred to GV Water who did not object to the proposed use. It is noted that Goulburn Valley Water have included two conditions which will be included on the Permit.</p>
<ul style="list-style-type: none"> Current unauthorised use is an eye sore along the Midland Highway. 	<p>The current use as a mechanics/ panel beater does not require a Planning Permit pursuant to Clause 34.04-1 of the Planning Scheme. However the materials recycling element and car sales element of the proposal would require a planning permit. It is considered that the use as a materials recycling would be a complimentary use to the existing use on site.</p> <p>Further to this, it is considered that the screening of uses and landscaping of the site would improve the appearance of the site to an acceptable standard.</p>
<ul style="list-style-type: none"> Subject site should be within the Design and Development Overlay (Schedule 8) 	<p>The subject site is not within the DD08</p>
<ul style="list-style-type: none"> Application does not comply with Clause 21.04-4 of the Planning Scheme. 	<p>It is noted that the subject lands and the entrance into Mooroopna is not included as one of the five precincts which are outlined in Clause 21.04-4 of the Planning Scheme. However having regard to the general principals of the Clause, it is considered that the application does comply in the following ways:</p> <p>The Planning Permit will include conditions regarding the screening of the vehicles used for materials recycling. This would improve the appearance of the site.</p>

<ul style="list-style-type: none">The operation would have a detrimental impact on the residents and future residents of Westwood Run Estate due to negative visual impact, emissions of noise, odour, light spill and pollutants.	It is considered that with appropriate screening and restriction on the hours of trade, the proposal would not have a negative impact on the amenity of future residents of Westwood Run Estate.
<ul style="list-style-type: none">Visual impacts on the major western approach to Mooroopna.	It is considered that the appearance of the site can be improved by screen planting and fencing.
<ul style="list-style-type: none">Visual impact on Regional Park.	The Planning Permit will include conditions regarding appropriate screening of the site and it is considered that this would improve the visual appearance of the site from any future regional park.
<ul style="list-style-type: none">Health and environmental concerns through risks to gas and liquid emissions, leaks, spills, weeds, vermin and pest animals.	The planning application was referred to Goulburn Valley Water, Goulburn Murray Water and the Environmental Protection Agency. None of the authorities had any objection to the proposal.

Moved by Braydon Aitken and Seconded by Rob Frame

Notice of Decision to Grant a Permit

That Council having caused notice of Planning Application No. **2012-122** to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* and having considered the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of Clause **34.04-1, 52.06, 52.07, 52.14,52.45** of the Greater Shepparton Planning Scheme in respect of the land known and described as **270 McLennan Street MOOROOPNA VIC 3629**, for the **Use for Motor Vehicle Sales and Material Recycling (Car Recycling)** in accordance with the Notice of Decision, the endorsed plans and the added and amended conditions as follows:

- Amend condition 2. a) to read: Fencing plan showing external pool type fencing around the site and a solid colourbond internal fence to screen all of the car bodies used for materials recycling or as otherwise agreed to in writing by the responsible authority.
- Amend condition 2. f) to read: Landscape plan which shows an appropriate landscaped buffer of 5 metres wide or otherwise agreed to in writing by the responsible authority along the northern eastern and western boundaries of the site.

- Amend condition 2. g) to read: Screening of the waste bin storage area or as otherwise agreed to in writing by the responsible authority.
- Additional condition:

Consolidation

Within 2 months of the date of this planning permit all lots comprising the land must be consolidated into one lot.

- Additional condition:

Sealing of Access ways

Before the use begins access ways within the site are to be sealed with bitumen to the building line to the satisfaction of the Responsible Authority.

- Additional condition:

Lighting

All security lighting used to externally illuminate buildings, works and uses shall be designed, baffled and located, so as to prevent the emission of light onto adjoining roadways and land.

- Amend condition b) for **Landscape Plan** to read:

a 5 metre landscape buffer along the northern, eastern and western boundaries of the land consisting of an under and over storey made up of native species, or as otherwise agreed to in writing by the responsible authority.

- Additional condition:

Car sales area

All cars which are located within the area designated for vehicle sales on the endorsed plans must be in a road worthy state.

CARRIED

Subject Site & Locality

An inspection of the site and the surrounding area has been undertaken.

Date: 11/5/12 and 28/5/2012

Time: 16.15 pm

The site has a total area of approximately **4,216** square metres and currently contains:

- A shed industrial building used as a car mechanics and panel beaters. The subject lands also include car storage.

The main site/locality characteristics are:

- The subject lands are located within a strip of Business 4 Zoned lands along the Midland Highway on the entrance into Mooroopna.
- Lands which are within the Mooroopna Growth corridor are adjacent.

The Photos below show the existing site:



Permit/Site History

The history of the site includes:

- 2000-326

Planning Permit granted for an extension to an existing building.

It is noted that the Council's Planning Department confirmed that planning permits were not required to use the land for motor repairs or panel beating by letter dated 20 May 2011. The letter stated the following:

The definition of motor repairs pursuant to Clause 74 of the Greater Shepparton Planning Scheme includes 'land use to repair or service motor vehicles, and includes the fitting of accessories'.

It also includes the use of the land for panel beating which is defined as 'land used to repair or replace damaged motor vehicle bodies and panels, and carry out any associated mechanical work or spray painting. However, you should note there is a minimum threshold distance comprising of 100 metres for use of land of panel beating from land which is in a Residential Zone, Business 5 Zone and land used for a hospital or an education centre.

This respective use is included in the definition of 'Industry' and therefore a planning permit is not required. However, a permit will be required for any buildings and works carried out in this respective zone.

Having regard to the above, the use of the site for panel beating and motor repairs does not require a planning permit in the Business 4 Zone.

Further Information

Was further information requested for this application? **Yes**

What date was the further information requested?: **11/5/12. The applicant was requested to provide a full copy of title.**

What date was the further information received?: **19/5/12**

Public Notification

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.

Objections

The Council has received 2 objections to date. The key issues that were raised in the objections have been outlined above.

Title Details

The title does not contain a Restrictive Covenant or Section 173 Agreement

Consultation

The Councils Planning Department undertook a number of meetings with both of the objectors and the applicant to attempt to mitigate the concerns of the objectors. It became clear that an accommodation could not be reached.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	Nil
Section 52 Notices	Goulburn Valley Water, No Objection subject to Conditions Goulburn Broken Catchment Management Authority, No objection subject to Conditions Environmental Protection Agency No objections

Assessment

The zoning of the land

The subject lands are within the Business 4 Zone. The purpose of the Business 4 Zone is to

“To encourage the development of a mix of bulky goods retailing and manufacturing industry and their associated business services”:

Pursuant to Clause 34.04-2 of the Planning Scheme

A use must not detrimentally affect the amenity of the neighbourhood, including through the:

- Transport of materials, goods or commodities to or from the land;
- Appearance of any building, works or materials;
- Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.

It is considered that the proposed use would comply with the provisions of Clause 34.04-2 of the Planning Scheme in the following ways:

- The proposed use would not affect the amenity of the area due to the transportation of materials, goods or commodities. The proposal entails the use of the site for car sales, to be located to the front of the site, it is considered that this would not attract a large amount of extra transport of goods/ commodities. The application also includes retrospective permission for materials recycling. It is considered that the materials recycling element of the proposal which is already in use would not attract a larger amount of transport of materials than currently exist.
- The proposal does not include any buildings or works.

- The proposal would operate within normal working hours as existing and would not have an additional impact on emissions from the site.

It is considered that the proposal complies with the provisions of the Business 4 Zone.

Relevant overlay provisions

The subject lands are affected by the Land Subject to Inundation Overlay. The purpose of the Land Subject to Inundation Overlay is to:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To identify land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority.
- To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.
- To reflect any declaration under Division 4 of Part 10 of the Water Act, 1989 where a declaration has been made.
- To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).
- To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.

Having regard to the above both the initial and amended applications were referred to Goulburn Broken Catchment Management Authority. The initial response of the Catchment Management Authority to the application stated:

“The 100 year ARI (1% AEP) flood levels have been declared for this area under provisions of the [act]. The declared 100-year ARI flood level for the location described above is 112.6 metres AHD, which was obtained from Goulburn Broken CMA Plan No. 540222. Please note that declared flood level plans are available for many areas on the Goulburn Broken CMA’s website: www.gbcma.vic.gov.au

It is understood, from the documents supplied, that all buildings are existing and no major structural works are proposed.

In light of the above information and pursuant to Section 56 of the Planning and Environment Act 1987, the Goulburn Broken CMA does not object to the amendment to the permit to include material recycling”

A response to the amended application from Goulburn Broken Catchment Management Authority stated:

“The 100 year ARI (1% AEP) flood levels have been declared for this area under provisions of the [act]. The declared 100-year ARI flood level for the location described above is 112.6 metres AHD, which was obtained from Goulburn Broken

CMA Plan No. 540222. Please note that declared flood level plans are available for many areas on the Goulburn Broken CMA's website: www.gbcma.vic.qv.au

It is understood that the proposed change of use includes the addition of material recycling (Car recycling).

In light of the above information and pursuant to Section 56 of the Planning and Environment Act 1987, the Goulburn Broken CMA does not object to the amendment to the permit to include material recycling"

Having regard to the above, it is considered that the proposal complies with the provisions of the Land Subject to Inundation Overlay.

The subject lands are also affected by the Public Acquisition Overlay (Schedule 10). The purpose of the Public Acquisition Overlay is

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To identify land which is proposed to be acquired by an authority.
- To reserve land for a public purpose and to ensure that changes to the use or development of the land do not prejudice the purpose for which the land is to be acquired.

A small portion to the north of the site is within the PAO (10). However the Councils Strategic Planning Team have confirmed that the Overlay is proposed to be deleted from this site pursuant to Amendment C160. It is therefore can be considered that the Overlay no longer functionally applies to the site.

The State Planning Policy Framework (SPPF)

Clause 11.05

The purpose of Clause 11.05 is to ensure that development is to support sustainable development of regional cities, which includes Shepparton.

The proposal would provide a new commercial car yard in Mooroopna, where one does not exist at present. This provide for the sustainable development of Mooroopna.

Clause 13.02-1

The purpose of Clause 13.02-1 of the Planning Scheme is to assist the protection of:

- Life, property and community infrastructure from flood hazard.
- The natural flood carrying capacity of rivers, streams and floodways.
- The flood storage function of floodplains and waterways.
- Floodplain areas of environmental significance or of importance to river health.

Having regard to the above, the application was referred to the Goulburn Broken Catchment Management Authority, who did not object to the proposal.

Clause 13.04-1

The objective of Clause 13.04-1 of the Planning Scheme is to assist the control of noise effects on sensitive land uses.

Ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.

It is considered that the proposal would not cause any detrimental noise impact for the community as the dismantling and recycling operation will commence from 8am to 3.30pm Monday to Friday.

Further to this the applicants have stated that shields and other noise abatement measures will be used to reduce any potential noise from car dismantling.

Clause 15.01-1

The objective of Clause 15.01-1 of the Planning Scheme is to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.

Having regard to the above it is considered that the proposal would comply with Clause 15.01-1 of the Planning Scheme as the proposal would be appropriately screened by both fencing and landscaping which would reduce the visual impact of the existing structure and use from surrounding uses.

Clause 15.01-2

The objective of Clause 15.01-2 of the Planning Scheme is to achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties.

It is considered that the proposal would lead to an enhanced urban design outcome for the key view points into the site.

The key view points would be into the site from McLennan Street and into the site from the north (from the Finnborough Lands)

In this regard the proposal would replace the existing damaged cars which are located to the front of the site and in clear view from McLennan Street with new cars for sale and customer parking. It is considered that this would constitute an enhanced urban design outcome.

The second key view is from the lands to the north. It is considered that the screening of the lands would block the view of the lands from the north. This would provide an enhanced urban design outcome.

Clause 17.01-1

The objective of Clause 17.01-1 of the Planning Scheme is to encourage development which meet the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.

The proposed development would provide for a new car sales yard, which would meet the communities need commercial services in Mooroopna, where no other car sales yard's exist.

The proposal would also provide a location where damaged and old cars can be recycled and parts can be obtained in the local area.

Clause 19.03-5

The objective of Clause 19.03-5 of the Planning Scheme is to avoid, minimise and generate less waste to reduce damage to the environment caused by waste, pollution, land degradation and unsustainable waste practices.

The proposal would not lead to any damage to the environment the application was referred to the Environmental Protection Agency who did not have any objection to the proposal, however the Environmental Protection Agency have requested that a number of conditions be placed on the Permit which require compliance with the following Acts:

- Guide to Best Practice at Recourse Recovery and Waste Transfer Facilities (2004);
- Environmental Protection (Prescribed Waste) Regulations 1998;
- Construction Techniques for sediment Pollution Control (EPA Publication No. 275, May 1991);
- Interim Guidelines for Control of Noise from Industry in Country Victoria (EPA Publication No N3/89. It is noted that these interim guidelines adopt the State environment protection policy (Control of Noise from Commerce Industry and Trade) No. N-1 where appropriate.

The Local Planning Policy Framework (LPPF)- including the Municipal Strategic Statement (MSS), local planning policies and Structure Plans

There are no Local Planning Policies which are pertinent to the proposed use.

Relevant Particular Provisions

52.05 Advertising Signs

The purpose of Clause 52.05 of the Planning Scheme is to:

- To regulate the display of signs and associated structures.
- To provide for signs that are compatible with the amenity and visual appearance of an area, including the existing or desired future character.
- To ensure signs do not contribute to excessive visual clutter or visual disorder.
- To ensure that signs do not cause loss of amenity or adversely affect the natural or built environment or the safety, appearance or efficiency of a road.

The application does not include any signage. A separate application would be required for signage.

52.06 Car Parking.

The purpose of Clause 52.06 of the Planning Scheme is to:

- To ensure that car parking is provided in accordance with the State Planning Policy Framework and Local Planning Policy Framework.
- To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.
- To support sustainable transport alternatives to the motor car.
- To promote the efficient use of car parking spaces through the consolidation of car parking facilities.

- To ensure that car parking does not adversely affect the amenity of the locality.
- To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

Table 1 of Clause 52.06 of the Planning Scheme sets out the car parking requirements per use.

- Car Sales would require 1 space per 10 cars for sale. This figure is taken from the pre updated Clause 52.06;
- Materials Recycling would require an area equivalent to 10% of the subject site.

The applicant has provided a site plan which shows that approximately 27 cars would be on display. Therefore 3 no. customer spaces would be required to be provided.

The site plan shows that the site can provide 10 spaces for customers, which is far in excess of the standards set out in Clause 52.06 of the Planning Scheme.

Further to this Table 1 of Clause 52.06 requires 10% of the site area to be set aside for the purpose of car parking.

The applicants have not shown an area equivalent to 10% of the site which is set aside for car parking, however it is considered that the space on site exists for this provision and the applicant will be required amended plans to demonstrate this.

Clause 52.07 Loading and Unloading

The purpose of Clause 52.07 of the Planning Scheme is to:

To set aside land for loading and unloading commercial vehicles to prevent loss of amenity and adverse effect on traffic flow and road safety.

Clause 52.07 sets out the following loading areas which are required as set out below:

For a building of 2,600 sq m or less in single occupation an area of 27.4 sq m must be provided, with the following dimensions:

Length 7.6 m
Width 3.6 m
Height clearance 4.0 m

The subject lands can provide a loading bay of the dimensions as outlined above. In this regard it is noted that a condition will be inserted on the Planning Permit to ensure that an adequate area is provided for the loading and unloading of vehicles.

52.14 Motor Vehicle, Boat or Caravan Sales

The purpose of Clause 52.14 of the Planning Scheme is to:

- To ensure that amenity, site layout and design are considered when land is to be used for motor vehicle, boat or caravan sales, especially if the site adjoins a residential zone.

- To ensure that use of land for motor vehicle, boat or caravan sales does not impair traffic flow or road safety.

The following requirements must be met (it is noted that a permit can be granted to vary these requirements)

- No more than 2 vehicle crossovers may service the site from a road and at the road alignment a crossover must be no wider than 9.2 metres;
- Except at crossovers, a kerb or barrier must be built along the road alignment to prevent the passage of vehicles and to prevent vehicles protruding beyond the site boundary;
- Except where a kerb or barrier is installed, the area within 6 metres of the road must be sealed to the satisfaction of the responsible authority;
- No building other than an office with a floor area not exceeding 19 square metres and toilet facilities may be built on the site;
- The site must contain a concrete bay for washing vehicles and waste from the bay must drain into a public sewer or a settlement and oil separation system. The system must comply with the Environment Protection Act 1970 and be installed to the satisfaction of the responsible authority;
- Vehicles may be washed only in the washing bay;
- Water from the site must be discharged by an underground pipe to an approved outlet to the satisfaction of the responsible authority;
- No vehicle for sale or hire may be displayed on an adjacent road;
- No vehicle may be repaired on the site;
- An area of at least 1 space to each 10 spaces or part must be set aside on the site for customer and employee car parking and for valuing vehicles. The area must be clearly marked by a sign reading 'customer parking' with the letters at least 50 millimetres high;
- On a car sales or hire site, the number of cars for sale or hire must not exceed 1 to each 30 square metres of site area;
- If the site is more than one lot it must be consolidated into one title.

If the site adjoins a residential zone:

- A landscape buffer strip at least 3 metres wide must be provided on the site along the common boundary and planted and maintained to the satisfaction of the responsible authority;
- Except for the landscape buffer strip, all of the site not occupied by buildings must be sealed to prevent dust;
- External lights must be directed away from the residential zone to prevent light spill and glare.

It is considered that the proposal would comply in the following manner:

- It is considered that the variation to Clause 52.14 of the Planning Scheme to provide more than one office of 19m² is appropriate having regard to the mix of uses on the site. It is considered that this would not have a impact on the amenity of the area;
- Only one crossover would provide access to the site;
- A concrete bay is located to the east of the existing building and could be used for vehicle washing, it is further noted that the applicants are committed to providing a triple interceptor pit on the site;
- A condition will be included on the permit which restricts the sale or hire vehicles from the site area only. In this regard it is noted that the applicants have supplied a site plan which shows the location of the car display area;

- The subject lands are currently used for motor vehicle repairs and panel beating;
- The applicants have provided a site plan which shows an appropriate area for car parking;
- The proposal would not have more cars than 1 to 30m²;
- The site is one lot;
- Amended plans to include the provision of a landscape plan will be included on the permit;
- There are no external lights proposed.

Having regard to the above, it is considered that the proposal could comply with the provisions of Clause 52.14 of the Planning Scheme. However it is noted that the applicant will be given a one year time frame to demonstrate compliance with Clause 52.14 of the Planning Scheme, to ensure that the proposal can operate in an appropriate fashion.

52.45 Resource Recovery

The purpose of Clause 52.45 of the Planning Scheme is:

To facilitate the establishment and expansion of a Transfer station and/or a Materials recycling facility in appropriate locations with minimal impact on the environment and amenity of the area.

Clause 52.45-2 of the Planning Scheme sets out application requirements as set out below:

An application must be accompanied by the following information:

- A location plan showing the site and surrounding uses including distances to nearby sensitive uses such as residential, hospital or education uses.
- A detailed site plan showing the layout and height of buildings and works,
- Materials, reflectivity, colour, lighting, landscaping, access roads and parking areas.
- Plans or other media showing anticipated views of the facility from sensitive use locations.

A written report(s) including:

- Identification of the purpose of the use.
- A description of the proposal including the materials to be processed, the types of processes to be used and any materials to be stored and handled.
- Proposed hours of operation.
- Likely traffic generation including heavy vehicles.
- Consideration of whether a works approval or licence is required from the
- Environment Protection Authority.

An assessment of:

- Potential amenity impacts such as noise, odour, emissions to air, land or water, vibration, dust, light spill, visual impact.
- The impact of traffic generation on local roads.

The applicants have supplied a written report which outlines potential amenity aspects as outlined above.

The report provided by the applicants has not been prepared by a professional and it is considered that the report does demonstrate that the applicants are prepared to undertake

the necessary protective measures to ensure that the proposal would not have a negative impact on the environment.

It is considered that the Notice of Decision would include conditions which would allow for the business to be run in an environmentally safe manner.

It is noted that the applicants have stated that operating hours would be:

Monday to Friday (excluding public holidays) from 8.00 am to 5.00 pm for the car yard and;

Monday to Friday (excluding public holidays) from 8.00 am to 3.30 pm.

These hours are considered appropriate.

Further to this, the applicants have also supplied a detailed site plan which outlines how the site would be managed in terms of areas for staff/customer parking, an area dedicated to the materials recycling element of the application and an area which would be for car display. This is considered an appropriate response to Clause 52.45-2 of the Planning Scheme, as it has been demonstrated that the subject lands can adequately cater for the proposed use for recourse recovery.

The decision guidelines of Clause 65

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in Section 60 of the Act.
- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

It is considered that the proposal would comply with the provisions of Clause 65 of the Planning Scheme in the following ways:

- The proposed use complies with the purpose of the Business 4 Zone as it would not have a detrimental impact on the amenity of the area;
- The planning permit will include conditions which would require extensive screening of the materials recycling component of the site, it is considered that the subject site

would comply with the orderly planning of the area subject to compliance with Conditions placed on the permit;

- The proposal would not have a negative impact on the amenity of the area subject to compliance with conditions regarding screening;
- The subject site is not in proximity to any public lands;
- The proposal would not cause or contribute to land degradation, salinity and would not reduce water quality;
- The proposal would not have an impact on the quality of stormwater within and exiting the site;
- The proposal would not have an impact on native vegetation;
- The proposal would not increase the degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land.

Having regard to the above, it is considered that the proposal would comply with the provisions of Clause 65 of the Planning Scheme.

Relevant incorporated or reference documents

There are no relevant incorporated or reference documents which are associated with the proposed use.

Other relevant adopted State policies or strategies policies

There are no other relevant adopted State policies or strategies which are associated with the proposed use.

Relevant Planning Scheme amendments

There are no Planning Scheme amendments which are associated with the proposed use.

Are there any significant social & economic effects?

There are no significant social and economic effects associated with the proposed use.

Discuss any other relevant Acts that relate to the application?

There are no other relevant Acts which relate to the application.

Conclusion

The application proposes a motor sales area and materials recycling at an existing Panel Beating and Motor Mechanics at 270 McLennan Street, Mooroopna.

The application was notified to the public and two objections were received.

The objectors concerns were predominantly (but not exclusively) concerned with amenity based issues.

In response to the concerns of the objectors it is considered that substantive screening/landscaping of the site would appropriately screen the site and would mitigate the concerns of the objectors.

It is further noted that the substantive issues regarding the impact of the proposal on the amenity of the area could be rectified with appropriate screen planting and fencing.

Additional the land is on a residential commercial interface and therefore the level of residential amenity cannot what would be expected in a pristine residential area that is remote from commercial zoned land.

The application was referred to Goulburn Valley Water, Goulburn Murray Water, Goulburn Broken Catchment Management Authority and the Environment Protection Agency.

None of the authorities objected to the proposal, subject to compliance with various conditions, which will be applied to the permit.

It is considered that the proposal would not have a detrimental impact on the amenity of the area subject to compliance with appropriate landscape and screening conditions and hour of operations which will be attached to the Notice of Decision.

DRAFT PLANNING PERMIT

DRAFT DATE: 30 January 2013

PERMIT NO: 2012-122

ADDRESS OF THE LAND: 270 McLennan Street MOOROOPNA VIC 3629

THE PERMIT ALLOWS: Use for Motor Vehicle Sales and Material Recycling (Car Recycling) and variation of Clause 52.14 of the Planning Scheme in accordance with the endorsed Plans forming part of this Permit.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

1. **Restriction of Use (Layout not altered)**
The extent of the materials recycling use on the land (with the exception of customer parking) as shown on the endorsed plans is restricted to the area as shown on the endorsed plan, and must not be altered without the written consent of the Responsible Authority.

2. **Amended Plans Required**
Within 2 months of the date of this permit, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and a minimum of three copies must be provided. Such plan must be generally in accordance with the plan submitted with the application but modified to show:
 - a) Fencing plan showing external pool type fencing around the site and a solid colourbond internal fence to screen all of the car bodies used for materials recycling;
 - b) The dimensions of the area of the land that is restricted to materials recycling (to the north of the internal fence) in accordance with the endorsed plans;
 - c) The area of the land to be used for car sales (to the south of the site);
 - d) The area of the land which provides for customer parking;
 - e) An area equivalent to 10% of the site area to provide parking for the materials recycling element to comply with clause 52.06;
 - f) Landscape plan which shows an appropriate landscaped buffer of 5 metres wide along the northern eastern and western boundaries of the site;
 - g) Screening of the waste bin storage area;
 - h) Waste management plan showing compliance with the provisions of Clause 52.45 of the Planning Scheme;
 - i) Plans showing the loading and unloading area and how loading and unloading in this area would function.

3. Hours of Operation

The uses as permitted by this permit must operate only between the hours of 8.00 am to 5.00pm Monday to Friday (excluding public holidays) for car sales and 8.00 am to 3.30 pm Monday to Friday (excluding public holidays) for the Materials Recycling element to the satisfaction of the Responsible Authority.

4. General Amenity

The use of the land must not, in the opinion of the Responsible Authority, adversely affect the amenity of the area, by way of:

- a) processes carried on the land;
- b) the transportation of materials, goods or commodities to or from the land;
- c) the appearance of any buildings, works or materials;
- d) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapor, steam, soot, ash, dust, waste water, waste products, grit, or oil;
- e) the presence of vermin.

5. Landscape Plan

Within 2 months a landscape plan must be submitted to and approved by the responsible authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and two copies must be provided show:

- a) a schedule of all proposed trees, shrubs and ground cover, including the location, number and size at maturity of all plants, the botanical names and the location of areas to be covered by grass, lawn or other surface materials as specified;
- b) a 5 metre landscape buffer along the northern, eastern and western boundaries of the land consisting of an under and over storey made up of native species.

The applicant must comply with the endorsed landscape plan within 12 months of the date of the planning permit.

6. Fencing

Within 12 months of the issue of the Permit fencing to comply with condition 2 a) must be completed.

7. Site maintenance

Maintenance of all works and parking areas within the site must be carried out by the permit holder in such a manner to render the site to be neat, tidy and clean at all times to the satisfaction of the responsible authority.

8. Goods and machinery storage

Materials for recycling (other than car bodies) that are to be stored outside the building area must be either located within bins, or stockpiled in the designated areas on the

endorsed plans to a height below the height of the screening fence.

All other goods and materials must be stored out of view or in a manner so as not to cause unsightliness when viewed from nearby lands or roadways to the satisfaction of the Responsible Authority.

Waste bin storage area to be screened.

Cars which are offered for sale maybe visible from McLennan Street.

9. Storage of Car Bodies

Car bodies (for materials recycling) must be stored in the specially designated area in accordance with the endorsed site plan and to the satisfaction of the Responsible Authority. Prior to car bodies being stored in this area, the container walls to be used to screen this area as shown on the endorsed plans must be installed, and then maintained thereafter to the satisfaction of the Responsible Authority. The height of the cars stockpiled must not exceed the height of the fence.

10. No Sale of Vehicles in Street

Vehicles offered for sale by or under the control of the proprietor are to be parked wholly within the boundary of the subject site. No parking on the road reserve will be permitted.

11. Storage of Wastes (Oil)

Any waste including oils must be retained on site such that there is no contamination of surface waters to the satisfaction of the Responsible Authority. Any waste must be banded in accordance with EPA Publication 347 "Bunding Guidelines" to prevent stormwater infiltration or runoff.

12. Staff Parking

No staff parking is permitted on the nature strip to the front of the site (McLennan Street)

13. Vehicle Wash Area

Within 6 months of the date of the permit, a concrete paved area must be provided to be used for the washing of vehicles on the land, All water associated with the washing bay must be drained to an outlet point in the concrete area (with appropriate oil interceptor traps) and discharged to an approved sewer to the satisfaction of the responsible authority. All vehicles washed on the land must be washed in the washing bay.

14. Noise

Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy Noise from Industry in Regional Victoria (NIRV).

In the event of complaints of noise from a nearby property, within one month of a request by the responsible authority, an acoustic report must be submitted to the responsible authority giving details of noise measurements to achieve compliance with the NIRV or later replacement policies, and if necessary, to recommend additional

measures (physical construction and/or operation modifications) required to ensure compliance. Such measures must then be implemented as soon as practical to the satisfaction of the responsible authority.

Security Alarms

Before the building is occupied, any security alarm installed on the premises must be fitted with a cut off device limiting any sounding of the alarm to a maximum duration of 10 minutes, with no repeat sounding until manually reset and or silently wired to a security firm or the Victoria Police.

15. Loading and unloading

Loading and unloading of vehicles and delivery goods and merchandise to and from the premises must be carried out within the land as it is shown on the endorsed plan and be conducted as to cause minimum interference with other vehicular traffic.

All delivery vehicles must be enter and leave the site in a forward direction.

16. Goulburn Murray Water Requirements

All construction activities must follow sediment control principles outlined in "Construction Techniques for Sediment Pollution Control" (EPA 1991)

Site managed in accordance with the Bunding Guidelines (Environmental Protection Agency publication 347, 1992).

17. EPA Conditions

- a) The design and operation of the premises should be in accordance with Sustainability Victoria's Guide to Best Practice at Resource Recovery and Waste Transfer Facilities (July 2004).
- b) Prescribed Industrial Waste (including asbestos), as defined by the Environment Protection (Prescribed Waste) Regulations 1998, should not be permitted to be accepted on-site.
- c) Amenity protection with respect to dust, odour, litter and noise control should be achieved.
- d) No discharge of wastewater or-contaminated stormwater to the stormwater drainage system or nearby surface waters should occur.
- e) Any clearing or construction activity associated with development on the subject land, should be carried out in accordance with Construction Techniques for Sediment Pollution Control, (EPA Publication No. 275, May 1991

18. Time for Starting and Completion

This permit will expire if one of the following circumstances applies:

- a) the development and use are not started within **two (2) years** of the date of this permit;
- b) the development is not completed within **four (4) years** of the date of this

permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three (3) months afterwards.

NOTATIONS

Goulburn Murray Water note

Any future development must comply with the relevant EPA Code of Practice –Onsite Wasterwater Management including wasterwater disposal area setbacks from Goulburn-Murray Water infrastructure including irrigation channels and drains (also Community Surface Drains)

Application Details:

Responsible Officer:	Tim Watson
Application Number:	2012-368
Applicants Name:	Ericsson Australia Pty Ltd
Date Application Received:	5 November 2012
Statutory Days:	
Land/Address:	907 Goulburn Valley Highway CONGUPNA VIC 3633
Zoning and Overlays:	-Farming Zone -Land Subject to Inundation Overlay
Why is a permit required (include Permit Triggers):	35.07-4 – Buildings and works in the Farming Zone; and 52.19 – installation of a telecommunications facility.
Are there any Restrictive Covenants on the title?	no

Proposal

The application for a planning permit proposes the installation of a Telecommunications facility in the Farming Zone at the subject address. An application was required for buildings and works in the Farming Zone and pursuant to the particular provision for the installation of telecommunications facilities.

The facility is to comprise of the following:

- Installation of a new 40 metre high monopole tower;
- 3 panel antennas;
- 4 parabolic antennas;
- 2 outdoor cabinets on steel platform 1 metre above the ground level; and
- Ancillary equipment associated with operation of facility, including remote radio units, canister, cable trays, cabling, safe access methods, bird proofing, earthing, electrical works and air-conditioning equipment.

Summary of Key Issues

- The application for a planning permit proposes the buildings and works in the Farming Zone and in accordance with 52.19 the construction of a telecommunications facility.
- The application was referred internally to the Council's Airport committee, who do not object to the issue of a permit, subject to conditions.

- The application was publicly notified through letters to surrounding neighbours, a sign onsite and a notice in the Shepparton News.
- 3 objections have been received so far.

Moved by Braydon Aitken and Seconded by Rob Frame

Notice of Decision to Grant a Permit

That Council having caused notice of Planning Application No. **2012-368** to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* and having considered the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of **35.07-4 and 52.19** of the Greater Shepparton Planning Scheme in respect of the land known and described as **907 Goulburn Valley Highway CONGUPNA VIC 3633**, for the **Development of land for a telecommunications facility to include a 40 metre monopole with antennas and associated ground facilities.** in accordance with the Notice of Decision and the endorsed plans.

Discuss key Conditions (including Referral Authorities):

1. Layout not altered.
2. Shepparton Aerodrome Advisory Committee.
3. Construction phase.
4. Landscape plan.
5. Rural Drainage.
6. Cessation of use.
7. Time for starting and completion.

CARRIED

Subject Site & Locality

An inspection of the site and the surrounding area has been undertaken.

Date: **15/11/12** Time: **2:50pm**

The site has a total area 1.735 hectares and currently contains:

- An existing dwelling in the southern corner of the property adjacent the Goulburn Valley Highway.
- A shed located on the north east boundary used in association with the main use of the land for a earth moving and civil construction company.
- The remainder of the land is covered with a crushed rock and used for the storage of earth moving equipment.

The main site/locality characteristics are:

- The land abuts the Goulburn Valley Highway, a Road Zone, Category 1 on the south eastern boundary.

- The surrounding land is zoned farming with the land on the north east and north west boundaries in one ownership and used for equine purposes.
- The land to south west also zoned Farming, is used as part of the Goulburn Valley equine hospital, with a number of facilities including housing for vets and stables and sheds used for the storage and operation of medical equipment.
- The Township zone of Congupna is the closest to the site, with the proposed tower site approximately 360 metre from the closest township zoned land.

The Photos below show the existing site:



Red dot marks proposed position of Telecommunications Facility.



View of proposed site, looking south east from abutting property.



View from proposed site to the north



View from proposed site looking south west towards Equine Hospital

Permit/Site History

The history of the site includes:

- There is no previous planning permit history for this site.

Further Information

Was further information requested for this application? **no**

Public Notification

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site.
- Notice in Newspaper.

Objections

The Council has received **3** objections to date. The key issues that were raised in the objections are.

- The possible health effects on residents in nearby dwellings from radio waves emitted by the facility;
- The visual impacts to residents of nearby dwellings;
- The impact of the facility on medical equipment used by the equine hospital and the foaling alarms;
- Devaluing of property values; and
- Site selection in accordance with the code has not fully undertaken all circumstances.

Title Details

The title does not contain a Restrictive Covenant or Section 173 Agreement

Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- A meeting with the two objectors, one of which objected on behalf of the equine hospital which she operates.
- The objectors were advised of the process and given a copy of the application and all documents submitted.
- The objections were forwarded on to the applicant, who responded with a letter addressing the concerns of the objections. This letter was forwarded to the objectors to review.
- A meeting on the abutting properties was undertaken with objectors to better understand their points of objection and view the proposed site from their properties.

*Note

It should be noted that the Council's Planning Investigations Officer has forwarded a show cause letter to the owners of the subject land. It was brought to the Council's attention and a site inspection confirmed that the land is being used for a prohibited use (store) in the Farming Zone. The matter regarding the area in which trucks park has also been raised as it was built up without a permit and is creating drainage problems for abutting properties.

Given the current changes intended for the Farming Zone undertaken by the State Government through its Planning Reforms. The landowner has been advised that the Council will hold off on taking any action until the proposed changes are decided upon.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	The application for a planning permit was not referred to any authorities.
Section 52 Notices	The application for a planning permit was not notified to any authorities.

Internal Council Notices	Advice/Response/Conditions
Airport Committee	The application was referred internally to the airport committee, who do not object to the issue of a permit subject to the following conditions being included on the

	permit: 1. At no time during the development and use of the facility and land affected by this Planning Permit is the Shepparton Aerodrome Obstacle Limitation Surface to be breached. 2. The communications tower must be fitted with markings and lighting that satisfies the requirements of the Civil Aviation Safety Authority's Manual of Standards Part 139, Sections 8.10 and 9.4. The markings and lighting are to be maintained in a safe and operating state at all times. 3. The proposed structure is not to exceed RL 148.594 AHD in height. 4. The developers and owners of the facilities must report the construction and details of the completed facilities to the Royal Australian Air Force (RAAF) in accordance with the details provided in the CASA advisory Circular, AC 139-08 "Reporting of Tall Structures" 5. Buildings must be constructed and maintained with non reflective materials 6. The landowners/operators must not install and/or use any device that may cause electrical or radio interference with Aviation Navigation Aids.
Nil	Nil

Assessment

The zoning of the land

Farming Zone 35.07

The purpose of the Farming Zone is to provide for the use of land for agriculture and to ensure that non-agricultural uses, particularly dwellings do not adversely affect the use of land for agriculture.

A planning permit was required for buildings and works in the Farming Zone pursuant to clause 35.07-4.

As a permit was not required for the use of the land, therefore only a small number of the decision guidelines have been considered in relation to the development of the site.

Given the small parcel of land on which the tower and facilities are to be located, it is not envisaged that there will be any loss of productive agricultural land or an effect on the abutting agricultural activities.

When considering the design and siting of the development on the surrounding environment the applicant has shown in addressing the Code of Practice they have attempted to minimise the impacts of the facility. The development of the land for a Telecommunications facility like this one to service a community will always involve a tower of significant height, so there is no avoiding that it will be visible from certain viewpoints. The siting though not completely invisible provides setbacks from areas of higher populations, so as to reduce the potential impact of the facility on the views and vistas of the locality.

Relevant overlay provisions

Land Subject to Inundation Overlay 44.04-4

The Overlay identifies land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority. The Overlays purpose is to ensure that development maintains the free passage and temporary

storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

A planning permit was not triggered under the Land Subject to Inundation Overlay and therefore the provisions of the overlay have not been taken into account.

The State Planning Policy Framework (SPPF)

Telecommunications 19.03-4

Objectives and strategies:

- To facilitate the orderly development, extension and maintenance of telecommunication infrastructure.
- Facilitate the upgrading and maintenance of telecommunications facilities.
- Ensure that modern telecommunications facilities are widely accessible to business, industry and the community.
- Ensure the communications technology need of business, domestic, entertainment and community services are met.
- Do not prohibit the use of land for a telecommunications facility in any zone.
- Encourage the continued deployment of broadband telecommunications services that are easily accessible by:
 - Increasing and improving access for all sectors of the community to the broadband telecommunication trunk network.
 - Supporting access to transport and other public corridors for the deployment of broadband networks in order to encourage infrastructure investment and reduce investor risk
- In consideration of proposals for telecommunication services, seek a balance between the provision of important telecommunications services and the need to protect the environment from adverse impacts arising from telecommunications infrastructure.
- Planning should have regard to national implications of a telecommunications network and the need for consistency in infrastructure design and placement.

Planning must consider as relevant:

- *A Code of Practice for Telecommunications Facilities in Victoria* (Department of Sustainability and Environment, 2004).

Response

The application seeks approval for the development of the subject land for a telecommunications facility to provide wireless NBN services to the Township of Congupna. The proposal will help to provide the surrounding communities with technology to achieve better broadband telecommunications services.

The Code of Practice is addressed under another section of this report.

The Local Planning Policy Framework (LPPF)- including the Municipal Strategic Statement (MSS), local planning policies and Structure Plans

Urban and Rural Services 21.07-2

An objective of the Clause is to provide telecommunications facilities available to all areas of the municipality.

Response

The proposed development seeks to provide telecommunications facilities to areas of the municipality that will not be serviced by the in ground fibre optic network.

Relevant Particular Provisions

Telecommunications Facility 52.19

The purpose of the provision is to:

- Ensure that telecommunications infrastructure and services are provided in an efficient and cost effective manner to meet community needs.
- Ensure the application of consistent provisions for telecommunications facilities.
- Encourage an effective state-wide telecommunications network in a manner consistent with the economic, environmental and social objectives of planning in Victoria as set out in Section 4 of the Planning and Environment Act 1987.
- Encourage the provision of telecommunications facilities with minimal impact of the amenity of the area.

Application 52.19-1

These provisions apply to the construction of a building or the construction or carrying out of works associated with the use of the land for a telecommunications facility. They apply to the extent permitted under the Telecommunications Act 1997 (Cwth) and determinations made under that Act by the relevant Commonwealth Minister for Telecommunications, including the Telecommunications (Low-impact Facilities) Determination 1997.

Pursuant to Clause 52.19-2 a planning permit is required to construct a building or carry out works for a Telecommunications facility.

Decision Guidelines

Before deciding on an application, in addition to the decision guidelines of Clause 65, the responsible authority must consider, as appropriate:

- The principle for design, siting, construction and operation of a Telecommunications facility set out in A Code of Practice for Telecommunications Facilities in Victoria.
- The effect of the proposal on adjacent land.
- If the Telecommunications facility is located in an Environmental Significance Overlay, a Vegetation Protection Overlay, a Significant Landscape Overlay, a Heritage Overlay, a Design and Development Overlay or an Erosion Management Overlay, the decision guidelines in those overlays and the schedules to those overlays.

Response

The following is an assessment against the provisions and principles of the Code of Practice.

The following four principles must be applied where relevant to the design, siting, construction and operation of any telecommunications facility which is not exempt under Commonwealth legislation.

Principle	Response
<p>A telecommunications facility should be sited to minimise visual impact. Application of principle</p> <ul style="list-style-type: none"> • On, or in the vicinity of a heritage place, a telecommunications facility should be sited and designed with external colours, finishes and scale sympathetic to those of the heritage place. A heritage place is a heritage place listed in the schedule to the Heritage Overlay in the planning scheme. • A telecommunications facility mounted on a building should be integrated with the design and appearance of the building. • Equipment associated with the telecommunications facility should be screened or housed to reduce its visibility. • The relevant officer of the responsible authority should be consulted before any street tree is pruned, lopped, destroyed or removed. • A telecommunications facility should be located so as to minimise any interruption to a significant view of a heritage place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land. 	<ul style="list-style-type: none"> • There are no heritage places within the vicinity of the proposed telecommunications facility. • The proposed facility will not be mounted on a building. • A condition on the permit will require appropriate screening of the equipment on the ground particularly from the north and east directions. A vegetation screen is the most preferred. • No street trees are required to be removed. • The proposed site will not abut, nor is it adjacent to any existing or proposed residential areas.
<p>Telecommunications facilities should be co-located wherever practical. Application of principle</p> <ul style="list-style-type: none"> • Wherever practical, telecommunications lines should be located within an existing underground conduit or duct. • Overhead lines and antennae should be attached to existing utility poles, towers or other radio communications equipment to minimise 	<ul style="list-style-type: none"> • The applicant has identified that there are no co-location opportunities available for the township of Congupna.

<p>unnecessary clutter.</p> <p>Health standards for exposure to radio emissions will be met. Application of principle</p> <ul style="list-style-type: none"> A telecommunications facility must be designed and installed so that the maximum human exposure levels to radio frequency emissions comply with <i>Radiation Protection Standard – Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300 GHz</i>, Arpana, May 2002. 	<ul style="list-style-type: none"> The applicant has advised that the band width of waves emitted by the facility are strictly enforced to ensure that they do not interfere with surrounding radio equipment (i.e. medical equipment). The applicant has also provided a report which was prepared for the site to predict the maximum level of electromagnetic energy at ground level surrounding the proposed tower, which will be less than 0.02% of the maximum allowable level.
<p>Disturbance and risk relating to siting and construction should be minimised. Construction activity and site location should comply with State Environment protection policies and best practice environmental management guidelines. Application of principles</p> <ul style="list-style-type: none"> Soil erosion during construction and soil instability during operation should be minimised in accordance with any relevant policy or guideline issued by the Environment Protection Authority. Construction should be carried out in a safe and effective manner in accordance with relevant requirements of the <i>Occupational Health and Safety Act 1985</i>. Obstruction or danger to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction should be minimised. Where practical, construction should be carried out during times that cause minimum disruption to adjoining properties and public access. Traffic control measures should be taken during construction in accordance with <i>Australian Standard AS1742.3 – 2002 Manual of uniform traffic control devices – Traffic control devices on roads</i>. Open trenching should be guarded in accordance with <i>Australian Standard Section 93.080 – Road Engineering AS 1165 – 1982 – Traffic hazard warning lamps</i>. Disturbance to flora and fauna should be minimised during construction and vegetation replaced to the satisfaction of the land owner or responsible authority at the conclusion of work. Street furniture, paving or other existing facilities removed or damaged during construction should be reinstated (at the telecommunication carrier's expense) to at least the same condition as that which existed prior to the telecommunications facility being installed. 	<ul style="list-style-type: none"> A construction phase condition will be included on the permit to address this principle.

The objectors have raised a number of concerns with the likely affects of the proposed tower on the land abutting their properties, of which the main concerns are listed below. Given significance of telecommunications facilities and prevalence of cases at the tribunal, a number of cases have been referenced.

Health impacts

The objections raised the potential of health impacts to the users of surrounding land, particularly the employees of the equine hospital. In considering the potential health effects of the proposed facility, the applicant has noted that they will be required by legislation to ensure that each radio wave is transmitted within a frequency band, which is allocated and enforced by the Australian Communications and Media Authority.

Rundell noted in *Optus Mobile v Macedon Ranges SC* (2009) VCAT 2578 that *“the Code of Practice for Telecommunications Facilities requires that a telecommunications facility must be designed so that the maximum human exposure levels to radio emissions comply Radiation Protection Standard... It is beyond the role of the Tribunal to inquire if these standards are appropriate. Compliance with these standards is mandatory, and no discretion is available to me, or sought by the applicant, to vary the standards.*

For the above reasons the potential health effects of the proposed telecommunications facility are out the scope of assessment for the planning permit application.

Visual

Objections noted that the tower would be in the direct line of site from two dwellings and the office of the Goulburn Valley Equine Hospital. The two dwellings are located approximately 230 and 285 metres away from the proposed facility and the hospital office 100 metres. The equine hospital also has accommodation onsite provided for employees, located approximately 125 metres from the proposed facility site. The code addresses the siting of towers to minimise visual impacts to surrounding sensitive uses, thus the need to locate facilities away from township boundaries and future residential growth areas.

The proposed facility is not considered an unreasonable protrusion to the sight line of the office given the building is not used for accommodation and the partial screening of the site by existing vegetation. The two buildings used for habitation to the south west of the site are both partially screened from the facility site by existing vegetation, with the closer employee accommodation orientated to the south east away from the direction of the proposed tower. Should a permit issue a condition will require that the applicant provide a vegetation screening around the facility to provide a visual buffer from the components on the ground and lower levels of the tower.

Medical Equipment

The equine hospital has objected to the application in part due to the potential of the proposed telecommunications facility to impact on electrically operated medical equipment and foaling alarms. The applicant has advised similarly to the concern regarding health, that the facility is required to operate to a designated frequency so as to avoid any potential health affects in interference with medical equipment.

Devaluation of property

With respect to the devaluation of abutting land due to a proposed development Cimino cited in *Eckhardt v Monash CC* (2006) VCAT 1047 *“if adjoining land is devalued because of detriment to its amenity that is considered in relation to town planning, not the resulting devaluation (in relation to which there is seldom, if ever, any evidence in any event)”*. Therefore no consideration has been given the claims of objectors that the abutting properties would be devalued by the proposed use and development.

Site Selection

The site selection has been addressed by the applicant in the submitted report, with a number of alternate sites listed and the reasons for rejection of these sites.

O’Leary in *Male & Ors v Wangaratta Rural CC* (2009) VCAT 576 noted that whilst the alternate site selection process *“may not be a satisfactory response from an objector’s point of view, nonetheless it demonstrates that the applicants have undertaken a realistic attempt to examine other sites that may be suitable for a telecommunications facility. However, it is not the Tribunal’s role to determine the best or optimum sites according to objectors, but rather to consider whether the proposal is acceptable having regard to those matters outlined in the planning scheme, including the Telecommunications Code of Practice.”*

The site selection process and eventual selection is considered an acceptable outcome when assessed against the various requirements of the Code.

The decision guidelines of Clause 65

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

- The following decision guidelines are relevant to this application:
- The matters set out in Section 60 of the Act.
- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.

Response

The matters listed under the decision guidelines of clause 65 have been addressed under other sections of this report. The effect of the facility on the amenity of the locality has been addressed in the objectors concerns in an assessment against the code.

Relevant incorporated or reference documents

Telecommunications Facilities 'A Code of Practice for Telecommunications Facilities in Victoria' – the code and the guidelines are addressed under other sub-sections of this report.

Other relevant adopted State policies or strategies policies

There are no other relevant adopted State or strategic policies that relate to this application.

Relevant Planning Scheme amendments

There are no relevant Planning Scheme amendments that relate to this application.

Are there any significant social & economic effects?

Discuss any other relevant Acts that relate to the application?

There are no relevant Acts that relate to this application

Conclusion

Given consideration to the relevant planning scheme provisions and the *Telecommunications Facilities 'A Code of Practice for Telecommunications Facilities in Victoria'*, the proposed installation of a telecommunications facility is considered to achieve acceptable outcomes. Consequently it is recommended that the Panel decide to approve a Notice of Decision.

Draft Notice Of Decision

APPLICATION NO: 2012-368

PLANNING SCHEME: GREATER SHEPPARTON PLANNING SCHEME

RESPONSIBLE AUTHORITY: GREATER SHEPPARTON CITY COUNCIL

THE RESPONSIBLE AUTHORITY HAS DECIDED TO GRANT A PERMIT.

THE PERMIT HAS NOT BEEN ISSUED.

ADDRESS OF THE LAND: 907 GOULBURN VALLEY HIGHWAY
CONGUPNA VIC 3633

WHAT THE PERMIT WILL ALLOW: DEVELOPMENT OF LAND FOR A TELECOMMUNICATIONS FACILITY TO INCLUDE A 40 METRE MONOPOLE WITH ANTENNAS AND ASSOCIATED GROUND FACILITIES.

WHAT WILL THE CONDITIONS OF THE PERMIT BE?

1. Layout Not Altered

The development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

2. Shepparton Aerodrome Advisory Committee

- a) At no time during the development and use of the facility and land affected by this Planning Permit is the Shepparton Aerodrome Obstacle Limitation Surface to be breached.
- b) The communications tower must be fitted with markings and lighting that satisfies the requirements of the Civil Aviation Safety Authority's Manual of Standards Part 139, Sections 8.10 and 9.4. The markings and lighting are to be maintained in a safe and operating state at all times.
- c) The proposed structure is not to exceed RL 153.693 AHD in height.
- d) The developers and owners of the facilities must report the construction and details of the completed facilities to the Royal Australian Air Force (RAAF) in accordance with the details provided in the CASA advisory Circular, AC 139-08 "Reporting of Tall Structures"
- e) Buildings must be constructed and maintained with non reflective materials
- f) The landowners/operators must not install and/or use any device that may cause electrical or radio interference with Aviation Navigation Aids.

3. Construction Phase

All activities associated with the construction of the development permitted by this permit must be carried out to the satisfaction of the Responsible Authority and all care must be taken to minimise the effect of such activities on the amenity of the locality, including:

- a) Avoiding the transport of mud onto roads;
- b) Minimising the generation of dust during earthworks or vehicles accessing site;
- c) The retention of all silt and sediment on the site during the construction phase, in accordance with the sediment control principles outlined in Construction Techniques for Sediment Pollution Control (EPA, 1991)' and;
- d) Maintaining a neat and tidy site.

4. Landscape Plan

Before the development starts a landscape plan must be submitted to and approved by the Responsible Authority, .When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The landscaping plan must show:

- a) a schedule of all proposed trees and shrubs, including the location, number and size at maturity of all plants;
- b) a permanent screen of trees and shrubs with a minimum of two rows using a mixture of local trees and understorey species on north-eastern, north-western and south-western boundaries of the proposed facility.

All species selected must be to the satisfaction of the responsible authority.

All trees planted as part of the landscape works must be a minimum height of 2 metres at the time of planting.

Before use of the telecommunications facility commences or by such a later date as is approved by the responsible authority in writing, landscaping works shown on the endorsed plan must be carried out and completed to the satisfaction of the responsible authority.

5. Rural Drainage

Before the telecommunication facility is used, all stormwater and surface water drainage from the land, buildings and works must be connected to the legal point of discharge or retained on site to the satisfaction of the responsible authority.

6. Cessation of use

Should the use of the land for a telecommunication facility cease the tower and all associated infrastructure must be removed and the site area reinstated to its original state within three months of the use ceasing to the satisfaction of the responsible authority.

7. Time for Starting and Completion

This permit will expire if one of the following circumstances applies:

- a) the development is not started within **two (2) years** of the date of this permit;
- b) the development is not completed within **four (4) years** of the date of this permit.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires or within three (3) months afterwards.

Meeting closed at 11.16am