

SPECIAL MEETING OF COUNCIL

Notice is hereby given of a
Special Meeting of Council to be held at
Council Chamber, 15 Stead Street, Ballan on
Wednesday 28 October 2015,
commencing at 3.30p.m.

Members:

Cr. Paul Tatchell	Central Ward
Cr. Allan Comrie	East Moorabool Ward
Cr. David Edwards	East Moorabool Ward
Cr. John Spain	East Moorabool Ward
Cr. Tonia Dudzik	East Moorabool Ward
Cr. Tom Sullivan	West Moorabool Ward
Cr. Pat Toohey	Woodlands Ward

Officers:

Mr. Rob Croxford	Chief Executive Officer
Mr. Phil Jeffrey	General Manager Infrastructure
Mr. Satwinder Sandhu	General Manager Growth and Development
Mr. Danny Colgan	General Manager Community Services

Rob Croxford
Chief Executive Officer

AGENDA

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1. OPENING OF MEETING

Pursuant to the provisions of section 72 of the *Local Government Act* 1989, the term of the Office of the Mayor expires at 6.00am on the day of the election of the Mayor. On Wednesday 28 October 2015 at 5.00pm, the election of the Mayor will be conducted at the Special Meeting of Council – Statutory and Annual Appointments Meeting.

The Chief Executive Officer shall act as Chairperson for this Special Meeting of Council in accordance with section 72 and Part B, Clause 7 of the *Meeting Procedure Local Law, Local Law No.8*.

2. ACKNOWLEDGEMENT TO COUNTRY

We respectfully acknowledge the traditional owners of this land, their spirits and ancestors.

3. PRESENT**4. APOLOGIES**

5. DISCLOSURE OF CONFLICT OF INTEREST

Under the Local Government Act (1989), the classification of the type of interest giving rise to a conflict is; a direct interest; or an indirect interest (section 77A and 77B). The type of indirect interest specified under Section 78, 78A, 78B, 78C or 78D of the Local Government Act 1989 set out the requirements of a Councillor or member of a Special Committee to disclose any conflicts of interest that the Councillor or member of a Special Committee may have in a matter being or likely to be considered at a meeting of the Council or Committee.

Definitions of the class of the interest are:

- a direct interest
 - (section 77A, 77B)
- an indirect interest (see below)
 - indirect interest by close association (section 78)
 - indirect financial interest (section 78A)
 - indirect interest because of conflicting duty (section 78B)
 - indirect interest because of receipt of gift(s) (section 78C)
 - indirect interest through civil proceedings (section 78D)

Time for Disclosure of Conflicts of Interest

In addition to the Council protocol relating to disclosure at the beginning of the meeting, section 79 of the Local Government Act 1989 (the Act) requires a Councillor to disclose the details, classification and the nature of the conflict of interest immediately at the beginning of the meeting and/or before consideration or discussion of the Item.

Section 79(6) of the Act states:

While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must:

- (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
- (b) remain outside the room and any gallery or other area in view of hearing of the room.

The Councillor is to be notified by the Mayor or Chairperson of the special committee that he or she may return to the room after consideration of the matter and all votes on the matter.

There are important reasons for requiring this disclosure immediately before the relevant matter is considered.

- Firstly, members of the public might only be in attendance for part of a meeting and should be able to see that all matters are considered in an appropriately transparent manner.
- Secondly, if conflicts of interest are not disclosed immediately before an item there is a risk that a Councillor who arrives late to a meeting may fail to disclose their conflict of interest and be in breach of the Act.

6. PRESENTATIONS / DEPUTATIONS

The Council has made provision in the business of the Special Meeting of the Council for the making of presentations or deputations to Council in relation to matters presented on the agenda for Council consideration.

Presentations or deputations are required to be conducted in accordance with the requirements contained within the **Presentation/Deputations Protocols and Procedural Guidelines**.

Persons wishing to make a presentation or deputation to the Council on a matter included in the agenda shall inform Council by 1pm on the Friday prior to the meeting by contacting the Chief Executive Officer's Office and registering their name and agenda item being spoken to.

At the meeting the Mayor will invite the persons wishing to make a presentation or delegation to address the Council on the agenda item.

The person making the presentation or deputation is to stand and address the Council on the item. No debate on the item is permitted between the person making the presentation or delegation and the Council.

A maximum of three minutes per presentation or delegation will be allocated. An extension of time may be granted at the discretion of the Mayor.

Councillors, through the Mayor, may ask the person making the presentation or delegation for clarification of matters presented.

The Mayor may direct that a member of the gallery ceases speaking if the above procedure is not followed.

List of Persons making Presentations/Deputations other than in relation to a planning item listed on the agenda:

As listed.

7. BUSINESS

7.1 Planning Permit 2015-212 – Development of a Telecommunications Facility and Removal of Native Vegetation (Grasses) at Crown Allotment 22K, Section B, Parish of Blackwood , 35 Byres Road Blackwood VIC 3458.

Application Summary:	
Permit No:	PA2015 212
Lodgement Date:	11 September, 2015
Planning Officer:	Robert Fillisch
Address of the land:	Crown Allotment 22K, Section B, Parish of Blackwood, 35 Byres Road, Blackwood VIC 3458.
Proposal:	Development of a Telecommunications Facility and Removal of Native Vegetation (Grasses)
Lot size:	3.34 hectares
Why is a permit required	<p>Clause 52.17 – A permit is required to remove native vegetation (Grasses)</p> <p>Clause 52.19 – A permit is required for the use and development of a Telecommunications Facility.</p>
Restrictions registered on title	None
Public Consultation:	
Was the application advertised?	The application was advertised due to the proposal's potential to cause material detriment.
Number of notices to properties:	48
Notices on site:	None
Notice in Moorabool Newspaper:	None
Number of Objections:	Three (3)
Consultation meeting:	An informal consultation meeting was held onsite on 16 October 2015 with two of the objectors. The meeting provided clarity to the objectors. At the time of writing this report no objections were withdrawn.

Policy Implications:	
Key Result Area	Enhanced Infrastructure and Natural Built Environment.
Objective	Effective and efficient land use planning and building controls.
Strategy	Implement high quality, responsive, and efficient processing systems for planning and building applications Ensure that development is sustainable, resilient to change and respects the existing character.
Victorian Charter of Human Rights and Responsibilities Act 2006	
In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.	
Officer's Declaration of Conflict of Interests	
Under section 80C of the <i>Local Government Act 1989</i> (as amended), officers providing advice to Council must disclose any interests, including the type of interest. <i>Manager – Satwinder Sandhu</i> In providing this advice to Council as the Manager, I have no interests to disclose in this report. <i>Author – Robert Fillisch</i> In providing this advice to Council as the Author, I have no interests to disclose in this report.	
Executive Summary:	
Application referred?	The application was referred to Southern Rural Water, Western Water and internally to Council's Infrastructure and Environment units. Discussions were also held with Department of Environment, Land, Water and Planning with regard to vegetation removal.
Any issues raised in referral responses?	None raised, subject to conditions being placed on a permit.
Preliminary Concerns?	Issues with avoiding the removal of native vegetation (grasses).

Any discussions with applicant regarding concerns	The applicant has provided additional details in order to avoid native vegetation removal using underground boring techniques.
Any changes made to the application since being lodged?	The application was amended to include the removal of native vegetation. This was done after an onsite assessment a DELWP officer who identified that grasses would need to be removed to facilitate the construction of the facility.
VCAT history?	None
Previous applications for the site?	None
General summary	<p>The application is for the construction of a telecommunications facility in order to provide telecommunications services to the immediate Blackwood area.</p> <p>The site selected is within the area of land set aside for the cemetery. The facility would be constructed outside the fenced off area which is currently being used for the cemetery. This land adjoins the cemetery and is unused in terms of grave location.</p> <p>The facility would be located within a compound which is to be fenced off using cyclone mesh fencing. The area to be fenced off would be 6 X 10 metres. Within the compound would be a 35 metre concrete monopole to be painted pale eucalypt and a pale eucalypt colourbond shed 3.28 X 2 metres.</p> <p>Access to the site would be via an existing access track from Byers Road. This track follows the fence of the cemetery and avoids the graves.</p> <p>The facility is to be located in an existing cleared area that it partially screen by native vegetation. The cleared area has been identified as containing native vegetation in terms of grasses. The removal of native vegetation is limited to the facility compound and will have an impact on grasses but not on any surrounding trees.</p> <p>Due to the small amount of vegetation being removed an offset is not required.</p>
Summary Recommendation:	
It is recommended that Council issue a Notice of Decision to Grant a Permit for this application in accordance with Section 61 of the <i>Planning and Environment Act 1987</i> , subject to conditions detailed at the end of this report.	

Public Notice

The application was advertised to adjoining and nearby landowners within 100 metres of the cemetery land by mail on Monday 21 September, 2015. It was determined that a sign was unnecessary given the extent of the notices. Three (3) objections were received.

An application to amend an application in progress to include native vegetation removal was received by Council on Monday 19 October, 2015. It was determined that re-advertising the application was not required due to the location not changing and the original application clearly outlining where the facility would be positioned.

Summary of Objections

The objections received are detailed below with officer's comments accompanying them:

Objection	Any relevant requirements?
The visual impact the facility will have on the surrounding area. The tower will be 7 metres above the existing vegetation and will dominate the skyline.	
Officer's response - The proposal has been assessed against relevant State and local planning policy and the provisions of Clause 52.19. While the applicant has made an effort to reduce the visual amenity of the tower it is acknowledged that it would protrude above the existing vegetation. The applicant has selected a monopole which will be painted pale eucalypt to reduce the visual impact. The tower needs to be above the vegetation to best meet the telecommunications needs of the Blackwood community.	
Health concerns with the tower being some 80 metres from existing dwellings.	
Officer's response - This is a common issue raised when discussing telecommunications facilities. VCAT have consistently stated that the appropriate health authority is the World Health Organisation (WHO). Research undertaken by WHO has not found any health issue with telecommunications facilities. It was also stated by the Telstra representative during the on-site meeting that the emissions from this facility would be less than that of using a mobile phone. The electromagnetic exposure from this facility would be 0.034 % of the maximum exposure limit.	
Heritage impact of the graves within the cemetery.	

Officer's response - The site was selected in consultation with the cemetery trust. It is considered that the trust would have the most up to date information on the location of any graves, however the location of the Chinese graves may not be fully understood. A permit condition would be included to require all works to cease should any additional graves to be found in the compound area. This is a requirement which currently exists.	
Has the land been purchased by the applicant through the cemetery trust without any community consultation.	
Officer's response - The details of the leasing arrangement between the applicant and the cemetery trust is not a matter that Council requires. However Council is obliged to ensure the applicant has the approval of the land manager. The land manager in this case is the Department of Health. They are required to appoint managers of the cemetery under the <i>Cemeteries and Crematoria Act 2003</i> . Department of Health have confirmed that the Blackwood Cemetery Trust has been appointed under this Act. Under the <i>Cemeteries and Crematoria Act 2003</i> the trust then acts as land managers. It should be noted that the land is not being sold and the applicant would enter into a lease arrangement with the Department of Health as the trust is unable to enter into a lease arrangement under the <i>Cemeteries and Crematoria Act 2003</i> .	
Devaluation of property.	
Officer's response - There are a range of factors which affect property values and as such the potential devaluation of surrounding properties is not deemed to be a valid planning consideration.	
Cemetery Trusts obligation to consult with stakeholders.	
Officer's response - This is not a direct issue for Council to consider. However it is acknowledged that the application has been advertised through the planning process which has provided the opportunity for public consultation.	
Vegetation removal and impact on the native fauna.	
Officer's response - Vegetation removal would be kept to a bare minimum by using the existing access tracks and modern boring techniques in conjunction with trenching to avoid valuable native grasses.	
Future co-location with other telecommunications providers to install additional facilities.	

Officer's response -

Co-location is recommended and this may result in increased aerials on the tower. Should co location occur it would need to meet the criteria of Telecommunications (Low-impact Facilities) Determination 1997. If any proposed expansion of the facility does not meet this guideline then the any current permit would require amending which would result in an additional planning permit application which would be subject to public notification.

Proposal

The application is for the construction of a telecommunications facility in order to provide telecommunications services to the immediate Blackwood area.

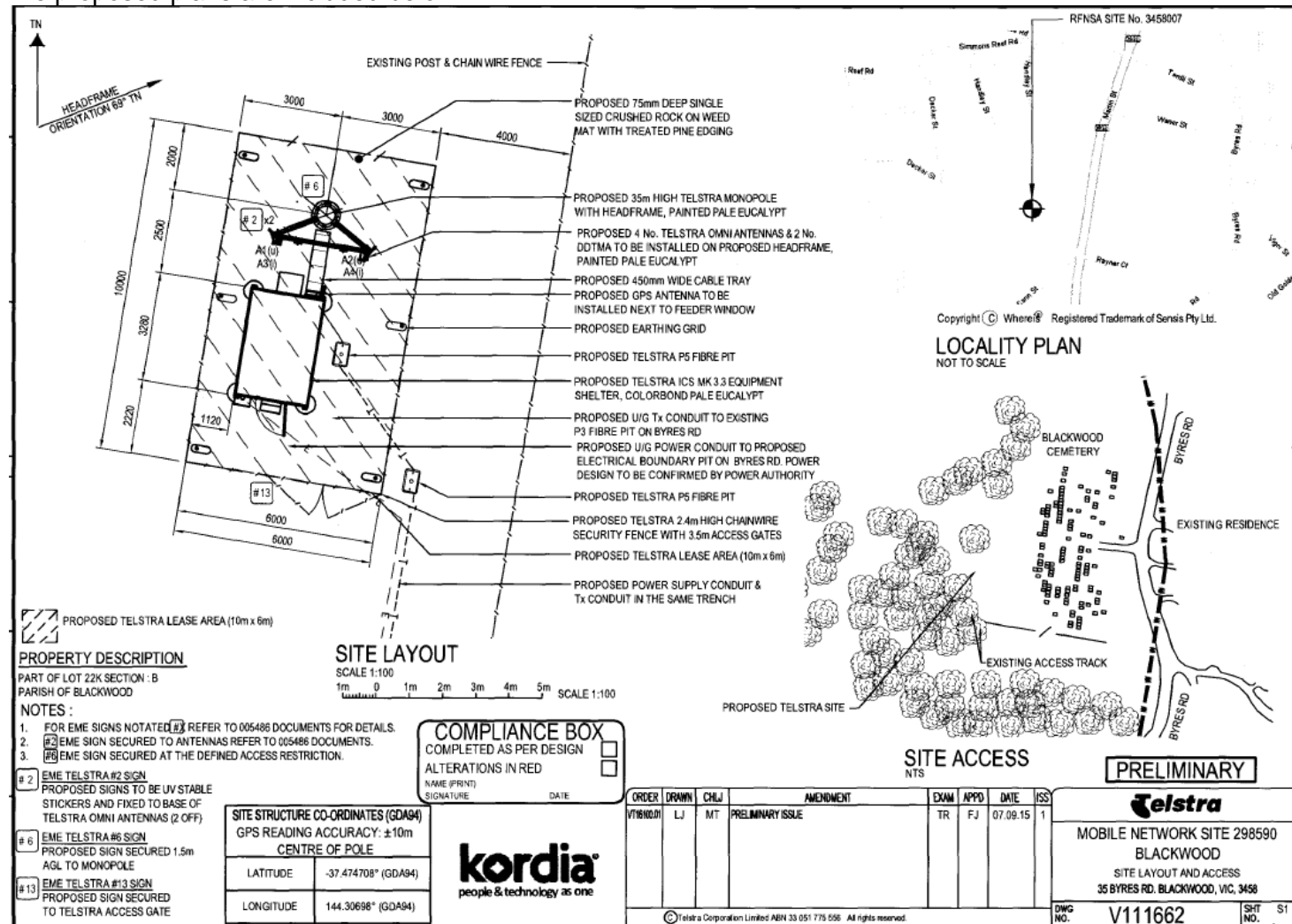
The site selected is within the area of land set aside for the cemetery. The telecommunications facility would be constructed outside the fenced off area which is currently utilised as a cemetery. This land adjoins the cemetery and is unused in terms of grave location.

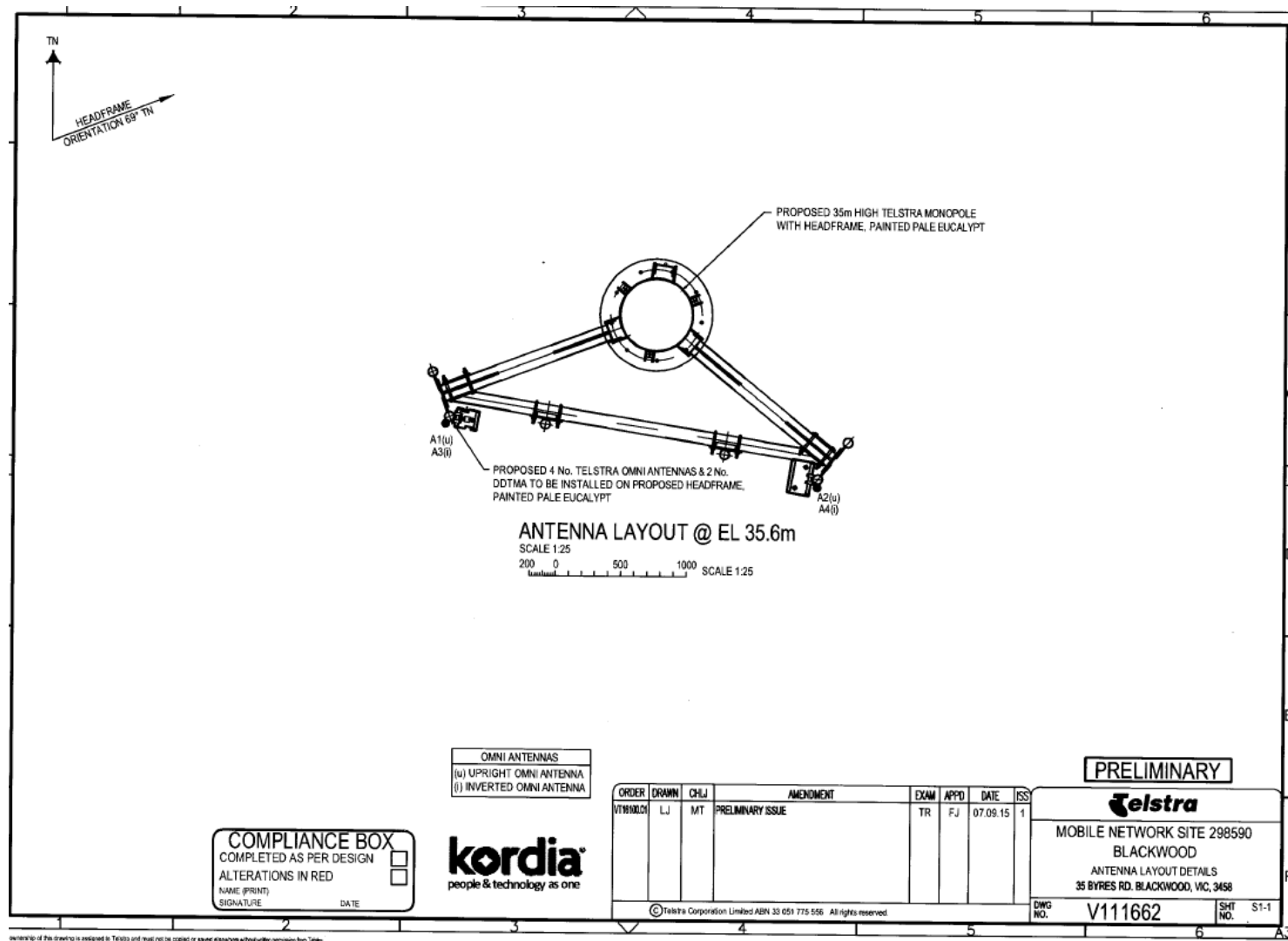
The telecommunications facility would be located within a compound which is to be fenced off using cyclone mesh fencing at a height of 2.4 metres. The area to be fenced off would be 6 X 10 metres with access gates 3.5 metres wide. Within the compound would be a 35 metre concrete monopole to be painted pale eucalypt and a pale eucalypt colourbond shed 3.28 X 2 metres. The monopole will contain a headframe with four Omni antennas and two twin tower mast amplifiers.

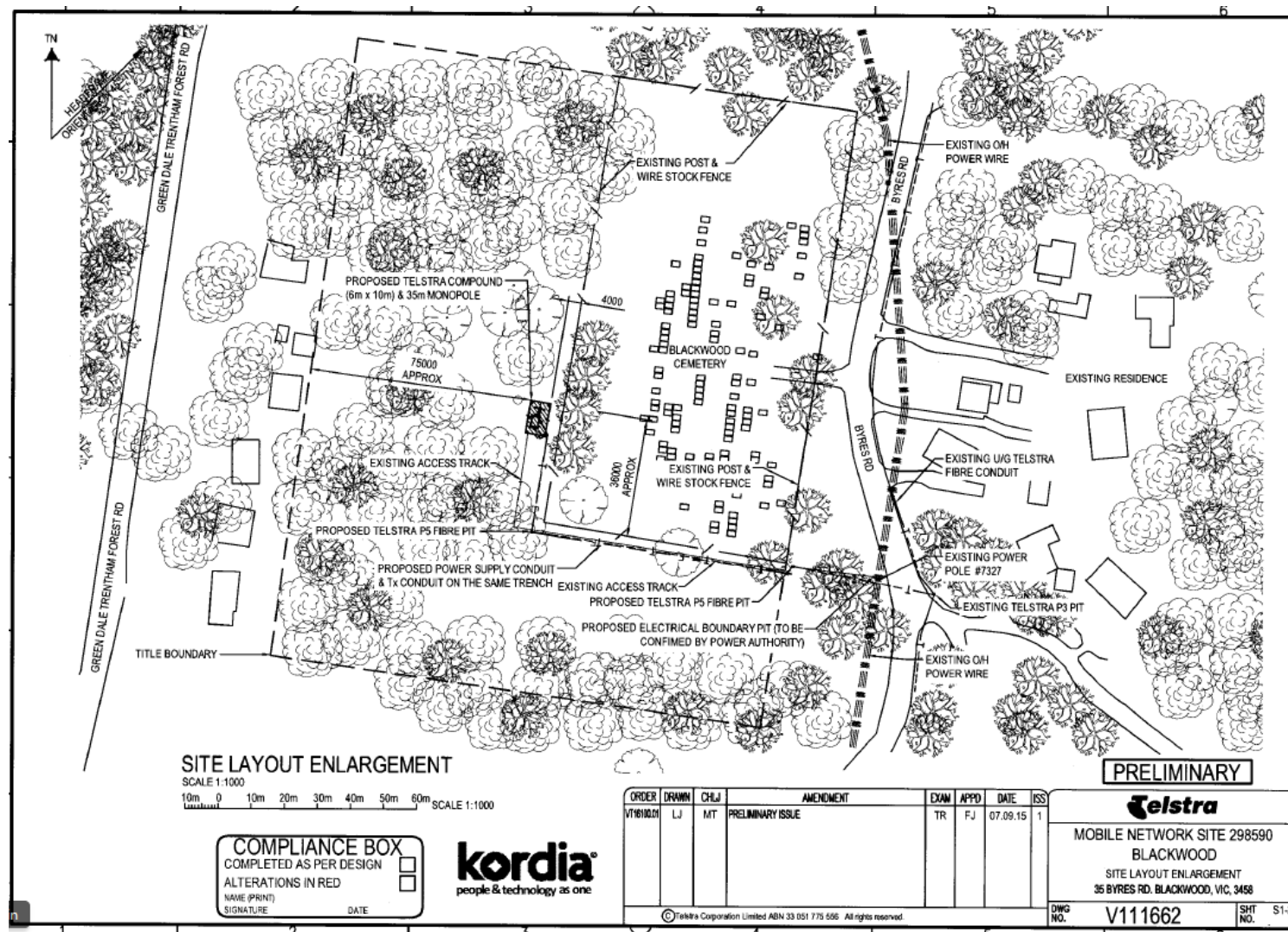
Access to the site would be via an existing access track from Byers Road. This track follows the fence of the cemetery and avoids the graves.

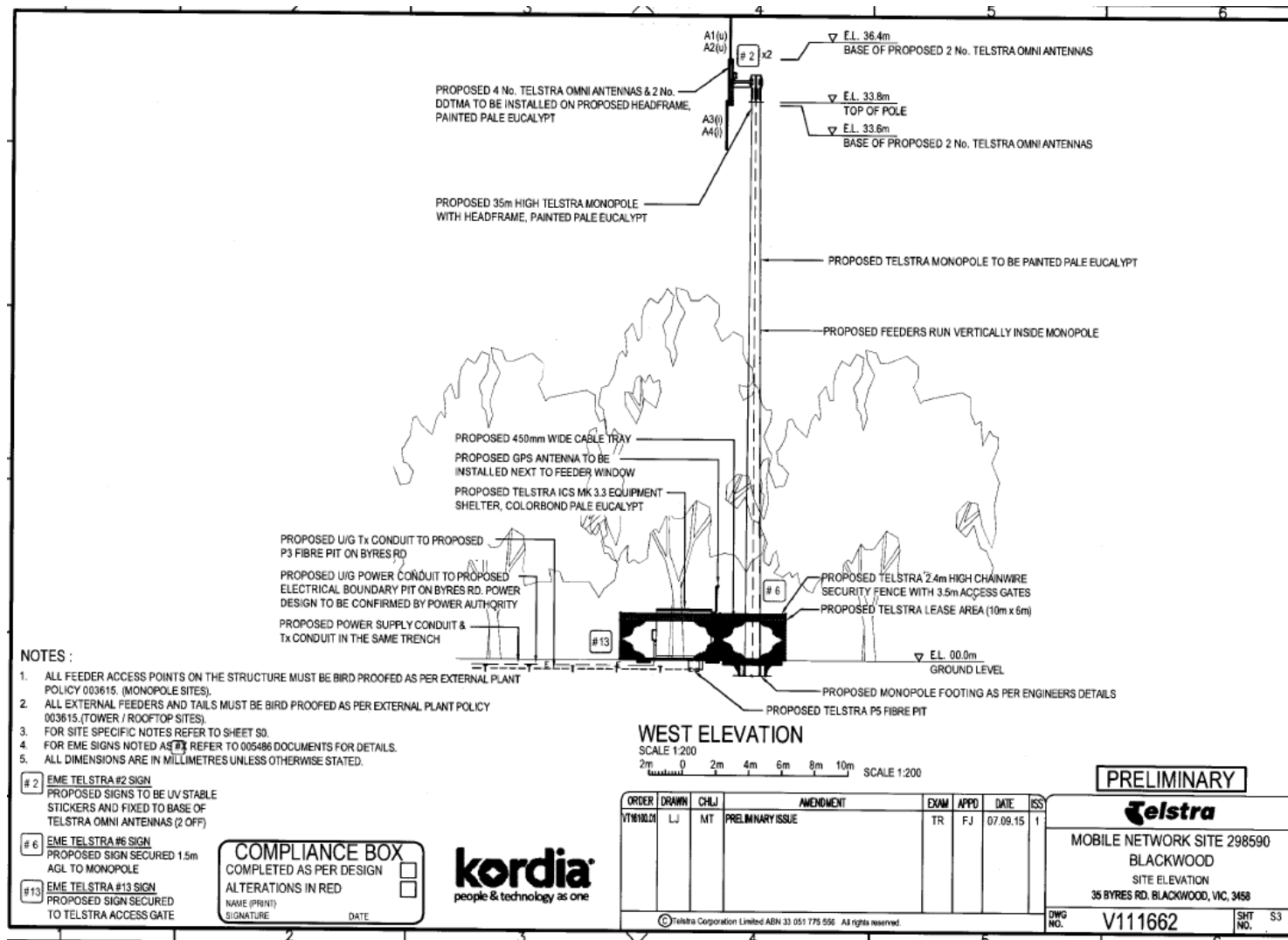
The telecommunication facility is to be located in an existing cleared area that it partially screen by native vegetation. The cleared area has been identified as containing native vegetation in terms of grasses. The removal of native vegetation is limited to the facility compound and will have an impact on grasses but not on any surrounding trees. In terms of native vegetation removal the area to be impacted would be 10.7 X 10.7 metres.

The proposed plans are included below.









Site Description

The site is located within the Blackwood Township which is surrounded by natural bushland. Blackwood has a population of some 300 permanent residents. The township consists of private residences, a Hotel, a Caravan Park and some commercial properties.

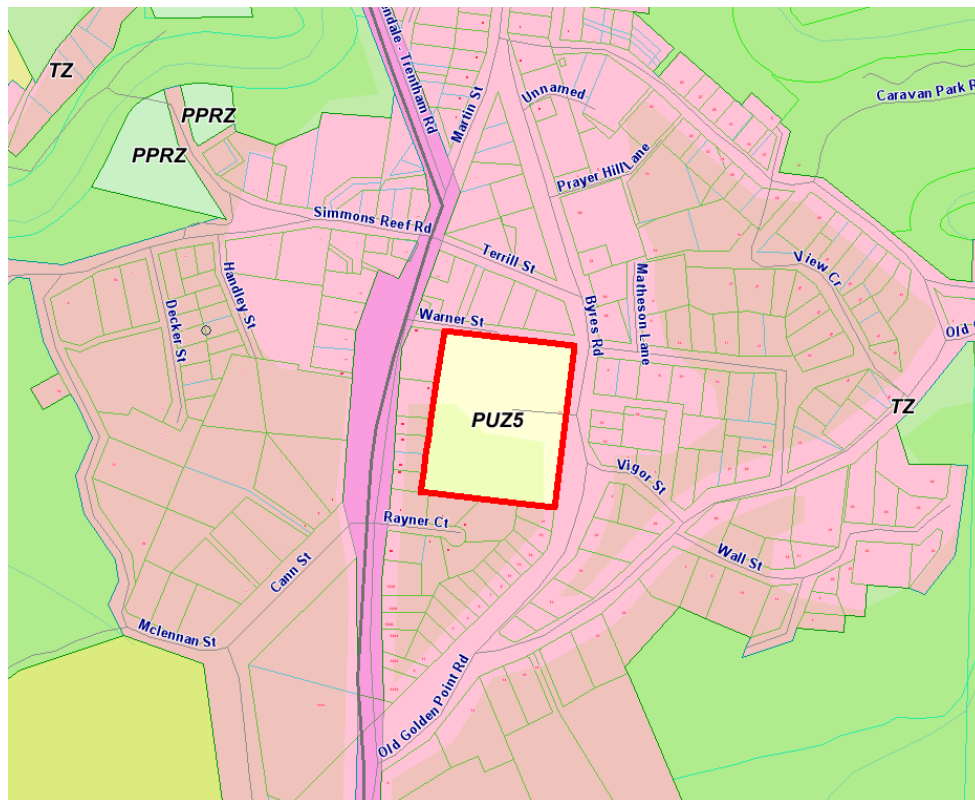
The subject site is regular in shape and is bounded by Byers Road to the east, private dwellings to the north, south and west. Land is undulating and low lying on the north and south boundaries, peaking in the centre with an elevation of approximately 600 metres, making it one of the highest points in the township.

The subject site would be located within crown land that is managed by the Blackwood Cemetery Trust. Part of the whole site is used for the purpose of a cemetery. The unused portion of the cemetery is characterised by tall eucalypts and accessed by a track from Byers Road.



Locality Map

The map below shows the location of the subject site and the zoning of the surrounding area.



Planning Scheme Provisions

Council is required to consider the Victoria Planning Provisions and give particular attention to the State Planning Policy Framework (SPPF), the Local Planning Policy Framework (LPPF) and the Municipal Strategic Statement (MSS).

The relevant clauses are:

- Clause 11.05-2 – Melbourne’s hinterland areas
- Clause 11.05-4 – Regional planning strategies and principles
- Clause 17.01-1 – Business
- Clause 19.02-4 – Distribution of social and cultural infrastructure
- Clause 19.03-4 – Telecommunications
- Clause 21.03-5 – Rural lifestyle opportunities
- Clause 21.05-5 – Social infrastructure
- Clause 21.09-3 – Other small towns – Key issues and influences

The proposal generally complies with the relevant sections of the SPPF and LPPF.

Zone

Public Use Zone Schedule 5

The subject site is in the Public Use Zone, Schedule 5 (PUZ5), and the provisions of Clause 36.01 apply.

However the use is exempt from the requirement of a planning permit under Clause 62.01 providing the provisions of Clause 52.19 are met. This is further discussed in this report. Therefore a permit is not required under the provisions of Clause 36.01.

Overlays

The subject site is affected by the Environmental Significance Overlay Schedule 1. The intent of this overlay is to protect the potable water catchment areas from inappropriate development.

The provision of this facility will have minimal impact on the catchment area. Any impact on the catchment area will be limited to the construction phase of the development.

The application was referred to the appropriate referral authority which in this case was Western Water (WW) and Southern Rural Water (SRW). A response was provided by WW and SRW stating they have no concerns with the proposal providing appropriate erosion and sediment control measures are undertaken during construction.

The subject site is affected by the Bushfire Management Overlay. The intent of this overlay is the protection of life. This overlay does not trigger planning approval as the telecommunications facility is not considered to be a sensitive use.

Particular Provisions

Clause 52.17 Native Vegetation

The proposal triggers a permit for the removal of native vegetation, in this case native grasses in the area where the compound will be located. The installation of the fibre cable from Byers Lane to the compound is to be undertaken with underground boring to minimise any vegetation impacts.

The applicant has had discussions with the Department of Environment, Land, Water and Planning to assist in identifying the extent of native vegetation removal.

A Biodiversity Assessment Report has been provided for the removal of vegetation for the area of the compound part of the surrounding land. The area is some 10.7 X10.7 metres. This has a total extent of 0.006 hectares. Given the size of the removal the biodiversity assessment report indicates that no offsets are required.

Clause 52.19 Telecommunications Facility

The purpose of this clause 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 on the amenity of the area.*

It is considered that the telecommunications infrastructure is proposed in a location which would provide efficient service to the Blackwood Community. Moorabool Shire council can impose certain conditions on the development under the *Planning and Environment Act 1987* to meet the objectives set under Section 4 of the Act. Apart from the planning control at local level the applicant is required to abide with a Code of Practice for Telecommunications Facilities in Victoria which is State legislation. Thus the Code of Practice governs any impact on the amenity of the area.

This particular telecommunications facility is supported by the Federal Government's Mobile Black Spot programme which provides specific services to regional and remote areas which may be subject to bushfires.

Under Clause 52.19 the facility is not considered to be low impact and therefore the works associated with the telecommunication tower are not exempt from requiring a planning permit.

It is considered that the applicant has demonstrated that the provision of Clause 52.19 have been met.

Discussion

Having regard to the provisions of Clause 52.17 Native vegetation and 52.19 Telecommunications Facility the proposed telecommunications facility offers no significant impact on the adjoining properties. The facility will provide additional services and protection for the Blackwood community particularly in emergency situations.

The impact on vegetation would be minimal and limited to native grasses on the site. Techniques such as boring would be applied to minimise impact on vegetation. Conditions will be included to prevent tree removal.

General Provisions

Clause 65 – Decision Guidelines have been considered by officers in assessing this application.

Referrals

The following referrals were made pursuant to s.55 of the *Planning and Environment Act 1987* and Council departments were provided with an opportunity to make comment on the proposed development plan.

Authority	Response
Western Water	Consent
Southern Rural Water	Consent with conditions
Infrastructure	No objection subject to conditions
Environment	No objection subject to conditions

Financial Implications

The recommendation of an approval of this development would not represent any financial implications to Council.

Risk and Occupational Health and Safety Issues

The recommendation of an approval of this development does not implicate any risk or OH & S issues to Council.

Communications Strategy

Notice was undertaken for the application, in accordance with s.52 of the *Planning and Environment Act 1987*, and further correspondence is required to all interested parties to the application as a result of a decision in this matter. The submitters and the applicant were invited to attend this meeting and address Council if desired.

Options

An alternative recommendation would be to refuse the application on the grounds that the proposal will impact on the amenity of the area. The facility is required to provide for additional emergency services and therefore a refusal would not be considered a good outcome for the Blackwood community.

Refusing the application may result in the proponent lodging an application for review of Council's decision with VCAT.

Conclusion

The proposed telecommunications facility will have minimal impact on the Blackwood cemetery and would provide a net community benefit to the residents of the Blackwood community. The siting of the facility is generally accepted by the community and located to minimise amenity impacts on the surrounding land. The facility would provide emergency service connectivity to the Blackwood community through the use of mobile phone technology.

It is therefore recommended that the application be supported by Council.

Recommendation:

That, having considered all matters as prescribed by s.60 of the *Planning and Environment Act 1987*, Council issues a Notice of Decision to Grant Planning Permit No. PA2015 212, subject to the following conditions:

Endorsed Plans:

1. The use and development as shown on the endorsed plans must not be altered without the written approval of the Responsible Authority. All buildings shall be located clear of any easements or septic tank and effluent lines.
2. All noise emanating from any mechanical plant on the site must comply with the Environment Protection Authority's (EPA's) regulations and Council Environmental Health department requirements.
3. The telecommunication tower must comply with the "Code of Practice for Telecommunications Facility in Victoria".
4. The telecommunications facility must be designed and installed so that the maximum human exposure levels to radio frequency emissions comply with Radiation Protection Standard-Maximum exposure Levels to Radiofrequency Fields-3kHz to 300 GHz.

Native Vegetation:

5. An appropriate exclusion zone must be established around the existing trees while any construction works are undertaken. This could be in the form of bunting.
6. If works are to occur within the Tree Protection Zone (DBH *12) then suitable measures must be identified to ensure no long term impact occurs to the trees.
7. No trees may be removed as part of the permit except in accordance with the provisions of the Moorabool Planning Scheme.
8. The fibre required to connect the facility to the existing infrastructure in Byers Lane must be installed using a combination of trenching and boring techniques to minimise disturbance to the site. This works is to be determined in conjunction with DELWP to the satisfaction of the Responsible Authority.

Artefacts:

9. Should any Archaeological artefacts be disturbed during construction all works must cease until appropriate approvals are provided pursuant to the *Archaeological and Aboriginal Relics Preservation Act 1972* and *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

Infrastructure conditions:

10. Storm water drainage from the proposed buildings and impervious surfaces must be retained and disposed of within the boundaries of the subject land to the satisfaction of the Responsible Authority. Overflows from onsite storage systems must be directed away from any waste water disposal areas on the site or any adjoining sites.
11. Sediment discharges must be restricted from any construction activities within the property in accordance with relevant Guidelines including Construction Techniques for Sediment Control (EPA 1991).
12. Unless otherwise approved by the Responsible Authority there must be no buildings, structures, or improvements located over proposed drainage pipes and easements on the property.
13. Any existing works affected by the development must be fully reinstated at no cost to Council and to the satisfaction of the Responsible Authority.

Southern Rural Water:

14. Should major excavation works be required, sediment control measures outlined in the EPA's publication No 275, Sediment Pollution Control shall be employed whilst carrying out works and maintained until the disturbed areas have been revegetated.

Expiry Conditions:

15. This permit will expire if one the following circumstances apply:
 - a) The development is not started within two years of the date of this permit.
 - b) The development is not completed within four years of the date of this permit.

Council may extend the periods referred to if a request is made in writing before the permit expires or in accordance with the timeframes as specified in Section 69 of the *Planning and Environment Act 1987*.

Permit Notes:

This permit does NOT exempt the applicant/developer from any approvals required pursuant to the *Archaeological and Aboriginal Relics Preservation Act 1972* and *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

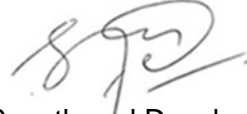
Report Authorisation

Authorised by:

Name: Satwinder Sandhu

Title: General Manager Growth and Development

Date: Tuesday, 20 October 2015



8. FURTHER BUSINESS AS ADMITTED BY UNANIMOUS RESOLUTION OF COUNCIL

9. CLOSED SESSION OF THE MEETING TO THE PUBLIC

9.1 Confidential Report

Recommendation:

That pursuant to the provisions of the Local Government Act 1989, the meeting now be closed to members of the public to enable the meeting to discuss matters, which the Council may, pursuant to the provisions of Section 89(2) of the Local Government Act 1989 (the Act) resolve to be considered in Closed Session, being a matter contemplated by Section 89(2) of the Act, as follows:

- (a) personnel matters;**
- (b) the personal hardship of any resident or ratepayer;**
- (c) industrial matters;**
- (d) contractual matters;**
- (e) proposed developments;**
- (f) legal advice;**
- (g) matters affecting the security of Council property;**
- (h) any other matter which the Council or special committee considers would prejudice the Council or any person;**
- (i) a resolution to close the meeting to members of the public**

10. MEETING CLOSURE