

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**ADMINISTRATIVE DIVISION****PLANNING AND ENVIRONMENT LIST**VCAT REFERENCE NO. P1940/2015
PERMIT APPLICATION NO. PA2015/4666

APPLICANT	Vodafone Hutchison Australia Pty Ltd
RESPONSIBLE AUTHORITY	Melton Shire Council
RESPONDENTS	K Ridophi, S Singh, S & C Chamberlain, K Jones, S Lee, J Szwadiak, P Dhirman, T Lu, M K Lim, W Ma, X Ruan, J S Buttar, T Thai, and P Lloyd.
SUBJECT LAND	142 Hume Drive, Taylors Hill ('the Melbourne Water site')
WHERE HELD	Melbourne
BEFORE	Michael Nelthorpe, Member
HEARING TYPE	Hearing
DATE OF HEARING	15 & 16 August 2016
DATE OF ORDER	16 August 2016
CITATION	

ORDER

- Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: CPS Global
 - Drawing numbers: 340026 P1 to 340026 P6 All Revision H
 - Dated: 23.03.2016
 - Prepared by: Hansen
 - Drawing numbers: LCD-001 Revision P
 - Dated: 24.03.2016
- The decision of the Responsible Authority is set aside.
- In permit application PA2015/4666 a permit is granted and directed to be issued for the land at 142 Hume Drive, Taylors Hill in accordance with the

endorsed plans and on the conditions set out in Appendix A. The permit allows:

- Use and development of land in the Public Use Zone for a telecommunication facility.

Michael Nelthorpe
Member

APPEARANCES

For Applicant

Mr Jason Kane, barrister.

He called the following witnesses:

- Mr Damien Iles, town planner of Hansen Partnership Pty Ltd;
- Mr Craig Czany, landscape architect and urban designer of Hansen Partnership Pty Ltd; and
- Mr Ravi Govindasamy Ravichandran, radio frequency manager of Vodafone Hutchison Australia.

A statement of evidence of Mr Richard Webb, senior project manager of Vodafone Hutchison Australia was prepared and circulated however Mr Webb was not called to present his evidence.

For Responsible Authority

Ms Kim Piskuric, solicitor of Harwood Andrews.

A statement of visual amenity evidence by Mr Chris Goss of Orbit Visualization was prepared and circulated on behalf of the Responsible Authority however Mr Goss was not called to present his evidence.

For S Singh

Ms Singh

For K Jones

Ms Jones

For S & C Chamberlain

Ms Chamberlain

INFORMATION

Description of Proposal

A 17 metre high monopole with three panel antennas to an overall height of 18.34 metres, an equipment cabin and associated tracks and fencing set within a mix of perimeter and central tree planting.

Nature of Proceeding	Application under Section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Zone and Overlays	Public Use Zone 1 (Service and Utility)
Permit Requirements	<p>Clause 36.01-1: to use land for a telecommunication facility;</p> <p>Clause 36.01-2: to construct buildings and works for a telecommunication facility; and</p> <p>Clause 52.19-2: to construct buildings and works for a telecommunication facility.</p>
Relevant Scheme, policies and provisions	Clauses 9, 10, 15, 19, 21.01, 21.03, 21.04, 22.04, 36.01, 52.19 and 65.
Land Description	<p>The land is a 3.8 hectare parcel owned by Melbourne Water and comprised of a large rectangular parcel and a long access track. The rectangular parcel has approximate dimensions of 100 metres (north-south) by 200 metres (east-west).</p> <p>A water storage tank with a height of 12.1 metres and a diameter of 73 metres is located on the eastern half of this parcel.</p> <p>Trees along the northern boundary range between 6.2 and 10.6 metres high, the trees on the western boundary are generally between 5.2 and 8.4 metres high, and the trees along the southern boundary are between 1 and 3.6 metres high.</p> <p>The rear yards of dwellings along Hardware Lane, Hawthorn Grove, Timele Drive and Serrata Court back onto the site, as does the side yard of a property on Silvana Way.</p>
Tribunal Inspection	15 August 2016

REASONS¹**WHAT IS THIS PROCEEDING ABOUT?**

- 1 Vodafone Hutchison Australia Pty Ltd ('the Applicant') proposed to construct a telecommunications facility (monopole) on the Melbourne Water site in Taylors Hill. Melton Shire Council refused to grant a permit, saying the facility's visual impact on surrounding properties was not acceptably minimised. As such, it considered the facility was contrary to State policy at clause 19.03-4, the particular provisions of clause 52.19 of the Planning Scheme, and the *Code of Practice for Telecommunications Facilities* (July 2004) that is a reference document to clause 52.19. A large number of local residents share this view.
- 2 The Applicant relies on amended plans that relocate the monopole, reduce the number of antennae panels, reduce its height, and provide perimeter and centrally located landscaping.
- 3 Originally, a 25 metre monopole with six antennae panels was proposed to be located 11 metres from the northern boundary. The amended plans show a 17 metre monopole with three antennae panels (18.36 metres to the top of the antennae panels) in a more centrally located site that is 50.17 metres from both the north and south boundaries and 63.3 metres from the western boundary.
- 4 The associated landscaping comprises 53 trees comprising two belts of trees around the northern, southern and western boundaries and scattered planting near the monopole.
- 5 The Council reviewed the amended proposal and maintained its grounds of refusal. This decision was contrary to the recommendations of its officers.
- 6 After hearing submissions and evidence, and after inspecting the site (including views from private properties directly adjacent to, and nearby the site), I decided that the proposal warranted the grant of a permit. I provided my reasons orally at that time. A summary of these reasons is provided below.

MY REASONS

- 7 I find the amended proposal is an acceptable response to the policies and provisions of the Planning Scheme.
- 8 I accept the submissions of the Applicant and the Council that the Planning Scheme requires that I strike an acceptable balance between the effective and economic provision of telecommunication infrastructure, and the negative amenity impacts caused by the visual appearance of this infrastructure.

¹ I have considered the submissions of all the parties that appeared, all the written and oral evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons.

- 9 In this instance, I accept Mr Czany's evidence that the facility's visual impact is acceptable subject to it being mitigated by landscaping. More specifically I find:
- a the views from the nearby streets is acceptable given the monopole will not be a dominant feature in these views; and
 - b the most intrusive impact, being that from 30-34 Hardware Lane, will be acceptably mitigated once the proposed vegetation is at a semi-mature stage.
- 10 I make these findings in the context of the Planning Scheme's policies and provisions for telecommunications facilities. I find these policies and provisions generally support the development of an effective telecommunications network subject to the minimisation of visual impacts.
- 11 In this context, I find it is reasonable to expect new telecommunications infrastructure in an establishing neighbourhood such as this. I acknowledge that Taylors Hill has an open skyline caused by the lack of overhead power lines and the relative immaturity of landscaping in private gardens. However, I expect this will change over time as gardens mature.
- 12 The existing infrastructure on the site, and the purpose for which this site is set aside, also influences my decision. The existing water tank is a prominent local landmark that is significantly more dominant than the monopole. The tank, and its surrounding open space, also has notable visual impacts on the abutting properties. While the tank has a benign presence, it is a large structure that is dominant in many views from abutting rear yards. I find the monopole will have a lesser visual impact in this context.
- 13 The open space next to the tank provides a benefit to directly abutting properties. It provides an open outlook to the sky that would not be there if these properties backed on to other residential properties. However, I cannot avoid recognising that this land is set aside for a second water tank. Given this is a reasonably anticipated outcome, I consider the monopole's visual impact is significantly less than that of a future water tank.
- 14 The Council Officer's report also influences my decision. These officers and I share a similar role of being charged with assessing this proposal's acceptability against the Planning Scheme's policies and provisions. I give weight to their finding that the amended proposal is an acceptable outcome.
- 15 Finally, I place no weight on the fact that the Council has twice refused to grant permits for similar facilities on this site. This does not imply that the site is not suitable. The permit applicants in those earlier cases did not seek a review of those decisions thus I have no indication as to whether these previous proposals would have succeeded or failed on review.
- 16 Separately, and at the commencement of the second hearing day, I provided a detailed description of my inspection of the site and surrounds. This

included findings that some views from within nearby dwellings and rear yards were limited to horizontal views across the site. This outcome was caused by ceilings within dwellings and roofs/covers over outdoor patios that obstructed upward views. This influenced my finding that semi-mature landscaping on the site would mitigate the monopole's visual impact from the most directly affected properties.

- 17 Also, as I advised during the hearing, I followed the Orders made by Member Cook on 7 December 2015 in relation to this matter that:

The following grounds are struck out from all objectors' statements of grounds and may not be relied on at the hearing:

- a) Grounds relating to concerns over the impacts of electromagnetic radiation from the proposed telecommunications facility; and
- b) Grounds relating to concerns about the impacts on public health and/or to the users of nearby land, insofar as they relate to radiofrequency fields or electromagnetic radiation from the proposed telecommunications facility.

- 18 Finally, as I also advised during the hearing, I noted and followed Member Cook's observation that general submissions would not be sufficient to be regarded as evidence on the potential devaluation of properties resulting from this proposal.

WHAT CONDITIONS ARE APPROPRIATE?

- 19 Conditions were discussed at the hearing. It was noted that some of these conditions oblige the Applicant to maintain the proposed landscaping for the life of the permit. I upheld the Council's submission that these conditions should clarify that the landscaping shown on the endorsed plans must be maintained. Further to this, I have ordered a revision to the Maintenance Notation on the Landscape Concept Plan so it refers to the permit holder rather than the Body Corporate.
- 20 Separately, I have not included Melbourne Water's notes on the permit and consider that the Council can convey this advice by other means, such as the covering letter to the permit.

Michael Nelthorpe
Member

APPENDIX A

PERMIT APPLICATION NO:	PA2015/4666
LAND:	142 Hume Drive, Taylors Hill
WHAT THE PERMIT ALLOWS:	
Use and development of land in the Public Use Zone for a telecommunication facility in accordance with the endorsed plans.	

CONDITIONS

- 1 The use and development must be in accordance with the endorsed plans and must not be altered or modified without the prior written consent of the Responsible Authority. The plans must be in accordance with plans prepared by CPS Global (Drawing No's 340026 – P1-P6 Revision H 23/03/2016) in relation to VCAT Hearing P1940/2015.
- 2 Landscaping of the site must be in accordance with the endorsed plans and must not be altered or modified without the prior written consent of the Responsible Authority. The plans must be in accordance with plans prepared by Hansen (Drawing No LCD-001 Revision P 24/03/2016) in relation to VCAT Hearing P1940/2015, except that the words 'Body Corporate' must be replaced with the words 'Permit Holder' in the Maintenance Notation.
- 3 Before the development is complete or by such later date as is approved by the Responsible Authority in writing, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.
- 4 The landscaping shown on the endorsed plans must be maintained in accordance with the endorsed plans to the satisfaction of the Responsible Authority and used for no other purpose, including that any dead, diseased or damaged plants are to be replaced.
- 5 The amenity of the locality must not be adversely affected by the activity on the site, the appearance of any building, works or materials, emissions from the premises or in any other way to the satisfaction of the Responsible Authority.
- 6 All existing works affected by the development works shall be reinstated at no cost and to the satisfaction of the Responsible Authority.

- 7 Stormwater must not be discharged from the site other than by means of an underground pipe drain discharged to a legal point of discharge to the satisfaction of the Responsible Authority.
- 8 The 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, Arpana, May 2002.
- 9 Access to the site, vehicle crossovers and any ancillary road and road drainage works must be constructed in accordance with the requirements of the Responsible Authority.
- 10 Entry to the site must be via Melbourne Water’s northern pipe reserve from Allenby Road and through its reservoir site on a recently asphalted driveway which will require the permit applicant to enter into a maintenance agreement with Melbourne Water.
- 11 The entry through the reservoir site will involve the crossing of a number of Melbourne Water’s water mains and drains which will require protection. How these assets shall be protected must be covered in the required maintenance agreements.
- 12 Pollution and sediment laden runoff must not be discharged directly or indirectly into Melbourne Water’s drains or waterways.
- 13 This permit will expire if one of the following circumstances applies:
 - (a) The development is not started within two years of the issued date of this permit.
 - (b) The development is not completed within four years of the issued date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

--- End of Conditions ---