

11.4 TELECOMMUNICATIONS INFRASTRUCTURE LEASE - PETITION RESPONSE**Author: Daniel Hogan- Manager Customer Engagement****Presenter: Luke Shannon- General Manager Corporate Services****PURPOSE OF REPORT**

To respond to a petition received at the Ordinary Council Meeting held 7 March 2016 seeking the cancellation of a lease between Melton City Council and Vodafone for telecommunications infrastructure located at 72-80 Caroline Springs Boulevard, Caroline Springs.

RECOMMENDATION:

That Council note the petition and take no further action.

REPORT**1. Executive Summary**

A petition of approximately 1,400 signatures was received at the Ordinary Council Meeting held 7 March 2016 seeking the cancellation of a lease between Melton City Council and Vodafone for telecommunications infrastructure installed at 72-80 Caroline Springs Boulevard, Caroline Springs.

Legally, under the terms of the contract, Council has no power to unilaterally break the lease. Any cancellation of the lease would require consent from Vodafone as the leasee. Given the considerable financial and resource investment of the leasee in the planning and construction of the existing infrastructure and the commercial value of the installation, the likelihood of consent from Vodafone is considered nil.

The petition request turns on the argument that "*occupiers, students, teachers, parents of students, members of sporting clubs and all other employees were not given the opportunity to comment or object to the (planning) application.*"

Addressing this assertion, Council has been compliant with all legal obligations, including community notification standards, in granting planning approval for the proposed telecommunications infrastructure. The applicant has also complied with all statutory and regulatory obligations within their planning application, and has since installed a 30m high monopole, associated panel antennae and an equipment shelter as permitted.

Commencing the statutory notice period, Council sent 271 notification letters to land owners and or occupiers within a 300 metre radius of the site. Further, three signs were posted to site in various locations giving notice of the planning application. In addition, a Public Notice was published in the Melton Leader local newspaper, 16 June 2015.

Council received four objections during the community notice period, referencing community health and safety concerns as the primary issue. The Environmental "Electro-Magnetic Emissions" Report (EME) submitted with the planning application complied with the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) standard, therefore Council had no basis to reject the planning application based on community health concerns.

Further, Council maintains that the visual impact of the installation was not unreasonable given its immediate surrounds and being adjacent to a major traffic intersection.

More generally, Council is alive to broad community demand for access to high quality telecommunications, mobile telephony and internet services. As a consequence, Officers

recommend Council not seek to cancel the lease as requested by the petition and maintain our legal obligations under the terms of the lease contract.

2. Background/Issues

A petition of approximately 1,400 signatures was received at the Ordinary Council Meeting held 7 March 2016. The full text reads:

"We the undersigned strongly request that the City of Melton cancel the lease agreement with Vodafone at 72-80 Caroline Springs Boulevard, Caroline Springs Vic 3023. And in doing so, forego the \$13,000 in annual rent in response to large and growing opposition from local residents to this agreement. We request this action on the basis that Vodafone/City of Melton did NOT write to all schools, sporting clubs, kindergartens, child care centres, before and after school care centres within a 300 metre radius of the site in relation to the application for a permit to build a mobile phone tower. In doing so, occupiers, students, teachers, parents of students, members of sporting clubs and all other employees were not given the opportunity to comment or object to the application. This is a breach of both planning, Industry Code C564:2011 Mobile Phone Base Station Deployment as well as natural justice. We are open to Vodafone finding an alternative more suitable location (in contrast to this community sensitive location) for the mobile phone tower in full consultation with the local community."

Legally, under the terms of the contract, Council has no ability to unilaterally break the lease. Any cancellation of the lease would require consent from Vodafone as the leasee. Given the considerable financial and resource investment of the leasee in the planning and construction of the existing infrastructure and the commercial value of the installation, the likelihood of consent from Vodafone is considered nil.

Responding to claims within the petition more generally, Council is bound and/or must have regard for several Acts, regulations and standards in relation to the approval or rejection of planning applications, regulation designed to protect all elements of community amenity and safety.

These obligations include:

- The Melton Planning Scheme, established by the Victorian State Government Department of Environment, Land, Water & Planning (DELWP)
- The State Planning & Environment Act, DELWP
- State Planning Policy, DELWP
- The Federal Telecommunications Act, administered by The Australian Information Commissioner (Information Commissioner)
- Industry codes and standards.

The above regulatory and policy framework not only defines the manner in which planning authorities should consider telecommunications planning applications, but in instances actively encourages the establishment of telecommunications infrastructure to provide for the needs of the community. For example, Clause 52.19, *Telecommunications Facility* within the Melton Planning Scheme states as its objective, "To ensure that telecommunications infrastructure and services are provided in an efficient and cost effective manner to meet community needs."

Council has been compliant with all applicable obligations in the planning approval of the telecommunications infrastructure in question. The applicant also complied with all statutory and regulatory obligations within their planning application.

Meeting public notification benchmarks established within planning requirements, Council sent 271 notification letters to land owners and or occupiers within a 300 metre radius of the site. Further, three signs were posted to site in various locations giving notice of the planning

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application. In addition, a Public Notice was published in the Melton Leader local newspaper, 16 June 2015.

Of the bulk mail-out, letters were addressed to the Department of Education, the Brookside Early Learning Centre, Christ the Priest Primary School, and Brookside College. Approximately three months after sending written notification, Council was returned the letter addressed to the occupier of 13-16 Federation Way, Caroline Springs (Brookside College). The date of return prevented Council from issuing another letter of notification to the College.

Of the four objections received during the statutory notice period advertising the planning application and subsequent community enquiries received during construction of the facility, all referenced community health and safety concerns as the primary issue.

The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) is the Australian Government's primary authority on radiation protection and nuclear safety. ARPANSA regulates Commonwealth entities using radiation with the objective of protecting people and the environment from the harmful effect of radiation. ARPANSA undertakes research, provides services, and promotes national uniformity and the implementation of international best practice across all jurisdictions.

The radiation protection standard applied by ARPANSA to electromagnetic emissions from telecommunications infrastructure is the Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields - 3 kHz to 300 GHz (2002). This standard specifies limits of human exposure to radiofrequency fields in the range 3kHz to 300GHz to prevent adverse effects. It specifies basic restrictions for occupational exposure, general public exposure, and equipment and usage parameters.

Complementing the science informing the radiation protection standard, ARPANSA publishes EMR literature, including articles in peer-reviewed journals, scientific-body reports, fact sheets, conference proceedings etc. online, designed to provide an update on new literature related to EMR and health that may be of interest to the general public.

In this case, the Environmental "Electro-Magnetic Emissions" Report (EME) which was submitted as part of the planning application indicated that the maximum EME level calculated for the proposed systems at this site is 1.43% of the public exposure limit. Having complied with the ARPANSA standard, Council had no basis upon which to reject the planning application.

Further, a recent Victorian Civil and Administrative Tribunal (VCAT) decision (Mason & Ors v Greater Geelong City Council, 2013) has set a case law precedent that planning decisions cannot be appealed based on health concerns where planning applications meet the ARPANSA standard. The case is particularly instructive as to the regard of VCAT for unsupported assertions of public health concerns.

Recognising that telecommunications infrastructure can be unattractive, the installation was designed to co-locate. That is, replace or additionally perform the task of existing infrastructure, or to facilitate shared infrastructure amongst carriers, rather than encourage proliferation of single purpose or carrier structures. The installation replaces an existing light tower, or vertical structure, and is located in an area that provides maximum telecommunication benefit, adjacent to a very substantial traffic intersection.

Council has acted with the principle to ensure that the community is provided with the necessary infrastructure to access high quality telecommunications, mobile telephony and internet services. Council has long advocated for the need for telecommunications investment from other levels of Government and the private sector and continues to do so. The decision of Council to issue the planning permit for the installation of the telecommunications structure is entirely consistent with this position.

Respecting the authority of ARPANSA and the science informing the ARPANSA Standard, Council is satisfied that community health is not at risk. Council maintains that the visual impact of the installation is not unreasonable given its immediate surrounds, and that the

needs of the broader community for improved telecommunications services are being met by this installation.

As a consequence, Officers recommend Council note the petition and take no further action.

3. Council Plan Reference and Policy Reference

The Melton City Council 2013-2017 Council Plan references:

1. Managing our Growth: A clear vision to connect and develop a sustainable City

1.1 Strategically plan for a well designed and built City

4. Financial Considerations

The leasing contract with Vodafone generates \$13,000 + GST per year, indexed at CPI annually.

5. Consultation/Public Submissions

This report is produced in response to a petition signed by 1,400 residents seeking the cancellation of a lease entered into with Vodafone for the installation of telecommunications infrastructure located at 72-80 Caroline Springs Boulevard, Caroline Springs.

During the planning approval process, Council met public notification standards for all statutory and regulatory requirements. Council sent 271 notification letters to land owners and or occupiers within a 300 metre radius of the site. Further, three signs were posted to site in various locations giving notice of the planning application. In addition, a Public Notice was published in the Melton Leader local newspaper, 16 June 2015.

Of the four objections received during the statutory notice period advertising the planning application and subsequent community enquiries received during construction of the facility, all referenced community health and safety concerns as the primary issue. The Environmental "Electro-Magnetic Emissions" Report (EME) submitted with the planning application complied with the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) standard, allaying community health concerns.

6. Risk Analysis

Accepting the recommendation as put may result in a legal challenge by petitioners as to the lawfulness and validity of Council process to date. Council believes that it and the applicant/leasee have conformed with all legal requirements, therefore the risk of successful proceedings to set aside the lease is considered low.

Considering the alternative of Council breaking the lease, under the terms of the contract, Council has no legal ability to act unilaterally. Any cancellation of the lease would require consent from Vodafone as the leasee. Given the considerable financial and resource investment of the leasee in the planning and construction of the existing infrastructure and the commercial value of the installation, the likelihood of consent from Vodafone is considered nil.

An approach to Vodafone to break a lease negotiated in good faith, compliant with all legal and statutory requirements and featuring mutually beneficial outcomes, may risk Council's reputation as a partner in the delivery of essential infrastructure required to meet community need.

7. Options

Council may:

- 1) Accept the recommendation as put.
- 2) Reject the recommendation and seek Vodafone approval to break the lease, accepting the outcome of any such negotiation.

LIST OF APPENDICES

Nil