

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2586/2017
PERMIT APPLICATION NO. PInA01046/16

CATCHWORDS

Section 82 of the *Planning and Environment Act 1987*. Casey Planning Scheme. Telecommunication facility. Visual impact. Heritage considerations.

APPLICANT	Judith Margaret Rand
RESPONSIBLE AUTHORITY	Casey City Council
RESPONDENT	Optus Mobile Pty Ltd
SUBJECT LAND	1370 Baxter-Tooradin Road, Cannons Creek
WHERE HELD	Melbourne
BEFORE	Vicki Davies, Member
HEARING TYPE	Hearing
DATES OF HEARING	18 May and 7 June 2018
DATE OF ORDER	27 June 2018
CITATION	Rand v Casey CC [2018] VCAT 970

ORDER

- 1 In application P2586/2017 the decision of the responsible authority is varied.
- 2 In planning permit application PInA01046/16 a permit is granted and directed to be issued for the land at 1370 Baxter-Tooradin Road, Cannons Creek in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Use of land for a Telecommunications facility in a Rural Conservation Zone
 - Buildings or works associated with a Telecommunications facility on land in a Rural Conservation Zone, Environmental Significance Overlay and Significant Landscape Overlay
 - Buildings or works for a Telecommunications facility under clause 52.19
 - Alteration of access to a road in a Road Zone, Category 1

Vicki Davies
Member

APPEARANCES

For applicant

Mr Nicholas Sutton, solicitor, Planning and Property Partners Pty Ltd

He called the following witness:

- Ms Robyn Riddett, architectural historian and heritage consultant, Anthemion Consultancies

For responsible authority

Mr Angus McGuckian, town planner, Journeyman Planning

For respondent

Ms Marita Foley of Counsel, instructed by Minter Ellison

She called the following witnesses:

- Mr Brad James, town planner, Huawei Technologies (Australia)
- Mr Allan Wyatt, landscape architect, XURBAN
- Mr Stuart McGurn, town planner, Urbis
- Mr Semih Sahin, radio frequency engineer, Huawei Technologies (Australia)

INFORMATION

Description of proposal	Optus telecommunications facility, including 30m-high monopole, on rural land
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit
Planning scheme	Casey Planning Scheme
Zone and overlays	Rural Conservation Zone (RCZ) Public Use Zone, Schedule 1 (PUZ1) Road Zone, Category 1 Significant Landscape Overlay, Schedule 2 (SLO2) Environmental Significance Overlay, Schedule 1 (ESO1) Bushfire Management Overlay (BMO)
Permit requirements	Clause 35.06-1 Use of land for a telecommunications facility in RCZ Clause 35.06-5 A building or works associated with a section 2 use in RCZ Clause 42.01-2 Construct a building or construct or carry out works in ESO Clause 42.03-2 Construct a building or construct or carry out works in SLO Clause 52.19-1 Construct a building or construct or carry out works for a Telecommunications facility Clause 52.29 Create or alter access to a road in a Road Zone, Category 1
Relevant scheme policies and provisions	Clauses 10, 11, 12, 13.05, 15, 19.03, 21, 22.06, 22.07, 35.06, 36.01, 42.01, 42.03, 52.19, 52.29, 62.01, 62.02-1 and 65
Land description	The review site (known as ‘Shadowbrook’) is located on the south side of Baxter-Tooradin Road, approximately 2.5km to the west of the township boundary of Cannons Creek. It has a frontage of approximately 511m and an area of around 20ha. This is a rural area with a variety of land uses, including cropping, grazing and a number of

thoroughbred horse racing and agistment facilities (including the review site).

Abutting the site to the west is 1300 Baxter-Tooradin Road (known as 'Balla Balla'). It is about twice the size of the review site and is used for raising beef cattle. It accommodates an historic homestead in a garden setting.

Tribunal inspection

4 June 2018, unaccompanied by the parties

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application to review the Council's decision to grant a permit for the use and development of the land at 1370 Baxter-Tooradin Road, Cannons Creek for the purpose of a telecommunications facility.
- 2 The applicant for review, Ms Rand, is the owner of an adjoining rural property. Part of her property is covered by an individual Heritage Overlay. Her grounds of review relate to the visual impact of the proposed telecommunications tower, particularly on the heritage value of her property ('Balla Balla'); non-compliance with the Telecommunications Code of Practice and clause 52.19; and the failure to co-locate to another tower that does not impact on the historical values or landscape.
- 3 The permit applicant is a respondent in the proceeding.
- 4 I must decide whether a permit should be granted and, if a permit is granted, what conditions it should contain.
- 5 In the light of the submissions and evidence, and my inspection, I consider that the key issue to be determined is whether the proposed facility will have an unreasonable visual impact on the public realm or Ms Rand's property.
- 6 My principal finding is that there would be a clear net community benefit arising from the proposal. The facility would improve the telecommunications service in the area. Although it would change part of the outlook from Ms Rand's property, the visual impact would be minimised and reasonable. Accordingly, I have decided to grant a permit, with modified conditions to those on the Notice of Decision to Grant a Permit (NOD). My reasons follow.

THE PROPOSAL

- 7 It is proposed to site the telecommunications facility in the north-west corner of the review site. The fenced compound (10m by 6.4m) would be set back approximately 55m from Baxter-Tooradin Road and 20.8m from the western boundary. It would be located at the base of a small rise, within a cleared area amongst native vegetation. Key features of the facility are:
 - A 30m monopole (total height with antenna protrusion is approximately 32.3m).
 - Panel antennas and receivers on a hexagonal headframe at the top of the monopole and one parabolic antenna mounted at a height of 20m.

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

- An equipment shelter (3.15m by 2.38m), adjacent to the monopole.
 - Construction of a gravel access track on cleared land for approximately 65m.
 - Underground power from an existing farm shed.
 - No vegetation removal.
- 8 The front of the review site is contained within the Public Use Zone, Schedule 1 (PUZ1). The proposed facility is not within the PUZ1 area, but the proposed access track is. Mr McGuckian submitted that while the proposed facility is consistent with the purpose of the zone for Service and Utility, the consent of the relevant public land manager is required.² Ms Foley advised that to simplify the matter the access track could be realigned so that is wholly within the Rural Conservation Zone (RCZ).
- 9 I agree with Mr Sutton that there are deficiencies with the plans. They do not have adequate site dimensions, references to the precise location or AHD levels or contours. It is also unclear whether the trees shown around the compound are accurately depicted. However, I do not think those deficiencies fundamentally restrict an assessment of the proposal.

PLANNING SCHEME CONTROLS AND PROVISIONS

Zone and overlays

- 10 In the Casey Planning Scheme (the scheme), most of the review site is included in a RCZ, the purpose of which includes:
- To conserve the values specified in a schedule to this zone.
 - To encourage development and use of land which...takes into account the conservation values and environmental sensitivity of the locality.
 - To conserve and enhance the cultural significance and character of open rural and scenic non urban landscapes.
- 11 The conservation values specified in the schedule to the RCZ are ‘To maintain the biodiversity of these ecologically sensitive areas and conserve the valued environment, landscapes and landforms’.
- 12 On one reading of the scheme, a permit is not required under the RCZ for use of the land or buildings and works by virtue of the exemption in clause 62.01 for ‘The use of land for a telecommunications facility if the associated buildings and works meet the requirements of clause 52.19’ and the exemption in clause 62.02-1 for ‘Buildings and works associated with a telecommunications facility if the requirements of clause 52.19 are met’. I consider that matter later in these reasons.
- 13 Baxter-Tooradin Road is a Road Zone, Category 1 (RDZ1). As no part of the use or buildings and works is contained within the RDZ1, a planning

² Pursuant to clause 52.19-2.

permit is not triggered. However, a permit is required under clause 52.29 to create or alter access to a RDZ1. Mr McGuckian advised that the Council had taken the view that a permit is required in this instance, as there would be a change in circumstances or usage of the existing access arising from the new facility. VicRoads has advised that it has no objection to the proposal and has not required any permit conditions.

- 14 The whole of the review site is contained within an Environmental Significance Overlay (ESO). The purpose of the overlay includes 'To ensure that development is compatible with identified environmental values'. More particularly, the review site is within Schedule 1 (Coastal Environs). The objectives of the schedule include 'To maintain and enhance the rural character of areas fringing Western Port'.
- 15 Clause 42.01-2 requires a permit to construct a building or construct or carry out works, unless a schedule specifically states that a permit is not required. The schedule does not state that a permit is not required. However, as I have already noted, clause 62.02-1 includes an exemption for 'Buildings and works associated with a telecommunications facility if the requirements of clause 52.19 are met'.
- 16 The whole of the review site is also contained within a Significant Landscape Overlay (SLO). The purpose of the overlay includes 'To conserve and enhance the character of significant landscapes'. More particularly, the review site is within Schedule 2 (Western Port Coast). The landscape character objectives in the schedule include 'To encourage development that is in harmony with the coastal landscape of Western Port' and 'To protect the coastal character of land surrounding the settlements of Blind Bight, Cannons Creek, Tooradin and Warneet'. Again, if it were not for the apparent exemption in clause 62.02-1, clause 42.03-2 would require a permit for buildings and works.
- 17 The south-east corner of the review site is affected by a Bushfire Management Overlay (BMO). The proposed facility and associated works are not located within the BMO area. In any event, a planning permit would not be required under clause 44.06-2 as the buildings and works are not associated with a listed use under the provision.
- 18 Given the exemptions in clause 62.01 and 62.02-1 regarding a telecommunications facility, on the face of it there are no permit triggers for use of the land and buildings and works under the RCZ, the ESO and SLO. There is a permit exemption if the requirements of clause 52.19 are met.
- 19 Near the end of the hearing, there was a discussion about draft conditions and what a permit would allow. It was assumed that there were exemptions under the applicable zone and overlays, but I heard competing submissions about whether both use and development are relevant under the permit trigger in clause 52.19. On that matter, Mr McGuckian drew my attention to

the decision of Deputy President Gibson in *Pfarr v Campaspe SC*,³ which directly addresses this issue in relation to a proposed telecommunications facility within a Farming Zone and subject to a Salinity Management Overlay. After outlining the provisions in clause 62.01 and 62.02-1, the Tribunal commented:

65 These provisions are poorly drafted. They do not make it clear whether, if a permit is required for buildings and works under clause 52.19-2, then no permit is required under any other provision. Alternatively, and more logically, it would seem that the intent is that if a telecommunications facility does not require a permit under clause 52.19-2 for any reason, including that it is described in the Code of Practice and complies with the requirements of the Code, then both use and development are exempt from the need for a permit under both clauses 62.01 and clause 62.02-1. I have interpreted these provisions in this way.

20 The Tribunal saw that interpretation as consistent with the provisions of the Code itself, particularly its stated purpose and its description of how to use the Code (section 3). The Code being referred to is *A Code of Practice for Telecommunications Facilities in Victoria*⁴ (the Code of Practice), which is an incorporated document under clause 81 of the scheme. The Tribunal went on to state:

68 As a result, I find that when clauses 62.01 and 62.02-1 refer to buildings and works associated with a telecommunications facility meeting the requirements of clause 52.19, they are referring to buildings and works that:

- are associated with one of the telecommunications facilities described in section 5 of the Code of Practice; and
- the requirements set out in section 5 in respect of the particular type of telecommunications facility in question are met.

21 In *Pfarr*, the proposed telecommunications facility was not of the type described in section 5 (examples of which are a microcell, an above ground housing and a temporary facility) and thus the requirements of clause 52.9 were not met. Accordingly, the Tribunal concluded that a permit was required for buildings and works pursuant to clause 52.19-2; the use of land was not exempt under clause 62.01; a permit was required for use of the land and buildings and works under the Farming Zone provisions; and a permit was required for buildings and works under the Salinity Management Overlay provisions.

22 Essentially, the provisions of the scheme aim to exempt relatively minor telecommunications facilities, as listed in section 5, which each have their own 'requirements' in the Code of Practice. Clauses 62.01 and 62.02-1 do

³ [2014] VCAT 872.

⁴ Department of Sustainability and Environment, 2004.

not seek to exempt larger telecommunications facilities. The basis of that distinction makes obvious sense.

- 23 The findings in *Pfarr* are directly applicable to the zone and overlay regime in this case. The proposed telecommunications facility is not one of the types described in section 5 of the Code of Practice. Accordingly, under the RCZ provisions a permit is required for the use of the land for a telecommunications facility and buildings and works; and permission is also required for buildings and works under the ESO and SLO.

Particular provisions

- 24 As highlighted in *Pfarr*, clause 52.19 includes its own permit trigger for buildings and works for a telecommunications facility, separate to any other requirements under a zone or overlay.
- 25 It was common ground that the proposed telecommunications tower does not fall within any of the categories of buildings and works for which no permit is required. For instance, it is not considered to be a ‘low-impact facility’, as described by relevant legislation.
- 26 Mr McGuckian advised that during the processing of the planning application, it was amended at the applicant’s request to include the ‘use’ of the site for a telecommunications facility, in addition to the proposed buildings and works. The preamble of the NOD refers to ‘Use and development of the land for the purpose of a telecommunications facility under clause 52.19’. However, during the discussion of permit conditions, Ms Foley submitted that the reference to use should be removed. Mr McGurn agreed with that. They invoked the exemption in clause 62.02-1 and noted various Tribunal orders where what the permit allowed was limited to the development of land for the purpose of a telecommunications facility.
- 27 Under clause 52.19-1, the only permit requirement is ‘to construct a building or construct or carry out works for a Telecommunications facility’. After considering buildings and works pursuant to clause 52.19-2, the Tribunal in *Pfarr* states ‘Use of the land for a telecommunications facility is not exempt under clause 62.01’. The Tribunal then goes on to make findings about the permit requirements for the relevant zone and overlay in that case.⁵ However, I do not take that to mean that a permit for use of land is required under clause 52.19-1. Unlike the RCZ provisions, clause 52.19-1 does not require a permit for use, which may or may not be exempt under clause 62.02-1.
- 28 The purpose of Clause 52.19 is:
- To ensure that telecommunications infrastructure and services are provided in an efficient and cost effective manner to meet community needs.

⁵ *Pfarr v Campaspe SC* [2014] VCAT 872, [69].

- To facilitate an effective statewide communications network in a manner consistent with orderly and proper planning.
 - To encourage the provision of telecommunications facilities with minimal impact on the amenity of the area.
- 29 The decision guidelines at clause 52.19-6 require that before deciding on an application, the responsible authority (and the Tribunal on review) must consider, as appropriate:
- The principles for the design, siting, construction and operation of a Telecommunications facility set out in *A Code of Practice for Telecommunications Facilities in Victoria, July 2004*.
 - 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.
- 30 The Code of Practice includes four principles for the design, siting, construction and operation of telecommunication facilities. I consider their application later in these reasons.
- 31 The general decision guidelines at Clause 65 set out a number of matters to be considered. They include State and local policies; the purpose of the zone, overlay or other provision; the orderly planning of the area; and the effect on the amenity of the area.

Planning policies

- 32 With respect to policy, the starting point is clause 19.03-4 (Telecommunications) in the State Planning Policy Framework of the scheme. It recognises the importance of telecommunication facilities to the community and seeks to facilitate their orderly provision throughout the community. Strategies include:
- Ensure that modern telecommunications facilities are widely accessible to business, industry and the community.
 - Do not prohibit the use of land for a telecommunications facility in any zone.
 - In consideration [sic] 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.
- 33 Clause 19.03-4 provides that planning must consider, as relevant, the Code of Practice.
- 34 Given the various overlays that apply to the land, clause 12 (Environmental and Landscape Values) is relevant. It is policy that 'Planning should protect

sites and features of nature conservation, biodiversity, geological or landscape value'. More specifically, there are objectives 'To protect and conserve environmentally sensitive areas'⁶ and 'To protect landscapes and significant open spaces that contribute to character, identity and sustainable environments'.⁷

35 The review site is within the area addressed by the Casey Coast policy at clause 21.12. The policy describes the Casey Coast as 'an internationally significant area that has long been noted for its environmental attributes, particularly its biodiversity and wide range of habitats for coastal plants and animals'. Strategies at clause 21.12-3 include:

- Encourage development that is visually integrated with the surrounding area, designed to minimise visual bulk, and is sympathetic to the environmental and scenic qualities of the Western Port coastal areas.
- Encourage sensitively sited and designed coastal infrastructure that avoids the fragmentation of Ramsar-listed coastal environments.
- Enhance the special, open coastal, rural landscape character of the land south of Baxter-Tooradin Road.

36 At clause 22.06 there is a Telecommunications Facility Policy that applies to all land, in accordance with the provisions of clause 52.19. The policy basis (at clause 22.06-1) includes:

Telecommunications have, and will continue to, become an increasingly significant part of daily life. It is an industry that is experiencing major advances in technology, facilitating a revolution in mobile phone and Internet use, and assisting in breaking down global barriers to business and communications.

The provision of telecommunications facilities and infrastructure, however, can be a cause for community concern and conflict, as they have the potential for visual and environmental impacts. These impacts can relate to visual intrusion, lack of compatibility with surrounding land uses, and concerns about long-term health effects.

37 The policy objectives include to 'To coordinate the location of new telecommunications facilities' and 'To minimise the visual and environmental impacts of new telecommunications facilities'.

NEED FOR THE FACILITY

38 Ms Foley posed the rhetorical question of 'Why would Optus seek a facility that is not required?' However, the local policy effectively calls for it to be established that a new facility is required. Specifically, it is policy that an application for a new telecommunications facility be accompanied by 'A demonstration that the preferred site accords with the strategic rollout plan

⁶ Clause 12.04-1.

⁷ Clause 12.04-2.

of the carrier’ and ‘Details on the radial coverage area for the facility and any existing facilities located within that area’.⁸

- 39 In the light of the information provided with the permit application and the evidence of Mr James and Mr Sahin, I am satisfied that there is a need for the proposed facility in order to provide improved, high-quality coverage to the Cannons Creek area, particularly mobile data capacity.
- 40 As explained by Mr James, the proposed facility is part of a nationwide rollout to deliver improved telecommunication services. An investigation of the mobile network in Cannons Creek has identified areas where coverage and network quality needs to be improved. As shown on a coverage map annexed to Mr James’ witness statement, the existing facilities do not provide sufficient coverage. An additional base station is needed. If action is not taken, users will have difficulty connecting to the network or calls will drop out. Users may also have reduced data speeds, longer download times and experience poor network performance at busy times.
- 41 Material presented by Mr Sutton, printed from the Optus website, suggested that the existing mobile network coverage for the Internet is ‘great’ for both indoor and outdoor coverage at his client’s property. However, Mr Sahin advised that that is not the case. He explained that the coverage map tendered by Mr Sutton shows the general extent of coverage when using a device outside buildings. It must also be read in conjunction with ‘Important Notes’ which clarify that the coverage maps ‘show planned rollouts’, and thus predict coverage. In contrast, Mr James’ coverage map forecasts service for a user that is located indoors and in a vehicle. Mr Sahin confirmed that there is a gap in coverage in the vicinity of the review site and the proposed facility is required to improve the ability for customers to connect to the network when indoors or when travelling along main roads in the area, and for future requirements.

CO-LOCATION AND ALTERNATIVE SITES

- 42 Principle 2 of the Code of Practice is ‘Telecommunications facilities should be co-located wherever practical’. The aim is ‘to minimise unnecessary clutter’. The policy at clause 22.06-3 reinforces co-location, identifying co-location with existing infrastructure as the first preference when providing new facilities. The decision guidelines include:

Whether all possible options for the co-location and/or integration of the facility with existing structures have been exhausted.

- 43 It was Mr James’ evidence that there are no existing structures within the targeted coverage area in Cannons Creek that could viably be used for co-location. The closest towers are Optus facilities at Blind Bight and Pearcedale, but Optus is seeking to address a blackspot in coverage between those sites. The Telstra towers in the vicinity are further from the Cannons

⁸ Clause 22.06-3.

Creek area. Mr James also advised that it is not feasible to upgrade existing Optus towers. A new facility in the Cannons Creek area is required.

- 44 Although the local policy identifies a new structure/tower as the least preferred option for the provision of new telecommunications facilities, I accept that it is necessary in the Cannons Creek area.
- 45 The policy at clause 22.06-3 calls for a permit application to be accompanied by 'A detailed assessment of at least three other feasible sites for the establishment of the facility and the rationale for the preferred site'. On that matter, Mr James' evidence included a table of 'Alternate site options'. It addresses six possible sites (including the review site) and includes a description of the property, planning matters/constraints and design issues. All of the sites are deemed to be suitable from a design perspective, but the review site is the only site where acquisition is possible. In other words, none of the other landowners were interested in the proposal.
- 46 The investigation of alternative sites accords with the local policy. There does not need to be an exhaustive process of investigating alternative sites. Ultimately, I am not called upon to assess the relative merits of various sites, but whether the proposal is an acceptable outcome.
- 47 This is not a preferred location for a telecommunications facility in terms of the clause 22.06 policy. It says that new facility should 'be preferably located in commercial and industrial areas'. However, that is not an option in this instance.

VISUAL IMPACT

- 48 An aim of the Code of Practice is to 'Encourage the provision of telecommunications facilities with minimal impact on the amenity of the area'. Principle 1 is that such facilities 'should be sited to minimise visual impact'. The 'Application of principle' includes:
- 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.
 - Equipment associated with the telecommunications facility should be screened or housed to reduce its visibility.
 - A telecommunications facility should be located so as to minimise any interruption to a significant view of a heritage place, a landmark, streetscape, vista or panorama, whether viewed from public or private land.
- 49 Clause 22.06 also aims to minimise the visual impact of telecommunications facilities. In particular, it is policy that:
- Residential, heritage and/or environmentally sensitive areas only be considered for the location of facilities where the siting of

that facility is likely to better achieve the objectives of this policy.

- The location and design of telecommunications facilities minimise visual impacts through sensitive siting, use of non-reflective, finishes and appropriate landscaping.

50 The policy calls for a permit application to be accompanied by ‘Photographic imaging and/or other means to demonstrate that any adverse visual impacts have been minimised’.

51 Before considering the visual impact of the proposal, I wish to make some general observations. Firstly, I agree with Mr McGurn that visual impact is to be considered in a policy context which includes the active facilitation of telecommunications facilities in the Code of Practice and local policy and the fact that such facilities are not prohibited in any zone. Secondly, in order to serve their function, monopole facilities need to be elevated and located prominently. That invariably makes them conspicuous in an open, rural landscape. Thirdly, ‘minimal’ visual impact does not mean no impact and to ‘minimise’ impact means to achieve a minimal impact.⁹ Fourthly, whether a facility has been located to minimise the visual impact is a subjective issue about which there can be differences of opinion. The Tribunal has observed that it can depend on factors such as distance from the viewer to the facility, position in the landscape, other infrastructure in the landscape, proximity to dwellings, attitudes to landscape and the characteristics of the particular facility.¹⁰

52 Furthermore, I note that the Tribunal has expressed various views about the nature of monopoles. For instance, on the one hand, the Tribunal has observed that ‘a monopole is a structure of a fundamentally different type’ to other buildings and infrastructure in a rural setting, and its potential impact is far greater.¹¹ In other decisions, the Tribunal has stated:

As is the case with most new structures in the landscape, the monopole may appear quite dominant when it is first constructed. However in time, it will become just another piece of infrastructure in the landscape – a part of someone’s everyday experience in the same way electricity poles, road signs, television aerials and satellite dishes fade into the background and become a normal and unremarkable part of a locality.¹²

The extent to which the visibility of the structure could be found to be unreasonable when viewed from paddocks and outdoor recreational areas must be tempered by the rural context and zoning of the land.

While many properties are clearly used for rural living, the setting is

⁹ *Howard v ACE Radio Broadcasters Pty Ltd* [2010] VSC 248, [33].

¹⁰ *McClelland v Golden Plains SC* [2013] VCAT 749, [21].

¹¹ *Richter v South Gippsland SC* [2013] VCAT 2120, [28].

¹² *Crawford v Ballarat CC & Anor* [2013] VCAT, [30].

rural where telecommunications and farm-related infrastructure are not unreasonable additions to an ever-changing rural landscape.¹³

Impact on the landscape

- 53 The existence of an ESO and a SLO reflect the fact that this is a sensitive landscape context. Clause 52.19-6 invokes the decision guidelines of those overlays. I acknowledge that in *Richter v South Gippsland SC*¹⁴ the Tribunal refused to grant a permit for a proposed 30m-high monopole on land in Port Franklin with a similar planning context (that is, land subject to an ESO and SLO, although different schedules to those in this case, and in a Farming Zone rather than a RCZ).
- 54 Every proposal need to be considered on its merits. As highlighted by Mr McGurn, ESO1 is essentially about the ecological diversity of land along Western Port and SLO2 relates to the coastal landscape character. Furthermore, the review site is at the periphery of the overlay areas. Ultimately, I agree with Mr McGurn that the proposal would not be contrary to the objectives of either overlay. There is no proposed removal of vegetation, an issue to be considered under both overlays.
- 55 With respect to the issue of visibility, the decision guideline of SLO2 include ‘Whether the development will be visible from public roads and other vantage points’ and the decision guidelines of ESO1 include:
- The design, location and colour of the proposed buildings and works and their impact on the landscape.
 - Whether the location of buildings and works take advantage of the topography and landscaping of the area to provide screening from adjoining properties and surrounding areas.
- 56 Mr McGuckian submitted that a number of factors lead to the conclusion that the site is appropriate for visual mitigation. They include:
- The topography of the area is generally flat, with some undulated land to the south of Baxter-Tooradin Road.
 - The existing native vegetation along the road forms of visual tunnel focusing the view of the travelling public down the road. There are a few gaps and breaks on approach to the site, but these are fleeting and from vehicles travelling at 90-100km/hour. There are generally more open, expansive views to the north of the road.
 - The proposed tower would be well set back from the road, behind a hedge along the frontage and amongst a copse of trees estimated to be 12m-15m high.

¹³ *Williams v Benalla RC* [2004] VCAT 511, [41].

¹⁴ [2013] VCAT 2120.

- The tower would not be located on a highpoint in the area and from any public vantage point ‘would not be profiled starkly against a sky backdrop or on a ridge’.
- There are ‘no unimpeded, unfiltered, commending views’ from any of the adjoining residences and large setbacks are provided.

57 No concerns were raised about the visual impact from any private property other than that of the applicant for review. I consider the particular impact on Ms Rand’s property under the next heading.

58 In terms of views from the public realm, I fully agree with Mr McGuckian’s submissions. This is not a case of broad open farmland where a stand-alone tower would have a great prominence. My inspection confirmed that there would be only fleeting views of the tower from Baxter-Tooradin Road. That is consistent with the evidence of Mr Wyatt, who had assessed the visibility of the tower from four vantage points along the road. Indeed, Mr Wyatt advised that he had found it difficult to find locations along the road where the facility would be visible for any distance. Mr Wyatt acknowledged the prospect of occasional glimpses when travelling east but thought there would be less chance of viewing the tower when travelling west. He concluded that the only view of the tower, and potentially its base and supporting infrastructure, would occur at the entry gate to the review site. I agree with Mr Wyatt that the visual impact on the public domain would be negligible.

Views from ‘Balla Balla’

59 One of the decision guidelines at clause 52.19-6 is ‘The effect of the proposal on adjacent land’. Unsurprisingly, the focus of the hearing was the potential impact on the applicant for review’s adjacent land.

60 Mr Sutton submitted that the proposed tower will ‘puncture the current open view’, especially from the first floor balcony of the ‘Balla Balla’ homestead. He acknowledged that there is already infrastructure close to the house, but it has a height of no more than 10m or so. He suggested that the tower would be the sole structure extending straight up. Mr Sutton also submitted that the visual impact would be exacerbated give that the site of the tower is approximately 2m higher than the ground level at the homestead. He also highlighted the gap in plantings in the vicinity of the proposed compound, potentially allowing the full height of the tower to be visible in views from the homestead.

61 There will undoubtedly be views from certain locations on Ms Rand’s property. I think that views from within paddocks or working areas of the property are less relevant than views from the homestead, particularly its living areas, and garden.

62 I agree with Ms Foley that there is a subjective aspect to visual impact. There is no test for the impact on private dwellings. In this case, the dwelling is located over 600m from the proposed tower. It would largely be

screened by two runs of native vegetation, which are assisted by natural undulations in the topography. My inspection revealed that there is unlikely to be any view of the tower from the ground level in front of the dwelling. A row of trees and a small rise will interrupt views. As acknowledged by all parties, any clear view would only really be captured from the first floor balcony. From that vantage point, trees are likely to screen the base of the tower, although it is possible that a gap in the trees would expose the full height of the tower in some views.

- 63 Mr Wyatt's evidence was that at a distance of approximately 590m the proposed monopole 'is not a dominant element, even when visible'. Rather, it would be a 'small and delicate' element at a distance. In reaching that conclusion he relied on the photomontages he prepared from viewpoints at a comparable distance (VP1, approximately 540m to the north-east and VP4, the driveway to 'Balla Balla', approximately 500m to the west). Mr Wyatt concluded that given the distance, and the likelihood of intervening vegetation reducing the extent of visibility, the visual impact is 'negligible-nil' from potential viewing locations adjacent to the house. He thought that there would be negligible impact if the tower was visible in any gap in the trees.
- 64 Mr McGurn also considered that the distance would mitigate any impact. He thought that the tower is not close enough to affect the amenity of living on Ms Rand's property. He contrasted this situation to that considered by the Tribunal in *Richter*. In that case, the Tribunal refused a tower that was to be greater than 500m from the applicant for review's house but it was in the middle of a panoramic view from a living room, not ameliorated by vegetation. Mr McGurn commented that in this case the dwelling is offset from the proposed tower and there is vegetation in the foreground.
- 65 I would have been greatly assisted by a photomontage depicting the view of the tower from the first floor balcony. Unfortunately, Mr Wyatt's evidence did not include such a representation. He was unable to get access to the dwelling because he did not provide adequate notice about when he would be in the area.
- 66 In the absence of an accurate photomontage, I am still confident that the proposed tower would not have an unreasonable visual impact in views from the homestead. There may be views from the first floor balcony between the trees, but at a distance of around 590m there would be a significant diminution in impact. The proposed tower would be a small element in the landscape. As I discuss later in these reasons, new plantings could ultimately further mitigate the visual impact.
- 67 Mr McGuckian submitted that due to the distance and existing vegetation, a person would need to 'seek out' a view of the tower. Given Ms Rand's initial objection and initiation of this proceeding, I appreciate that once the tower is constructed she will always be highly conscious of its presence. However, I need to assess the visual impact in a more objective sense. My

key finding is that the tower would have a minimal visual impact on the neighbouring property.

IMPACT ON HERITAGE SIGNIFICANCE

68 Part of the applicant for review's property is covered by an individual Heritage Overlay - HO13 ('Balla Balla'). The statement of significance includes:

'Balla Balla', comprising the homestead (including its interior) constructed c.1880 (with possible earlier sections), and its associated gardens (including two Canary Island Palms and an Italian Cypress) and land at Baxter-Tooradin Road, Cannons Creek.

'Balla Balla' is regionally significant for its link, by history and by part of its fabric, to the early and formative pastoral era in the Westernport and Gippsland districts. The house, by its original construction, relative integrity and style, appears to be substantially from the 1870s or early 1880s and as such is linked with Alexander M Hunter, a well known grazier in the colony at that time.

'Balla Balla' is architecturally and aesthetically significant as a relatively intact example of an early dwelling in the now rare Colonial Georgian style.¹⁵

69 There is no Heritage Overlay affecting the review site. Accordingly, I agree with Mr McGuckian that in accordance with the long-established 'National Trust principal'¹⁶ the provisions of clause 43.01 (Heritage Overlay) are not relevant. Although Ms Riddett's statement of evidence applied the objectives and decision guidelines of the Heritage Overlay, and State policy relating to 'heritage places', under cross-examination she conceded that those provisions are not relevant. On the other hand, she still maintained that clause 43.01 could be used 'as a benchmark'.

70 Some planning schemes have policies aimed at ensuring that development on land abutting a heritage place respects heritage values.¹⁷ However, there is no such policy in the Casey Planning Scheme. Nor is there a heritage policy in the scheme. In any event, the review site does not directly abut HO13.

71 The policy at clause 22.06-3 directs that heritage areas should be generally avoided as location for telecommunications facilities, but it makes no reference to adjoining land in a Heritage Overlay.

72 This is an interesting case, however, as Principle 1 of the Code of Practice and clause 52.19 specifically invoke heritage considerations. Relevantly, the Code of Practice states:

¹⁵ Citation prepared by Graeme Butler & Associates, 1994.

¹⁶ *National Trust of Australia [Victoria] v Australian Temperance and General Mutual Life Insurance Society Ltd* [1976] VR 592.

¹⁷ An example is clause 22.04 (Heritage Places and Abutting Land) of the Mornington Peninsula Planning Scheme.

- ...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 telecommunications facility should be located so as to minimise any interruption to a significant view of a heritage place...whether viewed from public or private land.

73 Notably, the decision guidelines at clause 52.19-6 only require a consideration of the decision guidelines of the Heritage Overlay if the proposed telecommunications facility is located in a Heritage Overlay.

74 Notwithstanding the limited ambit of heritage considerations, Ms Riddett's evidence was that the proposal would adversely affect the significance of 'Balla Balla', which a heritage place 'in the vicinity'. Ms Riddett saw the proposal as contrary to the strategies for heritage conservation in clause 15.03-1. In particular, she thought it does not respect an identified heritage place and does not 'Ensure an appropriate setting and context for heritage places is maintained or enhanced'.

75 Ms Riddett was particularly concerned that the tower would be seen from the first floor balcony and therefore affect its setting. She noted that while the balcony is now accessed from a secondary bedroom and sewing room, it would have been initially built for the purpose of obtaining views, and the adjacent rooms could one day revert to living rooms.

76 Ms Riddett's evidence was that 'Balla Balla' now has an unencumbered setting and it should remain so. She highlighted that the *Burra Charter* seeks to protect the setting of heritage places. Specifically, Article 8 states 'Conservation requires retention of an appropriate setting',¹⁸ which is 'the immediate and extended environment of a place that is part of or contributes to its cultural significance and distinctive character'.¹⁹

77 Ms Riddett included in her written statement an extract from the *Burra Charter* 'Explanatory Note' which defines setting.²⁰ When cross-examined by Ms Foley, she conceded that it does not mention views from a heritage place being part of the setting. However, I have since realised that the extract is incorrect. The correct version includes:

Setting may include: structures, spaces, land, water and sky; the visual setting, including views to and from the place, and along a cultural route... [Emphasis added]

78 While views from a heritage place are part of its setting, ultimately, I am not persuaded that the proposed tower would compromise the setting of 'Balla Balla'. I have reached that conclusion for a number of reasons.

¹⁸ *The Burra Charter*. The Australian ICOMOS Charter for Places of Cultural Significance, 2013, [5].

¹⁹ *Ibid.* [3].

²⁰ Heritage Statement, May 2018, [42].

- 79 Firstly, I acknowledge Mr Sutton's submission that the tower would be permanently in the viewshed from the first floor balcony. It would not be seen in a fleeting glimpse, as is the case along the road. However, the proposed tower would be over 600m from the homestead and over 400m from the edge of HO13 and, as I have already discussed, would be a minor element in the distance.
- 80 Secondly, clause 43.01 does not seek to protect development or use beyond the heritage place. It is entirely unreasonable for Ms Riddett to suggest that the setting of 'Balla Balla' is 'as far as the eye can see'. The extent of HO13 is not just a practical, drafting issue. It relates to what the planning scheme is seeking to protect. The entirety of the applicant for review's property is not significant. The limited extent of HO13 is an indication that heritage significance does not radiate beyond the homestead and its immediate surrounds, or curtilage. Notably, the statement of significance does not make reference to the wider context, or any particular views. As put by Mr McGuckian, there is no justification for 'potential sterilisation of use and development on adjoining sites'. That is not the purpose of the Heritage Overlay.
- 81 Thirdly, as acknowledged by Ms Riddett, the proposed tower would not impact on any views of the homestead and garden. The heritage components of 'Balla Balla' are largely screened from public views and any private views of the dwelling would not be affected by the tower. Indeed, it is unlikely that the tower and 'Balla Balla' would be seen in the same view cone from any vantage points. The tower in no way competes with the heritage building. As Mr McGurn observed, if there were to be views from other private properties to the south, the tower would be in the background and not interrupt views of the homestead. The tower would certainly not interrupt any 'significant view' of the heritage place (as referred to in Principle 1 of the Code of Practice). Nor would the proposed tower have any visual relationship with the designated heritage trees, which are at the back of the homestead.
- 82 The Code of Practice does not define what is meant by 'in the vicinity of a heritage place'. However, given the distance between the proposed tower and the homestead, and the fact that they would not be seen together, I see no need for the facility to be sited and designed with external colours, finishes and scale 'sympathetic to the heritage place'. Such a requirement is more applicable to an urban area. I agree with Mr McGuckian that in this instance the presence of a heritage building on the adjoining site does not warrant any specific or different design or colour treatment.
- 83 Lastly, I note that Ms Riddett suggested that if the proposed tower was moved one way or the other, out of the existing gap between the trees, there would be less of a view, and perhaps even no view from the first floor balcony of 'Balla Balla'. She thought that the tower would then be respectful of the heritage place. However, Mr Sutton did not necessarily

agree with that suggestion, noting that no analysis has been done on the visual impact.

- 84 It is perhaps possible to make the tower invisible from the first floor balcony of the homestead, as suggested by Ms Riddett. However, my key finding is that the proposed tower would have a limited, if any, adverse impact on the heritage significance of 'Balla Balla'. The impact is certainly not to the extent which would require the tower to be invisible in views from the first floor balcony.

MINIMISATION OF IMPACT

- 85 The minimisation of visual impact is a key aim of the Code of Practice, clause 52.19 and the local policy. In particular, it is policy at clause 22.06-3 that 'The location and design of telecommunications facilities minimise visual impacts through sensitive siting, use of non-reflective, finishes and appropriate landscaping'. A related decision guideline clause at 22.06-4 is 'Whether techniques to minimise visual impacts have been incorporated into the design of the facility'.²¹

- 86 For reasons I have already explained, I am satisfied that the location of the proposed tower minimises visual impacts in public and private views. Conditions of the NOD address the design of the facility. Specifically, Condition 7 repeats the requirement in Condition 1(c) that the plans to be modified to show:

The exterior colour and cladding of the monopole and buildings of a non-reflective nature and/or either painted or have a pre-painted finish in natural, muted tones (or such other colour as is approved by the Responsible Authority) to the satisfaction of the Responsible Authority.

- 87 I assume that the reference in local policy to 'appropriate landscaping' relates to the potential for screen planting around the base of a facility, rather than trees that would interrupt views of a 30m-high monopole. In many of the decisions I was provided with, the Tribunal imposed a permit condition requiring an endorsed landscape plan with screen planting around the fenced enclosure. In *Richter*, the Tribunal observed that the planting of 'taller screening trees...is quite common for facilities of this kind'.²²

- 88 The NOD includes no condition requiring screen plantings. Condition 15, under the heading 'Landscaping', requires that no native vegetation be removed, destroyed or lopped for the construction of the monopole and associated infrastructure, unless otherwise exempt. Condition 10 requires 'Any landscaped areas surrounding the housing units' to be regularly maintained, but it is unclear what that is referring to as the plans do not depict any 'landscaped areas'.

²¹ Clause 22.06-4.

²² *Richter v South Gippsland SC* [2013] VCAT 2120, [40].

- 89 In this instance, the existing trees around the proposed compound will provide a screening effect from many vantage points. I have already commented that the trees should be accurately plotted on the plans. I agree with Mr Sutton that there should be a tree protection condition, including a requirement for oversight by a qualified arborist during construction.
- 90 There could be a requirement for supplementary plantings for the long-term replacement of existing trees. There could also be a requirement for tree planting in any existing gaps in the trees around the compound. That would offer additional screening in the medium and long term. Ms Foley was reluctant to agree to new tree planting, noting that it would be outside the proposed lease area and there would be issues relating to maintenance. However, I could require additional tree planting if I thought it was necessary to achieve the outcomes sought by the Code of Practice and local policy.
- 91 Ultimately, I do not think replacement tree planting is necessary. However, if the plotting of existing trees reveals any substantial gap (or gaps) in the trees around the compound area, especially on the south-west side as viewed from 'Balla', it would be appropriate for there to be new trees planted to the satisfaction of the Council.

OTHER ISSUES

- 92 No issues have been raised about potential health risks, a matter addressed in Principle 3 of the Code of Practice. In any event, Condition 8 on the NOD refers to compliance with various regulations, including ARPANSA and Electromagnetic Energy and Radiation requirements.
- 93 Principle 4 of the Code of Practice is 'Disturbance and risk relating to siting and construction should be minimised'. I am satisfied that the proposal is acceptable in that regard. As highlighted by the Tribunal in *Crawford*, the fencing of a relatively small section of agricultural land, without the necessity to clear native vegetation, is a minor project. Furthermore, once the construction phase is over, there will be no need for frequent visits by technicians and vehicles.²³
- 94 For those reasons, the permit trigger under the RCZ for use of the land is not controversial. Ms Foley suggested that such a facility is typically checked only once a year for maintenance.
- 95 Mr Sutton and Mr McGurn agreed that the review site is within a 'designated bushfire prone area' and thus the policy at clause 13.05 (Bushfire) applies. However, a telecommunications facility is not a listed use or development for which a consideration of bushfire risk is called for.

²³ *Crawford v Ballarat CC & Anor* [2013] VCAT 1065, [38]-[39].

NET COMMUNITY BENEFIT

- 96 Clause 10.01 of the scheme requires the Tribunal to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
- 97 Essentially, the balancing exercise is between, on the one hand, an improvement of telecommunications service for the area, providing equitable and reliable coverage, and, on the other hand, a change to the outlook from one dwelling.
- 98 For the reasons I have explained at length, I do not think the proposal would have any unreasonable visual impacts. I agree with the Council that the proposal strikes an appropriate balance between the provision of expected community infrastructure and the need to minimise visual intrusion and impact on landscape values. A permit should issue.

WHAT CONDITIONS ARE APPROPRIATE?

- 99 I have made a few changes to the NOD conditions to reflect my findings, to remove a repetitive condition and to respond to the suggestions of the parties that the access track should be realigned and the plans should be further detailed.
- 100 Ms Foley called for the deletion of a condition requiring the monopole to be built so it can support the future co-location of equipment from additional carrier/operators. I note that the plans indicate an allowance for future Optus antennas, receivers, amplifiers, but do not refer to other operators. Given the local policy clearly supports co-location, the NOD condition should remain, although I appreciate it may be difficult for the Council to determine compliance with the condition. Ms Foley also sought the deletion of the NOD condition requiring no additional structures to be placed on the monopole (unless they are exempt low impact facilities) without the written consent of the responsible authority. Although the condition overlaps with the 'Layout Not Altered' condition, I think it should be retained. It will be important to assess the visual impact of any additional structures.
- 101 I have modified the general amenity condition to more appropriately reflect the nature of the proposed use, which is not industrial or commercial.
- 102 Although my order does not include the 'Notes' on the NOD, such advisory information may be included in the permit that is to issue.

CONCLUSION

- 103 For the reasons given above, the decision of the responsible authority is varied. A permit is issued subject to conditions different to the NOD.

Vicki Davies
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	PlnA01046/16
LAND	1370 Baxter-Tooradin Road, Cannons Creek

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Use of land for a Telecommunications facility in a Rural Conservation zone
- Buildings or works associated with a Telecommunications facility on land in a Rural Conservation Zone, Environmental Significance Overlay and Significant Landscape Overlay
- Buildings or works for a Telecommunications facility under clause 52.19
- Alteration of access to a road in a Road Zone, Category 1

CONDITIONS

- 1 Prior to the commencement of the use of the development, 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 an electronic copy must be provided. The plans must be generally in accordance with the plans submitted with the application prepared by Huawei Technologies Pty Ltd, Draft Site Layout, Revision: 02 and Draft Site Elevation, Revision: 02 but modified to show:
 - (a) The title boundaries of 1370 Baxter-Tooradin Road Cannons Creek;
 - (b) The realignment of the proposed access track so as not to encroach on the Public Use Zone;
 - (c) Full dimensions, including the setback of the proposed monopole from Baxter-Tooradin Road and the western property boundary, the access track and other features, including the plotting of trees in the vicinity of the proposed compound area and access track;
 - (d) The depiction of the Tree Protection Zone of each tree in the vicinity of the proposed compound area and access track;
 - (e) AHD levels for natural ground level, the top of the monopole, the headframe, the hardstand area and the equipment shelter; and
 - (f) The exterior colour and cladding of the monopole and buildings of a non-reflective nature and/or either painted or have a pre-painted finish in natural, muted tones (or such other colour as is approved by the Responsible Authority).

Layout Not Altered

- 2 The use and development as shown on the endorsed plan must not be altered without the written consent of the Responsible Authority.

General conditions

- 3 Once buildings and works have commenced, they must be completed to the satisfaction of the Responsible Authority.
- 4 Upon completion of the buildings and works, the site must be cleared of all excess and unused building materials and debris to the satisfaction of the Responsible Authority.
- 5 All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
- 6 The use and development must be managed to the satisfaction of the Responsible Authority so that the amenity of the area is not detrimentally affected through the:
 - (a) Transport of materials, goods or commodities to or from the land; and
 - (b) Appearance of the building, works or materials.

Telecommunications Facility Amenity

- 7 All operational equipment must comply with the Australian Communications and Media Authority, ARPANSA and Electromagnetic Energy & Radiation requirements to the satisfaction of the Responsible Authority.
- 8 The telecommunications cabinets and equipment must be visually maintained and kept free from vandalism and graffiti to the satisfaction of the Responsible Authority.
- 9 Any landscaped areas surrounding the housing units must be maintained regularly to the satisfaction of the Responsible Authority.
- 10 The monopole must be built in a way so that it can support the future co-location of equipment from additional carriers/operators to the satisfaction of the Responsible Authority.
- 11 No additional structures can be placed on the monopole other than those exempt under the Telecommunications (low impact facilities) Determination 1997 unless with the written consent of the Responsible Authority.
- 12 Any communications infrastructure decommissioned and no longer required at the telecommunications facility must be removed from the site in one month of being decommissioned and no longer required to the satisfaction of the Responsible Authority.
- 13 If the telecommunications facility hereby approved becomes redundant, all above ground infrastructure associated with the telecommunication facility must be removed and the area reinstated to the satisfaction of the

Responsible Authority. All works to comply with this condition must be completed within three months of the facility ceasing to operate and must be at the expense of the permit holder.

Vegetation protection and landscaping

- 14 No native vegetation (including groundcovers and grasses) are to be removed, destroyed or lopped for the construction of the monopole and associated infrastructure unless otherwise exempt from requiring planning permission under the provisions of the Casey Planning Scheme.
- 15 During construction, measures must be undertaken to protect the existing trees in the vicinity of the proposed compound and access track, including (but not limited to):
 - (a) Tree protection fencing;
 - (b) No vehicle or pedestrian access, trenching or soil excavation within any Tree Protection Zone; and
 - (c) Oversight by a qualified arborist.
- 16 If the plotting of existing trees required by Condition 1(c) reveals a substantial gap (or gaps) between the trees in the vicinity of the proposed compound, especially on the south-west side, then new trees must be planted and subsequently maintained, to the satisfaction of the Responsible Authority.

Construction Activities

- 16 Construction activities must be managed so that the amenity of the area is not detrimentally affected, through the:
 - (a) Transport of materials, goods or commodities to or from the land;
 - (b) Inappropriate storage of any works or construction materials; and
 - (c) Hours of construction activity.

Permit Expiry

- 17 This permit will expire if one of the following circumstances applies:
 - (a) The use and development is not started within two years of the date of this permit; or
 - (b) The development is not completed within four years from 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; within six months of the permit expiry for the commencement of use and / or development; or within 12 months of the permit expiry for the completion of development.

– End of conditions –