HIGH COURT OF AUSTRALIA

Public Information Officer

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HUTCHISON 3G AUSTRALIA PTY LTD v CITY OF MITCHAM, CKI UTILITIES DEVELOPMENT LTD, HEI UTILITIES DEVELOPMENT LTD, CKI UTILITIES HOLDINGS LTD, HEI UTILITIES HOLDINGS LTD, CKI/HEI UTILITIES DISTRIBUTION LTD, AND THE ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA

Power poles at certain locations in Adelaide carrying mobile phone transmission facilities in the circumstances did not require council development approval, the High Court of Australia held today.

Hutchison erected telecommunication facilities, called downlink sites, as part of its mobile phone network at five locations in suburban Adelaide, all within the City of Mitcham, in 2002 and 2003. The second to sixth respondents are a group of companies trading as electricity distributor ETSA Utilities. Hutchison facilities were installed on ETSA's stobie poles (Adelaide's concrete and steel power poles). Stobie poles at four of the five locations had to be replaced, at Hutchison's expense, to handle the installation of its equipment. Downlink sites comprised panel antennae mounted above the stobie pole and an equipment shelter on the ground with noisy air-conditioning units to keep electrical equipment at a constant temperature. Hutchison notified the council of its intention to install downlink facilities but neither Hutchison nor ETSA sought development approval. In April 2003, the council issued enforcement notices requiring Hutchison to cease work. It contended that the replacement poles were facilities under the Commonwealth *Telecommunications Act* as they had been erected by ETSA for Hutchison's purposes. More specifically, the council also submitted that the poles were towers and, because of their size and structure, were not low-impact facilities so did not fall within exemptions to the SA *Development Act*.

In the Environment, Resources and Development Court of South Australia, Hutchison challenged the council's notices on the ground that the downlink sites were low-impact facilities under the *Telecommunications Act* so did not require development approval under the *Development Act.* In a separate proceeding in the Supreme Court, the council sought declarations that each downlink site required approval and sought injunctions requiring Hutchison to lodge development applications for the sites and to remove its equipment from the stobie poles on which they had been erected. The parties agreed to stay the Environment Court proceedings pending the determination of the action in the Supreme Court. Justice Bruce Debelle referred a set of questions to the Full Court, which answered them favourably to the council, to the effect that either Hutchison or ETSA must obtain development approval for the downlink sites. Hutchison then appealed to the High Court.

The Court unanimously allowed the appeal. It held that Hutchison did not need to seek development approval for replacing the poles because it was ETSA that undertook the development, and even if Hutchison had undertaken the development Hutchison would have been entitled to the benefit of an exemption from the operation of the *Development Act*, as provided for in the *Telecommunications Act*. Specifically, Hutchison's facilities were not towers and were of low impact, so Hutchison was not required to obtain development approval from the council for the erection of replacement stobie poles. ETSA did not need to obtain development approval because of an exemption in the *Development Act*.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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