

**RECOMMENDATIONS CONTAINED HEREIN ARE
SUBJECT TO CONFIRMATION BY COUNCIL**

CITY OF COCKBURN

**SUMMARY OF MINUTES OF SPECIAL COUNCIL MEETING HELD
ON MONDAY, 9 NOVEMBER 1998**

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CITY OF COCKBURN

MINUTES OF SPECIAL COUNCIL MEETING HELD ON MONDAY, 9 NOVEMBER 1998 AT

PRESENT:

COMMITTEE MEMBERS

Mr J Grljusich	-	Mayor (Presiding Member)
Mrs N Waters	-	Councillor
Mr S Lee	-	Councillor
Mr C Elpitelli	-	Councillor
Mr R A Lees	-	Councillor
Mr L Howlett	-	Councillor
Mr J McNair	-	Councillor

IN ATTENDANCE

Mr R W Brown	-	Chief Executive Officer
Mr S M Hiller	-	Director, Planning & Development
Mr S Ryan	-	Manager, Planning
Mr D Walsh	-	Manager, Environmental Services
Mrs B Pinto	-	Secretary to Chief Executive Officer
Mr D McLeod	-	McLeod & Company

A quorum was not present until 7.55 at which time the Presiding Member declared the meeting open. The Presiding Member welcomed Mr. Denis McLeod, Council's Solicitor to the Meeting.

1. APPOINTMENT OF PRESIDING MEMBER [IF REQUIRED]

Nil

2. PUBLIC ADDRESS SESSION

Karen Reeve-Fowkes, representing Yangebup Progress Association and Yangebup P and C spoke on Item 5, expressing concerns of the



impact that such a proposal would have on the surrounding neighbourhood and their families, should approval be given for the development of a Waste Liquid Treatment Plant. She requested that Council assess the proposal, with strong emphasis on the emission factor.

Julie Gore, a ratepayer and representing Yangebup Primary School, also spoke on the proposed Waste Liquid Treatment Plant, strongly opposing the proposed development. She requested Council to carry out its obligations in looking after the welfare of its community. She requested Mayor Grljusich to address the students and teachers of the Yangebup Primary School at the School assembly on Thursday, 12 November 1998 on the decision which would be taken tonight.

Ian Cross, also representing the Yangebup Progress Association and Yangebup P and C had grave concerns with regard to the Waste Liquid Treatment Plant being proposed in the Bibra Lake Industrial area. He table a petition containing 450 signatures opposing the development. He also stated that a petition containing 900 signatures has been presented to Parliament strongly opposing the proposal and a copy of that was also handed to the meeting.

3. APOLOGIES & LEAVE OF ABSENCE

Clr L Humphreys	Apology (Attending Conference)
Clr M Pecotic	Apology (Attending Conference)
Clr S Hunt	Apology
Clr B Wheatley	Apology

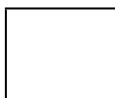
4. PURPOSE OF MEETING

The purpose of the Meeting is to consider an application for the Proposed Liquid Waste Treatment Plant at Lot 197 Cocos Drive, Bibra Lake.

MEETING BEHIND CLOSED DOORS

MOVED Clr Lees SECONDED Clr Elpitelli that pursuant to s5.23(2) (d) of the Local Government Act 1995 the time being 8.07 pm, the Meeting not be open to the public but Council proceed to consider Item 5 on the Agenda behind closed doors, as the issue is one of a legal nature, until the Council by resolution decides that the Meeting be opened to the public.

CARRIED



5. (SCM11/98) - PROPOSED WASTE LIQUID TREATMENT PLANT - LOT 197 COCOS DRIVE, BIBRA LAKE - OWNER/APPLICANT: WESTERN RESOURCE RECOVERY (4412617) (SR) (SOUTH) (MAP NO.8)

RECOMMENDATION

That Council resolve to:

- (1) take no further action in respect of Point (1) of its Resolution dated 21 October 1997 which characterised the proposal as a 'Noxious Industry';
- (2) on the basis of the further legal advice received, determine that the proposal constitutes a 'use not listed' under the provisions of the Scheme;
- (3) reconsider the application for Planning Approval and advertise the proposal for a period of 21 days in accordance with Clause 6.2.3(b) and (c) of the Scheme;
- (4) subject to (3) above, and receipt of the Minister for the Environment's authorisation that the proposal may be implemented under the provisions of the Environmental Protection Act, Council make its determination of the Application for Planning Consent;
- (5) advise the Applicant, the Minister for the Environment and the Yangebup Progress Association of (1)-(4) above.

COUNCIL DECISION

MOVED Clr Lee SECONDED Clr Elpitelli that Council:

- (1) reconfirm its decision of 21 October 1997;
- (2) advise the applicant that in the light of further information on the proposal provided through the CER and other processes, and detailed legal advice on the matter, that it has come to the conclusion that the process proposed involves a Noxious Industry and it is not open to Council to approve a development application for the process on the proposed site under its present zoning of General Industry under District Zoning Scheme No.2; and
- (3) refuse the application.

CARRIED

CLR HOWLETT REQUESTED THAT VOTES BE RECORDED:

FOR: MAYOR GRLJUSICH, CLRS, LEES, McNAIR, LEE, WATERS, ELPITELLI

AGAINST: CLR HOWLETT

Background

Council at its meeting held on 20 October 1998 resolved as follows:-

Moved Major Grljusich seconded Councillor Wheatley that this matter be deferred to a special meeting of Council and that Denis McLeod be invited to attend the meeting to discuss this issue.

ZONING:	MRS:	Industrial
	DZS:	General Industry
LAND USE:	Vacant	
LOT SIZE:	7133m ²	
AREA:	3000m ² (approx. building area)	
USE CLASS:	To be determined	

Council first considered the proposal at its meeting on 3 December 1996 and resolved as follows:-

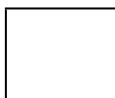
"(1) subject to receipt of advice that the proposal is not subject to formal assessment under the Environmental Protection Act, the Director of Planning and Development be authorised to grant approval to the Liquid Waste Treatment Facility in accordance with the plan dated 22 October 1996 subject to the following conditions:

Standard Conditions

- 1. Standard conditions contained in Council Policy PBH 3.1 as determined appropriate to this application by the delegated officer under clause 7.6 of Town Planning Scheme - District Zoning Scheme No.2*

Special Conditions

- 1. All offensive odours to be effectively retained within the confines of the subject property. Details of measures to control odour emissions to be submitted to Council's Environmental Services Section for approval prior to commencement of development.*



2. *All waste water and stormwater to be retained on the site. All spillage and stormwater in materials handling and processing areas to be collected separately and directed to an appropriate on-site treatment facility.*
3. *All handling of waste products is to be carried out under cover and shall ensure no run-off occurs other than to a sealed collection point.*

Special Footnotes

1. *All dangerous goods to be stored in accordance with the requirements of DOME.*
2. *Approval from the Water Corporation be granted prior to the commencement of development.*
3. *Approval from the Water and Rivers Commission be granted prior to the commencement of development.*
4. *The development shall not commence until such time as a Works Approval is issued by the DEP."*

The project was, however, subject to formal assessment by the Environmental Protection Authority and no Planning Approval was issued. The Company states that it relied upon the form of advice given to them regarding the Council Resolution. They purchased the land and undertook the Consultative Environmental Review process with an expectation that a Council Planning Approval would issue in the event that they were able to obtain environmental approval.

The CER process was undertaken by the Company in 1997 and following public notification of the proposal there was substantial local public concern about potential environmental impacts. This resulted in a public meeting held on 30 June 1997 in the Yangebup Community Hall.

Legal advice was sought at that time regarding the status of Council's 3 December 1996 Resolution. The Company was accordingly advised that the Council would reconsider the application for Planning Approval at the conclusion of the CER process.

Further legal advice was provided in respect of the 1984 'McNeice' decision of the Supreme Court. The effect of this advice was that at its meeting on 21 October 1997 Council resolved as follows:-

- "(1) advise the applicant that in the light of further information on the proposal provided through the CER and other*



processes, and detailed legal advice on the matter, that it has come to the conclusion that the process proposed involves a Noxious Industry and it is not open to Council to approve a development application for the process on the proposed site under its present zoning of General Industry under District Zoning Scheme No. 2;

- (2) *that the Director of Planning & Development prepare a report on the implications of the McNeice ruling and his recommendations to Council as to possible options it can pursue in this matter and the effects of these options and that Council then further considers the matter."*

(Refer to the Officer Report [21. October 1997] for further details).

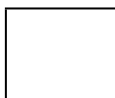
In regard to (2) of the above Resolution, a detailed report was presented to the 16 December 1997 Council meeting proposing an amendment to Council's Town Planning Scheme to overcome the potential restriction the McNeice decision may place on general industrial type developments. (Refer to the Officer Report to the 2 December 1997 SPC meeting and Item 7.2 of this Agenda for details of the draft amendment.

The generality of the McNeice decision creates a degree of uncertainty for a number of general industries which, by their nature, require the implementation of 'preventative measures' to reduce potential sources of nuisance.

The Council at its meeting held on 20 October 1998, resolved to defer the matter to allow a report to be prepared informing the Council which businesses currently operate in the Industrial areas outside the McNeice ruling.

A report has been prepared for the Community Development Committee meeting to be held on 10 November 1998.

The Department of Environmental Protection issued its report on the proposal on 5 December 1997. The Summary and Recommendations of the DEP were included as an Attachment as are the proponent's environmental management commitments. The DEP was advised at that time that the 1984 McNeice decision prevented Council issuing a Planning Approval, apart from the fact that the DEP had recommended to the Minister for the Environment that the project be granted environmental approval under the Environmental Protection Act. This advice was also provided to the Minister for the Environment on 22 December 1997.



A number of Appeals against the Report and Recommendations of the EPA relating to the proposal were submitted to the Minister for the Environment. The Minister has yet to determine these Appeals.

At the request of the Appeals Convenor for the Environmental Protection Act, a meeting was held between Company and Council representatives on 16 September 1998. It was agreed that the Council would reconsider the matter, together with any further submissions by the Company and legal advice.

Submission

The proposed waste treatment facility will treat commercial/industrial waste from oil and grease traps, waste oil, oil contaminated water and other non-sewerable liquid wastes and sludges with contaminants which require chemical fixation. The plant would not treat pesticides, PCB's or materials which are flammable, explosive or radioactive.

Typical sources of the wastes are food processing, automotive service and metal finishing industries.

The Applicant has recently submitted two letters to Council outlining their position following the CER process. These letters have been circulated under separate cover, together with Council's Solicitor's advice.

Report

The outcome of the CER process is that the proposal is considered environmentally acceptable by the EPA, provided that the DEP's recommended conditions are implemented by the proponent. These include commitments to stringent odour control and an avoidance of transport routes through the Yangebup residential area.

In assessing the proposal, the EPA sought advice from a range of government agencies as well as appointing an independent consultant to review the proposal. Key issues assessed related to impacts on groundwater quality, odour, noise and vibration, solid and liquid wastes, off-site risk and transport.

In relation to odour, the proponents undertook odour modelling which revealed that levels of odour at the nearest residence would be well below acceptable levels. Modelling undertaken by the DEP confirmed this, with the proponent bound to a commitment to install the latest available scrubbing and process monitoring systems in addition to a standby power system to ensure that odour emissions meet predicted levels at all times.



Off-site risks were assessed as acceptable, with the proponent required to implement an environmental management system to ensure events which could increase risk are not accepted at the site and prepare a suitable emergency response plan prior to commencement. In terms of transport, the proponent is bound to a commitment to negotiate appropriate routes and delivery times with relevant authorities, including Council.

Overall, the EPA's report advised that whilst some deficiencies in the CER document were highlighted in the assessment process, the Authority was satisfied that these deficiencies had been addressed by the proponent through the assessment process. Approval was recommended subject to the proponents environmental management commitments and the preparation of an environmental management system to the EPA's requirements.

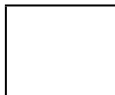
The EP Act requires that decision making authorities do not make any decisions which would cause a proposal to be implemented until such time as the Minister for the Environment has granted environmental approval.

Council's current position that the proposal constitutes a 'Noxious Industry', due to incorporation of preventative measures to overcome any potential nuisance (ie, particularly odour nuisance) is not subject to an Appeal right via the normal Ministerial or Tribunal processes. It can only be challenged by a Supreme Court writ of mandamus or similar action.

The current legal advice outlines that the proposal may not fall within the "Industry" category as the processes are predominantly dealing with liquids, sludges and materials in solution, rather than solid materials which fit the definition of an 'article'. Based on the advice, it is open to the Council to interpret the applicable 'use class' as being a 'use not listed', rather than a 'Noxious Industry'. This allows Council to consider approving the proposal, subject to the following prerequisites:-

1. Interpretation of the use class as a Use not listed based upon legal advice;
2. Completion of the public advertising procedures required by Clause 3.2.4 and 6.2 of the Scheme;
3. The Minister for the Environment having granted environmental approval prior to a formal decision being made by the Council regarding Planning Approval;

It would also be open for the Council to refuse the proposal following completion of prerequisites 1-2 above, which would then be subject to



a right of appeal to either the Minister for Planning or the Town Planning Appeals Tribunal.

It is therefore recommended that Council advise the Minister for the Environment and the Applicant that it would be prepared to characterise the proposal as a "Use not Listed" and make a fresh determination on an Application for Planning Approval, following the prerequisites 1-3 outlined above.

Strategic Plan/Policy Implications

Strategy 4.4 - 'Ensure that environmental issues are adequately recognised in the Council's planning and decision-making processes.'

Budget/Financial Implications

Matters referred to in the Applicant's letter dated 29 September 1998.

MEETING OPEN TO THE PUBLIC

MOVED Cllr Lees SECONDED Cllr Lee that the Meeting be opened to the public the time being 9.59 pm.

CARRIED

At this point in the Meeting the Chief Executive Officer read aloud the decision of Council whilst behind closed doors.

MEETING CLOSED 10.03 PM

CONFIRMATION OF MINUTES

I, (Presiding Member) declare that these minutes have been confirmed as a true and accurate record of the meeting.

Signed: Date:/...../.....

