



MELTON CITY COUNCIL

**Minutes of the Special Meeting of the
Melton City Council**

11 April 2017

TABLE OF CONTENTS

1.	APOLOGIES AND LEAVE OF ABSENCE	2
2.	DECLARATION OF ANY PECUNIARY INTEREST, OTHER INTEREST OR CONFLICT OF INTEREST OF ANY COUNCILLOR	2
3.	PRESENTATION OF STAFF REPORTS	3
3.1	EPA WORKS APPROVAL FOR EXPANSION OF MELBOURNE REGIONAL LANDFILL	3
	To consider the feasibility of Council seeking a review at the Victorian Civil and Administrative Tribunal (VCAT), of a Works Approval issued on 24 March 2017 by the Environment Protection Authority (EPA) for extension of the Melbourne Regional Landfill.	
4.	CLOSE OF BUSINESS	7

MELTON CITY COUNCIL

MINUTES OF THE SPECIAL MEETING OF THE MELTON CITY COUNCIL HELD IN THE COUNCIL CHAMBER, CIVIC CENTRE, 232 HIGH STREET, MELTON ON 11 APRIL 2017 AT 7.00PM

Present: Cr S Ramsey (Mayor)
Cr B Turner (Deputy Mayor)
Cr S Abboushi
Cr L Carli
Cr M De Santis
Cr K Hardy
Cr G Kesic
Cr K Majdlik
Cr M Mendes

Mr K Tori, Chief Executive Officer
Mr P Bean, General Manager Corporate Services
Mr M Heaney, General Manager Community Services
Mr L Stokes, Acting General Manager Planning and Development
Mr B Baggio, Manager Planning Services
Ms C Denyer, Manager Legal and Governance
Ms T Spiteri, Governance Coordinator

1. APOLOGIES AND LEAVE OF ABSENCE

Nil.

2. DECLARATION OF ANY PECUNIARY INTEREST, OTHER INTEREST OR CONFLICT OF INTEREST OF ANY COUNCILLOR

Procedural Motion

Crs Abboushi.

That I be excused from the chamber while this matter is discussed and decided upon in reliance of section 79B of the *Local Government Act* 1989 by reason of a conflicting personal interest in circumstances where I have given evidence at a panel hearing in relation to the planning matter upon which the works permit is conditional.

CARRIED

Cr Abboushi left the Chamber at 7.03pm and did not return to the meeting.

3. PRESENTATION OF STAFF REPORTS

3.1 EPA WORKS APPROVAL FOR EXPANSION OF MELBOURNE REGIONAL LANDFILL

Author: Bob Baggio - Manager Planning Services
Presenter: Bob Baggio – Manager Planning Services

PURPOSE OF REPORT

To consider the feasibility of Council seeking a review at the Victorian Civil and Administrative Tribunal (VCAT), of a Works Approval issued on 24 March 2017 by the Environment Protection Authority (EPA) for extension of the Melbourne Regional Landfill.

RECOMMENDATION:

That Council not lodge an application for review at VCAT in relation to the EPA Works Approval for the extension of the Melbourne Regional Landfill.

Motion

Crs Kesic/Hardy.

That Council apply to VCAT for a review of the Environment Protection Authority's decision to grant a Works Permit, on any available grounds as set out in the legal advice or any further legal advice Council may receive.

During the debate the Mayor vacated the Chair to speak to the Motion, and moved a motion to appoint Cr Mendes as temporary Chairperson, the Deputy Mayor having already spoken to the Motion.

Procedural Motion

Crs Ramsey/Hardy.

That Cr Mendes be appointed the temporary Chairperson.

CARRIED

Debate concluded and the substantive Motion was put to the vote.

CARRIED

Cr Majdlik called for a division thereby setting aside the vote.

For:

Crs Carli, De Santis, Hardy, Kesic, Majdlik, Mendes, Ramsey and Turner

Against:

Nil

The temporary Chairperson declared the Motion CARRIED

The Mayor resumed the Chair.

REPORT

1. Executive Summary

The proposed expansion of the Melbourne Regional Landfill has been the subject of applications for both planning permit and EPA Works Approval.

The planning permit application was 'called in' by the Minister for Planning, and has been the subject of an extensive Panel hearing and a report which is still with the Minister for decision.

The EPA however has decided to issue the Works Approval, albeit for an expansion of the landfill comprising about half of the area which was proposed.

Council has until the 18 April to make application to seek a review at VCAT of the issue of the Works Approval.

2. Background/Issues

On 24 March 2017, Council received an email from the EPA advising that it had granted approval to Cleanaway to extend the landfill operation in Ravenhall. The Works Approval:

- Limits the landfill to seven cells in the south portion only
- Has not accepted the proposal for nine cells in the north portion
- Grants landfill area of 96 hectares, with 23 million cubic metres of airspace (the space to be filled with waste)
- Grants space for 13 years of landfilling (from 2025 to 2038, based on projected landfilling rates).

The works approval essentially allows for approximately half of the proposal put forward by Cleanaway. The approval is conditional upon the Minister for Planning granting a planning permit. The report of the Advisory Committee has not yet been released and no decision has been made on the planning permit application by the Minister.

The Council opposed the proposal on a range of amenity grounds and the inconsistencies of a long-term landfilling resource with the need to encourage alternate resource recovery methodologies and growth in the resource recovery sector.

Section 33B(1)(a) of the *Environment Protection Act 1970* provides that if the EPA issues a works approval, a person whose interests are affected by the decision may apply to VCAT for review of that decision, within 21 days after the decision was made. The Works Approval was issued on 24 March 2017. It is therefore open to Council to apply for review of the EPA's decision until Tuesday 18 April 2017 (noting 21 days falls on 14 April 2017, being Good Friday).

Section 33B(2) confines the grounds on which a third party may bring an application for review under section 33B(1)(a). It states:

An application for review under subsection (1)(a) is to be based on either or both of the following grounds-

(a) that if the works are completed in accordance with the works approval, the use of the works will result in-

(i) a discharge, emission or deposit of waste to the environment; or

(ii) the reprocessing, treatment, storage, containment, disposal or handling of waste; or

(iii) the reprocessing, treatment, storage, containment, disposal or handling of substances which are a danger or a potential danger to the quality of the environment or any segment of the environment-

which will unreasonably and adversely affect the interests, whether wholly or partly of that person;

(b) that if the works are completed in accordance with the works approval, the use of the works will result in-

(i) a discharge, emission or deposit of waste to the environment; or

(ii) the reprocessing, treatment, storage, containment, disposal or handling of waste; or

(iii) the reprocessing, treatment, storage, containment, disposal or handling of substances which are a danger or a potential danger to the quality of the environment or any segment of the environment-

in the area which will be inconsistent with any relevant Order declared under section 16, 16A or 17A for the area, or if no relevant Orders have been declared under any of those sections for that area, would cause pollution or an environmental hazard.

Council's solicitors have provided written advice on this matter however it is recommended that this advice not be provided to the public so that Legal Professional Privilege is maintained.

To set out the details of that legal advice here or even to summarise it would waive Legal Professional Privilege.

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 lawyers who represented Council at the Panel Hearing estimate their costs in preparation for and appearance at a review at VACAT in the order of \$15,000 to \$30,000, plus the costs of any expert witnesses, based on an estimate of 4 – 5 day hearing. Each additional hearing weeks would be in the order of \$15,000 per week.

If Council were unsuccessful there is a risk that costs could be awarded against it, which may be in the order of \$100,000.

5. Consultation/Public Submissions

N/A

6. Risk Analysis

The risks to Council as outlined above are essentially monetary, in terms of running its case at VCAT, and if it is not successful potential costs being awarded against Council.

There are also potentially reputational risks in challenging the decision of a public body in circumstances where the decision has been taken after a lengthy and technical hearing of the matter.

7. Options

The Officer's recommendation (set out at the beginning of this report) is that Council not apply to review the EPA's decision.

Alternatively Council could decide to make the application for review.

If Council does decide to make such an application, it could be later withdrawn, should Council so decide however this decision may need to be taken swiftly.

If Council were to decide to apply to VCAT for a review, then the appropriate resolution would be, 'That Council apply to VCAT for a review of the EPA's decision to grant a Works Permit, on any available grounds as set out in the Legal Advice or any further advice Council may receive.'

LIST OF APPENDICES

Nil

4. CLOSE OF BUSINESS

The meeting closed at 7.19pm.

Confirmed

Dated this

.....CHAIRPERSON