

## APPEAL 5192 OF 2011 – REQUEST TO EXTEND RELEVANT PERIOD FOR BIOMASS POWER PLANT AT 70-96 HILLVIEW ROAD, MOUNT COTTON

**Datworks Filename:** MC008414

**Attachment:** [Locality Plan, Aerial Plan, Site Plan, Elevations, Map of Community Changes](#)

**Responsible Officer:** Bruce Macnee  
Group Manager, Sustainable Assessment

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Senior Planner, Design and Co-ordination

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### EXECUTIVE SUMMARY

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|-----------------------------------|--------------------------------------|
| <b>Application Type</b>           | Request to Extend Relevant Period    |
| <b>Proposed Use</b>               | Bio-Mass Power Plant (Undefined Use) |
| <b>Property Description</b>       | Lot 2 RP 30611                       |
| <b>Location</b>                   | 70-96 Hillview Road, Mount Cotton    |
| <b>Appellant</b>                  | Cleveland Power Pty Ltd              |
| <b>Land Owner</b>                 | Darwalla Egg Producers Pty Ltd       |
| <b>Date Appeal Filed in Court</b> | 22/12/2011                           |
| <b>Appeal Coordinator</b>         | Chris Vize                           |
| <b>Manager</b>                    | Bruce Macnee                         |

### PURPOSE

A settlement offer has been proposed by the appellant for Council's consideration. The purpose of this report is to present this offer to Council for their formal direction.

### EXECUTIVE SUMMARY

As there will be significant benefit in Council making a formal decision (resolution) on this matter without delay, it is recommended that the Committee use delegated authority for formal decision making on this matter, in accordance with Section 257 of the *Local Government Act 2009* and Council's resolution of the Post Election Meeting 17 May 2012, (Item 7). The significant benefit relates to meeting statutory timeframes.

The appellant has filed an appeal in respect of Council's refusal of a request to extend the relevant period. The assessment of the request to extend the relevant period is against four tests set out in the Sustainable Planning Act 2009 (SPA). Two of the tests support Council's position to refuse the request, while the other two support the appellant's position to allow the extension of the relevant period.

The appeal is listed for trial on 1 and 2 November 2012. The appellant has put an offer to Council to settle the appeal without going to trial. This offer involves Council agreeing to approval of the two year extension to the relevant period, and the appellant agreeing to change the existing approval to include conditions relating to the temperature and velocity of the emissions to meet the requirements of the joint report of the air quality experts.

This report recommends that the offer be rejected and allow the matter to proceed to trial. It is considered that Council has sound grounds on which to defend its decision to refuse the request to extend the relevant period, particularly in respect of community awareness and the likelihood of submissions should a new application be lodged.

The alternative recommendation is to accept the offer, with some minor inclusions to provide certainty to the approval, and seek to settle the appeal. It is noted that the alternative recommendation does require approval of other parties. The Department of Environment and Heritage Protection (DEHP) would be required to agree to amend their conditions relating to air quality and design features. The alternative recommendation involves a separate application for permissible change to the Planning and Environment Court to assess and determine whether the new conditions meet the permissible change test as set out in the SPA. The relevant statutory and community members who were party to the 2007 Court approval would be notified of the application.

## **BACKGROUND**

### Original Application

The original application was lodged on 18 June 2004 and involved a Material Change of Use for a “Bio-mass Power Plant” (Undefined Use) and an Environmentally Relevant Activity (ERA) #17 – Fuel Burning. ERA #17 for fuel burning was a non-devolved activity, meaning that this aspect of the proposal was required to be assessed entirely by the Environmental Protection Agency (EPA) (now DEHP).

The development application was publicly notified on two separate occasions in August 2004 and May 2005. Objections raised in the submissions included health impacts, noise and odour nuisance, inconsistency with rural and residential uses, water quality impacts and a detrimental impact to local tourism. After the public notification period, Council issued a number of informal information requests, which resulted in several responses from the applicant. These responses included additional information as well as changes to the development itself. This included changes to the cooling and burning systems as well as alterations to the layout of the development. The application did not revert back to the start of the application process and was not re-notified.

On 14 November 2006 Council received the Concurrence Agency Response from the EPA, approving the ERA #17 in full, subject to conditions.

On 20 March 2007 a development permit, subject to conditions, was granted by Council at a Development Assessment Committee meeting.

### Original Appeal

An appeal against Council's decision was filed on 2 May 2007 by a submitter to the application. Without prejudice negotiations and discussions took place throughout 2007 between the parties involved in the appeal. The Court Parties included six resident submitters (assisted by the Wildlife Preservation Society), the developer Cleveland Power P/L, Council, Environmental Protection Agency (concurrence agency) and the Department of Main Roads (advice agency). A settlement was reached and the appeal was therefore resolved by agreement of the parties.

A Consent Order was issued by the Court on 7 November 2007, which upheld the approval of the application, subject to additional agreed conditions. The conditions and approved plans referenced in this Court Consent Order therefore represent the current approval documentation. Inconsistencies in the approved material have caused a great deal of confusion, both inside Council and in the community.

### Audit Processes

The application was subject to three separate audit processes, which were initiated through a large number of complaints regarding the handling of the development

application. This included an internal audit, an audit by the Crime and Misconduct Commission (CMC) and a coordinated audit by the former Council CEO, which included independent advice from external experts. A great deal of time and money has been expended on these audits.

### Request to Extend the Relevant Period

The approval was issued with a four year relevant period, meaning that the development was required to commence within that timeframe. This did not occur, and therefore on 7 November 2011 the appellant lodged a request to extend the relevant period for an additional two years. This request was assessed against the four tests detailed in Section 388 of the SPA. The officer assessment determined that the request did not satisfy the four tests. This assessment is discussed in further detail later in this report.

The request was presented to Council's General Meeting on 14 December 2011, where the request was refused in accordance with the officers' recommendation.

### Current Appeal

The appellant filed an appeal in the Planning and Environment Court on 22 December 2011 against Council's refusal to extend the relevant period. The details of the current appeal are discussed later in this report.

## **SITE AND LOCALITY DESCRIPTION**

The subject site has been used for poultry farming for several decades and currently accommodates four poultry sheds, a residential dwelling and a mobile phone tower. The buildings and associated use areas are contained within the northern half of the site. A dam exists on the eastern side of the site and it is understood that the south-eastern portion of the site has been used for intermittent grazing activities. The south-western portion of the site is heavily vegetated, steeply sloped and contains the highest elevations on the site.

The surrounding area is predominantly rural in nature. The Golden Cockerel chicken processing plant is located to the direct east of the site, with another poultry farm on the northern side of Hillview Road. To the south of the site are a contractor's depot and the Barro Quarry. A number of small to medium size rural lots exist in the locality, which are used for a mix of uses, varying from purely residential dwellings on large lots to hobby farms and conservation-style lots. To the far west of the site are large stretches of bushland, which dominate both sides of West Mount Cotton Road.

A park residential estate exists on the eastern side of Mount Cotton Road. Mount Cotton State School is located approximately 800 metres to the north-east of the site. The large Mount Cotton village residential estate exists to the south-east of the site on the eastern side of Mount Cotton Road. Further residential subdivision has occurred at the Mount Cotton village within two to three kilometres of the subject site.

## **DEVELOPMENT PROPOSAL**

The approved development involves the operation of a power plant fuelled by chicken litter in Hillview Road, Mount Cotton. The plant infrastructure will replace the existing large rectangular poultry growing shed on the north-eastern side of the site. The following summarises the development (as generally presented to the DA Committee in 2007):

- the plant design and operation is modelled on that currently being used in the United Kingdom;
- the fuel to be burnt is primarily chicken litter (with other start up fuels being smaller quantities of sawdust and gas);
- the plant will have a throughput of 60 000 tonnes of chicken litter per annum;
- the sources of the fuel are local Darwalla operated poultry farms. However, dependent upon supply of litter, sources may include competitor's farms and Darwalla operated farms outside the local area;
- the activity is proposed to operate continuously;
- the proposal is an ERA under the Environmental Protection Act 1994 and is the responsibility of DEHP;
- fuel delivery will be via 10 to 12 semi-trailers per day with additional truck movements to dispose of general waste;
- the fuel storage hall will be approximately 11 metres in height above existing ground level and 3000m<sup>2</sup> in area (60m x 50m);
- maximum litter storage will be 700 tonnes (4 days fuel) at any one time;
- the power generation / distribution and pollution control equipment / infrastructure occupies an area of approximately 2040 m<sup>2</sup> (60m x 34m) on the south-western side of the fuel storage hall. This plant area has a predominate height similar to the height of the fuel storage hall, with a chimney that extends to 30 metres in height (though there are conflicting heights and diameters in the approved plans);
- the approved plans indicate both a rotating kiln and a fluidised bed furnace as the burner, which burn at a temperature between 900°C and 1200°C;
- the heat from the burner heats water to generate steam which drives a turbine;
- the turbine drives an alternator which produces the electricity that is released to the grid and the Golden Cockerel processing plant to the east of the site;
- the EPA conditions restrict the power generation to approximately 5 MW of electricity;
- emissions will be released to the air via a bag house filter, lime dosing system and a 30m high stack;
- waste ash will be cooled and collected for reuse by licensed waste transporters; and
- the disposal of waste heat is proposed to be via a dry fluid cooling system (fans).

## **ISSUES IN THE APPEAL**

Section 388 of the Sustainable Planning Act (SPA) identifies the only matters that the assessment manager must have regard to in making a decision on a request to extend the relevant period. These four matters are:

- The consistency of the development approval with the current laws and policies;
- The community's current awareness of the development approval;
- Whether further rights to make a submission would be available if the request were refused, and the likely extent to which those rights may be exercised;
- The views of any concurrence agencies.

The assessment manager is required to assess each point's applicability to the development, the development's extent of variance from the principles of each point and then balance the outcomes across the four tests to determine whether to approve or refuse the extension. To highlight this consideration, each point is addressed in turn below.

It is emphasised that the consideration of a request to extend the relevant period does not involve a re-assessment of the merits of the proposal. The original application was approved after consideration of the merits of the proposal against the laws and policies in place at the time. The assessment of the request to extend focuses on what has changed – both in the policy and the community.

### Consistency with Current Laws and Policies

Council and the appellant have engaged experts for planning and air quality to assess the consistency of the development approval with current laws and policies. In relation to the planning assessment, the experts generally agree that the development is consistent with the current laws and policy in relation to planning matters. The planning outcomes for the site, as expressed in the planning scheme and various State planning instruments, remain unchanged.

In relation to the air quality assessment, the experts identify that the air quality criteria has changed since the time of the original approval. In particular, the Environmental Protection (Air) Policy has been amended to impose more stringent criteria for particulate matter. These particulate matter criteria are directly related to the protection of human health. While the experts agree that the development could be conducted to comply with the current criteria, there is not the necessary certainty that the criteria will be complied with, due to ambiguity in the development approval.

The experts agree that the approval could be made more certain by changing the approval conditions to include conditions relating to the temperature and velocity of the emissions released from the chimney stack. Council officers also consider that the conditions should be amended to reference the current particulate matter criteria, rather than the outdated, less stringent criteria.

It must be noted that the conditions of the approval cannot be amended or added to as part of the consideration of a request to extend the relevant period. Therefore, the changes would need to occur concurrently through a permissible change request to the Court to amend the approval conditions.

Furthermore, the conditions that would be amended and added to are not Council conditions – they are conditions imposed by DEHP. Therefore, the appellant would need to seek DEHP's views on amending their conditions.

### Current Awareness and Potential for Submissions

The community's current awareness and the potential for public submissions are intricately linked and are therefore addressed together.

These two factors are part of the assessment test due to the fact that the processing of a request to extend the relevant period does not involve any formal public notification of the application and does not allow any rights of appeal to the public.

Council, in its assessment of the request, considered that the community's awareness of the development approval was affected by two main factors: the change to the surrounding residential area, resulting in a large number of new residents, and the changes to the development proposal itself after public notification, resulting in a lack of awareness of the details of the approval.

Early in the appeal process, Council produced a map showing the extent of changes to the locality. This information identified that an additional 787 residential lots have been created in Mount Cotton village since the last public notification. In addition, approximately 450 lots have changed ownership in the Mount Cotton suburb since that time. In total this indicates a large amount of community change in the surrounding area.

Furthermore, Council considered that there would be a high likelihood of public submissions, should those rights be available. This was influenced by the following:

- 333 submission received (332 objecting to the development) during the public notification stages for the original application;
- There remains keen interest in, and concern over, this development among several community members and groups (e.g. in letters to the editor and emails and letters to Council from community members and groups); and
- The changes made to the proposal plans during the original application were not publically notified, thereby removing the public's opportunity to make submissions on these amended plans.

To test these considerations, the Council commissioned a survey of the Mt Cotton community during the appeal. Three media were used for the survey: telephone (200 respondents), mail out (364 respondents) and online (151 respondents). The letter and online surveys included the relevant link to Council's PD Online, containing the proposal plans for development and other public information relating to the original application. This approach was purposely taken to allow the respondent to find out information to inform its decisions on the survey, without influencing the presentation of this information.

The surveys themselves contained the following important questions, with the results identified below:

- How long have you lived in the Mount Cotton area?

Of the total respondents, 38% have lived in the Mount Cotton area for 1 to 5 years; that is, they have moved into Mount Cotton after the notification and consideration of the original development application for the biomass power plant.

- Before participating in this survey, were you aware of the development approval for a biomass power station located at 70-96 Hillview Road, Mount Cotton?

55% of the respondents identified that they were not aware of the development approval for the biomass power plant. This figure is surprising, considering the perceived knowledge of the development within the local community, and potentially identifies that this knowledge penetration is not as deep as perceived.

Furthermore, linking the first two questions, approximately 75% of telephone respondents who were not aware of the development approval, had been living in Mount Cotton for 1 to 5 years. This flags that the lack of awareness is most acute among new residents. This is not a surprising point, but does highlight the importance of knowing how the surrounding community has changed, as it clearly correlates to the awareness of that community.

- In your opinion, how important is it that the community has an opportunity to see and comment on this application to build a biomass power station in Mount Cotton? Rate your response on a scale of 1 – 4 where 1 is "Not important" and 4 is "very important".

This question was purposely worded to be objective; to give the respondent a clear opportunity to identify their opinion on community involvement for this particular development.

87% of respondents stated that it is either "very important" or "important" that the community has an opportunity to see and comments on this application. This is a very high result.

- If a new development application for the biomass power station located at 70-96 Hillview Road, Mount Cotton, was made to the Council today, would you (please circle one):
  - (a) Lodge a submission supporting the development application?
  - (b) Lodge a submission opposing the development application?
  - (c) Not lodge a submission concerning the development application?

This question was purposely worded to be objective and not lead the respondent. The question gives all three options for responding to public notification: object, support or no action. The question does not ask whether the respondent supports or objects to the proposal itself, it specifically asks whether they would lodge a submission to that effect, which is distinct from simply holding that view. Obviously it is conceded that it is easier to tick a box identifying that one would lodge a submission than actually penning a submission itself. However, the wording of the question is considered to at least force the respondent to think about whether they would lodge a submission.

Approximately 64.5% of respondents identified that they would lodge a submission objecting to the proposal. 8% of respondents identified that they would lodge a submission supporting the proposal. 18.7% identified that they would not lodge a submission and 2.9% identified that they required further information before making a decision on whether to lodge a submission. The remaining 5.9% of respondents did not provide a response to this question.

The result for respondents lodging a submission objecting to the proposal is compelling and, coupled with the response to the previous question, indicates a clear desire of the community to have a say on the development. This result was consistent across all three survey media; telephone (60% would lodge an objection), mail out (65%) and online (68%).

Based on the above information, it is considered that these two points support Council's position in the appeal.

#### Views of Concurrence Agencies

Two concurrence agencies were involved in the original application; the Department of Transport and Main Roads (TMR) and Department of Environment and Heritage Protection (DEHP). The appellant referred the request to both agencies during the application stage and both agencies have identified that they have no objection to the extension request.

In this regard, this point supports the appellant's position in the appeal.

#### Summary

To summarise the above, the following issues remain relevant to the appeal:

1. Consistency with current laws and policies, in relation to the potential non-compliance with air quality criteria due to the ambiguous and out-of-date approval conditions;
2. Lack of community awareness;
3. High potential for public submissions, if rights were available.

#### **APPELLANT SETTLEMENT OFFER**

The appellant has put to Council a settlement offer that attempts to deal with point 1 above. In exchange for Council agreeing to extend the relevant period by two years, the appellant will seek changes to the development approval to include or clarify

conditions as recommended by the joint report of the air quality experts dated 19 September 2012 by prescribing the following requirements:

1. a minimum efflux temperature of 150 °C;
2. a minimum efflux velocity of 20.5 m/s;
3. a minimum stack height of 30m;
4. a maximum diameter at stack exit (release) point of 1.3 metres;
5. annual monitoring of stack efflux temperature and efflux velocity; and
6. clarify the inconsistency in the approval as they relate to design features namely:
  - (a) the cooling method by dry fluid system and not a ground loop system; and
  - (b) the furnace type by fluidised bed system and not rotating kiln.

This would involve seeking permissible changes, through the Court, to the conditions of DEHP relating to the temperature and velocity of the emissions released from the chimney stack to ensure adequate dispersion of those emissions. The following section assesses the settlement offer.

## **CONSIDERATION**

### Discussion of Preferred Option

Council officers and external Counsel have considered the settlement offer in detail and recommend rejecting the offer. The basis for this recommendation is discussed below:

#### *Removing the rights of the public to make a submission*

Agreeing to settle the appeal will remove the rights of the public to make submissions for or against the development. It is an inherent right under Queensland planning legislation for the public to guide the development of their Council area through involvement in both policy making and development assessment. In relation to development assessment, the Act clearly distinguishes between code and impact assessment, by only providing appeal rights to the public under impact assessment. This development involves an impact assessable use.

While the public had the opportunity to submit to the original application and appeal the decision (which was taken up), two factors indicate that this opportunity should be allowed again. These are the fact that a large number of new residents have moved into the Mount Cotton area (approximately 700+ new residents) and have not had the chance to lodge a submission or exercise appeal rights and the fact that there were changes to the proposal plans that were not available to the public during the original notification period.

In addition, there are currently 13 resident witnesses involved in the appeal that have provided statements and made themselves available to be a part of the appeal process to support Council's position. Should Council now agree to settle the appeal, these witnesses may feel that their time, effort and opinions have been disregarded by Council.

#### *Prospects*

Legal Counsel has advised that Council's prospects of success are approximately 50/50. As previously identified, it is clear that two of the four tests under SPA favour Council, while the remaining two tests favour the appellant. The decision of the Court will be a balancing of these tests and their application with regard to the purpose of the Act.



Council officers and our legal team consider there are still good arguments to support Council's position to refuse the extension. As previously discussed, the rights of the public to make a submission and to secure appeal rights are fundamental pillars of the Act. There is evidence from the survey that there is a lack of awareness of the development approval and that people would make a submission in relation to the application, if those rights were available.

In addition, the air quality experts report indicates that there is a level of conflict between the approval and the current laws and policies in relation to air quality. This therefore opens Council's ability to argue that three of the four points under Section 388 are not adequately addressed by the request.

Conversely, there are practicalities that the Court may consider in the Section 388 test. For example, what value will a new application serve? Would the submissions add any value to the assessment of the application? Is it simply delaying the inevitable?

A clear idea of prospects is difficult due to the fact that there is no current case law to indicate the Court's interpretation of Section 388 of the SPA.

### Judicial Decision

There is great value in gaining a judicial decision on this matter. Firstly, a decision by the Court has the potential to halt or at least reduce the questioning of Council's past processing and decision making on the application. Responding to the continuing significant amount of correspondence received from the public on this matter has been, and continues to be, a considerable resource burden on Council. A judicial decision on the matter, as opposed to a consent settlement, would allow Council to respond to any future questioning with clear reference to the Judgement and Order of the Court.

Secondly, a judicial decision on this point of law in relation to the consideration of Section 388 of SPA has the potential to produce important case law that will guide future decision making under Section 388. This has the potential to reduce future Court costs borne by this Council and provide guidance to all local governments, as the decision will assist in indicating the Court's interpretation and application of this largely untested section of the Act.

### Costs of Trial

The majority of costs to Council for the appeal have already been borne. Taking the matter to trial is predicted to cost an additional \$60,000. This relatively low cost is due to the scoping of issues that has occurred already in the appeal, which has reduced the need for expert witnesses and will therefore avoid lengthy debates on extraneous matters.

This is considered a small amount of money to pay to have a judicial decision on the matter, which has the potential to reduce future complaints and investigations on the proposal and to inform case law on this important legal point. It may also give the public rights to submit and appeal the proposal.

### Discussion of Alternative Option

While the officers do not recommend the settlement option, it does have the potential to provide more certainty to the approval in relation to the approved design and emission controls. Conversely, the process required to change the approval through the Court has the potential to open up a long and protracted Court process, should another party raise objections to the proposed changes. For example, the original

submitters involved in the appeal may opt to challenge the proposed changes to the approval. This then adds another layer of uncertainty to the settlement.

Should Council be of a mind to agree to this settlement offer, it is recommended that the appellant be required to address the following additional matters:

- Provide a single consistent set of proposal plans to be approved, that indicate the same design on all plans to ensure certainty in the approval;
- Amend the DEHP conditions in relation to particulate matter to reference the current criteria under the Environmental Protection (Air) Policy. This would involve amending the PM10 condition to reference a maximum of 50 micrograms per cubic metre, rather than the current 150 micrograms per cubic metre, and to include PM2.5 (smaller particular matter) criteria, which is not currently part of the conditions but is a criterion under the current EP (Air) Policy; and
- Provide written agreement from DEHP that they agree to the amendment of their conditions of approval, consistent with any agreement with Council. The agreement could easily fail if DEHP does not agree to amend their original conditions.

## **OFFICER'S RECOMMENDATION**

### **Preferred Option**

1. That Council resolve to use Committee delegated authority for formal decision making in accordance with Section 257 of the Local Government Act 2009 and Council resolution of the Post Election Meeting 17 May 2012 Item 7, to reject the settlement offer from the appellant; and
2. The use of delegated authority is justified for the purpose of meeting statutory timeframes.

### **Alternative Option**

1. That Council resolve to use Committee delegated authority for formal decision making in accordance with Section 257 of the Local Government Act 2009 and Council resolution of the Post Election Meeting 17 May 2012 Item 7, as follows:
  - a. To accept the settlement offer from the appellant, subject to the following:
    - i. The appellant provides a single consistent set of proposal plans to be approved, that indicate the same design specifications on all plans to ensure certainty in the approval;
    - ii. Amend the conditions of the Department of Environment and Heritage Protection (DEHP) in relation to particulate matter PM10 and PM2.5 to reference the current criteria under the current Environmental Protection (Air) Policy 2008; and
    - iii. Provide written agreement from DEHP that they agree to the amendments of their conditions, consistent with the agreement between the appellant and Council; and
  - b. To instruct the Group Manager, Sustainable Assessment to settle the appeal subject to the matters identified above.
2. The use of delegated authority is justified for the purpose of meeting statutory timeframes.

**OFFICER'S RECOMMENDATION/  
COMMITTEE RECOMMENDATION**

Moved by: Cr W Boglary

Seconded by: Cr PGleeson

1. That Council resolve to use Committee delegated authority for formal decision making in accordance with Section 257 of the *Local Government Act 2009* and Council resolution of the Post Election Meeting 17 May 2012 Item 7, as follows:
  - a. That the Preferred Option be adopted; and
  - b. That this report and its recommendations remain confidential pending the final outcome of the appeal; and
2. The use of delegated authority is justified for the purpose of meeting statutory timeframes.

The motion was **LOST** for the purposes of a delegated decision.

**DIVISION**

FOR: Crs Boglary, Ogilvie, Gleeson, Bishop and Elliott.

AGAINST: Crs Hardman, Edwards, Williams, Talty and Beard.

Cr Hewlet was not present when this motion was put.

In accordance with the Council Resolution at the Post Election Meeting on 17 May 2012, there must be eight Councillors who vote in favour of a resolution under Delegated Authority to Committee for the motion to succeed. Therefore, despite there having been a simple majority in favour of the recommendation, the motion was LOST for the purposes of a delegated decision.

This Committee Recommendation will now be listed for determination at the General Meeting scheduled for 31 October 2012.

**COUNCIL MINUTES RESOLUTION AS LISTED IN MINUTES  
(PRIOR TO COURT HEARING)**

Moved by: Cr M Edwards

Seconded by: Cr L Hewlett

**That Council resolve as follows:**

1. **To accept the alternative recommendation as amended; and**
2. **That this report and its recommendations remain confidential pending the final outcome of the appeal, with the exceptions of points 1, 2 and 3 in the amended recommendation which may be made public after they have been presented to the Court.**

**CARRIED**

**DIVISION**

FOR: Crs Beard, Talty Edwards, Hewlett, Hardman and Williams

AGAINST: Crs Bishop, Gleeson, Elliott, Ogilvie and Boglary

## **COUNCIL RESOLUTION**

**Moved by: Cr M Edwards**

**Seconded by: Cr L Hewlett**

**That Council resolve as follows:**

- 1. To adjourn the Court proceedings so that the applicant can make a permissible change application to the Court to clarify the inconsistencies in the Approval issued by the Planning & Environment Court on 7 November 2007, in particular the design features related to the furnace, stack and cooling systems;**
- 2. That the Permissible Change Application must include the recommendations by the air quality experts as to the design features and to meet the current environmental emission standards, in particular the PM.10 and PM.2.5 emission standards;**
- 3. That the Permissible Change Application must include a single set of plans and expert documentation to support the proposed changes;**
- 4. Subject to the above resolutions, the Council will not oppose the permissible change application or progress the current court proceedings until the Court has determined the Permissible Change Application; and**
- 5. That this report and its recommendations remain confidential pending the final outcome of the appeal, with the exceptions of points 1, 2 and 3 above which may be made public after they have been presented to the Court.**

**CARRIED**

**DIVISION**

**FOR: Crs Beard, Talty Edwards, Hewlett, Hardman and Williams**

**AGAINST: Crs Bishop, Gleeson, Elliott, Ogilvie and Boglary**