

CLEVELAND POWER PTY LTD (BIOMASS) PLANNING & ENVIRONMENT COURT APPEALS

Objective Reference: A2865475
Reports and Attachments (Archives)

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PURPOSE

This report recommends Council resolves to settle the Planning and Environment Court appeals (Court Reference 1476/17 & 4763/17) in relation to the proposed Biomass Power Plant at Hillview Road, Mount Cotton.

The proposed settlement terms are that the Planning and Environment Court appeals be discontinued and each party bear their own costs.

The effect of the settlement is that the current approval for the Biomass power plant facility will lapse and cannot proceed; unless a new development application is made and approved.

BACKGROUND

In June 2004 the Biomass development application was made by Cleveland Power Pty Ltd and was publicly advertised in 2004 and 2005 which attracted 333 public submissions. The application was approved and subsequently appealed.

On 7 November 2007 the Biomass facility was approved by the Planning and Environment Court for storing and burning chicken litter to generate approximately 5 megawatts of electricity and to be located behind the Golden Cockerel chicken processing plant at Hillview Road, Mount Cotton.

In 2011 Council refused an application to extend the currency period of the Court approval which was subsequently appealed and approved by the Planning and Environment Court in 2015.

On 22 March 2017 Council again refused an application to extend the currency period which was subsequently appealed and the subject of the current Planning and Environment Court proceedings (Court Reference 1476/17).

On 8 December 2017 Cleveland Power Pty Ltd applied to the Planning and Environment Court (Court Reference 4763/17) to make changes to the Biomass power plant approval.

On 5 February 2018 Council received an offer to settle both Planning and Environment Court Appeal Proceedings reference 1476/17 and 4763/17 on the basis the proceedings be discontinued and each party bear their own costs. This offer was subsequently withdrawn.

On 15 February 2018 Council received the above settlement offer again and including the same terms. The offer is open until 4pm on 22 February 2018.

On 21 February 2018 the change application is listed for a Court review.

On 28 March 2018 the appeal is listed for a Court review.

ISSUES

The settlement proposal is consistent with the previous Council decision on 22 March 2017 to refuse the extension of the development proposal and the settlement outcome is the same as sought by Council in the Court appeals.

The effect of the settlement is that the current approval for the Biomass facility will lapse and cannot proceed; unless a new development application is made and approved.

STRATEGIC IMPLICATIONS

Legislative Requirements

The recommendation is consistent with the Local Government Principles under the *Local Government Act 2009* and the *Planning and Environment Court Act 2016* to resolve proceedings expeditiously.

Risk Management

The recommendation resolves risks associated with the Court appeals.

Financial

The appeals are managed within the existing budget and the early settlement would reduce associated financial costs.

People

There are no direct people implications from the recommendation.

Environmental

There are no direct people implications from the recommendation.

Social

There are no direct people implications from the recommendation.

Alignment with Council's Policy and Plans

The recommendation is consistent with the Corporate Plan governance outcomes.

CONSULTATION

Consultation has occurred with General Counsel and Council's external solicitors.

OPTIONS

Option One

That Council resolves as follows:

1. To accept the settlement offer on the terms generally described in this report to settle both Court Appeals reference 1476/17 and 4763/17; and
2. That this report remains confidential until finalisation of the appeals.

Option Two

That Council resolves to not accept the settlement offer.

OFFICER'S RECOMMENDATION

That Council resolves as follows:

1. **To accept the settlement offer to discontinue Court appeals 1476/17 and 4763/17 on the terms generally described in this report; and**
2. **That this report remains confidential until finalisation of the appeals.**