



From your Council Representative

Councillor Julie Talty

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by mail*

Our Ref: JTHs
MCO08414

Dear Resident

Cleveland Power Pty Ltd – Biomass Electricity Project

I am writing to ensure you have the latest information about the Biomass Electricity Project that is intended to be built by Cleveland Power Pty Ltd at 70-96 Hillview Road, Mount Cotton.

The planning approval for this facility was issued by the Planning and Environment Court in 2007. Under State planning legislation the period to implement the approval was four years. The legislation allows an applicant to seek extensions to an approval if it has not been implemented. On 20 March 2013 the Court agreed to an extension of the approval for a further two years. This followed an appeal against Council refusal of the request. The applicant has now applied to extend the approval for a further 18 months, as permitted by the legislation.

Under State Planning legislation, in considering the application to extend the approval period, Council is required to have regard only to the tests that apply to the matter of the extension of the approval period. That is, Council is not permitted to rehear the original application, and can only consider the relevant assessment criteria for the extension. In this case these tests essentially can be summarised to the following two areas.

1. Is the application still consistent with current laws and policies? and,
2. The community's awareness of the proposal and likelihood of new submissions if the community had an opportunity to make these.

The case put before the Planning and Environment Court by Council on behalf of residents between 2011 and 2013 addressed these areas. As a result, the plans for the plant were upgraded to ensure they met the latest environmental requirements under law and further community consultation was carried out with council providing all submissions in their entirety to the Court. You will also find a transcript of the judgment relevant to the 2013 approval here:

<http://apps.courts.qld.gov.au/esearching/FileDetails.aspx?Location=BRISB&Court=DISTR&FileNumber=5192/11>

I draw your attention to some critical matters from that judgment. Firstly, Judge Andrews concluded in paragraph 22 that the development approval was consistent with current laws and policies. The judge further concluded that as there were over 300 submissions made in response to the original development application it is unlikely that any new issues not previously considered in the original application process would be raised in a new submission.

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With regard to the matter of community consultation and knowledge of the project, Judge Andrews in paragraphs 23, 24 and 25 of his judgement stated;

[23] I accept the submission that any new resident in the area having arrived after the public notice should have an expectation that development could proceed in the area in accordance with the planning scheme. The consistency of the development approval with the planning documents is important because there must therefore be a reasonable expectation on the part of the public that development of the kind approved may occur in the area.

[24] I accept that the opposition to the proposal maintained by some members of the public is likely to be related to the acceptability of the "use" in the area and not based upon its consistency or otherwise with current laws and policies. I balance that against the fact that the approval, including its conditions, is consistent with current laws and policies.

[25] I accept there would be little utility in forcing the developer to undergo an extensive impact assessment process for the purpose of obtaining a development approval that would be, for all intents and purposes, consistent with the existing development approval and which would be unlikely to provoke a public submission that would raise any new issue for consideration.

As this judgment has set new case law in Queensland, it is therefore a significant element in the matter of the application to extend the relevant period that is now before council. The judgment notes that any new submissions are unlikely to raise any new issue for consideration; this is based upon the facts that, the application as it stands meets current legal and planning requirements, and that so many submissions have already been received as a result of the original application and subsequent appeal case, that no new technical or planning related objections are likely to be raised.

Officers assessing the latest extension application must have regard to the judgment and have concluded that the application remains consistent with current planning regulation and policy ie there have been no significant changes to laws and policies since this was considered by the Courts previously. Additionally, the judgment as it relates to community awareness and likelihood of new matters raised by submissions is clear and must be considered by Council in deciding this current application.

I wanted you to have the latest information available on this project – the same information that has been provided to councillors for their consideration of this matter when it comes to Council for decision on the 6th of May. All related documents are available in full via Council's web site.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Talty', with a large loop at the end.

Councillor Julie Talty
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Redland City Council