



## MELTON CITY COUNCIL

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Notice is hereby given that the Special Meeting of the Melton City Council will be held in the Council Chamber, Civic Centre, 232 High Street, Melton on 11 April 2017 at 7.00pm.

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**THIS AGENDA CONTAINS REPORTS TO BE DEALT WITH AT A CLOSED MEETING OF COUNCIL**

Kelvin Tori  
CHIEF EXECUTIVE

## Visitors to the Gallery please note:

Proceedings at Council meetings are controlled by the Chairperson. The Chairperson is empowered to enforce the provision of Council's Local Law, which includes the following aspects:

- **Silence** must be maintained by members of the public in the gallery at all times. A visitor to the gallery must not interject or take part in the debate that occurs in the Chamber.
- Members of the public in the gallery must not operate **recording equipment** at a Council or Special Committee Meeting without the prior written consent of Council.
- **Question time** is available at every Ordinary Meeting to enable members of the public to address questions to Council. All questions must be received by the Chief Executive Officer or other person nominated for this purpose no later than:
  - i) 5 pm on the day of the Ordinary Meeting if questions are submitted into the receptacle designated for public questions outside the Council Chamber
  - ii) 5pm on the day of the Ordinary Meeting if questions are submitted by electronic medium as per Council website directions.

A person must not submit more than two (2) individual questions at a meeting, inclusive of all parts and variants as interpreted by the Chairperson or other person authorised for this purpose by the Chairperson. The person directing the question must be present in the gallery at the time the question is to be dealt with for it to be valid.

- It is an offence for any person, not being a Councillor, who is guilty of any improper or disorderly conduct to not leave the meeting when requested by the Chairperson to do so.  
Penalty: 20 Penalty Units
- It is an offence for any person to fail to obey a direction of the Chairperson relating to the conduct of the meeting and the maintenance of order.  
Penalty: 20 Penalty Units

A penalty unit for a Local Law made under Part 5 of the *Local Government Act 1989* is \$100 in accordance with s110(2) of the *Sentencing Act 1991*.

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**1. APOLOGIES AND LEAVE OF ABSENCE**

The Mayor will call for any apologies received from any Councillors who are unable to attend this meeting.

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

Pursuant to Section 77A, 77B, 78 and 79 of the Local Government Act 1989, any Councillor must declare any direct or indirect interest, and any conflict of interest, in any items contained within the Notice Paper.

### **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.

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#### **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 VCAT 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 legal advice Council may receive.'

#### **LIST OF APPENDICES**

Nil

#### **4. CONFIDENTIAL BUSINESS**

##### **Procedural Motion**

That pursuant to section 89(2) of the *Local Government Act 1989* the meeting be closed to the public to consider the following reports, that are considered confidential for the reasons indicated:

##### **3.1 EPA Works Approval for Expansion of the Melbourne Regional Landfill**

This report is confidential in accordance with s89(2)(f) as it relates to legal advice.



**Procedural Motion**

That the meeting be opened to the public.

**5. CLOSE OF BUSINESS**