

Subject: Biomass Power Plant & Waste Incinerator Mt Cotton
Questions and Answers

Introduction:

Council has prepared this Question and Answer response to issues and concerns about the proposed Biomass power plant and waste facility at Mt Cotton.

What is the Biomass development?

The Biomass facility was approved by the Planning and Environment Court on 7 November 2007 for storing and burning chicken litter to generate approximately 5 megawatts of electricity.

The facility is proposed to be located behind the Golden Cockerel chicken processing plant at Hillview Road Mount Cotton by replacing existing poultry sheds. The electricity will be used by the Golden Cockerel plant with surplus electricity supplied to the electricity grid which could potentially power approximately 7,500 homes per year.

[Source: Council Development Assessment Report 20 March 2007; P&E Court Judgment 7 Nov 2007]

Who approved the Biomass development?

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

The application was originally assessed and approved on 20 March 2007 by the then Redland Shire Council, Environmental Protection Authority and Department of Main Roads. The approval was for a 'material change of use' to replace the existing poultry sheds with the biomass power plant and for an 'environmental relevant activity' for fuel burning and fuel burning equipment.

The approval was appealed to the Planning and Environment Court by local residents who were opposed to the development. The parties to the Court Appeal included the residents, the applicant Cleveland Power, Council, Environmental Protection Authority and the Department of Main Roads.

The Court parties engaged experts in planning and air quality to re-assess the development. The Court experts agreed the Biomass facility, as a 'heavy industrial use', could be approved with further conditions ensuring there were no undue impacts on public health or the environment.

On 7 November 2007 the Court Approved the Biomass facility with conditions, including a term of 4 years for the facility to be constructed and started.

[Source: Council Development Assessment Report 20 March 2007; Court Planning Experts Joint Report 9 Oct 2007; Court Air Quality Experts Joint Report 9 Oct 2007; P&E Court Judgment 7 Nov 2007]

How does the Biomass approval regulate the development?

The approval regulates the development design and potential impacts by imposing conditions that:

- Limit the type of fuel to be uncontaminated chicken waste and start up fuels of saw dust and liquid petroleum gas [condition 5.2 & A12]
- Limit the amount of fuel to approximately 65,000 tonnes per year [condition 5.2 (a)].
- Limit air, noise and waste emissions to the environment (on and off site) to meet health and environmental standards [G1; A3; A9; A14; N2; W1; Table 1 and Table 3].
- Require a manufactures guarantee or engineering certification that certifies the equipment will meet the health and environmental standards [condition 5.5(a)(iv)].

- Require monitoring, maintenance and control systems [conditions 5.1; 5.4; 5.5; 9.1; G2; G3; G8; G9; A4; A5; A6; A8; A10; A11; A13; L8; N3].
- Require the formation of a community liaison group in regard to the biomass operations so that social and environmental issues are addressed effectively [condition 9].

The approval identifies that additional permits are required for associated development works, building works and plumbing and drainage works. Prior to the associated development works approval being issued, the applicant must provide certification that the design, plans and specifications comply with the approved conditions of the Court Approval.

[Source: Council Development Assessment Report 20 March 2007; Court Planning Experts Joint Report 9 Oct 2007; Court Air Quality Experts Joint Report 9 Oct 2007; P&E Court Judgment 7 Nov 2007]

What is the role of Council?

Council exercised a limited statutory role as the assessment manager prior to 20 March 2007. Thereafter the Appeal was managed by the Planning and Environment Court which acts as the assessment manager and considers the application afresh with Court experts.

The Council assessment was limited under the then Integrated Planning Act 1997 to assess the material change of use from poultry sheds to power plant as the Environmental Protection Authority (EPA) assessed the fuel burning equipment, activity and related emissions as an environmental relevant activity under the Environmental Protection Act 1994.

In 2011 the Department of Environment and Resource Management (DERM) assessed and approved the application by Cleveland Power for their approval to be extended for a further 2 years. The Council with its limited authority refused the 2 year extension of the approval.

Cleveland Power appealed Council's refusal of the extension. The Appeal is managed by the Planning and Environment Court which acts as the assessment manager and considers the application afresh with Court experts.

[Source: Integrated Planning Act 1997; Sustainable Planning Act 2009; Council report 20 March 2007; Court Judgment 7 Nov 2007]

What are the current Court proceedings about?

The current Court proceedings involve an Appeal by Cleveland Power Pty Ltd against the Council decision in December 2011 refusing to extend the approval from 4 years for a further 2 years.

The parties engaged independent planning and air quality experts to consider the extension Appeal. On 1 November 2012 the Court proceedings were adjourned so the applicant could consider making a separate permissible change application to the Court.

[Source: Qld E-Court reference 5192 /2011; Sustainable Planning Act 2009]

Will there be further Court proceedings?

Yes, there is likely to be a further separate Court proceeding for the applicant to make a change to the development approval as it was the Planning and Environment Court that issued the original 2007 approval for the Biomass facility.

The application must be in accordance with the Sustainable Planning Act 2009 and not involve substantial changes to or impacts from the Biomass facility, which will be independently assessed by the Planning and Environment Court. The current proceedings to extend the approval will be on hold subject to the Court assessment of the proposed change.

[Source: Qld E-Court reference 5192 /2011; Sustainable Planning Act 2009]

What is the complaint and allegations about?

The complaint started in about 2008 from community members and in summary alleges that the Biomass development plans were substantially changed after the 2005 public notification period which increased the scale, intensity and related impacts from the development. It is also alleged that the Council officers misled the Council, the Planning and Environment Court and the Crime and Misconduct Commission as to the nature and scope of the development changes.

The complainants allege the Council's conduct invalidates the approval issued by the Court in 2007. The complaints have continued to varying degrees from 2008 to date.

On 16 December 2010 and 9 November 2011 the Council considered at Special Meetings the complaint investigation and agreed with some but not all of the investigation findings. Council agreed that during the Council / EPA assessment up to 20 March 2007 the plans relating to the Biomass cooling system changed and the plans were inconsistent regarding combustion mechanism and stack dimensions. Such inconsistencies are mitigated by the plan notation giving precedence to Stanley & Partners plans. The approved plans were re-assessed by the Court experts up to the Court approval on 7 November 2007 and during the 2011 application to extend the approval.

On 25 January 2012 the Chief Executive Officer at a General Meeting made a statement in respect of the Biomass Application and complaint assessment that it was not fully compliant and identified corresponding remedies. The CEO did not state that the Council assessment, investigation or decision was illegal or invalid as the areas of non-compliance involved administrative processes for the recording and referral of assessment information between statutory departments and the registration, recording and conduct involved in handling complaints. The CEO statement was made in the context of resolving a number of serial complaints.

Some of the complaints and investigations have been filed in the Planning and Environment Court so that the Court is informed about the allegations.

[Source: Council General Meeting minutes 16 Dec 2010; 9 Nov 2011; Rose Report; Qld E-Court reference 5192 /2011 doc 7]

Who assessed the complaints?

The complaints have been referred to and assessed by numerous agencies including the Council, an external investigator (Rose Report 2010); the Crime and Misconduct Commission; the Ombudsman; The Minister for Local Government and the Planning and Environment Court.

There have been dozens of complaint investigations over several years. None have found any negligence or misconduct by Council or Council officers or conduct that misled the Council, CMC or the Court in its assessment or decision regarding the approval of the Biomass facility.

The Crime and Misconduct Commission and the Minister for Local Government have notified the complainant that they will not continue to respond to substantially the same complaints that have previously been investigated.

The Council has informed the complainants that the complaints are for the most part based on incorrect assumptions which will not be continually responded to as the matter is currently subject to Court proceedings.

The Complaints involve some matters beyond the Council jurisdiction involving the assessment and approval issued by the Planning and Environment Court and the Environmental Protection Authority, which are currently being independently considered by the Court in the accordance with the Sustainable Planning Act 2009.

[Source: Council General Meeting minutes 16 Dec 2010; 9 Nov 2011; Rose Report; Qld E-Court reference 5192 /2011 doc 7]

Will the Biomass facility produce emissions that contaminate the air, water or land?

The Biomass facility has been assessed several times over the past 8 years and approved with conditions to meet strict environmental emission standards.

The assessment and approved conditions has been undertaken and agreed to by numerous experts over the past 8 years that have been appointed by different parties (Cleveland Power Pty Ltd; Council; EPA; DERM; Resident submitters).

The proposed facility is the subject of Court proceedings where the relevant planning and air quality experts are assessing the development which will be decided by the Court.

[Source: Council Development Assessment Report 20 March 2007; Court Planning Experts Joint Report 9 Oct 2007; Court Air Quality Experts Joint Report 9 Oct 2007; P&E Court Judgment 7 Nov 2007]

Will traffic be increased by the Biomass facility?

The application estimated traffic to be increased by approximately 20 vehicle movement per week, representing in 2004 less than 0.1% of traffic along Mt Cotton Road.

[Source: Council Development Assessment Report 20 March 2007]

Will the capacity of the Biomass plant be increased to incinerate 230,000 tonnes per year?

There is no proposal to increase the amount of fuel to the biomass facility which is approved under condition 2.1 and 5.2(a) at approximately 65,000 tonnes of fuel per year as per the Darwalla Milling Co letter to Council of 8 December 2006.

[Source: Council Development Assessment Report 20 March 2007; Court Planning Experts Joint Report 9 Oct 2007; Court Air Quality Experts Joint Report 9 Oct 2007; P&E Court Judgment 7 Nov 2007]

Will the Biomass plant produce emissions with fallout over many hectares of land in Redland City?

No, the Biomass plant is conditioned by A3 and Table 1 which expressly requires the air emissions to meet the environmental standards, before the emissions are released to the air, so that any emission fallout on or off the site is compliant with the environmental standards. The air emissions are monitored to meet the standards within stage 1 of the chimney stack and regulated to be released at a height, speed and temperature so as not to cause environmental nuisance harm or adverse public health effects.

Is the information about the Biomass facility and Court proceedings publicly available?

Yes, information about the Biomass facility; the complaints and Court proceedings is available from the Council and Court by the internet sites listed below.



REFERENCES

Development Information:

Redland City Council Website Development Assessment Records PD-online
Development Application Reference MC008414
<http://www.redland.qld.gov.au/Pages/default1.aspx>

Court Information:

Qld E-Court Website Appeal Reference 5192/11
Cleveland Power Pty Ltd -v- Redland City Council [E-Court Records]
<http://www.courts.qld.gov.au/information-for-lawyers/search-civil-files-ecourts>

Complaint Information:

Qld E-Court Website Appeal Reference 5192/11
Cleveland Power Pty Ltd -v- Redland City Council [E-Court Records]
See Document 7 – Affidavit A Fernandez and exhibits
<http://www.courts.qld.gov.au/information-for-lawyers/search-civil-files-ecourts>

Expert Reports:

Redland City Council Website Development Assessment Records PD-online
Development Application Reference MC008414
See Joint Planning and Air Quality Expert Reports produced in the 2007 Court Appeal
<http://www.redland.qld.gov.au/Pages/default1.aspx>