

HAWKESBURY CITY COUNCIL

BUSINESS PAPER

SPECIAL MEETING - 2ND MAY, 1991

Your Ref:

April 26, 1991

Our Ref:

HAWKESBURY CITY COUNCIL



George Street, Windsor NSW 2756
Phone (045) 87 7000
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Mr.G.F.Falson,
Manager of Town Planning,
Hawkesbury City Council,
Council Chambers,
WINDSOR, N.S.W. 2756

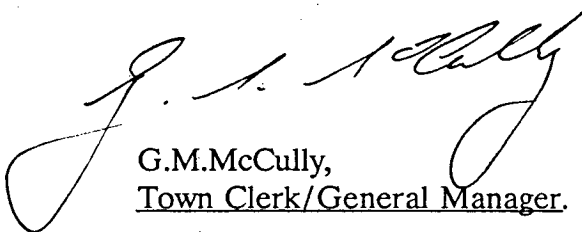
Dear Sir :

A SPECIAL MEETING of Council will be held
in the Council Chambers, Windsor on THURSDAY, 2ND MAY, 1991
commencing at 7.30 p.m. for the transaction of the following business :

CONSIDERATION OF REPORT ON MUSHROOM COMPOSTING

Your attendance would be appreciated.

Yours faithfully,



G.M.McCully,
Town Clerk/General Manager.

TOWN CLERK/GENERAL MANAGER'S REPORT

SPECIAL MEETING - 2ND MAY, 1991

Mayor and Aldermen:

1. MUSHROOM COMPOSTING. 1641.700, 1609.110

On 1st February, 1990, notices were served on Graham Price Pty Ltd and Mushroom Composters Pty Ltd to cease the emission of offensive fumes from their premises and to abate the public nuisances being caused, within twelve (12) months.

Discussions with Council's Solicitor prior to serving the notices, concluded that the preferred option in determining whether the notices had ultimately been complied with, would be by the use of an independent odour panel. Staff of the State Pollution Control Commission could recommend only one consultant in this field and, after some months, a quotation was received in July 1990 for \$70,500. Briefly the work involved included seven site visits, gas sampling, panel assessment, meteorological data and dispersion modelling, in accordance with relevant Australian Standards.

Council's Solicitor had requested that he be kept informed of any developments and following a meeting with him in August 1990, he forwarded advice which included:-

"Although it is not a complete answer to an action for nuisance a Court will have regard to the fact that the persons complaining of a nuisance have in effect "come" to the nuisance if the nuisance has not worsened since the complainants "came" to the nuisance. Put another way, the Court may well be reluctant to grant relief restraining the carrying out of a nuisance if the person complaining has come to his or her premises knowing that the activities the source of the nuisance was in existence.

In summary it appears that the scientific community is divided as to the consequences of the emission of odours. It also seems to be accepted that it is impossible to totally eliminate the odours.

Without endeavouring to quantify the number of residents who must be affected, the Courts have held that for the nuisance to be public, it must affect a significant number of persons.

It would appear that the operators 2 activities referred to above, have been making an endeavour to alleviate the problems complained of and we should say that in our view, whilst the Council's case is not hopeless, it has a difficult task in front of it in obtaining relief in respect of nuisance. We observe that the conditions of development consent also refer to "offensive nuisance" which term would no doubt raise the same questions for determination and any proceedings in the Land and Environment Court for orders seeking compliance with the conditions of consent."

At the expiration of the notices Mushroom Composters Pty Ltd, Graham Price Pty Ltd and Concerned Citizens of McGraths Hill for Clean Air and Ebenezer Concerned Residents, which both purport to represent residents in their respective communities, were invited to make written representations and further advised that they would have the opportunity to address Council at a Special Meeting.

Graham Price Pty Ltd

Since service of the notice, complaints have been received from 137 persons, of which 127 submitted their complaint in writing in the nature of a pro forma letter. All of these 127 persons were advised in reply that:-

"Information in your letter regarding offensive odour is very generalised. To enable information to be obtained by Council on the current extent of the odour nuisance it would be appreciated if you could provide further instances of specific nuisances including date and time. Such information should be conveyed to Council's Environment and Building Services Department."

Four of these residents subsequently provided details of one or more specific nuisances. Therefore, from 1-2-90 to 22-4-91 ten residents of McGraths Hill area made specific complaints.

Although Graham Price Pty Ltd was invited to make a written submission for this report, such submission has not been received.

The following has been received from the Environmental Defender's Office Ltd on behalf of Concerned Citizens of McGraths Hill for Clean Air

"Re Special Council Meeting to Consider Problems Associated with Mushroom Composting Industry"

We act on behalf of McGraths Hills Citizens for Clean Air and Ebenezer Concerned Citizens.

We note the history of this matter as follows:-

1. *After considerable debate regarding the odours produced by mushroom composting, on 17 May 1988 Council appointed a steering committee with regard to the mushroom composting industry with the stated aim of reducing odour emissions within a two year period.*
2. *On 2 August 1988 at the first meeting of the Mushroom Composting Industry Committee, the time-frame for reduction of odours was reduced to one year.*
3. *In February 1990 notices under section 289(b) of the Local Government Act were issued on composters including Graham Price Pty Ltd and Mushroom Composters Pty Ltd.*
4. *In the following 14 months, a number of composters including Graham Price Pty Limited and Mushroom Composters Pty Limited made changes or proposals for changes to methods of operation. Such changes include an accelerated tunnelling method (Graham Price Pty Ltd) and an accelerated production cycle (Mushroom Composters Pty Limited).*

The effect of such operational changes is definitely to increase compost production levels.

5. *In early February 1991 the twelve month period within which compliance with the section 289(b) notice was required expired.*

Our clients submit that no reduction in odour levels has resulted over the last 14 months. Our clients believe that an inexpensive, objective odour testing procedure could be adopted which would reinforce their view that the odours produced by Mushroom Composters Pty Limited and Graham Price Pty Limited are objectionable.

The question is not what improvements could conceivably be achieved using experimental mushroom composting technologies at some undetermined future time. The question is whether the objectionable odours have abated within the 12 month period reasonably required by Council, or alternatively over the 3 year period since the last special Council meeting to consider the problem.

Our clients submit that the only reasonable course of action for Council now to adopt is to commence proceedings for failure to comply with the s.289(b) notices.

Mushroom Composters Pty Limited

Since service of the notice, complaints have been received from ten residents, four of which have submitted details of specific odour nuisance. The following written submissions have been received:-

Mushroom Composters Pty Limited

"Council has requested a written representation from Mushroom Composters P/L for a special meeting of Council to determine compliance with Council's notice under Section 289(b) of the Local Government Act.

Since the issue at hand is whether or not Mushroom Composters P/L has complied with the Notice, the Company intends only to describe the measures taken to comply with the Notice.

Matters of legal argument are contained in the letters to Council from our Solicitor.

Since November 1990, Mushroom Composters P/L has implemented the following planned series of changes to its composting methods specifically to reduce odour.

Firstly, we imported a new blending machine from England to produce a more even suspension of elements throughout the compost which in turn reduces the odour producing anaerobic fermentation. This improved technique also allows for greater control over the rate of supplements added to the compost.

Secondly, by changing the preparation stage of composting from a wet to a dry start, we have been able to shorten the composting cycle from 21 to 14 days. This method also reduces the volume of compost held on site, therefore further reducing the potential for odour.

We contend that these measures have been effective in abating odour from our composting operations, and that this has been supported by the low level of complaints received by Council over the past months.

Ebenezer Concerned Residents' Committee

**"Mushroom Composting - Submission to Council
Your 3655W;13871/Ic/RC H&b/SB - 22.3.91**

In 1978 a public notice in the Gazette indicated the development would occur at Post Office Road Ebenezer and that mushroom composting would be done aerobically to minimise odours. Residents were then reassured by the conditions of development that indicated that the amenity of the area would not be affected.

Over the past thirteen years, Mushroom Composters have not only ignored the conditions of their development, they have even tried to have them removed and during this time they have continued to increase not only their production, but also the pollution they produce.

Their developments have often occurred without Council consent and we believe that the composting area is much larger than the 5490 square metres approved by Council. They increased the slab again in 1990 without a development application or Council consent.

The steering committee was set up almost three years ago and over this time there has been no reduction in pollution, but as indicated by the number of full trucks leaving Mushroom Composters, there has been a significant increase in production.

Mushroom Composters have provided the steering committee and Council with information on their attempts to reduce odour. Over the past three years there have been only two procedures taken to reduce odour from their composting process, i.e. -

- 1. Reduce amount of poultry manure used*
- 1. Control water content of compost.*

Neither of these procedures required much cost or effort, or produced any reduction in pollution.

The main effect of the steering committee has been to recognise that compost produces pollution when under anaerobic conditions and it was a great surprise to realise that this was already known by the industry in 1978 (as indicated in the public notice preceding development by Mushroom Composters).

Last year Mushroom Composters indicated that they would be introducing a process which would increase production time, was judged by State Pollution Control to be substantive at reducing odour, and would reduce odour emissions from Mushroom Composters. This year the reality of the process has become evident --

**The process does not reduce odour. Indeed the S.P.C.C. indicated that they had never investigated the process, nor approved it as being substantive at reducing odour.*

**Instead of increasing production time as indicated by Mr Hely's submission to the steering committee, the process has reduced composting time from 21 days to 14 days, which considering the same area is being used for production, gives a fifty percent increase in production.*

So, yes, Mushroom Composters did spend \$400,000 on a process, but this money was spent on increasing production, not reducing odour.

The fact that there has been no reduction in odour can easily be verified by contacting Ebenezer School, Ebenezer Uniting Church, Ebenezer Fire Brigade and Ebenezer residents who have regularly had their activities disturbed by the putrid odour emanating from Mushroom Composters.

Mushroom composters have been given an unbelievably generous amount of time to comply with the conditions of their development - thirteen years, during which time they have been able to produce compost cheaply at the residents' expense. This is a case of a company siting its industry in a rural-residential area and then telling the residents to put up with the resulting pollution (not residents encroaching on an established industry).

S.P.C.C. has confirmed to the steering committee that the odour from Mushroom composting could be controlled if the ricks were enclosed and air scrubbers installed. Also, there are at least two countries where composting is done inside buildings (i.e. Switzerland and Austria) with biofilters, and presumably they are still able to produce compost at a profit. So Mushroom Composters could have developed in this direction and abated the odour, but it probably would not have given an increase in production. This has been their choice, not the residents' choice, and

This estimate may change were expert evidence to become available but we are concerned that a Court may be reluctant to grant an injunction based solely on the unquantified subjective evidence of certain residents, particularly as the Court would have regard to the fact that it would be open to the individual complaining residents to bring their own actions for private nuisance, it being remembered that Council's action is for public nuisance.

If the proceedings are to be undertaken, we confirm our suggestion that we should obtain detailed proofs of evidence from those persons most acutely affected.

The writer also concurs with the views expressed by Mr Forrester that if expert evidence were to be available those prospects of success would change however we note that such evidence is presently not available and given the quote which Council has received from a consultant to sample and determine the nature of the odours it is extremely likely that the evidence will not be available in the foreseeable future, if at all.

The other aspect which was discussed with Mr Clifford was the element of establishing, if a suit was commenced in the Equity Division of the Supreme Court for public nuisance, the nature of the public interest in the matter. While a number of objections have been received by Council, a lot of those have been proforma objections and it is not known how many of those objectors would be prepared to make themselves available for interview, swear Affidavits and attend Court for cross examination if necessary.

Further, we have been advised that it is often the practice of residents in the areas involved to use chicken manure for the purpose of fertilising their properties and this can also cause odour emission. In the hands of any half skilled cross examiner appearing for the Defendants in either a public nuisance suit in the Equity Division of the Supreme Court or in injunction proceedings in the Land & Environment Court those matters could well be used to discredit residents' evidence of odour emission from the subject properties."

Without the availability of expert subjective assessment of the odour Council would have to rely on the evidence of residents in any matter before the Court regarding the nuisance. The legal advice received since expiration of the notices has reiterated the earlier advice that the Court may be reluctant to grant relief as the person complaining has come to his or her premises after establishment of the compost activity.

Mushroom Composters - not the residents - must accept the costs of their decisions.

Therefore, as there has been no real attempt by Mushroom Composters to reduce odour, and no likelihood of any reduction of odour in the future, we believe the Council has no choice but to enforce the notice served on Mushroom Composters. They must either abate the odour or stop production.

This action may temporarily increase the price of mushrooms but should see the industry move towards a less environmentally damaging process.

Further discussions have been held with Council's Solicitor following expiration of the notices. The advice received has included:-

"As Council is aware, the issue of an injunction is a discretionary remedy and Council would not only have to show that the odours are offensive and causing interference to the public at large, but also that the injury to the public is such as would outweigh the hardship to the proprietors in the event that the conduct of their business is restrained.

We understand from discussions with Council officers that the smells are less intense and of a different nature to those first complained of. We further note that concern is expressed that there may be other sources of smells such as the use of other organic fertilisers in the area including chicken manure and compost which may contribute to the odours generally in the area. Of course, the other sources cannot be laid at the door of the occupiers complained of.

Given the nature of the activity, it would appear inevitable that some odour will result from the activity. If the operator of the site is able to satisfy a Court that it has taken all reasonable and practical steps to alleviate the emission of odour, given the state of current scientific knowledge, then in our view a Court is unlikely to make orders which would have the effect of closing down the composting operation, given the history of the operation and the fact that it, in most instances, pre-dates the coming to the area of the complainants.

In summary therefore, on the material before us, although it is open to Council to take the proceedings above referred to, both in the Land and Environment Court and in the Supreme Court, we cannot predict with certainty the success thereof. If asked to quantify the prospects of success, we would have to say that they are, in our view, less than 50/50.