

HAWKESBURY CITY COUNCIL SPECIAL MEETING



Where People Make the Difference!

SPECIAL BUSINESS PAPER

DATE OF MEETING: 8 November 1995

LOCATION: Council Chambers

TIME: 7.30pm

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AGENDA

- **Apologies.**
- **SECTION 4 - Reports for Determination**
- 11: MUSHROOM COMPOSTERS - LAND AND ENVIRONMENT COURT**
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Section 4
Reports for Determination

ITEM: 11 **MUSHROOM COMPOSTERS - LAND AND ENVIRONMENT COURT**

FILE NUMBER: P1609/110 PT11/GMA

REPORT:

Land and Environment Court proceedings No. 40150/91 involve the Council and Peter Foster vs Mushroom Composters Pty Ltd.

Yesterday, Council's solicitors were notified from the Environmental Defender's Office (representing Peter Foster) that they had re-listed the matter for call-over before the Registrar of the Court on Thursday, 9 November 1995, for the purpose of fixing a timetable for the filing of evidence and to obtain a hearing date.

The matter before the Court will be the Notice of Motion originally filed in these proceedings which, pursuant to the Order of the Chief Justice, may be restored at forty eight (48) hours notice. Thus, it appears that Peter Foster is alleging that the contempt is continuing.

The Council's current instructions in the matter have been requested by its solicitors.

Discussions were held this morning with the Directors of Mushroom Composters Pty Ltd and their accountant. They indicate they are proceeding as quickly as possible with the relocation to their approved site at Singleton and that there are very significant works to be undertaken that include the obtaining, connection and distribution of services (water, electrical, drainage), undertaking of considerable site earthworks, construction of dam and large concrete working areas, storage buildings, plant relocation and weighbridge. Their advice is the estimated cost of these works is currently at \$642,830.00.

While it has the necessary town planning approval, the company is still in the process of obtaining the necessary Environmental Protection Agency licence for the Singleton operation. Their accountant advises their current financial position is one of considerable losses and that significant borrowings have to take place to enable the Singleton project to proceed to completion.

Notwithstanding those circumstances, they are prepared to give an undertaking to cease composting on the Ebenezer site no later than Friday, 15 December 1995. The Council's support for this position is sought. There have been no recent submissions to the Council regarding continuing contempt, although this would appear to be the reason for tomorrow's call-over.

It is in the interests of all parties that a fixed date is presented when both the composting on the site will cease and the residents can see some undertaking that any prior nuisance cannot recur. To achieve that requires some support to ensure that the company's resources are focused on relocation to Singleton and not into any unnecessary legal costs. In fact, in a recent judgement Justice Pearlman included

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"It seems clear to me that the Council and the respondent (Mushroom Composters) concentrate on relocation as a solution which would ultimately benefit all concerned by eliminating the odour at Ebenezer by placing the operations in an area where complaints were unlikely and by keeping the industry within the Council's local government area".

Council's most recent position in this matter is as follows:

"The Council is still receiving complaints from residents of nuisance as a result of the odour from the compost operation, that while the company indicates that it has reduced its level of operation and has made efforts to relocate the nuisance, it is still occurring and, accordingly, the court should impose a fine that encourages the company to abate the nuisance as soon as possible."

Given the proposed undertaking from Mushroom Composters Pty Ltd that they will cease composting on the Ebenezer site on or before 15 December 1995 and the benefit this will be to the residents of the area, that the Council supports the proposal. In doing so, further advise the Court that due to the relocation costs involved and the stated financial position of the company (that impacts on its owners and employees), that all resources available should be allocated to the relocation.

RECOMMENDATION:

Council instruct its solicitors that it concurs with the company's proposed undertaking to stop composting at Ebenezer by 15 December 1995 and, accordingly, due to the relocation costs and benefits that will accrue (both to residents, company owners and its employees) that all resources available to the company should be allocated to its relocation.

ATTACHMENTS:

There are no supporting documents for this report.

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