

<http://www.canning.wa.gov.au/Shared/Meetings/Minutes10June2008.htm>

15. NOTICES OF MOTION GIVEN AT THE MEETING FOR CONSIDERATION
DURING THE FOLLOWING MEETING

Cr Boots

“(a) That Chief Executive Officer be authorised to write forthwith to Southern Metropolitan Regional Council (SMRC) and to all other participants, namely:

- City of Cockburn
- Town of East Fremantle
- City of Fremantle
- Town of Kwinana
- City of Melville
- City of Rockingham

That City of Canning give notice of its intention to withdraw from the “regional Resource Recovery Centre Project of the Southern Metropolitan Regional Council” and the “Establishment Agreement of the Southern Metropolitan Regional Council” under clause 8.10 of the Establishment Agreement.

Under Clause 8.11 of the Establishment Agreement, the withdrawal takes effect on the 1st July 2009, and from this date, the City of Canning has no further association with Southern Metropolitan Regional Council.

b) That the Chief Executive Officer be authorised to write forthwith to the Minister for Local Government, the Honourable Ljiljana Ravlich MLC, to take immediate steps to carry out “Dissolution of Southern Metropolitan Regional Council” as per Section 3.63(1)(a) of the Local Government Act 1995.

The principal reasons are as follows:

- The odour from SMRC managed Canning Vale plant is seriously affecting the health and lives of a significant number of residents.
- The foul, pungent odour has been an ongoing issue since the SMRC managed Canning Vale plant commenced operations in 2003. SMRC is

incapable of resolving the odour issue despite major injection of funds and resources from the participants.

- SMRC are not being fiscally responsible and are haemorrhaging City of Canning funds. SMRC have increased their liabilities from \$35 million in 2003 to \$53 million today, an increase of 51%. Furthermore, SMRC have increased "gate fees" for municipal solid waste (general green bin rubbish) from \$36/tonne in 2003 to \$102/tonne today, an increase of 80%. For 2008/2009 budget, SMRC is asking for further increases well above CPI.

- There is a real possibility that the SMRC, the City of Canning and all the other participants could be found liable for breaches of the Health Act and Environmental Protection Act. If successful, there is no doubt that this would drag in the State Government of Western Australia as the Councils' guarantor."

<http://www.canning.wa.gov.au/Shared/Meetings/ag27May2008.htm>

SRS-094-08 REGIONAL RESOURCE RECOVERY CENTRE – OPTIONS FOR RESPONDING TO ODOUR ISSUES
Executive Strategic and Regulatory Services

Tabled:

1.Part VII, Division 1 of the Health Act 1911.

2.Regional Resource Recovery Centre Licence Conditions.

Attachments:

1. Location plan.

2. Copy of email from K Raine dated 28 February 2008.

3. Legislative Council Media Release.

BACKGROUND

At Council's ordinary Meeting of 22 August 2006, a Resolution was adopted for the City's Environmental Health Service to investigate complaints lodged by ratepayers of the City of Canning regarding odour emissions from the waste facility in Canning Vale and to report to Council monthly.

A decision to continue odour monitoring was also reconfirmed at the Council Meeting of 30 January 2007, and at the Council Meeting on 25 March 2008 it was resolved that Reports be presented to each ordinary Meeting of Council.

The Regional Resource Recovery Centre (RRRC) is a prescribed premises under the provisions of the Environmental Protection Act and is licensed as a "solid waste depot" by the Department of Environment and Conservation (DEC). The operating Licence pertaining to the RRRC contains a number of conditions including specific conditions relating to the control of odour emissions. Enforcement of the Licence conditions is the responsibility of the Department of Environment and Conservation.

NOTE THIS IS IN REGARDS TO:

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<http://www.canning.wa.gov.au/Shared/Meetings/Minutes13May08.htm>

SRS-082-08 ODOUR REGISTER - REGIONAL RESOURCE RECOVERY CENTRE  
- CANNING VALE

Executive Strategic and Regulatory Services

MOVED Cr Olsen, Seconded Cr Daly, that:

(a) That Report SRS-082-08 – Odour Register – Regional Resource Recovery Centre, Canning Vale, be received.

(b) A report be prepared for Council for the next Ordinary Council Meeting, to the issues relating to the email from Mr Ken Raine in regard to the information in which he states "even though DEC has primary responsibility for regulating the facility with respect to environmental emissions, the provisions of the Health Act 1911 (Section 182 - Nuisances Caused by Accumulations of Offensive Materials) also apply, and can be enforced by the City should it so desire". Mr Raine also states that "if the City is concerned that insufficient action is being taken, there are alternative avenues for it to act to serve its community". The report should state what the alternative avenues are, and what enforcement actions can be undertaken.

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ASSESSMENT

The issue of odour emissions from the RRRC facility is primarily controlled through the facility's Licence conditions. The Department of Environment and Conservation is responsible for administering compliance with these Licence conditions and has the ability to take a range of enforcement actions in the event that a breach of conditions is demonstrated. The above Resolution seeks investigation of alternative avenues to respond to odour issues, in particular the opportunity to utilise provisions within the Health Act 1911. Assessment of the City's abilities to respond to odour concerns through the Health Act 1911 is provided below. The assessment incorporates verbal

advice received from the City Solicitors with respect to the best enforcement approach to address the issue of odour emissions.

Indications are that the most direct legislative response to addressing the odour issue is to pursue the Department of Environment and Conservation to establish if the RRRC odour conditions have been breached and if so for the DEC to initiate enforcement action. In the event of non compliance with Licence conditions, the options available to the DEC include suspension of facility operations and/or direction for undertaking of odour abatement works. Opportunity also exists for the City to take its own actions under the Health Act 1911.

The City is not the lead regulatory authority with respect to operation of the RRRC and accordingly enforcement action under this option would need to address a number of issues as outlined below.

Health Act Interpretations:

The Health Act 1911 provides a broad legislative foundation aimed at maintaining the health and wellbeing of the community. Part VII, Division 1 of the Act (Tabled Item 1 refers) deals with the issues of "Nuisance". Sections 181, 182, 183 and 184 of the Act deal with the definition of nuisance, removal of offensive matter and actions to deal with abatement of nuisances. Under Section 182 (3) a nuisance is defined as including "an accumulation or deposit which is offensive or injurious or dangerous to health".

Section 184 outlines the measures for dealing with a "nuisance". In summary, the City may by requisition direct the landowner and occupier to abate the nuisance. If the landowner and occupier default in carrying out the requisition within a specified time, the Local Government may require the necessary works to remove the "nuisance" to be undertaken and to recover any expenses from the landowner and occupier. It is noted that the owner and occupier would have a Right of Appeal to the State Administrative Tribunal with respect to any requisition issued under this section.

Do the operations at the RRRC constitute a "Nuisance" Under the Health Act:

Materials accumulating or deposited at the RRRC may be determined to be a nuisance if it can be demonstrated that they are offensive to a level which has potential to be injurious or dangerous to health. The extent of odour complaints received from the community would indicate that there may be a case to argue that the odours experienced are offensive. In any Health Act enforcement action it is likely to be necessary for the City to be able to demonstrate that the degree of "offensiveness" is at a level which may be injurious or dangerous to health (the primary purpose of the Health Act is to protect public health). In the RRRC example, consideration of the interpretation of "nuisance" would also need to have regard to the existence

of the licensing conditions imposed on the operations of the RRRC through the DEC. The licensing conditions relating to odour could be viewed as having been specifically imposed to ensure that odour emissions are contained to a level that would not be deemed offensive to the community, and not injurious or dangerous to health. From a legal point of view, it is likely that demonstrating that the accumulation of materials at the RRRC is a "nuisance", may first require demonstration that the specific DEC odour conditions had been breached. Accordingly any enforcement action taken under the Health Act may be met with the technical defence that there is no odour issue until such time as the DEC has demonstrated a breach of the specific Licence conditions through a successful prosecution with respect to breach of Licence conditions. Regard also needs to be had to Section 182 of the Act which specifically identifies that a sufficient defence in any proceedings relating to an alleged "nuisance" will apply if the accused satisfies the Court that, "the accumulation or deposit is incident to the reasonable and proper carrying out of a trade... and also that best practicable means have been taken to prevent nuisance and injury to health, and also that no danger to health exists."

Accordingly, preparation of a robust enforcement action under the Health Act, would be likely to require the gathering of evidence demonstrating that the odour being experienced in the community was at a level deemed to be offensive and injurious and/or dangerous to health, and also evidence demonstrating that the procedures employed by the RRRC with respect to odour minimisation fall short of "best practicable means". This response is likely to require expert and possibly independent evidence with respect to the operations of the RRRC, together with medical evidence indicating that the specific odours experienced are injurious to health.

City of Canning Ownership of RRRC Site and Membership of SMRC:

The City of Canning is the owner of the land occupied by the RRRC and has a degree of involvement in the operation of the facility as a member of the SMRC. It is noted that prosecution actions under the Health Act 1911, including rectification measures identified under Section 184, are directed at both the operator and landowner of a subject property. In any enforcement action, the operator and the owner would be jointly liable if an identified nuisance was not satisfactorily abated. In the progression of any enforcement action under the Health Act, a circumstance may arise where the action by the City leads to a penalty being imposed on the City due to its position as landowner and member of the SMRC. Potential complications due to the City's role as prosecuting authority and defendant due to its position as landowner and member of the SMRC are largely untested, but may frustrate any proposed legal action.

Summary:

Action by the DEC to identify a breach of Licence conditions and to take prosecution action with respect to such a breach remains the most direct enforcement route to the successful achievement of abatement of odour at the RRRC. The DEC as the relevant regulatory authority has the ability to suspend operations at the RRRC and/or direct odour abatement works. The "nuisance" provisions of the Health Act also provide scope for the City to initiate its own enforcement actions in relation to odour. Such action would send a clear message to the RRRC and the community that excessive odour emission from the RRRC is not tolerated. In the absence of a DEC odour prosecution with respect to Licence conditions, a prosecution under the Health Act is likely to require extensive evidence to demonstrate the existence of a "nuisance". Outcome of a successful prosecution may also be limited to a direction to the owner and occupier to abate the existing nuisance. In the event that the nuisance is not abated, the City's recourse may be limited to attempting to undertake abatement works themselves and recovering costs from the owner and occupier. The City's position as landowner of the RRRC site and involvement in the SMRC could present a legal complication to enforcement action.

Standing Committee on Environment and Public Affairs:

On 14 May 2008, the Standing Committee on Environment and Public Affairs reopened its enquiries into Regional Resource Recovery Centre (Media Release attached). The enquiry will focus on the issue of odour emanating from the RRRC. The role of the Standing Committee will be to investigate the odour issues and report back to Parliament. Whilst the enquiry has no enforcement powers, it is anticipated that the reopening of the enquiry will further encourage the DEC to investigate odour complaints, to determine if the subject odours represent a breach of the relevant Licence conditions and to take abatement action if applicable.

In this regard, it is noted that the DEC has been undertaking a comprehensive odour study and community survey. The DEC advises that the results of this study will be released in June 2008 and that the study will be making conclusive determinations with respect to the extent, nature and source of odour in the vicinity of the RRRC.

It is recommended that this Report relating to options to address odour issues in the vicinity of the RRRC, in particular the possibility of using the Health Act for enforcement action be received.

#SRS-094-08

RECOMMEND:

Report SRS-094-08 relating to options to address odour issues in the vicinity of the Regional Resource Recovery Centre, in particular the possibility of using the Health Act 1911 for enforcement action be received.

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SRS-094-08 REGIONAL RESOURCE RECOVERY CENTRE – OPTIONS FOR RESPONDING TO ODOUR ISSUES

From: Executive Strategic and Regulatory Services
MOVED Cr Olsen, Seconded Cr Daly, that:

- (a) Report SRS-094-08 relating to options to address odour issues in the vicinity of the Regional Resource Recovery Centre, in particular the possibility of using the Health Act 1911 for enforcement action, be received.
- (b) The City of Canning write to the Department of Environment and Conservation to state that the City is very concerned in regard to the obvious odour problem that the Waste Composting Facility has, and the impact this odour is having on the community.
- (c) The City request a copy of the Southern Metropolitan Regional Council's (SMRC) Operating Licence for the Waste Composting Facility (to manufacture compost), and in particular, the specific conditions relating to the control of odour emissions from the Waste Composting Facility.
- (d) The City investigate the possible action against the Southern Metropolitan Regional Council under Section 182 of the Health Act, to protect the public health of the community.

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5. QUESTION TIME

ORDINARY COUNCIL MEETING – TUESDAY, 27 MAY 2008

Mr P Daly, 28 Merley Way, Parkwood

Statement: Mr Deputy Mayor, Norm J Snell is the author of a book called 'Planet Earth Environment and People', which includes the activities on the SMRC, and recycling in general. This book is a text book valued at approximately \$90.00, good work if you can get it.

Question 1: Did Norman J Snell ever declare an interest in the SMRC while he was a Councillor at the City of Canning?

The Chairman advised Mr Daly that the above question would be taken on notice.

Answer 1: Chief Executive Officer. The City's records do not show a declaration of interest in relation to the Southern Metropolitan Regional Council.

Question 2: Did Norman J Snell ever receive any financial benefit from this book?

Question 3: Mr Deputy Mayor, do you agree that Mr Snell has, and continues, to harass Councillors of the City of Canning in the local press, and in fact in this Chamber, eg Councillors voting patterns, travel allowances and declarations of interest?

Question 4: What measures will this Council take to put an end to such outrageous behaviour?

Statement: Mr Deputy Mayor, where I come from, and some of the things that I have seen, and my spouse has put up with, would get a very, very quick punch in the nose to say the least. I would like a written response please.

The Chairman: The second question is not up to Council to find out whether he derived a benefit or otherwise, because the Council would not have any access to that. The third one is that the Council can take part of that on notice, and the rest of it, is that the question asked by the public under the Standing Orders and the Local Government Act, is that we have to give a fair and balanced view of the questions has to do with the proper running of the Council Business. So we will take that on notice and the Officers will research that and will give you an answer in due course.

Additional Information in Relation to Questions 3 and 4: Chief Executive Officer. The City of Canning Local Law No 1 – Standing Orders (Meeting Procedures), provides for Public Question Time and the manner in which they may be asked. It is up to the Presiding Member to determine at that time, as to whether these questions are in order. Council is obligated to provide a substantive answer to a question raised by a member of the public. This can either be done at the Meeting, or it can be taken on notice, in order to ensure that a substantive answer is given.