PLANNING & ENVIRONMENT COURT OF QUEENSLAND

CITATION:	*D & R Lavis Waste Disposal v Mareeba Shire Council and Others* [2008] QPEC 111
PARTIES:	**DAVID & ROSA LAVIS TRADING AS D&R LAVIS WASTE DISPOSAL** (Appellant) v **MAREEBA SHIRE COUNCIL** (Respondent) **CHIEF EXECUTIVE OF THE ENVIRONMENTAL PROTECTION AGENCY** (First Co-Respondent) **CHIEF EXECUTIVE UNDER THE *VEGETATION MANAGEMENT ACT* 1999** (Second Co-Respondent) **CHIEF EXECUTIVE UNDER THE *TRANSPORT INFRASTRUCTURE ACT* 1994** (Third Co-Respondent) **OSCAR BUGNO, PHILLIP HERLIHY & FRED COUGHLAN** (Fourth Co-Respondents) **MITCHELL RIVER WATERSHED MANAGEMENT GROUP INC** (Fifth Co-Respondent) **JUDITH PETRUSA, BRYAN & LEONA SCHINCARIOL, NORMAN & DEBBIE BUTLER, ADRIAN & JOAN SCHINCARIOL, ERMES & PIA SCHINCARIOL, BRUNO & DIANE MICHELIN, PAUL COSATTO, FRANCO TOSONI, SANDRO & LISA TOSONI, JOHN MURADOR, CARMINE & CESIDIO RANTUCCI, OLIVER SCHINCARIOL** (Sixth Co-Respondents)
FILE NO/S:	129 of 2006
DIVISION:	
PROCEEDING:	Appeal
ORIGINATING COURT:	Planning and Environment Court, Cairns
DELIVERED ON:	7 August 2008
DELIVERED AT:	Cairns
HEARING DATE:	

JUDGE: White DCJ

ORDER:

CATCHWORDS:

COUNSEL: Mr W L Cochrane for the appellant
Mr C Hughes SC with Mr D P Morzone for the respondent
Ms T Fantin for the fourth, fifth and sixth co-respondents

SOLICITORS: P&E Law for the appellant
Marino Moller for the respondent
Environmental Defenders' Office for the fourth, fifth and sixth co-respondents

[1] The appellants operate a waste collection and disposal service in Cairns. So far as is relevant they collect grease-trap waste from hotels, restaurants etc in Cairns and currently dispose of it by transferring it to a competitor for transport to Townsville. The subject land is formally described as Lot 110 on HG 336 County of Hodgkinson, Parish of Borneo in the local government area of the respondent Council. It is situated at 65461 on the Burke Development Road, west of the township of Dimbulah. The subject land has a total area of 94.5 hectares. It is divided into two portions which may be conveniently described as the northern and southern portions, by the Burke Development Road. Each of those portions has approximately a 600 m frontage to the Burke Development Road. On the southern side the subject land has a 600 metre frontage to Eureka Creek.

[2] The appellants' proposal has been conveniently described as a composting activity. However, as I will explain later, it involves two distinct, although obviously connected, activities.

[3] The first of these may be conveniently described as the composting process. The appellants propose to obtain quantities of poultry manure from a poultry farm, quantities of green waste from Cairns and to mix the poultry manure and green waste with grease-trap waste collected by them in their business. It is proposed to compost the mixture by decomposition in a manner not dissimilar in broad terms to the sort of composting activities undertaken by home gardeners. It is envisaged that the resulting product will have the potential to improve soil condition and provide plant nutrient so as to be capable of enhancing the productivity of soil. The second stage of the proposal involves spreading the composted waste on parts of the subject land so as to improve the condition of the soil, fertilise the soil, and to grow Rhodes grass. Rhodes grass is well recognised as an improved pasture species which, when properly grown in appropriate conditions provides a high protein fodder for livestock. The appellants' plan is to graze cattle on the Rhodes grass pasture, and/or if appropriate circumstances arise cut and bale the Rhodes grass for use as conserved livestock fodder in the form of hay.

[4] It is not disputed that the proposal constituted an environmentally relevant activity pursuant to the *Environmental Protection Act* 1994. As such, it required approval of the respondent Council before it could be carried on and that approval could only be given after carrying out impact assessment. The appellants applied to the respondent for approval. In the circumstances which do not need to be enumerated in full it was necessary for the respondent Council as assessment manager to refer

the application to three referral agencies. These referral agencies are represented by the first, second and third co-respondents. In particular, the Chief Executive of the Environment Protection Agency was a required referral agency by reason of the fact that the proposal involved the carrying out of an environmentally relevant activity.

[5] All three of the referral agencies notified the respondent Council that the application could be approved with appropriate conditions. It was submitted on behalf of the appellants that I should give weight to the approval by the three referral agencies, in particular the Environmental Protection Agency, in determining the outcome of this appeal. I respectfully reject the submission. In my view, this Court is obliged to determine an appeal such as this on the basis of the evidence put before it during the course of the hearing. A decision to uphold or dismiss an appeal by an applicant is a decision of the Court and a decision of the Court alone. In my view, this Court would be in error to give weight to the bare decision of a referral agency just as it would be in error to give weight to the bare decision of an assessment manager, such as the respondent Council.

[6] On the other hand, the first co-respondent required the imposition of a comprehensive range of conditions if the application was approved. Central to these conditions was the application of a Site Based Management Plan (SBMP) governing the operation of the composting activity. The appellants accept that all of the conditions required by all of the referral agencies should be imposed. In my view, therefore, it is appropriate not just to consider the details of the appellants' proposal but the impact of that proposal carried on under the regime of the referral agencies' conditions and in particular the SBMP.

[7] I also point out that the matters which the respondent Council needed to consider went somewhat beyond those issues which were required to be considered by the three referral agencies. The Chief Executive of the Environmental Protection Agency obviously was concerned with environmental issues. The Chief Executive under the *Vegetation Management Act* 1999 was obviously concerned with vegetation clearing issues. The Chief Executive under the *Transport Infrastructure Act* 1994 was obviously concerned with implications of the development which might affect the use of the Burke Development Road. However, the Council had the responsibility for considering Town Planning issues. In my view there is nothing necessarily inconsistent with the respondent Council refusing the application on Town Planning issues whilst the three referral agencies indicated approval subject to conditions. Further, there is no legal reason why there could not be some overlapping of environmental, vegetation clearing, and transport issues with Town Planning issues.

[8] There were a considerable number of submissions made in respect of the appellants' application. In the end result the respondent Council refused the application. This is an appeal against that refusal. The fourth, fifth and sixth co-respondents were submitters and have elected to be joined as co-respondents to the appeal.

[9] Before considering the issues raised on this appeal in detail there is one general observation I wish to make. It is clear that the management details of the compost activity which the appellants proposed to carry out, have altered and developed between the time of application and the commencement of the hearing of this appeal. There seems to be a degree of criticism in the submissions of counsel for the respondent and the co-respondents of this process. It seems to be suggested that by

reason of this development process I should draw the conclusion that the management of the composting activity has not been well thought out and in some ways therefore unreliable. I do not accept this submission. Much of the development of the detail of the management of the proposed activity occurred as a result of the exchange of expert reports and in particular, the conferring of the various expert witnesses. Whilst such conferring was required by practice directions in order to clarify the facts in issue between the various experts, if a developer's experts are able to hear and understand criticisms of an initial proposal and are willing and able to make alterations to take account of those criticisms, this is no bad thing and does not reflect poorly on the appellants or their expert witnesses. In one respect it might be said that these accommodations, if they might be so called, might have led the appellants to have better prospects of success in their appeal. On the other hand, if such alterations and accommodations have the result of producing an overall better development, in my view that is no bad thing and does not reflect badly at all on the appellants or their expert consultants.

[10] The relevant planning scheme of the respondent Council is that which came into force in 1982. It is a superseded planning scheme. The original superseded planning scheme was expanded by the gazettal of a Strategic Plan for the Shire in January 1994. The subject land is in the Rural A zone under the superseded Planning Scheme. An IPA Scheme came into effect in January 2005. The subject land is included in the Rural Zone under that Scheme. It is not suggested that the provisions of the IPA Scheme have any particular relevance to the issues for consideration in this appeal. There are provisions of the Strategic Plan of the superseded planning scheme which are relied upon by the respondents. They are set out at paragraphs 33 – 36 of the written submissions by counsel for the respondent. There is no need to set these out in full because I accept the submissions made on behalf of the respondent that there is a clear intention in the Strategic Plan which supports the view that the appellants' proposal should not be approved if it –

(a) adversely impacts upon the amenity of surrounding residents
(b) if it adversely impacts upon the water quality in a water course
(c) if it adversely impacts upon the surrounding environment generally
(d) if it adversely impacts upon the ability of the owners of surrounding farms to carry out their chosen farming activities, particularly those farmers who carry out irrigation operations.

[11] I accept that if any such adverse impacts arise out of the appellants' proposal that there would be a conflict with the planning Scheme. I also accept that there are no planning reasons for approving the appellants' proposal in spite of such conflicts. However, I do not understand the appellants to submit that any such reasons exist. Rather, the appellants' case is that the proposed composting activity will not result in any of the adverse impacts listed above and that therefore the proposed composting activity is quite compatible with the planning scheme in all respects and should be approved. It is therefore necessary to consider the adverse impacts which are suggested by the respondents will arise out of the composting activity.

[12] I will first consider the composting component of the appellants' proposal. The composting operation is to be carried out in the north western corner of the subject land. It will be carried out in an area approximately 83 m long and 23 m wide. That area will be surrounded by a bund wall. I am satisfied that the construction specification of the bund wall is such that it will prevent the entry of any overland rainwater flow into the composting area. I am also satisfied that it will prevent any

rainwater which falls directly on the enclosed area from escaping the bunded area except via the control mechanisms which I will shortly discuss. It is proposed to bring onto the subject site on a weekly basis –

(a) 71.5 cubic metres of garden waste
(b) 7.5 cubic metres of chicken litter
(c) 51.3 cubic metres of liquid grease-trap waste

These quantities will be brought onto the site by truck which will enter into the bunded area via a trafficable ramp over the bund wall.

[13] The material will be placed in windrows approximately 64 metres long, 3 metres wide and 1.5 metres high and mixed. Once two windrows of these dimensions are built they will be left to the composting process. No raw materials will be stored on site. Once the composting windrows are filled with raw material, delivery of raw material will cease until more space in the windrows becomes available. The composting process results in a significant decrease in the volume of material. When the process is partly completed the material in windrows 1 and 2 will be combined into a third wind row of similar dimensions to allow a pasteurisation process to take place. The pasteurisation process involves the material in the windrow reaching a certain temperature so as to make inert any pathogens, seeds and such like which might still be viable.

[14] There is no recognised standard in Queensland to be applied to compost material considered to be suitable for unrestricted use. However, there are published New South Wales Bio-solids Guidelines which the expert witnesses agree is an appropriate standard to apply. In particular, it is common ground amongst the experts that provided the composted material complies with a standard described as "contaminant grade A" pursuant to the New South Wales bio-solids guidelines, it would be suitable for general application as compost material and in particular it would be suitable for application as compost material during the farming part of the activity proposed by the applicants. It is also accepted that if the SBMP is strictly adhered to with appropriate sampling and testing, the composting process involved in the appellants' proposal, will produce compost of such a grade.

[15] One of the adverse impacts with which the respondent and co-respondents are concerned is that of offensive odour produced during the composting process. I pause at this stage to point out that there is no evidence suggesting that any offensive odour of any significance is likely to occur during the farming process after the composted material has been spread. There is no need for me to canvass the evidence about the potential for the production of offensive odour in any detail. I accept that there are residences in the area which, by reason of prevailing winds, are close enough to the composting process site to be subjected to offensive odours from time to time. I also accept that there are employees working on surrounding properties from time to time who would be subjected to offensive odours from time to time during the composting process. I also accept that if appropriate and effective mitigation measures were not taken that the frequency and level of those offensive odours would result in an undue impact on the amenity of those people who might be subjected to the offensive odours. Following consultation between Mr Simpson, the appellants' expert and Mr Galvin the respondent's expert and further inquiries and evaluations carried out by Mr Simpson, Mr Simpson has identified a commercially available material which can be used as a cover for the composting wind rows, which I am satisfied will effectively mitigate against any

significant spread of offensive odour during the composting process so as to interfere in any significant way with the amenity of those living and working in the surrounding areas. I should add for completion that I am not greatly moved by the suggestion that the suitability of such cover material has been only demonstrated in areas where the general temperatures are somewhat less than those that might be expected around the subject land. I am satisfied that there is sufficient safety margin in Mr Simpson's modelling to more than adequately take account of any difference in the intensity of the odour which might be produced by reason of the temperature factor.

[16] The other matter of concern raised by the respondents is that there is a real risk of the escape of contaminants during the composting process and before they are rendered inert by the final completion of the process. On the evidence the only way this can happen is if those contaminants are carried outside the bunded area in water. There is no doubt that there will be some water run-off within the bunded area. Firstly, one source of water is the grease-trap waste itself which in fact consists overwhelmingly of water. Also, there can be no doubt that from time to time it will rain and obviously some rainwater will fall upon the bunded area. I point out that the only rainwater with which it is necessary to be concerned will be rain falling directly upon the bunded area because, as I have said, I am satisfied that the bund wall will prevent any rainwater falling outside the bunded area from flowing into and across the bunded area.

[17] The appellants and, for that matter, the SBMP acknowledge that there is a risk of rainwater falling directly on the bunded area and water applied directly to the composting and pasteurising wind rows leaching contaminants and other substances out of the wind rows and the need to contain such contaminants and other substances. The appellants propose a number of measures to effectively contain such materials. Firstly, it is proposed to construct the area surrounded by the bund wall with a slight fall to the south east. In the south east corner of the bund wall there will be a pipe valve. Along the south-western edge and outside the bund wall there will be constructed a clean water pond. To the south east of the corner of the bunded area will be constructed a tailings pond. When it is not raining the pipe valve will be configured so that any water leaching contaminants and other substances out of the windrows will flow into the tailings pond where it will be contained.

[18] It is also proposed that when rain is threatening, covers will be placed over the wind rows so that any rain falling whilst the covers are in place will not enter the wind rows and will flow down to the south eastern corner of the bunded area as clean water. Under such circumstances the valve will be configured so that such clean water will flow into the clean water pond. Whilst the water in the clean water pond is clean, then no environmental consequences will flow if the amount of water in that pond exceeds its capacity or if some of the water in that pond seeps out of the pond below ground level.

[19] I am satisfied that the volume capacity of the tailings pond as designed is sufficient to accommodate the volume of contaminated water which is likely to be produced during the composting process. However, it must be accepted that there could be occasions (which I consider likely to be infrequent) when it is not possible to have the rain covers placed over the composting windrows before rain actually commences. Under those circumstances there would be some increase in the

volume of water leaching through the composting windrows and thereby potentially becoming contaminated. In my view, it would therefore be appropriate for the tailings pond to be constructed with such a volume capacity as to provide a significant safety margin against such contingencies. I am satisfied on the evidence that a tailings pond of a 600 cubic metre capacity would be sufficient to provide such a safety margin. The appellants have indicated that they would be willing to accept such a condition applying to any approval of their proposal and in my view, if I eventually come to the conclusion that the appeal should be upheld, it would be appropriate for such a condition to be imposed.

[20] The respondent and co-respondents also mount a submission that there is a real risk that the SBMP will not work perfectly so as to contain contaminants within the boundaries of the composting operation and the tailings dam, thereby giving rise to a real risk that such contaminants and other substances will find their way into Eureka Creek and thereby find their way onto the land of neighbouring farmers who pump water from Eureka Creek for irrigation and domestic purposes. There is also an issue of general contamination of the waters of Eureka Creek. The respondent and co-respondents also raise such a concern about the leaching of contaminants and other substances from compost which is spread upon the subject land after the composting process is complete, into the waters of Eureka Creek and thereby finding its way onto surrounding land. I will discuss this so-called "risk factor" comprehensively later in these reasons.

[21] Further, the respondent and co-respondents submit that even under the Site Based Management Plan there is a risk that not all of the composted material will reach the grade required under the New South Wales guidelines so as to make it safe for spreading upon the paddocks of the subject land. Once again, I will discuss this risk factor a little later. However, I am satisfied that the Site Based Management Plan is likely to be adhered to substantially and that the composted material spread upon the paddocks of the subject land will conform to the required standard. Once again, however I do accept that there is a risk that from time to time some of the material spread upon the subject land will not fully conform with the required standard. It may contain some contaminants. However I am satisfied that any such material which fails to meet the required standard will be a very small proportion only of the total composted material produced. In summary therefore, subject to the question of risk, I am satisfied that the composting component of the appellants' proposal will not adversely impact upon the amenity of people living in the area, upon the water quality in Eureka Creek, and upon the quality of water used by surrounding farmers for irrigation and domestic purposes.

[22] Subject to the risk issue, the end result of the composting component of the appellants' proposal, will be a valuable organic soil conditioner and fertiliser. The subject land is in the Rural A Zone under the respondents' planning scheme. There can be no doubt that the enhancement of productivity of land by the use of fertilisers is a legitimate and recognised part of farming. The owners of the surrounding irrigation farms themselves use chemical fertilisers on their farms. There can be no doubt that the slope of at least the northern portion of the subject land and its soils provide a challenge to its use for farming purposes. There is no doubt that there are some parts of the subject land which are completely unsuitable for agricultural use because of severe erosion in the past. Some parts of the subject land have an impervious hard pan below the surface which has resulted in water-logging on some parts of the subject land. Mr David Finney has carried out extensive examination of

the subject land. In his addendum to exhibit 2 he has attached a revised plan designating areas which, in his opinion, are suitable for spreading the compost material and for growing Rhodes grass. I would not be surprised if when the proposal gets under way that there might need to be some minor revisions of the exact boundaries of these areas. However, I am satisfied that there are 58 hectares approximately of the subject land which are potentially at least suitable for the spreading of the composting material and the growing of Rhodes grass.

[23] The parts of the subject land which are suitable for the spreading of compost have been divided into 12 approximately equal parts. The expectation (which I am satisfied is realistic) is that a quantity of composted material will become available for spreading approximately once per month. It is proposed then to spread that material on particular areas spaced over the whole of the calendar year. The amount of composted materials spread at any time and the frequency with which that occurs will be governed by appropriate soil tests for nutrient content and appropriate sampling and testing of the composted material for nutrient content. The plan is that only sufficient composted material to ensure that all nutrients contained in that material is taken up in the following 12 months by Rhodes grass will be spread at any one time. Depending upon the testing and sampling, the quantity of composted material produced and spread may be reduced or increased marginally in any one year.

[24] Even those areas of the subject land designated by Mr Finney as being suitable for growing Rhodes grass provides some challenges. The respondents challenge the ability of the soil to grow Rhodes grass without irrigation (which will be the case here). There was conflicting evidence in that regard. However, I prefer the evidence of the previous owner who, in my view, has the most detailed knowledge of the subject land in that regard. I am satisfied that Rhodes grass can be grown on all of the areas designated for compost spreading in Mr Finney's report. The real issue is how much Rhodes grass can be grown. I accept that without irrigation the soil on the subject land in its present state in some areas at least, would be capable of supporting only a small amount of Rhodes grass. This of course will vary. In my view the southern portion of the subject land is likely to produce a better or higher quantity of Rhodes grass than the northern portion. However, this proposal does not involve growing Rhodes grass on an unimproved soil. The use of the composted material will, over time, improve the condition of the soil. This, in turn, will improve its water retention ability so that Rhodes grass plants on the subject land will have access to a greater quantity of water than might otherwise have been the case. I accept that the nature of the soil and the hard pan below the surface soil is such that a significant quantity of rainwater falling on the subject land will be lost through overland flow and sub-surface flow downhill towards Eureka Creek. The other factor contributing to the ability of the soil on the subject land to grow Rhodes grass over and above that quantity, which might be produced on the unimproved soil, is the plant nutrient which will be contained in the compost material spread over it.

[25] It may well be that as time goes on there will be some of the monthly application areas which will produce a greater quantity of Rhodes grass than others. If that is the case then those areas will be identified by the required soil testing which will identify any application area in which all of the nutrient contained in the compost material spread the previous year has not been taken up. That soil testing will allow Mr Finney, or somebody like him, to be able to calculate an appropriate quantity of

compost material to be incorporated on the application area in the following year. If insufficient Rhodes grass grows to take up all of the composted material spread the previous year then the amount of compost spread in following years will be commensurately reduced. Whilst there may be adjustments needed to be made as to the amount of composted material spread on the subject land and consequently the amount of compost produced in the composting process and consequentially the amount of raw materials brought onto the subject land, the Site Based Management Plan is designed to identify those factors and to make appropriate adjustments for them. Put bluntly, I am satisfied that if in practice it turns out, that some lesser quantity of compost material is used by the Rhodes grass grown on the subject land, than is initially estimated the amount of raw material brought onto the subject land for composting will be commensurately reduced.

[26] A major plank in the argument of the respondent and co-respondents against approval of the appellants' proposal is the risk that contaminants and nutrients will be spread on the subject land during the application process and that there will be leaching of that material by rainwater which will carry such contaminants and nutrients into Eureka Creek. I have no doubt that during rainfall events that some rainwater will run off the subject land into Eureka Creek. I also have no doubt that some rainwater which will initially penetrate the soil on the subject land will flow, by reason of the hard pan below the surface soil, downhill and into Eureka Creek. I also accept that such sub-surface flow will continue for a period of time following a rainfall event. I am also satisfied that there will be a degree of leaching but that it will be small. It is absurd in my view to suggest that all of the nutrients contained in the compost material applied to the subject land will leach into Eureka Creek. The surrounding farmers themselves fertiliser their horticultural crops with chemical fertilisers, in particular nitrogen and phosphorus. The whole exercise would be pointless if in the next rainfall event or alternatively, the next time they irrigated their crops, the water would collect all of that nutrient and leach into Eureka Creek on its southern side.

[27] Eureka Creek is a constantly flowing stream. I accept the evidence that water flowing in the relevant part of Eureka Creek is relatively clean and of good quality. But as a matter of common sense it cannot possibly be pure water. The sorts of contaminants which might be brought onto the subject land in the grease-trap waste, chicken manure and green waste, a small proportion of which might escape the composting process and be spread on the subject land during the farming process, all occur naturally. The sorts of pathogens which will be found in small quantities amongst the vast body of water in the grease-trap waste occur naturally. Wild animals die and their carcasses rot. If what I observed on the site inspection is any indication, wild animals also die as a result of road kill. The rotting bodies of dead animals produce pathogens which would no doubt be washed into Eureka Creek during heavy rain. Plant nutrients, such as nitrogen and phosphorus occur naturally in soil, although not in great quantities on the subject land. Similarly, trace elements such as copper and zinc occur naturally. There are irrigation farms upstream from the subject land and from the neighbouring farms which are no doubt fertilised. It could well be that the levels of nitrogen and phosphorus already observed in modest quantities in the water flowing down Eureka Creek have leached into the creek from these upstream farms.

[28] When there is rain on the subject land sufficient to potentially produce some leaching of elements in the soil into Eureka Creek, there will almost invariably be

rain of similar intensity falling on surrounding land. The flow of the creek will increase. Any rainwater flowing from the subject land into Eureka Creek will be substantially diluted immediately upon entering the creek. It will flow quickly away. Eureka Creek is part of the Mitchell River system. Eureka Creek flows into the Walsh River which in turn flows into the Mitchell River. The Mitchell River rises on the western slopes of the Great Dividing Range on the eastern side of Queensland and flows northwest across the southern part of Cape York Peninsula and into the Gulf of Carpentaria. In my view any contaminants, nutrients etc which might be leached off the subject land during rainfall events will quickly be diluted down to insignificant concentrations and flow quickly away. Once it gets into the Mitchell River system it will become immeasurable. Therefore, although I accept that there is some chance that small quantities of contaminants will not be rendered inert by the composting process and will be spread on the subject land, I am satisfied that the vast bulk of material composted during the process and spread on the subject land will reach the required standard so that the concentration of contaminants will be extremely small. Once such contaminants are leached into Eureka Creek, if that should occur, that concentration will be reduced many times further by dilution. Once those contaminants flow into the Mitchell River system proper they will be completely insignificant. Similarly, with nutrients and trace elements.

[29] In my view the risk of any contaminants, trace elements or nutrients flowing from the subject land into Eureka Creek will be even less likely to find their way onto the land of the neighbouring irrigation farmers. As I have said, the leaching process will only occur when there is rain on the subject land. When there is rain on the subject land sufficient to saturate the soil leaving an excess flow to carry the supposedly objectionable substances into Eureka Creek there will undoubtedly be the same sort of rainfall on the land of the farmers nearby. It is inconceivable, in my view, that those farmers would want to be pumping water from Eureka Creek for irrigation or domestic purposes in the middle or soon after heavy natural rain, or for a significant period soon after. I reject the suggestion that the subject land could remain so saturated after rain that water was flowing over and under the surface of the subject land into Eureka Creek and yet soil on the other side of Eureka Creek in the same area would have become so dried out as to require irrigation. Further, even if the neighbouring farms on the southern side of Eureka Creek to the subject land are pumping water from Eureka Creek in my view any contaminants, nutrients or trace elements leached from the subject land will be so diluted as to have no significant effect upon their water quality.

[30] It is necessary to give some consideration to the property of Mr Fred Coughlan. Mr Coughlan owns a farm immediately to the west of the northern portion of the subject land. He does not irrigate from Eureka Creek so he is not affected by any leaching from the subject land into Eureka Creek. Even if he were, my view about the potential effect on his land would be the same as that which I hold in relation to the potential non-effect on the irrigation farmers on the southern side of Eureka Creek. The feature of Mr Coughlan's farm which requires specific attention is his dam. That dam is located in a watercourse just on his land on the western side of the boundary of the subject land. The slope of the subject land is such that rain falling on a relatively small part of the northern portion of the subject land at its western side, if not retained on the subject land by absorption into the soil, flows into that watercourse and then into Mr Coughlan's dam. I was initially concerned that the possible leaching of objectionable materials from the subject land might

have the potential to unacceptably pollute Mr Coughlan's dam. However, upon careful consideration I have come to the conclusion that the same considerations apply in respect of Mr Coughlan's dam as apply to the risk of objectionable material finding its way onto the land of farms on the southern side of Eureka Creek. Firstly, only a fairly small proportion of the subject land drains into the watercourse which supplies water to Mr Coughlan's dam. Therefore the potential quantity of objectionable material is commensurately smaller.

[31] Secondly, the catchment for the watercourse which fills Mr Coughlan's dam covers an area considerably greater than that area of the subject land which drains into that watercourse. Therefore in times of heavy rain there will already be substantial water flows into Mr Coughlan's dam coming from land not part of the subject land. In any such rainfall event, initially a significant part of the rain on that small proportion of the subject land can be expected to be absorbed into the soil. After that, there is the potential for surface and sub-surface run-off and the potential for some leaching to occur. However, in my view, such objectionable material which might leach through rainfall on the subject land will be substantially diluted by mixing with water coming from parts of the catchment other than the subject land. Further, Mr Coughlan's dam has limited capacity. Not all water flowing down the watercourse which fills it will remain in the dam. Once the dam is filled then further rainfall will flow over and around the dam and into Eureka Creek. I am therefore satisfied that the amount of objectionable material which might possibly remain in Mr Coughlan's dam after a rainfall event is of no material significance.

[32] The other aspect of potential pollution raised by the respondent and the co-respondents relates to a camping and picnic area to the west of the southern portion of the subject land. The Burke Development Road runs west through the subject land and a short distance further to the west takes a turn to the south and over a bridge over Eureka Creek. Adjacent to this bridge on the northern side of Eureka Creek is a cleared rest area. In fact it is personally well known to me as an area where travellers stop. Some people who stop there also swim in Eureka Creek. The argument raised by the respondent and co-respondents is that the undesirable materials which might leach from the subject land into Eureka Creek could have some adverse affect on such people. In my view there will be no such adverse effect on anybody using Eureka Creek for swimming, fishing etc in association with stopovers and the rest area. Once again, any undesirable materials, if any, which leach from the subject land into Eureka Creek will only do so at a time of heavy rain. In the event of heavy rain Eureka Creek will be fast flowing and perhaps even in flood as it passes by the rest area. Volumes of water in Eureka Creek will be greater than normal. I think it is highly unlikely that people will be swimming in Eureka Creek at times of flooding and if they do, they shouldn't be because of the potential danger. But in any event even if they do, in my view they will not be affected by any undesirable material leaching into Eureka Creek from the subject land because that material will be so diluted upon joining the waters flowing down Eureka Creek that it will have no significant effect.

[33] I accept that there are no doubt better sites for the composting process envisaged by the appellants. However, in my view, that is not the point. The real point is the suitability of the subject land. On the basis of the evidence which I accept I am satisfied that the subject land is suitable for the composting process and the compost spreading process planned by the appellants. I am satisfied that it will have no significant impact at all on the amenity of people living in the area. It will have no

significant impact at all on the integrity of the irrigation farms carried on in the immediate vicinity. It will have no significant impact on the water quality of Eureka Creek and the Mitchell River system. Absent any such impact, I am satisfied that it is an entirely appropriate activity to be carried on, on the subject land, given its zone in the Town Planning Scheme. I propose to order that the appeal be upheld. I will give the parties the opportunity to agree upon a suitable set of conditions. Without wishing to constrain the parties in any way, such conditions in my view should include provision for the covering of the composting windrows with odour suppression material and for the construction of a 600 cubic metre tailings dam.