



**REPORT OF THE**

**STANDING COMMITTEE ON**

**CONSTITUTIONAL AFFAIRS**

**IN RELATION TO**

**A PETITION OBJECTING TO THE PRACTICE**

**OF LANDFILLING WITH DEMOLITION WASTE**

**IN THE AREA OF BIRD AND JACKSON ROADS**

**IN MUNDIJONG**

Presented by the Hon Murray Nixon JP MLC (Chairman)

Report 37

## STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

### **Date first appointed:**

21 December 1989

### **Terms of Reference:**

1. The functions of the committee are to inquire into and report on:
  - (a) the constitutional law, customs and usages of Western Australia;
  - (b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,  
  
and any related matter or issue;
  - (c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
  - (d) any petition.
  
2. A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

### **Members as at the date of this report:**

Hon Murray Nixon JP MLC (Chairman)  
Hon Ray Halligan MLC  
Hon Tom Helm MLC

### **Staff as at the date of this report:**

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**Report of the Legislative Council  
Constitutional Affairs Committee**

**in relation to**

**A Petition objecting to the practice of landfilling with demolition  
waste in the area of Bird and Jackson Roads in Mundijong**

**1. Introduction**

**1.1 The Petition**

1.1.1 On 30 June 1998, Hon Jim Scott MLC tabled a petition (*TP# 1754*) objecting to the practice of landfilling with demolition waste in the area of Bird and Jackson Roads in Mundijong. The petitioners expressed concern that landfilling with demolition waste was contaminating the local wetlands, environment and drinking water. The petitioners expressed concern regarding the health of the local population, and the potential for danger to the local lifestyle, property values and local businesses.

1.1.2 The petition was retabled (*TP# 171*) on 16 September 1998 by Hon Jim Scott MLC. The petitioners again expressed concern that landfilling with demolition waste was contaminating the local environment.

**2. The Petitioner's Account**

2.1 The principal petitioner sent a facsimile letter dated 6 April 1999 to the Committee setting out his objections to the practice of landfilling with demolition waste. In that facsimile letter the principal petitioner stated that:

- the original licence conditions on landfilling operations "that had to be complied with for planning approval have steadily been deleted". The principal petitioner claimed that the requirement for three monitoring bores to test ground water had been deleted as had the requirement for a 1.8 metre security fence;
- experts claimed that organochlorine levels could fluctuate "yet no further investigation of that bore for human consumption was carried out to our knowledge";
- contrary to the Minister for the Environment's claim that all water would be contained on site in the case of Lot 12 Bird Road, in a planning application approved by the Department of Environmental Protection ("the DEP") "there is a provision for water to be pumped into the Berrigga (*sic*) Brook/Drain" and

"there is also a permanent over flow from that site into that drain which leads to the Serpentine River and thence into the Peel Inlet";

- the local environmental concerns related to the levels of organochlorines, heavy metals, PCB's and asbestos in the soil; and
- at least three families had sold out at considerably less than their expectations. The principal petitioner gave as an example a family who purchased a property in the area some years ago for \$265 000. The Committee was advised that the family were now trying to sell the property and were willing to take \$250 000 however there had been no interest in the property and a real estate agent had indicated that they would be lucky to get an offer of \$100 000.

2.2 As part of his submission, the principal petitioner also provided the Committee with a copy of a letter he received from the Conservation Council of Western Australia Inc. ("the Conservation Council") dated 12 January 1999. The letter concerned the Conservation Council's concerns "with respect to the issue of dumping of contaminated demolition waste in the vicinity of Jackson and Bird Roads, Mundijong." The letter stated that:

- "the issue of asbestos contamination has been handled abysmally by the regulatory agencies responsible for the prevention of pollution and waste management";
- at an inspection by the Acting Co-ordinator of the Conservation Council in October 1998 it was discovered that "large pieces of blue and white asbestos were broken, flaking and crushed on the ground. The material was widespread and integrated with other demolition material" such as lead sheeting and copper;
- "sampling of local surface water at the site and a nearby drinking water bore also revealed significant levels of dieldrin. Presumably these had leached from the broken and crushed timber and cement created during the demolition process";
- the Conservation Council was "extremely concerned that the presence and disturbance of these materials by earthmoving machinery would compound the problem by spreading contamination and creating a threat to public health (if it had not already reached that stage) and the ecosystems in the area"; and
- "the portion of the wetlands that is contiguous to the dumping zone spoon drain appeared to have very little moisture present compared to the proximate wetland area that was well inundated".

2.3 The letter from the Conservation Council concluded by stating that in an effort to remedy the situation, a detailed remediation plan should be developed by State and Local authorities incorporating, *inter alia*:

- a thorough environmental assessment of the contaminated area;
- an assessment of the public health risk currently posed by the site;
- a full public consultation program;
- administrative measures to prevent such a situation reoccurring; and
- liability to be determined in keeping with State Government ‘polluter pays’ policy.

### **3. The Minister for Planning’s Account**

3.1 On 22 October 1998, the Committee received a letter from the Minister for Planning, the Hon Graham Kierath MLA, advising that the matter of the landfill at Lot 12 Bird Road, Mundijong was the subject of an appeal to him under the provisions of the Shire of Serpentine-Jarrahdale Town Planning Scheme and the *Town Planning and Development Act 1928*. The Shire had approved the use of the site for landfill but subject to conditions, one of which restricted the type of material which could be used as landfill. The proponent had appealed against this restriction.

3.2 The Committee was subsequently advised by the Minister’s office that the proponent’s appeal was upheld on 6 April 1999.

### **4. The Minister for the Environment’s Account**

4.1 On 15 December 1998, the Committee received a detailed letter from the Minister for the Environment, the Hon Cheryl Edwardes MLA that:

- outlined the requirements for the licensing of operations involving landfilling with demolition waste in Western Australia;
- explained the current situation with landfills in the Mundijong area the subject of the petition; and
- addressed the specific issues raised in the petition.

4.2 The Minister advised that the requirements for the licensing of operations involving landfilling with demolition waste in Western Australia were as follows:

- under regulations which were gazetted on 13 September 1996, operations involving the landfilling of demolition waste had to be licensed under the *Environmental Protection Act 1986* ("the Act") and the *Environmental Protection Regulations 1987*. New landfill sites had to be licensed as from 13 September 1996 while landfill sites already operating on 13 September 1996 had to be licensed as from 13 March 1997;
- proposals for new operations were examined by the Environmental Protection Authority ("the EPA") and depending on the size, nature and environmental sensitivity of the proposal, it may require formal assessment under Part III of the Act. The EPA had generally decided that inert landfills (where the materials used were concrete or brick rubble and the like) did not require formal assessment and were to be controlled under Part V of the Act which allowed for the prevention, control and abatement of pollution by the DEP;
- the process for approving landfill sites under Part V of the Act required firstly a works approval application to be lodged with the DEP and secondly, if the works were approved and undertaken, a licence application to operate the premises;
- when a works application was received for the development of a landfill, conditions were placed in the approval which would ensure that the work could be undertaken in an environmentally acceptable manner. The works approval, specifying the environmental conditions, was then issued. Provided the conditions of the works approval were met, a licence may then be issued to the proponent; and
- at present there were about 310 known and licensed landfills in Western Australia.

4.3 The Minister explained the current situation with landfills in the Mundijong area the subject of the petition.

4.3.1 Lot 12 Bird Road, Mundijong

The Minister advised that the licensed operation on Lot 12 Bird Road by McLean Recycling Industries was the biggest landfilling operation in the area in terms of size (about 5 hectares) and amount of fill accepted (about 150 000 cubic metres). This company was issued with a works approval on 16 February 1998 which required



environmental control systems to be put in place. This included the construction of a leachate collection drain to prevent potentially contaminated water entering the nearby Birrega drain system. Upon completion of this leachate collection drain, a licence to accept inert fill was issued on 8 June 1998. The DEP has advised the Committee that on expiry of the licence on 7 June 1999, it was renewed for a further year. The licence is therefore now due to expire on 7 June 2000.

The Minister advised that the company was fully complying with its licence conditions which were the most stringent of any landfill site in the State. The DEP believed that the operations were environmentally acceptable and that there were no sound environmental reasons why they should not be allowed to continue. The current licence conditions were considered appropriate to achieve sound environmental management. The Minister advised that as a result of the control measures in place on Lot 12 Bird Road and the nature of the material going into the landfill, it was highly unlikely that the landfilling would contaminate the local wetlands, environment or drinking water at that site. The only issue of significance was how much more landfilling should be allowed and of what type of material.

#### 4.3.2 Lot 16 Bird Road, Mundijong

The Committee was advised that the operation on Lot 16 Bird Road was the next biggest operation. It started in 1995 and the landowner was issued with a landfilling licence on 29 January 1998 to accept clean fill only. The licence had expired however it was no longer required as the site was accepting clean and uncontaminated soil only. The DEP advised the Committee that since Lot 16 was only accepting clean fill, monitoring of the site was not required.

The DEP believed that the operation was environmentally acceptable and that there was no sound environmental reason why it should not be allowed to continue. The current practice was considered appropriate to achieve sound environmental management. The Minister advised that as a result of the control measures in place on Lot 16 Bird Road and the nature of the material going into the landfill, it was highly unlikely that the landfilling would contaminate the local wetlands, environment or drinking water at that site. The only issue of significance was how much more landfilling should be allowed and of what type of material.

#### 4.3.3 Lot 1 Boomerang Road, Mundijong

The Minister advised that the landfill on Lot 1 Boomerang Road was unlicensed. It was unauthorised and had demolition waste containing some asbestos-cement material dumped on it in December 1996. The Minister advised that although the regulations requiring this new landfilling operation to have approval under the Act had been gazetted

shortly before the waste was dumped, because the landfill was a relatively small operation and of very minor environmental significance, the DEP did not initiate formal enforcement action under the Act. Instead, the DEP gave advice to the landowners about how to make their site environmentally acceptable.

The Minister advised that the demolition waste dumped on this site was found to contain asbestos-cement material. The Minister advised that the DEP gave the landowners advice on how to deal with the material temporarily while they pursued civil legal action against the contractor who placed the asbestos-cement material on their land. The DEP became aware that the Shire of Serpentine-Jarrahdale placed a clean-up order on the property in early 1997, requiring the offending material to be removed. The DEP's advice was that to date (December 1998) the order had not been complied with, however the Committee was advised by the DEP that, in their view, there was negligible risk to either public health or the environment from the small amount of buried asbestos-cement material. Accordingly, the DEP advised the Committee that they intended to take no further action.

#### 4.3.4 Lot 15 Bird Road, Mundijong

The Minister advised that the landfill on Lot 15 was unlicensed. It had contaminated demolition waste dumped on it in early 1998 when the landowners accepted a quantity of construction and demolition waste, between 500 - 1000 tonnes, onto their property without DEP approval. The material was contaminated with metals such as copper, zinc, aluminium and steel, as well as degrading plastics, asbestos and other unacceptable materials. The Minister advised that given that there were no pollution prevention measures in place, it was likely that pollution of the environment would result unless action was taken soon.

The Minister advised that the DEP had concerns about what had been dumped on Lot 15, and was taking action using the control of pollution provisions in Part V of the Act to correct the situation. This involved asking the landowners to show cause why prosecution should not proceed.

The DEP advised the Committee that the landowners had responded by proposing a remediation strategy for dealing with the contaminated material on the site. The proposal was approved by the DEP on 31 October 1998, subject to certain additional requirements.

The Committee was advised that officers from the DEP had conducted a site visit on 24 June 1999 to Lot 15 to inspect the site and to ensure that the remediation strategy was being properly carried out. The officers from the DEP who conducted the site visit were Mr Fred Tromp, Director Pollution Prevention Division, Mr Wayne Ennor,

Environmental Officer, and Ms Irene Vasquez, Environmental Officer. The Committee was advised by the DEP that it was satisfied with the remediation carried out on Lot 15 as at 24 June 1999. The DEP believed that Lot 15 no longer contained waste and therefore monitoring of the site was no longer required.

The Minister also advised that the landowners were seeking DEP approval to accept more landfill as they wished to improve the amenity of their property by raising the ground level so that it was not inundated by water in the wetter months.

The Committee was advised that the Shire of Serpentine-Jarrahdale had recently informed the DEP that it would not give planning approval for the proposal, and hence the DEP had suspended consideration of the works approval application.

#### 4.3.5 Lot 2 Bird Road, Mundijong

The Minister advised that the landowners of Lot 2 Bird Road had also submitted a works approval application for landfilling on their property. The Shire of Serpentine-Jarrahdale subsequently informed the DEP that it would not give planning approval for the proposal, and the DEP accordingly suspended consideration of the works approval application.

The Minister advised that the DEP was aware that a quantity of material was accepted on the property without the required DEP approval. This material was similar to that accepted onto Lot 15. The landowners ceased accepting landfill after the DEP warned them on 24 March 1998 that such a practice was illegal without holding a works approval and licence under the Act.

The Committee was advised that the DEP had inspected the waste dumped on the property and that it was contaminated with metals such as copper, lead, zinc, aluminium and steel, degrading plastics, asbestos and other unacceptable materials to the extent that it was likely that pollution of the environment would result unless action was taken soon.

The Minister advised that the DEP had concerns about what had been dumped on Lot 2, and was taking action under Part V of the Act to correct the situation. This involved asking the landowners to show cause why prosecution should not proceed.

The DEP advised the Committee that the landowners had responded by proposing a remediation strategy for dealing with the contaminated material on the site. The proposal was approved by the DEP on 31 October 1998, subject to certain additional requirements.

The Committee was advised that officers from the DEP had conducted a site visit on 24 June 1999 to Lot 2 to inspect the site and to ensure that the remediation strategy was being properly carried out. The officers from the DEP who conducted the site visit were Mr Fred Tromp, Director Pollution Prevention Division, Mr Wayne Ennor, Environmental Officer, and Ms Irene Vasquez, Environmental Officer. The Committee was advised by the DEP that it was satisfied with the remediation carried out on Lot 2 as at 24 June 1999. The remediation had only been partially completed however, due to the onset of winter rains. It was expected that remediation operations would continue when the winter rains ceased and the area could support vehicles required for the remediation works. It was anticipated that this would be in October/November 1999. The DEP advised that it would continue to monitor the remediation operation.

4.4 The Minister also addressed the specific issues raised in the petition regarding the practice of landfilling with demolition waste in the Mundijong area.

4.4.1 It was claimed that the area was unsuitable for the tipping of demolition waste or the crushing and screening of such waste.

The Minister stated that the EPA, the DEP and the Shire of Serpentine-Jarrahdale had all looked at various proposals for those activities . Until a recent decision of the Shire reportedly taken by Council on 27 July 1998 to the effect that no more landfilling should occur in Mundijong, the authorities all considered the area was suitable for those activities.

The Committee was subsequently advised by the Manager of Planning and Development Services at the Shire of Serpentine-Jarrahdale that the Shire had subsequently decided to continue permitting landfilling to occur in Mundijong.

4.4.2 The petition expressed concern that the practice of landfilling with demolition waste was likely to contaminate the local wetlands, environment and drinking water.

The Minister stated that because of the control measures in place on Lots 12 and 16 Bird Road and the nature of the material going into those landfills, it was highly unlikely that the landfilling would contaminate the local wetlands, environment or drinking water at those sites. The DEP did have concerns about what had been dumped on Lots 2 and 15 Bird Road and was taking action in that regard. The material dumped on Lot 1 Boomerang Road was not considered to be of environmental or public health significance.

The Minister advised that in response to concerns expressed by the principal petitioner on behalf of the West Byford and Peel Estate Conservation Committee relating to ground water contamination affecting drinking water, the DEP had tested for contaminants such

as heavy metals and organochlorine pesticides which could potentially leach from the fill of the existing landfill on Lot 12. The results showed that the water collected from the two leachate recovery ponds on Lot 12 was better, for the analysed contaminants, than the Australian (ANZECC) standards for human drinking water. It would be considered acceptable for human consumption.

The Minister stated that both the DEP and the Waters and Rivers Commission were of the opinion that this water was of a quality suitable for discharge into the Birrega Drain. This water was, in fact, pumped into the Birrega Drain following the 1998 winter rains. The ponds were close to overflowing and approval was sought from the DEP to pump water out of the ponds and into the drain. On the basis of the acceptable analysis results and noting that the Shire of Serpentine-Jarrahdale had been informed of the proposal and had not objected, the DEP gave its approval on 2 October 1998 for McLean Recycling Industries to pump the pond water into Birrega Drain.

4.4.3 The petition stated that the practice of landfilling with demolition waste led to grave concerns regarding the health of the local population and the potential for danger to the local lifestyle, property values and local businesses.

The Minister noted that one of the main health fears held by the petitioners was related to the asbestos-cement products dumped on the sites. The Minister advised that this type of asbestos-cement product was quite different to the raw blue asbestos fibres found in the Wittenoom area, and that the total amount of asbestos-cement buried in the area was of little significance. Furthermore, testing for airborne asbestos fibres indicated no problem with airborne asbestos fibres.

The Minister did not accept the petitioners' claims that the landfilling would endanger the local lifestyle, property values and local businesses. The Minister stated that some of the landowners believed that the landfilling would increase their property values, make the land suitable for further development and enhance their lifestyles - in part by raising the level of their land to avoid flooding as a consequence of winter rains.

4.5 The Minister concluded by stating that the DEP was of the view that the concerns raised in the petition were being appropriately addressed. The DEP intended to continue with its present administrative process and enforcement activities. The DEP believed there was no new information presented that would require any further controls, although the DEP was always prepared to review the situation should significant new information become available.

## **5. Conclusions and Recommendations**

### **5.1 Lot 12 Bird Road, Mundijong**

The Committee believes that this site has been thoroughly reviewed by the DEP and that the operators of the landfilling operation are complying with the licence conditions. The Committee understands that these conditions are amongst the most stringent in Western Australia. As a result the Committee accepts the advice of the DEP that the operations are environmentally acceptable and that there is no threat to the environment or public health from the landfilling operations at this site.

### **5.2 Lot 16 Bird Road, Mundijong**

The Committee believes that as a result of the monitoring by the DEP and the nature of the materials going into the site, the landfilling at Lot 16 is environmentally acceptable. The Committee concludes that it is highly unlikely that contamination of the local wetlands, environment or drinking water will occur as a result of the operations at this site.

### **5.3 Lot 1 Boomerang Road, Mundijong**

It is noted that the principal petitioner, Mr Paul Nield, and Mrs Christine Nield are the registered proprietors of Lot 1 Boomerang Road, Mundijong.

The Committee believes that a breach of the proper procedures with respect to the dumping of demolition waste has occurred at this site. However the Committee accepts the advice of the DEP that there is negligible risk to either public health or the environment from the materials dumped at this site.

### **5.4 Lot 15 Bird Road, Mundijong**

The Committee believes that a breach of the proper procedures with respect to landfilling occurred when contaminated demolition waste was dumped on the site in early 1998. The Committee notes that there was a threat to the environment as a result of this unlicensed landfill, however believes that the matter has been dealt with by the DEP according to the proper procedures and that the necessary action has been taken to address the problems at this site.

### **5.5 Lot 2 Bird Road, Mundijong**

The Committee believes that breaches of the proper landfilling conditions have occurred at this site. The Committee believes that the DEP is taking the necessary action to

address the problems at this site and that it should continue to pursue the matter to ensure that there is no damage to the environment or to public health.

<p>The Committee recommends that the DEP continue to monitor this site in accordance with its standard procedures to ensure that the remediation strategy is completed to the satisfaction of the DEP.</p>
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- 5.6 The Committee has considered the substantial amount of evidence presented to it by the DEP and believes there is nothing to suggest that landfilling with demolition waste in the area of Bird and Jackson Roads in Mundijong has resulted in contamination of the local wetlands, environment and drinking water and hence the Committee concludes that there is no danger to the health of the local population.
- 5.7 The Committee has also considered the issues raised in the petition concerning the potential for danger to the local lifestyle, property values and local businesses and has noted the submissions on this matter from the principal petitioner and the Minister for the Environment. The Committee concludes that these matters are subjective and are determined by a multiplicity of factors outside the specific terms of the petition. As a result, the Committee has resolved not to inquire into these matters.

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**Hon Murray Nixon JP MLC**

**Date:**

