

**STANDING COMMITTEE ON
ENVIRONMENT AND PUBLIC AFFAIRS**

PETITION 59 — BIO-ORGANICS

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 23 SEPTEMBER 2015**

Members

**Hon Simon O'Brien (Chairman)
Hon Stephen Dawson (Deputy Chairman)
Hon Brian Ellis
Hon Paul Brown
Hon Samantha Rowe**

Hearing commenced at 10.10 am**Mr RICHARD GORBUNOW****Chief Executive Officer, Shire of Serpentine Jarrahdale, examined:****Mr DEON VAN DER LINDE****Acting Director, Planning, Shire of Serpentine Jarrahdale, examined:****Mr TONY TURNER****Manager, Health and Building, Shire of Serpentine Jarrahdale, examined:**

The CHAIRMAN: On behalf of the committee, I would like to welcome our witnesses to our hearing this morning. Gentlemen, you will have each signed a document entitled “Information for Witnesses”. Have you read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, if you could please quote the full title of any document that you might refer to during the course of the hearing for the record. I remind you that your transcript will become a matter for the public record, and if, for some reason, you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Mr Gorbunow, before I ask you to make an opening statement, I would also like to acknowledge the presence of so many interested parties in the public gallery today. I would like to thank you on behalf of my colleagues for your attendance because that helps reassure us that we are examining matters that are of interest and concern to the public and your presence here helps us in that way. There are two other reasons why we appreciate your attendance, and I think we have got about half the shire here today by the look of it. The first of those is that it is important that any proceeding of the Parliament, and this is a proceeding of the Parliament, be open to the public to the greatest extent possible and so your presence helps make sure that that is occurring. The second responsibility, of course, that we thank you for undertaking is to acknowledge that the proceedings of Parliament, although they can be observed, should not be interrupted in any way. This is a parliamentary hearing but not a public meeting as such. But thanks for being here and I hope you find these proceedings of interest this morning.

Mr Gorbunow, could I invite you now to make some opening remarks?

Mr Gorbunow: Thank you, Chair. Firstly, I would like to thank the Standing Committee on Environment and Public Affairs for giving the shire the opportunity to present on this important matter. I would like to also commend the community for taking the initiative to present the petition to our state Parliament. Without going into too many details, I will provide the Chair and committee with some necessary background and reasons for the shire’s strong position regarding the operations at 63 Abernethy Road. I then will hand over to my expert staff—the acting director for planning, Deon Van der Linde, and also the manager for environmental health, Mr Turner—for more detail regarding our presentations and approach to these important planning, health, amenity and environmental issues.

It is my understanding that the original land use was for a transport depot for an earthmoving company ATA Constructions before making application to the shire in 1999 for a composting facility, which included animal manures. Our records show that this application resulted in the high level of community concern, which caused the shire to take a proactive approach to that application. The original approval was issued by the Minister for Planning in May 2001 for a green waste composting facility. That is just a brief overview, Mr Chair, and I now, having had our little preamble discussions, think it is important that I leave it to the Chair to request any other information or further details on this matter.

The CHAIRMAN: Certainly. I think, Mr Turner, you were going to provide us with an overview of the process. I know you have a fairly detailed PowerPoint presentation, which we will not receive today, but thank you for providing a copy of the slides. If you want to refer to that and talk to that as you give an overview to the committee, that would be great if you could do that.

Mr Turner: Thank you. I have some notes here, which are similar, but I do not have a copy of the PowerPoint.

I think it is important to acknowledge that there is a lot of knowledge in this room about the application and the activities on this site. That has certainly helped the shire in its process towards assessing the application and also responding to the issues that came of this site and the development application. Just in summary, there were three main areas that the council responded to and that was the development application, the residents' and the council's concerns, and also the SAT appeals process. An important component of what we were going to present is that there was a number of important interactions between the shire, the applicant, the residents and the DER and we were going to draw out some of those interactions throughout the PowerPoint. I will skip through some of the detail so that we can get to the question time. Just quickly, the development application was delayed because of a lack of information. Council did ask for further information and it was provided. However, the detail was lacking in some key areas, particularly in the area of management plans. There was no validation for their position on some of the key potential impacts.

The CHAIRMAN: This is back in 2001.

Mr Turner: No, this is the latest application for the current composting position, and that involved the inclusion of poultry and other manures and liquid waste. The shire, even after supplementary application, still had some significant concerns about the lack of information and could not support the application. During that assessment process, the residents also raised a number of similar concerns, in fact, about odour and, in particular, poultry manure, and the increase in types and amount of liquid waste, which resulted in increasing truck movements and noise and offsite impacts. In particular, odour was a major concern. It is my belief that odour was already an issue and with the inclusion of poultry manure and other manures, the residents just believed it was going to be too much for them to tolerate. As a result, there was a significant increase in complaints. The DER and the shire registered a significant number of complaints on a daily basis. As a result, the shire officers implemented an odour investigation involving the community with diaries and field odour assessments. Some of those field odour assessments were done with the DER, which was useful in corroborating our approach. At the end of those assessments, we found that there was definitely an odour issue and produced an odour report and provided that report to the DER. However, we never got any response from the DER on that odour report or the odour issue when we inquired. The residents were also concerned about the large number of truck movements. After another investigation where the community recorded the number of truck movements and the times and also some details about the trucks, we found that a lot of the deliveries were from controlled waste vehicles.

[10.20 am]

Just looking at the size of the trucks and the number of trucks—up to 40 a day—we concluded that there was a significant amount of liquid waste entering the site. With that we went to the DER again

and asked them about the amount of controlled waste and the types of materials that were going in, and this involved the controlled waste branch as well as the licensing office. Their response was that that information is restricted and they would not give us any information. At about the same time there were some residents who were concerned about unauthorised discharge into some of the open drains. In response to that, the shire officers went out and had a look through one resident's property—Mr Dempsey's property—and on the south east corner of the composting site there is a culvert that passes over into Mr Dempsey's property and we had a look at the site. The shire officers undertook several other site visits after that, and on 13 November 2013 there was a significant pollution event that the shire officers identified. They reported that to the DER and they attended with their pollution response branch and licensing branch. They took samples and investigated the pollution event, but on inquiry the shire officers could not get any response or any details about that investigation. One of the questions we asked was if there would be any ongoing monitoring because we were concerned about the extent of the contamination. Again the DER could not provide us with any details. All they could say was that that was the responsibility of the composting operator. So the shire took some samples on Mr Dempsey's property of surface water and then referred the results of those to a consultant. The information we got back from that more or less said to us that we needed further monitoring. We implemented a small preliminary monitoring program and ultimately, after several rounds of sampling, the Stass report was produced and that identified that there was reason to be concerned about potential contamination off site. We forwarded that report to the DER and, again, we had little or no response from the DER on the report or the results, or from that pollution event. During that time we were also involved in the SAT process and it was important that we had the feedback from the community and some of the details about odour and those primary issues of odour, wastewater contamination and the contamination of ground and surface water. We needed further confirmation from the DER about some of the positions we held and some of the issues we felt were important. Our legal representation sent several letters to the DER asking for some feedback on some critical pointers and for some collaboration of the information that we had. However, we never got any formal response again from the DER and as far as I know the residents never received any confirmation about any pollution events or odour issues.

That whole process was a significant commitment by the shire and the residents in man hours and in cost. In addition to that, it should be acknowledged that there was also a cost to the community throughout this process. Residents had to put up with not only the impacts from odour, noise and dust, but also a whole series of events that led to an amount of animosity and certainly an air of mistrust, and sometimes anger was expressed from the community that filtered out into the rest of the community and at times it was expressed to the DER. To the DER's credit, they did put some actions in place, as was said earlier. They amended the licence and issued contaminated sites registrations—unfortunately on Mr Dempsey's property as well as the composting facility—and they also withdrew the licence from the composting operation. However, I think throughout that process the shire certainly feels that they could have corroborated with the shire a lot better and they certainly could have communicated with the community, and that would have probably ended up with certainly a better relationship with the community, and, if not, a better result today. Thank you.

The CHAIRMAN: Thanks for that very useful summary of what is happening. It helps us set the scene and also leads into the balance of a number of questions we would like to put to you to supplement the submissions that you have already made. Again, you might want to take this question on notice depending on the matter of detail, but my question is this: is the shire involved in any legal action at the present time related to the Bio-Organics site?

Mr Gorbunow: Yes, the shire is in the process of legal proceedings to do with the planning approval that Bio-Organics has not had to be operating on site. That is still in the legal process.

The CHAIRMAN: Are you able to provide us with details of past, as well as present, legal action?

Mr Gorbunow: I am limited to that because of my time with the shire, so I can only relate to the last three or four years, which is the current proceedings but I will ask my officers, they may be long term here. Mr Turner, are you aware?

Mr Turner: No. I am not aware of any other legal proceedings against the composting facility or the previous use of ATA construction on that site.

The CHAIRMAN: That is from the shire's point of view. There has been other legal action, of course, that we know —

Mr Turner: From the shire's point of view, I am not aware of any action taken.

Hon PAUL BROWN: Which tribunal or court do you currently have action under?

Mr Gorbunow: From the planning approval?

Mr Van der Linde: It is the State Administrative Tribunal.

Mr Turner: And the Magistrates Court.

The CHAIRMAN: I want to turn now to the shire's role in the planning process and the development approval. Can you give an outline of the planning process for a facility like Bio-Organics and what role the shire has in that?

Mr Gorbunow: I will refer the question to our planning director.

Mr Van der Linde: Usually when an application comes into council, the shire officers will assess the application, decide whether, in terms of our policies, people should be advised of the application—so neighbouring properties and stakeholders. Those comments get put into a council report. That report then gets presented to council and a decision is made. In some instances, if a decision goes against the applicant they can take us to the tribunal and then the council will have to defend the case in the tribunal. If we needed to go through that process we would then appoint consultants to assist us during that process.

The CHAIRMAN: The development approval was time-limited, was it not?

Mr Van der Linde: That is correct.

The CHAIRMAN: What were the dates of the start and expiry?

Mr Van der Linde: I do not have that information in front of me, I am afraid. We asked for additional information once the application had come in. We did not receive that information, so in the process it is deemed refused and then automatically the applicant can ask the SAT to adjudicate on the matter because we had not responded within the statutory time frames, and this has happened in this case.

The CHAIRMAN: There have been a couple of applications to the DER in respect of this site in terms of the inquiry that we are currently looking at.

Mr Van der Linde: Yes.

The CHAIRMAN: Let us call those the first application, which dates back to about 2001, and then we have got the second application, which is from about 2012, is it?

Mr Van der Linde: Yes, that is correct.

[10.30 am]

The CHAIRMAN: In respect to the first application, I understand that the minister of the day made the decision to approve a green waste composting facility.

Mr Van der Linde: Correct.

The CHAIRMAN: How did that come about?

Mr Van der Linde: What basically happened is because of the process at that stage, the minister had the final say, from what I understand, and the minister made the decision to approve the green waste—it was green waste only. The council had to also approve it. Council then decided that we had to put on certain conditions. We went back to the minister and the minister adjudicated that some of the conditions that were on there were not appropriate and then she made a final decision somewhere in February 2002.

The CHAIRMAN: As I understand it, in general terms that was to approve, with conditions, a green waste composting facility.

Mr Van der Linde: Correct.

The CHAIRMAN: That was time limited, as I understand it, until about August 2011 or so. Am I correct?

Mr Gorbunow: Two key conditions were passed by the minister. The first one was a 10-year time-limited approval. If you take that into consideration that expiry date would be 2012. The other key condition that the minister approved was the “green waste only” condition that excludes animal and other noxious waste. They are the primary two conditions.

The CHAIRMAN: That is the committee’s understanding, so thanks for confirming that again. During the shire’s consideration of the second application, I understand it was discovered that the original development approval that we have just discussed had expired. Is that the case?

Mr Van der Linde: During the second one, yes, that is my understanding.

The CHAIRMAN: So how was the operation able to continue even though the period of approval had expired? Was it an oversight or was there something that allows for a rollover?

Mr Van der Linde: Generally, what happens in a case like that is the applicant and the DER were in discussions about a new proposal. Sometimes it is very difficult for a shire to go and close down an operation like that if the applicant has demonstrated that they would like to continue and they are in discussions. But, at the end of the day, we did not continue with that. We did not close them down specifically after 10 years.

The CHAIRMAN: We understand the realities of what confronted you, with an operation up and running and established, but I am just wondering, for the record—again, you might want to take this on notice to refer to your records—what was the date that the original development approval expired? Secondly, when did the shire realise that that development approval had expired? That may or may not be significant, but we just want to find out those dates. Can you take that on notice?

Mr Turner: Yes, we can.

Mr Gorbunow: I think it is appropriate to be absolutely correct on those two requests, so we will take that statement on notice.

The CHAIRMAN: I apologise if I am pre-empting the answer, but was it the case that the expiry of the development approval was not identified at the time as an oversight?

Mr Van der Linde: I would suggest it probably was, yes.

The CHAIRMAN: Has anything been done at the shire to avoid those oversights in future?

Mr Gorbunow: Yes, very much so. We have a system in place that brings up expiry dates, because we deal with many other contractual agreements and approvals.

The CHAIRMAN: As part of the question that you have just taken on notice, which is about the specific incidence of a DA lapsing without perhaps people noticing at the time, could you also just provide us with some information about the mechanisms that the shire subsequently put in place to avoid that sort of thing happening again?

Mr Gorbunow: Yes, we will do that.

The CHAIRMAN: We will take that as supplementary information. This is a technical question that I want to put to the shire now: was Bio-Organics operating illegally once the development approval expired; and, if yes, what would be the consequence of that?

Mr Turner: That is the basis of our legal proceedings and that is the advice that we have got from our lawyers that that is the case.

The CHAIRMAN: So it was up to Bio-Organics to get a fresh approval or else they would be acting illegally, is that your understanding?

Mr Turner: Yes.

Hon PAUL BROWN: I will just follow up on what the Chair said then. With the expiry of the approval process, and I think Mr Van der Linde said that it is generally accepted that the activity can continue if they are in discussion, you are not going to close them down, did the discussion about the second permit start after the approval lapsed or prior to the date of the approval lapsing?

Mr Turner: After.

Hon PAUL BROWN: So the approval had expired and they were operating illegally before they started discussions around the second approval.

Mr Turner: Correct, and, if I may add, Mr Brown, the complications with that once the planning approval expires, you do not have any conditions that you can actually contest over so it became a narrowing of mechanisms. We were unable to do anything about the system, and it just purely came down to a prosecution was all we could respond to.

Hon PAUL BROWN: Just going back once again to the original 10-year development approval, given that it was only approved for green waste—and I cannot remember what conditions were attached, but green waste only, I would say—was there any evidence from the council that Bio-Organics were using anything other than green waste in that 10-year time frame?

Mr Turner: Yes, I am holding up a copy of the all the DER licences and amendments over that period and copies of those were sent to the council. Each one of those in each year was either an amendment or a new licence. We were aware and specifically asked at times whether we agreed with the trials or the amendments to the licence, and a number of letters went back to the DER saying that we did not agree with the trials or the licence amendments.

Hon PAUL BROWN: And what gravity did your objections have with the DER? Obviously, very little.

Mr Turner: Yes, it is funny position to be in when you have a community to answer to and then you have a state agency that is not responding, as disempowering as it is for the community.

Hon PAUL BROWN: I have just one final question. With regard to the trials undertaken, they were given approval for trials but was any evidence collected of the efficacy or the outcomes of those trials or was it purely a “trial” to allow them to use other waste?

[10.40 am]

Mr Turner: Predominantly, the amendments and the licences had a requirement for monitoring and reporting, and when asked, the DER could not provide us with any details of the monitoring. In the context of the day, and I did personally confront some of the DER officers on these trials and the cumulative impacts and the potential of that, and I believe at the time they thought that it was a good opportunity to recycle materials using the green waste composting process to produce a useable material that was sort of value adding, if you like. I think where DER got caught out was in the amounts, in the end. No-one realised that it was not just trials going on, but millions of litres of liquid waste being used.

Hon PAUL BROWN: And there were no outcomes at the end of those trials for publication to see what the efficacy of those trials were?

Mr Turner: No.

The CHAIRMAN: Mr Turner, that document you referred to then, they are the amendments to conditions from DER; is that right?

Mr Turner: Each year Bio-Organics received a new annual licence and then periodically through each year amendments for trials. Bio-Organics, to my understanding, would make application to DER for the trial of a new activator or a new ingredient, and then DER would issue an amendment to the licence for that trial.

The CHAIRMAN: And drop you a copy.

Mr Turner: And drop us a copy.

The CHAIRMAN: So that quite substantial document, is that the consolidation of —

Mr Turner: On our records they were copies, for each year, of the different licences and then amendments. So each tab is a year and then each year has a licence and a number of amendments.

Hon PAUL BROWN: I have just one final question. Sorry, I have expanded my thinking. In that file there, does it notify you of any applications for amendments that were opposed or refused?

Mr Turner: No.

Hon PAUL BROWN: So, there is no evidence that any trials were actually opposed?

Mr Turner: True.

Hon PAUL BROWN: But you get notification of the ones that are approved?

Mr Turner: Yes.

The CHAIRMAN: I want to move on now to the respective roles of the shire and the department. What is the level of interaction or cooperation, if any, between the shire and the Department of Environment Regulation in planning matters?

Mr Gorbunow: I can very briefly summarise that we have very little or lack support from DER. I think, in the whole entire process, I met with the GM or the departmental head once and, continuously, as Mr Turner indicated, we were never responded to or kept informed at times on those key issue matters.

The CHAIRMAN: When you are dealing, as you would, with other councils about the place, do they have the same problems—lack of communication?

Mr Gorbunow: Mr Chairman, I cannot comment on that, but we found that that was very hard work.

The CHAIRMAN: Is there any overlap or information sharing during the assessment of development approvals or works approvals or licencing?

Mr Van der Linde: Yes, there is. With development applications, they get referred out formally to all the different departments and we receive a response from them, generally, and that forms the basis of our assessment for those specific issues.

The CHAIRMAN: At that functional officer level, what is the quality of the liaison between the shire and the department?

Mr Van der Linde: On the planning side, I would say it is relatively good—technical. I do not think there is a constant discussion, but I think that the response we get generally is acceptable.

The CHAIRMAN: What about with regard to, say, monitoring and regulatory activities? Is there overlap or information sharing in that area?

Mr Gorbunow: I will refer that to Mr Turner, but there are certain statutory requirements that the council itself does monitor in relation to health issues et cetera, but because the licence is controlled by DER—I think you are referring to the question of how that information has been received—I think, Mr Turner, you might be able to elaborate on that.

Mr Turner: I think that is the key point: we assume that they are the licensing authority and we make assumptions that they are regulating. I certainly understand that they are resource and priority driven, the same as most organisations, and certainly they are challenged by where they put their resources. But perhaps we probably assume too much at times that they are monitoring and auditing and obtaining reports.

The CHAIRMAN: This throws into question the relative responsibilities of the shire and the department; does it not? What sort of environmental investigations does the shire conduct or, perhaps in this case, what have you conducted?

Mr Turner: I think when there was the discrepancy in the second planning application, acknowledgement of the offsite impacts, in particular, odour, in the first place, and then a community comes to you with such an extreme opposite, officers really have to step back. There are often gaps and, usually, you can condition some of the gaps up, and in other instances you cannot and you recommend refusal. In this case, the gap was quite significant, so the officers decided to put together some sort of odour assessment. We could not rationalise appointing an odour consultant at that point but we went out into the field and sniffed the air, and we asked the residents to record in odour diaries. We developed the diaries with the residents. Over several months, while they were recording the odour levels, we were also in the field and we corroborated that information into a report. The same with the truck movements and the same, certainly, with the ground and surface water contamination; we felt fairly strongly about the pollution event, and it set off some alarm bells for us. The shire was good enough to allocate some funds to us to appoint a consultant and that produced a report that more or less triggered most of this issue off.

The CHAIRMAN: I am sure that the community finds it very commendable for the shire to be responsive. Would it be normal, though, for the shire to be doing odour investigations and whatnot?

Mr Turner: No.

Mr Gorbunow: No, not a standard practice for the local government authority.

The CHAIRMAN: Sorry?

Mr Gorbunow: It is not standard practice for the local government authority.

The CHAIRMAN: I was wondering: do you have any particular authority to do that?

Mr Gorbunow: No.

The CHAIRMAN: I am not saying you cannot do it, but it is not really contemplated, is it, under the —

Mr Turner: No; the Health Act only provides for amenity and some offensive material sort of issues. It is not a legislative requirement that a council sees that there is a significance of an issue, and we believe that there was a significant issue. We did some preliminary investigations, and once we found that it appeared to be significant, then we just took the next step.

The CHAIRMAN: We will use the Bio-Organics case as our example, because that is what this is all about, but in cases where there is suspected environmental contamination occurring, or has occurred, is there a delineation between the role of the department and the relevant council, or is that a bit blurred?

[10.50 am]

Mr Turner: From an officer's point of view, I think you would see that the DER would respond to the environmental implications and the science behind it, but from a council's point of view,

because we are so close to the community, we respond to the community, and I suppose our role is to try to link that up as best we can if there is an issue.

The CHAIRMAN: I do not want to put words in a witness's mouth, but this is where a problem potentially arises if you do not have lines of communication or a good working relationship between a local government and the department. Is that proposition something you might reflect on?

Mr Turner: I can reflect on as recently as last week: a couple of residents rang through to the environmental health officers at the shire asking what was going on. They just received a letter from an unknown consultant wanting to put bores in and take samples from their property. We were going, "Sorry, I don't know anything about it." My officers rang through to the DER and arranged a meeting in the city with the DER and the controlled waste and licensing branches, which were good enough to give us some time. The object of that meeting was to sit with them and ask them what was going on and to see if they would come down and answer some of the community's questions. They could not find the time to come down, but we relayed some of the information that the community was concerned about. At the end of that, there was a number of hours and concern from the community, it would have been a lot simpler if the DER had pre-empted a requirement of Bio-Organics to implement a monitoring program, finally after two and a half years, by visiting the residents and the community and saying, "We're going to kick this off, and this is basically what would happen." I think that is a fairly good example of it not happening.

The CHAIRMAN: I think in your submission and in some of the discussion we have had just now, the shire has expressed concern about the lack of collaboration and cooperation with the DER. How has that impacted on the shire's ability to carry out its regulatory functions?

Mr Gorbunow: It is very difficult, because, as you are aware, we are very limited in what our jurisdictions and regulatory roles are, and having a state agency that is actually responsible for that specific issue does not seem to work. It is difficult.

The CHAIRMAN: So, this is not only a Bio-Organics matter, it is a systemic problem?

Mr Gorbunow: I would say yes.

The CHAIRMAN: We have probably gone a bit over the time we had allocated, but just before I see whether there are any final questions from my colleagues, I have to advise that we have received and just considered this morning some correspondence from a resident who acquaints us with this information —

... over the last 6 months we —

That being local residents —

observed in excess of 30 Highboard Semi-Trailers, we believe full of mulch, delivering their loads to the Bio-Organics site, via the access road from King Road.

Do you know anything about this sort of activity at the site?

Mr Turner: Yes, I have heard that through discussions with local residents.

The CHAIRMAN: What is your reaction to that?

Mr Turner: We have talked to environmental consultants and legal representation and that is certainly a DER issue, because there is a particular notice on the property that restricts activities. It is my understanding that on a weekly basis, I have been informed, the site is inspected and audited. So, I imagine they are doing that with the authority of the DER.

The CHAIRMAN: I will put that on the record. The committee was of the understanding that the business had shut down. Is it still operating?

Mr Turner: My understanding is the business has shut down as well. We periodically review aerial photos that indicate that there is activity on the site and we have tracked some materials that have gone off-site to another site within the shire—we cannot see where it all goes. We then raised the issue with the DER and one of the responses was, “Well, do you want the stuff off the site or not?” On one hand, they need to clear the site of the material that is there to remove the contamination, so there needs to be a certain amount of activity on the site to, perhaps, neutralise the compost and/or reduce, mix or blend material that is going off site. It was my understanding that the notice said that nothing was to be brought on to the site; only material was to come off the site.

Hon PAUL BROWN: I suppose the question there, Chair, is: was the shire made aware of the revocation of Bio-Organics’ licence?

Mr Turner: Yes.

Hon PAUL BROWN: The licence has been revoked to do any green waste or composting, so anything coming on to the site would be unapproved, unlicensed, in breach of that revocation.

Mr Turner: The licence is for category 61 under the Environmental Protection Act and is specific to the handling of certain materials. That has been removed, so you would assume that they are not able to receive any liquid waste under that category, but they may be able to undertake certain activities to minimise the pollution or the material that is on there.

Hon PAUL BROWN: With the licence being revoked, does the shire revoke the approval for the development as well or does that continue on for the 10 years?

Mr Turner: It is interesting you should ask, because that was part of our contention through the SAT process: how can we consider a planning application for a site that has had its licence removed? It is sort of a chicken and egg thing and SAT was confused by that process as well. There was an appeal against the closure notice as well to the Appeals Convenor. I have rung up the Appeals Convenor every three weeks over the last 12 months to ask where that is up to as well, because that would have fed back into the State Administrative Tribunal’s position. Because if that licence has been removed and that notice is on that property, you would think that we would not be able to even assess a development application for that site until it was cleaned up.

Hon PAUL BROWN: What is the process by which you would revoke a DA for that site?

Mr Turner: There was no DA for the site, but there was a current application. So in principle, while it is going through the SAT process everything is on hold, and while the court proceedings are occurring, everything is on hold. We do not have a planning approval to also take them on any conditions that they have, so everything sort of relies on the DER’s actions.

Hon STEPHEN DAWSON: Chair, can I just go back to the piece of correspondence that the committee received? Mr Turner, in this correspondence we have received we are told that in excess of 30 semitrailers have been observed over the last few months bringing mulch, or a kind of mulch, on to the site. We were also advised that numerous trucks owned by Bio-Organics over the same period have gone out empty and have returned full with some sort of product. Were those allegations raised with you and the shire?

Mr Turner: Yes, and there was some indication that they may be bringing in some sort of neutralising material, but I do not know what.

Hon STEPHEN DAWSON: Are you aware that they might be bringing in neutralising material because of conversations with the DER?

Mr Turner: Just the residents.

Hon STEPHEN DAWSON: Once these allegations were brought to the shire’s attention, have you then gone to DER to seek advice or guidance?

Mr Turner: Only in the first instance when we saw trucks going out and depositing materials. We went and sampled that, and then said, “We’re concerned about this material. Is there any risk of it contaminating other sites? They said, “What do you want us to do? Do you want to get rid of the materials or not?”

Hon STEPHEN DAWSON: Approximately when was that?

Mr Turner: That would have been 12 months ago—hang on, the closure notice—so six months ago.

Hon STEPHEN DAWSON: Have you had any further correspondence?

Mr Turner: No.

Hon STEPHEN DAWSON: Nothing—you have heard nothing from DER since that time?

Mr Turner: No.

Hon STEPHEN DAWSON: Are you under the impression that these trucks are still going in and out of the site? Or has that stopped?

Mr Turner: I have not sent officers down there to observe the trucks. Other than six months ago when we tracked some of the materials to another lot within the shire, we have not taken any steps to go onto the site. There is a fair bit of animosity between the operators and shire officers and it is almost very intimidating to attend the site.

Hon STEPHEN DAWSON: Just one final question from me. This correspondence we received this week, and it was dated last week—when was the last, I guess, complaint or information brought to council’s attention about those trucks?

Mr Turner: If not last week, the week before.

Hon PAUL BROWN: The sites that the contaminated materials are being trucked to, would those sites need to be licensed?

Mr Turner: That’s a good question.

Hon PAUL BROWN: Given that the material would be considered contaminated material—is that correct?

[11.00 am]

Mr Turner: Not necessarily, no, because the contaminated sites registration says potential contaminated sites—investigation required. So when we asked the question of the DER—almost exactly that question—there is no evidence to suggest that it would contaminate another site because adjoining those two sites are some food producers. We were concerned about groundwater contamination on that site and took some samples, again. We got some expert advice that said it is within Australian Standards and because the size of the lot that is sort of a reduction in the significance because the amount of material was fairly small at that stage. But I think each week there seems to be more and more material going onto that site as well.

Hon PAUL BROWN: So basically they are in—as the Chair said earlier, I don’t want to put words in your mouth, but are they just moving the problem from one site to another from a licensed site to an unlicensed site, which you may not have access to for a range of reasons?

Mr Turner: I can only think that the DER has done something with Bio-Organics to minimise any of those risks that might be —

Hon PAUL BROWN: That you are not aware of.

Mr Turner: No.

Hon PAUL BROWN: DER has not corresponded with you in any way, shape or form about the implications to your shire and to your residents and business owners in that area?

Mr Turner: No. I do not think the residents have received anything either.

The CHAIRMAN: Obviously you are in contact with residents from time to time about these matters. Have they expressed any desire that they would like to find out from DER what is going on and stop being “kept in the dark”?

Mr Turner: I think the residents have said they have made contact with the DER at times and been frustrated by the response.

The CHAIRMAN: Thanks. I think we can pursue that in our own ways.

Hon STEPHEN DAWSON: There are a few questions to be asked of DER so perhaps we might go there next.

The CHAIRMAN: From out of this session, yes.

Hon PAUL BROWN: The site that the contaminated material or non-contaminated material is being trucked to, is there any suggestion that there is other material going onto that site from any other—so the trucking from the Bio-Organic site to the secondary site, is there any suggestion that there is other material coming from other sources onto that second site as well?

Mr Turner: Not that I know of.

The CHAIRMAN: The question of whether or not any matter that is being imported to the Bio-Organics site—it could be benign, potentially, and helping in the resolution of the material on the site.

Mr Turner: Correct.

The CHAIRMAN: Or it could be, as my colleague asks, further contaminated matter being brought in to continue an operation that should have ceased.

Mr Turner: A little bit of information can go a long way.

Hon PAUL BROWN: I think there are some questions that DER need to answer.

The CHAIRMAN: At least we have worked out what the questions are now for that matter, but they certainly do need to be answered. Our time has expired for now, but I think we have exhausted the questions we needed to ask you as well. We would like to thank you very much for coming in and we look forward to receiving the answers to the one or two supplementary questions that you have taken on notice. If you could provide those through our office, we look forward to receiving those. Thanks very much. We bid you good morning and draw our hearing to a close.

Hearing concluded at 11.04 am
