

Arguments in Support of Joinder

of Amanjit Gill as a party to the case

Veolia Recycling & Recovery Pty Ltd v Environment Protection Authority (EPA)

Introduction

I have lived in the City of Casey for most of my life. I grew up in Endeavour Hills; my family moved there when I was a toddler, and I remained there until I was 28 years old. Then, after renting outside the City of Casey for two years, I purchased my current home in Narre Warren, where I have lived for 11 years. My father still lives in Endeavour Hills.

I hold bachelor's degrees in engineering and computer science, a diploma in secondary education and a master's degree in data science. I have held professional roles in engineering, software development and teaching. I have also leveraged my technical skills on a voluntary basis in the advancement of social causes. It is in this capacity that I became aware of the proposed waste transfer station that is the subject of the present proceeding.

I initially supported the development. The public engagement materials Veolia produced were attractive and portrayed the proposed facility as sensible in design and operation. However, I changed my mind when I read Veolia's application to the EPA for a development licence.

My concerns are centred on the financial penalty I may incur as a ratepayer, stemming from the poor quality of Veolia's documentation, mismanagement of the matter by multiple entities, and the resulting vulnerability to litigation. The imperative to prevent a costly debacle is why I have applied to join this case.

Arguments

I seek to argue that my financial interests are adversely impacted by:

- the EPA's failure to make a decision on Veolia's application for a development licence
- the City of Casey's choice to relinquish land in furtherance of Veolia's proposed development, for no compensation
- potential litigation resulting from Veolia's poor-quality application and the mismanagement of this by the City of Casey and the EPA

Argument I: Failure to make a decision

1. The City of Casey took nearly one year to approve Veolia's planning application (Attachment 1). During this time, the application was referred to the EPA in its capacity as a determining referral authority, on 5 January 2024 and 17 June 2024.
2. In the referral process, the EPA received several technical documents that had been provided by Veolia to the City of Casey, such as a draft risk management and monitoring plan, an air quality and noise assessment, and a landfill gas risk assessment (Attachment 2).

3. These are the same documents that Veolia later submitted to the EPA to support its development licence application. This means that the EPA had possession and awareness of the documents months earlier than when it received the development licence application.
4. The EPA's response to the City of Casey's referral (Attachment 2) confirms that the EPA did not examine the technical documents other than to confirm the completeness of Veolia's planning application.
5. The EPA could have used the planning permit decision period to review the documents properly; this would have saved time during the development licence review period and potentially prevented the EPA from running over its deadline.
6. By thus failing to meet its deadline, the EPA has imperilled the residents of the City of Casey, bringing us in proximity to predictable, preventable legal and financial trouble by gifting Veolia the opportunity to have its flawed application accepted by VCAT.

Argument II: Loss of potential income from land transfer

1. The Hampton Park Development Plan prepared by the City of Casey in 2015 shows that Veolia's Hallam Road landfill site was intended for future public open space (Attachment 3).
2. The site is subdivided into several lots (Attachment 4). The future transfer of rehabilitated land to the City of Casey was set out in permit conditions on lots 2 and 4, as well as a Section 173 agreement (Attachments 5 and 6).
3. In 2020, Veolia requested to retain lot 4 and instead transfer lot 1 to the City of Casey. A council officer's report from February 2020 cites the superior attributes of lot 1, and its potential to be rehabilitated earlier than lot 4, as arguments in favour of agreeing to Veolia's request (Attachment 7).
4. Council accepted these arguments and carried a motion to receive lot 1 instead of lot 4 for nil consideration (Attachment 8), despite lot 4 being much larger than lot 1 (Attachment 4).
5. A new Section 173 agreement, dated 11 September 2023, cites Veolia's intention to develop a waste and resource recovery centre as the reason for the land swap (Attachment 9), contradicting the aforementioned officer's report.
6. This confirms that the loss of potential income from receiving less land than was previously agreed, in exchange for no compensation, can be attributed to the proposed development. Thus it is relevant in determining the development's impact on my financial interests.

Argument III: Potential litigation

1. A decision to issue a development licence to Veolia may leave me, as a ratepayer in the City of Casey, liable for costs and penalties that result from the operation of the proposed WTS, even though the City of Casey will not have been directly responsible for issuing the licence. I will now discuss points that may not appear to be pertinent to my joinder application but are required to lay out my argument.

2. Veolia's development licence application contains errors, oversights and omissions. I made a submission to the EPA to this effect (Attachment 10). Veolia's response did not adequately address the points I made (Attachment 11).
3. Another resident's submission identifies serious flaws with the air quality and noise assessment Veolia submitted with both the planning and development licence applications (Attachment 12). This submission, too, was not properly addressed by Veolia (Attachment 13).
4. Both submissions identify faults that, if corrected, may drastically change the conclusions one might draw from the analyses.
5. In this situation, the only appropriate action is to discard the application and its supporting documents, and redo the analyses from scratch.
6. As outlined in Argument I, technical documents supporting Veolia's development licence application were earlier supplied to the City of Casey with its planning application. These were also supplied to the EPA through the statutory referral process.
7. The planning permit was ultimately issued despite the oversights, errors and omissions in Veolia's application being discoverable to both the City of Casey as the responsible authority and the EPA as a determining referral authority.
8. In assessing the planning application, a council delegate reported on Veolia's analysis uncritically, taking its conclusions as true (Attachment 14).
9. Issuing a development licence based on poor-quality analyses and management strategies can only result in a facility whose health and environmental risks are overlooked, minimised or improperly mitigated.
10. Therefore, it is likely that the risks Veolia claims to have controlled in its application will materialise into actual impacts on local residents.
11. If this happens, the community may direct some of its anger towards the EPA and VCAT, but the bulk of it will be directed at the City of Casey, because of its failure to head off the risks at the earliest opportunity - by refusing the planning permit.
12. This may then result in large unplanned expenditures arising from remediation, compensation and litigation. This was the outcome of the Brookland Greens emergency in 2008 which also involved a landfill in the City of Casey (Attachment 15). This cost the municipality in several ways:
 - The City of Casey waived rates for all Brookland Greens residents in 2008-09.
 - As of February 2010, the cost of the City of Casey's "escalation response" had reached \$5.75 million and was expected to increase (Attachment 16).
 - In May 2010, Council discussed the following rate rises that were recommended by council officers (Attachment 17):
 - 0.51% to set up a fighting fund

- 5.0% to finance a 10-year loan to replenish reserves that were borrowed against to pay for remediation works
 - By October 2010, the City of Casey was foreshadowing an 11% rate rise, and estimating it would require \$100 million to remediate the landfill long term (Attachment 18).
 - The City of Casey, the EPA and others were subject to a class action lawsuit that was settled for \$23.5 million, of which the City of Casey paid \$13.5 million (Attachment 19).
13. The extensive damage the Brookland Greens incident inflicted on the City of Casey's financial position, and the indisputable fact that these costs flowed to ratepayers, substantiates the connection between Veolia's poorly documented proposal and my personal financial interests, validating my wish to prevent a recurrence of that scenario.

Conclusion

Veolia has presented a development licence application with serious faults. No decision to issue a licence on the basis of these flawed documents would be defensible. Therefore, the best outcome would be for Veolia to withdraw its application. Otherwise, to protect the interests of ratepayers like me, VCAT should deny Veolia's request for a development licence.