

**58TH COLRO PTY LTD
ENVIRONMENT PROTECTION AUTHORITY
G & K O'CONNOR PTY LTD**

APPELLANT/OBJECTOR
AUTHORITY
RESPONDENT/APPLICANT

Appeal No. : E88/2038

Date of Determination : June 20, 1989

Tribunal Members : R D Barton (Deputy President), A B Hicks

WORKS APPROVAL GIVEN BY ENVIRONMENT PROTECTION AUTHORITY ("EPA")
FOR RENDERING PLANT - OBJECTOR APPEALED - OBJECTOR ALLEGED WORKS
APPROVAL INVALID DUE TO NON-COMPLIANCE WITH VARIOUS REQUIREMENTS
OF S.19B OF ENVIRONMENT PROTECTION AUTHORITY ACT 1970 ("THE ACT")
- WHETHER APPLICATION DID COMPLY - WHETHER REQUIREMENTS WERE
MANDATORY OR DIRECTORY ONLY - SCOPE OF S.33B OF THE ACT

The Respondent conducted an export abattoir on land in Pakenham. It proposed to build a rendering plant on its land, the estimated cost of which plant was \$6m.

The Appellant contested the validity of the Works Approval issued to the Respondent by the EPA ("the Authority"). Secondly, it challenged the exercise of its discretion to grant the Works Approval relying on its right to appeal as a "person other than the Applicant ... who feels aggrieved by the decision of the Authority ... to issue a Works Approval"; s.33B(1) of the Act.

The Respondent applied for a Works Approval on 31 March 1988. The application was required by s.19B(1) of the Environment Protection Act 1970 ("the Act") to contain the address of the site. By error the application stated the address to be "... City of Mornington" whereas the correct address was "... County of Mornington". The Appellant relied, in part, on the error as establishing non-compliance with s.19B(1) of the Act.

The application was accompanied, *inter alia*, by certain specifications for the rendering, evaporating and deodorizing plants together with mass balance calculations and process control schedules. This information was later supplemented in response to a request by the Authority. The application was accepted as complete by the Authority on 11 May 1988. The Appellant contended that the application was not accompanied by sufficient information to enable the authority to properly assess whether or not approval should be given and that in consequence the application failed to comply with s.19B(1) of the Act.

The application was referred to the Health Department of Victoria, the Dangerous Goods Branch of the Department of Labour, the Groundwater Branch of the Department of Industry, Technology and Resources and the Shire of Pakenham. Certain of the documents tendered with or following the application were provided to these bodies. The Appellant contended that the Authority had failed to comply with s.19B(1)(c) of the Act in relation to the information actually provided to the Chief General Manager of the Department of Health and/or the Shire of Pakenham.

The Application was advertised on 14 May 1988 in a metropolitan newspaper. However the advertisement contained an error as to the location where copies of the relevant documents could be inspected. This was corrected in a subsequent advertisement which appeared in the same newspaper on 21 May 1988. The Appellant contended that the advertisements were defective in several particulars, involving errors not only as to location of plans available for inspection but also as to the site of the proposed works, and the time available for public comment and that because of these errors the Authority had failed to comply with s.19B(3)(b) of the Act.

On 17 May 1988, the Appellant's agent, pursuant to s.19B(3)(b)(iii) of the Act,

paid a prescribed fee and requested "... a summary of the application and the accompanying plans and specifications and other information." The Appellant asserted that its agent was provided only with copies of the documents submitted to the Authority by the Respondent dated 30 March 1988 and that in consequence the Authority failed to comply with s.19B(3)(b)(iii) of the Act.

The Appellant further contended that the Shire of Pakenham had failed to comply with s.19B(3A) of the Act in that it did not make a copy of the application and all accompanying documents as it was never given a copy of the accompanying documents by the Authority. No evidence however was given as to whether such documents were made available to members of the public at the Shire of Pakenham's office.

The Appellant further contended that as the proposed works were prohibited pursuant to the Pakenham Planning Scheme, it had no power to issue a Works Approval by reason of s.19B(5)(c) of the Act. The Appellant contended that the permit which was issued at the direction of the Administrative Appeals Tribunal contained a number of conditions which were ultra vires and because these conditions were inseparable, the permit was void. In these circumstances s.19B(7A) of the Act required the Authority to issue any Works Approval subject to a condition that the Works Approval did not take effect until it was endorsed by the Responsible Authority administering the planning scheme to the effect that a permit had been issued under the scheme which would allow the proposed works to be constructed. As the Works Approval did not include such a condition, the argument ran, the approval was void by reason of s.19B(7A) and (7B) of the Act.

The Appellant further contended that the Works Approval issued by the Authority on 2 September 1988 was invalid and void because some specified conditions were ultra vires, the Works Approval itself was vague and uncertain and that one other condition breached s.19CA(3) of the Act.

Challenging the merits of the decision to grant the Works Approval, the Appellant contended firstly that the discharge of offsite odours would unreasonably and adversely affect its interests contrary to s.33B(2)(a) of the Act and secondly that the said discharge would be inconsistent with the State Environment Protection Policy (the Air Environment) contrary to s.33B(2)(b) of the Act.

The relevant statutory provisions are set out in the course of the decision.

Held, disallowing the appeal

1. Each of the challenges to s.19B of the Act failed. In view of that finding it was unnecessary to consider whether the provisions contained in s.19B were of a mandatory or a directory nature.
 - (a) The objection relating to the incorrect address was trivial. No potential objector would be likely to be misled in any way as to the locality of the proposed discharge.
 - (b) While the initial application was not accompanied by sufficient information to enable the Authority to properly assess the application, the production of the additional information sought by the Authority and the production of the supplementary information dated March 1988 satisfied the requirements of s.19B(1).
 - (c) The Authority did comply with s.19B(3) by referring to the appropriate bodies a copy of the Application, a copy of the site plans and a copy of the document entitled "Supplementary Information - March 1988" which was a convenient summary of the application and in general of the operation proposed.

- (d) *While the first advertisement was defective, the second advertisement was not. No person would be likely to be misled by the reference to “Mornington” in view of the context and the other objection relating to “interested parties” being able to comment rather than “any person or body interested in the operation” was mere pettifogging.*
 - (e) *S.19B(3)(b)(iii) was not breached by the Authority. The provision of a copy of the application, a copy of the site plan and a copy of the document “Supplementary Information – March 1988” satisfied the statutory obligation cast upon the Authority by the said sub-section.*
 - (f) *There was no evidence as to what documents were made available by the Shire of Pakenham for inspection by members of the public. Accordingly, the Appellant did not establish a breach by the Shire of s.19B(3A) of the Act.*
 - (g) *The argument that the Authority had no jurisdiction to issue a Works Authority by virtue of s.19B(5)(c) of the Act was untenable. The Authority was not required to examine each condition in the permit with a view to ascertaining whether or not it was invalid and, if invalid, whether the conditions were severable. The Authority was entitled to rely on the legitimacy and regularity of the permit issued.*
 - (h) *The Works Approval was not invalid or void by reason of allegedly, ultra vires conditions. Nor was the Permit vague and uncertain. Nor did the Permit fail to comply with s.19CA(3) as the requisite expiry date could be ascertained from the relevant conditions.*
2. *An appeal pursuant to s.33B is limited in scope by ss.(1) and (2). In considering these sub-sections, the Tribunal must be satisfied:*
- (a) *That the discharge etc must be under the provisions of the works approval or licence ie in conformity with the same. While a discharge not in accordance with the works approval may amount to the commission of an offence under the Act, that is not a matter which can be relied on by an objector under s.33B(2).*
 - (b) *That the discharge etc must be one which “will” not “may” unreasonably and adversely affect the interests whether wholly or partly of that person.*
 - (c) *That there must be a causal connection between the consequence or effect complained of and the discharge of waste under the provisions of the works approval.*
 - (d) *That, likewise, under (b) there must be a causal link between the discharge under the provisions of the works approval and the pollution caused.*
- Statement of principle in McKinlay v EPA & Shire of Flinders (Administrative Appeals Tribunal, August 21, 1986, unreported), applied.*
3. *On the basis of the evidence adduced before the Tribunal, the Appellant did not satisfy the provisions of s.33B(2)(a) that the discharge, emission or deposit of waste under the provision of the works approval would unreasonably and adversely affect the interests, whether wholly or partly, of the Appellant.*
4. *The relevant conditions of the Works Approval meant that the proposal complied with the relevant provisions of the State Environment Protection Policy. Accordingly, the ground of appeal based on s.33B(2)(b) also failed.*

Appeal Site: Kooweerup Road, Pakenham

Mr R Gillard QC with Mr T S Falkiner of Counsel, instructed by Arnold Bloch Leibler & Co, Solicitors, appeared on behalf of the Appellant/Objector.

Mr C J Canavan QC with Mr J Gobbo of Counsel, instructed by Arthur Phillips

& Just, Solicitors, appeared on behalf of the Respondent/Applicant.

Mr D Mitchell, Solicitor of the Office of Mr P Merrylees, appeared on behalf of the Environment Protection Authority on 20, 21 and 22 March 1989 and Mr P Bechervaise, Solicitor of that office, appeared on behalf of the Authority on 27 and 28 April, 1989.

Determination and Reasons for Determination

This was an appeal by 58th Colro Pty Ltd against a decision by the Environment Protection Authority to grant a Works Approval for the construction of a Rendering Plant at Kooweerup Road, Pakenham.

The site comprises portion of Crown Allotment 60, Parish of Nar Nar Goon and is located on the west side of the Healesville-Kooweerup Road some 3 kms south of Pakenham. It is approximately 48 ha in area and trapezoidal in shape, having a narrow frontage to the Healesville-Kooweerup Road of some 30 metres, a depth of 1400 metres and a width of approximately 530 metres at its rear boundary. The northern boundary runs at an angle in a north-easterly direction following the alignment of the northern contour drain in Pakenham South. The site is flat. A long landscaped driveway runs along the south boundary of the site leading to the existing export abattoir which is set in landscaped surrounds approximately 6-700 metres back from the road alignment. The abattoir comprises large industrial style buildings, boning room and freezing works, administrative offices, workers amenities, holding yards and car parking areas.

Immediately to the north of the site lies the Pakenham Water Board's Wastewater Control Centre which is a regional sewage disposal works on a site of a similar size to the abattoir site and bounded on the south by the northern contour drain and on its north by a major SEC Main Transmission Line Easement. Surrounding the site on its eastern, western and southern sides are large tracts of rural land used for grazing purposes. Further to the north, on the same side of the Healesville-Kooweerup Road is an Offensive Industrial Zone. Generally, development in the area is of low density, very few farm houses being within a 1 to 2 km radius of the site. The nearest dwelling is 800 metres from the site.

The export abattoir conducted by G & K O'Connor Pty Ltd is a modern works which has a killing capacity of 700 head of cattle per day. This is now the largest abattoir in Australia which does not have an on-site rendering plant to process its animal by-products. Large quantities of such are produced in the operation of the export abattoir. The plant is expected to process approximately 200 tonnes of mixed abattoir materials, 50 tonnes of soft fats and 20 tonnes of blood each day. The abattoir will contribute approximately 40% of the mixed abattoir material, 60% of soft fats and 100% of the blood. The balance of the raw material will be obtained from selected sources within a 100 km radius of the site.

The rendering works, to be contained in a building some 60 metres long by 25 metres wide, will sit to the rear of the amenities building some 9 metres from the southern boundary of the property. It will have precast concrete wall panels and colourbond metal roof sheeting. The maximum wall height is 8.5 metres and the maximum roof height is 12 metres.

The core of the plant will be a Stord Bartz low-temperature rendering system. Stord Bartz is a Norwegian company which has over the years produced equipment for the rendering of fishmeal and the fishmeal industry. The system has in recent years been applied to the rendering of red meat.

The proposed plant will also include two other process streams namely a "soft

fats" line which will produce high quality fat from selected fat trimmings and a blood handling system which will be integrated with the Stord Bartz meatmeal drying system. Products to be produced at the plant include industrial fat, tallow, meatmeal and bonemeal.

It is convenient to set out the processes involved in the proposed plant in the words of Dr Bellair as follows:

Raw Material Reception. Raw material will be tipped into one of two raw material bins. The raw material is then conveyed to a prebreaker where the material is crushed.

Preheating. The crushed raw material will be fed to a continuous preheater where it is held at 80 to 90 C for approximately 30 minutes. The preheater is a fully enclosed Stord Bartz disc-type heater.

Pressing. The material from the preheater will be continuously discharged to the twin screw press, where the liquids are expelled leaving a cake with a moisture content of 45 to 55 per cent. The liquid phase, consisting of fat, water and some fines, is pumped to the press-liquid tank, while the press cake is continuously conveyed to the Rotadisc drier.

The Stord Bartz Twin Screw Press is a low speed, low pressure machine which has two counter rotating screws and it is totally enclosed.

Meal Drying. The de-fatted and dewatered solids from the press will be dried in a Stord Bartz Rotadisc Drier. This drier is a disc type unit with steam-heated discs attached to a rotating shaft.

The drier is totally enclosed and the vapor will be collected and fed to a heat recovery unit and subsequently to the boilers for fume incineration.

Meal Plant. The meal plant, which is located within the building, consists of a mill, bins for ground and unground meal, and associated conveyors.

Decantation. The liquid from the press is conveyed via a press-liquid tank to a decanter. The decanter separates the majority of the remaining solids from the liquid phase. These solids are added to the presscake, while the liquid passes via a tank to the separator.

Separation. The separators separate the liquid into two phases, comprising tallow and an aqueous phase (stickwater). The refined tallow is pumped to a bulk storage tank.

Blood System. Blood from the O'Connor abattoir will be pumped to a storage tank in the rendering plant before coagulation by direct steam injection in a completely enclosed unit.

The coagulated blood will be fed directly into a centrifugal decanter, which separates the serum from the coagulated solids. The decanted solids are blended in the feed conveyor with the press solids derived from the main mixed abattoir material stream. The serum water forms part of the wastewater stream.

Soft Fats System. Selected soft fats will be conveyed from the soft fats hopper to a mincer and then to a heater, where the fat is simply liquified before passing to the decanter, which separates solids and liquids. The solids are blended with the press solids and coagulated blood. The aqueous (stickwater) phase is removed in the separator and combined with stickwater from the main mixed abattoir material process stream and conveyed to the evaporator for recovery of proteinaceous material. The lipid phase from the separator is piped to the technical fat storage tank.

Waste Heat Evaporator. The evaporator will be a Stord Bartz single-stage unit with an evaporative capacity of 4,400 kg/h. It will use waste heat from the

drier exhaust and operate under partial vacuum in order to boil the stickwater at a temperature of approximately 60C. Non-condensable gases in the drier exhaust stream will be incinerated, while the condensate forms part of the wastewater stream.

Concentrated stickwater from the evaporator will be further concentrated in a Stord Bartz finisher to achieve a total solids content of 30 to 40 per cent. This recovered protein concentrate is combined with the main solids stream and dried in the rotadisc drier.

Condenser. Vapor produced by evaporation of the stickwater in the evaporator will be ducted to a Stord Bartz condenser with a capacity of 4,500 kg of vapor per hour. Cooling will be provided by cold water and the hot water produced will be used in the abattoir.

Boilers/Fume Incinerators. Steam will be provided for the rendering plant by two 4 MW gas-fired boilers located in the western end of the building. One of these boilers will be equipped with a special burner to allow odorous gases to be incinerated at 760C."

It is also convenient to set out in summary form the pollution control facilities proposed, as set out in the evidence of Dr Bellair. It is noted that no solid wastes will be produced by the plant as all solids are sold as meal or bonemeal.

"Liquid Wastes. Wastewater from the existing operations at the O'Connor site are conveyed to the Pakenham Water Board's sewage treatment works, following on-site pretreatment consisting of shaker screens and aerated lagoons. The Pakenham Water Board has given its agreement in principle to accept the increased wastewater load attributable to the rendering plant.

A system of floor drains and bunds will be provided in the rendering plant to ensure that no contaminated water from within the building or deodorizer plant area can enter the stormwater drainage system. A bund will also be installed around the acid and alkali storage areas with sufficient capacity to contain any spills. All plant washdown water will be piped to the sewerage treatment works after processing in O'Connors' existing effluent pretreatment plant; solids collected on the shaker screens will be returned to the mixed abattoir material raw material bin at the rendering plant for processing.

Process wastewater consisting of condensate from the evaporator/condensor system and serum water will be piped directly to the sewerage treatment works and discharged into the lagoon through a sub-surface outlet to provide rapid dilution in an oxygen-rich environment and avoid the release of odours from the waste stream.

Gaseous Emissions. Discharges to atmosphere from the rendering plant will be restricted to three sources: (1) the boilers; (2) the foul-air scrubber; and (3) the ventilation outlet.

Boilers/Fume Incinerators. Each of the two 4 MW natural gas-fired boilers will be served by a separate 18m high stack. One of the boilers will be modified to serve as fume incinerators for the non-condensable gases collected from the evaporator and condenser, after passage through a droplet eliminator. This boiler will be equipped with a special burner to allow the non-condensable gases to be introduced through the centre of the burner with the combustion air, while suitable conditions for odour destruction (760C with a detention time of at least 0.5 seconds) will be maintained in the firebox.

Foul Air Scrubber. A two-stage Stord Bartz scrubber with a capacity of 10,200 m³/h will be used to deodorize foul air ducted from 14 point items of equipment

within the rendering plant. These points include tanks, conveyors, the preheater, decanters, separators and the press.

The scrubber system will consist of two main items of equipment: (1) a venturi scrubber, which will remove any residual particulates and cool the gas stream; and (2) a two-stage counter-current scrubber providing for gas phase chlorine injection, followed by wet scrubbing with a dilute sodium hydroxide solution, and mist elimination. Dosing of chlorine will be controlled by a conventional air-operated injector system, in which the chlorine supply is always under vacuum, thus ensuring that there can be no accidental releases of chlorine. Automatic control systems will be used to maintain the pH of the caustic solution above pH12 and ensure a constant volume of scrubbing solution.

Deodorized air will be discharged from the scrubber through a 0.5m bore fibre-reinforced plastic stack terminating 18m above ground.

Ventilation Air Discharge. All ventilation air from within the plant building will be discharged to atmosphere through a single stack terminating 3m above the ridge level. Provision will be made for these emissions to be ducted to an odour control device should this prove necessary in the future. However, this is considered to be most unlikely because of the relatively low odour from Stord Bartz Low Temperature Rendering plants handling good quality material and the efficient foul air collection system discussed above."

The history of this matter is as follows:

1. On 31 March 1988 the Environment Protection Authority received a works approval application from the Applicant for the construction of a rendering plant. In the application the information pertaining to the registered office/principal office in Victoria/address for service of notices/name and address of public officer was filled in as follows:

"KooWeeRup Road, Pakenham, Victoria

Kevin O'Connor, KooWeeRup Road, Pakenham, Victoria

Public Officer

Postcode 3810"

The address of the site from which the discharge was proposed was stated to be: "Title - Reg Vol 8913 Fol 357 KooWeeRup Road, Pakenham, Crown Allotment 60, Nar Nar Goon, City of Mornington."

The reference to the City of Mornington is, of course, an error. Nar Nar Goon is the name of a Parish and Mornington is the name of a County in which the land at KooWeeRup Road, Pakenham, is situated.

The application was accompanied by the following documents:

- (i) cheque for the application fee;
- (ii) copy of the Applicant's Certificate of Incorporation;
- (iii) a site plan showing the location of the proposed rendering plant;
- (iv) a document dated 31 March 1988 prepared by Consulting Environmental Engineers and entitled "Supplementary Information".
- (v) specifications for the rendering, evaporating and deodorizing plants together with mass balance calculations and process control schedules. These were supplied on the basis that they were confidential and not to be made available to any other parties without the consent of the applicant.

The letter from Consulting Environmental Engineers noted that various engineering drawings and architectural drawings had been supplied, also on a confidential basis, to the Dandenong Office of the Environment Protection

Authority on 29 March, 1988.

2. Under cover of a letter from Consulting Environmental Engineers dated 8 April 1988 the Environment Protection Authority received further confidential information concerning a proposed scrubbing system manufactured by Transfield Pty Ltd. The proposal to use Transfield scrubbing equipment was subsequently abandoned by the applicant in favour of another system designed and manufactured by Stord Bartz.
3. Following a request to Consulting Environmental Engineers for information on zoning and existing land uses the Environment Protection Authority received under cover of a letter dated 14 April 1988 a copy of a submission prepared by Mr David Whitney, Town Planning Consultant.
4. By letter dated 20 April 1988 to the Applicant the Environment Protection Authority stated that the following further information was required before the application for works approval would be accepted namely:
 - (i) an additional \$469.00 for the application fee
 - (ii) details of raw material storage durations prior to handling
 - (iii) stabilization details of raw materials
 - (iv) details of raw material receipts - age, etc.
 - (v) wet scrubbing system design details showing odour reduction calculations, etc.
 - (vi) design details for the process air extraction system
 - (vii) design details for the general workplace ventilation system detailing discharge points, volumes, etc.
 - (viii) design details for the milled meal bagging and handling system and tallow fat storage
 - (ix) instrumentation diagrams indicating all measurement, recording and interlocked equipment
 - (x) design details of expected water quality and quantity entering the wastewater stream from all washdown points.

The information requested, amounting to 10 pages, was received by the Authority on 11 May 1988.

In view of the fact that it was proposed to use only fresh material, slaughtered not more than twelve hours previously, information relating to stabilization details of raw materials was no longer insisted on. Design details of the wet scrubbing system as required by Item 5 was subsequently required by Condition 25 of the works approval to be provided at least one month prior to commencement of construction.

5. Under cover of a letter from Consulting Environmental Engineers dated 12 May 1988, the Environment Protection Authority received a document entitled "Application for Works Approval for Low Temperature Rendering Plant, Pakenham, Supplementary Information March 1988". This was an updated and expanded version of the similar document dated 31 March 1988 lodged with the application. It is divided into five sections which describe the proposal in terms of its location, raw materials, processes and equipment, pollution control facilities and results of plume dispersion modelling. It contains 11 pages.
6. The application was accepted as complete by the Environment Protection Authority on 11 May 1988, after receipt of the information required by the Authority by letter dated 20 April 1988.
7. On 14 May 1988 the application was advertised in the Age newspaper. However,

the advertisement contained an error in that it stated that copies of the relevant documents might be viewed and copied at the Geelong Office of the Environment Protection Authority. On 21 May 1988 the application was again advertised in the Age newspaper. On this occasion the advertisement stated that copies of the development documents could be viewed and copied at the EPA head office at Collins Street, Melbourne.

8. By letter dated 17 May 1988 a number of documents were referred to the Health Department of Victoria, the Dangerous Goods Branch Department of Labour, the Groundwater Branch of the Department of Industry Technology and Resources and the Shire of Pakenham. The documents so referred were:
 - (i) a copy of the application dated 30 May 1988
 - (ii) a copy of the site plan
 - (iii) a copy of the revised Supplementary Information report by Consulting Environmental Engineers dated March 1988. The same documents were subsequently provided to the Pakenham Waterboard.

The Health Department had no comment to make on the application, the Dangerous Goods Branch of the Department of Labour had no objection to the application, the Groundwater Branch of the Department of Industry, Technology and Resources commented on the on-site pretreatment of liquid waste in aerated lagoons and the Shire of Pakenham by letter dated 22 July 1988 to the Environment Protection Authority advised that permit No 4147H under the *Planning and Environment Act* 1987 had been issued for the proposed works on 10 June 1988 at the direction of the Administrative Appeals Tribunal. The Shire stated it had no objection to the grant of the works approval subject to the conditions applied being not less in strength than those applied on the Town Planning permit.

The Pakenham Water Board first gave approval in principle then subsequently withdrew its previous approval in principle and finally reinstated the approval.

9. By letter dated 10 June 1988, Underwood & Hume Pty Ltd, Town Planning Consultants objected to the works approval application on behalf of the appellant. No other written comments or objections were received in response to the public advertisement.
10. A conference was convened pursuant to Section 20B of the *Environment Protection Act* on 8 July 1988 at the Dandenong Office of the Authority.
11. On 2 September 1988 works approval No WA 488/6 was issued by the Environment Protection Authority to the applicant.

The Works Approval and the accompanying proposed licence conditions are most comprehensive documents, as one might expect having regard to the estimated cost of the works which were in excess of \$6 million. The Works Approval contained some 58 conditions and the proposed licence contained 39 conditions and four schedules. Schedule D contains three conditions with numerous sub-conditions, all dealing with monitoring.

The relevant conditions for present purposes contained in the Works Approval are as follows:

1. The works as specified in the works approval and the plans and specifications supplied as part of the application shall not be altered or modified (whether or not to comply with any statute, statutory rule or by-law or for any reason), without the written consent of the Environment Protection Authority.
2. The occupier shall notify the Authority in writing when the works are completed so that an inspection of the finished works may be made before a licence

to discharge waste is issued. The proposal licence conditions are attached to this works approval.

4. The works shall be constructed in accordance with the works approval application dated 30 March 1988, except in the event of any inconsistency arising between the application and the conditions of this works approval, the conditions of this works approval shall apply.
5. The occupier shall make provisions so that the works are maintained and operated at a standard which prevents:
 - (a) visible emissions (except water vapor);
 - (b) odours being discharged from the site described in the annexed block plan which might reasonably be expected to be offensive to the senses of human beings; and
 - (c) particulate matter being discharged from the site described in the annexed block plan which might reasonably be expected to be detrimental to any beneficial use of the environment.
11. The occupier shall design and construct all material transfer operations so that material transfers are carried out in enclosed conveyors except in the raw material area.
14. The occupier shall submit to the Environment Protection Authority for approval a report detailing the steps to be taken which will prevent the production of odours or a health problem to any beneficial user of the environment in the event of a major equipment failure. This report is to be submitted to the Authority two months prior to plant commissioning and should consider methods of material stabilisation. No handling of putrescible matter may be carried out on site until the methods outlined in the report have been approved in writing by the Environment Protection Authority.
16. The occupier shall design and construct the raw material receipt area to be within an enclosed building. The vehicle unloading operation shall be wholly contained within that building.
17. The occupier shall design and construct the building air extraction system so that all ventilation air is discharged via a single stack.
18. The occupier shall design and construct the air ventilation system to operate at a rate no less than 10 buildings air changes per hour.
21. The occupier shall design and construct an odour control system consisting of a venturi scrubber, chlorine gas injection equipment and a sodium hydroxide packed tower to treat all gaseous emission from the following plant items:
 - (a) the mixed abattoir material pre-heater;
 - (b) the Stord Bartz Low Temperature Rendering System drainer screw conveyor;
 - (c) the twin screw press;
 - (d) the Stord Bartz Low Temperature Rendering System press cake discharge conveyor;
 - (e) the Stord Bartz Low Temperature Rendering System separator feed tank;
 - (f) the Stord Bartz Low Temperature Rendering System decanter feed tank;
 - (g) the blood decanter tank;
 - (h) the Stord Bartz Low Temperature Rendering System pressed cake screw conveyor;
 - (i) the soft fats melt vessel;
 - (j) the soft fats decanter solids conveyor;
 - (k) the soft fats decanter liquid tank;
 - (l) the Stord Bartz Low Temperature Rendering System bulk tallow tank;

- (m) the Stord Bartz Low Temperature Rendering System drier include feed conveyor; and
 - (n) the soft fats bulk tallow tank.
22. The occupier shall design and construct an odour control system consisting of equipment to incinerate at a temperature of at least 760 degrees Celsius for a period of at least 0.5 seconds all gaseous emissions from the evaporator and condensor systems.
 23. The occupier shall design and construct the odour control system referred to in condition numbers 21 and 22 to discharge odour at a maximum level of 200 odour units from each discharge point.
 24. The occupier shall design and install a ventilation system which includes hooding and gaseous transfer equipment to capture and transport all gaseous emissions from the plant equipment referred to in condition numbers 21 and 22 of this works approval to the respective odour control systems.
 25. The occupier shall submit complete plans and specifications of the odour control systems referred to in condition number 21 of this works approval for approval by the Environment Protection Authority at least one month prior to the commencement of construction of the proposed plant.
 29. The occupier shall design and install a standby scrubber recirculation pump of equivalent capacity so it can replace the operation of the scrubber recirculation pump of the odour control system referred to in condition number 21 in the event of pump failure.
 39. The occupier shall submit complete plans and specifications of the odour control equipment referred to in condition number 22 for approval by the Environment Protection Authority at least one month prior to the commencement of construction of the proposed plant. The plans shall include drawing of the combustion equipment and the ductwork necessary to convey wastes from each source to the combustion equipment. The specifications shall include calculations of the ductwork sizing, combustion equipment energy balance and effluent retention time and stack efflux velocity.
 45. The occupier shall design and construct the washwater primary solids separation system so that odorous emissions from this system are minimized.
 47. The occupier shall design and construct the wastewater discharge to the Pakenham Water Board from the venturi scrubber of the odour control system referred to in condition number 21 in such a manner that no gaseous emissions are discharged to the environment.
 48. The occupier shall design and construct the spent liquor flow from the packed tower of the odour control system referred to in condition 21 to discharge via an enclosed drain directly to the Pakenham Water Board or the on-site wastewater treatment plant.
 49. The occupier shall design and construct plant equipment which allows all process wastewater to be collected and transferred to the Pakenham Water Board facility by methods which restrict gaseous emissions to the atmosphere.
 50. The occupier shall submit a report to the Environment Protection Authority detailing the process wastewater system referred to in condition number 49 one month prior to commencement of work on the plant.
 53. The occupier shall design and construct an impermeable bund to fully contain any spillage from the odour control system referred to in condition number 21.

The proposed discharge licence conditions as contained in Schedule B contained

the following:

5. No odours shall be discharged from the site described in the Block Plan in Schedule E which might reasonably be expected to be offensive to the senses of human beings in a residential area or in a public space adjacent to a residential area.
7. No unstabilised animal matter of age greater than 12 hours since slaughter shall be processed or stored on site without the prior approval of the Environment Protection Authority. Approval may be obtained by phoning the Dandenong Regional Office of the Environment Protection Authority.
8. All raw material receipt operations shall be performed within the enclosed building which houses the raw material bins.
9. At all times except during vehicle movement in or out of the building the vehicle access doors to the raw material receiving area shall remain closed.

Schedule C of the proposed waste discharge licence contains various conditions some of which mirror conditions contained in the works approval. For example Condition 8 mirrors works approval Condition 21, Condition 9 mirrors works approval Condition 23 and Condition 11 mirrors works approval Condition 22.

The following provisions of the *Environment Protection Act* 1970 (as amended) are, inter alia, relevant.

The Tribunal then set down the provisions of Sections 5(1), 13(1), 19A(1), 19(B), 20((1), 20(C) and 21 of the Act and continued:

On the hearing Mr R Gillard QC with Mr T S Falkiner of Counsel appeared on behalf of the Appellant/Objector and Mr C J Canavan QC with Mr J Gobbo of Counsel appeared on behalf of the Respondent/Applicant. On 20, 21 and 22 March, 1989 Mr D Mitchell, Solicitor, appeared on behalf of the Environment Protection Authority and on 27 and 28 April, 1989 Mr B Bechervaise, Solicitor, appeared on behalf of that Authority. Written submissions were presented to the Tribunal on behalf of each of the parties. It is unnecessary to refer to these in detail. Mr Gillard called to give evidence Mr M Lyons, and Environmental Chemist and Dr P Nadebaum, an Environmental Consultant. Mr Mitchell called Mr P A Davern, an officer of the Authority. Mr Canavan called Dr J T Bellair, an Environmental Consultant.

The subject premises are schedule 1 premises. "Works Approval" is defined by Section 4 of the Act as follows:

" 'Works Approval' means an approval of works issued under Section 19B".

A good deal of time was spent at the hearing on the meaning of Section 19B(1)(c). However, in our opinion the meaning is clear. We have already referred to the terms of Section 13 which details the powers, duties and functions of the Environment Protection Authority. Suffice it to say that they are very wide. Indeed, some years ago when the Act was in a more primitive form, they were described as "draconian". Of the approach to be adopted by the Authority there is no doubt. The Act is concerned with an unqualified protection of the environment.

We turn now to the provisions of Section 19B. Section 19B(1)(a) and (1)(b), while important to an applicant, are not for present purposes relevant. Section 19B(1)(c) provides:

"(1) An application for a works approval shall be -

- (c) accompanied by such plans, specifications and other information and a summary thereof as may be required by the Authority within 21 days of receiving the initial application."

The words of this sub-section seem to us to be unequivocal. We have already set out Section 13 of the Act. The Environment Protection Authority is constituted

as the expert body to deal with pollution. It seems obvious that when an application is received it will be referred to a person having specialized expert knowledge. The nature of the permission sought will obviously mean a great deal. For example, in relation to an application for a rendering plant one does not need to be a scientific expert to know that the nature of the material to be rendered is of great importance. A beast which has been dead for a number of days in a paddock emits unpleasant odours. It emits equally unpleasant odours while being rendered. Yet, such beasts are rendered at some rendering plants (although that is not the present proposal). The above is just an example. Examples could be multiplied. Other relevant facts will include the size of the operation, the distance of the plant from human habitation, the town planning zoning etc. It must be assumed that a scientist can look at an application for a rendering plant and pick out the relevant considerations to which attention must be paid in the circumstances of the application. Under Section 19B(1)(c) the Authority has 21 days after receiving the initial application to require "such plans, specifications and other information and the summary thereof, to be lodged". No time is specified by the Act for the production of such information. It is not difficult to see the reason for this. In some cases where it is necessary to make enquiries overseas as to, for example, the performance of certain equipment, it could be a lengthy period.

Section 19B(2) forbids the Authority from dealing with an application which does not comply with Section 19B(1). This simply means, in our opinion, that in relation to the relevant Section 19B(1)(c) that the application is not accompanied by the required documentation.

Section 19B(3)(a) provides:

"(3) The Authority shall upon receiving an application for works approval -

- (a) refer a copy of the application and a copy or summary of the accompanying plans, specifications and other information to
 - (i) any protection agency which the Authority considers may be directly affected by the application; and
 - (ii) the Chief General Manager of the Department of Health; and
 - (iii) any responsible authority under the *Planning and Environment Act* 1987 administering a planning scheme applying to the land for which the application for works approval is made;"

We think that the words "upon receiving an application" mean "upon receiving an application which in the opinion of the Authority complies with sub-section (1)". If it does not comply the Authority is forbidden to deal with it under sub-section (2). An application which did not comply with sub-section (1) might fail to comply because it was not accompanied by any plans, specifications or summary. It would be pointless to refer such to a referral authority. The point of referral is to put the referral authority on notice. Under sub-section (3)(a) all that the Authority is required to do is to refer a copy of the application "and a copy or summary of the accompanying plans specifications and other information". Provided a summary is provided that is sufficient.

Sub-section (3)(b) deals with advertising.

Sub-section (3)(b)(ii) deals with a specification of the place or places at which documents may be examined. Such documents are a copy *or* a summary of the application and a copy *or* summary of the accompanying plans, specifications and other information.

Sub-section (3)(b)(iii) enables a person upon payment of the prescribed fee to receive from the Authority "a summary of the application and the accompanying

plans and specifications and other information". It seems to us that all that an interested person is entitled to receive is a summary and not copies of the accompanying plans, specifications and other information.

Sub-section (4A)(a) casts a duty on a responsible authority to which a copy of an application for a works approval has been referred to inform the Authority of certain matters, namely whether the proposed works are allowed by the planning scheme with or without conditions, whether a permit is required under the *Planning and Environment Act*, whether a permit has been issued under the *Planning and Environment Act*, whether the Responsible Authority is considering an application for a permit under the *Planning and Environment Act* and whether the proposed works are prohibited by the planning scheme.

Sub-section (4B) requires the responsible authority to give to the Authority a copy of any permit issued under the *Planning and Environment Act* 1987 for the proposed works.

Sub-section (5)(c) requires the Authority to refuse to issue a works approval if the proposed works are prohibited by a planning scheme.

It seems to us that prohibited in this context bears its ordinary meaning namely not permitted under the planning scheme. This is made clear by the various alternatives specified in sub-section (4A) one of which is that the proposed works are prohibited.

Sub-section (7A) provides that if a planning scheme requires a permit to be obtained under the *Planning and Environment Act* 1987 for the proposed works and if a permit has not been issued, any works approval issued by the Authority for the proposed works must be issued subject to a condition that the approval does not take effect until it is endorsed by the Responsible Authority administering the planning scheme to the effect that a permit has been issued under the scheme which will allow the proposed works to be constructed.

Sub-section (7B) provides that any works approval issued in breach of sub-section (5)(c) or (7A) is void.

One of the bases on which sub-section (7A) depends is that a permit has not been issued. In the present case it was contended on behalf of the Objector that the permit which was issued at the direction of the Administrative Appeals Tribunal contained a number of conditions which were ultra vires and these were inseverable from the remaining conditions and that therefore the permit was void. Accordingly, it was said, that the works approval was also void in that it was not subject to the condition specified in sub-section (7A).

We do not think that the argument is tenable. In our opinion the Authority was not required to examine each condition in the permit with a view to ascertaining whether it was invalid or not and, if invalid, whether the conditions were severable. That is not its function. It was entitled to rely on the maxim "Omnia Praesumuntur Rite Esse Acta". It is noted in passing that the permit was issued at the direction of the Administrative Appeals Tribunal after a two day hearing in which the present Objector was represented by Counsel. The appeal arose out of a determination to grant. The Presiding Senior Member was a lawyer. There is no suggestion in the written decision dated 29 April 1988 that a challenge was made to any of the conditions proposed by the Responsible Authority.

In considering whether the Authority acted properly in treating the application as complying with Section 19B(1) on 11 May 1988 much must depend on the information contained in the document compiled by Consulting Environmental Engineers headed "Supplementary Information" and dated March 1988 which was

received by the Authority under cover of a letter dated 12 May 1988. This superseded the document headed "Supplementary Information" dated 31 March 1988.

According to the Authority the revision was necessitated by a modification made by the Applicant to the odour control system at the suggestion of Authority officers. In the report dated 31 March 1988, it was proposed to direct both low and high intensity odours to a chemical wet scrubber. High intensity odours are capable of overloading such a scrubber and thereby degrading its stability to strip out odours from gases. The proposal contained in the supplement of March 1988 is different in that high intensity odours will be incinerated in two boilers used to generate steam and hot water.

The supplement dated March 1988 is divided into five sections:

1. Location of proposed plant.
2. Raw materials to be used.
3. Processes and equipment. This describes in some detail the process to be undertaken, the equipment to be used; and the various waste streams. A Flow Chart depicting all this is attached. Sections are included on raw material reception, preheating, pressing, meal drying, meal plant, decantation, separation, blood system, soft fats system, waste heat evaporator and steam raising plant.
4. Pollution control facilities with sections on liquid wastes, gaseous wastes, odour control equipment, emissions from boilers, emissions from scrubber system and operations and maintenance.
5. Plume dispersion modelling.

Having read the Supplement dated March 1988, it seems to us that it is an adequate summary of the whole proposed operation. Any reasonable person reading it would be left in no doubt of the goals sought to be attained or the means proposed to attain them. In short the supplement is an admirable over-view of the whole proposed operation.

On 16 December, 1988 the Tribunal directed that the Appellant/Objector give notice of the legal grounds on which it intended to rely at the hearing. We shall now briefly deal with these which were the subject of considerable elaboration by Mr R Gillard QC on the hearing.

1. The application for works approval was required to be in compliance with Section 19B(1) of the *Environment Protection Act* 1970 and was not in compliance with these requirements.
 - (b) The application was required to be made in a form which gave the proper address of the site on which the discharge was proposed but this requirement was not met having regard to the assertion in the application that the site was within the City of Mornington.
 - (c) The application was not accompanied by sufficient information to enable the authority to properly assess whether or not approval should be given; as a consequence the application was not in accordance with the requirements of Section 19B(1).

In regard to (b) we have already dealt with the form of the application. It is quite obvious that the City of Mornington is an error and should read "County of Mornington". Having regard to the whole of the form of application we do not think that any potential objector would be likely to be misled in any way as to the locality of the proposed discharge. We regard this objection as trivial. In relation to (c) while it is clear that the initial application was not accompanied by sufficient information to enable the Authority to properly assess whether or not approval should be given it seems to us that with the

production of the additional information sought by the Authority and the production of the supplementary information dated March 1988 there was sufficient information on which the Authority might proceed.

2. The Authority failed to refer copies of the accompanying plans and specifications and other information submitted to it, a summary of the accompanying plans, specifications and other information submitted to it, to the Chief General Manager of the Department of Health and/or the Shire of Pakenham.

The Authority in fact referred to the two referral authorities a copy of the application, a copy of the site plan and a copy of the document entitled "Supplementary Information - March 1988".

It seems to us that the document entitled "Supplementary Information - March 1988" is a convenient summary of the application and in general of the operation proposed. All that the Authority was required to refer was a copy of the application and a copy or summary of the accompanying plans specifications and other information. We think that it did this. It must be remembered that the purpose of Section 19B(3) is to alert the referral authority to what is proposed etc. It is not to constitute the referred authority as a mini EPA.

3. The Authority failed to comply with Section 19B(3)(b) of the *Planning and Environment Act* 1970 in that it did not publish in a newspaper circulating generally throughout Victoria notice in relation to the application for works approval which was in accordance with the Statutory requirements.

The objections were that the first advertisement, already referred to, in which reference was made to the Government Offices at Geelong was defective, the fact that the second advertisement described the site of the proposed works as Kooweerup Road, Pakenham, Crown Lot 60, Nar Nar Goon, Mornington, and the fact that the advertisement stated that interested parties might within 21 days of the date of the advertisement comment in writing on the application, whereas the requirement was to publish notice that any person or body interested to the application might comment in writing on the application.

There is no doubt that the first advertisement was defective. However, we can see no reason why the second advertisement was defective. As already stated it seems to us that no person would be likely to be misled by the reference to Mornington having regard to what was earlier stated namely Kooweerup Road, Pakenham. Nar Nar Goon is, of course, the name of a Parish and Mornington is the name of a County. The other objection relating to "interested parties" being able to comment rather than "any person or body interested in the application", we regard as merely pettifogging.

4. The Authority failed to comply with the provisions of Section 19B(3)(b)(iii) in that on 17 May 1988 when requested to do so by an agent of the Appellant and upon payment of a fee of \$5.75 it failed to provide a summary of the application and the accompanying plans, specifications and other information, providing in lieu the documents submitted to the Authority by the Applicant dated 30 March 1988.

According to the Authority the documents provided were a copy of the application, a copy of the site plan and a copy of the document entitled "Supplementary Information - March 1988". We accept this assertion by the Authority.

It seems to us that all that was required to be provided was a summary of the accompanying plans, etc and that this was provided.

5. The provisions of Section 19B(3A) of the *Environment Protection Act* 1970

were not complied with in that the Shire of Pakenham did not make a copy of the application and a copy of all accompanying documents available at its office for any person to inspect free of charge as it was never given a copy of all accompanying documents which formed part of the application which was accepted by the Authority on 11 May 1988.

According to the Environment Protection Authority the documents provided to the Shire of Pakenham were as set out above namely a copy of the application, a copy of the site plan and a copy of the summary. Whether such documents were made available at its office by the Shire of Pakenham is a matter on which there is no information. The Shire of Pakenham was not a party to the proceedings.

6. The Authority was bound to refuse to issue a Works Approval. It had no jurisdiction to issue a works approval, by virtue of Section 19B(5)(c) of the *Environment Protection Act* as the proposed works are prohibited pursuant to the Pakenham Planning Scheme.

This matter has already been dealt with.

7. The decision of the Authority to issue a Works Approval is invalid as it was made at a time prior to the submission of relevant information to the Authority which was essential information in order to properly assess whether or not Works Approval should be given.

So far as we can see the Authority at the time it issued the Works Approval was in possession of all information necessary in order to properly assess whether or not a Works Approval should be given.

8. The Works Approval issued by the Authority on 2 September 1988 is and was invalid and void.
 - (a) The approval contains conditions namely Conditions 1, 39 and 43, which reserve powers to the Authority to alter the approval or to provide approval in the future without recourse to the Statutory requirements in relation to works approval, including requirements which allow third parties to participate in the process.
 - (b) The Works Approval is vague and uncertain as the plans and specifications referred to in Condition 1, to which the approval is tied, were not provided to the appellant and cannot be ascertained with certainty.
 - (c) Condition 3 of the Works Approval is contrary to Section 19CA(3) of the *Environment Protection Act*.

Condition 1 is the common condition that the works as specified will not be altered or modified without the written consent of the Environment Protection Authority.

Condition 39 provides for the submission of the plans and specification of the odour control equipment for approval by the Authority at least one month prior to the commencement of construction of the proposed plant.

Condition 43 is to the same effect in relation to dust collection equipment.

These conditions do not appear to us to be objectionable. It seems obvious that some approvals must wait until after the grant of a Works Approval. Otherwise an applicant would be put to enormous expense in the preparation of detailed plans for each facet of its proposed development when it might turn out that it did not obtain a Works Approval. There would then be a great wastage of money. We can see no substance in sub-paragraph (b).

In relation to the matter raised under (c) namely that Condition 3 of the Works Approval is contrary to Section 19CA(3) of the *Environment Protection Act*, Condition

3 provides that the Works Approval should expire if the works are –
“19CA(3)

- (a) not commenced to the satisfaction of the Authority by 3 June 1989; and
- (b) are not completed to the satisfaction of the Authority within two years of the date of issue of the Works Approval.”

Under Clause 22 of the permit dated 10 June 1988 it is provided that the permit will expire if the development is not commenced within one year of the date of issue ie. 10 June 1989 or it is not commenced and completed within two years of the date of issue.

Section 19CA(3) provides that “If a permit has been issued for the proposed works under the *Planning and Environment Act* 1987, the Authority must specify an expiry date for the works approval under sub-section (1) which must not be later than the day on which the permit expires for a failure to start the works”.

It appears to us that the provisions of Section 19CA(3) have been complied with. The difficulty arises from the setting back of the time frame due to the planning appeal and this appeal.

While we do not consider that there have been failures on the part of the Authority to comply with the provisions of Section 19B of the Act, nevertheless Mr Gillard QC said that there had been. He also asserted that the section was mandatory and not directory.

A great deal of learning has been directed to the question whether a given provision is mandatory or directory. The matter has been the subject of at least two decisions of the full Supreme Court of Victoria namely *Enders v Rouse* (1885) 11 VLR 827 and *Morton v Hampson* (1962) VR 364. However the Authority which appears to be most in point is *Montreal Street Railway Company v Normandin* (1917) AC 170, a decision of the Privy Council. Their lordships said at page 175 –

“When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those trusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, neglect of them, although punishable, not affecting the validity of the acts done”.

It is unnecessary to set out again the provisions of Section 19B. Suffice it to say that the only input required from an applicant is pursuant to Section 19B(1). Thereafter the matter is entirely in the hands of the Authority. However, in our opinion, the case is not one where it is necessary to resort to characterisation. We think that Section 19B was complied with.

In the light of what we have said above we consider the challenges to the validity of the Works Approval must fail.

We turn now to the merits of this matter.

The first matter to be observed is the provision of Section 33B of the Act. This limits in many respects the right of appeal. It provides:

“(1) Where the Authority or a delegated agency –

- (a) issues a works approval
any person other than the applicant or licence holder who feels aggrieved by the decision of the Authority or a delegated agency may within 21 days of that decision being made appeal against that decision.
- (2) ... an appeal under sub-section (1) shall be based on either or both of the following grounds:

- (a) that the discharge, emission or deposit of waste under the provisions of the works approval or licence will unreasonably and adversely affect the interests, whether wholly or partly of that person;
- (b) that the discharge, emission or deposit of waste under the provisions of the works approval or licence –
 - (i) will be inconsistent with State Environment Protection Policy established for the area in which the discharge, emission or deposit will occur; or
 - (ii) where there is no State Environment Protection Policy for that area, would cause pollution.

In *McKinlay v EPA and Shire of Flinders* (Appeal No E86/0108, 21 August 1986 Messrs Barton, Gould and Buckley), the Planning Appeals Board agreed with the submissions made by Counsel representing the Shire which were:

- “(1) That the discharge etc must be under the provisions of the works approval or licence ie. in conformity with the same. While a discharge not in accordance with the works approval may amount to the commission of an offence under the Act, that is not a matter which can be relied on by an Objector under Section 33B(2).
- (2) That the discharge etc must be one which “will” not “may” unreasonably and adversely affect the interests whether wholly or partly of that person.
- (3) That there must be a causal connection between the consequence or effect complained of and the discharge of waste under the provisions of the works approval.
- (4) That, likewise, under (b) there must be a causal link between the discharge under the provisions of the works approval and the pollution caused.

The Board agrees with the above statements of principle”.

The above reasoning has been followed with approval by different divisions of the Planning Appeals Board. See *Crofton v City of Williamstown and EPA* (Appeal No E85/0473, 30 October 1986 Messrs Molesworth, Kinder and Dr Mainwaring) and *Finch and Others v EPA and City of Sunshine* (Appeal No E86/1826, 23 March 1987 Messrs Barton, Elms and Buckley) and by the Planning Division of the Administrative Appeals Tribunal in *Finch and Mazurek v EPA and Associated Quarries Pty Ltd* (Appeal No E86/1965 21 March 1988 Messrs Barton, Gould and Marsden).

In respect of the merits, evidence was given by Dr P Nadebaum and Mr M Lyons on behalf of the Appellant/Objector, by Mr P A Davern on behalf of the Authority and by Dr J T Bellair on behalf of the Respondent/Applicant.

We may say at once that having observed the various witnesses give their evidence we prefer the evidence of Dr Bellair. Where it is in conflict with the evidence of any other witness we accept it. This is not to say that we regard any other witness as untruthful or unreliable. Mr Davern is an officer of the Authority. The technology proposed is, from the evidence, only approximately five years old and is in its pure form unknown in Australia. We say “in its pure form” because there are a number of abattoirs, some old, which use techniques in association with Stord Bartz techniques. Such old abattoirs use techniques which are a mixture of the old techniques (such as high temperature rendering) and the new. The evidence establishes that the Stord Bartz process is new, at least to Australia. It is understandable that an officer of the Authority should not be completely familiar with the Stord Bartz technology.

We turn now to the evidence of the witnesses which, in chief, was all in writing. It would be tedious to set out the various differences between the evidence of

Mr M Lyons, an Environmental Chemist and Dr B Nadebaum on behalf of the Appellant/Objector and Dr J T Bellair on behalf of the Respondent/Applicant in relation to the use of technology in rendering. Many of the differences were based on the performance of various rendering plants using in part or in whole Stord Bartz technology. They were the AJ Bush plant in Brisbane, the Waitaki International Plant in New Zealand, the Darling-Delaware, Oklahoma Rendering Plant in Oklahoma City, USA and the Peerless Holdings Plant at Laverton, Victoria.

The difficulty about comparing the proposed operation with that conducted in these plants is that due to differences in the age of the raw material used, the proximity of the Stord Bartz equipment to old, high temperature, cookers, and in some cases high temperature processing plant, to name but some differences, there is no basis for comparison. It is notorious that high temperature cookers, and high temperature blood processing are very odorous operations. Having heard and examined the evidence we do not think that the proposed operation could be fairly compared with that conducted in any of the plants referred to. Dr Bellair put the matter in the following way:

"The report (by Dr Nadebaum) suggests that the design of the O'Connor plant is defective, largely because some existing rendering plants generate offsite odours. This ignores the following facts:

- the O'Connor plant will be the most up to date rendering facility in Victoria and probably Australia;
- the plant will employ state of the art process equipment and environmental control technology;
- the plant will only process high quality raw material; and
- the plant is to be located at an abattoir site zoned for rendering and situated in a rural area adjacent to a municipal sewerage treatment plant, where there is only one dwelling within a one kilometre radius of the site (about 800 metres away)."

We conclude that the present proposed operation is, at least in Australia, novel by reason of the application of Stord Bartz technology in a "stand alone" situation. In relation to this Dr Bellair said:

"The SBLTR technology has not been applied previously in Australia in a 'stand alone' situation and represents a major advance over the high temperature equipment used in most batch and continuous rendering operations.

The maximum temperature achieved in the SBLTR process is about 90C (which involves more gentle 'cooking' than that required to prepare stews and soups in the kitchen) and is the key to its ability to produce high quality products without generating significant 'off' odours. The odours produced in processing fresh material are therefore typical cooking-type smells. In contrast, the high temperatures involved in conventional dry rendering, which can reach over 140C in the cookers and 300C in the presses, cause decomposition and burning of fats and proteins to produce the range of unpleasant, highly odorous compounds which made the vapours from this process so offensive.

SBLTR systems also have far fewer potential odour sources and are more reliable in the type of application proposed at the O'Connor site, which significantly reduces the risk of breakdowns and accidental escapes of odours.

The potential for odour generation will be substantially reduced by processing only 'fresh' raw materials. A large proportion of odour complaints involving rendering plants occur when 'old' material, which may have been transported over long distances, is being processed, particularly during hot weather. The

Company will have every incentive to process only fresh material in order to maintain the premium quality and value of its products.

All wastewater generated at the plant will be discharged to the Pakenham sewage treatment works in such a way that odours are not released to atmosphere. The design of the bunding and drainage system will ensure that stormwater is not contaminated with raw materials, process or washdown water, products or reagents.

Fume incineration will be used to treat non-condensable gases from the evaporator and condenser, while foul air from all other potentially significant odour sources within the plant will be deodorized in a two-stage scrubber.

Finally, the proposed rendering plant is in reality a fully enclosed box. The only inputs will be high grade raw materials, clean water, reagents, natural gas and electricity. Apart from the products (tallow, industrial fat and meal), the only outputs will be: (1) gaseous emissions from four discrete stacks; and (2) wastewater which will be piped to the adjacent Pakenham sewage treatment plant. All of these outputs are adequately controlled by the Works Approval and Draft Licence and will not cause a loss of amenity of the surrounding area.

The commissioning of this plant will herald a new era in the processing of animal by-products in Victoria, and is likely to increase pressure on other renderers to improve the environmental performance of their plants."

Before concluding with this aspect of the matter we note that there is a difference between Condition 15 of the Planning Permit and general condition 5 of the Works Approval and Condition 5 in Schedule B of the proposed waste discharge licence. Condition 15 provides that "no odour shall be detectable beyond the boundaries of the site" while Condition 5 provides that "no odour shall be discharged from the site ... which might reasonably be expected to be offensive to the senses of human beings in a residential area or in a public space adjacent to a residential area". There are different criteria prescribed by the two conditions. In these circumstances it will be necessary for the Applicant to comply with the most restrictive condition.

For the reasons previously stated, we do not consider the Appellant/Objector has satisfied the provisions of Section 33B(2)(a).

The other matter relied on by the Appellant/Objector was that there will be non-compliance with Section 33B(2)(b) in that the discharge, emission or deposit of waste under the provisions of the works approval will be inconsistent with the State Environment Protection Policy (The Air Environment). Dr Nadebaum referred to Clauses 8 (protection of beneficial uses), 22 and Schedule F-6 (pollution control requirements), 26 (application of best available control technology), 29 (means of control of diffuse emissions), 42 (the necessity to control the emissions of odorous substances), 43 (encouragement of land use planning, design ground level concentration, buffer zones), Schedule C (calculation of chimney heights in relation to odour levels).

We think it necessary to refer further to Schedule F6 inserted by Gazette No S45 on 6 June 1988 which describes control requirements to be applied to the rendering industry. The following provisions are relevant:

"This section describes control requirements to be applied to the rendering industry. For the purposes of this Section, all rendering plants shall comply with the minimum requirements described in Table 6-1. In addition, those rendering plants that give rise to justified complaints, may be required to meet additional

requirements, on an individual basis, as specified by a Works Approval, licence conditions or a pollution abatement notice.

Table 6-1 Description of Requirements for Rendering Plants:

Processing -

Material to be rendered down shall be processed as soon as possible after slaughter, or death, to reduce the odours caused by decay.

Vapour Control -

(b) All new continuous low temperature plants may be required to enclose raw material hoppers and cooker/dryer equipment.

Odour removal -

The odour level of air discharged to atmosphere shall not exceed 200 odour units. Cooker and pressing vapours having levels higher than 200 odour units will be treated in odour removal equipment comprised of -

- (i) knock out box and condenser - direct or indirect, and
- (ii) fume incinerator or chemical wet scrubber, or
- (iii) other equipment demonstrated to meet the odour emission limit requirements to the satisfaction of the Authority in consultation with the licensee.

Odour removal equipment will operate such that the air discharged to atmosphere does not exceed an odour level of 200 units.

For new plant with separate ventilation air extraction, the odour level in the ventilation air exhaust shall be determined in accordance with the dispersion requirements but shall not exceed 200 odour units. Building ventilation should be designed to bring ventilated air to a single point(s) so that odour removal equipment can be installed if necessary.

Condensate Removal -

Condensate shall be discharged to sewer wherever sewer connection is available. Where lagoon and land disposal is used, it may be necessary to take this additional odour into consideration.

Blood or Feather Drying -

Vapour Control -

(ii) New Plant

All new plants shall totally enclose the dryer equipment such that vapour collection is either separate or integrated with plant ventilation air extraction.

The odour level of the vapour collected shall not exceed 200 odour units."

We have already set out the relevant conditions of the Works Approval. An examination discloses, we think, that they are in compliance with the relevant provisions of the policy. Accordingly the ground based on Section 33B(2)(b) also fails.

In this decision all legal matters have been determined by the Deputy President.

Accordingly the appeal will be disallowed. Acting pursuant to Section 37(a) of the *Environment Protection Act* it is directed that a Works Approval issue subject to all conditions contained in the Works Approval 488/6 issued on 2 September 1988 as subsequently corrected pursuant to Section 19C of the Act.

PDS