

Council loses case it was warned off

BY JOANNE MCCARTHY

PORT Stephens Council has lost the legal case it was warned not to fight because it would lose and leave rate-payers with a multi-million dollar bill.

The council quietly conceded defeat on May 9 in the years-long Nelson Bay Lagoons Estate case, only days before the start of a NSW Supreme Court trial and more than 18 months after receiving a court-appointed expert's report that showed it was likely to lose.

It conceded defeat more than six months after a judge delivered a scathing assessment of the running of the drainage case as "myopic", "pedantic" and "not in the interests of justice", with the council "primarily responsible".

The council's silence since May about the loss and its consequences - with a total possible bill of \$20 million for legal costs, failed drainage by the council since an earlier council court loss in 2006, damages and new drainage works - has coincided with its public push for extraordinary rate increases over the next seven years.

Now questions are being asked about the council's handling of the case since 2006 when it was ordered to complete drainage works. The order followed a judge's finding the council's negligence had been "stark" after evidence it directed drainage on to the Lagoons Estate, said it would do work to reduce flooding but didn't, and in response to complaints told the owner to "be realistic and cope with the development".

In conceding liability on May 9 the council acknowledged work undertaken by it "in purported compliance" with the 2006 order had failed to stop excessive stormwater flowing on to the Lagoons Estate, which residents alleged caused damage to properties.

The council and Lagoons Estate owner David Vitnell will return to the Supreme Court in October for a hearing to determine the size of the damages bill.

"I was always confident we were going to be successful. It was obvious after the court-appointed expert's report in August, 2016 that the council had not complied with the original 2006 court order and it was a waste of time to defend the case brought against it, but they did," Mr Vitnell said.



Department of Planning and Environment

Exhibition of Modification Request

Eraring Power Station Ash Dam Expansion Modification 1

Application No MP 07_2284 MOD 1
 Location 281 Construction Road, Myuna Bay (Lot 11 DP 1050120)
 Proponent Origin Eraring Energy
 Council Area Lake Macquarie
 Approval Authority Minister for Planning under the *Environmental Planning and Assessment Act 1979*

Description of project

Staged expansion of the Eraring Power Station Ash Dam footprint and installation of ancillary infrastructure to facilitate changes in the ash disposal method.

Description of proposed modification

Expansion of the Eraring Power Station Ash Dam to increase the storage capacity by an additional 5,000,000 m3 and augmentation of associated infrastructure.

Exhibition Details

The Modification Request and accompanying documents may be inspected at the following locations from **Thursday 13 September 2018 until Thursday 27 September 2018** during the ordinary office or opening hours of the agency concerned:

An electronic copy may be viewed free of charge at Department of Planning and Environment at