

## **How Alcoa Penalizes First Home Buyers!**

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Think You've Got Bad Neighbours? Picture it. You've invested in a plot of land near Coogee's pristine white sand beaches. The land is located 30 minutes south of Perth CBD with easy access to Kwinana Freeway and public transit. Zoned for subdivision and residential development, it's a developer's dream and you anticipate strong demand given Perth's housing shortage. When it is time to develop your prize you roll up your sleeves... but wait. You've got mail.

Alcoa has commissioned and funded environmental consultants who find that dust from their tailing pond, 1.5km south, might negatively impact your land. Alcoa's report makes its way to the Western Australian Planning Commission (WAPC) just as your residential subdivision application is up for final approval. Voila, your land is sterilised. Sorry!

This is what land owners experienced recently in the City of Cockburn. They were informed that dust from Alcoa's Residue Disposal Area (aka: tailing ponds) over 1km away had the potential to adversely impact human health. Informed by a dust report submitted by Alcoa, the Western Australian Planning Commission (WAPC) and Kwinana Buffer Review Committee (KBRC) resolved to increase an accepted 1km buffer zone north and east from the tailing ponds with an additional 0.5km non-residential transitional zone.

At 1.5km the outer edge of the buffer zone thereby moved Alcoa's impact into nearby land, sterilising residential property scheduled to host over 200 much needed residential dwellings. The intrusion from Kwinana not only came as a surprise to the land owners, who had been sold a "prime development opportunity" but also to the City of Cockburn.

City of Cockburn minutes reveal:

- Despite the fact the dust study alleges an impact on the City's land, the City had no formal involvement or engagement from either Alcoa or the WAPC in preparing or considering the Alcoa study;
- The Alcoa study was wholly funded and prepared for Alcoa with no opportunity for the City nor any affected landowners to be involved in the formulation of the studies;
- The Alcoa study seeks to undo (without any consultation) all strategic and statutory planning which has been undertaken over more than a decade to realise zonings under the Metropolitan Region Scheme and City of Cockburn Town Planning Scheme no.3 which allows for residential development for the affected land holding

- There was no on-ground dust monitoring undertaken on land within the City to confirm whether dust issues exist, or not. The premise to prohibit residential development was made against a model (a model which experts subsequently found at SAT to be flawed) Alcoa's previous undertaking and the City's understanding that Alcoa would close the tailings area and source of any potential fugitive dust by the end of 2010 and relocated to the far west of Alcoa's land.

At the outset, it's worth noting that the circumstances surrounding Wattleup concern a matter impacting development in sprawling cities around the world. That is, how do industrial and residential zone stakeholders manage their mutual interface?

What is exceptional at Wattleup is that the land in question isn't in Kwinana but adjacent to it. We have an incident of industry encroaching on residents and furthermore of industry encroaching outside of its designated zone.

At a glance one might give thanks for the buffer extension. We've all heard stories about industrial malpractice where ill health effects were hidden, covered up and denied by companies embarrassed by their folly upon local residents. Good on Alcoa for taking preventative action!

However, it's important to check emotion. A buffer zone is by definition a region where pollution transcends to nil. So what methods were applied by Alcoa to determine where the zone should and should not exist? What exactly does their dust report say? If the pollution is legitimate, what recourse is available to land owners who are now impacted? If proximity does indeed equate to dust exposure, shouldn't there be some burden of proof prior to someone's property being sterilised as has happened at Wattleup?

### **Land Affordability**

These questions not only matter to the Wattleup land owners but to all of us. Every piece of land is important in an increasingly crowded city struggling to cope with a severe housing shortage and affordability. If a company is going to wave its wand and sterilise huge swathes of land, that decision needs to be scrutinised to protect property owners, to validate the impact dimensions (they may need to be bigger/smaller) and to examine what that company is doing in the first place to warrant this kind of impact.

Before giving in to their own pollution concerns the Wattleup land owners decided to critically analyse the dust report that was challenging their lives. To their surprise they found critical flaws in Alcoa's dust report such that the State Administrative Tribunal (SAT) ruled that the Alcoa Report carries no weight.

Upon inspection it came to light that observations were conducted for 6 weeks between January and March 2008. This is contrary to the recommendation of a

Senior Environmental Officer with the Department of Environment and Conservation whereby a dust assessment would be conducted for 12 months to ensure all environmental conditions are observed.

The SAT also found the dust report did not effectively monitor PM10 (the National Environment Protection measure used to assess health impacts) and TSP (total suspended particles like nuisance dust which is used to assess the amenity impact), both of which are the basic building blocks of a dust report. Lastly, the SAT found the report did not adequately address the emissions toxicity potential.

Given such fundamental flaws as well as the facts contained within the previously mentioned City of Cockburn minutes, it's troubling a 1.5km nonresidential buffer zone was adopted, sounding an alarm absent of data. The SAT found that the dust report was empty, but adopted the precautionary principle in the event there was some unknown truth. An adequate 1 year environmental assessment was prescribed by the SAT. In adopting the Precautionary Principle, SAT found that the conditions precedent necessary for its adoption were present, namely that there is a threat of serious or irreversible environmental damage for residents of the proposed subdivision in relation to dust and there is scientific uncertainty as to the environmental damage. Consequently a precautionary measure may be taken to avert the anticipated threat of environmental damage, provided it is proportionate to the threat.

Facing further expense and delays the owners pressed the SAT to acknowledge a false alarm and give effect to the approved planning framework, an ironic request given most requests involve an owner's desire to depart from the planning framework. The land owners were told of a lack of resources to fully assess the situation, thereby justifying a precautionary principle. The safe route reads more like bureaucrats choosing to avoid taking Alcoa to task. Alcoa, incidentally were conspicuous by their absence at the Tribunal hearing.

Where to from here? In the worst case scenario all is not lost for the land owners who have scope to claim damages, though they're unlikely to walk away smiling given the time and expense already put toward the matter. It's not so much the fate of the owner that matters but the principle at stake.

This case demonstrates industrial indifference and how the state may respond if you find yourself on the wrong side of a large company. Amidst a housing shortage and skyrocketed prices an industrial entity is happy to sterilise swathes of its neighbours land without really doing its homework. To make matters worse the state plays along uncritically until the neighbours sound the alarm. Even then the state goes through procedure but fatigues relative to the big issue.

Can we afford to allow decades of planning to be overturned by a flawed report commissioned by a company with a vested interest? This practice sets a dangerous precedent which can only increase developer risk and thereby the costs of bringing

residential land to market. Furthermore, if the state won't take the lead in managing the mutual encroachment of residential and industrial zones, who will?

The intention here is not to demonise a company but highlight that the encroachment of residential and industrial zones is not unilaterally in industry's favour. Industry needs to act with responsibility ensuring their activities do not create a nuisance beyond pre-agreed boundaries and be held accountable if they cross that line. The confrontations will only increase in frequency as Perth grows more congested and these competing interests are brought face to face.

The way this confrontation is managed by the state matters for planning purposes and also to property investors who trust the Australian property market to honour its own codes and protect investors.

State Administrative Tribunal of Western Australia Hearing. Wattleup Rd Development Company Pty Ltd v Western Australian Planning Commission. 2011 WASAT160. Summary of Tribunal's Decision 11 Oct 2011  
<http://decisions.justice.wa.gov.au/SAT/SATdcsn.nsf>

City of Cockburn – Minutes of Ordinary Council Meeting 11 November 2010  
[http://www.cockburn.wa.gov.au/Meetings\\_and\\_Minutes/Minutes\\_and\\_Agendas/1937-a11\\_ocm\\_mins\\_111110.pdf](http://www.cockburn.wa.gov.au/Meetings_and_Minutes/Minutes_and_Agendas/1937-a11_ocm_mins_111110.pdf)