

Ordinary Meeting

Meeting Date: Tuesday, 26 June, 2018
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

Membership (Quorum - 7)
All Councillors

Addendum Agenda

Mayoral Minute

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MM18.11 Mayoral Minute - Award Recipients - 2018 Queen's Birthday Honours and 2018 International Midwives' Day award

HPERM Ref: D18/196523

Recommendation

That Council receive the report for information and the Mayor sends congratulatory letters to the recipients of awards on behalf of Council.

Details

The 2018 Queen's Birthday Honours were bestowed upon three of our local identities this year. Congratulations to Sydney Weller OAM, Donald Godden OAM and Deborah Ely AM.

MEDAL (OAM) OF THE ORDER OF AUSTRALIA IN THE GENERAL DIVISION

- **Sydney Weller OAM** for service to rugby league, and to the community.
- **Donald Godden OAM** for service to the community through history preservation organisations.

MEMBER (AM) IN THE GENERAL DIVISION OF THE ORDER OF AUSTRALIA

- **Deborah Ely AM** for significant service to the visual arts through leadership roles with art galleries, and to children's art education programs.

PUBLIC SERVICE MEDAL (PSM)

- **Jason Ardler PSM** for outstanding public service to Indigenous people in New South Wales.

Congratulations Cllr Annette Alldrick

- Cllr Alldrick was awarded the 2018 International Midwives' Day award of the Midwife of the Year for the Illawarra/Shoalhaven. Congratulations Annette on this wonderful award recognising the work that you do in the area of midwifery.

MM18.11

MM18.12 Mayoral Minute - Tomerong Quarry

HPERM Ref: D18/209894

Attachments: 1. Attachment - Scope for Tomerong Quarry [□](#)

Recommendation

That

1. Council endorse the attached 'service specifications' as a Terms of Reference to independently investigate issues that have been raised by the community in respect to the compliance action of council and operation of Tomerong quarry.
2. Council send the 'service specifications' to the following workplace conduct investigators for their consideration:
 - Mr Allan Yates – Internal Ombudsman at Burwood Council; and
 - Mr Andrew Patterson – Internal Ombudsman for a number of NSW Councils, currently undertaking contract work for Council's as requested.
3. Council support that a budget item be raised for the payment of any costs incurred.

Details

A Motion was made in response to the report at the Strategy and Assets meeting (15 May) as follows;

That:

1. *The report be received for information on the proviso that no assumptions are made in regard to its conclusions and adequacy.*
2. *The General Manager commission an independent external investigation into the issues that have been raised by the community in respect of the compliance action of Council and operation of Tomerong Quarry.*
3. *Further reports on the Quarry be provided to Council as the matter is further investigated.*

To execute an independent investigation Council must agree to a terms of reference / service specification to enable the engagement of a suitably qualified person/s. I have recommended to Council that we forward these specifications to two work place conduct investigators. Mr Yates and Mr Patterson are skilled investigators and either one would be an excellent candidate to undertake the work on behalf of Shoalhaven City Council and neither has a previous relationship with Council.

MM18.12

Shoalhaven
City Council

SERVICE SPECIFICATIONS

Subject	Independent investigation into issues that have been raised by the community in respect of the compliance action of council and operation of Tomerong quarry
Council Reference	58283e
Council Contact & Enquiries	Mayor Amanda Findley amanda.findley@shoalhaven.nsw.gov.au 02 4429 3111

A. Background

Council Decision

Council in its Strategy & Assets Committee meeting on 23 January 2018 resolved the following to the Notice of Motion submitted:

That the General Manager provide a detailed report to the Council with respect to the operations of Tomerong Quarry at Lot 4 DP775296, Parnell Rd Tomerong. The report is to include explanations, answers and assurances on the following points:

1. *Details of enforcement action and the issuing of infringements for breach of consent conditions since the commencement of Quarry operations, including reasons as to why the issue of infringements:*
 - a) *Were determined under delegated authority and with minimal community consultation thereby attracting concerns from the Community about the transparency of the decision making;*
 - b) *Were not applied to each individual breach; and*
 - c) *Did not amount to the greatest possible financial penalty available.*
2. *Assurance to the Community that Council has applied the same standard of scrutiny to the Tomerong Quarry as it has to similar operations such as the SCCR Quarry at South Nowra.*
3. *Assurance that the following consent conditions in relation to DA90/1912 have been adhered to:*
 - a) *(6b) Base level quarrying is to keep pace with overburden stripping;*
 - b) *(6c) Overburden to be used to revegetate the quarry walls; and*
 - c) *(6d) Revegetation and rehabilitation to keep pace with quarrying activities.*
4. *Details of any instances Council is aware of where significant tonnage of overburden set aside for rehabilitation has been sold off for profit by the proprietors of the Quarry and if this material has been purchased by the Council.*

5. Assurance that Quarry rehabilitation that occurs on the site:
 - a) Will require a Development Application to allow for Community consultation and will consider the impact on local residents, and
 - b) Will not be at the expense of Shoalhaven Ratepayers.
6. An explanation as to why after 14 months the Council has not determined the Section 96 Amendment Application (DS16/1532) for the site.
7. An explanation as to why the Mining Operation Plan D13MOP has still not been assessed by the Council, despite being lodged over 5 years ago.
8. Advice as to whether the record of non-compliance of the current Quarry Operators will be taken into account by Council when it assesses any future Development Applications submitted for the site.
9. Details of any plan known to the Council of the NSW Government transporting stockpiled excavation material from the M5 West Connex Project from the old Marrickville Tip to the Tomerong Quarry for disposal.

In response to the resolution a report (SA18.119) was prepared by Council's Planning & Development Services group for 15 May 2018 Strategy & Assets Committee meeting.

A Motion was made in response to the report at the Strategy and Assets meeting (15 May) as follows;

That:

1. The report be received for information on the proviso that no assumptions are made in regard to its conclusions and adequacy.
2. The General Manager commission an independent external investigation into the issues that have been raised by the community in respect of the compliance action of Council and operation of Tomerong Quarry.
3. Further reports on the Quarry be provided to Council as the matter is further investigated.

Development Assessment

Council in 1990 approved DA90/1912 made by applicant Cowman & Royston Pty Ltd for proposed quarry and processing of shale at Lot 4, DP 775296 off Parnell Road, Portion 159, Parish of Wandrawandian Tomerong. The DA90/1912 was modified by DS02/1087 in 2002, DS03/1325 in 2004, DS06/1039 in 2006. The quarry traded as SCE Resources Pty Ltd and ceased operations in July 2017. The modified conditions brought about additional consent conditions which were subject to a Land Environment Court Action during 2012 were an agreement was struck between SCE Resources Pty Ltd and Shoalhaven City Council, the enforcement of this agreement is one of the areas subject to complaint.

It is noted that a number of the Council staff involved in the management of this DA have finished their employment with Shoalhaven City Council.

Tomerong Community Forum

Tomerong Community Forum is a community consultative body endorsed by Council as the representative of the Tomerong residents and ratepayers. The Tomerong Community Forum has raised concerns since 2004 to Council on the operations of the Tomerong quarry including related compliance issues. Continuous passive surveillance of the quarry's operation has been undertaken by the community as much interest was raised when a failed landfill bid was put before the Joint Regional Planning Panel 2009 (DA09/2077).

B. Scope of Review

1. Investigate whether:
 - a) the response of Council to the issues was appropriate given the:
 - i) legislative requirements;
 - ii) policy, process and procedural framework;
 - iii) available systems and resources; and
 - iv) directions from the elected Council at the time.
 - v) The choice of methods preferred for dealing with non-compliance (i.e. penalty infringement vs court proceedings)
 - vi) Breach of consent conditions.
 - b) adequate response was provided to those who raised concerns to the Council with respect to operation of the Tomerong quarry; and
 - c) if there is evidence that Council Officers and Officials acted in non-partisan manner.
 - d) Undertake interviews with relevant staff (current and exited) in compliance and development.

C. Required Outcomes

1. Provision of an engagement letter for this project including an assessment of:
 - a) Tasks;
 - b) Site visits, interviews, entry and exit meetings;
 - c) Estimated hours to complete the project;
 - d) Target start and completion date;
 - e) Hourly fees and charges;
 - f) Availability (at additional cost) to present the report to Council and interested parties; and
 - g) Biography of person tasked to conduct the investigation.
2. On acceptance of the engagement letter by Council:
 - a) Provide a timeline of the issues raised on the operations and concerns raised by community on Tomerong Quarry;

- b) Perform a detailed review of Council records;
 - c) Conduct interviews with relevant Council Officers (in accordance with clause 36C (i) of LG Award 2017 and guidelines – *Local Government Industry Guidelines on Workplace Investigations*) and Officials and representatives of key community group (Tomerong Community Forum);
 - d) Discuss key findings with the relevant officers and individuals and provide procedural fairness to respond to any adverse issues prior to finalisation of the issue; and
 - e) Provide:
 - i) a detailed report with findings and recommendations to Council
 - ii) an executive summary report which will be made available to the public
3. The report to be made available within 12 weeks of the engagement.
4. The report to be provided in both hard copy and electronic format and the latter is to be compatible to Council's IT systems

D. Period of Review

The period of review will be from 1999 to 15 May 2018. There are extensive records related to this matter. Key documents and contact persons will be provided to the appointed service provider.