



Hawkesbury City Council

supplementary ordinary meeting business paper

date of meeting: 10 October 2006

location: council chambers

time: 5:00 p.m.

ORDINARY MEETING

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Questions With Notice

QUESTIONS WITH NOTICE

Question With Notice - Tinda Creek Sandmine - (80105, 95498, 95495)

Submitted by: Councillor L Williams

I would be pleased if you could arrange for me to receive answers for the following:

1. Is it a fact that Birdon Contracting Pty Limited is operating "out of Area"?
2. Is it a fact that Birdon commenced operations, and continues to operate, without an Erosion and Control Plan being submitted as required by their consent?
3. If 1. and 2. is in fact true, should Council require Birdon to cease operations?
4. Has Council investigated the complaint of Mr Danny Pullicin of 15 May 2006, where Mr Pullicin complains that Tinda Creek was ceased to flow, and the subsequent environmental damage which could occur from such an event?
5. Is it a fact that Birdons operations have caused the water table to drop markedly, the aquifer to be pierced, or the drying up (or re-routing) of Tinda Creek to occur?
6. If any of 5. is correct, should Council require Birdon to cease operations and rectify the situation?

NOTE BY MANAGEMENT:

In response to the Question With Notice, the following information is provided:

1. *Is it a fact that Birdon Contracting Pty Ltd is operating "out of area"?*

The matter was raised with the operator and their legal representatives. This was the result of the Environmental Management Plan (EMP) submitted by the operator in March 2005. The site plan contained in the EMP appeared to be different to the plans approved and identified in the Development Consent (conditional). The matter was discussed with the operator in May 2005 and their submission was referred to Council's solicitors for advice on the matter. The operator has chosen to lodge an application under Section 96 of the EPA Act to modify the development.

The operator contends that the area where the mining is occurring outside the area shown on the approved plans referred to in the Development Consent was included in the assessment undertaken by the approved Environmental Impact Statement.

The current application lodged to modify Development Consent 134/95 proposes to resolve this matter. At this stage, the application has been placed on public exhibition and Council officers are in the process of considering the submission received and undertaking an assessment under the EPA Act.

The operator has also been advised that part of the drainage channel that diverts water around the quarry area is located on the adjoining property. The operator was advised of the need to lodge the necessary application to seek approval for the channel or relocate the channel on the property as per the approved plans. The operator has indicated they are currently undertaking works to relocate the channel within the property subject to the sand mining operation, as approved by Development Consent 134/95.

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2. *Is it a fact that Birdon commenced operations, and continues to operate, without an Erosion and Control Plan being submitted as required by their consent?*

Condition 1 of Development Consent refers to 3 plans. Plan P591/E130, Drawing No. 3 of 3, is entitled "Erosion and Sedimentation Plan" and shows a number of sections and cross section and a site plan. These plans were submitted by the applicant and referred to a number of Government Agencies including the Soil Conservation Service, Department of Land and Water Conservation. The Department provided comments on the plans provided. Condition 4 of the Development Consent was amended at the Mediation Meeting to include reference to approval by the Department of Water and Land Conservation.

As previously advised in Council's report on the matter in November 2003, there is no evidence on the Council file that the final plan was submitted and approved by the Department of Land and Water Conservation prior to the works commencing.

3. *If 1. or 2. is in fact true, should Council require Birdon to cease operations?*

In considering non-compliance with Conditions of Consent, Council has several options available under the EPA Act. One of the options could be to cease the operations of the quarry until the matters are resolved or satisfied.

The other options may involve:

- issue of a penalty;
- issue of an order; and
- combination of both a penalty and order.

4. *Has Council investigated the complaint of Mr Danny Pullicin of 15 May 2006 where Mr Pullicin complains that Tinda Creek has ceased to flow, and the subsequent environmental damage which could occur from such an event?*

An email was received by Mr Pullicin concerning the flows in Tinda Creek. A response was provided from Council officers advising that the activities on site are controlled by an Environmental Protection Licence No. 12007 issued by the NSW EPA and suggest they make their enquiry to the NSW EPA, being the responsible Regulatory Authority for environmental matters associated with this activity.

The matter of ground water quality monitoring has been previously identified and is required by Condition 17(b) of the Development.

5. *Is it a fact that Birdon's operations have caused the water table to drop markedly, the aquifer to be pierced, or the drying up (or re-routing) of Tinda Creek to occur?*

The operator, as part of the recent matter in the Land and Environment Court, commissioned a report on the Hydrogeologic Assessment Tinda Creek Sand Quarry which made recommendations. Council will be engaging a suitable consultant to review this matter and provide advice and comments to be involved in the assessment of the current S96 application. Council currently has no information to confirm that the operations have caused the water table to drop.

As previously advised, Council will be engaging a consultant to review this matter and provide some advice and comments.

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6. *If any of 5. is correct, should Council require Birdon to cease operations and rectify the situation?*

If Council were to require Birdon to cease operations based on impact on the water table, Council would need strong evidence available to suggest and demonstrate the impact otherwise it may leave Council open to a compensation claim if proven to be incorrect about the ground water dropping. Once the consultant has finalised the review, this action can be further considered.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF NOTICE OF MOTION Oooo

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SECTION 4 - Reports for Determination

SUPPLEMENTARY REPORTS

Item: 250 **GM - Growth Centres Commission (79351, 98750)**

Previous Item: 366, Ordinary (29 November 2006)

REPORT:

Council on 29 November 2005 resolved to appoint Council Bart Bassett as its representative to the Growth Centres Commission North West Sector Committee. Councillor Bassett's appointment was personal and advice from the Growth Centres Commission at that time was that the person appointed could not delegate their responsibility to another Councillor.

Some confusion has arisen at the most recent meeting of the North West Sector's Committee on 9 October 2006, insofar as newly appointed Mayors to a number of Councils have attended the meeting to represent the relevant Council.

The Executive of the Growth Centres Commission have now indicated that whilst it was intended that incumbent Mayors represent the interests of their Councils on the Growth Centres Commission North West Sector Committee, Councils have the ability to resolve otherwise, which is consistent with the approach taken by Hawkesbury City Council in the past.

Notwithstanding the above, and to prevent any possible confusion, it is necessary for Council to nominate or re-affirm its representative appointment.

Conformance to Strategic Plan

The proposal is deemed to conform with the objectives set out in Council's Strategic Plan i.e:

"Investigate and document the impact of population growth to identify future requirements for land, employment, human services and infrastructure."

Funding

There are no funding implications.

RECOMMENDATION:

That Council nominate a Councillor to be its representative on the North West Sector Growth Centres Commission Executive Committee, along with the General Manager.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

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ordinary
meeting

end of
supplementary
business
paper

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