
TITLE MAYORAL MINUTE RINDEAN QUARRY (IR 15899991)

Mayor: Lawrie McKinna

Political Donation: None declared

Introduction

Council has a policy for the management of Legal Services (Policy A1.52), which details the intent by which legal matters are managed. In addition to this policy Council has a procedure that states:

4.2 That the General Manager may commence an action before any Court, Tribunal and is authorised to defend, prosecute, make application, compromise, settle, mediate conciliate, arbitrate, or resolve any issue before such Court or to do what is required to resolve the issue before it is heard, or if the hearing has commenced before it is concluded by that Court.

This practice of settling court matters is detailed the monthly legal update report provided to Council.

BACKGROUND

The matter referred to as 'Rindean Quarry' is a Class 1 application in the Land and Environment Court (LEC No 2014/10021). Council was advised that the proponents had lodged an appeal against the Joint Regional Planning Panels (JRPP) refusal on July 18 2013. The JRPP's reasons for refusal of the application were, in summary, the lack of information supplied by the applicant to address air and water quality.

Call over was held on March 3 2014, and the case was included in the March 25 confidential legal report to Council. The legal advice summarised in that report was:

Council's solicitors advice is that they anticipate the applicant will supply additional information at the s34 conference. Subject to satisfying the EPA in respect to air quality control it is likely the matter will be settled.

Facts and contentions for the case were produced by staff and provided to Councilors on May 9 2014.

Recent Events

- The NSW Office of Water (NOW) provided conditions of approval on May 5 2014;
 - The EPA granted General Terms of Approval relating to air, noise and surface water quality impacts and monitoring on May 8 2014.
 - On 9/5/14 a S34 conference was held between the applicant, Council and Land & Environment Court. At the conference it was agreed that as conditions have been received from NOW and EPA that consent orders/conditions could be granted to address the reasons for refusal.
 - Although it was agreed that Council and the applicant would prepare draft conditions to be considered by the Court on May 22, the court date was vacated as Council's draft conditions were not released.
 - The matter is set down for June 5 2014. Either party may restore the matter on 48 hours notice
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REPORT

It is recommended that Council continue the process to settle the appeal by consent orders by negotiating the final conditions with the applicant, as mediated by the Court.

This recommendation is made on the basis that the remaining concerns, now that with conditions Council does not have a strong case on which to defend the appeal. Even if successful there is the likelihood the matter would be the subject of Land & Environment Court s56A appeal.

Attachments: Nil.

Tabled Items: A confidential pack will be provided to Councillors at the meeting.

FINANCIAL IMPACT STATEMENT

Information included in the confidential pack provided to Councillors at the meeting.

RECOMMENDATION

- A Council note that the NSW Office of Water and the Environmental Protection Authority have provided their respective terms of approval to the court for the Rindean Quarry at Somersby, thus addressing the material components of Councils and the JRPPs previous refusal of the development.
- B Noting the advice from Councils legal representatives that the remaining reasons for refusal can reasonable be addressed by conditions, Council request the Chief Executive Officer to prepare draft consent conditions for the Court with the objective of seeking to address the concerns of residents.
- C That Council make the above report, and councils resolution public with the exception of the tabled items which should remain confidential in accordance with Section 10A(2) as it contains commercial information that if disclosed would prejudice the commercial position of the person who supplied it and 10A(2)(g) they contain advice concerning litigation.

