



New South Wales

The Hon. Kerry Hickey MP
Minister for Local Government

Ref:
MIN:
Doc ID: A83195

The Director
Budget Estimates
Parliament House
Macquarie Street
SYDNEY NSW 2000

RECEIVED
2 1 NOV 2006

2 1 NOV 2006

GPSC's

Dear Sir

I am writing in reply to your letter of 13 November 2006 regarding the Inquiry into the Budget Estimates 2006-07.

When officers from the Department of Local Government appeared before the Committee on Friday, 10 November 2006 several questions were taken on notice. I now enclose responses to those questions.

It should be noted that the information provided in response to a question from the Hon D T Harwin MLC (page 19 of the transcript), regarding written advice provided by the Investigations and Review Branch of the Department is limited to the submission entitled 'Hornsby Shire Council – Acquisition of Hornsby Quarry'. The documents referred to in that submission are not attached as they are already in the public domain.

The response also includes an amendment to the evidence provided by Mr Garry Payne, Director General of the Department of Local Government.

Yours sincerely

Kerry Hickey MP
Minister

GENERAL PURPOSE STANDING COMMITTEE No. 4
Portfolio Area: Local Government
10 November 2006
Response to Questions

Questions from the Hon D T Harwin
(page 19)

"Mr Payne, given the public interest in this matter, are you prepared to release the written advice that was given to you by the investigations branch in relation to this review?"

Answer

Yes. Copy attached.

(pages 21-22)

"Was it necessary to obtain legal advice on that compulsory acquisition?"
"... are you prepared to table the advice that was given to the Minister on the compulsory acquisition?"

Answer

No additional legal advice was sought. The Department also relied on it's own legal experts.

(page 39)

"During your recent review at the request of the Mayor of Hornsby Council of its handling of the Hornsby quarry issue, did you find whether they had a plan of management in place for the quarry?"

Answer

No attempt was made to review any management plan as part of the review - this was not relevant to the acquisition processes.

Question from the Hon Dr A Chesterfield-Evans

(page 29)

"Did you look at the Gerard report, which said there were likely to be large remediation costs because of the geotechnical problems?"

Answer

No. The loan approval process only looks at council's capacity to borrow, not projects to be undertaken.

Questions from the Chair, the Hon J A Gardiner

(page 36)

"Can you provide on notice a list of the community groups that made representations on the cultural centre?"

Answer

- o Resident Action Network
- o Kooloonbung Group
- o The Community That Cares

(page 36)

"Did the member for Port Macquarie make representations in relation to that matter?"

Answer

Yes.

(page 39)

"What is the budget in relation to inquiries conducted by the department, breaking it down into reviews, public inquiries and investigations? Could you also give the Committee the budget for 2006-07?"

Answer

- Budget for 2006/07
 - Inquiries - \$60,000
 - Investigations & Review Branch - \$1,405,800

- Expenditure 2005/06
 - Inquiries - \$265,943
 - Investigations & Review Branch - \$1,247,882

There were also costs incurred in relation to reviews and public inquiries that are not costed separately and are contained within other cost centres.

Amendment to Transcript

Mr Payne wishes to advise of a correction to this sentence (marked as red text) at page 25 of the transcript:

"The Hon. DON HARWIN: How long has that project targeting preschool children, those between the ages of one and four, been in preparation?"

Mr PAYNE: Some months.

The Hon. DON HARWIN: It would have been in preparation in August 2006?

Mr PAYNE: No, nothing formal. We were putting in place the SPOT program and having it developed and committed, which we have done. We have made the first payment on that. We then turned our attention to children aged from one year to four years. I can recall people from Victoria, which has a program for junior people, coming up here after the estimates committee and talking about it.

The people from Victoria came on 26 July 2006, before the budget estimates committee hearing of 28 August 2006.

The one-to-four year olds' dog education program is still not resolved, as funding has not been allocated. The Department received further details in early August 2006 and the Minister then adopted a formal position in support of a preschool program in early September 2006.

MIN. 06/2172
Doc ID. A48907

subject

HORNSBY SHIRE COUNCIL – ACQUISITION OF HORNSBY QUARRY

Background

On 22 February 2006, following substantial and ongoing local concern, Hornsby Shire Council resolved to write to the Minister inviting him to review issues relating to council's acquisition of the Hornsby Quarry.

On 10 March 2006 the mayor wrote to the Minister providing a large quantity of material and asking that the department review the material and determine whether any further investigation or action is warranted.

I have reviewed all of the material provided by the council and have drawn the following analysis from it. I have also reviewed some material that has been provided by local residents and I will refer to some issues raised by them in this submission.

The documents provided to me are listed at the end of this submission and relevantly includes extracts from an advice provided by Mr Robertson SC and the transcript of his address at council's workshop meeting on 22 February 2006.

Docs 1&2

Summary of Conclusions

In considering the material I have ultimately concluded that no investigation or other action is warranted, for the following reasons:

- When CSR gave notice to the council requiring it to resume the Hornsby Quarry, the council had no alternative but to proceed with the acquisition processes.
- As part of the acquisition process, CSR was entitled to be paid compensation.
- Compensation was determined independently by the Valuer-General. When CSR accepted this valuation the council could not challenge the amount determined by the Valuer-General.
- The council had made representations (including providing expert valuation and other advice) to the Valuer-General suggesting that the value was substantially less than the amount ultimately determined by the Valuer-General, but the Valuer-General determined otherwise.

- The processes adopted by CSR have also shifted the responsibility for the remediation of the site to the council.
- The council has subsequently obtained expert advice that shows that the development capacity anticipated by the Valuer-General is not achievable. Further development of the site is either not financially viable or only marginally viable.
- Throughout the process and particularly when residents have raised concerns, the council has sought to keep residents informed of its processes. Additionally, the council has taken particular steps to respond to concerns, for example by making its documents available and by conducting meetings where residents can put their concerns.

It may be that consideration should be given to whether the Land Acquisition (Just Terms Compensation) Act ("the Compensation Act"), which effectively removes councils from a role in the determination of the compensation payable under this Act, should make provision for appeals on the part of acquiring authorities.

However, this is not legislation within the Minister's portfolio. Further, such a change would need to be balanced with the risk that such appeals could exhaust the resources of persons whose land is being acquired.

Brief Chronology of Events

Early 1900s	Quarrying operations commence
22 July 1994	Hornsby LEP gazetted
	Quarry site zoned Open Space A (Public Recreation – Local)
	Cl. 17(5) allows the owner of land in the zone to request council to acquire the land and provides that the council must acquire it (see also Part 2, Division 3 of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>)
22 March 2001	CSR requests that the council acquire the quarry
9 May 2002	Department advises approval to council giving an Acquisition Notice
16 August 2002	CSR's valuer provides a value of \$29.5m
29 August 2002	Council's valuer provides a value of \$2.3m
26 September 2002	Council provides its expert planning, valuation and other reports to the Valuer-General

25 October 2002	Notice of Acquisition published in the gazette
21 February 2003	Valuer-General advises his valuation of \$25,099,500
4 December 2003	CSR accepts Valuer-General's valuation
26 October 2004	An independent land capability study commissioned by the council concludes there are limited development opportunities on the site
February 2005	An independent feasibility study commissioned by the council concludes that the combination of land price and cost of infrastructure works is too large to be recovered by development site sales
20 July 2005	Council invites residents to make written submissions to the council
1 February 2006	Council obtains independent legal advice from Mr T Robertson SC
22 February 2006	Council holds a public workshop and provides a business paper; details resident's submissions; legal advice valuations; and other material Council arranges for Mr Robertson SC to address the workshop and answer resident's questions.

Note: In the period following CSR's notice to acquire the quarry, the council has sought and has been guided by independent legal, valuation, planning and other advice.

The Acquisition

On 22 March 2001, CSR wrote to the council requesting that it acquire the quarry land west of the older part of the shopping centre at Hornsby.

Clause 17(5) of council's Local Environmental Plan provided that on receipt of the request, the Council "must" acquire the land.

As Mr Robertson SC, in his advice to council, states:

Upon service of the notice, Council has a duty to acquire it (sic. the land).

Doc 1

The council was then required to respond, serving a written notice of its intent to acquire the land.

CSR, as owner was then entitled to be paid compensation.

Notes: As indicated by Mr Robertson, when CSR served the notice, the council had no choice but to acquire the land.

Compensation

The Compensation Act provides that the Valuer-General is to determine the amount of compensation to be offered.

Both CSR and the council provided material, including valuations, town planner's reports and other material to the Valuer-General. There was a substantial difference between these 2 valuations.

Council's valuer valued the land at \$2.3 million. CSR's valuer initially valued the land at \$29.5 million. This valuation was subsequently increased to \$33 million.

These 2 valuations are not particularly relevant, as the Valuer-General was bound to carry out his own valuation. They do, however, demonstrate a substantial discrepancy in what the land was said to be worth.

In determining the valuation of the land, the Valuer-General is required to disregard the particular zoning that applies to the land (ie, "open space") and to assume a zoning that would have otherwise applied.

This task was to form the crux of the matter.

Council's valuer came to the view that the appropriate alternative zoning was Environmental Protection B (River Catchment). Mr Robertson reports that this zoning reflects the surrounding land and the sensitivity of the land. Council's valuer identified a number of constraints and came to the view that the quarry site had limited future development potential.

His valuation was \$2.3m.

Docs 3&4

By comparison, CSR's valuer came to the view that the appropriate alternative zoning was multi unit residential development, with up to 443 units able to be developed.

His valuation was \$29.5m. This was subsequently increased to \$33m.

Doc 1

The Valuer-General retained an independent valuer to advise him. Ultimately the Valuer-General determined the value of the quarry land at \$25.0995m.

Underlying the Valuer-General's valuation was his own town planner's advice that adopted CSR's view of the development potential of the land.

Unlike CSR, the council could not appeal against the amount of compensation determined by the Valuer-General. This is because the Compensation Act provides that the Valuer-General is to determine the amount of compensation to be offered.

It is important to emphasise that the Valuer-General was effectively making an offer on behalf of the council. While the council could (and did) provide opinions and information to the Valuer-General, it had no role in the determination of the amount of compensation to be paid.

Ultimately, while it had no part in this process, the council was required to pay the amount determined by the Valuer-General.

In turn, CSR could accept or reject the amount of compensation offered. If it rejected the offer, it had a right to apply to the Land and Environment Court to determine the compensation.

The effect of this legislation is to take the process away from the council and place it in the hands of the Valuer-General. Unlike CSR, the council has no right to apply to the Land and Environment Court if it does not agree with the Valuer-General's determination of the value.

As I have already indicated, the council had no part in determining what compensation was payable. The Council was later to obtain advice confirming that it was unlikely to successfully challenge the valuation on an error of law.

Put simply, the council was required to pay the compensation determined by the Valuer-General.

Notes: While CSR could have appealed against the amount of the Valuer-General's valuation, the council did not have a right of appeal but could only challenge the process on matters of law.

If CSR (as it did) accepted the Valuer-General's valuation, the council was bound to pay this amount.

Review

The council's misgivings about the compensation that it was required to pay have been heightened by its subsequent studies:

- a planning study came to the view that very little of the site could be safely developed

Doc 5

- a feasibility review, that suggested that if land within the site and adjoining it was developed, it would realise a substantial loss. This was primarily due to the cost of infrastructure necessary for any development.

Doc 6

While it was suggested that there was still a resource in the quarry, advice has indicated that the rock reserves do not meet market demand for product and that work is required to stabilise the quarry walls.

It appears that even though quarrying had not taking place for some years, CSR had not abandoned the quarry and was able to pass the quarry to the council as an operational quarry.

As a result, council appears to be liable to carry out remediation works.

The council has sought advice whether there are other legal proceedings that may be taken by it. The full content of the advice has not been made public, but it appears that the council has no rights to appeal against the value that was determined.

Note: The further advices have indicated that, given current conditions, development of the land is not feasible.

The council has and will continue to incur costs associated with the remediation, stabilisation and other issues affecting the site.

The Residents' Concerns

On 22 February 2006, the council held a workshop on governance issues associated with the quarry. The business papers contained a report that referred to 186 questions that had been raised by local residents. It attempted to answer the questions. This part was supplemented by various documents, including:

- the questions and council's answers
- a chronology of events
- internal memoranda and correspondence and
- copies of the documents sent to the Valuer-General.

Doc7

Mr Robertson SC addressed the meeting and answered questions.

The approach that was taken by the council suggests that it has sought to be both open and transparent and to place its documents in the public arena.

Notwithstanding the approach taken, the council remains subject to continuing resident concern over its processes. These concerns are reflected in complaints to the Minister and to the department.

Note: Neither the Minister nor the department can resolve the crucial issue, that of compensation.

The Valuer-General (acting on advice from a private valuer) has determined the amount of compensation to be paid to CSR.

There have been suggestions that the council's processes were either flawed or lacking.

As I have indicated earlier, CSR was entitled to serve a request on the council to acquire the land. The council was then required to acquire the land. The request was not a nicety but set in motion mandatory obligations on the council to acquire the land.

The matter does not centre upon a decision of the council to acquire the land, nor a question of who was responsible for making this decision, as has been suggested in some complaints.

The determination of what compensation was payable was determined independently by the Valuer-General. While both CSR and the council could (and did) make representations of what was a proper amount, the decision lay with the Valuer-General.

The Compensation Act did not permit the council to appeal against the amount of compensation determined by the Valuer-General.

The Workshop

As I have indicated previously, the council held a public workshop on 22 February 2006. The business papers include reference to a number of submissions received by the council in which a total of 186 questions were raised.

The business papers separately answer each of the questions that were raised. The business papers also attach a significant number of other documents, including:

- A chronology
- A previously confidential memo dealing with legal advice provided to the council
- Legal advice provided by council's solicitors
- The documents that the council provided to the Valuer-General, including:
 - A geotechnical evaluation of the quarry
 - A town planner's report
 - A valuation report
 - A geologist's report on the viability of the quarry.

Mr T Robertson SC attended the workshop, addressed the audience and answered questions. The council has provided a transcript of his address.

Mr Robertson had previously provided an advice to the council. This advice extended from an initial request to advise the council whether there was any avenue of appeal from the Valuer-General's determination of the value to responding to 177 questions that had been raised by residents.

The Complaints

I have reviewed the residents' questions in the briefing papers and a number of the complaints received by the Minister and the department. A large number

reveal a significant misunderstanding of council's role in acquiring and valuing the land as well as the overall processes involved.

The residents' questions also indicate that they have had access to a substantial number of council's documents that have been used to formulate many of their questions. It is also clear from the business papers that residents had access to Mr Robertson's advice when raising their questions.

Response

I attach a letter responding to the mayor's letter, indicating that the department does not intend to investigate the matter further.

I have included a paragraph at the conclusion of the letter indicating that it is intended to provide a copy of the Minister's response to the Mayor in responding to complainants calling for an investigation into the quarry.

Once this letter has issued, letters will be sent to a number of other complainants on the same issue.

Angus Broad
Senior Investigations Officer
Ext 192

- 1. Manager, Investigations and Review Branch
- 2. Director, Performance Management and Compliance
- 3. Director, Legal, Policy & Special Programs
- 4. Manager Executive Support
- 5. Director General
- 6. Policy Adviser
- 7. Minister
- 8. Records, please file

ag 25.5.06

ag 2.6.06

2/6

Noted. take letter to reply on minister's behalf.

Director General

to reply on minister's behalf.

letter amended as requested 9.6.06

KA 14/6/06

SEEN BY MINISTER ~~THE DG~~
ON
APPROVED/NOTED/
LETTER SIGNED

RECEIVED
- 7 JUN 2006
IN MINISTER'S OFFICE

Reference Material

1.	Advice	T Robertson SC	1.2.06
2.	Transcript	T Robertson SC – workshop	22.2.06
3.	Valuation	KD Wood valuations	29.8.02
4.	Planning Advice	Drummond Parmenter	May 02
5.	Parsons Brinckerhoff	Land Capability Study	Oct 04
6.	Intalink	Feasibility Review	Feb 05
7.	Hornsby Council	Business Paper	22.2.06
8.	Quarry Submissions	Various	
9.	Local Environmental Plan		
10.	Report to Meeting		6.9.00
11.	Report to Meeting		18.6.03
12.	Report to Meeting		19.11.03
13.	Report to Meeting		17.3.04
14.	Report to Meeting		1.12.04
15.	Report to Meeting		13.4.05
16.	Report to Meeting		20.7.05