

SOUTH GIPPSLAND SHIRE COUNCIL

Special Committee Meeting

of Council to hear submitters who have elected to speak to their submission regarding the proposed lease of the Fish Creek Quarry.

28 February 2018
Council Chambers, Leongatha
Commencing at 9.30am



agenda



*South Gippsland
Shire Council*

Come for the beauty, Stay for the lifestyle



MISSION

South Gippsland Shire will be a place where our quality of life and sense of community are balanced by sustainable and sensitive development, population and economic growth.

Privacy

Council is required to keep minutes of each Council meeting. The minutes contain details of proceedings which may include personal information about community members disclosed as part of presentations, submissions and questions. The minutes of Council meetings are a public record and can be inspected by members of the public.

Council undertakes audio recordings of Council Meetings as a contribution to good governance and accuracy of minutes. An audio recording of this meeting is being made for the purpose of verifying the accuracy of minutes of the meeting. In some circumstances the recording may be disclosed, such as where Council is compelled to do so by court order, warrant, and subpoena or by any other law such as the Freedom of Information Act 1982. It should be noted that other people present at the meeting may be recording the meeting and Council has limited power to regulate this. Council has developed a policy to regulate recordings, "*Sound Recording of Council Meetings*".

A copy of this policy is located on Council's website www.southgippsland.vic.gov.au.

SOUTH GIPPSLAND SHIRE COUNCIL

Notice is hereby given that the Special Committee Meeting of Council of the South Gippsland Shire Council which will be held on 21 February 2018 in the Council Chambers, Leongatha commencing at 9.30am

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Tim Tamlin
Chief Executive Officer

1. PRELIMINARY MATTERS

1.1. WELCOME

Please ensure Mobile phones remain 'off' during the Council Meeting.

1.2. OPENING PRAYER

We pray to God to guide us so that the thoughts we have and the decisions made this day, are in the best interests of the people of the South Gippsland Shire.

Amen

1.3. ACKNOWLEDGEMENT OF TRADITIONAL CUSTODIANS

The South Gippsland Shire Council respectfully acknowledges the Traditional Custodians of this Land, Elders past and present, their Spirits and Ancestors.

1.4. REQUESTS FOR LEAVE OF ABSENCE

1.5. APOLOGIES

1.6. DECLARATION OF CONFLICT OF INTEREST FOR COUNCILLORS

Any interest that a Councillor or staff member has deemed to be significant and has disclosed as either a direct or an indirect interest is now considered to be a conflict of interest. Conflict of interest legislation is in sections 77A, 77B, 78, 78A-D and 79 of the Local Government Act 1989 (the Act). This legislation can be obtained by contacting the Council's Corporate & Community Services Directorate (Council Business) or by accessing the Victorian Legislation and Parliamentary Documents website at

www.legislation.vic.gov.au<http://www.legislation.vic.gov.au>.

An interest may be by close association, financial, conflicting duties or receipt of gifts. If a Councillor or staff member discloses any interest in an item discussed at any Council Meeting (whether they attend or not) they must:

- Complete a disclosure of interest form prior to the Meeting (forms are available from Council Business Department at South Gippsland Shire Council).
- Advise the Chair of the interest immediately before the particular item is considered (if attending the Meeting).
- Leave the Council Chamber or Meeting room while the item is being discussed and during any vote taken (if attending the Meeting).

The Councillor or staff member will be advised to return to the Council Chamber or Meeting room immediately after the item has been considered and the vote is complete.

Councillors should check the Minutes of the Council Meeting to ensure their disclosure is recorded accurately. Councillors are not required to disclose conflict of interest in relation to matters only considered at Meetings they do not attend. Detailed information is available in *Conflict of Interest – A Guide for Councillors – October 2012*.

1.7. DECLARATION OF CONFLICT OF INTEREST FOR STAFF

Sections 80B and 80C of the Local Government Act 1989 require members of Council staff who have delegated functions and/or provide advice to Council or a Special Committee to disclose conflicts of interest. If Council staff have written, provided information/advice or approved a Council Report and have a conflict of interest, it is the responsibility of that staff member to disclose the interest.

Guidance to identifying and disclosing a conflict of interest is contained in the Victorian State Government, Department of Transport, Planning and Local Infrastructure – *Conflict of Interest – A Guide for Council Staff – October 2011*.

2. COUNCIL REPORTS

2.1. 223 SUBMISSION HEARING - FISH CREEK QUARRY PROPOSED LEASE

Infrastructure Directorate

EXECUTIVE SUMMARY

Council owns several parcels of land at the end of Fish Creek Quarry Road, Fish Creek which is currently leased to Goldsmith Quarries Pty Ltd (Goldsmith) for use as a quarry. The lease expires on 30 June 2018.

At the Ordinary Meeting of Council held 20 December 2017, resolved to commence the statutory procedures in accordance with ss.190 and 223 of the Local Government Act 1989 to enter into a lease of the Fish Creek Quarry being part of CP165852 with an approximate area of 24.5Ha to Goldsmith for an initial term of ten (10) years with options of two (2) further terms of five (5) years each for a rental and royalties amount to be determined by a specialist quarry valuer (the proposal).

Council published the notice calling for submissions in the local newspapers in the week commencing 8 January 2018 and Council received three submissions. Of the three submissions, one submitter has elected to be heard in support of their submission (**Confidential Attachment [15.1.1]** - Fish Creek Quarry Submission).

This report has been prepared for the Special Committee of Council comprising of the Mayor (who will chair the meeting), not less than two other Councillors, and the Director Infrastructure (for administrative purposes) to hear the submitter speak to their submission.

All submissions will be considered and determined at the Ordinary Meeting of Council to be held 28 March 2018 in an open session.

RECOMMENDATION

That the Special Committee of Council:

- 1. Hear those submitters speak to their submission regarding the proposed Lease of the Fish Creek Quarry.**
 - a. Submission 1 – Tim Farrell**
- 2. Requires the following response to be included in the recommendation in the Council Report for the 28 March 2018 Ordinary Meeting of Council in**

open session on the proposed Lease of the Fish Creek Quarry – Consider and Determine Submissions as follows:

a. 'That the Special Committee of Council heard the following submitter speak to their submission in regard to the proposed Lease of the Fish Creek Quarry:

i. Submission 1 – Tim Farrell

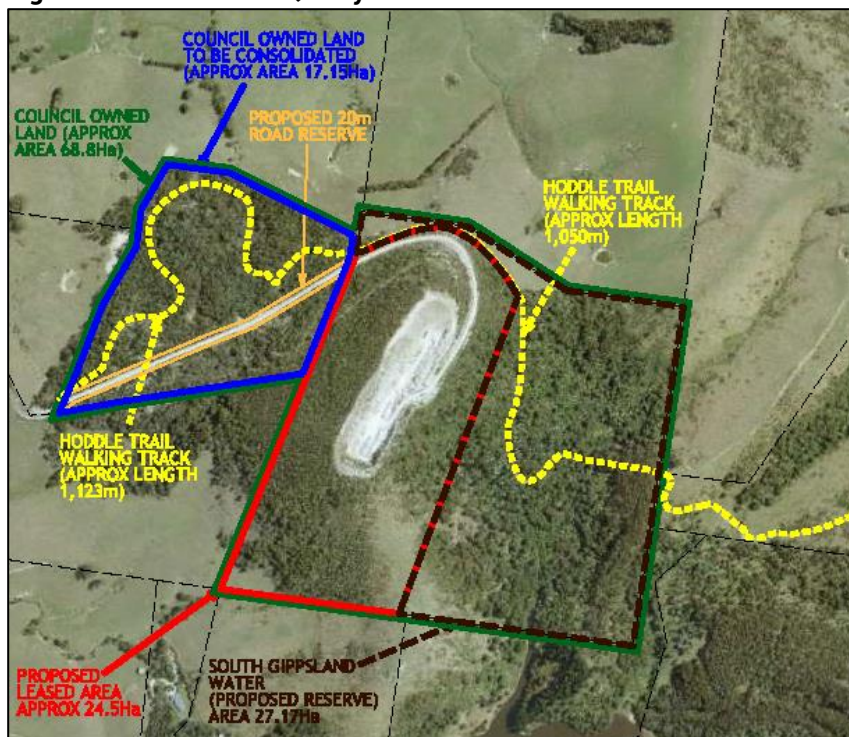
REPORT

Council owns several parcels of land (outlined in green in **Figure 1** below) at the end of Fish Creek Quarry Road, Fish Creek on which a quarry is located. All of the land is currently leased to Goldsmith Quarries Pty Ltd (Goldsmith) for use as a quarry. Goldsmith has a planning permit and the necessary work authority to operate the site as a quarry.

The lease commenced in 1998 with an expiry date of 2008 and was extended by exercise of options to 30 June 2018 when the lease expires. The lease has been transferred between different operators over time.

A plan is available in **Figure 1** below and a larger version in **Attachment (2.1.1)**.

Figure 1 – Fish Creek Quarry Plan



The current leased area includes land that falls within the Battery Creek Catchment overlay, areas of native vegetation that can't be quarried, and part of the Hoddle Mountain Trail.

Council resolved at its ordinary meeting 20 December 2017 to reduce the leased area by excluding the Battery Creek Catchment area and access track, areas that can't be quarried, and part of the Hoddle Mountain Trail, whilst leaving sufficient area necessary for a quarry operations into the future. It also resolved to create the road reserve shown in **Figure 1** to provide a legal point of access.

CONSULTATION

Consultation in regards to the proposed lease has occurred as follows:

- Goldsmith – current tenant and operator of the quarry. Goldsmith is interested in continuing with a lease over the land.
- Russell Kennedy lawyers – legal advice and preparation of the lease (**Confidential Attachment [15.1.3]**).
- Planning department – planning permit.
- South Gippsland Water Corporation – confirmed agreement in principal to have the catchment area (highlighted black) vest with the Corporation and that the walking trail could continue.
- Earth Resources Regulation, Department of Economic Development Jobs Transport & Resources (DEDJTR) – regarding work plan and works authority.
- C J Ham & Company – for valuation (**Confidential Attachment [15.1.2]**).
- Public Notice – Council published the notice calling for submissions in the local newspapers edition week commencing 8 January 2018 on the proposal in accordance with s.223 of the Local Government Act 1989 to commence a public consultation process inviting written submissions to the proposal from the community by 5:00pm, Tuesday 6 February 2018.
- Submissions – Council received three submissions in response to this public notice. Of the three submissions one submitter has elected to be heard in support of their submission (**Confidential Attachment [15.1.1]**).

OFFICER RESPONSE TO WRITTEN SUBMISSION

Mr Tim Farrell is to be heard by the Special Committee on behalf of the Fish Creek Farrell Family and Yuulong Nominees Pty Ltd.

Council is aware of the significant flora and fauna values present at the site including the presence Gippsland Mallee, *Eucalyptus kitsoniana*. The area to the of west and south of the current extraction limits has been specifically

excluded from future development due to the significance of the vegetation and the habitat it provides for native fauna.

Council is also transferring ownership of approximately 27 ha of the site to South Gippsland Water (area east of the quarry). Approximately 92 percent of this area contains indigenous vegetation.

The land transfer is being undertaken to:

- protect the flora and fauna of the area;
- enable the Hoddle Mountain Trail to be further developed for passive recreation;
- protect the landscape/visual amenity of the area (Hoddle Range);
- protect and maintain water quality and quantity in the Battery Creek, Catchment (Fish Creek Reservoir); and
- minimise erosion (through the retention of the indigenous vegetation).

The remaining areas outside of the proposed lease site (existing quarry) will also be managed to protect flora and fauna values and enable the development of the Hoddle Mountain Trail as previously indicated. Management will include weed control and upgrading, and clearly define the Hoddle Mountain Trail.

Management of the existing quarry is via the work authority issued by the DEDJTR. The quarry operator is required to prepare a work plan, which is endorsed and regulated by the DEDJTR. The work plan addresses a range of management issues including impacts to the:

- hydrogeology of the area;
- local flora and fauna; and
- rehabilitation (including an appropriate bond).

If Mr Farrell wishes to lodge a complaint regarding non-compliance onsite in respect of the work authority, work authority conditions, or the current approved work plan, he can do so by contacting Earth Resources, DEDJTR.

RESOURCES

Current rent is \$14,041 plus GST per annum, plus payment of royalties on sales of rock to Council and other purchasers.

Rental and/or royalties as per independent valuation.

Management of lease.

RISKS

The risks to Council if the quarry operations cease are:

- a reduction in supply of road making material for rural purposes;
- a loss of Council revenue; and
- remediation of the site by the quarry operator will become Council responsibility.

If a lease is not granted, the planning permit and works approvals cannot be approved.

STAFF DISCLOSURE

Nil

ATTACHMENTS

Attachments are available on Council's website: www.southgippsland.vic.gov.au

1. Fish Creek Quarry Plan **[2.1.1]**

CONFIDENTIAL ATTACHMENTS

Confidential Attachments [15.1.1] – Submission, **[15.1.2]** – Fish Creek Quarry Valuation – and **[15.1.3]** Fish Creek Quarry Draft Lease – have been provided in accordance with s.77(2)(c) of the Local Government Act 1989, the Chief Executive Officer designates these items as confidential information on the grounds that it relates to s.89(2)(d) - a contractual matter, and (h) - any other matter which the Council or Special Committee considers would prejudice the Council or any persons.

These attachments are confidential to protect the privacy of the submitter and relates to contractual matters.

REFERENCE DOCUMENTS

Council Policy

Documents are available on Council's website: www.southgippsland.vic.gov.au

Leasing Policy 2014

Legislative Provisions

Local Government Act 1989

3. MEETING CLOSED

NEXT MEETING

The next Ordinary Meeting of Council open to the public will be held on Wednesday, 28 February 2018 commencing at 2pm in the Council Chambers, Leongatha.