Parma NSW 2540

PCU040081

11/122012

Major ProjectsAssessmentDepartment ofPlanning & Infrastructure NSWOPO Box: 20SydneySydneyAttention Sally Munk

Department of Planning Received 1 7 DEC 2012

Scanning Room

Dear Sir, Ref: 06_0135 Comberton Grange, Sth Nowra Tourist and Restantial Development

Preamble

This is an extremely lengthy document. The documentation requires a longer period of exhibition to offer a reasoned response. This is the first time there has been an opportunity for the public to respond since 2005 when a Memorandum of Understanding was signed between Shoalhaven Council and the Abbot of the Shaolin order. This was without any reference to the community.

There is a feeling of unease in the community about how the whole issue has been handled and in some cases manipulated. To take a history lesson one must start at the beginning and work through from the time Bob Jennings was coerced to sell Comberton Grange by representatives of the Armco Corporation. Bob, who was a personal friend, sold the property that had been in the Jennings family for generations because he was informed that a steel works was to be built on his boundary.

Shoalhaven City Council purchased the property in 1985 for \$1.3M to acquire the hard rock deposits contained in it. The Deputy City Engineer said the material would provide high quality road building material for many years. The state government said it was a great resource for the south coast. The former quarry manager said in an interview that the material was of high quality. Why was this asset wound down and placed in the Contract of Sale to the Shaolins? Reasons that have been given by council do not appear to add up.

aware of any police investigation into the cause. disconnected and there was no other fire in the vicinity. I am not The heritage house was destroyed by fire after the power was

Negotiations of Sale

long and we a have a council that appears to be putty in their hands. will invest hundreds of millions in this project can procrastinate for so supposedly are a wealthy body, have wealthy benefactors and say they funds. It beggars belief that an organization such as the Shoaolins who affair appears farcical and looks to be poor management of ratepayer's months or until the Environmental Assessment is approved. The whole have the situation of council voting to defer interest payments for six on 29th March 2012. The contract has not yet been settled. Now we deferred twice more and eventually the contract stipulated mortgage was \$4.75M and the settlement was due in 2009. Settle was interest was imposed on the mortgagor. The amount involved in the and SCC took a mortgage on the title. A less than commercial rate of the public excluded. The Shaolin Temple Foundation paid a 5% deposit These negotiations have always been held in confidential meetings and have been ever changing since contracts were exchanged in 2006. Negotiations with the Shaolin Temple Foundation settenent

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community. There are eleven cultural units across Europe alone. Temple Foundation, no doubt, sees an opportunity in the Religious Tourism market to spread its beliefs and teachings in the general There is no recognised to support these assumptions. The Shaolin number of tourists to be attracted a from 100,000 to 450,000 per year. field of interest and some assumptions have been published as to the Shaolin Temple complex and Kung Fu academy will cater for a narrow Regional NSW and tourism has been growing steadily. The proposed Shoalhaven City is the most visited Local Government Area in

tradition, spreading kung fu culture and its many benefits, to a wider National People's Congress of the people of China from 1993 to 2003. achievements show him to have been an elected Deputy of the 9th audience. A published list of the Abbot's appointments and Temple as a business. However, he argued this protected the Shaolin Recently, Abbot Shi Yongxin has been criticised for running the Shaolin

martial art known as Kung Fu. This seems to have a limited following in Australia but there are some Academies in Victoria at present. The Part of the Shaolin doctrine is the teaching and acceptance of the proponents of the Temple indicate they will seek to have the academy accredited as an educational facility. As the Shaolins are a sect of Buddhism, Kung Fu and most of their associated events appear to be covered by Taxation Ruling TR 92/17 of the Australian Tax Office and the Local Government Amendment (General Rate Exemptions) Act 2010 No 37. Through these two rulings this development may pay little or no tax or rates.

If this is the case not only would this be an unjust impost on Shoalhaven ratepayers and the nation's taxpayers as a whole but it also it places other tourist operators in Shoalhaven at a distinct financial disadvantage. A development such as this could have severe financial implications for the local council rather than provide the money tree they hope for.

Employment

Claims have been made regarding the huge employment opportunities that will be created by this development. As is often the case in the construction stage much labour comes from elsewhere and in the case of foreign developers considerable numbers are often sourced from outside of the country. The operation could probably employ little outside staff as the large number of Shaolin members in residence could, no doubt, be sufficient to carry out most of the day to day running. There is no guarantee where labour will be sourced.

The proposed development of Comberton Grange by the Shaolin Temple Foundation will be a stand-alone complex and in that respect will comply with that part of the recommendations of the Regional Plan and the Sensitive Urban Land Report. However, it cannot comply with the thrust of the recommendations due to its sheer size and thus in becoming a town looses any credibility. The Environmental Assessment Report says the development will endeavour to become self- sufficient. What does that really mean? There is mention in the report that most people living at Comberton Grange will be of Chinese extraction or followers of the sect.

There is no credible document or socio economic study presented to support the employment figures that would be created through the approval of such a proclaimed self-sufficient complex.

Community Title

Management committees will rule the complex system of precincts linked together under Community Title. My understanding is that the Shaolin Temple Foundation must be the "proprietor" of the title. It is dependent on the rules of the different precinct management committees whether the Shaolins control the composition of the population in the complex subdivisions or elsewhere. If this is the case no one other than a follower of this Buddhism sect will wish to buy in here anyhow. Perhaps, if not an adherent a person may not qualify to occupy a site.

All commercial services could be able to be tightly controlled. Restaurants, theatres, conferences, shops etc will all be under the control of the Foundation. If all this were to be correct I assume we would be creating a precedent for this country.

Why is it necessary to seek a Community Title if, in fact, the Shaolin Foundation will be able to have complete control anyway?

Quarry

Suggested irregular actions implemented by Shoalhaven Council in regard to the closure and disposal of Comberton Grange Quarry have featured over recent years in the media. As previously stated the property was purchased in 1985 primarily for its hard rock deposits and about the same time the old pine forest was acquired.

The quarry deposits are known as the Currumbene Dome and in the Jervis Bay Settlement Strategy of 2003 it was noted that the area was zoned 1(e) Extractive and Mineral Resources and is surround by 1000 metre buffer.

In 1990 Mr Barry Russell, Deputy City Engineer, reported to the Comberton Grange Task Force Committee the importance of the quarry in the road works programme. A much needed resource for road construction for Shoalhaven and the South Ceast etc.

An Independent? Valuation in 2004 led, without any warning, to Comberton Grange quarry being included in the sale to the Shaolin Temple Foundation. The quality of the material was not in question but was adopted by the councillors to purchase further supplies from private sources. Council General Manager, Russ Pigg, said regulations imposed on the quarry's operations played a part in reducing its viability. Most discussions were held in confidential session again.

In March 2012 the former quarry manager, senior engineering staff member Peter Jirgens, issued a statement that the quarry was saving the community hundreds of thousands of dollars a year. He said that he

constantly had political pressure applied to him from within Council to slow the operations. Mr Jirgins was in charge of the quarry for ten years and it always made a profit, as well as paying off the set-up costs, despite having the relatively small extraction rate of 35,000 tonnes annually. He estimated that the worth of large deposits of sandstone and dolerite still in the quarry, was in the "millions"

As far as I am aware the quarry is still listed as a significant resource and is zoned 1e on Shoalhaven LEP. The foundation has suggested they may use this material for a base for internal roads. However, the Director- General's Environmental Requirements (13.1) requires the Foundation to assess the viability of the existing dolerite and sandstone mineral resources. Has this not already been done?

Former South Coast State member John Hatton has called for an ICAC inquiry over this whole episode. It seems to some that perhaps negotiations with the Foundation may have led to the quarry being included in the contract for sale.

Bushfire

The site of the proposal is bounded on three sides by bushland except to the south. Problems should only occur in this direction if the lower grassland was tinder dry and fire swept up the slope to the 78 buildings above.

However, heavy bushland to the north, northwest and west could make it difficult to make an effective evacuation plan in times of emergency. With such a large resident population at any one time the only means of evacuation would be into and through forested areas.

This will be one of the great difficulties of establishing a town and keeping it secure, in the middle of the Australian bush. Except for the flat land to the south the property is in Category 1 Fire Risk Zone and it is difficult to accept the recommendations of the Kettle Report 2001 that there should be a minimum 20-metre fuel free zone and a 20metre fuel reduced zone for buildings adjacent to the forest.

Conclusion

I have not attempted to cover all aspects of the Environmental Assessment Report and I leave these to others. Issues such as environment, traffic generation and visibility from the south require closer scrutiny. Employment and tourism generation assumptions are just that. This is not an historical 1500-year-old

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. . temple set in China but a commercial operation that may undermine parts of the existing tourism industry.

I oppose the Environmental Assessment Report as it is not supportable and does not cover all of the key elements. The consultants have attempted to cover all angles but in doing so have watered down the real issues that have not been sufficiently addressed.

1/ In trying to obtain the most concessions they can the consultants are creating a town against the clear recommendations of 3 government studies. The site is not close to any established urban area and should not be considered for urban expansion, which appears to be the case in this instance. Planning studies have shown that Shoalhaven has a more than sufficient stock of available land for housing construction attached to current urban areas for well into the future. I stated earlier that this development would house as many, or more, people than the township of Berry (2422 in 2011). To accept this development would fly in the face of previously widely accepted planning for Shoalhaven.

2/ I do not think the seriousness that the development will pose to Currumbene Creek has been sufficiently addressed. This stream which provides the main catchment for Jervis Bay has long been identified for the utmost protection. The vast majority of Comberton Grange discharges run off into Currumbene Creek, either directly, or through, its creeks and waterways. An important fish sanctuary for the Jervis Bay Marine Park is located in Currumbene Creek and is vital for the maintenance of fish stocks in Jervis Bay. I do not think the Marine Park Authority would be impressed.

3/ Appendix 16 of the Assessment report, Consultation with Authorities, exhibits 6 items; of these are five to do with Shoalhaven Council and I from Joanna Gash. Gash wrote in her capacity as Federal Member for Gilmore supporting the project. She is now Mayor. Two of the others were to the department supporting the developers, and the others to do with getting the department's support in clarifying a road project. I think it should be remembered that Shoalhaven Council is the vendor and should keep at arms length in some matters dealing with the proposed sale.

4/ Many in the community have not been impressed with some developments Shoalhaven City Council has supported over the years around and in Jervis Bay. These include: relocating the eastern naval base, locating an armaments wharf in the Bay, having the munitions dump in the old pine forest, discharging of sewage effluent off

Governor Head, supporting rezoning of the Heritage paper estate and entering into the various Huscorp debarcles.

The Council opposed the Jervis Bay Marine Park, Boodaree National Park and other State National Parks. Council has lost all of these issues and cost the ratepayers considerable sums in running their campaigns..

5/ The secrecy surrounding dealings between the vendor (our council) and the purchaser are felt to have been suspicious. The original contract stipulated settlement in 3 years (2009) and since then settlement has been extended at least twice. What promises have been made and what concessions has Council extended to the purchaser? We have been told that the purchaser under the contract is to pay an interest below the commercial rate. It has taken 7 years to get where we are to date. In October, Shoalhaven Council has deferred the interest payments for six months or until the Environmental Assessment Report is adopted. A long time might pass before we see any money.

Council accepted a mortgage on the property in 2006 for \$4.75M. At a low interest rate of say 5% for seven years Council should have received approximately \$1.7M. What have they received and will all the outstanding interest be compounded at settlement? Has Council acted responsibly? Citizens of Shoalhaven have been kept in the dark while the purchasers have been handed more and more.

6/ The Shaolin Foundation, through their resident representative Patrick Pang, has stated that they do not want external investors which is taken to mean that those buying into the community title subdivision precincts would only be members of the Shaolin sect. This appears that the Comberton Grange development will be a closed community based on sectarian grounds. Could this have been the vision of the South Coast Regional Strategy and the South Coast Sensitive Urban Lands Report?

7/ If this proposal is to be approved the eastern forest must be ceded to the Department of Environment (National Parks), the quarry 1e zoned site must be withdrawn from the Contract of Sale (and probably reopened) and the Department of Planning and Infrastructure must be given the power of veto in framing of precinct management committee rules.

It would be better not to publish my name on your website or to the owners of Comberton Grange as the hassle would not be worth it. I am, however, prepared to be subject to interview at any time.

Attachments:

- 1/ Contract Recommendation Minutes & Reports
- 2/ Quarry Media Extracts
- 3/ Consultation Correspondence
- 4/ Taxes and Rate Legislation



588. Request from Palerang Council - Main Road 92 Project - Braidwood to Nowra File 1466-13

RESOLVED on a MOTION of Clr Anderson, seconded Clr Kerr, that Council agree to a letter of support to Palerang Council in their application for upgrading and sealing a 3km section of Main Road 92, north of Braidwood, under the Auslink Strategic Regional Program.

589. Replacement of the Bridge over Tributary of Broughton Creek, Beach Road Berry File 34131

RESOLVED on a MOTION of Clr Young, seconded Clr Ward, that:

- a) Council to accept the option 2 tender of Ablock Builders Pty Ltd. for Replacement of the Bridge over Tributary of Broughton Creek, Beach Road Berry;
- b) The Contract be executed under the Seal of Council.
- 590.Forest Road Upgrade Tenders for Construction WorksFile 33989-03

RESOLVED on a MOTION of Clr Young, seconded Clr Ward, that:

- a) Council accept the tender of Trilogy Civil Pty Ltd for the Upgrading and Sealing of Forest Road, Specification CH0206/03, File 33989, including the option of the contractor providing the subbase material.
- b) The Contract be executed under the Seal of Council;
- c) Council determine to close Forest Road for the duration of construction and that all respondents be advised accordingly;
- d) Council authorise the General Manager, (Director City Services) to negotiate with the successful contractor for the upgrading of the existing sealed sections of Forest Road to 80km Standard, under the terms of the existing Contract.
- e) A further report be submitted to Council on the outcome of these negotiations and the anticipated balance of the Roads to Recovery Two funding.
- 591. Drilling, Blasting and Crushing of Approximately 55,000 tonne of Sandstone at Comberton Grange Quarry. Spec MGH 00905/02 File 33080

A MOTION was moved by Clr Finkernagel, seconded Clr Ward, that:

- a) Council accept the tender of Stefanutti Constructions (Wollongong) for drilling, blasting and crushing of approximately 55,000 tonne of sandstone at Comberton Grange Quarry.
- b) The material be stockpiled for future use in the City.

The MOTION upon being PUT to the meeting was declared LOST.

THE RECORD OF VOTING ON THIS MATTER WAS AS FOLLOWS:

The following Councillors voted "Aye";

THIS IS PAGE 39 OF THE MINUTES OF THE ORDINARY MEETING OF THE COUNCIL OF THE CITY OF SHOALHAVEN HELD ON MONDAY, 24TH APRIL 2006

MINUTES CONFIRMED ON TUESDAY 23RD MAY, 2006 - CHAIRMAN

Clrs Finkernagel, Ward

The following Councillors voted "No";

Clrs Rudd, Murphy, Green, McCrudden, Kerr, Kearney, Anderson, Willmott, Young, Bates, Watson

A MOTION was moved by Clr Anderson, seconded Clr Kearney, that Council not accept any of the tenders received for the drilling, blasting and crushing of approximately 55,000 tonne of sandstone at Comberton Grange Quarry (Spec MGH 00905/02).

The MOTION upon being PUT to the meeting was declared CARRIED.

THE RECORD OF VOTING ON THIS MATTER WAS AS FOLLOWS:

The following Councillors voted "Aye";

Clrs Finkernagel, Rudd, Murphy, Green, McCrudden, Kerr, Ward, Kearney, Anderson, Young, Bates, Watson

The following Councillors voted "No";

Clr Willmott

SHOALHAVEN WATER GROUP

592. Conjola Regional Sewerage Scheme - Pumping Station Power Supply Tender File 32134

RESOLVED on a MOTION of Clr Anderson, seconded Clr Ward, that Council:

- a) Decline to accept any tenders for the Conjola Regional Sewerage Scheme: Construction of contestable works for power supply to new wastewater pump stations called on the 18th February, 2006 and closed on 14th March, 2006.
- b) In accordance with clause 167, 168 and 169 of the Local Government (General) Regulations 2005 call fresh tenders for the power supply to new wastewater pumping stations including pumping station M2.

PROCEDURAL MOTION

593. Adjournment for Dinner

A procedural MOTION was moved by Clr Rudd, seconded Clr Watson, that the meeting adjourn for dinner as the time was 7.05 pm.

The MOTION upon being PUT to the meeting was declared LOST on the voices.

THIS IS PAGE 40 OF THE MINUTES OF THE ORDINARY MEETING OF THE COUNCIL OF THE CITY OF SHOALHAVEN HELD ON MONDAY, 24TH APRIL 2006

MINUTES CONFIRMED ON TUESDAY 23RD MAY, 2006 - CHAIRMAN

SECOND MAYORAL MINUTE

ORDINARY MEETING

TUESDAY, 23RD MAY, 2006

1. Proposal Shaolin Centre - Shoalhaven

File 18583-02

As Councillors would be aware I will be travelling to China in early June to finalise the arrangements for the conditional sale of the Comberton Grange property to the Shaolin Abbot. The property will be purchased by an Australian Corporation "Shaolin Temple Foundation (Australia) Limited " with the membership being Shaolin Temple, China and the Director and Guarantor being the Shaolin Abbot, Shi Yong Xin.

To add to the status of the occasion it is my recommendation that the Contract for Sale be executed under the Common Seal of Council with both myself and Clr. John Anderson being authorised to sign the document.

I am endeavouring to organise business meetings in Beijing and Shanghai - Patrick Pang the Abbot's representative is assisting me with the Beijing meeting and Steven Hu, Australia/Asia Exchange Association with the Shanghai meetings. In addition to this I am endeavouring to contact the Mayor of Beijing, Hon. Wang Qishan and the Mayor of Shanghai, Hon. Han Zheng with a view to holding Mayor to Mayor discussions

A number of Councillors have made private arrangements and will be attending the signing ceremony. As their attendance has not been authorised they may not be covered by Council's insurance policy.

To ensure that the Councillors are covered during the trip to and from China and in China itself, I believe it would be appropriate to declare the whole trip business of Council.

RECOMMENDED that

- As reported to the Property Steering Committee, Council authorise the Contract for Sale between the Council of the City of Shoalhaven for the sale of the Comberton Grange property to the Shaolin Temple Foundation (Australia) Ltd. or such other entity nominated by the Shaolin Abbot, Shi Yong Xin at the agreed Contract price and conditions contained in the report to the Property Steering Committee of the 19th May, 2006.
- ii) Council authorise the Mayor and a Councillor to sign the Contract for Sale on Council's behalf.
- iii) The Transfer is to be executed under the Common Seal of the Council of the City of Shoalhaven.
- The Mortgage based on terms and conditions contained in the report of 19th May, 2006 be signed by the General Manager, and

REPORT OF THE CONFIDENTIAL COUNCIL PROPERTY STEERING COMMITTEE – FRIDAY 19TH MAY 2006

ITEMS FOR RESOLUTION BY COUNCIL

1. Land Acquisition for Road - Part of Lot B DP335109 Moss Street, Nowra File 30363

Council resolved on 24th April 2006 to negotiate the acquisition of Lot B DP 335109 for future road widening. Negotiations have resulted in the vendor revising the sales offer which was tabled at the Committee meeting.

A MOTION was moved Clr Watson, seconded Clr Finkernagel, that the Council Property Steering Committee make the following recommendation to Council:

RECOMMENDED that the General Manager (City Services) proceed with further negotiations for the purchase of Lot B DP224109 Moss Street, Nowra, at the price adopted at the meeting and submit a further report to Council.

The MOTION upon being PUT to the meeting was declared CARRIED

2. Sale of Council Land at Comberton Grange Road, South Nowra File 18583-02

Agreement has been reached on the terms and conditions of sale of the property commonly known as Comberton Grange and documentation is being drafted for signing and exchange of contracts.

A MOTION was moved by Clr Anderson, seconded Clr Finkernagel, that the Council Property Steering Committee make the following recommendation to Council:

RECOMMENDED that:

- a) Council authorises the Contract for sale between The Council of the City of Shoalhaven for the sale of Comberton Grange property to Shaolin Temple Foundation (Australia) Limited or such other entity nominated by the Shaolin Abbot at the agreed contract price and conditions contained in the reports of 19th May 2006 to be signed by the Mayor and a Councillor;
- b) The Transfer is to be executed under the common seal of the Council of the City of Shoalhaven;
- c) The Mortgage based on terms and conditions contained in the report of 19th May 2006 be signed by the General Manager; and
- d) The Contract and Mortgage be guaranteed by the Abbot of Shaolin Temple.

The MOTION upon being PUT to the meeting was declared CARRIED

MINUTES OF THE ORDINARY MEETING OF THE COUNCIL OF THE CITY OF SHOALHAVEN HELD IN THE COUNCIL CHAMBERS, CITY ADMINISTRATIVE CENTRE, BRIDGE ROAD, NOWRA ON WEDNESDAY 31ST MAY 2006 COMMENCING AT 3.39 PM

The following members were present;

Clr G Watson – Chairman Clr J Finkernagel Clr R Rudd Clr P Murphy Clr P Green Clr J McCrudden Clr J Kerr Clr G Ward Clr G Kearney Clr J Anderson Clr J Willmott Clr R Bates

750. Apologies

An apology was received from Clr Young.

RESOLVED on a Motion of Clr Ward, seconded Clr Anderson, that the apology of Clr Young be received and accepted.

MAYORAL MINUTE

751. Shaolin Temple - Amended Legal Document File 18583-02

RESOLVED on a MOTION of Clr Watson, seconded Clr Anderson that the Contract for the Sale of the Comberton Grange property be executed under the Common Seal of Shoalhaven City Council.

On the introduction of this item Clr Ward moved a procedural motion that the introduction of a Mayoral Minutes without notice at an Extra Ordinary Meeting was contrary to prescribed meeting procedure.

The procedural motion was not put.

The Mayor further ruled that the Local Government Regulations provided for the Mayor to put to the meeting without notice, any matter or topic that is with in the jurisdiction of the Council or of which Council has official knowledge.

THIS IS PAGE 1 OF THE MINUTES OF THE EXTRA ORDINARY MEETING OF THE COUNCIL OF THE CITY OF SHOALHAVEN HELD ON WEDNESDAY, 31ST MAY 2006

MINUTES CONFIRMED ON TUESDAY 27th JUNE 2006 - CHAIRMAN

- The Contract and Mortgage be guaranteed by the Abbot of Shaolin Temple, V) Shi Yong Xin.
- vi) To ensure that those Councillors attending the Signing Ceremony are covered by insurance that the trip to and from China and in China itself be declared business of Council.

Greg Watson

Mayor

- d) The documents including the lease agreement relating to this resolution be authorised to be signed by the General Manager and executed under the Seal of Council where necessary.
- 737. (Item 2, Page 76A-3) Sale of Council Land at Comberton Grange Road, South Nowra

File 18583-02

This item was withdrawn and dealt with separately.

RECOMMENDED that:

- a) Council authorises the Contract for sale between The Council of the City of Shoalhaven for the sale of Comberton Grange property to Shaolin Temple Foundation (Australia) Limited or such other entity nominated by the Shaolin Abbot at the agreed contract price and conditions contained in the reports of 19th May 2006 to be signed by the Mayor and a Councillor;
- b) The Transfer is to be executed under the common seal of the Council of the City of Shoalhaven;
- c) The Mortgage based on terms and conditions contained in the report of 19th May 2006 be signed by the General Manager; and
- d) The Contract and Mortgage be guaranteed by the Abbot of Shaolin Temple.

RESOLVED on a MOTION of Clr Young, seconded Clr Ward that the report of the Confidential Council Property Steering Committee from Friday 19th May 2006 regarding the Sale of Council Land at Comberton Grange Road, South Nowra be received for information.

738. (Item 4, Page 76A-4) Council Land - Ulladulla Lot 11 DP791198, Lot 2 DP717433 and Huskisson Lot B DP348180, Lot 23 DP7169DP7169. Public Car Parks File 30259, 32056

This item was withdrawn and dealt with separately

RECOMMENDED that:

- a) Council continue with the Expression of Interest process of the sale of Ulladulla Lot 11 DP791198, Lot 2 DP717433 and Huskisson Lot B DP348180, Lot 1 DP7169 and Lot 23 DP7169 Public Car Parks, incorporating comments made by the Council Property Steering Committee.
- b) The Council Property Steering Committee review the final Expression of Interest documentation for the sale of Huskisson and Ulladulla Public Car Parks land.

RESOLVED on a MOTION of Clr Finkernagel seconded Clr Ward that the recommendation of the Confidential Council Property Steering Committee be adopted.

THIS IS PAGE 33 OF THE MINUTES OF THE ORDINARY MEETING OF THE COUNCIL OF THE CITY OF SHOALHAVEN HELD ON TUESDAY, 23RD MAY, 2006

MINUTES CONFIRMED ON TUESDAY 27TH JUNE 2006 - CHAIRMAN

REPORT OF GENERAL MANAGER

COUNCIL PROPERTY STEERING

MONDAY, 10TH NOVEMBER 2008

ASSISTANT GENERAL MANAGER

1. Contract for Sale of Land to Shaolin Temple Foundation (Australia) Limited

File 18583-03

Purpose of the Report:

To inform Council of the advice from the Shaolin Temple Foundation (Australia) Limited – purchaser, to complete the contract for sale of the Comberton Grange Property, Comberton Grange Road, Comberton (South Nowra) in December 2008.

Details/Issue:

Background

The Comberton Grange Property consists of six titles and comprises the original Comberton Grange property (1,082ha) and the Pine Forest (166ha).

The Contract for sale of the subject property was exchanged with Shaolin Temple Foundation (Australia) Limited on 11 June 2006. The completion (settlement) of the contract was conditional on the Minister for Planning forming the opinion under SEPP (Major Projects) 2005 that the development (as described in application to Minister 20 April 2006) is a Major Project to which Part 3A of the Environment Planning and Assessment Act applies. Completion of the Contract would then take place within 21 days.

The Minister's opinion of the proposed development being a Major Project was issued on 18 June 2008. The Department on 16 July 2008 issued the Director-General's Environmental Assessment Requirements (DGRs). Shaolin Temple Foundation (Australia) Limited has engaged planning consultant Conybeare Morrison International Pty Ltd in this development proposal.

Variation to Contract

Council resolved on 28 November 2006 (Minute 1526) to adopt the recommendation of the Council Property Steering Committee:

"RECOMMENDED that Council agrees to extend the date to 1 November 2006 in Clause 43 of the Contract for sale dated 11 June 2006 and authorise the General Manager to make determinations in respect of the contract in future pending the announcement by the Minister for Planning."

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At the request of Shaolin Temple (Foundation) Australia Limited, the settlement date was agreed for 31 October 2008. However, the representative of the Abbot of Shaolin Temple on behalf of the purchaser sought a further extension of time and has committed to completion (settlement) in December 2008. Council's lawyers have been informed.

Economic, Social & Environmental (ESD) Consideration: Not applicable at this stage.

Financial Considerations:

The Contract price is \$5,000,000 plus gst. The deposit of \$250,000 has been paid and invested by Council's lawyers into an interest bearing account with the accrued interest to be shared equally.

Options:

Not applicable on the assumption that settlement will occur in December 2008. If this does not occur, the matter will be reported back to Council and options at that time may be:

- 1. Force the settlement at a determined date.
- 2. Allow further deferral of settlement.
- 3. Serve notice to end the contract.

SUBMITTED for information.

2. Council Properties - Public Car Parks at South Street and Boree Street, Ulladulla File 30259 and 31095

Purpose of the Report:

To inform Council of the current position in implementing the previous Council's resolution to proceed with the calling of Expressions of Interest for the sale and development of the two public carparks in South Street and Boree Street, Ulladulla. It is also opportune to consider the implications of the current financial and economic conditions of the domestic economy in marketing these properties and to review the expected community outcome from the property dealings for the Expressions of Interest.

Details/Issue:

Background

Reports relating to this matter have been submitted over a number of years to the Council Property Steering Committee and to the Ordinary Meeting. The last relevant Council resolutions are:

- 1. South Street and Boree Street, Ulladulla Minute 1448 of 24 October 2006: "RECOMMENDED that Council include special requirements for a new Library in the Expression of Interest process for South Street and Boree Street carparks.
- 2. South Street and Boree Street, Ulladulla Minute 1718 of 20 November 2007: *"RECOMMENDED that: a) Council adopt the Public Interest Evaluation process as outlined in the report:*

Council Property Steering - 10th November 2008 Report - General Manager - Assistant General Manager

MINUTES OF THE COUNCIL PROPERTY STEERING COMMITTEE MEETING HELD ON MONDAY, 9TH MARCH 2009 IN COMMITTEE ROOMS 1 & 2, CITY ADMINISTRATIVE CENTRE, BRIDGE ROAD, NOWRA COMMENCING AT 3.05 PM

The following members were present:

Clr Fergusson - Chairperson Clr Kearney Clr Ward Clr Miller – arrived 3.31 pm Russ Pigg - General Manager Peter Dun - Director Finance and Corporate Services

Others Present:

Clr Watson Clr Findley Ernie Royston - Director Strategic Planning and Infrastructure John Drummond - Strategic Property Manager

Apologies:

Apologies were received from Clrs Guile and Bennett.

1. Minutes of Previous Meeting

RESOLVED on a MOTION of Clr Ward, seconded Clr Kearney, that the Minutes of the meeting of the Council Property Steering Committee held on Monday 9th February 2009 be confirmed.

REPORT OF THE GENERAL Manager

STRATEGIC PLANNING AND INFRASTRUCTURE

2. Contract for Sale - Shaolin Temple Foundation (Australia) Limited File 18583-03

This item was deferred and dealt with following the confidential session.

3. Community Garden Proposal File DA08/1785, 39230

A MOTION was moved by Clr Kearney, seconded Mr Pigg, that the Council Property Steering Committee make the following recommendation to Council:

RECOMMENDED that Council acknowledges the owners of Lot 1 DP112866 Nobblers Lane, Terara decision not to pursue the land swap proposal with Council owned land and to proceed with the determination of the development application over their land.

The MOTION upon being PUT to the meeting was declared CARRIED.

4. Egans Lane Carpark

A MOTION was moved by Clr Ward, seconded Clr Kearney, that the Council Property Steering Committee make the following recommendation to Council:

RECOMMENDED that:

- a) Council actively promote the Egans Lane area as a potential development site which essentially involves an amendment to the existing CBD strategy;
- b) A report be submitted to the Council Property Steering Committee in regard to probity advice, the constraints and strategic planning outcomes, including the future CBD Strategy and DCP, and other potential options.

The MOTION upon being PUT to the meeting was declared CARRIED

CONFIDENTIAL REPORT

STRATEGIC PLANNING AND INFRASTRUCTURE

CONSIDERATION OF ITEMS OF A CONFIDENTIAL NATURE

ltem			Reason
Contract Foundation		•	Advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege 10A(2)(g)

Pursuant to section 10A(4), the public were invited to make representations to the Council Property Steering Committee before any part of the meeting is closed, as to whether that part of the meeting should be closed.

A MOTION was moved by CIr Ward, seconded by CIr Kearney, that the Council Property Steering Committee Meeting exclude the press and public from the Meeting pursuant to section 10A(1)(a) of the Local Government Act, 1993 as it was to consider an item of a confidential nature in relation to matters pursuant to Section 10A(2)(g).

The MOTION upon being PUT to the meeting was declared CARRIED.

The meeting moved into confidential the time being 3.32 pm.

The meeting moved into open session, the time being 4.27 pm.

5. Contract Matter - Shaolin Temple Foundation (Australia) Ltd- Legal Advice File 18583-03

The following recommendation of the Council Property Steering Committee, whilst closed to the public, was read to the meeting by the Chairperson.

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RECOMMENDED on a MOTION that the recommendation remain confidential in accordance with S10A(2)(g) of the Local Government Act 1993.

6. Contract for Sale - Shaolin Temple Foundation (Australia) Limited File 18583-03

This item was deferred, previously Item 1.

A MOTION was moved by Clr Ward, seconded Clr Kearney, that the Council Property Steering Committee make the following recommendation to Council:

RECOMMENDED that Council authorises the General Manager to:

- a) Sign the Deed of Variation of Contract which will provide Council the opportunity to purchase the property as follows::
 - i) If the Shaolin Temple Foundation (Australia) Limited, at any time, wishes to sell the property, it must offer the property for sale to the Council on the same terms for which the property eventually sells. (Right of Pre-Emption/First Right of Refusal);
 - ii) The Shaolin Temple Foundation (Australia) Limited gives to Council an option to purchase the property back from the Foundation for \$5,000,000.00. This option can only be used by Council if at the end of five (5) years from the purchase of the property by the Foundation, a development consent for construction of the temple complex has not issued, and the foundations for that complex have not been constructed. (Grant of Option)
- b) Sign the Mortgage in accordance with the Contract dated 11 June 2006.

The MOTION upon being PUT to the meeting was declared CARRIED.

There being no further business, the meeting concluded, the time being 4.28 pm.

Clr Fergusson CHAIRPERSON

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ADDENDUM REPORT 1 - STRATEGIC PLANNING AND INFRASTRUCTURE

8. Deed of Mortgage - Shaolin Temple Foundation (Australia) Limited File 18583E

A MOTION was moved by CIr Watson, seconded CIr Proudfoot, that the Council Property Steering Committee make the following recommendation to Council:

RECOMMENDED that:

- a) Council agrees to vary the Mortgage AE610852R between The Council of the City of Shoalhaven (mortgagee) and Shaolin Temple Foundation (Australia) Limited (mortgagor) by extending the date for repayment of the principal sum by twelve months on the condition that the Shaolin Temple make available all studies relating to the submission of the development application;
- b) The terms and conditions of the Deed of Mortgage AE610852R otherwise apply including Annexure A (amending Item 2) and the Guarantee and Indemnity (see Attachment B);
- c) All costs associated with the variation of Mortgage be payable by the mortgagor; and
- d) Council enter into any Deeds of Agreement with the Shaolin Temple Foundation (and any third parties) that may be necessary for Council to secure access to the studies (and reports) in the event of mortgage default by the Foundation relating to the submission of the Development Application over the lands described as Lot 1 DP 725955, Lot 1 DP 550098, Lot 4 DP 63405, Lot 59 DP 755928 and Auto Consol 991/4.
- e) The Common Seal of the Council of the City of Shoalhaven be affixed to any documents required to be sealed, otherwise the General Manager be authorised to sign any documentation necessary to give effect to this resolution.

The MOTION upon being PUT to the meeting was declared CARRIED.

CONFIDENTIAL REPORT

STRATEGIC PLANNING AND INFRASTRUCTURE

CONSIDERATION OF ITEMS OF A CONFIDENTIAL NATURE

Item	Reason
Proposed Land Acquisition – Part of 94 Princes Highway, Ulladulla	Information that would if disclosed confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business 10(A)(2)(c)
Resolutions/Actions – Projects to be completed	Information that would if disclosed confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business 10(A)(2)(c)

Minutes of the Council Property Steering Committee-8 February 2012 Page 16 .

ADDENDUM REPORT OF GENERAL MANAGER

COUNCIL PROPERTY STEERING COMMITTEE

WEDNESDAY, 8 FEBRUARY 2012

STRATEGIC PLANNING AND INFRASTRUCTURE

1. Deed of Mortgage - Shoalin Temple Foundation (Australia) Limited File 18583E

PURPOSE OF THE REPORT

This report is submitted as an addendum to the Business Paper due to the urgency in considering a request from the mortgagor to extend the mortgage period by twelve months to 3 April 2013 (see Attachment A).

RECOMMENDED that:

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- a) Council agrees to vary the Mortgage AE610852R between The Council of the City of Shoalhaven (mortgagee) and Shoalin Temple Foundation (Australia) Limited (mortgagor) by extending the date for repayment of the principal sum by twelve months;
- b) The terms and conditions of the Deed of Mortgage AE610852R otherwise apply including Annexure A (amending Item 2) and the Guarantee and Indemnity (see Attachment B);
- c) All costs associated with the variation of Mortgage be payable by the mortgagor; and
- d) The Common Seal of the Council of the City of Shoalhaven be affixed to any documents required to be sealed, otherwise the General Manager be authorised to sign any documentation necessary to give effect to this resolution.

COMMUNITY STRATEGIC PLAN

Objective	4.5	A Council that is accountable and sustainable.
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Strategy 4.5.1 Manage Council's finance and resources in accordance with the Resourcing Strategy.

DELIVERY PROGRAM

Activity: 4.5.1.12 Develop strategies to optimise returns and contribute to the sustainability of Council's services within its property portfolio.

OPTIONS AND IMPLICATIONS

Option 1: Recommended

To adopt the Recommendation as stated above.
Option 2: Not Recommended

To not agree to extend the date of the repayment of the principal sum of the Mortgage.

<u>Implications:</u> Should the principal sum be not paid by due date then Council could take action as Mortgagee based on legal advice for such default.

REPORT DETAILS

Shoalin Temple Foundation (Australia) Limited purchased the property known as 'Comberton Grange' and entered into a Deed of Mortgage dated 3 April 2009. A copy of the Mortgage AE610852R is attached hereto.

The Mortgage incorporated a guarantee and indemnity. The salient terms and conditions are for the principal sum of four million seven hundred and fifty thousand dollars (\$4,750,000) to be repaid within three years from 3 April 2009 at the agreed interest rate payable six monthly in arrears.

The mortgagee has met its obligation under the Deed in respect of payment of interest by the due dates. The principal sum has not been reduced so the balance is still \$4,750,000.

The NSW State Government has been assessing the proposed development of Comberton under a Part 3(a) Application and the submission of the EA Report from the applicant to Department of Planning and Infrastructure is imminent. The Mortgagee has now requested Council to extend the repayment date of the loan for twelve months to allow the funding of the proposed development of Comberton Grange to be finalised.

Resourcing Implications – Financial, Assets, Workforce:

In regards to the impact on cash flow and budgets for 2011/12 and 2012/13 if the proceeds from the sale are not realised in 2011/12 there will be no impact on these budgets due to the management of the Strategic Projects Reserves Account.

Community, Environment (ESD), Economic and Governance Impact:

There is no adverse impact resulting from this action to the community, the environment or economically. The reporting of this matter demonstrates good governance in keeping the transaction transparent.

R.D PiggP.L. AdamsGENERAL MANAGERDIRECTOR, STRATEGIC PLANNING & INFRASTRUCTURE



Council loan may enable temple plans

Author: By ALEN ARNOLD Date: 07/04/2009 Words: 196 Source: ILL Publication: Illawarra Mercury Section: News Page: 10

A PROPOSED \$370 million Shaolin Buddhist temple south of Nowra has been given a lifeline by Shoalhaven City Council.

The Shaolin Temple Foundation (Australia) Limited has enacted a clause in its 2006 contract to enter into a mortgage with the council for a \$5 million purchase of the Comberton Grange property.

The council had told the proponents to finalise a land purchase by the end of March or look elsewhere.

The foundation paid a \$250,000 deposit in 2006 and will now be required to pay the final amount to the council within three years.

A council spokesman said interest is payable on the amount, with payments to be made every six months.

In June last year the proposal, including a temple, kung fu academy, hotel and residential complex, was granted major project status by the State Government.

Shoalhaven Mayor Paul Green said the council has added protection through a buy-back clause.

"The negotiations have been long, but this is a special development in the city and has the propensity to bring further rewards in terms of jo growth and tourist visitors to the city," Councillor Green said.

ADDENDUM REPORT OF GENERAL MANAGER

ORDINARY MEETING

TUESDAY, 25 SEPTEMBER 2012

STRATEGIC PLANNING AND INFRASTRUCTURE

1. Shaolin Temple Foundation (Australia) Ltd – Comberton Grange File 18583E

PURPOSE: Delivery Program Activity: 4.5.1.12

This report is submitted as an addendum to the Business Paper due to the urgency in considering a request from the mortgagor to defer the payment of interest due on 3 October 2012 (see Attachment 'A').

RECOMMENDED that:

- a) Council agrees to vary the Mortgage AE610852R between The Council of the City of Shoalhaven (mortgagee) and Shaolin Temple Foundation (Australia) Limited (mortgagor) by deferring the date for repayment of the interest due on 3 October 2012 until the Environmental Assessment Plan (EAP) is approved or by one month, being 3 November 2012, whichever is the sooner;
- b) The interest rate applicable for the ninety (90) day Bank Bill Swap Reference as at 3 October 2012 or the interest rate as at the date of payment, whichever is the higher, be the minimum rate applied on the date when the deferred payment is made;
- c) The terms and conditions of the Deed of Mortgage AE610852R otherwise apply including Annexure A and the Guarantee and Indemnity (see Attachment B) and Variation of Mortgage (see Attachment C);
- d) If exchange of letters is not acceptable in this matter, then all costs associated with a Variation of Mortgage be payable by the mortgagor; and
- e) The Common Seal of the Council of the City of Shoalhaven be affixed to any documents required to be sealed, otherwise the General Manager be authorised to sign any documentation necessary to give effect to this resolution.

OPTIONS

1. *(Recommended).* Endorse the recommendation above. This will allow the Shaolin Temple Foundation (Australia) Ltd (the Foundation) to fund the application fee to enable their EAP to be exhibited and considered by the Department of Planning and Infrastructure. It will however have some adverse financial implications for the Council as the investment earnings to be paid to Council will be deferred.

2. (Not Recommended). Reject the Foundation's request and insist that the interest payment be paid as at the due date of 3 October 2012. This may result in the Foundation's exhibition and consideration of their EAP by the Department of Planning and Infrastructure being delayed which will further delay the determination of the project and possibly cause them to miss the deadline date of 30 November for Part 3A Projects which in turn may jeopardise the whole project.

DETAILS

The Shaolin Temple Foundation (Australia) Limited purchased the property known as 'Comberton Grange' and entered into a Deed of Mortgage dated 3 April 2009. A copy of the Mortgage AE610852R is attached (Attachment 'B').

The Mortgage incorporated a guarantee and indemnity. The salient terms and conditions are for the principal sum of four million seven hundred and fifty thousand dollars (\$4,750,000) to be repaid within three years from 3 April 2009 at the agreed interest rate payable six monthly in arrears. Council at its meeting of 28 February 2012 agreed to the variation of the Deed of Mortgage whereby it allowed the final payment of the principal sum to be extended to 3 April 2013, MIN12.177.

The mortgagee has met its obligation under the Deed in respect of payment of interest by the due dates. The principal sum has not been reduced so the balance is still \$4,750,000.

The NSW State Government has been assessing the proposed development of Comberton Grange under a Part 3A Application and the lodgement of the EAP from the applicant to the Department of Planning and Infrastructure has now occurred. The Mortgagee has now requested Council to defer the next 6 monthly payment of interest due on 3 October 2012. This is a one off deferral of payment and will not affect future repayments.

The Foundation has advised that the deferral of the interest payment until the EAP has been approved will allow them to pay the application fee imposed by the Department of Planning & Infrastructure of \$196,142 and progress the matter to an early approval. As the date of approval of the EAP is uncertain it is recommended that the Foundation be given one month to make the repayment regardless of whether approval has been given or not.

FINANCIAL IMPLICATIONS:

Council's Finance Section has advised that the deferral of this repayment will result in a loss of investment earnings. Further, there is a risk that the interest rate will drop before the repayment is made and it is proposed to make the ninety (90) day Bank Bill Swap Reference as at 3 October 2012 the minimum rate to be applied on the date the repayment is made.

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It is understood that this deferral can be agreed through exchange of letters however should a variation to the Deed of Mortgage be required the applicant is to bear all costs associated with preparation and execution of the Variation of Mortgage.

Peter Adams DIRECTOR STRATEGIC PLANNING & INFRASTRUCTURE

R.D. Pigg GENERAL MANAGER b) A further report be submitted to Council Property Steering Committee on the 'Proceeds from Disposal of Properties' process.

CARRIED

8. Proposed Telecommunications Base Station - Shoalhaven Heads File 42155E

Conflict of Interest Declaration - Clr White - pecuniary interest – being that her and her husband are dealer licensees for Telstra Corporation and receive remunerations from Telstra - left the room, did not take part in discussion or vote.

MOTION:

Moved: Kearney / Second: Baptist

RECOMMENDED that the Report of the General Manager (Strategic Planning & Infrastructure) concerning the proposed telecommunications base station at Shoalhaven Heads be received for Information.

CARRIED

9. Resolutions/Actions – Projects to be Completed File 30977E

MOTION

Moved: Watson / Second: Robertson

RECOMMENDED that the Report of the General Manager (Strategic Planning & Infrastructure) concerning the Listing of Resolutions/Actions – Strategic Projects to be completed from the Council Property Steering Committee be received for Information.

CARRIED

GENERAL BUSINESS

10. Additional Item – Shaolin Temple – Deferment of Interest Payments File 18583E

Conflict of Interest declaration - Clr Watson – less than significant non pecuniary interest – Mr Balding is known to him, he is a local accountant - remained in the room

MOTION

Moved: Watson / Second: Baptist

RECOMMENDED that Council defer the interest payments for the Shaolin Temple for 6 months from 3 October 2012 or until the EA Plan is approved by the DPI or whichever event is soonest.

CARRIED

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588. Request from Palerang Council - Main Road 92 Project - Braidwood to Nowra File 1466-13

RESOLVED on a MOTION of Clr Anderson, seconded Clr Kerr, that Council agree to a letter of support to Palerang Council in their application for upgrading and sealing a 3km section of Main Road 92, north of Braidwood, under the Auslink Strategic Regional Program.

589. Replacement of the Bridge over Tributary of Broughton Creek, Beach Road Berry File 34131

RESOLVED on a MOTION of Clr Young, seconded Clr Ward, that:

- a) Council to accept the option 2 tender of Ablock Builders Pty Ltd. for Replacement of the Bridge over Tributary of Broughton Creek, Beach Road Berry;
- b) The Contract be executed under the Seal of Council.
- 590.Forest Road Upgrade Tenders for Construction WorksFile 33989-03

RESOLVED on a MOTION of Clr Young, seconded Clr Ward, that:

- a) Council accept the tender of Trilogy Civil Pty Ltd for the Upgrading and Sealing of Forest Road, Specification CH0206/03, File 33989, including the option of the contractor providing the subbase material.
- b) The Contract be executed under the Seal of Council;
- c) Council determine to close Forest Road for the duration of construction and that all respondents be advised accordingly;
- d) Council authorise the General Manager, (Director City Services) to negotiate with the successful contractor for the upgrading of the existing sealed sections of Forest Road to 80km Standard, under the terms of the existing Contract.
- e) A further report be submitted to Council on the outcome of these negotiations and the anticipated balance of the Roads to Recovery Two funding.
- 591. Drilling, Blasting and Crushing of Approximately 55,000 tonne of Sandstone at Comberton Grange Quarry. Spec MGH 00905/02 File 33080

A MOTION was moved by Clr Finkernagel, seconded Clr Ward, that:

- a) Council accept the tender of Stefanutti Constructions (Wollongong) for drilling, blasting and crushing of approximately 55,000 tonne of sandstone at Comberton Grange Quarry.
- b) The material be stockpiled for future use in the City.

The MOTION upon being PUT to the meeting was declared LOST.

THE RECORD OF VOTING ON THIS MATTER WAS AS FOLLOWS:

The following Councillors voted "Aye";

THIS IS PAGE 39 OF THE MINUTES OF THE ORDINARY MEETING OF THE COUNCIL OF THE CITY OF SHOALHAVEN HELD ON MONDAY, 24TH APRIL 2006

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Clrs Finkernagel, Ward

The following Councillors voted "No";

Clrs Rudd, Murphy, Green, McCrudden, Kerr, Kearney, Anderson, Willmott, Young, Bates, Watson

A MOTION was moved by Clr Anderson, seconded Clr Kearney, that Council not accept any of the tenders received for the drilling, blasting and crushing of approximately 55,000 tonne of sandstone at Comberton Grange Quarry (Spec MGH 00905/02).

The MOTION upon being PUT to the meeting was declared CARRIED.

THE RECORD OF VOTING ON THIS MATTER WAS AS FOLLOWS:

The following Councillors voted "Aye";

Clrs Finkernagel, Rudd, Murphy, Green, McCrudden, Kerr, Ward, Kearney, Anderson, Young, Bates, Watson

The following Councillors voted "No"; WILmail

South Coast Register

The state said the quarry was valuable By GLENN ELLARD March 22, 2012, 9:45 p.m.



RESOURCE: A diagram of the sandstone and dolerite deposit known at the Currambene Dome.

THE sandstone and dolerite deposit under the ground at Comberton Grange was noted in the Jervis Bay Settlement Strategy of 2003 as being significant to the entire South Coast, and in need of protection from impact by development.

"Comberton Grange is a regionally significant hard rock (sandstone/dolerite) resource on the northern side of Currambene Creek," the report noted.

"As the resource is regionally significant, it has been zoned Rural 1(e) (Extractive and Mineral Resources) and is surrounded by a 1000-metre buffer.

"Any future development of the Comberton Grange property would thus need to be restricted to areas outside the buffer," the report added.

A 1990 report from the then deputy city engineer Barry Russell pointed to important role the quarry could play and the savings it could offer Shoalhaven City Council.

"Based upon council's current and projected roadworks expenditure programs – over a 20-year period, council has a road pavement material demand for new works, network upgrading, and road rehabilitation of over six million cubic metres," Mr Russell said.

"A city-wide problem is the overall quality of pavement available to council.

"It is considered that the most desirable pavement composition for maximum pavement life is a sandstone sub-base with a dolerite base.

"The current options are shale from two commercial quarries, dense graded base material from basalt guarries outside the

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city, or a combination of ridge gravel/sandstone pits of limited quality and quantity.

"Concerns have been expressed at the long term durability of shale materials in the higher trafficked roads," Mr Russell reported to the Comberton Grange Task Force Committee.

The same year a report on possible urban development at Comberton Grange noted the sandstone and dolerite deposits in what was known as the Currambene Dome were identified in state and commonwealth surveys.

It also spoke of the need to protect the quarry and its valuable deposits from being impacted by development in the area.

"The quarry resources have been identified and the alienation of these resources by urban development will need to be addressed," the urban project report noted.

It also spoke about possible ramifications if the quarry needed to be closed down to make way for redevelopment of the site for housing.

"Council, in the justification of the quarry, argued that the resource was scarce and necessary in terms of council carrying out its construction programmes cost efficiently.

"It will be hard for council to explain such an 'about face'.

"It has not been possible to carry out any detailed assessment as to whether the quarry in a modified form could operate in the interim period," the report said.

... but our council thought otherwise

AN independent valuation back in 2004 led to the Comberton Grange quarry being included in the sale to the Shaolin Temple Foundation, according to Shoalhaven Mayor Paul Green.

Cr Green said while he would have preferred to hold on to the quarry, the decision of the council led by then Mayor Greg Watson to dispose of the property based on an independent valuation that highlighted problems with accessing the sandstone and dolerite deposits.

Those problems were reflected in the fact that none of the major mining and quarrying companies expressed any interest in taking control of the land when expressions of interest were called in 2004 and 2005, Cr Green said.

Council general manager Russ Pigg said regulations imposed on the quarry's operations played a part in reducing its viability.

"Despite recent remarks in the media to the contrary, council received an independent valuation on the Comberton quarry which found that with the development conditions and the low-quality resources found within the quarry that the property was worth \$300,000 based on a production rate of 50,000 tonnes per annum, when historically the production rate was only 25,000 TPA," said Mr Pigg.

"The valuers added that if council was to seek the Land and Environment Court's consent to change the condition to produce a maximum of 125,000 tonnes of product annually, the quarry's estimated value rose to \$580,000."

Cr Watson said the Land and Environment Court's consent to operate the quarry was "highly restrictive".

He said when council marketed the property for sale quarry operators including Boral and Cleary Bros were contacted, to no avail.

"It is significant that none of these operators submitted expressions of interest for the acquisition of the property, which is a real indication of the viability of the quarry," Cr Watson said.

Councillor briefings and staff reports "brought into question the viability of council continuing to use the quarry", Cr Watson said, particularly as some members of staff were reluctant to accept the role of quarry superintendent because of the personal risk involved.

Council also believed it could acquire quarry products cheaper from other operators, he added.

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FRIDAY, MARCH 16, 2012

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By LUCY ROBERTSON

AS sub-standard road materials are being used to pothole-patch crum-bling local roads, former South Coast MP John Hatton has called for an investigation into Shoalhaven City Council's sale of Comberton

The anti-corruption campaigner said when council sold the land at a "bargain basement price" to a Chinese consortium, it also lost

Chinese consortium, it also lost access to a rich. local source of nat-ural resources. Mr Hatton has congratulated council's city services manager Bill Paterson for spealing out about the poor quality road material coming from other quarries. Mr Hatton said the poor state of Shoalhaven roads put a 90-hectare quarry of sandstone and diorite (a

Shoalhaven roads put a 90-hectare quarry of sandstone and diorite (a form of blue metal) positioned in the middle of the former council-owned Comberton Grange estate "firmly in the spotlight". He referred to council's own reports from 1985, sighted yester-day by the South Coast Register, in which council officers of the time strongly recommended the quarry be kept in public ownership, due to its status as the richest igneous rock and sandstone source between Kiama and Milton.

The Milton quarry has since closed, making the Comberton Grange quarry the most valuable seam of road materials from the Bombo quarry in the north, to Batemans Bay in the south.

In the same report, commonwealth government agencies esti-mated at least one million tonnes of

mated at least one million tonnes of diorite and more than five million tonnes of high-grade sandstone were available in the quarry. The report estimated around five million tonnes of the materials would have been readily available for extraction within five years. Both diorite and exardstone are Both diorite and sandstone are preferred materials used in the con-

struction of high-quality roadbase. Samples extracted in the 1980s Samples extracted in the 1960s from the Comberton Grange quarry were also rated as significantly bet-ter quality than the product being sourced and transported from Kiama at great expense. Despite this information, and the recommendations from it own

Despite this information, and the recommendations from its own officers, Shoalhaven City Council sold the quarry as part of the 1084-hectare Comberton Grange estate to Chinese developers for \$5 million in mid-2004. The estimated \$9 million value of patural resources (now thought to

natural resources (now thought to be closer to \$12 million) in the quar-

ry was not factored into the sale price at the time. A Shaolin temple slated for the site at the time of the sale has not even-tuated, and doubts over its future

tuated, and doubts over its future development continue to plague the proposal. "Shoalhaven City Council success-fully operated that quarry for many years at a profit, and knew the sig-nificant value of those resources," Mr Hatton said yesterday. Shoalhaven City Council has still not been paid the sale price for the estate containing the quarry, with council recently extending its \$4.75 million loan to the Chinese buyers. "This council, first under Cr Greg

million loan to the Chinese buyers. "This council, first under Cr Greg Watson and now under the current powerbase of Shoalhaven Independents, has become party to the sale of public assets for millions of dollars under their true value, and in a contract that makes no economic sense and means ratepayers are footing the bill," Mr Hatton said. Hatton said. "Meanwhile, road users are being

put at risk with substandard materi-als that are being transported in from Kiama, when we have our very own source of natural resources sit-ting unused, right under our noses.

Hatton said.

"It's nothing short of a disgrace, and there are some serious ques-tions that need to be answered," Mr ROCKED: Former South Coast MP John Hatton said the sale of Comberton Grange has helped expose local road problems.

alanti dina dina si	PHONE: 4421 9123 FAX: Editorial 4421 9111	MAIL: PO Box 108 Nowra 2541 ADDRESS: 122 Kinghomo Street, Nowra	EMAIL: mail.scragister@ruralpress.com	CLASSIFIEDS 4421 9100 classifieds.scregister@ruralpress.com	facebook	Follow us & SCRepistor			



South Coast Register

Former quarry manager faced political pressure

By GLENN ELLARD March 20, 2012, 8:58 p.m.



STONE'S THROW: Former manager Peter Jirgens pictured with some of the sandstone extracted from the Comberton Grange quarry and used for a North Nowra roundabout.

WHEN senior engineering staff member at Shoalhaven City Council Peter Jirgens was saving the community hundreds of thousands of dollars a year through the Comberton Grange quarry, there were those who did not like it.

If fact, political pressure was applied in an effort to stop him.

"I had pressure all the time," Mr Jirgens revealed this week.

That included staff members trying to stop him bringing in clay to mix with sandstone from the quarry, creating a road base that held together better and required grading less frequently.

It had the potential to free up one of council's road crews, saving the community about \$250,000 a year but Mr Jirgens said he came under pressure to stop the process.

"I had a lot of pressure internally not to do that," he said.

Mr Jirgens was even told the quarry's development approval did not allow him to bring in clay from another site.

"Really, there was nothing in the DA conditions that said I could or could not import clay to mix in with the quarry's products," he said.

However he accepted the advice and found a clay source on the quarry's land, and started using it with sandstone to create a road base that was more stable, held together better, and dried out more quickly after rain.

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He was also starting to use dolerite from the quarry with clay.

"Once you mixed the dolerite with the clay, there's no better road building material," Mr Jirgens said.

However he again faced opposition from within council, which he believed was driven by other business operators who were faced with losing valuable contracts lobbying councillors, who put pressure on staff.

Mr Jirgens took on the role of managing the quarry at Comberton Grange from 1991 to 2001 as an added responsibility on top of his normal workload, but said when he left council "no one was interested in running it".

During the 10 years Mr Jirgens was in charge the quarry made a profit, as well as paying off the set-up costs, despite having the relatively small extraction rate of 35,000 tonnes annually.

Tenders were called each year to extract and crush the quarry material, which Mr Jirgens said was of good quality.

With large deposits of sandstone and dolerite still in the quarry, Mr Jirgens said it was worth "millions".

"It's a valuable asset for council," he said.

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South Coast Register

Resource values don't add up

March 20, 2012, 8:59 p.m.

MILLIONS of dollars have been lost to the community as Shoalhaven City Council first ignored, and then sold off, a valuable asset that promised many years of income.

After operating profitably for 10 years, the hard rock quarry in Comberton Grange was left idle for five years before the site was somehow included in a sale of the land to the Shaolin Temple Foundation in 2006.

In the years before the sale, Shoalhaven City Council moved to excise the quarry land and service roads from the package being offered for sale.

In August 2004 when council started action to sell the Comberton Grange property totalling more than 1000 hectares, it voted, "The land required for the quarry operations and access road is to be excluded from this sale."

Former city engineer Barry Russell said at the time, "The area required to be excised for council's retention for its quarry and access road is about 100 hectares."

The residue "after excluding land required for quarry operations and access road" was then to be extensively marketed for sale. Mr Russell noted.

However just two months later councillors voted the quarry land back into the sale schedule during the first ever meeting of the council property steering committee.

When council called for expressions of interest between August 2004 and July 2005 for buying Comberton Grange, it was listed as including an "active sandstone / dolerite quarry currently owned and used by Shoalhaven City Council with deposits used for preparing road surfaces".

The hard rock quarry was earlier deemed to be so valuable it was one of the reasons why council bought the Comberton Grange property for \$1.3 million in 1985.

In a 1985 report then town clerk Graham Napper urged council to buy the quarry ahead of another bidder "To secure a hard rock quarry site important for the Jervis Bay Boat Harbour; to preserve the only known source of igneous quarry products between Kiama and Milton; to protect the establishment of a defence facility with a 200-plus employment; and to obtain significant benefits for the community."

Those benefits included easy access to quality road building material and sandstone suitable for breakwalls, Mr Napper said in his report.

Council operated the quarry for 10 years from 1991 with a licence to remove 35,000 tonnes of material annually, and the quarry proved profitable with all its material sold within the first six months of each financial year.

The operation also paid off all the set-up costs within the first 10 years, and contributed to a couple of special funds.

The job of managing the quarry was given to senior engineering staff member Peter Jirgens as an added task, but when Mr Jirgens left council in 2001 work on the council stopped.

"No-one else could be bothered taking it on," Mr Jirgens said this week.

During its life the quarry provided many thousands of tonnes of road building materials for local roads, but since it closed down council has spent hundreds of thousands of dollars annually buying and transporting in rock and blue metal to build roads.



COUNCIL REFERENCE: CONTACT PERSON: YOUR REF: 3A08/1008 (D12/154002) Russ Pigg

2 July 2012

Mr S Haddad Department of Planning & Infrastructure PO Box 39 SYDNEY 2001

Dear Mr Haddad,

This is to confirm that Shoalhaven City Council fully supports the proposed Shaolin Temple tourism development on the "Comberton Grange" property near Jervis Bay.

I understand that the Department of Planning & Infrastructure is not yet in a position to determine the application, however, Council looks forward to an eventual positive outcome.

This project has enormous potential to inject significant capital investment into the State of NSW, with resultant job creation and tourism, particularly overseas visitors, boosting the local, regional and State economy.

The Shoalhaven Tourism Board, in a letter to Council, has described the project in the following terms –

"The Development will include the construction of temples, accommodation for the Abbot and Monks, a library, an amphitheatre, a multicultural Centre, a 500 room four star hotel, a convention centre to seat 1,500 people, external entertainment facilities for 4000 people and a 27 hole golf course.

60 Million people world wide follow the Shaolin Buddhist Philosophy. It is reasonable to assume that 150,000 international visitors will come to the Shaolin Temple Shoalhaven per annum.

In addition it is estimated that there will be 300,000 visitors from Australian per annum.

These visitors will stay at the Temple and other existing accommodation establishments throughout the Shoalhaven.

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Assuming that target is only achieved to the 75% mark then if the temple only accommodates the international visitors it will achieve 82% occupancy once it is in full operation. The balance of the international visitation and all of the domestic visitation can easily be accommodated in the rest of the Shoalhaven which currently accommodates 1.4 million domestic visitors per annum recording just over 5 million visitors nights.

The economic impact on Shoalhaven City will be significant.

Visitors	Alumahan	1	A	Tatal
Visitors	Number	Average	Average	Total
		Length of	Expenditure	
		Stay	Per Trip	
International	150,000	4.09	\$495	\$74,250,000
Domestic:	300,000	3.52	\$324	\$97,200,000
Total For Sho	\$171,450,000			
	150,000	17	\$1,462 in	\$219,300,000
International			NSW	
Domestic:	300,000			
	36.9% from	3.52	\$324	\$35,900,00
	Interstate			
Domestic	300,000			
	63.1%	3.52	\$324	\$61,300,000
	captured			
	from escape			
	spending			
Total for NSИ	\$316,500,000			

Impact on Jobs

The additional expenditure generated by the increased visitation in New South Wales because of the Shaolin Temple will cause, directly and indirectly, an additional 3,400 permanent full time or full time equivalent jobs. Of these approximately half will be in the Shoalhaven or surrounding regions with the supply of goods and services.

<u>Seasonality</u>

It is anticipated that the Shaolin Temple will be free of seasonality in that it will generate visitation from the international arena and generate visitation from devotees from throughout Australia. This even spread of visitation will be easily accommodated within the existing tourism infrastructure expect during peak seasons and will provide a better utilisation of both public and private assets."

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With outcomes such as this, any dispensation or assistance the State Government can provide to Shaolin Temple (Australia) Co Ltd to ensure the development proceeds will be repaid many times over, through the economic returns to the State's economy.

If you wish to discuss this matter further, please do not hesitate to contact me by telephoning 02 4429 3260.

Yours faithfully

Russ Pigg General Manager



City Administrative Centre Bridge Road, Nowra NSW Australia 2541 Phone: (02) 4429 3111 • Fax: (02) 4422 1816 • DX 5323 Nowra

Address all correspondence to The General Manager, PO Box 42, Nowra NSW Australia 2541

COUNCIL REFERENCE: CONTACT PERSON: YOUR REF: 33378E (D12/210380) Russ Pigg

30 August 2012

Mr P Balding Shaolin Temple Foundation (Australia) Ltd - Nowra Office C/- Street Quinn Pty Ltd 72 Osborne Street NOWRA NSW 2541

Dear Phil,

I refer to letter of the 24th August, 2012, giving a summary of issues discussed at our recent meeting and I confirm that most matters in regard to water and sewerage have been referred to Director Shoalhaven Water, Carmel Krogh, for response.

In response to the outstanding issues with Forests NSW, I advise that Mr Adams and I met with the Regional Manager on the 29th August 2012, and it appears that we have reached a good outcome to resolve the acquisition of the road reserve, giving access from Forest Road to the Shaolin Temple site. We expect Daniel to write and confirm his agreement to proceed and finalise the compulsory acquisition process.

In respect of the key contact in Council to help facilitate or discuss any concerns you may have moving forward with the DA process, I advise that Mr Greg Pullen, our Economic Development Manager has been briefed and is on notice that you may call for his assistance at some future time.

In regard to the other letter raising concerns about a proposed road network and additional crossing of Currambene Creek, I advise that this matter has been referred to Director Strategic Planning & Infrastructure Peter Adams, to review our strategies and respond direct to you.

Should you wish to discuss this further, please contact me by telephoning (02) 44293260.

Yours faithfully

Russ Pigg General Manager



Shaolin Temple Foundation (Australia) Ltd ABN: 11 752 078 006

Friday, August 24, 2012

The General Manager Shoalhaven City Council PO Box 42 Nowra NSW 2541

Dear Sir

RE: SHAOLIN TEMPLE MASTER PLAN - CURRAMBENE CREEK CROSSING

At a meeting between yourself, directors Fletcher, Adams and Krogh, myself and Patrick Pang, the issue was raised concerning a proposal that created a corridor from Forest Road through Comberton Grange and Shaolin temple land with the future possibility of a road crossing over Currambene Creek.

It was pointed out that the Temple had only recently found out about the proposed corridor and had grave concerns about its existence. Preliminary investigation has revealed that it would appear that this corridor is still on council's agenda.

In a report "Shoalhaven City Council – Strategic Planning Group – Traffic & Transport Unit" dated Friday 7 November 2008 it was stated –

"Council has previously been considering a Currambene Creek road crossing to form part of the eastern villages' road network to link Jervis Bay Road and Forest Road.

Whilst it is understood there may not be current support based on existing traffic levels to justify the proposal, council has not thoroughly examined the impacts of ultimate development in the Bay & Basin and eastern villages areas to be confident the road will not be required in the future.

Accordingly, Traffic & Transport Unit considers that it is very premature to ignore the future requirements of a Currambene Creek crossing and recommend that the development must not take on a form that would impact on council's ability to consider a future road crossing of Currambene Creek in the future."

In discussing the options concerning the Forest Road access, Scott Wills commented in an email dated 26 August 2011 to John Britton – "One advantage I saw with the 5th option (council's preferred option and once subsequently agreed to by all parties) was that it generally aligns with the location of the Currambene Creek crossing project which council has never formally removed from planning, thus my comments that the
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development should include a north/south running perimeter road with access at Forest Road via the adopted Charcoal Road east, and no direct access to any components of the development from the north/south road, to protect options for the Currambene Creek crossing in future...... I understand the formal SPIG comments removed any reference to the Currambene Creek crossing, but in terms of long term planning and alternative emergency access, it is my view that the Currambene crossing would be yet another alternative transport route to the site, as well as addressing regional transport demand in the future (and mitigating traffic impacts on the Princes Highway)."

It is my understanding that council did not inform the temple of the above proposal when it sold the land to them. Such a proposal would have a significant impact on the Temple development, not to mention the serious environment issues that would arise should the proposal proceed.

The Temple requests that Shoalhaven City Council give an unequivocal guarantee that this proposal will not proceed either now or in the future through Temple land.

Should you wish to discuss this matter further please feel free to contact the writer.

Yours faithfully,

Philip Balding Company Secretary

> ola: Servet Quana 217 Ltd 72 Osharaz Street, Novera, NSU 2843 Tel: 82-442(7)199

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New South Wales

Local Government Amendment (General Rate Exemptions) Act 2010 No 37

Contents

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		Page
1	Name of Act	2
2	Commencement	2
Schedule 1	Amendment of Local Government Act 1993 No 30	3

.

07

ŵ

46

1



New South Wales

Local Government Amendment (General Rate Exemptions) Act 2010 No 37

Act No 37, 2010

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An Act to amend the *Local Government Act 1993* in relation to rate exemptions for land partly used by religious or charitable bodies. [Assented to 15 June 2010]

Section 1 Local Government Amendment (General Rate Exemptions) Act 2010 No 37

The Legislature of New South Wales enacts:

1 Name of Act

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This Act is the Local Government Amendment (General Rate Exemptions) Act 2010.

2 Commencement

This Act commences on the date of assent to this Act.

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Local Government Amendment (General Rate Exemptions) Act 2010 No 37

Amendment of Local Government Act 1993 No 30

Schedule 1

Schedule 1 Amendment of Local Government Act 1993 No 30

- [1] Section 555 What land is exempt from all rates?
 - Insert after section 555 (4):
 - (5) A parcel of rateable land belonging to a religious body that is partly occupied and used in a manner described in subsection (1) (e), and partly in a manner that would result in part of the parcel not being exempt from rates under this section, is to be valued in accordance with section 28A of the *Valuation of Land Act 1916* to enable those rates to be levied on the part that is not exempt.
 - (6) Any such valuation is to be made at the request of the council that proposes to levy rates on the parcel concerned.
 - (7) For the avoidance of doubt, sections 7B and 28A of the Valuation of Land Act 1916 extend to a stratum for the purpose of carrying out a valuation in accordance with subsection (5) and so extend whether or not the stratum is a lot in a strata plan that is registered under the Strata Schemes (Freehold Development) Act 1973 or the Strata Schemes (Leasehold Development) Act 1986.

[2] Section 556 What land is exempt from all rates, other than water supply special rates and sewerage special rates?

Insert after section 556 (2):

- (3) A parcel of rateable land belonging to a public benevolent institution or public charity that is partly used or occupied by the institution or charity for its own purposes, and partly for a purpose that would result in part of the parcel not being exempt from rates under this section, is to be valued in accordance with section 28A of the *Valuation of Land Act 1916* to enable those rates to be levied on the part that is not exempt.
- (4) Any such valuation is to be made at the request of the council that proposes to levy rates on the parcel concerned.
- (5) For the avoidance of doubt, sections 7B and 28A of the *Valuation* of Land Act 1916 extend to a stratum for the purpose of carrying out a valuation in accordance with subsection (3) and so extend whether or not the stratum is a lot in a strata plan that is registered under the Strata Schemes (Freehold Development) Act 1973 or the Strata Schemes (Leasehold Development) Act 1986.

Local Government Amendment (General Rate Exemptions) Act 2010 No 37

Amendment of Local Government Act 1993 No 30

* :

Schedule 1

(3) In this clause:

amending Act means the Local Government Amendment (General Rate Exemptions) Act 2010.

existing lease means a lease entered into before the commencement of the amending Act.

[Agreement in principle speech made in Legislative Assembly on 13 May 2010 Second reading speech made in Legislative Council on 8 June 2010]

BY AUTHORITY

Page 5



Taxation Ruling

TR 92/17

Income tax and fringe benefits tax: exemptions for 'religious institutions'

Please note that the PDF version is the authorised version of this ruling.

FOI status: may be released

para	2
What this Ruling is about	
Ruling	4
Religious institution	4
Religious practitioner	11
Pastoral duties and directly related religious activities	20
Date of effect	30
Examples	32

Preamble

This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.

What this Ruling is about

1. The income of a 'religious institution' is exempt from income tax under paragraph 23(e) of the *Income Tax Assessment Act 1936* (ITAA).

2. Benefits provided to certain employees of a 'religious institution' are exempt benefits under section 57 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA). A benefit provided by a religious institution to an employee is an exempt benefit under section 57 of the FBTAA if:

(a)

the employee is a religious practitioner (i.e. a minister of religion, a full-time member of a religious order, or a person training to become a minister of religion or a member of a religious order); and

(b)

the benefit is provided to the employee, the employee's 'spouse' as defined in subsection 136(1) of the FBTAA, or the employee's 'child' as defined in subsection 136(1) of the FBTAA; and

(c)

the benefit is not provided principally in respect of duties of the employee, other than pastoral duties or any other duties or activities directly related to the practice, study, teaching or

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propagation of religious beliefs.

3. This Ruling discusses:

(a)

- the meaning of the term 'religious institution' as it appears in the ITAA and the FBTAA; and
- (b) the conditions which must be met before a benefit provided to an employee by a religious institution is exempt from the application of the FBTAA.

Ruling

Religious institution

4. A body is an 'institution' for the purposes of both the ITAA and the FBTAA if it is an establishment, organisation or association, instituted for the promotion of some object (especially one of public or general utility) that is religious, charitable, educational, etc. That definition was accepted by the High Court of Australia in *YMCA of Melbourne v. FC of* T (1926) 37 CLR 351 and later in *Stratton v. Simpson* (1970) 125 CLR 138.

5. A body is a 'religious institution' if it is instituted for religious purposes. For a body to be regarded as a religious institution:

(a)

its objects and activities must reflect its character as a body instituted for the promotion of some religious object; and

(b)

the beliefs and practices of the members of that body must constitute a religion.

6. The two most important factors for determining whether a particular set of beliefs and practices constitute a religion are:

(a)

belief in a supernatural Being, Thing or Principle; and

(b)

acceptance of canons of conduct which give effect to that belief, but which do not offend against the ordinary laws.

7. These factors were established by the High Court in *The Church of the New Faith v. Commissioner of Pay-roll Tax* (*Vic*) 83 ATC 4652; (1983) 14 ATR 769 (the *Scientology* case). Although other relevant criteria were discussed by the members of the Court in that case, if those two main criteria are satisfied it is likely that the body will be characterised as religious. On the other hand, if those two criteria are not satisfied it is unlikely that the body will be characterised as religious.

8. The expression 'religious institution' is not confined to the major religions such as Christianity, Islam, Judaism and Buddhism; it extends also to religions less well known in Australia, such as Taoism.

9. Private schools, private universities and residential university colleges established or conducted by religious institutions generally are not religious institutions for the purposes of the ITAA and the FBTAA. That question must be determined having regard to the primary or dominant object of the body as ascertained by reference to the objects as stated in its memorandum of association or other constituent documents and by consideration of its activities: see *Commissioner for ACT Revenue Collections v. Council of the Dominican Sisters of Australia* 91 ATC 4602; (1991) 22 ATR 213.

10. On the other hand, seminaries, theological colleges and Bible colleges may come within the scope of the term 'religious institution'. Where the primary or dominant object of such a body is religious in character, the body will be treated as a religious institution for the purposes of the ITAA and the FBTAA.

Religious practitioner

11. A 'religious practitioner' is defined in subsection 136(1) of the FBTAA to mean:

http://law.ato.gov.au/atolaw/print.htm?DocID=TXR%2FTR9217%2FN...F00001&PiT=99991231235958&Life=19921210000001-99991231235959 Page 2 of 7

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(a)

a minister of religion;

(b)

a student at an institution who is undertaking a course of instruction in the duties of a minister of religion;

(C)

a full-time member of a religious order; or

(d)

a student at a college conducted solely for training persons to become members of religious orders.

12. While the expressions 'minister of religion' and 'member of a religious order' clearly include members of the clergy in the Christian denominations, they are also intended to include persons who hold equivalent positions in other religions.

13. In determining whether a person is a minister of religion, many, if not all, of the following characteristics should be present:

(a)

the person is a member of a religious institution;

(b)

the person is recognised officially by ordination or other admission or commissioning, or, where the particular religion does not require a minister to be formally ordained, the person is authorised to carry out the duties of a minister based on a specified level of theological or other relevant training or experience;

(C)

the person is recognised officially as having authority in matters of doctrine or religious practice;

(d)

the person's position is distinct from that of the ordinary adherents of the religion;

(e)

the person has acknowledged leadership in the spiritual affairs of the religious institution;

(f)

the person is authorised to discharge the duties of a minister or spiritual leader, including the conduct of religious worship and other religious ceremonies.

14. In determining whether a person is a member of a religious order, it is necessary to consider what constitutes a religious order. In a religious order, many, if not all, of the following characteristics will be present:

(a)

members generally are separated from secular society to pursue the religious life on a fulltime basis and normally live together as part of a community;

(b)

members participate regularly in activities such as private and public prayer, religious study, teaching, care of the aged, missionary work or church reform;

(C)

the order is related to a particular religious institution and generally is directly or indirectly under the control and supervision of, or is funded, either partially or wholly, by that body;

(d)

members renounce in principle any possession of property and they live under a strict set of rules requiring moral and spiritual self-sacrifice and dedication to the goals of the organisation at the expense of their material well-being;

(e)

members of the order make a long-term commitment to the order.

15. Religious practitioners who receive a stipend or other form of remuneration (including non-cash benefits) are employees for the purposes of the FBTAA (see the definitions of 'current employee' in subsection 136(1) of the FBTAA and 'employee' in subsection 221A(1) of the ITAA). Consequently, if the requirements of section 57 of the FBTAA are satisfied, any fringe benefits provided to a religious practitioner who is an employee of a religious institution are exempt benefits. (It should be noted that the consequence of a view that religious practitioners are not employees is that non-cash benefits provided to a religious practitioner generally would be assessable income on ordinary concepts in the hands of the religious practitioner.)

16. It does not follow that a religious practitioner who comes within the meaning of 'employee' in subsection 221A(1) of the ITAA is an employee at common law. That question must be determined in accordance with common law principles: for example, see *Davies v. Presbyterian Church of Wales* [1986] 1 WLR 323.

17. Lay persons acting in the capacity of a minister of religion or equivalent position may be treated as a minister while acting in that capacity. For example, a lay person may be directed to work in a parish where there is no ordained minister. Provided that the lay person comes within the meaning of 'religious practitioner' and is an 'employee' for FBT purposes, fringe benefits provided to that person are exempt.

18. A person training to be a minister of religion or member of a religious order is a religious practitioner only if that person is attending a course, either full-time or part-time, conducted by a religious institution. If a person who has completed the prescribed course of training is required to serve a specified period of probation before being ordained or otherwise admitted, that person will be regarded as a religious practitioner during the probation period.

19. Missionaries who are not:

(a)

ministers of religion; or

- (b) members of a religious order; or
- (C)

students at a college conducted solely for training persons to become members of religious orders

are not religious practitioners for the purposes of the FBTAA.

Pastoral duties and directly related religious activities

20. For a benefit to be exempt, it must not be provided principally in respect of duties of the employee other than pastoral duties (subparagraph 57(d)(i) of the FBTAA), or other duties or activities that are directly related to the practice, study, teaching or propagation of religious beliefs (subparagraph 57(d)(ii) of the FBTAA). The latter duties and activities are referred to in this Ruling as 'directly related religious activities'.

What are pastoral duties?

21. Pastoral duties generally are duties associated with the spiritual care of the members of the congregation of a religious body. The following are examples of pastoral duties:

- (a) communication of religious beliefs;
- (b) teaching and counselling adherents and members of the surrounding community;
- (c)

providing adherents and members of the surrounding community with spiritual guidance and support;

(d)

attendance at an in-service training seminar by a person or persons conducting the seminar,

provided that the seminar is of a spiritual nature; and

(e)

meeting with and visiting adherents, the sick, the poor, or persons otherwise in need of emotional and spiritual support.

What are directly related religious activities: i.e. practice, study, teaching or propagation of religious beliefs?

22. The duties or activities must be related directly to the practice, study, teaching or propagation of religious beliefs to meet the requirements of paragraph 57(d) of the FBTAA. The duties or activities may include secular activities if it can be shown that there is a direct link between those activities and the religious beliefs of the person concerned.

23. Although a full-time member of a religious order may not be involved exclusively or predominantly in pastoral duties, he or she generally is engaged in duties or activities that are directly related to the practice, study, teaching or propagation of their religious beliefs.

24. Missionary work, to the extent that it is not pastoral in character, is, in any event, directly related to the teaching or propagation of religious beliefs.

What are not pastoral duties or directly related religious activities?

25. The following examples, which are not intended to be exhaustive, are duties or activities which are not pastoral duties or directly related religious activities:

(a)

the administration of a church; and

(b)

work undertaken by a director of a department of a Diocese or similar unit of ecclesiastical administration; and

(c)

the administration of a school.

The 'principally' test

26. If the benefit has not been provided principally in respect of pastoral or directly related religious activities, the benefit is not exempt.

27. Whether the benefit has been provided principally in respect of pastoral duties or directly related religious activities depends on the facts of each particular case. A benefit provided to a minister of religion whose duties are exclusively or predominantly pastoral generally satisfies the 'principally' test.

28. On the other hand, a benefit generally is not an exempt benefit if the duties of the employee to whom it is provided are exclusively or predominantly non-pastoral duties.

29. However, if an employee who is a religious practitioner undertakes both pastoral and non-pastoral duties (even where the non-pastoral duties predominate), it is possible for a benefit to be provided to the employee solely or principally in respect of the employee's pastoral duties, and, therefore, be exempt under section 57 of the FBTAA.

Date of effect

30. This Ruling sets out the current practice of the Australian Taxation Office (ATO) and is not a change in interpretation. Consequently, it applies (subject to any limitations imposed by statute) for years of income and fringe benefits tax years commencing both before and after the date on which it is issued.

31. However, if a taxpayer has received from the ATO a private ruling which is contrary to the views expressed in this Ruling, with respect to that taxpayer this Ruling will apply only from and including the 1993-94 year of income or the 1993-94 fringe benefits tax year (as the case may be) unless the taxpayer asks that it apply to earlier years.

Examples

32. A minister of religion, whose duties are exclusively or predominantly of a pastoral nature, is provided with a

residence and a motor vehicle in addition to a stipend. Those benefits are not provided principally in respect of duties other than the minister's pastoral duties, and the benefits are exempt from fringe benefits tax. Similarly, if the religious institution pays the school fees for a child of that minister, that benefit is an exempt benefit.

33. A full-time member of a religious order is required to teach non-religious subjects at a private school. In the normal course, the cost of that person's living expenses, including accommodation and meals, is met by the religious institution. The teaching activity is not, itself, pastoral or a directly related religious activity. However, any benefits provided to that person are not provided principally in respect of the teaching duties, but in respect of their duties or activities directly related to the practice, study, teaching or propagation of religious beliefs as a member of the religious order. Accordingly, any benefits provided to that person are exempt.

34. A minister of religion is engaged exclusively or predominantly in performing duties of an administrative nature and the religious institution pays the costs of educating a child of the minister. That benefit is not exempt because it is not provided principally in respect of pastoral duties or directly related religious activities.

35. A minister of religion is appointed headmaster of a private school and his or her duties are related exclusively or predominantly to the administration of the school. As part of the remuneration package, the minister is provided with a residence and a motor vehicle. Those benefits are not exempt, either because the minister is not an employee of a religious institution, or the benefits are provided principally in respect of duties other than pastoral duties or directly related religious activities.

Commissioner of Taxation

10 December 1992

References

ATO references: NO 91/5417-5

ISSN 1039 - 0731

Related Rulings/Determinations: MT 2021

Subject References:

- directly related religious activities
- employees
- exempt fringe benefits
- ministers of religion
- pastoral duties
- religious institutions
- religious orders
- religious practitioners

Legislative References:

- ITAA 23(e); ITAA 221A(1) - FBTAA 57; FBTAA 136(1)

Case References: YMCA of Melbourne v. FC of T (1926) 37 CLR 351

Stratton v. Simpson (1970) 125 CLR 138

The Church of the New Faith v. Commissioner of Pay-roll Tax (Vic) 83 ATC 4652

(1983) 14 ATR 769

Commissioner for ACT Revenue Collections v. Council of the Dominican Sisters of Australia 91 ATC 4602 (1991) 22 ATR 213

Davies v. Presbyterian Church of Wales [1986] 1 WLR 323

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