



Will The Port Stephens Ratepayers Ever Get the



'Cabbage' from the Cabbage Tree Road Sand Mine? Part 1



- *There is a fair bit of detail in this article but TRRA think this is necessary to understand the implications of this story, and get all of it properly on the record.*
- *This information was researched from the 35 newspaper reports and all the Council documents in our extensive TRRA database on the subject, and we feel that it needs to be aired in full. References are included at the bottom of the article.*
- *We hope the ratepayers of Port Stephens will consider our major articles like this when evaluating the Councils performance prior to the next election in 2016.*

The Purchase, 398 Cabbage Tree Road

In **2002** Port Stephens Council purchased four separately titled, adjoining lots of land totalling 175 Hectares at 282, 282A, 282B and 398 **Cabbage Tree Road** for \$630, 00.00 and leased it out for cattle agistment. (See Map [HERE](#) and [HERE](#))

In **2010** the then Commercial Property Section of Council commenced investigation into the possibility of leasing the site for sand extraction. The quantity of sand able to be extracted has been estimated at 6,950,000 tonnes. Site inspections and testing indicated that the sand was high grade silica sand, suitable for glass manufacture.

- Expectations were that this would produce a return to ratepayers of \$26-30 million over the 15 year life of the project.



The Tender Process

In **March 2012** Council resolved to call for tenders for a royalty based lease to extract the sand and in July 2012 tender submissions were received from the following nine tenders:

1. Castle Quarry Products
 2. Daracon Group
 3. Dunmore Sand & Soil Pty Ltd
 4. Holcim Australia Pty Ltd
 5. LJB George Pty Ltd
 6. Macka's Sand & Soil Supplies
 7. M. Collins & Sons Holdings Pty Ltd
 8. Rocla Quarry Products
 9. Sibelco Australia Limited
- In accordance with Council's Procurement Guidelines, a tender evaluation panel was established. Due to the specialist nature of the tender, Council engaged an Independent Mining Specialist Advisor to sit on the panel to assist with the assessment of the submissions.
 - The evaluation criteria examined each tenderers response to the areas of:
 - a) Price (comprising royalties and base rent)
 - b) Previous experience, capability (including management and technical resources)
 - c) Ecologically sustainable development, work health and safety
 - d) Environmental performance
 - e) Non-conformance with the Agreement of Lease
 - f) Financial Capacity to undertake the project.
 - The Panel determined that three of the submissions received were non-conforming due to incomplete compulsory documentation and were excluded. The three companies were Daracon Group, LJB George and Rocla Quarry Products.

On **21 September 2012** the assessment of the remaining submissions was undertaken.

- The panel rated all six tenders in accordance with the evaluation criteria. A Preferred Tenderer was not selected at this time due to the panel requiring additional information from one of the tenders, **Castle Quarry Products** (a Buildev company), clarifying their financial capacity and their ability to provide a Bank Guarantee.
- A response was subsequently received however the panel considered it inadequate as it still did not satisfy the requirements of the original tender documentation.

On **10 January 2013** the Tender Evaluation Panel reconvened and unanimously agreed that the highest rating tender be accepted as the Preferred Tenderer. The highest rating tender was **M. Collins & Sons Holdings Pty Ltd** and was recommended for acceptance by the panel.

- M. Collins & Sons Pty Ltd has been in operation since 1975. The company operates in the greater Sydney metropolitan area in the Quarry, Transport and Turf industries and additionally operates a contracting business that specialise in the construction and reconstruction of sporting fields and facilities.

In **October 2012** an Exploration Licence Application (ELA) was lodged with the Department of Trade and Industry over the Council land at Cabbage Tree Road.

- Should the Council not enter into a lease and a DA be submitted, there is a risk that another ELA will be approved on Council's land and Council will be at risk of losing royalty payments.
- The Property Services initial enquiries and investigations indicated a royalty payment of between \$2.50, to \$3.00 per tonne could be anticipated for silica sand.
- Cost to Council of the Tender preparation was \$33,079.00

On **11 February 2013** the Mayor Withdrew his Macka's Sands tender.

- Councillors were advised by email that he had done so just before it was considered at a Council meeting.

On **12 February 2013** the Tender was on the agenda at the Ordinary Council Meeting.

- The Mayor's tender had not been removed from the Council papers, the Mayor did not declare any pecuniary or non-pecuniary interest, and we hear was heavily involved in the debate rejecting the preferred tenderer and supporting the CQP (Buildev) bid which resulted in this motion:

MOTION 038: *Councillor Steve Tucker, Councillor Sally Dover*
It was resolved that Council:

1. *Reject all tenders and negotiation with any tenderer as the evaluation table contained within the report is not sufficient.*
2. *Arrange a workshop for the Mayor and Councillors following consultation with any tenderer.*

- This 'workshop' took place after all the tender information had been disclosed and seems to have turned into a 'Dutch Auction' between Collins Sands and CQP as to who would provide the highest royalties, the Mayor later claimed in the media that the CQP tender would produce \$8 mill more over the life of the mine.
- But questions were asked about what the Council would be contributing to the remaining cost of the approval process, as Council would end up owning all the intellectual property associated.
- Presentations were made to the 'workshop' only by Collins and CQP. None of the other tenderers were invited. CQP must have changed its bid substantially' post tender to outbid Collins which was identified as the

- highest rating tender by the evaluation panel. This is a highly irregular process and we are advised that the staff, who put a lot of time and expense into the evaluation process were not impressed with their recommendation being ignored in this manner.
- No minutes or records are publically available from this 'workshop.'
 - **Edit 31 July 2015:** Because we were relying on Council's public reports for information about this 'workshop' which were very sparse, we had to speculate on what had actually happened. We now have further detailed information in documents recently received. We were not far wrong in our speculation.....
 - **After the decision to reject all tenders and negotiate with any tenderer:**
 - **On 21 February 2013** the PSC General Manager Wayne Wallis wrote to each of the original nine tenderers (**including Macka's Sand, who had withdrawn their tender!**) asking them to respond again to the same requirements as the original tender but stipulated a base rent compulsory payment of \$100,000.00 and a minimum extraction rate of 200,00 tonnes or greater. They were to "*reconsider their 'Royalty Rent previously submitted and indicate separate rates for Silica and fill sand. (Dutch auction?)*" This was to "*form the basis of a presentation to Council for the awarding of the sand extraction contract.*" Reply's to be submitted by 08 march 2013.
 - On 19 March 2013 the 'workshop' was arranged to assess the four companies that formally responded, M. Collins and Sons, Castle Quarry Products, Dunmore Sand and Soil and Rocla Quarry Products.
 - We still don't know what happened at the 'workshop which was not minuted. The report from Carmel Foster, Property Services Manager about this to the 09 April Council meeting (below) was considered in confidential session and remains confidential. The Motion for this was moved by Mayor Bruce Mackenzie and seconded by Cllr Ken Jordan both of whom, in our opinion had at least a un-declared, non-pecuniary interest.
 - TRRA are not legal professionals or accountants but a reading of this extract from the ['Code of Practice for Procurement for NSW Govt.](#) would seem to place PSC in breach of a number of provisions especially the section on the prohibition on 'Bid Shopping'. (Page 7)

On **09 April 2013** the matter was on the agenda again at the next Council Meeting.

- A motion to consider the report in open Council was moved by Clr. Dingle seconded Clr. Nell but this was lost and the matter was debated 'in confidence' behind closed doors again.
- The Mayor declared verbally (i.e. not on the appropriate form) that he "did not have a conflict" and moved the 'in confidence' motion.
- Clr Jordan seconded it in the minutes, but Clr Jordan later denied in the media that he had taken any part in the debate because of his pecuniary interest with CQP which is a Nathan Tinkler/Buildev company.
- Ken Jordan has a long standing publically declared friendship with the Buildev CEO Darren Williams (he was allegedly best man at his wedding). He was not present at the first meeting and tabled a pecuniary interest form before the second one, but still seconded the 'in confidence' motion at the meeting. (Confused? So are we!)
- Newcastle Herald 06 November 2014: [Port Stephens councillor Ken Jordan doesn't vote on Buildev matters due to friendship with Darren Williams](#)
- The following motion was resolved by Council:

Motion 092: *Councillor Paul Le Mottee, Councillor Steve Tucker*
It was resolved that Council:

1. *Enter into an Agreement for Lease and Lease for Lot 1012 DP 814078, Lot 11 DP 629503, Lot 121 DP 556403 & Lot 1 DP 224587, 282, 282A, 282B and 398 Cabbage Tree Road, Williamtown with Castle Quarry Products.*
2. *Authorise the Mayor and General Manager to affix the Seal of Council to the Agreement for Lease and lease and sign any other related legal documentation.*
3. *Castle Quarry Products provide Council with a list detailing all consultants engaged and the requirement to assign all intellectual property to Council, including intellectual property created by third party consultants engaged by Castle Products or its assigns for the purposes of fulfilling its lease obligations.*
4. *The bank guarantee requirement be brought forward to the Agreement for Lease stage.*

Reaction to Council's Rejection of Panel Recommendation

On 08 April 2013 TRRA wrote to the **Council General Manager** expressing our concern at the way this matter was handled, requesting that the **Department Of Local Government** instigate a code of conduct review.

- Tony Wickham (PSC Executive Officer) referred the matter to the DLG on 17 June 2013, but the Department stated in response that:

"On the basis that there is no evidence currently before the Division of any association between Councillor Mackenzie and any of the other tenderers, and on the advice that (his) tender was

withdrawn prior to the relevant meeting, the Division does not consider that the available information discloses a prima facie breach of the pecuniary interest provisions of the Local Government Act 1993. Accordingly. The Division proposes to take no further action on the matter.”

- Unfortunately the ‘evidence’ and ‘information available’ supplied to the DLG was hard to come by, as very little is minuted or recorded, and it may just be in ‘the eye of the beholder,’ as explained to TRRA in an email from Tony Wickham:

“With respect to declaration of interest consideration, it is the responsibility of the elected member to ensure that they consider all aspects of conflicts of interest (real and perceived) in a matter before the Council. In the matter you reference, it is up to the Mayor to consider any conflict of interest he believes there may or may not be with regard to this matter, and then make the appropriate disclosure if required to do so.

On the basis on the information available it would appear given that the withdrawal of Macka’s Sands & Soil Supplies from the tender process, there would not be a "real" conflict of interest. As previously mentioned it is up to the elected member to consider the perception aspect.

It should be noted however that you would have to have a matter before Council that would create such a perception. Given Macka’s Sands & Soil Supplies withdrew from the tender process, this may remove any conflict of interest.”

- Sir Humphrey Appleby from ‘Yes Minister’ could not have spun it better, any wonder this sort of stuff is endemic when it interpreted this way by the Council’s Public Officer in a response to a Community Group.

In **May** and **July 2014**, In the light of the revelations regarding The State Member and Buildev,

- TRRA made several extensive submissions to **ICAC** (Independent Commission Against Corruption) requesting that an enquiry should be undertaken into the Castle Quarry tender process and some other matters of concern.
- We were advised that the information that we had provided would be *‘Retained by our Investigations Division and may be of future benefit.’*
- Unfortunately ICAC had a fair bit on their plate at the time, and we feel that this matter may have escaped the close scrutiny that it deserved. However the Commission are not known for telegraphing their operations

in advance, the first most hear is when they get invited in for a quiet cup of coffee with the investigators.....

Money in the Bank...

On **12 July 2013**, **5 months after** the Council closed the Tender process, \$250,000.00 was deposited to Council **In cash**, (by someone that the Council refuses to identify) as the '*Bank Guarantee*' required in the tender process.

- Council having received the signed *Agreement For Lease* and the deposit, the General Manager and the Mayor executed the lease documents.
- Concern had been expressed by Norm Barnes, a Council Staff member of the evaluation panel, that Castle Quarry Products tender had failed to provide:
 - i. *The requirement that Previous experience, capability including management and technical resources.* (They only had one employee.)
 - ii. *The financial capacity and the ability to provide a Bank Guarantee.* (they did not have a bank account)
- ([Newcastle Herald 09 April 2013](#)) Some Councilors, including Cr Geoff Dingle, expressed concern over Castle Quarry's links to the Nathan Tinkler-backed Buildev Group.
- However the majority of Councilors believed Castle Quarry, which already operated a mine at Fullerton Cove, was by far the best financial choice. "*At the end of the day if they don't perform, we've still got the sand,*" Cr MacKenzie said.

On **09 September 2013** QCP requested the Director General's requirements, fulfilling one of the first conditions of the lease.

On **15 October 2013** CQP complied with the second condition precedent, to provide a detailed survey of the site, including a detailed survey of the 3 extraction areas.

Extension of time...

In **June 2014** CQP wrote to Council requesting an extension of time on the lease condition that they were to prepare an Environmental Impact Statement within 12 months of the signing of the agreement.

- This was due on **15 July 2014**. They stated that they were unable to complete the necessary seasonality studies, in particular the spring and summer surveys.
- This was due to the complete decimation of the property by the bushfires that burnt out the property in late **October 2013**.

- Council agreed to extend this condition to **30 March 2015**, but did not extend the contract "Sunset Date" which requires all conditions precedents to be met by **15 July 2016**.
- We understand that a meeting of Councilors has been called to review the lease on **28 July 2015**.

CQP in liquidation

On 24 July 2014 this article appeared in the Newcastle Herald:
Newcastle Herald 24 July 2014: [Uncertainty Over Jets Sponsor As Receivers called In.](#)

Council's response was:

"Council has become aware that receivers and managers have been appointed in respect of the Fullerton Cove site owned by BD (NSW) Project J001 Pty Ltd BD (NSW). Castle Quarry Products occupy this site as the lessee. There has been some concern that due to BD (NSW) Project J001 Pty Ltd and Castle Quarry Products being related companies that there may be some impact on Council's agreement with CQP.

Council officers understand the land (owned by BD (NSW) Project J001 Pty Ltd) will be sold however the lease of the site may not be impacted and CQP could remain trading as the lessee. There currently is no impact on Council's Agreement for Lease and CQP continue to meet the conditions precedent of the AFL."

This article was one of many but summed up the situation the best:
Newcastle Herald November 06 2014: [Council awards Buildev Group company sand-mining lease against advice of staff](#)

Lease transfer to Benelli Holdings, Who is Benelli?

In August 2014 the council was approached by CQP about transferring the lease to Benelli Holdings, according to papers given to Councilors ahead of Tuesday's meeting:

- The request was made as a "result of an organizational structure" to simplify arrangements, Council papers said.
- The changes would appear to put distance between the Buildev Group and Mr Tinkler, and the proposed new lease holder.
- The lease would go to Benelli Holdings, which company records show is part-owned by Fiona Williams (Darren Williams Wife) and "Les & Zelda Investments". (Tinkler's father)

- Buildev co-founder Darren Williams and Mr Tinkler's father Leslie are listed as Benelli directors, with Mr Tinkler's right-hand man Troy Palmer named as a former director.
- Council staff have recommended the lease transfer go ahead, on the condition that CQP and Benelli "warrant that all the CQP quarry projects are owned by Benelli and provide evidence to this effect" as well as evidence of Benelli's financial capacity.
- Newcastle Herald Nov 25 2014: [Shifting sands: council agrees to lease transfer](#)

Action Groups Against Mine

In March 2015 [The Williamtown and Surrounds Resident's Action Group](#) was set up by local resident Cain Gorfine to oppose the mine on environmental grounds. We understand that it now has about 250 members.

- Examiner 24 Feb 2015: [Action group meets Monday](#)
- Newcastle Herald 09 March 2015: [Greens challenge Williamtown sand mine status](#)

Budget implications.

- Port Stephens Council has factored this sand mine income into its forward budget planning and sustainability reviews. Its strategy was outlined recently in its 'Fit for the Future' submission to the state Government in which it stated that it would not be increasing rates by 45% like Newcastle Council, and would stay under the State cap.
- It would rely on income from its investments in The Cabbage Tree Sand Mine, the Newcastle Airport and its Holiday Parks to fund its future needs and address its \$29 mill Infrastructure and maintenance backlog that grew by another \$3 mill last year alone.
- Projected returns from the Newcastle Airport in the past have been optimistic to say the least and TRRA has serious doubts about the viability of the recent investments in the Holiday Parks and their projected returns. TRRA is also aware of some serious legal challenges that Council may be facing in the near future.
- There may be serious environmental challenges ahead for this mine and the Council's budget. The WSRA Group are concerned about the effect on the Tomago water supply, native wildlife, traffic and noise issues and the plan to mine the sand using a dry method of filtering/extraction which may pose a serious health risk.



Questions:

1. Why did the Mayor of Port Stephens, **a major local sand miner**:
 - Withdraw his tender for the Council's own sand mine at the last minute?
 - Not declare any pecuniary or non-pecuniary interest?
 - Then support a motion to:
 1. *Reject all tenders **and negotiation with any tenderer** as the evaluation table contained within the report is not sufficient.*
 2. *Arrange a workshop for the Mayor and Councillors following consultation with **any tenderer**.*

2. In Consequence, Why did the Mayors Group of Councillors:
 - Reject the tender of a well-established company (Collins Sands) with excellent credentials, recommended after a rigorous examination by an evaluation panel including staff and an independent expert?
 - Arrange an unminuted 'workshop' for Councillors involving the recommended tenderer and a Nathan Tinkler/Buildev shelf Company (CQP, with one employee and a salesman with no bank account) to give a presentation for a 'consultation'?
 - After jettisoning a properly constituted tender process that cost ratepayers \$33,079.00, and based on this 'consultation' how could they enter into a lease agreement with a company that has been shown by the recent ICAC investigation to be involved in the worst political bastardry 'since the Rum Corps' and now owes millions of dollars to the tax Dept., the banks and many local creditors and businesses?

3. Why have the Department of Local Government and the ICAC ignored our pleas and taken no interest in this process which must be (based on our reading) in clear breach of the Council's and the Government's Code of Practice for Procurement?

4. What were They Thinking? This outfit had form. The original Buildev/CQP project at Zircon Lane, Fullerton Cove, involved the unauthorized extraction of 70,000 tonnes of sand by Buildev in 2008. This was a totally illegal operation unauthorised by Council, in multiple breaches of the Environmental Planning Act, and culminated in an agreement to pay Council \$80,000.00 in reparation. Of course this was never paid and none of this has ever been disclosed to the public. It was listed in the Land and Environment Court on 27 October 2008 and dealt with by Council confidentially on two occasions, **25 November 2008** then concluded by way of a Confidential Mayoral Minute on **10 March 2009**, **but the same Councillors were present at those confidential meetings as those that made the decisions on the Cabbage Tree Mine**. The matter is referred to in the minutes on the Council website but no detail is provided on how it was resolved or if it ever was. This is a classic case of why these

- sorts of things should always be made public. Why don't we know what happened?
5. How did they send us **THIS** with a straight face, given the above?
 6. Where does that leave the Council and its ratepayers if we are relying on future income from this project to address the \$29 million backlog of infrastructure and maintenance identified in the budget?
 7. Will the whole process have to be repeated? Will they now admit their mistake and award it to the recommended tenderer, or just bring in another 'mate' to pick up the pieces without any proper process?
 8. How much has the personal relationships of some Councillors, and Councils dealings with the Buildev companies, cost the ratepayers of Port Stephens over recent years? The debacle with Nathan Tinkler over the development of the land around the Salamander Shopping Centre, the costs of infrastructure around the Medowie Woolworths shopping centre to name a few should have sounded a warning against further involvement with these people long ago.

TRRA want transparency, accountability and due process please.....

To Be Continued.....

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References:

Castle Quarry products

[150220 Castle Quarry Products – Info Community Consultation 20150211](#)

Council Documents:

[140725 Extract From Code of Practice For Procurement](#)

[140725 Extracts From PSC Minutes – Cabbage Tree Rd Sand Mine](#)

[130211 ITEM 22 Withdrawal Of Tender T12-2012 Lease of Land at Williamtown for Sand Extraction](#)

[141125 Extract Benelli Transfer 398 Cabbage Tree Road](#)

[150104 PSC Castle Quarry Issue Response from GM](#)



TRRA Documents:

[130408 Cabbage Tree Road Pecuniary Interests](#)

[130719 DLG Response to Pecuniary Interest MacKenzie](#)

[130617 PSC Response Advising Code of Conduct to go to DLG](#)

Media Links

Press Clippings, Cabbage Tree Sand Mine:

Examiner 12 February 2013: [Sand May fill pocket Of Council](#)

Newcastle Herald 09 April 2013: [Sand into gold for Port council](#)

Examiner 16 April: [Quarry Bid Boosts Council Coffers](#)

Newcastle Herald 19 December 2013: [Council's delay could cost cash](#)

Newcastle Herald 29 December 2013: [Sand Mine Seeks State Nod](#)

Newcastle Herald 02 April 2014: [Dwindling staff, late pay, adds to uncertainty for Buildev](#)

Newcastle Herald 24 July 2014: [Uncertainty Over Jets Sponsor As Receivers called In.](#)

Newcastle Herald 17 September 2014: [Federal Paterson MP Bob Baldwin and Buildev director Darren Williams relationship in the spotlight](#)

Daily Telegraph 17 September 2014: [Federal MP Bob Baldwin linked with developer Buildev: He sold a block of land to company executive's wife!](#)

Newcastle Herald November 06 2014: [Council awards Buildev Group company sand-mining lease against advice of staff](#)

Newcastle Herald 06 November 2014: [Port Stephens councillor Ken Jordan doesn't vote on Buildev matters due to friendship with Darren Williams](#)

Newcastle herald 19 Feb 2014: [Sand mine plan alarms neighbours](#)

Newcastle Herald 04 May 2014: [ICAC urged to look into Bruce MacKenzie's election campaigns](#)

Examiner 20 August 2014: [Call for ICAC probe into Port Stephens Council and Mayor Bruce MacKenzie](#)

Examiner 17 September 2014: [ICAC: Investigate Port council: TRRA](#)



Newcastle Herald 25 November 2014: [Jets sponsor locked out of sandmine over debts](#)

Newcastle Herald Nov 25 2014: [Shifting sands: council agrees to lease transfer](#)

Examiner 24 Feb 2015: [Action group meets Monday](#)

Newcastle Herald 08 January 2015: [Tinkler companies hit by technology blackout](#)

Newcastle Herald 19 Feb 2015: [Port Stephens Mayor Bruce MacKenzie denies mine support](#)

Newcastle Herald 26 Feb 2015: [Phone call from MP Craig Baumann alarms sand mining campaigner](#)

ABC News 27 Feb 2015: [Revelations ICAC looked into Port Stephens sand mine deal](#)

Newcastle Herald 09 March 2015: [Greens challenge Williamtown sand mine status](#)

Newcastle Herald 08 July 2015: [Build Development NSW: Another Nathan Tinkler company bites the dust](#)

Newcastle Herald July 20: [Where is Nathan Tinkler?](#)

Newcastle Herald 15 July 2015: ['Heads in sand' over mine sale](#)

Newcastle Herald 21 July 2015: [Fears Tinkler may be planning move](#)

Newcastle Herald Opinion 21 July 2015: [DONNA PAGE: Spare us the excuses Tinkler Examiner 21 July 2015: Fullerton Cove Sand Mine Status Questioned by Councilors](#)

Newcastle Herald 22 July 2015: [Nathan Tinkler owes US banker \\$41m](#)

Newcastle Herald 22 July 2015: [Future of sand mine under question](#)

Newcastle Herald 23 July 2015: [Tinkler home and still hosing down](#)

Newcastle Herald 23 July 2015: ['What are you doing, grub?': Tinkler lashes out at photographer](#)

Newcastle Herald 23 July 2015: [Staff may lose unpaid super in Patinack mire](#)

Newcastle Herald 24 July 2015: [Nathan Tinkler facing bankruptcy](#)

TRRA Website:

[Who is in the Cac at ICAC?](#)

[ICAC – Local Govt. Minister: Please Finish The Job!](#)

[ICAC, Mackenze & McCloy – Should Property Developers be Mayors Too?](#)

