



Adams consulting & training

**FOLLOW-ON
REPORT TO WYONG COUNCIL**

**INVESTIGATION OF
ALLEGED ILLEGAL DUMPING
AT GWANDALAN AND OTHER SITES**

August 2008

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Anagrams and short-hand descriptions used in this Report, have the meanings as set out below.

DECC	NSW Department of Environment & Climate Change (including the Environmental Protection Agency)
Gwandalan	The closed landfill site at Gwandalan
OH&S	Occupational Health and safety

1. EXECUTIVE SUMMARY

1.1 Background & Investigation Scope

The Report on Alleged Illegal Dumping was considered by Council at its General meeting on 23 July 2008. As reported there, it was not possible to include findings and recommendations on certain tasks which had been found to need a broader assessment of Council activities. At that Meeting, Council resolved to accept the recommendations reflected in the Report, including the recommendation that the identified outstanding tasks continue to be investigated. The specific tasks were the investigations of:

- The handling of reporting of environmental non compliance matters to DECC
- The processes for reporting non compliance matters to authorities
- The conduct of internal investigations, and
- Improved mechanisms for the reporting of corruption or breaches of the Code of Conduct.

The results of these investigations are set out in the present Report.

1.2 Investigation Methodology

The present investigation was undertaken principally through meetings with key Council officers and the review of related documentation.

As these issues were considered in part during the earlier part of the Investigation, it is appropriate to record that all Councillors were invited to meet with me to provide any information which they considered might be of assistance. In the event, interviews were held with two Councillors.

I was assisted in this task by Ms Melanie Domingo, Council's Public Officer, who provided administrative support for the investigation.

1.3 Consideration of Draft Report

A draft of this Follow-on Report was provided to the Mayor, the General Manager and the Directors of the Shire Planning and Shire Services Departments for consideration. The comments received have been considered in this finalised Report.

2. CONCLUSIONS & RECOMMENDATIONS

2.1 *Conclusions*

The principal conclusions flowing from further investigation of the matters set out at 1.1 above are set out as follows.

To support the environmental reporting obligations of Council, there is a need for change in the level of understanding of environmental issues affecting Council's Shire Services Department and in the approach adopted to identifying issues and reporting them. This will require a cultural change through training, guidance and support.

There is also a need in my view for an enhanced role for the Shire Planning Department in order to more effectively utilise its expertise in relation to environmental matters affecting Council and, in that way, help ensure that Council is acting appropriately in this area. Changes in administrative procedures in recording and reporting matters should also result in obtaining greater control over issues as they arise, and enable greater assurance that environmental issues have been dealt with reasonably.

2.2 *Recommendations*

The principal recommendation arising from the matters addressed in this Follow-on Investigation Report are listed below.

- (a) I recommend that all instances where reporting to DECC is reasonably in contemplation by members of the Shire Services Department (or others) should be recorded on a centralised record, including details of action taken and the details of the report made (if any).
- (b) I recommend as the most effective ways to achieve the desired level of understanding of environmental matters on the part of Shire Services members:
 - for senior officers and Councillors to enunciate for staff and contractors the importance of achieving sound practices in respect of environmental compliance and conduct; and
 - to undertake specific training in respect of the legislated and ethical obligations in this area.
- (c) I recommend that, in order for Council and, in particular, the Shire Services Department, to gain an assurance that Council is performing in accordance with sound practice, that a program of audits by Shire Planning Department specialists be recommenced in a comprehensive and effective fashion.
- (d) A recommendation of my earlier Investigation Report, which was accepted by Council, was to establish reporting arrangements which:
 - require feedback from Shire Services Department on matters referred to it by the specialist officers of the Shire Planning Department;

- require reporting (at the discretion of Shire Planning) up the line, including to the General Manager where appropriate, on the status of actions taken.
I recommend that this feedback and reporting process also be implemented in respect of matters raised proactively by representatives of the Shire Planning Department and where arising through the proposed audit process.
- (e) In relation to dealings between Council and DECC, I recommend that, whenever a matter is identified as being of significance, there should be a communication to the Shire Planning Department for their information and consideration.
- (f) In order to help ensure close management of environmental investigations, and to give assurance that the timeliness of response and quality of performance meet desirable standards, I recommend that the Service Request processes be expanded (or supplemented) and regularised.
- (g) I recommend that Council procedures governing the conduct of environmental investigations, along with requirements for recording matters for investigation and for reporting outcomes etc., be documented as soon as possible.

3. FINDINGS

3.1 Reporting of Environmental Non-compliance Matters to DECC

3.1.1 Background

The reader should note that the principal focus of this topic is on Council's own environmental non-compliance rather than on non-compliance by the public or others where Council has the related regulatory responsibility.

During the course of this Investigation, as reported in my earlier Investigation Report, I noted the views from a number of parties that Shire Services historically has been less attendant to environmental issues than was preferred albeit there was an acknowledgment that this had improved somewhat in recent times. I also noted evidence of an inclination to minimise the potential negative impact on Council of disclosing full information outside of Shire Services. This did not equate to a cover-up in my view in respect of the matters sighted but did appear to be reflective of an undesirable aspect of the culture within the responsible Department.

In the case of the Gwandalan matters reported internally in early March 2008, the attendance to assessing the significance of the allegations was slower than it should have been, with the result that the report to DECC was later than it should have been, in my view. I do not expect that unsubstantiated allegations should be reported to DECC immediately. However, I suggest it as appropriate that Council should treat such allegations in an orderly and prudent fashion and that a report should be made to DECC as soon as practicable. Council should be able to determine immediately

whether there is a strict obligation to report a matter in question and, even where there is a doubt in this regard, it should report the matter (as it did in this instance).

The Acting Director, Shire Services, in discussion, has indicated to me that he believes that his Department, while having a healthy respect for their obligations to report to DECC, may have:

- had a keener interest in remedying any environmental issues than in reporting those issues
- not appreciated the full significance of environmental matters observed; and
- not appreciated fully the extent of the reporting obligations.

Others within Council, however, as indicated in my earlier Investigation Report, have suggested that there may have been a strong reluctance by that Department to report to DECC.

As part of this follow-on investigation, I sought statistics from the Shire Services Department on reports lodged with DECC. While information was able to be accumulated to address my request, I noted that no centralised recording of these matters is maintained which, particularly in view of the enhanced processes recommended elsewhere in this Report, would be a useful management tool which could assist in the control and monitoring of DECC reporting. Accordingly, I recommend that all instances where reporting to DECC is reasonably in contemplation should be recorded on a centralised record, including details of action taken and the details of the report made (if any). (See also 3.2.1 of this Report.)

3.1.2 Responsibility for Reporting to DECC

Wyong Council has a regulatory role on environmental compliance in respect of all actions by residents in the Shire and certain acts by contractors engaged on certain areas of Council operations. In other areas, DECC is the relevant regulatory authority and, in those areas, there is an obligation on Council to report breaches to DECC. Clearly, the events at Council's closed landfill site at Gwandalan were in that category.

The Acting Director, Shire Services, has suggested to me that it is preferable for the manager who is responsible for the operations in question to have the obligation, as now, to report to DECC whenever it is appropriate. The process at present is intended to be that Shire Planning specialists are not to report Council activities to DECC but the advice of Shire Planning representatives is sought in cases where further expertise is required by Shire Services officers. I agree that the reporting responsibility should remain with the responsible Shire Services officer but I believe it is essential, as discussed further at 3.2 of this Report, that representatives of the Shire Planning Department are involved or at least notified in each instance where an environmental issue of concern is identified. By "environmental issue of concern" I mean an occurrence which should reasonably raise a consideration of reporting to DECC, such as a finding of waste or mixed materials at a possibly unauthorised site.

3.2 Reporting Non-compliance Matters to Authorities

Within this subject area, I discuss the process of reporting to DECC and to environmental specialist areas within the Shire Planning Department.

3.2.1 Reporting to DECC

At section 3.1 of this Report, I discussed arrangements for reporting to DECC and concluded that they warranted enhancement. This view has been endorsed by the Directors of both the Shire Planning and Shire Services Departments.

While noting that whenever Shire Services officers require further environmental expertise they can and do seek advice from Shire Planning specialists, I recommend for implementation in order to address the reporting process that an area within Shire Planning should have an involvement in the reporting decision whenever reporting a matter of environmental concern to DECC is reasonably in contemplation. In all cases where there is a matter involving an environmental issue of concern, and

- it is proposed to not report to DECC, Shire Planning concurrence should be sought and obtained before closing off the issue; or
- it is proposed to report the matter to DECC, Shire Planning should be informed.

In either case, the details of the issue including, where applicable, the matters reported, should be communicated to Shire Planning. In any case where there is a difference of view between the Departments, a process of resolution should be undertaken at a management level and, if not obtained within a period acceptable to Shire Planning, should be referred to the General Manager for information or resolution, depending on the Shire Planning assessment.

In addition, as accepted by the Acting Director, Shire Services, it is important that Shire Services develop a greater understanding of environmental matters including:

- The identification of the range of environmental issues affecting their operations;
- The significance of environmental matters within today's legislated and community expectations; and
- The legal obligations for reporting and management of environmental matters.

The most effective ways to achieve the desired level of understanding in my view, and the actions I recommend for implementation, are:

- for senior officers and Councillors to enunciate for staff and contractors the importance of achieving sound practice in respect of environmental compliance and conduct; and
- to undertake specific training of staff in respect of their legislated and ethical obligations in this area.

In respect of “conduct” and “ethical obligations”, I refer to aspects of the culture of the organisation to which I alluded in my earlier Investigation Report. Specifically there appears to be a need for greater transparency and accountability in this area, and to be more responsive and open, rather than defensive and secretive in their approach to these issues, with an objective of securing sound practice in the administration and management of environmental issues.

3.2.2 Reporting to Shire Planning Department

As mentioned at 4.1.1 of this Report, and discussed in my earlier Investigation Report at section 4.6.1, Council’s Shire Services Department has the responsibility for managing its owned sites (including landfill sites etc) and, within that role, ensuring that Council acts in accordance with environmental laws etc. The Shire Planning Department, in these cases, has had an advisory role only.

Environmental Assurance

I understand that in recent years, the Natural Resources area of Shire Planning has been charged with a responsibility to undertake audits of Shire Services operations in order to provide support and assurances in respect of its operations. This auditing was expected, in a sense, to help underpin its role in the preparation of an annual State of the Environment Report. I understand that few audits have been performed in recent years, however, partly because of resourcing issues and partly because of perceptions within the Unit that audits would not be dealt with in a constructive fashion by the Shire Services Department. (I understand that audits of this kind may have been undertaken more routinely some years ago.)

In order for Council and, in particular, the Shire Services Department, to gain an assurance that Council is performing in accordance with sound practice, I recommend that audits, in effect, be reintroduced. They should be:

- undertaken according to an approved strategy and annual audit plan
- focussed on giving assistance by way of assurance and guidance
- resourced adequately by staff or contractors who have an appropriate skill set and independent mind set
- subject to a reporting regime which includes
 - a necessary feedback loop from Shire Services to Shire Planning Unit (in respect of formal audit reports)
 - exception reporting to the senior officers where Shire Services responses are assessed as incomplete or insufficient (in order to ensure that these matters are resolved at appropriate levels), and
 - periodic reporting (e.g. monthly and annually) to the Directors of Shire Planning and Shire Services on the status of audits and achievements over the relevant periods.

It is not important in my view for the responsibility for this assurance role to remain within the Natural Resources Unit. However, it is important that the personnel involved are specifically dedicated to the assurance task to the extent practicable, and that their reports are seen to have the authority of senior and responsible officers.

As included in my earlier Investigation Report at section 4.6.1, I recommended consideration by Council to establish reporting arrangements which:

- Require feedback from Shire Services Department on matters referred to it by the specialist officers of the Shire Planning Department;
- Require reporting up the line, including to the General Manager where appropriate, on the status of actions taken.

This recommendation for consideration was accepted by Councillors at their General Meeting on 23 July 2008. As noted above, I now recommend that this feedback and reporting process also be implemented in respect of matters raised proactively by representatives of the Shire Planning Department and where arising through the proposed audit process.

Involvement of Shire Planning in DECC Issues

In discussions with senior officers, I have noted that Shire Planning representatives do not have a necessary role in matters involving DECC. An important issue has been the subject of disagreement between Council and DECC for some time, relating to fees payable from certain Buttonderry landfill operations. The Acting Director Shire Services has explained to me that this particular issue does not require input from environmental experts as it relates principally to fees and technical definitions of landfill materials, and as independent legal advice has been obtained to address the matters. I consider that it would be desirable as a matter of policy for Shire Planning to at least be informed of any issues of significance involving DECC in their role as regulatory authority. What is regarded as an issue of significance should reasonably be the responsibility of Shire Services officers to determine. However, I recommend that, whenever a matter is identified as being of significance, there should be a communication to the Shire Planning Department for their information and consideration. The results of a DECC audit and any occasion where an independent legal opinion is to be sought, I suggest, would clearly constitute matters of significance and would warrant reporting to the Shire Planning Department, including to the environmental assurance area within that Department.

3.3 The Conduct of Internal Investigations

In this section, I address the range of internal investigations conducted by Council.

3.3.1 Internal Audit

Investigations are undertaken by, or on behalf of, Internal Audit on an ad hoc basis where the subject has arisen unexpectedly and is a matter of special significance. These subjects may include alleged defalcations or other alleged breaches of law. They are outsourced where specific expertise is required or where the Internal Audit staff are fully engaged on programmed audits.

Extent of Consultation

I note the question occurring in respect of the early stages of involvement by Internal Audit in pursuit of the alleged illegal dumping at Gwandalan. There was a suggestion that the auditor should have consulted further before reporting their concerns to others outside of the Shire Services Department.

Whether consultation is appropriate prior to raising concerns to more senior officers or to others is a matter for the auditor's discretion. There can be circumstances where consultation is clearly not appropriate, for example where there is conclusive evidence that a fraud or other event has occurred and where consultation with the officers closest to the matter might compromise any subsequent investigation or legal action. However, where it is not reasonable to conclude, for example, that there has clearly been a breach of law, it is highly desirable that there be consultation in order to test the veracity of the evidence obtained and to obtain an explanation and clarification of the matter from the responsible officers or their supervisors.

In the case of the Gwandalan matter, the early involvement by the Internal Auditor in pursuing the allegations and in reporting the matter to the General Manager was reflective of his concern about the significance of the issue. It was interpreted by some, however, as being premature as the operations staff had no prior knowledge of the allegations and had not had the opportunity to review those allegations to assess their veracity. In the particular circumstances, the auditor's judgments in relation to early involvement and related reporting may have been vindicated by subsequent events. It might not have been so, however, as the related issues, as indicated in my earlier Investigation Report, were far more complex than one might have expected.

This event has been instructive for both the auditor and the operations staff in a number of ways. On the matter of process, it has been a useful example of the value of internal audit when it applies an appropriate judgment on the available facts. I am assured, however, that the Internal Auditor is always mindful of the need to ensure that his methodology is appropriate according to the nature of the matter under investigation.

I dealt with a related question in my earlier Investigation Report at section 4.9, as to whether further consultation by the Internal Auditor with other Council officers was warranted in all the circumstances prior to inclusion of the matter in Governance Committee papers. I believe there is merit in that view: had the Internal Auditor consulted and suggested it strongly, in view of his judgment in the matter, it is possible that the matter would have been reported formally to Councillors earlier, to the benefit of all concerned. But as indicated in my earlier Report I am not decided on that, and this question does not lessen the auditor's obligations to report as he did.

Relationship to Other Investigations

It is possible that Internal Audit may have a role in respect of matters identified during investigations by other officers such as environment compliance investigations or OH&S investigations. This occurred in the case of the Gwandalan illegal dumping allegations which were raised initially by an officer within the Shire Planning Regulation & Compliance area. In that case, the matter concerned the conduct of

Council officers and involved allegations of substantial breaches of environmental laws.

While Council officers should not be dissuaded from reporting matters to the Internal Auditor, it is also desirable to follow required procedures to allow findings to be processed in an orderly fashion. In the normal course, Council officers should pursue the existing internal management and reporting mechanisms to resolve issues of concern before referring matters to the Internal Auditor.

Other than in exceptional circumstances, the Internal Auditor would reasonably be expected to note the information received from Council officers and to monitor the actions taken by Council managers etc in dealing with the matter. In the Gwandalan matter, it was reported immediately to the Internal Auditor and, at the same time, was reported up the line within Shire Planning and then to Shire Services as appropriate. In my view it was a reasonable action in bringing the matter immediately to the notice of the Internal Auditor and, in this instance, it was appropriate for the Internal Auditor to actively pursue the matter rather than to simply monitor the actions taken by Council managers.

3.3.2 Occupational Health & Safety

From discussions with the relevant manager and staff it is apparent that a detailed system and process are in place to control, record and monitor the performance of investigations undertaken in this area. I offer no suggestions for enhancement in the conduct of investigations. However, I note that a reporting mechanism, whereby summarised advice to the Senior Management Team is provided monthly in respect of the level of responsiveness to OH&S investigation reports etc, has recently been introduced. This is a desirable initiative which, when in operation for a longer period, should prove to be a useful management tool to help ensure the effectiveness of related investigations. In that regard, I have offered minor suggestions for enhancing the contents of those reports to help them underscore the significance of the statistical information provided.

3.3.3 Industrial Relations

After discussion the relevant Council Manager, I note that investigations in this area are few and far between and dependent upon the specific circumstances of the matters under consideration. They are required to operate in accordance the Ombudsman's Guidelines and Award Statement.

From my review in this area, I have not identified enhancement opportunities.

3.3.4 Environmental Compliance

A number of processes exist which give rise to environmental investigations. They can arise:

- Where there has been an environment-related Service Request lodged in the Council Service Request system. (This occurs were a complaint of an environmental nature is received from a member of the public or, in some cases, where someone in Shire Services requests environment-related advice or actions from the Shire Planning Department.)
- Where required as part of a Development Assessment
- Where advice or actions are requested by Shire Services officers, and
- Where identified and initiated at the instigation of officers within the Shire Planning areas of Environmental Compliance, Natural Resources or Estuary Management.

Where there are Service Requests, records are maintained of the details of the complaint, the times of receipt and actions taken, and the outcomes. These records, which are completed by the officers who undertake the investigations, are able to be reviewed by the Manager, Regulation & Compliance. He has been able to show me that he does periodically review the performance of staff in the conduct of investigations, principally as part of their individual performance reviews.

In order to help ensure close management of environmental investigations, and to give assurance that the timeliness of response and quality of performance meet desirable standards, I recommend that the Service Request processes be expanded (or supplemented¹) and regularised. Specific initiatives would include:

- Requiring all investigation matters to be recorded by way of a Service Request, whether instigated by the Shire Planning officer who undertakes the investigation or undertaken at the request of another officer;
- Requiring periodic and regular review of investigations, probably on a sample basis as well as a statistical basis, for the purpose of assessing the level of performance of the investigation process (rather than only for personnel performance purposes);
- Requiring periodic reporting to the Director Shire Planning (possibly quarterly and annually) on the statistical performance of the investigation role;
- Reporting on an exception basis, as now, where investigations identify matters of concern which have not been able to be resolved; and
- Documenting and promulgating this required recording and reporting process.

¹ The enhancements proposed may be achieved by expanded utilisation of the specific Service Request system itself or by other means, depending on Council's assessment of efficiencies in the implementation of this recommendation. References to Service Request and Service Request system should be read in that potentially broader context.

It should be noted that this investigation role is not the same as the audit role described at section 3.2.2 of this Report. It may be that officers move between those roles from time to time but they will have different objectives and a different methodology in meeting the requirements of the different roles.

I have discussed with the Manager, Regulation & Compliance, the methodology of the conduct of environmental investigations. I note that, while there are at present no documented Council procedures governing the conduct of these investigations, the development of such procedures is in train at present. I recommend that this documentation, along with the requirements for recording matters for investigation and for reporting outcomes etc., be documented as soon as possible. It can be expected that, through the process of documentation, actions to make the task more effective and efficient may be identified.

3.3 Improved Mechanisms for the Reporting of Corruption or Breaches of the Code of Conduct.

This subject has been addressed in two categories as the processes applicable are separate and distinct:

- Breaches by members of staff; and
- Breaches by Councillors.

Alleged breaches by staff are reported to and reviewed by the General Manager or, if the allegation involves the General Manager, it is reported to and reviewed by the Mayor. Alleged breaches by Councillors are investigated by a Conduct Committee (comprising the Mayor, the General Manager and an independent appointee) and the result is reported to Council.

The reporting mechanisms are set out in Council's Code of Conduct which is in accord with the Department of Local Government's previous Model Code of Conduct. There is a new Model Code recently issued to Councils and, I understand, it is expected to be adopted by Council following the imminent Council elections.

I have not discerned anything in respect of either category (i.e. in respect of either staff or Councillors), either from discussion with interviewees or from separate enquiry, that the processes applying within Council are in any way inconsistent with desirable practices. The only matter I raise for consideration, however, is whether there is a sufficient attendance to the obligations to report possible breaches of the Code – that is, I query whether staff are utilising the system and, if not, why.

Within the perceived culture of Council, referred to in my earlier Investigator's Report, there appears to be a reluctance to report inappropriate conduct. There has been evidence presented to me which suggests there is a view held strongly by some Council staff that Council does not encourage an openness in dealing with staff concerns; staff suggestions for improvements; or confidential complaints about possible misbehaviour. While not conclusive, either through anecdotal evidence or

statistics, I note that, during 2007, there were 71 complaints raised by the public about the conduct of Council staff while there was only one complaint lodged by a member of staff. (The matters raised by the public related principally to driving incidents, staff attitudes and abilities, and Council policy.)

This may or may not be a matter simply of perception. However, it is an issue in my view which warrants concerted action as it can adversely affect morale. I referred to this issue in my earlier Investigation Report. In accordance with the accepted recommendation in that Report, I have made a further submission to Council's Governance Committee for consideration.



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