



Council

An Ordinary Meeting of Lismore City Council will be held at the Council Chambers on Tuesday 10 October 2023 at 6.00pm

Members of Council are requested to attend.

Lismore City Council acknowledges the Widjabul Wia-bal people of the Bundjalung nation, traditional custodians of the land on which we meet.

Jon Gibbons
General Manager

4 October 2023



ETHICAL DECISION MAKING AND CONFLICTS OF INTEREST

A guiding checklist for councillors, staff and community committees

Ethical decision making

- Is the decision or conduct legal?
- Is it consistent with government policy, Council's objectives and Code of Conduct?
- What will the outcome be for you, your colleagues, the Council, anyone else?
- Does it raise a conflict of interest?
- Do you stand to gain personally at public expense?
- Can the decision be justified in terms of public interest?
- Would it withstand public scrutiny?

Conflict of interest

A conflict of interest is a clash between private interest and public duty. There are two types of conflict:

- Pecuniary – an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to yourself or another person or entity defined in part 4 of the Lismore City Council Code of Conduct with whom you are associated.
- Non-pecuniary – a private or personal interest that you have that does not amount to a pecuniary interest as defined in the Lismore City Council Code of Conduct. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.

The test for conflict of interest

- Is it likely I could be influenced by personal interest in carrying out my public duty?
- Would a fair and reasonable person believe I could be so influenced?
- Conflict of interest is closely tied to the layperson's definition of "corruption" – using public office for private gain.
- Important to consider public perceptions of whether you have a conflict of interest.

Identifying problems

- Do I have private interests affected by a matter I am officially involved in?
- Is my official role one of influence or perceived influence over the matter?
- Do my private interests' conflict with my official role?

Disclosure and participation in meetings

- A councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
 - a. at any time during which the matter is being considered or discussed by the Council or Committee, or
 - b. at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - a person does not breach this clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Non-pecuniary Interests - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. participate in discussion but not in decision making or vice versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as of the provisions in the Code of Conduct (particularly if you have a significant non-pecuniary interest)

Whilst seeking advice is generally useful, the ultimate decision rests with the person concerned.

Agenda

1. Opening of Meeting

2. Acknowledgement of Country

3. Pause for reflection

4. Apologies and Applications for Leave of Absence or Attendance by Audio-Visual Link

5. Confirmation of Minutes

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Mayoral Minute(s) and Condolence Motions



Mayoral Minutes

Subject **Mayoral Attendance Report**

TRIM Record No BP23/837:EF19/25-5

That Council receives the Mayoral Attendance Report for September 2023.

September

- 4 Official opening Lismore Children’s Library
 Official opening PJ’s Fruit & Veg
- 5 Councillor briefing
- 7 All Ability Basketball Program
 Northern Rivers Community Leaders Forum
- 12 Council meeting
- 13 Business Renewal Forum
 Mates in Construction BBQ
 Wyrallah Road Public School Concert
- 14 Citizenship ceremony
- 15 Serpentine Gallery exhibition opening
 Baseball Grand Final
- 16 Northern Rivers Business Awards
- 17 Aboriginal Knockout Carnival
- 18 The Morning Show interview
- 19 Adjourned Council meeting
- 21 Lismore Cup
- 22 Rivers College Lismore High Campus Year 12 Presentation Assembly
 Lismore Masters Games Welcome Function
- 23 Lismore Workers Sports Bowls Club Opening Bowls Facilities
 Nimbin Show
 Lismore Masters Games
- 24 Byron Bay Cycling Club Road Cycling Race
 Lismore Masters Games Soccer Presentation
- 26 HammondCare Official Opening
 Business NSW lunch with Premier Minns & Janelle Saffin MP
- 27 Chamber Business After Hours
- 28 Resilient Lismore Stakeholders Session
- 29 Southern Cross University Graduation

Attachment/s

There are no attachments for this report.

TRIM Record No: BP23/837:EF19/25-5



Children's Library Opening



PJ's Fruit & Veg Opening



All Ability Basketball Program



Mates in Construction BBQ



Citizenship Ceremony



Serpentine Gallery

Mayoral Minutes



Baseball Grand Final



Northern Rivers Business Awards



Nimbin Show



Road Cycling Race



HammondCare Official Opening

Reports of Committees



Report of Committee

Sister City Advisory Group - 16 August 2023

Recommendation

That the minutes be received and adopted and the recommendations contained therein be adopted.

Attachment/s

1. [↓](#) Minutes

Sister City Advisory Group Minutes 16 August 2023

MINUTES OF THE SISTER CITY ADVISORY GROUP HELD IN COUNCIL CHAMBERS ON WEDNESDAY 16 AUGUST 2023 AT 4.30PM

Please note: These minutes are subject to confirmation at the next Council meeting. Decisions recorded in the draft minutes are subject to the Council's Code of Meeting Practice in relation to rescinding decisions.

Present

Councillors Ekins and Bing; Members Dr Ros Derrett, Daniel Gubby, Tazuko McLaren, Joanne Cooper, Brandon Yee, Patricia Anderson together with Mr Jon Gibbons, General Manager and Ms Olivieri, Community Engagement Coordinator.

Apologies

Nil

Confirmation of Minutes

SCAP16/23 **RESOLVED** that the minutes of the 14 June 2023 meeting be accepted.

(Members Cooper/Derrett)

Voting for: Councillors Bing and Ekins and Members Anderson, Cooper, Derrett, Gubby, McLaren and Yee

Voting against: Nil

Disclosure of Interest

Nil

5.1 Sister City Advisory Group held 10 May 2023

SCAP17/23 **RESOLVED** that the Minutes of the Sister City Advisory Group 10 May Meeting that were endorsed by Council at the June 2023 Meeting be accepted.

(Councillor Bing/Member Anderson) (BP23/695)

Voting for: Councillors Bing and Ekins and Members Anderson, Cooper, Derrett, Gubby, McLaren and Yee

Sister City Advisory Group Minutes 16 August 2023

Voting against: Nil

5.2 Student Exchange 2023

SCAP18/23

RESOLVED that:

1. the report be noted and accepted.
2. Council thank the Lismore Families who hosted the Yamato Takada Students and Chaperone during their visit to Lismore.
3. design options for Student and Chaperone shirts be provided to the group by email for approval.
4. Council thank Elizabeth Olivieri, Community Engagement Officer for the organisation and administering of the successful Yamato Takada visit to Lismore.
5. the group note and confirm the students, Rosalie Vassella, Liam Corbett, Sharmeeeka McPaul, Kye Tung, Ava Maddock and Chaperone, Brandon Yee are the successful applicants for the 2023 Student Exchange.

(Councillor Ekins/Member Anderson) (BP23/688)

Voting for: Councillors Bing and Ekins and Members Anderson, Cooper, Derrett, Gubby, McLaren and Yee

Voting against: Nil

5.3 Official Delegation visit to Yamato Takada

SCAP19/23

RESOLVED that in accordance with the Council resolution the group resolves the:

1. Eligibility criteria and seeks expressions of interest from the public and Council staff to join the delegation at their own expense.
2. Delegation Information Night to be held in February 2024.

(Members Yee/Gubby) (BP23/689)

Voting for: Councillors Bing and Ekins and Members Anderson, Cooper, Derrett, Gubby, McLaren and Yee

Voting against: Nil

Member Joanne Cooper left the meeting, the time being 5.34pm.

Sister City Advisory Group Minutes 16 August 2023

5.4 Active Sister City Updates

SCAP20/23

RESOLVED that:

1. community engagement is undertaken to explore community, school and business groups' interest in fostering the friendship relationship with Conegliano.
2. Council confirms its interest in consolidating a friendship relationship with Conegliano.

(Members Derrett/McLaren) (BP23/690)

Voting for: Councillors Bing and Ekins and Members Anderson, Derrett, Gubby, McLaren and Yee

Voting against: Nil

Absent: Member Cooper

Closure

This concluded the business and the meeting closed at 5.56pm.

Report of Committee

Nimbin Advisory Group - 17 August 2023

Recommendation

That the minutes be received and adopted and the recommendations contained therein be adopted.

Attachment/s

1. [↓](#) Minutes 17 August 2023

Nimbin Advisory Group Minutes 17 August 2023

MINUTES OF THE NIMBIN ADVISORY GROUP HELD IN BIRTH & BEYOND SUITE ON THURSDAY 17 AUGUST 2023 AT 5.30PM

Please note: These minutes are subject to confirmation at the next Council meeting. Decisions recorded in the draft minutes are subject to the Council's Code of Meeting Practice in relation to rescinding decisions.

Present

Councillors Cook (Chair), Rob; Members Doug Pinch, Diana Roberts, Gwen Trimble, Megan James, Michael Balderstone, Sue Edmonds, Amy-Kate Dillon

LCC Officers: Ms Soady, Community Engagement Officer

Apologies

Councillors Krieg, Bird and Members Natalie Meyer, Susan Stock

Confirmation of Minutes

RESOLVED that the minutes of the 22 June 2023 meeting be accepted.

(Members Trimble/Roberts)

Voting for: Councillor Cook, Members Balderstone, Edmonds, James, Pinch, Roberts, Dillon and Trimble

Voting against: Nil

Disclosure of Interest

Nil

Nimbin Advisory Group Minutes 17 August 2023

5.1 Nimbin Good Times

NAG10/23 **RESOLVED** that Member James write the report from the NAG meeting to go into the Nimbin Good Times.

(Members James/Balderstone) (BP23/668)

Voting for: Councillor Cook, Members Balderstone, Dillon, Edmonds, James, Pinch, Roberts and Trimble

Voting against: Councillor Rob

5.2 Nimbin DA Update

NAG11/23 **RESOLVED** that:

1. the report be noted and accepted
2. Council provide a progress report at the next meeting on status of Cubes development
3. Council provides progress report for large and significant projects

(Members Roberts/Dillon) (BP23/669)

Voting for: Councillor Cook, Members Balderstone, Dillon, Edmonds, James, Pinch, Roberts and Trimble

Voting against: Councillor Rob

5.3 Developer Contributions

NAG12/23 **RESOLVED** that:

1. the report be noted and accepted
2. report be provided on revised contribution plan at next meeting
3. provide a copy of the report that went to The Nimbin Chamber of Commerce with additional details on where funds have been spent to date in Rural North (past 10 years)

(Members James/Roberts) (BP23/670)

Voting for: Councillor Cook, Members Balderstone, Dillon, Edmonds, James, Pinch, Roberts and Trimble

Voting against: Councillor Rob

Nimbin Advisory Group Minutes 17 August 2023

5.4 Nimbin Place Plan

- NAG13/23 **RESOLVED** that:
1. the report be noted and accepted
 2. group looks forward to community engagement with Council

(Members Trimble/Dillon) (BP23/671)

Voting for: Councillors Cook and Rob, Members Balderstone, Dillon, Edmonds, James, Pinch, Roberts and Trimble

Voting against: Nil

5.5 Water Tap in Koori Korner - Allsop Park

- NAG14/23 **RESOLVED** that:
1. the report be noted and accepted
 2. the group thanks Council for the installation of the BBQ and tap
 3. recommend that Council look at installation of new BBQ in 2nd shelter shed near the pool

(Members Edmonds/Trimble) (BP23/672)

Voting for: Councillors Cook and Rob, Members Balderstone, Dillon, Edmonds, James, Pinch, Roberts and Trimble

Voting against: Nil

5.6 Other Business

- NAG15/23 **RESOLVED** that:
1. Rod Mallam be thanked and acknowledged for his urgent attention to answering questions to assist with the grant application to restump Birth and Beyond building
 2. Council be thanked for recent street cleaning
 3. an update be provided on water carriers filling up in Nimbin
 4. Nic Linder be thanked and acknowledged for his contribution to the group following his resignation
 5. Walking track update be added as a standing item on the agenda
 6. thank Council for the recent Tourism workshop which was incredibly well managed
 7. updates are provided on any outstanding items from the previous minutes as a

Nimbin Advisory Group Minutes 17 August 2023

standing item on the agenda

(Members Roberts/Trimble) (BP23/672)

Voting for: Councillors Cook and Rob, Members Balderstone, Dillon, Edmonds, James, Pinch, Roberts and Trimble

Voting against: Nil

Closure

This concluded the business and the meeting closed at 6.25 pm.

Report of Committee

Floodplain Risk Management Committee - 6 September 2023

Recommendation

That the minutes be received and adopted and the recommendations contained therein be adopted.

Attachment/s

1. [↓](#) Minutes Floodplain Risk Management Committee 6 September 2023

Lismore Floodplain Risk Management Committee Minutes 6 September 2023

MINUTES OF THE LISMORE FLOODPLAIN RISK MANAGEMENT COMMITTEE HELD IN COUNCIL CHAMBERS ON WEDNESDAY 6 SEPTEMBER 2023 AT 1.00 PM

Please note: These minutes are subject to confirmation at the next Council meeting. Decisions recorded in the draft minutes are subject to the Council's Code of Meeting Practice in relation to rescinding decisions.

Present

Councillor Jensen (Chair), Councillors Bird (via audio visual), Ekins, Rob; Mr Andrew Logan, Mr Damien Maher (via audio visual), Mr Peter Cinque (via audio visual), Mr Toong Chin, Mr Ian McPherson, Mr Graham Askey, Mr Col Baker, Mr Bill Moorhouse, Ms Cindy Roberts (arrived at 2.00pm)

In Attendance

LCC Officers: Mr Parks, Coordinator Strategic Planning; Mr Jewell, Senior Strategic Planner; Mr Butron, Chief Community Officer; Mr Smith, Acting Head of COO – Shared Services; Mr Myers, Strategic Engineer; Miss Hull, Executive Assistant to Chief Community Officer

Presenters: Mr Mark Page, Engeny (via audio-visual)

Observers: Mrs Beth Trevan (via audio-visual), Mr Richard Trevan (via audio-visual)
Ms Elena Palamara

Apologies

Mrs Leisa Blok

Confirmation of Minutes

RESOLVED that the Minutes from the meeting dated 22 June 2023 were endorsed at the Council Meeting on 8 August 2023

(Member Askey/Councillor Rob)

Voting for: Councillors Jensen, Ekins, Rob and Bird; Members Askey, McPherson, Moorhouse, Baker, Chin, Cinque, Logan and Maher

Voting against: Nil

Lismore Floodplain Risk Management Committee Minutes 6 September 2023

Disclosure of Interest

Col Baker and Graham Askey own properties in South Lismore and Graham Askey is a resident in South Lismore.

5.1 Structural flood mitigation in the Lismore Floodplain Risk Management Plan

That:

1. the Committee recommend to Council to again include analysis of structural flood mitigation in the Lismore Floodplain Risk Management Plan
2. the Committee recommend to Council to seek funding for amendments to the scope of the Floodplain Risk Management Plan
3. the technical sub-committee develop a list of mitigation options to be included in the Floodplain Risk Management Plan
4. a report be provided back to the Committee on selected mitigation options

Item 5.1 withdrawn from the Agenda

5.2 Outcomes of community engagement on the DCP Public Exhibition

FMGCC7/23 **RESOLVED** that the Committee note the presentation provided.

(Members Logan/Askey) (BP23/736)

Voting for: Councillors Ekins, Jensen, Bird; Members Askey, Baker, Chin, Cinque, Logan and Maher

Voting against: Councillor Rob; Members McPherson and Moorhouse

5.3 New timelines for the Floodplain Risk Management Plan

FMGCC8/23 **RESOLVED** that the Committee notes the report.

(Councillor Rob/Member Logan) (BP23/737)

Voting for: Councillors Jensen, Bird, Rob, Ekins; Members Askey, Baker, Chin, Cinque, Logan, Maher, McPherson and Moorhouse

Voting against: Nil

Lismore Floodplain Risk Management Committee Minutes 6 September 2023

5.4 Lismore floor level surveys

FMGCC9/23 **RESOLVED** that the Committee:

1. Note this report.
2. Recommend Council write to the NRRC requesting that the floor level survey program include properties up to the probable maximum flood (PMF) extent.

(Members Askey/Moorhouse) (BP23/749)

Voting for: Councillors Bird, Ekins, Jensen, Rob; Members Askey, Baker, Chin, Cinque, Logan, Maher, McPherson and Moorhouse

Voting against: Nil

Closure

This concluded the business and the meeting terminated at 2.30pm.

Next meeting to be scheduled for December 2023.

Report of Committee

Audit Risk and Improvement Committee - 18 September 2023

Recommendation

That the minutes be received and noted.

Attachment/s

1. [↓](#) Minutes 18 September 2023

Audit Risk and Improvement Committee Minutes 18 September 2023

**MINUTES OF THE AUDIT RISK AND IMPROVEMENT COMMITTEE HELD IN COUNCIL CHAMBERS
ON MONDAY 18 SEPTEMBER 2023 AT 9.00AM**

Please note: These minutes are subject to confirmation at the next Council meeting. Decisions recorded in the draft minutes are subject to the Council's Code of Meeting Practice in relation to rescinding decisions.

Present

Mr Coates (Chair), Mr MacLeod, Councillor Bing, Councillor Colby

In Attendance

Mr Franey (TNR), Ms Bosworth (TNR), Mr Fitzgerald (NSW Audit Office), Mr Lean (Grant Thornton), Mr Gibbons (General Manager), Mr Enevoldson (Chief Financial Officer), Ms Cotterill (Governance and Risk Manager), Mr Hartley (Manager Finance), Mr Gilroy (Manager People and Culture), Ms Thomas (Governance Officer)

Apologies

Mr Mullins

Confirmation of Minutes

ARIC216/23 **RESOLVED** that the minutes of the Audit Risk and Improvement Committee held on 19 June 2023 be confirmed.

(Member Coates/Councillor Bing)

Voting for: Councillors Bing, Coates, Colby and MacLeod

Voting against: Nil

Disclosure of Interest

Nil

Audit Risk and Improvement Committee Minutes 18 September 2023

5.1 General Manager's Report

ARIC217/23 **RESOLVED** that the Committee receive the report of the General Manager and notes the matters raised.

(Councillor Bing/Member Coates) (BP23/772)

Voting for: Councillors Bing and Colby, Members Coates and MacLeod

Voting against: Nil

5.2 External Audit Report

ARIC218/23 **RESOLVED** that the Committee receive and note the:

- verbal update on the External Audit program.
- Local Government 2022 Report
- LCC DRIVES Compliance Audit 2023 Reporting Package

(Councillor Colby/Member MacLeod) (BP23/655)

Voting for: Councillors Bing and Colby, Members Coates and MacLeod

Voting against: Nil

5.3 Internal Audit Report

ARIC219/23 **RESOLVED** that the Committee receive and note the verbal update on the 2023/2024 internal audit program.

(Member MacLeod/Councillor Colby) (BP23/656)

Voting for: Councillors Bing and Colby, Members Coates and MacLeod

Voting against: Nil

5.4 Financial Management Update

ARIC220/23 **RESOLVED** that the report be received and noted.

(Member MacLeod/Councillor Bing) (BP23/759)

Voting for: Councillors Bing and Colby, Members Coates and MacLeod

Audit Risk and Improvement Committee Minutes
18 September 2023

Voting against: Nil

Audit Risk and Improvement Committee Minutes 18 September 2023

5.5 Capacity, Capability and Recovery Roadmap (CCRR) project - June 2023

ARIC221/23 **RESOLVED** that the Committee receive and note the report on the Capacity, Capability & Recovery Roadmap

(Councillor Bing/Member MacLeod) (BP23/773)

Voting for: Councillors Bing and Colby, Members Coates and MacLeod

Voting against: Nil

5.6 Integrated Planning and Reporting

ARIC222/23 **RESOLVED** that the Committee receive and note the report on the Integrated Planning & Reporting (IP&R) activities of Lismore City Council.

(Councillor Colby/Member MacLeod) (BP23/780)

Voting for: Councillors Bing and Colby, Members Coates and MacLeod

Voting against: Nil

5.7 People & Culture Report

ARIC223/23 **RESOLVED** that the Committee receives and notes the People & Culture report.

(Members Coates/MacLeod) (BP23/767)

Voting for: Councillors Bing and Colby, Members Coates and MacLeod

Voting against: Nil

5.8 Staff Presentation - Development Applications

ARIC224/23 **RESOLVED** that the Committee receives and notes the presentation by the Manager of Statutory Planning on development applications.

(Councillors Colby/Bing) (BP23/657)

Voting for: Councillors Bing and Colby, Members Coates and MacLeod

Voting against: Nil

Audit Risk and Improvement Committee Minutes 18 September 2023

5.9 2023/24 Insurance Renewals

ARIC225/23 **RESOLVED** that the Committee receives and notes the report.

(Member MacLeod/Councillor Colby) (BP23/747)

Voting for: Councillors Bing and Colby, Members Coates and MacLeod

Voting against: Nil

5.10 Legal Matters Report

ARIC226/23 **RESOLVED** that the Committee receive and note the current legal matters underway to the period ended 30 June 2023.

(Councillors Bing/Colby) (BP23/760)

Voting for: Councillors Bing and Colby, Members Coates and MacLeod

Voting against: Nil

5.11 Risk Register Review Update

ARIC227/23 **RESOLVED** that the Committee receives and notes the update on council's risk register review.

(Councillor Colby/Member MacLeod) (BP23/761)

Voting for: Councillors Bing and Colby, Member Coates and MacLeod

Voting against: Nil

5.12 Fraud and Corruption Control Report

ARIC228/23 **RESOLVED** that the Committee receives and notes the update on council's Fraud and Corruption Control Framework.

(Members MacLeod/Coates) (BP23/660)

Voting for: Councillors Bing and Colby, Member Coates and MacLeod

Voting against: Nil

Audit Risk and Improvement Committee Minutes 18 September 2023

5.13 Compliance Framework Report

ARIC229/23 **RESOLVED** that the Committee receives and notes the update on council's Compliance Framework.

(Councillor Bing/Member MacLeod) (BP23/661)

Voting for: Councillors Bing and Colby, Member Coates and MacLeod

Voting against: Nil

5.14 Report Showing Trends on Audit Items

ARIC230/23 **RESOLVED** that the Committee receives the progress report on the status of audit items as at 31 July 2023.

(Councillors Colby/Bing) (BP23/658)

Voting for: Councillors Bing and Colby, Member Coates and MacLeod

Voting against: Nil

5.15 ARIC Action Tracker, topics for next meeting and any other business

ARIC231/23 **RESOLVED** that the Committee:

1. Has reviewed and endorses the progress of the status of actions arising from previous meetings.
2. Reviews and notes the ARIC Schedule
3. Notes the following topics for its next meeting:
 - General Managers update
 - Internal audit update
 - External audit update
 - Financial management update
 - External Accountability and Financial Reporting Framework
 - Grants and tied funding
 - Legal matters update
 - Risk management update
 - Business Continuity Plan
 - Flood recovery update
 - People & Culture update (including WHS)

Audit Risk and Improvement Committee Minutes 18 September 2023

- Road map project control committee update
- Integrated planning and reporting
- Service Delivery Framework and Standards
- Review of ARIC Terms of Reference
- Information and communications technology (ICT) Governance
- Data and knowledge management
- Staff presentation (TBC by the ARIC)

(Member Coates/Councillor Bing) (BP23/659)

Voting for: Councillors Bing, Coates, Colby and MacLeod

Voting against: Nil

Closure

This concluded the business and the meeting terminated at 11:10 am.

Report of Committee

Local Traffic Committee - 20 September 2023

Recommendation

That the minutes be received and adopted and the recommendations contained therein be adopted.

Attachment/s

1. [↓](#) Local Traffic Committee Minutes - Meeting of 20 September 2023

Local Traffic Committee Minutes 20 September 2023

MINUTES OF THE LOCAL TRAFFIC COMMITTEE HELD IN LISMORE ROOM, CORPORATE CENTRE, 43 OLIVER AVENUE, GOONELLABAH ON WEDNESDAY 20 SEPTEMBER 2023 AT 10.30AM

Please note: These minutes are subject to confirmation at the next Council meeting. Decisions recorded in the draft minutes are subject to the Council's Code of Meeting Practice in relation to rescinding decisions.

Present

Councillor Hall (Chairperson), Sgt Clint Williams (NSW Police), Chelcee Dauscher (On Behalf of Janelle Saffin MP) and Ms Caleisse Dunston (Transport for NSW).

In Attendance

Mr Goodwin, Design Services Engineer; Ms Spencer, Business Support Officer.

Apologies

Nil.

Confirmation of Minutes

TAC14/23 Resolved that the minutes of 16 August 2023 were confirmed.

Voting for: Councillor Hall, Members Dunston, Dauscher and Williams

Voting against: Nil

Disclosure of Interest

TAC2/23 Nil.

4.1 Traffic Conditions - DA 5.2022.326.1 Clunes Street, Bexhill

TAC3/23 **RECOMMENDED** that Council does not support the proposed changes to Clunes Street & Bangalow Road (B62) intersection, as a detailed design has not been provided for assessment.

(Councillor Hall/Member Williams) (BP23/766)

Voting for: Councillor Hall, Members Dunston, Dauscher and Williams

Local Traffic Committee Minutes 20 September 2023

Voting against: Nil

4.2 Lismore Base Hospital, Uralba Street - Parking Changes

TAC4/23

RECOMMENDED that:

1. Council support the request for the relocation of the Accessible Parks and Bus Stop in the proposed location, pending consultation with bus companies.
2. Lismore Base Hospital to fund the relocation.

(Councillor Hall/Member Williams) (BP23/784)

Voting for: Councillor Hall, Members Dunston, Dauscher and Williams

Voting against: Nil

4.3 DA 23/208 Proposed Child Care Centre - 62 Rous Road Goonellabah

TAC5/23

RECOMMENDED that:

1. Council support the proposed left-hand turn and give way signage at the intersection of Rous Road and Reserve Street.
2. Intersection upgrades to be undertaken as part of the Development Consent conditions.

(Members Dunston/Dauscher) (BP23/786)

Voting for: Councillor Hall, Members Dunston, Dauscher and Williams

Voting against: Nil

Closure

This concluded the business and the meeting terminated at 10.55am.

Reports of the General Manager



Report

Subject	DA92/523-5 - S4.55(2) Application to Modify DA92/523 to extend the life of the quarry at 72 River Bank Road Monaltrie by 12 years to 12 May 2036
TRIM Record No	BP23/797:DA92/523-7
Prepared by	Development Assessment Officer - Planning
Reason	Called up to Council for determination.
Strategic Theme	Our built environment
Strategy	Our city and village services are well managed and maintained.
Action	Plan for infrastructure that meets the needs of the community.

Executive Summary

Council received an application to modify Development Consent 1992/523 for an existing quarry located at 72 River Bank Road, Monaltrie on 8 March 2022. This Section 4.55(2) application seeks to extend the life of the quarry by an additional 16 years to 12 May 2036. This extension was reduced during the assessment to 12 years, to 12 May 2032.

This Section 4.55(2) application follows several previous attempts to extend the life of the quarry with varying additional modifications to conditions of consent.

Given the lengthy history of this matter, Council has engaged an independent town planner, GAT & Associates, to undertake the assessment of this Section 4.55(2) application. The assessment of this application has determined that the development is “substantially the same” as required by Section 4.55(2) of the *Environmental Protection and Assessment Act*.

Thirty-five (35) public submissions were received in response to the notification of this Section 4.55(2) application, including 25 against and 10 in support. The public submissions raised several concerns, including impacts on the visual and acoustic amenity of the area and nearby properties, impacts on the road networks, koalas, and the legality of the potential for consent to extend the quarry's life. These matters are discussed in this report.

The modification application has been assessed and is recommended for refusal for the reasons outlined in this report.

Recommendation

That the application for modification of Development Consent DA92/523 for extension of the life of the quarry at 72 River Bank Road, Monaltrie, by 12 years to 12 May 2032 be REFUSED for the reasons of refusal at **Attachment 1** of this report.

The below details the relevant background of the quarry development at this site:

- Council approved Development Application (DA) No 92/523 on 12 May 1993 for extensions to an existing hard rock quarry subject to conditions. In particular, the conditions limited the operation of the quarry to 25 years from the date of consent (Condition 2 – consent expired in 2020) and also limited the annual extraction rate to 40,500 tonnes per annum (Condition 5). The DA was submitted and assessed as “designated development” in accordance with the relevant provisions of the *EP&A Act* and included an Environmental Impact Statement.
- The report to Council at its meeting of 6 April 1993 included submissions about the traffic impact on the road network and amenity. The matter was again considered by Council at its meeting on 20 April 1993 with additional information provided on noise attenuation measures. It was resolved to approve DA92/523 subject to conditions.
- Further amendments were approved by Council at its meeting on 1 March 1994. The amendments related to clarification of matters and modified Conditions 2, 3, 4, 7, 10, 16, 24, 26, 31, 33, 34, and 38.
- Further amendments were approved under delegated authority on 7 May 1998 relating to hours of operation (Condition No/s 11, 12 and 13). In addition, approval was granted for the amendment of Condition 24 regarding construction requirements for the access road to be sealed 3m wide surface within two years of operation and a pavement suitable for the gravel haulage vehicles (the previous requirement of Condition No. 24 was for the access road to be bitumen sealed after three years of operation).
- The consent modification approved on 13 May 2005 amended conditions relating to Section 94 levies and relocation of the access driveway.
- A further amendment of Development Consent 92/523 was granted on 28 July 2006 to relocate the access driveway off River Bank Road and subsequent amendments of Condition No 1 and Condition No 39 (40, 41, 42, 43 and 44) were added to the consent in relation to the road works required by Condition 39.
- Correspondence from Council to Mr Santin (the current quarry owner) on 11 September 2013, advised of several outstanding incomplete conditions of development consent.
- On 17 December 2014, Council conducted a pre-lodgement meeting with Mr Santin and his consultant Mr Gary Peacock (Outline Planning Consultants Pty Ltd) to discuss a proposed Section 96 modification of DA92/523 to modify the consent to increase the extraction, processing and transport of material from 40,500 tonnes per annum to a maximum production of 79,500 tonnes per annum. The applicant also sought an extension to the life of the quarry and a modification to the finished profile of the quarry to allow access to the additional resource. The applicant anticipated a full extraction of up to an additional 300,000 tonnes of quarry material.
- A further Section 96(2) Modification of Development Consent 92/523 Application was lodged on 1 October 2015 that proposed to increase the extraction, processing, and transport off-site of the volume of material from 40,500 tonnes per annum to 79,500 tonnes per annum. The applicant also sought an extension to the life of the quarry for twenty (20) years and a modification to the finished profile of the quarry to allow access to the additional resource. The application was reported to Council with a recommendation for refusal on the basis of the increase in annual extraction proposed from 40,500 tonnes per annum to 79,500 tonnes per annum. The application was subsequently withdrawn by the applicant.

- A pre-lodgement meeting was held with the quarry owner Mr Santin and his consultant Mr Malcolm Scott on 2 April 2019 regarding the proposed modification of consent to extend the life of the quarry for an additional twenty-five (25) years.
- A Section 4.55(2) Modification of Development Consent 92/523 Application was then lodged on 8 October 2019 proposing to extend the life of the quarry for a further twenty-five (25) years. The application was reported to Council on 14 April 2020 with a recommendation for approval limited to five (5) years to allow the applicant the opportunity to demonstrate consistent compliance with the acoustic impacts to nearby properties, amongst others. The application was refused by Council for the following reasons:
 1. the proponent has not demonstrated that the proposed extension of the life of the quarry will not have an adverse effect on the local koala population, road network, amenity of the area; and
 2. that the current and previous quarry owner / operator have failed to comply with a number of the conditions of the original DA approval, and subsequent amendments, over the past 25 years of the quarry life; and
 3. this application is not substantially the same as the original DA
- A pre-lodgement meeting was held with Mr Santin and his consultant Malcolm Scott on 2 June 2020 regarding the proposed modification of consent to extend the life of the quarry for an additional sixteen (16) years.
- A Section 4.55(2) Modification of DA1992/523 was lodged on 15 July 2020 that proposed to extend the life of the quarry for sixteen (16) years to 12 May 2036 and modify Conditions 17, 24, 31 and 35 relating to the quarry fencing, the sealing of the access road and product haulage. The application was reported to Council on 13 October 2020 with a recommendation for approval. The application was deferred by Council to allow staff to seek advice relating to Condition 3 of the consent and the expiration date, and further information relating to silica and water concerns raised by residents.
- The matter went before Council on 8 December 2020 with a revised recommendation for approval but with options for consent to be granted for approval of 5, 10 or the full 16 years. The application was refused by Council for the following reasons:
 1. The likely impacts of the development on the locality, and
 2. It is not in the public interest, and
 3. This application is not substantially the same as the original DA; and
 4. A modification application to extend the life of the quarry cannot be accepted because the consent has expired.
- An appeal to the Land and Environmental Court was lodged on the refusal of this application. The applicant ultimately withdrew the appeal in 2021.
- The current Section 4.55(2) was lodged on 8 March 2022.

Description of Proposal

The Section 4.55(2) application seeks the consent of Lismore City Council (LCC) for the modification to DA1992/523 at 72 River Bank Road, Monaltrie, to extend the life of the quarry sixteen (16) years from 12 May 2020 to 12 May 2036. This will involve modifying Conditions 2 and 3 of the current consent.

During the assessment, the request to extend the life of the quarry was dropped from sixteen years to twelve (12) years and only quarrying of the southern face would be permitted. The application as presented now is therefore to modify the life of the quarry for 12 years to 12 May 2032.

The conditions sought to be amended are as follows:

Current Condition (DA92/523)	Proposed Modified Condition at Lodgement	Proposed Modified Condition as Amended
<p>1. This consent shall permit quarrying for not more than twenty-five (25) years from the date of the commencement of the quarry. This is to be the date upon which the first rock won from the trial blast conducted 8-10 June, 1992 is removed from the site or two (2) years from the date of issue of the S92 Notice of Determination.</p>	<p>This consent shall permit quarrying for sixteen (16) years from 12 May 2020. This is the date twenty-five (25) years from the date of the commencement of the quarry (12 May 1995).</p>	<p>This consent shall permit quarrying of the southern face only for twelve (12) years from 12 May 2020 (12 May 2032).</p>
<p>2. This consent shall lapse the date 25 years and nine months from the date of commencement at which time extraction shall have ceased and the site restored in accordance with the detailed Plan of management. Any extension during the final nine months shall be for the purposes of facilitating the restoration.</p>	<p>The period of this consent shall lapse sixteen (16) years and nine months from 12 May 2020 at which time extraction shall have ceased and the site restored in accordance with the detailed Plan of management. Any extension during the final nine months shall be for the purposes of facilitating the restoration.</p>	<p>The period of this consent shall lapse twelve (12) years and nine months from 12 May 2020 at which time extraction shall have ceased and the site restored in accordance with the detailed Plan of management. Any extension during the final nine months shall be for the purposes of facilitating the restoration.</p>

Additionally, the modification application also sought to modify Condition 24 regarding the material of the access road. The current and proposed modified condition is:

Current Condition (DA92/523)	Proposed Modified Condition at Lodgement	Proposed Modified Condition as Amended
<p>24. The access road to be 3 metres wide bitumen sealed and is to be completed within two (2) years of the date of this amended consent. The pavement to be suitable to cater for the gravel haulage vehicle and be in the order of 400mm compacted depth. Suitable truck passing bays also be incorporated.</p>	<p>The access road to be 3 metres wide all-weather surface, beyond the existing 250 metre length of sealed portion, is to be completed within two (2) years of the date of the amended consent. The pavement to be suitable to cater for the gravel haulage vehicles and be in the order of 400mm compacted depth. Suitable truck passing bays also be incorporated.</p>	<p>The access road to be 3 metres wide bitumen sealed to the southern boundary of the approved extraction area and is to be completed within two (2) years of the date of this amended consent. The pavement to be suitable to cater for the gravel haulage vehicle and be in the order of 400mm compacted depth. Suitable truck passing bays also be incorporated.</p>

The modification throughout the assessment also introduced an amendment request to Condition 36 relating to the acoustic noise level requirements. The current and proposed modified condition is:

Current Condition (DA92/523)	Proposed Modified Condition
36. Noise – LA10 noise levels emitted from the quarry and all plant and equipment shall not exceed the background noise levels by more than 5dB(A) when measured at any affected residence.	Noise – LAeq,15min noise levels emitted from the quarry and all plant and equipment shall not exceed the Project Noise Trigger Level of 40 dB(A) when measured at any affected residence, except when prior written approval of an exceedance is obtained from the affected land owner.

The approved Environmental Impact Statement (EIS) for DA92/523 required the establishment of two bunds/berms along the western edge of the quarry. The proposed modifications also seek to combine these into one for the purposes of acoustic attenuation.

The initial application submitted also sought to delete Conditions 17 and 31 relating to the erection of a stock-proof fence around the quarry perimeter. This request was rescinded on 15 December 2022 in the applicant's formal response to a request for additional information.

The proposed modification does not seek to expand the quarry operation (e.g. the approved footprint of extraction) or alter the approved extraction rate (40,500 tonnes per annum).

A number of aspects of the operation of the quarry have been altered or are proposed to be altered from the approved development though they may not be directly tied to a condition of consent. Notwithstanding this, they are considered in the overall assessment of the modification. A summary of these is below and are discussed further within the report:

- the EIS for DA92/523 stated the haulage route toward Lismore would be via Gundurimba Road and the route south would be via Wyrallah Road. Since the approval, quarry vehicles heading north began using Wyrallah Road as well, which is sought to be continued. In the intervening years, Wyrallah Road has been substantially upgraded while Gundurimba Road has not, making Wyrallah Road the safer route
- the EIS stated typical haulage vehicles are either 6 or 8 wheel configurations, with a capacity of 8m³ to 10m³. The operation (while active) evolved to use contemporary, larger vehicles ranging from 2 tonne trucks to 38 tonnes. The EIS stated that all vehicles will be required to meet road limits
- the existing crushing method is by a fixed plant. It is sought to use a mobile crushing and screener plant to optimise the use of quarry faces and stockpiles as noise barriers

The development is integrated development and requires approval from the Department of Planning and Environment – Water and Transport for NSW (TfNSW) under the *Water Management Act 2000* and State Environmental Planning Policy (Resources and Energy) 2021 respectively.

Description of Site and Locality

The subject site is commonly known as 72 River Bank Road, Monaltrie, and is legally defined as Lot 4 in Deposited Plan 701527. The site has a single street frontage to River Bank Road in the south. The site area is 16.31ha.

It is noted the owner of the quarry also owns the adjoining properties to the east and west, being 96 River Bank Road (Lot 3 in Deposited Plan 701527) and 589 Wyrallah Road (Lot 4 in Deposited Plan 1758358).

The property is located approximately 6km south of the centre of Lismore. The land is situated in a rural setting with the front portion of the site reflecting the rural character. The specific quarry location is toward

the northern end/rear of the allotment and is accessed by a partly bitumen driveway. An unnamed creek runs on the northern side of the quarry floor. Refer to Figure 1 below for a site aerial.

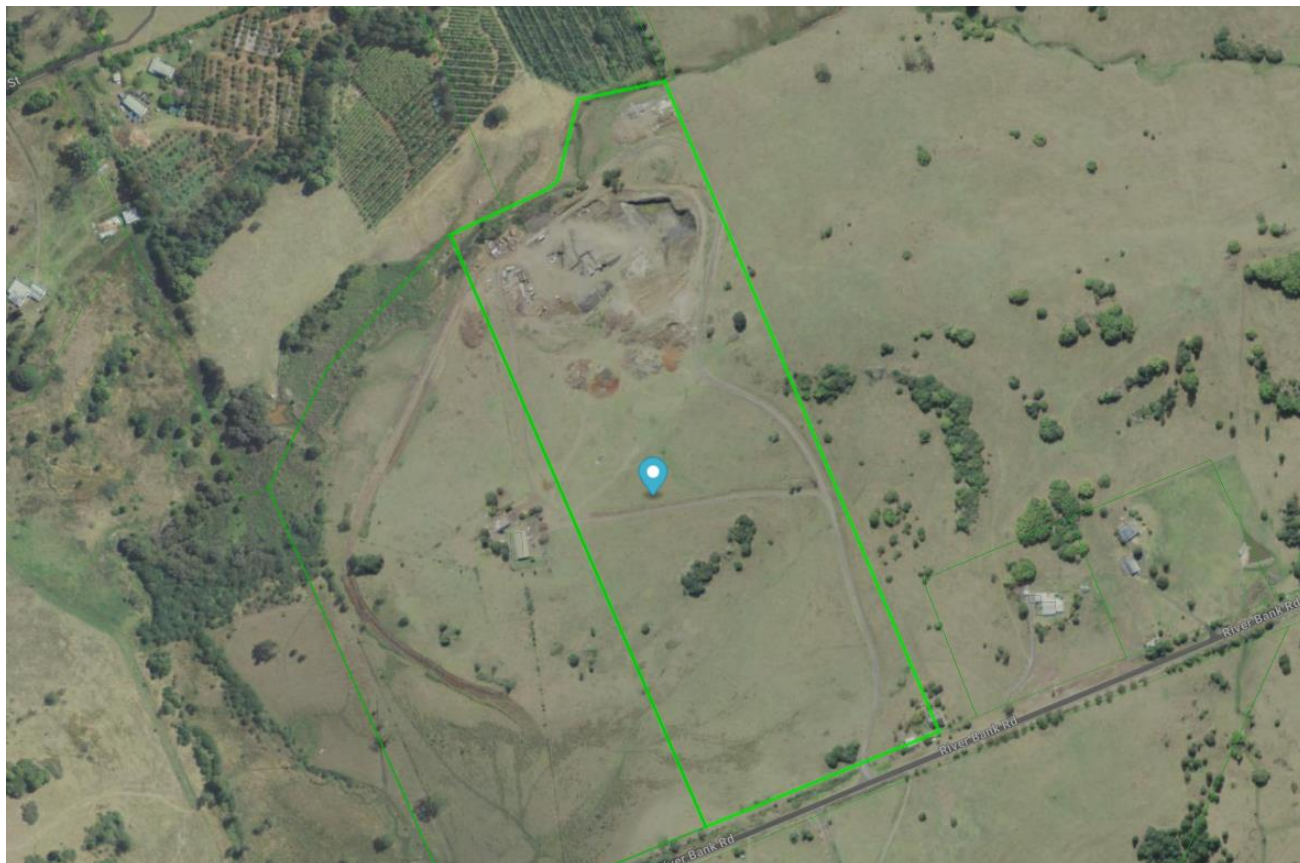


Figure 1: Site Aerial (Source: Mecone Mosaic)

The locality is characterised by rural residential, agricultural and grazing land uses, as illustrated in Figure 2.

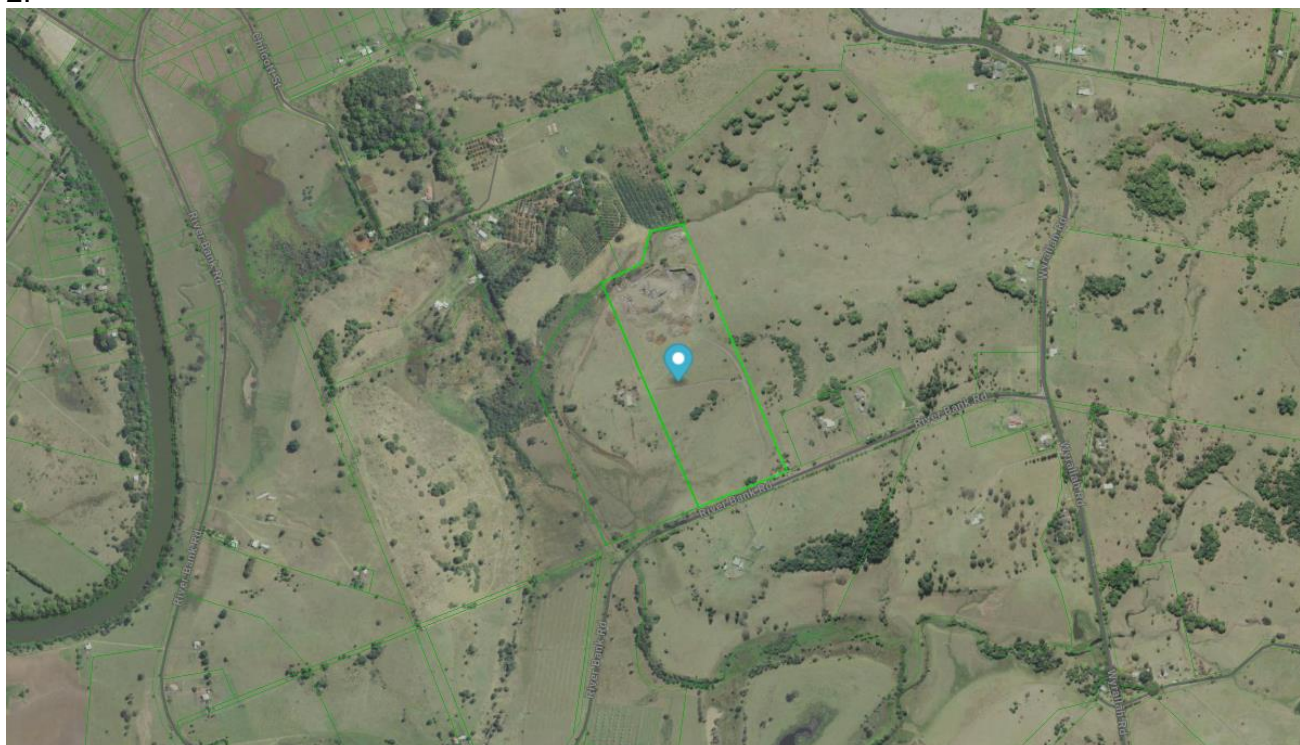


Figure 2: Site Location Map (Source: Mecone Mosaic)

The immediate adjoining properties include:

- 96 River Bank Road: owned by the quarry operator, the western neighbouring property contains open land with a single dwelling.
- 589 Wyrallah Road: owned by the quarry operator, the eastern neighbouring property contains open land with a dwelling located on the far side.
- 55 and 56 Chillott Street: the northern neighbouring properties include dwellings and an organic farm.
- 39 River Bank Road: the southern neighbouring property includes an outdoor equestrian learning facility.

Existing Operations

The approved development consent DA92/523 was for the extraction, crushing and transport of 40,500 tonnes per annum of basalt for a period of 25 years.

The approval permitted the stripping of the land, blasting, extracting, and crushing of the basalt, and the loading and transportation of material won from the quarry. There are four permanent staff and three casual staff intended, per the previous operation.

The hours of operation as approved (and not sought to be modified) are:

- General quarrying operations: 7:30am to 4:30pm, Monday to Saturday
- Drilling and crushing operations: 8am to 4:30pm, Monday to Saturday
- Blasting operations: 8am to 3:30pm, Monday to Friday (and, where practicable, blasting is concluded before 12pm).

The outline of the approved extraction area is identified in Figure 3 taken from the approved EIS. The current outline of the quarry is identified in the extract of the site plan in Figure 4. Images of the site are included in the documents supplied by the applicant with the application available on DA tracker as item 8_photos.

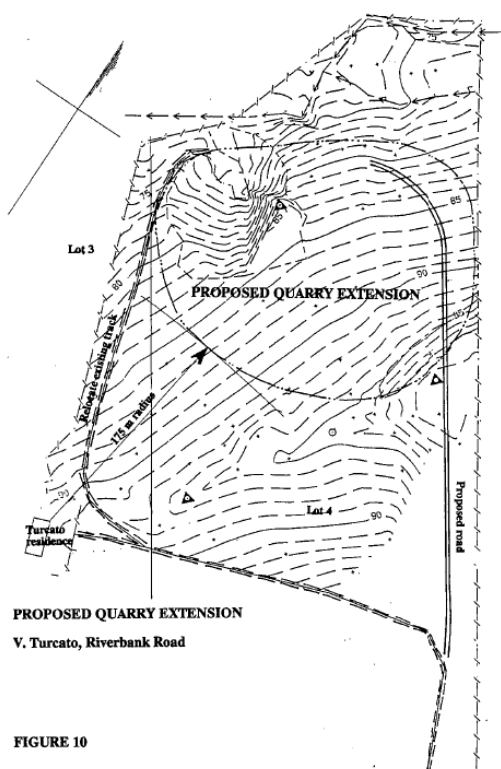


Figure 3: Approved Quarry Extension under DA92/523

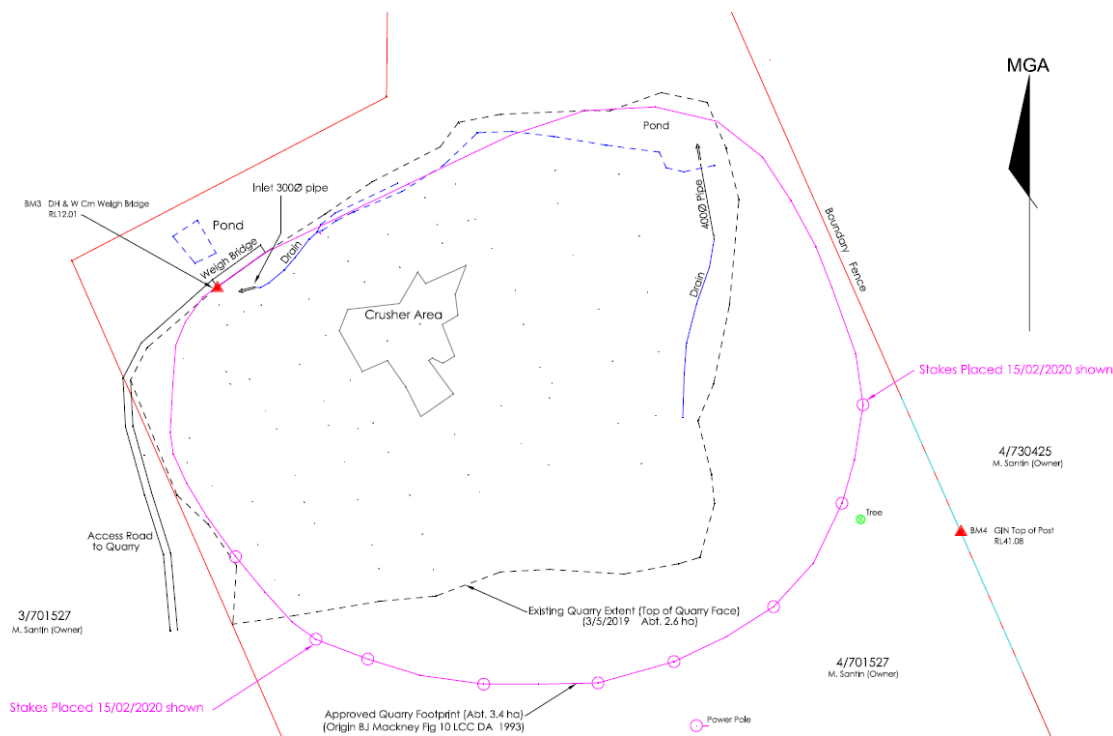


Figure 4: Current Quarry Outline, taken from Staked Limit of Quarry Footprint plan (Plan No. 19/1601 by Wade Engineering Surveying)

Assessment History

A summary of the assessment history is provided below.

- The development application was lodged on 8 March 2022.
- The application was notified between 21 March and 18 April 2022.
- A request for additional information was sent to the applicant on 24 August 2022.
- The applicant and Council met on 18 August 2022 to discuss the request.
- Additional information was submitted on 15 December 2022.
- A further request was issued on 8 February 2023.
- Additional information was submitted on 15 March 2023.
- Due to the acoustic concerns, the acoustic report was peer reviewed by a third-party acoustic consultant.
- A request for additional information in relation to the peer review was issued on 4 May 2023.
- Additional information was received on 20 July 2023.

The application is determined based on the information submitted as of 20 July 2023.

Statutory Controls

The following environmental planning instruments and planning instruments are of relevance to the consideration of the application:

- *Environmental Planning and Assessment Act 1979*
 - Section 4.15 Evaluation
 - Section 4.55 Modification of Consents—Generally
- *Environmental Planning and Assessment Regulations 2021*
- State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021
 - Chapter 4 Koala Habitat Protection 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021

- Chapter 3 Hazardous and Offensive Development
- Chapter 4 Remediation of Land
- State Environmental Planning Policy (Resources and Energy) 2021
 - Chapter 2 Mining, Petroleum Production and Extractive Industries
- Lismore Local Environmental Plan (LEP) 2012
- Lismore Development Control Plan (DCP) 2012

Notification/Submissions

The application was notified to adjoining and surrounding property owners and advertised in the Local Matters publication in accordance with the provisions of the *LCC Community Consultation Plan* Appendix 1 for the notification and advertising of development applications. This also included notification to all previous submitters to the original development application at their last known address. A copy of all submission documents are included in Attachments 2 & 3.

The notification drew 35 submissions during the set period and late submissions. Ten supporting submissions were received and 25 objecting submissions.

For clarity, four identical submissions were received under separate names, and two submissions with multiple signatories were received (one with six signatories, and one with 11).

Attachment 2 to this report includes a table summarising the response to the issues raised in the submissions.

Key Issues raised by Submissions

The key issues raised in submissions not otherwise addressed under referrals or the Section 4.55 Evaluation section of this report are discussed below.

Development Consent 1992/523 (As Modified) has Expired

A number of objectors questioned or stated the development consent for the quarry had lapsed or expired and therefore was not lawful for a consent authority to grant consent to a Section 4.55(2) modification. This topic has seen much discourse through the previous attempts to modify this development consent.

The summary below details the fundamental components of this discussion:

- Development consent was issued on 12 May 1993 for the proposed extension to an existing hard rock quarry.
- A series of Section 96 (now Section 4.55) Modifications were lodged and approved as detailed in the Background section of this report.
- The development commenced in accordance with the *EP&A Act 1979* as applied at the time of the consent.
- There is no question from Council that the development achieved commencement.
- Condition 2 of the consent states:

“This consent shall permit quarrying for not more than twenty-five (25) years from the date of the commencement of the quarry. This is to be the date upon which the first rock won from the trial blast conducted 8-10 June 1992 is removed from the site or two (2) years from the date of issues of the S92 Notice of Determination.”

- There is inconclusive evidence as to when the first rock was removed from the property.
- Past discourse has taken the approach that the date is then to be taken as 25 years from the period 2 years after the consent was issued, being 12 May 1995.
- The period of 25 years therefore lawfully permitted quarrying until 12 May 2020.

- Condition 3 of the consent states:

“The consent shall lapse the date 25 years and nine months from the date of commencement at which time extraction shall have ceased and the site restored in accordance with the detailed Plan of Management. Any extension during the final nine months shall be for the purposes of facilitating the restoration.”

- The period of nine months until 12 February 2021 existed to allow for the rehabilitation of the site.

At the time of writing, the period of both quarrying and rehabilitation has passed, and the development is to have “lapsed” as worded by Condition 3 of the original development consent and as later modified.

The ambiguity of the legality of the ability of the consent authority to grant consent has been due to the wording of “lapse” in Condition 2. The lapsing of a development consent is a specific concept within Section 4.53 Lapsing of Consent of the *EP&A Act* that refers to a development consent that has not commenced within a timeframe specified by the consent. As there is no question that the development commenced in accordance with the *EP&A Act*, the development consent has not lapsed under the meaning of Section 4.53.

Although Condition 3 is worded with the term “lapse,” the Condition is phrased with the intent to establish a time-limited consent and, in tandem with Condition 2, provide the timeframe that the consent for the activity would expire.

Council has obtained legal advice on previous applications on this matter which favourably viewed Council’s legal capacity to grant consent to a modification of an expired development consent. As part of the assessment of this latest Section 4.55(2) Modification, Council sought the legal opinion of an external law firm with no history in this matter. This legal advice supports the advice previously obtained by Council and the overall position that Council has the legal capacity to grant consent to extend the life of an expired time-limited consent.

In conclusion, it is lawful for the consent authority to grant consent to this modification despite the period of quarrying in the development consent having “expired.”

Is the Development “Substantially the Same”?

The majority of objectors have to some degree raised that the proposed modifications and the environmental impacts result in a development that is not substantially the same as what was approved under the original development application.

Section 4.55(2) of the *EP&A Act* (which the application has been submitted under) states:

*“(2) **Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

- a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*

- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.
- Subsections (1) and (1A) do not apply to such a modification.”*

(2)(a) requires the consent authority to be “...satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted...”

A suite of caselaw has established the relevant considerations for what is deemed ‘substantially the same.’ *Vacik Pty Ltd v Penrith City Council* (Stein J, 10242 of 1991, 24 February 1992) stated this test in the following terms:

“... ‘substantially’ when used in the section means essentially or materially or having the same essence”.

In relation to determining whether a proposed modified development is “essentially or materially” the same as the approved development, Justice Bignold in *Moto Projects No. 2 Pty Ltd v North Sydney Council* (1999) 106 LGERA 298 at 309, states:

“The relevant satisfaction required by s 96(2) (a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared....”

The test is then whether the application is quantitatively and qualitatively similar to the original development application to be modified.

In the context of the development to be modified, it is the assessment position that the most important aspects of the approved development are those listed below:

- the purpose of the application – a quarry, now referred to as an extractive industry
- the material to be extracted – basalt
- the extraction footprint
- the amount of material to be extracted
- the method of the extraction – blasting, crushing, etc
- the environmental impact of the operation

The above are determined to be the fundamental attributes of the original application. A number of secondary aspects also exist that factor into whether the development is substantially the same, including haulage routes, the number of truck movements, truck sizes, extraction rates, etc. which remain relevant considerations to the overall assessment and are discussed below.

In the case of the listed fundamental attributes, only the last two are being altered by the proposed modification to any notable degree. The amount of material to be extracted would be reduced based on the amended proposal to quarry only the south face, resulting in a lesser impact.

The Method of Extraction

The method of extraction is to be unmodified. However, the machinery associated with the crushing process is. The Noise Impact Assessment submitted with the application states the existing crushing and screening plant will be decommissioned and a mobile crusher will be used.

The retirement of a fixed location plant and replacement with a mobile crusher is not so considerably different to not be substantially the same development. The proposal states this is reflective of evolving industry practices in achieving the same outcome (crushing material). It is considered that, rather than a new process requiring a full reassessment, the assessment is to address the environmental impacts associated with change (e.g noise). Subject to addressing acoustic impacts, the modification to machinery would be acceptable. This assessment is undertaken in the acoustic impact section later in this report.

The Environmental Impact of the Operation

The environmental impacts of a development are a fundamental element of the development. In the case of the quarry, these range from the acoustic impacts to the visual impact of the quarry, tree removal, ecological impacts and the like. In this case, there is no tree removal, impacts on the watercourse have been assessed and deemed acceptable by the Department of Planning and Environment – Water, and ecological impacts have been assessed and deemed acceptable. Refer to the Council Ecologist referral later in this report.

The acoustic impact is discussed in more detail in the following section. This Section 4.55(2) application is recommended for refusal due to outstanding concerns for the acoustic impact. In terms of whether the development is substantially the same, the noise generators of the quarry operation remain substantially the same as the original application. Were the acoustic concerns resolved, there would be no impediment to approval from satisfying the substantially the same test.

In terms of the visual impact, the footprint of the quarry is not sought to be increased. The modification as originally lodged only sought to extract the remaining material from the approved footprint. As amended, the modification only seeks to extract the material from the southern face of the quarry. The assessment of the original development application determined that the visual impact of the quarry footprint was acceptable to grant the consent for the operation for the envisioned 25 year operational lifespan to extract the material from the approved footprint. The continuation of extraction within the approved footprint for another 12 years, as modified, is still substantially the same development.

The timing aspect is discussed below.

The Time-Limited Consent

A time-limited consent was issued for a period of 25 years under DA92/523. The 25 year period was taken from the EIS as the estimated life of the project. Specifically, the EIS stated under Section 4.6 Life of Project:

“Preliminary estimates suggest mining to the existing quarry floor level will produce in excess of 1,000,000 tonnes of material. At a rate of 12,000 to 15,000 cubic metres per annum, this equates to a project life of 25 years.”

In reviewing the EIS, it is not this author’s position that the development consent was only issued as the environmental impacts of the quarry were acceptable because the application was for 25 years, but that the 25 year period was the anticipated time it would take to extract the material. No element of the original submission makes the statement (or an equivalent) that the quarry could only be supported as the impact would be 25 years. Consequently, the 25 year period is not construed as an essential or material feature of the original approval but as a secondary aspect to be modified. The reality is that the quarry has operated

the majority of its life well below the maximum extraction rate permitted, which has resulted in less material won from the site and thus has a longer lifespan than envisioned in the EIS.

The main test on whether the duration of the quarry operation being modified is acceptable, is the environmental impacts of the continued operation. A Section 4.55(2) is subject to contemporary planning controls, except where legislation states otherwise. The assessment within this report covers the environmental impacts of the modification. With the exception of the acoustic impacts, these have been deemed acceptable.

For completion, it is acknowledged that the extension for 12 years is a 48% increase in the life of the quarry, which is a quantitatively larger change. However, the length of time is considered a lesser weighed aspect of the key components of the development approval than the footprint of the quarry and the amount of material to be extracted, of which the life of the quarry directly correlates to and is unchanged (or reduced, given the application now is limited to the southern face of the quarry only).

Other Aspects – Haulage Routes

The haulage route was forecast in the EIS to use Gundurimba Road for vehicles heading to Lismore and north in general and Wyrallah Road southbound. The Traffic Impact Assessment submitted for this modification identifies Wyrallah Road as the preferred route for all vehicles, except those below 4.5 tonnes which may still use Gundurimba Road. This is due to the upgrades to the Wyrallah Road corridor and the stagnation or deterioration of the Gundurimba Road route.

The physical route for the trucks is not considered a fundamental attribute of the application. However, it is a necessary element to assess as an aspect that has been altered since the original approval.

The EIS stated “... *Terrain and vertical and horizontal alignment of Gundurimba Road northward to Lismore suggests that this would be the preferred route for trucks hauling material from the quarry. The Wyrallah Road to Lismore traverses a far less desirable alignment and is unlikely to be utilised by contract hauliers and its use will be discouraged.*”

It is noted that no specific condition was established to prevent vehicles from using Wyrallah Road northbound, only a condition that trucking operations west along River Bank Road and East Gundurimba Road be restricted to the hours 8:30am to 3:30pm, Monday to Friday. The remaining consideration for haulage routes at the time was it was guided by abidance with road limit rules and general safety considerations.

The upgrades to Wyrallah Road and, conversely, the lack of upgrades to Gundurimba Road have resulted in Wyrallah Road being the preferred and safer alignment. There is no inherent concern with the relocation subject to the relevant traffic and acoustic impact assessment. The traffic assessment has been undertaken by the applicant’s traffic consultant and reviewed by Council’s Engineer. This aspect is acceptable.

It was requested in the first additional information request for the acoustic report to consider the changed haulage route and the consequent impact, as the rerouting introduces new residences affected by the truck noise. As is discussed in more detail in the acoustic assessment section below, there remain concerns about the noise modelling. This aspect is unresolved.

From the overall perspective, the change to the haulage route is not assessed to be substantially different from the approved development. Were the acoustic matters resolved, it is not deemed that this modification would be an impediment to an approval on the grounds of substantially the same development.

Other Aspects – Trucks Sizes

The EIS stated typical haulage vehicles are either 6 or 8 wheel configurations, with a capacity of 8m³ to 10m³. The EIS also stated that all vehicles will be required to meet road limits.

The Planning Report stated the operation (while active) evolved to use contemporary, larger vehicles ranging from 2 tonne trucks to 38 tonnes. The Report states these are the envisioned trucks that will access the quarry upon resumption of operation.

The two key considerations to the truck size are the adequacy of the road network and the acoustic impact of the trucks passing by residences. Council's Engineer and TfNSW have reviewed the proposal and are supportive of it subject to conditions of consent requiring a previously approved upgrade to the intersection of the quarry access road and River Bank Road and River Bank Road and Wyrallah Road. The adequacy of the road network aspect is satisfactory subject to those conditions.

The acoustic impact is similar to the haulage route in that were the acoustic matters satisfactory, the truck sizes is a product of the evolution of quarry practices and not a fundamental component that permitted the original consent to be issued. Were the acoustic matters resolved, it is not deemed that a modification to the size of the trucks (which were not expressly conditioned as an individual condition but simply as part of the EIS) is an impediment to the modification being substantially the same.

Other Aspects – Truck Movements

Regarding the number of vehicle movements, the EIS stated, "*Vehicle movements are likely to vary from nil per week a daily average of 30 vehicles per day.*"

The consent as modified was conditioned as follows:

"35 That loaded truck movements generated as a consequence of the operation of the quarry not exceed an average of 15/day and be subject to a maximum of 20 loaded truck movements per day."

For clarity, the above conditioned only loaded vehicle movements and not the unloaded vehicles arriving at the quarry for collection of material.

The Planning Report stated the following regarding vehicle movements:

"The average number of trucks generated by the quarry daily is very difficult to determine as that will be influenced by weather, size of the order and destination location.

Now approx. 25% of the haulage vehicles are rigid bodied trucks that have a payload of 12T. The majority of haulage trucks have a payload of greater than 28T. However, on occasions a 2T truck may haul material from the quarry. Recent average truck weight of loads is 15.5T. At an extraction rate of 40,500T per annum and the quarry operating for 304 day per year, the approx. tonnage hauled would be 133T per day.

The number of loaded trucks, with an average weight of 15.5T, likely to be generated onto Riverbank Rd would be 8.5 per day (16 – 18 truck movements per day).

At the 'capped' rate of extraction of 29,970T per annum and the quarry operating for 304 day per year, the approx. tonnage hauled would be 99T per day and number of loaded trucks, with an average weight of 15.5T, would be 6.4 per day (12 truck movements)."

The above was reflective of the original submission that sought to approve quarrying of the entire remainder of the footprint and not the revised position of quarrying the south face only. The amount of material to be extracted daily and associated truck movements would likely be reduced from what was stated in the Planning Report, noting the letter accompanying the formal request to modify the application to a 12 year extension and to quarry the south face only stated the capped rate of 29,970 tonnes was to be revised down to 16,490 tonnes. Even if this was not the case and the extraction rate would be higher

(and within the maximum permitted 29,970 tonnes, resulting in a shorter than 12 year lifespan, the specified truck movements are within the confines of the previous consent condition and is therefore substantially the same.

Extraction Rate

The extraction rate is approved at 15,000m³ in situ material, equivalent to 40,5000 tonnes crushed, annually (Condition 5). The operation of the quarry has generally not reached this maximum based on the records tabled in the Planning Report. Refer to the extract of the table below.

Table No. 3 Amount extracted

Year	Amount (T)	Year	Amount (T)
1993	131	2007	42,762
1994	5,960	2008	28,290
1995	17,348	2009	3,277
1996	30,159	2010	0
1997	1,823	2011	0
1998	2,146	2012	9,076
1999	6,392	2013	15,582
2000	7,111	2014	32,365
2001	25,438	2015	9,050
2002	18,415	2016	6,878
2003	13,783	2017	36,123
2004	25,922	2018	20,868
2005	16,708	2019	11,894
2006	42,762	Total to-date	430,263

The application, as amended to only refer to the southern face, intends to operate for a period of 12 years at an annual rate of extraction of 5,910m³ (16,549T).

No modification is sought to the approved conditioned maximum extraction rate. Given this, there is no concern regarding the extraction rate from a general perspective or the substantially the same test.

Cumulative Modifications

The final key assessment is the cumulative modifications made to the original consent.

The development has been considered substantially the same throughout the several modifications granted consent up to 28 July 2006.

In assessing the cumulative differences between the original application and the proposed modification, it is not this author's view that the development is currently or proposed to be substantially different than originally proposed. The general operations of the quarry will remain as envisioned, except for elements such as changing extraction machinery (fixed vs. mobile crushers), road vehicle size and haulage routes to suit the advancement of the industry, technology and changing road network suitability's. The operation remains an extractive industry in a set location, for set hours of operation, for a material and amount of material that is the same or even less than originally proposed.

Additional conditions modified are similarly not substantially different. The lifespan of the quarry is the most significant, but in view of the reduced quarry output within the same approved footprint, it is the environmental impact assessment that governs this as acceptable. The internal truck road being paved is acceptable as a potential modification, though the acoustic impacts are unresolved for internal vehicle movements.

Each modification can only be assessed as it is submitted. The scope of modifications sought, as amended, are acceptable as substantially the same, subject to resolution of environmental impacts.

Conclusion

Given the above comments, it is considered the proposed modifications can be deemed substantially the same insofar as what is proposed. In undertaking the environmental impact assessment associated with the modifications, the application is recommended for refusal due to outstanding concerns regarding the acoustic impacts.

For completion, were the acoustic matters resolved, it would be acceptable to consider the development substantially the same.

Acoustic Impact

In the intervening period between the approval of DA92/523, the noise criteria and policy have been amended and updated. The original consent as modified prescribed a condition on noise which stated:

“36 Noise – LA10 noise levels emitted from the quarry and all plant and equipment shall not exceed the background noise levels by more than 5dB(A) when measured at any affected residence.”

The Noise Impact Assessment (NIA) submitted with the development application states:

“Operational noise emissions (excluding blasting) are limited to ‘background + 5 dB’. The background noise levels reported by Australian Blasting Consultants in 1992 were 45 and 48 dB(A), which is exceptionally high for this rural area. Adopting a ‘background + 5 dB’ criterion of 50 or 53 dB(A) resp on the basis of which the original consent was issued, would likely lead to land use conflict with adjoining landowners. We therefore recommend that this consent condition is abandoned and that operational noise emissions are assessed under the 2017 Noise Policy for Industry instead.”

It has been agreed by both Council and the applicant that this condition is not representative of current acoustic standards. Council's Environmental Health Officer's referral is provided in the following section indicating the agreement to rely on the 2017 Noise Policy.

The review of the acoustic report by Environmental Health noted the noise levels at three (3) receivers (Nos. 1-3) would exceed the project trigger noise level (PNTL) and therefore will have a potential noise impact. The relevant receivers are the residences on 41, 55 and 56 Chillcott Street respectively.

The NIA presented two management responses to the noise impacts:

- landowners written acceptance of the residual noise levels
- submission of an 'offensive noise checklist' presenting an argument that the residual noise is not offensive

The NIA supplied signed acceptance from the owners of 55 and 56 Chillcott Street for the quarry to exceed the PNTL. The remaining receiver (No. 1) at 41 Chillcott Street, was assessed against the offensive noise checklist. It is noted the non-compliance with the noise levels at No. 44 was only when the quarrying would occur on the eastern face of the quarry, not the southern.

Concern was raised with the adoption of both management responses. In relation to the letters of acceptance, these were not considered sufficient in isolation. Should land ownership change, the agreement of the past owners has limited weight. Council's Environmental Health Officer indicated negotiated outcomes are an acceptable management response but there was a reasonable expectation that an agreement be formalised on title to ensure land ownership does not compromise the agreement.

In terms of the offensive noise checklist, in isolation, this was also not considered appropriate. The checklist is a document that asks questions as to a merit assessment of whether the acoustic impact would

be atypically loud in the area, irritating, the timing of the noise, the frequency/infrequency and the number of people affected.

Environmental Health noted acoustic assessments for the past Section 4.55(2) applications did not rely on this checklist and achieved compliance with the PNTL. A Section 4.55(2) application can only consider what has been submitted with the application and thus the consideration of past reports indicating compliance is not taken into consideration in this assessment.

However, the NIA submitted with the application did not adequately demonstrate that all reasonable and feasible mitigation measures had been explored prior to the dependence on the checklist. The checklist is considered a last resort measure that should be used once other methods have been explored as it assumes a foregone conclusion that the noise criteria will be exceeded.

The additional information requested issued on 24 August 2022 sought further information on the other mitigation measures to address the above. An amended NIA was submitted on 15 December 2022.

Due to the number of submissions raising acoustic concerns (including an acoustic peer review assessment by Day Design, commissioned by the Monaltrie Area Community Association Inc.), the complexity and history of the matter, Council engaged a third-party acoustic consultant to review the acoustic documents. The peer review made a number of recommendations with the conclusion, based on the applicant's NIA, there were deficiencies with the assessment that were considered significant.

A request for additional information was issued on 3 May 2023 in relation to the matters raised by the acoustic peer review. These included:

- *the NIA should consider and assess tonal noise from quarrying activities as required by the Noise Policy for Industry (NPI)*
- *the NIA should not rely on, or reference, the NGLG offensive noise checklist as it does not apply to industrial developments, or at least is not as restrictive as the NPI noise criteria which must also be considered*
- *the NIA should adopt the local road noise criteria for River Bank Road, as it is not an arterial road and has not been formally designated a Principal Haulage Route by LCC*
- *the noise model should include the correct terrain type, not 10m vegetation to all receivers as this will artificially reduce calculated noise levels*
- *a more representative sound power level and spectrum for the crusher/screens is required, or the adopted 110 dBA sound power level and spectrum should be verified and justified*
- *the NIA should provide more details of the truck route parameters included in the model (number of trucks per hour, speed, etc)*
- *the NIA should consider a range of equipment operating locations within the quarry to ensure reasonable worst case noise levels are reported, not just noise levels including a significant barrier effect from quarry faces*
- *the NIA should include a quantitative noise assessment for the drilling machine*
- *the revised NIA should consider a more representative location for overburden removal and drilling near the southern face, include details of the assumed sound power level for this activity and recalculate overburden removal noise levels*
- *the NIA must consider all feasible and reasonable noise mitigation measures before the effect and acceptability of any remaining criteria exceedances can be considered*
- *the NIA cannot rely on acceptance letters from residences unless this is permitted by LCC, due to the possibility of change of ownership or occupation of affected residences*
- *the NIA should refer to the VLAMP (Voluntary Land Acquisition and Mitigation Policy) for treatment of noise levels over NPI criteria*
- *the NIA must ensure noise levels are correctly calculated to all receivers. This includes having the correct quarry face heights, ground surface type and other relevant details in the noise model*

An amended NIA was submitted on 20 July 2023. This report was again reviewed by the third-party acoustic consultant who determined that, while many of the above issues were resolved, there were still seven identified concerns of moderate to high importance in the assessment. Specifically, the peer review continued to raise the following:

- *the Revised NIA should not rely on, or reference, the NGLG offensive noise checklist as it does not apply to industrial developments. Instead, section 4 of the NPI and the VLAMP provide appropriate guidance to deal with predicted exceedances of the NPI criteria*
- *the noise model should include the correct terrain type, not 6m vegetation to R2 and R3 and 10m vegetation to all other receivers as this will artificially reduce calculated noise levels*
- *a more representative sound power level and spectrum for the crusher/screens is required, or the adopted 110 dBA sound power level and spectrum should be verified and justified, then predicted noise levels recalculated*
- *the Revised NIA should correct the modelled sound power level of the truck haul route to reflect a truck movement in a 15 minute period, then recalculate predicted noise levels*
- *conflicts between the western side of the truck route and the western barrier should be resolved, rather than the current modelled situation where the route crosses the berm, and noise levels recalculated*
- *the overburden removal scenario should be checked to identify and correct the current under-reporting of noise levels to receivers*
- *the Revised NIA must consider all feasible and reasonable noise mitigation measures, including receiver noise controls as recommended in the NPI section 4 and VLAMP, before the effect and acceptability of any remaining criteria exceedances can be considered by LCC*

Where issues were duplicated from the previous request, they were not resolved by the amended NIA.

It is recognised both by the assessing officer and the acoustic peer review that a quarry operation will create loud noise in periods associated with the extraction of the material. There is scope to allow a relaxation of the noise criteria where noise impacts are intermittent and short term in duration. However, there remain concerns with the assessment generally that leaves sufficient doubt the acoustic impacts of the proposed modification are accurately assessed and acceptable, inclusive of a potential relaxation of the noise criteria, to understand what level will be reached, where, when and to whom. The unresolved aspects from the second peer review may, once resolved, introduce new properties affected by exceedances in the noise criteria or detail an exacerbated impact on the currently identified affected properties to a point where the current assessment is not acceptable.

The most important point taken from the planner's assessment, the Environmental Health Officer's assessment and echoed in the acoustic peer review is the NIA has not adequately demonstrated it has considered all feasible and reasonable noise mitigation measures. The first request for additional information sought more information but as of the second peer review, this information remains inadequately addressed. The outstanding information affects whether the quarry can operate on the southern face only or on both the southern and eastern faces.

Consequently, the NIA has not provided sufficient information to determine the proposed mitigation measures (signed agreements and the offensive noise checklist) are necessary and/or other mitigation measures are viable or unviable to address acoustic privacy. Given this, the proposed Section 4.55(2) application is recommended for refusal on the basis of the acoustic impacts.

For completion of the considerations, were any consent to be issued relying on the signed agreement method for acceptance breaches to the PNTL, these would need to be conditioned to be placed on title for the duration of the development consent for the affected lots prior to the resumption of the quarry to ensure the longevity of the agreement through land ownership changes and occupant circumstances.

Further, road noise of the rerouting of the haulage route was assessed in the December 2022 amended NIA and both peer reviews by the third-party consultant. This aspect was not resolved.

Internal Referrals

Council's internal referrals are detailed below.

Ecology

No substantive change to the impact on flora and fauna from previous development application modification is being proposed. Due to the highly modified vegetation and paucity of habitat on site and type and scale of impact on site the assessment below is complete.

Koala Habitat Protection SEPP 2021 (Lismore Comprehensive Koala Plan of Management (CKPoM))
Koala Habitat Assessment report submitted.

Proposal consistent with the Lismore CKPoM assessment criteria

1. no trees proposed to be removed, no net loss of koala food trees/habitat. An additional 100 koala food trees on the subject site was recommended
2. no removing or altering of any habitat linkages. The current risk to koala movement would not be altered by the proposal and safety would improve by the proposed restriction on truck speed

Biodiversity Conservation Act 2016 (BC Act)

- land not identified on Biodiversity Values Map
- no clearing of native vegetation proposed
- 5 Part Test concluded no significant impact to koalas *as shown in the koala assessment report*

Environment Protection and Biodiversity Conservation Act

The proposal is unlikely to have a significant impact on koalas. Therefore, a referral to the Commonwealth Minister for the Environment for a Controlled Action determination is not required.

The optimal traffic/koala impact mitigation measure is to have koala food trees and corridors away from roads - as described in proposed mitigation measure.

It is recommended a legally enforceable and security bonded conditioned landscape management plan will allow scope to plant koala trees well away from River Bank Road. This measure would include clump plantings and vegetated sound and dust buffer mounds containing koala food trees and other indigenous vegetation associated with this vegetation community.

It is concluded that the extension of the life of the quarry operation does not pose an increased threat to koalas and koala habitat. Conditioned and implemented recommended mitigation measures provide an opportunity to grow secure koala habitat away from traffic hotspots and increase connectivity in the landscape.

FLORA AND FAUNA/THREATENED SPECIES ASSESSMENT

Review of Desktop Assessment

Description of the study area

The description of the study area was included and includes details of the types, locations and conditions of native vegetation and koala habitat in the study area. The study area, subject site and relevant habitat features were displayed on a map. On the whole, the description of the study area was adequate.

List of threatened species, populations or ecological communities, or their habitats known or likely to occur

A desktop assessment limited to the study of the koala, populations or their habitats known or likely to occur within the locality was conducted. The spatial extent of the study was adequate.

The desktop assessment identified koalas and koala habitat was predicted to occur onsite and near the subject site.

The document does not consider other threatened flora and fauna species, populations or ecological communities, or their habitats likely to occur in the locality of the subject site, nor does it assess the likelihood of these species occurring on the subject site.

Review of Flora and Fauna Field Survey Methods

Review of Flora Field Survey Methods

The details of the flora field survey methods employed was sufficient.

The choice of flora field survey methods (inspect all trees on the property) and the extent of the survey was justified.

The constraints to the flora field survey methods were noted.

Given the size of the subject site, the flora field survey methods, on the whole, appear to be reasonable and appropriate.

Review of Fauna (koala) Field Survey Methods

The details of the fauna field survey methods employed was sufficient.

The choice of fauna field survey methods and the extent of the survey was justified.

The constraints to the fauna field survey methods were not noted.

Given the size of the subject site, the fauna field survey methods, on the whole, appear to be reasonable and appropriate.

Review of Flora and Fauna Assessment Findings

Flora Assessment Findings

A targeted flora survey found a total of 11 Forest Red Gum (preferred koala food trees) on or near the subject site.

The vegetation present on the site was found to be largely agricultural grazing land with some small patches of regrowth dry rainforest and scattered camphor laurel paddock trees.

No threatened native plant species were found to occur on the subject site.

Fauna Assessment Findings

The fauna survey found evidence of koalas persisting on the site. The targeted survey for koalas found evidence (scats and scratches) in Forest Red Gums in the northern boundary of the property.

Assessment of the likelihood of threatened species, populations or ecological communities identified as occurring or likely to occur in the locality

An assessment of the likelihood of threatened flora and fauna species occurring or likely to occur within the study area was not conducted. The assessment was considered to be adequate given there is no proposal for clearing vegetation and a koala habitat assessment has been submitted with the DA.

For each threatened species, population of ecological community, the assessment included an evaluation of the:

- habitat(s) are present within the study area

- condition of the habitat for the identified threatened species, populations or ecological communities identified above (eg. foraging substrate; availability of tree hollows; density of ground cover; presence/absence of caves, overhangs, crevices, rock outcrops; presence/absence of permanent or ephemeral water bodies)
- whether the habitat(s) are connected with similar habitat(s) occurring outside the study area
- extent of interconnectedness and distribution of habitats within the region
- nature and extent of disturbance from natural and/or anthropogenic causes that already exist within the study area

Assessment of Significance

Application of the five-part test for threatened flora, fauna or endangered ecological communities under Section 7.3 of the *BC Act 2016* found there was no significant impacts on any threatened plant species, populations or endangered ecological communities. Consequently, a Species Impact Statement was not provided.

Application of the five-part test for threatened flora, fauna and endangered ecological communities also appear to be reasonable.

Species Impact Statement

Not required

Report Recommendations

- planting of 100 koala trees along the western boundary of the property, to provide long term habitat security and connectivity away from the road.
- limit speed for trucks to 40 kilometres per hour

KOALA PLAN OF MANAGEMENT

Not required by LCC's CKPoM.

Environmental Health

As part of the previous assessments site inspections including a councillor site inspection, have been undertaken (attended by applicant, consultant councillors and staff). No further site inspections were considered necessary for the completion of this referral.

The NSW Environment Protection Authority (EPA) (through the online concurrence and referral service) has advised Council is the 'appropriate regulatory authority' for this application. NSW EPA have not provided any further comment.

NSW EPA has previously advised the quarry does not hold an Environment Protection Licence (EPL).

The supporting Modification Planners Report states:

The rate of extraction is to be 'capped' at 29,970T per annum. An Environment Protection Licence (EPL) issued by the NSW Environmental Protection Authority (EPA) will either be sought at the time a DA is to be lodged for the expansion of the quarry or if Mr Santin proposes to extract greater than 30,000T per annum.

This is consistent with condition 5 and 6 of the consent.

The EPA has noted the historic extraction rate has exceeded 30,000 tonnes in 1996, 2006, 2007, 2014 and 2017. The EPA has issued a formal warning to the quarry operator for failure to hold an EPL when lawfully required. Council through a previous pre-lodgement process has highlighted the EPL requirements.

As the consent enables an extraction rate that would require an EPL issued by NSW EPA it is considered that the current consent be contemporised, so conditions are consistent to any future potential Environment Protection Licence (EPL). Previous discussions have been held with representatives of NSW EPA to achieve this outcome. On issuing an EPL NSW EPA is recognised as the regulatory authority (Protection of Environmental Operations (POEO) Act) for the quarry land use.

In contemporising the consent notice a key assessment matter is noise impact. The current consent notice Condition No.36 provides a 'project noise trigger level' of:

LA10 noise levels emitted from the quarry and all plant and equipment shall not exceed the background noise levels by more than 5dB(A) when measured at any affected residence.

This level of noise emission is not supported moving forward. The acoustic technical reporting has recognised management of noise emission to the abovementioned standard would create the potential for land use conflict and in response the NSW EPA Noise Policy for Industry has been adopted as the assessment standard. The applicant however has not requested amendment of condition No.36 which is considered necessary should the application be supported.

CONTAMINATED LAND

The quarry is an existing approved land use. As the proposal is seeking an extension of time to enable the continuation of the activity under the current approval no further technical reporting is required on this matter.

NOISE

Operational Noise

The current consent notice Condition No.36 provides a 'project noise trigger level' (noise emission standard) of –

LA10 noise levels emitted from the quarry and all plant and equipment shall not exceed the background noise levels by more than 5dB(A) when measured at any affected residence.

This project noise trigger level is not supported. The acoustic technical reporting has recognised management of noise emission to the abovementioned standard would create the potential for land use conflict and in response the *NSW EPA Noise Policy for Industry* has been adopted as the assessment standard. This is the standard adopted for previous modification applications and recommended modifications to current condition of consent. The planning report supporting the modification application has not requested amendment of condition No.36. A request for amendment of Condition No.36 is required to be consistent with the supporting technical reporting.

The quarry works include drilling, blasting, ripping, stockpiling, loading and haulage of material. The operations have been the subject of previous NIA's to support modification applications. This NIA recognises from an acoustic perspective the following operations will be altered compared to previous operations:

- existing crushing and screening plant to be decommissioned
- all crushing and screening to be carried out by a mobile crusher
- western berm (as indicated in the 1992 EIS) to be constructed

The NIA dated 17 February 2022, prepared by INGEN Consulting has been submitted to support the application for modification. The NIA recommends the adopted noise impact criteria for the application be contemporised. The technical report has been prepared to address the standards nominated with the NSW EPA 'Noise Policy for Industry' October 2017 (NPF1), *Technical basis for guidelines to minimise annoyance due to blasting overpressure and ground vibration*, issued by the Australian and New Zealand Environment Council (ANZEC) in 1990 and *NSW EPA 2011 Road Noise Policy*. The nominated standards/policies framework has been consistently utilised by Council in assessing noise emissions from extractive industry

developments and is considered reasonable in the assessment of this application when considering wording of existing conditions of consent that:

- refer to NSW EPA criteria
- require a NIA being submitted to Council to support noise emission levels, and
- adopt of a project noise trigger level that is not representative of current policy (L_{A10} = average maximum level rather than average minimum level plus 5 dB(A) intrusive criteria) having the potential to increase noise impacts upon non-associate receivers

The NPMF recognises that *‘when applying the policy to existing operations, the scope for applying feasible and reasonable mitigation measures can be more limited than for new developments. Careful consideration of noise impacts and the feasible and reasonable mitigation measures available at these sites is needed, noting that the noise limits might not be the same as those for a greenfield site.’*

The NPMF requires determination of a ‘project noise trigger level’ PNTL and states *‘The project noise trigger level provides a benchmark or objective for assessing a proposal or site. It is not intended for use as a mandatory requirement. The project noise trigger level is a level that, if exceeded, would indicate a potential noise impact on the community, and so ‘trigger’ a management response; for example, further investigation of mitigation measures. The project noise trigger level, feasible and reasonable mitigation, and consideration of residual noise impacts are used together to assess noise impact and manage the noise from a proposal or site.’*

The INGEN NIA recommends the PNTL for the development as **40/35/35** dB(A) (day/evening/night), adopting the lesser of the intrusiveness noise level and the amenity noise level. This is the minimum intrusive noise level adopted by the NSW EPA NPMF. The methodology presented within the NIA in determining the PNTL is supported.

The NIA presents noise modelling outcomes (Soundplan V8.0 modelling) for the following quarry operating scenarios:

1. existing quarry footprint: plant working southern face (no mitigation)
2. existing quarry footprint: plant working eastern face (no mitigation)
3. existing quarry footprint: Removal of overburden on top of quarry face
4. approved quarry footprint: loader working rock face, internal haulage, crushing and screening operations resulting in the following residual noise levels:

Table 19 | Residual noise level summary

Receiver	Sc 1 – Southern quarry face	Sc 2 – Eastern quarry face	Sc 3 – overburden removal	Sc 4 – final quarry extent
R1	0	7.4	0	0
R2	3.9	3.7	0	3.3
R3	6.8	6.2	0	5.3
R4	0	0	0	0
R5	0	0	0	0
R6	0	0	0	0
R7	0	0	0	0



Figure 11 | Receiver locations, Source aerial photo: Lismore Intramaps January 2022

The NIA modelling outcome has determined noise emissions at levels exceeding the nominated PTNL and therefore has a potential noise impact on the community (receivers 1-3). The significance of the residual noise impact is considered to be moderate when compared to the provisions of the NSW EPA NPFI.

The NPFI requires a management response through consideration of feasible and reasonable mitigation measures. The NIA has presented the following as the management response to the residual noise impacts:

- landowners written acceptance of the residual noise levels or in effect a negotiated outcome
- submission of 'offensive noise checklist' presenting an argument that the residual noise is not offensive

The NIA identifies landowners R2 and R3 have provided written acceptance of the residual noise levels. In relation to receiver R1 the NIA states the noise levels observed at the receiver strongly depend on the area of quarry operations. Modelling determines quarrying on the southern face results in the PNTL be satisfied (no residual noise levels) however quarrying on the eastern face results in residual noise levels that would reasonably require a noise mitigation response.

Negotiated outcomes are recognised as an acceptable management response (in part) when considering the noise impacts identified by the NIA. However in adopting this response it is a reasonable expectation that any agreement be formalised through an appropriate legal instrument ensuring the commitment is commensurate with any consent period and not compromised by a change of land ownership.

The NIA further presents an 'offensive noise checklist' (Noise Guide for Local Government) as the justification for exclusion of exploring further feasible and reasonable attenuation measures to address the residual impacts upon receiver R1 when the eastern quarry face is under operation. This justification in isolation is considered inadequate. Previous technical reporting for this site has determined the construction of attenuation berms within the quarry floor as a reasonable and feasible response to residual noise to achieve the PNTL objective.

The NIA identifies the quarry operations, in part (southern face) can be undertaken to reasonably satisfy the objective of the PNTL as determined by the NSW EPA NPFI. It is therefore considered the noise impacts can be appropriately conditioned. Conditions will require an amended NIA clearly defining the operational area that satisfies the PNTL objective.

It is considered the NIA does not satisfactorily consider/explore all reasonable and feasible mitigation measures to control residual noise levels as a result of quarry operations on the eastern face. It is therefore

considered that continued operations upon the eastern face is only supported upon the submission of an amended NIA demonstrating the effective management of residual noise levels through the provision of reasonable and feasible mitigation measures.

Blasting (overburden removal, drilling & blasting)

The NIA states blasting occurs on average less than once per year and is normally a 1–3 day process. The NIA states noise levels associated with overburden removal will satisfy the PNTL objective, however drilling would likely result in significant residual noise levels when compared to the provisions of the NSW EPA NPMFI. The NIA provides an ‘offensive noise checklist’ addressing the nature, duration, frequency and impact of the drilling activity concluding the noise emission for the activity is not considered offensive on balance. As stated above the NPMFI recognises that *‘when applying the policy to existing operations, the scope for applying feasible and reasonable mitigation measures can be more limited than for new developments. Careful consideration of noise impacts and the feasible and reasonable mitigation measures available at these sites is needed, noting that the noise limits might not be the same as those for a greenfield site.’* In recognition of the time of day the activity is undertaken and duration and frequency and recognising the PNTL is not a mandatory objective, the outcome of the offensive noise checklist is supported. However this position is valued by the requirement imbedded within the NIA that the operator will ensure best management practices and technology is employed. It is recommended this be embedded within any approved Quarry Plan of Management.

The NIA recognises the NSW blasting criteria as *Technical basis for guidelines to minimise annoyance due to blasting overpressure and ground vibration*, issued by the ANZEC as the assessment standard. A review of historical blasting records has been undertaken by the acoustic consultant confirms that following initial compliance issues in 1993 blasting activities undertaken have been in accordance with the ANZEC recommendations.

Road Noise

The NIA recognises the NSW EPA *Road Noise Policy 2011* as the assessment standard. The modelling results demonstrate all increases in road traffic noise due to the quarry with respect to background traffic satisfy the assessment standard.



Figure 20 | Receiver locations, Source of aerial image: Lismore Intramaps 2019

The NIA also recognises the implementation of best management practices and best available technology economically achievable will have a positive influence on the management of noise emissions from the site. It would be appropriate that such practices are recognised as an integral part of any future quarry plan of management.

Lismore City Council

Meeting held 10 October 2023 - DA92/523-5 - S4.55(2) Application to Modify DA92/523 to extend the life of the quarry at 72 River Bank Road Monaltrie by 12 years to 12 May 2036

The consent notice, the subject of this application, includes a number of conditions for the management of noise emissions. It is recommended draft conditions of consent for the matter of noise management be constructed, clearly articulating presented noise management strategies.

ON-SITE SEWAGE MANAGEMENT

Existing chemical closet facilities provided.

ENVIRONMENTAL IMPACTS (Amenity)

See noise comments.

A *Soil and Water Management Plan* August 2019 and *Crystalline Silica Risk – Basalt Extraction – Review of Literature & Guidance Document* June 2020 report have been prepared to assess potential impacts likely to arise from site-based works and recommendation of appropriate mitigation measures to address:

- nuisance dust
- the displacement of sediment and soil off the site
- water quality of receiving environments
- control and treat surface runoff
- divert clean waters, and
- achieve compliance

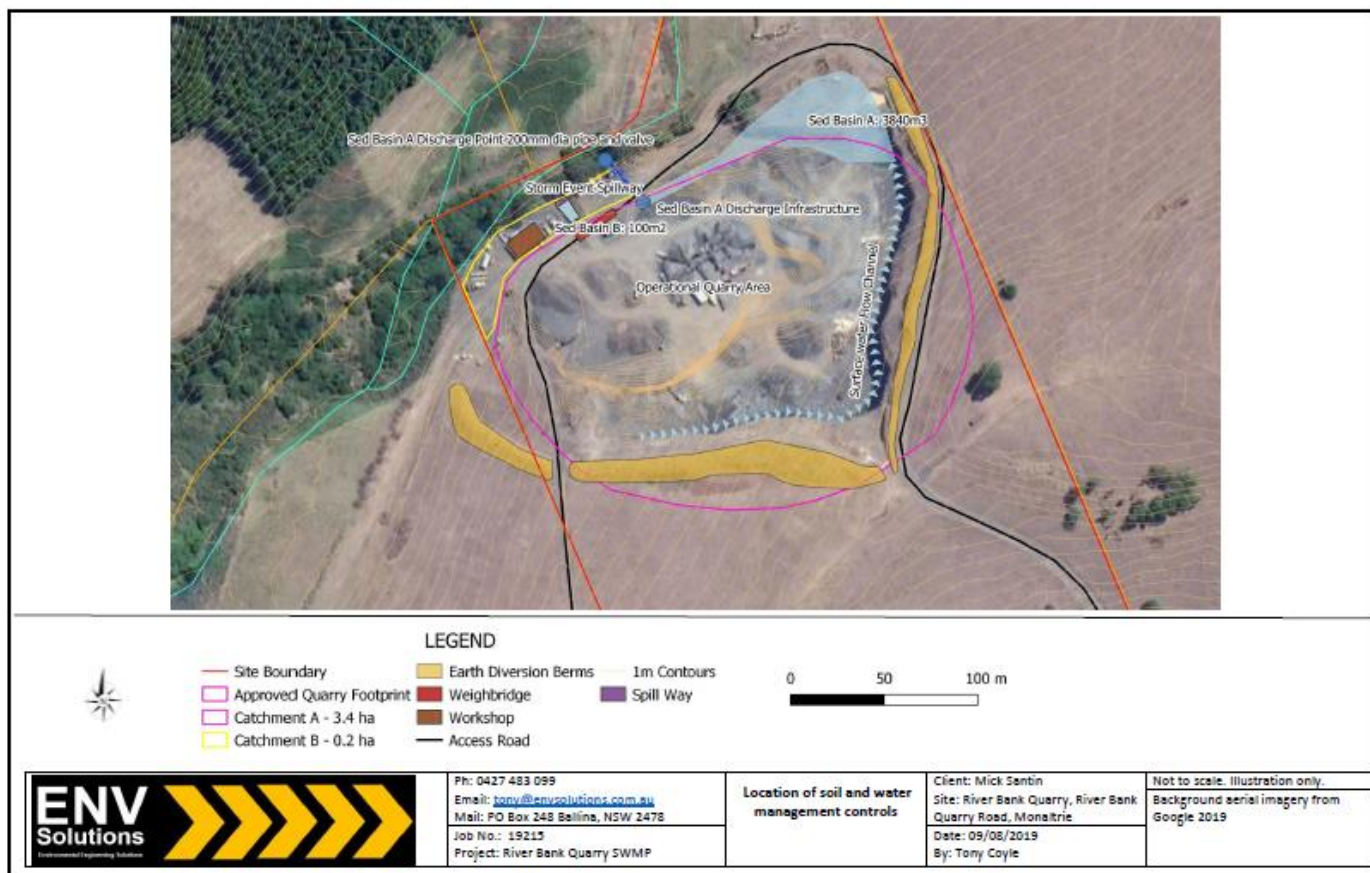
The silica risk report concludes:

On the basis that exposure to respirable crystalline silica is considered a workplace hazard and not an environmental risk, and taking into consideration the distance from the quarry area to neighbouring properties, the risk of exposure to respirable crystalline silica for persons at these properties is considered to be low.

Through previous assessments Council engaged the services of an independent consultant to review the environmental health risks related to silica exposure as it was an expressed community concern as it is identified through current submissions. The independent review presented a position consistent with the technical reporting prepared by ENV Solutions that the risk of exposure to respirable crystalline silica to persons within properties adjoining the quarry is negligible.

The technical report states that baseline monitoring was undertaken (single round) to evaluate water quality discharges from the existing stormwater management system. The results conclude that at the time of sampling the quarry activity was not impacting upon the water quality of receiving waters.

Standard conditions have been prepared to ensure performance measures presented within the technical reporting for soil and water management are clearly incorporated into any subsequent consent notice.



STORMWATER / TREATMENT DEVICES

See environmental impacts above.

Standard conditions have been nominated.

BUFFERS

Potential for land use conflict is offensive noise emissions (including vibration) and other amenity impacts such as nuisance dust.

It is recognised the application before Council is for the modification of an existing consent to enable the ongoing use of the quarry for a further 12 years. The principle behind the DCP is to protect industries from encroaching development within the rural landscape. In this case encroaching development is existing and any further applications would be subject to merit assessment.

The quarry has general control and management of lands within what was previously identified within Chapter 11 – Buffers as the primary buffer – 500m with the exception of lands to the north. Council undertook a review of Chapter 11 in 2021 resulting in the adoption of revised buffer distances for extractive industries. The recommended minimum buffer distance of 500m and 1000m (operations involve blasting) respectively to a rural dwelling. Santin Quarry involves blasting on an irregular basis. The acoustic technical report provides the following information in relation to non-associated rural dwellings and separation distances.

Table 7 | Residential receivers

ID	Description	Dwelling distance from quarry crushing circuit, m	Dwelling direction from quarry
R1	Lot 1 DP 1249996	560	W
R2	Lot 2 DP 701527	450	NW
R3	Lot 1 DP 701527	570	NW
R4	Lot 1 DP 530135	100	NE
R5	Lot 4 DP 730425	1000	E
R6	Lot 2 DP 730425	600	SE
R7	Lot 1 DP 730425	570	SE
R8	A DP 979537	740	S

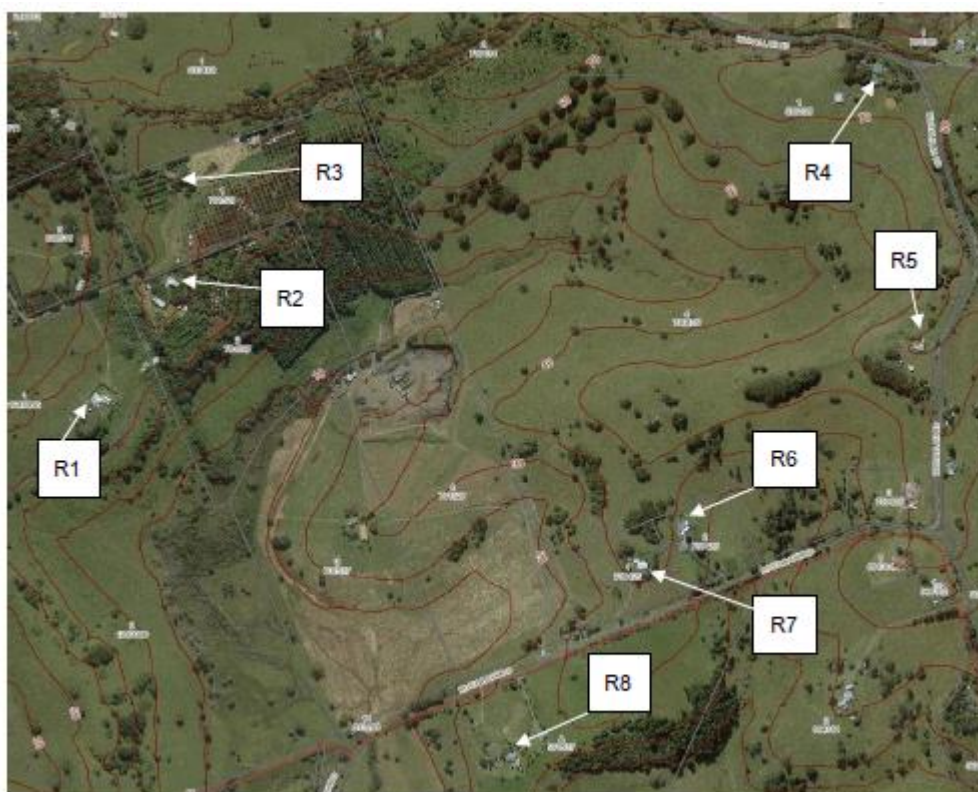


Figure 11 | Receiver locations, Source aerial photo: Lismore Intramaps January 2022

It is considered noise presents the greatest potential for land use conflict. The standard adopted by Council to support variations to the development standard has been the preparation of supporting technical specialist reporting and overarching land use conflict risk assessment. In this instance the key conflict matter is noise and a NIA has been submitted for merit assessment. The assessment of the technical report is presented above. In summary it is considered the quarry activity can be undertaken (southern face) with the implementation of reasonable and feasible mitigation measures so as not to create a situation of unacceptable land use conflict. However it is considered that the proposed mitigation measures do not adequately address the land use conflict potential for operations upon the eastern face.

Development Engineering

Vehicular Access/Sight Distance

The vehicular access has been previously conditioned to be upgraded to a Basic Right Turn (BAR) and Basic Left Turn (BAL), the works for this will be done under a Section 138 that has been granted (73.2019.72.1) and can be seen below. The BAR and BAL intersection will be satisfactory for any future traffic volumes produced by the quarry.

The existing internal access road is in good condition and given the rural location and quarry's distance to adjoining properties there is no objection to the internal access road remaining as a gravel surface and not be bitumen sealed.



Intersection design in accordance with Section 138 Approval 73.2019.72.1

Sight Distance (Visibility)

Refer to Attachment 6 for a detailed assessment of this aspect.

Traffic Impact

Refer to Attachment 6 for a detailed assessment of this aspect. Refer to the table below for a summary of traffic generation by the development.

Yearly Approved Extraction Rate	40,500 Tonnes
Days of Operation (Excludes Sunday and Public Holidays)	304 Days
Daily Haulage Rate	133 Tonnes
Average Tonnage per Load	15.5 (based on recent dockets)
Average Loaded Trucks per Day	8.6
Condition 35 Allowable Loaded Trucks per day	15.0
Average Daily Truck Trips	17.2
Average Daily Staff Vehicle Trips	10
Total Average Daily Vehicle Trips	27
River Bank Road Average Daily Trips (Current)	98
River Bank Road Average Daily Trips (Including Development)	125
River Bank Road Capacity	150

Considering the assessment in Attachment 6 and the table above it the writer's opinion that the overall traffic generation/impact from the site is similar to that of the original DA when assessed. Therefore, it is considered that this proposed modification will not have any adverse impact on the road network.

Road Safety

Refer to Appendix A for a detailed assessment of this aspect.

Pedestrian Safety

Refer to Appendix A for a detailed assessment of this aspect.

Parking Manoeuvring

There is adequate space on site for vehicles to maneuver and exit in a forward direction.

stormwater (quantity)

The existing ponds on site used to capture stormwater along with the plan of management are adequate to ensure stormwater is discharged without causing adverse impacts to adjoining properties.

Levies – Section 94

For the assessing officer to determine.

Flooding (bulk earthworks, overland flow)

The modification will not adversely affect the flood characteristics of the property.

External Referrals

The proposed modification was externally referred to the following parties:

- Environmental Protection Agency
- Department of Planning and Environment – Water
- Transport for NSW

Environmental Protection Agency

The EPA were referred the application and returned the application as the proposal did not trigger the threshold for a referral under Schedule 1 of *POEO Act 1997*.

An extractive industry is identified under Section 19 of Schedule 1. The threshold is for an extraction exceeding 30,000 tonnes per year. The proposed modification seeks to extract approximately 16,549 tonnes of material on average and otherwise not modify the previous maximum of 29,970 tonnes. Consequently, the EPA was not required to comment on the application.

Department of Planning and Environment – Water

The Department of Planning and Environment – Water were referred the application due to the operation being within 40m of a watercourse – an unnamed creek north of the quarry floor.

The initial response from the Department requested additional information on the following:

Statement of environmental effects

- *No consideration of the potential for excavation that interferes with an aquifer during the extended life of the quarry. Clarification is requested on the potential for excavation to interfere with an aquifer during the operation of the quarry. Provide plans and cross sections of the final quarry floor depth to support the discussion of aquifer interference issues.*
- *Clarification is requested on additional works, activities or rehabilitation for the life of the quarry (i) in the bed of any river, (ii) on the banks of any river, (iii) on land within 40 metres of the highest bank of a river. Note – supplied plans shall be prepared in accordance with Department of Planning and Environment—Waters guidelines located on the website <https://www.dpie.nsw.gov.au/water/licensing-andtrade/approvals/controlledactivityapprovals/what/guidelines>*

The applicant submitted additional information incorporating a report from ENV Solutions addressing the above points. This information was referred back to the Department.

General Terms of Approval were issued by the Department on 26 April 2023.

Transport for NSW

The application was referred to TfNSW under Section 2.22 of SEPP (Resources and Energy) 2021. Refer to the related description under the assessment of the SEPP.

The application was reviewed by TfNSW and a response was provided on 2 May 2022 which determined the proposed modification does not involve an increase in traffic generation and recommended conditions were provided.

Section 4.15 Evaluation

The relevant matters for consideration under Section 4.15 of the *EP&A Act* are assessed below.

Any Environmental Planning Instrument and Development Control Plan

Environmental Planning and Assessment Act 1979

Section 4.55 Modification of Consent—Generally

The proposal was submitted as a Section 4.55(2) modification application and is assessed under these provisions.

The proposed modifications are deemed substantially the same as discussed earlier in this report.

Environmental Planning and Assessment Regulations 2021

Section 4.10 of the *EP&A Act* states that designated development is declared to be as such by an environmental planning instrument or the regulations. The *EP&A Regulations* identify an extractive industry as designated development if it were to meet the threshold tests in Schedule 3, Section 26 Extractive industries which are:

- (1) *Development for the purposes of an extractive industry facility is designated development if the facility obtains or processes for sale, or reuse, more than 30,000 cubic metres of extractive material per year.*
- (2) *Development for the purposes of an extractive industry facility is designated development if the facility disturbs or will disturb a total surface area of more than 2 hectares of land by—*
 - (a) clearing or excavating, or*
 - (b) constructing dams, ponds, drains, roads or conveyors, or*

- (c) storing or depositing overburden, extractive material or tailings.
- (3) Development for the purposes of an extractive industry facility is designated development if the facility is located—
- (a) in or within 40 metres of a natural waterbody or environmentally sensitive area of State significance, or
 - (b) in or within 100 metres of a wetland, or
 - (c) within 200 metres of a coastline, or
 - (d) in an area of contaminated soil or acid sulfate soil, or
 - (e) on land that slopes at more than 18 degrees to the horizontal, or
 - (f) if the facility involves blasting—within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development, or
 - (g) within 500 metres of the site of another extractive industry facility that has operated during the last 5 years.

The approved DA92/523 was designated development and assessed under the relevant legislation at the time. The above section only applies to the proposal for new extractive industries, not modifications.

Section 48 of the Regulations relates to the alterations and additions to existing or approved designated development. It states:

- (1) *Development involving alterations or additions to development, whether existing or approved, is not designated development if, in the consent authority's opinion, the alterations or additions do not significantly increase the environmental impacts of the existing or approved development.*

The proposal is for a modification and not alterations and additions. Further, Section 48 includes a note which states:

Note 2—

This section does not apply in relation to an application for modification of a development consent.

Accordingly, the proposed modification requires no further consideration as designated development.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 Chapter 3 Koala Habitat Protection 2020

LCC is a local government area listed in Schedule 1 of the SEPP and thus the Chapter is applicable.

A Koala Assessment Application prepared by Dr David Sharpe was submitted with the Section 4.55(2) application. The report concluded the proposal is unlikely to have a significant impact on koalas. In the assessment, the following recommendation was made:

*“...to offset other potential risks, a minimum of 100 koala food trees (*E. tereticornis*) is proposed to be planted on the subject site. These trees can be planted along fence lines but should not be planted within 50m of River Bank Road to minimum the risk of vehicle strike.”*

Council's Ecology Officer reviewed the Koala Assessment and the referral comments were provided earlier in this report. Subject to the conditioning of the 100 koala food trees to be planted along the western boundary, the proposal was considered acceptable regarding the impact on koalas.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3 Hazardous and Offensive Development

As the original approval of the quarry predates Chapter 3, the considerations of the Chapter are not applicable. For clarity, the following comments are made on the provisions of Chapter 3.

It is stated Chapter 3 governs, amongst others, potentially offensive industry, which is defined as:

***potentially offensive industry** means a development for the purposes of an industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would emit a polluting discharge (including for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land, and includes an offensive industry and an offensive storage establishment.*

The consequence of being deemed potentially offensive industry is the need for the preparation of a preliminary hazard analysis under Section 3.11 of the SEPP. Again, due to the Chapter not applying to a development application prior to coming into force, this assessment is not required in this instance.

Based on the detailed assessment of the proposed modification, it is not considered the modification would be considered a potentially offensive industry were the acoustic issues that have warranted the recommendation for refusal be resolved.

Chapter 4 Remediation of Land

Council has no information to suspect there is any contamination of the land or any contamination that would preclude the resumption of the quarry operation.

Consistent with Section 4.6 of the SEPP, Council can conclude the site is unlikely to be contaminated and no further assessment is required.

State Environmental Planning Policy (Resources and Energy) 2021

Chapter 2 Mining, Petroleum Production and Extractive Industries

The proposal is for an extractive industry to which Chapter 2 applies. The key clauses are referred to in the table and further comment is provided below, where required.

Section 2.10 of the SEPP relevantly states that if a local environmental plan permits extractive industries with development consent, the development may be approved without the remaining provisions of that LEP having been satisfied. The Lismore LEP permits extractive industries. No other clause needs to be satisfied.

Section 2.17 relates to the compatibility of the extractive industry with other land uses. The SEPP relevantly refers to the assessment of compatibility as understanding the existing uses and approved uses of land in the vicinity of the development, whether or not the development is likely to have a significant impact on the uses and any ways in which the development may be incompatible with those uses. This report assesses these aspects under various sections and, with the exception of the acoustic impacts, is satisfied the resumption of the quarry is sufficiently compatible with the area. The acoustic issues, however, warrant the refusal of the application. Refer to the discussion on the acoustic impacts earlier in the report.

The SEPP contains matters for consideration as part of the merit assessment of the extractive industry. These are:

- Section 2.20 Natural resource management and environmental management
- Section 2.21 Resource recovery
- Section 2.22 Transport
- Section 2.23 Rehabilitation

These matters are considered throughout this report. The Department of Planning and Environment – Water has provided General Terms of Approval and Council’s Engineer has provided support subject to conditions relating to drainage and water impacts, Council’s Ecologist is satisfied by the impacts on koalas subject to conditions, and the proposal is satisfactory regarding waste, transportation and rehabilitation.

Lismore Local Environmental Plan 2012

Land Zoning and Permissibility

The site is zoned RU1 Primary Production under the Lismore LEP 2012. Refer to the Land Zoning Map below.

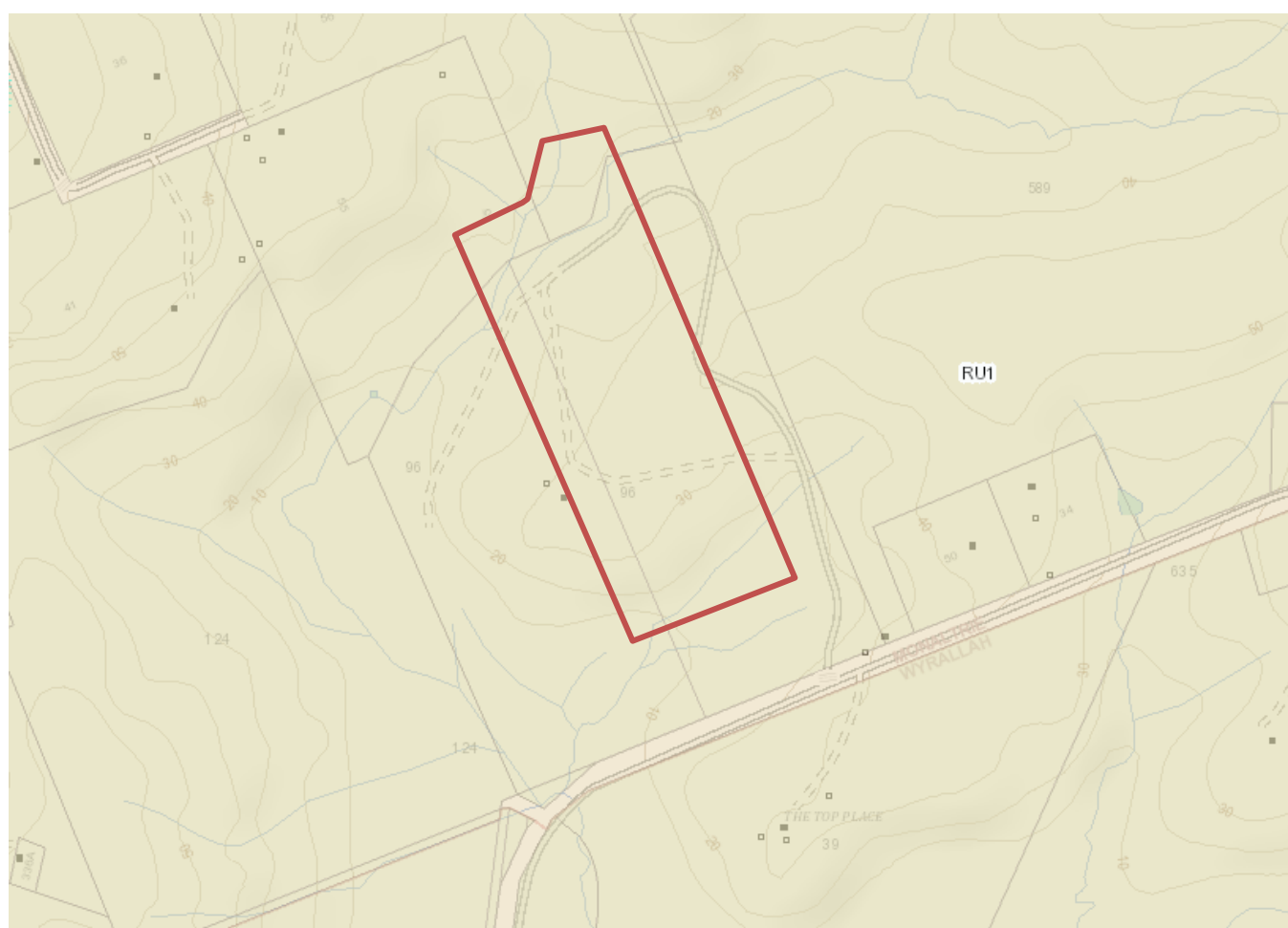


Figure 5: Land Zoning Map (Source: NSW Planning Portal Digital EPI Viewer)

The proposed modification is to a quarry which is defined under the LEP as an ‘extractive industry’ with the following definition:

extractive industry means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing,

stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.

Note—

Extractive industries are not a type of industry - see the definition of that term in this Dictionary.

Extractive industries are listed as permissible with consent in the land use table. The proposed modification is therefore permissible.

Zone Objectives

The zone objectives of the RU1 Primary Production zone are listed below.

- *to encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *to encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *to minimise the fragmentation and alienation of resource lands.*
- *to minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *to preserve rural resources by ensuring that the viability of rural land is not extinguished by inappropriate development or incompatible uses.*
- *to enable a range of other uses to occur on rural land providing such uses do not conflict with existing or potential agriculture and do not detract from the scenic amenity and character of the rural environment.*

In response, the following comments are made as relevant to the modifications sought:

- the site in its current form is for an unused quarry, a primary industry. The resumption of the quarry operation would not negatively impact the ability of other land to conduct sustainable primary industry production subject to resolution of its environmental impacts of which the acoustic impacts are not adequately addressed
- as a permissible land use, an extractive industry may be permitted with consent. However, due to the continued acoustic concerns raised through the assessment of the application, the modification has not satisfactorily demonstrated the continued operation is appropriate for the area
- the proposal does not fragment or alienate resource lands
- the proposal has not adequately addressed the acoustic impacts of the operation and consequently has not minimised conflict between the quarry and other land uses within the zone
- the resumption of the quarry operation would not extinguish the viability of rural land. The proposal in its current form, however, would be an incompatible use from an amenity perspective
- the proposed modification only seeks to continue to operate within the approved area of quarrying activity as the time period of the previous consent has expired. Despite the evolving locality around the site, the proposed modification does not seek to introduce a new scenic amenity impact. Consequently, the proposed modification is not inconsistent with this objective

Per the above, the development is not consistent with all the objectives and is recommended for refusal.

Other Clauses

No other clauses within the Lismore LEP 2012 are relevant to the assessment of the application, notwithstanding it would be overridden by Chapter 2 of SEPP (Resources and Energy) 2021.

Lismore Development Control Plan 2012

The following Chapters of the Lismore DCP 2012 are relevant for the assessment of the application:

- Chapter 11 – Buffer Areas
- Chapter 18 – Extractive Industries

The application has been assessed regarding the relevant provisions of the DCP. Comments made in the sections below relate to specific controls of note.

Chapter 11 – Buffer Areas

Chapter 11 provides recommended minimum buffer distances for primary industries, including extractive industries. The minimum recommended buffer for an extractive industry is 500m or 1000m where operations involve blasting, as with the approved quarry operation.

The Planning Report prepared by Malcolm Scott, the applicant's town planner, includes the following image demonstrating the buffer distances to the surrounding properties.

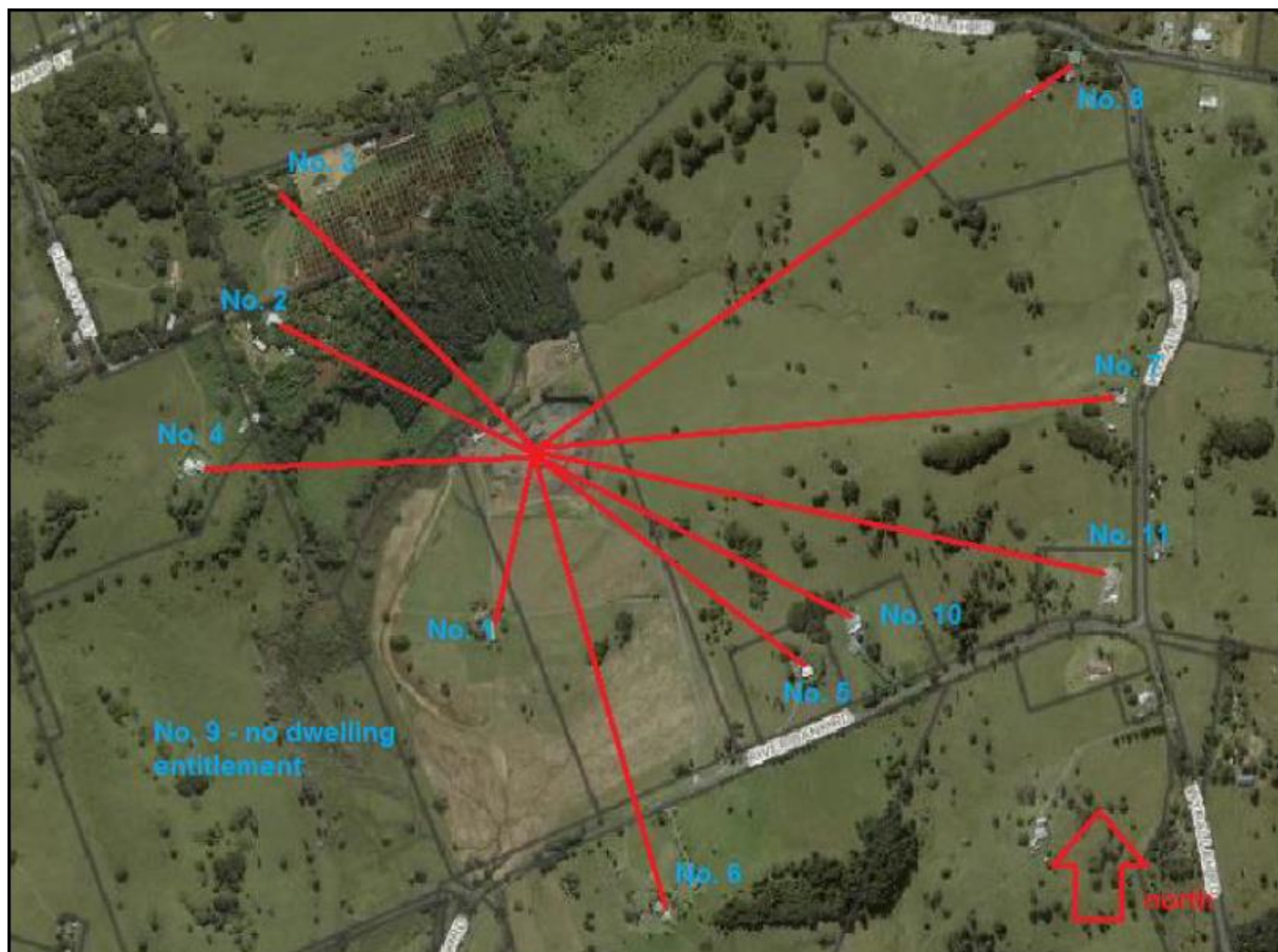


Figure 6: Buffer distances from the quarry (Source: Planning Report p.11)

The buffer distances vary between 286m (96 Riverbank Drive, owned by the quarry operator; No. 1) and 464m (55 Chillcott Street, the closest dwelling not owned by the operator; No. 2) to 1.09km to 495 Wyrallah Road in the northeast (No. 8).

For general operations, only one (1) property is within a 500m buffer (55 Chillcott Street) by a distance of 36m.

In total, there are six (6) properties within 1000m of the quarry as indicated in the Planning Report.

The objective of the Chapter is to “...minimise land use conflicts between potentially incompatible land uses through the establishment of appropriate buffer areas.” The land use conflicts of a quarry typically are the acoustic and visual impacts. The acoustic impacts were discussed earlier in the report. The quarry

is an existing operation. The extent of new visual impact created by the modification is negligible, given the approved footprint is being retained and only the south face is now being sought to be quarried.

The proposal does not seek further encroachment into buffer areas. Consequently, no inherent concern is raised by the absence of a compliant recommended minimum buffer under Chapter 11. It should be acknowledged that any further development in the locality would be subject to consideration of the quarry proximity, were the modification to be approved.

Due to ongoing acoustic concerns, the proposal is otherwise recommended for refusal. Refer to the comments on the acoustic impact.

Chapter 18 - Extractive Industries

Chapter 18 provides guidance for the development of extractive industries. Refer to the compliance table for an assessment of the Chapter and below the table for further comments.

Controls	Comment	Compliance
Extractive and Mineral Resources in Lismore	The resource on the land is recognised as important, as well as the merits of a proposal to extend the life of the quarry to extract the resource originally approved.	Yes
Extractive Industries – Haulage Routes	Refer to comments below the table.	Yes
Buffer Areas Around Extractive Industry Sites	The DCP identifies 500m and 800m primary and secondary buffer zones for a large quarry (10,000m ³ per annum). The buffer areas are discussed under the previous Chapter as acceptable except for the unresolved acoustic impacts.	No
Rehabilitation of Quarries	A draft Quarry Plan of Management and Rehabilitation was submitted with the application. Upon review, a request for additional information was issued that required further detail on the maintenance of the onsite vegetation including the currently unbuilt berms and 100 koala food trees to be planted as recommended by the Koala Assessment Report, weed and pest management and management measures to control run-off/drainage at various stages of the rehabilitation. A revised draft Quarry Plan of Management and Rehabilitation was submitted which addressed the above request.	Yes
Extractive Industry Management Plans	Per the above, a draft Quarry Plan of Management and Rehabilitation was submitted and is acceptable.	Yes

Haulage Route

The proposed modification states in the traffic assessment the haulage routes from the quarry will largely head east along River Bank Road and head either north to Lismore and beyond or south toward the M1 along Wyrallah Road. Limited vehicles, and only those below 4.5 tonnes, are intended to travel west from the quarry and use Gundurimba Road.

The original EIS indicated all trucks to Lismore and north of the quarry in general would use Gundurimba Road. The changing circumstances since the 1992 EIS have resulted in Wyrallah Road becoming the more desirable alignment following various upgrades on the route. It is understood the quarry in later years of its operation did use this alignment. Notably, no specific condition of consent restricted the potential for northbound vehicles to use Wyrallah Road, only that vehicles using Gundurimba Road must only operate between 9:30am and 3:30pm.

The adequacy of the road network was raised during the assessment. Subject to the construction of the previously approved upgrades to the intersection of the access road with River Bank Road and River Bank Road and Wyrallah Road, Council's Engineer found the route and the road network to be acceptable.

Any Draft Environmental Planning Instruments

There are no draft EPIs that affect the assessment or the determination of the application.

The Likely Impacts of the Development

The likely impacts are identified as natural, built, social and economic under Section 4.15 Evaluation. These have been discussed throughout this report and are summarised as:

- the assessment of the proposed modification has determined that there will not be an unreasonable impact on the natural environment subject to the conditioning of the 100 Koala food trees as recommended by the Koala Assessment submitted by the applicant. The Department is satisfied with the impact of the proposal on the nearby creek. No land clearing is required to facilitate the resumption of the quarrying within its approved footprint. No additional visual impact is created by the modification as it only seeks to quarry in the portion of the land allowed under the original consent
- the impact on the built environment is considered unacceptable in that the acoustic impact of the operation of the quarry is not compliant with the contemporary noise criteria
- due to the acoustic impact of the operation, a detrimental social impact will be created by the approval of the application
- the resumption of the quarry would be an economic benefit for Lismore and the region

In view of the above, the proposal is considered to have an unacceptable impact on the built environment and social impact due to the unresolved acoustic issues.

Public consultation

The public exhibition and submissions to the proposed modifications to extend the life of the quarry have been considered and addressed within this report and in the summary table of the submissions provided in **Attachment 2**.

Recommendation

The proposed Section 4.55(2) modification application to DA92/523 at 72 River Bank Road, Monaltrie, to extend the life of the quarry 12 years from 12 May 2020 to 12 May 2032, has been assessed within this report. As detailed above, all aspects of the proposed modifications are considered acceptable with the exception of the outstanding concerns raised by the peer review acoustic assessment. Consequently, it is the recommendation of this report that the application be refused in accordance with the reasons for refusal outlined in **Attachment 1**.

Conclusion

All relevant legislative requirements relating to the proposed modification of DA92/523 have been considered in this report.

A large number of submissions have been made and their comments have been considered in the assessment. The main areas of concern relate to noise, traffic impacts, impacts on koalas, the legality of the modification and whether the development was substantially the same. The above assessment has taken these into consideration.

On the basis of the above assessment, it is recommended that the application to modify DA92/523 to extend the life of the quarry for 12 years to 12 May 2032 is refused on the reasons specified in the draft reasons for refusal.

Attachment/s

1. [↓](#) Attachment 1 - Reasons for Refusal
2. [↔](#) Attachment 2 - Submissions Table (Over 7 pages)
3. [↔](#) Attachment 3 - Submissions (Over 7 pages)
4. [↔](#) Attachment 4 - Site Plans and Aerial (Over 7 pages)
5. [↔](#) Attachment 5 - Copy of Consents (Over 7 pages)
6. [↔](#) Attachment 6 - Traffic Impact Assessment (Over 7 pages)

Attachment 1. Reasons for Refusal

DA92/523-5 - S4.55(2) - Application to Modify DA92/523 to extend the life of the quarry at 72 River Bank Road Monaltrie by 16 years to 12 May 2036

Reasons for Refusal

1. The proposal is inconsistent with Section 2.17 of State Environmental Planning Policy (Resources and Energy) 2021 in that the proposed modification is not compatible with other land uses as it is likely to have a significant acoustic impact, and has submitted insufficient information to assess whether all reasonable and feasible mitigation measures have been explored, pursuant to Section 4.15(1)(i) and Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
2. The proposal is inconsistent with the following objectives of the RU1 Primary Production zone under Clause 2.3 Zone objectives and Land Use of the Lismore Local Environmental Plan 2012 due to the acoustic impact of the proposed modifications, pursuant to Section 1.3(a) and Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979:
 - *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
 - *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
 - *To preserve rural resources by ensuring that the viability of rural land is not extinguished by inappropriate development or incompatible uses.*
 - *To enable a range of other uses to occur on rural land providing such uses do not conflict with existing or potential agriculture and do not detract from the scenic amenity and character of the rural environment.*
3. The proposal is inconsistent with the following objectives of Chapter 18 Extractive Industries of the Lismore Development Control Plan 2012 due to the acoustic impact of the proposed modifications, pursuant to Section 4.15(1)(iii), Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979:
 - *Ensure that extractive industries do not adversely impact on the environment and surrounding land uses.*
4. The proposal has not adequately demonstrated that the development will not have an unacceptable adverse impact on the built environment and would not have adverse social impacts, pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
5. The proposal has not satisfactorily demonstrated that the site is suitable for the continuation of the quarry operation, pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
6. Due to the above reasons, approval of the application is not in the public interest, pursuant to Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

Report

Subject	Investments - September 2023
TRIM Record No	BP23/833:EF22/122-2
Prepared by	Manager Finance
Reason	Required by Local Government Act 1993, Local Government (General) Regulations 2021 and Council's Investment Policy
Strategic Theme	Leadership and participation
Strategy	We provide effective management and responsible governance.
Action	Ensure the efficient and effective operation of Council.

Executive Summary

The *Local Government Act 1993* (Section 625), *Local Government (General) Regulation 2021* (Clause 212) and Council's Investment Policy requires a monthly report be submitted to Council on investments. The report is to include the source and amount of funds invested, investment portfolio performance for the period and a statement of compliance in relation to the requirements of the *Local Government Act 1993*.

All investments with various financial institutions have been made in accordance with the *Local Government Act 1993* and *Local Government (General) Regulation 2021*.

This report includes the period to 30 September 2023.

- The face value* of the portfolio as of 30 September 2023 - \$135,468,703

*The face value represents the purchase price of investments.

In addition, Council has approximately \$2.114 million held in various bank accounts; being operational accounts; restricted funds held for grants or held in trust. These are not included in the Investment portfolio.

The percentage of the portfolio invested in Socially Responsible Investments (SRI) has increased to 42% from the previous month of 41%, or from \$53 million to \$56.1 million.

The portfolio balance will fluctuate from month to month depending on the timing of payments, rates and grant funds being received.

Investments returns – for September Council returned 4.72% compared to the Annualised Bank Bill Index bank of 4.18%.

Council's total return for the financial year 2023/24 is 4.58% compared to the Annualised Bank Bill Index bank of 4.35%.

Recommendation

That the report be received and noted.

Background

The *Local Government Act 1993* (Section 625), *Local Government (General) Regulation 2021* (Clause 212) and Council's Investment Policy requires a monthly report be submitted to Council on investments. The report is to include the source and amount of funds invested, investment portfolio performance for the period and a statement of compliance in relation to the requirements of the *Local Government Act 1993*.

Report on Investments

	Current Month Face Value*	Current Month Current Value**	Previous Month Face Value	Previous Month Current Value	Average Return	AusBond BB Index Annualised Return	Fossil Free Invest
September	\$135,468,703	\$137,016,397	\$131,105,307	\$132,462,140	4.72%	4.18%	42.00%

*The face value represents the purchase price of investments.

**The current value is the value of investments at today's date and includes any interest owed but not paid

The portfolio balance will fluctuate from month to month depending on the timing of payments, rate receipts and grant funds received. In August Council incurred normal operational expenses, such as employee costs, creditors, and expenditure in relation to capital works program. Council also received reimbursement of grant funds and rates income.

In addition, Council has approximately \$2.114 million held in various bank accounts; being operational accounts; restricted funds held for grants or held in trust. These are not included in the Investment portfolio.

Ethical Investments*.

Where the opportunity arises Council will seek SRI products, however the investment product will be considered in the context of Council's overall cashflow requirements, the opportunity costs of the product and the security of the investment. Presently there is only a small financial opportunity cost between these investments and other available investment products, however this will be monitored for future investments.

Council value of ethical investments in September is \$56,111,568, this is an increase from the previous month of approximately \$3,000,000. The percentage of the portfolio held in SRI has increased to 42% from the previous months 41%.

* Note - this includes Fossil Fuel Free Investments

Portfolio structure - Council is limited in its investment options in accordance with the Minister's Investment Order and the Investment Policy adopted by Council. The current portfolio is split between cash and fixed deposits. These offer a lower return to other products however have a greater security around capital protection.

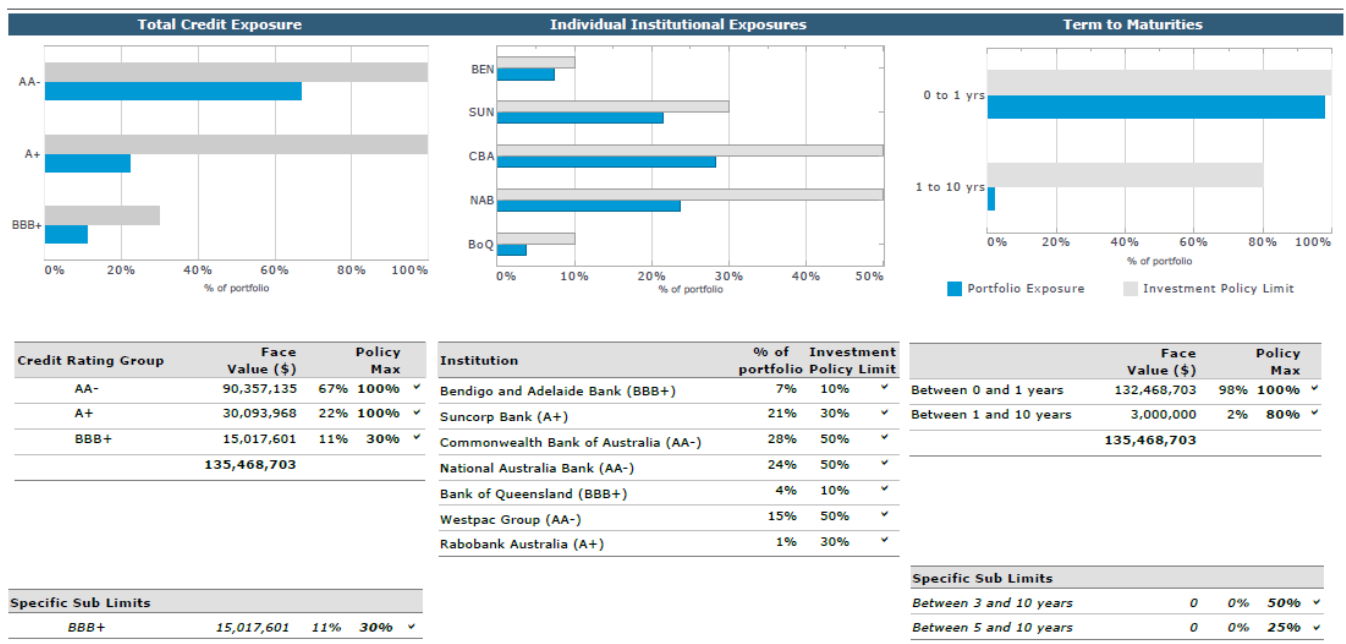
Lismore City Council
Executive Summary - September 2023

Investment Holdings

	Face Value (\$)	Current Value (\$)	Current Yield (%)
Cash	12,357,135	12,357,135	4.1000
Term Deposit	123,111,568	124,659,262	4.8254
	135,468,703	137,016,397	4.7592

Compliance with Policy Requirements

Lismore City Council
Investment Policy Compliance Report - September 2023



✓ = compliant
X = non-compliant

(Ethical) Investments

As part of the current policy framework and within the limits of prevailing legislation, Council’s investments will be made in consideration of the principles of ethical investment management.

Where possible investments are made to achieve the intention of the investment policy of Council around Ethical Investments, however this must be made within the constraints of the current market, the availability of investment products, maintaining a diverse portfolio that minimises the risk to Council’s capital and ensuring compliance with Council’s investment policy.

The availability of suitable investments products that fits within the “Fossil Free” category and is within the current policy compliance is limited.

Council will seek SRI products; however, the investment products will be considered in the context of Council’s overall cashflow requirements, the opportunity costs of the product and the security of the investment.

Lismore City Council

Environmental Commitments Report - September 2023

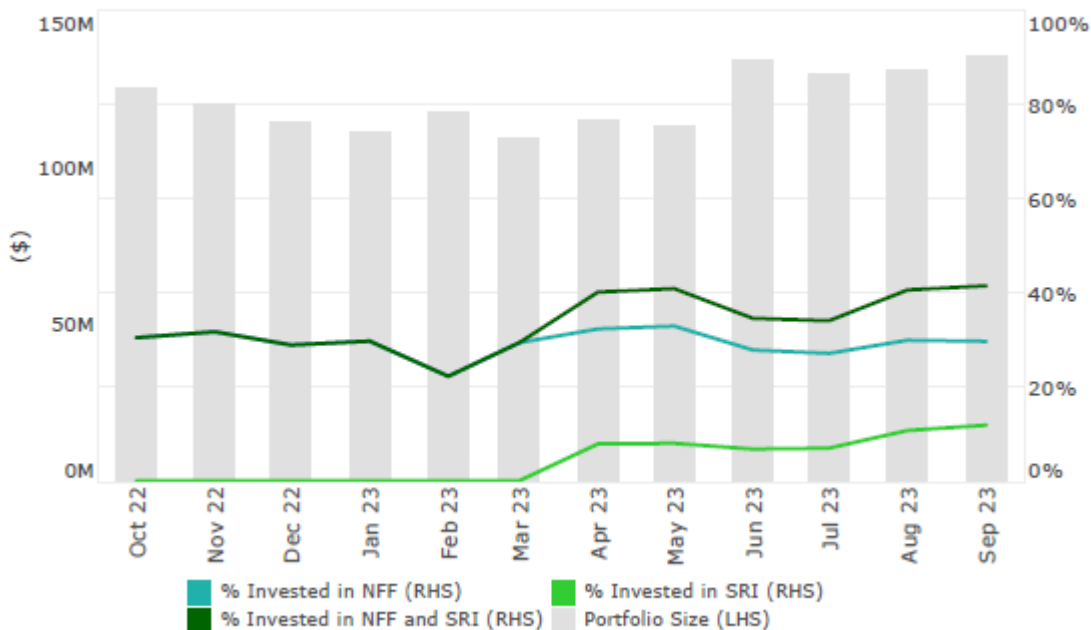
Current Breakdown

ADI Lending Status *	Current Month (\$)	Previous Month (\$)
Fossil Fuel Lending ADIs		
Bank of Queensland	5,000,000	1,000,000
Commonwealth Bank of Australia	38,357,135	42,974,135
National Australia Bank	32,000,000	30,000,000
Westpac Group	4,000,000	4,000,000
	79,357,135 59%	77,974,135 59%
Non Fossil Fuel Lending ADIs		
Bendigo and Adelaide Bank	10,017,601	10,017,601
Rabobank Australia	1,000,000	1,000,000
Suncorp Bank	29,093,968	28,113,572
	40,111,568 30%	39,131,172 30%
Socially Responsible Investment		
Westpac Group (Green TD)	16,000,000	14,000,000
	16,000,000 12%	14,000,000 11%
	135,468,703	131,105,307

* source: Marketforces

Percentages may not add up to 100% due to rounding

Historical Portfolio Exposure to NFF Lending ADIs and SRIs



Maintaining adequate liquidity to progress flood restoration works

An additional constraint on Council moving to Ethical Investments is the requirement to maintain appropriate liquidity to ensure flood restoration works continue within an acceptable timeframe whilst waiting for reimbursement from NSW and Australian Government agencies.

The following amounts have been included in the Investment Portfolio, Commonwealth Bank of Australia \$12,357,135. This is short term overnight money account and is used for liquidity purposes, that is to provide access to funds to meet Council's short term payment commitments. This account is a fossil fuel investment however Council is restricted in its options of available providers to provide short term liquidity whilst providing returns greater than the cash rate.

If these accounts are excluded, then Council's Ethical Investment ratio is 45.55%.

Comments

Responsible Accounting Officer

All investments with various financial institutions have been made in accordance with the *Local Government Act 1993* and *Local Government (General) Regulation 2021*.

Conclusion

A report on investments is required to be submitted to Council monthly.

The value of the portfolio for September 2023 is provided.

Attachment/s

1. [🔗](#) September 2023 Investment (Over 7 pages)

Report

Subject	Lismore Senior Citizens Social Club - Subsidised License Application
TRIM Record No	BP23/810:AF18/416
Prepared by	Acting Property Services Manager
Reason	To consider a subsidised license application in accordance with Policy 1.8.25.
Strategic Theme	Leadership and participation
Strategy	We collaborate with other agencies to achieve great outcomes.
Action	Build capacity of and provide support to community organisations and groups.

Executive Summary

Lismore Senior Citizens Social Club Inc (the Club) has applied for a subsidised license fee for their occupation of the Goonellabah Community Centre in accordance with Policy 1.8.25. – Leasing of Council Properties.

The Club has occupied a suite in the Goonellabah Community Centre at 27 Oliver Avenue since 2018. The Community Centre was built with financial assistance from the Commonwealth of Australia for the purposes associated with the *Home and Community Care Act 1985*.

This report recommends Council grant financial assistance by way of rent subsidies to the Club.

Recommendation

That:

1. Council enter into a new license agreement with Lismore Senior Citizens Social Club Inc for occupation of part of Goonellabah Community Centre (being Suite 8 and attached store room, 27 Oliver Avenue, Goonellabah), with subsidised rent as outlined in Option 1 of the report
2. the General Manager be delegated authority to execute the license with the Lismore Senior Citizens Social Club Inc (ABN 32 334 073 717) over Suite 8 and the attached store room, 27 Oliver Avenue, Goonellabah (Lot 2 in DP 832169), for a term of five years for the permitted use of: Lismore Senior Citizens Social Club Activities.

Background

Goonellabah Community Centre

The Goonellabah Community Centre was built with financial assistance from the Commonwealth of Australia for the purposes associated with the *Home and Community Care (HACC) Act 1985*. Under a HACC agreement (refer attachment) dated 12 May 1993, a proportion of the Centre is to be used for the provision of services which are within the scope of the HACC Program or for the welfare of older people.

HACC transitioned into the Commonwealth Home Support Program (CHSP).

Lismore Senior Citizens Social Club

The Club was a previous tenant of the Laurie Allan Centre in Magellan Street, Lismore. After the 2017 flood, the Club needed a new building to call home. On 19 January 2018 the Club commenced its use of Suite 8 in the Goonellabah Community Centre (GCC), with the license fee in line with the previous tenant's fee, being \$9,100 per annum.

Following representations by the Club to Council requesting and providing reasoning for a reduction in the annual license fee, a Notice of Motion was submitted to the ordinary Council meeting of 8 May 2018 to move that Council reduce the annual rental charge from \$9,100 per annum to \$2,000. This motion did not gain majority support at the Council meeting and instead it was resolved that:

1. *Council notes the impact of high fees on our senior citizens.*
2. *Council staff work with the Senior Citizens to make an application in accordance with Policy 1.8.25 and report back to Council.*

Negotiations between Council staff and the Club resulted in a subsidised annual license fee of 50% being submitted for Council's consideration. At its ordinary meeting of 14 August 2018 Council adopted the following conditions for a license agreement:

P17487-07	Senior Citizens' Social Club Subsidised Licence Fee for Licence of Goonellabah Community Centre – 27 Oliver Avenue, Goonellabah
Property:	Goonellabah Community Centre, 27 Oliver Avenue
Suites:	Suite 7
Licensee:	Senior Citizens' Social Club
Term:	Monday to Friday for five (5) years commencing 19 January 2018
Licence Fee:	Reduced by 50% to \$87.50 per week (including GST).

Leasing of Council Properties Policy 1.8.25

Council's Policy provides a mechanism to grant subsidies and sets out six eligibility criteria to be considered for a subsidy. An extract of the policy appears below:

Subsidised Lease Arrangements

Council will consider subsidising lease arrangements for community based groups in certain circumstances.

To be considered eligible for a rental or any other subsidy as part of the lease the community group or organisation must first demonstrate that they are:

- *A not-for-profit community-based organisation*
- *Have open membership, i.e., membership is open to the general public*
- *An incorporated association*
- *Providing a necessary and beneficial service to the general community.*

In addition, Council will require that any community based group proposing to lease a Council owned property, whether at a subsidised rental or not:

- *Demonstrate an ability to meet the financial obligations of a lease arrangement (provide a copy of the most recent audited financial statements and a business plan where appropriate)*
- *Maintain appropriate insurances, including public liability and comprehensive contents insurance.*

Currently hardship is not amongst the criteria required to be considered by Council. In fact, the applicant is required to demonstrate they can meet the financial obligations of the lease. Council may amend its policy to change the eligibility criteria.

Application for Rent Relief

On 25 August 2023 the Club submitted the attached application for financial assistance in accordance with [Council's Policy 1.8.25 - Leasing of Council Properties](#), Subsidised Lease Arrangements, by requesting a subsidised rent for occupation of the GCC (being Suite 8 and the attached store room), as follows:

Premises:	Part 27 Oliver Avenue, Goonellabah
Current Rent:	\$87.50/week (incl GST)
Market Rent*:	Approximately \$275/week (incl GST)
Proposed Rent:	\$93.80/week (incl GST) 1 st year
Proposed subsidy:	\$181.92/week (incl GST).

*Market Rent being the subsidised rent Council resolved to provide RSL LifeCare (11 October 2022) and Lismore Meals on wheels (13 September 2022) for licenses within the GCC.

In accordance with Policy 1.8.25 – Leasing of Council Properties, Subsidised Lease Arrangements ('the Policy'), the Club has demonstrated it is eligible to be considered for a rental subsidy as it meets the following Policy requirements:

- 1. A not for profit (NFP) community based organisation**
The Club is a self-assessed NFP organisation that operates for its purpose and not for the profit or gain of its individual members.
- 2. Have open membership**
The Club has an open membership to all persons over the age of 50 with no gender, social, political, racial or religious discrimination.
- 3. An Incorporated Association**
The Club was incorporated on and from 29 June 1988.
- 4. Providing a necessary and beneficial service to the general community**
The objective of the Club is to provide a place where senior citizens and other eligible persons may meet together for companionship, relaxation, social activities, community service and for their general well being. The Club provides a place where services may be developed and delivered to improve the wellbeing of the elderly and disadvantaged citizens of Lismore.
- 5. Demonstrate an ability to meet the financial obligations of a lease arrangement**
The Club has provided income and expenditure statements demonstrating the club holds the ability to meet the financial obligations of the current license agreement entered.
- 6. Maintain appropriate insurances, including public liability and comprehensive contents insurance**
The Club maintains current certificates of currency until September 2024. The policy has public liability to \$20,000,000 and contents insurance.

Further information considered relevant

The GCC was built with financial assistance from the Commonwealth of Australia for the purposes associated with the *HACC Act*, 1985. Under a HACC agreement dated 12 May 1993, the Centre is to be used for the provision of services which are within the scope of the HACC Program or for the welfare of older people.

The Club's newsletter, which contains the Club's calendar of events, confirms the Club is using the Centre in accordance with the HACC agreement.

Options to Respond to Senior Citizens Application for Rent Relief

Option 1 – Agree to Rental Subsidy as requested – Enter into five-year lease at the proposed subsidised rent of \$93.80/week (incl GST), with an annual stepped rent review to increase the rent so that at Year 5 it equates to \$6,000 per annum (incl GST).

In its application, the Club requested Council consider the amount it paid the previous year, plus CPI, up to \$6,000 per annum (incl GST). Council staff had regard to CPI on the current rent and stepping the rent up to reach \$6,000 per annum by Year 5, there was \$10 difference between the annual stepped approach and the CPI increase for the first year. Discussion with the Club President indicated that for financial forward planning, the rent preference would be the stepped approach so as to budget for the increased rent as shown below.

	Annual Rent (Inc GST)	Weekly Rent (Inc GST)
Year 1	\$4,840.00	\$ 93.08
Year 2	\$5,130.00	\$ 98.65
Year 3	\$5,420.00	\$104.23
Year 4	\$5,710.00	\$109.81
Year 5	\$6,000.00	\$115.38

Pros	Cons
<ul style="list-style-type: none"> • Council will continue to lease the property in line with the HACC agreement. • The Club will have a suitable home base to continue to provide the important service it offers. • The Club can budget for the yearly increase in rent. 	<ul style="list-style-type: none"> • This is not in line with the subsidised rent granted by Council to Meals on Wheels (September 2022 meeting) and RSL LifeCare (October 2022 meeting).

Option 2 - Refuse rental subsidy as requested and offer license in line with subsidy recently granted to Meals on Wheels and RSL LifeCare – At the September 2022 and October 2022 Council meetings, Council resolved to grant a rental subsidy to Meals on Wheels and RSL LifeCare who occupy part of the same building. The proposal is to enter a five year license in line with the rental subsidy granted to Lismore Meals on Wheels and RSL LifeCare, with the annual rent review to increase by CPI annually, starting at a rental fee of \$1,191.67/month (incl GST).

Pros	Cons
<ul style="list-style-type: none"> • The rental subsidy is in line with the rental subsidy granted to Meals on Wheels and RSL LifeCare; noting RSL LifeCare and Meals on Wheels are Not for Profit (NFP) businesses; the Club is a social club run by volunteers. 	<ul style="list-style-type: none"> • High risk the Club will not be able to afford the rent and will be required to vacate the building. • If the Club vacates the premise, there may be an extended license fee free period finding a suitable tenant in line with the HACC agreement.

Comments

Finance

The recommendation as printed is supported as it is still within the 2023/24 budget forecasts as adopted by Council.

Public consultation

[Section 356 of the Local Government Act 1993](#) provides a Council must give 28 days' public notice of a proposal to pass a resolution to grant financial assistance if the proposed recipient acts for private gain. As the Lismore Senior Citizens Social Club Inc does not act for private gain, no public notice of the proposal has been given.

Conclusion

Lismore Senior Citizens Social Club Inc has submitted an application for financial assistance in accordance with Council's Policy 1.8.25 Leasing of Council Properties, Subsidised Lease Arrangements and has demonstrated it meets the criteria.

It is acknowledged the Club provides an important service to Lismore's ageing community. It is recommended a subsidised license arrangement be granted to the applicant and a new license be entered into in line with Option 1 as outlined in the report.

Attachment/s

1. [↓](#) Goonellabah Community Centre HACC Agreement
2. [↓](#) Lismore Senior Citizens Social Club Application requesting subsidised rent

THIS DEED OF AGREEMENT

made the 12th day of May 1993

between the NSW DEPARTMENT OF LOCAL GOVERNMENT & CO-OPERATIVES, for and on behalf of the CROWN in right of the STATE OF NEW SOUTH WALES (in this Deed of Agreement called 'the Department' and 'the State' respectively), of the one part, and the Lismore City Council (in this Deed of Agreement called 'the Council') of the other part.

WHEREAS:

- (A) for many years, the State, local councils, churches and community organisations have been providing and funding a range of home and community care services;
- (B) financial assistance has been provided by the Commonwealth of Australia for certain home and community care services and facilities, including Home Nursing, Home Care and Delivered Meals services and Senior Citizens' Centre facilities; and,
- (C) the State of New South Wales and Commonwealth of Australia have entered into an agreement for joint operation and funding of a Home and Community Care (HACC) Program pursuant to the Home and Community Care Act, 1985 of the Commonwealth Parliament.

NOW IT IS HEREBY AGREED as follows:

INTERPRETATION

- 1. In this Deed of Agreement, unless the contrary intention appears;
 - (a) words and phrases shall have the general meaning ascribed to them in the Home and Community Care Act, 1985 of the Commonwealth Parliament AND in the Home and Community Care Program National Guidelines;
 - (b) the words 'approved project' AND 'approved facility' AND 'approved purpose' shall refer to the specific project and purpose jointly approved by the Commonwealth and the State for funding under the Home and Community Care Program which is described in Schedule 1 of this Deed.

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2. FORMAL ACCEPTANCE OF OFFER

2.1 The award of the Grant to the Council shall be subject to receipt by the Department of notification in writing of the acceptance by the Council of the offer of the Grant.

3. CONDITIONS TO APPLY

3.1 Acceptance of the offer of the Grant shall constitute a contract between the Council and the Department in terms upon which the Grant is offered and the conditions of the contract shall include these conditions.

4. PAYMENT AND ACCEPTANCE OF THE GRANT

4.1 Subject to the terms and conditions of this Deed of Agreement the Department shall pay to the Lismore City Council a specific purpose grant ('the Grant') of up to \$384,000 as financial assistance towards the cost of the approved project.

4.2 The amount of the Grant shall not exceed two-thirds of the agreed cost of providing the approved facility or that part thereof to which the Grant applies.

4.3 The approved facility shall be developed for or in connection with the provision of approved HACC services to members of the HACC Target Population in accordance with the objectives, policies and guidelines of the Home and Community Care Program, as varied by agreement between the State and the Commonwealth from time to time.

4.4 The Council hereby acknowledges the purpose of the Grant as referenced and set out in this Deed of Agreement and in Schedule 1 of this Deed of Agreement, and agrees to accept the Grant on the terms and conditions hereinafter provided.

5. CONTRIBUTION BY THE COUNCIL

5.1 The Council shall make a contribution towards the cost of providing the approved facility, from the Council's own resources, or on another basis which has the prior approval of the Department, and such contribution shall be at least equal to one dollar for every two dollars of the Grant moneys provided as financial assistance.

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6. USE OF THE GRANT

6.1 The Council undertakes to provide the approved facility and to use or apply all Grant moneys, together with all interest income received from investment of Grant moneys, only for the purposes of meeting or reimbursing, as the case may be, necessary expenditure on the approved project.

7. REPORTING, CERTIFICATION AND EVALUATION

7.1 The Council shall ensure that proper and complete project management records and books of account are established and maintained to show the receipt, management and expenditure of funds pursuant to the project including Grant moneys and interest income received on Grant moneys.

7.2 The Council shall provide regular reports, in the form determined by the Department, of progress and expenditure on the approved project, and shall allow representatives of the Department or of the State and Commonwealth Ministers responsible for the administration of the Home and Community Care Program to inspect the project records and the relevant books of account on request.

7.3 At the commissioning of the approved facility or whenever required by the Department, the Council shall provide a written report to the Department of:

- (a) the amounts and sources of all funds and other resources received or allocated from the Council’s own resources for provision of the approved facility, including the Grant and all interest income earned from investment of Grant moneys held in the trust account;
- (b) the amounts and purpose of all expenditure on provision of the approved facility including details of transfers of Grant moneys from the trust account and all other expenditure;
- (c) the form of the finished facility, including photographs and a site plan on iso-standard A3 sheets showing the siting and layout of buildings and identifying functional areas of the facility; and,
- (d) any other matters relevant to the use of the Grant moneys and the provision and ongoing operation of the approved facility as may be requested by the Department or considered appropriate by the Council.

7.4 The report shall be an accurate record and shall be certified as such by the Shire Clerk or General Manager responsible for its preparation.

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7.5 The report shall be accompanied by a certified statement by the Mayor or President of the Council to the effect that payments made and interest income received under these terms and conditions have been used for the purpose of the approved project, that the terms and conditions have been met and that the approved facility has been commissioned for the benefit of the HACC Target Population.

8. FINANCIAL ACCOUNTABILITY

8.1 No later than three months after the completion of the approved facility the Council shall provide to the Department a statement from the Council’s auditor that the expenditure of the Grant moneys and interest income received has been incurred in accordance with the specific terms and conditions of the Grant.

8.2 The Council shall ensure that the auditor who prepares the financial statement is:

- a) registered as a company; or
- b) a member of the Institute of Chartered Accountants; or
- c) a member of the Australian Society of Accountants; or
- d) a Government approved Accountant.

8.3 The auditor shall not be an employee of the Council or a member of the Council’s management committee.

8.4 The Council shall make all financial and operational records in respect of the service available for inspection by the Department including the taking of extracts and copies.

9. ACQUISITION, DESIGN AND CONSTRUCTION

9.1 The Council undertakes that the proposed site, premises and surroundings are suitable for the approved purpose.

9.2 The Council shall:

- (a) obtain the prior approval of the Department as to the proposed site and the purchase, design, construction and/or refurbishing of the approved facility and all tendering, design and construction processes to be employed in provision of the approved facility;

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- (b) ensure that the facility to which the Grant is applied accords with or exceeds all relevant requirements and guidelines laid down by Commonwealth, State and Local authorities, including zoning regulations, fire regulations and design standards for services to and access by people with a disability;
- (c) ensure that the acquisition, design and construction of the approved facility demonstrates cost efficient use of capital, material, labour and other resources;
- (d) ensure that the design or specification for the approved facility is appropriate for the approved purpose, prepared by competent persons and based on adequate consultation with relevant service providers, access committees, users, professionals and government authorities;
- (e) ensure that suitably qualified and competent persons are engaged in management of the project throughout all stages of provision of the approved facility; and,
- (f) promptly commence, and diligently proceed with work within the time frame determined by the Department.

10. INCOME

10.1 The Council shall ensure that income derived from the use of the facility or that part of the facility to which the Grant applies shall be applied for or in connection with the provision of approved HACC services or for the management and maintenance of the facility.

11. INSURANCE AND INDEMNITY

11.1 The Council shall ensure that adequate insurance, including Public Liability, Fire, Perils, Building and Contents insurance is taken out and maintained in force, and shall indemnify the Department and State and Commonwealth Ministers responsible for the administration of the Home and Community Care Program and their officers against all claims for damages arising from the construction and operation of the approved project.

11.2 The Council shall ensure that the interest of the State of New South Wales and the Commonwealth of Australia is noted in all insurances.


11.3 The Council shall ensure that insurance is taken out with firms authorised to conduct insurance business under the Commonwealth Insurance Act.

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12. DIRECTION, MANAGEMENT AND MAINTENANCE

- 12.1 The Council shall always ensure that the priority use of the facility, or that part thereof to which the Grant applies, will be for or in connection with the provision of services which are within the scope of the Home and Community Care Program. Subject to this priority the facility may be used secondarily by or for the welfare of older people, people with disabilities and other disadvantaged groups and, when otherwise available, for generally compatible community purposes at the discretion of the Council.
- 12.2 The Council shall ensure that all people identified in the Home and Community Care Program National Guidelines as the HACC Target Population have access to and use of the community facility, subject to reasonable management arrangements for efficient time shared use of the facility. Management arrangements shall always facilitate equitable access to the facility by ALL members of the HACC Target Population, particularly those groups identified as disadvantaged in their access to community services, including Australian Aborigines, persons suffering from brain failure, financially disadvantaged persons, younger disabled persons, persons living in remote or isolated areas and persons of non english speaking background.
- 12.3 The Council shall consult with and facilitate co-operation with local HACC service providers and Government HACC authorities in the ongoing management and operation of the approved facility for the development of a comprehensive, flexible and integrated range of home and community care services for the basic maintenance of members of the HACC Target Population in the service area, where possible and appropriate.
- 12.4 The Council shall direct the operation of the approved facility so that, within available resources, priority is directed to the support of services for persons within the HACC Target Population most in need of home and community care.
- 12.5 The Council shall not lease or otherwise delegate responsibility for the direction of use of the approved facility to another person, group or organisation unless the prior approval in writing has been obtained from the Department as to the terms and conditions of such a lease or delegation.
- 12.6 The Council may delegate responsibility of day to day management of the approved facility, subject to:
- (a) the Council's ongoing direction as to policy, usage and accountability;
 - (b) guidelines of the Home and Community Care Program;
 - (c) compliance with terms and conditions of this Deed of Agreement, where applicable; and,
 - (d) termination of the delegation with reasonable notice, by resolution of the Council.

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12.7 The Council shall ensure that any managing body charged with responsibility of day to day management of the approved facility:

- (a) shall be so constituted and directed as to ensure that priority use of the facility or that part thereof to which the Grant relates is for or in connection with the provision of approved Home and Community Care services to members of the HACC Target Population;
- (b) shall, unless otherwise agreed by the Department, include at least one person who is a member of the HACC Target Population receiving an approved HACC service and at least two other persons who are nominated representatives of recognised HACC service providing organisations, and shall also ensure, if so requested by the Department, that management arrangements for the facility conform with requirements of the Department as determined from time to time;
- (c) is at all times aware of and guided by this Deed of Agreement and the objectives, policies and guidelines of the HACC Program as set out in the Home and Community Care Act, 1985, the Home and Community Care Program National Guidelines and any future guidelines adopted for the administration of Senior Citizens' Centres and HACC Community Centres.

12.8 The Council shall ensure that management of the approved facility is always subject to adequate property maintenance planning for ongoing efficient use within the terms and conditions of this Deed of Agreement.

12.9 Nothing in the terms of Clauses 11.1 to 11.8 above shall prevent the Council:

- (a) entering into or delegating to an appropriately constituted management committee or body authority to enter into licence agreements with eligible organisations providing services within the scope of the HACC program, for appropriate exclusive or time shared use of a part of the approved facility for facilitation of such services to members of the HACC Target Population, and requiring the payment of a reasonable fee for such use; or,
- (b) subject to priority use for or in connection with HACC services, entering into or delegating to an appropriately constituted management committee or body authority to enter into, time limited licence Agreements for shared use of appropriate parts of the facility with other organisations providing services or programs for the welfare of members of the HACC Target Population or other purposes within the scope of this Deed of Agreement, and requiring the payment of a fee for such use.

12.10 The Council shall ensure that the buildings and grounds of the approved facility and all furniture, plant and equipment acquired for or in connection with operation of the facility are maintained in good order and condition.

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13. ASSET REGISTER

13.1 The Council shall ensure that a proper and complete register of all items of furniture, plant and equipment purchased for or valued at more than \$300 (whichever is the greater) and acquired for or in connection with the provision and operation of the approved facility, is maintained. The register shall at least record; a description of the item including any model, engine or serial number; the date of acquisition and the purchase price or value at the time of acquisition; the relevant depreciation allowance and the depreciated value adjusted, accordingly.

14. ALIENATION

14.1 The Council shall not alienate the approved facility and shall not mortgage or otherwise use the approved facility as security for loans or other financial arrangements without the prior written approval from the Department.

15. MONITORING AND EVALUATION

15.1 The Council shall ensure that appropriate mechanisms for needs assessment, service evaluation and community service planning for the HACC Target Population in the local government area are maintained, particularly with respect to the service support role of the approved facility.

15.2 The Council shall direct and monitor the operation of the approved facility and shall review and report on the operation of the facility to its electors and to the Department at least once in each year.

15.3 The Council shall provide appropriate direction and guidance to the management and users of the facility to ensure compliance with this Deed of Agreement and efficient and equitable operation in accordance with the objectives, policies and guidelines of the Home and Community Care Program as set out in the Home and Community Care Act 1985, the Home and Community Care Program National Guidelines and any future guidelines adopted by the State of New South Wales for the administration and operation of HACC community facilities, Senior Citizens' Centres and HACC Community Centres.

15.4 The Council shall facilitate a review of the approved project where considered appropriate by the Department or by the Commonwealth or State Ministers responsible for administration of the Home and Community Care Program.

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16. REPAYMENT

16.1 In the event that the approved facility or that part thereof to which the Grant relates, is disposed of, is not or ceases to be used as specified in this Deed of Agreement or is destroyed then the Council shall pay to the State of New South Wales the joint Commonwealth - State share of the value of the property at the date of the happening of this event, unless the Commonwealth Minister and the State Minister responsible for administration of the Home and Community Care Program otherwise agree.

16.2 For the purpose of clause 15.1 above:

the phrase "the value of the property" means the amount agreed upon by the Council, the Commonwealth and the State or, in the absence of agreement the amount determined by a qualified valuer nominated by the Commonwealth Minister responsible for administration of the Home and Community Care Program, as the value of the property; and,

the phrase "the joint Commonwealth - State share" means the amount that bears to the value of the property the same proportion as the amount expended in relation to the acquisition and development of the property attributable to the Grant bears to the total cost of acquiring and developing the property.

17. PROMOTION

17.1 The Council shall, wherever appropriate, inform local area residents of the existence and purpose of the approved facility and shall promote its Home and Community Care functions.

17.2 In any advertising for tenders or staff or functions, and in any press publicity and signs associated with the approved facility the Council shall, wherever appropriate, acknowledge that it is a HACC facility and include words to the effect that:

"The Home and Community Care (HACC) Program is jointly funded by the New South Wales and Commonwealth governments with support from local councils, churches and community organisations."

18. BREACH OF THIS DEED OF AGREEMENT

18.1 The Council shall be in breach of this Deed of Agreement if there is a failure by the Council to meet any of the terms and conditions of the Grant which in the joint opinion of the State and Commonwealth Ministers appointed to administer the Home and Community Care Program may significantly jeopardise the efficiency and the effectiveness of the approved facility.

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19. TERMINATION OF THE GRANT

19.1 In the event that the Council fails:

- (a) to observe and perform the terms of these conditions; or,
- (b) to carry out the approved project and direct the ongoing operation of the approved facility with competence and diligence, and such failure continues for a period of twenty-one (21) days after notice is given to the Council by the Department requiring that the failure be remedied.

19.2 The Minister for Local Government may by notice in writing to the Council:

- (a) where the whole of the Grant moneys have not been expended, terminate the right of the Council to continue to hold and use any part of the Grant remaining unexpended;
- (b) require the repayment to the Department of any unexpended portion of the Grant; and,
- (c) suspend any further payment of Grant moneys to the Council and any amount required to be repaid in accordance with paragraph (b) of this clause and/or clause 15.1 above shall be deemed to be a debt due to the State and recoverable as such.

20. DISPUTES

20.1 The Council and the Department shall ensure that disputes regarding the interpretation of this agreement are resolved co-operatively in the interests of the users of the service.

20.2 If a dispute arises in relation to this Agreement then the Director General may nominate a representative who is not personally involved in the dispute for the purpose of negotiating a settlement.

20.3 Should the nominated representatives of the Director General and the Council be unable to resolve the dispute within 14 days (or such other period as they may agree upon) the matter shall be referred to a person mutually agreed upon for conciliation and arbitration.

Initialled: [Redacted] Council [Redacted]

[Redacted] Dept of Local Government & Co-operatives.. [Redacted]

21. GOVERNING LAW

21.1 This Deed of Agreement shall be governed and construed in accordance with the laws of the State of New South Wales and the parties shall submit to the jurisdiction of the Courts of New South Wales.

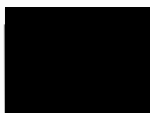
22. SPECIAL CONDITIONS

22.1 Schedule 1 of this Deed of Agreement shall form a part of this Deed of Agreement and any conditions recorded therein shall be conditions of the Grant.

22.2 Additional special terms and conditions of the Grant, if any, are to be recorded here.

*** THERE ARE NO ADDITIONAL SPECIAL CONDITIONS ***

Initial



City of



Dept of Local Government & Co-operatives



Schedule 1**Project Summary**

File: FF88/1610

Round: 8

PROJECT: Goonellabah HACC Centre

SERVICE: HACC Community Facility

ADMINISTERING BODY: NSW Department of Local Government & Co-operatives

SPONSOR: Lismore City Council

CEO: Paul Muldoon

CEO POSITION: Gen Mgr/Town Clerk

ADDRESS: PO Box 23A

LISMORE NSW 2480

Contact Person:	Contacts Position:	Contacts Tel:	Contacts Fax:
Anne Meagher		(066) 25 0548	
Nick Juradowitch	Chief Planner		

PROJECT LOCATION: Oliver Avenue

GOONELLABAH NSW 2480

DCS REGION: Far North Coast **STATE ELECTORATE:** Lismore

LGA: Lismore City **FEDERAL ELECTORATE:** Richmond

PROJECT DESCRIPTION: To construct a new HACC facility as stage I of a Multi-Purpose Community Centre Accommodation will be provided for: Interchange Respite Care, Lismore Home Modification and Maintenance Service, Lismore Seniors Day Care, the HACC development worker, meeting rooms, volunteer and carers support groups information and training.

SPECIAL CONDITIONS: Conditions as per the HACC Funding Deed of Agreement.

NATURE OF COMMITMENT: Non-recurrent (Capital Works)

PERIOD OF FUNDING: From commencement to completion of project.

Sponsor HACC Funds	Net C'wealth/State HACC Grant:	Upper Limit of Approval (HACC Effect)	Estimated Expenditure (Net C/S Payments)	
			1992/93	1993/94
\$403,000	\$384,000	\$787,000	\$384,000	nil

HACC FUNDING AGREEMENT: Goonellabah HACC Centre

SIGNED, SEALED AND DELIVERED:

The Common Seal of the Lismore City Council was hereto affixed this 21 day of April 1993 under delegated Authority Minute Number 229/93 in pursuance of a resolution of the Council passed on this 6th day of April 1993 in the presence of:

[Redacted signature]

Mayor / President

[Redacted signature]

Town Clerk

[Redacted signature]

SIGNED for and on behalf of the NSW Department of Local Government & Co-operatives, by Director General

in the presence of:

[Redacted signature]

Signature of Witness

[Redacted signature]

VICKI JEAN MILNE

Full Name of Witness

To: The Lismore City Council
 From: Frank DiGiandomenico President Lismore Senior Citizens Social Club INC
 Date: 25 August 2023
 Re: Proposal to council for rent reduction.

In applying for rent reduction for the hire of The Goonellabah Community centre we present the following documents.

- We are a not for profit community based organization
- We have open membership to all persons over the age of 50 and no longer employed
- A copy of our current Financials
- A certificate of Incorporation
- An up to date copy of our insurance covers
- We provide a necessary service to the general community
- We are able to meet all our financial obligations
- Please find enclosed a current newsletter and copy of our constitution.

We are a club of about 55 members we have a committee of 9 these being President/public officer, Vice President, Secretary, Treasurer, Catering manager and 4 General committee members who put in a mighty effort in maintaining this club, we also have members who involve themselves in club functions.

1. We are a not for profit organization all income is put back into our club by providing activities to our members and by keeping costs down.
2. Our membership is open to all members of the public without any pred???
3. Our only request is that all members abide by all conditions set out in our constitution and that they are over 50 however we do have one junior member from overseas who visits family and is always welcome to attend our functions, all potential members are allowed to attend twice prior to deciding to join or not join.
4. As was stated in our previous application of 21 May 2018 we have 2 accounts one being a working account which has a balance of about \$ 10,000.00 And a fixed term account with a balance of \$20,000.00 In 2018 this account had \$30,000.00 but due to loss of income through covid 19 we still had rent, insurance and other expenses which we needed to meet, we also made donations to Palliative care for \$500.00 and to the westpac helicopter of \$1000.00 of which \$750.00 was a donation from the Ballarat senior citizens who thought that we had lost all again when we informed them that we were ok and that we would return those funds they said no and to give it to who ever we wanted so we increased it to \$1000.00 and gave it to westpac

helicopter who do a marvellous job. Please find attached a current financial statement as of April 2023 AGM. We also lost over \$1000.00 worth of food and a \$2000.00 refrigerator while we were away from the club for 1 month during roof repairs.

- 4 Please find attached certificate of incorporation.
- 5 Please find attached certificate of all current Insurance policies.
- 6 Due to the average age of our members we are generally unable to aid in labour terms but we do what we aid by financial means, and now that we are over the worst of covid and learning to live with it we are able to get back to running functions specifically designed to raise funds for different causes and hopefully able to raise the amounts to be donated, our membership meeting attendance prior to Covid was always around 40 members this dropped considerably after the covid outbreak due to the fear and conformance to the regulatory requirements set in place by all forms of Government which all our members agreed with, these numbers now are returning to pre covid levels, and hoping to gain some new members due to some clubs closing down.

We have been provided with information by council staff in regards to current council property hire costs.

We find ourselves unable to meet these costs without drastically increasing our charges to our members who are mostly pensioners on the age pension, and have been burdened with cost of living increases, however we believe that we are obliged to do our share and accept that a rent rise is inevitable.

As to the amount we would consider the amount paid in the previous lease plus CPI or up to a figure of \$6000.00 per year, we hope that this is acceptable to council as this club is the only outlet to some of our members, all our members find a great deal of friendship and camaraderie and something we would like to keep.

In closing we look after our clubrooms and maintain it, and we are of an era where bills are paid prior to eating.

Yours Sincerely

Frank DiGiandomenico
President Lismore Senior Citizens Social Club INC.

Report

The following documents have been prepared in accordance with previous resolutions of the Council and/or the provisions of the *Local Government Act 1993* and other relevant statutes.

This report does not support the Council seal being stamped on documents that don't meet the criteria of:

- a) Council Corporate Procedure 1.1.36, which purpose is to limit use of the Council seal to documents required by law to be signed under seal; and
- b) The General Manager's delegations to grant leases and licenses at the time these agreements were negotiated, which avoids commercial disadvantage to Council and the proposed occupiers that could suffer if agreements were required to be reported to Council prior to being agreed.

Executive Summary

The attached Annexure provides details on the following documents to be executed under delegated authority by the General Manager:

- | | |
|--------|--|
| Item A | Lease to Lismore City Council over Suite 6, 164 Molesworth Street, Lismore for Lismore Regional Gallery's continued use of the office space (ref: AF23/1531). |
| Item B | Lease to Lismore City Council over Shop 3, 164 Molesworth Street, Lismore for continuation of the Lismore Regional Gallery Pop up Gallery (ref: AF23/1302). |

Recommendation

That Council note the following documents be executed as negotiated under delegated authority by the General Manager:

- Item A **Lease to Lismore City Council (ABN 60 080 932 837)** over Suite 6, 164 Molesworth Street, Lismore (Lot 1 in DP 1862) for Lismore Regional Gallery's continued use of the office space in line with funding from the State Government (ref: AF23/1531)
- Item B **Lease to Lismore City Council (ABN 60 080 932 837)** over Shop 3, 164 Molesworth Street, Lismore (Lot 1 in DP 1862) for Lismore Regional Gallery's continuation of the Lismore Regional Gallery Pop up Gallery in line with funding from the State Government (ref: AF23/1302).


Attachment/s

1. [↓](#) Additional Details - Documents for Signing

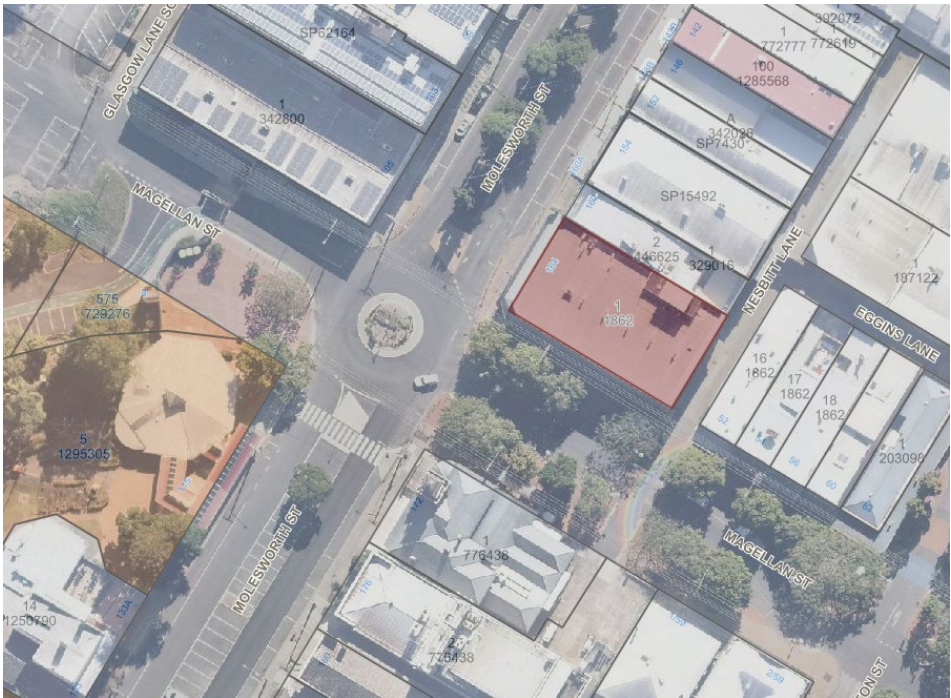
Annexure Page

Documents for Signing - Council meeting 10 October 2023

The Documents for Signing recommend the following occupancy agreements be signed by the General Manager under existing delegations.

Item A: Lease to Lismore City Council for Lismore Regional Gallery office space (Ref: AF23/1531)	
Background	<p>At Council’s ordinary meeting of 14 March 2023 Council resolved to lease a suitable office space in the Lismore CBD for the Lismore Regional Gallery team following the 2023 flood event. Lismore City Council entered a lease over Suite 6 at 164 Molesworth Street, Lismore.</p>  <p>Gallery staff have secured funding through Create NSW Infrastructure CLIRP ECAP Program to continue to use the office space until 30 June 2024. The expiry of the current lease and options are not in line with the current funding. Council could hold over the current lease on a monthly tenancy arrangement but this would also be at risk of the landlord giving one months notice to vacate the premises.</p> <p>The landlord has offered the option to enter a new lease to expire in line with the funding.</p>
Property	Suite 6, 164 Molesworth Street, Lismore being Lot 1 in DP 1862
Lessee	Lismore City Council (ABN 60 808 932 837)
Rent	\$280 per week
Permitted Use	Lismore Regional Gallery office space and back of house operations
Term	In line with funding from the State Government

Item B: Lease to Lismore City Council for commercial/ retail space for Lismore Regional Gallery to facilitate pop-up gallery (Ref: AF23/1302)

<p>Background</p>	<p>At Council's ordinary meeting of 11 October 2022 Council resolved to lease a suitable retail/ commercial office space(s) within the Lismore CBD to provide space for Christmas activations, Lismore Regional Gallery exhibitions, programs and back of house operations following the 2023 flood event. Lismore City Council entered a lease over Shop 3 at 164 Molesworth Street, Lismore.</p>  <p>Gallery staff have secured funding through Create NSW Infrastructure CLIRP ECAP Program to continue to use the pop up gallery shop space until 30 June 2024. The expiry of the current lease and options are not in line with the current funding. Council could hold over the current lease on a monthly tenancy arrangement but this would also be at risk of the landlord giving one months notice to vacate the premises.</p> <p>The landlord has offered the option to enter a new lease to expire in line with the funding.</p>
<p>Property</p>	<p>Shop 3, 164 Molesworth Street, Lismore being Lot 1 in DP 1862</p>
<p>Lessee</p>	<p>Lismore City Council (ABN 60 808 932 837)</p>
<p>Rent</p>	<p>\$450 per week</p>
<p>Permitted Use</p>	<p>Lismore Regional Gallery office space and back of house operations</p>
<p>Term</p>	<p>In line with funding from the State Government</p>

Report

Subject	Code of Meeting Practice
TRIM Record No	BP23/640:EF19/483-5
Prepared by	Governance & Risk Manager
Reason	To amend Council's Code of Meeting Practice
Strategic Theme	Leadership and participation
Strategy	We provide effective management and responsible governance.
Action	Ensure the efficient and effective operation of Council.

Executive Summary

At the Council meeting of 11 July 2023 it was resolved to include clause 3.16(a) into the Code of Meeting Practice (COMP). The code was placed on public exhibition and submissions invited.

Recommendation

That following the period of public exhibition the following clause now be included in Lismore City Council's Code of Meeting Practice.

- 3.16 (a) Any response provided to a question with notice submitted under clause 3.16 will be included in the minutes of the meeting. In the case of an oral response a transcript of the response is to be included in the minutes.

Background

Council resolved at its July 2023 meeting to include clause 3.16(a) into the COMP. In accordance with clause 361 of the *Local Government Act 1993* the updated COMP was placed on public exhibition from 3 August to 14 September 2023. Submissions from members of the public were invited during this period.

No submissions were received.

Public consultation

The amended COMP was placed on public exhibition on 3 August 2023 and remained on public exhibition and submissions were accepted until 14 September 2023. No submissions were received.

Conclusion

The COMP be amended to include clause 3.16 (a).

Attachment/s

There are no attachments for this report.

Report

Subject	Pecuniary Interest Returns
TRIM Record No	BP23/835:AF23/5359
Prepared by	Governance & Risk Manager
Reason	Pecuniary Interest Returns are required to be tabled at a Council meeting
Strategic Theme	Leadership and participation
Strategy	We provide effective management and responsible governance.
Action	Ensure the efficient and effective operation of Council.

Executive Summary

Clause 4.21 of Council's Code of Conduct requires Disclosures of Interests returns be lodged by councillors and designated persons within 3 months of 30 June each year.

Clause 4.25 requires these returns be tabled at the first Council meeting after the last day the return is required to be lodged.

The written returns have been completed and are now tabled for acknowledgement by Council.

Recommendation

That the report be received and the tabled Pecuniary Interest Returns be acknowledged.

Background

Clause 4.21 of Council's Code of Conduct requires Disclosures of Interests in written returns be lodged by councillors or designated persons within 3 months of 30 June each year.

These returns must be tabled at a Council meeting. This report serves to table those returns.

Pecuniary Interest Returns for Councillors and Designated Staff have been completed and are tabled.

The following is the list of Designated Persons:

- General Manager
- Senior staff as defined under s332 of the *Local Government Act 1993*
- Any member of staff or council delegate who is identified in the exercise of a function that could give rise to a conflict of interest (defined as Program Managers, Public Officer/Complaints Coordinator)
- Regulation & enforcement staff undertaking investigations and enforcement activities
- Staff with significant planning delegation (defined as Senior Planner or above with delegations to approve a variation)
- Councillors

Attachment/s

There are no attachments for this report.

Report

Subject	Council's Ordinary Meeting Schedule for 2024
TRIM Record No	BP23/756:EF23/173
Prepared by	Executive Officer - General Manager and Mayor & Councillors
Reason	To resolve the Council meeting schedule for 2024
Strategic Theme	Leadership and participation
Strategy	Our decisions and actions are open, transparent, effective and in the interests of all.
Action	Manage Council meetings and provide support to Councillors in fulfilling their role.

Executive Summary

In accordance with the Council's adopted Code of Meeting Practice (Code), this report sets out the Ordinary Meeting schedule for 2024.

Recommendation

That:

1. the first Ordinary Meeting of Council for 2024 be held on Tuesday 13 February 2024 at 6pm and subsequent meetings held on the second Tuesday of the month with the final ordinary meeting for this term of Council being Tuesday 13 August 2024
2. Council's first meeting after the September 2024 local government elections be held on Tuesday 8 October 2024 at 6pm with subsequent meetings being held on the second Tuesday of November and December 2024

Background

The Council's Code sets out the following:

3 BEFORE THE MEETING

Timing of ordinary council meetings

3.2 The council shall, by resolution, set the frequency, time, date and place of its ordinary meetings.

The purpose of this report is to meet the above requirements. In accordance with the Code, the first Ordinary Meeting would be held on Tuesday 13 February 2024.

Due to the Local Government elections being held in September 2024 there will be no meeting held this month.

Public consultation

Not required.

Conclusion

It is recommended Council set meeting dates consistent with existing practise.

Attachment/s

There are no attachments for this report.

Notices of Motion / Questions with Notice



Notice of Motion / Question with Notice

Councillor Adam Guise has given notice of intention to move:

That Council holds a public briefing identifying existing and potential planning mechanisms which support flood impacted residents to rebuild or relocate post-flood.

Councillor Comment

Outcome Sought

Flood impacted residents have been left in limbo post flood, and have encountered challenges rebuilding, retrofitting or relocating their homes post-flood. Residents who accept buybacks require affordable options to relocate their homes, with exempt or complying development pathways to facilitate this. Covenants which restrict the types of houses that can be moved to new housing estates are an impediment to facilitating relocations. Residents who don't accept buybacks or who don't have this option, should have safe options for remaining in their homes. Council should be identifying and advocating for planning mechanisms which facilitate flood recovery in order to enable impacted residents to relocate or continue to live safely in their homes. Mechanisms such as providing complying development pathways, waiving DA fees or subsidising flood friendly retrofits could facilitate a safer, more equitable and speedier flood recovery.

Cost of Implementing

Staff time

Funding Source

Not applicable

Staff Consulted

Strategic Planning Coordinator

Staff Comment

Coordinator Strategic Planning

Navigating the NSW Planning System is never a simple process and any measures that could assist flood impacted residents should be explored. In response to the measures identified here, the following comments are provided:

- Staff have had dialogue with the Department of Planning and Environment (DPE) over the creation of a 'complying development certificate (CDC)' pathway for the relocation of flood affected dwellings within the local government area (LGA). Ultimately, it was concluded that a CDC pathway was likely to make the process more complicated and bureaucratic than a Development Application (DA) pathway. Instead, Council's Coordinator of Building Services is providing a personalised, fastrack service to anyone seeking to relocate a flood affected dwelling within the LGA.
- Council staff are working with the NSW Reconstruction Authority (NSWRA) to develop an "end-to-end" process for residents who are offered assistance from the NSWRA. This is something that needs considerable work, but unfortunately is largely out of the hands of LCC.
- Clause 1.9A of the Local Environment Plan ('Suspension of covenants, agreements and instruments') gives Council the power to ignore any covenants restricting the type of building materials etc that are to be used within a new residential area. This clause allows DA approval to be granted for the relocation of flood affected dwellings regardless of any such covenants. It may then become a matter between the landowner with a DA consent and the developer who put the covenant in place to resolve.
- there is a CDC pathway in place for house raising.

Notice of Motion / Question with Notice

- Council have made grants of \$15,000 available to any resident that accepts a buyback from NSWRA to relocate an existing house or build a new one within the LGA. The Lismore Housing Grants program was amended recently and now applies to the relocation of any flood affected dwelling within the LGA where the applicant meets the income threshold or agrees to use the house as an 'affordable rental' for a minimum of 5 years.
- the waiving of any DA fees would need to be via adopting a new policy through a resolution of Council. Similarly, the source of any funds to be allocated by Council for retrofitting would need to be identified by councillors.

The NRRC's Resilient Lands program was specifically tasked with identifying suitable land and allocated \$100 million to assist with the provisions of infrastructure so that land could be made available to flood affected resident to relocate. Little progress has been made on this program and Council continues to advocate for action in this area.

In addition, LCC are organising a Housing Expo, scheduled for 11 November 2023, that will bring together a wide range of housing services including builders, tiny homes/granny flat manufacturers, house raising and relocation services, planning consultants, financial providers and other flood recovery services. The aim is to create a kind of 'one-stop-shop' where people can have all sorts of housing questions answered. It is hoped that this can achieve some of the aims of this motion.

Attachment/s

There are no attachments for this report.

TRIM Record No: BP23/746:EF19/25-5

Notice of Motion / Question with Notice

Councillor Big Rob has given notice of intention to move:

That Council contact Transport for NSW and Janelle Saffin MP requesting a process to remove the Terania Street rail bridge be identified and commenced as soon as possible so that Terania Street can be reopened permanently.

Councillor Comment

Outcome Sought

The imposition of a main road closure in North Lismore so soon after businesses struggling to recover after the 2022 floods have reopened is unacceptable. It is likely most will not survive the indefinite closure of Terania Street. Add to this the hassle residents will face and it is clear we need to find a permanent solution as soon as possible.

It has long been known that the railway bridge crossing Terania Street is in a bad way. The centre lanes have been blocked for some time without any progress on repairing the structure.

We continue to hear that heritage listing is the issue but we also know that such structures can be removed in many circumstances. The recent demolition of the longest single-span timber bridge in the southern hemisphere at Tabulam is a recent example.

Of significant importance is the danger many of our railway bridges pose when we are flooding. Search and rescue operations are often hampered for hours while rescuers wait for the flood levels to rise high enough to skull drag a boat over the railway line, or drop low enough again so they can manoeuvre under it. In the most flood affected area in the country, this is such an absurd problem to have.

Trains have not operated on these railway bridges for many years, they are not being maintained, they are falling apart, they pose a risk to public safety, and they are now destroying businesses and making life difficult for residents.

It is time our problem railway bridges were removed!!!

Cost of Implementing

Not applicable

Funding Source

Not required

Staff Consulted

Nil

Attachment/s

There are no attachments for this report.

TRIM Record No: BP23/829:EF19/25-5

Notice of Motion / Question with Notice

Councillor Big Rob has put the following question with notice:

Can the General Manager identify any reasons why the CSIRO should not be sought out and asked to be the lead agency undertaking a Regional Vision and Masterplan to coordinate a multi-disciplinary team of research experts, and to support Lismore City Council to deliver the Lismore City Council Vision?

Attachment/s

There are no attachments for this report.

TRIM Record No: BP23/834:EF19/25-5

General Manager's response:

At the ordinary meeting of 12 September 2023, council resolved the following:

RESOLVED that Council endorse the Northern Rivers Joint Organisation resolution dated 11 August 2023 'that the Northern Rivers Joint Organisation Board call on the NSW Reconstruction Authority, Minister for Planning and Public Spaces and Minister for Emergency Services to work collaboratively with Northern Rivers communities and councils to develop a CSIRO informed long-term master plan and vision for rebuilding the region post the 2022 flood disaster'.

The resolution refers to a "CSIRO informed" masterplan and vision for the region.

If the intent is for CSIRO to lead the Regional Vision, then the above resolution would need to be amended accordingly to reflect this. Further, to gain regional support other Councils would need to endorse this approach through the NRJO or by separate resolutions.

With regards to CSIRO supporting the delivery of the Lismore Vision, Council staff are supportive of this. Staff have been in discussions with CSIRO to facilitate collaboration be it by undertaking various key strategies or by providing expert advice to the vision and master planning process.

Confidential Business



Confidential Matters – Closed Council Meeting

A Council may close to the public only so much of its meeting as comprises the receipt or discussion of any of the following:

Section 10A(2) – *Local Government Act 1993*:

- a) personnel matters concerning particular individuals;
- b) the personal hardship of any resident or ratepayer;
- c) information that would, if disclosed, confer a commercial advantage of a person with whom the Council is conducting (or proposes to conduct) business;
- d) commercial information of a confidential nature that would, if disclosed:
 - i) prejudice the commercial position of the person who supplied it, or
 - ii) confer a commercial advantage on a competitor of the Council, or
 - iii) reveal a trade secret;
- e) information that would, if disclosed, prejudice the maintenance of law;
- f) matters affecting security of the Council, Councillors, Council staff or Council property;
- g) advice concerning litigation, or advice, that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege;
- h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.

Clause 34 of Council Code of Meeting Practice

Representations from the public as to whether part of the meeting should be closed to the public can be made after the motion to close the meeting has been moved and seconded for a period of 10 minutes.

Recommendation

That the Council exclude members of the press and public from the meeting and move into Closed Council Meeting to consider the following matters:

Item	13.1 Tender T2023123 - Replacement of Roof - Corporate Centre, 43 Oliver Avenue, Goonellabah
Grounds for Closure	Section 10A(2) (d i):
Public Interest	Discussion of this matter in an open meeting would on balance be contrary to the public interest because it relates to: commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

MINUTES OF THE ORDINARY MEETING OF THE COUNCIL OF THE CITY OF LISMORE HELD IN COUNCIL CHAMBERS ON TUESDAY 12 SEPTEMBER 2023 AT 6.00PM

Please note: These minutes are subject to confirmation at the next Council meeting. Decisions recorded in the draft minutes are subject to the Council's Code of Meeting Practice in relation to rescinding decisions.

Present

Mayor, Councillor Krieg; Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen (via audio-visual), Rob, together with Mr Gibbons, General Manager; Mr Enevoldson, Chief Financial Officer; Dr Logan, Chief Operating Officer; Mr Butron, Chief Community Officer; Mr Wilson, Executive Officer – Customer Experience; Ms O'Regan, Manager Investment & Growth; Mr Shaw, Manager Technology and Innovation; Mr Parks, Strategic Planning Coordinator; Mr Jewell, Senior Strategic Planner; Mr Malloy, Technology Support Officer and Mrs Mitchell, Executive Officer to the General Manager & Mayor and Councillors.

Apologies and Applications for Leave of Absence or Attendance by Audio-Visual Link

158/23 **RESOLVED** that attendance by audio-visual link be approved for Councillor Jensen due to being out of the area.

(Councillors Gordon/Hall)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

Confirmation of Minutes

159/23 An error was corrected by staff for item 11.6 as the vote was inverted.

RESOLVED that the minutes of the following meetings be confirmed:

- Ordinary Meeting held on 8 August 2023
- Confidential Meeting held on 8 August 2023

(Councillors Gordon/Bing)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

Disclosures of Interest

Clr Gordon declared a Non-Pecuniary, Non-Significant Conflict of Interest for the following item: 12.1 Rezoning Planning Proposal for land at Durham Road, Monaltrie Lane and Wyrallah Road, Monaltrie
Nature: I am a real estate agent

Clr Guise declared a Non-Pecuniary, Non-Significant Conflict of Interest for the following item: 11.5 Revised Flood Prone Lands DCP – post-exhibition report
Nature: My home is on the floodplain but I am a general class of person so I will remain in the Chamber

Clr Guise declared a Pecuniary, Non-Significant Conflict of Interest for the following item: 11.8 Lismore Flood Appeal
Nature: I was a recipient of the appeal so I will leave the Chamber

Clr Guise declared a Non-Pecuniary, Non-Significant Conflict of Interest for the following item: 12.3 Moratorium on House Demolitions
Nature: My home is on the floodplain but I am a general class of person so I will remain in the Chamber

Clr Guise declared a Non-Pecuniary, Significant Conflict of Interest for the following item: 12.5 Lismore Base Hospital Parking
Nature: if this Question with Notice turns into a motion I will disclose an interest and leave the Chamber

Councillor Rob left the meeting, the time being 6:23PM

Public Forum

Prior to dealing with the circulated reports and associated information, a Public Forum was held at which Council was addressed by the following:

Reports of the General Manager

11.10 2023 Local Government NSW Conference

FOR	Dot Moller, Fridays4forest
	Meg Nielsen, Celebrating Earth & Art, River FM
	Peter Nielsen
	Sean O'Shannessy, North East Forest Alliance

Councillor Rob returned to the meeting, the time being 6:38PM

Notices of Motion/Questions with Notice

12.1 Rescission Motion - Rezoning Planning Proposal for land at Durham Road, Monaltrie Lane and Wyrallah Road, Monaltrie

FOR	Ina Egermann, Friends of the Koala
	Lorraine Vass, Friends of the Koala

Councillor Hall left the meeting, the time being 6:50PM

Councillor Hall returned to the meeting, the time being 6:52PM

12.3 Moratorium on House Demolitions

FOR	Graham Askey
	Miriam Torzillo, Reclaim our Recovery
	Andrew George

Councillor Gordon left the meeting, the time being 7:06PM

Councillor Gordon returned to the meeting, the time being 7:09PM

Councillor Cook left the meeting, the time being 7:09PM

Councillor Cook returned to the meeting, the time being 7:11PM

Mayoral Minute(s) and Condolence Motions

8.1 Mayoral Attendance Report

160/23 **RESOLVED** that Council receives the Mayoral Attendance Report for August 2023.

(Councillor Krieg) (BP23/718)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

8.2 Condolence Motion - Mary Betteridge

161/23 **RESOLVED** that Council:

1. receive and note the Condolence motion
2. forward a letter of condolence to the family from the Mayor

(Councillor Krieg) (BP23/720)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

Mary Betteridge was born in Brisbane on 13 April 1932 and passed away on 1 August 2023.

It is hard to speak of Mary without talking about her twin Emily. They were inseparable until Emily's passing in 2018. They lived, worked and played together.

Three of Mary's passions were gardening, sport (most importantly St George Rugby League Club) and the Westpac Lifesaver Rescue Helicopter.

Mary was a member of the Lismore Home Garden Education Club for over 60 years, including 22 years as President and later became a Life Member.

Mary was an early supporter of St George Football Club, even taking her passion so far as to commonly dress in red and white, furnish their house in red and white and own white cars with red upholstery.

From day one of the helicopter service being born Mary and Emily were involved and continued their dedication for over 30 years. They referred to the aircraft as their baby and spent many tireless hours selling raffle tickets.

In 1989 Mary and Emily received an Australia Day Award and in 2008 were given a NSW Premier's Award for continuous fundraising for the Helicopter.

Mary will be sadly missed by her family and many friends.

Please join me in a moments silence for Mary Betteridge.

Altering Order of Business

162/23 **RESOLVED** that the order of business be altered to debate the following matters raised during Public Forum

- 11.9 Election of Deputy Mayor
- 12.1 Rezoning Planning Proposal for land at Durheim Road, Monaltrie Lane and Wyrallah Road, Monaltrie
- 12.3 Moratorium on House Demolitions

(Councillors Gordon/Bing)

AMENDMENT moved that the order of business be altered to debate the following matters raised during Public Forum

- 11.9 Election of Deputy Mayor
- 12.1 Rezoning Planning Proposal for land at Durham Road, Monaltrie Lane and Wyrallah Road, Monaltrie
- 12.3 Moratorium on House Demolitions
- 11.10 2023 Local Government NSW Conference

(Councillors Ekins/Guise)

Amendment withdrawn when the mover of the motion accepted the amendment.

163/23

RESOLVED that the order of business be altered to debate the following matters raised during Public Forum

- 11.9 Election of Deputy Mayor
- 12.1 Rezoning Planning Proposal for land at Durham Road, Monaltrie Lane and Wyrallah Road, Monaltrie
- 12.3 Moratorium on House Demolitions
- 11.10 2023 Local Government NSW Conference

(Councillors Gordon/Bing)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Hall, Jensen, Krieg and Rob

Voting against: Councillor Guise

11.9 Election of Deputy Mayor

164/23

RESOLVED that:

1. Council elect a Deputy Mayor
2. the period of appointment be until the 2024 Local Government election
3. the method of election be by open voting by councillors
4. each candidate be offered the opportunity to make a short presentation prior to any election

(Councillors Gordon/Bing) (BP23/685)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

At this time the General Manager took the Chair to carry out the election of the Deputy Mayor.

Councillor Hall nominated by Councillors Krieg and Gordon.

As the only nomination, Councillor Hall was elected Deputy Mayor.

12.1 Rezoning Planning Proposal for land at Durham Road, Monaltrie Lane and Wyrallah Road, Monaltrie

MOTION moved that Council rescind its decision of Item 11.5 from the 8 August 2023 meeting.

(Councillors Guise/Cook)

RESOLVED to put the motion.

(Councillor Hall)

Voting for: Councillors Bing, Colby, Gordon, Hall, Jensen, Krieg and Rob

Voting against: Councillor Bird, Cook, Ekins and Guise

165/23 **DEFEATED** that Council rescind its decision of Item 11.5 from the 8 August 2023 meeting.

(Councillors Guise/Cook) (BP23/682)

Voting for: Councillors Bird, Cook, Ekins and Guise

Voting against: Councillors Bing, Colby, Gordon, Hall, Jensen, Krieg and Rob

Councillor Hall left the meeting, the time being 7:56PM

Councillor Hall returned to the meeting, the time being 7:58PM

Councillor Jensen left the meeting, the time being 8:03PM

12.3 Moratorium on House Demolitions

MOTION moved that Council writes to NSW Reconstruction Authority CEO Simon Draper, National Emergency Management Agency Coordinator-General Brendan Moon, Member for Lismore Janelle Saffin MP, Minister for Emergency Services Jihad Dib MP, Minister for Planning & Public Spaces Paul Scully MP calling for:

1. a moratorium on the demolition of Lismore's historic timber homes that have been bought back
2. a moratorium on removal of these homes from the Northern Rivers region
3. a plan to manage these properties is developed
4. bought back homes are made habitable for temporary accommodation, tenants or relocation until the future of the houses is decided
5. homeowners are offered at least 12 months occupation of their homes after settlement to allow options for them to be included in lands that will become available through the Resilient Lands program

(Councillors Ekins/Bird)

RESOLVED to put the motion.

(Councillor Hall)

Voting for: Councillors Bing, Colby, Gordon, Hall, Jensen, Krieg and Rob

Voting against: Councillor Bird, Cook, Ekins and Guise

166/23

DEFEATED that Council writes to NSW Reconstruction Authority CEO Simon Draper, National Emergency Management Agency Coordinator-General Brendan Moon, Member for Lismore Janelle Saffin MP, Minister for Emergency Services Jihad Dib MP, Minister for Planning & Public Spaces Paul Scully MP calling for:

1. a moratorium on the demolition of Lismore's historic timber homes that have been bought back
2. a moratorium on removal of these homes from the Northern Rivers region
3. a plan to manage these properties is developed
4. bought back homes are made habitable for temporary accommodation, tenants or relocation until the future of the houses is decided
5. homeowners are offered at least 12 months occupation of their homes after settlement to allow options for them to be included in lands that will become available through the Resilient Lands program

(Councillors Ekins/Bird) (BP23/743)

Voting for: Councillors Bird, Cook, Ekins and Guise

Voting against: Councillors Bing, Colby, Gordon, Hall, Krieg and Rob

Absent: Councillor Jensen

At this point the meeting adjourned for a short recess, the time being 8:33PM

The meeting resumed at 8:39PM

11.10 2023 Local Government NSW Conference

167/23 **RESOLVED** that Council's three voting delegates to the 2023 Local Government NSW Conference are Councillors Krieg, Hall and Rob.
(Councillors Rob/Hall) (BP23/516)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Krieg and Rob

Voting against: Nil

Absent: Councillor Jensen

168/23 MOTION moved that the following motion be submitted to the 2023 Local Government NSW Conference:

Motion title
End native public forest logging

Motion wording
That LGNSW lobbies the NSW government to declare an immediate moratorium on current Forestry Corporation logging activities in NSW's Native State Forests, and develops a just transition package for forestry workers and creation of sustainable employment opportunities in new related industries, including ecologically sustainable plantations and farm forestry.

(Councillors Guise/Ekins) (BP23/516)

Voting for: Councillors Bird, Colby, Cook, Ekins and Guise

Voting against: Councillors Bing, Gordon, Hall, Krieg and Rob

Absent: Councillor Jensen

The vote being tied the Mayor declared the motion **DEFEATED** with his casting vote.

Councillor Guise left the meeting, the time being 9:13PM

Councillor Guise returned to the meeting, the time being 9:14PM

169/23 MOTION moved that the following motion be submitted to the 2023 Local Government NSW Conference:

Motion title

Group Voting Squares at Local Government Elections

Motion wording

That LGNSW lobbies the NSW Government to remove group voting squares at local government elections.

(Councillors Rob/Bing) (BP23/516)

Voting for: Councillors Bing, Colby, Gordon, Krieg and Rob

Voting against: Councillors Bird, Cook, Ekins, Guise and Hall

Absent: Councillor Jensen

The vote being tied the Mayor declared the motion **RESOLVED** with his casting vote.

Councillor Colby left the meeting, the time being 9:22PM

Councillor Colby returned to the meeting, the time being 9:23PM

170/23 MOTION moved that the following motion be submitted to the 2023 Local Government NSW Conference:

Motion title

Political Parties at Local Government Elections

Motion wording

That LGNSW lobbies the NSW Government to ban candidates listing their political party affiliation on the ballot paper when running at local government elections.

(Councillors Rob/Hall) (BP23/516)

Voting for: Councillors Bing, Colby, Gordon, Hall and Rob

Voting against: Councillors Bird, Cook, Ekins, Guise and Krieg

Absent: Councillor Jensen

The vote being tied the Mayor declared the motion **DEFEATED** with his casting vote.

Reports of Committees

MOTION moved that the recommendations set out in items 9.1 to 9.3 be adopted by exception.

(Councillors Gordon/Hall)

As per clause 13.3 of the Code of Meeting Practice the motion was withdrawn as a councillor indicated they wished to speak on an item.

9.1 Capacity Capability & Recovery Roadmap Project Control Committee - 19 July 2023

171/23 **RESOLVED** that the minutes be received and the recommendations contained therein be adopted.

(Councillors Gordon/Colby) (BP23/684)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Hall, Krieg and Rob

Voting against: Councillor Guise

Absent: Councillor Jensen

9.2 Local Traffic Committee Minutes - Meeting of 16 August 2023

172/23 **RESOLVED** that the minutes be received and adopted and the recommendations contained therein be adopted.

(Councillors Hall/Rob) (BP23/726)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Krieg and Rob

Voting against: Nil

Absent: Councillor Jensen

9.3 Richmond Tweed Regional Library Committee - 16 August 2023

173/23 **RESOLVED** that the minutes be received and noted.

(Councillors Gordon/Cook) (BP23/731)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Krieg and Rob

Voting against: Nil

Absent: Councillor Jensen

Reports of the General Manager

11.1 Richmond Tweed Regional Library - Changes to 2023/24 Fees & Charges

174/23

RESOLVED that:

1. the reported resolution of the Richmond Tweed Regional Library Committee be received and noted
2. the following changes to the 2023/24 Richmond Tweed Regional Library Fees & Charges be advertised for 28 days and public submissions invited:
 - a. Reservation Fees be reduced from \$2.40 to \$2.00, and
 - b. Inter Library Loan Fees be reduced from \$8.00 to \$4.50
3. submissions be received and noted and forwarded to the Richmond Tweed Regional Library Committee for consideration and reporting back to Council
4. if no submissions are received then the proposed fees be adopted at the conclusion of the exhibition period

(Councillors Rob/Gordon) (BP23/735)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Krieg and Rob

Voting against: Nil

Absent: Councillor Jensen

11.2 Investments - August 2023

175/23

RESOLVED that the report be received and noted.

(Councillors Rob/Bing) (BP23/738)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Hall, Krieg and Rob

Voting against: Councillor Guise

Absent: Councillor Jensen

11.3 Dedication of Land as a Public Road - Oliver Avenue, Goonellabah

MOTION moved that in accordance:

1. section 47F of the *Local Government Act 1993* Council dedicate community land known as 934 Oliver Avenue, Goonellabah (being Lot 299 in DP 1058607) as public road under section 10 of *Roads Act 1993* for the purpose of widening an existing public road
2. with section 10 of *Roads Act 1993* Council publish notice in the NSW Gazette dedicating 934 Oliver Avenue, Goonellabah (being Lot 299 in DP 1058607) as public road.

(Councillors Bing/Rob)

FORESHADOWED MOTION moved that this matter be deferred until after the planning issue has been dealt with.

(Councillor Guise)

176/23

RESOLVED that in accordance:

1. section 47F of the *Local Government Act 1993* Council dedicate community land known as 934 Oliver Avenue, Goonellabah (being Lot 299 in DP 1058607) as public road under section 10 of *Roads Act 1993* for the purpose of widening an existing public road
2. with section 10 of *Roads Act 1993* Council publish notice in the NSW Gazette dedicating 934 Oliver Avenue, Goonellabah (being Lot 299 in DP 1058607) as public road.

(Councillors Bing/Rob) (BP23/497)

Voting for: Councillors Bing, Colby, Cook, Gordon, Hall, Krieg and Rob

Voting against: Councillors Bird, Ekins and Guise

Absent: Councillor Jensen

Councillor Hall left the meeting, the time being 9:39PM

Councillor Hall returned to the meeting, the time being 9:41PM

11.4 Amendment to Housing Grants

177/23

RESOLVED that:

1. Category 1 of the Lismore Housing Grant program be amended to include:
 - the relocation of an existing dwelling from a flood affected lot, and
2. the following be amended to include:

Category 1

- Existing landowners who build any of the following housing types on their land within the Lismore Local Government Area (LGA), that is, in addition to an existing dwelling.

Category 2

- First home buyers who purchases vacant land to build any new home, or relocate a flood affected dwelling within the Lismore LGA

Category 6

- Any developer of new multi-dwelling housing, residential flat building or co-living housing within the Lismore LGA that agrees to enter into a Voluntary Planning Agreement (VPA) with Council to have the housing managed by a CHP for a minimum of 15 years as affordable rental housing

3. the factsheet be amended to provide flexibility in how affordable rental accommodation for this category is reported to Council

(Councillors Cook/Rob) (BP23/748)

Voting for: Councillors Bing, Colby, Cook, Ekins, Gordon, Hall, Krieg and Rob

Voting against: Councillors Bird and Guise

Absent: Councillor Jensen

11.5 Revised Flood Prone Lands DCP - post-exhibition report

MOTION moved that Council adopts:

1. a flood planning level of the 0.2% AEP design flood event (1 in 500 probability) + 500mm freeboard
2. the revised Flood Prone Lands DCP with the changes as proposed in this report

(Councillors Ekins/Bird)

FORESHADOWED MOTION moved that Council adopts a flood planning level of the 0.2% AEP design flood event (1 in 500 probability) + 500mm freeboard.

(Councillor Rob)

Continuation of Meeting

178/23 **DEFEATED** that the time being 10.32pm the meeting continue to 11.00pm.

(Councillors Rob/Cook)

Voting for: Councillors Bing, Cook, Ekins and Rob

Voting against: Councillors Bird, Colby, Gordon, Guise, Hall and Krieg

Absent: Councillor Jensen

The time being 10.33pm the meeting is adjourned to Tuesday 19 September at 6.00pm.

Present

Mayor, Councillor Krieg; Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Rob, together with Mr Gibbons, General Manager; Mr Enevoldson, Chief Financial Officer; Dr Logan, Chief Operating Officer; Mr Butron, Chief Community Officer; Mr Wilson, Executive Officer – Customer Experience; Mr Shaw, Manager Technology and Innovation; Mr Malloy, Technology Support Officer; Mr Campbell, Technology Support Officer and Mrs Mitchell, Executive Officer to the General Manager & Mayor and Councillors.

11.5 Revised Flood Prone Lands DCP - post-exhibition report

MOTION moved that Council adopts:

1. a flood planning level of the 0.2% AEP design flood event (1 in 500 probability) + 500mm freeboard
2. the revised Flood Prone Lands DCP with the changes as proposed in this report

(Councillors Ekins/Bird)

FORESHADOWED MOTION moved that Council adopts a flood planning level of the 0.2% AEP design flood event (1 in 500 probability) + 500mm freeboard.

(Councillor Rob)

FORESHADOWED MOTION moved that this matter be deferred to a briefing.

(Councillor Gordon)

RESOLVED to put the motion.

(Councillor Rob)

Voting for: Councillors Bing, Colby, Gordon, Hall, Jensen, Krieg and Rob
Voting against: Councillor Bird, Cook, Ekins and Guise

- 179/23 **DEFEATED** that Council adopts:
1. a flood planning level of the 0.2% AEP design flood event (1 in 500 probability) + 500mm freeboard
 2. the revised Flood Prone Lands DCP with the changes as proposed in this report

(Councillors Ekins/Bird) (BP23/723)

Voting for: Councillors Bird, Cook and Ekins
Voting against: Councillors Bing, Colby, Gordon, Guise, Hall, Jensen, Krieg and Rob

Councillor Rob withdrew his foreshadowed motion.

- 180/23 On submission to the meeting the foreshadowed motion became the motion and was **RESOLVED** that this matter be deferred to a briefing.

(Councillors Gordon/Hall) (BP23/723)

Voting for: Councillors Bing, Colby, Cook, Gordon, Guise, Hall, Jensen, Krieg and Rob
Voting against: Councillors Bird and Ekins

11.6 Change to Meeting Schedule

- 181/23 **RESOLVED** that the November Ordinary Council meeting be moved to 21 November 2023.

(Councillors Rob/Gordon) (BP23/654)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob
Voting against: Nil

11.7 Local Event Day

182/23 **RESOLVED** that Council make application to the Minister for Industrial Relations for gazettal of a local event day for the Lismore local government area on 19 December annually designated as “Widjabul Wia-bal Day”.

(Councillors Ekins/Bird) (BP23/663)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

At this time Councillor Bird disclosed a non-pecuniary, significant interest as I am involved with a number of the charities for consideration and will leave the Chamber.

Councillor Bird left the meeting, the time being 6:20PM

Councillor Guise left the meeting, the time being 6:20PM

11.8 Lismore Flood Appeal

183/23 **RESOLVED** that the Lismore Soup Kitchen receive the balance of the remaining funds in the Lismore Flood Appeal account.

(Councillors Rob/Bing) (BP23/662)

Voting for: Councillors Bing, Colby, Cook, Ekins, Gordon, Hall, Jensen, Krieg and Rob

Voting against: Nil

Absent: Councillors Bird and Guise

Councillor Bird returned to the meeting, the time being 6:22PM

Councillor Guise returned to the meeting, the time being 6:22PM

11.11 Minutes from External Committees and Organisations

184/23 **RESOLVED** that Council notes the draft minutes of Arts Northern Rivers, Rous County Council and the Northern Rivers Joint Organisation.

(Councillors Gordon/Bing) (BP23/727)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

11.12 Documents for Signing

185/23

RESOLVED that Council note the following documents be executed as negotiated under delegated authority by the General Manager:

- Item B **Variation of Crown Lease 411088 (Head Lease AG631488S) to Lismore City Council** over “The Cottage”, 651 Skyline Road, Goonellabah, by extending the term of the lease for a further period of five years to expire on 16 July 2029 (Ref: AF16/247)
- Item C **Renewal of Lease to BP Australia Pty Ltd** (CAN 004 085 616) over Airport Fuel Site No. 1 at the Lismore Regional Airport (over part Lot 27 in DP 1217003 and Lot 9 in DP 1093668) for a 2-year term with a 3-year option (Ref: AF17/1632)
- Item D **Renewal of Grazing Agreement with Wayne Gilbert** over part 173 Bruxner Highway, South Lismore (Lot 2 in DP 882565) for a 5-year term with a 5-year option for the purpose of horse grazing (Ref: AF22/1486)
- Item E **Licence with Commonwealth of Australia as represented by the Bureau of Meteorology** over part 10 Fraser Road, Dunoon (Lot 1 in DP 833644) for a 5-year term for the purpose of installation, inspection, renovation, repair, replacement, maintenance, upgrade, operation and dismantling of the Bureau’s property that includes but is not limited to weather observation equipment, flood warning equipment, antenna, repeater/ gateway (Ref: P24001)
- Item F **Licence with Commonwealth of Australia as represented by the Bureau of Meteorology** over part 16 Wyreema Avenue, Goonellabah (Lot 1 in DP 410491) for a 5-year term for the purpose of installation, inspection, renovation, repair, replacement, maintenance, upgrade, operation and dismantling of the Bureau’s property that includes but is not limited to weather observation equipment, flood warning equipment, antenna, repeater/ gateway (Ref: P4031)
- Item G **Licence with Commonwealth of Australia as represented by the Bureau of Meteorology** over part 43 Oliver Avenue, Goonellabah (Lot 9 in DP 771616) for a 5-year term for the purpose of installation, inspection, renovation, repair, replacement, maintenance, upgrade, operation and dismantling of the Bureau’s property that includes but is not limited to weather observation equipment, flood warning equipment, antenna, repeater/gateway (Ref: P558)

(Councillors Gordon/Colby) (BP23/730)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

186/23 **RESOLVED** that Council note the following documents be executed as negotiated under delegated authority by the General Manager:

Item A **Lease to Lismore City Council (ABN 60 080 932 837)** over a suitable space within the Lismore CBD to deliver temporary Christmas activation/s (including Santa's Wonderland) to support local shopping and community reconnecting in the CBD (Ref: EF19/301-4)

Item H **Lease to Lismore City Council (ABN 60 080 932 837)** for a retail office space in Lismore Central known as 44 Carrington Street, Lismore (being Lot 1 in DP 746262), for the Richmond Tweed Regional Library with funding from CIRP Arts and cultural priority need; the lease being for a period of one (1) year with either two additional six (6) months options, or one (1) year option if required (Ref: AF23/1526)

(Councillors Cook/Hall) (BP23/730)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen and Krieg

Voting against: Councillor Rob

Notices of Motion / Questions with Notice

12.2 Deferred Matters

187/23 **RESOLVED** that Council:

1. take no further action on deferred matter land, rezoning and associated studies
2. return funding received from the Biodiversity Conservation Division of the NSW Department of Planning and Environment

(Councillors Gordon/Bing) (BP23/740)

Voting for: Councillors Bing, Colby, Cook, Gordon, Hall, Jensen, Krieg and Rob

Voting against: Councillors Bird, Ekins and Guise

12.4 Class of Ratepayer

Can the General Manager please refer councillors to and explain the workings of the relevant clause in the Code of Conduct which covers the often stated 'class of ratepayer' reason provided by councillors who disclose a pecuniary conflict of interest but remain involved in the matter being considered, and whether the definition of a 'class of ratepayer' could be extended to situations where less than 100% of the ratepayers in the relevant class are impacted if it is determined to be an appropriate pecuniary interest disclosure?

A written response was printed in the business paper.

12.5 Lismore Base Hospital Parking

Excluding Uralba Street between Hunter Street and Dibbs Street, can the General Manager outline the financial impact of abolishing paid parking on the streets around the Lismore Base Hospital precinct and, if possible, advise how soon this could be implemented if resolved by Council to do so?

A written response was printed in the business paper.

12.6 Unlawfully Placed Signs & Banners

Considering how ugly Lismore looks with random signs and banners unlawfully placed all over the place, and what transpired a few years ago with regards to a CSG sign unlawfully draped over the roof of a home along Ballina Road, can the General Manager please explain any enforcement action being taken, and whether the prompt removal of unlawfully placed signs is part of the enforcement process?

A written response was printed in the business paper.

12.7 Northern Rivers Joint Organisation CSIRO resolution

Can the General Manager please advise if there is any reason why council should not endorse the recent Northern Rivers Joint Organisation resolution dated 11 August 2023, 'that the Northern Rivers Joint Organisation Board call on the NSW Reconstruction Authority, Minister for Planning and Public Spaces and Minister for Emergency Services to work collaboratively with Northern Rivers communities and councils to develop a CSIRO informed long-term master plan and vision for rebuilding the region post the 2022 flood disaster'?

A written response was provided in the business paper.

188/23 **RESOLVED** that Council endorse the Northern Rivers Joint Organisation resolution dated 11 August 2023 'that the Northern Rivers Joint Organisation Board call on the NSW Reconstruction Authority, Minister for Planning and Public Spaces and Minister for Emergency Services to work collaboratively with Northern Rivers communities and councils to develop a CSIRO informed long-term master plan and vision for rebuilding the region post the 2022 flood disaster'.

(Councillors Gordon/Bing) (BP23/742)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

Confidential Matters – Closed Council Meeting

189/23 **RESOLVED** that Council now exclude the press and public and meet in Closed Council to consider the following matters;

Item 13.1 Tender T2023/131 - Nimbin Wayfinding Project - Landscaping and Civil Works

Grounds for Closure Section 10A(2) (d i):

Public Interest Discussion of this matter in an open meeting would on balance be contrary to the public interest because it relates to: commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

Item 13.2 Tender T2023114 - Goonellabah Skate Park Upgrade Design and Construct

Grounds for Closure Section 10A(2) (d i):

Public Interest Discussion of this matter in an open meeting would on balance be contrary to the public interest because it relates to: commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

(Councillors Bing/Gordon)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

Resumption of Open Council

When the Council had resumed its former sitting, the Mayor reported that Council, meeting in Closed Session, had RESOLVED:

13.1 Tender T2023/131 - Nimbin Wayfinding Project - Landscaping and Civil Works

That:

1. in accordance with Clause 178(1)(a) of the *Local Government (General) Regulation 2021*, Council accepts the tender from Boyds Bay Landscaping Services Pty Ltd ATF Boyds Bay Landscaping Trust for Tender T2023/131 – Nimbin Wayfinding Project - Landscaping and Civil Works for the sum of \$311,891.05, excluding GST

2. Council authorises the General Manager to finalise and execute a Mini-Minor Works (MMW) contract and any other documentation required to give effect to this resolution
3. a redacted copy of this report will be released as a public document

(Councillors Gordon/Hall) (BP23/717)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

13.2 Tender T2023114 - Goonellabah Skate Park Upgrade Design and Construct

That:

1. in accordance with Clause 178(1)(a) of the *Local Government (General) Regulation 2021*, Council accepts the tender from Trinity Skateparks Pty Ltd for Tender T2023114 Goonellabah Skate Park Upgrade Design and Construct, for the sum of \$272,690.00 including GST
2. Council authorises the General Manager to finalise and execute the contract and any other documentation required to give effect to this resolution
3. a redacted copy of this report and attachment be released as a public document

(Councillors Gordon/Cook) (BP23/752)

Voting for: Councillors Bing, Colby, Cook, Gordon, Hall, Jensen, Krieg and Rob

Voting against: Councillors Bird, Ekins and Guise

Closure

This concluded the business and the meeting terminated at 7.12pm.

CONFIRMED this > > 2023 at which meeting the signature herein was subscribed.

MAYOR

Confidential Report

Report

Subject	Tender T2023/131 - Nimbin Wayfinding Project - Landscaping and Civil Works
TRIM Record No	BP23/717:G21/9
Prepared by	Manager Desintation & Economy
Reason	To award grant funded project provided by TfNSW to improve pedestrian walkability and safety and increase dwell time in Nimbin's business precinct.
Strategic Theme	An inclusive and healthy community
Strategy	Our community is a desirable place to live, an easy place to work and a welcoming place to visit.
Action	Create liveable communities for all.
Grounds for Closure	Section 10A(2) (d i):
Public Interest	Discussion of this matter in an open meeting would on balance be contrary to the public interest because it relates to:commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

Executive Summary

Nimbin will be a better place to live, work and visit, with community spaces revitalised as part of the NSW Government's Streets as Shared Spaces funding provided to Lismore City Council. The project will enhance road and footpath networks, provide additional seating and address safety concerns around pedestrian activity along Cullen Street, Nimbin.

The landscaping and civil works outlined in this report will see the creation of a formal pedestrian link from Cullen Street, Nimbin to the western carpark and a new green parklet to encourage foot traffic and increase economic activity in an otherwise quiet part of the business precinct.

The purpose of this report is to select a suitably qualified company with the capability, expertise, and availability to undertake the landscaping and civil works required for the street infrastructure upgrades for the Nimbin Wayfinding Project within a specified timeframe. The T2023/131 Nimbin Wayfinding Project – Landscaping and Civil Works is to be awarded as a construction contract.

Recommendation

That:

1. in accordance with Clause 178(1)(a) of the *Local Government (General) Regulation 2021*, Council accepts the tender from Boyds Bay Landscaping Services Pty td ATF Boyds Bay Landscaping Trust for Tender T2023/131 – Nimbin Wayfinding Project - Landscaping and Civil Works for the sum of \$311,891.05, excluding GST
2. Council authorises the General Manager to finalise and execute a Mini-Minor Works (MMW) contract and any other documentation required to give effect to this resolution
3. a redacted copy of this report will be released as a public document

Lismore City Council
Meeting held 12 September 2023 - Tender T2023/131 - Nimbin Wayfinding Project -
Landscaping and Civil Works

1

Confidential Report

Background

In response to the February 2022 natural disaster, Transport for NSW (TfNSW) approached Lismore City Council (LCC) to work in partnership to develop and deliver a \$500,000 (excluding GST) project in alignment with the Streets as Shared Spaces funding priorities. Through considerable engagement with the Nimbin Chamber of Commerce, the Nimbin Advisory Group, Nimbin Community Centre and other community groups, several small elements were identified and developed for inclusion into the project. Broader input regarding the project and its elements was also sought from the wider community via Council's 'Your Say' page, as well as through print and digital mediums.

The identified project elements include:

Pedestrian Link Improvements

The current pedestrian link traverses through community owned land and presents significant hazard and accessibility issues for pedestrians. This project will deliver outcomes to formalise a pedestrian right of way and provide a safe and accessible footpath from Cullen Street to the western carpark. This project has been identified in the Lismore City Council Nimbin Carparking Strategy (2018).

As the land on which the pedestrian link is currently community owned land, Council staff have been in discussion with the landowner, the Nimbin Community Centre (NCC). The NCC are in support of the pedestrian link improvements and subsequent ownership transfer. The transfer deed documentation is currently with the NCC Committee for signature. Once signed, this will formalise the transfer of the pedestrian right of way to LCC.

Green Parklet

The green parklet will provide enhanced amenity, seating and activation to support local businesses and community enterprise, such as the weekly farmers' market. The 'green parklet' concept was developed in consultation with the Nimbin Chamber of Commerce to activate a traditionally quieter area of the business precinct. The site will be activated with informative and culturally responsive installations.

Temporary Traffic Calming

This TfNSW project required the development of a Local Area Traffic Management Plan (LATMP) to identify opportunities to enhance safety around the pedestrian crossing located in Cullen Street. Temporary traffic calming devices (speed humps) have been installed in response to the development of the LATMP, to trial and measure the impact on the space. This element of the project was undertaken in consultation with TfNSW and does not form part of this tender evaluation, the subject of this report.

With part of the project delivering a pedestrian link traversing through community owned land a gratis deed transfer of the pedestrian right of way was secured. The current pedestrian link traverses through community owned land.

The Request for Tender sought submissions from companies to submit a Landscaping and Civil Works proposal to complete these works under a MW21 contract. The new pedestrian link and green parklet will be constructed in accordance with the detailed Design Plan developed by Ennismore Field Landscape Architects to ensure high quality and deliverable outcomes.

Project Risk

TfNSW have advised the Streets as Shared Spaces program (this programs funding) will conclude in February 2024. Accordingly, for this project to be successfully delivered to the community, the project must be completed no later than 15 January 2024. The current timeline identified by the preferred contractor, Boyds Bay Landscaping Services Pty Ltd ATF Boyds Bay Landscaping Trust is currently within scope. Should approval delays be experienced in engaging this contractor it will be necessary to terminate the project and return unspent funds.

Confidential Report

Site Plan – Cullen Street, Nimbin



Tender Submissions

The project has experienced significant ongoing procurement delays as a result of the trade shortage across the Northern Rivers region. To support the procurement process, our delivery partners, Planit Consulting, contacted several local contractors in September 2022 to gauge interest and availability.

The Request for Tender was advertised via VendorPanel on 29 June 2023. Invitation for submission was sent to four (4) suppliers. A total of one submission was received by the close of tender on 25 July 2023 as listed below:

- Boyds Bay Landscaping Services Pty Ltd ATF Boyds Bay Landscaping Trust

Of the submissions received, the following was determined:

- Boyds Bay Landscaping Services Pty Ltd ATF Boyds Bay Landscaping Trust are an experienced contractor with the capacity to deliver high quality outcomes,
- Boyds Bay Landscaping Services Pty Ltd ATF Boyds Bay Landscaping Trust are available for the desired construction window for delivery within the funding timeline, and
- LCC has contracted Boyds Bay Landscaping Services Pty Ltd ATF Boyds Bay Landscaping Trust for various projects including the recent Lismore Laneways Project and has been satisfied with the quality of work produced.
- clarifications of scope and price identify the works will satisfy Council standards, deed requirements and the budget.

Tender Submissions

The evaluation was conducted in accordance with the Local Government Tendering Guidelines, Regional Procurement Tendering Code of Conduct and Tendering Evaluation Principles and Process.

The tender evaluation panel comprised of Council's Manager Destination and Economy, Economic Development Manager and Project Delivery Manager – Planit Consulting. Confidentiality and probity were maintained throughout the process.

Lismore City Council
Meeting held 12 September 2023 - Tender T2023/131 - Nimbin Wayfinding Project -
Landscaping and Civil Works

Confidential Report

The following criteria and weightings were used to assess the submission received:

Criteria	Group Summary	Weighting
1	Total Price	
2	Capability, Experience and Availability	
3	WHS, Environment & Quality	
4	Local Content	

The tender was ranked for each criterion as follows:

Rating	Description	Score (example)
Excellent	Exceeds requirements in all ways, with very little or no risk	10
Very Good	Meets requirements in all ways, exceeds it in some, little risk involved	8-9
Good	Meets the requirement and is workable, acceptable risk	6-7
Marginal	Nearly meets requirement, workable but may be deficient or limited in some areas, some element of risk	4-5
Poor	Offer is difficult to assess against criteria, high risk	1-3
Non-compliant	Tenderer has either stated non-compliance, demonstrated non-compliance, or there is insufficient information to assess	0

Evaluation Results

A summary of the tender evaluation results is provided below.

Scoring Criteria	Boyd's Bay
Total Price (Ex GST)	\$311,981.05
Price Score (50%)	
Capability & Experience (20%)	
WHS, Environment & Quality (10%)	
Local Content (20%)	
Total Weighted Score/ 100	

With only one (1) submission received for the tender, the evaluation panel supported the continuation of the procurement process noting the following points:

- the price submitted following clarifications represents very good value for money and is within project budget.
- Boyd's Bay Landscaping Services Pty Ltd ATF Boyd's Bay Landscaping Trust is a highly capable company and has significant experience in civil and landscape construction with success including the Lismore Laneways Project. Other previous projects within surrounding areas include Miles CBD Streetscape Revitalisation for Western Downs Regional Council, Lennox Head Streetscape and Park for Ballina Shire Council and Barker Street Urban Space for Richmond Valley Council. Each of these projects strongly align with specific outcomes of this project.

No other tenderers are recommended due to the following points:

- Lismore City Council did not receive any other tenders for the project.

Confidential Report

[REDACTED]

[REDACTED]

S.166-S.169 Local Government (General) Regulation 2021

Tendering methodology was pursuant to Section 169(1)(b) of the *Local Government (General) Regulation 2021* and supported and endorsed by Council's Procurement team. Contractors were selected based on published capability statements, and the Request for Tender was advertised on VendorPanel for a period of greater than 21 days.

Budget

A total project budget of \$500,000 (excluding GST) has been provided by Transport for NSW Streets as Shared Spaces fund.

The recommended tender submission is within budget and allows for a healthy contingency if required.

Comments

Finance

The recommendation is supported as printed. The project is fully funded through grants.

Public consultation

Through considerable engagement with the Nimbin Chamber of Commerce, the Nimbin Advisory Group, NCC and other community groups, project elements were identified and developed for inclusion into the project.

The community receive regular updates regarding the project via LCC's 'Your Say' page and key stakeholder engagement.

The elements being delivered by the Nimbin Wayfinding Project will respond to the desired outcomes as identified through this consultation.

Conclusion

The Tender Panel recommends the contract for T2023/131 – Nimbin Wayfinding Project – Landscaping and Civil Works, be awarded to Boyds Bay Landscaping Services Pty Ltd ATF Boyds Bay Landscaping Trust.

Boys Bay Landscaping Services Pty Ltd ATF Boyds Bay Landscaping Trust are a Northern Rivers based company with extensive knowledge and experience in landscaping and civil works. The detailed submission of Boyds Bay Landscaping Services Pty Ltd ATF Boyds Bay Landscaping Trust supports their capability and capacity to deliver the landscaping and civil works for the Nimbin Wayfinding Project with minimal risk to Council.

Attachment/s

There are no attachments for this report.

Confidential Report

Report

Subject	Tender T2023114 - Goonellabah Skate Park Upgrade Design and Construct
TRIM Record No	BP23/752:AF23/2263
Prepared by	Project Manager Infrastructure & Open Spaces
Reason	To approve a contractor for the upgrade of the Goonellabah Skate Park funded from the NSW grant, Stronger Country Communities Fund (SCCF).
Strategic Theme	An inclusive and healthy community
Strategy	Our sporting facilities and recreational spaces encourage active and passive community participation.
Action	Continued improvement of Lismore's sport and recreation facilities.
Grounds for Closure	Section 10A(2) (d i):
Public Interest	Discussion of this matter in an open meeting would on balance be contrary to the public interest because it relates to:commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

Executive Summary

Lismore City Council received grant funding to undertake an upgrade of the Goonellabah Skate Park situated at Oliver Avenue, which will provide an upgraded facility that meets the specific needs of all levels of local skaters, scooter riders and spectators.

This skate park upgrade will deliver the vision, strategies and objectives of the Office of Sport's Strategic Plan 2016-2020, the North Coast Sport and Active Recreation Plan 2017 and the North Coast Regional Plan 2036 by enhancing Goonellabah with a modern and accessible skating facility.

The recommended contractor has the capability, experience and availability to undertake the design and installation of the new skating obstacles and remedial works. The tender is valid with the works to be awarded as a Design and Construct MW21 Contract.

Recommendation

That:

1. in accordance with Clause 178(1)(a) of the *Local Government (General) Regulation 2021*, Council accepts the tender from Trinity Skateparks Pty Ltd for Tender T2023114 Goonellabah Skate Park Upgrade Design and Construct, for the sum of \$272,690.00 including GST
2. Council authorises the General Manager to finalise and execute the contract and any other documentation required to give effect to this resolution
3. a redacted copy of this report and attachment be released as a public document.

Lismore City Council
Meeting held 12 September 2023 - 13.2 - Tender T2023114 - Goonellabah Skate
Park Upgrade Design and Construct

1

Confidential Report

Background

Lismore City Council sought submissions from suitably qualified companies with the capability, experience and availability to upgrade the outdated skating facility at Goonellabah with new skating trick obstacles and some remedial works to the existing bowl. The current skating precinct is overcrowded with three obstacles that targets more experienced skaters, making it difficult for younger and less experienced skaters.



Lismore City Council
Meeting held 12 September 2023 - 13.2 - Tender T2023114 - Goonellabah Skate
Park Upgrade Design and Construct

Confidential Report

The Request for Tender sought submissions from companies to submit a Design and Construct proposal to complete various works under a MW21 contract. New obstacles and other works would be retrofitted to the existing skate park by demolishing three unused and damaged, large rectangular blocks in the centre of the skating precinct, making room for the new beginner to intermediate obstacles.

As part of the contracted works tenderers were advised the approved contractor may need to adjust their submission design options following a community design workshop. Any design alterations must be within budget constraints.

It was requested that the contracted works be carried out in accordance with the following:

1. All relevant standards
2. Building Code of Australia requirements
3. Review of Environmental Factors (REF)

Tender Submissions

A Request for Tender was advertised via VendorPanel on Monday 22 May 2023 and closed Friday 23 June 2023 at 5pm. Unfortunately, there was no response to this tender. Discussions took place with various skate contractors to detail any concerns or issues before the second tender was advertised.

A second revised Request for Tender was advertised via VendorPanel on Monday 26 June 2023 and closed Friday 14 July 2023. One submission was received by the close of tender, as listed below:

- Trinity Skateparks Pty Ltd.

The tender submission by Trinity Skateparks included all schedules duly completed and the company has disclosed it has no direct contractual agreement to construct or operate at the Carmichael mine. The tender was therefore progressed for further evaluation.

The original tender scope included phased works for Stages 1 and 2. Aspects of the submission relating to the staging of works, methodology and specific scope required clarification with the tenderer. As a result of these clarifications, it was agreed that a change to the sequence of the staged works was required, resulting in additional Stage 1 costs, yet still within budget.

The tender price nominated within this report represents the clarified Stage 1 only tender price. The Stage 2 scope and estimates will take form following consultation with the community and will be a separate future project.

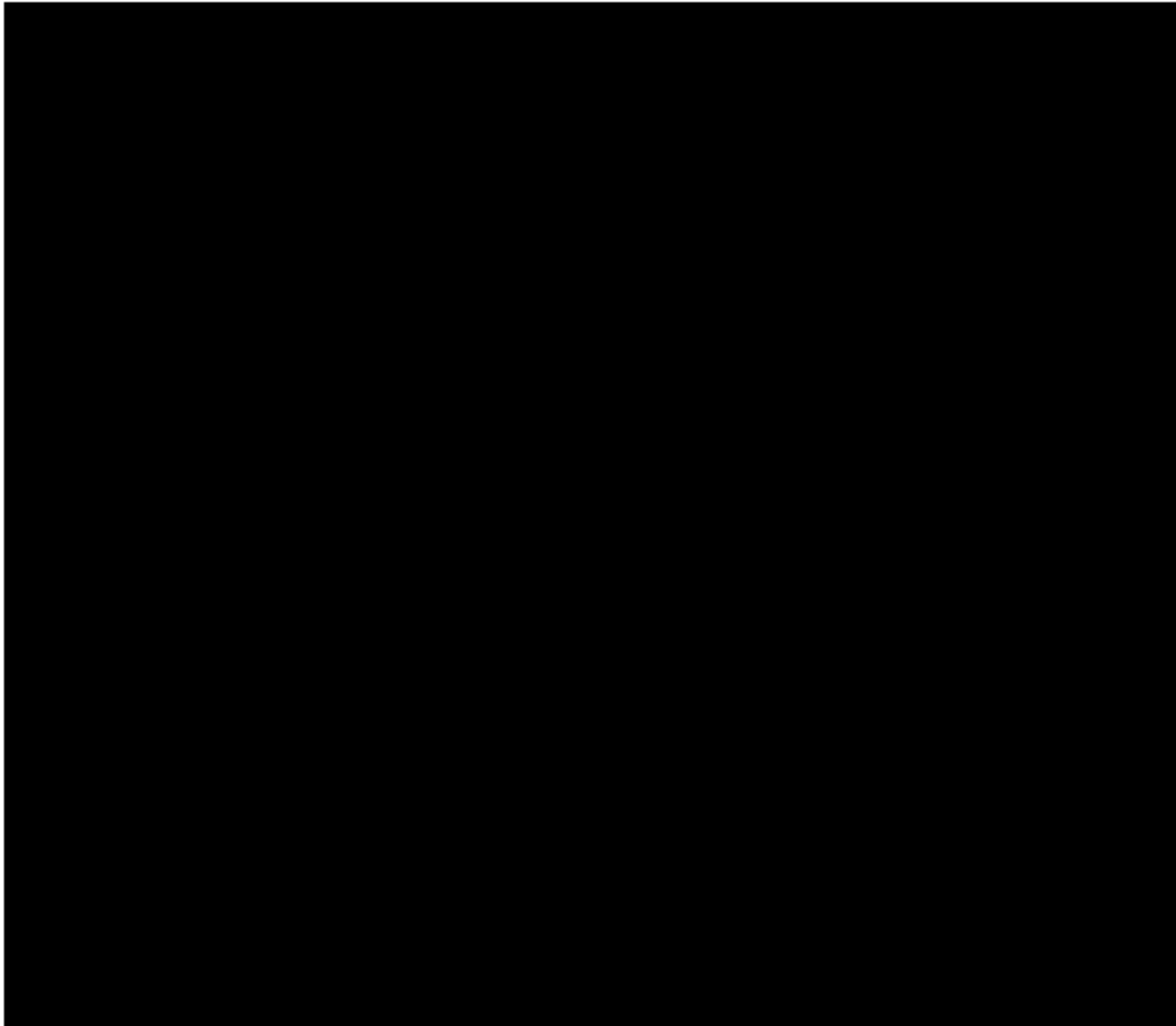
Methodology

The following criteria and weightings were used to assess the submission received:

Criteria	Group Summary	Weighting
1	Total Price	
2	Capability, Experience and Availability	
3	Design Compliance and Experience	
4	Local Content	

Confidential Report

The tender was ranked for each criterion within VendorPanel as follows:



Evaluation Results

Assessment of the tender submission was completed via VendorPanel by a team of 3 staff members. A summary of the scoring relating to the Criteria is below:

Scoring Criteria	Overall Score - Trinity Skateparks
Total Price (Ex GST)	\$247,900.00
Price Score (50%)	
Local Content (20%)	
Capability & Experience (10%)	
WHS & Quality (20%)	
Total Weighted Score/ 100	

Confidential Report

S.166-S.169 Local Government (General) Regulation 2021

Tendering methodology was pursuant to Section 169(1)(b) of the *Local Government (General) Regulation 2021* and supported and endorsed by Council's Procurement Team. Contractors were selected based on published capability statements, and the Request for Tender was advertised on VendorPanel for a period of greater than 21 days.

Budget

A budget of \$306,193.00 (ex GST) has been provided by a grant funded under the NSW Stronger Country Communities Fund (SCCF).

Comments

Finance

As the project is grant funded and the recommended tender is within the grant funds approved, the recommendation is supported as printed.

Public consultation

Public consultation was addressed prior to the grant application. The Northern Rivers Skating Community and local skaters were also approached for their input on the potential replacement, updating and/or renewal of park areas and obstacles.

As part of the design process, the contractor is required to host one public consultation workshop to refine the design.

Conclusion

The submission received was assessed in line with the requirements outlined in the Request for Tender documentation.

Although only one submission was received, the tender evaluation panel recommends the contract for T2023114 Goonellabah Skate Park Upgrade Design and Construct, be awarded to Trinity Skateparks Pty Ltd. Trinity Skateparks is a Queensland based company with extensive knowledge and experience in new and remedial skatepark works. Their detailed submission demonstrates a low risk to Council.

Attachment/s

There are no attachments for this report.

**MINUTES OF THE CONFIDENTIAL MEETING OF THE COUNCIL OF THE CITY OF LISMORE HELD
IN COUNCIL CHAMBERS ON TUESDAY 12 SEPTEMBER 2023 AT 6.00PM**

Please note: These minutes are subject to confirmation at the next Council meeting. Decisions recorded in the draft minutes are subject to the Council's Code of Meeting Practice in relation to rescinding decisions.

Present

Mayor, Councillor Krieg; Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Rob, together with Mr Gibbons, General Manager; Mr Enevoldson, Chief Financial Officer; Dr Logan, Chief Operating Officer; Mr Butron, Chief Community Officer and Mrs Mitchell, Executive Officer to the General Manager & Mayor and Councillors.

MOTION moved that the recommendations set out in items 13.1 and 13.2 be adopted by exception.

(Councillors Gordon/Hall)

As per clause 13.3 of the Code of Meeting Practice the motion was withdrawn as a councillor indicated they wished to speak on an item.

13.1 Tender T2023/131 - Nimbin Wayfinding Project - Landscaping and Civil Works

176/23

RESOLVED that:

1. in accordance with Clause 178(1)(a) of the *Local Government (General) Regulation 2021*, Council accepts the tender from Boyds Bay Landscaping Services Pty Ltd ATF Boyds Bay Landscaping Trust for Tender T2023/131 – Nimbin Wayfinding Project - Landscaping and Civil Works for the sum of \$311,891.05, excluding GST
2. Council authorises the General Manager to finalise and execute a Mini-Minor Works (MMW) contract and any other documentation required to give effect to this resolution
3. a redacted copy of this report will be released as a public document

(Councillors Gordon/Hall) (BP23/717)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

13.2 Tender T2023114 - Goonellabah Skate Park Upgrade Design and Construct

MOTION moved that:

1. in accordance with Clause 178(1)(a) of the *Local Government (General) Regulation 2021*, Council accepts the tender from Trinity Skateparks Pty Ltd for Tender T2023114 Goonellabah Skate Park Upgrade Design and Construct, for the sum of \$272,690.00 including GST
2. Council authorises the General Manager to finalise and execute the contract and any other documentation required to give effect to this resolution
3. a redacted copy of this report and attachment be released as a public document

(Councillors Gordon/Cook)

FORESHADOWED MOTION moved that this matter be deferred until additional information on the project can be provided.

(Councillors Ekins/Bird)

177/23

RESOLVED that:

1. in accordance with Clause 178(1)(a) of the *Local Government (General) Regulation 2021*, Council accepts the tender from Trinity Skateparks Pty Ltd for Tender T2023114 Goonellabah Skate Park Upgrade Design and Construct, for the sum of \$272,690.00 including GST
2. Council authorises the General Manager to finalise and execute the contract and any other documentation required to give effect to this resolution
3. a redacted copy of this report and attachment be released as a public document

(Councillors Gordon/Cook) (BP23/752)

Voting for: Councillors Bing, Colby, Cook, Gordon, Hall, Jensen, Krieg and Rob

Voting against: Councillors Bird, Ekins and Guise

Resumption of Open Council

178/23 **RESOLVED** that Council reopen the doors to the public and return to open session.

(Councillors Hall/Gordon)

Voting for: Councillors Bing, Bird, Colby, Cook, Ekins, Gordon, Guise, Hall, Jensen, Krieg and Rob

Voting against: Nil

Closure

This concluded the business and the meeting terminated at 7.10pm.

CONFIRMED this > > 2023 at which meeting the signature herein was subscribed.

MAYOR