

An Ordinary Meeting of Lismore City Council will be held at the Council Chambers on 21 November 2023, 6.00pm

Attachments Excluded From Agenda

Jon Gibbons
General Manager

14 November 2023



Attachments

Reports

- 11.1 **Rezoning Planning Proposal for land at 1055 and 1055A Bruxner Highway**
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Planning Proposal

Rezoning of 1055 and 1055A Bruxner Highway,
Lismore (Lot 42, DP 868366 and Lot 1, DP 957677).

November 2023



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Executive Summary

In November 2022 Lismore City Council received a Planning Proposal from landowners at 1055 and 1055 Bruxner Highway, Goonellabah (hereby 'the site'). The Planning Proposal seeks to amend the land zones, minimum lot size and height of building controls within the Lismore Local Environment Plan 2012 to enable future residential, commercial, industrial, and recreational development across the 75 hectares of the site.

The site is identified in Lismore Council's Growth and Realignment Strategy 2022 (GRS) and the supporting Addendum that specifically addresses the need for new flood free employment lands in the region. The GRS has been endorsed by the Department of Planning and Environment.

The mix of zonings proposed across the site will allow for the integration of new housing, employment, recreation and community facilities. A Draft Voluntary Planning Agreement (VPA) will also ensure there are opportunities for the affordable relocation of dwellings from high flood-risk areas, as well as the provision of environmental benefits along Tucki Tucki Creek.

The proposal is considered to facilitate suitable and sustainable growth in a strategically situated location for Lismore's future.

List of Attachments

Attachment	Title
C	Urban Design Report
E	Social Infrastructure Needs Assessment
F	Economic Benefits Assessment
G	Aboriginal and Historic Heritage Due Diligence Assessment
H	Ecological Assessment Report
I	Agricultural Assessment
J	Land Use Conflict Risk Assessment
K	Bushfire Constraints Assessment
L	Preliminary Site Investigations
La	Land Contamination Detailed Site Investigations (response to additional information request)
Laa	Contaminated Land Studies Summary (response to additional information request)
M	Acid Sulphate Soil Investigation
N	Noise Impact Assessment
O	Geotechnical Investigations Report
P	Traffic and Transport Study
Pa	Traffic and Transport Study (response to additional information request)
Q	Water Servicing Assessment
R	Sewer Servicing Assessment
S	Stormwater Management Report
T	Site Survey

Introduction

Background

In November 2022 a planning proposal was received from Nimble Estates to amend the zoning and associated development standards on two lots at 1055 and 1055A Bruxner Highway, Goonellabah (Lot 42, DP 868366 and Lot 1, DP 957677).

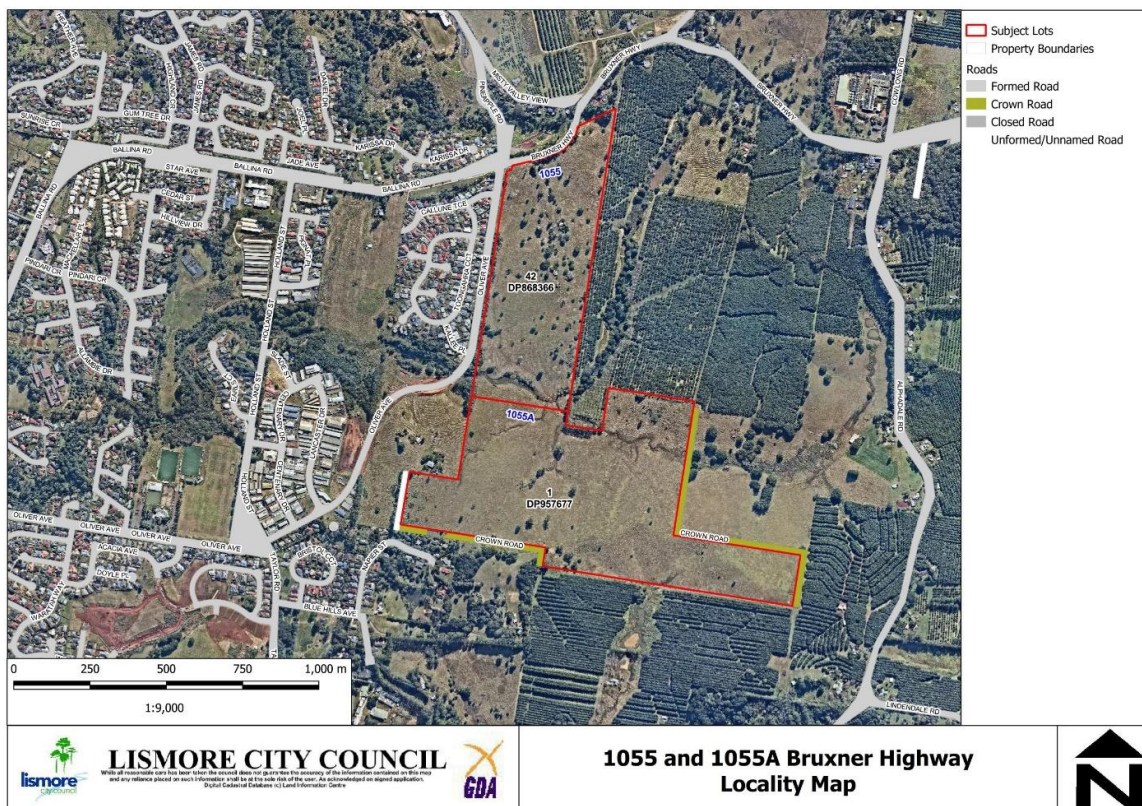
The planning proposal intends to facilitate the future development of the site for residential, industrial, and commercial use. It is expected that the proposal will lead to the creation of around 350 residential lots and 150 industrial/ commercial lots. The controls included in the Planning Proposal and an associated site-specific Development Control Plan (DCP) aim to deliver a range of housing opportunities including some medium density housing and a range of industrial / commercial opportunities.

This planning proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) with consideration of DPE's 'Local Environmental Plan Making Guideline' (August 2023).

Site description

The site is a large (75 ha) landholding located on the eastern fringe of Goonellabah, abutting established residential and industrial land uses. To the north, west and south of the site is residential land, and to the east and south of the site is agricultural land currently containing macadamia farms. The site is approximately 8km to the Lismore CBD and 3km to the Goonellabah shopping precinct.

Figure 1 - Locality and Parcels



The two lots (1055 and 1055A) are divided by the Tucki Tucki creek which includes a corridor of vegetation on the NSW Biodiversity Values Map. Across the site there are a number of fragmented mature paddock trees that have some biodiversity value.

The majority of the site has a slope of 10-20%, referred to as rolling, however there some areas that are considered gently undulating with a slope of 2-5%.

The site is currently used as grazing land and is mapped as State Significant Farmland. It is currently zoned as RU1 Primary Production.

Delegation of plan making functions

Council seeks authority of plan making functions pursuant to Section 3.36 of *the EP&A Act*.

Part 1 - Objectives or Intended Outcomes

Objective

The objective of this planning proposal is to amend the Lismore LEP 2012 to enable residential, mixed use and industrial land to meet the needs of the Lismore community.

Intended Outcomes

The intended outcome of this Planning Proposal is to rezone the site to a combination of R1 *General Residential*, MU1 *Mixed Use*, E4 *General Industrial* and RE1 *Public Recreation*

The intended outcomes of the rezoning are to:

- Provide a diversity of housing options;
- Provide commercial and community land to meet the needs of the new residential community;
- Provide open space areas to meet the needs of the residential community, including, but not limited to, a pedestrian/cycling link along the Tucki Tucki creek reserve;
- Provide a diversity of industrial lots; and
- Retain, enhance and protect the existing environmental qualities on the site.

Part 2 - Explanation of Provisions

The objectives and intended outcomes of the Planning Proposal will be achieved through the following amendments to the Lismore Local Environmental Plan 2012 (LLEP):

1. Amend the LLEP 2012 Land Use Zoning Map (Sheet LZN_005 and Sheet LZN_006) from RU1 Primary Production to part:
 - R1 General Residential
 - MU1 Mixed Use
 - E4 General Industrial
 - RE1 Public Recreation

See existing and proposed land zoning maps at figure 2 and 3 in Part 4.

2. Amend the Lot Size Map (Sheet LSZ_005 and Sheet LSZ_006) to remove the current minimum lot size requirement of 40ha and 20ha and impose the following minimum lot sizes:
 - R1 zoned land: a minimum lot size of 400m²,
 - MU1 zoned land: a minimum lot size of 300m²,
 - E4 zoned land: a minimum lot size of 1,500m².

See existing and proposed minimum lot size maps at figure 4 and 5 in Part 4.

3. Amend the LLEP 2012 Height of Building Map (Sheet HOB_005 and Sheet HOB_006) to impose the following maximum height of building control (excluding the RE1 and IN1 zoned land):
 - MU1 zoned land maximum building height of 13m
 - R1 zoned land: maximum building height of 8.5m

See existing and proposed height of building maps at figure 6 and 7 in Part 4.

Part 3 - Justification

Section A - Need for the Planning Proposal

Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

Yes. The site is the result of Council's adopted and endorsed Growth and Realignment Strategy 2022 (GRS) and its Addendum.

At the Council meeting of 13 December 2022 Councillors adopted the GRS and resolved to publish it following DPE's endorsement.

In June 2023, the DPE endorsed part of the site (1055 Bruxner) and conditionally endorsed part of the site (1055A Bruxner) requesting additional information around the need for local industrial land before full endorsement could be provided.

To address the request for additional information, Lismore City Council prepared an Addendum to the GRS. The Addendum highlights the need for additional flood-free industrial land and addressed DPE concerns for this part of the site. This was submitted to the DPE in August 2023 and endorsed in September 2023.

The entirety of the site is therefore endorsed in an adopted growth strategy that is published on Lismore City Council's website.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The site is currently zoned RU1 Primary Production and as such the Planning Proposal is the best way to enable the zone change and allow the intended outcomes to be met.

Section B – Relationship to strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The Planning Proposal will give effect to many objectives and intentions of the regional plans and strategies listed below.

North Coast Regional Plan 2041

The NCRP is the overarching framework for the management of growth on the NSW North Coast. The NCRP represents a review of the region's strategic planning settings and considers some of the key land use challenges and opportunities over the last five years including drought, flooding, bushfire and the effects of the COVID-19 pandemic. The plan reflects the recent changes in community attitudes and expectations for the region.

The Proposal sits outside the urban growth area for Lismore shown in Figure 19 of the NCRP. This is because the NCRP was prepared and adopted prior to Lismore's Growth and Realignment Strategy being adopted and endorsed in December 2022. For this reason, appendix 3 outlines how the proposal meets the NCRP's Urban Growth Area Variation Principles.

The Proposal contradicts Objective 8, Goal 1 of the North Coast Regional Plan 2041 (NCRP) and the Northern Rivers Farmland Protection Project 2005 in that it seeks the rezoning of State Significant Farmland.

Objective 8, Goal 1 of the NCRP is to *Support the productivity of agricultural land*. However the NCRP recognises that agricultural production may not be suitable on some small pockets of state and regionally significant mapped farmland. It allows Councils to make a variation to the mapped farmland boundary, where important farmland is unlikely to contribute significantly to future agricultural production. The variation criteria is set out within the Urban Growth Area Variation Principles. These Urban Growth Area Variation Principles in relation to the rezoning of land identified as Important Farmland for non-agricultural land uses were addressed in the Addendum to Council's Growth and Realignment Strategy and are also addressed in appendix 3.

Aside from objective 8, the proposal complies with all other objectives within the three goals of the NCRP and will directly contribute to achieving the sustainability (objectives 1, 5, 18 and 19), affordable housing (objective 2) and employment (objectives 11 and 14) aspirations of the NCRP.

The proposal directly contributes toward achieving the narrative for Lismore in the NCRP as it will:

- *support the development of employment lands, including commercial and industrial employment opportunities outside of the Lismore CBD;*
- *deliver housing across Lismore including at Goonellabah and within urban investigation areas; and*
- *support the delivery of enhanced housing diversity including medium density housing, affordable housing and housing appropriate to the climate of the region.*

Northern Rivers Farmland Protection Project 2005

The Northern Rivers Farm Protection Project (NRFPP) was prepared by the NSW Department of Primary Industries and seeks to:

"protect the best agricultural from urban and rural residential rezoning development by mapping farmland and developing planning principles."

The NRFPP classifies the site as State Significant Farmland (SSF) on the NRFPP mapping. Despite this classification, a site-specific agricultural assessment found that the site fails to meet the definitive attributes of SSF and is not suitable for productive cultivation or agriculture. Furthermore, the NRFPP acknowledges that there may be errors in the SSF mapping and states:

"The maps were prepared for regional planning purposes. The minimum mappable area is 40 hectares. Farmland significance identified may not necessarily be accurate at the property scale. It is possible that there will be some inclusions of lower quality lands. Some degree of boundary verification will be necessary in assisting councils to overcome these limitations when defining boundaries for future settlement strategies."

As identified in the Agricultural Assessment (Attachment I), the subject site was found to contain 60% of either Class 4 or Class 5 Agricultural Land and is unsuitable for agriculture, or light grazing with the potential agricultural productivity being very low or zero as a result of severe constraints. Approximately 40% of the site contained Class 3 Agricultural Land which is suitable for some speciality crops. However, the Class 3 Agricultural Land is sporadically dispersed throughout the site.

This assessment confirmed that the site is not land that *"is important currently or in the future."* The incorrectly mapped SSF in this instance has caused sterilisation of the site from economically sustainable development.

The NSW Department of Primary Industries is currently reviewing the mapping with an early draft being consulted on in 2021/2022. It is not known when the final mapping will be published and if the site will remain mapped as SSF.

Given there are recognised errors in the SSF mapping, and the site does meet several of the criteria that contribute toward SSF, this request for a Planning Proposal will not prevent the aims and objectives of the NRFPP from being delivered as the site has been demonstrated to be of little to no agricultural importance currently or in the future due to its significant constraints.

Lismore Regional City Action Plan

The Lismore Regional City Action Plan 2036 (the RCAP) supports the vision and goals of the North Coast Regional Plan 2036. The RCAP will guide growth and change in the city towards 2036. The objectives relevant to this Planning Proposal are discussed below:

Objective 1: Support community aspirations for greater housing diversity and choice.

The indicative layout for the site proposes a mix of diverse housing typologies to cater for the changing needs of future communities. Housing types proposed include:

- Townhouse, dual occupancies, dwelling houses, group homes, multi dwelling housing, and semidetached dwellings (up to 600sqm), and
- Medium to high density residential apartments.

The proposal recognises Lismore as one of the four regional cities that is a popular place to live and work and will accommodate a large portion of the North Coast region's population growth. The precinct will contribute towards the North Coast Regional Plan 2036 target of delivering 23,900 dwellings by 2036.

Objective 3: Strengthen resilience to natural hazards and climate change.

Objective 3 aims to avoid development in high-risk areas, mitigate natural hazards particularly bushfires and flooding and incorporate resilience measures. The site is not flood prone land. The bushfire report confirms the requirement of Planning for Bush Fire Protection 2019 can be satisfied with minimal environmental impact and suitable APZ's are available. Further, any future development applications on the site will need to achieve all relevant standards in terms of resilience planning measures set by State and local government policy.

Objective 7: Deliver local jobs through the city's employment lands and industry sectors.

The proposed MU1 Mixed Use zone and E4 General Industrial zone will deliver a range of commercial and industrial uses including minor and major retail services, warehouse and distribution centres, general and light industries.

The Economic Benefits Assessment prepared by Urbis (Attachment F) indicates that the employment generating lands on site will deliver 4,336 total ongoing jobs and contribute a total GVA of \$759.0 million per annum. The proposal will facilitate new job opportunities in proximity to a range of residential developments resulting in a productive centre within the Precinct.

Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

Yes, the Planning Proposal is consistent with the following strategic planning documents:

Inspire Lismore 2040 (LSPS)

Inspire Lismore 2040 is the overarching principle strategic planning document for Lismore City Council. It sets out the vision for Lismore and the land use priorities and actions that will

enable the vision to be realised. The LSPS sets out five key themes and 14 planning priorities.

The Planning Proposal aligns with the following themes and priorities:

Theme 1, Liveable Places

Priority 1: *Growth is consolidated around Lismore City, CBD and villages*

The site will form a natural progression of Goonellabah and is set within the newly adopted Growth and Realignment Strategy.

Priority 2: *Create a city and villages that support active and healthy living*

The Proposal includes the provision of open space to meet the needs of the new community as well as provision of a walking/ cycling track along Tucki Tucki creek reserve to link up in the future with the existing walking/ cycling track to the west of the site. The Proposal also includes Mixed Use areas where it is proposed that live/work opportunities will exist. The provision of a commercial core will also ensure local services can be provided within walking distance of the new community

Theme 2, Productive Economy

Priority 5: *Identify & support the expansion of emerging industries*

The Proposal includes land to be rezoned to E4 General Industrial and MU1 Mixed Use. The DCP enables a range of lot sizes to suit varying business sizes and facilitate the growth of existing start-ups and small-scale businesses.

Priority 8: *Consolidate existing industries & support their continued growth*

The Proposal will be a natural progression to the existing Goonellabah Industrial Area. The varied lot sizes will provide opportunities to a range of new industries.

Theme 4, Sustainable Environment

Priority 11: *Waterways, riparian areas and water catchments are protected and enhanced.*

The Proposal includes the revegetation of the Tucki Tucki Creek Corridor that is within the site boundaries.

The Proposal does not align, or is neutral with the following:

Theme 2, Productive Economy

Priority 6: *Expand agriculture and agribusiness while protecting productive agricultural land*

By providing new industrial land with a range of lot sizes, there could be opportunities to support agribusiness.

However, the site is currently zoned RU1 Primary Production and mapped as State Significant Farmland.

The rezoning is therefore inconsistent with the priority of protecting productive agricultural land however it is justified – see response to question 2 above.

Theme 4, Sustainable Environment

Priority 12: *Protect and improve productive agricultural land and other natural resources*

As above.

Growth and Realignment Strategy

After the natural disaster flood events of 2022, Lismore Council reviewed and revised its growth strategy, prioritising investigation into new flood-free land for business and residential land uses. At the Council meeting of 13 December 2022 the Growth and Realignment Strategy (GRS) was adopted.

In June 2023, the DPE conditionally endorsed the strategy but requested additional information around the need for additional local industrial land before full endorsement could be provided. To address this and carry out the further investigation, Lismore City Council prepared an addendum to the GRS to highlight the need and address concerns for this part of the site. This was submitted to the DPE in August 2023 and endorsed in September 2023. The entirety of the site is therefore endorsed in the adopted and published Growth and Realignment Strategy as suitable for urban development. This proposal is consistent with and can facilitate the vision of the GRS to accommodate future residential and employment growth outside of flood-affected areas.

The site is referenced within the GRS at map 4 and map 18.

Map 4: "Oliver Avenue Potential Residential / Mixed Use Area" identifies 1055 Bruxner Highway for residential development.

Map 18: "Potential expansion area of the Goonellabah Industrial Precinct" identifies 1055A Bruxner Highway for industrial uses.

The GRS and associated Addendum acknowledges that the site would form a logical eastern expansion to the Goonellabah Industrial Precinct and benefitting from the \$14 million State Government investment to construct the Oliver Avenue Link as part of the Lismore Employment Lands Project.

Imagine Lismore (Community Strategic Plan) 2022-2032

The Imagine Lismore Community Strategic Plan (CSP) was developed and adopted by Council in accordance with the *Local Government Act 1993*. The plan identifies the main priorities and aspirations for the future of the LGA for a period of 10 years. Imagine Lismore includes a list of challenges that the plan aims to address. Those of relevance to the proposal include:

- Limited public transport restricts the community from accessing the services they need.
- Limited housing choice impacts Council's ability to attract a diverse range of people to live and work in the region.
- Changing social structures require public spaces, activities and facilities to help bring people together and build social connections in the community.
- To retain Regional City status, Lismore must retain key regional institutions in sectors such as education and health.
- The current lack of resources to maintain community assets has resulted in a maintenance backlog for Council that cannot be addressed adequately.

Several key directions were developed to address the above challenges and to incorporate the community's vision for Lismore, these include ensuring:

- Sporting and recreational spaces encourage active and passive community participation.
- The community has access to essential services.
- The city, villages and riverbank precincts are vibrant and provide diverse activity that strengthens social connections.
- The community has a diverse and thriving arts and cultural life.

- The community is connected, and the city is accessible.
- The city and village facilities and services are well managed and maintained.
- The built environment is managed and enhanced to meet the needs of the growing community.
- Land-use planning caters for all sectors of the community.

The Planning Proposal accords with the following objectives in the CSP;

Community Strategic Plan Objective	Planning Proposal alignment
B1 <i>Our community has diverse business and industry, as well as opportunities for investment and growth</i>	The Proposal includes zones MU1 Mixed Use and E4 General Industrial zones. The proposal could accommodate 100 new industrial lots, enabling opportunities for business and industry.
C1 <i>Our waterways and catchments are healthy</i>	The Proposal will see the revegetation of the Tucki Tucki Creek corridor within the land parcels.
D2 <i>Our built environment is managed and enhanced to meet the needs of our growing community</i>	The Proposal will enable up to 346 new residential lots, made up of predominantly medium density housing typologies, and 100 industrial lots, therefore ensuring the needs of the built environment growing community are met.
D3 <i>Our land-use planning caters for all sectors of the community</i>	The Proposal will contribute to the availability of serviced land to meet the Lismore population growth and flood relocation.
D4 <i>Our community has a diversity of affordable housing options</i>	The proposal sets out to facilitate a range of housing types, from residential flat buildings to single detached dwellings. This will increase the diversity of Lismore's housing stock and contribute to meeting community needs. Furthermore, a voluntary planning agreement has been drafted to provide affordable housing and enable house relocations from within high risk flood areas.

Innovate Lismore, Economic Development Strategy 2019 – 2024

The Innovate Lismore Economic Development Strategy 2019-2024 (the Economic Strategy) sets a vision to facilitate the growth and diversity of businesses across sectors such as industry, business and community services. The strategy is underpinned by the six following economic opportunities:

1. Enabling the Agri-Economy
2. Innovative and Connected City
3. Tourism, Culture and Sport
4. River City Lifestyle
5. Village Lifestyle
6. Growing Professional Services

Relevant to this planning proposal is the aspiration to enable interconnections between precincts to support business stimulation and growth and attract appropriate businesses. The site will be rezoned to part MU1 Mixed use and part E4 General Industrial, being employment generating land uses. The proposal seeks to deliver 23.27ha of employment generating land including the local centre, commercial developments within MU1 Mixed Use lots and industrial developments.

The economic strategy identifies retail trade as the third highest employer (11.5%). The proposal will facilitate the expansion of retail trade and businesses through the proposed local centre, and business and retail premises as part of MU1 Mixed Use lots. Therefore, increasing

the number of registered businesses will play a key role in the economic strength and diversity of the region. As such, the proposal will be consistent with Opportunity 2 which seeks to create centres that are connected, accessible, and distinctive.

Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

Yes, the Proposal is consistent and will positively contribute to the following state and regional Strategies.

NSW Housing Strategy, Housing 2041

The NSW Housing Strategy sets out a 20 year vision for housing in NSW. It sets out the government's goals and ambitions for future housing that meets the current needs of residents. Its vision is set around four pillars; supply; diversity; affordability; and resilience.

The Proposal will positively contribute to the achievement of the strategy by increasing housing supply and diversity, by providing affordable housing on site through the VPA and by enabling housing development on flood-free land and in accordance with its environment.

Making it Happen in the Regions: Regional Development Framework

The Regional Development Framework provides a framework to provide appropriate services and infrastructure in regional NSW. It seeks to support growing regional centres and identify and activate economic potential across regional NSW for opportunities to improve economic outlook and activate local economies.

The Regional Framework focuses on ensuring regional economic growth can be captured through the implementation of the following programs:

- Improved regional structures to facilitate regional development.
- Building an evidence-base for investment in regional development.
- Attracting investment and co-investment.
- Building regional workforce capability.

The planning proposal is consistent with the above programs for the following reasons:

- Recent flooding and natural disasters in the region have highlighted the urgent need to facilitate release of flood free land for new residential and employment development. The timely release of flood-free land is critical to Lismore's future function as a regional city for the Northern Rivers.
- The location of the site provides for strategically located and accessible employment land for the Northern Rivers.
- The Economics Benefits Assessment demonstrates that future development of the site facilitated by this planning proposal generates approximately \$345M during construction and \$759M annually during ongoing operations in gross value add to the economy.
- The Economics Benefits Assessment also demonstrates that future development of the site facilitated by this proposal generates approximately an average of 4,336 annual ongoing jobs for local and regional residents.

NSW State Infrastructure Strategy 2018-2036

Infrastructure NSW published the Building Momentum State Infrastructure Strategy 2018-2038 (SIS), a 20- year Strategy that sets out Infrastructure NSW's advice on the needs and priorities over the next 20 years. It establishes six strategic directions which inform the recommendations contained within the SIS.

Direction 1 of the SIS seeks to continuously improve the integration of land use and infrastructure planning. Built upon this direction is Infrastructure NSW's recommendation that NSW Government Agencies integrate the infrastructure priorities necessary to support Growth Areas, Planned Precincts, and Growth Infrastructure Compacts. This includes factoring

infrastructure and the associated costs into decisions about land rezoning and land release and maximizing opportunities for the co-location of different services.

The proposal is designed to ensure that planned physical and human infrastructure and services are appropriate to service the requirements of the proposed development.

Upgrades will be required to Council's water and sewer networks to be able to service the site. The site is included in the NRRRC's Resilient Lands Strategy and is the subject of future investment which may contribute to the cost of the necessary upgrades. Additionally, Lismore City Council has applied for round 2 funding of the Regional Housing Strategic Planning fund to be able to prepare detailed design and costings for the upgrades as well as an Infrastructure Delivery Plan for the site that can support this Planning Proposal post-Gateway and be used by Lismore City Council to update its Section 64 Contributions Plan.

Urban Design Guide for Regional NSW

The Urban Design for Regional NSW provides guidance in the design, planning, and development of the building environment across regional NSW. The guide provides 7 urban design strategies for regional NSW, including:

- Engage with the history and culture of places.
- Integrate with the natural environment and landscape.
- Revitalise main streets and town centres.
- Prioritise connectivity, walkability, and cycling opportunities.
- Balance urban growth.
- Increase options for diverse and healthy living.
- Respond to climatic conditions and their impacts.

The planning proposal, structure plan and supporting DCP has been developed based on extensive technical advice including heritage, ecology, bushfire, and stormwater considerations as well as primarily the needs of the community to be able to reside in the new release area with an exemplary quality of life.

The proposal recognises the biodiversity and ecological features of the site, and the importance of protecting and enhancing these features has informed the structure planning.

The proposal promotes development of a walkable neighbourhood, containing a northern residential neighbourhood with access to a local centre. The southern employment land also provides the opportunity for people to work in a well-connected neighbourhood with proximity and ease of access to employment opportunities.

Q6. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent, or justifiably inconsistent, with the requirements of the applicable State Environmental Planning Policies (SEPPs). An assessment against relevant SEPPs is provided at Appendix 1.

Q7. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The proposal is inconsistent with direction 9.1 and 9.4 regarding Rural Land and State Significant Farmland. These inconsistencies can be justified. An assessment against the Ministerial Directions is provided at Appendix 2.

Section C – Environmental, social and economic impact

Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

The site contains two small patches of Lowland Rainforest EEC under the NSW Biodiversity Conservation Act, 2016. But these areas would not meet threshold requirements under the Commonwealth EPBC Act. Similarly, there are patches of vegetation that could be recognised as 'Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions – Endangered Ecological Community'. Council's ecologist notes that the majority of the vegetation on the site is unmapped and that there is a high chance that scattered paddock trees are rainforest remnant trees and recommends that the scattered trees assessment of the BAM 2020 should be applied when assessing impacts on clearing any native vegetation at the Development Application stage.

An ecology report has been provided by Bower Ecology (Attachment H). It identifies the existence of one threatened flora species (scrub turpentine, *Rhodamnia rubescens*) and evidence of one fauna species (koala, *phascolarctus cinereus*) were confirmed on site. The potential impacts on these species as a result of the proposal, with mitigation measures is unlikely to require referral.

A Council-owned strip of land adjacent to the site (which will provide access into 1055 Bruxner Highway) and the Tucki Tucki creek corridor are identified in the NSW Biodiversity Values Map, see Figure 11 in Part 4 Maps. It is considered that the Biodiversity Offset Scheme will be triggered due to a combination of a minor impact to the Biodiversity Values Mapping (approximately 260m²) and the native clearing threshold likely being exceeded due to clearance of native paddock trees. Based on the current proposal, the associated DA will be required to undertake a Biodiversity Development Assessment Report and calculate offset requirements in accordance with the NSW Biodiversity Assessment Method (2020).

The attached ecological report also identifies that a targeted survey for Hairy Joint Grass (*Arthraxon hispidus*), will be required as part of any future development application process and that Tucki Tucki Creek is mapped as habitat for the Purple Spotted Gudgeon (*Mogurnda adspersa*) which is a threatened freshwater species. Whilst not identified on the site, future restoration along Tucki Tucki Creek may assist with local recovery of the species.

Q9. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

Contaminated Land and Acid Sulphate Soils

A technical report (Attachment M) has been provided by HMC Environmental Consulting Pty Ltd, it notes "Acid sulfate soil has not have been identified as being a constraint to the proposed Planning Proposal for Lot 42 DP 868366 & Lot 1 DP 957677, 1055 Bruxner Highway, Goonellabah NSW. No further investigation or management is required".

Land contamination studies demonstrate that the site is suitable for development. The initial Preliminary Site Investigations report (Attachment L) identified that agricultural activities have taken place on the subject land however focused on the existing and past structures and did not undertake a systematic sampling design across the identified agricultural area.

A further Land Contamination DSI (Attachment La and Laa) was submitted to Council that satisfactorily addressed Councils request for information. The additional report concludes that:

"Based on the information presented, in relation to potential site contamination associated with the current and former land use, the proposed Planning Proposal site... is considered suitable for the proposed future mixed-use development subject to the recommendations proposed as part of the Preliminary Site Investigation including:

1. Prior to the submission of a development application for development in the area shown as AoC 1 and AoC 2 in this report, a Detailed Site Investigation is to be prepared by a suitably qualified environmental consultant to further delineate the potential contaminants of concern identified in and around the existing dwellings and associated structures.

2. Following the preparation of the Detailed Site Investigation in 1 above, a Remedial Action Plan is to be prepared providing details on required remediation and validation of lead-impacted soil and other identified potential contaminants of concern.”

Geotechnical Considerations

The site is defined by several ridges and gullies with a distinct creek line which bisects centrally through the site. Slopes vary on the site but are generally in the order of 7 – 15% with some localised areas being in the order of 26%. These slopes are such that they would all fit within current DCP guidelines that would not exclude any residential, commercial, and industrial development.

Soil Profile

The site testing determined that the soil profile consists of a silty clay topsoil, silty clay residual layer and weather rock. Testing further determined that the topsoil will not be suitable for reuse as controlled fill, however the other layers will be suitable for controlled fill. Topsoil will be appropriate for landscaping uses which include topsoiling the land once earthworks are completed.

Slope Stability

The applicant has provided a slope stability assessment from November 2016 for the previous proposal on site along with an updated Geotechnical Assessment (Attachment O). Both assessments demonstrate that with the implantation of appropriate engineering controls applied during the construction process the site will be suitable for residential, commercial, and industrial development. The low categories of hazards H1 and H2 also suggest that the land is currently geotechnically stable and suitable for development.

Further geotechnical assessment will be required during the DA process to ensure that specific designs of areas will still maintain slope stability.

Potential Land Use Conflict

This proposal has the potential to impact upon residential zoned land to the north (about 80m) and west (about 70m) and South (about 40m). There is primary production zoned land adjoining the site, including the north (which includes dwellings), south and east. There is intensive agriculture (macadamia plantations) directly to the east, 20m south and 180m to the north. The plantation to the north is situated on R1 General residential land which is subject to an approved residential subdivision.

A technical Land Use Conflict Risk Assessment (LUCRA) report (Attachment J) was submitted to Council support the planning proposal. The discussion has considered the visual impact, odour impact, pests, chemical use and noise impacts and recommended buffers in Councils DCP chapter. The LUCRA notes that:

“the design of the proposed rezoning area has been informed via the recommended buffers with Lismore City Council’s Development Control Plan 2012 Chapter 11 buffers. The design includes buffers to areas adjacent to macadamia crops including 80 metres to residential lots, including a 30-metre vegetated buffer and 30 to 40 metres to proposed industrial lots. This also includes a mounded and vegetated buffer. These buffers are in accordance with those recommended by the DCP.”

It is considered that these buffers are suitable in preventing land use conflict.

Stormwater

The applicant has provided a Stormwater Management Report (SWMR) for the full site and proposal (Attachment S). The SWMR has considered the 346 residential lots along with 105 industrial lots and applied the following percentages for impervious areas;

- 40% impervious area for standard residential lots (600m²)
- 70% impervious for smaller residential lots (200m²)
- 65% impervious for road reserves within the industrial lots
- 90% impervious for industrial/commercial lots

These areas were compared against the pre-development condition of 0% impervious area for the site and to comply with DCP Chapter 22 and the Northern Rivers Development and Design Manual the following onsite detention is required.

Basin	Basin Volume (m ³)	Biofiltration Area (m ²)	Arrangement
Basin 1	117	81	Bioretention basin
Basin 2	1047	400	
Basin 3 / 4	3086	1250	
Basin 5	448	188	
Basin 6	538	225	
Basin 7	822	360	
Basin 8	489	200	
Basin 9	170	64	
Basin 10	334	120	

Table 1 - OSD Details

For both the 10% and 1% AEP all post development flows from the site have been reduced from the predeveloped conditions.

The basins and underground storage have been located as such that they will not affect any proposed allotment and will be able to discharge water without affecting any neighbouring property. The use of underground storage tanks would be allowed subject to specific requirements during the Development Application stage.

Flooding

The site is not mapped within the Lismore Flood Planning Area, however, does show on mapping to be affected by creek swelling. In this regard the data suggests that the creek might swell to a level of 140m AHD. Similar to other areas of Goonellabah a hydraulic/flood assessment is not required, and the applicant has demonstrated that all residential and industrial lots are situated above the 146m AHD contour line which provides adequate freeboard.

Acoustic

A 'Noise Impact Assessment' (NIA) report (Attachment N) has been provided by ATP consulting and has assessed the noise impacts from Bruxner Highway on the proposed residential lots and noise impacts of the proposed employment lots to the proposed and existing surrounding lots. The NIA has not assessed the impacts of traffic noise from Oliver Avenue on the proposed residential lots and it is proposed that this be done post-Gateway.

Bruxner Highway: Compliance with the NSW Road Noise Policy criterion has been achieved for all the proposed residential lots in the development through the addition of a noise barrier

fence along the northern boundary of the proposed development. The NIA proposes a height and alignment of the noise barrier fence to meet the compliance. A section of the land at the boundary of the existing Bruxner Highway has been excluded from the proposal to allow for a potential future realignment of the Bruxner that may necessitate TfNSW acquiring this section of the land. It is expected that future realignment works would include noise buffer solutions within that section of reserved land.

Existing Surrounding Residents: Noise mitigation measures will be required along the southern boundary of the proposed development to protect existing residents from noise impacts from the employment lands. The NIA proposes two scenarios for compliance that can achieve project trigger levels.

Internal design: The NIA states that “the indicative development layout provides sufficient setback distance between the proposed industrial and residential lots. Within the proposed setback distance, it includes mixed use and public recreation lots, which provides a transitional section to reduce the industrial noise impact on the proposed residential lots.” This is considered suitable.

The noise impact assessment is to be amended post-gateway to include an assessment of the traffic noise from Oliver Avenue as per the NSW Road Noise Policy. The assessment should consider the growth scenarios modelled in the Traffic and Transport Study by Barker Ryan Stewart Pty Ltd. Additionally, it should be demonstrated post-gateway that all noise treatment solutions can be designed to be koala sensitive and in accordance with the Biodiversity SEPP and Lismore’s KPOM. This will involve collaboration from the NIA and ecology consultants.

Bushfire Hazard

The site is partially mapped as being bushfire prone (as shown in Figure 8, Part 4). A Bushfire Constrains and Opportunities Assessment (Attachment K) has been prepared that outlines a package of asset protection zones (APZs) suitable for development on the site to ensure the proposal aligns with the Planning for Bush Fire Protection 2019 guide as legislated by the Environmental Planning and Assessment Act 1979.

Q10. Has the planning proposal adequately addressed any social and economic effects?

Aboriginal and European Cultural Heritage

An Aboriginal Heritage Information Management Systems (AHIMS) search was undertaken and no Aboriginal sites or places were identified within 50 metres of the subject land. The land is also not listed as a heritage item in Schedule 5 of the Lismore LEP 2012. The Cultural Heritage Assessment (Attachment G) identified five PADs where it is likely for aboriginal items to be present. The Assessment recommends that these PADs be avoided or excavated and investigated prior to development.

The assessment has been referred to the Ngulingah Local Aboriginal Land Council for a Local Knowledge Holder to review. Ngulingah recommend and request that LCC place a condition on any development approval to ensure that the developer contract or employ an Aboriginal Cultural Heritage Officer that has experience in Aboriginal Cultural Heritage Surveys to observe and identify any artifacts that may be unearthed in the earth works stage. NLALC should also be invited.

Social and Economic Impact

The Proposal is supported by a Social Infrastructure Needs Assessment and an Economic Benefit Assessment.

Social

The Social Infrastructure Needs Assessment (Attachment E) focuses on the needs of incoming residents, while also considering local services and facilities to support incoming workers, such as outdoor spaces and childcare. Based on this, a number of key recommendations to be considered have been suggested, including, but not limited to, the following:

- Consider the provision of a childcare centre on-site, either within the residential or business area to meet the needs of the incoming residential and worker population, and the surrounding community.
- Review the location of the public open space. It was recommended the park be co-located with the proposed Local Centre (e.g. on the lot immediately to the east). Co-locating the Local Centre and park would create a focal point and activity hub within the proposed residential area. This hub would provide an important meeting and gathering point for the local community. This has been addressed in the current structure plan and DCP.
- Consider the provision of amenities within the cleared buffer zone e.g. walking/jogging and cycling path, outdoor fitness equipment, dog park) to increase access to open space and recreational opportunities for the incoming population. This has been addressed in the current structure plan and DCP.
- Investigate opportunities to provide a pedestrian/cycling connection along the Tucki Tucki Creek riparian corridor to provide an east-west connection through the site. Work with Council to explore opportunities to coordinate with any Council plans for the extension of the Tucki Tucki Creek pathway and other walking and cycling networks. This has been addressed in the structure plan, DCP and via the VPA.

The proposal has been designed to support a thriving community whereby residents are supported by well-designed public spaces and facilities. The site-specific DCP (to be considered separately by Council) and the VPA will ensure deliver high-quality, embellished open spaces along the riparian corridor and in the open spaces as well as a co-located community facility and services within the village centre.

The assessment also calculated the need for 68sqm of community facility and 36 sqm of library space. Council will need to consider how these additional services can be delivered in the Goonellabah area.

Economic

The Economic Benefits Assessment (Attachment F) considers that the construction of the development over a 10-year period is expected to generate 214 jobs per year. Beyond construction, the proposal will generate an additional 4,336 jobs per year, made up of direct and indirect jobs.

The Assessment considers that this will generate an additional \$345.1 million Gross Added Value during construction and \$759 million Gross Added Value through the ongoing jobs and operation as a result of the Proposal.

Section D – Infrastructure (Local, State and Commonwealth)

Q11. Is there adequate public infrastructure for the planning proposal?

No. Currently, the site does not have direct access to water and sewer services. This is because prior to 2022, development was not expected to occur in this area. However, as documented in earlier questions, Lismore's 2022 GRS has identified the site as necessary for Lismore's future and as such, water and sewer servicing requirements have only just commenced.

Council expect water and sewer servicing could be partly enabled by the Northern Rivers Reconstruction Corporation's (NRRC) Resilient Lands Package and dialogue between the NRRC and the landowner is underway.

Alternatively, if the NRRC are unable to fund or fully fund the water and sewer servicing Lismore City Council will seek alternate state or federal funding. Further details on the infrastructure needs is set out below.

Water

The proposed development can be readily serviced for reticulated water following upgrades of the existing water supply network. There are at least two options available, boosted or additional ground storage, both of which can be achieved using land already available to Council and/or the proponents.

LCC's review of the Water Servicing Assessment (Attachment Q) concludes that upgrades will be necessary to accommodate the full proposal. LCC are committed to undertaking a modelling update for water and sewer. The updated modelling will help in fine tuning of hydraulic distribution and minor changes from previous modelling. Council have sought grant funding to cover the costs of the model as well as to prepare detailed design and costings for the preferred upgrades.

Sewer

Upgrades to the sewer system will be needed to accommodate the full scale of the proposal with a final preferred option for infrastructure upgrades not yet decided upon.

LCC's review of the Sewer Servicing Assessment (Attachment R) concludes that sufficient information has been provided at this stage. Detail on preferred options and estimated costs will need to be determined post-Gateway and Council have sought grant funding to cover the costs of preparing detailed design and costings for the preferred upgrades.

Transport

The Traffic and Transport Study (Attachment P and Pa) demonstrates that the transport network, with upgrades, can suitably accommodate the proposal.

Due to the potential for the Bruxner Highway to be realigned, and based on some modelling requests from TfNSW, a further scoping study was requested of the landowner and submitted (Attachment Pa). Additionally, land at the northern end of the site, adjoining the Bruxner Highway, has not been proposed for rezoning to enable that land to be used by Transport for NSW in the future.

The Traffic and Transport Study concludes that the subject site is suitable for the proposed rezoning as a staged development in relation to the impact of traffic. The updated transport study concluded that the current intersections surrounding the proposal site can operate with acceptable average delays for a 10-year growth scenario with stage 1 of development.

For stages 1 and 2 of the development, it was concluded that consideration would need to be given to upgrade the Oliver Avenue/ Bruxner Highway roundabout after the 5-year growth scenario (2028). This would be by potentially providing two north bound lanes of an estimated 150m in length in Oliver Avenue leading into the roundabout to enable the Bruxner Highway and Oliver Avenue roundabout to function adequately.

The addition of the two north bound lanes of an estimated 150m in length in Oliver Avenue leading into the roundabout would also be able to cater for the proposed stage 3 in the 10-year growth scenario.

Lismore City Council's review of the Traffic and Transport studies raises concerns that the modelling did not sufficiently consider and cater for the full quantity of development expected north of the site within the Pineapple Road precinct. In liaison with Transport for NSW, Lismore City Council will request revised modelling post-gateway. It is expected that the revised modelling may change the growth scenarios but that the site is still capable and suitable for the proposed rezoning.

Vehicle Access

The northern residential/ mixed-use area (1055 Bruxner Highway) of the proposal has identified two vehicle access points off Oliver Avenue.

Access to the southern commercial/ industrial area of the proposal (1055A Bruxner Highway) has not been secured as this parcel is landlocked by land in private ownership at 245 Oliver Avenue. Nimble Estates has engaged in negotiations with this third-party landowner but has not reached any agreement.

As such, there are three options for access to this area:

1. A third access route into 1055 Bruxner Highway is provided with a bridge over the Tucki Tucki creek into 1055A Bruxner. This would be at the landowners cost and is considered achievable by Lismore City Council.
2. Ongoing negotiations between landowner of 245 Oliver Avenue and Nimble Estates be resumed and an agreement subsequently concluded to achieve access via 245 Oliver Avenue.
3. Only if option 2 fails, Lismore City Council enter into negotiations with the third-party landowner at 245 Oliver Avenue and potentially other landowners with properties fronting Oliver Avenue with the aim to enable access from Oliver Avenue directly into 1055A Bruxner Highway.

It is proposed that the final access route to the southern part of the site at 1055A Bruxner Highway can be determined prior to development application stage.

Section E – State and Commonwealth Interests

Q12. What are the views of State and Commonwealth public authorities and government agencies consulted in order to inform the Gateway determination?

The proponent held pre-lodgement meetings with Transport for NSW and the Department for Planning and Environment. Details of the meetings are below.

Transport for NSW

The proponent and representatives of the project team held a meeting with Transport for New South Wales (TfNSW) on 26 August 2022. The purpose of the meeting was to provide an overview of the intended objectives and outcomes of the planning proposal and to present the Indicative Layout Plan for future residential and employment land development supported by social and commercial facilities. Furthermore, the meeting sought to confirm any details TfNSW could provide on the proposed upgrades to Bruxner Highway and if there is anything that TfNSW specifically wanted to be addressed in the Traffic and Transport Study. The key outcomes from the meeting include:

- TfNSW has funding committed to taking the Bruxner Highway upgrade project through to Final Business Case. There is no current funding allocated for construction.

- TfNSW has undertaken modelling to inform the Strategic Business Case and is able to share the base Sidra model for the intersection of Oliver Ave and Bruxner Highway with the applicant under a Deed.
- Applicant to undertake further modelling to identify the capacity of the existing roundabout to cater for the proposed development for a ten-year design horizon and what, if any, intersection upgrades are required.
- There may be a need to model various scenarios to understand infrastructure requirements, in relation to the staging of lot release, to facilitate the full development.
- Depending on the outcome of the modelling there may (or may not) be a need to secure infrastructure upgrades at specific staging triggers and this is best managed via a VPA.

Following the meeting, TfNSW prepared a draft Deed Poll that has been signed by the proponent and returned to TfNSW who shared the base model. This base model and the other information has been incorporated into the Traffic and Transport Study prepared in support of the proposal.

Department of Planning and Environment

Representatives of the project team held a meeting with the Department of Planning and Environment (DPE) on 11 August 2022. The purpose of the meeting was to provide an overview of the intended objectives and outcomes of the planning proposal and to present the proposal for a future residential and employment land development supported by social and commercial facilities, in order to meet the established housing and employment land needs after the recent flooding in Lismore.

Post-Gateway Consultation

It is recommended that the following agencies are consulted following the Gateway Determination:

- the Rural Fire Service,
- Transport for NSW,
- Heritage NSW,
- DPE Biodiversity and Conservation Division,
- Natural Resource Access Regulator,
- Department of Primary Industries,
- Essential Energy, and
- NBN.

Part 4 - Maps

Figure 1: Locality of the subject site.

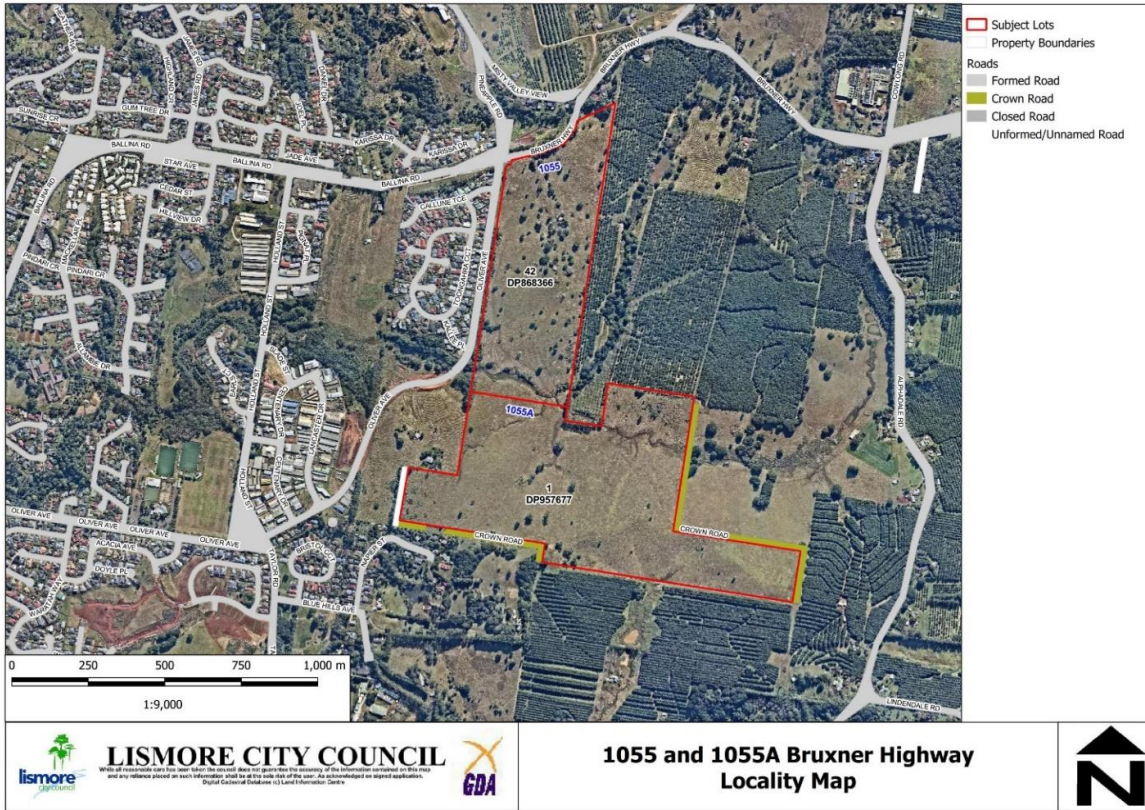


Figure 2: Current LEP zoning

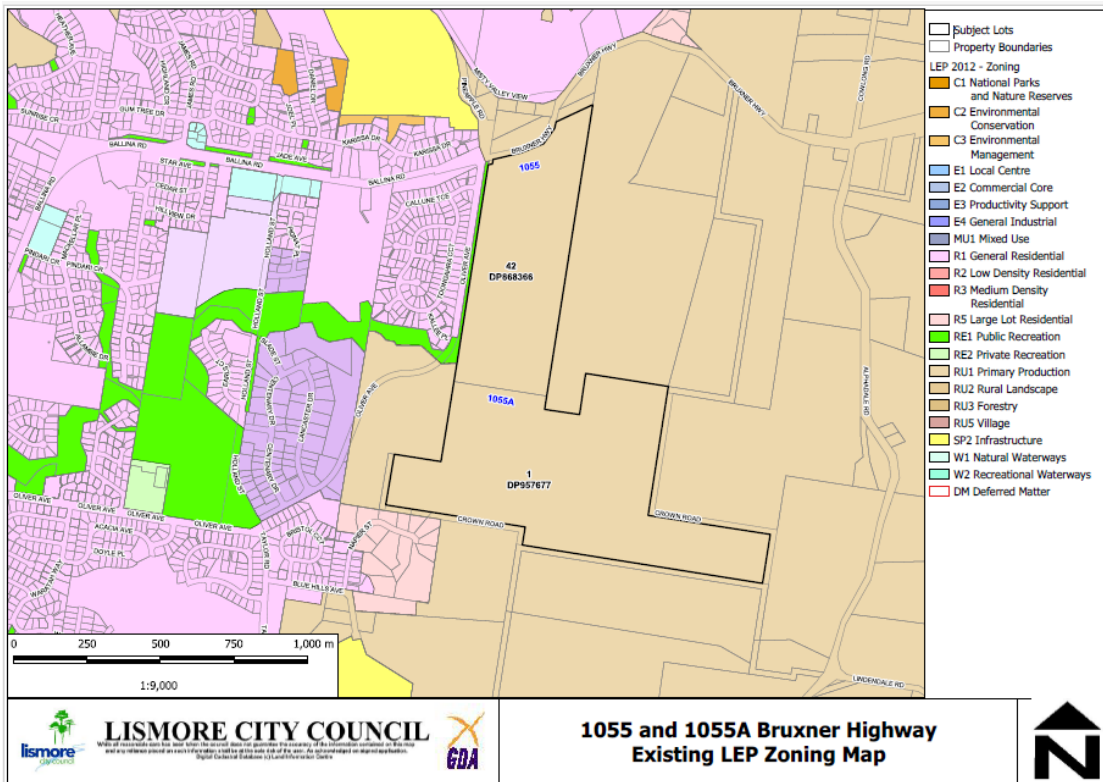


Figure 3: Proposed LEP zoning

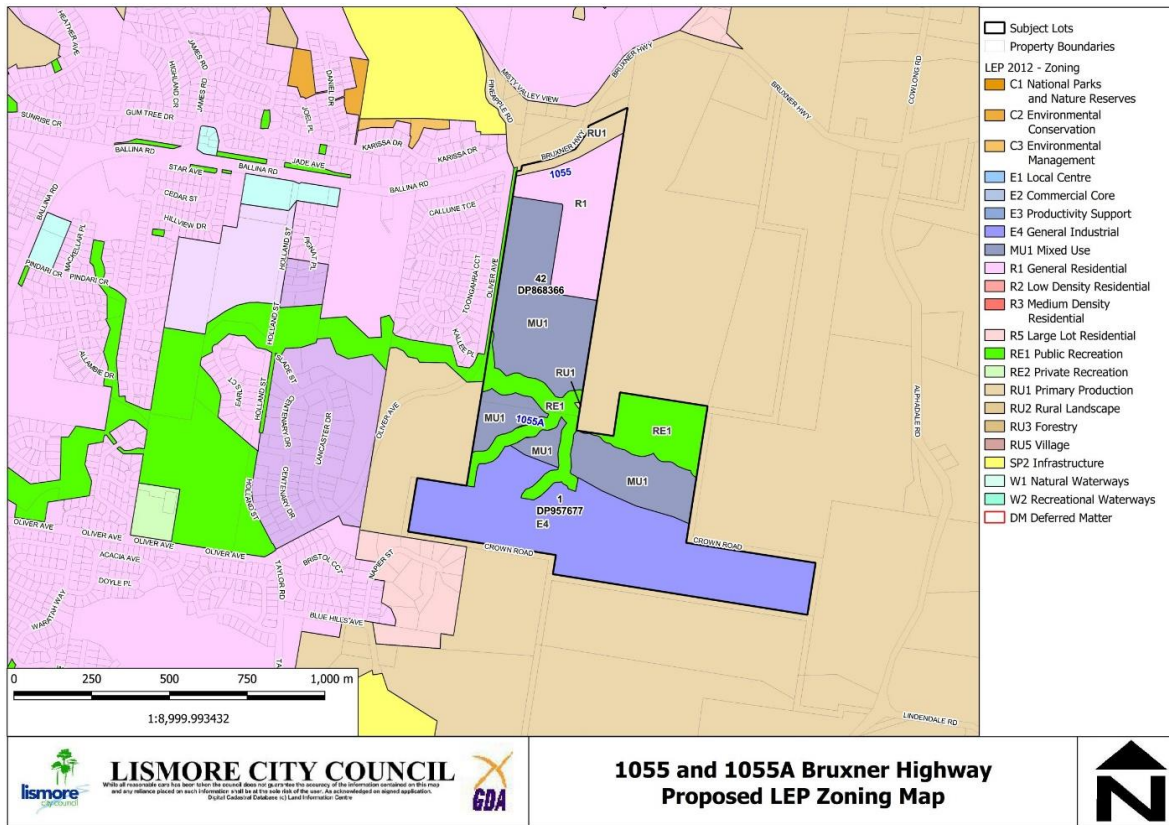


Figure 4: Existing Lot Size

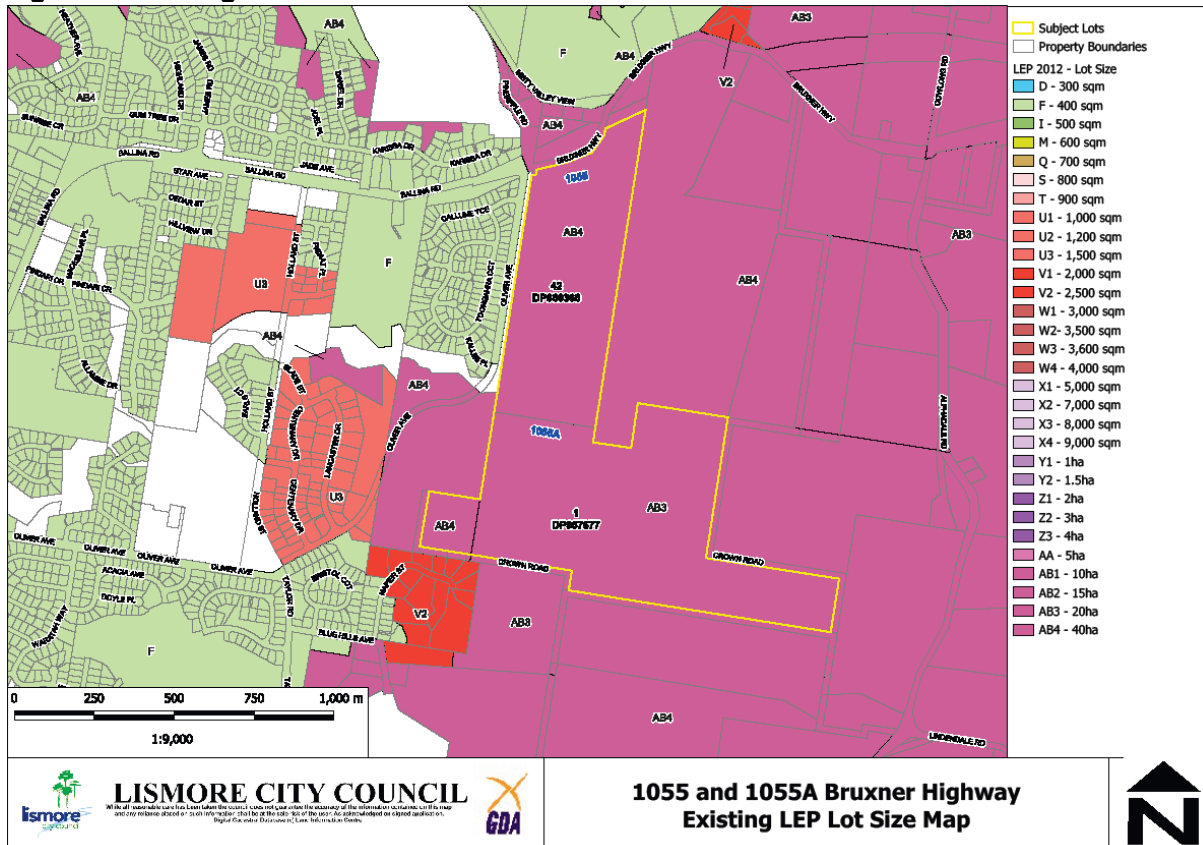


Figure 5: Proposed Lot Size

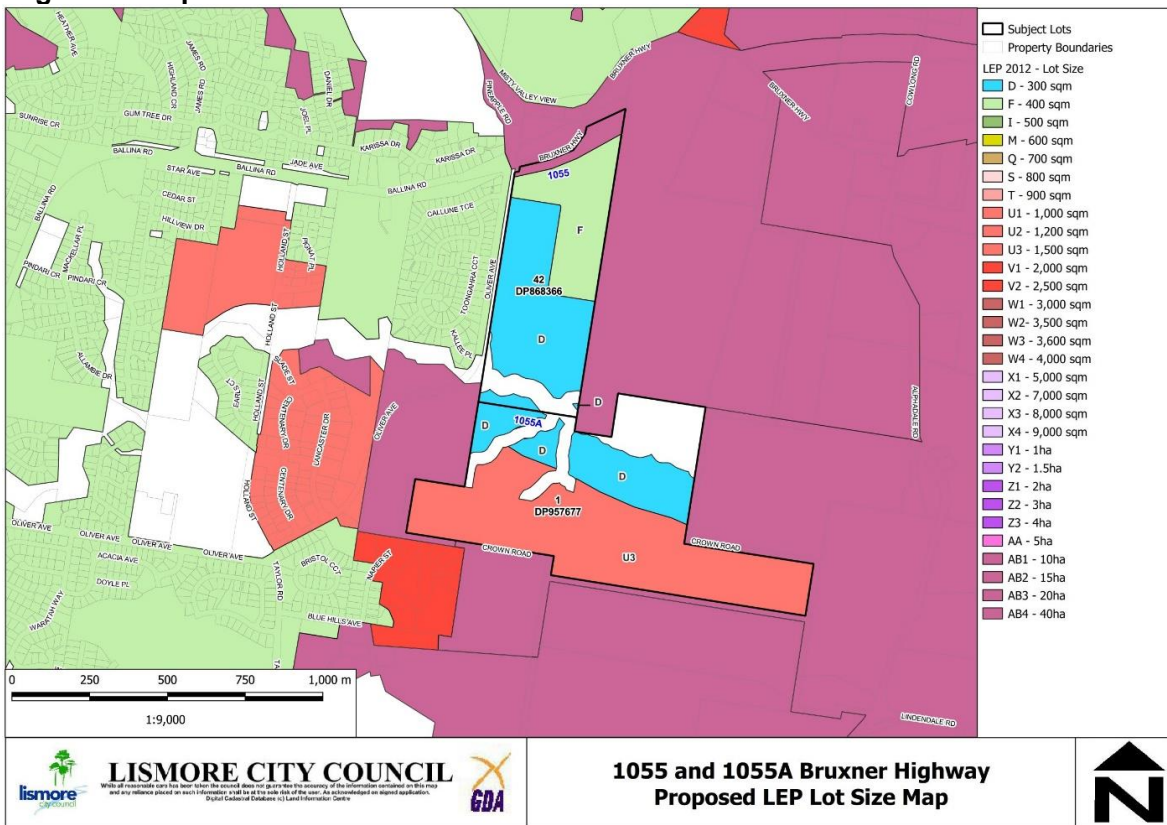


Figure 6: Existing Height of Buildings

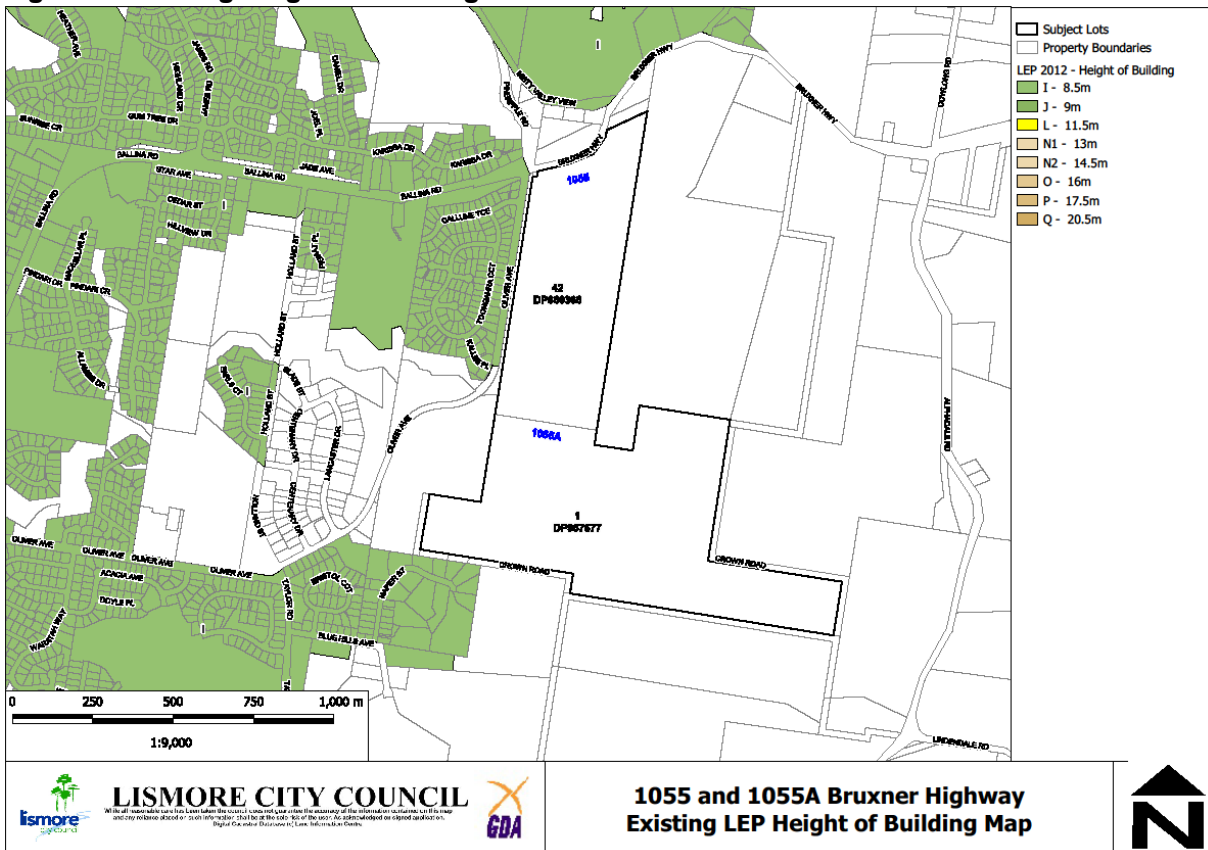


Figure 7: Proposed Height of Building

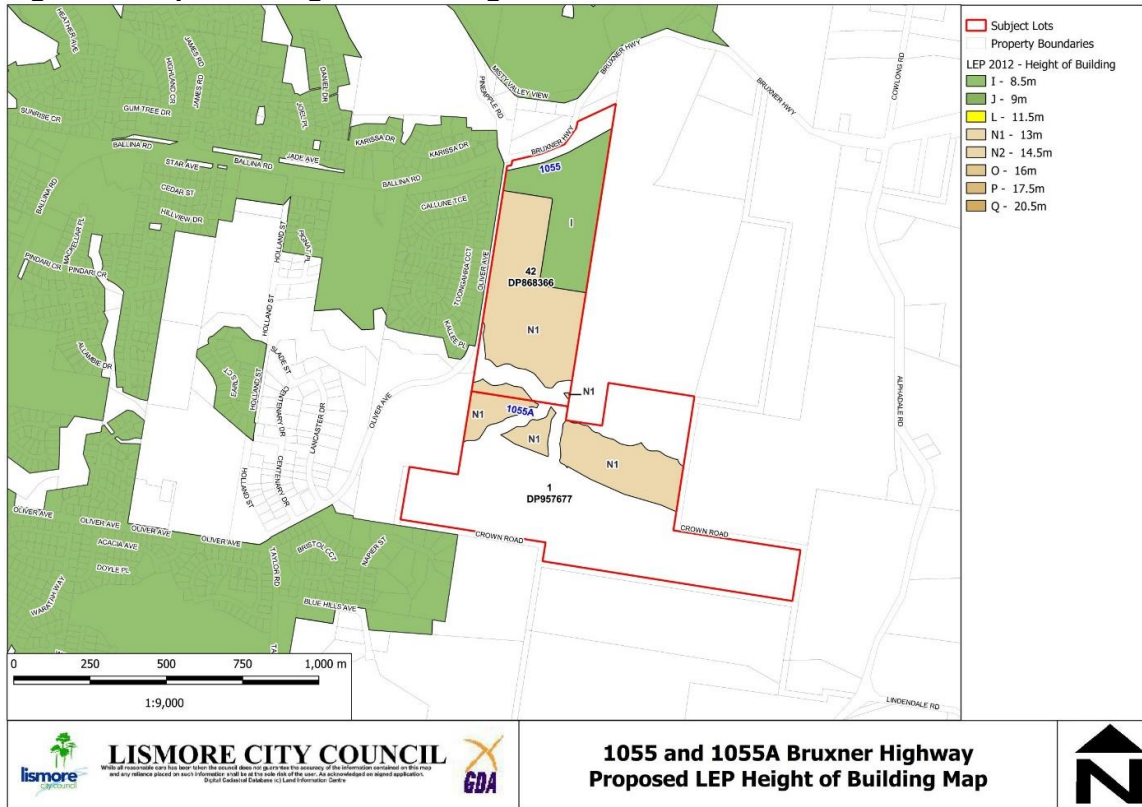


Figure 8: Bushfire prone vegetation

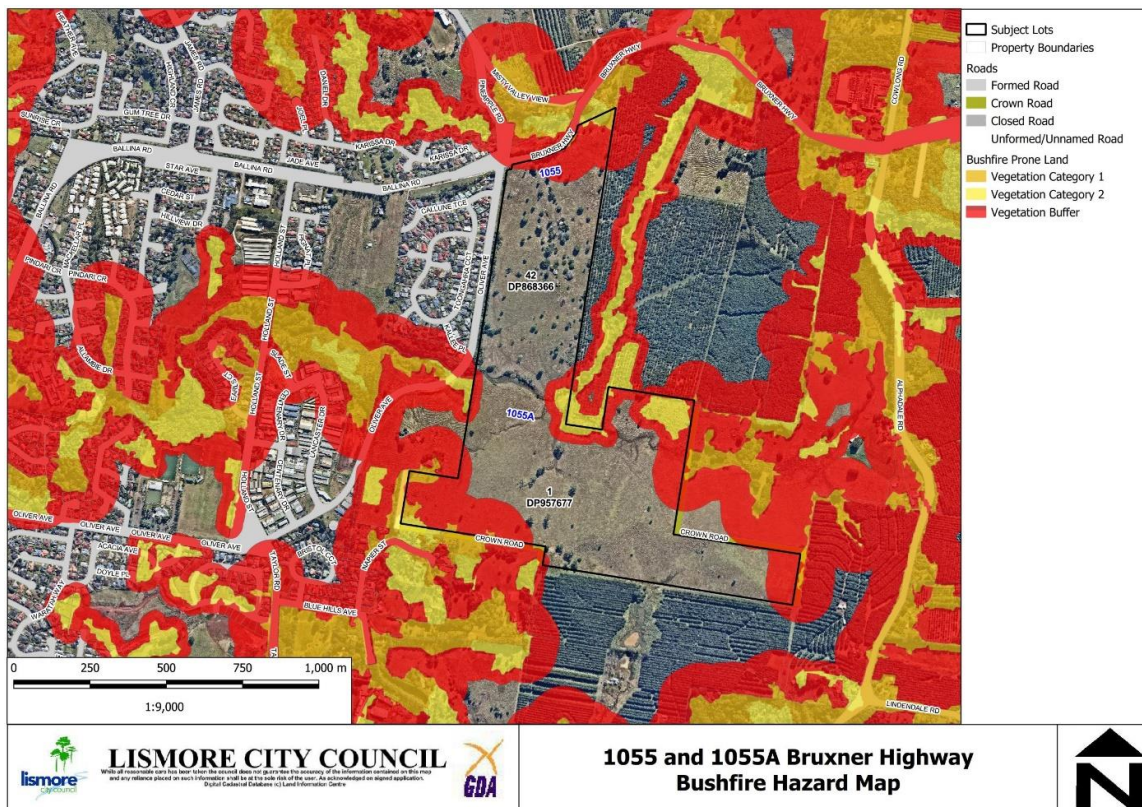


Figure 11: Biodiversity Vales Map

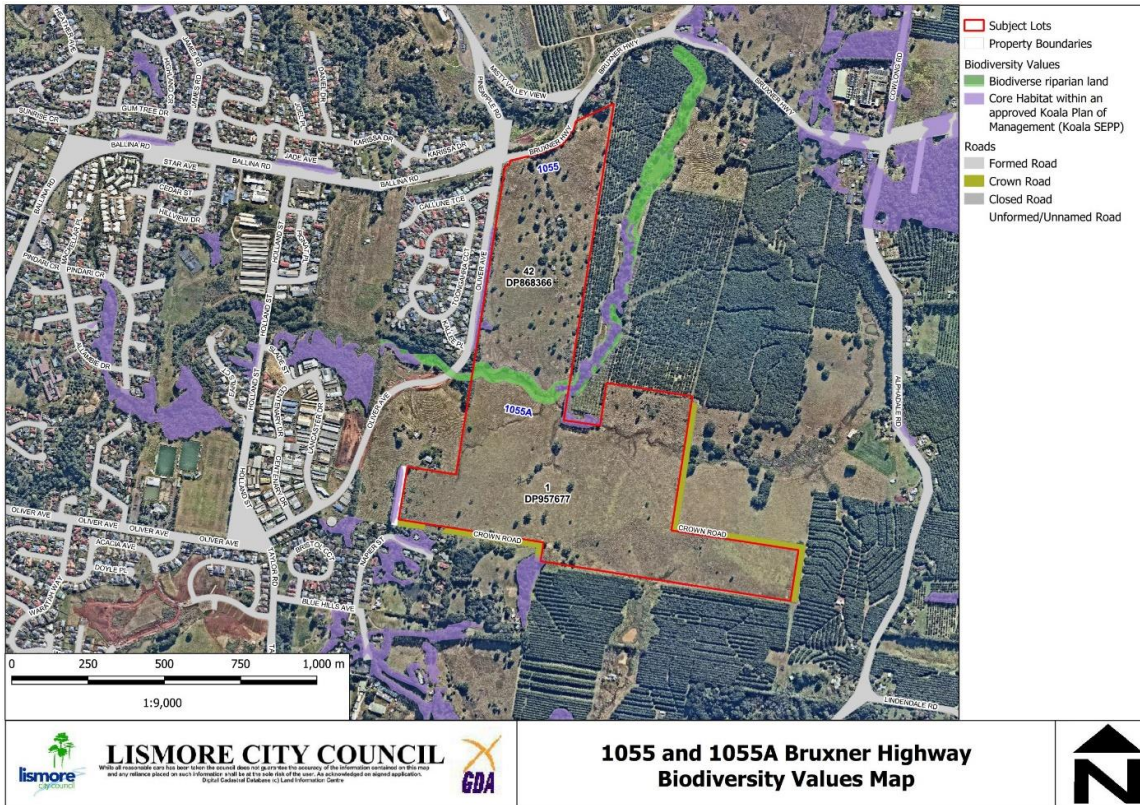
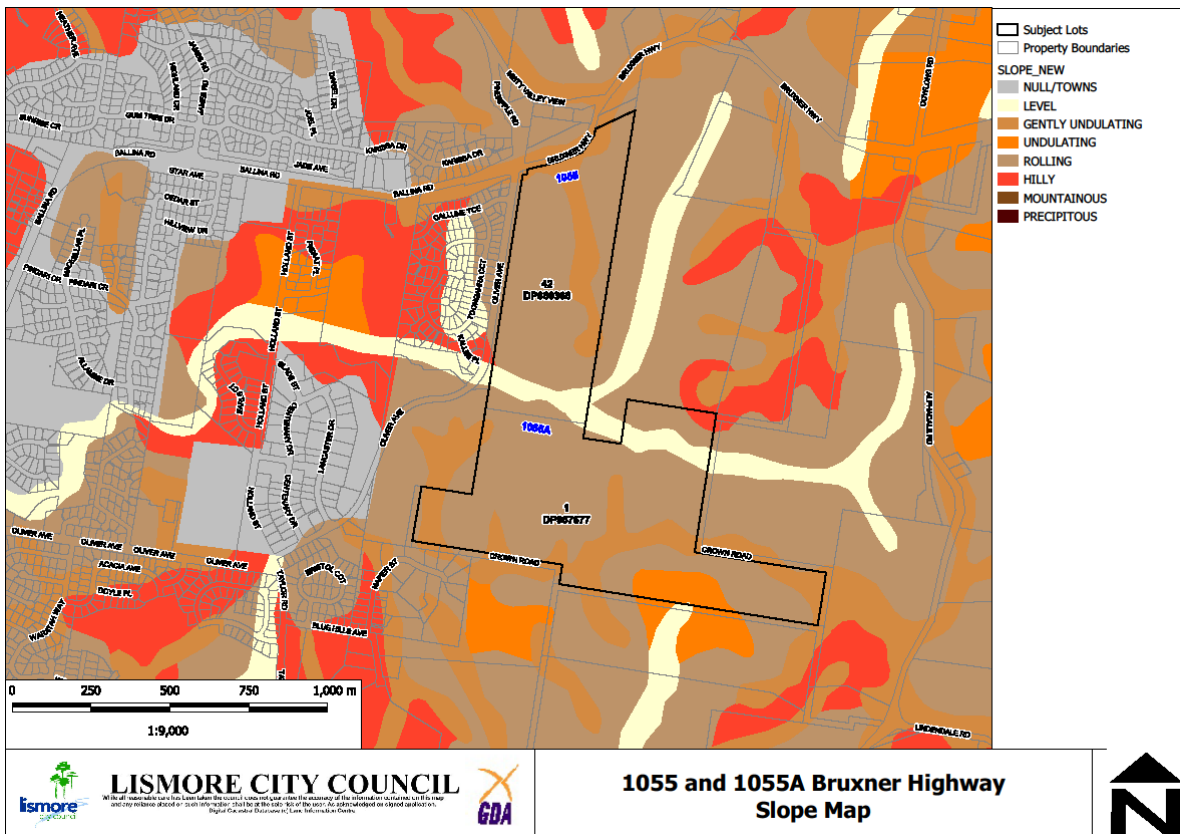


Figure 12: Topography



Part 5 - Community Consultation

Council will commence community consultation post Gateway determination. For the purposes of public notification, Council considers that a twenty-eight (28) day public exhibition period is appropriate.

Notification of the exhibited planning proposal will include:

- A newspaper advertisement (Local Matters) that circulates in the area affected by the planning proposal;
- On the website of Lismore City Council and the Department of Planning, Industry and Environment;
- A letter to adjoining landowners; and
- Referral to State agencies through the planning portal

The written notice will:

- Provide a brief description of the objectives or intended outcomes of the planning proposal;
- Indicate the land that is the subject of the planning proposal;
- State where and when the planning proposal can be inspected; and
- Provide detail that will enable members of the community to make a submission.

Exhibition Material:

- The planning proposal, in the form approved for community consultation by the Director General of the Department of Planning and Environment.
- The Gateway determination.
- Any studies required as part of the planning proposal.

The Gateway determination will confirm the public consultation requirements.

Part 6 - Project Timeline

It is anticipated that the planning proposal will be completed within the indicative timeline shown below:

- Report to Council – **November 2024**
- Gateway determination issued – **February 2024**
- Agency and public consultation – **March - April 2024**
- Consideration of submissions – **May 2024**
- Further studies prepared – **May – July 2024**
- Council consideration of the proposal post exhibition – **August 2024**
- Anticipated date of submission to the Department for notification of the making of the LEP – **December 2024**
- Anticipated date for plan making – **March 2025**

Conclusion

The Planning Proposal to rezone the land at 1055 and 1055A Bruxner Highway ((Lot 42, DP 868366 and Lot 1, DP 957677) is supported by a detailed range of technical reports. The site represents an important expansion of the Lismore urban area to the east that will allow for the creation of future housing and employment opportunities.

This site is identified in Lismore Council's Growth and Realignment Strategy (2022) and the supporting addendum that specifically addresses the need for new flood free employment lands in the region. The mix of zonings proposed across the site will allow for the integration of new housing, employment, recreation and community facilities. The Draft VPA will also ensure there are opportunities for the affordable relocation of dwellings from high flood-risk areas, as well as environmental benefits along Tucki Tucki Creek.

The proposal is considered to facilitate suitable and sustainable growth in a strategically situated location for Lismore's future.

APPENDIX 1 - Compliance with applicable State Environmental Planning Policies

State Environmental Planning Policy	Requirements	Compliance
<p><i>SEPP (Primary Production) 2021</i></p>	<p>Chapter 2 Primary Production and rural development aims to facilitate the orderly economic use and development of lands for primary production and to reduce land use conflict in rural areas.</p>	<p>The site is not identified in Schedule 1 – State significant agricultural land within the Primary Production SEPP. Notwithstanding, the Northern Rivers Farmland Protection Project 2005 (NRFPP) classifies the site as State Significant Farmland (SSF) on the NRFPP mapping. As identified in the Agricultural Land Assessment, the site does not possess high agricultural production value despite its rural zoning due to the majority of the site being classified as Class 4 & 5 Agricultural Land which is not suitable for agricultural enterprise. Therefore, the use of the site will not threaten or undermine the values of the rural areas or the state-wide value of agricultural land. Furthermore, the Land Use Conflict Risk Assessment prepared by BRS demonstrates that the site is capable of supporting the necessary buffers and measures required to ensure no unacceptable conflict will occur between the future urban site and adjoining agricultural uses. Should the site be zoned in accordance with the planning proposal, future development applications will not be subject to an assessment against the criteria contained in Schedule 4 of the SEPP (Primary Production) 2021.</p>

State Environmental Planning Policy	Requirements	Compliance
<p>SEPP Resilience and Hazards 2021 <i>(Previously Remediation of Land (55), Coastal Management and Hazardous and Offensive Development (33))</i></p>	<p>3 Hazardous and offensive development</p> <p>4 Remediation of Land The object of this Chapter is to provide for a Statewide planning approach to the remediation of contaminated land. In particular, this Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment— by specifying when consent is required, and when it is not required, for a remediation work, and by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and (c) by requiring that a remediation work meet certain standards and notification requirements</p>	<p>3. Consistent. The proposed industrial lots zoned IN1 General Industrial Zone (or E4 General Industrial as per the Employment Zones Reforms adopted by DPE) may support developments such as warehouses and distribution centres which may store dangerous goods (DGs) and will need to address the relevant provisions under Chapter 3 as part of any future development applications.</p> <p>4. Consistent Clause 4.6 requires in the event of a change of land use, the planning authority must consider whether the land is contaminated and if the land can be suitably remediated for the proposed use. Question 9 of this Planning Proposal and the associated attachments have satisfactorily addressed potential contamination and remediation issues.</p>
<p>SEPP Transport and Infrastructure <i>(Previously Infrastructure and others)</i></p>	<p>No specific requirement regarding rezoning land. Chapter 2 aims to facilitate the effective delivery of infrastructure across the State by (amongst other things) identifying matters to be considered in the assessment of development adjacent to particular types of development.</p>	<p>Consistent. As the future development on the site will involve the subdivision of 200 or more allotments, and the development of 300 or more residential dwellings, future development applications will require concurrence from the Roads and Maritime Services in accordance with Schedule 3 of the SEPP.</p>

State Environmental Planning Policy	Requirements	Compliance
SEPP (Housing) 2021	<p>The principles of this Policy are as follows—</p> <ul style="list-style-type: none"> (a) enabling the development of diverse housing types, including purpose-built rental housing, (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability, (c) ensuring new housing development provides residents with a reasonable level of amenity, (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services, (e) minimising adverse climate and environmental impacts of new housing development, (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality, (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use, (h) mitigating the loss of existing affordable rental housing. 	<p>Consistent.</p> <p>Provisions for affordable housing, diverse housing, and housing for seniors and people with a disability may be considered as part of the future residential subdivision and development of the site.</p>

APPENDIX 2 – Compliance with Section 9.1 Ministerial Directions

Ministerial Directions	Requirements	Compliance
1. Planning Systems		
1.1 Implementation of Regional Plans	Planning Proposals must be consistent with a Regional Plan released by the Minister for Planning.	Consistent The Planning Proposal is consistent with the objections of the North Coast Regional Plan 2036 and draft North Coast Regional Plan 2041.
1.2 Development of Aboriginal Land Council land	Not applicable	Not applicable. The site is not identified within the Land Application Map and a delivery plan has not been prepared for the site.
1.3 Approval and Referral Requirements	A Planning Proposal should not contain provisions requiring concurrence, consultation or referral of a Minister or public authority without approval from the relevant Minister or public authority; and the Director General of the Department of Planning. It must not identify development as designated development unless justified.	Consistent. The Planning Proposal does not introduce new concurrence, consultation, or referral requirements. Nor does it propose new forms of designated development.
1.4 Site Specific Provisions	A Planning Proposal to allow a particular land use to be carried out must either; (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.	Consistent The Planning Proposal does not propose any unnecessarily restrictive planning controls.
1. Planning Systems – Place Based		
1.5 – 1.17	Not applicable	Not applicable
3. Biodiversity and Conservation		

3.1 Conservation Zones	<p>(1) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>(2) A planning proposal that applies to land within a conservation zone or land otherwise identified for environment conservation/protection purposes in a LEP must not reduce the conservation standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with Direction 9.2 (2) of "Rural Lands"</p>	<p>Consistent</p> <p>The Planning Proposal facilitates the protection and conservation of the riparian corridor which is identified as a sensitive environmental area containing endangered ecological communities. This area is proposed to be zoned RE1 Public Recreation to ensure that it is protected and maintained. The ILP has been prepared to demonstrate that any future development applications for subdivision and development can achieve appropriate setbacks from areas of high biodiversity value, so as to protect and maintain waterways and natural features.</p>
3.2 Heritage Conservation	<p>Planning proposal must incorporate provisions for conservation of European and Aboriginal heritage items or places.</p>	<p>Consistent</p> <p>The site is not identified as an area of heritage significance within the Lismore LEP and an AHIMS search did not identify any Aboriginal sites or places within 50m of the subject land. The Cultural Heritage Assessment has identified five PADs where cultural items may be present and should either be avoided or excavated. The Cultural Heritage Assessment has been reviewed by a Local Knowledge Holder through the Ngulingah Aboriginal Land Council and will be referred to the Office of Environment and Heritage post gateway.</p>
3.3 Sydney Drinking Water Catchments	<p>Not applicable</p>	<p>Not applicable</p>
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	<p>Not applicable</p>	<p>Not applicable</p>
3.5 Recreation Vehicle Areas	<p>Not applicable</p>	<p>Not applicable</p>
3.6 Strategic Conservation Planning	<p>Not applicable</p>	<p>Not Applicable</p>
<p>4. Resilience and Hazards</p>		

4.1 Flooding	This direction applies to all relevant planning authorities that are responsible for flood prone land when preparing a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.	Not applicable The site is not identified as flood prone land under any SEPP or LEP. Pre-lodgement consultation confirmed that the site has a flood level of approximately 140m AHD. All future works will be kept above the 140m AHD to ensure flooding is not an issue.
4.2 Coastal Management	This direction applies when a planning proposal authority prepares a planning proposal that applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016 - comprising the coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area - and as identified by chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.	Not applicable
4.3 Planning for Bushfire	A Planning Proposal in bush fire prone land: (a) Is to be referred to the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination and prior to community consultation. (b) Have regard to Planning for Bush Fire Protection 2019. (c) Restrict inappropriate development from hazardous areas. Ensure bush fire hazard reduction is not prohibited within the APZ.	Consistent Portions of the site are mapped as containing bushfire-prone vegetation. The Bushfire Report prepared by Travers Bushfire & Ecology has considered the requirements of the Planning for Bushfire Protection 2019 (PBP). Bushfire protection measures have been considered and capable of being integrated within the future development. As recommended in the Bushfire Report a Asset protection zones can be achieved and maintained to ensure that potential building footprints will not be exposed to radiant heat levels exceeding 29kW/m2 residential and 40kW/m2 commercial/ industrial metre. A referral to the RFS will be undertaken post Gateway determination.
4.4 Remediation of Contaminated Land	This direction applies when a planning proposal authority prepares a planning proposal that applies to: (a) land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997, (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out, (c) the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital – land: i. in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and ii. on which it would have been lawful to carry out such	Consistent. Preliminary Site Investigations have been undertaken that demonstrate the site is considered suitable for the proposed uses, subject to detailed site investigation of two areas within the site being undertaken prior to the submission of any future development application.

	development during any period in respect of which there is no knowledge (or incomplete knowledge).	
4.5 Acid Sulfate Soils	This direction applies when a planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils.	Consistent The Acid Sulfate Soil Assessment confirms the site is located on non-Acid sulfate soil on the Alstonville Plateau at Goonellabah, greater than 5 km from any mapped acid sulfate soil. As a result, acid sulfate soil is not identified as being a constraint to the proposed Planning Proposal, and no further investigation or management is required.
4.6 Mine Subsidence and Unstable Land	Applies to mine subsidence areas Applies to areas identified as unstable	Not applicable.
5. Transport and Infrastructure		
5.1 Integrating Land Use and Transport	A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: (a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and (b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).	Consistent The site will benefit from significant investment in road, rail and air-based transport infrastructure in the region, namely the improvements to Bruxner Highway between Ballina and Casino connections to Ballina and Lismore Airport, and Pacific Highway upgrades expanding connection to Newcastle and Queensland will drive future industrial developments on site. The proposed residential developments will benefit from the proximity to public transport facilities including bus stops along Bruxner Highway. The Planning Proposal, therefore, aligns with the objectives of this direction and is consistent with the principles of <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001) and <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).
5.2 Reserving Land for Public Purposes	A Planning Proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without approval of the relevant public authority and the Director General of the Department of Planning.	Consistent The Planning Proposal will not necessitate land to be acquired under Division 3 of Part 2 of the Land Acquisition (Just terms Compensation) Act 1991. The proposed RE1 Public Recreation zoned land would be designed, constructed and dedicated to Council.
5.3 Development Near Regulated Airports and Defence Airfields	Not applicable	Not applicable The site is located approximately 12km east of the existing Lismore Airport and is not located on land that is in an ANEF or ANEC contour of 20 or greater
5.4 Shooting Ranges	Not applicable	Not applicable
6. Housing		

6.1 Residential Zones		Consistent The Planning Proposal accommodate a variety of housing options through the proposed lot typologies allowing for a mix of low to medium density housing supported by required infrastructure needs.
6.2 Caravan Parks and Manufactured Home Estates	Not applicable	Not applicable
7. Industry and Employment		
7.1 Business and Industrial Zones	Not applicable	Not applicable The Planning Proposal does not affect land within an existing or proposed business or industrial zone
7.2 Reduction in non-hosted short-term rental accommodation period	Not applicable	Not applicable
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable	Not applicable
8. Resources and Energy		
8.1 Mining, Petroleum Production and Extractive Industries	Not applicable	Not applicable
9. Primary Production		
9.1 Rural Zones	A planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.	Inconsistent, but justified The planning proposal is inconsistent. The intention of the direction is to protect the agricultural production value of rural land. An Agricultural Land Assessment has been prepared by Eco Team to determine the land and soil capability of the site as well as the agricultural production value of the land. As demonstrated in the Agricultural Land Assessment, the site does not demonstrate a high agricultural production value

		<p>despite its rural zoning and historical site uses. The Agricultural assessment confirms that a majority of the site comprises Class 4 and 5 Agricultural Land which is not suitable for valuable cultivation or agriculture. Therefore, the objective of Section 9.1 direction aiming to “protect the agricultural value of rural land” is irrelevant as it has been demonstrated that the site has little agricultural value. The proposed redevelopment of the site for a mix of residential and employment generating uses will provide a positive outcome for the community. The proposed development will increase the feasibility and viability of the site, whilst also retaining the local character and identity of the site. In line with the Direction, the Proposal is justified by way of the Agricultural Land Assessment study and also through its consistency with the North Coast Regional Plan as discussed at Section B, Q3 of this Planning Proposal and Appendix 3 and 3A.</p>
<p>9.2 Rural Lands</p>	<p>1. A planning proposal must:</p> <ul style="list-style-type: none"> (a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Planning Secretary, and any applicable local strategic planning statement (b) consider the significance of agriculture and primary production to the State and rural communities (c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources (d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions (e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities (f) support farmers in exercising their right to farm (g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land use (h) consider State significant agricultural land identified in chapter 2 of the State Environmental Planning Policy (Primary 	<p>Consistent</p> <p>The Proposal is consistent with the North Coast Regional Plan as endorsed by the Planning Secretary and the Lismore LSPS. The Proposal has considered the significance of agriculture and primary production through the preparation of an Agricultural Assessment. The Proposal has identified and is protecting the environmental values on the site. The Proposal has considered the natural and physical constraints of the land, including the topography which limits the agricultural value of the site. The Proposal includes rezoning to industrial land which could provide opportunities for investment in rural economic activities. The Proposal will support neighbouring landowners in their right to farm. The Planning Proposal does not fragment land as it is on the boundary of the existing urban growth area. The LUCRA demonstrates that the land use conflicts can be managed through on-site buffers. The SEPP (Primary Production) has been considered, see appendix 1. The Proposal has considered the social, economic and environmental interests of the community and is supported by an Economic Benefits Assessment and a Social Impact Study.</p> <p>The Planning Proposal seeks to amend the minimum lot size. It is consistent as will lead to minimal rural land fragmentation and conflict. It will not adversely affect the operation and viability of existing and future rural land uses and it is appropriately located with regards to the proximity to human services, infrastructure, transport and urban centres. The Proposal is necessary taking into account the existing and future demand and supply of rural residential land, particularly following the</p>

	<p>Production) 2021 for the purpose of ensuring the ongoing viability of this land</p> <p>(i) consider the social, economic and environmental interests of the community.</p> <p>(2) A planning proposal that changes the existing minimum lot size on land within a rural or conservation zone must demonstrate that it:</p> <p>(a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses</p> <p>(b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains</p> <p>(c) where it is for rural residential purposes:</p> <p>i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres</p> <p>ii. is necessary taking account of existing and future demand and supply of rural residential land</p>	<p>natural disaster of Feb 2022 and the floods of March 2022. The Proposal will also be in accordance with Cl 5.16 of the LLEP 2012.</p>
9.3 Oyster Aquaculture	Not applicable.	Not applicable.
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	<p>A planning proposal may be inconsistent with the terms of this direction only if council can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the planning proposal is consistent with:</p> <p>(a) the North Coast Regional Plan 2036, or</p> <p>(b) Section 4 of the report titled Northern Rivers Farmland Protection Project - Final Recommendations, February 2005, held by the Department of Planning and Environment.</p>	<p>Inconsistent, but justified</p> <p>The site is classified as State Significant Farmland (SSF) as per the Northern Rivers Farmland Protection Project 2005 (NRFPP). Therefore, Direction 9.4 applies to this proposal and the planning proposal is inconsistent. However, A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the Planning Proposal is consistent with:</p> <p>(a) the North Coast Regional Plan 2036, or</p> <p>(b) Section 4 of the report titled Northern Rivers Farmland Protection Project - Final Recommendations, February 2005, held by the Department of Planning and Environment.</p>

		<p>The Planning Proposal addresses subsection (a) under Direction 9.4 and demonstrates that this Planning Proposal remains consistent with Direction 9.4 and suitable to be rezoned. The consistency with the North Coast Regional Plan is discussed at Section B, Q3 of this Planning Proposal, with the farmland variation criteria being addressed at Appendix 3 and 3A.</p>
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APPENDIX 3 – North Coast Regional Plan 2041, Urban Growth Area Variation Principles

At the time of lodgement, the NCRP 2041 was in draft form and therefore taken into consideration, together with the adopted NCRP to 2036.

Principle		Compliance
Policy	The variation needs to be consistent with the objectives and outcomes in the North Coast Regional Plan 2041 and any relevant Section 9.1 Directions and State Environmental Planning Policies and should consider the intent of any applicable local growth management strategy.	Compliant, <ul style="list-style-type: none"> • The proposal is consistent with NCRP goals as outlined in response to Q3 • The proposal is compliant with relevant Section 9.1 Directions, as set out in appendix 2. • The proposal is within an adopted and endorsed Growth and Realignment Strategy.
Infrastructure	<p>The variation needs to consider the use of committed and planned major transport, water, and sewerage infrastructure, and have no cost to the government.</p> <p>The variation should only be permitted if adequate and cost-effective infrastructure can be provided to match the expected population</p>	Compliant, <ul style="list-style-type: none"> • Technical investigations have been undertaken to assess the impact of the proposal on existing and planned infrastructure. • The technical reports confirm that augmentation and upgrading works will be required to expand the existing water servicing, sewer servicing, and stormwater infrastructure to support future development at the site. The detail of costing and designing a preferred upgrade method will be determined post-gateway. It is expected that NRRC recovery funding (or other State funding) will be provided to cover the cost of these upgrades. • Early consultation with NBN and Essential Energy will be undertaken to provide communications services and electricity services to future lots within the development. This will be executed post-gateway. • The site will benefit from significant investment in road, rail and air-based transport infrastructure occurring in the region, namely the improvements to Bruxner Highway between Ballina and Casino connections to Ballina and Lismore Airport, and Pacific Highway upgrades expanding connection to Newcastle and Queensland. Furthermore, the site benefits from the \$14 million government investment to construct the Oliver Avenue Link as part of the Lismore Employment Lands Project.

Principle		Compliance
Environmental and heritage	The variation should avoid, minimise and appropriately manage and protect any areas of high environmental value or of Aboriginal and non-Aboriginal heritage.	<p>Compliant,</p> <ul style="list-style-type: none"> • The proposal provides an opportunity to rehabilitate and protect the degraded environmental area along Tucki Tucki Creek in perpetuity and will ultimately improve the biodiversity and ecological value of the corridor and site. An Ecological Assessment Report identified the site's ecological values and concluded the proposal and indicative layout plan appropriately manage the ecological values of the site and integrate them into open space zones with the intention of achieving a net benefit to wildlife habitat and connectivity. The site is predominantly cleared of threatened flora and fauna. Where threatened flora and fauna have been identified, appropriate mitigation and protection measures are identified to ensure they are not adversely impacted. As such, it is considered that the proposal is appropriate to support the proposal in terms of environmental values. • The Ecological Assessment highlights that some trees within a mapped Biodiversity Values Map may need to be offset and removed to allow access to the site along Oliver Avenue. This is considered suitable and the offsetting plan will be developed with Council. • An assessment of European and Aboriginal heritage has been undertaken with no items of significance identified. • Five areas which meet the criteria for being classified as a Potential Archaeological Deposit (PAD) were identified. To ensure these are protected archaeological test excavation can be undertaken at the DA stage to determine: <ul style="list-style-type: none"> ○ If the subsurface archaeological deposit is present. ○ Determine what the nature and extent is for any archaeological deposit. <p>Provide recommendations for the management of archaeological deposits where present.</p>
Avoiding risk	<p>The variation must avoid physically constrained land identified as:</p> <ul style="list-style-type: none"> • flood prone; • bushfire-prone; 	<p>Compliant,</p> <ul style="list-style-type: none"> • The site is generally free of natural hazards or unacceptable physical constraints. • The site is not identified as flood prone land.

Principle		Compliance
	<ul style="list-style-type: none"> • highly erodible; and • severe slope. 	<ul style="list-style-type: none"> • The site-specific Contamination and Acid Sulphate Soil Assessments confirm the site is suitable for development. • Given the site's current use as grazing land, the site is largely cleared of woody vegetation, and as such does not contain bushfire prone vegetation. Notwithstanding, small portions of the site are designated prone land. The Bushfire Constraints and Opportunities Assessment and Indicative Layout Plan, demonstrate that adequate asset protection zones are capable of being incorporated into the detailed design of future development. • The bushfire report confirms the requirement of Planning for Bush Fire Protection 2019 can be satisfied with minimal environmental impact and suitable APZ's are available. • The geotechnical report submitted with the proposal confirms the site is suitable for the proposed residential, commercial, and industrial development from a geotechnical perspective and recommends controls in relation to the management of the slope of the land. • A slope risk assessment indicates that there is a Low to Moderate risk of slope instability within inappropriately constructed fill slopes and excavations. The risk of instability for hazards can be reduced to Low by adhering to the recommendations within the geotechnical report. • The geotechnical report confirms that soils identified on-site and in previous engineering logs indicate the soils are not overly erodible in nature.
Coastal area	Only minor and contiguous variations to urban growth areas in the coastal area will be considered due to its environmental sensitivity and the range of land uses competing for this limited area.	NA
Land use conflict	The variation must be appropriately separated from incompatible land uses, including agricultural activities, sewage treatment plants, waste facilities, and productive resource lands.	Compliant, <ul style="list-style-type: none"> • The LUCRA identified a number of potential land use conflicts based on the proximity of intensive horticultural uses to portions of the site proposed to be zoned as residential and to a lesser extent, industrial. The LUCRA contains a number of mitigation measures that have been

Principle		Compliance
		<p>identified to either prevent any land use conflict or reduce the risk of conflict to a negligible level. These mitigation measures ensure the minimisation of conflict and risks and demonstrate that the proposal will not result in significant land use conflicts.</p> <ul style="list-style-type: none"> • Lismore City Council Development Control Plan – Buffer Areas, recommends that dwelling sites adjoining horticultural land have a setback of 80m with an inclusive 30m vegetation filter buffer. The indicative layout plan illustrates how these buffers can be incorporated into the future design of the site to ensure these requirements are satisfied. The LUCRA report confirms there are no major risks arising from the relationship between agricultural uses and future urban development on the site. • Following a recent Council resolution to amend the Lismore Growth & Realignment Strategy, the site is identified as an additional urban release area. Furthermore, the site comprises unconstrained land that can readily facilitate the form of urban development being proposed without compromising the amenity and function of the surrounding activities.
Important Farmland	<p>Is contiguous with an existing urban zone and the need and justification is supported by a sound evidence base addressing agricultural capability and sustainability and is either for:</p> <ul style="list-style-type: none"> • a minor adjustment to ‘round off an urban boundary’, or • if demonstrated through a Department approved local strategy that no other suitable alternate land is available, and if for housing, that substantial movement has been demonstrated toward achieving required housing delivery and infill targets within existing urban growth area boundaries. 	<p>Compliant,</p> <ul style="list-style-type: none"> • The site is included with Lismore City Council’s Growth and Realignment Strategy (GRS) and its Addendum and is no longer considered to be outside of Lismore’s growth boundaries. The land directly to the west of the proposal site includes E4 General Industrial land containing existing industrial businesses and R1 consisting of a residential estate known as The Regatta. Land directly north of the site, across the Bruxner Highway, is the Pineapple Road residential precinct, zoned R1 general Residential and subject to DA approved residential subdivisions. A small area of the land directly south is zoned R5 Large Lot Residential and contains existing dwellings. • The GRS commits Lismore to plan for a higher growth scenario and ensure there is sufficient flood free residential land to facilitate growth and relocation of flood affected homes and businesses over the medium and long term. As a regional city, in a highly constrained,

Principle		Compliance
		<p>unaffordable yet desirable sub-region of the North Coast NSW, Lismore has the opportunity to re-imagine itself and ensure its survival post-natural disaster. Lismore City Councils strives to supply suitable land for the relocation of existing communities and provide opportunities for growth, beyond DPE population projections.</p> <ul style="list-style-type: none"> • The site is also identified with the NRRC's Resilient Lands Strategy as a short term site. • An agricultural assessment has been carried out and as discussed in response to Q3, the assessment demonstrates that the site is not the most productive or valuable agricultural land. State Significant Farmland (SSF) and State Significant Agricultural Land (SSAL) are determined based on a Land Capability Assessment. The area between Alstonville to Goonellabah, is identified as Class 3 Land (moderate limitations) according to the Land and Soil Capability Mapping (eSpade 2022). Land capability maps are created relying upon a range of input layers that may vary in quality. This 'macro level' mapping is not considered suitable by NSW DPI for assessing planning proposals or development applications. Therefore, to determine the agricultural production quality of land, detailed site investigations are required which consider slope, soil depth, and site constraints. An agricultural assessment report was undertaken for the subject site (Ecoteam, August 2022). Assessment of the site reveals that the agricultural viability is identified as follows: <ul style="list-style-type: none"> • Class 3 and 4 Agricultural Land: The ridge terrain is identified as Class 3 Agricultural Land and hillslope terrain is identified as Class 4 Agricultural Land. Class 3 and 4 terrains and make up approximately 14ha (18.6%) and 39ha (52%) respectively. Limitations to class 3 and 4 land are the steep slopes (up to 30%), erosion hazards, and the very limited depth of arable soil (10 cm). This terrain may be suited to speciality crops such as macadamias, however, the steep hillslopes and rock outcrop footslopes of the subject property make the use of this land for this type of agriculture very limited. • Class 5 Agricultural Land: The footslope/gully terrain is identified as Class 5 Agricultural Land. Class 5 land takes up approximately 22ha

	Principle	Compliance
		<p>(30%) of the site due to poor soil, rock outcrops and land use conflicts with the creek and drainage lines. As a result, the Agricultural Assessment assigns the subject property an overall Class 5 Agricultural Land classification which is not suitable for agricultural enterprise.</p> <ul style="list-style-type: none"> • The report concludes that; <i>The subject property was found to contain a high portion of Class 5 Agricultural Land within footslopes and gullies. This land type is unsuitable for agriculture, or light grazing. Agricultural productivity is very low or zero as a result of severe constraints, including economic factors. Hillslopes at the site contained Class 4 Agricultural Land which is suitable for grazing but not for cultivation. Although the ridges have potential to be used as Class 3 Agricultural Land for specialty crops such as macadamias, this landscape is limited and only occupies a very small portion of the property.</i> • The NCRP 2041 reaffirms the 40% multi-dwelling / small lot (<400sqm) housing target to 2036 that was set within the previous NCRP. The target was established to support housing diversity and choice, improve affordability, and help meet the needs of an ageing population and an anticipated reduction in household size. Strategy 1.3 of the NCRP encourages Council's to prioritise infill development to assist in meeting the target. The site is not infill development, however it shares the intention of providing a diversity of housing types, including multi-dwellings and residential flat buildings and small lots. • The Planning Proposal seeks to rezone a large portion of the site to MU1 mixed use with a 300sqm minimum lot size. The estimated residential lot yield is for 346 lots. Therefore, the proposal will significantly contribute to the goal of providing multi-dwelling or small lot housing by 2036.

**PLANNING AGREEMENT for CHANGE TO AN
ENVIRONMENTAL PLANNING INSTRUMENT**

1055 Bruxner Highway, Goonellabah

Lismore City Council (ABN 60 080 932 837) (Council)

Nimble Estates Pty Ltd (ACN 656 265 575) (Developer)

NSW Reconstruction Authority (NSW State Government)

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PLANNING AGREEMENT for CHANGE TO AN ENVIRONMENTAL PLANNING INSTRUMENT

Parties to this Deed

Developer	Name	NIMBLE ESTATES PTY LTD
	Address	
	ACN	656 265 575
	ABN	21 656 265 575
	Contact Name	Brian Grant
	Contact email	█
Council	Name	Lismore City Council
	Address	43 Oliver Avenue, Goonellabah NSW 2480
	ABN	60 080 932 837
	Contact Name	█
	Contact email	█
NSW Government	Name	Reconstruction Authority
	Address	
	ACN	
	ABN	
	Contact Name	
	Contact email	

Background

- A On, **INSERT DATE** the Developer submitted the Planning Proposal to Council seeking the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B The Planning Proposal was accompanied by an offer by the Developer to enter into this Deed to make Development Contributions if the Instrument Change is made, and Development Consent is granted to development facilitated by the Instrument Change.

Operative provisions

Part 1 – Preliminary

1 Definitions and Interpretation

- 1.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Administration Levy means the charge paid by the Developer to Council and valued at 1% of the total of the Value of the Development Contributions required to be made under this Deed.

Approval includes approval, consent, licence, permission or the like.

Approved Work Drawings means the detailed plans and drawings for the Works approved by the Council referred to in Schedule 5.

Authority means any:

- (a) federal, state or local government;
- (b) a Minister of the Crown;
- (c) department of any federal, state or local government;
- (d) any court or administrative tribunal; or
- (e) public authority established under any legislation;
- (f) statutory corporation or regulatory body.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,

- (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Charge means the charge referred to in clause 22.1.

Charge Land means the Land.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Clearance Certificate means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953 (Cth)*.

CLM Act means the *Contaminated Land Management Act 1997*.

Complete or **Completed** means delivered or concluded in accordance with the requirements of the Works Provisions.

Confidential information means any information and all other knowledge at any time disclosed (whether in writing and orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; or
- (d) is information which may be reasonably considered to be of a confidential nature.

Construction Contract means a contract or arrangement entered into between the Developer as principal and another person under which the other person undertakes to provide Work required by this Deed, or to supply related goods and services, for the Developer.

Construction Certificate has the same meaning as in the Act.

Contamination has the same meaning as in the CLM Act.

Contractor means the contractor under a Construction Contract.

Contributions Table means the table in Schedule 1.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Deed means this agreement and includes any schedules, annexures and appendices to this Deed.

Development means residential, mixed use, commercial, industrial and open space development and associated infrastructure.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of works, or the provision of any other material public benefit which is required to be made under this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

ELNO has the meaning given to that term in the Participation Rules.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Event of Default means a breach of this Deed.

Foreign Resident Capital Gains Withholding Amount means the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953 (Cth)*.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Instrument Change means the amendment of the Lismore Local Environmental Plan 2012 as a consequence of the Planning Proposal which is given effect by the publication of the amending instrument on the NSW legislation website.

Land means Lot 42 in Deposited Plan 868366 and Lot 1 in Deposited Plan 957677, known as 1055 Bruxner Highway, Goonellabah including any lots created as a result of the subdivision or consolidation of that land.

Land Dedication Provisions means the provisions in Schedule 3, if any.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Maintenance Period means the period of [X] years from [TBC – depending on the nature of the Work].

Occupation Certificate has the same meaning as in the Act.

Part 6 Certificate means a certificate under Part 6 of the Act.

Participation Rules means the participation rules as determined by the Electronic Conveyancing National Law as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW)*.

Party means a party to this Deed, including their successors and assigns.

PEXA means Property Exchange Australia Ltd.

Planning Proposal means PP-2022-3907.

Planning Application means a Development Application, an application to modify a Development Consent, an application for a complying development certificate (within the meaning of the Act) or an application for a Part 6 Certificate.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

Site Audit Report has the same meaning as in the CLM Act.

Site Audit Statement has the same meaning as in the CLM Act.

Subdivision Certificate has the same meaning as in the Act.

Value means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed, as shown in the Contributions Table or as otherwise agreed between the Parties.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out under this Deed.

Works Provisions means the provisions in Schedule 4, if any.

- 1.2 **Interpretation** - In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 **Headings** are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a **business day** means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to **dollars or \$** means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any **law, legislation or legislative provision** includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any **agreement, deed or document** is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a **clause, part, schedule or attachment** is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a **natural person** includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a **word or phrase is given a defined meaning**, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes **the singular denotes the plural**, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word '**include**' or '**including**' are to be construed without limitation.
- 1.2.13 A reference to **this Deed** includes the agreement recorded in this Deed.
- 1.2.14 A reference to a **Party to this Deed** includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to '**dedicate**' or '**dedication**' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.

1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Planning agreement under the Act

2.1 This Deed is a planning agreement governed by Subdivision 2 of Part 7 of the Act.

3 Application of this Deed

3.1 This Deed applies to the Land, the Development and the Instrument Change.

4 Date upon which this Deed takes effect

4.1 This Deed takes effect when signed by both Parties. The date on which it takes effect is specified at the end of this Deed.

5 Warranties

5.1 The Parties warrant to each other that they:

5.1.1 have full capacity to enter into this Deed, and

5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

Part 2 – Development Contributions - General

8 Development Contributions to be made under this Deed

- 8.1 The Developer is required to make the Development Contributions described in the Contributions Table in Schedule 1 in accordance with the Contributions Table and the provisions of this Deed.
- 8.2 In summary the Development Contributions are:
- 8.2.1 Dedication of land at cost price in the form of 15 serviced lots for low-density residential use;
 - 8.2.2 Dedication of land at cost price in the form of 3000m² of serviced land for medium-density residential use;
 - 8.2.3 Dedication of land free of charge along the Tucki Tucki Creek corridor
 - 8.2.4 Embellishment of the Tucki Tucki creek corridor in the form of revegetation and construction of a public footpath
 - 8.2.5 Dedication of land free of charge within the northern precincts for the purpose of public recreation;
 - 8.2.6 Embellishment of land within the northern precincts for the purpose of public recreation; and
 - 8.2.7 Construction of a shared path that crosses the Tucki Tucki creek and connects the northern and southern precincts.

9 1% Administration Levy

- 9.1 Within 30 days of the execution of this Deed by both Parties, the Developer agrees to pay Council a levy, being 1% of the total Value of all Development Contributions, towards the cost to Council of administering this Deed.

10 Application of Development Contributions

- 10.1 The Council will apply each Development Contribution towards the public purpose for which it is made and otherwise in accordance with this Deed. However, Council may apply the Development Contributions to another public purpose to achieve an outcome it considers to be in the public interest.
- 10.2 Council will under no circumstances refund any monetary Development Contributions made under this Deed, including where the amount of the monetary Development Contribution exceeds the amount necessary to meet the public purpose for which the monetary Development Contribution was made.

11 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 11.1 This Deed does not exclude the application of s7.11 to the Development.
- 11.2 This Deed does not exclude the application of s7.12 to the Development.
- 11.3 This Deed does not exclude the application of s7.24 to the Development.
- 11.4 Benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.

12 Indexation of Contributions

- 12.1 All monetary Development Contributions and the Value of all other Development Contributions are to be indexed from the date of this Deed to the date of payment in accordance with the following formula:

$$RC = AC \times \text{Index A} / \text{Index B}$$

Where:

RC is the indexed Development Contribution or Value of the Development Contribution;

AC is the Development Contribution or Value of the Development Contribution at the date of this Deed;

Index A is the most recent Index number before the payment of the monetary Development Contribution or the date when the indexed Value of a Development Contribution needs to be determined;

Index B is the most recent Index number before the date of this Deed.

- 12.2 In this clause **Index** means:
- 12.2.1 the *Consumer Price Index – Sydney All Groups* published by the Australian Bureau of Statistics; or
- 12.2.2 where the Development Contribution is for or to be applied towards Affordable Housing, the acquisition of land or the acquisition of a building on land (not including infrastructure), the *House Price Index – Established House Prices (Sydney)* published by the Australian Bureau of Statistics.

Part 3 – Monetary Development Contributions

13 How money is paid

- 13.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council. Council will not accept any other forms of payment.
- 13.2 Despite clause 13.1, if Council agrees, in its absolute discretion, to accept payment of a monetary Development Contribution by EFTPOS using a credit card, the Developer will be required to pay a surcharge in accordance with Council's adopted schedule of fees and charges.

Part 4 – Dedication of Land

14 Land Dedication Provisions

- 14.1 If the Contributions Table shown in Schedule 1 of this Deed indicates that any land is required to be dedicated under this Deed, the Land Dedication Provisions in Schedule 3 apply to the dedication of that Land.

Part 5 – Carrying out of Work

15 Works Provisions

- 15.1 If the Contributions Table shown in Schedule 1 of this Deed indicates that any Works are required to be carried out by the Developer under this Deed, the Works Provisions in Schedule 4 apply to the carrying out of those Works.

Part 6 – Review, Monitoring and Dispute Resolution

16 Review of Deed

- 16.1 If either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this

Deed the Party may request a review of the whole or any part of this Deed.

- 16.2 For the purposes of clause 16.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other Authority to restrict or prohibit any aspect of the Development.
- 16.3 If a review is requested in accordance with clause 16.1, the Parties are to use all reasonable endeavours, in good faith, to agree on and implement appropriate amendments to this Deed.
- 16.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 16.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 16.1 (but not 16.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.
- 16.6 If the Parties agree to amend this Deed under this clause 16, any such amendment must be in writing and signed by the Parties, and exhibited in accordance with the Act and Regulation.

17 Monitoring and Reporting

- 17.1 The Developer acknowledges that the Council will continuously monitor compliance with the Developer's obligations under this Deed.
- 17.2 The Developer must provide an annual report to Council on or before 31 July each year in respect of its compliance with the provisions of this Deed in the previous financial year, and the progress of the Development in the previous financial year, including all Planning Applications made.
- 17.3 The annual report is to be in such a form and to address such matters as required by the Council from time to time and notified to the Developer and be prepared in a clear manner.
- 17.4 When lodging any Planning Application, the Developer must provide to Council or a certifier to whom the Planning Application is made, a report identifying what Development Contributions are required to be made in connection with the part of the Development the subject of the Planning Application, and the trigger for the making of those Development Contributions.

18 Notation on Planning Certificate

- 18.1 The Developer acknowledges that the Council may, pursuant to s10.7(5) of the Act make a notation on a planning certificate within the

meaning of the Act in respect of the Land stating that the Land is subject to this Deed.

19 Dispute resolution – expert determination

- 19.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 19.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 19.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 19.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 19.3 If a notice is given under clause 19.2, the Parties are to meet within 10 business days of the notice in an attempt to resolve the Dispute.
- 19.4 If the Dispute is not resolved within a further 20 business days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 19.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 19.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 19.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

20 Dispute Resolution - mediation

- 20.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 19 applies.
- 20.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 20.3 If a notice is given under clause 20.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 20.4 If the Dispute is not resolved within a further 20 business days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 20.5 If the Dispute is not resolved by mediation within a further 20 business days, or such longer period as may be necessary to allow any

mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

- 20.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 20.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 7 – Enforcement and Consequences of Non-Compliance

21 Security for performance of obligations

- 21.1 The Developer is to provide Security to the Council in the amount of 125% of the indexed Value of all Works required to be provided by the Developer under this Deed.
- 21.2 The Council is to hold the Security as security for the Developer performing its obligations under this Deed.
- 21.3 The Developer is to provide the Security to the Council:
- 21.3.1 before the Developer obtains the first Part 6 Certificate for any part of the Development or before the Developer commences any part of the Works, whichever occurs first, or
- 21.3.2 at such other time agreed in writing by Council.
- 21.4 If agreed in writing by Council, the Security may be paid in stages at different stages of the Development, in which case the Developer is to provide the portion of the Security relating to a particular stage of the Development before the Developer obtains the first Part 6 Certificate for each Stage, and before the Developer commences the particular Work.
- 21.5 The Council, in its absolute discretion and despite any other provision of this Deed, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out of the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 21.6 The Council may call-up and apply the Security in accordance with clause 25 notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 21.7 The Council is to release and return the Security or any unused part of it to the Developer within 10 business days of completion of all of the Developer's obligations under this Deed, or all of the Developer's

obligations to which the Security relates, or on termination of this Deed.

- 21.8 The Developer may at any time provide the Council with a replacement Security.
- 21.9 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 21.10 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 21.11 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

22 Grant of Charge

- 22.1 On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Charge Land, to secure:
 - 22.1.1 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and
 - 22.1.2 any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer
- 22.2 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the Charge Land.
- 22.3 If the Charge Land comprises part only of a lot in a deposited plan at the time that the instrument referred to in clause 22.2 is required to be given, the Developer is to give the Council an instrument that charges a greater area of the Land which includes the whole of the Charge Land.
- 22.4 The Developer is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

23 Caveat and Discharge

- 23.1 The Developer agrees that:
 - 23.1.1 the Council may lodge a caveat on the title of the Land to which the Charge applies,
 - 23.1.2 the Council is to release the caveat from any part of the Land to which the Charge applies that is not the Charge Land once that

part of the Land is contained in a separate lot to the Charge Land, and

- 23.1.3 the Council cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 23.2.
- 23.2 In order to enable a lot in the Development which is created for separate occupation and disposition and which is not intended to be further subdivided to be sold to end-purchasers (**Final Lot**), the Council is to release the Charge and withdraw the caveat from the title to the Final Lot on satisfaction by the Developer of its obligations under this Deed to make Development Contributions in respect of the creation of the Final Lot.
- 23.3 For the purposes of clause 23.2 the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of a Final Lot on or immediately prior to the date for settlement of the sale of that Final Lot.

24 Priority

- 24.1 The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.

25 Default in Performance and Step-in Rights

- 25.1 If the Council reasonably considers that the Developer has committed an Event of Default the Council may give a written notice to the Developer:
- 25.1.1 specifying the nature and extent of the breach,
- 25.1.2 requiring the Developer to:
- (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 25.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 25.2 If the Developer fails to fully comply with a notice referred to in clause 25.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.

- 25.3 If the Developer fails to comply with a notice given under clause 25.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 25.4 Any costs incurred by the Council in remedying a breach in accordance with clause 25.2 or clause 25.3 may be recovered by the Council by either or a combination of the following means:
- 25.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
- 25.4.2 as a debt due in a court of competent jurisdiction.
- 25.5 For the purpose of clause 25.4, the Council's costs of remedying a breach the subject of a notice given under clause 25.1 include, but are not limited to:
- 25.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
- 25.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 25.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 25.6 Nothing in this clause 25 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

26 Enforcement in a court of competent jurisdiction

- 26.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 26.2 For the avoidance of doubt, nothing in this Deed prevents:
- 26.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 26.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

27 Conditions of Consent

- 27.1 The Developer acknowledges that Council may impose a condition on any Development Consent granted to the Development requiring this Deed to be complied with.

Part 8 – Registration & Restriction on Dealings

28 Registration of this Deed

- 28.1 This Deed must be registered on the title of the Land pursuant to s7.6(1) of the Act.
- 28.2 On the commencement of this Deed, the Developer is to deliver to the Council:
- 28.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land, and
- 28.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 28.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur electronically through PEXA or another ELNO.
- 28.4 The Council agrees that the registration of this Deed can be removed from the title to any part of the Land if:
- 28.4.1 the part of the Land is a lot to be sold to end-purchasers or otherwise created for separate occupation and disposition and which is not intended to be further subdivided;
- 28.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

29 Restriction on dealings

- 29.1 The Developer is not to:
- 29.1.1 sell or transfer the Land, other than a lot to be sold to end-purchasers or otherwise created for separate occupation and disposition and which is not intended to be further subdivided, or
- 29.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 29.1.3 the Developer has, at no cost to the Council, first procured the incoming purchaser or assignee to enter into a novation deed on terms reasonably satisfactory to the Council under which the incoming purchaser or assignee agrees to perform the Developer's obligations under this Deed, and
- 29.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee,

assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

29.1.5 the Developer is not in breach of this Deed, and

29.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

29.2 Subject to clause 29.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 29.1.

29.3 Clause 29.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 9 – Indemnities & Insurance

30 Risk

30.1 The Developer performs this Deed at its own risk and its own cost.

31 Release

31.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

32 Indemnity

32.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

33 Insurance

33.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:

33.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and

- authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 33.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 33.1.3 workers compensation insurance as required by law, and
 - 33.1.4 any other insurance required by law.
- 33.2 If the Developer fails to comply with clause 33.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 33.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 33.2.2 recovery as a debt due in a court of competent jurisdiction.
- 33.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 33.1.

Part 10 – Other Provisions

34 Confidentiality

- 34.1 This agreement is a public document and its terms are not confidential.
- 34.2 The parties acknowledge that:
- 34.2.1 Confidential Information may have been supplied to some or all of the Parties in negotiations leading up to the making of this agreement; and
 - 34.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
- 34.3 Subject to clauses 34.4 and 34.5, each Party agrees:
- 34.3.1 not to disclose any Confidential Information received before or after the making of this agreement to any person without the prior written consent of the Party who supplied the Confidential Information; or
 - 34.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.

- 34.4 A Party may disclose Confidential Information in the following circumstances:
- 34.4.1 in order to comply with the law, or the requirements of any Authority; or
 - 34.4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the Confidential Information confidential.
- 34.5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

35 Notices

- 35.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 35.1.1 delivered or posted to that Party at its address, or
 - 35.1.2 emailed to that Party at its email address.
- 35.2 For the purposes of this clause a Party's address and email address are as noted under '**Parties to this Deed**'.
- 35.3 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 35.4 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 35.4.1 delivered, when it is left at the relevant address,
 - 35.4.2 sent by post, 2 business days after it is posted, or
 - 35.4.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 35.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

36 Approvals and Consent

- 36.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be

given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.

- 36.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

37 Costs

- 37.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping and registering this Deed, and any document related to this Deed within 5 business days of a written demand by the Council for such payment.
- 37.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 5 business days of a written demand by the Council for such payment.

38 Entire Deed

- 38.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 38.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

39 Further Acts

- 39.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

40 Governing Law and Jurisdiction

- 40.1 This Deed is governed by the law of New South Wales.
- 40.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 40.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

41 Joint and Individual Liability and Benefits

- 41.1 Except as otherwise set out in this Deed:
- 41.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and

41.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

42 No Fetter

- 42.1 The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the Act.
- 42.2 This deed is not intended to operate, and shall not be construed as operating to fetter, in any unlawful manner:
- 42.2.1 the power of Council to make any law; or
- 42.2.2 the exercise by Council of any statutory power, discretion or duty.
- 42.3 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law.

43 Illegality

- 43.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

44 Severability

- 44.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 44.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

45 Amendment

- 45.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with section 203 of the Regulation.

46 Waiver

- 46.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 46.2 A waiver by a Party is only effective if it:
- 46.2.1 is in writing,
 - 46.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 46.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 46.2.4 is signed and dated by the Party giving the waiver.
- 46.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 46.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 46.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

47 GST

- 47.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 47.2 Subject to clause 47.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 47.3 Clause 47.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 47.4 No additional amount shall be payable by the Council under clause 47.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 47.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 47.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 47.5.2 that any amounts payable by the Parties in accordance with clause 47.2 (as limited by clause 47.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 47.6 No payment of any amount pursuant to this clause 47, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 47.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 47.8 This clause continues to apply after expiration or termination of this Deed.

48 Explanatory Note

- 48.1 The Appendix contains the Explanatory Note relating to this Deed required by s205 of the Regulation.
- 48.2 Pursuant to s205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

49 Electronic Execution

- 49.1 Each Party:
- 49.1.1 consents to this Deed being signed by electronic signature by the methods set out in clause 49.3;
 - 49.1.2 agrees that those methods validly identify the person signing and indicates that person's intention to sign this Deed;
 - 49.1.3 agrees that those methods are reliable as appropriate for the purpose of signing this Deed, and
 - 49.1.4 agrees that electronic signing of this Deed by or on behalf of a Party by those methods indicates that Party's intention to be bound.
- 49.2 If this Deed is signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- 49.3 For the purposes of clause 49.1, the methods are:
- 49.3.1 insertion of an image (including a scanned image) of the person's own unique signature onto the Deed; or
 - 49.3.2 insertion of the person's name onto the Deed; or
 - 49.3.3 use of a stylus or touch finger or a touch screen to sign the Deed,
- provided that in each of the above cases, words to the effect of 'Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]' are also included on the Deed; or
- 49.3.4 use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the Deed; or
 - 49.3.5 as otherwise agreed in writing between the Parties.

Schedule 1: Contributions Table

Development Contribution Note: for example, 'Monetary Contribution for Roads' or Dedication of open space' or construction of road'	Public Purpose Note: for example, 'open space' or 'roads' or 'community facilities' or Affordable Housing	Manner and Extent Note: Include detailed description of the item in terms of amount, design, land size etc., including by reference to plan contained in annexures	Timing/ Trigger Note: for example, prior to the issue of a specified Construction Certificate or Subdivision Certificate'	Value	Party Responsible Note: for example, Developer or Landowner	Property Affected, if relevant	Development Stage Affected, if relevant	Third Party, if relevant
A. Monetary Contributions – See Part 3								
B. Dedication of Land – See Part 4 and Schedule 3								
Dedication of land	Post-flood house relocation	15 serviced lots	Prior to subdivision certificate for the low-density residential area in the northern precinct	To be determined following professional valuation of the site by at least 2 qualified valuers. The value is to be the cost price of the	Landowner	[TBC]	[TBC]	Northern Rivers Reconstruction Corporation – recipient/acquirer of land

				RU1 land + the cost of servicing the land (pro-rata for 15 lots)				
Dedication of land	Affordable housing	3000sqm of serviced land	Prior to subdivision certificate of the first stage of the MU1 zoned land in the northern precinct	To be determined following professional valuation of the site by at least 2 qualified valuers. The value is to be the cost price of the RU1 land + the cost of servicing the land (pro-rata for the 3000sqm)	Landowner	[TBC]	Subdivision	Community Housing Provider – ongoing manager of housing
Dedication of land	Public Open Space – recreational land	Tucki Tucki Creek Corridor	Five (5) years after commencement of revegetation and	Free of charge	Landowner	Tucki Tucki Creek Corridor, as zoned as RE1	NA	NA

			embellishment					
Dedication of land	Public Open Space – recreational land	As shown on precinct structure plan Parcel a - Xsqm Parcel b - Xsqm	One (1) year after construction.	Free of charge	Landowner	tbc	Subdivision	
C. Carrying out of Works – See Part 5 and Schedule 4								
Embellishment of Public Open Space	Public Open Space – revegetation	Tucki Tucki Creek corridor revegetation and continued maintenance	VLMP agreed by Council prior to subdivision certificate, works to commence within 3 months of issue, vegetation to be maintained for a period of five years	Free of charge	Landowner	Tucki Tucki Creek Corridor, as zoned as RE1		
Construction of footpath	Public Open Space - footpath	Tucki Tucki Creek Corridor, east to west along the corridor	VLMP agreed by Council prior to subdivision certificate, works to commence	[TBC]	Landowner	Tucki Tucki Creek Corridor, as zoned as RE1	Occupation or release of final lots	

			within 3 months of issue. Works to be complete prior to dedication of land					
Construction of shared path	Public Open Space – shared path	Shared path connecting the northern and southern precincts, crossing the Tucki Tucki Creek	VLMP agreed by Council prior to subdivision certificate, works to commence within 3 months of issue. Works to be complete prior to dedication of land.			Tucki Tucki Creek Corridor, as zoned as RE1		
Embellishment of Public Open Space	Public Open Space -	Landscape design and construction for each parcel As shown on precinct structure plan Parcel a - Xsqm	Plans to be agreed by Council prior to the first subdivision certificate in the northern precincts (Stage 1). Works to					

		Parcel b – Xaqm	commence within 3 months of subdivision certificate issue. Works to be completed prior to dedication of land (one year after construction commencement)					
D. Other material public benefits								

Schedule 2: Table of other Obligations

Item	Details
1. Security:	125% of indexed Value of all Works – See Clause 22
2. Maintenance Period	X years after completion of [TBC] – see clause 1.1]
3. Defects Liability Period	1 year after completion of the Work – see clause 1.1
4. Defects Liability Security	[%] of indexed Value of the relevant Works – See Clause 15 of Schedule 4]
5. Maintenance Security	[TBC] – See Clause 17 of Schedule 4
6. Registration (section 7.6(1) of the Act)	Registration required – see clause 28
7. Insurances:	See clause 33. Insurances required are: <ul style="list-style-type: none"> • Contract Works Insurance • Public Liability • Workers Compensation Insurance
8. Costs of Deed	At the Developer's cost – see clause 37

Schedule 3: Land Dedication Provisions

How Land is Dedicated

- 1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - 1.1 the Council is given:
 - 1.1.1 a Clearance Certificate that is valid at the time of dedication of the land, or
 - 1.1.2 the Foreign Resident Capital Gains Withholding Amount in respect of the land, and
 - 1.1.3 evidence that a transfer of the land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.
- 2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur and is to give Council 10 business days prior notice of the lodgement of a subdivision plan involving the land to be dedicated with LRS.
- 3 The Developer is to ensure that land is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 4 If, having used all reasonable endeavours, the Developer cannot ensure that the land is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 5 Before dedicating the land to the Council, the Developer, at its cost, is to obtain and provide to the Council a Site Audit Report and Site Audit Statement stating that the land is suitable for the purpose for which the land is required to be dedicated under this Deed without being subject to compliance with an environmental management plan.
- 6 The Developer indemnifies and agrees to keep indemnified the Council against all Claims made against the Council as a result of any Contamination on or emanating from the land being dedicated but only in relation to Contamination that existed on or before the date that the land is transferred or dedicated to Council or compulsorily acquired by Council pursuant to this Deed.
- 7 [pricing mechanism]

Land on which Works are carried out

- 8 If the Developer is required to dedicate land under this Deed, or to provide public access to land under this Deed, and the Developer is also required to construct a Work on that land, then the land must be dedicated to Council, or the public access provided, within 5 business days of Council accepting that the Work is Complete, or at such earlier time as may be agreed with Council.

Acquisition of land required to be dedicated

- 9 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 10 The Council is to only acquire land pursuant to clause 9 of this Schedule if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 11 Clause 9 of this Schedule constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 12 If, as a result of the acquisition referred to in clause **Error! Reference source not found.** of this Schedule, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 22 in Part 7 of this Deed.
- 13 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 14 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to clause 9 of this Schedule, including without limitation:
- 14.1 signing any documents or forms,
 - 14.2 giving land owner's consent for lodgement of any Development Application, and
 - 14.3 paying the Council's costs arising under clause 9 of this Schedule.

Schedule 4: Works Provisions

Cost Of Works

- 1 The Developer is responsible for meeting all Costs of and incidental to carrying out the Works, regardless of the Value of the Development Contribution comprising a Work.

Deed not Construction Contract

- 2 The Parties acknowledge and agree that this Deed is not a Construction Contract between the Council and the Developer.

General obligations relating to Works

- 3 The Developer is to provide and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works and in accordance with:
 - 3.1 all applicable laws,
 - 3.2 any Approval required by any law relating to the provision of the Works, and
 - 3.3 the lawful requirements of any Authority.
- 4 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed relating to the provision of the Works is supplied or made available for that purpose.

Warranties relating to Works

- 5 The Developer warrants to the Council that:
 - 5.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Works,
 - 5.2 it accepts that, if any aspect of the Works do not comply this Deed, the Council is entitled to require the Developer to cease the Works and to pursue its rights and remedies relating to the non-compliance under this Deed and, subject to this Deed, at law or in equity,
 - 5.3 the Works, when completed, are to be fit for purpose.
- 6 When a work is Completed, the Developer is to procure in favour of the Council any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Works.

Design of Works

- 7 If the design of a Work is agreed prior to the date of this Deed, Approved Work Drawings will be included in Schedule 5.
- 8 Clauses 9 – 14 of these Works Provisions apply if the design of a Work has not been agreed by Council prior to the date of this Deed, and no Approved Work Drawings are included in Schedule 5.
- 9 The Developer may not commence construction of the Works unless the Works are designed and approved in accordance with this Deed.
- 10 Before commencing the design of the Works, the Developer is to request the Council to provide the Developer with the Council's design requirements for the works.

- 11 Upon receipt of the Developer's request, the Council may:
- 11.1 initially request the Developer to provide a written proposal concerning the design of the Works, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements, and subsequently request the Developer to submit the plans and drawings of the Works to the Council for approval, or
 - 11.2 request the Developer to submit the plans and drawings of the works to the Council for approval.
- 12 The Council may reasonably require the Developer to make any change to the plans and drawings of the Works that it reasonably considers necessary or desirable as a precondition to approving the plans and drawings, and the Developer is to make any such change.
- 13 The Council is to inform the Developer in writing when it approves the plans and drawings of the Works.
- 14 The Developer is not to make any application for any Approval relating to the Works unless the Council approved the plans and drawings of the Works under this clause.

Defects Liability Security

- 15 The Developer is to provide Security in the amount of **[INSERT AMOUNT]** to the Council before the commencement of the Defects Liability Period for a Work (**Defects Liability Security**).
- 16 The Council is to release and return the Defects Liability Security, or any remaining part, to the Developer within 30 days after the end of the Defects Liability Period if, at that time, the Developer is not in breach of an obligation under this Deed to which the Defects Liability Security relates.

Maintenance Security

- 17 The Developer is to deliver Security to the Council in the amount of **[INSERT AMOUNT]** before the commencement of the Maintenance Period (**Maintenance Security**).
- 18 The Council is to release and return the Maintenance Security, or any remaining part, to the Developer within 30 days after the end of the Maintenance Period if, at that time, the Developer is not in breach of an obligation under this Deed to which the Maintenance Security relates.

Ownership & care of Works and land

- 19 The Developer owns, and is responsible for care of a Work and bears all risk and liability in connection with the Work, until:
- 19.1 20 business days after the Work is complete; or
 - 19.2 any land on which the Work is located which is to be dedicated to Council under this Deed has been dedicated to Council, provided the Work is Complete,
- whichever is the earlier.

Work health & safety

- 20 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Works unless and until such time that:
- 20.1 the Developer engages the Contractor to construct the Works, or
- 20.2 engages another person to be the Principal Contractor for the Works, and authorises the person to have management or control of the workplace relating to the Works and to discharge the duties of a Principal Contractor under WHS Law.
- 21 For the purpose of the Developer's compliance with WHS Law the Council:
- 21.1 acknowledges that the Developer (or the Contractor, where appropriate) is the person with management and control of the relevant works area for the purpose of Part 2 of the *Work Health and Safety Act 2011* (NSW); and
- 21.2 authorises the Developer (or the Contractor, where appropriate) to exercise authority of the Council necessary to enable the Developer to discharge its obligations and responsibilities under WHS Law.
- 22 If the Developer at any time terminates the engagement of the Contractor, or terminates its authority for the Contractor or other person referred to in clause 20 of these Works Provisions to be the Principal Contractor for the Works, the Developer becomes the Principal Contractor until such time as a new person is appointed as Contractor or to otherwise be the Principal Contractor for the Works.

Variations to approved Works & Costs

- 23 The detail or specifications of Works may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 24 The Party seeking the variation is to make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request.
- 25 The Party to whom the request is made must respond to the request within 20 business days or such other period considered by the Party to be reasonable in the circumstances.
- 26 A Party is not to unreasonably withhold its Approval to the request.
- 27 The Party who seeks the variation of the Works must meet the costs of the variation, unless the other Party otherwise agrees.
- 28 Despite anything else in clauses 23 to 27, if Council considers, in its absolute discretion, that a variation requested under clause 23 and 24 is not in the public interest, or does not lead to a better planning outcome than the originally designed Works, then it is entitled in its absolute discretion to refuse to agree to the variation.
- 29 In determining whether a variation is in the public interest or leads to a better planning outcome, Council will consider, without limitation:
- 29.1 the needs of the community;
- 29.2 Council's applicable planning controls and policies;
- 29.3 the benefit to the public of the Works as originally proposed and as proposed to be varied;
- 29.4 any impact of the variation on the public or a section of the public;
- 29.5 any costs implications for Council of the variation;
- 29.6 integration of the Works with existing Council infrastructure;

- 29.7 whether the variation will result in any delay in the provision of the Works;
- 29.8 the guiding principles for councils under the *Local Government Act 1993*;
- 29.9 whether the variation significantly improves, increases or enlarges the physical, financial, and environmental benefit of the Works to the wider community (other than occupants of the Development);
- 29.10 whether the variation significantly improves access to enjoyment of the Works by the wider community;
- 29.11 whether the variation better achieves implementation of Council' adopted strategies relevant to the Works and public benefits more generally.

Construction commencement notice

- 30 The Developer is to notify the Council of its intention to commence construction of the Works not less than 10 business days before that construction commences.

Protection of people, property & utilities

- 31 The Developer is to use all reasonable endeavours to ensure that, in providing the Works:
 - 31.1 all necessary measures are taken to protect people and property,
 - 31.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 31.3 nuisances and unreasonable noise and disturbances are prevented.
- 32 The Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land in connection with the Works unless authorised in writing by the Council or any relevant Authority.

Damage to assets & property

- 33 The Developer must immediately notify the Council in writing of any loss or damage that occurs in respect of a Council asset of which it becomes aware while performing the Works.
- 34 The Developer must replace or fix any Council asset the Developer loses or damages while performing the Works in accordance with any reasonable requirements of the Council.
- 35 If an audit, inspection or test of the Works shows that:
 - 35.1 the Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
 - 35.2 damage has occurred to a Council asset or the property of another person in connection with the Works,
 the Council may give the Developer a notice in writing requiring it to take corrective action to bring the Works into conformity or repair the damage, as the case requires.
- 36 Without limiting any other remedies available to the Council under this Deed, if the Developer does not comply with the Council's requirements under clause 35, the Council may take the action required of the Developer and recover the Council's costs of so doing from the Developer.

Entry onto Land

- 37 The Developer is responsible for obtaining all necessary rights to permit the Developer to lawfully enter, occupy, and provide the Works on any land not owned by Council or the Developer, and to enable the Council to enter that land to inspect the Works in accordance with this Deed.
- 38 Upon receiving reasonable prior written notice from the Developer, the Council is to allow the Developer to enter, occupy, and use Council owned or controlled land specified in the notice at any reasonable time if the occupation or use of the land by the Developer is reasonably necessary for the Works.
- 39 The Council is not required to allow the Developer to enter, occupy and use any Council owned land that is used for public purposes unless and until the Developer has paid any applicable fee or rent, as approved by the Council, for that purpose,
- 40 Upon receiving reasonable prior notice from the Council, the Developer is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Works are being, or have been, provided.
- 41 The Council must comply with the Developer's reasonable safety requirements while on any land on which the Works are being provided.

Audit, inspection, testing of Works

- 42 The Council may undertake an audit, inspection or test of the Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.
- 43 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Works.
- 44 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Works, the Developer is to:
- 44.1 take the action in the manner, and within the time, the Council reasonably requires, and
- 44.2 provide evidence to the Council that the action has been taken.
- 45 If an audit, inspection or test shows that the Works have not been provided in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.
- 46 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Works is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.

Access to information & records

- 47 The Council may make a written request to the Developer:
- 47.1 to provide information to the Council concerning the Works,
- 47.2 to allow the Council to inspect the Developer's records concerning the Works, including by giving the Council access to premises owned, occupied or controlled by the Developer for that purpose.
- 48 The Developer is to comply with any such request made by the Council not later than 15 business days after the Council makes the request.

Easements, covenants etc. relating to Works

- 49 The Developer must create, or procure the creation of, any easement or covenant or any other instrument benefitting the Council that is reasonably required by the Council in relation to the Works.
- 50 The Costs required to be incurred by the Developer in doing so include, unless otherwise agreed in writing between the Parties, the payment of compensation to any person.

Completion of Works

- 51 The Developer must provide the Council with at least 20 business days' notice of the date on which it considers it will Complete a Work it is required to carry out under this Deed and the notice must be accompanied by the following documents (where relevant):
- 51.1 construction plans;
 - 51.2 data and modelling assumptions;
 - 51.3 certification and inspection sign offs by Council or any certifier;
 - 51.4 maintenance manuals and other operating information; and
 - 51.5 maintenance schedules,
- (Completion Request Notice)**
- 52 Council will inspect the Works the subject of the Completion Request Notice within 20 business days of receipt of the Completion Request Notice, and the Developer must agree on a time for the inspection within that period.
- 53 After the inspection, the Council will give the Developer written notice of whether the Work the subject of the Completion Request Notice:
- 53.1 has been satisfactorily Completed; or
 - 53.2 has not been satisfactorily Completed and directing the Developer to complete, rectify or repair any specified part of the Work the subject of the Completion Request Notice within a period specified in the direction in order to bring the Works into conformity with this Deed or any Approval.
- 54 The Developer is to promptly comply with any such direction given by the Council.
- 55 The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Work the subject of a Completion Request Notice is Complete.
- 56 The Work is Complete for the purposes of this Deed when the Council issues the Developer a notice to that effect under clause 53.1 of these Works Provisions or after compliance by the Developer with any direction under clause 53.2 or 55 of these Works Provisions.

Works-As-Executed Plan

- 57 No later than 15 business days after Completion of all of the Works, the Developer is to submit to the Council a full Works-As-Executed-Plan for the Works in a format agreed to by the Council.
- 58 If the Developer owns the copyright in the Works-As-Executed Plan, the Developer must assign the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.

- 59 If the Developer is not the copyright owner of the Work-As-Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

Maintenance of Works

- 60 The Developer is to Maintain a Work during the Maintenance Period.
- 61 The Council is to permit the Developer to enter any land owned or controlled by the Council to enable the Developer to Maintain a Work during the Maintenance Period.

Rectification of Defects

- 62 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 63 The Developer is to comply with a Rectification Notice according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.
- 64 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice given by the Council.

Removal of structures & Equipment

- 65 When providing the Works on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
- 65.1 remove from the land any structure not comprising or required in connection with the completed Works and make good any damage or disturbance to the land as a result of that removal,
- 65.2 remove from the land any Equipment and make good any damage or disturbance to the land as a result of that removal, and
- 65.3 leave the land in a neat and tidy state, clean and free of rubbish.

Contribution for Maintenance or other Recurrent Charges

- 66 Not applicable

Schedule 5: Approved Work Drawings

DELETE IF NO WORKS OR NO WORKS DRAWINGS ARE APPROVED AS AT DATE OF AGREEMENT

DRAFT

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of the Developer in accordance with s127(1) of the
Corporations Act 2001 (Cth).

Name/Position

Name/Position

APPENDIX: EXPLANATORY NOTE

For the purposes of *Environmental Planning and Assessment Regulation 2021* (section 205) in respect of a draft Planning Agreement under s7.4 of the *Environmental Planning and Assessment Act 1979*.

1. Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the planning agreement).

This explanatory note explains what the planning agreement is proposing, how it delivers public benefit and whether it is an acceptable means of achieving the proposed planning outcomes.

2. The parties to this planning agreement are:

Lismore City Council; and

Nimble Estates Pty Ltd (ACN 656 265 575) as the Developer (and Landowner).

3. The land subject to the planning agreement is:

Lot 42 in Deposited Plan 868366 and Lot 1 in Deposited Plan 957 677, known as 1055 Bruxner Highway, Goonellabah.

A map of the subject land is attached to this explanatory note.

Will the planning agreement be registered on the subject land titles? Yes

4. Description of the proposed Change to the Environmental Planning Instrument

The developer is seeking an amendment to the planning controls for the subject land in accordance with Planning Proposal (PP) PP-2022-3907 and has made an offer to enter into a planning agreement in connection with the planning proposal. The amendments outlined in the related planning proposal are:

Planning Instrument provision	Current	Proposed
Land Zoning Maps, Sheet LZN_005 and Sheet LZN_006	RU1	R1, MU1 and E4 – see Planning Proposal report for detail

Lot Size Maps, Sheet LSZ_005 and Sheet LSZ_006	40ha, 20ha	R1 – 300m2 MU1 north – 300m2 MU1 south – 1500m2 E4 – 1500m2
Height of Building Maps, Sheet HOB_005 and Sheet HOB_006	NA	R1 – 8.5m MU1 north – 13.5m

5. Description of the planning agreement

The planning agreement will provide residential lots and residential developable land to a NSW Government entity and/or a registered community housing provider to provide as affordable housing and other strategic housing benefitting the Lismore local government area.

Will the contributions be in the form of land, works or a monetary contribution?

The contributions required by the planning agreement will be provided in the form of dedication of land and works, being:

- 15 serviced low density residential lots within the R1 General Residential zone, each of at least 500sqm;
- 3000m2 of serviced medium-density residential land within the MU1 zoned land north of Tucki Tucki Creek (in up to two development lots).
- XXsqm of land that forms the Tucki Tucki Creek corridor, for the purpose of public recreation. Land to be revegetated in accordance with a Council approved Vegetation and Landscaping Management Plan (VLMP) with a footpath constructed running east to west on at least one side of the creek. The corridor is to be maintained for the period stipulated in the VLMP;
- XXsqm of land located xxx, for the purpose of public recreation; and
- Shared path connection to be constructed across the Tucki Tucki Creek linking the northern and southern precincts.

A map of the proposed land to be dedicated is **attached** to this explanatory note.

Will the contributions be provided in addition to or in lieu of other contributions?

The contributions required by the planning agreement will be provided in addition to contributions under any applicable contributions plan.

However they will be in lieu of the following:

- Tucki Tucki Creek corridor open space acquisition and embellishment

When will the contributions be provided?

The contributions required by the planning agreement will be provided in accordance with Schedule 1 of the planning agreement.

6. Assessment of the merits of the planning agreement

How is the planning agreement in the public interest?

Contribution Element	Public Interest
15 serviced low-res lots	The dedication of 15 serviced lots to the NSW Government is in the public interest as it is specifically dedicated to help Lismore's recovery following the natural disaster of February 2022. The serviced lots are dedicated to the Northern Rivers Reconstruction Corporation who have the power to facilitate land swaps for impacted home owners.
3000sqm of medium-density land	The dedication of 3000sqm of serviced land is for the purpose of affordable housing.
Tucki Tucki Creek corridor	The Tucki Tucki Creek Corridor embellishment and land dedication is for the purpose of public recreation. The Tucki Tucki Creek from the west of the site into Goonellabah has been identified in the Lismore's Contribution Plan and Council already owns majority of the corridor where footpaths either exist or are planned. The dedication and embellishment of the creek corridor within this landholding will further contribute to the value and scale of the corridor for the community and region.
Urban public recreation land	Dedication and embellishment of land within the MU1 zoned land to the north of the creek is for the purpose of public recreation that will serve the residents of the urban release area. The intention is that the land will be utilised to provide social/family recreation function.

What is the impact, positive or negative, of the planning agreement on the public or any section of the public?

The planning agreement has a significantly positive impact on the public:

- Provision of land available for flood-impacted residents of Lismore who wish to remain in Lismore and can take up a land swap offer through the NRRC;
- Provision of affordable housing, benefiting those who are in housing stress;
- Provision of public recreation land benefiting all members of Goonellabah and beyond by facilitating greater opportunity for exercise, socialization and connection with nature.

How does the planning agreement conform with the planning authority's capital works program, if any?

Does the planning agreement specify that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued?

Yes.

Are there any other matters which a reasonable member of the public would wish to know in understanding this planning agreement?

DRAFT



Investment Summary Report
October 2023

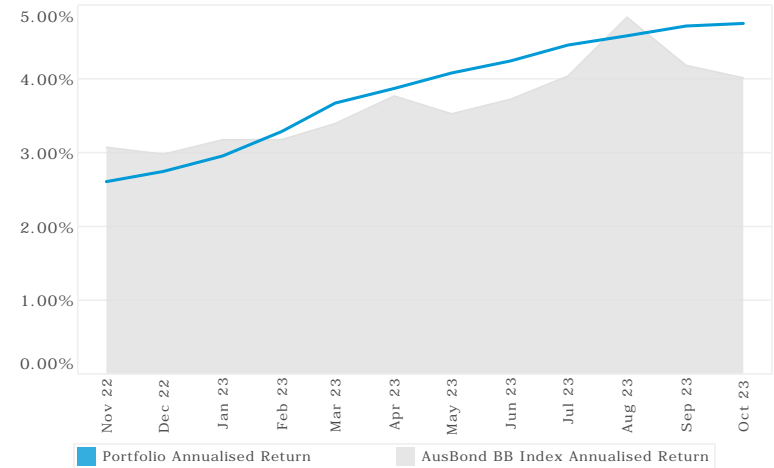


Lismore City Council
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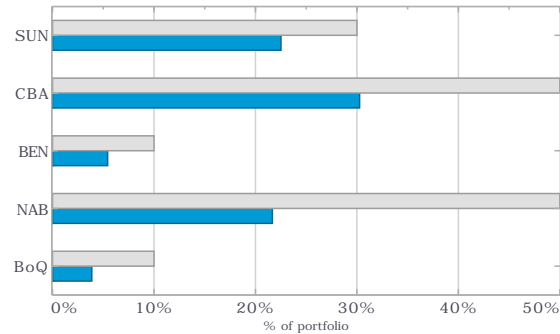
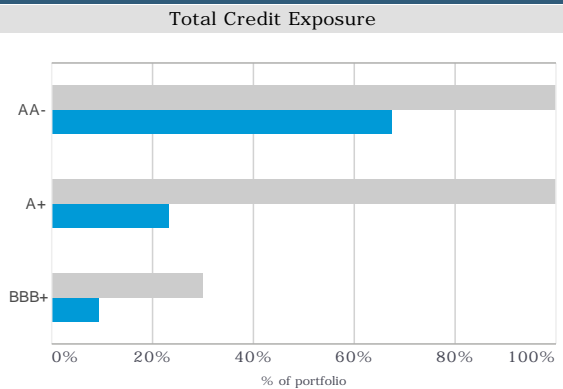


Investment Holdings Investment Performance

	Face Value (\$)	Current Value (\$)	Current Yield (%)
Cash	13,106,000	13,106,000	4.1000
Term Deposit	116,111,568	117,843,021	4.8469
	129,217,568	130,949,021	4.7712



Investment Policy Compliance



Term to Maturities

Term	Face Value (\$)	Policy Max
Between 0 and 1 years	128,217,568	99% 100% a
Between 1 and 10 years	1,000,000	1% 80% a
Total	129,217,568	

Specific Sub Limits

Between 3 and 10 years	0	0%	50%	a
Between 5 and 10 years	0	0%	25%	a

g Portfolio Exposure g Investment Policy Limit



Lismore City Council
Investment Holdings Report - October 2023



Cash Accounts										
	Face Value (\$)	Current Rate (%)	Institution	Credit Rating		Current Value (\$)	Deal No.			Reference
	13,106,000.00	4.1000%	Commonwealth Bank of Australia	AA-		13,106,000.00	543330			64
	13,106,000.00	4.1000%				13,106,000.00				

Term Deposits											
Maturity Date	Face Value (\$)	Current Rate (%)	Institution	Credit Rating	Purchase Price (\$)	Purchase Date	Current Value (\$)	Deal No.	Accrued Interest (\$)	Next Interest Date	Reference
1-Nov-23	1,000,000.00	4.6200%	Suncorp Bank	A+	1,000,000.00	28-Apr-23	1,023,669.59	544045	23,669.59	At Maturity	123
1-Nov-23	2,000,000.00	5.1700%	Commonwealth Bank of Australia	AA-	2,000,000.00	29-Jun-23	2,035,410.96	544278	35,410.96	At Maturity	
1-Nov-23	3,000,000.00	5.2100%	National Australia Bank	AA-	3,000,000.00	29-Jun-23	3,053,527.40	544259	53,527.40	At Maturity	
1-Nov-23	5,000,000.00	4.5800%	Suncorp Bank	A+	5,000,000.00	27-Apr-23	5,117,950.68	544035	117,950.68	At Maturity	
7-Nov-23	2,000,000.00	4.4300%	National Australia Bank	AA-	2,000,000.00	13-Sep-23	2,011,894.25	544507	11,894.25	At Maturity	
8-Nov-23	2,059,178.08	4.8700%	Suncorp Bank	A+	2,059,178.08	4-May-23	2,108,906.95	544066	49,728.87	At Maturity	
13-Nov-23	1,000,000.00	4.9300%	National Australia Bank	AA-	1,000,000.00	16-Aug-23	1,010,400.27	544396	10,400.27	At Maturity	
22-Nov-23	2,000,000.00	4.4800%	Suncorp Bank	A+	2,000,000.00	21-Mar-23	2,055,232.88	543946	55,232.88	At Maturity	111
22-Nov-23	2,000,000.00	4.9100%	Suncorp Bank	A+	2,000,000.00	22-May-23	2,043,853.70	544108	43,853.70	At Maturity	
22-Nov-23	2,000,000.00	4.9700%	Suncorp Bank	A+	2,000,000.00	24-May-23	2,043,844.93	544117	43,844.93	At Maturity	
27-Nov-23	1,000,000.00	4.9800%	National Australia Bank	AA-	1,000,000.00	16-Aug-23	1,010,505.75	544397	10,505.75	At Maturity	
7-Dec-23	4,000,000.00	3.2500%	Westpac Group	AA-	4,000,000.00	7-Jun-22	4,052,356.16	543388	52,356.16	Annually	55
13-Dec-23	1,000,000.00	3.3500%	Rabobank Australia	A+	1,000,000.00	13-Dec-18	1,029,645.21	543413	29,645.21	Annually	2
13-Dec-23	5,000,000.00	5.0100%	Commonwealth Bank of Australia	AA-	5,000,000.00	6-Jun-23	5,101,572.60	544164	101,572.60	At Maturity	
20-Dec-23	3,000,000.00	4.8100%	National Australia Bank	AA-	3,000,000.00	27-Sep-23	3,013,836.99	544539	13,836.99	At Maturity	
27-Dec-23	2,000,000.00	5.0000%	National Australia Bank	AA-	2,000,000.00	28-Aug-23	2,017,808.22	544429	17,808.22	At Maturity	
9-Jan-24	1,017,600.55	4.9000%	Bendigo and Adelaide Bank	BBB+	1,017,600.55	5-Apr-23	1,046,288.52	543994	28,687.97	At Maturity	
9-Jan-24	2,000,000.00	4.6500%	Commonwealth Bank of Australia	AA-	2,000,000.00	25-Oct-23	2,001,783.56	544592	1,783.56	At Maturity	
17-Jan-24	1,011,500.00	4.6000%	Suncorp Bank	A+	1,011,500.00	17-Mar-23	1,040,692.17	543938	29,192.17	At Maturity	109
17-Jan-24	1,023,289.86	3.6900%	Suncorp Bank	A+	1,023,289.86	10-Mar-23	1,047,704.15	543925	24,414.29	At Maturity	114
6-Feb-24	2,000,000.00	4.7000%	Bendigo and Adelaide Bank	BBB+	2,000,000.00	28-Apr-23	2,048,158.90	544044	48,158.90	At Maturity	121
27-Feb-24	2,000,000.00	5.0400%	National Australia Bank	AA-	2,000,000.00	27-Feb-23	2,068,212.60	543864	68,212.60	At Maturity	101



Lismore City Council Investment Holdings Report - October 2023



Maturity Date	Face Value (\$)	Current Rate (%)	Institution	Credit Rating	Purchase Price (\$)	Purchase Date	Current Value (\$)	Deal No.	Accrued Interest (\$)	Next Interest Date	Reference
27-Feb-24	3,000,000.00	4.9100%	Suncorp Bank	A+	3,000,000.00	28-Sep-23	3,013,721.10	544544	13,721.10	At Maturity	
28-Feb-24	2,000,000.00	5.0000%	National Australia Bank	AA-	2,000,000.00	28-Feb-23	2,067,397.26	543869	67,397.26	At Maturity	108
12-Mar-24	2,000,000.00	5.1000%	Bank of Queensland	BBB+	2,000,000.00	28-Sep-23	2,009,501.37	544545	9,501.37	At Maturity	
13-Mar-24	2,000,000.00	5.4000%	Commonwealth Bank of Australia	AA-	2,000,000.00	14-Jun-23	2,041,424.66	544201	41,424.66	At Maturity	
20-Mar-24	4,000,000.00	4.4000%	Bendigo and Adelaide Bank	BBB+	4,000,000.00	21-Mar-23	4,108,493.15	543945	108,493.15	At Maturity	110
26-Mar-24	3,000,000.00	5.1500%	Bank of Queensland	BBB+	3,000,000.00	28-Sep-23	3,014,391.78	544546	14,391.78	At Maturity	
26-Mar-24	5,000,000.00	5.1400%	Suncorp Bank	A+	5,000,000.00	25-Aug-23	5,047,879.45	544428	47,879.45	At Maturity	
3-Apr-24	2,000,000.00	5.1500%	National Australia Bank	AA-	2,000,000.00	30-Aug-23	2,017,778.08	544441	17,778.08	At Maturity	
10-Apr-24	2,000,000.00	4.5500%	Suncorp Bank	A+	2,000,000.00	12-Apr-23	2,050,610.96	544019	50,610.96	At Maturity	117
16-Apr-24	2,000,000.00	5.2000%	Suncorp Bank	A+	2,000,000.00	16-Aug-23	2,021,939.73	544395	21,939.73	At Maturity	
22-Apr-24	4,000,000.00	4.5200%	Westpac Group	AA-	4,000,000.00	21-Apr-23	4,096,096.44	544032	96,096.44	At Maturity	119 Green
1-May-24	5,000,000.00	4.1600%	Westpac Group	AA-	5,000,000.00	28-Apr-23	5,106,564.38	544046	106,564.38	At Maturity	122 Green
14-May-24	1,000,000.00	5.1200%	Suncorp Bank	A+	1,000,000.00	11-Oct-23	1,002,945.75	544574	2,945.75	At Maturity	
22-May-24	5,000,000.00	5.4700%	Commonwealth Bank of Australia	AA-	5,000,000.00	23-Aug-23	5,052,452.05	544410	52,452.05	At Maturity	
19-Jun-24	2,000,000.00	5.5800%	Commonwealth Bank of Australia	AA-	2,000,000.00	20-Jun-23	2,040,970.96	544214	40,970.96	At Maturity	
24-Jun-24	5,000,000.00	5.4200%	Commonwealth Bank of Australia	AA-	5,000,000.00	25-Aug-23	5,050,487.67	544427	50,487.67	At Maturity	
2-Jul-24	1,000,000.00	5.1900%	Commonwealth Bank of Australia	AA-	1,000,000.00	6-Sep-23	1,007,962.74	544472	7,962.74	At Maturity	
30-Jul-24	3,000,000.00	5.2500%	National Australia Bank	AA-	3,000,000.00	28-Sep-23	3,014,671.23	544547	14,671.23	At Maturity	
28-Aug-24	5,000,000.00	5.0700%	Westpac Group	AA-	5,000,000.00	25-Aug-23	5,047,227.40	544426	47,227.40	Quarterly	Green
3-Sep-24	2,000,000.00	5.2500%	National Australia Bank	AA-	2,000,000.00	5-Sep-23	2,016,397.26	544466	16,397.26	At Maturity	
4-Sep-24	1,000,000.00	5.2500%	National Australia Bank	AA-	1,000,000.00	6-Sep-23	1,008,054.79	544473	8,054.79	At Maturity	
25-Sep-24	1,000,000.00	5.3100%	National Australia Bank	AA-	1,000,000.00	26-Sep-23	1,005,237.26	544526	5,237.26	At Maturity	
1-Oct-24	2,000,000.00	5.2100%	Westpac Group	AA-	2,000,000.00	28-Sep-23	2,009,706.30	544548	9,706.30	At Maturity	Green
16-Oct-24	2,000,000.00	5.2900%	National Australia Bank	AA-	2,000,000.00	18-Oct-23	2,004,058.08	544584	4,058.08	At Maturity	
22-Oct-24	2,000,000.00	5.2800%	Commonwealth Bank of Australia	AA-	2,000,000.00	25-Oct-23	2,002,025.21	544593	2,025.21	At Maturity	99
25-Aug-25	1,000,000.00	0.9500%	National Australia Bank	AA-	1,000,000.00	25-Aug-21	1,001,769.86	543414	1,769.86	Annually	12
	116,111,568.49	4.8469%			116,111,568.49		117,843,021.36		1,731,452.87		



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Investment	Deal No.	Comments	Face Value (\$)	Settlement Date	Maturity Date	Interest Received (\$)	Days	Interest Accrued (\$)	Yield (% pa)
Cash									
Commonwealth Bank of Australia	543330					50,675.67	0	48,767.00	4.10%
						50,675.67		48,767.00	4.10%
Term Deposits									
Commonwealth Bank of Australia	543723		4,000,000.00	25-Jan-23	25-Oct-23	129,544.11	24	11,388.49	4.33%
Suncorp Bank	544020		1,000,000.00	12-Apr-23	11-Oct-23	22,936.99	10	1,260.28	4.60%
Bendigo and Adelaide Bank	544085		3,000,000.00	10-May-23	10-Oct-23	59,104.11	9	3,476.71	4.70%
National Australia Bank	544267		4,000,000.00	29-Jun-23	4-Oct-23	54,426.30	3	1,683.29	5.12%
National Australia Bank	544268		2,000,000.00	29-Jun-23	18-Oct-23	31,444.93	17	4,815.89	5.17%
Suncorp Bank	543946		2,000,000.00	21-Mar-23	22-Nov-23	0.00	31	7,609.87	4.48%
Suncorp Bank	544035		5,000,000.00	27-Apr-23	1-Nov-23	0.00	31	19,449.31	4.58%
Suncorp Bank	544045		1,000,000.00	28-Apr-23	1-Nov-23	0.00	31	3,923.84	4.62%
Suncorp Bank	544066		2,059,178.08	4-May-23	8-Nov-23	0.00	31	8,517.10	4.87%
Suncorp Bank	544108		2,000,000.00	22-May-23	22-Nov-23	0.00	31	8,340.28	4.91%
Suncorp Bank	544117		2,000,000.00	24-May-23	22-Nov-23	0.00	31	8,442.19	4.97%
National Australia Bank	544259		3,000,000.00	29-Jun-23	1-Nov-23	0.00	31	13,274.80	5.21%
National Australia Bank	544396		1,000,000.00	16-Aug-23	13-Nov-23	0.00	31	4,187.12	4.93%
National Australia Bank	544397		1,000,000.00	16-Aug-23	27-Nov-23	0.00	31	4,229.59	4.98%
National Australia Bank	544507		2,000,000.00	13-Sep-23	7-Nov-23	0.00	31	7,524.93	4.43%
Commonwealth Bank of Australia	544278		2,000,000.00	29-Jun-23	1-Nov-23	0.00	31	8,781.92	5.17%
Westpac Group	543388		4,000,000.00	7-Jun-22	7-Dec-23	0.00	31	11,041.09	3.25%
Rabobank Australia	543413		1,000,000.00	13-Dec-18	13-Dec-23	0.00	31	2,845.21	3.35%
Commonwealth Bank of Australia	544164		5,000,000.00	6-Jun-23	13-Dec-23	0.00	31	21,275.34	5.01%
National Australia Bank	544429		2,000,000.00	28-Aug-23	27-Dec-23	0.00	31	8,493.15	5.00%
National Australia Bank	544539		3,000,000.00	27-Sep-23	20-Dec-23	0.00	31	12,255.62	4.81%
Suncorp Bank	543925		1,023,289.86	10-Mar-23	17-Jan-24	0.00	31	3,206.96	3.69%
Suncorp Bank	543938		1,011,500.00	17-Mar-23	17-Jan-24	0.00	31	3,951.78	4.60%



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Investment	Deal No.	Comments	Face Value (\$)	Settlement Date	Maturity Date	Interest Received (\$)	Days	Interest Accrued (\$)	Yield (% pa)
Bendigo and Adelaide Bank	543994		1,017,600.55	5-Apr-23	9-Jan-24	0.00	31	4,234.89	4.90%
Commonwealth Bank of Australia	544592		2,000,000.00	25-Oct-23	9-Jan-24	0.00	7	1,783.56	4.65%
National Australia Bank	543864		2,000,000.00	27-Feb-23	27-Feb-24	0.00	31	8,561.09	5.04%
National Australia Bank	543869		2,000,000.00	28-Feb-23	28-Feb-24	0.00	31	8,493.15	5.00%
Bendigo and Adelaide Bank	544044		2,000,000.00	28-Apr-23	6-Feb-24	0.00	31	7,983.56	4.70%
Suncorp Bank	544544		3,000,000.00	28-Sep-23	27-Feb-24	0.00	31	12,510.42	4.91%
Bendigo and Adelaide Bank	543945		4,000,000.00	21-Mar-23	20-Mar-24	0.00	31	14,947.94	4.40%
Commonwealth Bank of Australia	544201		2,000,000.00	14-Jun-23	13-Mar-24	0.00	31	9,172.61	5.40%
Suncorp Bank	544428		5,000,000.00	25-Aug-23	26-Mar-24	0.00	31	21,827.40	5.14%
Bank of Queensland	544545		2,000,000.00	28-Sep-23	12-Mar-24	0.00	31	8,663.01	5.10%
Bank of Queensland	544546		3,000,000.00	28-Sep-23	26-Mar-24	0.00	31	13,121.92	5.15%
Suncorp Bank	544019		2,000,000.00	12-Apr-23	10-Apr-24	0.00	31	7,728.77	4.55%
Suncorp Bank	544395		2,000,000.00	16-Aug-23	16-Apr-24	0.00	31	8,832.88	5.20%
Westpac Group	544032		4,000,000.00	21-Apr-23	22-Apr-24	0.00	31	15,355.62	4.52%
National Australia Bank	544441		2,000,000.00	30-Aug-23	3-Apr-24	0.00	31	8,747.94	5.15%
Westpac Group	544046		5,000,000.00	28-Apr-23	1-May-24	0.00	31	17,665.75	4.16%
Commonwealth Bank of Australia	544410		5,000,000.00	23-Aug-23	22-May-24	0.00	31	23,228.76	5.47%
Suncorp Bank	544574		1,000,000.00	11-Oct-23	14-May-24	0.00	21	2,945.75	5.12%
Commonwealth Bank of Australia	544214		2,000,000.00	20-Jun-23	19-Jun-24	0.00	31	9,478.36	5.58%
Commonwealth Bank of Australia	544427		5,000,000.00	25-Aug-23	24-Jun-24	0.00	31	23,016.44	5.42%
Commonwealth Bank of Australia	544472		1,000,000.00	6-Sep-23	2-Jul-24	0.00	31	4,407.95	5.19%
National Australia Bank	544547		3,000,000.00	28-Sep-23	30-Jul-24	0.00	31	13,376.71	5.25%
Westpac Group	544426		5,000,000.00	25-Aug-23	28-Aug-24	0.00	31	21,530.14	5.07%
National Australia Bank	544466		2,000,000.00	5-Sep-23	3-Sep-24	0.00	31	8,917.81	5.25%
National Australia Bank	544473		1,000,000.00	6-Sep-23	4-Sep-24	0.00	31	4,458.90	5.25%
National Australia Bank	544526		1,000,000.00	26-Sep-23	25-Sep-24	0.00	31	4,509.86	5.31%
Westpac Group	544548		2,000,000.00	28-Sep-23	1-Oct-24	0.00	31	8,849.86	5.21%



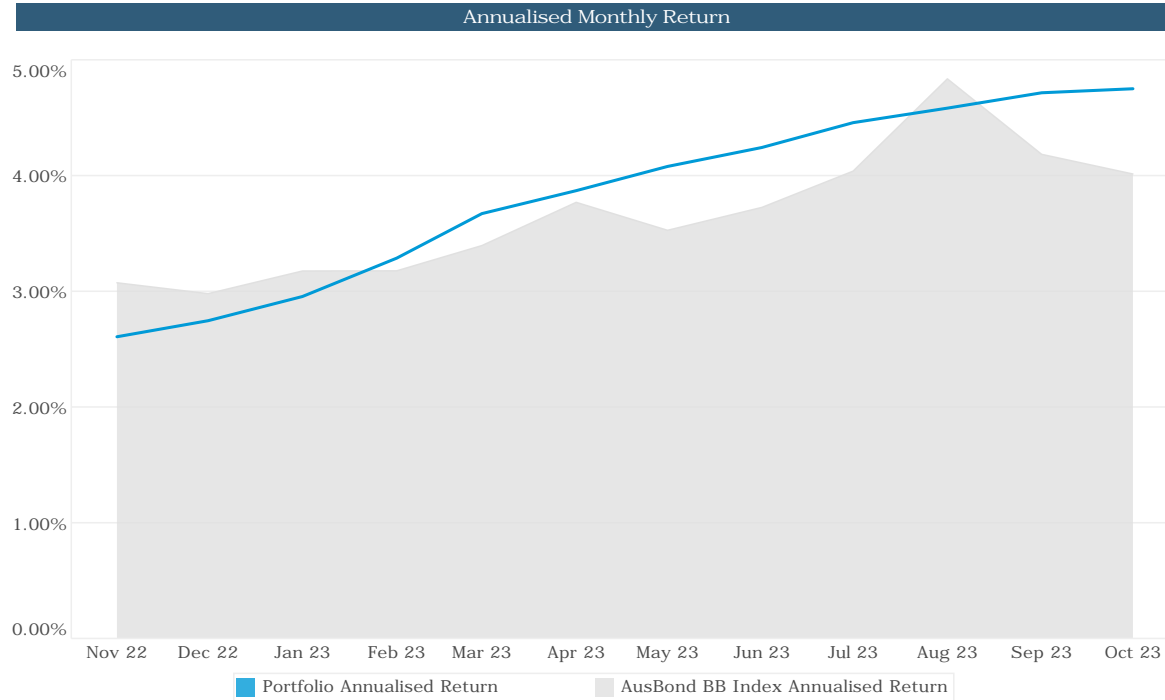
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Investment	Deal No.	Comments	Face Value (\$)	Settlement Date	Maturity Date	Interest Received (\$)	Days	Interest Accrued (\$)	Yield (% pa)
National Australia Bank	544584		2,000,000.00	18-Oct-23	16-Oct-24	0.00	14	4,058.08	5.29%
Commonwealth Bank of Australia	544593		2,000,000.00	25-Oct-23	22-Oct-24	0.00	7	2,025.21	5.28%
National Australia Bank	543414		1,000,000.00	25-Aug-21	25-Aug-25	0.00	31	806.85	0.95%
						297,456.44		481,215.95	4.83%
Grand Totals						348,132.11		529,982.95	4.75%



Lismore City Council
Investment Performance Report - October 2023



Historical Performance Summary (% pa)			
	Portfolio	Annualised BB Index	Outperformance
Oct 2023	4.75%	4.01%	0.74%
Last 3 months	4.68%	4.35%	0.33%
Last 6 months	4.47%	4.05%	0.42%
Financial Year to Date	4.63%	4.27%	0.36%
Last 12 months	3.83%	3.66%	0.17%



Lismore City Council
Environmental Commitments Report - October 2023



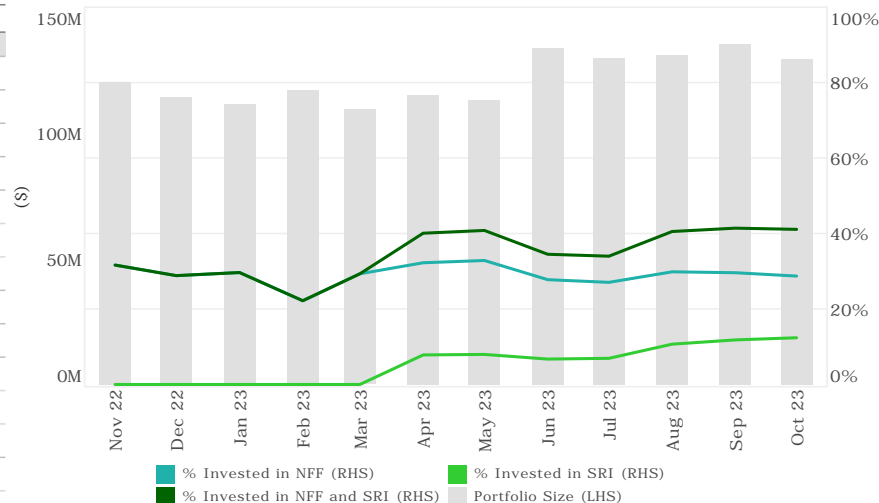
Current Breakdown

ADI Lending Status *	Current Month (\$)	Previous Month (\$)
Fossil Fuel Lending ADIs		
Bank of Queensland	5,000,000	5,000,000
Commonwealth Bank of Australia	39,106,000	38,357,135
National Australia Bank	28,000,000	32,000,000
Westpac Group	4,000,000	4,000,000
	76,106,000 59%	79,357,135 59%
Non Fossil Fuel Lending ADIs		
Bendigo and Adelaide Bank	7,017,601	10,017,601
Rabobank Australia	1,000,000	1,000,000
Suncorp Bank	29,093,968	29,093,968
	37,111,568 29%	40,111,568 30%
Socially Responsible Investment		
Westpac Group (Green TD)	16,000,000	16,000,000
	16,000,000 12%	16,000,000 12%
	129,217,568	135,468,703

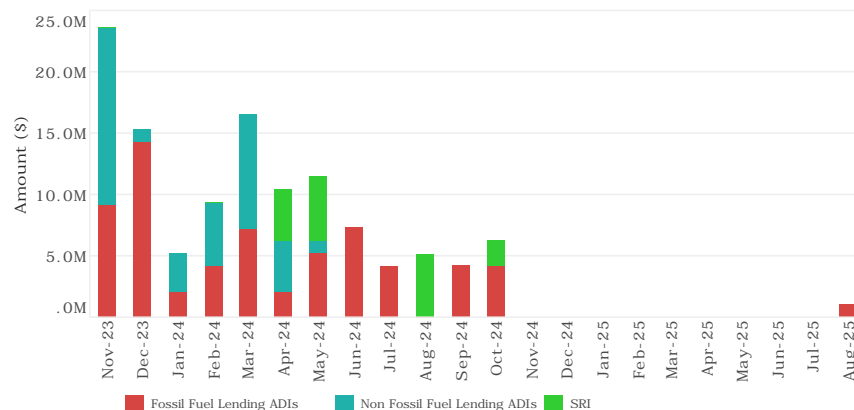
* source: Marketforces

Percentages may not add up to 100% due to rounding

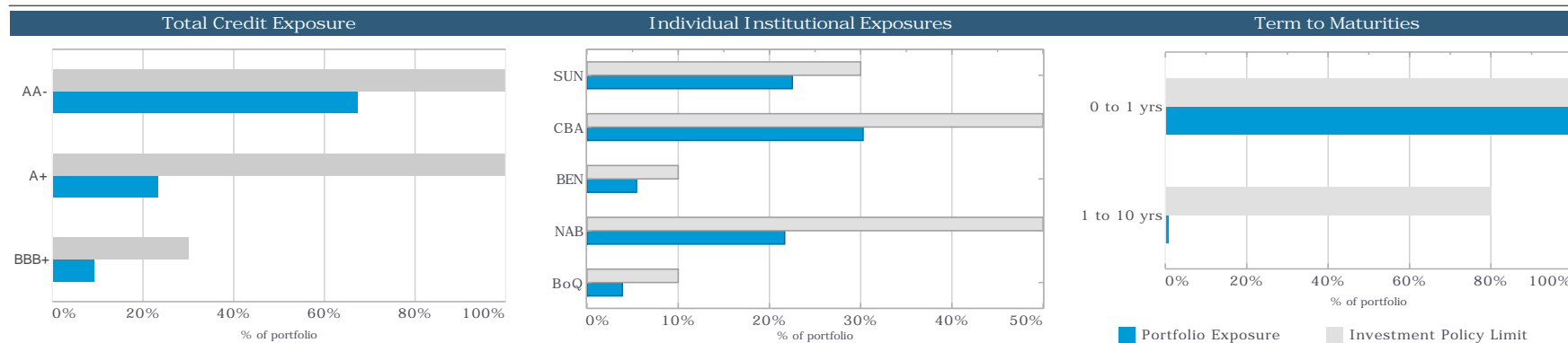
Historical Portfolio Exposure to NFF Lending ADIs and SRIs



Upcoming Maturities



Lismore City Council
Investment Policy Compliance Report - October 2023



Credit Rating Group	Face Value (\$)	% of portfolio	Policy Max	Compliance
AA-	87,106,000	67%	100%	a
A+	30,093,968	23%	100%	a
BBB+	12,017,601	9%	30%	a
Total		129,217,568		

Specific Sub Limits	Face Value (\$)	% of portfolio	Policy Max	Compliance
BBB+	12,017,601	9%	30%	a

Institution	% of portfolio	Investment Policy Limit	Compliance
Suncorp Bank (A+)	23%	30%	a
Commonwealth Bank of Australia (AA-)	30%	50%	a
Bendigo and Adelaide Bank (BBB+)	5%	10%	a
National Australia Bank (AA-)	22%	50%	a
Bank of Queensland (BBB+)	4%	10%	a
Westpac Group (AA-)	15%	50%	a
Rabobank Australia (A+)	1%	30%	a

Term	Face Value (\$)	% of portfolio	Policy Max	Compliance
Between 0 and 1 years	128,217,568	99%	100%	a
Between 1 and 10 years	1,000,000	1%	80%	a
Total	129,217,568			

Specific Sub Limits	Face Value (\$)	% of portfolio	Policy Max	Compliance
Between 3 and 10 years	0	0%	50%	a
Between 5 and 10 years	0	0%	25%	a

a = compliant
r = non-compliant

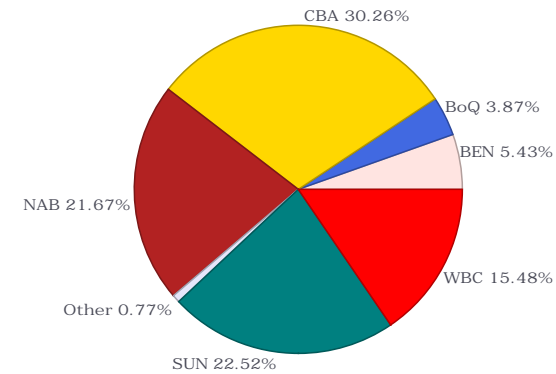
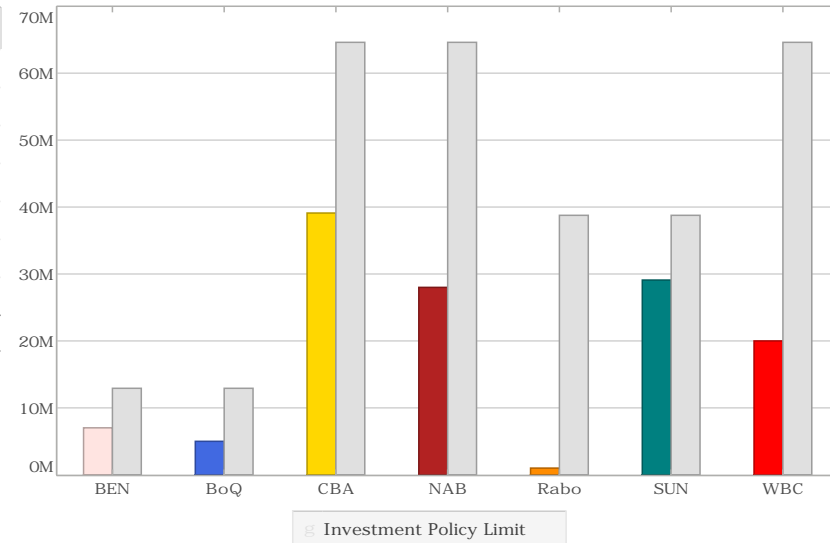


Lismore City Council
Individual Institutional Exposures Report - October 2023



Individual Institutional Exposures Individual Institutional Exposure Charts

	Current Exposures		Policy Limit		Capacity
Bank of Queensland (BBB+)	5,000,000	4%	12,921,757	10%	7,921,757
Bendigo and Adelaide Bank (BBB+)	7,017,601	5%	12,921,757	10%	5,904,156
Commonwealth Bank of Australia (AA-)	39,106,000	30%	64,608,784	50%	25,502,784
National Australia Bank (AA-)	28,000,000	22%	64,608,784	50%	36,608,784
Rabobank Australia (A+)	1,000,000	1%	38,765,271	30%	37,765,271
Suncorp Bank (A+)	29,093,968	23%	38,765,271	30%	9,671,303
Westpac Group (AA-)	20,000,000	15%	64,608,784	50%	44,608,784
	129,217,568				



Lismore City Council
Cashflows Report - October 2023



Actual Cashflows for October 2023

Date	Deal No.	Cashflow Counterparty	Asset Type	Cashflow Description	Amount
4-Oct-23	544267	National Australia Bank	Term Deposit	Maturity: Face Value	4,000,000.00
		National Australia Bank	Term Deposit	Maturity: Interest Received/Paid	54,426.30
<u>Deal Total</u>					<u>4,054,426.30</u>
<u>Day Total</u>					<u>4,054,426.30</u>
10-Oct-23	544085	Bendigo and Adelaide Bank	Term Deposit	Maturity: Face Value	3,000,000.00
		Bendigo and Adelaide Bank	Term Deposit	Maturity: Interest Received/Paid	59,104.11
<u>Deal Total</u>					<u>3,059,104.11</u>
<u>Day Total</u>					<u>3,059,104.11</u>
11-Oct-23	544020	Suncorp Bank	Term Deposit	Maturity: Face Value	1,000,000.00
		Suncorp Bank	Term Deposit	Maturity: Interest Received/Paid	22,936.99
<u>Deal Total</u>					<u>1,022,936.99</u>
11-Oct-23	544574	Suncorp Bank	Term Deposit	Settlement: Face Value	-1,000,000.00
<u>Deal Total</u>					<u>-1,000,000.00</u>
<u>Day Total</u>					<u>22,936.99</u>
18-Oct-23	544268	National Australia Bank	Term Deposit	Maturity: Face Value	2,000,000.00
		National Australia Bank	Term Deposit	Maturity: Interest Received/Paid	31,444.93
<u>Deal Total</u>					<u>2,031,444.93</u>
18-Oct-23	544584	National Australia Bank	Term Deposit	Settlement: Face Value	-2,000,000.00
<u>Deal Total</u>					<u>-2,000,000.00</u>
<u>Day Total</u>					<u>31,444.93</u>
25-Oct-23	543723	Commonwealth Bank of Australia	Term Deposit	Maturity: Face Value	4,000,000.00
		Commonwealth Bank of Australia	Term Deposit	Maturity: Interest Received/Paid	129,544.11
<u>Deal Total</u>					<u>4,129,544.11</u>
25-Oct-23	544592	Commonwealth Bank of Australia	Term Deposit	Settlement: Face Value	-2,000,000.00
<u>Deal Total</u>					<u>-2,000,000.00</u>
25-Oct-23	544593	Commonwealth Bank of Australia	Term Deposit	Settlement: Face Value	-2,000,000.00



Lismore City Council
Cashflows Report - October 2023



Date	Deal No.	Cashflow Counterparty	Asset Type	Cashflow Description	Amount
<u>Deal Total</u>					-2,000,000.00
Day Total					129,544.11
<u>Total for Month</u>					<u>7,297,456.44</u>

Forecast Cashflows for November 2023

Date	Deal No.	Cashflow Counterparty	Asset Type	Cashflow Description	Amount
1-Nov-23	544035	Suncorp Bank	Term Deposit	Maturity: Face Value	5,000,000.00
		Suncorp Bank	Term Deposit	Maturity: Interest Received/Paid	117,950.69
		<u>Deal Total</u>			
1-Nov-23	544045	Suncorp Bank	Term Deposit	Maturity: Face Value	1,000,000.00
		Suncorp Bank	Term Deposit	Maturity: Interest Received/Paid	23,669.59
		<u>Deal Total</u>			
1-Nov-23	544259	National Australia Bank	Term Deposit	Maturity: Face Value	3,000,000.00
		National Australia Bank	Term Deposit	Maturity: Interest Received/Paid	53,527.40
		<u>Deal Total</u>			
1-Nov-23	544278	Commonwealth Bank of Australia	Term Deposit	Maturity: Face Value	2,000,000.00
		Commonwealth Bank of Australia	Term Deposit	Maturity: Interest Received/Paid	35,410.96
		<u>Deal Total</u>			
Day Total					11,230,558.63
7-Nov-23	544507	National Australia Bank	Term Deposit	Maturity: Face Value	2,000,000.00
		National Australia Bank	Term Deposit	Maturity: Interest Received/Paid	13,350.68
		<u>Deal Total</u>			
Day Total					2,013,350.68
8-Nov-23	544066	Suncorp Bank	Term Deposit	Maturity: Face Value	2,059,178.13
		Suncorp Bank	Term Deposit	Maturity: Interest Received/Paid	51,652.09
		<u>Deal Total</u>			
Day Total					2,110,830.21



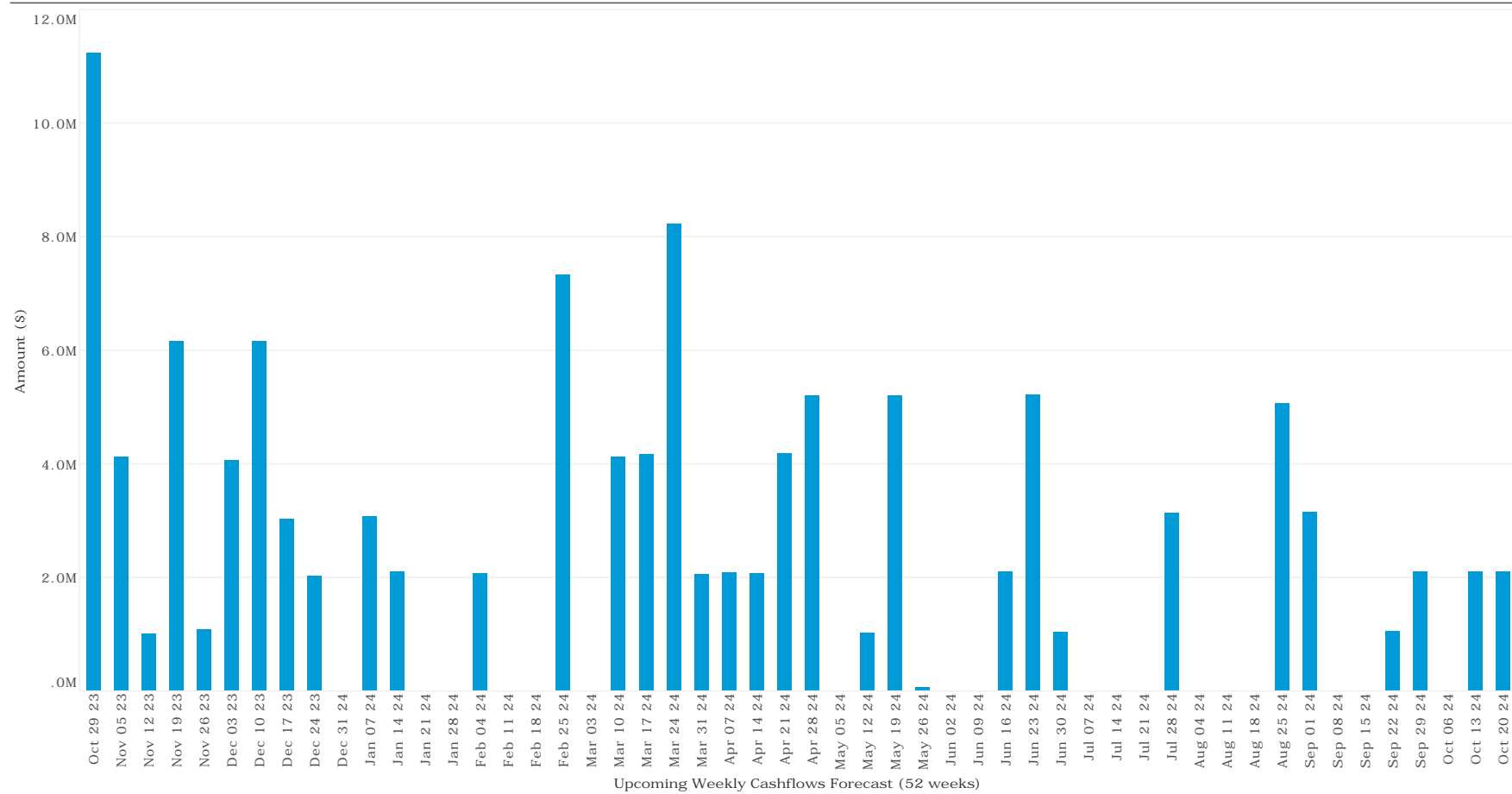
Lismore City Council
Cashflows Report - October 2023



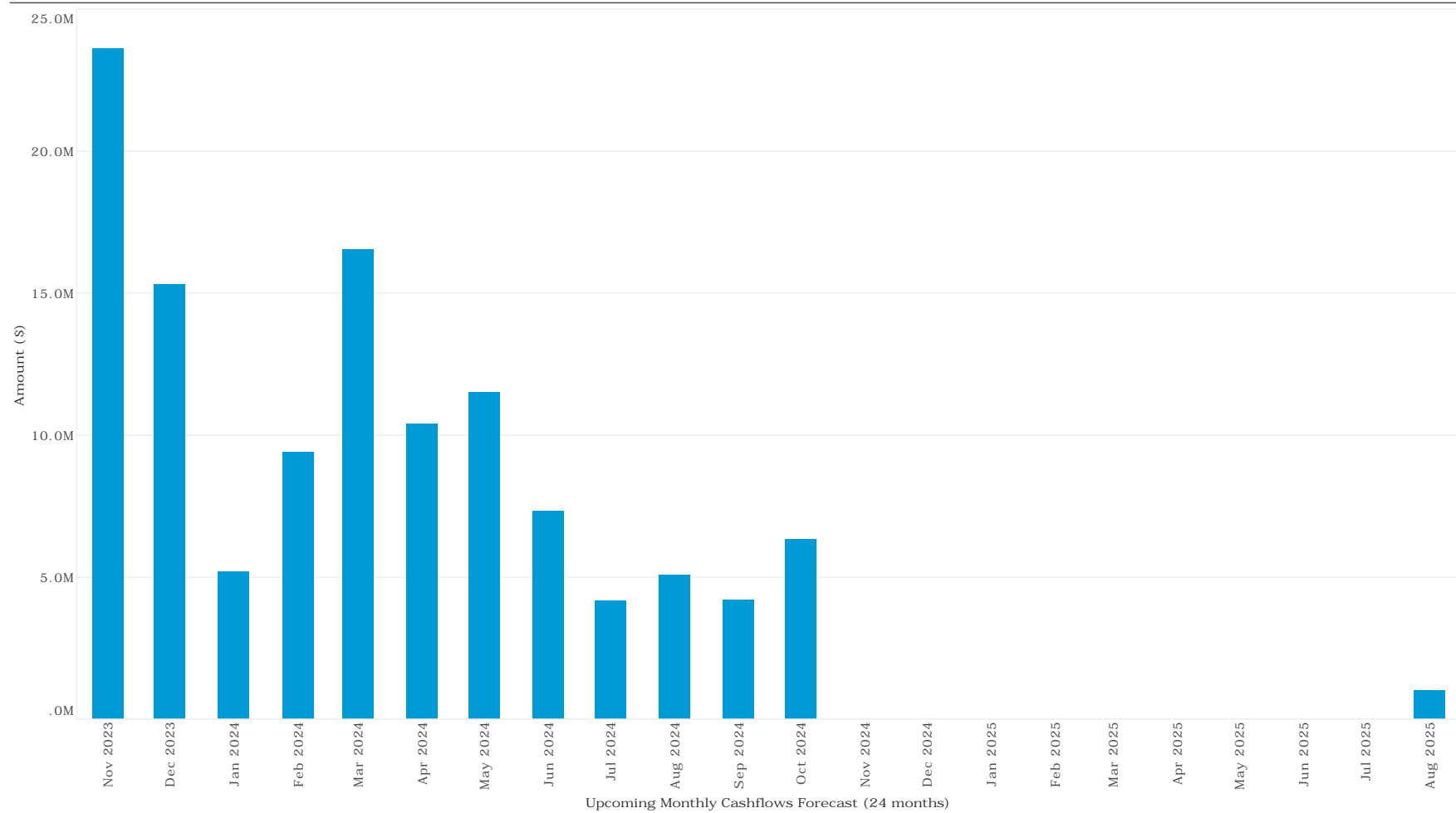
Date	Deal No.	Cashflow Counterparty	Asset Type	Cashflow Description	Amount
13-Nov-23	544396	National Australia Bank	Term Deposit	Maturity: Face Value	1,000,000.00
		National Australia Bank	Term Deposit	Maturity: Interest Received/Paid	12,021.10
<u>Deal Total</u>					<u>1,012,021.10</u>
<u>Day Total</u>					<u>1,012,021.10</u>
22-Nov-23	543946	Suncorp Bank	Term Deposit	Maturity: Face Value	2,000,000.00
		Suncorp Bank	Term Deposit	Maturity: Interest Received/Paid	60,387.95
<u>Deal Total</u>					<u>2,060,387.95</u>
22-Nov-23	544108	Suncorp Bank	Term Deposit	Maturity: Face Value	2,000,000.00
		Suncorp Bank	Term Deposit	Maturity: Interest Received/Paid	49,503.56
<u>Deal Total</u>					<u>2,049,503.56</u>
22-Nov-23	544117	Suncorp Bank	Term Deposit	Maturity: Face Value	2,000,000.00
		Suncorp Bank	Term Deposit	Maturity: Interest Received/Paid	49,563.84
<u>Deal Total</u>					<u>2,049,563.84</u>
<u>Day Total</u>					<u>6,159,455.34</u>
27-Nov-23	544397	National Australia Bank	Term Deposit	Maturity: Face Value	1,000,000.00
		National Australia Bank	Term Deposit	Maturity: Interest Received/Paid	14,053.15
<u>Deal Total</u>					<u>1,014,053.15</u>
27-Nov-23	544426	Westpac Group	Term Deposit	During: Interest Received/Paid Dates	65,284.93
				<u>Deal Total</u>	<u>65,284.93</u>
<u>Day Total</u>					<u>1,079,338.08</u>
<u>Total for Month</u>					<u>23,605,554.05</u>

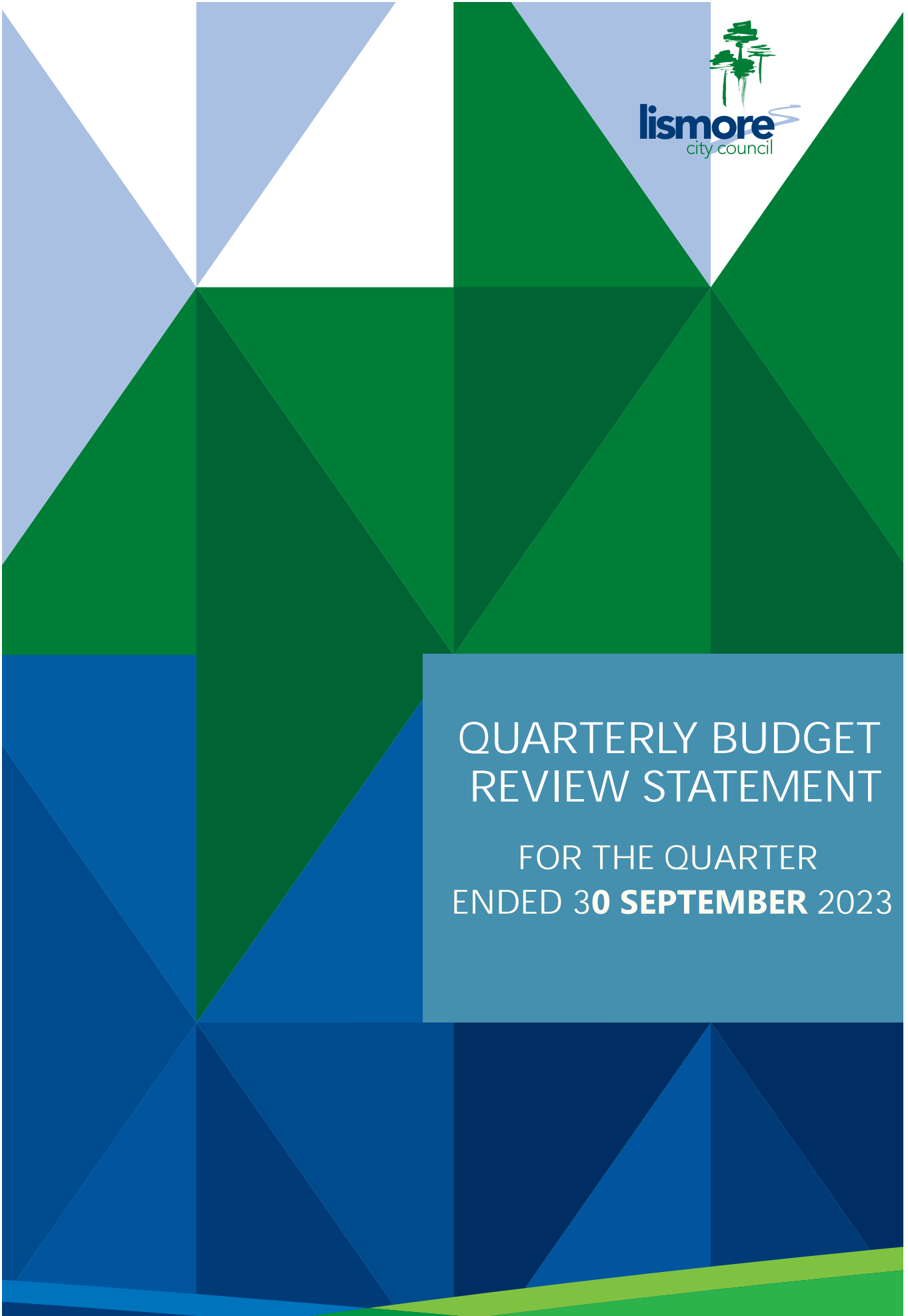


Lismore City Council
Cashflows Report - October 2023



Lismore City Council
Cashflows Report - October 2023





QUARTERLY BUDGET
REVIEW STATEMENT
FOR THE QUARTER
ENDED **30 SEPTEMBER** 2023

Lismore City Council

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

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Lismore City Council

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

Responsible Accounting Officer's Statement

The following statement is made in accordance with Clause 203(2) of the Local Government (General) Regulation 2021: 30 September 2023.

The Quarterly Budget Review Statement for Lismore City Council for the quarter ended 30/09/2023 indicates that Council's underlying projected financial position at 30/06/2024 will be satisfactory at year end, having regard to the projected estimates of income and expenditure as contained in the original adopted budget forecast.

Council's net operating result before capital grants and contributions indicates that Council is using more resources than it is generating in income. The operating deficit before capital grants & contributions has increased to (\$15,577,910), however this is currently impacted by a significant level of unexpended grants. After adjusting for carry forward works, the operating result before capital grants and contributions has improved by \$241,350 during the first quarter. Ongoing losses before capital grants and contributions is not considered to be sustainable in the long term and action is being taken to address this as part of the ongoing development of Council's Long Term Financial Plan.

Recovery from the catastrophic floods events of February and March 2022 remains a significant focus. Delays in funding timelines is resulting in significant variations in natural disaster budgets, with a decrease of \$32 million in roads capital works to a projected natural disaster program of \$82.5 million for roads after the first quarter. The capital works program shows an overall projected decrease of \$15,384,679, which factors in carry forward works of \$5,122,664.

The unrestricted cash result has improved from \$180,791 to \$569,816, mainly due to an increase in Council's Financial Assistance Grant. Whilst the cash position at 30 September 2023 appears favourable, budgets will need to be monitored closely to ensure Council's financial position remains satisfactory.

Long-Term Financial Plan

Consistent with the requirements of the Integrated Planning and Reporting Framework, Council has been working to finalise a Long Term Financial Plan setting out Council's projected income and expenditure across a 10 year time horizon.

Flood recovery works are expected to take several years to complete and will need to be included in the Long Term Financial Plan. State and Federal Government organisations have pledged to support large portions of the recovery work and insurance will cover some of the damage to property however rebuilding is expected to take several years and will be hampered by lack of access to contractors and materials.

In regards to the statement on Contracts and Consultancy, the content is based on information provided at the time of preparing the September 2023 Quarterly Budget Review Statement.

No assessment of the accuracy of this information was undertaken.

Council is working towards a corporate approach to this reporting and this will be incorporated into future QBRS reporting.

Signed: _____



Date:

07/11/2023

Kristian Enevoldson
Responsible Accounting Officer

Lismore City Council

Income Statement (Consolidated) & Funding Sources (Consolidated)

Budget review for the quarter ended 30 September 2023

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

	Original Budget 2023/24	Changes Carried Forward	Revised Forecast	Variations Recommended Sep	Notes Ref	Forecast Year End	Actual YTD
Income Statement (Consolidated)							
Income from continuing operations							
Rates and annual charges	61,008,500	-	61,008,500	-	1	61,008,500	57,500,205
User charges and fees	24,359,200	-	24,359,200	(80,000)	2	24,279,200	5,341,691
Interest and investment income	3,306,300	-	3,306,300	-	3	3,306,300	1,198,061
Other revenues	4,395,080	-	4,395,080	450,300	4	4,845,380	-
Grants and contributions - operating	22,574,061	(1,485,700)	21,088,361	1,575,111	5	22,663,472	2,208,352
Grants and contributions - capital	206,564,041	(12,457,885)	194,106,156	(26,064,918)	6	168,041,238	44,236,973
Net gain from the disposal of assets	-	-	-	-	-	-	-
Total income from continuing operations	322,207,182	(13,943,585)	308,263,597	(24,119,507)		284,144,090	110,485,282
Expenses from continuing operations							
Employee benefits and on-costs	(36,846,440)	-	(36,846,440)	37,000	7	(36,809,440)	(9,444,067)
Borrowing costs	(1,946,500)	-	(1,946,500)	-	8	(1,946,500)	(228,001)
Materials and services	(47,713,488)	(1,441,173)	(49,154,661)	(1,689,311)	9	(50,843,972)	(14,015,057)
Depreciation, amortisation and impairment	(34,665,700)	-	(34,665,700)	-	-	(34,665,700)	(8,666,425)
Other expenses	(3,924,700)	-	(3,924,700)	-	10	(3,924,700)	(1,432,306)
Net loss from the disposal of assets	(3,409,300)	-	(3,409,300)	-	11	(3,409,300)	-
Net share in associated entities	(29,400)	-	(29,400)	(51,750)	12	(81,150)	-
Total expenses from continuing operations	(128,535,528)	(1,441,173)	(129,976,701)	(1,704,061)		(131,680,762)	(33,785,856)
Operating result from continuing operations	193,671,654	(15,384,758)	178,286,896	(25,823,568)		152,463,328	76,699,426
Net operating result before capital grants and contributions	(12,892,387)	(2,926,873)	(15,819,260)	241,350		(15,577,910)	32,462,454

*Unfunded refers to variations that have an impact on the Net Cash Position.

More commentary on variations has been included in the QBRs.

Lismore City Council

Income Statement (Consolidated) & Funding Sources (Consolidated)

Budget review for the quarter ended 30 September 2023

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

	Original Budget 2023/24	Changes Carried Forward	Revised Forecast	Variations Recommended Sep	Notes Ref	Forecast Year End	Actual YTD
Funding Sources (Consolidated)							
Subtract Funds Deployed for Non-operating Purposes							
Acquisition of Assets	(235,790,817)	(5,122,664)	(240,913,481)	20,507,343	13	(220,406,138)	(19,805,660)
Investment in Associates	29,400	-	29,400	51,750	14	81,150	-
Acquisition of Assets Net Loss (Non-cash)	3,409,300	-	3,409,300	-		3,409,300	
Repayment of Principal on Loans	(5,941,400)	-	(5,941,400)	-	15	(5,941,400)	
Non-Cash Dedications	(700,000)	-	(700,000)	-		(700,000)	
Add Funds received from Non-operating Purposes							
Proceeds from Sale of intangible & tangible Assets	1,124,500	-	1,124,500	-	16	1,124,500	
Subtract Unexpended Grants and Contributions Received During Year							
Developer Contributions (Section 7.11) Net Movement	(1,165,100)	-	(1,165,100)	-		(1,165,100)	
Reverse Expenses Not Involving a Flow of Funds							
Depreciation	34,665,700	-	34,665,700	-		34,665,700	
WDV Assets disposed	-	-	-	-		-	
Total funding required from other than operations	(10,696,763)	(20,507,422)	(31,204,185)	(5,264,475)		(36,468,660)	
Non-operating Funds Employed							
Loan Funds New	4,900,000	-	4,900,000	-	17	4,900,000	
Loan Funds Unexpended	-	-	-	-	18	-	
Unexpended Grants Used	-	18,436,215	18,436,215	-	19	18,436,215	
Developer Contributions Used	303,200	23,607	326,807	75,000	20	401,807	
Repayments / (Advances to) by Deferred Debtors	-	-	-	-		-	
Reserve Funds Utilised - Transfer From	5,674,354	2,047,600	7,721,954	13,810,500	21	21,532,454	
Reserve Funds Future Use - Transfer To	-	-	-	(8,232,000)	22	(8,232,000)	
Increase/(Decrease) in Unfunded Operations*	180,791	-	180,791	389,025	23	569,816	

*Unfunded refers to variations that have an impact on the Net Cash Position.
More commentary on variations has been included in the QBRs.

Lismore City Council

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

Income & Expenses (Consolidated)

Detailed changes recommended

Budget Variations being recommended include the following material items:

Funded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Note: Positive numbers represent favourable variances, negative unfavourable.

Notes	Program	Description	Changes
1	Rates & Annual Charges		
Revenues		There have been no reportable changes to budget during the period	
2	User Fees & Charges		
Revenues		Adjustment for decrease expected in revenue for on-site sewage applications and other fees	(36,000)
		Reduction in forecasted food premise registration fees due to business closures from floods.	(29,000)
		Adjustment on forecasted revenue for decrease in Onsite Sewage Assessment applications due to the reduction in overall DA applications.	(15,000)
3	Interest and investment income		
Revenues		There have been no reportable changes to budget during the period	
4	Other revenues		
Revenues		Art Gallery Flood Insurance Claim - Exhibitions & Artworks - Insurance Payout	450,300
5	Grants and contributions - operating		
Revenues		Roads - Council has been advised of the Regional Roads Block Grant allocation for 2023/2024, which is under the original budget amount by \$7,400	(7,400)
		Sports Priority Needs Grant program - a component of the works funded through this grant has been reclassified as operating in nature (transferred from capital grants)	646,011
		General Purpose Revenues - the base 2023/2024 Financial Assistance Grant was 100% paid in advance in June 2023. Council has since been advised of the CPI and population adjustment payment of \$406,800 to be received in 2023/2024. Along with the assumption that a 2.5% increase on the base grant will be received 100% in advance in June 2024, this has had the effect of increasing Council's grant income for 2023/2024 by \$936,500.	936,500

Lismore City Council

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

Income & Expenses (Consolidated)

Detailed changes recommended

Budget Variations being recommended include the following material items:

Funded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Note: Positive numbers represent favourable variances, negative unfavourable.

Notes	Program Description	Changes
6	Grants and contributions - capital	
Revenues		
	Roads Natural Disaster EPAR Works - projected grant income reduced due to the capital expenditure budget decreasing from \$114.5 million to \$82.5 million. This stems from a shift in the expected funding timelines originally provided by the State Government. Notable areas affected by these shifts include pavement and landslip works. By recalibrating the scope of the flood repairs based on the updated funding schedules from the State Government and cross-referencing with our current commitments, the revised figure more accurately projects the anticipated expenditure for the roads program by the conclusion of the 2023/2024 financial year.	(32,000,000)
	Footpaths - Council has been successful in obtaining funding for the construction of footpaths in various locations under the Get NSW Active Program, totalling \$692,073 for the 2023/2024 financial year.	692,073
	Roads - Council has been successful in obtaining Black Spot funding for 3 projects - Nimbin Road (Booerie Creek Road), Nimbin Road (Shipway Road) and the Rous Road/Oliver Avenue roundabout. Funding of \$240,000 is allocated for design and some construction works in 2023/2024, with a further \$1,936,804 allocated for finalisation of construction works in 2024/2025.	240,000
	Sports Priority Needs Grant program - a component of the works funded through this grant has been reclassified as operating in nature (transferred from capital grants, with a minor adjustment for final expenditure incurred in 2022/2023)	(518,976)
	Stronger County Communities Program - Heritage Park and Goonellabah Skatepark - minor adjustment due to final expenditure incurred in 2022/2023	(7,940)
	Northern Rivers Rail Trail - include budget for projected works to be undertaken in 2023/2024, grant funded	5,459,900
	Fixing Country Bridges - increase in capital grant funding	70,025
7	Employee benefits and on-costs	
Expenses		
	Information Technology Services - temporary filling of vacant roles with casuals (increasing materials and services budgets)	47,000
	Increase budget allocated for staff training in bridge operations.	(10,000)
8	Borrowing costs	
Expenses		
	There have been no reportable changes to budget during the period	

Lismore City Council

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

Income & Expenses (Consolidated)

Detailed changes recommended

Budget Variations being recommended include the following material items:

Funded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Note: Positive numbers represent favourable variances, negative unfavourable.

Notes	Program Description	Changes
9	Materials and services	
Expenses		
	Roads - Council has been advised of the Regional Roads Block Grant allocation for 2023/2024, which is under the original budget amount by \$7,400, reducing the materials and services budget accordingly.	7,400
	Sports Priority Needs Grant program - a component of the works funded through this grant has been reclassified as operating in nature (transferred from capital expenditure)	(646,011)
	Street Lighting - Council's contribution to Essential Energy to upgrade existing streetlights to LED. This project is estimated to generate electricity savings of \$133,000 per annum.	(853,300)
	Information Technology Services - temporary filling of vacant roles with casuals (decreasing employee benefits and on-cost budgets)	(47,000)
	Information Technology Services - transfer of \$3,500 to fund IT cabinets (capital expenditure)	3,500
	Allocate funds for Bridge Staff Training	10,000
	Art Gallery Flood Insurance Claim - Exhibitions - Claims by Artists	(119,000)
	Art Gallery Flood Insurance Caim - Salvage Value - Disposed Artworks*	(10,900)
	Increase in Beat Patrol security costs due to CBD businesses back in operation, which were initially forecasted based on previous year figures which were impacted by flood closures.	(34,000)
<hr/>		
10	Other expenses	
Expenses		
	There have been no reportable changes to budget during the period	
<hr/>		
11	Net loss from the disposal of assets	
Expenses		
	There have been no reportable changes to budget during the period	
<hr/>		
12	Net share in associated entities	
Expenses		
	Increase in Council's share of Richmond Tweed Regional Library operations	(51,750)

Lismore City Council

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

Income & Expenses (Consolidated)

Detailed changes recommended

Budget Variations being recommended include the following material items:

Funded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Note: Positive numbers represent favourable variances, negative unfavourable.

Notes	Program	Description	Changes
13	Acquisition of Assets		
Funding		Roads Natural Disaster EPAR Works - the capital expenditure budget has been reduced from \$114.5 million to \$82.5 million which stems from a shift in the expected funding timelines originally provided by the State Government. Notable areas affected by these shifts include pavement and landslip works. By recalibrating the scope of the flood repairs based on the updated funding schedules from the State Government and cross-referencing with our current commitments, the revised figure more accurately projects the anticipated expenditure for the roads program by the conclusion of the 2023/2024 financial year.	32,000,000
		Footpaths - Council has been successful in obtaining funding for the construction of footpaths in various locations under the Get NSW Active Program, totalling \$692,073 for the 2023/2024 financial year.	(692,073)
		Roads - Council has been successful in obtaining Black Spot funding for 3 projects - Nimbin Road (Booerie Creek Road), Nimbin Road (Shipway Road) and the Rous Road/Oliver Avenue roundabout. Funding of \$240,000 is for design and preconstruction works in 2023/2024, with further funding for construction of \$1,936,804 allocated for 2024/2025	(240,000)
		Roads - the increase in the Local Roads component of the Financial Assistance Grant has been allocated to road rehabilitation works budgets	(252,600)
		Sports Priority Needs Grant program - a component of the works funded through this grant has been reclassified as operating in nature (transferred from capital expenditure, with a minor adjustment for final expenditure incurred in 2022/2023)	518,976
		Stronger County Communities Program - Heritage Park and Goonellabah Skatepark - minor adjustment due to final expenditure incurred in 2022/2023	7,940
		Facilities & Property Management - Carrington Street building costs funded from carry forward and revotes	(161,000)
		Lismore Recycling and Recovery Centre - Container Dome for Glass Cullet - 2 x shipping containers, container dome structure and hardstand floor for all weather storage of recovered glass cullet. Required to ensure glass cullet is clean and dry to attract best commodity price and recover Exchange for Change credits. Current storage of glass is outside, creates wet product not desirable for processors, funded from reserves	(50,000)
		Northern Rivers Rail Trail - include budget for projected works to be undertaken in 2023/2024, grant funded	(5,459,900)
		Information Technology Services - transfer of \$3,500 to fund IT cabinets (capital expenditure)	(3,500)
		Parks - formalise parking/access for Hepburn Park - Next to dog off leash park, funded from S7.11 reserves	(75,000)
		Lismore Wastewater - creation of new office at Wyrallah Road Works Depot for water and sewer	(42,200)

Lismore City Council

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

Income & Expenses (Consolidated)

Detailed changes recommended

Budget Variations being recommended include the following material items:

Funded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Note: Positive numbers represent favourable variances, negative unfavourable.

Notes	Program	Description	Changes
		Lismore Wastewater - Northern Front (Pineapple Road) - this project is due for completion in March 2023. This adjustment includes unexpended grant funds of \$1,400,000 from 2022/2023, with the balance funded from sewer reserves	(4,578,600)
		Art Gallery Flood Insurance Claim - Purchase of Artworks	(2,700)
		Donnans Road Sewer pump station needs VSDs as a part of installation of new pumps	(12,000)
		Facilities & Property Management - Terania Building restoration costs funded from Public Infrastructure and Buildings reserve	(450,000)

14 Investment in Associates

Funding	Increase in Council's share of Richmond Tweed Regional Library operations	51,750
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15 Repayment of Principal on Loans

Funding	There have been no reportable changes to budget during the period	
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16 Proceeds from Sale of intangible & tangible Assets

Funding	There have been no reportable changes to budget during the period	
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17 Developer Contributions (Section 7.11) Net Movement

Funding	There have been no reportable changes to budget during the period	
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18 Total funding required from other than operations

Funding	There have been no reportable changes to budget during the period	
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18 Loan Funds Unexpended

Funding	There have been no reportable changes to budget during the period	
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19 Unexpended Grants Used

Funding	There have been no reportable changes to budget during the period	
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Lismore City Council

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

Income & Expenses (Consolidated)

Detailed changes recommended

Budget Variations being recommended include the following material items:

Funded Variations - variations of \$10,000 or greater have been commented on in the QBRs.

Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRs.

Note: Positive numbers represent favourable variances, negative unfavourable.

Notes	Program Description	Changes
20	Developer Contributions Used	
Funding		
	Parks - formalise parking/access for Hepburn Park - Next to dog off leash park, fund from S7.11 reserves	75,000
21	Reserve Funds Utilised - Transfer From	
Funding		
	Facilities & Property Management - Carrington Street building costs funded from carry forward and revotes	161,000
	Lismore Recycling and Recovery Centre - Container Dome for Glass Cullet - 2 x shipping containers, container dome structure and hardstand floor for all weather storage of recovered glass cullet. Required to ensure glass cullet is clean and dry to attract best commodity price and recover Exchange for Change credits. Current storage of glass is outside, creates wet product not desirable for processors, funded from reserves	50,000
	Street Lighting - Council's contribution to Essential Energy to upgrade existing streetlights to LED, funded from reserves. This project is estimated to generate electricity savings of \$133,000 per annum.	853,300
	Facilities & Property Management - Terania Building restoration costs funded from Public Infrastructure and Buildings reserve	450,000
	Lismore Wastewater - creation of new office at Wyrallah Road Works Depot for water and sewer	42,200
	Donnans Road Sewer pump station needs VSDs as a part of installation of new pumps	12,000
	Lismore Wastewater - Northern Front (Pineapple Road) - this project is due for completion in March 2023. This adjustment includes unexpended grant funds of \$1,400,000 from 2022/2023, with the balance funded from sewer reserves	4,578,600
	General Purpose Revenues - 100% of the 2023/2024 Financial Assistance Grant was paid in advance and received in the 2022/2023 financial year, with funds drawn from reserves for the current year.	7,663,400
22	Reserve Funds Future Use - Transfer To	
Funding		
	Art Gallery Flood Insurance Claim - Transfer to Reserve	(317,700)
	General Purposes Revenues - assuming that 100% of the 2024/2025 Financial Assistance Grant will be received in advance, and assuming a 2.5% increase on the base grant, the advance payment of \$7,914,300 has been transferred to reserve.	(7,914,300)

Lismore City Council

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

Income & Expenses (Consolidated)

Detailed changes recommended

Budget Variations being recommended include the following material items:

Funded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Note: Positive numbers represent favourable variances, negative unfavourable.

Notes	Program	Description	Changes
23	Increase/(Decrease) in Unfunded Operations*		
Funding	NOTE		
	2	User charges and fees	(114,000)
	5	Grants and contributions - operating	433,000
	6	Grants and contributions - capital	70,025

Lismore City Council

**Capital Budget Review Statement
Detailed changes recommended**

Budget Variations being recommended include the following material items:

Funded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

No impact on Council's Delivery Program is anticipated as a result of these variations.

Notes Details

Variation

1 - Plant & Equipment

New Assets

Lismore Recycling and Recovery Centre - Container Dome for Glass Cullet - 2 x shipping containers, container dome structure and hardstand floor for all weather storage of recovered glass cullet. Required to ensure glass cullet is clean and dry to attract best commodity price and recover Exchange for Change credits. Current storage of glass is outside, creates wet product not desirable for processors, funded from reserves

(50,000)

Renewal

There have been no changes to budget during the period.

2 - Roads, Bridges, Footpath, Cycleways

New Assets

Footpaths - Council has been successful in obtaining funding for the construction of footpaths in various locations under the Get NSW Active Program, totalling \$692,073 for the 2023/2024 financial year.

(692,073)

Renewal

Roads Natural Disaster EPAR Works - the capital expenditure budget has been reduced from \$114.5 million to \$82.5 million which stems from a shift in the expected funding timelines originally provided by the State Government. Notable areas affected by these shifts include pavement and landslip works. By recalibrating the scope of the flood repairs based on the updated funding schedules from the State Government and cross-referencing with our current commitments, the revised figure more accurately projects the anticipated expenditure for the roads program by the conclusion of the 2023/2024 financial year.

32,000,000

Roads - Council has been successful in obtaining Black Spot funding for 3 projects - Nimbin Road (Booerie Creek Road), Nimbin Road (Shipway Road) and the Rous Road/Oliver Avenue roundabout. Funding of \$240,000 is allocated for design and some construction works in 2023/2024, with a further \$1,936,804 allocated for finalisation of construction works in 2024/2025.

(240,000)

Roads - the increase in the Local Roads component of the Financial Assistance Grant has been allocated to road rehabilitation works budgets

(252,600)

3 - Stormwater Drainage

New Assets

There have been no changes to budget during the period.

Renewal

There have been no changes to budget during the period.

4 - Land, Buildings & Other Structures

New Assets

Northern Rivers Rail Trail - include budget for projected works to be undertaken in 2023/2024, grant funded

(5,459,900)

Lismore City Council

Capital Budget Review Statement
Detailed changes recommended

Budget Variations being recommended include the following material items:

Funded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRS.

No impact on Council's Delivery Program is anticipated as a result of these variations.

Notes Details	Variation
	Renewal
Sports Priority Needs Grant program - a component of the works funded through this grant has been reclassified as operating in nature (transferred from capital expenditure, with a minor adjustment for final expenditure incurred in 2022/2023)	518,976
Facilities & Property Management - Carrington Street building costs funded from carry forward and revotes	(161,000)
Parks - formalise parking/access for Hepburn Park - Next to dog off leash park, funded from S7.11 reserves	(75,000)
Lismore Wastewater - creation of new office at Wyrallah Road Works Depot for water and sewer	(42,200)
Facilities & Property Management - Terania Building restoration costs funded from Public Infrastructure and Buildings reserve	(450,000)

5	- Water	New Assets
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There have been no changes to budget during the period.

There have been no changes to budget during the period.

6	- Wastewater	New Assets
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Lismore Wastewater - Northern Front (Pineapple Road) - this project is due for completion in March 2023. This adjustment includes unexpended grant funds of \$1,400,000 from 2022/2023, with the balance funded from sewer reserves

(4,578,600)

Donnans Road Sewer pump station needs VSDs as a part of installation of new pumps.

Renewal
(12,000)

7	- Remediation/ Restoration	New Assets
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There have been no changes to budget during the period.

There have been no changes to budget during the period.

Renewal

Lismore City Council

Quarterly Budget Review Statement
for the period 01/07/2023 to 30/09/2023

Capital Budget Review Statement

Detailed changes recommended

Budget Variations being recommended include the following material items:

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Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRs.*

No impact on Council's Delivery Program is anticipated as a result of these variations.

Funding Source

Asset Type	Capital Amount	New Loans	Loans - Unexpended	Unexpended Grants	Grants & Contributions provided for Capital Purposes	Reserves-Int	Section 64/S7.11 Contributions	Restricted - funding source	Rates & Untied Funding	Cash Position
New Assets										
- Plant & Equipment										-
Lismore Recycling and Recovery Centre - Container Dome for Glass Cullet - 2 x shipping containers, container dome structure and hardstand floor for all weather storage of recovered glass cullet. Required to ensure glass cullet is clean and dry to attract best commodity price and recover Exchange for Change credits. Current storage of glass is outside, creates wet product not desirable for processors, funded from reserves	(50,000)					50,000				-
- Land, Buildings & Other Structures										-
Northern Rivers Rail Trail - include budget for projected works to be undertaken in 2023/2024, grant funded	(5,459,900)				5,459,900					-
- Roads, Bridges, Footpath, Cycleways										-
Footpaths - Council has been successful in obtaining funding for the construction of footpaths in various locations under the Get NSW Active Program, totalling \$692,073 for the 2023/2024 financial year.	(692,073)				692,073					-
- Water										-
There have been no changes to budget during the period.										-
- Wastewater										-
Lismore Wastewater - Northern Front (Pineapple Road) - this project is due for completion in March 2023. This adjustment includes unexpended grant funds of \$1,400,000 from 2022/2023, with the balance funded from sewer reserves	(4,578,600)							4,578,600		-
- Remediation/ Restoration										-
There have been no changes to budget during the period.										-
Renewal										-
- Roads, Bridges, Footpath, Cycleways										-

Lismore City Council

Quarterly Budget Review Statement
for the period 01/07/2023 to 30/09/2023

Capital Budget Review Statement

Detailed changes recommended

Budget Variations being recommended include the following material items:

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Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRs.*

No impact on Council's Delivery Program is anticipated as a result of these variations.

Funding Source

Asset Type	Capital Amount	New Loans	Loans - Unexpended	Unexpended Grants	Grants & Contributions provided for Capital Purposes	Reserves-Int	Section 64/S7.11 Contributions	Restricted - funding source	Rates & Untied Funding	Cash Position
Roads Natural Disaster EPAR Works - the capital expenditure budget has been reduced from \$114.5 million to \$82.5 million which stems from a shift in the expected funding timelines originally provided by the State Government. Notable areas affected by these shifts include pavement and landslip works. By recalibrating the scope of the flood repairs based on the updated funding schedules from the State Government and cross-referencing with our current commitments, the revised figure more accurately projects the anticipated expenditure for the roads program by the conclusion of the 2023/2024 financial year.	32,000,000				(32,000,000)					-
Roads - Council has been successful in obtaining Black Spot funding for 3 projects - Nimbin Road (Boorie Creek Road), Nimbin Road (Shipway Road) and the Rous Road/Oliver Avenue roundabout. Funding of \$240,000 is allocated for design and some construction works in 2023/2024, with a further \$1,936,804 allocated for finalisation of construction works in 2024/2025.	(240,000)				240,000					-
Roads - the increase in the Local Roads component of the Financial Assistance Grant has been allocated to road rehabilitation works budgets	(252,600)								252,600	-
- Stormwater Drainage										-
There have been no changes to budget during the period.										-
	-									-

Lismore City Council

Quarterly Budget Review Statement
for the period 01/07/2023 to 30/09/2023

Capital Budget Review Statement

Detailed changes recommended

Budget Variations being recommended include the following material items:

*Funded Variations - variations of \$10,000 or greater have been commented on in the QBRs.
Unfunded Variations - variations of \$10,000 or greater have been commented on in the QBRs.*

No impact on Council's Delivery Program is anticipated as a result of these variations.

Funding Source

Asset Type	Capital Amount	New Loans	Loans - Unexpended	Unexpended Grants	Grants & Contributions provided for Capital Purposes	Reserves-Int	Section 64/S7.11 Contributions	Restricted - funding source	Rates & Untied Funding	Cash Position
- Land, Buildings & Other Structures										-
Sports Priority Needs Grant program - a component of the works funded through this grant has been reclassified as operating in nature (transferred from capital expenditure, with a minor adjustment for final expenditure incurred in 2022/2023)	518,976				(518,976)					-
Stronger County Communities Program - Heritage Park and Goonellabah Skatepark - minor adjustment due to final expenditure incurred in 2022/2023	-				-					-
Facilities & Property Management - Carrington Street building costs funded from carry forward and revotes	(161,000)					161,000				-
Parks - formalise parking/access for Hepburn Park - Next to dog off leash park, funded from S7.11 reserves	(75,000)						75,000			-
Information Technology Services - transfer of \$3,500 to fund IT cabinets (capital expenditure)	-								-	-
Lismore Wastewater - creation of new office at Wyrallah Road Works Depot for water and sewer	(42,200)							42,200		-
Facilities & Property Management - Terania Building restoration costs funded from Public Infrastructure and Buildings reserve	(450,000)					450,000				-
- Water										-
There have been no changes to budget during the period.										-
- Wastewater										-
Donnans Road Sewer pump station needs VSDs as a part of installation of new pumps.	(12,000)							12,000		-
- Other Changes < \$10,000	1,740				(7,940)	2,700			3,500	-
Total	20,507,343	-	-	-	(26,134,943)	663,700	75,000	4,632,800	256,100	-

Lismore City Council

Cash & Investments Budget Review Statement

Budget review for the quarter ended 30 September 2023

(\$000's)	Opening Balance 01/07/2023*	Working Capital 2023/2024	Approved 2023/2024	Original Budget 2023/24	Carried Forward	Revised Budget 2023/24	Variations for this Sep Qtr	Projected Year End Result
Externally Restricted								
Include:								
Developer Contributions - General	9,109,000	-	861,900	9,970,900	(23,607)	9,947,293	(75,000)	9,872,293
Specific Purpose unexpended grants	29,787,000	-	-	29,787,000	(18,427,476)	11,359,524	-	11,359,524
Water Supplies	16,663,000	-	(5,193,921)	11,469,079	-	11,469,079	-	11,469,079
Wastewater Services	48,002,000	-	2,373,149	50,375,149	-	50,375,149	(4,632,800)	45,742,349
Stormwater Management	2,623,000	-	(189,900)	2,433,100	(8,739)	2,424,361	-	2,424,361
Domestic Waste Management	-	-	51,508	51,508	-	51,508	-	51,508
Other - Waste Minimisation	2,113,000	-	(819,553)	1,293,447	-	1,293,447	-	1,293,447
Trust Fund/Donations accounts	2,069,000	-	-	2,069,000	-	2,069,000	-	2,069,000
Total Externally Restricted	110,366,000		(2,916,817)	107,449,183	(18,459,822)	88,989,361	(4,707,800)	84,281,561
Internally Restricted								
Internal Reserves	22,833,000	13,427,800	(2,625,137)	33,635,663	(2,047,600)	31,588,063	(945,700)	30,642,363
Specific purpose unexpended loans	-	-	-	-	-	-	-	-
Cash (Deficit)/Surplus	0	0	180,791	180,791	-	180,791	389,025	569,816
Total Internally Restricted	22,833,000	13,427,800	(2,444,346)	33,816,454	(2,047,600)	31,768,854	(556,675)	31,212,179
Unrestricted (i.e.. available after the above Restrictions)	-	-	-	-	-	-	-	-
Total Cash & Investments	133,199,000	13,427,800	(5,361,163)	141,265,637	(20,507,422)	120,758,215	(5,264,475)	115,493,740

Note:

Council accurately determines its investments portfolio on a externally/internally restricted basis annually

Estimates are provided as part of the monthly Investments Report.

As such the breakdown provided for YTD are estimates only and are based on the ratios reported in the 2022/23 Financial Reports (unaudited as at 30 September 2023).

Investments with various financial institutions have been made in accordance with the Local Government Act 1993, Local Government (General) Regulation 2021 and Council's Investment Policy.

Lismore City Council

Quarterly Budget Review Statement
for the period 01/07/2023 to 30/09/2023

Cash & Investments Budget Review Statement

Comment on Cash & Investments Position

A detailed commentary is provided as part of the monthly report to Council on Investments. The latest report to Council is for 30 September 2023.

Cash

The Cash at Bank has been reconciled to Council's Bank Accounts.
The date of completion of the latest bank account reconciliation is 30/09/23

Investments

Investments have been invested in accordance with Council's Investment Policy.

The value of Investments is \$137,016,397 as at 30/09/2023.

Lismore City Council

Quarterly Budget Review Statement
for the period 01/07/2023 to 30/09/2023

Key Performance Indicators (KPI) Budget Review Statement

Budget review for the quarter ended 30 September 2023

(\$000's)	Current Projection Indicator 23/24	Original Indicator 23/24	Prior Period Indicator* 22/23 <small>*unaudited and not available at time of Sep QBRS</small>
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The Council monitors the following Key Performance Indicators:

1. Operating Performance Ratio

Total continuing Operating revenue (excl Capital Grants & Contributions) - Operating Expenses (excluding loss on sale of assets and associates)	-10.48 %	-8.15 %	TBA
Total continuing Operating revenues			

This ratio measures a Council's achievement of containing operating expenditure within operating revenue.

* Note: the 2022/2023 indicator is affected by a significant amount of grant income, where under the revenue recognition accounting standards, was recognised in 2021/2022 but the expenditure is being incurred in 2022/2023.

Benchmark is greater than 0% September 2023 - Unfavourable

2. Own Source Operating Revenue Ratio

Total continuing operating revenue (excl all Grants & Cont.)	32.88 %	28.88 %	TBA
Total continuing operating revenue			

This ratio measures Council's fiscal flexibility. It measures a council's reliance on external funding sources such as operating grants and contributions. Council's financial flexibility improves the higher the level of its own source of revenue.

Benchmark is greater than 60% September 2023 - Unfavourable

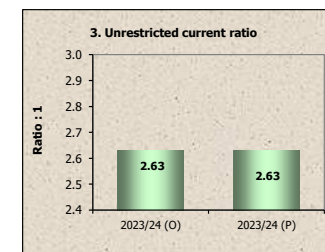
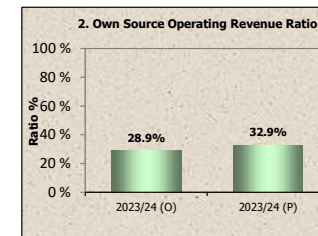
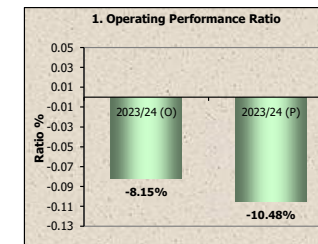
Note: this indicator is currently being impacted by significant natural disaster funding outside the scope of business as usual operations and previous natural disaster events. This is likely to continue over the next 2 to 3 years as restoration works are completed.

3. Unrestricted current ratio *Estimated*

Current assets less all external restrictions	2.63	2.63	TBA
Current liabilities less specific purpose liabilities			

The 'unrestricted current ratio' represents a council's ability to meet short-term obligations as they fall due. Restrictions placed on various funding sources (e.g. Section 7.11 developer contributions) exclude these funds from being used in day to day operations.

Benchmark is greater than 1.5x September 2023 - Favourable



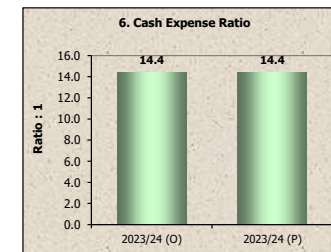
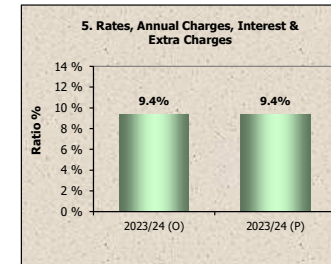
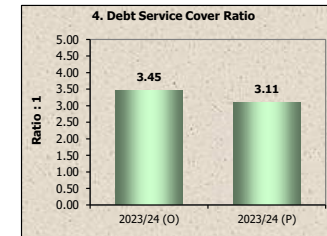
Lismore City Council

Quarterly Budget Review Statement
for the period 01/07/2023 to 30/09/2023

Key Performance Indicators (KPI) Budget Review Statement

Budget review for the quarter ended 30 September 2023

(\$000's)	Current Projection Indicator 23/24	Original Indicator 23/24	Prior Period Indicator* 22/23
4. Debt Service Cover Ratio			
Operating Result before capital excluding int & deprn	3.11	3.45	TBA
Principal Repayments and Borrowing Costs			
<p>This ratio measures the availability of operating cash to service debt including interest, principal and lease payments.</p> <p>Benchmark is greater than 2. September 2023 - Favourable</p> <p>Note: this ratio has been impacted by the inclusion of budgets that are funded by unexpended grants where the revenue was received in 2021/2022 and the expenditure is being incurred in 2022/2023.</p>			
5. Rates, Annual Charges, Interest & Extra Charges Outstanding Percentage			
Rates, Annual and Extra Charges Outstanding	9.36 %	9.36 %	TBA
Rates, Annual and Extra Charges Collectible			
<p>Note: this ratio is to assess the impact of uncollected rates and annual charges on liquidity and the adequacy of recovery efforts. This percentage is based on the amount outstanding as a percentage of the amount to be collected for rates and annual charges for the current year and outstanding from previous years.</p> <p>The ratio will decline as Council moves towards the financial year end and rates instalments are due and paid.</p> <p>Benchmark is less than 10%. September 2023 - Favourable</p>			
6. Cash Expense Ratio			
Current year's cash and cash equivalent plus all term deposits	14.37	14.37	TBA
Payments form cashflow of operating and financing activities			
<p>The liquidity ratio indicates the number of months a council can continue paying for its immediate expenses without additional cash inflow.</p> <p>The ratio is reported on a consolidated basis and does not separate between restricted and unrestricted funds.</p> <p>Benchmark is greater than 3 months. September 2023 - Favourable</p>			



Lismore City Council

Quarterly Budget Review Statement
for the period 01/07/2023 to 30/09/2023

Key Performance Indicators (KPI) Budget Review Statement

Budget review for the quarter ended 30 September 2023

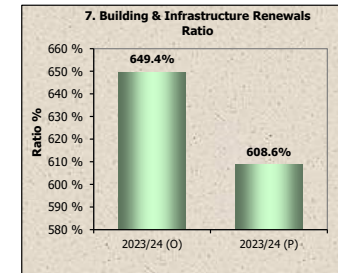
(\$000's)	Current Projection Indicator 23/24	Original Indicator 23/24	Prior Period Indicator* 22/23
7. Building & Infrastructure Renewals Ratio			
Asset Renewals (Building and Infrastructure)			
Depreciation, Amortisation & Impairment	608.60 %	649.40 %	TBA *

Benchmark is greater than 100%. September 2023 - Favourable

The ratio is a snap shot of what is expected to be spent on renewals for the 2022/2023 year only. The final ratio may be impacted due to delays in completion of budgeted works as a result of weather or realignment of priorities as a result of additional grant funding received throughout the year.

* Note: the 21/22 indicator of 22.73% was adversely impacted by the inclusion of \$76.5m in impairment as a result of the catastrophic floods in February and March 2022. Adjusted for impairment, this ratio would have been 78.2%.

* Note: the 22/23 indicator of 157.0% is favourably impacted by the inclusion of natural disaster works and achieving this result is based on fully completing the budgeted capital works program.



Lismore City Council

Quarterly Budget Review Statement

for the period 01/07/2023 to 30/09/2023

Contracts Budget Review Statement

Budget review for the quarter ended 30 September 2023

Part A - Contracts Listing - contracts entered into during the quarter

Contractor	Contract detail & purpose	Contract Value	Start Date	Duration of Contract	Budgeted (Y/N)	Notes
No contracts have been advised						

Information contained in the reports is based on the information supplied by Program Managers.

Notes:

1. Minimum reporting level is 1% of estimated income from continuing operations of Council or \$50,000 - whatever is the lesser.
2. Contracts listed are those entered into during the quarter being reported and exclude contractors on Council's Preferred Supplier list.
3. Contracts for employment are not required to be included.

Lismore City Council

Quarterly Budget Review Statement
for the period 01/07/2023 to 30/09/2023

Consultancy & Legal Expenses Budget Review Statement

Consultancy & Legal Expenses Overview

Expense	YTD Expenditure	Budgeted (Y/N)
Consultancy	219,169	Y*
Legal Expenses	291,425	Y**

Consultants*

A consultant is a person or organisation engaged under contract on a temporary basis to provide recommendations or high level specialist or professional advice to assist decision making by management. Generally it is the advisory nature of the work that differentiates a consultant from other contractors. Amounts previously categorised and reported as consultancy expenses have been reviewed and expenditure that does not fit within the definition of a consultant removed from the report.

This amount represents the net costs incurred as at 30 September 2023

Legal Expenses**

This amount represents the net costs incurred as at 30 September 2023

2023/24 Reserves (Internally Restricted) Summary							
Reserve Category	Reserve Balances 01/07/23	Working Capital	Ov Reserve Movement	Cfwd Reserve Movement	Sep QBRS Reserve Movement	Total Increase /(Decrease) in Reserve 2023/24	Projected Reserve Balances 30/06/24
Special Rate Variation	1,504,700	-	(97,600)	-	-	(97,600)	1,407,100
Carry Forward or Revote Works	11,780,000	3,567,300	(28,437)	(1,380,400)	568,600	2,727,063	14,507,063
Emergencies	-	1,100,000	-	-	-	1,100,000	1,100,000
Economic Development & Growth	-	1,000,000	-	-	-	1,000,000	1,000,000
Public Infrastructure and Building Assets	9,548,000	7,760,500	(2,499,100)	(667,200)	(1,514,300)	3,079,900	12,627,900
TOTAL RESERVES	22,832,700	13,427,800	(2,625,137)	(2,047,600)	(945,700)	7,809,363	30,642,063



PRACTICE NOTE No.1

REVISED

May 2000

Public Land Management

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Department of Local Government



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1. PUBLIC LAND MANAGEMENT - INTRODUCTION

A new regime for the management of public land owned or controlled by councils was introduced on 1 July 1993 with the commencement of the Local Government Act 1993.

The Act replaced outdated provisions governing the use and alienability of certain council land, generally known as 'reserves'. The Act emphasises a council's responsibility to actively manage land and to involve the community in developing a strategy for management. Councils should by now be familiar with the requirements of the public land management provisions.

Changes to the legislation, made by the Local Government Amendment (Community Land Management) Act 1998, together with court decisions since 1993 have led to the revision of this Practice Note. The Department has prepared this Practice Note to assist councils in their management of public land under the Act. However, this is not intended to be a substitute for reading the provisions of the Act or the Regulations themselves.

The Practice Note focuses on the requirements of the Local Government Act ("the Act") and related issues. The Act provides the common foundation for each council to apply specific management strategies to public land, as seen fit.

The Department welcomes comments on the Practice Note. Comments can be sent to dlg@dlg.nsw.gov.au or to the Director General, Department of Local Government, Locked Bag 1500, BANKSTOWN NSW 2200.

2. CLASSIFICATION OF PUBLIC LAND

2.1 What is public land?

Public land is defined (in the Dictionary to the Act) to mean any land (including a public reserve) vested in or under the control of the council. (“Public reserve” is also defined in the Dictionary.) However, public land does not include:

- a) a road; or
- b) land to which the Crown Lands Act 1989 applies (includes land that council controls but which is owned by the Crown)
- c) a common; or
- d) land subject to the Trustees of Schools of Arts Enabling Act 1902
- e) a regional park under the National Parks and Wildlife Act 1974.

2.2 Classification of public land

All public land must be classified by council as either “**community**” or “**operational**” land (ss.25 – 26). The main effect of classification is to restrict the alienation and use of the land. “Operational” land has no special restrictions other than those that may apply to any piece of land.

Community land is different. Classification as community land reflects the importance of the land to the community because of its use or special features. Generally, it is land intended for public access and use, or where other restrictions applying to the land create some obligation to maintain public access (such as a trust deed, or dedication under section 94 of the Environmental Planning and Assessment Act 1979). This gives rise to the restrictions in the Act, intended to preserve the qualities of the land. Community land:

- cannot be sold
- cannot be leased, licenced or any other estate granted over the land for more than 21 years
- must have a plan of management prepared for it.

How is public land classified?

Public land is initially classified by one of the following means:

1. by resolution of council, prior to or when the land is acquired; or
2. by a Local Environmental Plan (“LEP”) prepared under the EP&A Act 1979; or
3. by operation of the Local Government Act –
 - a. applies to certain land controlled by council at 1 July 1993, or
 - b. where council has since acquired land and there is no resolution to classify the land;

PRACTICE NOTE 1: PUBLIC LAND MANAGEMENT

The most common way in which to initially classify land is by resolution of council. It is unlikely an LEP will be used for initial classification.

Classification by resolution

Any public land that is acquired by or vested in council after 1 July 1993 may be classified by resolution of council. Land must be classified on or before its acquisition by council (s.31(2)). If not, the land is automatically classified as community (s.31(2)). In practical terms, this means that council should classify land before acquisition. If land is formally acquired between council meetings, it is too late to classify the land at the next meeting if it is intended that the land be operational.

A council must give public notice of a proposed resolution to classify public land as either operational or community land. A period of at least 28 days for public submissions must be given (s.34). This requirement also applies to land that the council is intending to acquire, but has not yet finally purchased (with one exception explained in s.34(4)).

Classification by LEP

A council may also classify land by an LEP on or prior to its acquisition by council (s.27), but this is not often done. The normal procedures of making an LEP under the Environmental Planning and Assessment Act 1979 (EP&A Act) apply. Again, if council does not classify the land (through an LEP) before acquiring it, the land is automatically classified as community land.

Classification by operation of the Act – land controlled by council on 1 July 1993

On July 1, 1993 certain public land that was vested in, or under the control of council, was automatically classified as community land. This land is set out in clause 6(2) of Schedule 7 to the Act:

Land “subject to a trust for a public purpose”

Under cl.6(2), Schedule 7, land is automatically classified as community if it is land “subject to a trust for public purposes”. This term was widely interpreted by the High Court in Bathurst City Council –v- PWC Properties Pty Limited (30 September 1998, Gaudron, McHugh, Gummow, Hayne and Callinan JJ). Councils have been advised that they may need to review the classification of land held on 1 July 1993 as a result (Departmental Circular 96/65, December 1996).

In the Bathurst case, car-parking land that Council had classified as operational was held to have been automatically classified as community land, because it was land “subject to a trust for public purposes”. Council could therefore not sell the land for redevelopment until an LEP had been made reclassifying the land. The trust arose because land had been transferred to Council as a condition of development consent for car-parking purposes in lieu of a car parking cash contribution. However the case is not limited to car parking arrangements.

A “trust” was held to include governmental responsibilities for a piece of land that restrict the freedom of a government to deal with the land. This is wider than a “trust” in a technical legal sense and was termed a “statutory trust”.

Where a statutory trust exists where land has been given to council by a State Government agency for use for a particular purpose, it is advisable to seek the views of that agency prior to council commencing any action affecting the land.

3. RECLASSIFICATION OF PUBLIC LAND

Classification of land may become inappropriate for many reasons. Reclassification from community to operational land will remove the restrictions that apply to community land under the Act and may also remove other restrictions on the land.

3.1 Reclassification from operational to community land

This may be carried out by resolution (s.33). A council must give at least 28 days public notice of the proposed resolution to allow for public submissions (s.34).

3.2 Reclassification from community to operational land

There are 2 ways to reclassify community land:

1. by an LEP
2. by resolution, but only if certain conditions are met.

Reclassification via LEP

Most community land will need to be reclassified through an LEP. The procedures under the EP&A Act will apply to the making of the LEP, but in addition, a public hearing under section 68 of the EP&A Act must be held (s.29). The procedures for public hearings are set out below.

In relation to LEPs that will reclassify land, the Department of Urban Affairs and Planning (DUAP) has advised that the council should state in its s.54 notification to DUAP under the EP&A Act that the proposed draft will reclassify land. Council must also indicate the purpose of the draft LEP (to reclassify land) when it forwards its submission to DUAP under s.64. If council is to reclassify land that has been given to it by a State agency for a particular purpose, then s.62 of the EP&A Act requires a council to consult with the agency. The outcome should be included in any report back to the Director General of DUAP under the EP&A Act.

If the draft LEP proposes to reclassify public land and also extinguish any restrictions, trusts etc applying to the land then further procedures are required as explained below.

Removing restrictions on community land

Council has the ability to explicitly remove any restrictions on the use of community land when the land is reclassified through an LEP (s.30). For example, an LEP may remove the public reserve status of the land.

From 1 January 1999 new procedures apply under s.30 in order to discharge restrictions. An LEP must have a specific clause discharging the land from any trusts, dedications, or other limitations upon reclassification. The land will not be free until such a clause is inserted into the LEP and the LEP commences. In addition, the Governor must approve of the making of any LEP that removes any restrictions.

The Minister for Urban Affairs and Planning has taken on responsibility for seeking the Governor’s approval to any LEP clause that removes restrictions on community land. Council is required to provide the following information to the Director-General of DUAP, either in its “s.68 submission” to the Director General or, where council exercises delegated powers under s.69, in its “s.69 report”:

1. the nature of trusts, dedications or other interests or restrictions applying to the land and whether the land is a public reserve (defined in the Dictionary to the Local Government Act);
2. the reason for council reclassifying the land eg to sell the land or enter into a long term lease;
3. the effect of reclassification, ie, extinguishment of trusts etc applying to the land and/or the land ceasing to be a public reserve.

DUAP is also currently reviewing the use of delegated powers by councils and DUAP’s 1997 Best Practice Guidelines “LEPs and Council Land” as these may relate to LEPs that reclassify council land. Councils will be informed by DUAP of any changes to the delegations or to the Best Practice Guidelines by letter.

The Parliamentary Counsel has provided informal model clauses for a hypothetical LEP seeking to reclassify public land and remove any restrictions. This is included in Appendix 2 for council’s information and assistance.

The new procedures do not apply to any draft LEP that has had a certificate issued under section 65 of the EP&A Act (authorising it for public exhibition) before 1 January 1999.

The conduct of the public hearing required to make an LEP reclassifying land is governed both by the EP&A Act and by the Local Government Act. Notice of the details of the hearing arrangement is required by clause 13, Environmental Planning and Assessment Regulation 1994. Section 47G of the Local Government Act also applies to public hearings conducted under the EP&A Act (see below).

Reclassification by resolution

This only applies to “section 94 land”, and only where certain conditions are met. Under section 32, council may resolve to reclassify certain land dedicated in accordance with a condition imposed under section 94 of the EP&A Act, (whether dedicated before or after July 1, 1993). A council may resolve that “section 94 land” is unsuitable for its purpose, on account of its size, shape, topography or location or the difficulty of providing public access to it (s.32). It may then reclassify that land as operational through resolution, rather than LEP. Section 94 land that does not fall within this description must be reclassified by LEP.

Prior to a resolution to reclassify “section 94 land”, a council must hold a public hearing into the proposed reclassification (s.29(2)), and also give at least 28 days public notice of the proposed resolution, with the opportunity to make submissions (s.32(4)).

PRACTICE NOTE 1: PUBLIC LAND MANAGEMENT

3.3 Public consultation when classifying or reclassifying public land

The requirements of the Act are set out below:

Process	Public consultation requirements
Classification by resolution	public notice of proposed resolution (s.34(1))
Classification by LEP	usual processes under EP&A Act apply
Reclassification by resolution – operational to community land	public notice of proposed resolution (s.34(1))
Reclassification by resolution – section 94 land	public hearing (s.29(2)), public notice of proposed resolution (s.32(4))
Reclassification by LEP	usual processes under EP&A Act apply, plus public hearing under s.68 EP&A Act (s.29(1))

When public notice is required, council must give at least 28 days for public submissions to be made. Council must take these submissions into account when making a final determination.

From 1 January 1999, new requirements apply to the holding of any public hearing (see s.47G). When a public hearing is required, including a public hearing into the reclassification of land under s.68, EP&A Act, council must appoint a person that is independent of council to preside at the hearing. Specifically, that person must not be a councillor or employee of the council, nor have held either of those positions in the last 5 years. Councils will therefore no longer be able to consider the general manager or other staff of council to preside at the public hearing. The report by the person presiding at the hearing must be made public within 4 days of being received by the council.

Many councils complain of a poor response from the public during consultation. This may be in part due to the description of the land in council’s public notices. Nominating land by lot and DP number only does not adequately explain the land to the public. The land should be described in an accessible way, such as by name (“Ewen Park”) and/or street location (“cnr of Park and River Streets”). Inclusion of a map showing the location of the land may also be useful. Technical, legal descriptions may defeat the purpose of public consultation and may result in difficulties further on when the public is made aware of council’s intentions too late.

The Department of Urban Affairs and Planning have also stressed the same concerns in relation to LEPs that reclassify land to operational, which are being exhibited under the EP&A Act. That Department also recommends that maps should be prominently displayed not only when the draft LEP is on display, but also during the lead up to the public hearing. Note that DUAP’s Best Practice Guidelines “LEPs and Council Land” require additional information discussing the proposed reclassification to be exhibited with the draft LEP, regardless of whether or not council intends to exercise s.69 delegation powers. This additional information may also be useful to be exhibited in the lead up to the public hearing.

4 PLANS OF MANAGEMENT

4.1 General Matters

Plans of management must be prepared for all community land. They are not only required under the Act but are an essential management tool. Plans of management:

- are written by council in consultation with the community
- identify the important features of the land (eg natural significance, sportsground)
- clarify how council will manage the land, and in particular
- indicate how the land may be used or developed, eg leasing.

Experience since the commencement of the Act in 1993 has shown that a few councils still have difficulty in understanding the necessity for adequate plans of management. Court decisions have assisted in the interpretation of the Act and have demonstrated the consequences of misunderstanding the requirements.

This Practice Note aims to assist with the requirements for plans of management set out in the Local Government Act. Substantial management issues for public land are dealt with in other publications, including the “Land Management Manual” (1993) published by Manidis Roberts Consultants and the then Department of Conservation and Land Management (now Department of Land and Water Conservation). Chapter 5 of that Manual was revised and issued separately in 1996. Council should also refer, where relevant, to DUAP’s “Urban Bushland Management Guidelines” (1991). (These Guidelines are currently being reviewed by DUAP.) Plans of management do not have to be lengthy documents. The provisions of the Act can be dealt with simply and succinctly. Council may of course add additional information where appropriate. An outline of a plan of management addressing the minimum requirements of the Act is included as Appendix 1.

4.2 Why prepare a plan of management?

Apart from the benefits of properly managing community land, there are legal requirements under the Act. A council must prepare a plan of management for community land (s.36). A plan of management may apply to one or more areas of community land (a ‘generic’ plan) or to just one area (a ‘specific’ plan). Councils are free to determine whether a generic or specific plan of management will be prepared for its community land, with a few exceptions. Sections 36A-36D require specific plans of management to be prepared for certain pieces of community land:

- land declared to be “critical habitat” under the Threatened Species Conservation Act 1995 (s.36A)
- land directly affected by a recovery plan or threat abatement plan under the TSC Act (s.36B)
- land declared by council to contain ‘significant natural features’ (s.36C)
- land declared by council to contain an ‘area of cultural significance’ (s.36D).

The specific requirements for these types of community land are discussed in more detail later in the Practice Note.

Until a plan of management for community land is adopted the nature and use of the land must not be changed (s.44). This means that council cannot carry out new development on the land. It also means that council cannot grant a lease, licence or other estate over the land until a plan of management is in place.

4.3 Plans of management and other laws affecting the land

Plans of management cannot override regulations or Acts. Council must comply with all relevant laws that apply to the use of the community land, in addition to the plan of management. For example, this includes other parts of the Local Government Act, Threatened Species Conservation Act 1995, Fisheries Management Act 1994, and the Environmental Planning and Assessment Act.

Plans of management cannot override, or replace, or stand in the place of planning instruments such as LEPs. Plans of management and LEPs are separate documents that have different functions and are made under different Acts. An LEP is the broader planning document which reflects the policy of council about the types of development that can be carried out on all land in the council’s area. The plan of management should be consistent with the LEP. It will further detail the particular uses of the piece of community land, consistent with the permissible uses for that land under the LEP.

LEPs that refer to the Local Government Act 1919

Council should note a transitional provision, inserted by the Local Government Amendment (Community Land Management) Act 1998, that applies to certain LEPs and their relationship to plans of management. The provision, clause 44, Schedule 8, Local Government Act, commenced on 1 January 1999. The clause applies to community land where:

- an LEP was in force on 30 June 1993 and continues to be in force
- the land subsequently became community land
- the LEP permits the carrying out of development for the purposes specified in Division 2 or 3 of Part 13 of the Local Government Act 1919.

As a result of transitional arrangements, the references to the 1919 Act in any LEP are taken to refer to the public land provisions of the 1993 Act. The 1993 Act does not specify the permissible uses of public land, leaving this to a plan of management, whereas the 1919 Act did spell out the permissible uses of reserve and park land. As a result, LEPs which refer to Part 13 of the 1919 Act now leave the determination of permissible uses under the LEP to a council’s plan of management.

It is inappropriate for broader planning issues to be left to the plan of management stage. Therefore, clause 44 now provides that a plan of management applying to such land cannot permit the carrying out of development that was prohibited prior to 1 July 1993, or which was permitted with consent prior to 1 July to be now carried out without planning consent. Council will need to amend its LEP to remove the reference to the 1919 Act in order to avoid this result.

4.4 Contents of plans of management

Minimum requirements

The minimum requirements under the Act are that a plan of management must:

- categorise the land in accordance with s.36(4) and (5)
- contain objectives for the management of the land
- contain performance targets
- specify the means of achieving the objectives and performance targets
- specify how achievement of the objectives and performance targets is to be assessed (s.36(3)).

These requirements have been discussed in Seaton –v- Mosman Municipal Council (1996) 93 LGERA 1. The Court of Appeal held that the ordinary dictionary definitions apply, that is:

- an “objective” is “an end towards which efforts are directed”
- a “performance target” is “an objective or goal to be performed”.

For plans that are specific to one area of land made after 1 January 1999, the plan must also:

- describe the condition of the land as at the adoption of the plan
- describe the buildings on the land as at adoption
- describe the use of the buildings and the land as at adoption
- state the purposes for which the land will be allowed to be used, and the scale and intensity of that use (s.36(3A)).

For plans in existence on 1 January 1999 that refer only to one piece of land, council had until 1 January 2000 to amend the plan to include these provisions (cl.40, Schedule 8, Local Government Act). The amended plan need only describe the condition of the land and buildings etc as at the date of adoption of the amended plan, rather than as at the date of adoption of the initial plan.

Additional matters

The Act specifies that other matters may be included in a plan, depending on council’s intentions for the land:

- an ‘express authorisation’ for leases, licences or other estates that may be granted over the land. Leases etc may not be granted unless there is an express authorisation in a plan (s.46). Council may also specify any other conditions to apply to leases etc
- leases, licences or other estates that will only be granted following a tender process (s.46A)
- activities that require the prior approval of the council before being carried out on the land (s.36(3)). These activities are listed in Part D, section 68. Council may have also dealt with these approvals more particularly under a local approvals policy. If so, council should cross reference the plan of management with the local approvals policy, or include the relevant material in the plan of management.

Additional matters where land is not owned by council

The Act requires that, where the council controls but does not own land, a plan must:

- identify the owner of the land
- state whether the land is subject to any trust, estate, interest, dedication, condition, restriction or covenant
- state whether the use or management of the land is subject to any condition or restriction imposed by the owner
- include any provisions that may properly be required by the person who owns the land
- not contain provisions inconsistent with the owner’s requirements (s.37).

4.5 Categorisation of Community Land

Community land must be categorised according to the list in s.36(4). The categories reflect land use and/or describe the physical characteristics of the land. Categorisation is intended to focus council’s attention on the essential nature of the land and how that may best be managed. For this reason also, if land is categorised as a “natural area” it must be further categorised according to the type of area – see s.36(5). Note that certain community land is automatically categorised under the Act, for example if it is affected by threatened species requirements land is categorised as a natural area (see below).

Guidelines for council to assist in categorisation are provided in the Local Government (General) Regulation (cls.10 - 19). Council must have regard to the guidelines in determining a category (cl.9) but are not required to adopt any category merely because the land fits the description in the guidelines. Council should look at all the circumstances of the land in making a decision as to categorisation. For example, a piece of land may seem to satisfy the guidelines for more than one category. Council has a discretion in this case to look at the land in context, taking into account all relevant material before determining a category. It is important that council be able to justify any decision.

Also, council may have a piece of community land, parts of which may be best managed as different categories, for example a piece of land with remnant bushland in one part and children’s play equipment in another. Council is able to categorise the land as part “natural area – bushland” and part “park”. It is strongly recommended that the land in each category not overlap. Overlapping categories may cause conflict in management objectives and will create confusion in the minds of council staff and the community. In this case the Local Government (General) Regulation requires that council “clearly identify” where each category applies on a map of the land, contained in the plan of management (cl.21). Council is not required to formally subdivide or survey the land in order to do so.

The initial determination of categorisation of community land will assist in clarifying the objectives of council and the community for that land. It may be that, using the above example, that the play equipment is sited close enough to the remnant bushland that it compromises the objectives of a “natural area” classification, through potential damage to the bush. Consideration could then be given to moving the equipment or otherwise managing the area with this in mind. (See DUAP’s “Urban Bushland Management Guidelines” or contact other councils for ideas.)

The guideline provisions came into force on 1 January 1999 and therefore do not apply to any land categorised before that date. That is, council is not required to have categorised land before 1 January, 1999, in accordance with the guidelines.

Once land is categorised, core objectives for each category are provided in the Act (ss.36E – N). These apply automatically to the land, regardless of the content of a plan of management. The core objectives came into force on 1 January 1999, and apply to all plans existing at that time. ***Council must review its plans of management to determine whether they comply with the core objectives. The review must be completed by 31 December 2000 (cl.23, Local Government (General) Regulation).*** As a result of the review, council may need to alter some categories and plans.

For plans adopted after 1 January 1999, council should incorporate the core objectives into the plan at draft stage. Other objectives may, of course, be included in the plan. Once included, the core objectives must then have a means of achievement and assessment, as required by s.36.

Any plan of management that is inconsistent with the core objectives after 31 December 2000 is invalid to the extent of the inconsistency (cl.23(3), Local Government (General) Regulation).

Significance of categorisation

Categorisation of community land has always been an effective way in which to focus on the essential aspects of each area of land. Amendments made to the Act by the Local Government Amendment (Community Land Management) Act 1998 (in force on 1 January 1999) have strengthened the role of categorisation and its impact on the management of the land.

First, community land must be managed in accordance with the core objectives for the relevant category. They apply as a result of the legislation and are not optional. Other objectives may be nominated by council, but neither these nor any other part of a plan of management should be inconsistent with the core objectives. As stated above, any part of a plan of management that is inconsistent with the core objectives is invalid.

For example, the core objectives for ‘natural area – bushland’ are aimed at preserving and restoring the vegetation and landforms of the land. A court (as the ultimate arbiter) may determine that an objective to develop the tourism potential of the land may be inconsistent with the core objectives, based on the particular facts in the case, such as the size and sensitivity of the land and the scale of potential development.

Second, a council may only grant a lease, licence or other estate in community land if the purpose of the grant is consistent with the core objectives for the category. This applies regardless of the actual authorisation for leases etc contained in a plan of management. See below for further discussion on leasing.

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4.6 Community land affected by threatened species laws

The Threatened Species Conservation Act 1995 aims to prevent native species in NSW from becoming extinct and to secure their recovery in nature. The Act seeks to achieve this aim through a number of mechanisms that involve impact assessment, recovery planning, preserving habitat and reducing key threats to species. The measures in the Act may affect public land owned or controlled by council. The Threatened Species Conservation Act works in conjunction with a number of other Acts including the National Parks and Wildlife Act 1974 and the EP&A Act.

The Fisheries Management Act 1994 operates in the same way in relation to marine life and habitat. Councils may be affected, particularly in relation to freshwater habitat. The Ministers administering those Acts may affect land in certain ways, such as through the declaration of critical habitat and the preparation of plans under those Acts. Responsibilities for land owners follow from that.

The Local Government Act was amended from 1 January 1999 to integrate the management of community land with threatened species laws, in particular the preparation of plans of management. Council must still comply with the full range of threatened species laws independently of the Local Government Act. However, the amendments to the Act make it easier to do so. The provisions apply when community land is declared as:

- **“critical habitat”** – is a formal classification of land under the Threatened Species Act, and listed in a register kept by the Director-General of the National Parks and Wildlife Service. It is land which comprises the habitat of an endangered species, population or an ecological community. The land must be critical to the survival of the species, population or ecological community. In relation to the Fisheries Management Act, “critical habitat” means an area that is occupied or periodically or occasionally occupied by fish or marine vegetation. “Fish” is defined under that Act to mean “marine, estuarine or freshwater fish or other aquatic animal life at any stage of their life history whether alive or dead”. The definition does not include mammals, reptiles, birds and amphibians. The Department understands that there is no “critical habitat” under either Act currently declared (as at January, 2000).
- **land directly affected by a “recovery plan”** – a plan to promote the recovery of an endangered species, population or ecological community to a position of viability in nature. A number of recovery plans under the Threatened Species Act have been made.
- **land directly affected by a “threat abatement plan”**- a plan to manage “key threatening processes” so as to abate, ameliorate or eliminate adverse affects on threatened species, populations or ecological communities. The Department is not aware of any “threat abatement plans” that have been made (as at January, 2000).

If community land is affected in any of these ways, the following applies:

- the land cannot be dealt with under a generic plan. The land must have its own plan of management (s.36A(2)/ s.36B(3))

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- the plan must state how the land is affected under the Acts – ie declared “critical habitat” or affected by “recovery plan” or “threat abatement plan” (s.36A(3)(a)/ s.36B(4)(a))
 - the land must be categorised as a natural area (s.36A(3)(b)/ s.36B(4)(b))
 - objectives for the management of the land, as required under s.36, must be consistent with the objects of the Threatened Species Conservation Act or the Fisheries Management Act (s.36A(3)(c)/ s.36B(4)(c))
 - the plan must incorporate the core objectives prescribed for a natural area (s.36A(3)(c)/ s.36B(3)(c))
 - the draft plan must be forwarded to the Director General of National Parks and Wildlife or the Director of NSW Fisheries and must incorporate any requirements made by either person (s.36A(3)(d)/ s.36B(4)(d))
 - no change in the use of the land is permitted until a plan of management has been adopted that meets the above requirements
 - no lease or licence can be granted until a plan of management is in place. (Leases etc that are in place before the land was affected by threatened species laws can continue to operate).

When land is affected under threatened species laws, existing specific plans of management will need to be changed, to comply with the provisions listed above. No change in the use of the land, and no new lease or licence can be granted until the plan of management is amended to comply with these requirements. (There is a limited exception to this in s.36A(4)(c)).

Generic plans that applied to the land cease to apply once land is affected by threatened species laws. A new, specific, plan of management must be prepared that complies with the requirements. No change in the use of the land and no new lease or licence can be granted until the plan of management is made.

Consultation and notification of threatened species plans

Councils are required to be consulted by the relevant agency (National Parks and Wildlife Service or NSW Fisheries) when a draft recovery plan or threat abatement plan is made or a declaration of critical habitat is proposed that will affect public land. In practice, the National Parks and Wildlife Service and NSW Fisheries have indicated that their policy is to involve land holders at an early stage of consideration of any proposed plan or declaration of critical habitat.

In relation to fisheries issues, councils may be responsible for the land or waters that are affected by marine threatened species laws. NSW Fisheries has also indicated that council management of its public land may have an important impact on marine habitat, even if council does not control that habitat. As a result, it is anticipated that individual councils will be invited to participate in processes to protect marine habitat by NSW Fisheries. If council does not own or control marine habitat, the legal requirements of the Local Government Act discussed above will not apply. However, the spirit of the law may point to some changes in management of community land to protect marine habitat that council does not control.

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Remember that the Threatened Species Conservation Act and the Fisheries Management Act contain requirements that may apply to all land owners, irrespective of any action under the Local Government Act. ***Council must comply with the Threatened Species Act and the Fisheries Management Act in addition to the Local Government Act.***

For further information on threatened species requirements under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994, please contact:

Threatened Species Unit
National Parks and Wildlife Service
43 Bridge Street
Hurstville 2220
Ph: (02) 9585 6444 (main switch)

NSW Fisheries
Threatened Species Unit
Port Stephens Research Centre
Private Bag 1
Nelson Bay 2315
Ph: (02) 4982 1232

The National Parks and Wildlife Service has also published “*Threatened Species Management Information Circular No.4: Critical Habitat Identification and Declaration*” December 1996. This was sent to all councils by the NPWS.

4.7 Community Land containing “significant natural features”

The Act gives council the ability to declare land as containing “significant natural features” that warrant protection (s.36C). The particular features are listed in s.36C. Such a resolution is not a determination of a category, but a step prior to categorisation. The decision to declare land in this way is at the discretion of the council.

If land has been declared to contain “significant natural features”:

- the land cannot be dealt with under a generic plan. The land must have its own plan of management (s.36C(2))
- the plan must state why the land is declared to contain significant natural features (s.36C(3)(a))
- the land is automatically categorised as a natural area (s.36C(3)(b))
- objectives and performance targets for the management of the land must be designed to protect the area and its features (s.36C(3)(c)).
- the plan must incorporate the core objectives prescribed for a natural area (s.36C(3)(c))
- no change in the use of the land is permitted until a plan of management has been adopted that meets the above requirements
- no lease or licence can be granted until a plan of management is in place. (Leases etc that are in place before the land was affected by the council resolution can continue to operate).

When land is included in a resolution under s.36C, existing specific plans of management will need to be changed to comply with the provisions listed above. No change in the use of the land, and no new lease or licence can be granted until the plan of management is amended to comply with these requirements. (There is a limited exception to this in s.36C(4)(c)).

Generic plans that applied to the land cease to apply once a resolution is made. A new, specific, plan of management must be prepared that complies with the requirements. No change in the use of the land and no new lease or licence can be granted until the plan of management is made.

Given that changes to a plan of management will be required following a resolution, it may be more efficient for a plan to be altered or a new one drafted prior to a formal resolution to declare land containing significant natural features. Council could initially resolve that its intention is to declare land after the preparation of a draft plan of management and community consultation. This allows council to fully canvas public opinion and develop an appropriate plan, which could come into effect at the time of the resolution to declare land as containing “significant natural features”.

4.8 Community Land declared as an “area of cultural significance”

As with resolutions regarding significant natural features, council has the ability to declare land as an “area of cultural significance” (s.36D). This is not a determination of a category, but a step prior to categorisation.

This is linked to the addition of a new category of community land also called an “area of cultural significance”. The provisions recognise that there may be important cultural or historic features on community land that have special meaning to the community. These could include memorials, obelisks, buildings or remains, gardens, places where historic events took place and so on. The land may be culturally significant because of Aboriginal links, and this is also covered under section 36D. Aboriginal issues will require some sensitivity (see below).

The decision to declare land as culturally significant is at the discretion of the council. The provisions regarding cultural significance came into effect on 1 January 1999 and council is not required to assess its community land held on that date to determine whether any land should be categorised instead as culturally significant. However, it is within the spirit of the Act that culturally significant areas should be declared and categorised as such.

If land has been declared to be an “area of cultural significance”:

- the land cannot be dealt with under a generic plan. The land must have its own plan of management (s.36D(2))
- the plan must state that the land is declared to be of cultural significance (s.36D(3)(a))
- the land must be categorised as an area of cultural significance (s.36D(3)(b))

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- the plan must incorporate the core objectives prescribed for an area of cultural significance (s.36D(3)(c))
 - the plan must incorporate any requirements of the Director General of National Parks and Wildlife. (The NPWS is responsible for sites of significance to aboriginal peoples.) (s.36D(3)(d))
 - no change in the use of the land is permitted until a plan of management has been adopted that meets the above requirements
 - no lease or licence can be granted until a plan of management is in place. (Leases etc that are in place before the land was affected by the council resolution can continue to operate).

When land is included in a resolution under s.36D, existing specific plans of management will need to be changed to comply with the provisions listed above. No change in the use of the land, and no new lease or licence can be granted until the plan of management is amended to comply with these requirements. (There is a limited exception to this in s.36D(4)(c)).

Generic plans that applied to the land cease to apply once a resolution is made. A new, specific, plan of management must be prepared that complies with the requirements. No change in the use of the land and no new lease or licence can be granted until the plan of management is made.

Given that changes to a plan of management will be required following a resolution, it may be more efficient for a plan of management to be altered or a new one drafted prior to a formal resolution. Council could initially resolve that its intention is to declare land as culturally significant following the preparation of a draft plan of management and community consultation. An appropriate plan of management can then be developed and could come into effect at the time of the formal resolution to declare land as culturally significant.

Special requirements for land of aboriginal significance

There are special requirements when community land is significant to the aboriginal community. Clause 20 of the Local Government (General Regulation) requires councils to request submissions as to whether the land is of Aboriginal significance from the Aboriginal community traditionally associated with that land. A procedure for giving notice is set out in that clause.

Council is required to consult before a decision is made as to whether the land is of Aboriginal significance, and therefore of cultural significance under s.36D.

Note that a council may also categorise land as culturally significant, without going first through the steps under s.36D, that is by specifying a category in a draft plan of management. If so, council must still engage in the same consultation under cl.20 before preparing a draft plan of management if the reason for categorisation is that land is of Aboriginal significance.

Consultation under cl.20 is also separate to the broader public consultation required once a draft plan of management has been prepared. It would clearly be desirable to obtain the assistance of the traditional Aboriginal community, as identified through the initial consultation, during this process as well, to determine effective management strategies for relevant land.

What land may be of aboriginal significance?

Land that may be of aboriginal significance is set out in clause 13 of the Regulation. This is broader than land on which physical evidence of Aboriginal occupation exists. It includes land that may be important to traditional or contemporary culture or land that contains European settlement that is of significance to Aboriginal peoples (eg old mission buildings, cemeteries, camping places, buildings where important events occurred).

Aboriginal cultural significance is intrinsically linked to natural heritage, particularly in traditional cultures. Many areas that are significant for natural values will also be significant to Aboriginal peoples. Therefore, where council is developing a plan of management for a natural area, aboriginal significance may need also to be considered. Management of the natural environment will be essential to the effective management of the Aboriginal values tied to the land. Where land may be of Aboriginal significance, the community land needs to be comprehensively assessed for all values and these need to be dealt with in a plan of management.

Who are Aboriginal people ‘traditionally associated’ with the land?

Clause 20 of the Regulation sets out the minimum notification requirements for council to identify and consult with Aboriginal people traditionally associated with the community land. These are;

- written notice to the Local Aboriginal Land Council
- advertisement in a Statewide newspaper primarily concerned with Aboriginal issues
- placement of a notice on the land itself.

While this is intended to be a practicable and effective means of consultation, there are other avenues that council may pursue if having difficulty in identifying relevant Aboriginal communities.

It is important to be aware that the Aboriginal people living locally may not represent those that are ‘traditionally associated’ with the land. Consequently the Local Aboriginal Land Council (which represents the local aboriginal residents) may not represent the views of the appropriate community. Native title claimants, elder organisations and other local Aboriginal organisations may all be able to assist. Agencies that may be able to assist in identifying communities traditionally associated with the land include;

- Native Title Tribunal – information on native title claimants and contact details for those claimants
- Native Title Unit, NSW Aboriginal Land Council – native title claimants and other relevant groups
- Registrar, Aboriginal Land Rights Act, NSW Department of Aboriginal Affairs – aboriginal owners listed on the Register under that Act
- Department of Aboriginal Affairs – contact groups and other resources

PRACTICE NOTE 1: PUBLIC LAND MANAGEMENT

- Registrar of Aboriginal Heritage, National Parks and Wildlife Service – aboriginal sites identified under national parks legislation.

Aboriginal people associated with the land are the primary source of knowledge about the land. Secondary sources such as academic research could be used to complement this knowledge.

Process of consultation

Disclosure of information by Aboriginal people of their beliefs and values can be an infringement of their laws and customs and could have serious consequences on the person or community disclosing such knowledge. Thus Aboriginal people may be reluctant to disclose knowledge unless an area is immediately threatened with destruction. Traditional laws of Aboriginal people govern the way knowledge is conveyed to others. Therefore, different individuals within the community may have varying levels of knowledge depending on factors such as descent, kinship, age, gender and seniority.

In complying with clause 20 of the Regulation council could consider receiving oral rather than, or in addition to, written submissions. Oral history is a legitimate source of information and evidence and offers a culturally appropriate and accessible forum through which Aboriginal people may express themselves.

The Department of Aboriginal Affairs has provided suggestions for the way in which consultation with Aboriginal groups could be handled:

Consultation principles

- allow flexibility re timeframes, locations and objectives
- allocate adequate time
- remain neutral
- state who you are, your qualifications, the nature and role of your position in the consultation process
- plain English communication – do not use jargon
- understand the limitations of consultation
- facilitate discussion
- promise only what you can provide
- be honest about what the council wants to achieve
- allow frustration to be vented but do not accept personal abuse
- seek points of agreement

- seek resolution in areas of disagreement or articulation of disagreement
- seek cooperation of all parties concerned
- seek the best option for the community
- respect the views of all parties

Arranging consultations

- identify appropriate groups/people but remain flexible in who can participate
- advance notice of pending consultation
- adequate notice to the organisation/community of any meeting (one month or more)
- separate meetings for different groups if issues are not similar or there is friction between the groups
- information in plain English to be distributed before the meeting
- information should include a description of the proposal, the process of the proposal including timeframes, the consultation methodology, avenues for Aboriginal input in the process, list of all organisations involved in the consultation process (Aboriginal and non-Aboriginal)
- make people feel comfortable – provide food and drink as it shows commitment to consultation process
- Provide feedback on process to organisations including how the information has been incorporated into the proposal

Ongoing management

It may be appropriate to provide an ongoing process for Aboriginal involvement in management of heritage issues in the identified area. The incorporation and accommodation of Aboriginal peoples’ diverse skills, knowledge and experience in management can provide significant assistance.

4.9 Public consultation in preparing plans of management

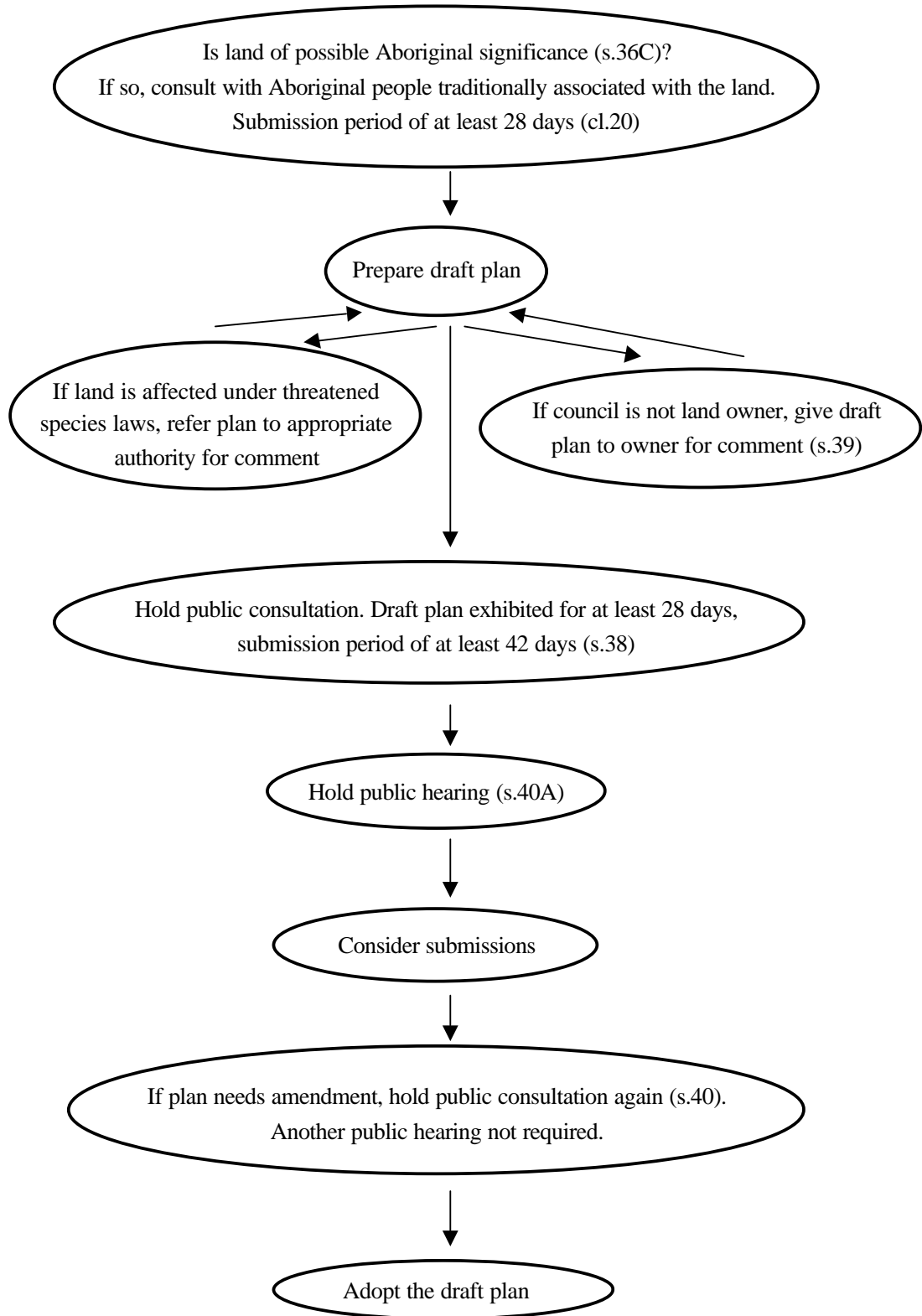
There are a number of ways in which the public can become involved in drafting plans of management. Council must provide these opportunities under the Act. The consequences of not providing for public involvement are:

- reduced acceptance of a plan of management, and possible conflict with council
- possible court action and a declaration that a plan of management, and any leases granted under the plan, are legally invalid.

The steps involved in public consultation are set out below. These are the minimum steps required under the Act. Council may choose to involve the community in other ways as well, such as in the preparation of the draft plan of management. The public also have a right to inspect and purchase plans and can apply to the council for a certificate indicating the classification of any public land.

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PUBLIC CONSULTATION IN PREPARING NEW PLANS OF MANAGEMENT



PRACTICE NOTE 1: PUBLIC LAND MANAGEMENT

5. LEASING, LICENSING AND THE GRANTING OF OTHER ESTATES OVER COMMUNITY LAND

Community land is classified because of its importance to the community. It is generally set aside for the public to enjoy. Leasing and other forms of alienation limit the ability of the public to use that land. The land is reserved for the exclusive use of one group or one person. Other matters may also arise, but this is at the core of the issues involved in the leasing etc. of community land.

The Local Government Act contains important restrictions on the ability of council to grant leases, licences and other estates over community land. This is coupled with requirements for public consultation to make sure that council takes community views into account.

5.1 Plans of management and leasing, licensing and granting other estates

Council may only grant a lease, licence or other estate if:

- *the plan of management expressly authorises the lease etc. AND*
- *the purpose of the lease etc is consistent with the core objectives for the category of land (s.46(2)) AND*
- *the lease etc is for a purpose listed in section 46(1)(b).*

“Other estates”

The term “estate” is wide and includes many other rights over land that can be granted. The technical legal meaning is found in the Interpretation Act 1987, section 21 - “estate includes interest, charge, right, title, claim, demand, lien and encumbrance whether at law or in equity.” A common example in local government is the grant of easements.

The term “other estates” was inserted on 1 January 1999. This means that all grants of all estates after this date, (not just leases and licences) must:

- be expressly authorised in a plan of management, and
- be consistent with the core objectives for the land and
- be for a purpose permitted under the Act.

Requests for easements for rights of way over community land to access private property should be carefully checked against the legislation to ensure that the easement is authorised, is for a purpose permitted under s.46(1)(b) and is consistent with the core objectives. While an easement may not be available, it is of course open to council to pursue other avenues to resolve access issues.

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Express authorisation

A plan of management does not need to name a particular lessee etc in order to authorise a lease. It must contain a statement of authorisation that is wide enough to apply to the particular lease proposal. Council can limit the purpose of any lease, the type of potential lessee, and the facilities that will be leased. Hypothetical examples are discussed below.

Example 1:

“This plan of management authorises the lease, licence or grant of any other estate over the DLG Park for sporting and auxiliary purposes”.

This could allow the lease of the community land to sporting clubs, schools etc for training, competitive matches. If the park includes changerooms and pavilions then these could be specifically included in any lease as well.

Question whether the authorisation is wide enough to allow a sporting club to operate a restaurant/entertainment venue, for example. The issue would be whether “sporting and auxiliary purposes” authorises such a use. If a venue or other commercial use is contemplated by council, it should be included in a plan of management, in order to remove doubt about any authorisation and to properly inform the public.

Example 2:

“This plan of management authorises the leasing, licensing or granting of any other estate over the park, and any buildings on the park for any community purpose as determined by council.”

This is a wide authorisation, but still limited to ‘community purpose’. Again, authorisation may not be sufficient to allow a private business to lease the land for purely profit-making purposes.

It is important to provide a clear statement of authorisation, which can be easily understood by any person reading the plan of management. This reduces the likelihood of confusion and legal challenge. Examples of ‘authorisations’ that may not be clear follow below. They are based on actual authorisations from some plans of management.

Example 3:

“This plan of management – expressly authorises the lease or licence or grant of any other estate over community land as follows:

DLG Hall to enable the use thereof as outlined under “use” above and in accordance with the Heritage Plan dated 1 January 1999 and prepared by DLG Pty Limited”.

The authorisation is similar to that discussed in Seaton –v- The Council of the Municipality of Mosman (1996) 93 LGERA 1. The Court of Appeal in that case had to go to some effort to understand the clause. It suggested that the authorisation may be too vague or uncertain to have any meaning, but this was not discussed any further.

Example 4:

“Over time, leases and licences have been issued to sporting clubs for the use of the Park. It is however not intended that the park be alienated from general community use. It should be noted that leases and licences will include a clause covering the behaviour of sporting clubs using the park.”

It is not at all clear what is intended by this statement. There is an indication that leases etc have been granted in the past, but this is not an adequate “authorisation” for any future licences etc. There is also a statement about the conditions under which future leases may be granted, but again this is not a clear “authorisation”.

Consistency with core objectives

A lease etc must be authorised in a plan of management AND be for purposes consistent with the core objectives for the category of land.

Categorisation is therefore key to the management of community land. Categorisation will determine the core objectives for the land and the core objectives are essential to determining the ways in which community land may be alienated. This is particularly relevant in relation to natural areas where the core objectives of the category are to preserve and enhance the natural qualities of the land. Leasing etc should be carefully considered in these areas to determine potential compatibility of any lease with the core objectives.

The requirement that a lease etc be consistent with the core objectives came into force on 1 January 1999. Leases etc formally signed before that date do not need to comply and may continue until the end of their term.

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Permitted purposes for leases, licences and other estates

A lease etc must be authorised in a plan of management AND be for a purpose consistent with the core objectives for the category of land AND be for a purpose listed in section 46(1)(b). A lease that is authorised by a plan, but which is not for a permitted purpose, is invalid under the Local Government Act.

The permitted purposes are listed in s.46(1)(b):

- short term, casual purposes prescribed in cl.24, Local Government (General) Regulation
- residential housing, where housing owned by council
- underground pipes etc to council-owned housing
- activities appropriate to the current and future needs of the community in relation to a number of wide public purposes, including public recreation and social welfare
- public roads.

Note that the requirement that a lease etc be for a purpose listed in s.46 came into force on 1 January 1999. Leases etc formally signed before that date do not need to comply and may continue until the end of their term.

Leases etc for public utilities

Leases, licences and other estates granted for the provision of public utilities and ancillary works do not need to be expressly authorised by a plan of management, or consistent with the core objectives, or be for a purpose listed in s.46(1)(b). Council is authorised by s.46(1)(a) to grant such estates (eg easements) without complying with the provisions applying to other purposes.

Leases etc of land categorised as a natural area

Special limitations apply to the alienation of natural areas, because of their environmental sensitivity. Council may only grant a lease of a structure/building or a lease to build a structure for the purposes listed in s.47B. These are limited to structures that assist in the public enjoyment of the land, such as walkways, kiosks (but not restaurants), amenities and the like.

Other provisions dealing with leasing etc

A number of amendments to the Act relating to leasing etc of community land commenced on 1 January 1999:

- council must call tenders for leases etc over 5 years, unless the lease etc is to be granted to a non-profit organisation, (s.46A).
- subleases are only allowable for the same purpose as the original lease, except for a handful of exceptions listed in cl.26, Local Government (General) Regulation. For example, the lease of a building to a sporting club for holding events/lessons/training cannot be subleased by the sporting club for public meetings, or markets (s.47C)
- council may only grant exclusive occupation of community land through a lease, licence or other estate. Council cannot bypass the Act by signing a ‘management agreement’ for example (s.47D)
- council cannot avoid the 21 year limit on leasing etc by including certain other terms in the lease (s.47(10))
- certain developments on community land must be determined by the council itself rather than by staff under delegated authority (s.47E).

5.2 Leases, licences and other estates of 5 years or less (section 47A)

Once a lease, licence or other estate complies with s.46 (explained above), council may move to grant particular estates to individuals. In doing so, council must:

- give public notice of the proposal
- place a notice of the proposal on the land
- notify owners adjoining the land
- notify persons living in the vicinity of the land if the council believes that the land “is the primary focus of the person’s enjoyment of community land” (eg by letterbox drop)
- consider submissions made about the proposal.

The Minister can “call in” a lease etc of 5 years or less, so that a council is prevented from entering into any agreement unless the Minister gives approval. The Minister may require the more detailed procedures of s.47(5) – (9) to apply to the proposal. Approval for the council to grant the lease etc is then given by the Minister in the same way as for leases over 5 years.

Section 47A commenced on 1 January 1999.

5.3 Leases for terms of 5 to 21 years (section 47)

Council may only grant leases, licences and other estates over community land for terms up to 21 years. For leases between 5 and 21 years council must:

- give public notice of the proposal
- place a notice of the proposal on the land
- notify owners adjoining the land
- notify persons living in the vicinity of the land if the council believes that the land “is the primary focus of the person’s enjoyment of community land”
- consider submissions made about the proposal
- refer the proposal to the Minister for Local Government if council has received an objection to the proposal.

If an objection has been received, the council cannot grant the lease etc but must refer the proposal to the Minister for approval.

5.4 Procedure for requesting the Minister’s consent

Under s.47, council must forward certain information to the Minister so that a proposal may be considered. A checklist is set out below. The Minister cannot assess or approve any application until the right information is provided.

Checklist for lease approvals under section 47

- ✓ *A copy of the plan of management applying to the land.*
The plan of management must authorise the lease etc being proposed. This most basic of requirements has been overlooked by some councils.
- ✓ *Details of all objections received and a statement setting out, for each objection, the council’s decision and the reasons for its decision.*
Attaching staff reports to council meetings may not be sufficient to satisfy this requirement if it is not clear what the objections have been and what council’s position is on them.
- ✓ *A statement setting out all the facts concerning the proposal to grant the lease, licence or other estate.*
Relevant facts include:
 - how the proposal arose
 - how the lessee/licensee was decided upon
 - previous dealings with the proposed lessee/licensee. Has council made any commitments to the lessee/licensee, such as signing a deed etc?
 - information about the lessee/licensee – profit or non-profit, its purpose, business, history in the area
 - any previous lease etc arrangements over the community land in question.
- ✓ *A copy of the newspaper notice of the proposal.*
It is important that in all notices, council gives the same date for the closing of submissions. If notices are published on different days and each notice states submissions close 28 days after publication of the notice, then this may give different closing days. Following Wingecarribee Shire Council –v- Minister for Local Government [1975] 2 NSWLR 779, different closing dates may make the public notice procedures invalid, and jeopardise the proposal.
- ✓ *A statement setting out the terms, conditions, restrictions and covenants proposed to be included in the lease, licence or other estate.*
A copy of the proposed lease etc, if available, is sufficient.
- ✓ *A statement setting out the manner in which and the extent to which the public interest would, in the councils’ opinion, be affected by the granting of the proposed lease, licence or other estate, including the manner in which and the extent to which the needs of the area with respect to community land would, in the council’s opinion, be adversely affected by the granting of the proposed lease, licence or other estate.*
This effectively asks council to consider all the elements of public interest in granting the lease, licence or other estate. It must consider both the advantages and disadvantages of the proposal. A copy of staff reports to council will not necessarily contain this information.

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5.5 A note about commercial arrangements involving community land

Community land can be used for commercial operations, provided the requirements of the Local Government Act have been met. These steps include proper categorisation of the land and consistency with the core objectives, development of a plan of management and consultation with the public (including a public hearing). These have been discussed in this Practice Note.

Ultimately, it is for the council to judge what is desirable and appropriate development on community land, but the alienation of a public asset for commercial use should be approached cautiously. Some businesses may enhance the amenity of the land, for example, kiosks or recreation facilities. However, what may be fitting on one piece of land may not be suitable on another. Council has the difficult task of balancing all the competing factors.

The issues become more complex when larger operations on community land are discussed. These may involve council in an entrepreneurial role, facilitating the development. Council should be very wary of undertaking this role in relation to community land. There is an inherent conflict of interest between the role of council in managing community land and as ‘entrepreneur’. The case of Noroton Holdings Pty Limited –v- Friends of Katoomba Falls Creek Valley Incorporated (1998) 98 LGERA 335, gives some guidance on this.

In that case the Blue Mountains City Council had signed a Deed with a developer, Noroton Holdings, to construct a hotel and residential development on part of an existing public golf course. The developer was also to upgrade the golf course and refurbish the clubhouse. The land was all categorised as community land. In the deed Council undertook to sell the necessary parts of the community land to the developer and Noroton agreed to undertake the development. It was recognised that rezoning of the land under the Local Environmental Plan was also required.

The deed was signed prior to any of the statutory steps being undertaken to rezone or allow the sale of the community land. An environmental study was required as part of the rezoning. The community land needed to be reclassified to operational land through an LEP to enable sale and a public hearing was therefore also required.

It became clear during these processes that part of the land was environmentally sensitive and that there was significant community opposition. Council was therefore placed in a great deal of difficulty. It had the statutory discretion to prevent the development from continuing but was bound under a commercial arrangement to progress the plans. Council tried to resolve the conflict in a way that the Court held was invalid. That is, the LEP reclassifying the land and the subsequent development consent were held to be not legally made.

The case illustrates the conflict of interest that arises where council takes a clear commercial interest in the use of community land. A council cannot ‘fetter its discretion’ in the exercise of statutory powers. Council is bound to carry out its role of managing community land, including the proper assessment of proposals to use community land and commercial arrangements cannot affect this.

If council does pre-empt processes under the Local Government Act by making commitments to a private operator, it may be liable to pay compensation to that operator if it later decides not to go ahead with the development.

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6. Other issues

6.1 Use of community land for roads

Public roads may be created in a number of ways, either by council or by other agencies over various types of land, including community land. Section 47F places some restrictions on the dedication of public roads over existing community land and came into force on 1 January 1999. If council is to dedicate land as a public road under section 10 of the Roads Act 1993, then it is limited in doing so if the land affected is community land. Section 47F(1) details the restrictions, but note that section 47F(2) goes on to allow road widening works, and other minor road works authorised by a plan of management.

As a result, at the time a plan of management is being drafted, council should consider whether road works may affect the land, and include appropriate provision in the plan. Alternatively, if an existing plan does not have a provision, or the kind of road works contemplated are not allowable on community land in any case under s.47F, then council must consider reclassifying the land to operational land in order to carry out the works.

6.2 Amending and revoking plans of management

Council can amend plans of management at any time. Any amendment is regarded as another plan of management and so must be put on public exhibition in the same way (s.40). Council is not required to hold a public hearing when preparing an amending plan of management unless the plan will re-categorise the land (s.40A).

Council may revoke a plan of management at any time. However, councils are required to have a plan of management for each piece of community land, so a plan should only be revoked when another may take its place.

Remember that a plan of management is automatically revoked if it is a generic plan when:

- the land is affected by a declaration of critical habitat or inclusion in a plan under threatened species laws (s.36A, s.36B), or
- the land is declared by council to contain significant natural features under s.36C; or
- the land is declared by council to be of cultural significance under s.36D.

A plan of management will cease to apply to land when:

- it is reclassified to operational, or
- the owner of the land (not being the council) sells the land; or
- the council ceases to control the land (ie, if council is not the owner)

6.3 Specific and generic plans of management

Council has the discretion in most cases to prepare a specific plan of management for the area or a generic plan that applies to more than one piece of land. As a result of amendments, from 1 January 1999, generic plans of management cannot be made for:

- land declared as critical habitat, or directly affected by a threat abatement plan or a recovery plan under threatened species laws
- land declared by council to contain significant natural features
- land declared by council to be of cultural significance.

Generic plans will be entirely appropriate in many cases, for example in dealing with children’s playgrounds or other pieces of land that contain similar facilities with similar management issues. Natural areas may not be so appropriate for generic plans, given that there may be issues unique to each piece of land, based on the character of the land, surrounding development, community expectations and so on. This does not prevent council from including common clauses or paragraphs in specific plans of management.

Alternatively, council could make a specific plan that incorporated another document that contained common provisions used in other specific plans. For example, council could make a brief site specific plan for each piece of land categorised as natural area. This plan must contain all the requirements of a plan of management, but these could be covered by reference to other documents such as “Management objectives – natural areas”, “Rehabilitation strategies – natural areas” and so on. Council must make sure that all the requirements of the Local Government Act are covered and that it is clear what documents apply, and whether there is any qualification to these in the individual plan of management. All documents referred to in a plan of management should be displayed at the same time as the draft plan is being exhibited and should be publicly available in the same way as the plan itself.

6.4 Relationship of Local Government Act to other Acts

There are many pieces of legislation that may be relevant to the management of community land, depending on the circumstances. Some have already been mentioned (eg threatened species laws). Those that may be more generally relevant to community land management are listed below:

- **Crown Lands Act 1989.** Land to which the Crown Lands Act applies is excluded from the definition of “public land” under the Local Government Act. That is, community land will not be land to which the Crown Lands Act applies. However, there are similar management issues involved where council manages Crown land, either under a reserve trust or otherwise. Crown reserves may need a plan of management under the Crown Lands Act. Crown land may often include bushland or other undeveloped

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land and may share a boundary with community land. Crown land may itself be required to have a plan of management under the Crown Lands Act. Sections of that Act deal with the interaction of the Act with the Local Government Act and the public land provisions in particular. Contact the Department of Land and Water Conservation for more details, and on the ways in which Council may integrate the management practices for both community and Crown land.

- **Environmental Planning and Assessment Act 1989** and State Environmental Planning Policies made under the Act
- **Threatened Species Conservation Act 1995**
- **Fisheries Management Act 1994**

APPENDIX 1 - SAMPLE FORM OF A PLAN OF MANAGEMENT

This sample outline of a plan of management is intended as a guide only. It is one of a range of ways in which council can develop a plan of management that complies with the Act. Many councils have developed innovative and informative plans which can be used as models. This model is intended to ensure that the minimum requirements of the Act have been met.

Council should also think about sharing its own or using the expertise of other councils to develop model plans for particular categories of community land. Such plans can then be used by individual councils, rather than each council having to develop its own plan in isolation. This also enhances regional consistency in the management of community land.

There are particular requirements in the Act that apply only if the plan of management is specific or generic, or where council is not the owner. These variations are identified. Council can also include other, optional, information to assist the public in understanding the management of the land. Ideas for additional information are included at the end of this sample plan.

Plan of Management for X Land

X Council

X Date of Adoption

1. Land covered under this Plan of Management

Council can simply state “this plan of management applies to x land.” *If the plan is generic*, Council could state “this plan of management applies to all x land (eg playgrounds, sportsgrounds, all land classified as ...) in Council’s area. Each piece or parcel of land covered by this plan is listed below (or in a Schedule).”

2. Category and classification of land

Council could state “the land is classified as community land under the Local Government Act. The land is categorised as x under the Act.” *If the plan is generic*, Council could state that “all the pieces of land covered by this plan are categorised as x.

If the land is declared as land containing significant natural features under s.36C: Council must state this in the plan of management. It must also include the reasons why the land was declared under s.36C.

For example, Council could state “the land has been declared by Council under s.36C of the Local Government Act as land containing significant natural features. The declaration was made because the land contains important geological formations including cliffs that give clear views over the DLG valley”.

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3. Owner of the land

Council could state simply “the land is owned by Council”.

If the land is owned by another: Council could state “the land is owned by x and is held by council under (specify how council holds the land, and timeframe).” The plan must also go on to state any restriction, covenant, trust etc applying to the land. It must state whether the use or management of the land is subject to any condition imposed by the owner (s.37).

4. Management of the land.

Council could state that “the land is managed according to the objectives and methods set out below.” Section 36(3) requires the following, as a minimum, be included:

	s.36(3)(b)	s.36(3)(c)	s.36(3)(d)
Management Issues	Objectives and Performance Targets	Means of achievement of objectives	Manner of assessment of performance
Broad issues can be listed here eg: “landscaping, equipment/facilities, traffic management, neighbour amenity”.	Council must list all the core objectives that apply to the land under the Act. Council can also list other objectives that are consistent with these.	List practical steps that will be taken to achieve the objectives, eg; “design wheelchair friendly paths”.	List practical measures of assessment eg: “assess useability of park by disabled through surveys, observation.”

If the plan applies only to one piece of land (ie a specific plan): Section 36(3A)(a) requires the plan to include -

“4(1) Condition of the land and structures on adoption of the plan”

A description need only be brief, but it should be accurate.

For example, in relation to a park council could state that “At the date of adoption of this plan, grass cover in the park was generally good. Some areas within the children’s playground area are poorly covered, as a result of frequent use. Trees and garden beds are thriving and in good condition. The amenities block is 20 years old and, while structurally sound, the toilet facilities are aging and in only fair condition. The children’s play equipment is structurally sound and in good condition and complies with Australian Standards (where relevant).” A diagram showing the basic layout of the natural and built elements could be included.

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If the land is classified as a natural area, the condition of the land will be important to the management of the land. Council can only know of vandalism, erosion, dieback of plants etc, unless there is an initial reference point of description of the land. A description of the land could include details of weed infestation, pollution on the land, health of the vegetation, erosion and so on. The description need only be brief.

“4(2) Use of the land and structures at the date of adoption of the plan”

Once again, only a brief note of the current usage is required. This should include details of current lease/licence or other arrangements for the use of the land.

If the land is affected by threatened species laws: Council must state that the land is so affected. That is, council will need to state that:

“4(3) Threatened Species Laws”

“Land covered by this plan of management has been declared as ‘critical habitat’ under the Threatened Species Conservation Act 1995 (or the Fisheries Management Act 1994), because of the population of x on the land”

OR

“Land covered by this plan of management is directly affected by a recovery plan under the Threatened Species Conservation Act 1995 (or the Fisheries Management Act 1994)”

OR

“Land covered by this plan of management is directly affected by a threat abatement plan under the Threatened Species Conservation Act 1995 (or the Fisheries Management Act 1994)”.

Council could also go on to explain that it has responsibilities under the relevant threatened species Act to manage the land in accordance with that Act. These are in addition to the matters in the plan of management. If the land is affected by a recovery or threat abatement plan it may be helpful to state that a copy of the plan is available from Council, or the National Parks and Wildlife Service.

5. Future use of the land

Council could include a general statement about its intentions for the future use of the land, the types of activities contemplated and so on.

If the plan is a specific plan: Council must include a statement of the purpose of any permitted future use and development of the land (s.36(3A)(b)). It must also describe the scale and intensity of the permitted use:

“5(1) Future use and development of the land”

The statement does not need to be long, but it will be binding on council once included, so any statement should be well thought out. A statement will apply to the activities of Council on the land as well as any other person (eg under a lease).

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A statement of permissible purposes and intensity of use will be closely related to any authorisation of leasing etc that council includes in a plan. An authorisation of leasing applies specifically to the use of community land by others apart from Council. The statement under this heading and any authorisation should be consistent with each other.

For example, in relation to a park, council could state “the park will be used in future for general community recreation, with public right of access to all outdoor areas. Council will permit the erection of an amenities block and/or kiosk, if appropriate. Outdoor seating at the kiosk is permitted, provided no more than 20 seats are erected.”

6. Leases, licences and other estates.

If council is going to consider granting leases etc, it must include an authorisation in the plan of management. Council’s authorisation should cover:

- the type of arrangement authorised –ie, council may authorise leases and/or licences and/or other estates
- the land or facilities to be covered – ie, council may allow leasing etc of all or some of the land and facilities
- the purpose for which leasing etc will be granted – council may choose to allow leasing for community purposes, business purposes, or more limited purposes such as sports or child care facilities.

Any authorisation should be consistent with a statement required in specific plans of management about the permissible future development of the land (see above).

6(1) Tendering for leases, licences and other estates.

Section 46A requires a council to tender for leases etc of community land over 5 years, unless the lease etc is to be granted to a non-profit organisation. In addition, council may choose to nominate other leases etc which will only be entered into after a tender process (s.46A). This is optional for councils.

For example, council may state that “ leases, licences and other estates granted for the purposes of will be granted only after a tender process in accordance with the Local Government Act 1993”.

7. Approvals for activities on the land

Section 68, Part D, of the Act requires approvals issued by Council for certain activities on community land. Council may choose to list these approvals here. Cross reference may also be made to any Local Approvals Policy that applies.

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8. Other information that could be included

Council may include other information in a plan of management where desired, for example:

- history of the land and its use
- previous studies of the land or other background information
- any relevant council policies
- control of activities on the land such as through signs under s.632, Local Government Act
- relevant zoning and land use restrictions under the Environmental Planning and Assessment Act 1979
- the impact of any other Acts on the management of the land
- how the land is managed in practice – through a council committee, council officers etc
- contact details for any further information on the community land

APPENDIX 2 – INFORMAL MODEL LEP CLAUSE TO RECLASSIFY PUBLIC LAND AND REMOVE RESTRICTIONS

This model is provided as a guide to councils of the way in which an LEP could be drafted to comply with section 30. The draft has been prepared by the Parliamentary Counsel’s Office.

Classification or reclassification of public land as operational land

- (1) The public land described in Schedule 1 is classified, or reclassified as operational land for the purposes of the Local Government Act 1993.
- (2) In accordance with section 30 of the Local Government Act 1993, a parcel of land described in Part 2 of Schedule 1, to the extent that it is a public reserve, ceases to be a public reserve on the commencement of the relevant amending plan and, by the operation of that plan, is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except for:
 - (a) any reservations that except land out of a Crown grant relating to the land; and
 - (b) reservations of minerals (within the meaning of the Crown Lands Act 1989).
- (3) Before the relevant amending plan that inserted the description of a parcel of land into Part 2 of Schedule 1 was made, the Governor approved of subclause (2) applying to the land.
- (4) In this clause, *the relevant amending plan*, in relation to a parcel of land described in Part 2 of Schedule 1, is the local environmental plan cited at the end of the description of the parcel.
- (5) Land described in Part 1 of Schedule 1 is not affected by the amendments made by the Local Government Amendment (Community Land Management) Act 1998 to section 30 of the Local Government Act 1993.

Schedule 1 Classification or reclassification of public land as operational land

Part 1

describes land classified or reclassified as operational land prior to 1 January 1999 (ie commencement of the Local Government Amendment (Community Land Management) Act 1998. The LEPs reclassifying this land and removing any restrictions did not need the Governor’s approval.

Part 2

describes land that was classified or reclassified as operational land since 1 January 1999.

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