

Item 8: Development

8.1 DA0146/2018 Function Centre and Business Identification Signage

REPORT BY THE TOWN PLANNER
TO 11 DECEMBER 2019 ORDINARY MEETING
GOV400067, DA0146/2018

RECOMMENDATION**That Council:**

- A. receive the report by the Town Planner on the DA0146/2018 Function Centre and Business Identification Signage;
- B. approve DA0146/2018 Function Centre and Business Identification Signage subject to the following conditions:

APPROVED PLANS

1. Development is to be carried out in accordance with the following plans endorsed with Council's Stamp as well as the documentation listed below except as varied by the conditions herein.

<i>Title/Name</i>	<i>Plan No.</i>	<i>Rev</i>	<i>Dated</i>	<i>Prepared by</i>
Site & Landscaping Plan	3538-A01	E	Sept 2019	Giselle Denley Drafting Services
Lodge Floor Plan	3538-A08	C	Sept 2019	Giselle Denley Drafting Services
Training Room/Lodge East & South Elevation	3538-A09	C	Sept 2019	Giselle Denley Drafting Services
Training Room Lodge West & North Elevation	3538-A10	C	Sept 2019	Giselle Denley Drafting Services
Advertising Sign	3538-A12	A	June 2018	Giselle Denley Drafting Services

GENERAL

2. This development consent provides approval for a function centre and business identification signage, only.
3. At least 1 month prior to staging the first event, an Operations Management Plan is to be submitted to and approved by Council. The Operations Management Plan is to be reviewed and modified as appropriate by the proponent, and submitted to Council on an annual basis.

The Operations Management Plan is to address, but not be limited to, the following:

- a) Telephone and email contact details for the on-site manager.
 - b) Details of a complaints contact, and format for a complaints register.
 - c) A methodology for recording the number of guests to the site.
 - d) Procedures for weddings or party events, including location and timings of ceremonies, reception, the conclusion of the event, and prompt and orderly direction of guests to their transport.
 - e) Hazard, fire and emergency management.
 - f) Lighting to and within the event.
 - g) Waste management.
 - h) Liquor licencing and alcohol management.
 - i) Specific measures to ensure the safety of guests from the on-site quarry, including appropriate fencing.
 - j) Dust control.
4. This approval does not provide any indemnity to the owner or applicant under the *Disability Discrimination Act 1992* with respect to the provision of access and facilities for people with disabilities.
5. Any damage which is caused to Council's infrastructure as a result of the proposed development must be repaired immediately to Council's satisfaction and at no cost to Council.

NOISE REGULATION

6. The proponent shall ensure that the noise generated from the function centre does not exceed the criteria in the Table at any residence on privately owned land. The allowable noise limits are applicable to the function centre.

Table – Maximum Allowable Noise Limits dB(A)

Location	Day/Evening and Night
	$L_{Aeq}(15 \text{ minute})$
Private residence	35

Noise generated by the Development is to be measured in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the *Noise Policy for Industry 2017*.

7. Prior to an application being made for a construction certificate for the Development, a report prepared by a suitably qualified acoustic engineer is to be submitted to the Council specifying a maximum allowable noise limit within the Function Centre that will ensure that the Development does not contravene the noise criteria specified in the table to condition 6 of this Consent. The maximum allowable noise limit within the Function Centre is to be determined by reference to the detailed plans and specifications accompanying the application for the construction certificate.
8. An onsite, suitably and regularly calibrated noise monitoring device is required to be used in the function centre, during all functions. The monitoring device is to be used to measure and monitor sound pressure levels within the function centre, to ensure all noise is kept below the Maximum Allowable Noise Limit, established in the
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acoustic assessment report, required by condition 7.

The data shall be made available to Council upon request, and will be used to demonstrate compliance with the required noise parameters, should complaints be received.

9. The proponent shall undertake verification testing of not less than 1 week's duration, and shall be undertaken by suitably qualified acoustic engineer, to verify compliance with Condition 6.

Testing shall be taken either from:

- a) 30m from the most affected residence; or
- b) If owner's permission cannot be obtained to enter the affected property, the boundary closest to the most affected residence,

The testing is to be undertaken within 6 months of occupation of the function centre, and where there are a minimum of 2 wedding or party events within the week.

Results of the testing shall be submitted to Council.

Where verification testing indicates that the facility is not compliant, additional acoustic treatments are to be implemented within 2 months of the non-compliance being identified, with details being provided to Council.

Further verification testing will be required within 6 months of the implementation of any additional acoustic treatments, to confirm compliance with Condition 6, and the results submitted to Council.

10. The '4m Wide Glass Wall/Door' located at the western end of the 'Lodge', as shown on the approved Lodge Floor Plan 3538-A08, shall be kept closed at all times whilst a function is occurring.
11. The proponent shall provide to all adjoining, adjacent and nearby residents a contact number that can be used by a complainant to contact the manager of the function centre in the event of a noise complaint. A complaints management plan, forming part of Condition 3, is to be established to include the following:
 - a. The manager will record all verbal and telephone complaints in writing including details of the circumstance leading to the complaint and all subsequent actions.
 - b. The manager and owner will investigate the complaint in order to determine whether a criterion exceedance has occurred or whether noise has occurred unnecessarily.
 - c. If excessive or unnecessary noise has been caused, corrective action will be planned and implemented by the project manager.
 - d. Complainants will be informed by the manager that their complaints are being addressed, and (if appropriate) that corrective action is being taken.

The complaints management plan is to be implemented and the record of complaints and subsequent actions is to be made available for inspection by Council upon request.

12. For functions carried out at the 'Lodge', all food must be served and consumed within the building. No outdoor dining is permitted.

This condition has been imposed, in the absence of the noise report addressing the external preparation, serving and consumption of food.

PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE

13. Prior to release of the Construction Certificate, approval pursuant to Section 68 of the *Local Government Act 1993* for the installation of an On-Site Sewer Management System is to be obtained from Mid-Western Regional Council.
14. In accordance with the provisions of Section 7.12 of the *Environmental Planning and Assessment Act 1979* and the *Mid-Western Regional Contributions Plan 2019* (the Section 94A Plan), a levy based on the value of works shall be paid to Council in accordance with this condition for the purpose of public facilities, prior to issue of a Construction Certificate.

The value of works is to be calculated in accordance with Table 6 and the procedure outlined in Figure 1 of the Contributions Plan. A report regarding value of works and any necessary certification is to be submitted to Council. Council will calculate and advise of the levy amount following submission of the documents.

The contribution amount will be adjusted by the Consumer Price Index, if not paid in the same financial year the development consent was issued.

Note – *Mid-Western Regional Contributions Plan 2019* is available for perusal at Council's Administration Centre at 86 Market Street, Mudgee or on Council's website www.midwestern.nsw.gov.au under Council Documents/Strategies and Plans.

15. Prior to the issue of any Construction Certificate that includes above ground works, a landscape plan shall be submitted to and approved by the Certifier (i.e. Council or a private Certifier). This landscape plan shall be prepared by an appropriately qualified and experienced professional. The landscaping plan is to show and/or achieve the following:
- a) A planting schedule (including a range of plant sizes).
 - b) A maintenance schedule.
 - c) Re-planting regime for any plants that are damaged, dead, or removed for any reason.
 - d) Utilise endemic species, where practicable, which are appropriate for the site.
16. Prior to issue of a Construction Certificate, details of a designated catering/servicing area shall be provided to Council, in a suitable location that limits disturbance to the amenity of the area.

PRIOR TO THE COMMENCEMENT OF WORKS

17. No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:
- a) the appointment of a Principal Certifying Authority and

b) the date on which work will commence.

Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.

18. The site shall be provided with a waste enclosure (minimum 1800mm X 1800mm X 1200mm) that has a lid or secure covering for the duration of the construction works to ensure that all wastes are contained on the site. The receptacle is to be emptied periodically to reduce the potential for rubbish to leave the site. Council encourages the separation and recycling of suitable materials.

NOTE: ALL WASTE GENERATED FROM THE CONSTRUCTION PROCESS IS TO BE CONTAINED ON-SITE

19. A sign must be erected in a prominent position on any work site on which the erection or demolition of a building is carried out:

- a) stating that unauthorised entry to the work site is prohibited;
- b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
- c) the name, address and telephone number of the Principal Certifying Authority for the work; and
- d) the sign shall be removed when the erection or demolition of the building has been completed.

20. With the exception of work where there is in force an exemption under clause 187 and 188 of the *Environmental Planning and Assessment Act 1979*, all building work that involves residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance is to be in force.

21. The development site is to be managed for the entirety of work in the following manner:

- a) Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
- b) Appropriate dust control measures;
- c) Construction equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained;
- d) Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

BUILDING CONSTRUCTION

22. If unexpected soil contaminants are discovered during works, which has the potential to alter previous conclusions regarding site contamination; work must cease and Council or NSW Environmental Protection Authority must be notified immediately.

The site is to be inspected by a suitably qualified person to identify any contaminated or hazardous material present. A proposal for remediation is to be prepared, which may include preparation of a Remedial Action Plan, and remediation is to be carried out in accordance with the proposal. A Validation Report, prepared in accordance with Environment Protection Authority requirements, is to be obtained

from a qualified expert on completion of the remediation work to verify that the site is suitable for the intended use. A copy of the Validation Report is to be provided to Council on completion of the remediation works.

Note – Council may also request that a NSW Environmental Protection Authority accredited site auditor is involved to assist with the assessment of the contaminated land situation and review any new contamination information. The developer must also adhere to any additional conditions which may be imposed by the accredited site auditor.

23. All building work must be carried out in accordance with the provisions of the National Construction Code, the *Environmental Planning & Assessment Act 1979* and Regulations and all relevant Australian Standards.
24. All plumbing and drainage work must be carried out by a licensed plumber and drainer and must comply with the Plumbing Code of Australia.
25. Construction work noise that is audible at other premises is to be restricted to the following times:
 - Monday to Saturday - 7.00am to 5.00pmNo construction work noise is permitted on Sundays or Public Holidays.
26. All mandatory inspections required by the *Environmental Planning & Assessment Act 1979* and any other inspections deemed necessary by the Principal Certifying Authority being carried out during the relevant stage of construction.
27. All stormwater is to discharge a minimum 3m from the building and disposed of in such a way as to not adversely affect the adjoining properties.
28. All building work is to comply with the requirements of the Access to Premises Standard.
29. The list of measures contained in the schedule attached to the Construction Certificate are required to be installed in the building or on the land to ensure the safety of persons in the event of fire in accordance with Clause 168 of the *Environmental Planning and Assessment Regulation 2000*.

ENGINEERING CONDITIONS

30. All earthworks, filling, building, driveways or other works, are to be designed and constructed (including stormwater drainage if necessary) to ensure that at no time any ponding of stormwater occurs on the subject site or adjoining land as a result of this development. Design must also ensure that no diversion of runoff onto other adjacent properties occurs.
 31. All stormwater runoff from roof surfaces is to be directed to rainwater tanks for storage and re-use. All runoff from rainwater tank overflow and other developed surfaces is to be controlled in such a manner so as not to flow or discharge over adjacent properties. Methods of disposal of excess stormwater must also include adequate provision for prevention of erosion and scouring.
 32. Prior to the commencement of construction of the internal driveway a design showing appropriate grades and alignment must be submitted to Council for assessment and approval. The design must provide an alignment with level or flat
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grades to ensure headlight spill from exiting vehicles does not create nuisance for nearby housing.

33. Sealed access crossovers and driveways must be constructed from Rocky Waterhole Road to provide access to the proposed development. Consent from Council must be obtained for all works within the road reserve pursuant to Section 138 of the *Roads Act 1993*. Construction must be in accordance with the requirements of Council's "Access to Properties". Access to the development (crossovers and internal driveways), should require double lane access, and are to be maintained and upgraded as necessary to provide an all-weather trafficable surface to the satisfaction of Council at all times.

The access crossover must also provide turning lanes for entering and exiting vehicles with localised shoulder widening to provide for a 'slip lane' for south bound traffic in the event of a queued vehicle waiting to enter.

34. A total of 55 car parking spaces are to be provided within the site of the development and comply with AS 2890.1: 2004 and the following requirements:
- Each parking space is to have minimum dimensions of 5.5m x 2.4m;
 - Each disabled car parking space is to be in accordance with the provisions of AS 2890.6: 2009.
 - Line marking, wheel stop and signage has to be installed as per the relevant Australian Standard

The car parking area must be constructed and sealed with an all-weather surface with provision made for the control of surface runoff. The layout should also provide for a suitably sized bus turning and parking area. Pavements and line marking must be maintained to the satisfaction of Council at all times.

PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE

35. Prior to the occupation of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the erection of the building.
36. Prior to occupation or the issue of the Occupation Certificate the owner of the building must cause the Principal Certifying Authority to be given a fire safety certificate in accordance with Clause 153 of the *Environmental Planning and Assessment Regulation 2000* for each measure listed in the schedule. The certificate must only be in the form specified by Clause 174 of the Regulation. A copy of the certificate is to be given to the Commissioner of the New South Wales Fire Brigade and a copy is to be prominently displayed in the building.

ONGOING / OPERATIONAL

37. Leadership and business functions to be carried out in the proposed Lodge must operate in accordance with the following:
- a. Be for a maximum of 50 people,
 - b. Not have any amplified music at any time.
 - c. The approved hours of operation are:

8am – 10pm Monday – Saturday;

8am – 6pm Sunday.

38. Weddings, party events or the like shall operate in accordance with the following:

- **Be for a maximum of 100 people, at any time.**
- **No more than 20 events are permitted in each calendar year.**
- **The 20 allowable wedding or party events shall be limited to Fridays and Saturdays, between the hours of 8am-10pm.**
- **The proponent shall keep a record of frequency of events and attendance numbers for each wedding or party event, and shall be made available to Council upon request.**
- **A site manager, employed by the site operators, shall be on the site at all times during events.**
- **Amplified music is permitted during the 20 allowable events only.**
- **All amplified noise will cease at 9:45pm, and all weddings and party events shall conclude no later than 10pm.**
- **Any proposed bar, that is to serve liquor, must be located within the function centre building only. No beverages shall be served outside.**

Note - Any function with over 50 attendees will be classed as a wedding or party event, and be included in the 20 allowable party events.

39. The functions shall be conducted in the function centre/lodge and curtilage, as shown in the approved site plan. The layout of the function centre/lodge shall be arranged such that the amplification equipment is orientated away from residences on neighbouring properties, and angled downwards to reduce noise spillage.

40. At the conclusion of any function or event, guests shall be ushered to their transport in a prompt and orderly fashion, to avoid neighbourhood disturbance.

41. Guests shall utilise the nominated driveway entry/exit point only. The Right of Carriageway traversing the site is only to be used by guests in emergency situations.

42. All food that is served ancillary to a function, in accordance with Condition 13, is to be either:

- a) **prepared off site by a registered food premises, transported and stored onsite in accordance with the NSW Food Act 2003 and the Food Standards Code, or**
- b) **prepared and stored onsite in a temporary food stall or mobile food vending vehicle, in accordance with NSW Food Authorities '*Guidelines for Mobile Food Vending Vehicles and Food Businesses at Temporary Events*'**

There shall be no preparation or storage of food within the proposed building unless separate consent is granted for such activities.

43. All exterior lighting associated with the development shall be designed and installed so that no obtrusive light will be cast onto any adjoining property or roadways, in accordance with Australian Standard 4282 "*Control of the Obtrusive Effects of Outdoor Lighting*".
44. All waste generated by the development is to be disposed of to an appropriately licenced waste facility. All fees and charges for disposal are to be borne by the developer.
45. The development is to be maintained in a clean and tidy manner, at all times.
46. Landscaping is to be maintained in perpetuity, in accordance with the approved landscape plan.
47. There being no interference with the amenity of the neighbourhood by reason of the emission of any "offensive noise", vibration, smell, fumes, smoke, vapour, steam, soot, ash or dust, or otherwise as a result of the proposed development.
48. All loading and unloading in connection with the premises shall be carried out wholly within the site.
49. All vehicles are required to enter and leave the site in a forward direction at all times. Signage to this effect is to be appropriately located within the site.

Signage

50. The sign is to be erected and sited in accordance with the plans submitted with the application, and in accordance with the following requirements:

Pylon Sign Display Area

Maximum length/width	2m
Maximum height	1.1m

Pylon Sign Overall

Maximum Height	2.2m
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51. The approved Business Identification Sign is to only display the name of the business carried out at the premises or the nature of the business carried out at the premises. The signage may include the address of the premises and/or a business logo.
52. The sign must not be illuminated at any time, and shall not include the use of bright or fluorescent colours, or highly reflective materials.
53. The approved signage and related components are to be maintained in a clean, tidy and structurally sound manner, at all times.
54. Any graffiti attacks on the approved signage and related components are to be removed and cleaned as soon as practicable, in order to deter future attacks.

STATEMENT OF REASONS

The determination decision was reached for the following reasons:

1. **The proposed development complies with the requirements of the applicable environmental planning instruments and *Mid-Western Regional Development Control Plan 2013*.**
2. **The proposed development is considered to be satisfactory in terms of the matters identified in Section 4.15 of the *Environmental Planning & Assessment Act 1979*.**
3. **The issues raised in submissions received in response to public notification of the development have been sufficiently addressed as follows:**
 - **Conditions 6-12, 37-40, 43, 45-47, have been imposed in relation to noise management, hours of operation and impacts to the amenity of the area;**
 - **Conditions 32-34, 41, 48, 49 have been imposed in relation to traffic and access;**
 - **Conditions 3, 11, 37-49 have been imposed to regulate the operational management of the site.**

ADVISORY NOTE

- **The development is to operate so as to not emit offensive noise, as defined in the *Protection of the Environment Operations Act 1997*.**

FURTHER APPROVALS REQUIRED

- **Section 138 Driveway Crossover for work in Road Reserve**

Executive summary

OWNER/S	Pearl Daly & Adam Swords
APPLICANT:	Pearl Daly
PROPERTY DESCRIPTION	196 Rocky Waterhole Road, Mount Frome (Lot 1 DP 1187857)
PROPOSED DEVELOPMENT	Function Centre and Business Identification Signage
ESTIMATED COST OF DEVELOPMENT:	\$1,194,475.00
REASON FOR REPORTING TO COUNCIL:	Number of Submissions > 6
PUBLIC SUBMISSIONS:	27

Council is in receipt of a Development Application that seeks approval for a function centre and business identification signage, located at 196 Rocky Waterhole Road, Mount Frome.

It should be noted that 6 x serviced apartments were originally proposed, which have since been withdrawn from this application. The applicant intends to lodge a development application for an accommodation component at some point in the future.

The development was notified, in accordance with Mid-Western Regional Development Control Plan 2013, for a period of 14 days on 3 separate occasions. In the first instance, insufficient information was provided by the applicant, and therefore was renotified upon receipt of the requested further information. In response to the submissions received in the second notification period, the application was notified for a third time addressing some of the concerns raised.

The following number of submissions were received:

- First notification – 5 submissions;
- Second notification – 21 submissions; and
- Third notification – 21 submissions.

A total of 27 parties lodged submissions over the 3 notification periods.

After the serviced apartment component was withdrawn from the application, it was not considered necessary to renotify, as the impacts associated with the development have only been reduced.

The proposed development has been assessed in accordance with Council's DCP and the LEP. The proposed development is considered generally consistent with Council's planning controls.

The application has been referred to council for consideration as it exceeds staff's *Delegation of Authority*, in that seven (7) or more objections have been made against the development.

The application is recommended for Approval.

Council Resolution October 2019

The matter was considered by Council at their Ordinary Meeting on 16 October 2019, where Council resolved that consideration of the application be deferred until the December Council meeting to enable:

1. further information on vehicle access to be provided showing access into the site can be safely achieved in both directions; and
2. an independent noise assessment be completed as per the objector's request.

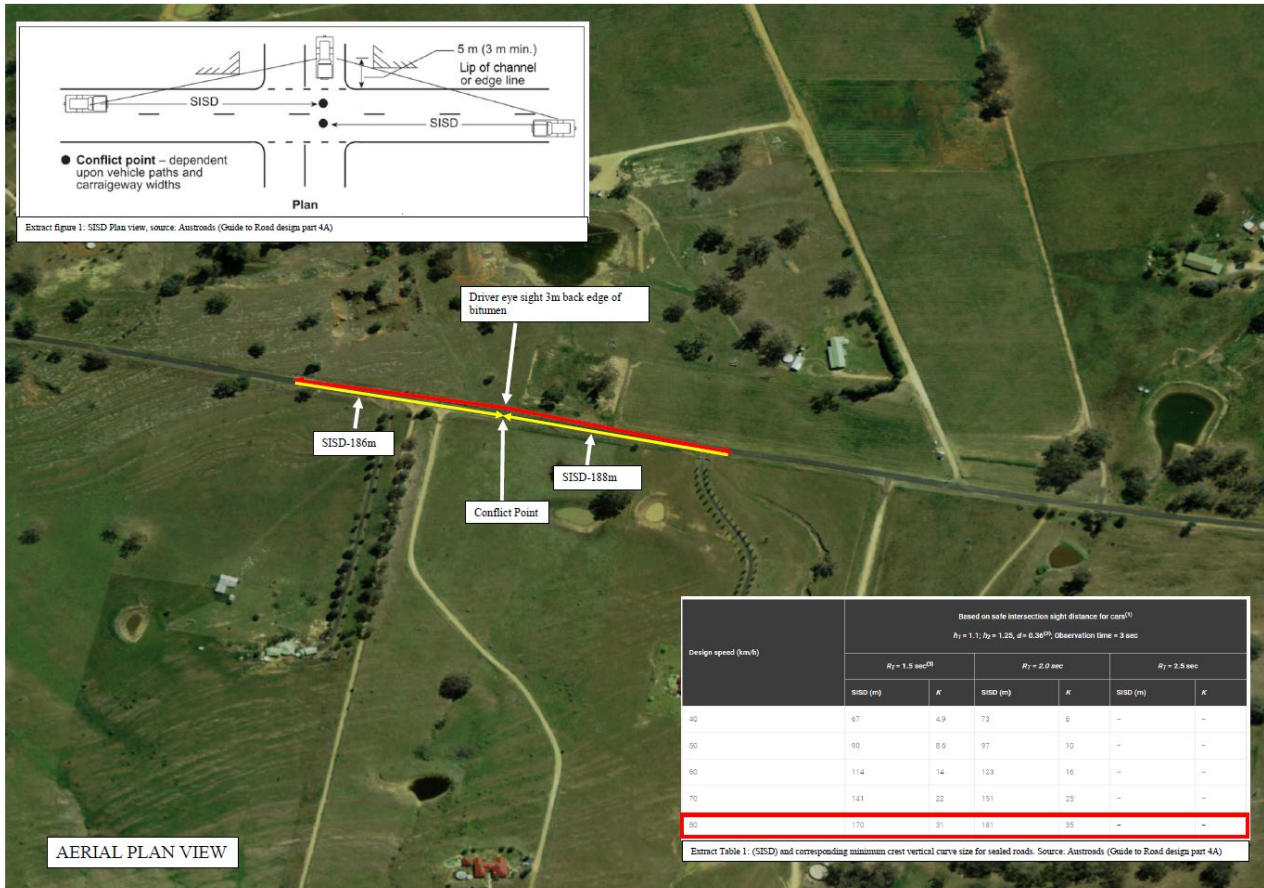
Resolution 1 – Vehicular Access

As per Council's resolution, Council's Development Engineers undertook a field survey to confirm that adequate sight distances could be achieved in an 80km/hr speed environment.

The results of the survey are as shown below, with larger copies of the survey provided in the attachments.

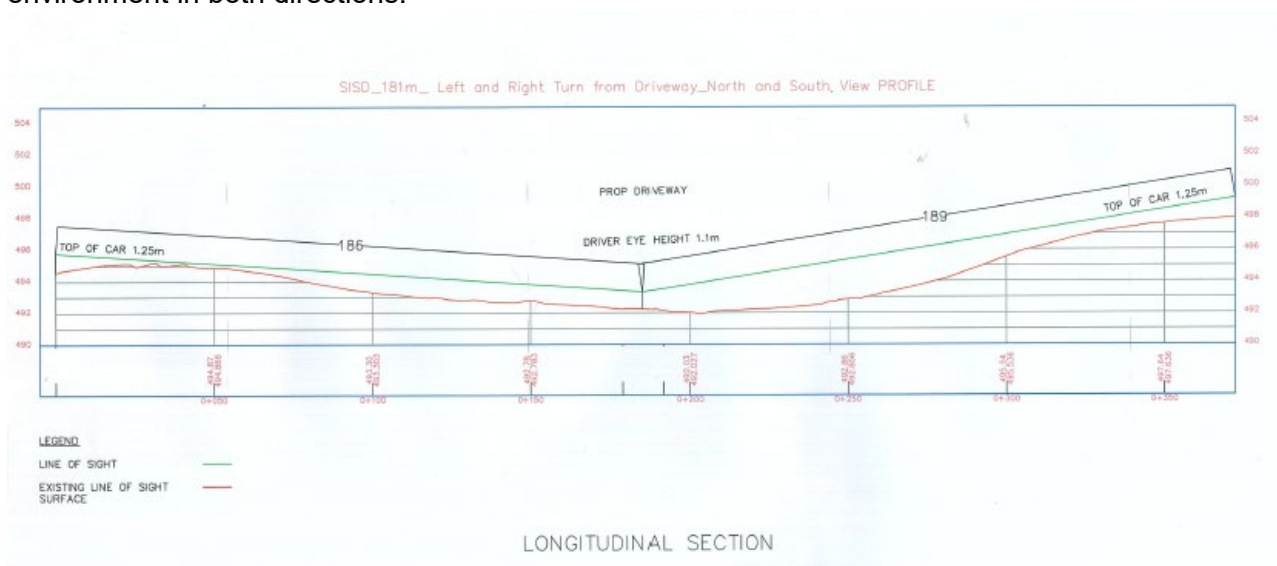
1. Aerial Plan view

This shows an aerial view with extracts from Austroads Design Guidelines detailing Safe Intersection Site Distances (SISD) assessment methodology and tabulated SISD.



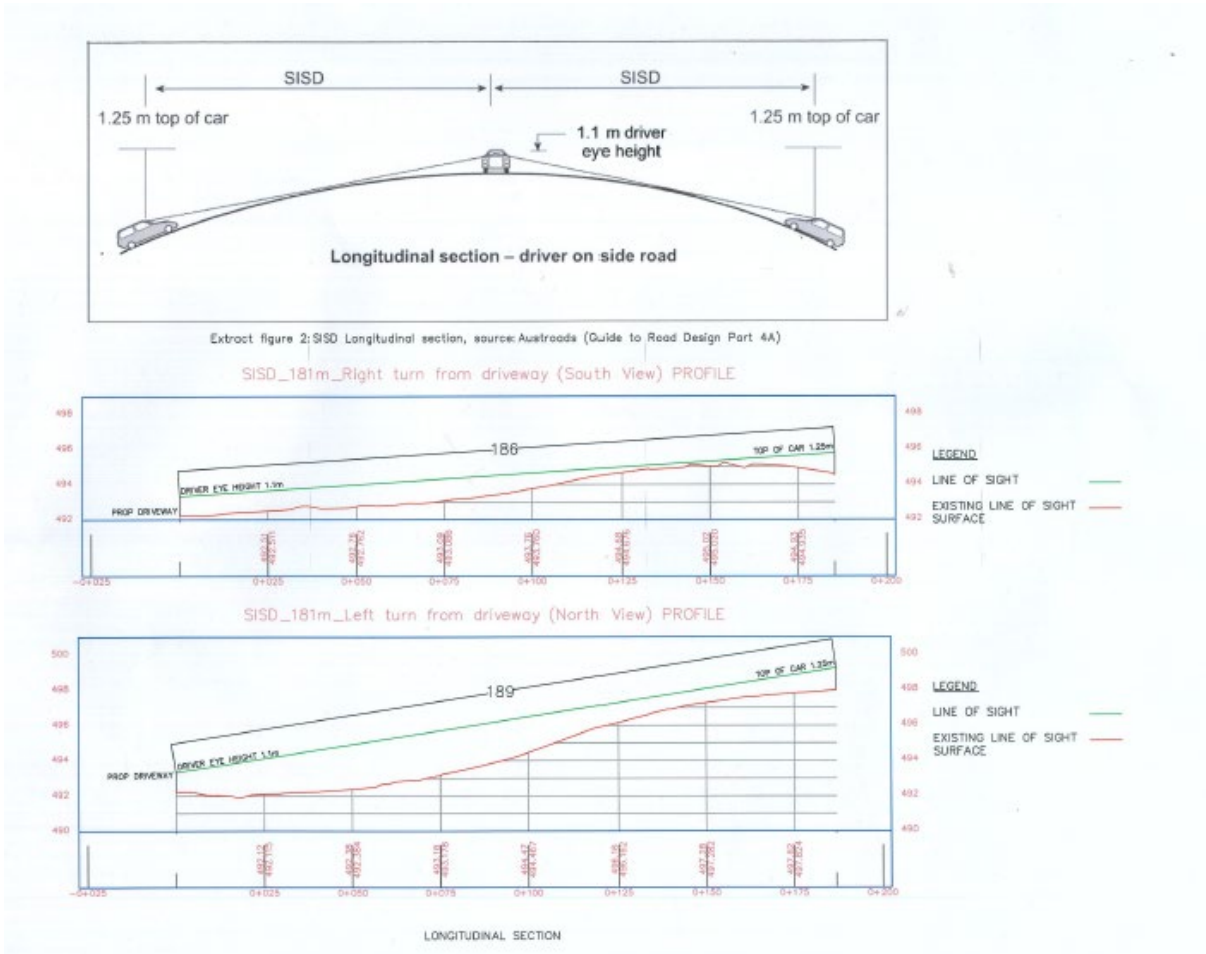
2. Full Longitudinal Section

This shows the actual longitudinal section of the road with sight lines plotted, which shows acceptable sight distances compliant with Austroads Design Guidelines for an 80 kph speed environment in both directions.



3. Longitudinal section

This shows an extract from Austroads design Guidelines with split sight distance profiles for north and south views.



It is apparent from the data presented that the original assessment by Council Officers of an adequate sight distance, compliant with Austroads design guidelines, has been verified.

The application was also informally referred to Roads and Maritime Services to obtain an independent opinion of sight distances and verify the suitability of the entrance. The RMS provided the following commentary:

Safe Intersection Sight Distance (SISD) requirements outlined in the Austroads Guide to Road Design Part 4A should be provided in both directions at the vehicular access point. For an 80km/h speed zone the minimum SISD is 181 metres. Based on a survey provided by Council we are advised this requirement appears to be satisfied for the proposed intersection location.

A copy of the RMS correspondence can be found in the attachments.

It is acknowledged, in points 9 and 10 of that correspondence, that the RMS has recommended Council impose requirements for Basic Right (BAR) and Basic Left (BAL) turn treatments, plus widening of the access to accommodate at least a Medium Rigid truck. In this regard Council has not imposed specific conditions requiring such improvements, as access requirements, user safety and rear-end collisions will be thoroughly assessed at the time of the S138 application, following submission of full detailed assessment and survey.

Resolution 2 – Noise Assessment

As per the resolution the objectors have commissioned their own noise report, which can be found in the attachments.

In addition to the above, the applicant also engaged a noise consultant to peer review the original noise report, with the full report found in the attachments.

For reference, the original noise assessment provided by the applicants was prepared by Spectrum Acoustics Doc. No: 171432 8464 June 2019.

Applicants Noise Report – Peer Review

Anitech Pty Ltd were engaged by the applicant to undertake an independent acoustic review of the acoustic report prepared by Spectrum Acoustics to consider impacts from entertainment, patrons and road traffic noise.

The review concluded that the methodology used in the Spectrum Acoustics report had been undertaken in accordance with the applicable standards and guidelines. Anitech is of the view that in compliance with the Spectrum Acoustics report, there would be no adverse acoustic impacts from the proposed development, and there was no acoustic reason why the development should not proceed.

Objectors Noise Report

The objectors commissioned Muller Acoustic Consulting Pty Ltd (MAC) to undertake a noise assessment of the development as per Council's resolution on 16 October 2019. The full report can be found in the attachments.

The MAC assessment has raised several matters contrary to the Spectrum Acoustics report, most notably that the proposed function centre would exceed the 35dB(A) limit at 5 sensitive receptors (residences) - though 2 of these receptors were not in fact residences.

Furthermore, the report states that weddings and parties were not considered in the Spectrum Acoustics assessment as they are a secondary function of the project (i.e. minor occurrences of these events), and that their findings were primarily calculated on training and leadership functions with a maximum of 50 people.

The MAC report made a recommendation that the function centre be limited to hosting training and conference events for up to 50 patrons during the daytime period only (7am – 6pm Monday to Saturday; and 8am – 6pm Sundays and Public Holidays).

MAC acknowledged Council's assessment report and recommended conditions 6-13, with the exception of Condition 11 (automatic sliding doors) were good practice with respect to managing noise emissions.

Council Comment:

The Spectrum Acoustics report has addressed weddings and parties for 100 people in their assessment. This has been discussed further in the 'Entertainment Noise' section of the report, relating specifically to these types of functions. The proposed limit of 20 wedding or party events per year confirms that these events are held infrequently, and as an ancillary component to the primary use for training and leadership functions. This is contrary to the MAC commentary, stating the findings were primarily calculated on training and leadership functions with a maximum of 50 people.

No mitigation measures were suggested in the acoustic assessment report prepared by MAC, with the summary of findings and recommendations concluding that the development cannot meet the 35dB(A) noise level at sensitive receptors. This is contrary the original report prepared by Spectrum Acoustics, and the peer review of said report carried out by Anitech Pty Ltd, which finds that in compliance with the relevant standards (*Noise Policy for Industry 2017*) there would be no

adverse acoustic impacts from the proposed development, and there should be no acoustic reason why the development should not proceed.

Notwithstanding the conflicting professional advice of the acoustic consultants, Council has recommended conditions of consent clearly stipulating that compliance must be achieved and verified through operational testing. Accordingly, Council can be satisfied that the function centre will operate within the required 35dB(A) noise level. Given this, there appears to be no reasonable grounds to limit the development to merely being a training and conference centre operating within daytime hours only.

MAC has acknowledged that with the exception of the requirement to install automatic sliding doors, the proposed noise regulating conditions were good practice with respect to managing noise emissions. Council acknowledges that the requirement to install an automatic sliding door is not industry best practice, and so the condition has been removed.

Note – in addition to the changes made to the report and conditions of consent noted above, condition 7 and 9, as originally proposed, have been modified. Condition 7 has been modified requiring that prior to an application being made for a construction certificate, a report prepared by a suitably qualified acoustic engineer is to be submitted to the Council specifying a maximum allowable noise limit within the Function Centre to ensure that the Development does not contravene the noise criteria specified in condition 6. Condition 9 has been amended to provide clarity as to the locations that noise verification testing should be undertaken.

Furthermore, the 6th zone objective, which was included in error, has also been removed. This objective is found only in the RU1 zone, which is not applicable to this development, in the RU4 zone. Removal of this objective is not deemed significant as it was not a material consideration and did not change the outcome of the recommendation.

Disclosure of Interest

Nil.

Detailed report

The application has been assessed in accordance with Section 79C(1) of the Environmental Planning & Assessment Act 1979. The main issues are addressed below as follows.

The application has been assessed in accordance with Section 4.15 of the *Environmental Planning & Assessment Act 1979*. The main issues are addressed below as follows.

Site Description:

The subject land is a long irregular shaped parcel that lies generally in a north-south direction in a rural locality. The parcel consists of a total of 20 hectares, and is situated on the western side of Rocky Waterhole Road, near Mount Frome.

The existing site is generally flat with a slight slope from the road frontage down towards the western side of the allotment.

There is a large irrigation dam as well as two inactive limestone quarries present onsite. Council has no record of any approval for the quarry, and may have operated prior to the need for consent. Any intention to utilise the quarry would require a new development consent.

Development Details

Approval is sought for the following:

Function Centre

- Construction of a 457m² function centre, inclusive of:
 - 220m² main room – function hall;
 - 66m² deck;
 - 88m² training room;
 - 52m² male/female/disabled toilets, laundry/washroom, store room;
 - 22m² hallway.
- Use of the function centre for corporate training, leadership courses, retreats, conferences, general functions, wedding and party events;
- Hours of operation:
 - Monday to Saturday 8am – 10pm;
 - Sunday 8am – 6pm;
- Maximum 20 x weddings, party events or the like per year;
- Maximum 100 guests at any one time;
- Other non-party events are limited to 50 people;
- Live music to be contained within the function centre and limited to 20 times per year, only on Fridays and Saturdays;
- No live music Sunday to Wednesday, or on non-party/wedding event days;
- On Premise Liquor Licensed venue;
- The function centre does not contain a kitchen, and therefore any catering shall be done from a mobile food vending vehicle or temporary food stall, external of the building, duly authorised under Section 68 of the *Local Government Act 1993* and registered with the NSW Food Authority.

Tourist Signage

- Post supported 1.1m x 2m tourist identification sign (total 2.2m high).
- No illumination.

REQUIREMENTS OF REGULATIONS AND POLICIES

Mid-Western Regional Local Environmental Plan 2012

The land is zoned RU4 Primary Production Small Lots pursuant to Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012). The following clauses of MWRLEP 2012 have been assessed as being relevant and matters for consideration in assessment of the Development Application.

Clause 1.2 Aims of Plan

The application is not contrary to the relevant aims and objectives of the plan.

Clause 1.4 Definitions

The proposal is defined in accordance with the MWRLEP 2012 as a:

function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

business identification sign means a sign:

- (a) that indicates:
 - (i) the name of the person or business, and
 - (ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and
 - (b) that may include the address of the premises or place and a logo or other symbol that identifies the business,
- but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

Clause 2.2 Zoning of Land to Which Plan Applies

The land is zoned RU4 Primary Production Small Lots and is therefore subject to the Plan.

Clause 2.3 Zone objectives and Land Use table

The land is zoned RU4 Primary Production Small Lots pursuant to MWRLEP 2012. The proposal, being a function centre and business identification signage is permissible with consent in the zone.

Pursuant to this clause, Council when determining a development application must have regard to the objectives of the zone, which has been given below. From the comments below, it is considered that the proposed application is generally consistent with the objectives, and is not antipathetic to them.

1. To enable sustainable primary industry and other compatible land uses.

Comment The proposal does not significantly impact upon the ability of the land to be used for the purposes of primary production or other compatible land uses. The proposed development is a permissible form of development in the RU4 zone.

2. To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.

Comment The proposal will not hinder employment opportunities in relation to the primary industry enterprises operating within the area. The proposed development is a permissible form of development in the RU4 zone.

3. To minimise conflict between land uses within this zone and land uses within adjoining zones.

Comment The proposal will not result in any significant conflict with adjoining land uses subject to compliance with conditions of the consent.

4. To ensure that land is available for intensive plant agriculture.

Comment The proposal will not hinder the use of the site for the purposes of intensive plant agriculture. The function centre and infrastructure are located primarily in and around the quarry, with the northern section of the block, which could be used for intensive

plant agriculture, left untouched. The proposed development is a permissible form of development in the RU4 zone.

5. *To encourage diversity and promote employment opportunities related to primary industry enterprises, particularly those that require smaller holdings or are more intensive in nature.*

Comment The proposal will not hinder employment opportunities in relation to the primary industry enterprises operating within the area.

Clause 5.10 Heritage Conservation

No items of aboriginal significance or a heritage item are recorded on the site or in the vicinity. Notwithstanding this, a condition will be placed upon the consent ensuring that work is ceased should an item be discovered during construction, until the correct approval and notification processes are carried out.

Clause 6.1 Salinity

The proposal only involves minimal earthworks and is not expected to significantly affect the process of salinisation.

Clause 6.3 Earthworks

The proposal involves only minor earthworks to prepare the site for the development. The works are not expected to generate any significant impacts as listed in Clause 6.3(3). Conditions of consent have been included to ensure any earthworks related activities are carried out appropriately and minimise impacts upon neighbouring properties.

Clause 6.4 Groundwater vulnerability

The site is identified as groundwater vulnerable in accordance with Council's mapping. No broad excavation is needed to facilitate the proposal and no significant impacts upon those matters contained within clause 6.4(3) is expected as a result of the proposed development. Given the extent of excavation, it is considered that the development would not cause groundwater contamination, adversely affect any groundwater dependent ecosystems, will not cumulatively impact potable water supply, and therefore no special measures, or conditions of consent would be considered necessary.

Clause 6.9 Essential Services

All essential services that are relevant to the proposal are available or will be available as a result of the proposed development.

State Environmental Planning Policy

State Environmental Planning Policy No 44 – Koala Habitat Protection

SEPP 44 applies to the proposal as Mid-Western Regional Council is listed within Schedule 1 of the SEPP and the area of land associated with the proposal in the same ownership is greater than 1 hectare in size.

However, the development does not propose to remove any trees. Accordingly, no further consideration is necessary.

State Environmental Planning Policy no 55 – Remediation of Land

The site contains two gravel quarry pits and a vineyard. The quarry pits were historically used for the extraction of limestone gravel material, and have not been in operation for a number of years. The limestone gravel material is not known to be contaminated. The proposed function centre is not located within the quarried area, or within the vineyard.

In accordance with clause 7(1), consideration was given as to whether the land is contaminated. After carrying out an initial investigation and a site inspection, together with the known history of the site, there were no indications that contamination was present on the site.

No concerns in relation to contamination have been raised, and therefore a preliminary investigation of the site, in accordance with the contaminated land planning guidelines, was not required.

Accordingly, no further consideration is necessary. Notwithstanding this, an appropriate condition has been imposed, outlining the processes/reports required, should contaminated material be found during construction/excavation works.

State Environmental Planning Policy no 64 (Advertising & Signage)

(ii) Clause 3: Aims and Objectives

The proposed signage does not conflict with the aims of the policy. In particular, the proposed signage:

- Is compatible with the desired amenity and character of the area;
- Provides effective communication in suitable locations – that is, providing business identification signage within the front boundary of the site, addressing Rocky Waterhole Road; and
- Will be of a high quality design and finish.

(iii) Clause 8: Granting Consent to Signage

Complies – the proposed signage:

- Is consistent with the objectives of the SEPP; and
- Complies with the relevant requirements of Schedule 1 – see below.

(iv) Part 3 – Advertisements

Clause 10: Prohibited Advertisements

- The land is not designated in any of the prohibited zones or described lands.

Clause 12: Consent authority

- Council is the consent authority for proposed signs, as (c), (d) and (e) do not apply.

Clause 17 Advertisements with display area greater than 20 square metres or higher than 8 metres above ground

- No advertising signage.

(v) Schedule 1 – Assessment Criteria

- *Character of the area* – Complies - the sign will reflect the character of the area, within an area typified by small scale agriculture and horticulture. The signage is limited to the proposed pylon sign at the front of the site setback 10m from the front boundary. It is considered that the scale of the signage has a negligible impact on the character of the area, and is compliant with the relevant DCP controls.
- *Special areas* – Complies - the proposed signs will not detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas. Furthermore, it is considered that the colour, lettering style and placement of the proposed sign will not have an adverse impact on the character of the area.
- *Views and vistas* – Complies - the proposed sign will not obscure important views, will not dominate the skyline, will not impact on any vistas and will not obscure the views of other signs in the vicinity.
- *Streetscape, setting or landscape* – Complies - the proposed signage will have minimal impact on the streetscape and setting as the business identification sign is setback 10m from the road, and is consistent with other similar premises around the Mudgee area i.e. Moothi Estate. The pylon sign is of an appropriate scale and location in the context.
- *Site and building* – Complies - the proposed sign is compatible with the site and building.
- *Associated devices and logos with advertisements and advertising structures* – N/A
- *Illumination* – Complies – illumination is prohibited in the area. A condition has been imposed to regulate.
- *Safety* – Complies – the proposed sign: will not reduce the safety of the public road; is located wholly on private land; will not reduce the safety of pedestrians or bicyclists; and will not obscure sightlines from public areas that will have an impact on the safety of pedestrians.

Mid-Western Regional Development Control Plan 2013

An assessment is made of the relevant chapters and sections of this DCP. Those chapters or sections not discussed here were considered not specifically applicable to this application or are discussed elsewhere in this report.

Part 4.4 Signs

Sign	Requirement	Compliance / Comment
Tourist Signage	(a) Post supported structures max. height of 3m above ground level or an advertising area of more than 3m ² with typical dimensions being 1.2m x 2.5m.	Complies. 2.2m height and 2.1m ² advertising area.
	(b) Identification signs must relate to a lawful or approved use of the land and be located on private land, not in the road reserve.	Complies and Conditioned. Signage relates to function centre.

	<p>(c) The size, colour and shape of the signs will generally be left to the discretion of the business but should not include the use of bright or fluorescent colours or highly reflective or illuminated materials.</p> <p>(d) Each property shall be allowed two Identification signs (which may be double sided). In circumstances when the property has two road frontages Council will consider a third sign on the secondary frontage where that frontage has a minimum of 250m.</p> <p>(e) In circumstances where there are two or more businesses operating from a site, Council will consider increasing the maximum sign face area from 3m² to 4m².</p>	<p>Complies and Conditioned.</p> <p>Complies. 1 x sign proposed.</p> <p>Not Applicable.</p>
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Part 5.1 Car Parking

The development is for a function centre, which is assessed under the tourist and visitor accommodation car parking rate that provides for restaurants.

Land Use & Rate	Requirements	Complies / Comment
<p>Tourist and Visitor Accommodation</p> <p>1 space per 7 m² gfa or 1 space per 3 seats whichever is the greater (Restaurant).</p>	<p>Function Centre 391m² = 55 spaces total</p>	<p>36 spaces shown on proposed site plan.</p> <p>55 Spaces Conditioned.</p>

Part 6.1 Dwellings in Rural Areas

Setbacks

No specific setbacks for function centres, and as such those for dwellings in rural areas have been used, as a guide to determine appropriate separation distances/setbacks. The minimum front setback as prescribed within the table is 60m. The proposed function centre is setback 70m. Accordingly, the proposal complies.

The minimum side/rear setback as prescribed within the table is 20m. The closest proposed building is setback over 200m to the side/rear boundary. Accordingly, the proposal complies.

Mid-Western Regional Contributions Plan 2019

Pursuant to Council's Contributions Plan 2019, the site is located within the 'Outside Mudgee' catchment, and with a proposed cost of development exceeding \$200,000 a levy of 1.0% is payable to Council. An appropriate condition has been imposed requiring payment of the contribution.

IMPACT OF DEVELOPMENT

Context and Setting

The site is located within the RU4 zone, in an area characterised by small scale farming, specifically grazing, cropping and viticulture. The majority of surrounding properties contain existing residential dwellings, at a distance of over 300m from the proposed function centre. Subject to compliance with the conditions of consent, this development can fit within this context and setting without significant impact.

Access, transport and traffic

Council's Manager Development Engineer has provided the following comments in relation to traffic:

The site can easily obtain access from the bitumen sealed roadway on Rocky Waterhole Road.

The proposed access is required to provide for a two lane all-weather driveway for both entry and exit use. This is should be applied to both existing and proposed driveways.

Construction of driveway crossover/s in the road reserve will need to be in accordance with Council requirements and subject to a further s138 approval.

It is apparent that sufficient space is available to provide for the appropriate number of car parking spaces.

Car parking areas should be constructed and sealed with provision also made for the control of surface runoff.

Provision should also be made for bus parking and turning areas.

Public domain

The development will not impact the public domain in terms of recreation opportunities, the amount, location, design, use and management of public spaces, or pedestrian linkages between public spaces.

Utilities

All relevant utilities are available or can be made readily available to the site.

Heritage

Not applicable. No items of aboriginal significance or a heritage item are recorded on the site or in the vicinity.

Other land resources

No impact expected on the conserving and the use of valuable land, such as productive agricultural land, mineral or extractive resources, or water supply catchments.

Water

There is no mains water supply for the land and it is understood that roof runoff will be captured and stored in rainwater tanks for re-use.

Overflow from the tanks and all other developed surfaces must be controlled and dispersed on site. Outlets must include appropriate controls to prevent erosion and scouring.

No runoff from developed surfaces should be directed or allowed to discharge over adjoining properties.

Soils

No significant impact expected. The land is not known to be affected by subsidence, slip or mass movement, subject to contamination, and will not result in significant soil erosion or degradation.

Air and Microclimate

The development is not expected to impact air quality or microclimatic conditions. Conditions of consent have been imposed to ensure, among other things, that dust generation is adequately managed both during construction and operational phases.

Flora & fauna

No significant impact.

Waste

Waste is to be disposed of at a properly licensed waste facility. The site is to be kept in a clean and tidy manner at all times. In relation to on-site disposal of sewage waste, a Section 68 approval is required prior to the issue of a Construction Certificate.

Energy

No significant impact. There is an electricity supply available to service the proposed function centre.

Noise & vibration

As per the acoustic report prepared by *Spectrum Acoustics*, dated June 2019 (Attached):

An acoustic assessment has been completed for the operation of a proposed conference lodge and cabin development at 196 Rocky Waterhole Road, Mount Frome, NSW.

The assessment considered potential impacts from entertainment, patron and road traffic noise.

The assessment has shown that there will be no adverse acoustic impacts from the proposed operation of the conference lodge, and therefore, no acoustic reason why the development should not proceed.

The assessment report considered the procedures and criteria detailed in the Noise Policy for Industry (NPI), as well as the criteria of the Independent Liquor and Gaming Authority, given the venue will be licensed. For further details, refer to the attached Acoustic Report.

The majority of the submissions received, raised noise as a pivotal issue, with some objectors arguing the noise report as submitted was inadequate and lacking in detail. Notwithstanding this, the report clearly finds that there will be no adverse impacts on surrounding landowners, and in the absence of any other evidence, the technical report, as submitted has been given the greatest weight.

However, given the concerns of the objectors, and to ensure the findings of the Acoustic Report are accurate, and reflect live situations, following the construction of the building, the conditions require validation of the acoustic report. A condition has been imposed that requires the applicant to undertake testing, to demonstrate compliance with the noise criteria imposed. Testing shall be not less than 1 week in duration, and shall occur within 6 months of occupation of the function centre/lodge, and where there are a minimum of 2 wedding or party events within the week.

To address issues of ongoing compliance, raised by objectors, the applicant will be required to have an on-site, calibrated noise monitoring device, during all functions. The monitoring device is to be used to measure and monitor sound pressure levels within the Lodge, to ensure all noise is kept below the specified levels, established by further acoustic noise assessment reports

(conditioned). The data shall be made available to Council upon request, and will be used to demonstrate compliance with the required noise parameters, should complaints be received.

The acoustic report has not detailed/addressed specific aspects of the businesses operations, and in these instances the consent has been conditioned accordingly. For example, no outdoor dining will be permitted, as the report only quantifies noise from 12 people being outside, and has not calculated/addressed noise from all 100 guests dining outdoors. Conditions have also been imposed, requiring the door on the western end of the Lodge to be closed at all times (during a function).

Natural Hazards

The development site is not identified as bushfire prone, flood prone and there are no known subsidence, slip or mass movement issues.

Technological hazards

There are no known risks to people, property or the biophysical environment, resulting from technological or industrial hazards, or building fire risk.

Safety, security and crime prevention

During the exhibition period, concerns were raised in relation to safety issues from the quarry on the site. The development has been conditioned that a plan of management be provided, to the satisfaction of Council, with specific measures to ensure the safety of guests from the on-site quarry including fencing.

Social impact in the locality

Generally positive.

Economic impact in the locality

Generally positive, creating employment in the Mudgee Region.

Site design and internal design

Adequate as discussed throughout this report.

Construction

To comply with the Building Code of Australia.

Cumulative Impacts

Nil. There are no known impacts that have the potential to act in unison, in terms of space or time, or owing to their repetitive nature, that would produce an effect greater or different than the sum of the separate parts.

SUITABILITY OF SITE FOR DEVELOPMENT

Does the proposal fit in the locality

Yes. There are no hazardous land uses or activities nearby, there are no constraints posed by adjacent developments and there are adequate utilities and transport facilities in the area available for the development.

Are the site attributes conducive to development

Yes. The site is not subjected to any natural hazards, and the project will not impact any critical habitat, threatened species, populations, ecological communities or endangered habitats on the site.

SUBMISSIONS MADE IN ACCORDANCE WITH ACT OR REGULATIONS

Public Submissions

The development was notified, in accordance with Mid-Western Regional Development Control Plan 2013, for a period of 14 days on 3 separate occasions. In the first instance, insufficient information was provided by the applicant, and therefore was renotified upon receipt of the requested further information. In response to the submissions received in the second notification period, the application was notified for a third time addressing some of the concerns raised.

The following number of submissions were received:

- First notification – 5 submissions;
- Second notification – 21 submissions; and
- Third notification – 21 submissions.

A total of 27 parties lodged a submission.

The submissions have been noted, and discussed below. Please note, that the submissions relating to the accommodation component of the original application have been omitted from this discussion.

Noise

Potential noise impacts have been one of, if not the most, contentious issue associated with the proposed development. The complainants argue that because no noise testing was undertaken, the theoretical report could not possibly reflect the background noise level in the area.

Submissions state that given the area is so quiet, noise will travel no matter what noise treatments are put in place to alleviate this. The primary concerns are amplified music and crowd chatter, particularly on the deck, which becomes louder as people become intoxicated.

Comment:

The noise assessment prepared by *Spectrum Acoustics Noise and Vibration Consultants*, adopts the noise level of **35dB(A)** for the development. This will form part of a condition of consent – condition 6.

In accordance with the *Noise Policy for Industry*, the 35dB(A) noise level is the most restrictive limitation Council can impose, even if a background level, through testing, is found to be less. As the application has committed to operating within this allowable noise level, no noise testing was required at Development Application stage.

It should be noted that the applicant would be able to increase their allowable noise output if they can prove, through adequate noise testing, that the background level is higher than the assumed minimum of 35dB(A).

It is recommended that a condition be imposed, that requires a further acoustic assessment to demonstrate the maximum noise level within the function centre that will correlate with a compliant noise level at the boundary of the site. Suitably calibrated noise monitoring equipment is to be used during wedding or party events to record sound pressure levels within the function centre, to ensure compliance with the maximum allowable noise level at sensitive receptors.

A condition has also been imposed that once operational, verification testing of not less than 1 week duration is to be undertaken to demonstrate compliance with the adopted noise goal. For

completeness, the testing is to occur where there are a minimum of 2 weddings or party events within the week.

In the event testing reveals any non-compliances, additional acoustic measures are to be implemented within 2 months and further testing done to verify compliance.

All results are to be submitted to Council for confirmation.

Hours of Operation

Concerns were raised in each round of submissions in relation to the hours of operation being too long, and inappropriate in a quiet rural setting. This concern was directly related to noise impacts.

The submissions suggested that:

1. 3rd party hire of the function centre will relinquish control of the premises. This will result in rules not being adhered to, and guests will not leave the site at the very conclusion of the event, which will prolong the disturbance;
2. Operation of the site for leadership/training functions will result in offensive noise being emitted every night.

Comment:

In response to the 2nd submission period, the applicant reduced the proposed hours of operation to the following:

- a. 8am – 10pm Monday – Saturday;
- b. 8am – 6pm Sunday.

The development has been strictly conditioned to alleviate the above concerns.

1. A site manager is to be on-site at all times during wedding or party events to ensure the function centre is run in accordance with the consent. The development has been conditioned that amplified music is to finish by 9:45pm and the event concluded by 10pm. Guests are to be ushered to their transport in an orderly fashion, to avoid disturbance.

An Operational Management Plan is to be provided to, and approved by Council at least 1 month before the first wedding function/party event, demonstrating among other things, how events will be managed and concluded.

Additionally, noise complaints may be made to the police, and noise abatement orders sought through the Local Court.

2. The development has been conditioned that amplified music is only to occur on Fridays and Saturdays, and only during the allowable 20 wedding or party events within the calendar year. The operation of the site for the leadership functions will remain bound by the noise conditions imposed, all year round.

Increased Traffic, Safety Concerns, and Condition of Rocky Waterhole Road

Council's Development Engineer has provided commentary in relation to the road, traffic and safety concerns:

State of Rocky Waterhole Road – narrow and soft broken edges not appropriate for additional traffic:

The construction and condition of the road is a matter for Council to manage and undertake appropriate maintenance. The proposed development is not considered to result in a significant increase in traffic volumes sufficient to warrant this development providing for upgrade and maintenance works.

80 km/hr speed limit too fast and not abided by:

The existing speed limits are appropriate for both the locality and road standard (sealed local road). Enforcement of speed limits is a Police matter. As noted above the proposed development is not considered to result in a significant increase in traffic volumes sufficient to warrant a reduction in the speed limit which requires review and approval by RMS.

Safety concerns relating to:

The single lane bridge:

Again as noted above road infrastructure, including the single lane bridge, is a matter for Council to manage and undertake appropriate maintenance. The proposed development is not considered to result in a significant increase in traffic volumes sufficient to warrant this development providing for a bridge upgrade.

Runners/cyclers/walkers:

There is no existing grade separated facility to provide for these road users. The proportionally limited increase in traffic generated by this development does not provide sufficient justification to require the developer to provide for external pedestrian and cyclist facilities. Concerned residents may lodge a request for upgrade and improvement to Council through appropriate processes to include these works on a future Capital Works program.

Reckless drivers:

Reckless drivers are a matter for Police enforcement and control and cannot be attributed solely as a requirement for this developer to manage.

Sight distances at proposed entry:

Sight distances have been assessed and are considered to meet the relevant Austroads design standards.

Requirement to widen road, and widen at access point:

An upgrade of the access crossover will be required to provide for two lane (entry / exit) traffic. The upgrade will also require provision of turning lanes for exit and entry. Assessment of plans may also require the provision of localized widening to provide for a 'slip lane' for south bound traffic in the event of a queued vehicle waiting to enter.

Rocky Waterhole Road/Castlereagh intersection requires upgrade:

An upgrade to the Castlereagh Highway / Rocky Waterhole Road is not considered necessary, owing to the negligible increase in vehicular traffic. Furthermore, owing to the small number of traffic movements, the RMS were not required to be consulted as part of the application.

Car headlights being directed into properties primarily when exiting the site onto Rocky Waterhole:

It is noted that there are no houses within approximately 200 metres of the entry, with the nearest being screened by an avenue of trees. However, headlight spill is a matter that can be remedied by appropriate internal driveway design such that vehicles exiting the site will approach the road at a level or near level grade. Appropriate condition imposed.

Light Impacts

Submissions raised concerns that light will have detrimental impacts on adjoining residences. These include lighting generated from the function centre and light from cars and buses directed into residences as they enter and exit the site.

Comment:

The development has been conditioned to the effect that exterior lighting associated with the development shall be designed and installed so that no obtrusive light will be cast onto any adjoining property or roadways, in accordance with Australian Standard 4282 "*Control of the Obtrusive Effects of Outdoor Lighting*".

The development has been conditioned that the design of the driveway access must provide an alignment with level or flat grades to ensure headlight spill from exiting vehicles does not create nuisance for nearby housing. This will help alleviate the light impacts on residences on the east side of Rocky Waterhole Road, specifically the dwelling directly opposite, which is 450m uphill.

Wedding and party events are limited to 20 times per year, with a maximum of 100 people. The fact that the majority of patrons will utilise bus transport or carpooling to get to and from the site will reduce the number of vehicles entering and exiting. For the most part, it is likely vehicles will enter and exit the site once. The restriction of hours to 10pm will ensure lights are not constant throughout the night.

Economic Impacts

Several of the objections submitted that property prices would be significantly devalued, should the development be approved.

Comment:

Under s 4.15 of the EP&A Act the consent authority, in determining a development application, is to take into consideration the likely impacts of the development, including (relevantly) social and economic impacts in the locality.

The loss of value to a single neighbouring landowner is not a proper matter for consideration, on the basis that some broader economic impact are required in the "locality" as specified in the EP&A Act.

Throughout the assessment and notification process, there has been no information provided that would give any weight to these claims that would, in itself, warrant refusal of the application.

Views

Submissions have stated that the development will impact on the views of adjoining property.

Comment

The right to a view was dealt with by the High Court in *Victoria Park Racing & Recreation Grounds Co Ltd v Taylor* [1937] HCA 45, which remains good law today. The High Court held that a property owner does not own the views from their land. **This has been affirmed in a number of subsequent decisions.**

Notwithstanding the above, the topography of the site and surroundings, compliance with Council setback standards, and distance to adjoining residences ensures that the proposed development will not significantly obstruct, or obscure any views. Additionally, landscaping is proposed, as shown on the site and landscaping plan submitted with the application that will further restrict views from Rocky Waterhole Road and adjoining property.

Privacy

Issues were raised in relation to the impacts the development will have on adjoining resident's privacy, in relation to overlooking adjoining residences.

Comment:

The function centre meets the minimum setback of 20m required by Council's DCP. The nearest residence is over 300m away, uphill from the function centre. Dwellings downhill from the site are over 400m away, and with no direct line of sight.

Signage

The application initially proposed illuminated signage within the front boundary. Submissions raised put forward that illumination is inappropriate in the setting, and that the signage development standards in Council's DCP, and *SEPP 64 Advertising and Signage* had not been adequately addressed.

Comment:

Illumination is prohibited in rural areas, and the applicant subsequently amended the plans. The type and size of the proposed signage complies with DCP standards, and SEPP 64 has been addressed in this report. The signage is therefore considered appropriate in the setting.

Clarification of Use

Submissions suggested the intended use of the function centre was vague and more clarity should be provided. Concerns were raised that the corporate training component was a 'smoke screen' to mask the primary use as a function centre/party venue.

Comment:

In response to submissions, an addendum was provided clarifying the intended use as a corporate/leadership training facility, and a function centre.

Remediation of Land

One submission suggested that the application neglected to address *SEPP 55 – Remediation of Land* on a property with an old quarry, and vineyard.

Comment:

Clause 7(4)(c) sets out the type of land that contamination and remediation needs to be considered in determining a development application, that being residential, educational, recreational or child care purposes. A function centre is a notable omission from the 'land concerned' and therefore are not required to address SEPP 55. Notwithstanding the above, there is no expectation of guests being subject to long term exposure, or exposure arising from working the land.

Furthermore, in this instance, the proposed buildings are not located within any vineyard, or land known to be used for agriculture, and the existing quarry was utilised for the extraction of gravel for road base, and was not known to contain contaminated material.

Tree Removal

Submissions raised concerns in relation to tree removal. One suggested that the *Biodiversity Conservation Act 2016*, and *SEPP 44 – Koala Habitat Protection* needed to be addressed.

Comment:

The development does not propose to remove any trees. However, in the event any are needed to be removed, clearing up to 0.5ha on Lots of 1ha to less than 40ha, does not require any approval as set out in the *Biodiversity Conservation Regulation 2017* thresholds. No trees on-site form part of a koala corridor. Accordingly, no consideration of tree removal is required.

Inconsistent With Objectives of the Zone

Concerns were raised that the proposed development does not meet the objectives of the zone, and will prohibit the land from being used for its intended purpose or intensive plant agriculture.

Comment:

In *BGP Properties Pty Limited v Lake Macquarie City Council*, the Court stated that in most cases it can be expected that approval is granted for an application to use a site for a purpose for which it is zoned, provided the design of the project results in acceptable environmental impacts.

The function centre is permitted in the zone, and is located within the area historically used for quarrying gravel material. This area is extremely rocky, and not ideal for intensive plant agriculture. The area of the site between the proposed buildings and the existing residential dwelling is currently utilised for grazing purposes. This will be left vacant, and will not prohibit future use of that area for intensive plant agriculture.

As discussed throughout this report, the proposal, and the limitations placed on it through conditions of consent are considered acceptable.

Safety

Concerns were raised in relation to safety issues from the quarry on the site.

Comment:

The development has been conditioned that a plan of management be provided to Council, satisfactorily demonstrating specific safety measures that will protect guests from the on-site quarry.

Plan of Management

One submission identified that a plan of management had not been submitted with the application.

Comment:

A Plan of Management is not required to be submitted with applications for development consent. Nevertheless, a condition has been imposed that an Operations Management Plan is to be submitted to and approved by Council at least 1 month prior to staging the first party event. This will allow the developer to provide specific details of how the site will operate, that may be updated and improved throughout the life of the development.

The Operations Management Plan is to address, but not be limited to, the following:

- a) Telephone and email contact details for the on-site manager.
- b) Details of a complaints contact and format for a complaints register.
- c) A methodology for recording the number of guests to the site.
- d) Procedures for weddings or party events, including location and timings of ceremonies, reception, the conclusion of the event, and direction of guests to their transport.
- e) Hazard, fire and emergency management.
- f) Lighting to and within the event.
- g) Waste management.
- h) Liquor licencing and alcohol management.
- i) Specific measures to ensure the safety of guests from the on-site quarry.
- j) Dust control.

Agricultural Buffers

Submissions raised concerns relating to agricultural buffer zones not being complied with and that patrons would be subject to health risks resulting from spray drift. One submission presented several policies and guidelines to support this claim.

Comment:

None of the policies or guidelines provided are applicable in this instance. These include:

- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* – this proposal is a development application, not exempt or complying development. Accordingly, no consideration of this policy is required.
- NSW Department of Primary Industries PRIMEFACT GUIDELINES – refers to the Exempt and Complying Development codes above, which are not applicable.
- Schedule 3 cl 21(4) of the *Environmental Planning and Assessment Regulation 2000* – applies to ‘Designated Development’ intensive livestock agriculture – poultry. This application is not Designated Development, nor related to poultry.
- Western Australia Department of Health – Guidelines for Separation of Agriculture & Residential Land Users – these guidelines have no authority in NSW.

The EPA regulates mismanagement of spray drift under the *Pesticides Act 1999* and works with communities to reduce spray drift by providing guidance and advice. It is the obligation of the sprayer to ensure best practice guidelines are followed to avoid spray drift. The EPA’s guidelines for reducing conflicts by avoiding spray drift requires the grower to know what to do; check conditions before spraying; consider and notify neighbours and suitably adjust spray equipment.

On-site Sewage Management and General Waste

Concerns were raised that the septic report was flawed, and the development would likely lead to sewage entering the ground water, and seeping onto adjoining property. Issues regarding waste disposal were also raised.

Comment:

A Section 68 Application has now been submitted with Council. The Section 68 is to be approved prior to issue of the Construction Certificate. The approval will ensure the safe disposal of septic, wholly within the site.

A condition has been imposed that any waste generated by the development is to be disposed of lawfully, at a licensed facility.

Incompatible in the Area

Submissions have stated that the proposed function centre is incompatible with the agricultural and residential character of the area.

Comment:

As discussed in relation to the above submissions and throughout this report, the development is permitted with consent and has generally complied with the relevant development controls, with appropriate conditions of consent being imposed to reduce impacts on the amenity of the area.

It is not unreasonable for development, which is permitted with consent in Council's LEP to be approved, where it can coexist with the existing surroundings without significant impact, with conditions of consent in place to regulate compliance.

Submissions from public authorities

No submissions were sought or received from public authorities.

THE PUBLIC INTEREST

Federal, State and local government interests and community interests

No significant issues in the interests of the public are expected as a result of the proposed development.

CONSULTATIONS

Health & Building

Council's Health & Building Officer has not raised any concerns with the proposal subject to standard conditions.

Development Engineer

Council's Development Engineer has not raised any concerns with the proposal subject to standard conditions.

Heritage Advisor

No consultation necessary.

Community Plan implications

Theme	Protecting Our Natural Environment
Goal	Protect and enhance our natural environment
Strategy	Ensure land use planning and management enhances and protects biodiversity and natural heritage

Strategic implications

Council Strategies

Mid-Western Regional Local Environmental Plan 2012
Mid-Western Regional Development Control Plan 2013
Mid-Western Regional Contributions Plan 2019

Council Policies

Not Applicable.

Legislation

Environmental Planning & Assessment Act 1979
Environmental Planning & Assessment Regulation 2000

Financial implications

The application will be required to pay develop contributions in accordance with the Mid-Western Regional Contributions Plan 2019.

Associated Risks

Should Council refuse the Development Application, the applicant may seek a further review of this decision or appeal through the Land & Environment Court.

CAMERON AMOS
TOWN PLANNER

LINDSAY DUNSTAN
MANAGER, STATUTORY PLANNING

JULIE ROBERTSON
DIRECTOR DEVELOPMENT

15 November 2019

Attachments:

1. Statement of Environmental Effects. (separately attached)
2. Submissions. (separately attached)
3. Safe Intersection Site Distance. (separately attached)
4. RMS Advice. (separately attached)
5. Accoustic Assessment (Original). (separately attached)
6. Independent Acoustic Review (Applicants). (separately attached)
7. Acoustic Assessment (Objectors). (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER