



AGENDA  
of the  
ORDINARY MEETING OF COUNCIL  
to be held on  
WEDNESDAY 24 APRIL 2013  
in the  
ALEXANDRA COUNCIL CHAMBERS  
commencing at  
6.00 pm

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**1. PRAYER & RECONCILIATION STATEMENT****2. APOLOGIES AND REQUESTS FOR LEAVE OF ABSENCE**

File: 12/02/19

**3. CONFIRMATION OF MINUTES**

- Minutes of the Ordinary meeting of Council held on 27 March 2013
- Minutes of the Special meeting of Council held on 10 April 2013

**4. DISCLOSURES OF INTEREST OR CONFLICT OF INTEREST**

File No: 12/01/06-1

**5. OPEN FORUM****6. PETITIONS RECEIVED BY COUNCIL****7. REPORTS BY ADVISORY COMMITTEES OR SPECIAL COMMITTEES****7.1 MURRINDINDI ENVIRONMENT ADVISORY COMMITTEE**

File: 58/03/16

(Refer Encl 7.1 – Minutes of Murrindindi Environment Advisory Committee held on 9 April 2013).

***Recommendation:***

**That the Minutes of the Murrindindi Environment Advisory Committee meeting held on 9 April 2013 be received.**

**8. OFFICER REPORTS****8.1 DEVELOPMENT & ENVIRONMENT****8.1.1 *Castella Quarry – Proposed Alteration to Hours***

File No: 1999/75

Land: 2900 Melba Highway, Castella

Proposal: Extension of hours under condition Q of Planning Permit 1999/75

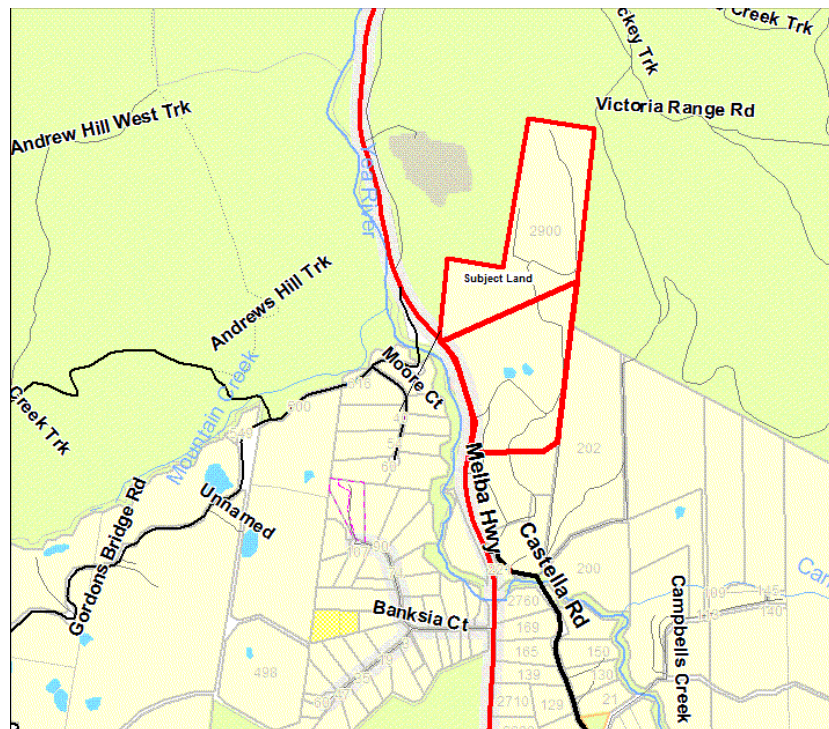
Applicant: Filja Pty Ltd

Zoning: Farming

Overlays: Bushfire Management Overlay

Attachments: Application and two noise assessment reports (*refer Encl 8.1.1*) (aerial photograph and submissions distributed separately)

## Locality Plan



### **Purpose:**

This report recommends that a request to extend the hours of operation for the Castella Quarry under condition Q of planning permit 1999/75 be refused.

### **Recommendation:**

***That Council refuse to allow an extension of hours under Condition Q of Planning Permit 1999/75 on the grounds that the extended hours will adversely impact on the amenity of the nearby low density residential zoned land with an unreasonable level of noise during the night period prior to 7.00am.***

### **History:**

The quarry operates under planning permit 1999/75 which was issued by the Minister for Planning as part of the approval of the consolidated Murrindindi Planning Scheme. As part of that process there were a number of developments that were directly permitted and controlled through a planning scheme provision instead of a planning permit. These controls were translated into a planning permit at the time that the consolidated Murrindindi Planning Scheme was approved. In this instance the quarry operation was approved by the Shire of Healesville and the operating conditions were contained in the Healesville Planning Scheme.

The original approval of the quarry was therefore an amendment to the former Healesville Planning Scheme and not a planning permit. The amendment process was similar to a planning permit application and allowed for public input. A total of 43 objections (including one from the former Yea Shire Council) and 9 supporting submissions were received to the amendment and half of the objectors also made, or were involved in, verbal submissions to the Planning Panel. The Panel was appointed by the Minister for Planning to hear submissions to the amendment proposal and ultimately the amendment was approved by the Minister for Planning.

The amendment provisions were subsequently directly translated into the permit and allow an extractive industry to occur on the site subject to conditions that deal with operational, environmental and amenity issues, including restrictions on the hours of use.

The quarry has been operating prior to 7.00am for some years. When this issue was first raised with Council the quarry requested a temporary extension of time due to the need to fulfil orders and was granted permission to enter the property at 6.30am but not to leave with loaded trucks until 7.00am. This was only for a limited period of time and has since expired.

**Proposal:**

The application is to obtain consent to allow trucks to enter the site and undertake loading activities from 5.30am until 6.00pm Monday to Friday inclusive and from 5.30am to 1.00pm Saturdays and to allow all other extractive operations to be conducted from 6.00am to 6.00pm Monday to Friday inclusive and 6.00am to 1.00pm Saturdays.

The existing Condition Q reads as follows:

*The operator must ensure that unless authorised otherwise in writing by the Responsible Authority, no operation including excavation, drilling, blasting, loading, crushing and cartage of stone or other material or access to the site by cartage trucks shall take place outside the hours of 7.00am and 6.00pm Monday to Friday inclusive, and 7.00am and 1.00pm on Saturdays and no works, other than essential maintenance, shall occur outside the hours of 6.00am and 6.00pm Monday to Friday inclusive, and 6.00am and 4.00pm on Saturdays, or on a Sunday or a Public Holiday.*

The justification for the application on economic grounds is the need to be able to have rock product delivered on site prior to 7.00am to meet the demand of customers. The request for truck access and loading from 5.30am is to allow trucks to leave the site between 6.00am and 6.30am to arrive on site at 7.00am depending on the travel distance. The need for extended hours for other extractive operations such as drilling, crushing etc has not specifically been addressed in the application.

The applicant advises that the inability of the quarry to remain competitive threatens their on-going viability which could lead to a loss of local employment and other flow on economic consequences.

The application includes two noise assessment reports with the original report dated 28 August 2012 and a follow up report dated 10 December 2012, both reports by Neville Goddard of Watson Moss Growcott Acoustics Pty Ltd. The brief in undertaking the acoustic assessment was to determine whether the proposed extended hours would comply with the relevant noise industry standards for regional Victoria *Noise from industry in regional Victoria: Recommended maximum noise levels from commerce, industry and trade premises in regional Victoria* (NIRV; EPA publication 1411). The acoustic reports are included in the attachments to this report.

The allowable noise levels are split into the day period being between 7.00am to 6.00pm Monday to Friday and 7.00am to 1.00pm Saturday, and night period from 10.00pm to 7.00am. The ambient noise levels for the night time period are lower and therefore the allowable noise levels during that period is also lower.

In summary the first report found that the quarry was complying with the guidelines during the day period but was not complying during the night period between 6.00am and 7.00am. This was due to the level and character of engine/exhaust brake operation while descending the access road loaded. It was recommended that more effective mufflers be fitted, or avoid the use of engine/exhaust brakes prior to 7.00am.

Since that time further work was done on two trucks with new muffler systems being fitted and one truck terminated from the quarry.

The second report is the result of further testing on the site. This was conducted using a stationery test in relation to exhaust noise levels and also measurements were taken while trucks were travelling on the quarry access road to enable comparison with similar measurements conducted prior to installation of the new mufflers. This test was done with vehicles going both uphill and downhill although the vehicles going downhill were not loaded. Noise reductions of 3 – 6 dB(A) were recorded which concluded that the noise level could meet the *Recommended Maximum Noise Levels* (RMNL) for the night period. The report also states that the onus is on the quarry to ensure that trucks using the quarry access road continue to monitor compliance with these noise levels.

The application addresses future compliance and proposes the following:

1. *Monitoring of the compliance annually with the derived RMNL to be undertaken annually. If compliance is demonstrated for two years then this monitoring would cease. This monitoring would be undertaken by a Council appointed consultant and done at a time nominated by Council (without the quarries knowledge). It would be paid for by Castella Quarries on the basis of a pre-approved quote.*
2. *Place a large sign at the entrance to the quarry advising truck drivers to keep the use of exhaust / engine brakes to the minimum necessary to ensure an acceptable noise environment for neighbours.*
3. *To develop a Code of Conduct for Drivers and as part of the normal quarry induction, educate drivers regarding the importance of making no more noise than necessary when on the access road as it is important to the viability of the quarry. Also advise drivers that as the date and time of their travel along the access road is recorded it will be possible to identify those drivers who threaten the viability of the business by making unnecessary noise, and*
4. *To locate signs regularly spaced along the access road to reinforce the need for drivers to keep noise levels down.*

***The Land & Surroundings:***

The quarry is situated on a site of 92 hectares on the eastern side of the Melba Highway at Castella 800 metres north of Castella Road. The excavation area is approximately 20 hectares in area and is located at the far north of the land at an elevation 280 metres above the Melba Highway. The access road leading into the quarry is more than 2km long, very steep and intersects with the Melba Highway directly opposite land within a Low Density Residential zone.

The land is surrounded by the Toolangi State Forest to the west, north and east with Farming zoned land to the south and an area of Low Density Residential zoned land to the south west on the western side of the Melba Highway. Thirteen Low Density Residential lots are located within 500 metres of the quarry property boundary with the majority in Moore Court and three in Wattle Court. All five of the objectors are located on Moore Court which is the closest area to the quarry and access road.

***Referrals:***

The application was not referred to any authorities. The Work Authority for the site allows for the same hours of use as the planning permit.

***Consultation:***

This application does not have third party rights, however due to the implications of this application notification was made by mail to all owners within 500 metres of the property boundary with an opportunity to comment on the proposal.

<b>Newspaper / Other</b>	<b>Publishing/Consultation Date(s)</b>
<b>Newspaper:</b>	N/A
<b>Consultation:</b>	6/6/2012 Previous meeting prior to application with two original objectors, planning officer, Councillor, quarry owner and consultant
<b>Mail out:</b>	8/1/2013 to 18 owners within 500 metres of quarry property boundary

There were five objections and one letter of support and the objections are précised below:

- Sleep disrupted by the sound of trucks arriving and leaving the quarry (5)
- Noise of quarrying affects quality of life (3)
- Residents should not be penalised due to economic need of quarry
- Disregard of times to date does not give faith that it will not keep occurring no matter what hours are permitted
- Quarry should investigate alternative access arrangements or erect sound barriers on road
- Quarry has history of exceeding noise limits which has also been shown by the noise testing
- Second lot of noise testing did not measure with engine brakes applied
- Excessive noise levels have continued even after the original testing and work on truck mufflers
- Quarry noise has become noisier over the years
- Quarry has commenced operation at 5.30am for years
- Truck noise on highway is different from those using quarry as the quarry trucks slow down and use gears and brakes
- Quarry owner only controls three trucks and has no authority over others using the quarry
- Have complained to quarry for years and no result
- Quarry noise is significantly louder than highway traffic

***Planning Considerations:***

The application is to increase the hours of use in the mornings only, Monday to Saturday. It is proposed to extend starting times from 5.30am for access and truck loading and from 6.00am for all other works including trucks leaving the site.

Refusal to allow an extension of hours will limit the operating hours of the quarry to a 7.00am start Monday to Saturday for all access and quarry works except for essential maintenance. The existing hours of use are all within the *day period* as defined by the Environment Protection Authority while the proposed hours come under the *night period* which specifies lower recommended noise levels.

An acoustic assessment was undertaken and maximum noise levels were determined as 52dB(A) during the day period and 45dB(A) during the night period. After the initial testing the consultant determined that the noise levels during the day time period were in compliance with the guidelines and that the night period noise levels did not comply. The measurements taken of trucks leaving the quarry largely did not comply due to the use of engine/exhaust brakes and inadequate muffler systems.

It is clear from the objectors that there are issues with all vehicle movement within the site but the major problem is the use of engine brakes which significantly raise noise levels, these levels are heard within the confines of surrounding residential zoned dwellings. Given the noise report states that the levels are just within the parameters of the recommended guidelines, any increased activity outside of the day period hours has the potential to increase the impact of noise already being experienced by surrounding neighbours.

It is also concerning that the later noise testing was not comprehensive in that loaded trucks were not tested, engine/exhaust brakes were not used and testing was limited to two vehicles.

The second report states that the three noisiest trucks were identified and noise attenuation measures applied to bring them into line with recommended noise levels with two trucks having new mufflers fitted, the other not being able to achieve a satisfactory reduction. Officers are concerned that individual cartage contractor numbers will increase with the increased use of the quarry between the hours of 5.30am and 7.00am and that the proposed signage treatment stipulating keeping exhaust/engine brakes to a minimum would not adequately address the problem.

The applicant has stated there is an economic imperative to deliver quarry products to construction sites prior to 7am and that competitors do not have the restrictions that have been imposed on the Castella Quarry. The Castella Quarry location is close to residential properties, which has caused restrictions to be placed on the hours of use. This was accepted when the quarry was first approved and in the subsequent translation into a planning permit.

**Conclusion:**

While quarries within the Murrindindi Shire are supported due to their economic benefit the proposed extension of hours has the capacity to unreasonably impact on people living in the adjacent dwellings. Officers would encourage the quarry to investigate alternative operating procedures to maintain viability within the marketplace that do not create additional noise impacts due to vehicle movements in the early hours of the morning.

**Legal/Policy Issues:**

**State Planning Policy Framework**

13.04-1 Noise Abatement

Strategy To ensure that development is not prejudiced and community amenity not reduced by noise emissions.

Policy Guideline To consider as relevant *Noise from industry in regional Victoria: Recommended maximum noise levels from commerce, industry and trade premises in regional Victoria* (NIRV; EPA publication 1411)

14.03 Resource Exploration and Extraction

Strategy Protect the opportunity for exploration and extraction of natural resources where consistent with overall planning considerations and application of acceptable environmental practice

Policy Guideline Provide for the long term protection of natural resources in Victoria  
To consider as relevant any policy guideline relating to State Environment Protection Policy

Particular Provisions

52.09 Stone Extraction and Extractive Industry Interest Areas

Purpose To ensure use and development of land for stone extraction does not adversely affect the environment or amenity of the area during or after extraction



To ensure that sand and stone resources, which may be required by the community for future use, are protected from inappropriate development

Decision Guidelines The effect of vehicular traffic, noise, blasting, dust and vibration on the amenity of the surrounding area

#### Other

Noise from industry in regional Victoria (NIRV – EPA publication 1411)

- Planning Scheme requires document to be considered as relevant.
- Document used for assessment of noise outside Melbourne Metropolitan area. Is a guideline only and needs to be applied through a statutory instrument such as a notice or a permit.

### **9. SEALING REGISTER**

<b><i>File Reference</i></b>	<b><i>Date Seal Affixed</i></b>	<b><i>Description of Documents</i></b>	<b><i>Signatures of Persons Sealing</i></b>
06/05/11	27/03/2013	Deed relating to subdivision between Murrindindi Shire Council, Owners Corporation Plan No PS401066J and "Owners Lot" and Marysville Residents Association Inc. Property: Marysville Village, Murchison Street, Marysville.	Cr M Rae M Abbey
2010/264	05/04/2013	Credit Agreement between Murrindindi Shire Council and Paul David Dettmann. BBA-1145/CA4_LA02 and Secretary to the Department of Sustainability and Environment on behalf of the State of Victoria	M Abbey M J Chesworth
32/04/03	17/04/2013	Greenfield site – improvements to remain, Murrindindi Shire Council and Ken Adams and Christine Adams, Section 17D Crown Land (Reserves) Act 1978 Lease (non retail) Marysville Caravan Park and Holiday Park, Marysville.	Cr J Walsh M Abbey
24/13/1217	17/4/2013	Borrower acceptance and Authorised Representative Certificate, ANZ Regional Business Banking	Cr J Walsh M Abbey

#### ***Recommendation:***

That the list of items to which the Council seal has been affixed be noted.

### **10. COUNCILLOR PORTFOLIO REPORTS**

#### **10.1 LAND USE PLANNING PORTFOLIO**

#### **10.2 ECONOMIC DEVELOPMENT PORTFOLIO**

#### **10.3 INFRASTRUCTURE AND WASTE PORTFOLIO**

**10.4 COMMUNITY SERVICES PORTFOLIO****10.5 CORPORATE SERVICES PORTFOLIO****10.6 NATURAL ENVIRONMENT & CLIMATE CHANGE PORTFOLIO****10.7 MAYOR AND DELEGATED COMMITTEE REPORTS****10.8 GENERAL BUSINESS****11. MATTERS DEFERRED FROM PREVIOUS MEETING****12. MOTIONS FOR WHICH NOTICE HAS PREVIOUSLY BEEN GIVEN****13. ASSEMBLIES OF COUNCILLORS**

File No: 12/01/06

***Purpose:***

This report presents the records of assemblies of Councillors for the 20 March 2013 to 10 April 2013, for Council to note in accordance with Section 80A of the *Local Government Act 1989 (the Act)*.

***Recommendation:***

**That Council receives and notes the record of assemblies of Councillors for March 2013 to 10 April 2013.**

***Background:***

In accordance with Section 80A of *the Act*, written assemblies of Councillors are to be reported at an Ordinary Council Meeting of the Council.

An assembly of Councillors includes advisory committees, where one or more Councillors were present, along with planned or scheduled meetings involving at least half of the Councillors and a Council Officer.

A Councillor who has a conflict of interest at an assembly of Councillors, must disclose the conflict of interest, and leave the meeting while the matter is being discussed.

A written record is required to be kept of every assembly of Councillors, including the names of all Councillors and staff at the meeting, a list of the matters considered, any conflict of interest disclosed by a Councillor, and whether a Councillor who disclosed a conflict left the meeting.

**Summary:**

<b>Meeting Name / Type</b>	Councillor Briefing Session
<b>Meeting Date</b>	20 March 2013
<b>Matters discussed</b>	<ol style="list-style-type: none"> <li>1. Budget Fees and Charges</li> <li>2. Waste Fees and Charges</li> <li>3. 2013/2014 Capital Works Program</li> <li>4. Organisational Staffing Requirements</li> </ol>
<b>Attendees:</b> Councillors – Cr Walsh, Cr Rae, Cr Ruhr, Cr Derwent, Cr Magner, Cr Challen	Staff – M Abbey, M Chesworth, R Cherry, T Johnson, J Canny, M Leitinger
<b>Conflict of Interest disclosures - Nil</b>	

<b>Meeting Name / Type</b>	Councillor Briefing Session
<b>Meeting Date</b>	3 April 2013
<b>Matters discussed</b>	<ol style="list-style-type: none"> <li>1. Y Water Centre</li> <li>2. Planning Application</li> <li>3. Council Plan</li> <li>4. Budget Fees</li> </ol>
<b>Attendees:</b> Councillors – Cr Walsh, Cr Rae, Cr Magner	Staff – M Abbey, R Cherry, M Chesworth, T Johnson, J Canny, M Crane
<b>Conflict of Interest disclosures - Nil</b>	

<b>Meeting Name / Type</b>	Murrindindi Environment Advisory Committee
<b>Meeting Date</b>	9 April 2013
<b>Matters discussed</b>	<ol style="list-style-type: none"> <li>1. Draft weed and Pest Animal Control Plan</li> <li>2. Native Vegetation Offset Policy development</li> </ol>
<b>Attendees:</b> Councillors – Cr Kennedy	Staff – Z Stephens, M Chesworth, S McNair
<b>Conflict of Interest disclosures - Nil</b>	

<b>Meeting Name / Type</b>	Special Meeting of Council
<b>Meeting Date</b>	10 April 2013
<b>Matters discussed</b>	<ol style="list-style-type: none"> <li>1. Y Water Centre</li> </ol>
<b>Attendees:</b> Councillors – Cr Walsh, Cr Rae, Cr Challen, Cr Kennedy, Cr Magner, Cr Derwent	Staff – M Abbey, T Johnson, J Canny, M Chesworth, R Cherry
<b>Conflict of Interest disclosures - Nil</b>	

<b>Meeting Name / Type</b>	Councillor Briefing Session
<b>Meeting Date</b>	10 April 2013
<b>Matters discussed</b>	<ol style="list-style-type: none"> <li>1. Capital Works Program</li> <li>2. Induction and Transition Program – Goulburn Broken Catchment Management Authority</li> <li>3. Planning Applications</li> <li>4. Corporate Services Review</li> <li>5. Yarra Plenty Library Service</li> </ol>
<b>Attendees:</b> Councillors – Cr Walsh, Cr Rae, Cr Derwent, Cr Magner, Cr Kennedy, Cr Challen	Staff – M Abbey, T Johnson, J Canny, M Chesworth, K Girvan, R Cherry
<b>Conflict of Interest disclosures - Nil</b>	

**14.**            **URGENT BUSINESS****15.**            **CONFIDENTIAL ITEMS**

It is proposed that the following items be considered in closed session.

- Tender for the Design and Construction of Bridge Works, Allandale Road, Strath Creek
- Tender for the Refurbishment of Breakaway Bridge, Acheron
- Tender for Landfill Monitoring and Consulting Services (2013)
- Loan Borrowings 2012-13
- Tender for the Rehabilitation of Break O'day Road
- Reappointment of Chief Executive Officer

The meeting is to be closed to members of the public as the discussion of this item is confidential pursuant to (Section 89(2)(h) of the *Local Government Act 1989*) - any other matter which the Council or special committee considers would prejudice the Council or any person.