

Notice of Council Meeting



Council

An ORDINARY MEETING of LISMORE CITY COUNCIL will be held at the Council Chambers on Tuesday, 10 March 2015 at 6.00pm

Members of Council are requested to attend.

Lismore City Council acknowledges the people of the Bundjalung nation, traditional custodians of the land on which we work.

Gary Murphy
General Manager

Report

Subject	ELTHAM RAILWAY COTTAGE
TRIM Record	No BP15/7:P15648
Prepared by	Land and Property Officer
Reason	To consider a proposal from the Eltham Community Foundation Ltd that Council lease the Eltham Railway Cottage.

Executive Summary This report seeks direction from Council to entering into a lease with Transport NSW for the Eltham Railway Cottage and then sub-lease the property to Eltham Community Foundation Ltd.

Background

The Eltham Railway Cottage was built in 1894 as the Eltham Station Gatekeeper's Cottage. The cottage is located at 460 Eltham Road, Eltham on the Casino–Murwillumbah railway line.

The cottage is in poor condition. It is weatherboard constructed with a metal roof. Some recent modifications have been carried out. It has been badly damaged on the northern side and is overgrown with vines, weeds and trees. It is important to note that vandalism and ingress of the elements causing the degradation of some of the cottage's historic fabrics does detract from its contribution to the streetscape. The cottage has not been used for many years.

The cottage is in close proximity to other historic landmarks including the Eltham Gallery, Eltham Friendly Inn, Masonic Hall, tennis courts and other historic built elements, and forms part of the streetscape.

Eltham Community Foundation (ECF) has approached Council to determine whether Council could assist the ECF in obtaining a lease for the Eltham Railway Cottage. The ECF has primarily been active in saving the Eltham Railway Cottage.

The ECF is a 'not for profit' company limited which was established in 2006. It is a community based organisation with 21 members. It is an important initiative for the community that supports history, culture, art and the environment in becoming a sustainable village of the future. Since 2006 the community has rallied to save the cottage from demolition and the ECF has researched the cottage's history and raised funds for its restoration and reuse.

There have been preliminary negotiations for many years in relation to the renovation of the cottage by the ECF with Australian Rail Track Corporation who was originally managing the interstate track adjacent to the cottage and then subsequently by John Holland Rail Pty Ltd who have taken over the management responsibilities. In order to restore the cottage, the ECF is seeking security of tenure to carry out the remediation and restoration works.

The cottage is owned by the Australian Rail Track Corporation (ARTC), who sought to demolish the structure in 2006. The local community opposed such a move and then commissioned a Heritage Assessment to investigate alternative uses for the cottage.

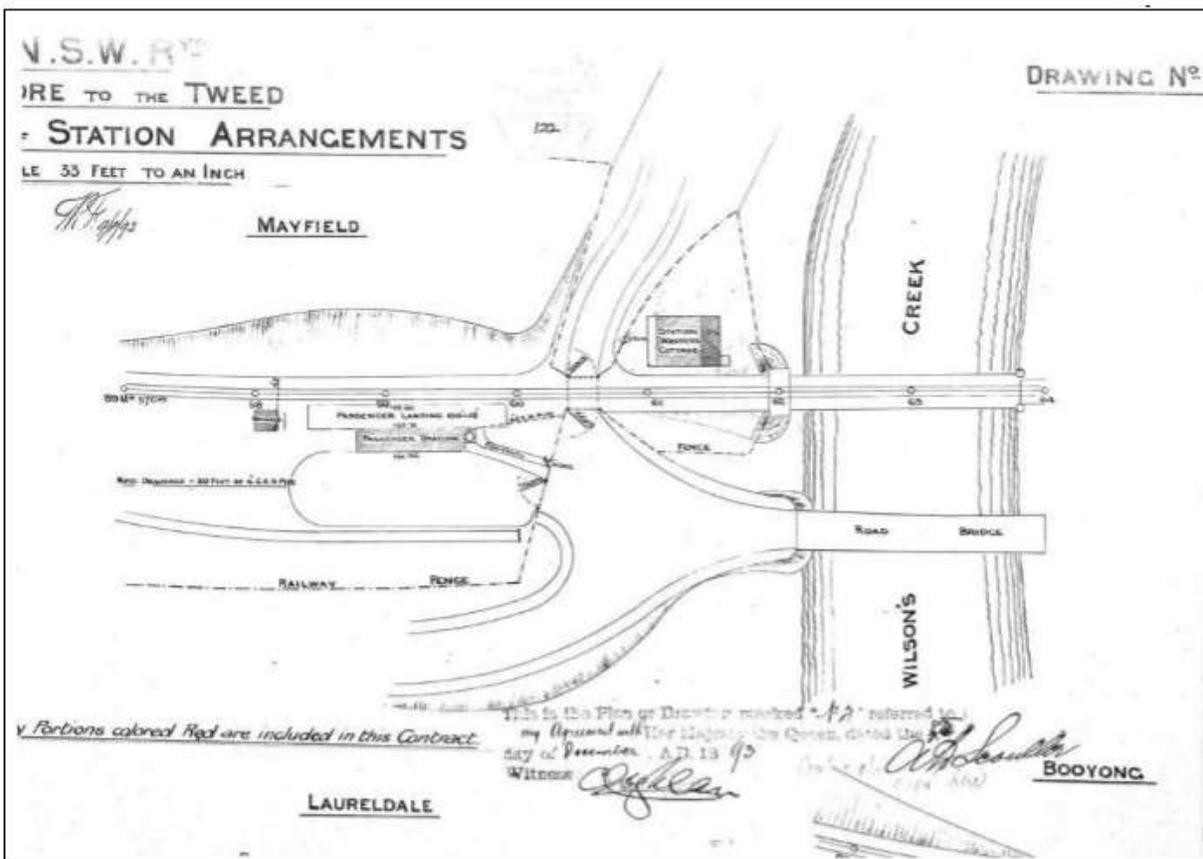
The following heritage lists were searched for reference to the Eltham Railway Cottage:

- Australian Heritage Database (which includes the World Heritage List,
- the National Heritage List,
- the Commonwealth Heritage List and the Register of the National Estate)
- State Heritage Register
- State Heritage Inventory
- Lismore LEP Heritage listing
- Royal Australian Institute of Architects 20th Century Register of Significant Buildings
- State Rail s170 register
- Register of the National Trust of Australia (NSW).

The Eltham Railway Cottage was not listed on any of the above heritage registers.



Photograph of the Eltham Railway Cottage



Station Plan of Eltham (then called Mayfield) showing relationship of the station, Cottage and bridge (Eltham Community Foundation)

Eltham Railway Cottage - Proposed Uses

The community survey that was undertaken in 2009 found the local community wanted the cottage to be used as a combined archive/museum, visitor centre and community centre.

Proposal 1

ECF has proposed the following uses:

- **Archive/Museum** - ECF has been collecting historical materials over the past years and these are currently being held in a small but safe room in the Eltham Masonic Lodge. This material would be moved to the Railway Cottage.
- **Meeting place** - for local groups including ECF and the Eltham Sports & Recreational Committee.

- **Youth access** - Eltham Public School Principal has expressed interest for the school to access facilities at the Railway Cottage.
- **Visitor Centre** - distributing pamphlets and brochures for the Lismore local government area.
- **Model Railway** - Clunes Model Railway Group has committed to help with displays and photos as well as volunteering for restoration of the cottage.

The cottage would be staffed four days each week for four hours per day.

Proposal 2

Eltham's three businesses have created a niche market that attracts visitors from nearby coastal towns of Byron Bay, Lennox Head and Ballina as well as the Tweed and Gold Coast. A large part of their business strategy would rely on the village's historic landscape to which the cottage contributes.

The mini business plan is attached as Attachment 1.

Long Term Plan for the Cottage

Eltham Community Foundation has spent considerable time negotiating with Transport NSW in an attempt to obtain a lease and therefore safely secure the cottage in order to carry out the remediation and restoration works. Over the past two years the ECF has been asked to submit a building condition report, a quote for restoration works and have commissioned two contamination assessment reports. A Heritage Assessment options report has been developed by Ainsworth Heritage.

The environmental assessment conducted by State Rail in 2005 found the site highly contaminated and unsuitable for public access. The Southern Cross University EAL Consulting GHD contamination assessment investigation detected elevated concentrations of arsenic, lead, polycyclic aromatic hydrocarbons, in particular benzo (a) pyrene. When comparing the results against commercial/ industrial criteria, three samples exceeded the criteria for lead and one for benzo (a) pyrene. The WHS audit found evidence of lead; biological hazards and asbestos sheeting were deemed to be present. However, the contamination does not pose a “significant risk of harm” to human health.

The ongoing neglect of the building will result in its eventual and total disintegration as the age and structure of the cottage requires maintenance in line with its material. In the short term the impact upon the cottage so far has been at moderate level.

The management of land resources takes into account contaminated lands on the application of the Precautionary Principle. The Precautionary Principle requires that the contaminated land is to be addressed.

The most widely employed formulation of the Precautionary Principle states this in Section 6(2)(a) of the Protection of the Environment Administration Act, 1991 (NSW). This provides that:

“If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason of postponing measures to prevent environmental degradation.

In application of the precautionary principle, public and private decisions should be guided by:

- (i) *Careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
- (ii) *An assessment of the risk weighted consequences of various options."*

In accordance with Section 121B of the Environmental Planning and Assessment Act, 1979, Section 124 of the Local Government Act, 1993 makes provision for orders to be made to address in certain circumstances activities that contribute to contamination and to make land safe. Pursuant to Section 124 of the Local Government Act, 1993, Order 22 provides Council with the ability to order the owner or occupier of land:

"To do or refrain from doing such things as are specified in the order to ensure that land is, or premises are, placed or kept in a safe or healthy condition".

Further Section 88E of the Conveyancing Act, 1919 provides that Council may:

"Impose restrictions on the use of, or impose public positive covenants on, any land to which this section applies for the purpose of the ongoing management of the land and may release or vary any such restriction or covenant."

This power, in conjunction with those that are available under Section 82A of Environmental Planning and Assessment Act, 1979 enables Council to impose obligations on the owner of land to do one or more of the following in relation to the land:

- a) to carry out any ongoing management of the land,
- b) to provide reports to Council at specified periods or on the occurrence of any specified event,
- c) to inform Council of any change in the ownership or occupancy of the land,
- d) to not carry out specified activities on the land and to not permit other persons to carry out any such activities on the land,
- e) to not use the land for specified purposes and to not permit other persons to use the land for those purposes,
- f) to carry out any other requirement in relation to the ongoing monitoring and maintenance of the land that is prescribed by the regulations.

The remediation or clean-up of the site must be undertaken so that the risks presented by the contamination are no longer present. The remediation process will involve the preparation of a management plan to achieve the desired level of remediation. This level may be set by the environmental authorities or the Eltham Community Foundation. The contamination issues need to be addressed prior to entering into a lease.

Due to the above contamination issues, Transport NSW remains reluctant to grant the Eltham Railway Cottage a lease.

Proposed Lease

Transport NSW has suggested two options for the Eltham Railway Cottage to obtain their objective:

1. Council consider purchasing the Eltham Railway Cottage from Australian Track Corporation (ARTC) for a nominal fee of \$1 then leasing to ECF (at peppercorn rent) on condition that ECF accepts responsibilities and costs of the remediation works.
2. Council consider entering into a head lease with Australian Track Corporation (ARTC) for the Eltham Railway Cottage, then granting a sub-lease to ECF (at peppercorn rent) on condition ECF accepts responsibility and costs of the remediation and restoration works.

Transport NSW has confirmed that it will consider an application from Council. However, it notes the following issues for Council's consideration prior to making an application:

- The land is subject to contamination;
- The building is in poor condition; and
- Transport NSW does not have any funding available to contribute to any remediation and/or make good the works.

If Council were to agree to enter into a head lease with Transport NSW, and then consent to a sub-lease with ECF, Council could insist on a clause inserted in the lease that allowed Council to terminate the head lease should the sub-lease terminate. Council does not wish to be left with responsibilities to clean up the contaminated site or restore the old building.

If ECF were able to gain a lease through Council it would need to agree to:

- Maintain Public Liability Insurance and take out Volunteer Insurance.
- Restore the cottage at no cost to Council (with the exception of applying for grants).
- Maintain the building and grounds.
- Pay utilities.
- Remain aware of WHS requirements at the cottage, particularly environmental factors e.g. contamination.

Any future terms of the sub-lease should not be considered burdensome upon Eltham Community Foundation and should be negotiated in good faith by the parties in order to benefit the wider community.

Community consultation

The Eltham Community Foundation (ECF) undertook its own community consultation amongst local residents to gauge their options regarding the cottage and appropriate uses for it in the future. Survey forms were distributed to every residence and business in the Eltham area. About 160 forms were distributed and 69 were returned. Survey results are provided in Attachment 2.

The following is an analysis of the results by ECF in order of preference:

Lismore City Council Meeting held 10 March 2015 - Eltham Railway Cottage.

1. Archive and Museum
2. Tourist Information Centre
3. Community Centre
4. Private Art Studio and Youth Centre
5. Private Film and Photographic Studio

Half of the forms returned by the ECF had made suggestions with regards to the reuse of the cottage. Table 4 contains the full list of the transcribed suggestions. The Community Suggestions Table attempts to quantify this input with the aim of (possibly) contributing to the overall results. It is significant from these suggestions that a large level of respondents suggest multiple uses for the cottage. Taking into account the community's second preference for a Tourist Information Centre, this would be a compatible use with an Archive/ Museum and provide further combined use.

Of the 160 surveys sent out 69, or 43% were returned to the ECF, with 35 (51%) of those returned having raised additional suggestions. Response to the survey was good and it is believed the results represent the views of the local Eltham community. The overall result of the survey is that the community voted for the cottage to be used as an Archive/Museum, or alternatively as a combined Archive/Museum and Tourist Information Centre.

Fundraising and Sponsorship

Eltham Community Foundation has been conducting fundraising activities over the past three years via monthly film screening in the Masonic Hall, Concerts in the Masonic Hall, and other activities as opportunities arise. Raffles are held at the Eltham Hotel nine times a year.

The ECF have been successful in receiving funds to purchase a PA system and electronic big screen to reduce expenditure for the monthly screening, thus increasing income. A booklet of the History of Eltham Railway Cottage was produced in order to raise funds. The Eltham Masonic Lodge has been a generous sponsor and has supported in the efforts to save the cottage. The Masons purchased an electric screen and provided liability insurance for the film nights. Eltham businesses such as the Village Gallery, Eltham Valley Pantry and Eltham Hotel support the retention of the cottage and have donated goods, time and provided opportunities for fundraising.

Strategic Alignment

One of the strategies in Imagine Lismore is to partner with the community. The proposed sub-lease would form a partnership with ECF whereby Council would take a long term lease of the property and ECF would undertake to manage it on Council's behalf by carrying out the restoration works.

The Eltham Railway Cottage is significant to the local community as it is part of the original set of buildings of the town of Eltham. The cottage is part of a larger significance of the entire railway line, which is regionally important to many in the Northern Rivers and one of the important historic infrastructure projects, which enables intergenerational equity of the cottage.

The cottage would no doubt be a potential attraction and/or form part of the ancillary infrastructure to support the proposed rail trail through the rail corridor.

Comments

Finance

The recommendations are supported on the basis all costs associated with the remediation and restoration of the site and the preparation of the sub-lease are the responsibility of the Eltham Community Foundation.

Other staff comments

Coordinator – Compliance

Contaminated Land Management

In relation to the matter of site remediation it is not possible to provide a definitive answer as to the level of remediation works that are required for the site due to the limitations of reporting to date and an understanding of any future land use. The matter of the management of land contamination is considered within a risk based assessment framework with a direct relationship between the proposed and/or existing land use sensitivity (residential is the most sensitive as there is an expectation of direct soil contact to commercial/ industrial where exposure is limited) and remediation or clean up objectives.

In undertaking any assessment Council is guided by relevant guidelines made or approved by the NSW EPA in accordance with the Contaminated Land Management Act. In summary the expectation for the site would be the preparation of a site specific remediation action plan (RAP). The RAP will confirm the remediation objectives for the site and identify the necessary works to be completed. A commercial/ industrial use may present the opportunity to, as part of the site remediation/ management response, to develop a site specific environmental management plan to manage the contamination risk rather than the undertaking of physical remediation works. An example of this would be the fencing off or providing physical barriers to contaminated zones. Such decisions can only be made on detailed information that would be derived through a detailed site analysis. In review of reporting presented to date and through the undertaking of site inspections it is considered that the matter of site contamination can be appropriately addressed.

Public consultation

The Eltham Community Foundation (ECF) has undertaken community consultation with respect to the proposed use of the site; details of this are included in Attachment 2. The ECF must continue to involve the local community in any ongoing work and ensure that the final use of the cottage is of benefit to the community and provides an ongoing benefit for Eltham.

Conclusion

The Eltham Railway Cottage is significant to the local community as it is part of the original set of buildings within the town of Eltham. The cottage is part of a larger significance of the entire railway line, which is regionally important to many in the Northern Rivers, and one of the important planned infrastructure projects for the railway corridor.

Despite its poor condition, the cottage retains a great deal of local and regional historic significance. Once restored, the cottage would complement the surrounding historic architecture and become a valued asset for the thriving community. As has been demonstrated the desire, planning and capability exists within the Eltham community to ensure the refurbishment of the cottage to a level where it will be suitable for community use for the ongoing benefit of Eltham and the wider Lismore region.

Council has the option of buying the site for a nominal amount but under the purchase would be accepting responsibility for remediation of the site.

It is recommended that Council agree to enter into a head lease for the property with Transport NSW subject to a sub-lease being entered with the Eltham Community Foundation. An option to purchase the site in the future for a nominal fee could be included in the lease and exercised by Council upon satisfactory resolution of the contamination issues. A condition of the head lease should be framed to allow Council to terminate should the sub-lease ultimately fail prior to resolution of the contamination issues.

The ECF would also be responsible for all costs associated with the remediation and restoration of the site.

Attachment/s

1. Eltham Community Federation Mini Business Plan for Eltham Railway Cottage
2. Eltham Railway Cottage - Community survey on future use
3. Environmental and Hazardous Materials Reports - Eltham Railway Cottage

<h2>Recommendation</h2>

That:

1. Council agree in principle to enter into a head lease with Transport NSW for the Eltham Railway Cottage situated at 460 Eltham Road, Eltham on the Casino–Murwillumbah railway line.
2. The General Manager enter into negotiations with Transport NSW for the proposed head lease of the Eltham Railway Cottage on the basis of:
 - a. The head lease being subject to Council being able to enter a satisfactory sub-lease of the facility with the Eltham Community Foundation Inc.

- b. That if a suitable sub-lease is unable to be agreed with the Eltham Community Foundation Inc, or is established but subsequently fails or ceases for whatever reason, Council retains the right to terminate the head lease.
 - c. Suitable clauses being included in the head lease to the satisfaction of Council's solicitor that indemnify Council against any responsibility for works or the costs involved with remediation of the site.
 - d. A clause allowing Council the option to purchase the site for \$1 should it so desire in the future.
3. Upon agreement with Transport NSW on terms and conditions for a head lease of the site, the General Manager enter into negotiations with the Eltham Community Foundation Inc for a sublease of the Eltham Railway Cottage on the basis of:
 - a. Should the sub-lease fail or cease for whatever reason, Council retains the right to terminate the head lease.
 - b. The Eltham Community Foundation Inc being responsible for all costs associated with the remediation and restoration of the site.
 - c. The Eltham Community Foundation Inc being responsible for all costs associated with the preparation of the sub-lease.
4. The seal of Council be affixed to the following documents:
 - a. Head lease agreement with Transport NSW
 - b. Sub-lease agreement with the Eltham Community Foundation Inc and any other documents necessary to finalise this resolution.

MINUTES OF MEETING

Public Access Session

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

John Maxwell - Eltham Railway Cottage Mr Maxwell detailed the history of the Eltham Railway Cottage since 1976. He fully endorsed the recommendations in the report. He addressed the issue of site contamination, advising a company had already been engaged to address this issue. He also mentioned the possible linkages with the proposed rail trail proposal.

REPORTS

11.1 Eltham Railway Cottage 29/15 RESOLVED that:

1. Council agree in principle to enter into a head lease with Transport NSW for the Eltham Railway Cottage situated at 460 Eltham Road, Eltham on the Casino– Murwillumbah railway line.
2. The General Manager enter into negotiations with Transport NSW for the proposed head lease of the Eltham Railway Cottage on the basis of:
 - a) The head lease being subject to Council being able to enter a satisfactory sublease of the facility with the Eltham Community Foundation Inc.
 - b) That if a suitable sub-lease is unable to be agreed with the Eltham Community Foundation Inc, or is established but subsequently fails or ceases for whatever reason, Council retains the right to terminate the head lease.
 - c) Suitable clauses being included in the head lease to the satisfaction of Council’s solicitor that indemnify Council against any responsibility for works or the costs involved with remediation of the site.
 - d) A clause allowing Council the option to purchase the site for \$1 should it so desire in the future.
 - e) If the land is purchased from Transport NSW it be offered for sale to the Eltham Community Foundation Inc. for the same price.
3. Upon agreement with Transport NSW on terms and conditions for a head lease of the site, the General Manager enter into negotiations with the Eltham Community Foundation Inc for a sub-lease of the Eltham Railway Cottage on the basis of:
 - a) Should the sub-lease fail or cease for whatever reason, Council retains the right to terminate the head lease.
 - b) The Eltham Community Foundation Inc being responsible for all costs associated with the remediation and restoration of the site.
 - c) The Eltham Community Foundation Inc being responsible for all costs associated with the preparation of the sub-lease.
4. The seal of Council be affixed to the following documents:
 - a) Head lease agreement with Transport NSW
 - b) Sub-lease agreement with the Eltham Community Foundation Inc and any other documents necessary to finalise this resolution.

(Councillors Marks/Battista) (BP15/7)

Voting for: Councillors Battista, Bennett, Clough, Dowell, Ekins, Houston, Marks, Meineke, Ritchie and Smith
Voting against: Nil