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# Memorial Hall Probity Audit Report Public Version



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# Memorial Hall Probity Audit Report

- This report was commissioned and undertaken prior to the construction component of the project. Therefore any reflections within this report does not include issues which may have arisen during the construction phase of the project.
- During the review the report writer found that all people that had been spoken to who were involved in the project operated with the very best of intentions and to the best of their abilities.



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# Memorial Hall Probity Audit Report

- Terms of Reference
- Governance Structure Review
- Guiding Documents
- Stakeholder Engagement
- Decision Making Process
- Financial Escalations
- Recommendations



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# Terms of Reference

- General Manager was instructed to undertake a probity audit of the Bellingen Memorial Hall refurbishment project.
- The purpose of the review is to provide Council an opportunity to reflect on the challenges faced during the project and provide recommendations based on lessons learnt.
- The produced report was designed as an internal working document and confidential. This presentation has now been amended to remove any material that should remain as confidential to the Council so as to place the information that does not need to remain as confidential in the public realm.
- The review covers the governance structure, stakeholder engagement, decision-making processes, financial escalations, and shortcomings in the project process.
- The review is focused on probity and governance and not a financial audit.
- Matters outside the terms of reference are not included in the report.
- The presentation will not discuss the project's history unless relevant to the content.
- The report provided recommendations to improve cost containment and future governance arrangements.



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# Governance Structure Review

- A governance structure was established at the commencement of the project
- Two groups were established: Project Control Group (PCG) and Project Management Team (PMT)
- PCG members included the Project sponsor (DGMCC), General Manager, and Create NSW representative(s)
- PMT members included the Project sponsor, Deputy General Manager Operations, Manager Community Wellbeing, Coordinator Youth Hub (External Contractor), and Chief Financial Officer
- The governance structure was informally changed with new members added and some members replaced
- Establishing two separate groups is to separate the 'hands-on' proponent of managing the Project, from its strategic oversight, but this was not supported in this case



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# Governance Structure Review cont...

- Conflict can arise for Council when two of its roles collide: as land owner and as public authority (This has now been dealt with through a formal policy on this matter)
- For a design and construct project, it would have been more appropriate for it to have been steered by someone with engineering or construction experience with a good knowledge of project management rather than DGMCC
- A junior civil engineer was appointed as project manager after the project had commenced, but without any real power to manage the project, which was a major reason for the challenges it faced
- The PMT was unevenly resourced with the majority of its members community-focused, rather than design and/or construction-focused.



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## Guiding Documents

- A document titled High Level Risk identificationV2 was provided, but it only lists risks without identifying any mitigation plans.
- The Procurement Plan suggests that all risks should have controls identified to reduce residual risk to an acceptable level, but this was not implemented.
- The Functional Manager is responsible for procurement outcomes, but the Initial Planning Overview states that the Deputy General Manager Corporate and Community is the lead on the Project Management Team, making it unclear if the two roles have the same responsibilities.



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## Guiding Documents cont...

- “The Overview”, created on 19 July 2019, outlines the scope of the project, which includes the upstairs refurbishment project, the refurbishment works, and the Hall to Hub Arts Evolution project.
- The project team had a variable membership and included core members responsible for community engagement, financial management, design and construction, grant milestones, payment claims, and project management.
- The roles of Sponsor and Project Manager were not defined, and there is no separation between their functions.
- The Overview document was quite detailed and appears to be a very good guiding document for the management of the project. However, in undertaking the research for preparation of the report, the writer only spoke to one person from all those interviewed who even mentioned its existence which brings into question whether or not it was used and referred to as and when necessary.





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# Stakeholder Engagement

- The reviewer asked for evidence of stakeholder engagement during the period from concept design to construction documentation.
- The only document provided was the Detailed Design Brief (Buildings) which was undated but created on 27 August 2019.
- The Design Brief refers to the Management Committee, Major User Groups, Major Stakeholder Groups, Subject Matter Experts, and the general community, but they were not defined.
- The Design Brief was created for seeking quotes from architectural companies to deliver developed designs for construction purposes.
- The Design Brief suggests that the consultation stage had concluded before drafting it.
- There was no written evidence of who was consulted with, the frequency of consultation, or the outcomes of such consultation during the period from concept design to construction documentation.
- The PMT meeting held on 7 November 2019 stated that community consultation had been undertaken and that additional consultation was being done.



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# Stakeholder Engagement cont...

- The Council report tabled on 29 July 2020 showed a circular process of "New concept design to Community Consultation to Design Reviews" and back to "New concept design," **which indicates a never-ending circle of consultation.**
- There does not appear a trigger to step outside the circular consultation phase

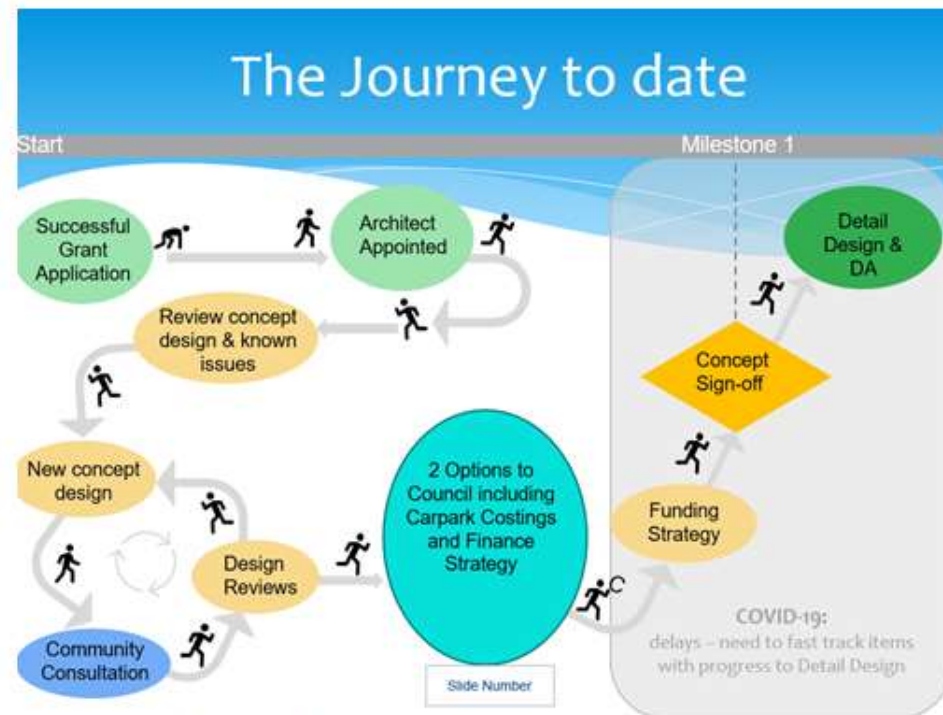


Image 1: The Journey to Date



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# Stakeholder Engagement cont...

- The lengthy community consultation process created delays and raised community expectations about the project, which was primarily about a building design and construction.
- There was no evidence of thorough documentation of negotiations about the neighbouring properties' issues, such as the car park and laneway.



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# Decision Making Process

- The grant application defined the original scope of works for the project, which included painting and preserving the building, upgrading bathrooms and the kitchen, improving flooring and lighting, and installing a hearing loop and solar panels.
- The grant application estimated the project would cost \$345,444 and was to be completed within 13 months, but external factors such as COVID and increased demand in the construction industry caused delays and increased costs.
- The grant application was based on quotes Council had received and a concept design drafted by an architect, but a staff member with design and construction experience should have assessed whether the project could be delivered for the estimated cost.
- Council's Local Preference Policy, which prioritizes local suppliers, may not always result in the most suitable contractor being appointed.



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# Decision Making Process cont...

- Despite the grant application stating that the project would be supported by the Manager Asset Design and Construction, there was no evidence of this happening.
- Establishing a panel of contractors to provide quick quotes for grant applications and planning may help manage tight timeframes and increased costs caused by external factors. (This is not necessarily agreed to by Management of Council)
- It then appears that the Council was provided with a grant under the Regional Cultural Fund of \$3.385million on top of the original \$335k Stronger Country Communities Fund.
- The RFT for the Detailed Design and Construct documentation had the project total at \$3.8 million from a total amount available of \$3.72 million.
- The first Quantity Survey (QS) review of the design came in at \$10.922 million. The Architects were not told to adhere to the RFT and to deliver a design within scope.



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# Decision Making Process cont...

- It is understood that it was the appeal of the design that encouraged the PMT and PCG to accept it and seek a resolution to gain further funds and also reduce some scope to come within the new budget. The report writer said that this is neither usual practice nor best practice.
- The QS report also had a long list of exclusions and that these exclusions were not scrutinized to undertake a risk assessment on cost escalation risks into the future.
- It is stated that it is very unusual for a contractor to go so far outside of the scope of a tender without some form of direction from the principal as they risk not getting paid. This is an opportunity for improvement so as to ensure it does not occur again.
- After work on the scope the QS was asked for a second and third report on costs with the second at \$6.93 million and the third at \$5.56million. Still all outside of the budget of \$3.72 million.
- There was evidence that the Project Manager tried to bring the PMT's attention back to the original concept designs however this was met with resistance.



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# Decision Making Process cont...

- The PMT and PCG minutes are incomplete, with no documents for meetings held in February, April, May, June, or July of 2020, and the PMT Report for August and September 2020 indicating that little work was being undertaken during this time.
- The PCG minutes dated 19 August 2020 did not analyze the Project's actual and predicted costs against the budget and were silent on expenditure and project life costs.
- The PCG was occasionally supplied a Project Management Team Cost Tracker, but it only had one or two pages, and from September to December 2020, this document repeated line items with only four new entries. No member of the PCG raised concern with this repetition, nor that the Project was moving very slowly, as a concern.



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# Decision Making Process cont...

- The financial element of the Project was not discussed in the PCG February, March, and April minutes, and it is not until May 2021 that a comment appears against 'Financial Report – Cost Tracker' in the PCG minutes.
- Council reports summarizing developments for the Project were not provided until 11 months after development of the Design Brief, 13 months after the first PCG meeting, and about three weeks after the receipt of the final architectural quote of \$5,560,000 (dated 5 August 2020).
- The first Councillor briefing on 22 July 2020 (Briefing 1) detailed the funding sources and compared the original concept design and options A and B, with Option A estimated at \$5,731,485, of which 63% would be covered by grant funding. However, not all Project costs were included in the Architect's estimate, and the exclusions are not dealt with anywhere in the presentation to Council.





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# Decision Making Process cont...

- Council report tabled on 29 July 2020 (Report 1) sought additional funding of \$1.6 M and for the Council to resolve to accept Option A. Yet, the shortfall between Sibling's quote of \$5,560,000 and the grant funds of \$3,743,578 is \$1,816,422.
- The Council report of 29 July 2020:
  - Could have provided more detail of Option B to balance the report
  - May be interpreted as attempting to convince the Council to select Option A rather than presenting a balanced discussion paper
  - Showed an average of \$6.20 in available operating cash for every \$1 of loan required to be paid in the Long Term Financial Plan
  - One year later, the average had decreased to \$4.30 in available operating cash for every \$1 of loan required to be paid
  - The latter report did not explain why the Long Term Financial Plan showed such a marked decrease even though the Council was seeking a decision based on this information
- A second Councillor briefing was held on 31 May 2021 (Briefing 2), which indicated that the estimated works would exceed the budget by \$1.27M.



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# Decision Making Process cont...

- The Council report of 7 June 2021:
  - States that a briefing and workshop were held with Councillors on the project
  - Assumes that the relevant Architect estimate is the version dated 21 February 2020 for \$6,930,000 with a list of exclusions
  - The list of exclusions in the Council report differs greatly from the list contained in QS's report
  - The Council report lists several exclusions for which there is no budget allocation, including carpark design, strengthening works, fees and charges, and professional fees
  - It is possible that some of the exclusions had already been dealt with by the PMT
  - Failure to expressly deal with exclusions that staff is aware of may expose the Council to allegations of deliberately failing to fully inform the Council.



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# Financial Escalations

- The review aims to examine the financial escalations in the context of the original project estimates and grant funding.
- The grants obtained for the project amounted to \$3,743,243.
- The second Architect's original quote was \$10,922,000, which was revised to \$6,930,000 in February 2020 and further reduced to \$5,560,000 in August 2020.
- Despite the RFT and contract requiring adherence to the budget, Architect's first quote was \$7,178,757 over budget, and the last was \$1,816,757 over the council's budget.
- There is no evidence of analysis being undertaken in relation to the exclusions included in QS's reports on Architects's quotes.
- Contracts can be formed and varied in various ways, including verbally, and reliable records are necessary to demonstrate what occurred.
- Creative NSW representatives were present in PCG meetings, which may have limited free and liberal discussion on financial escalations and other issues.



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# Financial Escalations

- Council report tabled on 29 July 2020 (Report 1) sought additional funding of \$1.6 M and for the Council to resolve to accept Option A. Yet, the shortfall between Sibling's quote of \$5,560,000 and the grant funds of \$3,743,578 is \$1,816,422.
- A second Councillor briefing was held on 31 May 2021 (Briefing 2), which indicated that the estimated works would exceed the new budget by \$1.27M.
- The Council Report tabled at the Extraordinary Meeting on 7 June 2021 agreed to increase the budget on the project to \$6.526million.
- This was where the report concluded with regards to cost escalation on the project as further scope was added post entering the construction contract.
- The whole project is now subject of a further review as resolved at the May 2023 Council meeting.



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# Recommendations

The responses highlighted in Red are those of the Executive of the Council.

1. That Council budget for an experienced project manager dedicated to work on large projects within its capital works program.

- **Response: Agree with this recommendation**

2. Consider establishing a panel of contractors for the sake of providing quick quotes for which they will be remunerated. The panel would not be established for the contractors to undertake work, but would merely be to provide quotes to Council for the sake of seeking grants and planning for projects. The panel contractors may also be engaged to use their experience and knowledge to review grant applications for the purpose of detecting missing project elements that should be costed, if such knowledge is not inhouse. This panel would comprise multiple skills and experiences.

- **Response: Do not agree with this recommendation. This is more appropriately dealt with by applying different size contingencies to projects depending on where the project is from a design perspective.**



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## Recommendations cont...

3. Both the PMT and the PCG would benefit from scrutinising the lifetime Project costs and timings at each meeting.

- **Response: Partially Agree with this recommendation. Lifetime Costs of a project should be assessed prior to a project receiving approval and should be determined with the context of Council's IP&R framework including if it is in the Delivery Program, Long Term Financial Plan and Resourcing Strategy. PMT and PCG should be looking at the project costs at each meeting.**

4. Confidential



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## Recommendations cont...

5. Consider exploring why The Architect diverted so far from the scope and the contract.
  - **Response: Partially Agree.** It is believed that the Architect diverted so far from the original scope due to the poor project management skills utilised to manage the initial stages of this project. An assessment has been made that there is very little chance of success in seeking recourse against Architect due to the fact that Senior Management in the Council appeared to have been swept up in the possibilities presented to Council by the Architect, which would most likely be found to have been accepted as a variation to the contract between the Architect and Council. This is although nothing specific was placed in writing. What needs to occur is a review of the process which allowed this to occur, and learnings taken from this to make sure it does not occur into the future.
6. While public authorities must consult with communities on provision of services and facilities, design and construction projects must be recognised and managed for what they are.
  - **Response: Agree with this recommendation.** It is quite clear from the report that the extensive and circular stakeholder engagement in this project delivered extensive scope creep which has led ultimately to a delivered project well in excess of the original scope and budget.



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## Recommendations cont...

7. Confidential

8. To avoid conflict, no individual should reside on both management groups over a project.

- **Response: Agree. A Project Manager can attend a PCG or Project Board meeting to provide information but they are not to be a member.**

9. This Project may have benefitted from engagement of a probity advisor. Please consider how to identify projects in future that would require a probity advisor.

**Response: Agree that Council should have a process to determine which projects should have a Probity Advisor.**





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# Recommendations cont...

10. Confidential

11. Council may wish to consider drafting a policy or guidance paper on how to deal with its own interests as both an owner and the local authority to avoid real and perceived conflicts.

- **Response: Agree. This Policy has been adopted by the Council.**



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## Recommendations cont...

12. Collaborative contracts are most useful when Council does not have sufficient experience and resources internally. A most useful form of collaborative contract for councils is Early Contractor Involvement (ECI).

- **Response: Agree. Council needs to put in place a process in its project management framework to determine when such contracts maybe beneficial.**

13. Confidential



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## Recommendations cont...

14. Please consider seeking the Mid North Coast Joint Organisation to employ an Ombudsman to share with other JO members.

- **Response: Disagree.** NSW already has an Ombudsman, and it is not considered appropriate for Council to add another layer of compliance into a compliance framework which already adequately addresses these matters.

15. Strategically consider whether Council can in fact deliver projects before applying for grants, after considering workloads, skills and experience.

- **Response: Agree.** It also needs to be assessed against the Council Strategic Priorities. Although Council has received some great opportunities through grant funding over the last few years, not enough rigor has been put into the assessment of the need, ongoing costs and Council's ability to appropriately manage the delivery of these projects.



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## Recommendations cont...

16. Please establish a Public Interest Disclosure regime that is well educated throughout Council. Such a regime would include multiple PID Officers who are able to take complaints. For further information and training contact the NSW Ombudsman [<https://www.ombo.nsw.gov.au/training-workshops-andevents/our-workshops/public-interest-disclosures-training>].

- **Response: Agree. A new PID regime comes into effect later this year and training will be put in place at this time.**



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