



23 APR 2013

Doc. No.....  
GDA Ref.....  
Years.....

Our ref: R90/0377-03 - out 21405

18 April 2013

Mr Roger Bailey  
General Manager  
Lithgow City Council  
PO Box 19  
LITHGOW NSW 2790

Dear Mr Bailey

**Approval of Legal Assistance Mid-Western Regional Council**

At its meeting of 4 April 2013, the Board of Local Government New South Wales approved an application for legal assistance by Mid-Western Regional Council.

Mid-Western Regional Council currently have a matter before the Land and Environment Court challenging Council's categorisation of land for ratings purposes when Council have determined land which is used for mining purposes to be appropriately categorised, notwithstanding that the land is not located within the boundaries of a mining lease.

The relevant land is owned by a mining company and may be used for such purposes as a passive buffer for the attenuation of noise, for the disposal of excess mine water, for environmental offset and other purposes relating to the mining of coal.

Council argue that if they are able to defend their categorisation in Court that it will have major benefits for all councils.

Although the matter does not strictly fall within the Legal Assistance Policy and Guidelines, in that it is not a matter before the New South Wales Court of Appeal or the High Court of Australia, the Board concluded that the matter was of importance to all councils in that mining, including coal seam gas mining, was a major issue for local government and the application should therefore be supported.

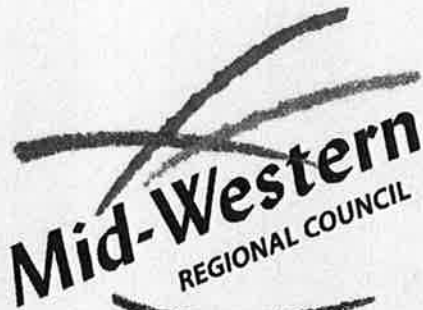
A letter seeking your support by way of voluntary contribution will be forwarded to you in the near future.

Please do not hesitate to contact me on (02) 9242 4125 if you have any questions on this matter.

Yours sincerely

Frank Loveridge  
Legal Officer

**LOCAL GOVERNMENT NSW**  
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MS:A0110036

Mayor Maree Stathem  
Lithgow City Council  
PO Box 19  
LITHGOW NSW 2790

*Maree*

Dear Mayor Stathem

*Office of the Mayor*

Lithgow City Council

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MUDGEE NSW 2850

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18 April 2013

In September last year, Mid-Western Regional Council undertook a review of the categorisation of land for rating purposes, in particular land used for mining. That review resulted in a change of rating categorisation from Residential and Farmland to Mining Coal on 253 parcels of land.

Following recategorisation, three mining companies impacted exercised their right for a review of the recategorisation. This Council upheld its original determination of Mining Coal categorisation on most of the properties. In October last year, mining companies commenced appeal proceedings in the Land & Environment Court challenging the rating categorisation on a number of these properties.

We are now facing a lengthy and expensive legal process to defend our categorisation according to dominant use. This will serve as a test case for councils across NSW. As a neighbouring council also impacted by coal mining, we hope we can count on your support as we pave the way.

Local Government NSW agrees that this is a matter of great importance to all councils in that mining, including coal seam gas mining, is a major issue for local government. Local Government NSW supports this application and will soon send all councils a letter seeking financial assistance.

I hope you will consider supporting us in this David and Goliath battle. Any financial support your can provide at this stage will help us invest in a safer future for any council affected by mining.

Please contact me at any stage if you'd like to discuss how we are managing this process.

Yours faithfully

DES KENNEDY  
MAYOR

Our ref: R90/0240-02-out 21478

14 May 2013

Mr Roger Bailey  
General Manager  
Lithgow City Council  
PO Box 19  
LITHGOW NSW 2790

Dear Mr Bailey,

**Advice re: Contribution to Legal Assistance**

The Association recently wrote to your Council outlining the successful application for legal assistance by Mid-Western Regional Council.

As set out in that letter, Mid-Western Regional Council currently has a matter before the Land and Environment Court challenging Council's categorisation of land as mining for ratings purposes.

The Association's Board considered that this matter is of importance to all local government especially taking into consideration the recent Coal Seam Gas issues that have occurred throughout the State.

Your financial contribution is now sought in this matter. Please find attached an invoice with your contribution amount of \$3446.16.

You are reminded that there is no obligation for a council to provide assistance.

Please do not hesitate to contact me on (02) 9242 4125 if you have any questions on this matter.

Yours sincerely



Frank Loveridge  
Legal Officer

## **LEGAL ASSISTANCE POLICY & GUIDELINES (04/2013)**

### **POLICY AND GUIDELINES - REQUESTS FOR ASSISTANCE WITH LEGAL COSTS**

A council may apply for the support of the Association in seeking contributions from all councils to assist with its legal costs where that council is involved in litigation and the principle in question in the matter;

- involves a major local government principle which may be eroded but for pursuing the matter; and
- is one which should not be eroded merely because the council involved is not itself, so seriously affected by the outcome of the case that the legal costs associated with pursuing the principle outweigh any other consequences. That is, just because the council involved itself, has decided in all the circumstances not to further pursue the matter, legal assistance can be provided where the matter is of such significance and broader concern to the whole of local government to warrant pursuing the principle;

Such applications are to be considered and dealt with on the following basis;

1. The question of whether or not an application for legal assistance will be supported is entirely for the Association to decide and the decision will be based on the general application of the principle involved in the case to all councils.
2. Assistance under these guidelines will only be granted in respect of appeal matters to the New South Wales Court of Appeal or the High Court of Australia. Assistance will not be available to fund litigation in a court of initial jurisdiction (including the Land and Environment Court) unless the Association is satisfied that there exists special and exceptional reasons for doing so. This may include a 'test case' where the matter will affect all councils.

Assistance is not available for matters not involving immediate court action (for examples, matters involving mediation or for the seeking of advice on any available courses of action).

Assistance is not available in relation to matters which arise as a consequence of any entrepreneurial activities which may have been initiated or undertaken by the council concerned in the matter.

Assistance will not normally be in appeals against penalties imposed on a council in a prosecution action by another authority unless there are exceptional grounds for granting it, such as the imposition of a penalty which is significantly inconsistent with penalties imposed in other matters having essentially similar facts and the matter has significance for the whole of local government.

3. Requests for assistance will only be considered if submitted to the Association prior to the commencement of the proceedings in the Court of Appeal or other court, unless the council is involved as the respondent to the appeal. In that event, the request should be submitted as soon as possible after the council becomes aware that the appeal has been or is to be lodged.
4. Support will not be available where the estimated legal costs are less than \$50,000.
5. All applications should include the following details;
  - a brief statement of the facts of the matter;

- a clear indication of the principle involved which makes the outcome of the case of relevance to all councils;
  - an estimate of the costs involved; and
  - advice from Counsel as to the prospects of success.
6. Where the Association agrees to support a request for assistance, contributions will be sought from councils calculated on a pro rata basis according to the proportion of the basic membership subscription assessed against each council and based upon the estimate of costs submitted with the initial request (unless an updated figure has been submitted in the meantime). Requests for contributions will be circulated as soon as possible after the Board meetings at which approval is given to seek contributions in the matter.
  7. Contributions are entirely voluntary and no council is under any obligation to make a contribution in any instance.
  8. The Association may, if it is considered appropriate, seek contributions for an amount which is less than the estimated costs involved in the matter.
  9. The Association will pay to the council involved in the matter, the lower of;
    - the total amount collected by the Association through the contribution process; or
    - the residual amount of costs remaining liable upon the council involved in the matter, after any costs are recovered from or ordered by the court to be paid by the other parties to the action, subject to the fact that the council involved in the matter will bear the first \$20,000 of legal costs itself.
  10. Where the council to which support has been given recovers costs from another party after the Association has paid contributions to it, it shall account and repay to the Association these amounts not previously taken into consideration. That is, no council shall be entitled to make a profit from receiving assistance.
  11. Where a council has received support in respect of an appeal to one court suffers an adverse verdict in that court and wishes to appeal to a higher court, for example to have an adverse verdict of the Court of Appeal tested in the High Court, a fresh application for assistance must be submitted. Each application will be considered on its merits. The fact that assistance was given in the lower court should not be seen as guaranteeing that assistance will be available for a further appeal.
  12. When submitting a request for assistance, councils should ensure as far as possible that all necessary information is included in the initial application. A request cannot be considered until all information has been supplied and failure to do so can lead to unnecessary correspondence and delays. If there is information which cannot be supplied when the request is submitted, that fact should be stated and an indication given as to when it will be available.
  13. Any funds received by the Association over and above those requested by the applicant council are to be reimbursed to the council that provided the funds.
  14. The Association will provide information and updates to all councils on matters that have been approved under this policy.