



A CENTRE OF REGIONAL EXCELLENCE

AGENDA

ORDINARY MEETING OF COUNCIL

TO BE HELD AT

THE ADMINISTRATION CENTRE, LITHGOW

ON

11 MAY 2015

AT 7.00pm

AGENDA

ACKNOWLEDGEMENT OF COUNTRY

APOLOGIES

PRESENT

CONFIRMATION OF THE MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD ON 20 APRIL 2015

DECLARATION OF INTEREST

PUBLIC FORUM

PRESENTATIONS - NIL

MAYORAL MINUTES - NIL

STAFF REPORTS

General Managers Reports
Environment and Development Reports
Operation Reports
Corporate and Community Reports

COUNCIL COMMITTEE MINUTES

Traffic Advisory Local Committee - 16th April 2015
Sports Advisory Committee Meeting Minutes - 28th April 2015

DELEGATES REPORTS - NIL

NOTICES OF MOTION - NIL

QUESTIONS WITH NOTICE - NIL

NOTICE OF RECISSIONS - NIL

BUSINESS OF GREAT URGENCY

as identified by Clause 241 of the Local Government (General) Regulations 2005

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BUSINESS OF GREAT URGENCY

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CLOSED COUNCIL

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ITEM-15 **CLOSED COUNCIL - CONFIDENTIAL - CORP - 11/05/15 - CODE OF CONDUCT INVESTIGATION REPORT CLR TICEHURST**

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CLOSED REPORT

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ITEM-15 **CLOSED REPORT - CONFIDENTIAL - CORP - 11/05/15 - CODE OF CONDUCT INVESTIGATION REPORT CLR TICEHURST**

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GENERAL MANAGERS REPORTS

ITEM-1 GM - 11/05/15 - LITHGOW GOLF COURSE PLAN OF MANAGEMENT

REPORT BY: R BAILEY - GENERAL MANAGER

REFERENCE

Min No 07-519: Policy and Strategy Committee held on 3 December 2007
Min No 05-09: Ordinary Meeting of Council held on 27 January 2009
Min No 09-162: Ordinary Meeting of Council held on 20 April 2009
Min No 09-301: Ordinary Meeting of Council held on 13 July 2009
Min No 15-33: Ordinary Meeting of Council held on 2 March 2015

SUMMARY

Council at its ordinary meeting of the 2 March 2015, endorsed the Draft Lithgow Golf Course Plan of Management (POM) for exhibition. The POM was exhibited for a period of twenty eight (28) days with two hundred and three (203) submissions being received with zero (0) by way of objection. Two hundred and one (201) of these submissions were in the form of a standardised letter. The submission details are outlined in the body of the report below.

This report seeks Council's support for adoption of the POM as required under the provisions of the Local Government Act 1993 (hereafter referred to as the LG Act).

COMMENTARY

The Lithgow Golf Club and Course is classified as "Community" land in accordance with s25 & 26 of the LG Act. Community land is public land intended to be kept for use by the community.

The LG Act requires that all community land is to be used and managed in accordance with a plan of management for the land. These plans may be developed for one area as a site specific plan or, alternatively, land with similar characteristics can be grouped together to form a single generic plan.

Background

For over 50 years the Lithgow Golf Course and Club House has provided the residents of Lithgow and visitors to the area with quality golfing and recreational facilities.

In 1994, the Council resolved to classify the Lithgow Golf Course as 'community' land in accordance with the provision of s25 & 26 of the Local Government Act 1993. Further to this classification, it is a requirement under the Act that a Plan of Management be developed for the land which specifies the values of the site to the community and objectives for its ongoing and future management. A POM also specifies what the land can be used for, firstly through categorisation, and secondly by authorising uses that can be leased or licensed.

The Lithgow Golf Course Plan of Management 2009, was adopted by Council at its ordinary meeting of the 24th August 2009. The current Plan has been in operation for 5 years, and has satisfied its obligations under the Local Government Act during this period.

This Plan expressly authorises the provision of a lease and associated licenses over the golf course and club house with the permitted uses of: public golf course, licensed club house, golf pro shop, functions and meetings, and upstairs residence and/or office.

These activities are consistent with the categorization of the land as ‘sportsground’.

Purpose of the Plan of Management

The purpose of the Lithgow Golf Course Plan of Management is to:

- Ensure that the management of the facility complies with the requirements under the Local Government Act (1993) for Community Land.
- Outline objectives for the usage of the facilities as a Golf Course, Golf Club House and ancillary services to accommodate the needs of the community
- Identify the values of the site.
- Recommend management strategies that are practical and within budgetary constraints.
- Inform and guide the Lithgow City Council in decisions effecting the management of the golf course and club house in the short term and over an extended period.
- Ensure management of the facility is consistent with Council’s policies and plans including Lithgow City Council’s Community Strategic Plan 2013-2026, relevant Combined Delivery and Operational Plans as proposed and Lithgow Local Environmental Plan 2014.

OUTCOMES OF PUBLIC EXHIBITION

The Draft Lithgow Golf Course POM was approved for public exhibition by Council at its meeting of the 2 March 2015 and placed on public exhibition from Thursday 12 March until Thursday 9 April 2015. Submissions were received on the matter until Thursday 23 April 2015. Two hundred and three (203) submissions were received during the public exhibition period.

RESPONDENT	COMMENTS	OFFICER COMMENT
Respondents 1 – 201 Individual letters with same contents	Support for Draft Lithgow Golf Course Plan of Management	No comment required
Respondents 202	Support for Draft Lithgow Golf Course Plan of Management	No comment required
Respondent 203	Raised issues of trespass and public liability from golfers entering their land to retrieve golf balls.	Issues raised are considerations of an operational nature and are therefore outside the scope of the POM and this process. The issues raised have been referred

		to Council's Recreation Manager and Risk Co-ordinator for consideration.
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Public Hearing

As the amendments to the POM do not involve a change in categorisation of the land, a public hearing is not required to be conducted in relation to the matter.(s.40(A))

KEY IMPLICATIONS

Organisational Impact

The development and implementation of the Lithgow Golf Course POM is intended to address Council's legislative obligations under the LG Act in the area of public land management. The Lithgow Golf Course POM is a necessary management tool from which further detailed asset planning and service delivery objectives and standards can be developed for the site.

Local Environmental Plans (LEPs) and other Relevant Legislation

The Lithgow Golf Course POM does not override a planning instrument such as an LEP. In planning terms, any development on community land will still be required to fully comply with the provisions of other overriding planning, building, environmental and administrative legislation.

Community Impacts

The development of the Lithgow Golf Course POM provides a transparent approach to public land management and delivers an opportunity for the community to shape the desired management objectives and outcomes for these assets.

FINANCIAL IMPLICATIONS

The financial costs of recommended actions of the Lithgow Golf Course POM will need to be incorporated into future operation and delivery plans and long term financial plans.

LEGAL IMPLICATIONS

The development and community consultation for the Lithgow Golf Course POM have been carried out in accordance with the relevant provisions of the Local Government Act, 1993 in particular

- Section 25 & 26 - require every Council to classify all public land as either "community" or "operational".
- Section 36 – requires every Council to prepare a POM for community land, and sets the framework for those plans.
- Section 38 – requires a draft POM to be publicly exhibited for not less than 28 days, with a period of not less than 42days from the commencement date of public exhibition during which submissions may be made to Council.
- Section 40A & 47G – require a public hearing to be conducted in respect of a Draft POM, if land is being categorised or re-categorised in accordance with section 36(4). A public hearing was not required in this instance.

The Lithgow Golf Course POM once adopted by Council will satisfy Council's obligations under Section 35 of the LG Act to use and manage community land in accordance with a plan of management.

POLICY IMPLICATIONS
NIL

ATTACHMENTS

1. Lithgow Golf Course Plan of Management

RECOMMENDATION

THAT Council:

1. Note the receipt of 203 public submissions in relation to the Draft Lithgow Golf Course Plan of Management.
2. Adopt the Lithgow Golf Course Plan of Management.

ITEM-2 GM - 11/05/15 - LEASE FOR LITHGOW GOLF CLUBHOUSE

REPORT BY: R BAILEY - GENERAL MANAGER

REFERENCE

Min No 10-15: Ordinary Meeting of Council held on 18 January 2010
Min No 10-97: Ordinary Meeting of Council held on 22 March 2010
Min No 14-48: Ordinary Meeting of Council held on 10 February 2014
Min No 15-34: Ordinary Meeting of Council held on 2 March 2015

SUMMARY

Council previously granted a lease over Lot 1 DP 840412, commonly known as the Lithgow Golf Course, for the purposes of public golf course, licensed club house, golf pro shop, functions and meetings, and upstairs residence and/or office. This lease was for five years and expired in April 2015.

Council established a Working Party to investigate options for the future use of the grounds and facilities at the Lithgow Golf Clubhouse. The options put forward by the working party were considered by Council at its meeting of 2 March 2015. Following this Council resolved to advertise its intent to lease the Lithgow Golf Clubhouse to the Lithgow Golf Club.

Advertising has since been undertaken and Council may now formally enter into a lease with the Lithgow Golf Club Ltd for a further 5 year term.

COMMENTARY

The Lithgow Golf Club Limited was founded in 1905. In 1947 the Club acquired the property that is now the Lithgow Golf Course. The Council took ownership of the golf course and club house in 1980 with the first lease of 21 year being granted to the Club in February 1981. In effect the Club has either owned or leased the Golf Course since 1947.

In 2010 Council granted a lease to the Lithgow Golf Club Limited. General conditions of the lease include:

- The lease period be for five (5) years.
- The rent commences at \$5,000 and be subject to annual CPI increase.
- The golf club to undertake a minimum of \$5,000 maintenance on the golf club house each year.
- A service level agreement be negotiated annually.

The land is classified as Community Land under the NSW Local Government Act. The Act provides that community land cannot be leased or licensed for more than 21 years and the lease or licence must be authorised by a Plan of Management. A Plan of Management for this land was developed in 2009 and has been reviewed by Council.

The POM endorses the use of the land for the purposes of public golf course, licensed club house, golf pro shop, functions and meetings, and upstairs residence and/or office. Council is therefore authorised to grant a 'lease, licence or other estate' over the Golf Club site, however, the Local Government Act 1993 (the Act) contains restrictions on the granting of such leases.

Section 47 of the Act provides that:

47 Leases, licences and other estates in respect of community land-terms greater than 5 years

- (1) *If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must:*
 - (a) *give public notice of the proposal, and*
 - (b) *exhibit notice of the proposal on the land to which the proposal relates, and*
 - (c) *give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and*
 - (d) *give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the land the subject of the proposal is likely to form the primary focus of the person's enjoyment of community land.*
- (2) *A notice of the proposal must include:*
 - *information sufficient to identify the community land concerned*
 - *the purpose for which the land will be used under the proposed lease, licence or other estate*
 - *the term of the proposed lease, licence or other estate (including particulars of any options for renewal)*
 - *the name of the person to whom it is proposed to grant the lease, licence or other estate (if known)*
 - *a statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice.*
- (3) *Any person may make a submission in writing to the council during the period specified for the purpose in the notice.*
- (4) *Before granting the lease, licence or other estate, the council must consider all submissions duly made to it.*
- (5) *If a person makes a submission by way of objection to the proposal, the council must not grant the lease, licence or other estate except with the Minister's consent.*
- (6) *If the council applies for the Minister's consent, it must forward with its application:*
 - *a copy of the plan of management for the land*
 - *details of all objections received and a statement setting out, for each objection, the council's decision and the reasons for its decision*
 - *a statement setting out all the facts concerning the proposal to grant the lease, licence or other estate*

- *a copy of the newspaper notice of the proposal*
 - *a statement setting out the terms, conditions, restrictions and covenants proposed to be included in the lease, licence or other estate*
 - *a statement setting out the manner in which and the extent to which the public interest would, in the council's opinion, be affected by the granting of the proposed lease, licence or other estate, including the manner in which and the extent to which the needs of the area with respect to community land would, in the council's opinion, be adversely affected by the granting of the proposed lease, licence or other estate.*
- (7) *On receipt of the application, the Minister must request the Director of Planning to furnish a report concerning the application within such period as the Minister specifies.*
- (8) *After considering the application and any report of the Director of Planning, the Minister, if satisfied that:*
- (a) *subsections (1), (2) and (6) have been complied with, and*
 - (b) *such consent would not contravene section 46, and*
 - (c) *in all the circumstances, it is desirable to grant consent, may consent to the granting of a lease, licence or other estate in respect of the whole or part of the land to which the application relates, subject to such terms and conditions as the Minister specifies.*
- (8A) *On request by any person, the Minister must provide that person, within 14 days of that request, with a written statement of reasons for consenting to, or refusing to consent to, the granting of a lease, licence or other estate in accordance with subsection (8).*
- (9) *The Minister's consent is conclusive evidence that the council has complied with subsections (1), (2) and (6).*
- (10) *For the purposes of this section, any provision made by a lease or licence, or by an instrument granting any other estate, in respect of community land, according to which the council:*
- (a) *would suffer a disadvantage or penalty if the same or a similar lease, licence or estate were not to be granted, for a further term, after the expiry of the current lease, licence or other estate, or*
 - (b) *would enjoy an advantage or benefit if the same or a similar lease, licence or estate were to be so granted, is taken to confer an option for renewal for a term equal to the further term.*

Sections 47A and 47 (1-4) of the Act apply to leases of five years or less. Section 47 (5-10) may apply at the Minister's request.

47A Leases, licences and other estates in respect of community land-terms of 5 years or less

- (1) *This section applies to a lease, licence or other estate in respect of community land granted for a period that (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) does not exceed 5 years, other than a lease, licence or other estate exempted by the regulations.*

- (2) *If a council proposes to grant a lease, licence or other estate to which this section applies:*
- (a) *the proposal must be notified and exhibited in the manner prescribed by section 47, and*
 - (b) *the provisions of section 47 (3) and (4) apply to the proposal, and*
 - (c) *on receipt by the council of a written request from the Minister, the proposal is to be referred to the Minister, who is to determine whether or not the provisions of section 47 (5)-(9) are to apply to the proposal.*
- (3) *If the Minister, under subsection (2) (c), determines that the provisions of section 47 (5)-(9) are to apply to the proposal:*
- (a) *the council, the Minister and the Director of Planning are to deal with the proposal in accordance with the provisions of section 47 (1)-(8), and*
 - (b) *section 47 (9) has effect with respect to the Minister's consent.*

Working Party

Council appointed a working party to explore and investigate options for the future use of the Lithgow Golf Course. The members appointed to the Working Party were Councillors Thompson, McGinnes and Hunter and the General Manager.

Three meetings of the working party were held with the following attendances:

Thompson	3
McGinnes	1
Hunter	3
General Manager	3

Councillor McGinnes advised Council at its meeting held on Monday 2 March 2015 that he refused to participate in the meetings of the working party as he 'could not get his way' at the only meeting that he attended.

As a result of the working party meetings an Options Paper was prepared and considered by Council.

Proposed Lease

The Golf Course Plan of Management permits a lease be entered into with the Lithgow Golf Club, or similar organisations. This is to be on the basis that:

1. A lease for five (5) years or less can be considered without calling for tenders regardless of the operating status of the lessee. Provided that this still goes through the exhibition process as outlined in s47A
2. A lease for more than five years must go to tender, unless lessee is a not for profit organisation. Upon finalisation of tender process

In accordance with s46A of the Act a lease of five years or less the lease does not have to go to tender. If the lease is for more than five years, then the lease will have to go to tender if the lessee is not a Not-for-Profit organisation.

The Lithgow Golf Club Ltd is a company limited by guarantee. The Articles of Association of the Lithgow Golf Club Ltd indicate that the company is a Not For Profit organisation.

Draft Lease Terms

The Draft Lease has been prepared on the basis of:

1. The lease period be for five (5) years.
2. The rent commence at \$6,500 and be subject to annual CPI increases.
3. The Lithgow Golf Club be required to undertake a minimum of \$6,500 maintenance on the golf club house each year; or provide \$6,500 towards maintenance.
4. The Lithgow Golf Club also provide a contribution of 20% of its yearly profit to Council's budget towards the purchase of fertilizers and chemicals for use on the golf course and help out at renovation time.
5. The Lithgow Golf Club pay for all electricity and water charges for the clubhouse and course.

In addition to this a service level agreement is to be negotiated and reviewed each year between the Council and the Lithgow Golf Club outlining minimum works to be undertaken by Council and the Lithgow Golf Club. The service level agreement includes provisions for works to be undertaken by members of the Lithgow Golf Club on a volunteer basis around the golf course and club house.

Advertising

Council advertised the Draft Lease to the Lithgow Golf Club, for the use of the Lithgow Golf Course and Club House, for a period of 28 days, allowing 42 days for response from the public as per Sections 47 and 47A of the Local Government Act.

The period of advertising immediately following the 2nd March Council meeting with the first advertisement being the 12 March 2015 to 24 April 2015. As a result of this 170 submissions were received and indicated support for the renewal of the lease.

The submissions are available to councillors on request.

This report now recommends that Council endorse the draft lease with the Lithgow Golf Club Limited as advertised.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

As outlined in this report.

Maintenance of the golf course is dealt with through the Council Operational Plan and Delivery Program.

LEGAL IMPLICATIONS

Council will be required to comply with the Local Government Act 1993

ATTACHMENTS

1. Draft Lease between Lithgow City Council and Lithgow Golf Course
2. Submissions are available to councillors on request

RECOMMENDATION

THAT Council:

1. Note the submissions in relation to the Draft Lease to the Lithgow Golf Club Ltd
2. Endorse the Draft Lease to the Lithgow Golf Club Ltd, for the use of the Lithgow Golf Course and Club House.

ITEM-3 GM - 11/05/15 - LOCAL GOVERNMENT REMUNERATION TRIBUNAL DETERMINATION

REPORT BY: R BAILEY - GENERAL MANAGER

SUMMARY

The Local Government Remuneration Tribunal handed down its report for 2015-16 period. This report deals with the fees to be applied to councillors and the Mayor

COMMENTARY

The Local Government Remuneration Tribunal (the Tribunal) sets the range of fees for all councillors and mayors in NSW each year.

The Tribunal is responsible for categorising each council, county council and mayoral office for the purpose of determining the minimum and maximum fees payable to councillors, members of county councils and mayors in each category.

This year the Tribunal has awarded an annual fee increase of 2.5 per cent, with effect from Wednesday 1 July 2015. Section 241 of the *Local Government Act 1993* (the Act) requires the Tribunal to determine each year the maximum and minimum amounts of annual fees payable during the following year to mayors and councillors. Sections 248 and 249 of the Act requires councils to fix and pay an annual fee based on the Tribunal's determination.

Councils are to fix councillor and mayoral fees for the 2015/16 financial year based on the Tribunal's Determination. The level of fees paid will depend on what category the council is in. In Lithgow's situation this is as Category 4 – 'Rural' which includes 77 general purpose councils.

A council cannot fix a fee higher than the maximum amount determined by the Tribunal. If a council does not fix a fee, the council must pay the minimum fee determined by the Tribunal.

The determinations by the Tribunal for 2015-2016 are:

	Councillor/Member Annual Fee		Mayor/Chairperson Additional Fee		Total Mayor/Chairperson Fee	
	Min \$	Max \$	Min \$	Max \$	Min \$	Max \$
Category S1 – Principal City	25,040	36,720	153,200	201,580	178,240	238,300
Category S2 – Major City	16,690	27,550	35,740	80,260	52,430	107,810
Category 1A – Metropolitan Major	16,690	27,550	35,470	80,260	52,430	107,810
Category 1 – Metropolitan Centre	12,520	23,370	26,600	62,090	39,120	85,460
Category 2 –	8,330	18,380	17,740	40,090	26,070	58,470

Metropolitan						
Category 3 – Regional Rural	8,330	18,380	17,740	40,090	26,070	58,470
Category 4 – Rural	8,330	11,010	8,860	24,030	17,190	35,040
Category S4 – County Council Water	1,660	9,180	3,550	15,080	5,210	24,260
Category S3 – County Council	1,660	5,490	3,550	10,020	5,210	15,510

Note: the Mayor is paid both the Councillor Remuneration and the additional fee for the Mayor.

The NSW Local Government Act 1993 requires:

248 Fixing and payment of annual fees for councillors

- (1) *A council must pay each councillor an annual fee.*
- (2) *A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.*
- (3) *The annual fee so fixed must be the same for each councillor.*
- (4) *A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal*

At the Council meeting of 2 June 2014 Council resolved to forgo the increased remuneration and the fees paid by Lithgow City Council in the 2014-15 period remained at:

- Councillors at \$9,825
- Mayor at \$20,810 (plus the Councillor fee of \$9,825).
- Car lease payable for the Mayor NIL

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

The increase is within the estimates set by Council earlier this year.

LEGAL IMPLICATIONS

Council is required to pay the remuneration in accordance with the limits set by the Tribunal.

ATTACHMENTS

1. Report and Determination of the Local Government Remuneration Tribunal under Sections 239 and 241 Local Government Act 1993, 13 April 2015

RECOMMENDATION

THAT Council:

1. Set the remuneration in 2015/16 for Councillors at \$10,070
2. Set the remuneration in 2015/16 for the Mayor at \$21,330
3. Set the 2015/16 car lease payable by the Mayor at NIL.

ITEM-4 GM - 11/05/15 - LITHGOW POOL - UNSUBSTANTIATED COMPLAINTS BY COUNCILLORS TICEHURST AND MCGINNES

REPORT BY: R BAILEY - GENERAL MANAGER

SUMMARY

Both Councillor Ticehurst and Councillor McGinnes have made unsubstantiated complaints and accusations in relation to incidents at the Lithgow pool.

Both councillors have been requested to substantiate their claims but neither councillor has provided this information or even responded.

A failure to substantiate such high risk claims and provide information to allow works and/or modifications to take place potentially places the public at harm and Council at risk of liability claims.

COMMENTARY

During the early parts of the 2014-15 summer swimming season Councillor Ticehurst launched a very persistent, misleading and aggressive campaign in relation to the Lithgow Pool. During this time he demanded the closure of the pool over concerns about ducks being spotted in the pool grounds.

During his campaign he also made unsubstantiated accusations that:

.....in the first weeks of the opening of the 50 metre Open Public Swimming Pool this season in early October, two women became quite sick for some days, including one who missed several days at work after swimming in the Pool's water.

The clear implication here was that the pool was unhealthy.

This unsubstantiated claim was first made by Clr Ticehurst on 12 November 2014.

Not only did Clr Ticehurst make this unsubstantiated allegation he made it to numerous persons and organisations, including (but not limited to):

Mr John Robertson MP LOP
Cass Coleman
Paul Toole - Minister for LG
Division of Local Government
Premier & Cabinet - Department
Troy Grant Deputy Premier
Fred Nile MP CDP

A further complaint, including this unsubstantiated allegation, was then repeated on 13 November 2014 to the Minister for Health along with the following persons and organisations (plus others):

Mr John Robertson MP LOP
Cass Coleman
Paul Toole - Minister for LG
Division of Local Government
Premier & Cabinet - Department
Troy Grant Deputy Premier
Fred Nile MP CDP
Jillian Skinner - Minister Health
Nepean District Health Board

Due to the very serious nature of the complaint Council's General Manager attempted to contact Clr Ticehurst to seek further information in relation to the allegation. Despite the numerous attempts NO advice was ever provided. There has not even been a response by Clr Ticehurst.

The following message was sent to Clr Ticehurst on 13 November 2014

I see in your latest claims that you are now alleging that two women became quite sick for some days, including one who missed several days work after allegedly swimming in the pool. At this stage your claim is not supported by any evidence. This of course is not the first time that you have made unsubstantiated allegations but if you do have any such evidence then it is incumbent upon you to provide that information to me so that it may be properly investigated.

In relation to unsubstantiated complaints by yourself I note that you still have not responded to my requests for confirmation in relation to alleged slips and falls on the paving in the Lithgow CBD.

You will recall that I mentioned in an earlier email that Clr McGinnes claimed at the recent Council meeting that he had been made aware of several incidents of people severely cutting themselves at the pool. On this point the Mayor challenged Clr McGinnes on at least two occasions during the meeting to provide the details of the claims. Clr McGinnes was unable, not surprisingly, to provide any substantiation to support his claims. This is not the first time that Clr McGinnes has made unsubstantiated claims in a Council meeting. I have written to Clr McGinnes asking him to provide evidence to support his latest claims. To date Clr McGinnes has been unable to provide any such evidence.

I await the evidence to support your latest claims.

A further email was sent to Clr Ticehurst on 15 November 2014 stating:

I still have not received from you any evidence to support your allegation that two women became quite sick for some days, including one who missed several days work after allegedly swimming in the pool.

In fact I have not even had a response from you.

In addition to this I still do not have from you information on the alleged slips in the Lithgow CBD. Again not even a response.

I would appreciate this information so that these issues can be properly investigated and resolved.

Further email messages were sent to him on:

- 17 November 2014
- 27 November 2014
- 6 January 2015
- 27 March 2015

Despite Councillor Ticehurst's desperation to have the pool closed he never responded to any of the requests.

In addition to the emails by Councillor Ticehurst, numerous emails were also sent to other organisations including Council's Insurance Mutual and insurance brokers.

During the 2014-15 season the Department of Health conducted two routine inspections of the Lithgow Pool. The Department indicated that it was aware of the complaints but took no action. The officer advised that the procedures for the cleaning and operation of the pool in the mornings with the removal of ducks was found to be of a high standard, minimising the spread and contamination of the pool. The Public Health Officer further advised that many of the pools he inspects would have ducks attend the pool out of hours.

Councillor McGinnes also made unsubstantiated statements that there were 'far more' injuries to people that required first aid from cutting themselves on sharp and exposed tiles at the pool during the 2013-14 summer swimming season at the Lithgow pool.

Councillors may also recall that Councillor McGinnes made the statement during the October 2014 Council meeting that other injuries should also be recorded against the pool, including those that occur in the nearby carpark. He stated that this be on the basis that the pool and the carpark are under the same insurance policy. This was a rather outlandish statement considering that Council carries one policy for all public liability risk.

In addition to this Councillor McGinnes also engaged in the debate over the two women becoming ill. Again this was without any evidence to support this claim.

Councillors have an important role in which to play for the community. The Act makes it clear that the role of a councillor is as outlined under Section 232 of the Act.

232 What is the role of a councillor?

- (1) The role of a councillor is, as a member of the governing body of the council:
 - to provide a civic leadership role in guiding the development of the community strategic plan for the area and to be responsible for monitoring the implementation of the council's delivery program
 - to direct and control the affairs of the council in accordance with this Act

- to participate in the optimum allocation of the council's resources for the benefit of the area
 - to play a key role in the creation and review of the council's policies and objectives and criteria relating to the exercise of the council's regulatory functions
 - to review the performance of the council and its delivery of services, and the delivery program and revenue policies of the council.
- (2) The role of a councillor is, as an elected person:
- to represent the interests of the residents and ratepayers
 - to provide leadership and guidance to the community
 - to facilitate communication between the community and the council.

The failure of the councillors to substantiate their accusations the councillors put at risk users of the pool and also place Council at risk of a claim.

Such actions in failing to report may also expose the Council and of course the councillors that have made the accusations, if such accusations are true, to liability under Section 731 of the NSW Local Government Act. Section 731 provides:

731 Liability of councillors, employees and other persons

A matter or thing done by the Minister, the Director-General, a council, a councillor, a member of a committee of the council or an employee of the council or any person acting under the direction of the Minister, the Director-General, the council or a committee of the council does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, and for and on behalf of the Minister, the Director-General, the council or a committee of the council, subject a councillor, a member, an employee or a person so acting personally to any action, liability, claim or demand.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

Potential exposure to liability claims.

LEGAL IMPLICATIONS

Potential exposure to liability claims.

ATTACHMENTS

1. Email by Councillor Ticehurst to local Member Paul Toole, Minister for Local Government
2. Email by Councillor Ticehurst to the NSW Minister for Health, Jillian Skinner
3. Letter to Councillor McGinnes

RECOMMENDATION

THAT Council note that:

1. Councillor Ticehurst has made unsubstantiated accusations that two women became ill after using the Lithgow pool in October 2014

2. Councillor McGinnes made unfounded accusations that there were 'far more' injuries to people that required first aid from cutting themselves on sharp and exposed tiles at the pool during the 2013-14 summer swimming season at the Lithgow pool
3. Both Councillor Ticehurst and Councillor McGinnes have failed to respond to requests for information to substantiate this.
4. The failure by these councillors to provide such significant information has therefore potentially threatened the safety of users of the pool
5. The failure by these councillors has also potentially exposed Council to liability claims for damages by users of the pool

ENVIRONMENT AND DEVELOPMENT REPORTS

ITEM-5 ENVIRO - 11/05/15 - DA238/14 & DA228/14 - SUBDIVISIONS AT GLEN ALICE - AGRICULTURAL CLASSIFICATION

REPORT BY: A MUIR – GROUP MANAGER ENVIRONMENT AND DEVELOPMENT

SUMMARY

To advise Council of two development applications for subdivision at Glen Alice. Both applications are situated on land designated as Prime Crop and Pasture Land which would not allow the applications to be considered.

The applicants have requested that Council considers specialist agronomist and soil classification reports as providing acceptable evidence to change the agricultural land classification from Class 3 to Class 4 for the proposed subdivision developments.

COMMENTARY

Council is in receipt of a Development Application DA238/14 which seeks to subdivide 3 lots into 12 at Lot 1 DP 651340, "Glen Alice" Glen Alice-Old Road, Glen Davis NSW 2846 and DA228/14 for a proposed 5 lots into 25 lot subdivision, Lot 5 DP 136719, "Eurella" 602 Upper Nile Road, Glen Alice, NSW 2849.

Both development applications are seeking a variation to the agricultural classification contained within the Rylstone Local Environmental Plan 1996 (Rylstone LEP).

With regard to DA228/14 the applicants have submitted additional information undertaken by an independent agronomist for Council to review the prime crop and pasture land issue. As determination of this issue was central to whether the application could otherwise proceed to determination, the application was accepted without **other** supporting information such as geotechnical or bushfire reports. The intention of doing so was to save the applicant the expense of these reports if the Council was of a mind to refuse the application on this basis alone.

Council officers have started assessing DA238/14 and have noted geotechnical issues with the proposed septic systems being within proximity to water courses and with the access road for two of the proposed lots being from a Crown Road that requires upgrade works. The layout of the proposed subdivision may be required to be amended due to these concerns.

Subdivision in the Rylstone LEP is limited by a provision that none of the land comprises 'prime crop and pasture land'. The land subject to these applications does comprise such a category.

The site is subject to assessment under the Rylstone LEP which states:

13 Subdivision for the purposes of dwellings within Zone No 1(a)

- (1) *The Council may consent to the subdivision of land within Zone No 1(a) if the Council is satisfied that each of the allotments to be created by the subdivision is intended to be used for the purpose of a dwelling, but only if each allotment:*
- (a) *Has an area of not less than 40 hectares, and*
 - (b) *Is unlikely adversely to affect the existing and potential capability of the land and adjacent land to produce food or fibre or to be used for other agricultural purposes, and*
 - (c) *Does not comprise prime crop and pasture land.*

This report relates to the above Clause 13(1)(c) specifically in relation to the land not comprising prime crop or pasture land which is defined below:

***Prime Crop or pasture land** means land within an area identified, on a map dated May 1982, prepared by or on behalf of the Department Agriculture, and which is deposited in the office of the Council, as Class 1, Class 2 or Class 3, but does not include land which the Council has from time to time determined by resolution as not being prime crop or pasture land for the purposes of this plan (after consideration of the guidelines within the Rural Land Evaluation Manual prepared by the Department of Urban Affairs and Planning).*

The two properties are mapped as 'Class 3' land on the agricultural land classification map. Class 3 land is defined as Prime Crop or Pasture Land and cannot be subdivided unless a resolution from Council is in place.

The Rural Land Evaluation Manual describes Class 3 as being:

Class 3

Grazing land or land well suited to pasture improvements. It may be cultivated or cropped in rotation with pasture. The overall production level is moderate because of edaphic or environmental constraints. Erosion hazard, soil structural breakdown or other factors including climate may limit the capacity for cultivation and soil conservation or drainage works may be required.

Both applications were to the Department of Primary Industries (Agriculture) for advice. The following comments were received in reply:

"Our advice to the Lithgow City Council and also the Mid Western Regional Council (in the past 7 years) when it also had to deal with such applications has been that the Department of Primary Industries sees no case for reviewing land currently mapped as prime agricultural land in the former Rylstone area. It would set a precedent and if it was to occur the Department would need to be satisfied that reclassification of small localised parts of the map would not contribute to significant risk of conflict with adjoining land use. In this case we would consider it to be appropriate for this continue unless detailed and informed land assessments take place to be considered otherwise."

Following the submission of the additional reports, these were referred to the Department on 14 April for additional assessment. No response has been received. It is considered

that the Department will not change their view based on various telephone conversations with the Department over the past two months.

The agronomist and soil classification reports received conclude that the properties are Class 4 under the agricultural classification rather than Class 3. This is due to:

DA238/14

- 12 soil tests were undertaken on the property and indicated moderate to high erodibility,
- Many of the soils were identified as sodic, these are usually unstable, exhibit poor physical and chemical properties which impede water infiltration, water availability and plant growth.
- Salinity in soils can have an effect on plant growth and yield, reduce water availability and lead to soil erosion. Most crops are negatively affected by (moderate) saline soils.
- Cation exchange capacity (cec) was measured on the property. Cation exchange capacity is used as a measure of soil fertility, the higher the cec the higher the fertility of the soil. Many of the soils tested at the property had low cec's.

The report submitted by PB Ag Consulting Pty Ltd states that that in regards to soil type and structure, slope and steepness, mountain areas along with rocky sections and past cropping failures, the land is only suitable for grazing and not cultivation.

DA228/14

- 17 soil tests were undertaken on the property and indicated a PH range that is strong ion acid soils.
- Plant growth in acid soils can experience aluminium and manganese toxicity.
- A number of the soil tests indicated a problem with slaking, this is where the soil particles disintegrate and crumble when exposed to moisture. The process has been identified in the reports as leading to erosion if the area is not flat or vegetated.

Several Councillors and the Group Manager Environment and Development have visited both sites, the inspection allowed the findings of the additional reports, mentioned above, to be confirmed. The two properties do not contain the characteristics of Class 3 land.

Section 79C of the Environmental Planning and Assessment Act requires the matter to be assessed under the current Rylstone LEP 1996 with consideration being given to the Draft Local Environmental Plan 2013 (Draft LEP) in its 'exhibited' form. The Draft LEP applies to this development and has to be assessed with any current application under the EP&A Act given it is an exhibited Draft. The Draft LEP proposed to map these properties within 'Area 1' of the Lot Size Map in which they *'may not be further subdivided'*.

Council has generally been allocating 'determinative weight' to the LEP in force when development applications were lodged. These two applications were lodged on 15 October 2014 for DA238/14 and 1 October 2014 for DA228/14. Both applications have been assessed under Rylstone LEP 1996 to determine permissibility, hence the need to seek a Council resolution that the subject land is not prime crop and pasture land for the purposes of the Rylstone LEP.

DA228/14 is not accompanied by geotechnical or bushfire reports as mentioned previously. Council also has concerns with the geotechnical reports and access for 2 of the proposed lots from a Crown Road that is required to be upgraded for DA238/14. A merits assessment of the applications will occur should Council adopt the recommendation in relation to prime crop and pasture land. The merit assessments will involve careful consideration, including the impact of a significant number of lots on the periphery of the local government area with access to the area not fully provided with sealed roads.

Strategically, it is necessary to consider the impacts such a resolution would have upon the area. The recommendation is to allow the consideration of the two development applications for subdivisions. Additional lots would bring additional demand on services, bushfire fighting and the treatment of effluent on site. Additional traffic for developments such as dual occupancy, bed and breakfast accommodation or those otherwise permitted within the RU1 - Primary Production zone should be considered as possibly occurring.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

The applications have been placed on 'Stop the Clock' under Clause 109 of the Environmental Planning and Assessment Regulation 2000.

ATTACHMENTS

1. Soil information for the Glen Alice district from David McKenzie, Soil Science Consultant- March 2015
2. Soil Classification Report prepared by PB Ag Consulting Pty Ltd – 25 October 2014

RECOMMENDATION

THAT:

1. Council resolve that Lot 1 DP 651340, Lot 1 and Lot 21 DP 753780 for DA 238/14 is not prime crop or pasture land for the purposes of the Rylstone Local Environmental Plan 1996.
2. Council resolve that Lot 5 DP 136719, Lots 3, 4, 11 and 12 DP 755796 for DA 228/14 is not prime crop or pasture land for the purposes of the Rylstone Local Environmental Plan 1996.
3. A **DIVISION** be called in accordance with the requirements of Section 375A(3) of the Local Government Act, 1993.

ITEM-6 ENVIRO - 11/05/15 - WALLERAWANG POULTRY FARM UPDATE

REPORT BY: A MUIR- GROUP MANAGER ENVIRONMENT & DEVELOPMENT

REFERENCE

Min No 14-483: Ordinary Meeting of Council held on 15 December 2014
 Min No 15-07: Ordinary Meeting of Council held on 9 February 2015
 Min No 15-41: Ordinary Meeting of Council held on 2 March 2015
 Min No 15-55: Ordinary Meeting of Council held on 23 March 2015
 Min No 15-76: Ordinary Meeting of Council held on 20 April 2015

SUMMARY

This report details complaints and current actions undertaken by Council relating to the Wallerawang Poultry Farm as resolved on 15 December 2014 below:

THAT Council officer's provide a report at the next Council meeting and every meeting thereafter in respect of complaints received by Council and actions taken by Council in relation to the Wallerawang Chicken Farm operations.

COMMENTARY

No complaints were received for the Wallerawang Poultry Farm over the period 8 April 2015 to 1 May 2015.

However, over this time the following actions have been undertaken:

- Regular odour surveys (detailed below) undertaken by Certified Officer. Refer to attachments 1 and 2 for the associated Site Map and Odour Intensity Scale

Location on Site Map	Date	Time	Odour Intensity Detected (Refer to Attachment 2)		Comments/Odour Characterised
			Maximum Level	Minimum Level	
1	Thursday 9/4/2015	8:59am to 9:04am	0	0	No comment.
2		8:48am to 8:53 am	0	0	No comment.
3		8:30am to 8:35am	0	0	No comment.
4		8:36am to 8:41am	0	0	No comment.
5		8:42am to 8:47am	0	0	No comment.
1	Tuesday 14/4/2015	4:54pm to 4:59pm	0	0	No comment.
2		4:48pm to 4:53pm	0	0	No comment.
3		4:30pm to 4:35pm	0	0	No comment.
4		4:36pm to	0	0	No comment.

		4:41pm			
5		4:42pm to 4:47pm	0	0	No comment.
1	Thursday 16/4/2015	2:16pm to 2:21pm	0	0	No comment.
2		2:10pm to 2:15pm	0	0	No comment.
3		2:22pm to 2:27pm	0	0	No comment.
4		2:28pm to 2:33pm	0	0	No comment.
5		2:34pm to 2:39pm	0	0	No comment.
1		Tuesday 21/4/2015	3:56pm to 4:01pm	0	0
2	3:50pm to 3:55pm		0	0	No comment.
3	4:02pm to 4:07pm		0	0	No comment.
4	4:08pm to 4:13pm		0	0	No comment.
5	4:13pm to 4:16pm		0	0	No comment.
1	Thursday 23/4/2015	8:21am to 8:26am	0	0	No comment.
2		8:15am to 8:20am	0	0	No comment.
3		8:33am to 8:38am	0	0	No comment.
4		8:27am to 8:32am	0	0	No comment.
5		8:39am to 8:44am	0	0	No comment.
1	Monday 27/4/2015	2:16pm to 2:21pm	0	0	No comment.
2		2:10pm to 2:15pm	1	0	No action required due to level of odour
3		2:21pm to 2:26pm	0	0	No comment.
4		2:27pm to 2:32pm	0	0	No comment.
5		2:33pm to 2:38pm	0	0	No comment.
1	Wednesday 29/4/2015	7:50am to 7:55am	0	0	No comment.
2		7:56am to 8:01am	0	0	No comment.
3		8:02am to 8:07am	0	0	No comment.
4		8:08am to 8:13am	0	0	No comment.
5		8:14am to 8:19am	0	0	No comment.

The operator/owner has advised that a 'clean out' of one of the sheds will be undertaken the week starting 11 May 2015. Residents have been notified by Council that odours may increase during this time.

Proposed actions for next reporting period:

- Undertake onsite inspection while cleaning of shed is in progress.
- Certified officer to continue regular odour checks.

Given the reports provided to date and ongoing results of odour surveys, it is intended to reduce odour surveys to one occasion per week. Furthermore, it is recommended that the regular report to Council only occur where instances of odour levels greater than 1 are encountered.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

To ensure that the development complies with the *Environmental Planning & Assessment Act 1979* in relation to compliance with conditions of consent.

ATTACHMENTS

1. Site Map of Chicken Farm and Odour Investigation Area
2. Odour Intensity Scale

RECOMMENDATION

THAT:

1. The information regarding complaints received and Council actions for the Wallerawang Poultry Farm for the period 8 April 2015 to 1 May 2015 be noted.
2. Further reports to Council in relation to complaints and ongoing odour surveys for the Wallerawang Poultry Farm only occur in instances where an odour level of 2 or more is recorded on the odour intensity scale by Council's odour specialist.

**ITEM-7 ENVIRO - 11/05/15 - ROAD NAMING - SLOGGETS LANE, PORTLAND
& WETLANDS LANE, LITHGOW**

REPORT BY: A MUIR GROUP MANAGER ENVIRONMENT & DEVELOPMENT

REFERENCE

Min No 15-13: Ordinary Meeting of Council held on 9 February 2015

SUMMARY

To update Council on road naming proposals for two existing roads requiring naming within the Lithgow Local Government Area.

COMMENTARY

At Council meeting 9 February 2015 two road names were proposed to be named within the Lithgow Government Area being:

1. Sloggets Lane:

Existing formed road (refer to Map 1) that was transferred to Council on 5 October 2012 from Department of Primary Industries- Catchment & Lands (Crown Lands) within the Portland area. This road has been known as 'Sloggets Lane', however given it was not Council owned, it was not formally named. Therefore it is proposed that the road be formally named as 'Sloggets Lane' following Council's policies.

2. Wetlands Lane:

Existing 100m of formed Council road off Inch Street, Lithgow that leads to Lake Pillans following the rail siding (refer to Map 2). This naming was requested by a resident and it has been proposed by the Council's Community Development Committee (11/11/2014) to name the road 'Wetlands Lane'. This is due to the road leading to the Lake Pillans wetlands area which is considered to have environmental and heritage significance in Lithgow.

These names were notified and advertised for a period of 28 days as resolved, with the following submissions received during this period:

1. Sloggetts Lane:

One submission supporting the proposal:

- Very happy for the road to be named and appreciate the proposal. However it is requested that the name be spelt as Sloggett.

Comment: Council will amend the proposed spelling and proceed with the gazette of the road name.

2. Wetlands Lane:

Two submissions received, one in support and one proposing a new name:

- Support the name of Wetlands Lane as it acknowledges the road and area
- Council should be looking at another name other than Wetlands Lane. The area originally was called State Mine Flat when the railway went through to the State Mine in 1921- 1922 and maybe something around State Mine Flat would be more appropriate.

Comment: Without any proposed name put forward, it is considered appropriate to continue with Wetlands Lane. Additionally State Mine Gully Road exists as a name within the LGA and may cause confusion in the future if a similar name was adopted.

POLICY IMPLICATIONS

These roads will be named in accordance with Council's Road Naming Policy.

FINANCIAL IMPLICATIONS

Council will incur some advertising costs in accordance with its Road Naming Policy, and the costs of the signage.

LEGAL IMPLICATIONS

Road naming it to be carried out in accordance with the *Roads Act 1993* and the *Roads Regulation 2008*.

ATTACHMENTS

1. Map 1 - proposed Sloggett Lane location
2. Map 2 - proposed Wetlands Lane location

RECOMMENDATION

THAT Council proceed with the gazettal of 'Sloggett Lane', Portland as per Map 1 and 'Wetland Lane', Lithgow as per Map 2 and notify emergency service authorities and affected residents accordingly.

**ITEM-8 ENVIRO - 11/05/15 - MODIFICATION OF CONSENT REPORT -
32899DACC S9605714 - PROPOSED MODIFICATION TO THE
MAXIMUM NUMBER OF DOGS, LOT 1 DP 501973 - 74 GEORDIE
STREET LITHGOW NSW 2**

REPORT BY: A MUIR – GROUP MANAGER ENVIRONMENT AND DEVELOPMENT

REFERENCE

Min No 828: Ordinary Meeting of Council held on 1 November 1999

Min No 766: Ordinary Meeting of Council held on 11 October 1999

SUMMARY

To assess and recommend determination of a Section 96 Modification of Consent application (S96057/14) associated with 328/99DACC.

COMMENTARY

Council granted consent on 1 November 1999 for a 'dog kennel' on Lot 1 DP 501973, 74 Geordie Street, Lithgow. An application has now been received which seeks to amend condition 2 relating to the number of dogs being boarded. Condition 2 of the development consent states:

The development be limited to 20 dogs only.

The current proposal, as originally submitted to Council, made application to modify this condition to allow for the boarding of up to 100 dogs on the property. Due to concerns with over-development of the site and noise concerns, the application has been reduced to 50 dogs (30 additional).

The additional 30 dogs are proposed to be located in an additional new kennel block. The Statement of Environmental Effects states that the additional kennel block will be situated in proximity to the existing kennel block.

The kennel block will consist of brick exterior walls, colour bond roof with weldmesh internal walls. The floor would be a concrete slab.

The property consists of a brick home on 2.3 hectares with dog kennels and dog exercise yards. A pet supply business is also operating with consent at the premises. Farmers Creek and the railway line adjoin the property.

The original approval was granted by the elected Council, for “an animal boarding or training establishment” for up to 20 dogs. The development required the construction of a brick kennel with 20 compartments, an exercise yard and a waste disposal facility consisting of an effluent disposal system whereby liquid effluent goes to the sewer and solid effluent is to be collected and taken to the Lithgow tip.

The original application was assessed as having 6 kennels for greyhound racing dogs and 14 kennels for general boarding. The proposed additional 30 kennels are expected to be for general boarding purposes. There have been no ongoing compliance or complaint issues with the current operations which has operated in accordance with its consent.

OTHER ISSUES

Given that the proposed amendment is for the additional boarding and the construction of further dog kennels, the modification was notified to adjoining neighbours and placed on public display at Council's Administration Building for a period of 14 days.

During the notification period, one submission was received with the following concern:

1. Traffic would be increased and there is limited parking in the vicinity for the dropping off and picking up of dogs. This would make it hard to see on-coming traffic when reversing from adjoining driveways.

Applicant's Comment: *The kennels will be accessed by a separate driveway that will run from the front boundary to the kennels at the rear. Therefore picking up and dropping of dogs would take place on the property and not in the street. Vehicles will be able to park and turn around easily on the property near the kennels. There will be no impediment whatsoever to the neighbour's vision when they leave their driveway. Geordie Street already carries a lot of traffic.*

Council Officers Comment: The applicant's response that the majority of the vehicles dropping off and picking up dogs would be via the existing driveway is reasonable.

POLICY IMPLICATIONS

Policy 7.7 Calling in of Development Applications and or Development Application/Construction Certificates by Councillors

4. This policy does not apply to applications to modify development consents unless the modification represents a significant departure from the original application; would involve issues the subject of an objection with the original application; or where the modification application itself has been called in under the processes outlined in this policy.

The original application was approved by the elected Council (ordinary Meeting) on 1 November 1999 (Minute Number 828).

As the original application was approved by Council and the modification is considered to represent a significant departure, the application is required to be determined by Council.

Policy 7.5 Notification of Development Applications

4. Notification of Section 96 Application

4.2 Section 96(1A) modifications that involve minimal environmental impact will not be notified unless in the opinion of Council, the proposed modification has the potential to increase the impact of the development on adjoining land.

It is to be noted that no objections were received for the original application. As the development is proposing to intensify the existing usage, the development was referred to adjoining neighbours and placed on public display for a period of 14 days.

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

The application must be assessed in accordance with the heads of consideration of Section 79C of the Environmental Planning & Assessment Act 1979. A full assessment is reported in the attached Section 79C assessment report.

ATTACHMENTS

1. Complete 79C Planning Report under separate cover.

RECOMMENDATION

THAT:

1. The Section 96 Modification of Consent application S96 057/14 associated with 328/99DACC be approved subject to conditions outlined in the attached Section 79C report being amended and added to the consent.
2. A **DIVISION** be called in accordance with the provisions of Section 375(3) of the Local Government Act 1993.

OPERATION REPORTS

ITEM-9 OPER - 11/05/15 - WATER REPORT

REPORT BY: I STEWART – GROUP MANAGER OPERATIONS

REFERENCE

Min No 15-84: Ordinary Meeting of Council held on 20 April 2015

SUMMARY

This report provides an update on various water management issues as per Minute Number 15-84.

COMMENTARY

Current Dam Levels for both Farmers Creek and Oberon

Farmers Creek Dam # 2 capacity on Monday, 27th April 2015 was 100%. Oberon Dam capacity on Monday, 27th April 2015 was 58%.

Current Water Usage from Each Supply

Table 1 below indicates total output from the Oakey Park Water Treatment Plant (consumption), the volume transferred from the Clarence Water Transfer System (CWTS) and the volume of water purchased from Fish River for 2014/2015. Table 2 below indicates total output from the Oakey Park Water Treatment Plant (consumption), the volume transferred from the Clarence Water Transfer System (CWTS) and the volume of water purchased from Fish River for 2012/2013 & 2013/2014.

Table 1 - Oakey Park Monthly Output and Clarence Transfer 2014/2015

Month	Oakey Park WTP (ML)	Clarence Transfer (ML)	Fish River Supply (ML)
July 2014	80	0	63
August 2014	145	0	45
September 2014	105	0	66
October 2014	112	0	61
November 2014	120	0	65
December 2014	84	0	36
January 2015	89	0	100

February 2015	95	0	66
March 2015	143	0	67
April 2015	99	0	71
TOTAL	1,072	0	640

Table 2 - Oakey Park Monthly Output and Clarence Transfer 2012/2014 & 2013/2014

Month	2012/13			2013/14		
	Oakey Park WTP (ML)	Clarence Transfer (ML)	Fish River Supply (ML)	Oakey Park WTP (ML)	Clarence Transfer (ML)	Fish River Supply (ML)
July	107	0	53	93	0	44
August	106	0	49	96	0	67
September	115	0	55	102	0	73
October	140	0	65	130	0	58
November	140	5	62	106	0	61
December	135	81	76	100	0	47
January	146	73	68	111	0	109
February	92	0	66	93	0	73
March	114	0	81	62	0	68
April	109	0	106	105	0	61
May	123	0	62	118	0	59
June	154	0	70	101	0	67
TOTAL	1,481	159	813	1,217	0	787

Oakey Park Water Quality Summary

Oakey Park Water Treatment Plant supplied water to Marrangaroo, Wallerawang, Lidsdale, Portland, Cullen Bullen, Glen Davis and Rydal from 24/04/2015 to 26/04/2015 and to Marrangaroo on 30/04/2015. OPWTP is currently supplying water to Lithgow. No health-based ADWG values were exceeded for the period 11/04/2015 to 1/05/2015.

Monitoring results for the licence to operate the water treatment plant have been published on the Lithgow City Council website as required by the *Protection of the Environment Operations Act 1997*.

Fish River Water Scheme Water Quality Summary

Fish River Water Supply is currently supplying water to Marrangaroo, Wallerawang, Lidsdale, Portland, Cullen Bullen, Glen Davis and Rydal. No health-based ADWG values were exceeded for the period 11/04/2015 to 1/05/2015.

Current Water Restrictions Update

Level 1 restrictions are effective from Monday, 17th March 2014.

Water Saving Schemes or Processes Update

Council's Rainwater Tank and Domestic Appliance Rebate Program continued with Council approving no applications for household appliance rebates and no applications for water tank rebates for the period 11/04/2015 to 1/05/2015.

Water Reticulation Complaints

Seven (7) varying complaints were received during the period 11/04/2015 to 1/05/2015 concerning water quality issues in the following areas. This is a significant reduction on the number of previous complaints.

Locality	Request	Resolution
Lithgow Street, Lithgow	Water from taps coming out black, no water going to toilets.	Internal pipework condition appears to be the cause of this complaint will be kept under review. Main flushed to increase chlorine residual at this location
Tobruk Street, Lithgow	Experiencing dirty water.	Affected by mains renewal program being undertaken in the vicinity.
Junction Street, Wallerawang	Caller stated that she called two weeks ago regarding this and Council went and flushed but the water is still dirty.	First complaint from this location. See report on second complaint.
Blaxland Street, Lithgow	Customer advised that over the last few weeks they have been experiencing yellow coloured water & brown sludge coming through the mains. It has improved slightly however water still not that clear.	This was caused by the high iron content as a result of the dam turnover and the main was flushed to clear affected water and improve chlorine residual.
Surveyors Way, South Bowenfels	Caller advised that a couple of weeks back he reported the water smells of paint. He advised that council went out tested the water and flushed the mains, but he said that the	The odour was residual chlorine in the water. Sample tested and not found to exceed ADWG values.

	smell has returned.	
Junction Street, Wallerawang	Caller advised that her water is quite discoloured. She advised they have had private plumber come and check to see if it was there side they have been advised that it is not.	This is the second complaint from the same address. Council checked the condition of the service from the Council main to the water meter and it was discovered to be copper and not galvanised iron as suspected The main was flushed and will be kept under review.
Macauley Street, Lithgow	Caller stated that the water taste dirty, could the water main please be flushed out.	This was caused by the high iron content resulting from the dam turnover, and was flushed to improve chlorine residual.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

RECOMMENDATION

THAT Council note the water report.

ITEM-10 OPER - 11/05/15 - PORTLAND SEWERAGE AUGMENTATION, DETAIL DESIGN SERVICES FOR NEW SEWERAGE TREATMENT PLANT

REPORT BY: I STEWART - GROUP MANAGER OPERATIONS

REFERENCE

Min No 14-311: Ordinary Meeting of Council held on 28 July 2014
Min No 14-423: Ordinary Meeting of Council held on 27 October 2014
Min No 14-468: Ordinary Meeting of Council held on 17 November 2014

SUMMARY

To advise Council of a proposal from the Department of Public Works to proceed with the detailed design for the new sewerage treatment plant which is funded through Resources for Regions.

COMMENTARY

Following the concept design received by NSW Public Works, a proposal has been received to provide detailed design services for the augmentation of Portland Sewerage Treatment Plant. This proposal includes:

- Civil design of new sewerage treatment plant.
- Hydraulic loading design
- Electrical, SCADA & Telemetry design
- Onsite emergency generator design
- Preconstruction cost estimate
- Onsite meetings & workshops

This design will provide drawings and documentation to allow for tenders to be called for the construction of the new sewerage treatment plant for Portland and will have a design capacity of 3,500 equivalent persons and will be of a similar design to the Intermittently Decanting Extended Aeration (IDEA) Plant recently commissioned at Wallerawang.

The draft program for the delivery of the detailed design allows for 16 weeks until Council will receive the detailed design.

Fee Schedule

The total fee including GST is \$402,270 and is broken up in the following cost activities:

	Item	Fee Amount
1	Design management	\$13,000
2	Site inspections and meetings	\$23,000
3	Civil/Process Design and peer review	\$91,000
4	Mechanical Design and peer review	\$35,000
5	Electrical Design and peer review	\$44,400

6	Telemetry Design and peer review	\$6,000
7	Drafting	\$91,000
8	CHAIR and HAZOP (hazardous operations analysis)	\$12,500
9	Pre-tender Cost Estimate	\$7,500
10	Disbursements	\$2,800
11	Project & Governance Management inclusive of attendance meetings/workshops	\$39,500
Sub-total		\$365,700
GST		\$36,570
Total Fee (in. GST)		\$402,270

Following the completion of the concept detailed design phase, the next phase of the project will be the adoption of the design and preparation of contract documents for the purpose of calling tenders. It is anticipated that this phase including review of tenders will cost in the vicinity \$60,000.

At this stage it is only proposed to commit to the preparation of the detailed design and associated works.

It is important the new STP to be constructed at Portland is of similar design to the STPs at Lithgow and Wallerawang as there are obvious benefits in achieving this type of construction.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

This project is part funded by an allocation of \$10.05 million from the NSW Resources for Regions program with the balance up to \$15 million being provided by Council.

LEGAL IMPLICATIONS

Under section 55 of the Tendering Regulations in the Local Government Act, Council is not required to call tenders for the provision of these services when engaging with the Crown, a Minister of the Crown or a statutory body representing the Crown

ATTACHMENTS

1. Portland Sewerage Augmentation Proposal Number; WSP 15026

RECOMMENDATION

THAT Council accept the proposal from NSW Public Works to provide a detailed design for the augmentation of the Portland Sewerage Treatment Plant at a total fee cost of \$402,270 inclusive of GST.

CORPORATE AND COMMUNITY REPORTS

ITEM-11 CORP - 11/05/15 - NOMINATIONS TO JOIN TOURISM ADVISORY COMMITTEE

REPORT BY: K BARROW – TOURISM MANAGER

REFERENCE

Min No 14-372: Ordinary Meeting of Council held on 8 September 2014
Min No 14-436: Ordinary Meeting of Council held on 27 October 2014
Min No 15-21: Ordinary Meeting of Council held on 9 February 2015
Min No 15-65: Ordinary Meeting of Council held on 23 March 2015

SUMMARY

This report details nominations received by Council to fill two vacant positions on the Tourism Advisory Committee.

COMMENTARY

The Tourism Advisory Committee membership is comprised of two (2) Councillors, the General Manager or his nominee, Council's Representative on Blue Mountains, Lithgow and Oberon Tourism Board and six community representatives.

All members of the Tourism Advisory Committee should have broad tourism knowledge and/or skills including in the areas of: financial awareness; marketing and promotions; knowledge of the local product; knowledge of broader product; knowledge of tourism market sectors; and work in/or have worked in a tourism or related business.

All committee members are to be financial members of Lithgow Tourism.

Two resignations were received from Ms Cassandra Baker and Mrs Domino Houlbrook-Cove at the end of 2014. Council called for Expressions of Interest for two representatives for Tourism Advisory Committee in January 2015.

Seven nominations were received:

Recommended Nominations:

- Mrs Stacey Phillips – Lake Lyell Recreation Park – Mrs Phillips has been assisting her husband with managing and caretaking of the Lake Lyell Recreation Park for the past two years and have increased visitation to Lake Lyell Recreation Area.
- Mr Greg Johnston – Owner Lithgow Tourist and Van Park – Mr Johnston has owned and operated the Lithgow Tourist and Van Park for the past 12 years and

understands customers tourism experiences in the area and sees the need to further develop tourism as a key source of revenue for the area.

Other Nominations Received:

- Mr Ron Murray – Owner of Central West Information Technology - Mr Murray has been associated with Tourism in Lithgow since starting Central West Information Technology. Mr Murray provides service and support to a wide range of Tourism related businesses in the LGA. Central West Information Technology is currently expanding services to offer new and innovative services which will directly assist and support Tourists and the Tourism Industry in the area well into the future.
- Mrs Joy Smith – Manager of Court House Hotel Lithgow. Mrs Smith has run a very popular hotel in Lithgow for ten years, which provides accommodation, a bistro and bars.
- Mrs Lorraine Taylor – Owner of Lithgow Rose – Mrs Taylor has been a member of Lithgow Tourism for several years and as owned holiday accommodation.
- Mrs Janette Watson - Proprietor of Jannei Goat Dairy. - Mrs Janette Watson is a long term resident of the Lithgow community and concerned for its growth and jobs. She believes she has a key industry that will attract tourists to the area.
- Mrs Jane Aiken – local resident – Mrs Aiken has experience in tourism and strongly supports advocacy and promotion of our natural heritage, landscape and the environment.

Council staff held discussions with the two Councillors on the Committee in regards to the expressions of interest.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

Local Government Act NSW 1993

ATTACHMENTS

1. Tourism Advisory Committee Terms of Reference.

RECOMMENDATION

THAT

1. Council appoint Mrs Stacey Phillips and Mr Greg Johnston to the Tourism Advisory Committee.

2. Before commencing their role on the Committee the appointments undertake Code of Conduct training.

ITEM-12 CORP - 11/05/15 - COUNCIL INVESTMENT OPTIONS

REPORT BY: J BROZEK - GROUP MANAGER CORPORATE AND COMMUNITY

REFERENCE

Min No 15-18: Ordinary meeting of Council held on 9 February 2015

SUMMARY

To provide Council with details of investment options as requested at the February 2015 Council Meeting.

COMMENTARY

As part of December 2014's monthly cash and investment report, Council resolved that a report be provided to Council on investment options.

Council must make all investments under the current Local Government Ministerial Order for Investments. This instrument states that "for the purposes of section 625 of the Local Government Act a council may only invest money in the following forms:

- (a) Any public funds or securities issued by a council (within the meaning of the Local Government Act 1993 (NSW));
- (b) Any debentures or securities issued by a council (within the meaning of the Local Government Act 1993 (NSW));
- (c) Interest bearing deposits with, or any debentures or bonds issued by, an authorised deposit-taking institution (as defined by the Banking Act 1959 (Cwth)), but excluding subordinated debt obligations;
- (d) Any bill of exchange which has a maturity of not more than 200 days; and if purchased for value confers on the holder in due course a right of recourse against a bank which has been designated as an authorised deposit taking institution by the Australian Prudential Regulation Authority;
- (e) A deposit with the New South Wales Treasury Corporation or investments in an Hour-Glass investment facility of the New South Wales Treasury Corporation;

Transitional Arrangements

- (i) nothing in this order affects any investment made before the date of this order which was made in compliance with the previous Ministerial Orders, and such investments are taken to be in compliance with this Order".

Previous versions of the Ministerial Order allowed councils to invest in instruments that carried a ratings agency rating of A or above. This option was removed as a consequence of the Global Financial Crisis (GFC). Since this change Lithgow City Council has historically, taken a very conservative approach to cash investments and

utilised a term deposit and at-call account structure. This has enabled Lithgow Council to minimise risk.

A comparison and review exercise has been undertaken with other Local Government Organisations to compare the investment strategy utilised when compared to the structure employed by Lithgow Council. The results of this exercise are summarised in the table below.

Organisation	Structure
Lithgow City Council	A mixture of term deposits and at call facilities
Mid Western Regional Council	A mixture of term deposits and at call facilities
Liverpool City Council	Term Deposits, debt securities bonds and Floating Rate Notes
Greater Taree City Council	Term Deposit Portfolio
Queanbeyan City Council	A mixture of term deposits, floating rate notes and at call facilities
Bathurst Regional Council	A mixture of term deposits, floating rate notes and at call facilities
Oberon Council	Term deposits with one deposit held under transitional arrangements
Blue Mountains City Council	A mixture of term deposits and investments held under transitional arrangements.

The current interest rate environment is one in which it is increasingly difficult to secure high rates of return. A review of investments options currently available to Council has shown that the other main form of cash investment available to Council is floating rate notes.

A floating rate note is an investment security where the amount of interest received each quarter varies as the bank bill swap rate (BBSW) moves. The rate of return on these investments is generally quoted as a margin above BBSW. For example in the table below, a floating rate note issued by the Commonwealth Bank is paying an interest rate of BBSW+0.36%. This equated to a total interest rate of 2.60%. On the same day Council would have been able to lodge a four year term deposit at an interest rate of 3.05%

When investing in any type of security there is a certain level of risk which should be assessed. The risk with investing in term deposits and floating rate notes can be categorised in terms of interest rate risk, credit risk and liquidity risk. By investing in a broad range of short term deposits Council is able to manage all three forms of risk. There is very little chance of interest rates fluctuating greatly during a given month, and if all term deposits are spread evenly over a three month period this substantially eliminates interest rate risk. Similarly with liquidity, or cash flow risk, a portfolio of term deposits with maturity dates spread out evenly during a quarter means that Council should have investment maturing periodically to release funds to meet operational needs as required.

The remaining type of risk to be managed is credit risk. Credit risk refers to the risk that a borrower will default on any type of debt by failing to make required payments. The risk is

primarily that of the lender and includes lost principal and interest and disruption to cash flows. This risk is controlled by diversification, which is limiting the percentage of the total investment portfolio in any one financial institution.

Floating rate notes also minimise interest rate risk as the base interest rate is adjusted. The margin for investment return remains the same. Floating rate notes generally have a longer term to maturity than the securities that are currently in Council's investment portfolio. A longer term investment can expose Council to increased liquidity risk.

The table below presents examples of investments in floating rate notes and then compares the interest rate on similar term deposits at the time of investment.

Investment	Term	Floating Rate Note Interest Rate	Equivalent Term Deposit	Interest Rate
Bendigo and Adelaide Bank	24 months	2.91% (BBSW + 0.67%)	Rabobank	3.00%
National Australia Bank	36 months	2.60% (BBSW + 0.36%)	Rabobank	3.15%
Commonwealth Bank	48 months	2.60% (BBSW + 0.36%)	NAB	3.05%

As Council currently invests in term deposits which have a shorter duration (around the 90 day to 180 day term) this strategy is currently the best way to manage all three forms of risk. By investing in longer term deposits the interest rate that may be achieved is higher than a floating rate note, but the strategy increases interest rate risk and liquidity risk. This strategy would restrict Council's cash flow and limit Council's ability to increase returns should interest rates increase. Investing in floating rate notes is not recommended as the returns are lower than what can be achieved by term deposits.

POLICY IMPLICATIONS

All investments are lodged in accordance with section 625 of the Local Government Act, the latest ministerial order and an adopted Cash and Investment Policy

FINANCIAL IMPLICATIONS

Interest income is recognised on an accruals basis and reported to Council as part of the monthly cash and investments report

LEGAL IMPLICATIONS

Investments are held in accordance with the Lithgow City Council's Investment Policy at the date of investing the funds. On 27 October 2014 Council adopted a revised Investment Policy as Policy 8.7 and investments will comply with this Policy which includes the following:

- Local Government Act 1993 - Section 625
- Local Government Act 1993 - Order dated 12 January 2011
- Local Government (General) Regulation 2005
- Trustee Amendment (Discretionary Investments) Act 1997 Section 14A (2), 14c(1) & (2)

RECOMMENDATION

THAT Council note the review of investment options.

COUNCIL COMMITTEE MINUTES

**ITEM-13 OPER - 11/05/15 - TRAFFIC ADVISORY LOCAL COMMITTEE - 16TH
APRIL 2015**

REPORT BY: I STEWART - GROUP MANAGER OPERATIONS

SUMMARY

This report details the Minutes of the Traffic Advisory Local Committee Meeting held on 16th April 2015.

COMMENTARY

At the Traffic Advisory Local Committee meeting held on 16th April 2015, the following items were discussed by the Committee:

- Major Events – Traffic Control Plan
- Parking Issues – Great Western highway, Lithgow
- Bathurst Bicentenary Event – Retrace the Steps
- The Wild West Downhill 2015
- Request for Double Lines – Rydal-Hampton Road
- Ironfest 2015 Traffic Management Plan
- 2015 Alpine Classic
- Road Closures – Spring Fair Street Parade, Portland
- Kookaburra March – World War I Re-Enactment
- Repositioning of Give Way Sign – Lithgow Valley Plaza
- Feasibility of Speed Camera – Intersection of Mort and Bridge Street
- Removal of Emergency Services Parking – Main Street, Lithgow
- Road Closure – Eskbank Street, Lithgow

The following items are outside the Committee's delegations and require Council to formally approve the recommendation:

- Rock & Road Cycle Race
- Replace Give Way Signs with Stop Signs
- Traffic Management – Intersection of Railway Avenue and Frankfort Road, Portland
- Laurie Bender/Barry Rushworth Walk for Cancer
- Repositioning of Disabled Parking – Main Street, Lithgow

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

ATTACHMENTS

1. Minutes of the Traffic Advisory Local Committee meeting held on 16 April 2014.

RECOMMENDATION

THAT Council:

1. Note the minutes of the Traffic Advisory Local Committee held on the 16 April 2015;
2. Approve the Rock & Road Cycle Race event subject to compliance with Police conditions;
3. Replace the Give Way signs with Stop signs at the intersection of Lemnos Street and Rabaul Street;
4. Install white reflective guideposts on the outer boundary of the corner at the intersection of Railway Avenue & Frankfort Road, Portland;
5. Support the Laurie Bender/Barry Rushworth Walk For Cancer subject to provision of current insurance and a professionally prepared traffic management plan;
6. Take no action in relation to repositioning the disabled parking or the construction of an accessible ramp at the top end of Main Street, Lithgow.

ITEM-14 OPER - 11/05/15 - SPORTS ADVISORY COMMITTEE MEETING MINUTES - 28TH APRIL 2015

REPORT BY: I STEWART – GROUP MANAGER OPERATIONS

REFERENCE

Min No 15-91: Ordinary Meeting of Council held on 20 April 2015

SUMMARY

This report details the Minutes of the Sports Advisory Committee Meeting held on 28th April 2015.

COMMENTARY

At the Sports Advisory Committee held on 28th April 2015, there were numerous items discussed by the Committee, including:

- Financial Assistance Requests
- 2015 LJ Hooker Reg Cowden Sports Star of the Year Awards
- Booking Requests

The following items were outside the Committee's delegations and require Council to formally approve the recommendation:

- Portland Touch Football Association – New Members
- Lithgow Giants RLFC – New Members

ATTACHMENTS

1. Minutes of the Sports Advisory Committee meeting held on 28 April 2015.

RECOMMENDATION

THAT Council:

1. Note the minutes of the Sports Advisory Committee held on 28th April 2015;
2. Accept Jason Whitney & Stephen Bender as the Sports Advisory Committee representatives from the Portland Touch Football Association;
3. Accept Dan Wyer & Brad Adams as the Sports Advisory Committee representatives from the Lithgow Giants RLFC;
4. Investigate the issues raised regarding Tony Luchetti Sportsground and report back to the next Sports Advisory Committee Meeting; and
5. Investigate the feasibility of seeking corporate sponsorship for Tony Luchetti Sportsground.

BUSINESS OF GREAT URGENCY

In accordance with Clause 241 of the Local Government (General) Regulations 2005 business may be transacted at a meeting of Council even though due notice of the business has not been given to the Councillors. However, this can happen only of:

- a) *A motion is passed to have the business transacted at the meeting: and*
- b) *The business proposed to be brought forward is ruled by the Chairperson to be of great urgency.*

CLOSED COUNCIL

ITEM-15 CLOSED COUNCIL - CONFIDENTIAL - CORP - 11/05/15 - CODE OF CONDUCT INVESTIGATION REPORT CLR TICEHURST

REPORT BY: J BROZEK – COMPLAINTS COORDINATOR

Reason for Confidentiality

This report is **CONFIDENTIAL** in accordance with Section 10A(i) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (i) alleged contraventions of any code of conduct requirements applicable under section 440.

SUMMARY

Council received two separate complaints in October 2014 and November 2014 in relation the conduct of Councillor Ticehurst. The complaints have been investigated by a conduct reviewer and the report is now presented for Council decision.

RECOMMENDATION

THAT Council consider the Code of Conduct Investigation report in relation to Councillor Ticehurst in Closed Council pursuant to Section 10A(i) of the Local Government Act 1993.