



LITHGOW CITY COUNCIL

MINUTES

FINANCE AND SERVICES COMMITTEE
MEETING OF COUNCIL

HELD ON

04 JUNE 2007

**MINUTES OF THE LITHGOW CITY COUNCIL MEETING
HELD AT THE CIVIC CENTRE, LITHGOW ON 4 JUNE 2007**

Meeting Commenced 7.08pm

Public Gallery: 22

PRESENT

His Worship the Mayor
Councillor Neville Castle
Councillor B P Morrissey
Councillor M F Ticehurst
Councillor W McAndrew
Councillor H K Fisher
Councillor B S Moran
Councillor M M Collins
Councillor A E Thompson
Councillor M J Wilson

APOLOGIES

An apology was received and accepted from General Manager, Paul Anderson due to being out of the City at a Shires Conference.

Also in attendance

Group Manager Regional Services, Mr Andrew Muir
Group Manager Community and Corporate Services, Ms Kathy Woolley
Minutes Secretary, Ms Casey Clarke
Executive Assistant, Ms Cortney Wood
Team Leader Planning, Mr Gary Wallace
Development Manager, Mr Jim Nichols

CONFIRMATION OF MINUTES

Confirmation of the Minutes of the Finance and Services Committee Meeting of Council held on the 7 May 2007 were taken as read and confirmed by Councillors M J Wilson and B S Moran

**07-228 RESOLVED
CARRIED**

DECLARATION OF INTEREST

His Worship the Mayor called for Declarations of Interest on any matter before the Meeting.

Councillor MJ Wilson declared a non-pecuniary interest in Item 1 due to being the Chairman of the Lake Wallace Community Boat Centre INC.

QUESTIONS FROM THE PUBLIC GALLERY

At 7.00pm members of public gallery were invited to address questions through the Mayor to Councillors and Staff:

Nil.

PRESENTATIONS:

Veronica Nolan – A presentation was given by Veronica Nolan regarding item 7 - DA 319/06 Construction and operation of heliport, Castlereagh Highway Capertee.

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MAYORAL MINUTE

**ITEM:1 04/06/07 - MAYORAL MINUTE - LAKE WALLACE COMMUNITY
BOAT CENTRE**

REPORT FROM - NEVILLE CASTLE, MAYOR

REFERENCE

NIL

SUMMARY

Correspondence has been received from the Lake Wallace Community Boat centre in relation to developing rowing, canoeing and other recreational boating activities on Lake Wallace.

COMMENTARY

The Lake Wallace Community Boat Centre Inc have based their model of management on that of the Wallerawang Indoor Sporting Complex Management Committee. They have been most helpful in providing them with assistance in developing an organisation.

Michael Wilson has been elected as President of the association.

The Lake Wallace Community Boat Centre Inc has as their objective the development, management and use of a community boat shed on the shores of Lake Wallace. To meet these objectives they are planning to build a twenty five metre by twelve meter shed of the shores of the Lake. The Prime aim of the shed is to provide for the storage of boats as well as premises from which training and boating activities can be carried out.

The Committee has adopted the strategy to develop the shed in stages as funding becomes available. Their initial costing has shown that we can purchase the shed without erection costs for approximately \$22,000. To erect the shed requires earth works and development of foundations which we believe will cost in the vicinity of \$6000. To bring the structure to completion will require the connection of sewerage, power and water and in time a concrete floor. Each of these items will be prioritised and completed as funding becomes available.

Development of the simple shed structure will fast track the use of the lake for water sports and encourage a greater community participation in the use of the lake. The Lake Wallace Boat Centre Inc would like to meet with Council as the lessee's of the foreshores of the lake and as the consent authority to start negotiations between Council and Delta Electricity over what will be required to construct the complex. They understand that a Memorandum of Understanding between the three parties is needed to translate the shed dream into a reality.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

RECOMMENDATION**THAT:**

1. The information be received
2. Council consider possible support in principle only to the Lake Wallace Boat Centre Inc

Councillor MJ Wilson declared a non-pecuniary interest and vacated the Chambers.

07-229 RESOLVED**THAT:**

1. The information be received
2. Council consider possible support in principle only to the Lake Wallace Boat Centre Inc
3. Council seek advice from the Lake Wallace Boat Centre Inc. in relation to incorporating a pontoon at Lake Wallace.
4. A report be brought back to Council in relation to setting up funds and Council taking on the project for the pontoon.

MOVED: Councillor B P Morrissey**SECONDED:** Councillor M M Collins.**CARRIED**

GENERAL MANAGERS REPORTS

**ITEM:2 GM - 04/06/07 - AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION
 - FAIR FUNDING CAMPAIGN**

REFERENCE

NIL

SUMMARY

This report outlines correspondence received from the Australian Local Government Association (ALGA) in relation to their Fair trading campaign.

COMMENTARY

Correspondence has been received from the Australian Local Government Association (ALGA) in relation to their Fair Trading.

Twelve months ago the Board of the Australian Local Government Association (ALGA) resolved to pursue concerted campaign to achieve fair treatment, fair trading and formal recognition on behalf of local government across the country. The campaign has been led by ALGA and has received extremely strong support from your Associations and their strengthening Local Government task Force.

Since the launch of our campaign together we have achieved two historic milestones:

1. On fair treatment – we have achieved an intergovernmental agreement (IGA) to stop cost shifting. The Cost Shifting IGA was signed by all governments in April 2006 and it sets out a process to ensure that local government is appropriately consulted and that funding matters will be addressed when local government is called upon to deliver services on behalf of another sphere of government. On a state level, the Associations and the Strengthening Local Government task Force are having constructive discussions with the NSW government on a similar IGA to establish a mechanism for determining the respective roles, service responsibilities and financial obligations of each level of government and dealing with cost shifting, limits of State intervention in Local Government and future consultative processes.
2. On formal recognition – we have achieved the passage of a joint parliamentary resolution recognising the importance of local government in the system of Australian government. This is a significant first step in the long journey to achieving constitutional recognition. With the passage of this resolution we have achieved an unprecedented level of bipartisan support which will be essential when the time comes to put the issue to a referendum.

We are writing to Council to provide you with important information on the third plank of our campaign – Fair Funding. In April 2006, ALGA supported by your associations, commissioned PricewaterhouseCoopers (PwC) to undertake a national study into the financial sustainability of Local Government.

The study was designed to build upon similar studies conducted in South Australia, New South Wales and Western Australia. Important work on this topic had also been completed by the Municipal Association of Victoria (MAV).

The PwC final report findings are broadly consistent with these state-based studies. The reports conclusion is quite stark. That up to 30% of Australian councils face substantial financial sustainability challenges and that urgent action is required to address this problem.

We urge Councils over the coming months to document examples of failing infrastructure and send this documentation to your Associations or directly to the ALGA Community Infrastructure Ideas Register. Together through ALGA we will ensure that this issue is at the forefront of national debate.

As our campaign builds momentum throughout 2007 it will be important for councils to play a more direct role.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

07-230 RESOLVED

THAT the information on the Australian Local Government Association Fair Funding campaign be received.

MOVED: Councillor H K Fisher

SECONDED: Councillor A E Thompson.

CARRIED

REGIONAL SERVICES REPORTS

ITEM:3 REG - 04/06/07 - REQUEST FOR CONSTRUCTION OF ACCESS RAMP - WARATAH STREET LITHGOW

REPORT BY: GROUP MANAGER REGIONAL SERVICES - ANDREW MUIR

SUMMARY

To advise of a request for an adjustment to kerbing and guttering to allow wheelchair access for residents in Waratah Street, Lithgow.

COMMENTARY

A request has been received from occupants of a residential premise in Waratah Street requesting that Council adjust the kerbing and guttering outside their premises indicating that “my husband is now wheelchair bound and we are having great difficulty in getting him in and out of the house and into the car”.

Whilst Council has no obligation to adjust the kerbing and guttering by the construction of an access ramp, there are some circumstances where the expenditure of public funds to assist residents for social reasons is considered reasonable and it is submitted that this is such a situation. It is suggested that this issue gives rise to a need to mend Council’s policy for kerb and guttering contributions where access issues are identified.

POLICY IMPLICATIONS

Policy kerb and guttering – contributions applies.

FINANCIAL IMPLICATIONS

The construction of a small access ramp would be in the order of \$500 and can be funded from the recurrent budget for kerbing and guttering.

LEGAL IMPLICATIONS

No particular legal issues arise.

07-231 RESOLVED

THAT

1. Council construct a small access ramp in the vicinity of 20 Waratah Street, Lithgow to allow wheelchair access.
2. A review of Council’s policy “kerb and guttering contributions” be undertaken with a view to explicitly identifying issues where accessibility is demonstrated how Council may provide works and the amended policy be brought back before Council for its consideration.

MOVED: Councillor B S Moran

SECONDED: Councillor M J Wilson.

CARRIED

ITEM:4 REG - 4/06/07 - PROPOSED ROAD NAMING CAPERTEE**REPORT FROM: ANDREW MUIR – GROUP MANAGER REGIONAL SERVICES****SUMMARY**

To advise Council of a request to name a previously unnamed portion of road which runs off the Castlereagh Highway north of the village of Capertee.

COMMENTARY

Council has received a proposal to name a previously unnamed road which runs off the Castlereagh Highway to “Tim Dickson Close”. This road services three properties and the suggestion came from a resident of Capertee as a way of remembering a former resident who was killed in the Capertee Valley some years ago. The resident making this suggestion has canvassed this idea with other residents at Capertee who are in agreement.

Following advertisement in the Lithgow Mercury calling for submissions on this proposed road naming, Council received two letters requesting the road be named after past prominent families who lived in the area. The proponents of these road names have submitted information which they claim links the names to families who have an historical association to the Capertee area. These proposals are that the road be named either “The Theobald Way” or “Theobald Close” or “Stampfli Way” or “Stampfli Drive”.

Mr Ted Theobald was born and reared in Palmers Oakey and his family was one of the original pioneering families in the area. He moved to Capertee in the late 1920's where he purchased approximately 80 acres adjacent to the section of road to be named. He built his own house and another for a friend and was known as the local handyman/builder and bee farmer, which was his main occupation. He built a number of buildings around Capertee, including the facade on the old garage next to the Royal Hotel. He put the front step on the main entry to the hotel, which was virtually right on the alignment of the Castlereagh Highway.

The Stampfli family settled in Capertee in the 1930's and purchased a large property known as 'Bernina' which ran for a number of kilometres along the Castlereagh Highway. The Stampfli family employed a number of people in the district on their property and participated in the ten pound assistance scheme which brought migrants to Australia.

POLICY IMPLICATIONS

This road should be named in accordance with Council's Street Naming Policy.

FINANCIAL IMPLICATIONS

Approximate cost of \$100.00 for the purchase of sign and installation.

LEGAL IMPLICATIONS

Nil

07-232 RESOLVED

THAT Council name this section of road “Tim Dickson Close” and place the names “The Theobald Way” or “Theobald Close” or “Stampfli Way” or “Stampfli Drive” on Council's database for the naming of future streets in the Capertee area.

MOVED: Councillor M J Wilson

SECONDED: Councillor A E Thompson.

CARRIED

ITEM:5 REG - 04/06/07 - DEVELOPMENT AND CONSTRUCTIONS APPROVALS

REPORT FROM: GROUP MANAGER REGIONAL SERVICES – ANDREW MUIR

SUMMARY

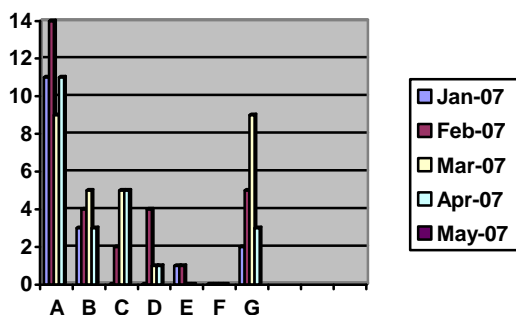
To provide statistical information on Development Applications and Construction Certificates processed.

COMMENTARY

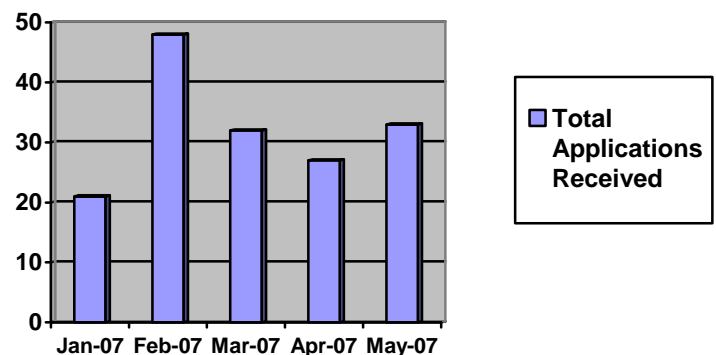
Following installation of a new electronic registration system the traditional reports on Development Applications and Construction Certificates have been replaced with a report detailing the types of applications processed in each month. Over time this will evolve into useful statistical information. A full list of individual applications will be made available to Councillors and the press.

| | Minor Development Approvals (including carports, garages and patios) A | Dwelling Approvals B | Dwelling Addition Approvals C | Other Residential Applications (including Dual Occupancies, Flats) D | Rural Subdivision Approvals E | Residential Subdivision Approvals F | Commercial /Industrial Approvals G | Total Applications Received |
|------------|---|-------------------------|----------------------------------|---|----------------------------------|--|---------------------------------------|-----------------------------|
| Jan 2007 | 11 | 3 | 0 | 0 | 1 | 0 | 2 | 21 |
| Feb 2007 | 14 | 4 | 2 | 4 | 1 | 0 | 5 | 47 |
| Mar 2007 | 9 | 5 | 5 | 1 | 0 | 0 | 9 | 32 |
| April 2007 | 11 | 3 | 5 | 1 | 0 | 0 | 3 | 27 |
| May 2007 * | 12 | 3 | 3 | 1 | 1 | 0 | 2 | 33 |

* includes Approvals from 01/05/2007 TO 29/05/2007



APPROVALS



| | |
|---|---------------------|
| Total Estimated Cost: | \$2,273,543 |
| Average Approval Time | 24 |
| Total Cost of Approvals from 1/01/2007 | \$13,979,890 |
| No. of Applications from 1/01/2007 | 176 |

RECOMMENDATION

THAT the information be received

07-233 RESOLVED**THAT**

1. The information be received
2. Development Application 102/07 be called in on the basis of public interest.
3. Council extend the submission period for DA 102/07 and notify all existing neighbouring land owners of this extended period.

MOVED: Councillor W McAndrew

SECONDED: Councillor B P Morrissey.

CARRIED

**ITEM:6 REG - 04/06/07 - EMIRATES - MINISTER APPROVAL MODIFIED
CONSENT**

REPORT FROM: GROUP MANAGER REGIONAL SERVICES – ANDREW MUIR

SUMMARY

To inform Council of the decision by the Minister for Planning to approve the modified concept plan for the Emirates resort in the Wolgan Valley.

COMMENTARY

On 20 November Emirates lodged two applications with the Department of Planning to modify the concept plan approved under Part 3A of the Environmental Planning and Assessment Act for the resort, and seeking approval for the modified concept plan.

The modification covered additional infrastructure including a gatehouse, pool building, stables and an electricity line and fibre optic cable. As part of the modification Emirates proposed to relocate some of the resort facilities into land that is owned by the Department of Environment and Conservation that forms part of the Wollemi National Park.

Emirates and the Department of Environment and Conservation have negotiated a land swap with an interim lease of the National Park land. The Department of Planning assessed the merits of the project and was satisfied that it would not generate unacceptable impacts on the surrounding area. Subsequently, the modification was approved subject to conditions.

Council has been successful in negotiations with Emirates to process the Construction Certificate for the project. This is a major achievement as these large projects are usually won by private certifiers acting for the owner. A number of meetings have been held with the developer in this regard.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The contribution towards the cost of upgrading the Wolgan Road is currently being negotiated between the parties.

LEGAL IMPLICATIONS

Nil

07-234 RESOLVED

THAT the information be noted.

MOVED: Councillor M J Wilson

SECONDED: Councillor W McAndrew.

CARRIED

ITEM:7 REG - 04/06/07 - DA 319/06 CONSTRUCTION AND OPERATION OF HELIPORT - CASTLEREAGH HWY, CAPERTEE

REPORTED BY: ANDREW MUIR – GROUP MANAGER REGIONAL SERVICES

REFERENCE

Min 07-94: Finance and Services Committee 5 March 2007 (DA 319-06) – calling in the development application.

SUMMARY

The purpose of this report is to determine Development Application 319-06 for the construction and operation of a heliport at 4675 Castlereagh Highway, Capertee. The report proposes to recommend approval of the application subject to conditions.

COMMENTARY

Council is in receipt of a designated and integrated development application from Mr Mark Lilley who is seeking approval for the construction and operation of heliport on land described as Lot 5 DP 244899, 4675 Castlereagh Highway, Capertee.

The proposal seeks to establish a heliport facility capable of accommodating 40 movements per day (i.e. 20 take offs and 20 landings). The site will cater for one single engine helicopter (Robinson R44 II or similar) as well as utilising existing infrastructure associated with rural activity on the land. A lockable compound, containers for fuel storage, security and lighting systems, bunding for chemical spills, emergency facilities, parking, toilet facilities and a hangar are proposed as part of the facility.

Layout and design of the final proposed helicopter landing site infrastructure, including siting and dimensions of the final approach and take off area will be subject to criteria set out in CAAP 92-2 (1) Guidelines for the establishment and use of helicopter landing sites administered by the Civil Aviation Safety Authority (CASA) and site survey.

Visitor access to the site is proposed via car or bus utilising the Castlereagh Highway. The Environmental Impact Statement indicates that substantial landscaping will be established as part of the proposal, with additional screening being proposed for the boundary fronting the Castlereagh Highway and the northern boundary.

Approach and departure flight paths have been identified in accordance with Civil Aviation Safety Authority (CASA) guidelines (1996), with take off and landing routes avoiding proximate residences. Rate of climb is proposed between 500 and 1500 ft/min (500 vertical height may be reached with 600m at 45 knots), with an angle of approach and departure being at or more than 15°.

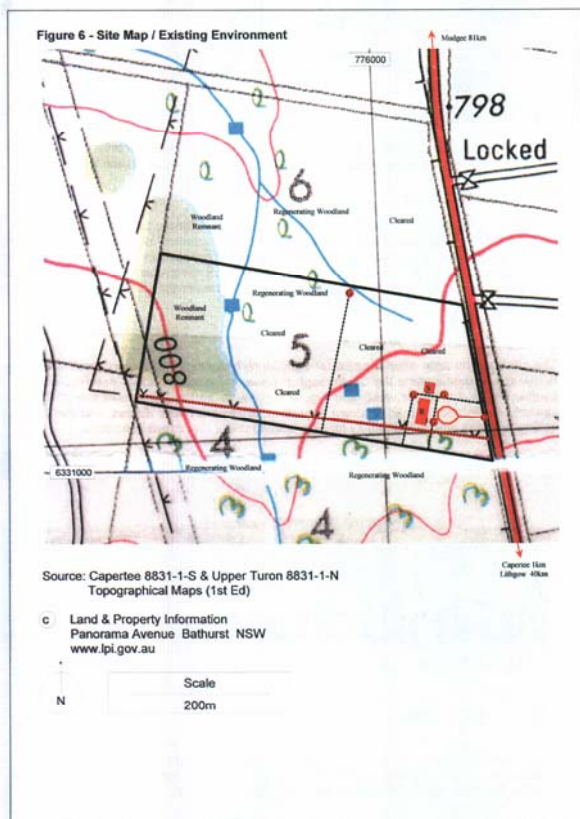
Examples of proposed flight paths are indicated in attachment 4. However, flight routes will be variable within this reference area so that residents along flight paths are not repeatedly exposed to the impacts of the proposal. It is proposed that scenic joyflight routes over conservation areas will be subject to finalisation of a "Fly Neighbourly Agreement" for the area.

If consent were to be granted, it would be proposed that a condition be placed on the consent requiring a Fly Neighbourly Agreement to be put in place in consultation with CASA and potentially affected landholders.

It is proposed that joyflights be conducted between 7.00am and 6.00pm Monday-Saturday and 8.00am to 6.00pm Sunday and Public Holidays, however peak activity will occur on weekends and during holiday periods. The heli-service is proposed to cater to various client requirements, from short (6 min) flights for coach passengers who may stop at the site, to long (half to one hour) pre-booked flights which will take clients further afield. Otherwise air transit, emergency operations and training/check flights will be conducted as necessary.

LOCATION OF THE PROPOSAL

The site is located 3.5km north of Capertee and has been cleared of most remnant vegetation, apart from a small section in the western end of the land. It is approximately 12.6ha in area containing current infrastructure such as sheds and a dwelling. The aspect of the development is in a northerly direction and the site drains towards the Turon River and eventually the Macquarie/Lachlan River system. The following plan extracted from the Environmental Impact Statement (EIS) submitted with the development application shows the site.



ZONING: The land is currently zoned General Rural 1(a) in accordance with Council's Local Planning Instrument, LEP 1994.

PERMISSIBILITY: The heliport is permissible in the zone as the development is not prohibited under Clause 9(1)(4) of Council's Local Environmental Plan 1994.

Under the Environmental Planning and Assessment Model Provisions 1980 the development is defined as a heliport. A heliport is defined as:

"heliport" means an area or place open to public use which is licensed by the Department of Transport for use by helicopters and includes terminal buildings and facilities for the parking, servicing and repair of helicopters.

Legal advice relating to an identical proposal (in terms of use) previously rejected by Council has confirmed that;

The proposal as outlined in the Environmental Impact Statement is clearly a 'heliport' under the Model Provisions, therefore, it does not fall within the definition of 'commercial premises', which excludes places elsewhere defined.

POLICY IMPLICATIONS

The application was 'called in' under Council's Policy for councillor's calling in development applications.

FINANCIAL IMPLICATIONS

The only financial implication pertaining to this matter would occur should the application be refused and the applicant lodges an appeal in the Land and Environment Court. However this would not be a relevant consideration in determining the development application.

LEGAL IMPLICATIONS

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 79C of the Environmental Planning and Assessment Act 1979. These matters for consideration are as follows:

Any Environmental Planning Instrument

Under the provisions of the Lithgow City Local Environmental Plan (LEP) 1994, the land where the development is proposed is zoned *General Rural 1(a) Zone*. The aims and objectives of the zone are outlined below with a comment provided after each objective. They include:

To promote the proper management and utilisation of natural resources by:

- (a) *protecting, enhancing and conserving:*
 - (i) *rural land, in particular prime crop and pasture land, in a manner which sustains its efficient and effective agricultural production potential, The land is currently considered Class 3 Agricultural Land, however, given the size of the allotment it is considered that prime crop and pasture land will not be affected by the proposal.*
 - (ii) *soil, by controlling and locating development in accordance with soil capability, given the size and nature of the development it is considered that the site is suitable and soil capability will not be affected.*
 - (iii) *forests of existing and potential commercial value for timber production, N/A*
 - (iv) *valuable deposits of minerals, coal and extractive materials, by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits, N/A.*
 - (v) *trees and other vegetation in environmentally sensitive areas, where the conservation of the vegetation is significant for scenic amenity or natural wildlife habitat or is likely to control land degradation, the proposal does not propose any clearing and has submitted a detailed fauna and flora report outlining impact.*
 - (vi) *water resources for use in the public interest, preventing the pollution of water supply catchment and major water storages, the proposal will have no impact*
 - (vii) *localities of significance for nature conservation, including places with rare plants, wetlands and significant wildlife habitat, the land use, which is Council's role to consider, will have no impact and*
 - (viii) *items of heritage significance, no impact*
- (b) *preventing the unjustified development of prime crop and pasture land for purposes other than agriculture, no impact*
- (c) *facilitating farm adjustments, N/A.*
- (d) *minimising the cost to the community of:*
 - (i) *fragmented and isolated development of rural land, and N/A.*
 - (ii) *providing, extending and maintaining public amenities and services, N/A*

- (e) *providing land for other non-agricultural purposes, in accordance with the need for that development, and the proposal is consistent with this objective*
- (f) *providing for the separation of conflicting land uses.* The application contends that the proposal has been sited near the Castlereagh Highway which separates the main noise impact from the surrounding rural area.

Providing the development is carried out in a controlled manner as indicated in the EIS in addition to conditions of development consent that will be proposed should consent be granted, the proposal is not antipathetic to any of these objectives.

State Environmental Planning Policy No 11 -- Traffic Generating Developments

The SEPP applies to the development and as such was forwarded to the Roads and Traffic Authority for comment and concurrence. The RTA have indicated that approval can be granted for the development subject to conditions.

State Environmental Planning Policy No 44 -- Koala Habitat Protection

SEPP 44 – Koala Habitat Protection applies to the Lithgow City Local Government Area. One of the species identified in Schedule 2 of SEPP 44 as habitat trees, namely, Ribbon Gum (*Eucalyptus viminalis*), was identified on the Site. SEPP 44 states that potential Koala habitat is an area “.....of native vegetation where trees of the types listed in Schedule 2 [of SEPP 44] constitute at least 15% of the total number of trees in the upper and lower components of the tree component.” The few scattered Ribbon Gum identified along some drainage lines within the Project Site do not constitute 15% of the total tree cover, hence SEPP 44 does not apply.

State Environmental Planning Policy 55 - Remediation of Land

No signs of contamination are present on the land.

The application is considered to be designated development and as such must comply with the provisions outlined in Schedule 3 of the Environmental Planning and Assessment Regulations 2000, which indicate:

Aircraft facilities

Aircraft facilities (including terminals, buildings for the parking, servicing or maintenance of aircraft, installations or movement areas) for the landing, taking-off or parking of aeroplanes, seaplanes or helicopters:

- (a) in the case of seaplane or aeroplane facilities:
 - (i) that cause a significant environmental impact or significantly increase the environmental impacts as a result of the number of flight movements (including taking-off or landing) or the maximum take-off weight of aircraft capable of using the facilities, and
 - (ii) that are located so that the whole or part of a residential zone, a school or hospital is within the 20 ANEF contour map approved by the Civil Aviation Authority of Australia, or within 5 kilometres of the facilities if no ANEF contour map has been approved, or

(b) in the case of helicopter facilities (other than facilities used exclusively for emergency aeromedical evacuation, retrieval or rescue):

(i) that have an intended use of more than 7 helicopter flight movements per week (including taking-off or landing), and

(ii) that are located within 1 kilometre of a dwelling not associated with the facilities, or

(c) in any case, that are located:

(i) so as to disturb more than 20 hectares of native vegetation by clearing, or

(ii) within 40 metres of an environmentally sensitive area, or

(iii) within 40 metres of a natural waterbody (if other than seaplane or helicopter facilities).

The application has been lodged in accordance with the above provision.

Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Nil.

Any Development Control Plan

Nil.

Any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F?

Nil.

Any matters prescribed by the regulations that apply to the land

N/A.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed development will be situated within the grassland vegetation community in the eastern half of the property. Gravel has been distributed over much of the ground to accommodate plant associated with the proponents current activity. Consequently, impacts associated with the construction phase of the development will not be significant.

Given that there is no clearing required under the proposal, the greatest impacts on the environment are likely to be those impacts associated general amenity. These include:

Visual & Noise – visual impacts and impacts of noise will potentially be the greatest along the approach and departure paths where helicopter height is lowest, flight frequency will be greatest and residentially occupied properties are nearer to the proposed helicopter landing site.

The EIS indicates that secondary disturbance will affect persons and animals along flight paths. Impacts along flight paths will be limited to periodic noise and low level visual impacts. This has the potential to cause concern to residents in the area or along designated flight paths.

Noise from the proposed operation of a heliport at the site is considered the major impact of the proposal. The EIS has indicated that several noise abatement procedures will be implemented under the proposal. They include:

- “Blade Slap” will be avoided (in accordance with the Robinson Helicopters noise abatement guidelines).
- Departure from and approach to the landing site is to be direct.
- Prolonged flight over residential dwellings is to be avoided.
- Flight paths are to be varied so that the same buildings are not repeatedly subjected to the impacts of the operations.
- Flight is to be above 500ft AGL, and will be preferably above 1000ft AGL.
- Scenic joyflight operations will occur between the hours of 7.00am and 7.00pm. Bushfire emergencies and other circumstances (eg: check flights, Sydney transit) may mean flights will occur at other times.

The appropriate regulatory authority (in this case the Department of Environment and Conservation) may at any time issue, in writing, a noise control notice prohibiting a specified activity or operation of a specified article (in this case a helicopter) in such a manner as to cause emission from the premises. This notice may specify times or days during which the emission, when measured at any specified point, must not exceed a specified level. In this particular case the operation of a heliport is subject to approval being issued by the Department of Environment and Conservation (DEC). As such, General Terms of Approval (GTA) must be issued by the DEC prior to any final assessment of the proposal by Council. This has occurred.

It was a requirement of the development application that an assessment was made of the noise emission resulting from all the ground borne operations of a helicopter operating at the site.

Noise level measurements were undertaken on 7 March 2005 at the critical receiver locations of warm up and initial take off, landing and the staged cool down procedure of the helicopter operation. The report was submitted by PKA Acoustic Consulting using a Robinson R22 helicopter. A supplementary report dated June 2006 by PKA Acoustic Consulting has also been submitted utilising both a Robinson 44 and Bell 47 Helicopter. Results of that report indicate that the ground borne noise output allows for their operation at the proposed site. Thus any conditions of approval will be limited to the type of helicopter proposed.

Natural & Man Made Hazards – running operations such as restocking hangar fuel supplies, helicopter refuelling and maintenance present potential for a chemical (fuel) spill. Appropriate bunding will be installed to cover the possibility of environmental harm via a spillage. Operations at night will be kept to a minimum, however low level light pollution may occur at times. Screening the landing site with vegetation will potentially ameliorate or minimise this impact.

Vibration – although separate to the land use issues relevant to this application, the impact of vibration at very low altitudes (whilst not proposed) may have the potential to cause cliff collapse. It is considered that if approval is given then mechanisms be put in place such as a Fly Neighbourly Policy to help address this concern.

Flora & Fauna – Flora, fauna and habitat values at the site were assessed in the EIS. Given that the proposal will develop lands presently cleared and presenting very poor Fauna/flora/habitat values the proposal is not considered likely to have any significant impact on these natural values.

Section 5a of the Environmental Planning and Assessment Act (EPAA) 1979 and Section 94 of the Threatened Species Conservation Act (TSCA) 1999 require that an investigation into the potential for the development to impact significantly on threatened species, populations and ecological communities be undertaken. As such, the applicant submitted the respective report which concluded that the scale of the development and nature of its impact on the environment (primarily noise) precludes it posing any potential to significantly impact on any threatened species, endangered populations or ecological communities in the area.

The EIS further indicated that the proposal does not remove or modify any area of significant habitat, and is not considered likely to have significant impact on any threatened species. There are no endangered populations or ecological communities in the region that will be affected by the proposals operation. Further, as part of the assessment Council contacted the Commonwealth Department of Environment & Heritage who have indicated that no further assessment would be warranted as part of the assessment.

Access – Access to the facility will be via the Castlereagh Highway. As the application is subject to assessment under SEPP 11 the RTA were notified of the proposal and asked to comment. The RTA have responded and indicated that approval is subject to conditions.

Rural & Natural Landscape Qualities- Impacts of operation of the proposal will include the creation of dust and visual impacts. The flight paths have been identified which avoid local residential dwellings, and noise levels resulting from the proposed heliport operation are proposed to be well within the limits for residential areas.

The EIS indicates that there will be several mitigation techniques developed to reduce the impacts of the development. These include:

- the proposed heliport site is a heavily disturbed location, having been cleared and grazed historically, and being subject to movement of earthmoving machinery. This being the case the excavation for the landing pad slab will have no impact on environmental or cultural values, and no mitigation in construction, beyond sediment control measures, are required for earthworks and construction.
- Visual impacts/distractions caused by the heliport and operations (including lighting at night) which may affect motorists passing along the Castlereagh Highway will be minimised by the establishment of thick screening vegetation in areas to the north of the site and the east of the site, fronting the Castlereagh Highway.
- Pollution controls such as bunded fuel storage areas and emissions control have been incorporated into design and maintenance schedules for the proposal.

- Operations will be conducted in accordance with guidelines on impact mitigation of helicopter activities. These strategies include those in the DEC (NPWS) Fly Neighbourly Advice and noise minimisation guidelines in Noise Control Guidelines for Helicopters 1985, i.e. orientating flight paths to minimise the noise exposure of residential land and minimizing ground idle time.
- Strategies such as variation of flight paths so that residents along flight paths are not subject to repeated impacts will be applied, and a response to community feedback (complaints) will be incorporated into running of the activity including the identification of exclusion zones within a 1km radius.
- A minimum height of 500ft is required for general air transport (lower heights are permissible for air taxi services and approach and departure manoeuvres). The proponent expects most scenic joyflight activities will be conducted at around 1500ft (2000ft over National Parks and other sensitive areas) significantly reducing visual impacts and impacts of noise on residents and visitors to the region, as well as stock and wildlife.
- Impact on bird and other wildlife will be monitored by providing a feedback mechanism to organizations conducting research and observing wildlife in the region
- Notwithstanding the Council's responsibility relating to landuse assessment, impacts such as cliff collapses as a result of vibration are acknowledged as a remote possibility. The potential for impacts will be minimised by responsible flying (minimizing blade slap and not flying close to clifflines). Any new cliff collapses along flightpaths will be documented and provided to regulatory authorities as part of the operators safety report.

The Suitability of the site for the development

The proposed development is consistent with the objectives of the Rural 1(a) zone. Conditions of consent pertaining to issues addressed by concerned parties can be incorporated into any approval therefore minimizing the overall impacts.

Any submissions made in accordance with this Act or the Regulations

The development was notified to adjoining landowners and placed on public exhibition. Council received over 60 submissions regarding the proposal, all objecting to the proposal. Copies of submissions have been provided to Councillors.

A brief outline of the relevant submissions is summarised below followed by a comment.

Noise – it is contended within a majority of the submissions that noise created by the development could have a negative impact on quality of life within the Capertee Valley. Further due to the close proximity of the development to adjoining residences both adjoining the development and within the proposed flight paths of the development. *Bearing in mind that the application is for the landuse, the application is considered to be integrated with the Department of Environment and Conservation (DEC). As such, prior to the issue of any General Terms of Approval (GTA) the DEC must take into account all noise and air impacts of the development and be satisfied that the proposal is suitable for the site. The DEC issued their GTA's on the 19 April 2007.*

Loss of Privacy – with numerous flights over residences it is contended that the proposal may encroach on resident's privacy around the site and within the Capertee Valley. *Council is not an air authority.*

However, as part of any proposed conditions of consent a site specific Fly Neighbourly Policy (FNP) will be proposed to be developed minimising the impact on loss of privacy

Peace and Quiet – many people utilise the Capertee Valley as a nature observation and bird watching sanctuary. The impact of low flying helicopter activity has the potential of destroying the fauna and flora within the valley. Once again, Council is not an air authority. *However, as part of the application the applicant has indicated substantial undertakings to minimise this concern. The applicant has indicated that flight heights will be limited to allow for overall aesthetic advantage. As such most flights are limited to 1500ft, minimising noise and loss of any overall tranquillity.*

World Heritage Area – the Capertee Valley must be considered to be part of the Blue Mountains which is currently a World Heritage Listed area. Council is not an air authority. *The Commonwealth office of the Department of Heritage regulates activities which pose risks to world heritage areas by considering how an activity may affect identified world heritage values. In correspondence received the DEH have indicated that they will take no further action pertaining to the development at this time.*

Recreational Environment – the proposal does not properly address the potential impacts of frequent helicopter operations on the recreational environment beneath the proposed flight paths. *As part of the application the applicant has indicated substantial undertakings to minimise this concern. The applicant has indicated that flight heights will be limited to allow for overall aesthetic advantage. As such most flights are limited to 1500ft, minimising noise and loss of any overall tranquillity.*

Biodiversity of the Valley and World heritage area - particularly birds. For instance the threatened Peregrine Falcon uses cliffs in the valley such as those at Genowlan Point, Mt Glenowlan an area planned to be visited regularly by helicopters.

The applicant in the EIS has indicated that all attempts will be made to avoid areas were known threatened species and vulnerable species are known. Additional to this the requirements of the FNP will set minimum allowable distances proposed to these known areas and will be prepared in consultation with the DEC, Council, the Department of Transport, and CASA.

Fauna & Flora – the application does not seem to substantially address the impacts of Flora and Fauna within the site and around the proposed flight areas. The EIS indicates that there is known nesting areas of the Regent Honeyeater on the verge of the Castlereagh Highway, however no significant flora or fauna assessment follows that statement. *The effect on Fauna and Flora has been substantially addressed in the application. As part of the application process the application was forwarded to the DEC (formerly the National Parks and Wildlife Service) who indicated that the proposal can be approved subject to conditions.*

Hours of Operation – the 7.00am to 7.00pm time frame for operation is of concern. The 12 hours of operation is considered to affect adjoining landowners (especially those who still agriculturally work their land). *As part of the GTA's issued by the DEC the hours of operation have been limited to address these concerns.*

Sound Vibration – there is concern over the affect of helicopter sound vibration and the impact of that vibration on the fragile sandstone cliff of the Capertee and Wolgan Valleys. *The applicant has contested that the possibility of cliffs collapsing as a result of helicopter noise and subsequent vibration is remote, and will be minimised by compliance with a FNP in relation to flying in proximity to cliffs.*

Fly Neighbourly Principles – these are voluntary guidelines and do not hold any legislative pull when it comes to enforcement. *The EIS indicates that a Fly Neighbourly Policy will be implemented into the overall development. As such, the FNP (should approval be considered) will not be voluntary, but will sit as part of the operation, requiring compliance.*

Property Values – The establishment of this facility could have detrimental effects on property values in and around the area. *No evidence can be found that would support the notion that property values would be substantially affected.*

Flight Paths – there are concerns that the proposed flight paths lodged with the EIS have a potential to cause a negative impact on all areas surrounding Capertee, including the Wolgan Valley and Turon National Park. Additionally, concern was raised over specific height levels proposed by the application. *The applicant has indicated within the EIS that operations will rarely pass over residential areas (Capertee). When this does occur it will be at heights around 1500ft, and noise will be well within amenity and intrusiveness limits. The FNP will additionally enforce this.*

The Effect on current Tourism – many submissions indicated that not enough attention has been made concerning the affect this proposed development would have on the current tourist activities that take place currently in the valley. Some include bird watching, bush walking and hiking. Some submissions indicate that the approval may have detrimental affect on the eco-tourism activity currently undertaken in the Valley.

The EIS indicates that the proposal could be considered to have a positive effect on Tourism in the area, believing that an additional business promoting one of the most scenically beautiful sites in Australia is of great importance to a small community. The spin offs from the proposal, including over night stays and meals are considered beneficial. Further, as indicated in the EIS, the applicant is happy to discuss routes and exclusion zones with other users of the valley.

Valley less attractive to visitors – concerns were raised through submissions that helicopters flying over the valley will have a detrimental affect on other users in the Valley. *The applicant in his response to submissions has indicated that the operator is currently a sole trader and the development consists of utilising his own helicopter. As such a single helicopter is not considered to substantially, if at all, impact on the attractiveness of the valley to other users.*

No limits to flights – concerns raised over the potential to exploit flights given the average 15min flight proposed. *The applicant has indicated that there are self proclaimed limits addressed in the EIS. However, should approval be recommended it is proposed to further reduce those flights to minimise any impact.*

Adverse Social Impact – the proposal is considered to have had a divide in the local community. *This is not a matter Council can assess in the development application process.*

Impacts on Stock – a concern raised through the exhibition process indicated that the development has the potential to adversely affect stock surrounding the site. *It is stated in the EIS that should this be a factor (especially around the site) the applicant would be happy to discuss exclusion zones around stud farms etc.*

Impacts on adjoining neighbours – concerns were raised pertaining to negative noise and amenity related impacts on adjoining landowners that have not been addressed in the EIS. *The applicant has indicated that very concerned objections were put by nearby neighbours that they were going to be subjected to increased impacts under the new proposed approach and departure paths. CASA are able to intervene in situations where flight paths are causing problems. Previously Council when considering the initial application also considered this to be of concern and should approval be considered it is recommended that exclusion zones be placed around and over adjoining residences.*

Fuel stored is a safety hazard – concerns were raised over the property with fuel stored on-site could be hazardous. *As part of the approval, should one be granted, appropriate fire fighting requirements will be needed in accordance with the Building Code of Australia (BCA). Further, as part of any approval bunding of 110% of the total capacity of holding tanks will be required to stop the potential for contamination on-site.*

Refuting Acoustic Report – as part of the submission process the Capertee Environmental Group (CVEG) submitted their own privately contributed acoustic report addressing the application (attached). *Through the regulatory process Council forwarded the refuting document to the DEC for comment prior to the issuing of any General Terms of Approval. The comments received by the DEC are attached as Schedule 2.*

However, after carefully assessing the application the DEC indicated that they were able to issue General Terms of Approval relating to the proposed development, given the report submitted and conditions.

Roads & Traffic Authority.

The RTA indicated that although it did not object to the proposal it did have concerns that would need addressing should development consent be provided. They included:

1. that sight distance be maximised to achieve 225m sight distance in either direction. Sight distance would improve if the driveway is relocated to the north.
2. An RTA type BAR (Basic Right Turn), BAL (Basic Left Turn) intersection is required.
3. Any advertising signage is to be on private land, is not to replicate any regulatory signage and is not to cause distraction to passing motorists.

Civil Aviation Safety Authority (CASA)

Council contacted CASA and asked for comment pertaining to the application. CASA responded on the 21st February 2007 indicating that it does not have any requirement to be involved with the proposed heliport. It is the operator's responsibility to ensure that an area is safe and suitable for their operations in accordance with their operations Manual and relevant legislation.

Civil Aviation Advisory Publication (CAAP) 92-2(1) provides *guidelines for the establishment and use of HLS's* and most operators adopt this document as their policy for landing sites. The CAAP also states there should not be non-essential personnel within 30m of the aircraft and that the area should be cleared of objects which could be a hazard to the aircraft.

It is recommended that the principles outlined in the CAAP 92-2(1) be incorporated into any approvals process.

Previous correspondence from CASA indicated that the Civil Aviation Safety Regulation 157 Low Flying applies to the development, which indicates:

- (1) The pilot in command of an aircraft must not fly the aircraft over:
 - (a) any city, town or populous area, at a height lower than 1000ft; or
 - (b) any other area at a height of 500ft.
- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) A height specified in subregulation (1) is the height above the highest point of the terrain, and any object on it, within a radius of:
 - (a) in the case of an aircraft other than a helicopter – 600m; or
 - (b) in the case of a helicopter – 300m; from a point on the terrain vertically below the aircraft
- (3A) Paragraph 1(a) does not apply in respect of a helicopter flying at a designated altitude within an access lane details of which have been published in the AIP or NOTAMS for use by helicopters arriving at or departing from a specified place.
- (4) Subregulation (1) does not apply if:
 - (a) through stress of weather or any unavoidable cause it is essential that a lower height be maintained; or
 - (b) the aircraft is engaged in private operations or aerial work operations, being operations that require low flying, and the owner or operator of the aircraft has received from CASA either a general permit for all flights or a specific permit for the particular flight to be made at a lower height while engaged in such operations; or
 - (c) the pilot of the aircraft is engaged in flying training and flies over a part of a flying training area in respect of which low flying is authorized by CASA under subregulation 141 (1); or
 - (d) the pilot of the aircraft ie. engaged in a baulked approach procedure, or the practice of such procedure under the supervision of a flight instructor or a check pilot; or
 - (e) the aircraft is flying in the course of actually taking-off or landing at an aerodrome; or
 - (f) the pilot of the aircraft is engaged in:
 - (i) a search; or
 - (ii) a rescue; or
 - (iii) dropping supplies: in a search and rescue operation; or
 - (g) the aircraft is a helicopter:
 - (i) operated by, or for the purposes of, the Australian Federal Police or the police force of a state or territory; and
 - (ii) engaged in law enforcement operations; or
 - (h) the pilot of the aircraft is engaged in an operation which requires the dropping of packages or other articles or substances in accordance with directions issued by CASA.

These stipulations will be encumbrances on the applicant should development consent be considered.

Department of Environment & Conservation (Environmental Protection Unit)

The General Terms of approval issued by the DEC are attached as part of Schedule 1 of the recommendations.

In their correspondence the DEC indicated that in assessing the proposal and reviewing the public submissions, as with the first Development Application (DA 22-05) the EPA again identified the potential impact of noise on the amenity of the residents of the Capertee Valley and the surrounding areas as an important issue. Lithgow City Council should consider the issue in its overall assessment of the application. The noise from helicopters in flight is outside the control of the EPA; nevertheless, it is apparent from the public submissions that noise from helicopters in the air is the overwhelming impact of concern for people who made submissions objecting to the proposed development.

The Department of Environment & Conservation (Threatened Species Unit)

Information received from the Threatened Species Unit of the DEC led to Council forwarding the information to the Commonwealth Department of Environment and Heritage.

The Commonwealth Department of Environment and Heritage

In correspondence received from the Department of Environment and Heritage it was found that after careful examination of the development application information the Department has concluded that the impact the proposal would have on the Regent Honeyeater, in this case, is unlikely to be significant. The Department therefore concluded that they do not propose to take any compliance action

The public interest

The approval of such an application is of particular public interest . Council has received substantial objection pertaining to the application with the predominant objection being related to airborne noise and privacy. Council being a landuse authority has limited compliance authority over airborne activity, however through the applicant's undertakings in the EIS it is proposed to implement conditions to minimise these potential concerns. Having community input into the preparation of a Fly Neighbourly Policy (FNP) can also help minimise these potential concerns.

DISCUSSION AND CONCLUSIONS

The development application has been the subject of much public interest. Issues relating to potential impacts of the helicopter whilst in the air and the relevant controlling authority have led to the conclusion that Council's responsibility lies in the impacts directly related to the landuse.

Notwithstanding this, after extensive consultation and assessment it has been concluded that development consent can be granted subject to a number of conditions. These include limiting the number of flights and also placing a sunset condition limiting the operation to 5 years. However, the option is given to the applicant to lodge a modification application, prior to the expiration of this period for an extension which will need to be assessed in accordance with past performance.

**RECOMMENDATION:
THAT**

1. The Applicant shall carry out the development generally in accordance with:
 - DA 319-06, as submitted
 - EIS titled *Environmental Impact Statement for Proposed Heliport* dated December 2006 and *Acoustic Report, Assessment of Noise Emission During Ground Borne Operations of Proposed Helipad, Capertee, NSW.* prepared by PKA Acoustic Consulting., dated March 2005.
 - Applicant's response to the issues raised in submissions
 - Conditions of this consent
2. If there is any inconsistency with the above, the conditions of this consent shall prevail to the extent of the inconsistency.
3. The applicant shall prepare a site specific Fly Neighbourly Policy (FNP) in consultation with the Department of Transport and Regional Services, Department of Environment and Conservation, Council and adjoining residents. The FNP shall incorporate all proposed flight paths and incorporate impact minimisation techniques proposed to reduce impact on the World Heritage Blue Mountains National Park, the Gardens of Stones National Park, residential premises that will be overflowed at altitudes between 500 and 1000 feet as well as major existing tourist developments or those that have lodged development proposals. Further the FNP will document proposed designated flight heights and distances from known vibration hazards such as potential cliff falls. This shall be completed prior to the commencement of the development. However, a trial of 3 months will be permitted to allow the proponent to test specific requirements that will be incorporated into the FNP prior to the lodgement of the final documentation.
4. The Applicant shall implement all practicable measures to prevent and/or minimise any harm to the environment that may result from the construction, operation, or rehabilitation of the development.
5. The applicant shall implement a complaint feedback register indicating the details of any complaints received and actions taken. Details of complaints shall be provided to Council every 6 months after the commencement of operations. The Applicant shall comply with any reasonable request from Council arising from complaints associated with the development whether received by the Applicant directly or by the Council.
6. The Applicant shall discuss the proposed access point with RTA with a view to providing the access at or near the northern boundary of Lot 5 to increase the available sight distance to 225m in either direction.
7. The access shall provide sealed widened shoulders in accordance with the RTA Road Design Guide for a basic right and a basic left turn layout to increase the safety of vehicles entering the site.

8. Any advertising signs are to be located outside the road reserve, are not to resemble road signs by design or colour, and not to prove a distraction to drivers on the Castlereagh Highway.
- 9.. No works are to be undertaken within the Castlereagh Highway road reserve without the consent of the RTA, and will require the developer entering into a Works Authorisation Deed with the RTA. All works are to be at no cost to the RTA.
- 10.. The Applicant shall implement the principles outlined in the Civil Aviation Advisory Publication (CAAP) 92-2(1) into the construction and operations of the facility.
11. The approval to operate this activity is restricted to the helicopter (Robinson 22R, 44 or Bell 47) used in the Acoustic Report, *Assessment of Noise Emission During Ground Borne Operations of proposed Heliport, Capertee, NSW* prepared by PKA Acoustic Consulting. Any proposed deviation in the type of helicopter will require further acoustic testing and an application for modification of development consent.
- 12.. The Applicant shall comply with the General Terms of Approval (GTA) issued by the Department of Environment and Conservation attached herewith as Schedule 1. These terms of approval may only be varied with the authority of the Department of Environment and Conservation.
- 13.. This consent operates for a period of 5 years after the date on which it commences.
Note: Should the applicant seek an extension of this period, then, subject to proper environment and legislative process a modification of consent under Section 96(2) of the Environmental Planning and Assessment Act 1979 can be lodged for assessment.
14. The number of joyflight movements shall be restricted to 12 movements per day (6 take offs & 6 landings) Monday to Friday. The number of joyflight movements shall be restricted to 20 movements per day (10 take offs & 10 landings) Saturday and Sunday. The applicant shall allow Council officers full access to flight records and shall provide copies to Council if requested to monitor compliance with this condition.
Note: Should the applicant seek additional movements, then, subject to proper environmental and legislative process a modification of consent under Section 96(2) of the Environmental Planning and Assessment Act 1979 can be lodged for assessment.
15. A construction certificate will be required to be lodged for all proposed structures to be erected on-site.
16. A Geotechnical investigation or relevant water balance assessment is required to be lodged and approved by Council prior to the issue of a construction certificate for the proposed toilet facilities to be constructed on site.
17. The Applicant shall ensure that all new buildings and structures, and any alterations or additions to existing buildings and structures, are constructed in accordance with the relevant requirements of the BCA.
18. The Applicant shall ensure that all external lighting associated with the development complies with *Australian Standard AS4282(INT) 1995 – Control of Obtrusive Effects of Outdoor Lighting*, or its latest version to the satisfaction of Council.

19. The Applicant shall:
 - (a) ensure that the development is suitably equipped to respond to any fires on site; and
 - (b) assist the Rural Fire Service and emergency services as much as possible if there is a fire on-site during the development.
20. The Applicant shall implement measures to mitigate the visual impacts of the development, including:
 - (a) designing and constructing development infrastructure in a manner that minimises visual contrasts.
 - (b) providing a landscaping plan aimed at placing and maintaining visual screens around the development.
 - (c) providing landscaping in accordance with the approved plan.
21. A carparking layout shall be provided to Council prior to commencement of operations. Such layout shall indicate construction standards as well as manoeuvring areas. A hard paved disabled person's carparking space, 3.2 metres wide and 5.5 metres long and signposted, shall be provided. A 1 metre wide hard paved path shall be provided from beside the carparking space to the entry to the facility in accordance with Australian Standard AS 1428.1. Also, within the toilet facility, a Water Closet shall be fitted out to comply with AS 1428.1, with detailed plans submitted to, and approved by Council prior to carrying out this work.
22. A separate male and female and accessible Water Closet and basins shall be provided on the site in accordance with Table F2.3 of the Building Code of Australia.
23. The Applicant shall ensure that impervious bunds are constructed around all fuel, oil and chemical storage areas in accordance with the requirements of DEC's Environment Protection Manual Technical Bulletin *Bunding and Spill Management*.
24. The applicant is to provide evidence prior to the commencement of operations copies of all relevant licence approvals obtained through the Department of Transport pertaining to the operation.
25. Bunding of all fuel storage is to be undertaken to a capacity of 110% of the tank in order to prevent any contamination of adjoining lands.

AMENDMENT:

THAT: Condition 14 be amended to allow up to 50 movements per week.

MOVED: Councillor M M Collins

SECONDED: Councillor A E Thompson

LOST

MOTION:**THAT:**

1. The Applicant shall carry out the development generally in accordance with:
 - DA 319-06, as submitted
 - EIS titled *Environmental Impact Statement for Proposed Heliport* dated December 2006 and *Acoustic Report, Assessment of Noise Emission During Ground Borne Operations of Proposed Helipad, Capertee, NSW.* prepared by PKA Acoustic Consulting., dated March 2005.
 - Applicant's response to the issues raised in submissions
 - Conditions of this consent
2. If there is any inconsistency with the above, the conditions of this consent shall prevail to the extent of the inconsistency.
3. The applicant shall prepare a site specific Fly Neighbourly Policy (FNP) in consultation with the Department of Transport and Regional Services, Department of Environment and Conservation, Council and adjoining residents. The FNP shall incorporate all proposed flight paths and incorporate impact minimisation techniques proposed to reduce impact on the World Heritage Blue Mountains National Park, the Gardens of Stones National Park, residential premises that will be overflowed at altitudes between 500 and 1000 feet as well as major existing tourist developments or those that have lodged development proposals. Further the FNP will document proposed designated flight heights and distances from known vibration hazards such as potential cliff falls. This shall be completed prior to the commencement of the development. However, a trial of 3 months will be permitted to allow the proponent to test specific requirements that will be incorporated into the FNP prior to the lodgement of the final documentation.
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7. The access shall provide sealed widened shoulders in accordance with the RTA Road Design Guide for a basic right and a basic left turn layout to increase the safety of vehicles entering the site.
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 - 10.. The Applicant shall implement the principles outlined in the Civil Aviation Advisory Publication (CAAP) 92-2(1) into the construction and operations of the facility.
 11. The approval to operate this activity is restricted to the helicopter (Robinson 22R, 44 or Bell 47) used in the Acoustic Report, *Assessment of Noise Emission During Ground Borne Operations of proposed Heliport, Capertee, NSW* prepared by PKA Acoustic Consulting. Any proposed deviation in the type of helicopter will require further acoustic testing and an application for modification of development consent.
 - 12.. The Applicant shall comply with the General Terms of Approval (GTA) issued by the Department of Environment and Conservation attached herewith as Schedule 1. These terms of approval may only be varied with the authority of the Department of Environment and Conservation.
 - 13.. This consent operates for a period of 5 years after the date on which it commences.
Note: Should the applicant seek an extension of this period, then, subject to proper environment and legislative process a modification of consent under Section 96(2) of the Environmental Planning and Assessment Act 1979 can be lodged for assessment.
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 18. The Applicant shall ensure that all external lighting associated with the development complies with *Australian Standard AS4282(INT) 1995 – Control of Obtrusive Effects of Outdoor Lighting*, or its latest version to the satisfaction of Council.
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 - (a) ensure that the development is suitably equipped to respond to any fires on site;
 - and
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- (b) assist the Rural Fire Service and emergency services as much as possible if there is a fire on-site during the development.
20. The Applicant shall implement measures to mitigate the visual impacts of the development, including:
- (a) designing and constructing development infrastructure in a manner that minimises visual contrasts.
 - (b) providing a landscaping plan aimed at placing and maintaining visual screens around the development.
 - (c) providing landscaping in accordance with the approved plan.
21. A carparking layout shall be provided to Council prior to commencement of operations. Such layout shall indicate construction standards as well as manoeuvring areas. A hard paved disabled person's carparking space, 3.2 metres wide and 5.5 metres long and signposted, shall be provided. A 1 metre wide hard paved path shall be provided from beside the carparking space to the entry to the facility in accordance with Australian Standard AS 1428.1. Also, within the toilet facility, a Water Closet shall be fitted out to comply with AS 1428.1, with detailed plans submitted to, and approved by Council prior to carrying out this work.
22. A separate male and female and accessible Water Closet and basins shall be provided on the site in accordance with Table F2.3 of the Building Code of Australia.
23. The Applicant shall ensure that impervious bunds are constructed around all fuel, oil and chemical storage areas in accordance with the requirements of DEC's Environment Protection Manual Technical Bulletin *Bunding and Spill Management*.
24. The applicant is to provide evidence prior to the commencement of operations copies of all relevant licence approvals obtained through the Department of Transport pertaining to the operation.
25. Bunding of all fuel storage is to be undertaken to a capacity of 110% of the tank in order to prevent any contamination of adjoining lands.

MOVED: Councillor A E Thompson **SECONDED:** Councillor M M Collins

LOST

07-235 RESOLVED:

THAT: Council refuse the application due to it being apathetic with the objectives of the zone and unresolved acoustic matters.

MOVED: Councillor H K Fisher **SECONDED:** Councillor B P Morrissey

CARRIED

**ITEM:8 REG - 21/05/07 - ROAD NAMING DEVELOPMENT APPLICATION
66/05 AND 67/05 - STRATHLONE ESTATE PTY LTD**

REPORT BY: GROUP MANAGER REGIONAL SERVICES – ANDREW MUIR

SUMMARY

To advise Council of road naming proposals for a residential subdivision at South Bowenfels.

COMMENTARY

Council has received a submission on the naming of unnamed roads in Stages 1 and 2 of a 101 Lot residential subdivision at the back and adjacent to the Donny Brook hotel in Strathlone Estate. The applicant requested that Council name the roads in accordance with their preferred list of names, which has a tree name theme which is consistent with road names in previous stages of Strathlone Estate. The suggested road names are:-

- Beech Place
- Conifer Place
- Eucalypt Close
- Fern Grove
- Magnolia Gardens
- Quince Court
- Mulberry Close

POLICY IMPLICATIONS

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

FINANCIAL IMPLICATIONS

Council will incur some minor advertising costs in accordance with its Road Naming Policy, although the costs of the signs will be borne by the applicant.

LEGAL IMPLICATIONS

Nil

07-236 RESOLVED

THAT in accordance with Council's Policy for the naming of roads, Council advertise the road names as indicated on the attached plan in the Lithgow Mercury calling for submissions to be made for the statutory period of twenty-eight (28) days, with the exception of Beech Place given its similarity to other street names in the Estate area.

MOVED: Councillor W McAndrew

SECONDED: Councillor M J Wilson.

CARRIED

COMMUNITY AND CORPORATE SERVICES REPORTS**ITEM:9 COMM - 04/06/07 - GOODS AND SERVICES TAX CERTIFICATE 1
JULY 2006 TO 30 APRIL 2007****REPORT FROM - INTERNAL SERVICES MANAGER - C FARNSWORTH**

REFERENCE

Nil

SUMMARY

To advise Council of reporting requirement for GST and seek authorisation for the Mayor, Deputy Mayor, General Manager and Responsible Accounting Officer to sign the 'Goods and Services Tax Certificate' for the period 1 July 2006 to 30 April 2007.

COMMENTARY

For the 2006/07 financial year the Department of Local Government requires Council to report on its GST compliance for the period 1 July 2006 to 30 April 2007.

It is no longer mandatory for Councils to request their auditors to undertake a review of the GST system but Council is required to lodge a certificate of confirmation with the Department in the place of the audit review report.

This request allows the Commonwealth Commissioner of Taxation to make a determination concerning the amount of GST collected in the financial year in question. Accordingly, local governing bodies are requested to provide the DLG with this advice before 8 June each year who in turn provide advice to the NSW Treasury for confirmation with the Commonwealth Commissioner of Taxation.

The Goods and Service Tax Certificate must be signed with a resolution of Council and which states:

To assist compliance with Section 114 of the Commonwealth Constitution, we specify that:

- *Voluntary GST has been paid by Lithgow City Council for the period 1 July 2006 to 30 April 2007*
- *Adequate management arrangements and internal controls were in place to enable the Council to adequately account for its GST liabilities and recoup all GST input tax credits eligible to be claimed.*
- *No GST non - compliance events by the Council were identified by or raised with the Australia Taxation Office*

Council has claimed refunds of the following GST amounts in the required period:

| MONTH | GST REFUNDS |
|-------------|-------------|
| 2006 | |
| July | 113,748 |
| August | 65,647 |
| Sept | 80,741 |
| October | 77,794 |
| November | 93,316 |
| December | 44,444 |
| 2007 | |
| January | 46,958 |
| February | 140,322 |
| March | 76,980 |
| April | 41,092 |

As previously reported to Council the Australian Taxation Office completed a problem free GST audit of Council records in past years which extensively covered the following risk areas:

- Implementation Activities
- Management of Transitional Issues
- Risk Identification and Mitigation
- Internal control relating to computer system (including QA activities)
- Decision Making - Supplies (eg sales, Division 81 Fees and Charges)
- Contracts Management
- BAS Preparation - in depth on the October 2004 BAS
- Training and Succession Planning
- Grant Providers (Grant paid to other entities)
- Grants Received
- Recipient Created Tax Invoices - supplies and acquisition tother than grants
- Acquisitions
- Tax Invoice Integrity - Supplier and Recipient
- Disposal and acquisition of assets
- Related Party Transactions
- Record keeping and Tax Invoice Management

Policy Implications

Nil

Financial Implications

Nil

Legal Implications

Nil

07-237 RESOLVED**THAT:**

1. the information be received
2. Council authorise the Mayor, Deputy Mayor, General Manager and the Responsible Accounting Officer to sign the Goods and Services Tax Certificate for the period 1 July 2006 to 30 April 2007.

MOVED: Councillor M J Wilson**SECONDED:** Councillor M M Collins.**CARRIED****ITEM:10 COMM - 04/06/07 - COUNCIL INVESTMENTS APRIL 2007****REPORT FROM - INTERNAL SERVICES MANAGER - C FARNSWORTH**

REFERENCE

Min 06-237: Finance and Services Committee 7 August 2006 (July 2006)
Min 06-330: Finance and Services Committee 3 October 2006 (August 2006)
Min 06-378 Finance and Services Committee 6 November 2006 (September 2006)
Min 06-436 Finance and Services Committee 4 December 2006 (October 2006)
Min 07-35 Finance and Services Committee 5 February 2007 (November 2006)
Min 07-36 Finance and Services Committee 5 February 2007 (December 2006)
Min 07-92 Finance and Services Committee 5 March 2007 (January 2007)
Min 07-124 Finance and Services Committee 5 March 2007 (February 2007)
Min 07-185 Finance and Services Committee 7 May 2007 (March 2007)

SUMMARY

To advise Council of 2006/07 investments held for the period ending 30 April 2007.

COMMENTARY

The amount invested as at 30 April 2007 when compared to 31 March 2007 has decreased by \$472,397.67 due to ongoing Council expenditure awaiting income of the 4th rate instalment on the 31 May 2007 and the 4th payment of the 06/07 Financial Assistant Grant.

| INVESTMENT REGISTER 2006/07 | | | | | | | | |
|-----------------------------|----------|-------------|--------------|-------|------|----------------------|----------------------|----------------|
| INSTITUTION | INV TYPE | DATE LODGED | DATE DUE | DAYS | INT | VALUE 31.03.07 | VALUE 30.04.07 | % OF TOTAL |
| ANZ | TD | 28.02.07 | 30.03.07 | 30 | 6.30 | 560,024.21 | 562,924.06 | 4.73% |
| CBA | CMS Nt | 06.11.11 | 06.11.16 | 1,825 | 7.12 | 500,000.00 | 500,000.00 | 4.20% |
| | On Call | | | | 6.20 | 168,547.47 | 168,546.47 | 1.42% |
| | Ethical | 20.06.06 | 20.06.11 | 1825 | 9.25 | 500,000.00 | 500,000.00 | 4.20% |
| | TD | 03.03.07 | 03.05.07 | 60 | 6.31 | 500,000.00 | 500,000.00 | 4.20% |
| CITIBANK | TD | 11.04.07 | 11.07.07 | 60 | 6.53 | 514,000.34 | 519,867.69 | 4.37% |
| LG FINANCIAL | On Call | | | | 6.15 | 1,184,714.43 | 684,714.43 | 5.75% |
| | TD | 06.03.07 | 04.05.07 | 60 | 6.39 | 798,120.43 | 798,120.43 | 6.70% |
| | TD | 16.04.07 | 18.06.07 | 63 | 6.53 | 517,279.92 | 520,173.29 | 4.37% |
| | TD | 06.03.07 | 05.06.07 | 90 | 6.40 | 505,317.31 | 505,317.31 | 4.24% |
| IMBS | On Call | | | | 6.25 | 5,013.50 | 266,011.56 | 2.23% |
| | TD | 05.03.07 | 07.06.07 | 92 | 6.45 | 1,047,920.10 | 1,047,920.10 | 8.80% |
| | TD | 28.06.06 | 29.06.07 | 364 | 6.41 | 450,000.00 | 450,000.00 | 3.78% |
| | TD | 22.01.07 | 23.04.07 | 90 | 6.54 | 256,631.12 | 0.00 | 0.00% |
| | TD | 06.03.07 | 06.06.07 | 92 | 6.46 | 762,249.86 | 762,249.86 | 6.40% |
| | TD | 20.02.07 | 21.05.07 | 91 | 6.47 | 750,000.00 | 750,000.00 | 6.30% |
| ALLIANCE | Managed | 01.04.02 | 28.02.08 | 365 | | 1,000,000.00 | 1,000,000.00 | 8.40% |
| ST GEORGE | TD | 10.01.07 | 07.05.07 | 122 | 6.30 | 256,298.15 | 256,298.15 | 2.15% |
| | TD | 16.04.07 | 16.07.07 | 90 | 6.54 | 1,341,238.63 | 1,348,460.74 | 11.33% |
| | TD | 11.04.07 | 12.06.07 | 62 | 6.45 | 761,940.64 | 766,294.35 | 6.44% |
| | | | TOTAL | | | 12,379,296.11 | 11,906,898.44 | 100.00% |

I, Carol G Farnsworth, Lithgow City Council Internal Services Manager (Responsible Accounting Officer) certify as required under Local Government (General) Regulations 2005, that Council's investments have been made in accordance with the Local Government Act 1993, Regulations and Lithgow City Council's Investment Policy.

POLICY IMPLICATIONS

All Council's investments are held in accordance with Lithgow City Council's Investment Policy.

FINANCIAL IMPLICATIONS

Investment income to date 30 April 2007 is \$ 404,969.48 with interest paid on the maturity date of the investment and managed funds report earnings quarterly.

LEGAL IMPLICATIONS

Investments are held in accordance with the Lithgow City Council's Investment Policy which accords with the requirements of the:

- Local Government Act 1993 - Section 625
- Local Government Act 1993 - Order dated 17 March 2000
- Local Government (General) Regulation 2005
- Trustee Amendment (Discretionary Investments) Act 1997- Section 14A(2), 14c(1) & (2)

07-238 RESOLVED

THAT Council's 2006/07 investments for the period ending 30 April 2007 be received.

MOVED: Councillor A E Thompson

SECONDED: Councillor W McAndrew.

CARRIED

ITEM:11 COMM - 04/06/07 - REPAYMENT OF INTEREST FREE LOAN TO LITHGOW AND DISTRICT VOLUNTEER RESCUE SQUAD**REPORT FROM: INTERNAL SERVICES MANAGER: - C FARNSWORTH**

REFERENCE

Min 06 - 465 Council Meeting 18 December 2006
Min 07 - 98 Council Meeting 19 March 2007

SUMMARY

Council received a request from the Lithgow and District Volunteer Rescue Squad on the 4 December 2006 to provide an interest free loan of \$11,000 to enable the organisation to complete a program of grant works. This report advises Council the funds have been repaid in full on the 14 May 2007.

COMMENTARY

The Lithgow and District Volunteer Rescue Organisation received a grant from the Federal Government Attorney-General's Department - Emergency Management Division, which provided for a project the Squad was to complete in early 2007. The organisation was not able to access the grant funds until the project was finalised and hence sought Council's assistance through the Council policy "Financial Assistance to Community Groups and Organisations – Interest Free Loans" for a loan of \$11,000.

In March 2007 Council resolved to extend the repayment deadline to 14 May 2007 to allow the Squad to complete the few remaining tasks in this project.

Council is advised that the loan has now been repaid in full.

POLICY IMPLICATIONS

Council's Policy Financial Assistance to Community Groups and Organisations – Interest Free Loans applies.

FINANCIAL IMPLICATIONS

Full repayment of the \$11,000 interest free loan has occurred.

LEGAL IMPLICATIONS

NIL

07-239 RESOLVED

THAT Council note the repayment of the \$11,000 interest free loan provided to the Lithgow and District Volunteer Rescue Squad in December 2006.

MOVED: Councillor M J Wilson

SECONDED: Councillor B S Moran.

CARRIED

COMMITTEE MEETINGS

ITEM:12 COMM - 04/06/07 - ENVIRONMENTAL ADVISORY COMMITTEE MEETING MINUTES HELD ON 9TH MAY 2007

REPORT FROM: COMMUNITY AND CULTURAL MANAGER– P. HALL

REFERENCE

Min 07-183: Finance and Services Committee meeting 7 May 2007

SUMMARY

Attached are the Environmental Advisory Committee meeting minutes held on the 9 May 2007 provided for Council's information.

COMMENTARY

The items which particularly need to be noted / determined by Council are:

Item 5 Terms of Reference

Council is aware that there will be a report brought to Council on those “committees” that are currently involved in assisting councils which will determine their status with regard to s355 of the Local Government Act 1993.

Council has provided the Committee with a draft set of the Terms of Reference (attached) being developed for the other Committees to gather their comments on the document.

STAFF RECOMMENDATION: That Council seek guidance and a list of environmental organisations that Council could consider to invite to be members on the Environmental Advisory Committee when it is reformed within the Terms of Reference framework and to ask for their recommendation on the tenure for committee members.

Item 6 Purple Copper Butterfly

Considerable concern was expressed by committee members that land behind the Community Nursery has been sold by Xstrata to a private citizen and a critical habitat for the Purple Copper Butterfly and location of the Butterfly Trail may not be managed properly.

The requested action from this Committee was that a Council and a NPWS representative meet with the new owner and clearly explain the restrictions on the land and what can and can't be done with it. This would include the owner's responsibility in regard to weed and pest control.

STAFF RECOMMENDATION: That in Council's ongoing discussions with the owner of the land the issues raised by the Committee be highlighted and reference to the information sources available be identified for the new owner's information.

Item 7 General Business

STAFF RECOMMENDATION: That Council investigate and consider the Indian Minor program for Lake Pillans as proposed by the Committee as a component in the 2007/08 budget with assessment and recommendation to proceed or not to be included in the quarterly review in September 2007.

STAFF RECOMMENDATION: That Council discuss with the Community Nursery the options for the provision of trees from the nursery.

STAFF RECOMMENDATION: That Council continue to update the Committee on the progress of the Hyde Park Plan of Management.

STAFF RECOMMENDATION: That Council note the request for consideration of a Natural Area Manager but advise the Committee that there are no plans for such a position within the 2007/08 budget.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

07-240 RESOLVED

THAT:

1. Council note the minutes of the Environmental Advisory Committee held on 9 May 2007;
2. That Council seek guidance and a list of environmental organisations that Council could consider to invite to be members on the Environmental Advisory Committee when it is reformed within the Terms of Reference framework and to ask for their recommendation on the tenure for committee members;
3. That in Council's ongoing discussions with the owner of the land the issues raised by the Committee be highlighted and reference to the information sources available be identified for the new owner's information;
4. That Council investigate and consider the Indian Minor program for Lake Pillans as proposed by the Committee as a component in the 2007/08 budget with assessment and recommendation to proceed or not to be included in the quarterly review in September 2007;
5. That in Council discuss with the Community Nursery the options for the provision of trees from the nursery;
6. That Council continue to update the Committee on the progress of the Hyde Park Plan of Management;
7. That Council note the request for consideration of a Natural Area Manager but advise the Committee that there are no plans for such a position within the 2007/08 budget.

MOVED: Councillor A E Thompson

SECONDED: Councillor B S Moran.

CARRIED

QUESTIONS WITHOUT NOTICE

QWN - 04/06/2007 - COUNCILLOR MF TICEHURST

6. Could Council Officers provide an immediate update on several insurance claims by Main Street Shops relating to Storm damage to their premises?

Is it correct that the Council's insurer has recently declined the Shop Owners insurance claims of financial compensation as the Lithgow Council was previously aware of the Main Street Lane drainage problem?

Is it correct that the Main Street Shops will now be required to take civil action direct against the Lithgow Council to financially recover their losses?

Is the Council aware that several affected Main Street Shops are in some financial difficulty due to the Storm Damage and to ensure the Shops remain open and viable, will the Lithgow City Council take immediate action to negotiate with the affected Shop Owners?

Council's insurer has advised the claims have been declined.

Councillor M F Ticehurst advised he was happy with the answers to his questions for the DA 319/06.

Mr Mayor:

With respect to Item 7 – DA 319/06 for the Construction and Operation of Heliport, Castlereagh Highway, Capertee – could Lithgow Council Officers provide a response to the detailed **INFORMATION** below and confirm -

- Q1. If DA 319/06 and its associated EIS is an application for the use of a **single** Helicopter landing and exiting from a **single** 'Helipad'; how then can DA 319/06 be legally defined as a 'Heliport' - ***that is a 'Port' for Helicopters*** under the Lithgow City Council's LEP and associated Model Provisions?

See letter dated 4 June 2007 from Pike, Pike and Fenwick. Please note that this letter is for the information of Councillors only and can only be released to other parties if the Council resolves to waive its right to legal professional privilege.

- Q2. If by definition DA 319/06 and its associated EIS is an application for the use of a **single** Helicopter landing and exiting from a **single** 'Helipad'; is clearly a 'helipad' under the Lithgow City Council's LEP and Model Provisions, that is an area or place not open to public use and which is authorised by the Department of Transport, why then has DA 319/06 not been previously refused by Council Officers as a prohibited development under the Lithgow City Council's LEP?

See answer to Q1 above.

Q3. How previous legal advice from Pike Pike & Fenwick on the definitions of the Model Provisions of the Lithgow City Councils LEP relating to Lithgow City Council DA 504/04 for a religious/corporate retreat' in the Megalong Valley, which has now been finally refused in the Land & Environment Court, appears to have been interpreted differently in respect of DA 319/06 or for the previous Council approved 'Allen' DA for a Helipad in the Megalong Valley and the recently approved Helipad for the new Emirates Resort in the Wolgan Valley?

See answer to Q1 above.

Q4. If a DA and its associated EIS is an application for the use of a single 'helipad' using a single helicopter is to be used for as 'commercial premises' for privately operated public joy flights, how does this make the DA a 'helipad' under the Lithgow City Councils LEP and Model Provisions?

See answer to Q1 above.

Q5. That the Council will publicly release the Councils full "Legal advice relating to an identical proposal (in terms of use) previously rejected by Council has confirmed that; *The proposal as outlined in the Environmental Impact Statement is clearly a 'helipad' under the Model Provisions, therefore, it does not fall within the definition of 'commercial premises', which excludes places elsewhere defined.*"

Although the main thrust of the advice is stated in the report, it is up to the Council, by resolution, as to whether to publicly release the entirety of the advice. However, in doing so the Council would need to realise that it would be waiving its right to legal professional privilege

QWN - 04/06/2007 - COUNCILLOR W MCANDREW

1. Mr Mayor, can I please call in the DA 025/07.

07-241 RESOLVED:

THAT: the DA 025/07 be called in.

Moved: Councillor W McAndrew

Seconded: Thompson AE Thompson

Meeting Closed: 8.22pm

