



LITHGOW CITY COUNCIL

## **MINUTES**

FINANCE AND SERVICES COMMITTEE  
MEETING OF COUNCIL

HELD ON

03 SEPTEMBER 2007

**MINUTES OF THE LITHGOW CITY COUNCIL MEETING  
HELD AT THE CIVIC CENTRE, LITHGOW ON 3 SEPTEMBER 2007**

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Meeting Commenced: 7.02

Public Gallery: 18

**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**

NIL

**Also in attendance**

General Manager, Mr Paul Anderson  
Group Manager Regional Services, Mr Andrew Muir  
Minutes Secretary, Miss Casey Clarke

**CONFIRMATION OF MINUTES**

Confirmation of the Minutes of the Finance and Services Committee Meeting of Council held on the 6 August 2007 were taken as read and confirmed by Councillors H K Fisher and M J Wilson

**07-390 RESOLVED**

**CARRIED**

**DECLARATION OF INTEREST**

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

Councillor H K Fisher declared a pecuniary interest in Item 5 due to the DA being lodge by Councillor Fisher. He vacated the Chambers.

Councillor M J Wilson declared a pecuniary interest in Items 4 and 8 due to being employed by Delta Electricity. He vacated the Chambers.

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Councillor B S Moran declared a pecuniary interest in Item 4 due to her husband being employed by Springvale Coal and location of her property. She vacated the Chambers.

Councillor M M Collins declared a pecuniary interest in Item 3 due to her company using this quarry. She vacated the Chambers.

## **QUESTIONS FROM THE PUBLIC GALLERY**

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

### **QPG - 03/09/07 - MARLENE BRINCKLEY**

1. Mr Mayor are you aware the Department of Fair Trading has not received accounting from Portland Pool nor has it been updated as to the now President? The last correspondence was in 2004. Council is willing to give a donation of \$5,000 to this Association. Without proof that they have fulfilled the obligations of the Association as required by the Department of Fair Trading.

*Council often provides donations to groups within the Community. It is not Council's role to check for compliance with other regulatory bodies such as Department of Fair Trading before providing financial assistance.*

*However, following your allegation I will request the General Manager to forward this information to the Portland Pool Association for their action.*

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## GENERAL MANAGER REPORTS

### ITEM:1 GM - 03/09/07 - EMAILING OF DLG CIRCULARS

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#### REFERENCE

NIL

#### SUMMARY

This report advises Council of an offer to Councillors to access DLG circulars via email. This report will request interested Councillors to complete a form, so it can be forwarded to the DLG for action.

#### COMMENTARY

The Department of Local Government is keen to provide elected Councillors with an electronic version of circulars issued to Councils.

The Department issues a variety of circulars to councils of significant matters, requiring Councils attention and are used by various Local Government stakeholders to stay informed about issues facing the sector.

Currently Circulars are emailed to council and posted on the Departments website at [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au), however, the Department is willing to email them directly to elected officials.

Should Councillors wish to avail themselves of this initiative by the Department they are requested to complete the enclosed form so an application can be forwarded to the Department on their behalf.

Should Councillors elect to receive the circular electronically any requests will remain valid until the next general council election scheduled for September 2008.

#### POLICY IMPLICATIONS

NIL

#### FINANCIAL IMPLICATIONS

NIL

#### LEGAL IMPLICATIONS

NIL

#### CONCLUSION

Should Councillors wish to receive circulars by email, then it may provide an efficient alternative to the hard copy version.

**07-391 RESOLVED**

**THAT** those Councillors wishing to receive electronic copies of the Department of Local Government circulars advise the General Manager by completing the enclosed form so a general request can be coordinated with the DLG.

**MOVED:** Councillor M J Wilson

**SECONDED:** Councillor M M Collins.

**CARRIED**

## REGIONAL SERVICES REPORTS

### ITEM:2            REG - 03/09/07 - WIRRAWAY STREET SUBDIVISION FENCING REQUIREMENTS

**REPORT BY: ANDREW MUIR GROUP MANAGER REGIONAL SERVICES**

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## REFERENCE

NIL

## SUMMARY

To advise Council of two submissions received in objection to the South Bowenfels DCP with specific reference to current fencing limitations.

## COMMENTARY

Previously, Council attended an on-site meeting in relation to issues in the Wirraway Street subdivision. As part of the Wirraway Street subdivision Council's Development Control Plan (DCP) for South Bowenfels applies to the land. The DCP has two criteria that can be implemented to assess standards or objectives required to achieve a satisfactory outcome in terms of minimum required standards for such things as amenity, privacy, public and private security and alike. Each criteria (properly incorporated into a development) addresses these standards in order to achieve the same outcome. The two criteria are as follows:

- Performance Criteria – these are general statements of achieving the objectives. They are not limiting in nature, and provide designers/applicant an opportunity to develop a number of different design solutions. Not all performance standards will be applicable to each development.
- Prescriptive Measures – provide development standards, which if satisfied, are deemed to satisfy either or all of the objectives.

To utilise the prescriptive measures to erect a fence the DCP requires a maximum of 1.2m solid (masonry) lower section and a 50% transparent upper section of fencing to a maximum height of 1.8m. Colorbond material is not recommended within the DCP.

Council is now in receipt of two letters from owners of land within the estate, seeking a variation to the Prescriptive Measures of the DCP to allow the erection of a colorbond material to a height of 1.8m on side and rear fences that adjoin public open reserves. Each have indicated that the development can comply with the performance criteria outlined in the DCP.

Each of the attached letters outline reasons for the variation, however one to the key objectives of the fencing requirements seeks adequate public surveillance to public reserves. It is considered that each application has not addressed this key objective of the DCP.

Upon assessment, it is considered that a compromise can be achieved for each development as follows:

1. A maximum of 1.2m solid colorbond construction be permitted for each boundary adjoining any open reserve.
2. any additional fencing is to be a minimum of 50% transparent to a maximum of 1.8m (for the entire fence, from natural ground level).

These simple compromises allow for the objectives of the fencing criteria within the DCP to be addressed whilst allowing the privacy issues outlined in each piece of correspondence to be adequately met.

#### **POLICY IMPLICATIONS**

There are no perceived policy implications associated with this report.

#### **FINANCIAL IMPLICATIONS**

There are no perceived financial implications associated with this report.

#### **LEGAL IMPLICATIONS**

There are no perceived legal implications associated with this report, as Council has the power to vary the DCP where it sees fit.

### **07-392 RESOLVED**

#### **THAT:**

1. The report be received.
2. Each of the landowners be informed that the compromised measures indicated in the above report are the only variations permissible relating to this issue. Any further variation or request for variation will be required to address the objectives outlined in the South Bowenfels DCP and submitted for Council consideration.

**MOVED:** Councillor B P Morrissey

**SECONDED:** Councillor W McAndrew.

**CARRIED**



**ITEM:3            REG - 03/09/07 - HARTLEY QUARRY - TRANSPORT TONNAGE INCREASE**

**REPORT BY: ANDREW MUIR – GROUP MANAGER REGIONAL SERVICES**

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**REFERENCE**

Nil

**SUMMARY**

To advise on receipt of correspondence and advice from Councils solicitors regarding Adelaide Brighton's Hartley Quarry and road transportation from their existing quarry.

**COMMENTARY**

Previously Council had been provided with correspondence from RW Corkery & Co. on behalf of Adelaide Brighton Pty Ltd, the new proprietor of Hartley Quarry, indicating that they were seeking a variation to their current licence (through the EPA) to haul product from the site to 1,000,000tpa.

As part of the original development approval in 1994 the consent restricted transportation of product from heavy vehicles to 198 daily, being 99 accessing and 99 egressing the site.

The applicant contends that no stipulation within the consent restricts total tonnage limits and as such, as long as vehicle movements do not exceed 198 the tonnage limits remain uncapped.

From this initial correspondence Council sought legal advice which indicated the following:

*In our opinion, all Council can say for the purposes of the development consent is that there is no specific limitation on production, nor requirement for strict compliance with the EIS, but at best, a general implied limitation that the numbers of heavy vehicular movements should not generally exceed 198 per day.*

Thus, it is concluded that as the development consent for the quarry included were no limitations on the maximum tonnages allowed to be transported but only the number of road transportation vehicles accessing and leaving the site.

It is considered that in correspondence back to the company Council reiterate the advice of its legal advisors and indicate that limits exist primarily to vehicle movements for the development.

**POLICY IMPLICATIONS**

There are no policy implications perceived as part of this report.

**FINANCIAL IMPLICATIONS**

There are no financial implications.

## **LEGAL IMPLICATIONS**

Councils Solicitors have outlined the legal position.

Councillor M M Collins declared a pecuniary interest in this item due to using this quarry and vacated the Chambers.

## **07-393 RESOLVED**

### **THAT:**

1. The information be received
2. Council send correspondence to Adelaide Brighton indicating the results of Councils investigation and advice.

**MOVED:** Councillor A E Thompson

**SECONDED:** Councillor M J Wilson.

**CARRIED**

**ITEM:4            REG - 03/09/07 - WESTERN RAIL UNLOADER**

**REPORT BY: ANDREW MUIR GROUP MANAGER REGIONAL SERVICES**

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## **REFERENCE**

Nil

## **SUMMARY**

To advise Council of the details of the Western Rail Unloader proposal.

## **COMMENTARY**

A Major Project application being the proposed Western Rail Unloader has been submitted to the NSW Department of Planning by Delta Electricity. The development application has been lodged under Part 3A of the Environmental Planning and Assessment Act (EP&A) 1979, being critical infrastructure required to carry out state significant development.

The proposal seeks to construct and operate a Rail Coal Unloader and would comprise of the following:

- A rail loop comprising a branch line off the Wallerawang – Mudgee Main Line;
- A coal unloader building which would allow coal to be delivered into a hopper located below the rail line;
- A conveyor system which would carry the coal to the existing coal handling facility at the Mt Piper Power Station.

Council has previously sent preliminary correspondence to the NSW Department of Planning initially indicating that it will not support the current proposal unless long term local coal contracts are developed with Springvale and Angus Place Colliery, being local coal mines developed expressly to produce coal for the local market. The Department did not formally inform Council or provide the relevant documents to Council until after the formal exhibition period. Therefore, Council has been granted a substantial extension of time to provide its additional comments.

A detailed investigation of the proposal has been undertaken and it is recommended that Council in its reply to the NSW Department of Planning indicate that the following issues will need to be addressed prior to finalisation of the project. These include:

1. A feasibility study be undertaken on all alternative sites proposed for the development. This could include further studies incorporating more appropriate locations for the rail siding that do not significantly impact on current residential (Village) infrastructure.
2. Further studies be undertaken indicating the potential impact of increased rail usage on the Town of Portland, given the Wallerawang – Mudgee line dissects east and west Portland.
3. Plans being submitted prior to any final assessment indicating appropriate landscaping and other measures proposed to minimise and potential impacts in terms of amenity, noise and dust (airborne particulate) bulk and scale for the proposed development in a rural environment.
4. The studies undertaken by SKM on flooding for creek systems around the site leave unresolved issues within the document. It is claimed within the Flood Study attached to the Environmental Assessment that issues such as scouring, attributed to excessive velocities in peak flood times, are an issue of concern that may require more investigation. This investigation should be required to be addressed prior to any final assessment occurring.
5. Within the Environmental Noise Assessment Report considered by SKM, conclusions are made that noise emissions produced from the development, although compliant with the Department of Environment and Climate Change Industrial Noise Policy Guidelines, are at some locations marginal. It is considered that given the proposed location of the development within a surrounding rural zone that noise impacts should be negligible. As such it is considered that the applicant give further consideration to mitigation measures for adjoining landowners prior to any final assessment by the Department.
6. A detailed investigation needs to be implemented into the Environmental Assessment (EA) regarding the Willewa Street rail crossing in Portland and the need for an option that does not intersect the street at the same grade. In a majority of correspondence received by Council pertaining to this application concerns over this crossing were paramount.

7. A major concern is what impact a potential break down would have on incoming coal supplies. The proposal does not indicate a coal stockpile to be incorporated into the development and no reference is made concerning potential mitigating mechanisms being put in place to continue coal movement. These mechanisms (should they be road transport related) effect external receptors which otherwise are not documented within the EA.
8. Further traffic studies will be required to be submitted for comment in relation to the likely impact of increased traffic (especially during construction phase) on the existing Pipers Flat Road.

### **POLICY IMPLICATIONS**

There are no perceived policy considerations pertaining to this report.

### **FINANCIAL IMPLICATIONS**

It is considered that should approval be recommended that Council request a contribution by way of a Planning Agreement in relation to infrastructure and/or community facilities.

### **LEGAL IMPLICATIONS**

There are no perceived legal considerations pertaining to this report at this time other than those mentioned above.

### **RECOMMENDATION**

#### **THAT:**

1. That Council reiterate its position to the Department of not supporting the current proposal unless long term local coal contracts are developed with Springvale and Angus Place Colliery, being local coal mines developed expressly to produce coal for the local market.
2. Council indicate to the Department of Planning that notwithstanding No 1 above it does not object to the proposal at this time on planning grounds. however it does have concerns and requests further information and actions as outlined in this report.
3. Council reserves the right to object to the proposal after consideration of the additional information as outlined within the report.
4. Council indicate that should approval be recommended that a condition be included in relation to a monetary contribution for public infrastructure and/or community facilities.

Councillor M J Wilson declared an interest in this item and vacated the Chambers.  
Councillor B S Moran declared an interest in this item and vacated the Chambers.

## 07-394 RESOLVED

### THAT:

1. That Council reiterate its position to the Department of not supporting the current proposal unless long term local coal contracts are developed with Springvale and Angus Place Colliery, being local coal mines developed expressly to produce coal for the local market.
2. Council note its displeasure that no response has been received to its concerns on the future contracts at Springvale and Angus Place Collieries.
3. Council indicate to the Department of Planning that notwithstanding No 1 above, it does have concerns and requests further information and actions as outlined in this report.
4. Council reserves the right to object to the proposal after consideration of the additional information as outlined within the report.
5. Council indicate that should approval be recommended that a condition be included in relation to a monetary contribution for public infrastructure and/or community facilities.

**MOVED:** Councillor B P Morrissey

**SECONDED:** Councillor A E Thompson.

**CARRIED**

**ITEM: 5            REG - 03/09/07 - DEVELOPMENT / CONSTRUCTION CERTIFICATE  
138/07 COUNCILLOR H K FISHER**

**REPORT FROM: REGIONAL SERVICES MANAGER – ANDREW MUIR**

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### **SUMMARY**

To advise council of the submission of a Development/Construction Certificate Application No.138/07 on behalf of Councillor H Fisher and recommend approval.

### **COMMENTARY**

An application has been received from Spectrum on behalf of Councillor H Fisher for the erection of a patio cover at Lot 1 DP 1029892, 1 Busby Street, Lithgow.

The proposal involves the construction of a steel framed and aluminium structure attached to the back of the existing dwelling.

**POLICY IMPLICATIONS**

Council's policy **Development Applications by Councillors and Staff and Relatives or on Council Owned Land** requires that any Development Application lodged where the applicant is a councillor must be referred to council or its appropriate committee for consideration and determination and that no aspect of the application be dealt with under delegated authority.

**FINANCIAL IMPLICATIONS**

Nil

**LEGAL IMPLICATIONS**

The application has been assessed in accordance with the provisions of the Environmental Planning and Assessment Act.

**07-395 RESOLVED**

**THAT** Development/Construction Certificate Application No.138/07 be approved subject to the following conditions:

1. All work on site shall only occur between the following hours:

Monday to Friday	7.00am to 6.00pm
Saturday	8.00am to 1.00pm
Sunday and public holidays	No work
2. That existing plumbing and drainage fixtures affected by the building works are modified or relocated in accordance with the requirements of the Council.
3. That the structure is securely bolted at its supports and fixed rigidly at its base.
4. That the proposed rainwater drains are connected to the existing rainwater disposal system.
5. To ensure structural integrity, the maintenance of minimum health standards, the management of the buildings surrounds and the protection of the environment, compliance certificates are to be issued at significant stages throughout the construction period. These stages are:
  - g) Framing when external wall and roof cladding is in place and prior to internal linings.
  - j) Stormwater drainage between building and discharge point (drainage pipes, soakage pits and the like) prior to covering.
  - k) Completion of the development and sign off to all conditions of the consent including landscaping, prior to occupation and use.  
At each inspection, erosion and sediment control measures and site management will be inspected.
6. That the external cladding and roofing of the enclosed patio are of a natural tone, non reflective condition.

7. Prior to the commencement of any works on the land, a sign/s must be erected in a prominent position on the site:
- a) which that person can be contacted outside working hours.
  - b) Stating that unauthorised entry to the work site is prohibited and
  - c) Showing the name, address and telephone number of the Principle Certifying Authority for the work.
- The sign/s are to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

**MOVED:** Councillor B S Moran

**SECONDED:** Councillor M J Wilson.

**CARRIED**

**ITEM:6            REG - 03/09/07 - DEVELOPMENT / CONSTRUCTION CERTIFICATE APPLICATION 160/07 LITHGOW CROQUET CLUB**

**REPORT FROM: REGIONAL SERVICES MANAGER – ANDREW MUIR**

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### **SUMMARY**

To advise council of the submission of Development/Construction Certificate Application No.160/07 from Lithgow Croquet Club for clubhouse additions on Council owned land at the Glanmire Reserve, Lithgow and recommend approval.

### **COMMENTARY**

An application has been received from Lithgow Croquet Club for the construction of additions and alterations to the existing croquet clubhouse located on Lot 45 DP 171939 Glanmire Reserve Lithgow owned by council.

The proposal involves the construction of an additional storage room, disabled access ramp, disabled toilet and other internal improvements to the clubhouse.

### **POLICY IMPLICATIONS**

Council's policy **Development Applications by Councillors and Staff and Relatives or on Council Owned Land** requires that such application be referred to Council or its appropriate committee for consideration and determination and that no aspect of the application be dealt with under delegated authority.

### **FINANCIAL IMPLICATIONS**

Council is partially funding the project through the 2007/08 Management Plan.

### **LEGAL IMPLICATIONS**

The application has been assessed in accordance with the provisions of the Environmental Planning and Assessment Act.

Councillor H K Fisher declared a pecuniary interest in this item and vacated the Chambers.

## **07-396 RESOLVED**

**THAT** Development/Construction Certificate Application No. 160/07 be approved subject to the following conditions:

### **CONDITIONS**

1. To ensure structural integrity, the maintenance of minimum health standards, the management of the buildings surrounds and the protection of the environment, compliance certificates are to be issued at significant stages throughout the construction period. These stages are:
  - a) Pier holes/pad footings before filling with concrete.
  - b) Trenches complete with reinforcing and prior to filling with concrete.
  - c) Internal drainage carried out by licensed plumber prior to covering
  - d) Reinforcing steel in position and before concrete is poured .
  - e) Floor frame, dampcourse, ant capping, foundation walls before floor material is laid.
  - f) Framing when external wall and roof cladding is in place and prior to internal linings.
  - g) External drainage (including onsite waste disposal system) installed by a licensed plumber and prior to covering.
  - h) Wet area flashing prior to tiling or covering.
  - i) Stormwater drainage between building and discharge point (drainage pipes, soakage pits and the like) prior to covering.
  - j) Completion of the development and sign off to all conditions of the consent including landscaping, prior to occupation and use.

At each inspection, erosion and sediment control measures and site management will be inspected.

**Note: forty-eight (48) hours notice shall be given to Council prior to inspections.**

2. All work on site shall only occur between the following hours:

Monday to Friday	7.00am to 6.00pm
Saturday	8.00am to 1.00pm
Sunday and public holidays	No work
3. That existing plumbing and drainage fixtures affected by the building works are modified or relocated in accordance with the requirements of the Council.
4. That all plumbing and drainage work be carried out by a licensed plumber and drainer and inspected by Council officers.
5. All building work must be carried out in accordance with the provisions of the Building Code of Australia.



6. Council is to be notified at least two days prior of the intention to commence building works, in accordance with Section 81A(2)(c) of the Act in Form 7 of Schedule 1 of the Regulations.
7. The person constructing any works shall install, prior to any construction work, adequate sediment and soil erosion controls. The controls shall be in accordance with the Department of Infrastructure Planning & Natural Resources current guidelines for erosion and sediment control.
8. The building or any part of the building which is the subject of a development consent and construction certificate must not be used or occupied until an Occupation Certificate has been issued by the Principal Certifying Authority.
9. The disabled handrails, access ramp and WC are to comply with the requirements of Australian Standard 1428 Design for Access and Mobility.

**MOVED:** Councillor B S Moran

**SECONDED:** Councillor M J Wilson.

**CARRIED**

**ITEM:7 REG - 03/09/07 - DEVELOPMENT AND CONSTRUCTIONS APPROVALS**

**REPORT FROM: GROUP MANAGER REGIONAL SERVICES – ANDREW MUIR**

**SUMMARY**

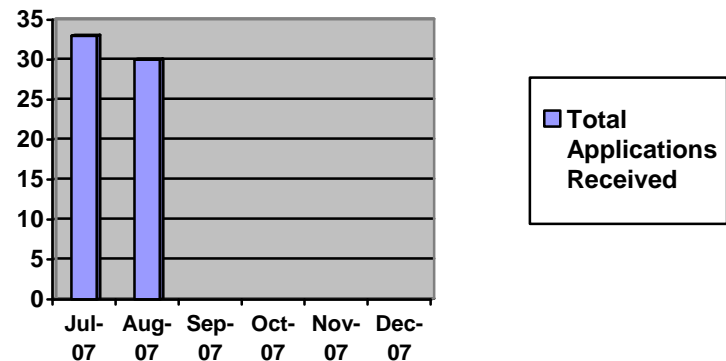
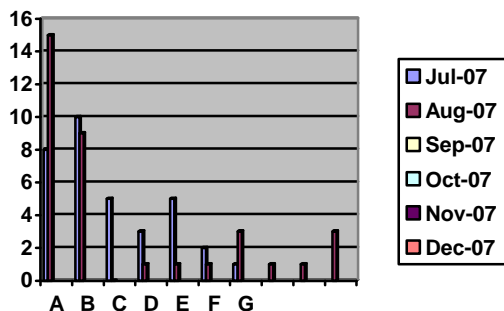
To provide statistical information on Development Applications and Construction Certificates processed.

**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
Jul * 2007	8	10	5	3	5	2	1	33
Aug 2007	15	9	0	1	1	1	3	30
Sep 2007								
Oct 2007								
Nov 2007								
Dec 2007								

\* includes Approvals from 28/07/2007 TO 27/08/2007



**APPROVALS**

Total Estimated Cost:	\$1,866,607
Average Approval Time	21
Total Cost of Approvals from 1/01/2007	\$23,271,914
No. of Applications from 1/01/2007	272

**07-397 RESOLVED**

**THAT** the information be received

**MOVED:** Councillor M J Wilson

**SECONDED:** Councillor A E Thompson.

**CARRIED**

**ITEM:8            REG - 03/09/07 - DA 461/04 MODIFICATION OF CONSENT - PUBLIC ROAD TRANSPORTATION AND INCREASED PRODUCTION - PINEDALE OPEN CUT MINE**

**REPORT BY: GROUP MANAGER REGIONAL SERVICES - ANDREW MUIR**

**REFERENCE**

Nil

**SUMMARY**

To report on a Section 96(2) Modification application in relation to the Pinedale open cut mine. The report recommends refusal of the application.

**COMMENTARY**

Previously, Council issued development consent to DA 461-04 being the construction and operation of the Pinedale Open Cut Mine in Blackmans Flat. Council is in receipt of a Modification of Development Consent Application for the approved development, seeking to modify current conditions relating to the use of public roads for a period no less than 6 years for the transportation of coal and to increase current maximum tonnages for the development to 350,00tpa from existing levels of 200,000tpa. A comprehensive Section 79C planning report is attached.

As part of the conditions of consent Council indicated that:

**13.2 Private Roads**

13.2. The Applicant shall ensure that within six months of the commencement of operations, all coal is to be transported to Mt. Piper and Wallerawang Power Stations by means other than public roads.

The applicants have lodged a Modification of Development Consent Application under Section 96(2) of the Environmental Planning and Assessment Act 1979, seeking to modify the above condition with the following:

### **13.2 Private Roads**

- 13.2.1 This consent sanctions the transportation of coal by public road to Mt Piper and Wallerawang Power Stations for a period of 5 years from the commencement of coal transportation.
- 13.2.2 Within six(6) months of the commencement of coal transportation, the Applicant shall convene a meeting with Council, Delta Electricity, the owner/operator of the Angus Place to Mt Piper Haul Road, the owner/operator of the Angus Place to Wallerawang Haul Road and Centennial Coal, or such of those parties who accept the convening, to discuss ways in which a practicable agreement may be reached to use the Angus Place to Mt Piper Haul Road and the Angus Place to Wallerawang Power Station Haul Road. If these discussions are successful, a timetable shall be implemented to ensure coal purchased from the applicant by Delta Electricity is generally transported to Delta Electricity power stations by private haul road, other than at times when access to the private haul roads may for some reason be unavailable. If these discussions are not successful then condition 13.2.3 shall apply.
- 13.2.3 Notwithstanding the provisions of condition 13.2.1, the applicant may apply to Council to extend the period for the transportation of coal to Mt Piper and Wallerawang Power Stations for the term of this consent on public roads if the discussions outlined in condition 13.2.2 do not result in agreement to utilise either or both of the private haul roads. Should this occur then this extension must be applied for in writing no later than six (6) months prior to the expiration of the five year period as outlined in condition 13.2.1. In determining whether to grant any such extension, the Council may consider previous performance of heavy vehicle haulage and any complaints received by Council or the Community Consultative Committee. Council's granting of an extension under this sub-clause may not be unreasonably withheld.

The modification application has been made under the justification that the applicant considers that sub-clause 13.2 of the consent is arguably, either not consent to its application or is unreasonably imposed, or both, by virtue of:

- a) by restricting the transportation of coal to means other than freely and readily available public roads, the purported consent significantly alters the development in respect of which the application was made so that the purported consent is not a not consent to the application at all; and
- b) the condition fails the common law test of validity in that, the condition imposed is so unreasonable that no reasonable local authority properly advised would impose such a condition.

To understand the basis on which to proceed, the modification application was referred to Council's Solicitors (Pike Pike & Fenwick) for comment on the justification supplied by the applicant. In their reply Pike, Pike and Fenwick indicated in their opinion the condition imposed as part of the original consent is "in legal principle" a valid condition.

The modification application was placed on public exhibition. In addition, the application is considered to be integrated development through the Roads Act 1993 and as such was forwarded to the RTA concerning any issues they may have.

The two modifications sought are summarised below

### **Increased Tonnage**

The modification seeks to increase tonnages from the site from 200,000tpa to 350,000tpa which would be an increase of 75%. The increased tonnages have been sought as additional contracts to the local (Mt Piper) markets and as such in order to activate those additional contracts the modification is required to be approved. The potential impacts of the modification are arguable. The additional contracts proposed have the potential to reduce the life of the mine significantly. As part of the original Environmental Impact Statement (EIS) for the Pine Dale proposal it was indicated that the total resource within the mining lease area was 1.9 million tonnes. An increase in tonnage potentially decreases the life of the mine from approximately 10 years to approximately 6 years. This decreases the effect on the adjoining residents of Blackmans Flat and Lidsdale. Additionally, the Statement of Environmental Effects (SoEE) indicates that this increase in operation will have no additional affect on limits pertaining to noise, hours of operation or mining method. The alternative view is that the modification seeks to increase production to an additional 75% of the approved development. Therefore there will be increased pressure placed on the adjoining area through such impacts as vehicle movements (both light and heavy) noise and amenity.

It is considered by assessing officers that the additional pressure placed on residents through increased truck movements and the like cannot be justified in this instance.

### **Transportation of Coal**

Council officers consider the issue of coal transportation to be one which requires careful consideration. The existing mining operations are situated adjacent to a private haul road and it seems incongruous that heavy vehicles would have to travel by public road when such a facility is so close. However, the applicant has indicated within the SoEE that there are private contractual issues which apparently make the potential usage of the private road improbable. The current development consent condition provides the following:

*13.2. The Applicant shall ensure that within six months of the commencement of operations, all coal is to be transported to Mt. Piper and Wallerawang Power Stations by means other than public roads.*

Council officers strongly favour the retention of this condition.

### **POLICY IMPLICATIONS**

There are no perceived policy consideration pertaining to this report.

### **FINANCIAL IMPLICATIONS**

The only perceived financial consideration pertaining to this report relate to costs involved in appealing a consent in the Land & Environment Court. However, this is not a relevant consideration in the development assessment process.

## LEGAL IMPLICATIONS

The application is considered to be integrated development through the Roads Act 1993, and as such the RTA was advised of the modification and asked to comment. In correspondence received by the RTA several recommendations were identified. These include;

1. The proponent monitor the volume of vehicles entering and leaving the site, ensuring 'busy days' are captured. For this purpose it is recommended that a traffic classifier be installed in an appropriate location within the site, and reports provided to Lithgow City Council for assessment.
2. In the event that the volume of vehicles turning into the site exceeds 10km's per hour, that the intersection is upgraded to a higher standard based on the RTA Road Design Guide 'AUR' or 'CHR' as appropriate for the volumes and road safety requirements.
3. The proponent to monitor traffic incidents, including 'near misses' at or near the site access that involve vehicles intending to access or having left the site.
4. The proponent to prepare a traffic management plan that includes induction and regular reminders to haulage vehicle drivers relating to safe operation of the vehicles on public roads.

However, in concluding the RTA state in their correspondence that *it is noted that a private haul road may be accessed for haulage operations. The use of a private haul road mitigates the majority of public road safety and traffic impacts accompanying the proposal and further negotiations should be encouraged.*

From the response submitted by the RTA it can be assumed that in their opinion usage of the private haul road to transport coal is a better option given it can mitigate all safety concerns on public roads.

## Conclusions

Considerable time has elapsed since the lodgement of the modification application, which was within the 6 month consent period. This has been primarily due to the time taken by the Department of Planning to allocate delegated authority for Council to undertake the assessment.

Further, Councillors should be aware that as part of the original development application extensive negotiations had taken place with the proponents in relation to conditions of consent prior to approval being given. Whilst general agreement was reached on draft conditions there remained two areas where this could not be achieved. Firstly, in relation to the life of the proposal Council recommended a limitation of 10 years which can only be extended through a Section 96 modification where ongoing environmental compliance would need to be demonstrated. In relation to haulage on public roads and access to other private means of transportation, Council was of the opinion that, irrespective of private matters of access, the proximity to the private haul road was too great a consideration to ignore.

**RECOMMENDATION**

**THAT:**

1. The Section 96 modification application be refused subject to recommendations and reasons outlined in the attached 79C Planning Report.
2. Council indicate to the applicant that it will provide a period of three months from 3 September 2007 for it to arrange alternative transport measures by means other than public roads. However, if such is not in place within this timeframe, Council will commence enforcement proceedings.

**07-398 RESOLVED**

**THAT:**

1. The Section 96 modification application be refused subject to recommendations and reasons outlined in the attached 79C Planning Report.
2. Council indicate to the applicant that it will provide a period of three months from 3 September 2007 for it to arrange alternative transport measures by means other than public roads. However, if such is not in place within this timeframe, Council will commence enforcement proceedings.
3. Council attempt to broker an agreement between the parties to assist in getting the vehicles off the public roadway.

**MOVED:** Councillor H K Fisher

**SECONDED:** Councillor B P Morrissey.

**CARRIED**

**ITEM:9            REG - 03/09/07 - RECOVERY OF LOW USAGE PAYPHONES BY  
                         TELSTRA**

**REPORT BY:            STRATEGIC ENGINEER – LEANNE KEARNEY**

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**REFERENCE**

Council has previously been informed by Telstra that they are reviewing the number of under utilised payphones in the Lithgow Local Government Area, which is an ongoing process and underway for a number of years.

**SUMMARY**

Details of notification by Telstra for the recovery of two (2) low usage payphones within the Lithgow Local Government Area.

**COMMENTARY**

Correspondence has been received from Telstra advising that they are proposing to remove low usage payphones at the following locations:

- 3 Roy Street, Lithgow (at the telephone exchange); and
- 25 Williwa Street, Portland (near the Portland Post Office).

Telstra have determined that these facilities are low usage payphones after investigating the evident community demand, financial viability, operational standards, and Telstra's obligations under the Universal Service Obligation, over a prolonged period, which Telstra believes is attributed to the widespread availability of mobile telephone services.

A prominent notice will be placed on the Williwa Street payphone for a period of at least three (3) months, advising of the proposal to remove this facility, and inviting comments from the users and members of the community, addressing relevant local factors such as evidence that there is a need for a payphone service at these locations, the social demography of the communities which these payphones are located, and evidence of groups in the community that rely on the payphones in this location. These comments will be evaluated by Telstra prior to a final decision regarding the removal being made. At the Roy Street payphone, a notice is not required, as at least one (1) payphone will remain at this site.

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**LEGAL IMPLICATIONS**

Nil

**RECOMMENDATION**

**THAT** the information be received.



**07-399 RESOLVED**

**THAT:**

1. Council oppose the removal of the payphones.
2. Council lobby the Federal Member to seek to have the phones maintained.

**MOVED:** Councillor H K Fisher

**SECONDED:** Councillor B P Morrissey.

**CARRIED**

## COMMUNITY AND CORPORATE SERVICES REPORTS

ITEM:10            COMM - 03/09/07 - HUMAN RIGHTS MEDAL AND AWARDS

REPORT FROM:    GROUP MANAGER – COMMUNITY AND CORPORATE – K.  
WOOLLEY

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### REFERENCE

NIL

### SUMMARY

To provide Council with details of the Human Rights and Equal Opportunity Commission (HREOC) awards and medals and to determine if Council wishes to resolve any nominations.

### COMMENTARY

Council has been advised by the Local Government and Shires Associations through a recent Weekly Circular that the Human Rights and Equal Opportunity Commission is seeking nominations for the 2007 Human Rights Medal and Awards.

Nominations close on 5 October 2007 should Council wish to identify a nominee.

The circular provided the following information:

*“Since 1987, HREOC has recognised the contribution made to Australian society by a variety of men and women committed to issues of human rights, social justice and equality through these awards.*

*The President of the Human Rights and Equal Opportunity Commission (HREOC), John von Doussa QC, noted that the Human Rights Medal and Awards celebrate their 20th anniversary this year and provide an opportunity to acknowledge the outstanding contributions of individuals and organisations by nominating them for these awards.*

*Nominees don't have to be famous or well known – the medal and awards are about celebrating the efforts of those who work tirelessly everyday without fuss to promote and protect human rights and to overcome discrimination in Australia.*

*Each year HREOC receives nominations for the Human Rights Medal and award categories of Law, Community (individual and organisation), Arts Non-Fiction, Print Media, Television and Radio.*

*To nominate the achievements of an individual or organisation for the 2007 Human Rights Medal or one of the award categories, fill in the entry form at [www.humanrights.gov.au/hr\\_awards](http://www.humanrights.gov.au/hr_awards) and forward supporting material by 5 October.*

*There is a luncheon ceremony at the Sheraton on the Park in Sydney on Monday 10 December to hear the winners announced. Julie McCrossin will MC the event and Mr von Doussa will deliver the annual Human Rights Day Oration. For information on tickets contact 9284 9618 or go to [www.humanrights.gov.au/hr\\_awards](http://www.humanrights.gov.au/hr_awards) “*

### **POLICY IMPLICATIONS**

No implications arise from this report.

### **FINANCIAL IMPLICATIONS**

No implications arise from this report.

### **LEGAL IMPLICATIONS**

No implications arise from this report.

### **CONCLUSION**

Council may wish to nominate for this award.

### **ATTACHMENTS**

NIL

### **07-400 RESOLVED**

**THAT** Council determine the name of any potential nominees for this award so applications can be processed.

**MOVED:** Councillor M J Wilson

**SECONDED:** Councillor W McAndrew.

**CARRIED**

**ITEM:11          COMM - 03/09/07 - COUNCIL INVESTMENTS JULY 2007**

**REPORT FROM - INTERNAL SERVICES MANAGER - C FARNSWORTH**

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### **REFERENCE**

NIL

### **SUMMARY**

To advise Council of 2007/08 investments held for the period ending 31 July 2007.

### **COMMENTARY**

The amount invested as at 31 July 2007 when compared to 30 June 2007 has decreased by \$1,593,710.79. This is due to the fact that Council's investments must sustain ongoing expenditure for a three month period from 31 May 2007, the date of the fourth 2006/07 rate instalment, until income is received for the first rate instalment of the 2007/08 rating year on 31 August 2007.

INVESTMENT REGISTER 2007/08								
INSTITUTION	INV TYPE	DATE LODGED	DATE DUE	DAYS	INT	VALUE 31.07.07	VALUE 30.06.07	% OF TOTAL
ANZ	TD	30.07.07	01.10.07	91	6.56	574,972.99	571,903.20	4.32%
CBA	CMS Nt	06.11.06	06.11.11	1,825	7.31	500,000.00	500,000.00	3.76%
	On Call				6.20	644,199.15	894,199.15	4.84%
	Ethical	20.06.06	20.06.11	1,825	9.25	500,000.00	500,000.00	3.76%
CITIBANK	TD	11.07.07	11.09.07	62	6.45	528,331.28	519,867.69	3.97%
LG FINANCIAL	On Call				6.15	684,714.43	684,714.43	5.14%
	TD	06.07.07	06.11.07	120	6.56	300,000.00	806,783.43	2.25%
	TD	18.06.07	12.09.07	86	6.47	526,036.14	526,036.14	3.95%
	TD	05.06.07	07.08.07	63	6.41	513,380.24	513,380.24	3.86%
	TD	06.06.07	08.08.07	63	6.40	500,000.00	500,000.00	3.76%
	TD	25.06.07	15.10.07	107	6.54	2,425,000.00	2,425,000.00	18.22%
IMBS	On Call				6.25	267,809.72	267,809.72	2.01%
	TD	07.06.07	07.09.07	92	6.49	1,064,956.70	1,064,956.70	8.00%
	TD	29.06.07	15.10.07	364	6.55	478,765.97	478,765.97	3.60%
	TD	06.06.07	06.09.07	92	6.46	774,661.38	774,661.38	5.82%
	TD	23.07.07	23.08.07	31	6.41	754,208.22	754,208.22	5.67%
ALLIANCE	Managed	01.04.02	28.02.08	365		1,000,000.00	1,000,000.00	7.51%
ST GEORGE	TD	16.07.07	17.07.07	30	6.34	500,000.00	1,348,460.74	0.00%
	TD	12.06.07	13.08.07	62	6.40	774,690.00	774,690.00	3.76%
			<b>TOTAL</b>			<b>13,311,726.22</b>	<b>14,905,437.01</b>	<b>100.00%</b>

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 31 July 2007 is negative \$17,592.28 due to accrued interest of \$68,764.70 which was brought to account to 30 June 2007 which must be reversed in 2007/08. Interest is 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)

## 07-401 RESOLVED

**THAT** Council's 2007/08 investments for the period ending 31 July 2007 be received.

**MOVED:** Councillor W McAndrew  
**CARRIED**

**SECONDED:** Councillor M M Collins.

**ITEM:12            COMM - 03/09/07 - NEWNES HOTEL - SEC 356 DONATIONS**

**REPORT FROM: COMMUNITY AND CULTURE MANAGER – P. HALL**

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**REFERENCE**

Minute 07-258: Extraordinary Meeting 28 June 2007  
Minute 07-289: Council meeting 16 July 2007  
Minute 07-360: Council meeting 20 August 2007

**SUMMARY**

To advise Council regarding Cr Barbara Moran’s urgent question at Council meeting on 20 August 2007 relating to support and sponsorship for Newnes Hotel 100 year celebrations.

**COMMENTARY**

A letter has been received from Newnes Hotel proprietors requesting sponsorship for printing and laminating of the posters for the celebration. An amount of \$788.25 is requested.

At the Council meeting on 20 August 2007 it was resolved that subject to the necessary advertisement Council support the following donations:

1.	Portland District Motor Sports Club	\$ 60.00
2.	Portland Pool Donation	\$5,000.00

Council should note the remaining balances in the donations funds in 2007/08 from the budgeted \$22,000 are \$385.58 in the general donations funds with the inclusion of the \$5,000.00 for the Portland Pool and \$60.00 for the Portland District Motor Sports Club.

To remain within budget Council could allocate the remaining \$385.58 to the Newnes Hotel if it so resolved.

It is advised that there are a number of other requests which have been made to Council which are to be reported at the September meeting.

**POLICY IMPLICATIONS**

Donation payments are made in line with Council's policies including “Donations – Section 356 of the Local Government Act” and “Request for donation by waiving of fees for council facilities”

**FINANCIAL IMPLICATIONS**

The general donations budget provides \$385.58 remaining and \$238.00 remaining in the hire of facilities donations budget. If the Newnes Hotel sponsorship request is met this will mean there is nil left in the general donations budget for 2007/08.

**LEGAL IMPLICATIONS**

Local Government Act 1993 s356 applies

**07-402 RESOLVED**

**THAT:**

1. Council provide the remaining \$385.58 in the general donations budget from the \$22,000 budgeted in 2007/08 to the Newnes Hotel subject to advertising in accordance with s356 of the Local Government Act;
2. Council note this will result in nil funds remaining in the 2007/08 Section 356 general donations budget;
3. Council note the remaining budget for the waiving of hire fees for Council facilities is \$238.00;

**MOVED:** Councillor B S Moran

**SECONDED:** Councillor A E Thompson.

**CARRIED**

## COMMITTEE MEETINGS

ITEM:13            REG - 03/09/07 - SPORTS ADVISORY COMMITTEE MEETING -  
MINUTES OF 27TH AUGUST 2007

**REPORT BY: STRATEGIC ENGINEER – LEANNE KEARNEY**

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### SUMMARY

Details of the Minutes of the Sports Advisory Committee Meeting held on Monday, 27 August 2007 for Council adoption.

### COMMENTARY

At the Sports Advisory Committee Meeting held on Monday, 27 August 2007, there were eleven (11) items discussed by the Committee, and it is considered that all these items be adopted by Council as per the Committee's recommendations.

### POLICY IMPLICATIONS

Nil

### FINANCIAL IMPLICATIONS

Nil

### LEGAL IMPLICATIONS

Nil

### 07-403 RESOLVED

**THAT** the minutes of the Sports Advisory Committee be adopted.

**MOVED:** Councillor M J Wilson

**SECONDED:** Councillor B S Moran.

**CARRIED**

**ITEM:14            REG - 03/09/07 - TRAFFIC AUTHORITY LOCAL COMMITTEE MEETING - MINUTES OF 9TH AUGUST 2007**

**REPORT BY:    GROUP MANAGER REGIONAL SERVICES– ANDREW MUIR**

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**SUMMARY**

Details of the Minutes of the Traffic Authority Local Committee Meeting held on 9 August 2007 for Council adoption.

**COMMENTARY**

At the Traffic Authority Local Committee Meeting held on 9 August 2007, there were a number of items discussed by the Committee, and it is considered that all these items be adopted by Council as per the Committee's recommendations.

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**LEGAL IMPLICATIONS**

Nil

**07-404 RESOLVED**

**THAT** the Minutes of the Traffic Authority Local Committee Meeting be noted.

**MOVED:** Councillor H K Fisher            **SECONDED:** Councillor M J Wilson.

**CARRIED**



## QUESTIONS OF AN URGENT NATURE

### QWN - 03/09/07 - COUNCILLOR M F TICEHURST

1. Mr Mayor I refer to a press release received in relation to the Magpie season. Can Council please advertise in their Council Column or via press release the dangers of this season, advising residents to be aware?

*The Mayor deemed this to be urgent and advised that advertising would take place.*

The meeting closed at 7.35pm.