



LITHGOW CITY COUNCIL

MINUTES

ORDINARY MEETING OF COUNCIL

HELD ON

15 OCTOBER 2007

**MINUTES OF THE LITHGOW CITY COUNCIL MEETING
HELD AT THE CIVIC CENTRE, LITHGOW ON 15TH OCTOBER 2007**

Meeting Commenced 7.00pm

Public Gallery: 13

PRESENT

His Worship the Mayor
Councillor Neville Castle
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 B P Morrissey who was out of the City on private business

MOVED: Councillor W McAndrew

SECONDED: Councillor H K Fisher.

07-445 RESOLVED

CARRIED

Also in attendance

General Manager, Mr Paul Anderson
Group Manager Regional Services, Mr Andrew Muir
Group Manager Community and Corporate Services, Ms Kathy Woolley
Minutes Secretary, Miss Casey Clarke

CONFIRMATION OF MINUTES

Confirmation of the Minutes of the Ordinary Meeting of Council held on the 17th September 2007 were taken as read and confirmed by Councillors M J Wilson and A E Thompson

07-446 RESOLVED

CARRIED

DECLARATION OF INTEREST

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

- Councillor M F Ticehurst declared a pecuniary interest in item 1 as he is the author of the Notice of Motion.
- Councillor M F Ticehurst declared a non pecuniary conflict of interest in Item 7 as he has current representations involving the Councils Conduct Committee
- Councillor M F Ticehurst declared a non pecuniary conflict of interest in the late Mayoral Minute as he has current representations before the Attorney General of NSW and the Department of Local Government.
- Councillor M M Collins declared a pecuniary interest in item 2 as her Company hauls such materials for this and other companies.
- Councillor M J Wilson declared a pecuniary interest in Item 9, Sub item 6 as he is an Executive member of the Board.
- Paul Anderson declared a non pecuniary conflict of interest in the Notice of Motion as he is the plaintiff in a case seeking damages for defamation before the Supreme Court.

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 questions were received.

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LATE ITEM - MAYORAL MINUTE - 15/10/07 - CODE OF CONDUCT

1

ITEM MAYORAL MINUTE - 15/10/07 - CODE OF CONDUCT

REPORT FROM: NEVILLE CASTLE, MAYOR

COMMENTARY

As Councillors would be aware Lithgow City Council has conscientiously embraced the concept and implementation of the Code of Conduct, legislation contained in the Local Government Act.

Council has diligently dealt with a number of matters through the Code of Conduct process. As Council will recall two of these matters have been referred to the Department of Local Government and the Minister for Local Government for review and possible further action. One of these items was referred to the Department nearly 12 months ago.

For whatever reason, the Department have not acted one way or another on these matters up to this point in time, even though they have actively pursued this matter and "imposed" the legislation on Local Government.

Regardless of the outcome of these two "referrals" it is now evident that the process is both very time consuming and can be very expensive (Lithgow City Council has spent close to \$40,000 on these matters). These matters have also taken up considerable time by a wide range of staff at Council whose costs have not been calculated.

It is therefore concluded that the original aims and intentions of the Act of Parliament have not been met and I believe that the Government needs to review this legislation.

RECOMMENDATION

THAT Lithgow City Council provide a late motion to the LGA Conference to ask the NSW Government to review their legislation in regard to Code of Conduct matters.

Signed: N. Castle
Neville Castle, Mayor

Councillor M F Ticehurst declared a non pecuniary conflict of interest in this item and vacated the Chambers.

07-447 RESOLVED

THAT Lithgow City Council provide a late motion to the LGA Conference to ask the NSW Government to review their legislation in regard to Code of Conduct matters.

MOVED: Councillor Neville Castle

CARRIED

NOTICE OF MOTIONS

ITEM:1 NOTICE OF MOTION - 15/10/07 - COUNCILLOR M F TICEHURST - NSW SUPREME COURT

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Lithgow City Council

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NOTICE OF MOTION

- 9 OCT 2007

MOTION TITLE/TOPIC:

Doc. No

GD^A Ref

Request for the Lithgow City Council to indemnify or reimburse the reasonable legal expenses of Councillor Martin Ticehurst to defend a legal action for alleged Defamation by the Council's General Manager, Paul Anderson in the NSW Supreme Court.

Listed by Councillor Martin Ticehurst

Date: 8 October 2007

BACKGROUND

As reported to the Councils P & S Committee Meeting of 5 February 2007, the Mercury of Thursday 19 March 2007 and a recent QWN from Councillor Morrissey, the Council's General Manager, Paul Anderson has issued legal proceedings in the NSW Supreme Court against Channel Seven Sydney Pty Ltd and Councillor Martin Ticehurst for alleged defamation over a report on the Today Tonight show on Monday 4 December 2006.

Statements of Claim by the General Manager, Paul Anderson have on his behalf been issued by his legal representative, Mr Ross Higgins of Higgins and Higgins Lithgow.

The Statements of Claim are currently before the NSW Supreme Court and attempt to seek unspecified damages for alleged defamation with a final Hearing Date not expected until mid or late 2008.

The Supreme Court action by the General Manager, Paul Anderson for alleged defamation relate to his appearance in a report on Today Tonight's on the Lithgow City Council's involvement in the Federally funded Roads to Recovery rural road reconstruction of the Blackheath Creek Road, Little Hartley. (Item 4. LCC Ordinary Meeting 18 December 06)

I am once again requesting that the Lithgow City Council resolve to indemnify or reimburse reasonable legal expenses incurred by me to defend the legal action by the General Manager, Paul Anderson for alleged defamation in the NSW Supreme Court against Lithgow City Councillor Martin Ticehurst over a report on the Today Tonight show on Monday 4 December 2006.

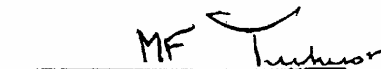
Whilst it is solely up to individual Councillors to personally consider whether they may hold any conflicts of interest in formally determining this matter, I would respectfully submit that it may be appropriate for the Council to seek to resolve to appoint a mutually agreeable independent legal person to formally determine this request.

The matter went before Justice Nicholas in the Supreme Court of NSW on Monday 8 October 2007 where the matter was adjourned to the 10 December 2007 for Mention, waiting for the result of Mediation to be conducted between all parties.

RECOMMENDATION

THAT the request for legal assistance be received and that the Lithgow City Council formally resolves to appoint a mutually agreeable, independent legal person to formally determine this request.

Signed:



This Notice of Motion was put before the Council but LAPSED due to having no mover of the Motion.

Councillor M F Ticehurst declared a pecuniary interest in this item and vacated the Chambers.

Paul Anderson declared a non pecuniary conflict of interest in this item and vacated the Chambers.

REGIONAL SERVICES REPORTS

ITEM:2 REG - 15/10/07 - TENDER FOR THE SUPPLY AND DELIVERY OF ROADBASE, WOLGAN ROAD PROJECT

REPORT FROM: WORKS ENGINEER – CHRIS SCHUMACHER

SUMMARY

To advise Council of the recent 'Tender' for the supply and delivery of approximately 25,000 tonne of Australian Standard (AS) 3501 road base for 14 kilometres of road construction, stage 1 of the Wolgan Road upgrade, Wolgan Valley.

COMMENTARY

Tenders for the supply & delivery of road base for the Wolgan Road upgrade works have now closed.

From assessment, four submissions were received from local quarries for the supply and delivery of approximately 25,000 tonne AS 3501 road base product.

The submissions received were from the following quarries:

1. MetroMix Pty Ltd
2. Oberon Quarries Pty Ltd
3. Hy-Tec Industries Pty Ltd
4. Hyrock Pty Ltd

From the analysis of the four 'Tenders' received it is evident that there is a substantial cost benefit to Council if Council were to accept the submitted 'Tender' from Hy-Tec P/L at \$ 13.10 per tonne supplied and delivered to the Wolgan Road project site.

POLICY IMPLICATIONS

Policy 3.1 'Contracts' – Disclosure on request of information contained in Council contracts which identifies information contained in Council contracts which may be publicly disclosed upon request is potentially applicable should a contract be awarded.

Policy 9.11 'Tenders – canvassing/lobbying of Councillors and staff' was applicable to the process.

FINANCIAL IMPLICATIONS

Funds have been made available in the 2007/08 Management Plan

LEGAL IMPLICATIONS

The Tendering Process has been undertaken pursuant to the provision of Sec 55 Local Government Act 1993 and the Local Government (General) Regulations 2005.

Councillor M M Collins declared an interest in this item and vacated the Chambers.

07-448 RESOLVED

THAT Council accept the Tender from Hy-Tec Industries Pty Ltd for the supply & delivery of approximately 25,000 tonne [AS 3501] road base material in the per/unit rate of \$13.10 per tonne plus GST.

MOVED: Councillor B S Moran

SECONDED: Councillor M J Wilson.

CARRIED

ITEM:3 REG - 15/10/07 - PURCHASE OF CROWN LAND - PORTLAND

REPORT FROM: GROUP MANAGER REGIONAL SERVICES – Andrew Muir

SUMMARY

To advise of an application to purchase a section of Crown Road and to formalise Council's position.

COMMENTARY

Correspondence has been received from Mrs Anne Lualua is seeking the Councils permission to purchase the Crown land next to her property, off Coolamigal Road, Portland. Mrs Lualua has approached the Department of Lands and they have no objections but require Council to indicate its position. Whilst Council is not in a position to give permission to the sale of the Crown road it can indicate that it raises no objection if it believes the Crown road is of no strategic value which appears to be the case in this instance. The land is currently only used for the access to Mrs Lualua's land and leads into a grassed paddock owned by her neighbour, Mrs Hayman. Mrs Hayman has no objections to the sale of the section of Crown land.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

07-449 RESOLVED

THAT Council raise no objection to the sale of the section of Crown Road.

MOVED: Councillor M J Wilson

SECONDED: Councillor B S Moran.

CARRIED

ITEM:4 REG - 15/10/07 - ROAD NAMING - DA 374/04 - OFF COX'S RIVER ROAD, LITTLE HARTLEY

REPORT BY: GROUP MANAGER REGIONAL SERVICES – ANDREW MUIR

SUMMARY

To advise Council of road naming proposal for a sixteen (16) lot subdivision of Lot 3 DP 609669 Cox's River Road, Little Hartley.

COMMENTARY

Council has received a submission on the naming of two (2) internal roads within a proposed sixteen (16) lot subdivision of Lot 3, DP 609669 off Cox's River Road, Little Hartley. The applicant has requested that Council name these roads "Leathem Place" and "Parkland Close". The name "Leathem Place" is significant to the historical name of the property and "Parkland Close" continues the parkland theme of the area.

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

07-450 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.

MOVED: Councillor M J Wilson

SECONDED: Councillor M M Collins.

CARRIED

COMMUNITY AND CORPORATE SERVICES REPORTS

ITEM:5 COMM - 15/10/07 - GENERAL MANAGERS DELEGATIONS UPDATE

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

REFERENCE

Minute 05-450: Ordinary Council meeting 5 September 2005

Minute 05-473: Special meeting 19 September 2005

Minute 06-363: Policy and Strategy Meeting 6 November 2006

SUMMARY

To provide feedback to Council on the review of the General Manager's delegations recently completed.

COMMENTARY

Clause 380 of the Local Government Act 1993 instructs Council to review the Delegations from Council within 12 months of the election of the council.

While it is not essential to review the General Manager's delegations at this time, Council has determined it will conduct an annual review of all policies to ensure completeness and compliance as a component of the internal auditing processes being implemented across the functional areas of Council.

As such a review of the General Manager's delegations has been conducted with staff in management positions being asked to review the current delegations and make suggested inclusions, deletions or amendments to the current delegations.

It is recommended to Council that the following three amendments be made. These amendments simply seek to ensure these tasks can be sub-delegated in the same manner as other tasks are as they could easily remain subject to the regulatory role the Council must fulfil. An additional part, Part P, would formally give the General Manager the ability to negotiate on Council's behalf in proceedings before the Land and Environment Court without the necessity to report individual matters back to Council and then refer the matter back to the Court. This was an issue recently raised in a seminar with the Chief Judge that greatly assists applicants and respondents in the efficient and cost effective consideration and settlement of matters (particularly Section 34 conferences and mediation).

The additional points are as follow:

Part A – Point 51

The function under Clause 603 of the Local Government Act 1993 to enable to issuing of certificates as to rates and charges applicable to property in the Local Government Area.

Part B – Point 29

The function under Section 149A, C and D of the Act to issue a Building Certificate specifying such matters relating to the land to which the certificate relates as maybe prescribed.

Part P – LAND AND ENVIRONMENT COURT ACT 1979 – ADDITION OF THIS SECTION

- 1. The ability to negotiate and reach agreement with other parties to proceedings under Part 3, Division 1 of the Court's jurisdiction on proposed 'consent orders' to be submitted to the Court for its consideration prior to the making of orders under Section 23.***
- 2. The ability to negotiate on Council's behalf on matters the subject of a conference pursuant to Section 34(1) or (1A).***
- 3. The ability at or after a conference to reach agreement on Council's behalf as to the terms of a decision in the proceedings pursuant to Section 34 (3) (a).***
- 4. The ability to negotiate, agree and settle on Council's behalf matters referred by the Court for mediation or neutral evaluation in accordance with Section 61D.***

The previously numbered section P would be re-named Q but is otherwise unaltered.

POLICY IMPLICATIONS

While not required at this stage, the review of all policies and consequently the General Manager's Delegations is good governance practice.

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

The General Manager's Delegations would be updated in accordance with the recommendations.

CONCLUSION

The proposed additions are recommended to the Council to improve the clarity of the General Manager's delegations.

07-451 RESOLVED

THAT the General Manager's delegations be amended with the inclusion of the following:

1. Part A – Point 51 - The function under Clause 603 of the Local Government Act 1993 to enable to issuing of certificates as to rates and charges applicable to property in the Local Government Area.
2. Part B – Point 29 - The function under Section 149A, C and D of the Act to issue a Building Certificate specifying such matters relating to the land to which the certificate relates as maybe prescribed.

3. Part P – LAND AND ENVIRONMENT COURT ACT 1979
 1. The ability to negotiate and reach agreement with other parties to proceedings under Part 3, Division 1 of the Court's jurisdiction on proposed 'consent orders' to be submitted to the Court for its consideration prior to the making of orders under Section 23.
 2. The ability to negotiate on Council's behalf on matters the subject of a conference pursuant to Section 34(1) or (1A).
 3. The ability at or after a conference to reach agreement on Council's behalf as to the terms of a decision in the proceedings pursuant to Section 34 (3)(a).
 4. The ability to negotiate, agree and settle on Council's behalf matters referred by the Court for mediation or neutral evaluation in accordance with Section 61D.
4. That the previously number section marked P for specific issue delegations to Council has given to the General Manager be renamed section Q.

MOVED: Councillor B S Moran **SECONDED:** Councillor M J Wilson.
CARRIED

ITEM:6 COMM - 15/10/07 - MAYORAL TERM

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

REFERENCE

Nil

SUMMARY

The Department of Local Government is seeking Councils comments on the terms Mayors are elected for and this report seeks to establish the response the Council wishes to provide.

COMMENTARY

The Department of Local Government has through Circular 07-46 "Term of Appointment of Mayors elected by Councillors and Term of Appointment of Temporary staff" sought comment from Councils in NSW on the one year term period Mayors who are elected by Councillors are allowed to serve.

This report deals with the Mayoral term component of the circular only as the other topic concerning the term of appointment of temporary staff is a staffing matter and hence operational and for the General Manager's consideration.

Lithgow City Council has traditionally determined the Mayor will be elected by Councillors. The alternative option is to have a popularly elected Mayor.

The Local Government Act 1993 determines the mayoral term for mayors elected by councillors to be for a one year period. Popularly elected Mayors hold the position nominally for four years.

The Council may wish to consider commenting also on the term of the deputy mayor if it wishes to respond to the Department's call for submissions on the issue.

The recommendation is to make a submission, seeking that the Mayoral term for Mayors elected by fellow councillors be increased to two years and the term for the deputy mayor be similarly increased.

Council has also received a request from the Local Government and Shires Associations on the same issue asking that Councils respond so that the Associations can put in a consolidated response as the peak industry body. It is recommended that the submission to be sent to the Department be provided to the Associations for their information and inclusion in their consolidated response also.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

The submission would seek to have an alteration to section 230 of the Local Government Act 1993.

CONCLUSION

It is recommended to Council that a submission to the Department of Local Government be made identifying Council's preference is to extend the Mayor and Deputy Mayoral term to cover a two year period and that a copy of the submission be provided to the Local Government Association.

07-452 RESOLVED

THAT:

1. Council make a submission to the Department of Local Government indicating support for a two year term for both the Mayor and Deputy Mayors who are elected by Councillors and seek the Local Government Act 1993 be amended accordingly;
2. Council provide a copy of the submission to the Local Government and Shires Association for inclusion in their submission from an industry point of view on the same issue.

MOVED: Councillor W McAndrew

SECONDED: Councillor M J Wilson.

CARRIED

ITEM:7 COMM - 15/10/07 - CODE OF CONDUCT AMENDMENT TO PROCESSES

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

REFERENCE

NIL

SUMMARY

In light of an issue raised in the Promoting Better Practice Review by the Department of Local Government with regard to a suggested amendment to Council's Code of Conduct so that there is greater definition of the guidelines for the General Manager to consider when referring a matter to the Conduct Committee, and the processes the committee uses in assessing allegations of breaches of the Code of Conduct, this report proposes amendments to the Code to reflect these better practice suggestions

COMMENTARY

The Promoting Better Practice review of Council by the Department of Local Government, concluded in June 2007, recommended that that Council amend the Code of Conduct to provide better defined criteria for the General Manager, or where an item relates to the General Manager, the Mayor, to use to determine if the Code of Conduct Committee should investigate a matter presented to it.

The following is recommended be added to point 4 of the Appendix attached to the Code of Conduct to provide this clarification. In developing this criteria consideration has been made of the NSW Ombudsman's report of June 2004 "Effective Complaint Handling" in addition to consultation of the Internal Ombudsman's policy documents from Sutherland Shire Council.

It is suggested that the Code of Conduct be amended with the addition of point 4 shown below to the Appendix attached to the Code:

POINT 4: APPENDIX

The General Manager (substitute Mayor if the complaint refers to the General Manager) will refer the complaint to the Conduct Committee having considered the following criteria:

Issue	Response	Possible actions
Is the complaint in writing?	y/n	If not, respond in writing to the complainant advising the issue will only be considered if it is submitted in writing.
Does the complaint identify the clause(s) of the Code of Conduct allegedly breached?	y/n	If yes, check that the clause has been correctly interpreted and determine if there is potential evidence of a breach of Code of Conduct. If no, identify if there is a potential

		<p>breach of the Code of Conduct in an another section of the Code.</p> <p>If the matter is not a breach of the Code of Conduct, consider if the issue relates to a breach of other Council policies or documents.</p> <p>If the matter is not a breach of the Code of Conduct, consider if the content of the complaint requires referral to other organisation (e.g. ICAC, DLG etc). If the General Manager determines this to be the case the referral shall occur in addition to the provision of written advice to the complainant advising them of the referral.</p> <p>If no breach and no reason to refer to other bodies, write back to complainant advising of the decision giving reasons for non-referral.</p>
Is the matter concerning a staff member?	y/n	If yes the General Manager will not refer to the Code of Conduct Committee – refer sheet 1
Is the matter concerning a councillor in their capacity as a councillor?	y/n	<p>If the matter relates to the performance as a councillor (or in the role of General Manager), continue to investigate.</p> <p>If the matter is in a capacity OTHER than the role as a councillor (for example- their employment or involvement in an organisation external to Council or that they have been appointed to other than as a delegate of Council) the matter is not referred to the Code of Conduct Committee and the complainant will be written to advising of the reason for non-referral.</p>
Does the General Manager consider the matter to be vexatious, frivolous, trivial or not made in good faith?	y/n	<p>The General Manager may consider the number of complaints made on the issues and by the same complainant in assessing if there is anything frivolous or vexatious about a complaint.</p> <p>If the answer is yes to any criteria nominated in this section, the General Manager will write to the complainant advising of this assessment and indicate that no further investigation</p>

		will occur. The General Manager may choose to alert the complainant to alternative investigation avenues (Department Local Government or ICAC for example)
<p>Is the General Manager aware that the topic or matter is currently under investigation by any of the following:</p> <ul style="list-style-type: none"> • Department of Local Government • Independent Commission Against Corruption • NSW Ombudsman's office • Federal or State minister of the Crown • Federal or State Police 	y/n	<p>If yes, the General Manager will write back to the complainant advising the matter is being dealt with by other authorities and no investigation will occur until the initial investigation by the external entity is completed.</p>
<p>Is the General Manager aware that the matter is currently being considered by a court, tribunal or coroner?</p>	y/n	<p>If yes, the General Manager will consider the issues raised in the complaint and determine if they include potential breaches of the Code of Conduct to determine if they should be referred to the committee.</p> <p>In some cases the General manager may determine the matter is more appropriately dealt with by the court, tribunal or coroner and would in this case also determine there is no significant breach of the Code of Conduct to warrant the Committee's consideration of the matter in addition to the court, tribunal or coroner's consideration of the matter.</p> <p>The General Manager may determine at the conclusion of the court, tribunal or coroner's consideration of the matter, to present the issue to the Code of Conduct Committee if any part of the matter concerning behaviour that breaches the Code of Conduct has not been dealt with adequately.</p> <p>The determination by the General Manager in these cases will be relayed in writing to the complainant.</p>
<p>Does the matter arise from a decision of Council or one of the Council's designated committees?</p>	y/n	<p>If Yes, the matter should be considered by the General Manager and if necessary reported to Council for the Council's reconsideration but is not an</p>

		<p>item that should be referred to the Code of Conduct Committee. The General Manager will write to the complainant advising the matter will not be considered by the Code of Conduct Committee but will be determined by the General Manager as to the actions to be taken. The General Manager may decide to provide details of the processes the complainant can utilise to ensure councillors are aware of the concerns arising from the Council's decision on a particular matter.</p>
Is there sufficient information to enable a full investigation?	y/n	<p>If the General Manager determines that further information is required to facilitate a thorough review, the complainant will be asked, in writing, to supply further information/evidence pertaining to their complaint.</p> <p>If the complainant declines to provide evidence or additional information, the General Manager may advise the complainant in writing that the matter will not be investigated due to insufficient information.</p>
Has the matter been dealt with previously?	y/n	<p>If yes, the General Manager will ascertain if the matter is a fresh incidence or is a re-submission of a previously resolved or rejected matter. The General Manager will assess if there is substantive new materials to make a further investigation or consideration of the matter by the Committee warranted.</p> <p>The complainant will be advised in writing if the General Manager determines the matter has already been dealt with.</p>
Does the complaint allege inappropriateness of the processes, membership or operation of the Code of Conduct Committee itself?	y/n	<p>If Yes, the General Manager may refer the issue to Council as a whole or to a relevant external entity, such as the Department of Local Government, if the matter would be better addressed by a change in legislation for example. A written response advising the complainant will be provided detailing the actions taken.</p>
Is the matter outside the jurisdiction of the Council?	y/n	<p>If yes, the General Manager shall advise the complainant in writing.</p>
Did the matter occur a considerable time ago and	y/n	<p>If Yes the General Manager may determine investigation would be</p>

would this impact on the ability to gather and assess credible information and witnesses in the matter?		sufficiently hampered to make referral to the Committee ineffectual. The complainant will be advised in writing of the determination.
Is the complaint made despite the determination of a matter by the Code of Conduct Committee, the Council or an independent to whom the matter had previously been referred (regardless if by Council or the complainant or others)?	y/n	If the General Manager can ascertain that with consideration of all reasonableness the matter has been assessed and concluded the matter may be rejected. The complainant will be advised in writing of this outcome.
Does the complaint seek unreasonable outcomes?	y/n	The General Manager may determine demands in the complaint for particular actions to be unreasonable and would assess the need for referral to the Code of Conduct Committee in particular if there are no breaches of the Code of Conduct identified. The complainant would be advised in writing.
Is the material supplied so voluminous that the request for reduction is required? Is some of the material irrelevant to the matter being complained if?	y/n	The General Manager may seek from a complainant a reduction or consolidation of materials if in the General Manager's opinion the information provided is repetitive or of such an extent to offer no value to the establishment of facts. There may be a need to identify also that relevance of materials needs to be established by the complainant in order that consideration of referral to the Code of Conduct Committee would be considered. The complainant would be advised in writing of any assessment of this sort.

The insertion of this table will also give cause for the renumbering of subsequent points in the Appendix of the Code.

POLICY IMPLICATIONS

The proposed changes would alter the Council's Code of Conduct Appendix.

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Council may wish to consider the Local Government Act 1993 regarding the need to place on exhibition the proposed changes to the Code of Conduct.

CONCLUSION

The Promoting Better Practice review of Council in June 2007 gave rise to suggestions for improvements to some of Council's policies and procedures and the recommended changes in this report provide Council with enhanced clarity for what items would be considered by the Code of Conduct Committee.

Councillor M F Ticehurst declared a non pecuniary conflict of interest in this item and vacated the Chambers.

07-453 RESOLVED

THAT:

1. Council adopt the suggested changes to the Appendix of the Code of Conduct to provide an enhanced framework for referral of items to the Code of Conduct Committee;
2. Council place on exhibition the proposed changes seeking public comment on them before finalising the matter;
3. Council note that the proposed change satisfies the suggestions made in recommendation 6 of the Promoting Better Practice Review provided to Council in June 2007.

MOVED: Councillor B S Moran

SECONDED: Councillor W McAndrew.

CARRIED

ITEM:8 COMM - 15/10/07 - WRITE OFF OF EXCESSIVE WATER ACCOUNTS FOR PROPERTY NUMBER 59370 AND PROPERTY 570

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

REFERENCE

Nil

SUMMARY

To advise Council of a water breakage on two properties which has caused excessive water accounts to be issued and seeking the requests be considered for the writing off of charges.

COMMENTARY

Council is in receipt of two requests from ratepayers with respect to excessive water accounts caused due to pipe breakage on the properties.

Accounts were issued in the following amounts:

- Property 59370 for the amount of \$1,354.60
- Property 570 for the amount of \$804.60.

Council's policy 8.6 "Excessive Water Usage Allowance for Breakages" should be considered. In the case of property 59370 while no tradesman's account is provided the ratepayer has indicated in the written submission that the works were done by an acquaintance and the leakage has been fixed. A tradesman's account has been supplied for works to Property 570 facilities.

The "Excessive Water Usage Allowance for Breakages" policy provides up to \$200 per property in a one off instance.

However, in both cases the size of the accounts and an indication of hardship which was in the submissions from both ratepayers also prompt consideration under Council's "Hardship Policy".

Council officers have investigated the request and the water used is excessive in both cases in comparison to water consumption over the past 4 accounts.

In accordance with the policies mentioned above it is recommended that Council write off the following amounts on each property's accounts:

- Property 59370 – write off total of \$1,262.80 being \$200 through the allowances in the "Excess Water Usage Allowance for Breakages" and \$1,062.80 under the "Hardship Policy";
- Property 570 - – write off total of \$539.40 being \$200 through the allowances in the "Excess Water Usage Allowance for Breakages" and \$339.40 under the "Hardship Policy".

POLICY IMPLICATIONS

Policy 8.3 "Hardship policy" and Policy 8.6 "Excessive Water Usage Allowances for Breakages" apply.

FINANCIAL IMPLICATIONS

The financial implication would see a write off of \$1,802.20 in total.

LEGAL IMPLICATIONS

Nil

CONCLUSION

In accordance with the policies mentioned above it is recommended that Council write off the following amounts on each property's accounts:

- Property 59370 – write off total of \$1,262.80 being \$200 through the allowances in the "Excess Water Usage Allowance for Breakages" and \$1,062.80 under the "Hardship Policy";

- Property 570 - – write off total of \$539.40 being \$200 through the allowances in the “Excess Water Usage Allowance for Breakages” and \$339.40 under the “Hardship Policy”.

07-454 RESOLVED

THAT Council resolves to write off excessive water accounts in the following amounts:

1. Property 59370 – write off total of \$1,262.80 being \$200 through the allowances in the “Excess Water Usage Allowance for Breakages” policy and \$1,062.80 under the “Hardship Policy”;
2. Property 570 – write off total of \$539.40 being \$200 through the allowances in the “Excess Water Usage Allowance for Breakages” policy and \$339.40 under the “Hardship Policy”;

MOVED: Councillor M M Collins

SECONDED: Councillor W McAndrew.

CARRIED

ITEM:9 COMM - 15/10/07 - SEC 356 DONATIONS

REPORT FROM: COMMUNITY AND CULTURE MANAGER – P. HALL

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
Minute 07-402: Finance and Services Committee Meeting 3rd September 2007
Minute 07-424: Council meeting 17 September 2007

SUMMARY

To advise Council of the Section 356 donation requests which have been received since the 2007/08 Management Plan has been adopted.

COMMENTARY

At its Extraordinary Meeting of Council on the 28 June 2007 a donations budget of \$25,000 was allocated for donations, comprising of \$17,000 for general donations, \$3,000 for hall hire and \$5,000 to the Portland Pool Association.

In addition to those included in the Management Plan Council adopted on 28 June 2007, as at 4 September 2007 the following payments have or are to be made:

General donations:

Date	Organisation	Assistance	Amount
28.06.07	Various (as per Management Plan)	Sponsorship	\$13,698.99
16.07.07	Kidney Health Kar Rally	Sponsorship- Lithgow team Min 07-289	\$ 100.00
20.08.08	Portland District Motor Sports Club	Sponsorship for a trophy Min 07-360	\$ 60.00
20.08.07	Portland Pool Association	Additional allocation for cost of operations	\$ 5,000.00
03.09.07	Newnes Hotel 100 year celebrations	Sponsorship Min 07 - 402	\$ 385.58
17.09.07	Rydal Show Society	Sponsorship Min 07-424	\$ 1,000.00
17.9.07	Greater Lithgow Regions Event Diary		\$ 300.00
Remaining			\$ 1,455.43

Hire of facilities:

Date	Organisation	Assistance	Amount
16.07.07	Quota – Hire of the Union Theatre	Reimbursement of hall hire fees	\$300.00
Remaining			\$238.00

Resubmissions of all Section 356 applications that have been received after the Management Plan adopted that Council has not approved follows with recommendations:

1. 16.7.07 Council Meeting Lithgow City Brass Band Requested –Hire of grand piano -\$175, Hire of the Union Theatre \$115.50, Bond of the Union Theatre \$300.00 Bond of the Grand Piano \$525.00 for the Western Region Solo and Party Competition event to be held on 22nd July 2007
Recommendation Nil as Council resolved at its extraordinary meeting of 28 June 2007 a Section 356 donation of \$1,000 for the Lithgow City Band for new music and an additional allocation is contrary to clause (iv) of the “Donations-Section 356 of the Local Government Act” policy of Council.

2. 16.7.07 Council Meeting Country Women’s Association of New South Wales – Lithgow Branch Council rates – General component \$451.87 rates for 2006/07 requested but as rates are paid for 2007/08 General component is \$417.47. The Country Women’s Association – Wallerawang branch general rates were paid as part of the 07/08 Management Plan donation payments. Country Women’s Association -Lithgow branch applied late in July so in light of equity issues the General rate component of the Country Women’s Association – Lithgow branch has now been paid.

3. 20.8.07 Council Meeting Charles Sturt University Requested – Assistance in raising \$30,000 for the ongoing benefit of students through a “Lifetime scholarship” whereby donors commit \$30,000 which can be paid in a lump sum over 5 years. It should be noted that Council has recently developed a Health Scholarship in partnership with Sydney West Area Health Service. **Recommendation Nil**

4. 17.9.07 Council Meeting Rivers SOS – Request financial assistance – Recommendation Nil All Association of Mining Related Council members are being asked to support Rivers SOS in producing a new film covering issues such as damage to bores and aquifers and the various health effects on communities around mines.

5. 17.9.07 Council Meeting Lithgow/Wallerawang Giant Tree Arboretum- Request for any financial support and assistance in applying for funding and grants– Recommendation Nil
 Delta Electricity is planning on turning a 16 hectare site into a Giant Trees Arboretum at Lake Wallace, Wallerawang. Whilst no financial support is recommended in 2007/08, Council can provide assistance in applying for grants. Council resolved to meet the group to consider other activities for the future.

6. 17.9.07 Council Meeting Board of State Mine Railway Ltd – Recommendation \$1,058.65 – difference between residential and business rates

This property is the registered office of the group and the principle categorisation is therefore business. Request for Council to consider a rate reimbursement of the difference between the current business rates levied on the above property and the amount of rates that would be payable if it was rated as residential is \$1,058.65 as shown in the following table:

	Business Amount	Residential Amount
General rate base	\$310.00	\$215.00
General rate Ad Valorem	\$912.28	\$258.63
Total	\$1532.28	\$473.63
Difference	\$1058.65	

7. 17.9.07 Council Meeting Portland Colts Football Club - Request for Waiver of Fees and Lighting Charges at Kremer Park Portland for the 2007 Football Season – Recommendation Nil

In 2006/07 original charges for lighting were \$2,541.00. After a meeting was held in August 2007 the charges were reviewed and amended to \$1,320.00. However, the charges are still considered as unacceptable by the Club hence this request was submitted.

8. 17.9.07 Council Meeting Portland Colts Football Club Request for financial assistance for 2007/8 for Lighting Charges and ground hire \$2,883 Recommendation: Nil

Summary of recommendations following this review:

Item	Organisation	Amount
1.	Lithgow City Brass Band	Nil
2.	Country Women's Association – Lithgow Branch	\$417.47
3.	Charles Sturt University	Nil
4.	Association of Mining Related Council members (Rivers SOS) financial assistance	Nil
5.	Lithgow/Wallerawang Giant Tree Arboretum financial support and assistance in applying for funding and grants	Nil
6.	Board of the State Mine Railway Ltd the difference between the current business rates and residential rates	\$1,058.65
7.	Portland Colts Football Club – Waiver of Fees and Lighting Charges at Kremer Park 2006/07	Nil change
8.	Portland Colts Football Club Kremer Park 2007/08 charges	Nil change

Therefore the recommendation is for CWA- Lithgow Branch and Board of State Mine Railway Ltd donations to be included. There would be a deficit of \$20.69 and no further funds available for donations

Applications received after 17 September 2007

Tanderra extension erection of a retaining wall to secure an embankment Amount requested \$75,000 including GST **Recommendation: Nil**

Lithgow Show Society Amount requested \$10,000 as a major sponsor for Friday night \$1,000 already allocated in 2007/08 budget **Recommendation: Nil**

Macquarie Philharmonic Foundation Inc. Bronze sponsorship requested Amount requested \$1,000 over four years Total of \$4,000 **Recommendation: Nil**

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

There are no funds remaining in the general donations fund and \$238 left in the hall hire facilities fund for 2007/08.

LEGAL IMPLICATIONS

Local Government Act 1993 s356 applies.

RECOMMENDATION

THAT:

1. Following the finalisation of the rates amounts, Council note there is a deficit of funds in the Section 356 general donations budget of \$20.69 following the recommended payments to The Lithgow Country Women's Association and Lithgow State Mine Railways Ltd for rates reimbursements as detailed in the report ;
2. Council note \$238.00 remains in the donations vote for the waiving of hire fees for Council facilities;
3. Council write back to all future applicants seeking funding advising that there are no remaining funds in the general donations vote and informing them of the process of making application for consideration in the management planning process to improve their organisation's success in seeking funding in 2007/08;
4. Council write to all organisations who sought Council funding, whether successful or not, who asked for funding from July 2006 to date advising them to supply their request by the middle of November 2007 to have them considered in the 2008/09 Management Plan.

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

07-455 RESOLVED

THAT:

1. Following the finalisation of the rates amounts, Council note there is a deficit of funds in the Section 356 general donations budget of \$20.69 following the recommended payments to The Lithgow Country Women's Association and Lithgow State Mine Railways Ltd for rates reimbursements as detailed in the report ;
2. Council note \$238.00 remains in the donations vote for the waiving of hire fees for Council facilities;
3. Council write back to all future applicants seeking funding advising that there are no remaining funds in the general donations vote and informing them of the process of making application for consideration in the management planning process to improve their organisation's success in seeking funding in 2007/08;
4. Council write to all organisations who sought Council funding, whether successful or not, who asked for funding from July 2006 to date advising them to supply their request by the middle of November 2007 to have them considered in the 2008/09 Management Plan.
5. Council advertise the donations in the Council Column and also send out a media release for the community groups for processing in next year.

MOVED: Councillor M F Ticehurst

SECONDED: Councillor H K Fisher.

CARRIED

QUESTIONS OF AN URGENT NATURE

QWN - 15/10/07 - COUNCILLOR B S MORAN

1. Mr Mayor I have had complaints from ratepayers in regards to the length of coal trains travelling through Wallerawang. The trains are approx 48 carriages long and at times stop across the road blocking traffic for a period of time. Can Council please contact the rail company and advise that this is a safety issue and seek that something be done?

The Mayor deemed this question to be of an urgent nature and Council will contact the rail company as soon as possible.

2. Mr Mayor I have had complaints from residents in Wallerawang in relation to the Black bridge. This bridge is a safety issue and something needs to be done urgently. Can Council advise as to where we are up to in regards to repairs?

The Mayor advised that a meeting will be held on Tuesday 16th October in regards to this bridge.

QWN - 15/10/07 - COUNCILLOR M J WILSON

1. Mr Mayor I have had complaints from residents in the Oakey Park area regarding their TV transmission. This transmission has been non existent for some time. Can Council advise as to when the transmission tower in Macauley Street will be repaired?

Although not deemed urgent, the Mayor advised that Council has written to the appropriate company regarding this but will send another letter asking their advice.

The meeting closed at 7.37pm.