



LITHGOW CITY COUNCIL

**MINUTES**

FINANCE AND SERVICES COMMITTEE  
MEETING OF COUNCIL

HELD ON

04 FEBRUARY 2008

**MINUTES OF THE LITHGOW CITY COUNCIL MEETING  
HELD AT THE CIVIC CENTRE, LITHGOW ON 4 FEBRUARY 2008**

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Meeting Commenced at 7.03pm

Public Gallery: 21

**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  
Internal Services Manager - Mrs Carol Farnsworth

**CONFIRMATION OF MINUTES**

Confirmation of the Minutes of the Finance and Services Committee Meeting of Council held on the 3 December 2007 were taken as read and confirmed by Councillors M J Wilson and B S Moran

**F08-01 RESOLVED**

**CARRIED**

**DECLARATION OF INTEREST**

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

Councillor W McAndrew declared a pecuniary Conflict of Interest in Item 1 as he is the Chairman of the Board. He 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: -

NIL questions were received.

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## NOTICE OF MOTION

**ITEM:1 NOTICE OF MOTION - 04/02/08 - COUNCILLOR M F TICEHURST - FALSE AND MISLEADING ADVICE BY THE LITHGOW CITY COUNCIL TO THE STATE PARLIAMENT OVER THE FORMER NSW HEALTH / HAC THREE TREE LODGE AGED CARE FACILITY IN LITHGOW**

Lithgow City Council

Scanned NOTICE OF MOTION

Lithgow City Council Meeting(s) 4 February 2008

29 JAN 2008

**MOTION TITLE:** False and misleading advice by the Lithgow City Council to the State Parliament over the former NSW Health/HAC Three Tree Lodge Aged Care Facility in Lithgow. Date of Deed .....  
Years .....

Listed by: Councillor Martin Ticehurst

Date: 29 January 2008.

REFERENCES:

Local Government Act 30/1993 – Chapter 9 – Council is Statutory Corporation.  
Parliament Hansard Legislative Council Question & Answers No. 6 of 7 June 2006. (0027)  
Parliament Hansard Legislative Assembly Question & Answers No. 9 of 26 June 2006 (0185)  
Parliament Hansard Legislative Council Question & Answers No. 19 of 28 September 2006. (0155)  
15 May 2003 – Lithgow Mercury – Statement Gerard Martin/Premier lemma on Three Tree Lodge.  
22 March 2004 – LCC Agenda Item 81: Three Tree Lodge / HAC/ Lithgow City Council Tri/Deed.  
13 August 2004 – LCC Copy of Tripartite Deed with HAC and Three Tree Lodge Lithgow Incorporated prepared by Lithgow City Council's Solicitor, Tim Le Fevre of Le Fevre & Co. Lithgow.  
20 December 2004 – LCC Agenda Item 44: Rating Three Tree Lodge.  
21 January 2005 – Department of Lands Property Search Title Lot 2/1068159 - Three Tree Lodge.  
31 October 2005 – LCC Agenda Item 26: 2004/2005 General Purpose Financial Reports.  
6 March 2006 – LCC Minutes: Questions from Public Gallery.  
4 May 2006 – Lithgow Mercury – Statement by Chairperson of Three Tree Lodge Lithgow Inc.  
05 June 2006 – LCC Agenda Item 13: Media Release/Questions Three Tree Lodge Portland Pool.  
21 August 2006 – LCC Agenda Item 15: Financial Issues in Local Government Workshop.  
05 February 2007 – LCC Agenda Item 17: Submission 05/06 General Purpose Financial Reports.  
16 July 2007 – LCC Agenda Item 5: DLG – Promoting Better Practice Review Report.  
3 September 2007 – LCC Agenda Item 3: Notice of Motion Cr Ticehurst – Three Tree Lodge.  
18 September 2007 – Department of Fair Trading 2004/2005 and 2005/2006 Annual Financial Statements of Three Tree Lodge Lithgow Incorporated.

ACTION SOUGHT:

- The Motion seeks Council support for ratepayers and residents calling upon the Governor and/or the Minister of Local Government to hold a Public Inquiry under Section 740 of the Local Government Act into the past and current financial governance of the Lithgow City Council with Terms of Reference.
- The Motion seeks a Section 740 Public Inquiry following the recent disclosure of substantial fresh evidence confirming the Lithgow City Council's false and misleading acquisition and accounting of the former NSW Health owned Three Tree Lodge Aged Care Facility in Lithgow at \$4.82 million dollars and Lithgow City Council's subsequent and ongoing false and misleading advice to its 20,000 ratepayers and residents and to State Parliament.

SUMMARY:

- In 2006, the former Minister for Local Government and his representative Minister in the Legislative Council, responded to numerous questions lodged by Messrs John Turner MP, Sylvia Hale MP and the Rev. Fred Nile MP on Hansard over the Lithgow City Council's acquisition and accounting of the former NSW Health owned Three Tree Lodge Aged Care Facility in Lithgow at \$4.82 million dollars, that: -
  - 3.1 "... Under that (Tripartite) agreement (Lithgow) Council is provided with the control of the (\$4.82 million dollar) infrastructure assets of Three Tree Lodge to ensure the long-term provision of aged care facilities for the community."

- 3.2 *"The facility is a 'controlled' non-current (\$4.82 million dollar) asset of (Lithgow) council and recorded in the (Lithgow) council's asset register."*
- 3.3 *"(Lithgow) Council is provided with the control of the (\$4.82 million dollar) infrastructure assets of Three Tree Lodge to ensure the long-term provision of aged care facilities for the community."*
4. The General Manager of Lithgow City Council reluctantly provided all Lithgow Councillors recently with a copy of the signed Tripartite Agreement between NSW Health, Three Tree Lodge Lithgow Incorporated and the Lithgow City Council.
5. The Tripartite Deed and correspondence from NSW Health, confirm now that Lithgow City Council was neither provided with nor indeed holds any financial or legal 'control' of the Three Tree Lodge Aged Care Facility in Lithgow, further confirming that Lithgow City Council falsely and misleadingly, financially accounted the Three Tree Lodge Aged Care Facility asset in Lithgow into their 2004/2005 (and ongoing) General Purpose Financial Reports at \$4.82 million dollars.
6. The Tripartite Deed in additions to the Three Tree Lodge Lithgow Inc.'s 2004/2005 and 2005/2006 Annual Financial Statements lodged with the Department of Fair Trading and the Federal Department of Health, confirm that by virtue of a Contract of Sale, the previously former State Government NSW Health owned publicly stated \$2.5 million dollar asset, was solely legally and financially owned and controlled by the community non-profit incorporated association, Three Tree Lodge Lithgow Inc. This position is further supported by the statement of the Chairperson of Three Tree Lodge Lithgow Inc. published in the Lithgow Mercury.
7. Lithgow City Council records confirm that the Tripartite Deed was forwarded to the Department of Local Government, however do not confirm if the Department or Council provided the Tripartite Deed, Department of Lands Title Deed or 2004/2005 & 2005/2006 Annual Financial Statements of Three Tree Lodge Lithgow Inc. lodged with the Department of Fair Trading, to the former or current Minister for Local Government to advise of any material discrepancies or amendments required to the information on Three Tree Lodge previously detailed on the Hansard Parliamentary record.
8. Lithgow City Council records, including a letter from the Department of Local Government, confirm that despite a written request, that there has been no outside independent audit of the statements on Hansard that, *"Under that (Tripartite) agreement, (Lithgow) Council is provided with the control of the (\$4.82 million dollar) infrastructure assets of Three Tree Lodge to ensure the long-term provision of aged care facilities for the community."* Further, the subject of the Tripartite Deed was not reported upon in the Department of Local Government 2007 Promoting Better Practice Review of the Lithgow City Council.
9. Lithgow City Council records confirm of no documentation having been provided to all Lithgow City Councillors, outlining how Council arrived at a land and property valuation of \$4.82 million dollars for the Three Tree Lodge Aged Care Facility in Lithgow, when the State Member and former NSW Health Minister now Premier, publicly indicated that the land and property was valued at only \$2.5 million dollars and this transfer figure was later recorded in the 2004/2005 & 2005/2006 Annual Financial Statements of Three Tree Lodge Lithgow Inc. lodged with the Department of Fair Trading.
10. The Tripartite Deed, Lithgow City Council records and both of the 2004/2005 & 2005/2006 Lithgow City Council General Purpose Financial Statements and the Annual Financial Statements of Three Tree Lodge Lithgow Inc. lodged with the Department of Fair Trading and Federal Department of Health, confirm:
- 10.1 Hansard records that there is no joint venture between the Lithgow City Council and Three Tree Lodge Lithgow Inc.

- 10.2 All lodged Financial Statements failed to disclose how the former \$2.5 million dollar NSW Health owned Three Tree Lodge Aged Care Facility became a \$7.32 million dollar asset on "two sets of books" (General Purpose Financial Reports), with Three Tree Lodge Lithgow Inc. claiming \$2.5m and Lithgow City Council claiming \$4.82m.
- 10.3 Lithgow City Council was financially entitled under AASB and Department of Local Government Asset Accounting Manual Guidelines, to only record a 'Contingency Asset' of its financial interest in the Three Tree Lodge Aged Care Facility asset. i.e. Their financial receipt of the "*leftovers or financial crumbs*" if Three Tree Lodge Lithgow Inc. were to fall over, become insolvent, or sold the Aged Care Facility asset at any time in the future - and that this future financial position was as stated in the Tripartite Deed, at the sole and "*absolute discretion*" of NSW Health.
- 10.4 Lithgow City Council's acquisition and accounting of the former NSW Health owned Three Tree Lodge Aged Care Facility in Lithgow at \$4.82 million dollars, failed to meet any of the Department of Local Government Asset Accounting Manual's, ten Guidelines for the Determination of Control over Assets. (301-310)
11. Lithgow City Council records confirm that for the financial year of 2004/2005, the Lithgow City Council had forecasted a projected budgeted deficit for 2004/2005 of \$2.666 million dollars, which followed a 2003/2004 deficit of \$1.56 million dollars.
12. Lithgow City Council records and Hansard confirm that in the 2004/2005 financial year, the Lithgow City Council financially acquired and accounted for another community owned \$320,000 asset in the Portland Community Olympic Swimming Centre in a similar financial manner to that of their \$4.82 million dollar Three Tree Lodge Aged Care Facility asset in Lithgow. The Portland Community Olympic Swimming Centre has for some 25 years and currently still is, community owned and operated by the Portland & District Olympic Pool Association Inc.
13. The NSW Treasury Office has confirmed that it has not published or issued any guidelines, policy or Circulars on the bifurcation of interests in land.
14. As previously indicated, this Motion seeks a Section 740 Public Inquiry following the recent disclosure of substantial fresh evidence confirming the Lithgow City Council's false and misleading acquisition and accounting of the former NSW Health owned Three Tree Lodge Aged Care Facility in Lithgow at \$4.82 million dollars and Lithgow City Council's subsequent and ongoing false and misleading advice to its 20,000 ratepayers and residents and to State Parliament.
15. As a matter of ensuring public trust to the Lithgow City Council's 20,000 plus ratepayers and residents, all Councillors are requested to exercise their fiduciary duty and fully support this Motion for a Public Inquiry under Section 740 of the Local Government Act 30/1993 into the both the past and current financial governance of the Lithgow City Council with suggested Terms of Reference outlined below.
16. Recommendation 1 has been included in the knowledge that due to Lithgow City Councils Auditors of over 24 years having held a long-term and current position on the Department of Local Government's, Local Government Accounting Advisory Group, the Minister may decline to have his Department of Local Government conduct any Public Inquiry into the Lithgow City Council if there is any perceived conflict of interest and may seek to appoint a suitably qualified Independent expert as indicated.

**RECOMMENDATIONS:** (Over)

**RECOMMENDATIONS:**

1. THAT following the recent disclosure of fresh evidence and to ensure public and parliamentary confidence, Council as a matter of urgency, engage on the independent advice of Institute of Chartered Accountants of Australia and ASIC, a suitably qualified corporation financial consultant, to conduct a full and thorough investigation into the 2004/2005 and subsequent Lithgow City Council General Purpose Financial Reports.
2. THAT as a matter of urgency, Council provide advice to the former and current Minister for Local Government and it's ratepayers and residents, that the Council provided false and misleading information to State Parliament over it's \$4.82 million dollar financial 'control' of the former NSW Health owned Three Tree Lodge Aged Care Facility, Lithgow.
3. THAT Council support their ratepayers and residents by calling upon the Governor and/or the Minister of Local Government to as a matter of urgency, hold a Public Inquiry under Section 740 of the Local Government Act into the financial governance of the Lithgow City Council.
4. THAT any Terms of Reference for the Public Inquiry, whilst not absolute, must include:
  - a. an investigation into how the former \$2.5 million dollar NSW Health owned Three Tree Lodge Aged Care Facility in Lithgow became a \$7.32 million dollar asset on "two sets of books" (General Purpose Financial Reports), with Three Tree Lodge Lithgow Inc's at \$2.5 million dollars and Lithgow City Council's at \$4.82 million dollars.
  - b. an investigation into the Lithgow City Council's false and misleading acquisition and accounting of the former NSW Health owned Three Tree Lodge Aged Care Facility in Lithgow at \$4.82 million dollars and the Council's subsequent and ongoing false and misleading advice to its 20,000 ratepayers and residents and to the NSW State Parliament.
  - c. an investigation into the Lithgow City Council's false and misleading acquisition and accounting of the currently community owned Portland Olympic Swimming Pool in Portland at \$320,000 and the Council's subsequent and ongoing false and misleading advice to its 20,000 ratepayers and residents and to the NSW State Parliament.
  - d. the role of the Department of Local Government and their investigations into the Lithgow City Council's Tripartite Deed and it's false and misleading acquisition and accounting of the former NSW Health owned Three Tree Lodge Aged Care Facility in Lithgow at \$4.82 million dollars and the Council's subsequent and ongoing false and misleading advice to its 20,000 ratepayers and residents and to the NSW State Parliament.
  - e. the role of the Department of Local Government and their investigations into the Lithgow City Council's Deed of Agreement and it's false and misleading acquisition and accounting of the currently community owned Portland Olympic Swimming Pool in Portland at \$320,000 and the Council's subsequent and ongoing false and misleading advice to its 20,000 ratepayers and residents and to the NSW State Parliament.
  - f. any other matter or matters of public interest brought to the attention of the Governor or the Minister for Local Government by the Councillors, ratepayers and residents of the Lithgow City Council Local Government area.
5. THAT Council defers finalising it's vacant and currently advertised Senior Executive position of Group Manager, Corporate & Community until further advice from the Minister.

Signed: *Martin Ticehurst* Martin Ticehurst Councillor Lithgow City Council

*Martin Ticehurst*

Councillor W McAndrew declared an interest in this item and vacated the Chambers.

This item **LAPSED** due to no seconder.

Councillor M F Ticehurst moved **A MATTER OF ARISING** in which he requested a copy of the valuation for Three Tree Lodge. This item **LAPSED** due to no seconder.



## REGIONAL SERVICES REPORTS

ITEM:2            REG - 17/12/07 - UPPER MACQUARIE COUNTY COUNCIL -  
OCTOBER, NOVEMBER & DECEMBER 2007 WEEDS REPORT

REPORT FROM: GROUP MANAGER, REGIONAL SERVICES - ANDREW MUIR

### **SUMMARY**

To advise of the most recent Upper Macquarie County Council Weeds Report.

### **COMMENTARY**

Attached are the reports from the Chief Weeds Officer of Upper Macquarie County Council for October, November and December 2007.

### **POLICY IMPLICATIONS**

Nil.

### **FINANCIAL IMPLICATIONS**

Nil.

### **LEGAL IMPLICATIONS**

Nil

### **F08-02 RESOLVED**

**THAT** the information be received.

**MOVED:** Councillor H K Fisher

**SECONDED:** Councillor B S Moran.

**CARRIED**

**ITEM:3            REG - 04/02/08 - GRANTS COMMISSION AUDIT**

**REPORT BY: OPERATIONS MANAGER – S. DARLINGTON**

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**REFERENCE**

NIL

**SUMMARY**

This report provides details of the recently completed NSW Grants Commission audit of road and bridge length data.

**COMMENTARY**

The NSW Local Government Grants Commission requires councils to submit an annual return of bridge and road length for each Local Government Area (LGA). The data provided then forms the basis of a calculation to provide councils with the roads component of the annual federal Financial Assistance Grant.

As part of the review of it's asset database, Council's Operations staff recently completed a full audit of road and bridge length data for the LGA. This internal audit resulted in a significant increase in the identified road and bridge length.

It therefore came as no surprise when these figures, after being submitted to the Department of Local Government in September 2007, were the subject of a Departmental audit in November 2007. The result of the Departmental audit subsequently verified Council's internal audit. In fact, through an interpretation of definitions, the Departmental audit further increased both the total bridge and total road length. The table below summarises the audit results.

**GRANTS COMMISSION RETURN**

<b>LOCAL ROADS</b>	<b>2006/2007</b>		<b>2007/2008</b>		<b>AUDIT</b>	
					<b>Amended 07/08</b>	
URBAN	206.9		214.6		214.64	
NON URBAN SEALED	202.7		229.5		235.25	
NON URBAN UNSEALED	361.5		423.8		423.77	
<b>TOTAL URBAN</b>	<b>771.1</b>		<b>868.0</b>		<b>873.66</b>	
<b>BRIDGES/CULVERTS</b>	<b>2006/2007</b>		<b>2007/2008</b>		<b>Amended 07/08</b>	
<b>CONCRETE/STEEL</b>		(m)	#	(m)		
URBAN	10	229.6	13	263.9	12	234.3
NON URBAN SEALED	6	144	8	289.8	11	323.8
NON URBAN UNSEALED	7	86.7	5	123	8	179.1
<b>TIMBER</b>						
URBAN	0	0	0	0	0	0
NON URBAN SEALED	1	26	1	20	4	85.2
NON URBAN UNSEALED	2	13.4	5	30.9	6	55.3
<b>TOTAL</b>	<b>26</b>	<b>499.7</b>	<b>32</b>	<b>727.6</b>	<b>41</b>	<b>877.7</b>

The Departmental auditor, in his report, stated that the quality of both the road and bridge length data is now considered to be good. The result of this audit, being the significant increases in the road and bridge length, will flow through to an increase in Council's roads component grant, which is currently \$821,510.

The preparation of the Management plan for 2008 – 2011 will include a program of capital expenditure reflecting the identified roads component of the Financial Assistance Grant. The exact quantum of the increase in funding as a result of the improved audit results is not known at this time, but it should be in the range of 5%- 8%

**POLICY IMPLICATIONS**

NIL

**FINANCIAL IMPLICATIONS**

The increase in road and bridge length will result in an increase in the funding for the roads component of the Federal Assistance Grant

**LEGAL IMPLICATIONS**

NIL

**F08-03 RESOLVED**

**THAT** the report on the Grants Commission audit be noted.

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

**ITEM:4            REG - 04/02/08 - RECOVERY OF LOW USAGE PAYPHONE - 25  
                         WILLIWA ST, PORTLAND**

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

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## **REFERENCE**

Finance and Services Committee meeting of 3 September 2007

## **SUMMARY**

Details of the response received from Telstra for the recovery of the payphone at 25 Williwa Street, Portland.

## **COMMENTARY**

At its Finance and Services Committee meeting held on Monday, 3 September 2007, Council resolved to oppose the proposed removal of the payphone at 25 Williwa Street, Portland, and to lobby the Federal Member to seek to have the phones maintained.

Council has now received correspondence from Telstra in response to its objection to the removal of the payphone. Telstra advise that they have conducted a final evaluation of this project, including a ninety (90) day public and customer consultation period, where the only submission regarding this proposal came from Council.

Full consideration has been given to Council's submission, however, as there is another payphone located within close proximity, the lack of patronage and cost of maintaining the equipment, Telstra have determined to proceed with the removal of this payphone. Accordingly, the removal programme commenced during December 2007.

## **POLICY IMPLICATIONS**

Nil.

## **FINANCIAL IMPLICATIONS**

Nil.

## **LEGAL IMPLICATIONS**

Nil.

## **F08-04 RESOLVED**

**THAT** the information be received.

**MOVED:** Councillor B S Moran

**SECONDED:** Councillor M J Wilson.

**CARRIED**

**ITEM:5 REG - 04/02/08 - DEVELOPMENT AND CONSTRUCTION APPROVALS**

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

**SUMMARY**

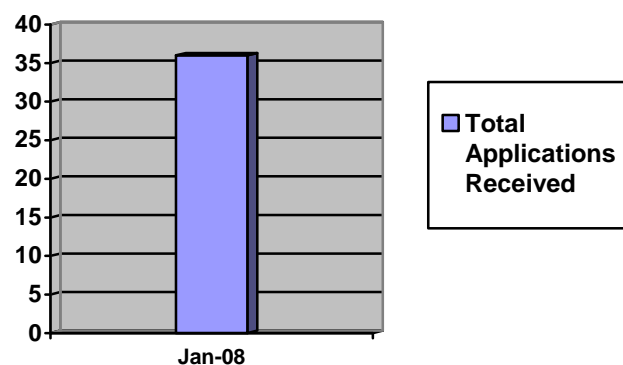
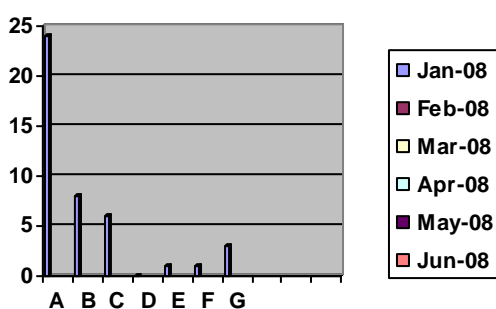
To provide statistical information on Development Applications and Construction Certificates processed.

**COMMENTARY**

The following table indicates Development Applications and Construction Certificates approved in the period between Finance and Services Committee Meetings. A full list of individual applications received and approved is made available to Councillors and the press.

	Minor Development Approvals (including carports, garages and patios) A	Dwelling Approvals B	Dwelling Addition Approvals C	Other Residential Applications (including Dual Occupancies, Flats) D	Rural Subdivision Approvals E	Residential Subdivision Approvals F	Commercial /Industrial Approvals G	Total Applications Received
Jan 2008	24	8	6	0	1	1	3	36
Feb 2008								

\* includes Approvals from 10/12/2007 TO 25/01/2008



**APPROVALS**

Total Estimated Cost:	\$73,321,312
Average Approval Time	18 days
Total Cost of Approvals from 10/12/2007	\$73,321,312
No. of Applications from 10/12/2007 to 25/01/08	36

**F08-05 RESOLVED**

**THAT** the information be noted.

**MOVED:** Councillor H K Fisher

**SECONDED:** Councillor M J Wilson.

**CARRIED**

## QUESTIONS WITHOUT NOTICE

### QWN - 04/02/08 - COUNCILLOR B S MORAN

1. Mr Mayor can Council advise when we will be having meetings in relation to the Management Plan?

*The Mayor deemed this question urgent and advised that meetings will not take place until later in the year and venues are yet to be decided following a Councillor Budget Workshop.*

### QWN - 04/02/08 - COUNCILLOR H K FISHER

1. Mr Mayor I refer to the dog leash area in Guy Street, can it please be mowed as the grass is extremely high?

*The Mayor deemed this question as a works request advised that the grass will be cut this week.*

### QWN - 04/02/08 - COUNCILLOR A E THOMPSON

1. Mr Mayor I refer to the memo in relation to the meeting with Superintendent Martin relating to policing issues in Wallerawang. Will we be discussing the issues relating to Wallerawang only or will we be able to raise issues that are prominent in the local government area?

#### **F08-06 RESOLVED**

*Council moved a further meeting with Inspector Martin and the Local Member be sought. Councillors to have discussion points to the General Manager by Friday 8<sup>th</sup> February 2008 for inclusion in the letter.*

*MOVED: Councillor A E Thompson*

*SECONDED: Councillor H K Fisher*

**CARRIED**

The meeting closed at 7.33pm.