



LITHGOW CITY COUNCIL

**MINUTES**

ORDINARY MEETING OF COUNCIL

HELD ON

17 MARCH 2008

**MINUTES OF THE LITHGOW CITY COUNCIL MEETING  
HELD AT THE CIVIC CENTRE, LITHGOW ON 17 MARCH 2008**

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Meeting Commenced 7.01pm

Public Gallery: 24

**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 M J Wilson

**APOLOGIES**

An apology was received and accepted from A E Thompson who is out of the City on personal business.

**MOVED:** Councillor H K Fisher **SECONDED:** Councillor M M Collins.

**008-14 RESOLVED  
CARRIED**

**Also in attendance**

General Manager, Mr Paul Anderson  
Group Manager Regional Services, Mr Andrew Muir  
Minutes Secretary, Miss Casey Clarke  
Policy and Planning Manager, Mrs Amanda Muir

**CONFIRMATION OF MINUTES**

Confirmation of the Minutes of the Ordinary Meeting of Council held on the 18<sup>th</sup> February 2008 were taken as read and confirmed by Councillors B S Moran and W McAndrew

**008-15 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 2 due to settling financial contributions.

Councillor M J Wilson declared a pecuniary interest in Item 10 as Delta Electricity is his employer. He vacated the Chambers.

Councillor M J Wilson declared a pecuniary interest in Item 12 as Pine Dale Mine is a supplier of coal to Delta Electricity. 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: -

### QUESTIONS - JULIE FAVELL

#### Item No. 12 - DA 461/04 Pine Dale Modification - Public Road Transport and Increased Production

- Q.1. Why is Council reneging on its original Consent Condition for Pine Dale Mine by recommending almost double the heavy truck haulage on public roads, when the original consent said they would use the Haul Road after 6 months operation (ie. from September 2006)?

*The reason for this latest application is well documented in the application, associated documents and report.*

- Q.2. Did Council ever have any real intention to enforce this Consent Condition, or was it Council's plan all along to approve the mine first, then weaken approval conditions later?

*Council has endeavoured to enforce the consent. The allegation is false.*

- Q.3. Will Council again change the rules in 12 month's time when a review is due for Pine Dale Mine, and allow them to haul east along the Castlereagh Hwy through our town? Will this community be given an opportunity to comment when the 12 monthly reviews occur?

*If there is a modification sought that could potentially impact on the community, then there is a process of consultation.*

- Q.4. Will this approval set a precedent for the proposed Ferndale, Nuebecks Creek, and Wolgan Road Mine's to also use public roads instead of the Haul Road to transport coal to Mount Piper?

*No*

- Q.5. Why isn't Council recommending a reduction to the 100 kph speed limit on the Castlereagh Hwy through the residential township of Blackman's Flat first, prior to approving this proposal to massively increase coal haulage?

*Outside the scope of this application particularly as the recommendation ensures no transportation through Blackman's Flat.*

- Q.6. Why has this community not been given any real reason, or shown any real proof why Pine Dale Mine cannot gain access to the haul road? Surely this community has a right to know, since we will suffer all the impacts? Why is Council weakening the original Consent Conditions in such a major way, if the only reason for not using the haul road is cost? Surely Pine Dale mine were fully aware of those costs when they started mining?

*Refer to application and report.*

- Q.7. Are Councillors aware that this consent recommends coal transport from 7am to 8pm Monday to Saturday on public roads, and maintenance from 7am-10pm Monday to Saturday. Isn't coal transport until 8pm at night an obscene imposition on a residential community? I ask council to review the consent times for production, internal and external haulage, and change them to Mon – Friday 7am-6pm given increased production of 75% which will also increase site noise, and internal haulage noise? (e.g. *this will mean 520 extra heavy vehicle movements per week on top of the additional 1,200 extra light/heavy vehicles per week when LCC's waste facility comes on board, and does not include extra trucks from Invincible Colliery which just doubled production, Cullen Valley Mine which started up again, 23% increase to Mt Piper Power Station due to proceed in 2008, Extension of Lamberts Gully mine, Ivanhoe open-cut when it starts, or the proposed Ferndale, Nuebecks Creek and Wolgan Rd Mines*).

*7am to 6pm, Monday to Friday is a reasonable suggestion for Council to consider.*

- Q.8. Why has Lithgow Council not shown common sense, or a fair and equitable outcome? Why is it allowing a company to prosper but failing to give the community the same opportunity? Whilst I encourage any opportunities to enhance the economy and provide employment, why has Council overlooked the economic impacts on these people and their homes? We all still have to sit here for 6 years with a 75% increase in production and coal transport, with a severely impaired opportunity to sell our homes if we wanted, and then at a severely reduced value, even if we could find an interested buyer. Why is every home owner in Blackman's Flat being forced to subsidise this company to the tune of at least \$50,000 in lost property values?

*Unable to answer these questions.*

- Q.9. Why did Council agree to this open cut mine when they knew very well that it would devalue the **existing** properties that surround this mine?

*This question has no reference to the application before Council.*

- Q.10. When will Council compensate/relocate the residents of Blackman's Flat due to this and previous decisions it has made, knowing full well the impacts it imposed on this community? (e.g those other approvals being Mt Piper fly-ash dump in 1992, Haul Road in 1994, Lamberts Gully mine 1998, Enhance Place Mine 1998, Lithgow Waste Facility 2006, Pine Dale 2006)

*There is no proposal for Council to compensate / relocate the residents of Blackman's Flat. Council has made representations to the State Government on the issues at Blackman's Flat.*

- Q.11. When will Council consult with the Blackman's Flat community and develop a new LEP to correctly rezone the residential township of Blackman's Flat as 2(v) Village?

*The timeframe for Councils new LEP is well documented. Of course there is no guarantee that Blackman's Flat would be zoned 2(v) Village and if that was to occur, any guarantee that this would satisfy Mrs Favells concerns.*

## **QUESTIONS - DOUG NEWSOME**

### **Item No. 12 - DA 461/04 Pine Dale Modification - Public Road Transport and Increased Production**

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NOTICES OF MOTION

**ITEM: 1 NOTICE OF MOTION - 17/03/08 - COUNCILLOR M F TICEHURST - REQUEST FOR COUNCIL SUPPORT OF THE FEDERAL HOMEOWNERS AND BANK PROTECTION BILL OF 2008 PROPOSED BY THE CITIZENS ELECTORAL COUNCIL OF AUSTRALIA**

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10 MAR 2008

**NOTICE OF MOTION**

**MOTION TITLE/TOPIC:**

Request for Council support of the Federal Homeowners and Bank Protection Bill of 2008 proposed by the Citizens Electoral Council of Australia.

Listed by Councillor Martin Ticehurst

Date: 10 March 2008

Doc. No .....  
GDA Ref. ....  
Years .....

**BACKGROUND**

I have been approached and requested, along with I understand many other Lithgow City Councillors by the Citizens Electoral Council of Australia to seek the Lithgow City Council's support for their proposed Homeowners and Bank Protection Bill of 2008 in the Federal Parliament.

The Citizens Electoral Council of Australia's proposed Bill resolution sets out that:

*Whereas*, the onrushing financial crisis engulfing home mortgages, debt instruments of all types, and the banking systems of the world, including those of the United States, Europe, Asia and Australia, threatens to set off an economic depression worse than the 1930s; and

*Whereas*, the mortgage crisis that has already hit Australia, threatens to become even worse, per capita, than that of the United States, where millions of American citizens are threatened with foreclosure and loss of their homes over the upcoming months, according to studies released by RealtyTrac and Moody's Economy.com; and

*Whereas*, Australia's household debt to annual income ratio of 175 per cent is the highest in the world, has risen three times faster than that of the United States, and the current rate of 800 home foreclosures nationally per week will explode as the global banking crisis escalates, with already 70,000 Australian mortgage holders in crisis, and a further 1.8 million households officially classed as "stressed";

*Whereas*, this financial crisis now threatens the integrity of Australian retail banks, Credit Unions and Building Societies;

*Whereas*, in similar crises in the past, both Australian and U.S. authorities acted to defend the Common Good, as did U.S. President Franklin Delano Roosevelt in the 1930s, by reorganising failing American banks under Federal protection and by passing legislation to stop home and farm foreclosures; and

Whereas, in the emergency caused by World War I, the Australian Commonwealth Government passed the *War Precautions Act 1916* and its *Commonwealth Moratorium Regulations* to stop foreclosures until 1920, and every state in Australia enacted legislation during the Depression to stop home and farm foreclosures, including Queensland's *Home Purchasers Protection Act*, Victoria's *Unemployed Occupiers and Farmers Act*, and *Financial Emergency Act 1932*; and, New South Wales' *Moratorium Act* of 19th December 1930, which, as amended, ultimately stopped all foreclosures until 1937, while the Commonwealth Government passed the *Farmers' Relief Act*, which provided £12,000,000 to the states for the relief of farmers.

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*Be it Resolved*, that the [Name of Council] hereby endorses the *Homeowners and Bank Protection Bill of 2008*, as initiated by economist Lyndon H. LaRouche, Jr. upon the following principles. As in the U.S., where only the Federal Congress has the capability to deal with this crisis, so, in Australia, only our Federal Parliament can enact the emergency legislation to keep people in their homes and avert social chaos.

This Bill must include the following provisions:

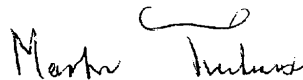
1. Parliament must establish a Federal agency to place Australian licensed retail Banks, Credit Unions and Building Societies under protection, freezing all existing home and family farm mortgages for a period of however many months or years are required to adjust the values to fair prices, and restructure existing mortgages at appropriate interest rates. Further, this action would also write off all of the speculative debt obligations of mortgage-backed securities, derivatives, and other forms of Ponzi Schemes that have brought the banking system to the point of bankruptcy.
2. During the transitional period, all foreclosures shall be frozen, allowing Australian families to retain their homes and farms. Monthly payments, the equivalent of rental payments, shall be made to designated banks, which can use the funds as collateral for normal lending practices, thus recapitalising the banking systems. These affordable monthly payments will be factored into new mortgages, reflecting the deflating of the housing bubble, and the establishment of appropriate property valuations, and reduced fixed mortgage interest rates. This shakeout will take several years to achieve. In the interim period no homeowner or family farmer shall be evicted from his or her property, and the Australian licensed retail Banks, Credit Unions and Building Societies shall be protected, so they can resume their traditional functions, serving local communities, and facilitating credit for investment in productive industries, agriculture, infrastructure, etc.
3. State premiers shall assume the administrative responsibilities for implementing the program, including the "rental" assessments to designated banks, with the Federal government providing the necessary credits and guarantees to assure the successful transition.

Further information on the proposed Homeowners and Bank Protection Bill 2008 by the Citizens Electoral Council of Australia can be found at [www.cecaust.com.au](http://www.cecaust.com.au)

#### **RECOMMENDATION**

THAT the Council supports the Homeowners and Bank Protection Bill of 2008 in the Federal Parliament as proposed by the Citizens Electoral Council of Australia.

Signed: \_\_\_\_\_



DataWorks Document Number: 404749

This **MOTION LAPSED** due to the want of a seconder.

**ITEM:2 NOTICE OF MOTION - 17/03/08 - COUNCILLOR M F TICEHURST - REQUEST TO LITHGOW CITY COUNCIL TO REIMBURSE THE REASONABLE LEGAL EXPENSES**

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NOTICE OF MOTION

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- IC/MAR 2008

MOTION TITLE/TOPIC:

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

Doc. No .....  
GDA Ref. ....  
Years .....

Listed by Councillor Martin Ticehurst

Date: 10 March 2008

REFERENCE/S:

Department of Local Government Circular 05/08 (9 March 2005)  
Lithgow City Council Policy & Services Committee Meeting 5 February 2007.  
Lithgow Mercury 19 March and 21 March 2007.  
Defamation List Supreme Court of NSW – 20107 of 2007.  
Lithgow City Council Ordinary Meeting 15 October 2007.

BACKGROUND

Lithgow City Council's General Manager, Paul Anderson issued legal proceedings in the NSW Supreme Court against Channel Seven Sydney Pty Ltd and Lithgow City Councillor, Martin Ticehurst for alleged defamation over a report on the Today Tonight show on Monday 4 December 2006 on the Lithgow City Council's involvement in the rural road reconstruction of the Blackheath Creek Road, Little Hartley. (see Item 4. Lithgow City Council Ordinary Meeting 18 December 06.)

I am pleased to report that the matter has now been formally finalised in the Supreme Court, following successful Mediation on the 15 February 2008 involving Paul and Mel Anderson, Scott McKinnon and Anne Becroft, Channel Seven Sydney and Lithgow City Councillor, Martin Ticehurst.

A Confidential Deed of Settlement was signed off on by parties in the legal proceedings.

Under the Local Government Act 1993 and Department of Local Government Circular 05/08 (9 March 2005), application is made to Lithgow City Council for the reimbursement of the legal and out-of-pocket expenses of not more than \$4,000 incurred by Lithgow City Councillor, Martin Ticehurst in defending the now finalised legal action by the General Manager, Paul Anderson for alleged defamation in the NSW Supreme Court.

I understand precedents exist with Parliament and Local Government approving matters involving legal action against elected Public Officials and Council staff in Public Inquiry's, including possibly the recent Wollongong City Council, ICAC inquiry. It should be noted that no legal and out-of-pocket expenses are being claimed arising out of the mediated Confidential Deed of Settlement.

RECOMMENDATION

**THAT** Council reimburse the legal and out-of-pocket expenses of not more than \$4,000 incurred by Lithgow City Councillor, Martin Ticehurst in defending the now finalised legal action by the General Manager, Paul Anderson for alleged defamation in the NSW Supreme Court.

Signed:



DataWorks Document Number: 404750

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

The **MOTION** was moved by Councillor H K Fisher and **SECONDED** by Councillor M J Wilson. The Motion was put and the Motion was LOST 7-0.

**O08-16 RESOLVED**

The motion put by Councillor Fisher and Councillor McAndrew

**THAT:**

1. Council decline any payment in this matter at all.
2. Council request a formal apology from Councillor M F Ticehurst to Mrs Anderson with 28 days for his attempt to include her in this matter.

**MOVED:** Councillor H K Fisher

**SECONDED:** Councillor W McAndrew.

**CARRIED UNANIMOUSLY**

**ITEM:3 NOTICE OF MOTION - 17/03/08 - COUNCILLOR M F TICEHURST -  
QUESTIONS WITHOUT NOTICE**

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-10 MAR 2008

Doc. No .....  
GDA Ref. ....  
Years .....

**NOTICE OF MOTION**

**MOTION TITLE/TOPIC:**

Questions with Notice submitted by Councillor Martin Ticehurst.

Listed by Councillor Martin Ticehurst

Date: 10 March 2008.

**BACKGROUND**

1. Could the Council Officers advise when Council Resolutions 07 – 489 and 07 – 490 made at Ordinary Meeting of Council on 19 November 2007 will be acted upon?

**07-489 THAT** Council proceed with water fluoridation and request the installation of the necessary infrastructure. (NB: This option would require a budget adjustment if it was to occur in the current financial year as there is currently no allocation for running costs and discussions with State Water/Fish River Water Supply as to the appropriate location of any plant to cater for consumers utilising this water supply would be necessary)

**07-490 A MATTER ARISING** was moved by Councillor BS Moran and HK Fisher that a report be brought back to Council detailing implementation of fluoridating Council's water supply.

2. Could the Lithgow City Council advise in relation to the Swimming Pools Act 1992:

- How many Swimming Pools on private property are there in the Lithgow Local Government area?
- When was the last compliance audit under the Swimming Pools Act undertaken by the Lithgow City Council and what were the results?
- How is the Lithgow City Council maintaining compliance audit under the Swimming Pools Act, does it have a policy for compliance audit and if not, will it initiate a policy for compliance audit under the Swimming Pools Act?

3. Could Council Officers provide a report to the Council on what road works, rock stabilisation works, etc. are to be undertaken on the 3.1 kilometre section of Wolgan Road, from the *Top of the Gap* to the *Bottom of the Gap* and which authorities will be funding the construction works?

Re: Q 3. Could Council Officers advise what structural engineering works, if any are proposed for the current and future stabilisation of the rock walls and on whose Structural Engineering Consultant/s advice does Council rely upon that there is no public risk to any future public safety from ongoing rock falls in that area?

Re: Q 3. Could Council Officers advise what current and future plans are in place for any unforeseen rock falls, road closures of the Wolgan Road for the entry and egress of local residents, school children, tourists and employees and guests of the new Emirates Resort in the Wolgan Valley?

**RECOMMENDATION**

**THAT** Council provide appropriate written responses to the Questions without Notice.

Signed: \_\_\_\_\_

*Martin Ticehurst*

**O08-17 RESOLVED**

**THAT** Council provide in an appropriate time frame, a full report on all items to an Ordinary Council Meeting.

**MOVED:** Councillor M F Ticehurst

**SECONDED:** Councillor W McAndrew.

**CARRIED**

## GENERAL MANAGER REPORTS

### ITEM:4 GM - 17/03/08 - ELECTORAL COMMISSION NSW - REGIONAL RETURNING OFFICER STRUCTURE

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#### REFERENCE

NIL

#### SUMMARY

This report outlines correspondence received from the Electoral Commission NSW in relation to the Regional Returning Officer Structure.

#### COMMENTARY

Lithgow City Council received correspondence from the Electoral Commissioner of the Electoral Commission NSW in relation the Regional Officer Structure.

The Electoral Commission NSW offered Lithgow Council the opportunity to share a returning officer and an office infrastructure and to share those costs with another council or councils in a "region".

While most council's embraced this regional approach, some gave qualified support subject to certain logistical issues being addressed while others indicated that the extent of the likely cost savings based on the regional approach may have some bearing on the eventual makeup of the region.

The Commission have identified those logistical issues and are presently addressing them. The Commission will have procedures in place that will minimise any impact on councils with those concerns and we will advise you of those arrangements separately.

Some Council's declined the invitation to join a region and this has had a bearing on the makeup of some regions. In some cases it has prevented the establishment of a region and the councils invited to form that particular region will each now have their own returning officer.

Given the timeframes leading up to the election, the Electoral Commission had to move forward with a number of issues, including recruitment or returning officers, location of office accommodation within each region and resourcing the offices and have done so on the basis of support for the regional concept.

The Commissioner has confirmed the makeup of our region as it presently stands. The proposed location of the Regional Returning Office (RRO) is indicated:

Region - Lithgow, Blue Mountains (Katoomba) (RRO)

Cost estimates will be forwarded to council' based on the region, however the estimates will not be sent until a later date.

**POLICY IMPLICATIONS**

NIL

**FINANCIAL IMPLICATIONS**

NIL

**LEGAL IMPLICATIONS**

NIL

**O08-18 RESOLVED**

**THAT** the information be noted.

**MOVED:** Councillor B P Morrissey

**SECONDED:** Councillor M J Wilson.

**CARRIED**

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**ITEM:5 GM - 17/03/08 - SECTION 94 LEVIES**

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**REFERENCE**

Min 008-03: Council Meeting 18 February 2008

Min P08-14: Policy and Strategy Committee Meeting 3 March 2008

**SUMMARY**

This report details correspondence received from the Local Government and Shires Association of NSW in response to correspondence from the Minister for Planning relating to section 94 levies.

**COMMENTARY**

The following correspondence has been received from the Local Government and Shires Association of NSW in response to the Minister for Planning's letter regarding the proposed changes to section 94 levies which was reported to Council's Policy and Strategy Committee Meeting of 3 March 2008:

“We wish to clarify claims made in a letter to all councils from the Minister for Planning, Frank Sartor, dated 19 February relating to development levies.

The letter suggests councils have made a number of incorrect statements about the Government's proposed changes, and it coincides with a press release from the State Treasurer claiming most communities would not be affected by the changes.

This is merely an attempt to water down the significant impacts of the proposed changes, blur the issue, and diminish trust in Local Government.

Let us be clear. There is no confirmed change to the Government's original position.

As was stated in a Department of Planning Circular dated 6 November last year, the new framework will apply to all councils across the state. This will mean the amount of funds many councils can levy will be reduced, and cannot be used to build new district-wide community or recreational facilities, or to expand existing facilities to meet the infrastructure requirements of new residents.

With regard to the collection of funds, the same circular states that: 'The NSW Government may consider collecting and holding section 94 and section 94A contributions for greenfield development outside the growth centres on a case-by-case basis. In particular, this is likely to occur for other large scale greenfield release areas.'

Minister Sartor's correspondence does not deny this position.

The Associations have presented their submission on development contributions to the Office of the Coordinator General this week. It is crucial your council keeps up the pressure locally on this issue and calls on the Government to delay implementation of the changes".

#### **POLICY IMPLICATIONS**

There are no policy implications as a result of this report.

#### **FINANCIAL IMPLICATIONS**

There are no financial implications as a result of this report.

#### **LEGAL IMPLICATIONS**

There are no legal implications as a result of this report.

#### **O08-19 RESOLVED**

**THAT** the NSW Government be requested through the Member for Bathurst to delay the implementation of the proposed changes to section 94 levies to allow for further consultation with local government.

**MOVED:** Councillor M M Collins

**SECONDED:** Councillor M J Wilson.

**CARRIED**

**ITEM:6            GM - 17/03/08 - AFFIXING OF THE COMMON SEAL FOR THE SALE  
                         OF 10 RESIDENTIAL ALLOTMENTS AT CARY AVENUE,  
                         WALLERAWANG**

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**REFERENCE**

Min P08-15: Policy and Strategy Committee Meeting 3 March 2008

**SUMMARY**

This report seeks Council's approval to attach the Common Seal in relation to the sale of 10 residential allotments at Cary Avenue, Wallerawang.

**COMMENTARY**

At its Policy and Strategy Committee Meeting of 3 March 2008, Council resolved to "affix the Common Seal to all contracts and transfer of land at its meeting of 17 March 2008" in relation to the sale of 10 residential allotments at Cary Avenue, Wallerawang. Therefore, this report recommends that the Common Seal be affixed to documents arising from the sale of the land.

**POLICY IMPLICATIONS**

Clause 73 of Council's Code of Meeting Practice outlines the requirements for the affixing of the Common Seal.

**FINANCIAL IMPLICATIONS**

There are no financial implications as a result of this report.

**LEGAL IMPLICATIONS**

The affixing of the Common Seal to documents requiring such will fulfil Council's legal obligations.

**O08-20 RESOLVED**

**THAT** the Common Seal be affixed to the contracts and transfer of land arising from the sale of 10 residential allotments at Cary Avenue, Wallerawang.

**MOVED:** Councillor M J Wilson

**SECONDED:** Councillor B P Morrissey.

**CARRIED**

**ITEM:7            GM - 17/03/08 - ENERGY CONSULTATIVE REFERENCE COMMITTEE  
SUBMISSION**

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**REFERENCE**

NIL

**COMMENTARY**

Lithgow City Council has received correspondence from the Department of Premier and Cabinet in relation to a submission to the Energy Consultative Reference Committee in relation to the Privatisation of Electricity Supply in NSW from Lithgow City Council.

The Executive Director of the Dept of Premier and Cabinet, on behalf of the Chairman of the Committee has advised that the submission has been received and copy of this submission has been provided to each of the members of the Committee and has also been placed on the NSW Government's website.

**POLICY IMPLICATIONS**

NIL

**FINANCIAL IMPLICATIONS**

NIL

**LEGAL IMPLICATIONS**

NIL

**RECOMMENDATION**

**THAT:**

1. Council note that the submission has been received.
2. Council await advice from the Department of Premier and Cabinet on the outcomes from the submission in relation to privatisation of electricity supply in NSW.

Councillor M J Wilson declared a pecuniary interest in this item as Delta Electricity are his employer and he vacated the Chambers.

**O08-21 RESOLVED**

**THAT:**

1. Council note that the submission has been received.
2. Council await advice from the Department of Premier and Cabinet on the outcomes from the submission in relation to privatisation of electricity supply in NSW.
3. Council reiterate its strongest opposition to the privatisation and sell of the NSW Power Industry.

**MOVED:** Councillor H K Fisher

**SECONDED:** Councillor M M Collins.

**CARRIED**

**ITEM:8 GM - 17/03/08 - LOCAL COUNCIL ELECTIONS - 13TH SEPTEMBER 2008**

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## **REFERENCE**

NIL

## **SUMMARY**

Council has received a media release from the Local Government and Shires Association confirming a date for the local government elections.

## **COMMENTARY**

A Media Release was received from the Local Government and Shires Association with confirmation of a new date for the local government elections.

State Parliament has passed legislation to hold local council elections on 13th September 2008. The Minister for Local Government, Paul Lynch has advised that the date was brought forward by two weeks to avoid a clash with school holidays.

The Minister advises that it was a common sense decision that will give voters in NSW every opportunity to have their say on who represents them. Amendments to the Local Government Act 1993 also ensured party registrations remained valid.

"A number of political parties registered on time last year in anticipation of an election date of 27 September and the amendment provides certainty for these parties", he said.

The NSW Government consulted with the Local Government and Shires Associations of NSW and the NSW Electoral Commissions before introducing the amendments.

Local Council elections were last held in 2004.

## **POLICY IMPLICATIONS**

NIL

## **FINANCIAL IMPLICATIONS**

NIL

## **LEGAL IMPLICATIONS**

NIL

## **O08-22 RESOLVED**

**THAT** Council note the local Council elections will be held on Saturday 13th September 2008.

**MOVED:** Councillor M M Collins

**SECONDED:** Councillor B S Moran.

**CARRIED**

**ITEM:9 GM - 17/03/08 - SHIRES ASSOCIATION**

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**REFERENCE**

NIL

**SUMMARY**

This report updates Council on the motion moved by Councillor Collins regarding forwarding a formal motion to the NSW Shires Association opposing the NSW Governments proposed privatisation of the Power Industry.

**COMMENTARY**

As Council is aware Councillor Collins moved that a motion regarding the opposition to the privatisation of the power industry and the poor form of needing funding for water resource allocation in NSW be forwarded to the NSW Shires Association.

This matter was discussed with the Executives of the Shires Association who have advised that this specific matter is already subject of a formal motion to be put to the Conference and also a policy position held by the Association.

The Shires Association have indicated that our support opposing the privatisation of the power industry will be noted in the business papers.

**POLICY IMPLICATIONS**

This report satisfies Councils policy on such matters.

**FINANCIAL IMPLICATIONS**

NIL

**LEGAL IMPLICATIONS**

NIL

**O08-23 RESOLVED**

**THAT** the report be noted.

**MOVED:** Councillor B P Morrissey

**SECONDED:** Councillor M J Wilson.

**CARRIED**

**ITEM:10 GM - 17/03/08 - DELEGATION TO THE HON IAN MCDONALD**

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**REFERENCE**

NIL

**SUMMARY**

This report provides Council with a brief update on the recent delegation to the Hon Ian McDonald, Minister for Primary Industries, Energy and State Development.

**COMMENTARY**

As Council is aware a delegation, lead by the Local Member, Gerard Martin, the Mayor, Councillor McAndrew and the General Manager, was taken to Minister McDonald on 10<sup>th</sup> March 2008 to discuss the current issues confronting Council and the local community with respect to;

- 1.Privatisation of the NSW Power Industry
- 2.Expansion / disruption to the Mount Piper Power Station
- 3.Blackman's Flat area

The Minister was very positive in his discussion regarding the expansion of Mount Piper and the obvious benefits the site had over other sites. The Minister was also very quick to point out that the ultimate decision was some way off given the current debate re privatisation and the carbon trading rules being considered.

The Minister was also actually aware of the issues surrounding Blackman's Flat and undertook, in conjunction with the Minister for Planning, Hon Frank Sartor to assist in resolving the matter.

Interestingly the day of the Councils delegation also saw the release of the Unsworth Committee report into the privatisation on the power industry, however, at the time of preparing this report I have not been able to read such.

**POLICY IMPLICATIONS**

This report is supporting of Council policies on:

- 1.Mount Piper Expansion
- 2.Privatisation of power industry

**FINANCIAL IMPLICATIONS**

NIL

**LEGAL IMPLICATIONS**

NIL

## RECOMMENDATION

**THAT:**

1. Council thank the Local Member Gerard Martin for arranging and facilitating the delegation the Hon, Ian McDonald Minister for Primary Industries, Energy and State Development.
2. Council note the report.

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

## O08-24 RESOLVED

**THAT:**

1. Council thank the Local Member Gerard Martin for arranging and facilitating the delegation the Hon, Ian McDonald Minister for Primary Industries, Energy and State Development.
2. Council note the report.
3. Council approach Delta to determine if finances are available for the further expansion of Mount Piper Power Station.

**MOVED:** Councillor B S Moran  
**CARRIED**

**SECONDED:** Councillor H K Fisher.

**O08-25 A MATTER OF ARISING** was moved as a matter of urgency Council write through the State Member as to when the Minister can move the matter and meet with the residents of Blackman's Flat.

**MOVED:** Councillor B S Moran  
**CARRIED**

**SECONDED:** Councillor H K Fisher.

**O08-26 A SUSPENSION OF STANDING ORDERS** was moved for Council to deal with Item 12 before Item 11.

**MOVED:** Councillor M M Collins  
**CARRIED**

**SECONDED:** Councillor W McAndrew.

## REGIONAL SERVICES REPORTS

**ITEM:11            REG - 17/03/08 - INQUIRY INTO SECURE AND SUSTAINABLE  
                          URBAN WATER SUPPLY AND SEWERAGE SERVICES FOR NON  
                          METROPOLITAN NSW**

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

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### REFERENCE

Nil

### SUMMARY

To advise Council of the inquiry into water supply and sewerage services for non-metropolitan New South Wales and the opportunity to make a submission to the inquiry.

### COMMENTARY

As Councillors may be aware, the Minister for Water Utilities, the Hon Nathan Rees MP, has announced an inquiry into the institutional and regulatory arrangements by which town water supply and sewerage services are provided in country NSW. The purpose of the inquiry is to identify the most effective governance arrangements for the long term provision of water supply and sewerage services in country NSW, and to ensure these arrangements are cost-effective, financially viable, sustainable, optimise whole-of-community outcomes, and achieve integrated water cycle management.

The Government has appointed two eminent members of the community to head the inquiry: the former Deputy Premier, The Hon Ian Armstrong OBE, and the former head of the Premier's Department, Dr. Colin Gellatly.

The terms of reference of the inquiry are:

- To identify the most effective institutional, regulatory and governance arrangements for the long term provision of water supply and sewerage services in country NSW; and
- Ensure these arrangements are cost-effective, financially viable, sustainable, optimise whole-of-community outcomes, and achieve integrated water cycle management.

Submissions are due by Wednesday 30th April 2008 and public hearings will also be held in a number of regional areas.

Whilst the Minister has indicated that the purpose of the inquiry is not underpinned by a desire of the State Government to take over local water and sewer undertakings, it is considered important that those undertakings can demonstrate that they are efficient and effective with a better understanding of local issues. Council officers are working on a submission and should Councillors have any issues they would like to include then they can make suggestions at the meeting or provide them to the General Manager by 31 March 2008.

**POLICY IMPLICATIONS**

Nil.

**FINANCIAL IMPLICATIONS**

Nil at this stage.

**LEGAL IMPLICATIONS**

Nil at this stage.

**O08-27 RESOLVED**

**THAT** the information be received.

**MOVED:** Councillor M J Wilson

**SECONDED:** Councillor W McAndrew.

**CARRIED**

**ITEM:12            REG - 17/03/08 -DA 461/04 MODIFICATION OF COSNENT - PUBLIC  
ROAD TRANSPORTATION AND INCREASED PRODUCTION -  
PINEDALE OPEN CUT MINE**

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

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**REFERENCE**

DA 461/04

Finance and Services Committee – 3 September 2007

Ordinary Meeting - 17 December 2007

Finance and Services Committee – 3 March 2008

**SUMMARY**

To report on a Section 96(2) Modification application in relation to the Pinedale open cut mine. The report recommends approval of the application, subject to stringent additional conditions and having regard for the support of the application from government authorities and current constraints placed on the applicant from private parties.

**COMMENTARY**

In 2005, Council issued development consent to DA 461-04 being the construction and operation of the Pinedale Open Cut Mine in Blackmans Flat. At Councils Finance and Services Committee meeting in September 2007 Council resolved to refuse a modification of consent to the approved operation when the applicant sought to utilise the public road infrastructure rather than other mechanisms as required by Councils condition.

Now Council is in receipt of a further modification application seeking approval for the use of public roads for a period of no less than 6 years for the transportation of coal and to increase current maximum tonnages for the development to 350,000tpa from existing levels of 200,000tpa with justification indicating that the previous option proposed (utilisation of the private haul road for coal transportation) has not been negotiated subject to the following:

- The commercial terms are not within any negotiating range of commercial acceptability
- Any agreement would include a termination period, which means that such notice, when given, and it can be given at any time, would then require Pine Dale Coal to go to Mt. Piper by public road.

The applicants have further indicated within the modification document that they are willing to continue discussions with the owner/operator of the private haul road however in this instance see neither an early resolution on cost of usage and 'notice to quit' provisions being uncertain.

As part of the modification process Council placed the application on public exhibition and sought comment from relevant government agencies. Those agencies included the Department of Planning (DOP), the Roads & Traffic Authority (RTA), the Department of Environment and Climate Change (DECC) the Department of Primary Industries (DPI) the Sydney Catchment Authority (SCA). The authorities comments are highlighted within the legal implications of this report:

A comprehensive Section 79C planning report is attached.

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.

### **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 previously favoured the retention of this condition. However, given the function of Council's delegated authority through the Department of Planning, their correspondence must be taken into consideration.

Further, the very restrictive conditions proposed within the Department of Planning's correspondence it is considered that approval could be considered subject to the implementation of these restrictive conditions.

### **POLICY IMPLICATIONS**

There are no perceived policy consideration's 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 must be assessed in accordance with the heads of consideration of Section 79C of the Environmental Planning & Assessment Act 1979. The proposal also constitutes Integrated Development under the Act.

Furthermore, 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. Further, due to the nature of Council's delegated authority to assess the application the Department of Planning were also notified of the application. Other government authorities notified through the modification process included the SCA, DECC & DPI. The correspondence is assessed separately below.

### **The NSW Department of Planning**

In correspondence received the Department of Planning (DOP) indicated as follows:

*The Department recognises the difficulties experienced by Enhance Place Pty Limited (the Applicant) in its attempts to gain access to the private haul road operated by Coal>Link.*

*While it remains the Department's preferred position that coal transportation on the public road network should be avoided, it would seem that access to the Coal>Link road is not currently available to the Applicant on a satisfactory commercial basis.*

*In these circumstances, the Department supports a restricted use of the public road network, in a manner that would not increase road haulage of coal in residential areas.*

*Accordingly, the Department supports the use of road transport to deliver coal to the Mount Piper Power Station by the use of the Castlereagh Highway.*

*The Department also supports the relocation of the Pine Dale access road, 75 metres to the west of its current location, to facilitate effective and safe integration with the proposed entry for Council's Waste Disposal Facility.*

*However, except in emergency situations, the Department does not support the use of the Castlereagh Highway to deliver coal to the Wallerawang Power Station, or to other customers to the south of the mine, as this would result in increases of coal traffic through residential areas.*

*In light of the above considerations, the Department recommends that Council consider imposing conditions of consent that:*

- ***prohibit the use of local council roads for transportation of coal from the mine;***
- ***avoid transportation of coal during times when school buses may be operating;***
- ***prohibit the use of public roads to deliver coal to Wallerawang Power Station and other domestic customers unless otherwise agreed to by Council; and***
- ***allow the use of public roads to deliver coal to Mount Piper Power Station for a initial period of 12 months, with further use of public roads to be considered on a yearly basis by Council based on the Applicant's presentation of written evidence that it has used its best endeavours to achieve access to the Coal>Link road.***

*In regard to noise, the Department considers that the predicted noise impacts for some residences (**particularly those in proximity to noise monitoring location 6, 7 and 8**) from on-site mining activities are sufficiently high to warrant the implementation of noise mitigation measures such as double glazing, insulation, and/or air conditioning to mitigate the effects of these impacts. As the Applicant claims that monitored noise impacts have proven to be lower than predicted noise impacts, the Department recommends that access to these mitigation measures be based on monitored, rather than predicted, impacts. Accordingly, the Department recommends Council consider a condition of consent along the lines of:*

- ***Upon receiving a written request from the owner of any residence where subsequent noise monitoring shows the noise generated by the development (i.e. not including off-site traffic noise) is greater than, or equal to,***

**42 dB(A)<sub>(LAeq,15minute)</sub>, (unless a negotiated noise agreement is in place), the Applicant shall implement additional noise mitigation measures such as double glazing, insulation, and/or air conditioning at any residence on the land in consultation with the landowner.**

*These additional mitigation measures must be reasonable and feasible.*

*If within 3 months of receiving this request from the landowner, the Applicant and the landowner cannot agree on the measures to be implemented, or there is a dispute about the implementation of these measures, then either party may refer the matter to Council for resolution.*

*Overall, the Department supports the proposed modification as it would ensure a continued supply of coal to the Mt Piper Power Station with limited impacts on the public road network and local residents, provided the recommended conditions outlined above are incorporated into any conditions of consent. The Department also notes that the proposed increase in coal production rates offers the opportunity for mining operations and rehabilitation of the site to completed 3 years earlier than would be otherwise possible.*

### **The Roads and Traffic Authority**

In their correspondence the RTA indicated that the comments provided to Council pertaining to the first modification still apply. This includes;

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.*

Further, within the current correspondence the RTA have indicated that given the proposed access relocation the required intersection of the access and the Castlereagh Highway should be constructed to allow protected right turns from the highway, that is, type CHR and type AUL (RTA Road Design Guide) treatments that cater for deceleration and storage of the vehicle types accessing the site.

If Pine Dale proposes to relocate the heavy vehicle entry opposite Council's Waste Disposal facility, they will be required to provide a treatment to complement this.

Further the RTA has asked Council to consider general requirements should approval be recommended. They include;

- The proposed landscaping, signage and fencing are not to impede sight lines of traffic and/or pedestrians within the development, or when entering and leaving the development. Safe intersection sight distance is to be achieved.
- The proponent is to provide a pavement design and intersection design for RTA approval prior to the commencement of works;
- A Road Occupancy Licence is required prior to any works commencing within 3m of the travel lanes. Submission of a traffic control plan is required as part of this licence
- A formal agreement in the form of a Works Authorisation Deed (WAD) may be required between the developer and the RTA should the developer wish to undertake 'private financing and construction' of the access with any highway. This agreement is necessary on works in which the RTA has a statutory interest.
- All works associated with the development are to be at no cost to the RTA.

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

At the time of writing no information had been received by the DPI, SCA and DECC, thus any finalisation of this application will be subject to these authorities concurring with the modification application and any conditions provided be implemented should approval be recommended.

### **Public Submissions**

As part of the modification application the proposal was placed on public exhibition for 14 day's in accordance with the Environmental Planning and Assessment Act Regulations 2000. At the closing date of submissions Council received 5 submissions objecting to the proposal. Council received another 2 late submissions both objecting to the proposal. A summary of these objections are highlighted below:

Council's Duty of Care – to care, respect, protect the communities rights, value the community in which it is responsible for. Lithgow City Council will be negligent in its duty of care if it chooses to provide this modification to proceed.

Noise – Given the expected exceedances (especially in Area C) due to the increased tonnages and transport movements Council should indicate that the applicant has no option other than utilisation of the private haul road.

Timing – objections are raised over additional truck movements for longer periods of the day.

Cumulative Effect – given the number of industrial developments surrounding Blackmans Flat it is considered that an increase in traffic movements will once again increase the cumulative impacts surrounding Blackmans Flat. This may be summarised through the following extract;

‘We are unaware of anything that has occurred since the approval of Pine Dale Mine that justifies this modification. Conditions have gotten worse for residents of Blackmans Flat given the substantial industrial/heavy development that has been approved since. It is considered that all development approved in and around Blackmans Flat has minimised any concerns relating to cumulative impact. Any potential increases in Haulage or Traffic only further increases impacts on the community of Blackmans Flat’.

Private Haul Road – the proponent claims that it is not economically viable to use the private coal haul road. The use of the private haul road is a condition in the original consent documentation and as part of the proponents duty should take responsibility for this. It is considered that the applicant had no intention of using the private haul road and knew that a modification was imminent. This is a blatant display of dishonesty and non transparent application process.

Road Impacts – seriously major traffic increases through the area of Blackmans Flat have been approved since Council first approved Pine Dale. It is totally unfair and unjust for Council to regard Pine Dale Mine as a stand alone project, these cumulative traffic increases must be taken into account holistically. While some of these projects have no other option than to use the Castlereagh Highway, Pine Dales owners do have a perfectly viable alternative, being the private haul road.

Further Cumulative Impacts – continuing health and safety risks, noise dust, air and quality of life impacts are occurring from substantial industrial development in the vicinity of Blackmans Flat.

### **Conclusions**

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. These concerns still exist for the current modification application. The fact that the use of a private haul road that is in such close proximity has been unable to be achieved to date is to say the least disappointing particularly, given the efforts that Council has put in to try and bring the parties to a solution. However, given the restrictive conditions proposed by the government agencies in this instance it is considered that Council can consider approval of the modification subject to the implementation of these conditions into the approval document.

Councillor M J Wilson declared a pecuniary interest in this item and he vacated the Chambers.

## **O08-28 RESOLVED**

**THAT:** the Section 96(2) modification application for DA 461-04 be approved subject to the following additional conditions approved with original development consent DA 461-04:

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.
5. The Castlereagh Highway is to be constructed to allow protected right turns from the highway, that is, type CHR and type AUL (RTA Road Design Guide) treatments that cater for deceleration and storage of the vehicle types accessing the site. The applicant is to relocate the heavy vehicle entry opposite Council's Waste Disposal facility access, and appropriate treatment is to complement this.
6. The proposed landscaping, signage and fencing are not to impede sight lines of traffic and/or pedestrians within the development, or when entering and leaving the development. Safe intersection sight distance is to be achieved.
7. The proponent is to provide a pavement design and intersection design for RTA approval prior to the commencement of works;
8. A Road Occupancy Licence is required prior to any works commencing within 3m of the travel lanes. Submission of a traffic control plan is required as part of this licence
9. A formal agreement in the form of a Works Authorisation Deed (WAD) may be required between the developer and the RTA should the developer wish to undertake 'private financing and construction' of the access with any highway. This agreement is necessary on works in which the RTA has a statutory interest.
10. All works associated with the development are to be at no cost to the RTA.

11. No coal transportation from the mine is to be carried out on any local council road, excepting Boulder Road from Castlereagh Highway to the entrance to Mt Piper Power Station;;
12. No transportation of coal is to occur during times when school buses are operating. Within one month of approval the applicant is to consult with Jones Bros Pty Ltd, and implement time restrictions appropriate to this condition into its amended Truck Management Plan which is to be submitted to Council for approval.
13. The use of public roads to deliver coal to Wallerawang Power Station and other domestic customers is prohibited unless alternative arrangements can be negotiated other than on public road
14. The use of public roads to deliver coal to Mount Piper Power Station is limited for a period of 12 months. Council will consider further use of public roads on a yearly basis and based on the Applicant's presentation of written evidence that it has used its best endeavours to achieve access to the Coal>Link road.
15. Upon receiving a written request from the owner of any residence where subsequent noise monitoring shows the noise generated by the development (i.e. not including off-site traffic noise) is greater than, or equal to, 42 dB(A)<sub>(LAeq,15minute)</sub>, (unless a negotiated noise agreement is in place), the Applicant shall implement additional noise mitigation measures such as double glazing, insulation, and/or air conditioning at any residence on the land in consultation with the landowner.  
**NOTE:** *If within 3 months of receiving this request from the landowner, the Applicant and the landowner cannot agree on the measures to be implemented, or there is a dispute about the implementation of these measures, then either party may refer the matter to Council for resolution.*
16. Any condition imposed by the SCA, DECC or DPI approving the application.
17. A Section 94 Contribution will be required to be paid by the applicant in accordance with Council's current Section 94 Plan for Rural Roads. This contribution will be based on 5 cents per tonne per kilometre yearly calculation for the length of Council road utilised by the development. In this case Boulder Road.
18. The access to the development is to be relocated in accordance with the location identified with the Statement of Environmental Effects, lodged with the modification dated 8 February 2008.
19. Prior to construction of the access the applicant is to provide a detailed traffic plan indicating proposed internal coal haulage vehicle movements for Council approval. This will additionally include, but not limited to proposed bund wall relocation requirements and potential watercourse access improvements.

**MOVED:** Councillor B P Morrissey

**SECONDED:** Councillor W McAndrew.

**CARRIED**

**ITEM:13            REG - 17/03/08 - SOUTH BOWENFELS PIPE LINE CONSTRUCTION**

**REPORT BY: ASSETS MANAGER – Y.AJITKUMAR**

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**SUMMARY**

To obtain approval to proceed with an open tender process for procurement of pipes and valves for the South Bowenfels water pipe line construction.

**COMMENTARY**

Council will be aware of a project to construct a new 2.0 mega litre reservoir and pipe line at South Bowenfels. This necessitates the construction of an inlet pipeline from strathlone to the reservoir off Magpie Hollow road.

Council invited quotations for supply of pipes and valves from 3 suppliers. Three quotations were received with prices between \$141,411.00 and \$170,858.86. Whilst the lowest quotation is below \$150,000, it was still considered prudent to undertake a tender process as any variation could potentially create a situation where statutory compliance could be breached.

**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' is applicable to the process. Furthermore, Council's Policy on Tendering requires goods with an apparent value of \$150,000 to be put out to tender. The policy also provides that Council must determine between an open or selective tender process. In this case, an open tender process is considered more appropriate

**FINANCIAL IMPLICATIONS**

An amount of \$600,000 is set aside in the 2007/2008 budget for this project.

**LEGAL IMPLICATIONS**

The tendering procedure must be undertaken pursuant to the provisions of Sec 55, Local Government Act 1993 and the Local Government (General) Regulations 2005. This includes the requirement to tender for procurement in excess of \$150,000.

**008-29 RESOLVED**

**THAT** the procurement of pipes and fittings for the South Bowenfels pipeline project be undertaken by the open tender process.

**MOVED:** Councillor B S Moran

**SECONDED:** Councillor M J Wilson.

**CARRIED**

**ITEM:14            REG - 17/03/08 - CONFIDENTIAL REPORT - EXPRESSIONS OF INTEREST - LAKE LYELL CARETAKER    CONFIDENTIAL**

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

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### **Reason for Confidentiality**

#### **Reason for Confidentiality**

In accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005, in the opinion of the General Manager, the following business is of a kind as referred to in section 10A(2) of the Act, and should be dealt with in a part of the meeting closed to the media and public.

**Set out below is section 10A(2) of the *Local Government Act 1993* in relation to matters which can be dealt with in the closed part of a meeting.**

The matters and information are the following:

- (a) personnel matters concerning particular individuals (other than councillors)
- (b) the personal hardship of any resident or ratepayer
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
- (d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret
- (e) information that would, if disclosed, prejudice the maintenance of law
- (f) matters affecting the security of the council, councillors, council staff or council property
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

It is not in the public interest to reveal all details of these expressions of interest or the assessment process. Interested parties have provided information about their plans for Lake Lyell in the confidence that these will not be made public by council. The practice of publication of such information could result in other parties to the process using the information to obtain a commercial advantage.

## **REFERENCE**

Policy and Strategy Meeting – 5 November 2007 – Min 07-463

## **SUMMARY**

To advise of the results of the Expression of Interest process undertaken to engage a new caretaker for Lake Lyell.

## **O08-30 RESOLVED**

**THAT** Council consider this report in closed Council pursuant to Section 10A(2)(c) of the local government Act 1993.

**MOVED:** Councillor W McAndrew

**SECONDED:** Councillor M M Collins.

**CARRIED**

## COMMUNITY AND CORPORATE SERVICES REPORTS

ITEM:15            **COMM - 17/03/08 - CODE OF CONDUCT AMENDMENT TO PROCESSES**

**REPORT FROM: POLICY & PLANNING MANAGER – AMANDA MUIR**

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### REFERENCE

07-453: Council Meeting 15 October 2007

### SUMMARY

This report recommends adoption of changes following public exhibition of the Code of Conduct. The changes provide greater definition of the guidelines for the General Manager to consider when referring a matter to the Code of Conduct Committee.

### COMMENTARY

Council at its meeting of 15 October 2007 considered a report regarding proposed changes to the Code of Conduct. It was resolved that:

- "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;
- Council place on exhibition the proposed changes seeking public comment on them before finalising the matter;
- 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".

The proposed changes were placed on public exhibition with no submissions being received. Therefore, it is recommended that Council adopt the proposed changes.

### POLICY IMPLICATIONS

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

### FINANCIAL IMPLICATIONS

There are no financial implications as a result of this report.

### LEGAL IMPLICATIONS

There are no legal implications as a result of this report.

### O08-31 RESOLVED

**THAT** the changes to the Appendix of the Code of Conduct be adopted.  
**MOVED:** Councillor M J Wilson                      **SECONDED:** Councillor B S Moran.

**CARRIED**

**ITEM: 16            COMM - 17/03/08 - SECTION 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
- Minute 07-402 - Finance and Services Committee Meeting 3 September 2007
- Minute 07-424 - Council Meeting 17 September 2007
- Minute 07-455 - Council Meeting 15 October 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 28th 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.

General donations: Donations approved by Council in current Financial Year (Total Budget \$22,000\*)

Date	Organisation	Assistance	Amount
28.06.07	Various	Sponsorship	\$13,698.99
16.07.07	Kidney Health Kar Rally	Sponsorship- Lithgow team	\$ 100.00
20.08.08	Portland District Motor Sports Club	Sponsorship for a trophy	\$ 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 -	\$ 385.58
17.09.07	Rydal Show Society	Sponsorship Min 07-424	\$ 1,000.00
17.9.07	Greater Lithgow Regions Event Diary	Sponsorship	\$ 300.00
15.10.07	Country Women's Association – Lithgow Branch	Reimbursement of general rates	\$ 417.47
15.10.07	Board of State Mine Railway	Difference between business and residential rates	\$ 1,058.65
Deficit			\$ 20.69

\* includes Portland Pool \$5,000

Hire of facilities: Donations approved in current Financial Year (Total budget \$3,000)

Date	Organisation	Assistance	Amount
16.07.07	Quota – Hire of the Union Theatre	Reimbursement of hall hire fees	\$300.00
07/08 Management Plan	Air League		\$600.00
07/08 Management Plan	LINC Disability Discos		\$462.00
07/08 Management Plan	Hire of Union Theatre 14 April 08-28 April 08 Andrew Wilson photography		\$1,400.00
Remaining			\$238.00
<b>However Andrew Wilson photography only wants to use the Union Theatre for 1 week instead of 2 in April 2008 so there would be a saving of \$700. Therefore the balance is:</b>			\$938.00

Council is in receipt of the following requests for assistance and determination is required:

1. **LINC Mini Olympics at Lake Wallace for Linc Disability Services– Recommendation \$175.00** Waiving of \$175 fee for special event at Lake Wallace to be held on 26<sup>th</sup> March 2008.
  
2. **The Bush Bursary/Country Women’s Association Scholarship Scheme – Recommendation - Nil**  
 Request for \$3,000 for a medical student who will agree to spend two weeks of “rural placement” in the Lithgow area  
 Recommend Council advise the new Rural Doctors Network that it is unable to take part in the 2008 Bush Bursary/Country Women's Association Scheme, but advise of the LCC / SWAHS Scholarship.
  
3. **Harmony Day Celebrations - Recommendation \$57.75**  
 Request for waiving the hall hire fee for the Lithgow Multicultural Agency who is managed by LINC. They are planning Harmony Day celebrations for Lithgow to be held in the Union Theatre on 19<sup>th</sup> March 2008.
  
4. **2008 Bikebiz Bushfire Benefit Bash – Special Event hire - Recommendation \$363.00**  
 Request is to waive the hire fees for the Tony Luchetti Showground \$363 Special event hire. The event is held on 9<sup>th</sup> March 2008 starts in Windsor with motor bike riders crossing Bells Line of Road and having a barbeque and entertainment at the show ground. Money raised from this event is used to fund and purchase special equipment for the volunteer bush fire fighters (RFS)

<b>DATE</b>	<b>ORGANISATION</b>	<b>AMOUNT</b>
16/1/08	LINC Disability Services Waiving of hire fee for lake Wallace	\$175.00
21/1/08	NSW Rural Doctors Network Bush Bursary Country Women's Association Scholarship Scheme	NIL
23/1/08	Harmony Day Celebrations	\$57.75
No date on Letter	BikeBiz Bushfire Benefit Bash	\$363.00
TOTAL		\$595.75
Remaining		\$342.25

**POLICY IMPLICATIONS**

Donations payments are made in line with Council's policies including "4.4 Donations – Section 356 of the Local Government Act" and "Request for donation by waiving of fees for Council's facilities" and "4.5 Financial Assistance to Community Groups and Organisations – Interest Free Loans"

**FINANCIAL IMPLICATIONS**

There are no funds remaining in the general donations fund and \$342.25 in the hall hire facilities fund for 2007/08.

**LEGAL IMPLICATIONS**

Local Government Act 1993 s356 applies.

**O08-32 RESOLVED**

**THAT** funds for hall hire fees be expended for LINC Mini Olympics (\$175.00), LINC Harmony Day (\$57.75) and the Bikebiz Bushfire Benefit (\$363.00)

**MOVED:** Councillor B S Moran

**SECONDED:** Councillor W McAndrew.

**CARRIED**

## DELEGATES REPORTS

### ITEM:17 DELEGATES REPORT - 17/03/08 - CENTROC MEETING

#### REPORT FROM: NEVILLE CASTLE, MAYOR

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#### REFERENCE

NIL

#### SUMMARY

NIL

#### COMMENTARY

At the most recent Centroc Meeting on 12 February 2008, it was very pleasing to be able to welcome Three (3) new Council's into Centroc those being, Boorowa, Harden and Young. At the same time however, unfortunately Centroc was in a position to deal with the request by Mid Western Council to withdraw from Centroc. They have sited a number of issues however clearly the main issue for them was the recently publicised change of sale dates at the cattle and sheep sale yards particularly in Orange and Bathurst, these being in response to the starting of the new livestock exchange near Carcoar, which is privately owned. However, if Mid Western Council looked to change their mind at any time in the future then I'm sure that Centroc would be more than happy to have them back and share in the many benefits that are now starting to accrue to the Centroc Council's.

Centroc was addressed by representatives of the Central West Catchments Management Authority and these people were able to outline a number of different projects that they were intending to do in the Central West as well as the processes people or groups need to go through to try and attract funding for various projects.

As part of Centroc's debate on "drought proofing" and the feasibility study for this we heard from Mr K Boyd and Mr C Devitt who gave some interesting information. The feasibility for drought proofing is really aimed at in the first place an overall audit of the water storage and capacity in the Central West and then after looking at the possible options, of which there are many, as to how we may be able to proceed as an area to help drought proof our entire area.

A detailed report was given regarding our recent delegation to Canberra which was facilitated by Bob Debus, the new Member for Macquarie. Bob Debus was able to get us to meet either the Ministers or Senior Representatives from approximately several different departments and we spoke to these people on a wide range of issues including the Bells Line Express Way, telecommunications and in particular broad band, environmental sustainability, health, infrastructure, water and water use recycling projects (such as at Lithgow Golf Course), and skill shortages. These particular items have in general already been covered in the press however it was pleasing to note that the Government has now committed to a \$5 million "desk top study" of all the options for a best possible route over the Blue Mountains, between the Lithgow Bathurst area and the Penrith Richmond area.

Apart from this study, which will then hopefully indicate that the Bells Lines Expressway is the best way to go, but even so the Government has committed to agreeing with whatever the study shows as being its priority for the medium to long term. In the short term of course the Federal Government has also committed approximately \$400 million to a very major improvement in the Great Western Highway between Lithgow and Mt Victoria.

**POLICY IMPLICATIONS**

NIL

**FINANCIAL IMPLICATIONS**

NIL

**LEGAL IMPLICATIONS**

NIL

**ATTACHMENTS**

NIL

**O08-33 RESOLVED**

**THAT** the information be noted.

**MOVED:** Councillor Neville Castle

**SECONDED:** Councillor B S Moran.

**CARRIED**

## QUESTIONS WITHOUT NOTICE

### QWN - 17/03/08 - COUNCILLOR H K FISHER

1. Mr Mayor I refer to large trees in Rabaul Street that have acorns attached to them, the acorns are falling onto the road and also birds that are attached to the acorns drop to the road and are being killed by vehicles. Can Council please place some signs advising motorists to be aware or do some tree lopping?

The Mayor deemed this as urgent and advised that road signs will be placed and also once money is available, works will be done in regards to tree lopping.

2. Mr Mayor I refer to the television reception in Macauley Street. Can Council please write to Prime TV or the relevant Minister asking that this be fixed?

**008-34** The Mayor deemed this as urgent and advised that Council will write to Prime TV as soon as possible. The Mayor also advised that Council could move to approach the Federal Member to approach the Federal Communications Minister asking for their help in rectifying this problem.

MOVED: Councillor H K Fisher  
CARRIED

SECONDED: Councillor M J Wilson

### QWN - 17/03/08 - COUNCILLOR B P MORRISSEY

1. Mr Mayor I refer to the local shops in main Streets and the fronts of these shops, is it possible for Council to test the legislation and seek the Businesses to carry out works to make these shops look respectable?

*The Mayor deemed this as urgent and advised that Council will look into this issue further and report back to Council.*

### QWN - 17/03/08 - COUNCILLOR W MCANDREW

1. Mr Mayor I refer to previous question raised in relation to Wolgan Road, particularly from the Lidsdale Tennis Courts to the entry of Angus Place Colliery, there are major potholes in the road that need to be filled as soon as possible, can Council please carry out these works? Also is anything being done to stop the heavy vehicles from travelling at high speeds on this road?

*The Mayor deemed this as urgent and advised that the Council jet patcher is now back on the road, which was the cause for the delay in works being carried out. Minor works are due to be carried out later this week. Further works will be carried out in later in the year. Also the Highway Patrols are currently doing more patrols on this road to stop the heavy vehicles from travelling at high speeds.*

**QWN - 17/03/08 - COUNCILLOR B S MORAN**

1. Mr Mayor can Council please contact Workcover and ask where they are up to in relation to the results from the Howard's explosion and also when is the debrief going to take place in relation to this incident?

*The Mayor deemed this as urgent and advised that the date has not been set as yet for the debrief but Council will look into this further and report back to Council.*

2. Mr Mayor does Council have an update on the Consultative Committee for the Wallerawang Quarry?

*The Mayor deemed this as not urgent but will look into this matter further and report back to Council.*

**QWN - 17/03/08 - COUNCILLOR M M COLLINS**

1. Mr Mayor I refer to Councillor Morrissey's question in relation to shop fronts, will Council consider asking the businesses to place lights underneath the awnings, especially on the railway Station side.

*The Mayor did not deem this as urgent but advised that this information has been forwarded to businesses previously but will look into further.*

The General Manager advised the Public that Council will now consider the Closed Confidential report. The reports were confidential in nature due to:

**ITEM: 14            REG - 17/03/08 - CONFIDENTIAL REPORT - EXPRESSIONS OF INTEREST - LAKE LYELL CARETAKER**

**Reason for Confidentiality**

In accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005, in the opinion of the General Manager, the following business is of a kind as referred to in section 10A(2) of the Act, and should be dealt with in a part of the meeting closed to the media and public.

**Set out below is section 10A(2) of the *Local Government Act 1993* in relation to matters which can be dealt with in the closed part of a meeting.**

The matters and information are the following:

- (a) personnel matters concerning particular individuals (other than councillors)
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- (d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret
- (e) information that would, if disclosed, prejudice the maintenance of law
- (f) matters affecting the security of the council, councillors, council staff or council property
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.

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- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

It is not in the public interest to reveal all details of these expressions of interest or the assessment process. Interested parties have provided information about their plans for Lake Lyell in the confidence that these will not be made public by council. The practice of publication of such information could result in other parties to the process using the information to obtain a commercial advantage.

**The General Manager asked for objections from the Public as to the confidential reports.**  
There were NIL objections to these reports.

Closed Council started at 8.18pm

**ITEM:14            REG - 17/03/08 - CONFIDENTIAL REPORT - EXPRESSIONS OF INTEREST - LAKE LYELL CARETAKER    CONFIDENTIAL**

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

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**Reason for Confidentiality**

In accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005, in the opinion of the General Manager, the following business is of a kind as referred to in section 10A(2) of the Act, and should be dealt with in a part of the meeting closed to the media and public.

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It is not in the public interest to reveal all details of these expressions of interest or the assessment process. Interested parties have provided information about their plans for Lake Lyell in the confidence that these will not be made public by council. The practice of publication of such information could result in other parties to the process using the information to obtain a commercial advantage.

**RECOMMENDATION**

**THAT** the information be noted.

## **O08-35 RESOLVED**

### **THAT:**

1. The information be noted
2. Paul and Jennifer Piggott be offered the contract to manage Lake Lyell Recreational Area as per the contract issues as outlined in this report.

**MOVED:** Councillor B P Morrissey  
**CARRIED**

**SECONDED:** Councillor B S Moran.

The Mayor reopened the meeting to the public and the General Manager advised them that the following resolutions were made in relation to the confidential reports:

### **ITEM: 14**

## **O08-35 RESOLVED**

### **THAT:**

1. The information be noted
2. Paul and Jennifer Piggott be offered the contract to manage Lake Lyell Recreational Area as per the contract issues as outlined in this report.

**MOVED:** Councillor B P Morrissey

**SECONDED:** Councillor B S Moran.

**CARRIED**

The meeting closed at 8.28pm