



LITHGOW CITY COUNCIL

MINUTES

ORDINARY MEETING OF COUNCIL

HELD ON

30 MARCH 2009

**MINUTES OF THE LITHGOW CITY COUNCIL MEETING
HELD AT THE CIVIC CENTRE, LITHGOW ON 30TH MARCH 2009**

Meeting Commenced 7.01pm

Public Gallery: 20

PRESENT

His Worship the Mayor
Councillor Neville Castle
Councillor J J McGinnes
Councillor M F Ticehurst
Councillor W McAndrew
Councillor H K Fisher
Councillor G Danaher
Councillor C Hunter
Councillor R Thompson
Councillor W Marshall

APOLOGIES

NIL

Also in attendance

General Manager, Mr Roger Bailey
Group Manager Regional Services, Mr Andrew Muir
Group Manager Community and Corporate Services, Ms Suzanne Lollback
Minutes Secretary, Miss Casey Clarke

CONFIRMATION OF MINUTES

Confirmation of the Minutes of the Extra Ordinary Meeting of Council held on the 5th March 2009 were taken as read and confirmed by Councillors H K Fisher and G Danaher

09-115 RESOLVED

CARRIED

Confirmation of the Minutes of the Ordinary Meeting of Council held on the 9th March 2009 were taken as read and confirmed by Councillors W McAndrew and H K Fisher

09-116 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 conflict of interest in Item 21 due to his wife being an employee of the Lithgow Golf Club. He vacated the Chambers.

PUBLIC FORUM

Members of public gallery were invited to address questions through the Mayor to Councillors and Staff: -

PF - 30/03/09 - MR M KHOURY - MAIN STREET SERVICE STATION

1. Mr Mayor I refer to the spill that occurred this week at the Main Street Service Station and wish to advised that it was not caused by his company.
2. Mr Mayor I refer to the Interim Occupant Certificate that Council advised at the last meeting would be granted if documents were granted by the SCA, the documents from the SCA has been given to Council but to date Council have not given the Interim Occupant Certificate. Can Council advise why is this?

The Group Manager through the Mayor advised that Mr Khoury was advised that if he is unable to connect his oil separation system to the Council sewer until final tradewaste approval from the Department of Water and Energy is granted then another temporary option exists whereby the collected oil could be pumped out and disposed of by an appropriately licensed contractor. This would only be a temporary arrangement in relation to an interim occupation certificate and the commissioning of the oil separator for disposal to sewer would be required following tradewaste approval. This option has been discussed with Sydney Catchment Authority Officers who have raised no objection. It was also reiterated to Mr Khoury that he must call for a final inspection when he believes he has complied with his conditions of consent.

PF - 30/03/09 - MRS M BRINCKLEY - EDUCATION OF STAFF

1. Mr Mayor can you please advise if it is Council policy to educate their staff?

The Mayor advised Mrs Brinckley that staff are provided with training.

TABLE OF CONTENTS

<u>ITEM</u>	<u>TITLE</u>	<u>PAGE</u>
	<u>NOTICES OF RESCISSION</u>	<u>5</u>
<u>ITEM:1</u>	<u>NOTICE OF RESCISSION - 30/03/09 - REVERSE MOTION TO RESTRICT IRONFEST PARKING ON WATSFORD OVAL</u>	<u>5</u>
	<u>NOTICES OF MOTION</u>	<u>7</u>
<u>ITEM:2</u>	<u>NOTICE OF MOTION - 30/03/08 - UPDATE ON DEVELOPMENT APPROVAL 068/08DA - SERVICE STATION AT 327 MAIN ST, LITHGOW</u>	<u>7</u>
<u>ITEM:3</u>	<u>NOTICE OF MOTION - 30/03/09 - SUBSTANTIAL FINANCIAL RISES TO THE LITHGOW CITY COUNCIL FINANCIAL CONTRIBUTIONS TO THE LG SUPERANNUATION SCHEME</u>	<u>9</u>
<u>ITEM:4</u>	<u>NOTICE OF MOTION - 30/03/09 - NSW SOCIAL PROFILE REPORT ON THE LITHGOW LGA FOR MONTH OF FEBRUARY 2009</u>	<u>11</u>
<u>ITEM:5</u>	<u>NOTICE OF MOTION - 30/03/09 - FISH RIVER WATER SUPPLY - CONFIRMATION OF CURRENT LEVEL 5 WATER RESTRICTIONS</u>	<u>13</u>
<u>ITEM:6</u>	<u>NOTICE OF MOTION - 30/03/09 - NSW INDEPENDENT PRICING AND REGULATORY TRIBUNAL - MARKET BASED ELECTRICITY PURCHASE COST ALLOWANCE - 2009 REVIEW</u>	<u>15</u>
	<u>GENERAL MANAGER REPORTS</u>	<u>17</u>
<u>ITEM:7</u>	<u>GM - 30/03/09 - 2009 NATIONAL GENERAL ASSEMBLY OF LOCAL GOVERNMENT - CALL FOR MOTIONS</u>	<u>17</u>
<u>ITEM:8</u>	<u>GM - 30/03/09 - DRAFT MANAGEMENT PLAN 2009/2010 - 2011/2012</u>	<u>19</u>
	<u>REGIONAL SERVICES REPORTS</u>	<u>23</u>
<u>ITEM:9</u>	<u>REG - 30/03/09 - UPPER MACQUARIE COUNTY COUNCIL - CHIEF WEEDS OFFICERS REPORT FOR FEBRUARY 2009</u>	<u>23</u>
<u>ITEM:10</u>	<u>REG - 30/03/09 - FUNDING OPTIONS FOR NEW COMMUTER CARPARKS</u>	<u>24</u>
<u>ITEM:11</u>	<u>REG - 30/03/09 - DEVELOPMENT APPLICATION / CONSTRUCTION CERTIFICATE 017/09DACC AMENITIES / CLUBROOM CONRAN OVAL</u>	<u>25</u>
<u>ITEM:12</u>	<u>REG - 30/03/09 - CROWN ROAD CLOSURES</u>	<u>29</u>
<u>ITEM:13</u>	<u>REG - 30/03/09 - 134/08DACC - CONSTRUCT MOUNTAIN BIKE/WALKING TRAIL AT HASSANS WALLS RESERVE</u>	<u>32</u>

<u>ITEM:14</u>	<u>REG - 30/03/09 - NSW HOUSING CODE IMPLEMENTATION</u>	<u>36</u>
<u>ITEM:15</u>	<u>REG - 30/03/09 - 04/09DACC HOWARDS AND SONS PYROTECHNICS CLARIFICATION OF RESOLUTION</u>	<u>39</u>
<u>ITEM:16</u>	<u>REG - 30/03/09 - SUPPLY OF WATER FROM THE FARMERS CREEK SUPPLY TO MARRANGAROO</u>	<u>42</u>
<u>ITEM:17</u>	<u>REG - 30/03/09 - 2007/2008 ANNUAL REPORT OF THE STATE EMERGENCY SERVICE OF NSW</u>	<u>44</u>
<u>ITEM:18</u>	<u>REG - 30/03/09 - 015/08DA HEALTH & FITNESS CENTRE - 9 WOLGAN STREET PORTLAND NSW 2847</u>	<u>45</u>
<u>ITEM:19</u>	<u>REG - 30/03/09 - DEVELOPMENT APPLICATION 014/08DA SUBDIVISION INTO 5 LOTS - IVATT STREET LITHGOW NSW 2790 - REVIEW OF DETERMINATION</u>	<u>52</u>
<u>ITEM:20</u>	<u>REG - 30/03/09 - CLARENCE TRANSFER SYSTEM UPGRADE - UPDATE ON PROGRESS</u>	<u>58</u>
	<u>COMMUNITY AND CORPORATE SERVICES REPORTS</u>	<u>60</u>
<u>ITEM:21</u>	<u>COMM - 30/03/09 - DRAFT LITHGOW GOLF COURSE PLAN OF MANAGEMENT</u>	<u>60</u>
<u>ITEM:22</u>	<u>COMM - 30/03/09 - RESPONSE TO BUSINESS OF AN URGENT NATURE - 27/01/09 FROM COUNCILLOR H K FISHER CONCERNING RTA STOCKPILE AT TUNNEL HILL</u>	<u>65</u>
<u>ITEM:23</u>	<u>COMM - 30/03/09 - ESTABLISHMENT OF ALCOHOL FREE ZONE IN PORTLAND AND WALLERAWANG CBD AREAS</u>	<u>66</u>
	<u>COMMITTEE MEETINGS</u>	<u>69</u>
<u>ITEM:24</u>	<u>COMM - 30/03/09 - SISTER CITY ADVISORY COMMITTEE</u>	<u>69</u>
<u>ITEM:25</u>	<u>COMM - 30/03/09 - TOURISM ADVISORY COMMITTEE MINUTES 3RD FEBRUARY 2009</u>	<u>70</u>
	<u>BGU - 30/03/09 - COUNCILLOR W MCANDREW</u>	<u>72</u>

NOTICES OF RESCISSION

ITEM:1 NOTICE OF RESCISSION - 30/03/09 - REVERSE MOTION TO RESTRICT IRONFEST PARKING ON WATSFORD OVAL

NOTICES OF RESCISSION



MOTION TITLE/TOPIC:

Reverse Motion to restrict Ironfest parking on Watsford Oval.

Listed by Councillor Graham Danaher DATE: 23/3/09

BACKGROUND:


The rescission motion is to reverse the decision taken from the last council meeting motions from the sports advisory to restrict Ironfest parking on Watsford Oval.

RECOMMENDATION:

That:

Council reverse the decision taken from the last Council meeting motions from the Sports Advisory to restrict Ironfest parking on Watsford Oval.

A further recommendation to have Watsford available for Ironfest parking on the understanding that responsibility for conduct of parking and damage to the oval through the period Ironfest uses Watsford Oval for parking is agreed by the festival organisers.

Signed: 

Signed: N. Castle

Signed: 

09-117 RESOLVED

THAT Council reverse the decision taken from the last council meeting motions from the Sports Advisory to restrict Ironfest parking on Watsford Oval

MOVED: Councillor G Danaher
CARRIED

SECONDED: Councillor W McAndrew.

09-118 RESOLVED

THAT Council to have Watsford Oval available for Ironfest parking on the understanding that responsibility for conduct of parking and damage to the oval through the period Ironfest uses Watsford Oval for parking is agreed in writing by the festival organisers.

MOVED: Councillor G Danaher
CARRIED

SECONDED: Councillor R Thompson

NOTICES OF MOTION**ITEM:2 NOTICE OF MOTION - 30/03/08 - UPDATE ON DEVELOPMENT APPROVAL 068/08DA - SERVICE STATION AT 327 MAIN ST, LITHGOW****NOTICE OF MOTION****MOTION TITLE/TOPIC:**

Update on Development Approval No: 068/08DA – Service Station at 327 Main Street Lithgow and request for Council Officers to conduct compliance checks, including SCA compliance requirements for all other Service Stations in the Lithgow LGA.

Listed by Councillor Martin Ticehurst.

Date: 22 March 2009.

REFERENCES:

Development Approval No: 068/08DA.

BACKGROUND

As at the 22 March 2009, further to QPG and previous Council resolution 09-89 at the Ordinary Meeting of Lithgow City Council on 9 March 2009, Council approval for an Interim Occupancy Certificate remains outstanding.

This Notice of Motion seeks that Council Officers provide an update on this matter at the Ordinary Meeting of Lithgow City Council on 30 March 2009.

Further, this Notice of Motion seeks that the Council conduct inspections of all other similar Service Stations in the Lithgow LGA to confirm if they are all as similarly compliant as the Council is currently seeking compliance upon the Owner/Operator/Developer of the Midtown Service Station in Lithgow.

I understand many other Service Stations may not be similarly compliant, including compliant with similar SCA requirements as sought for DA 068-08 and a report from Council Officers is sought on the Councils past (dated) inspections of Service Stations in the Lithgow LGA and if not compliant, what urgent action will be taken to ensure compliance.

RECOMMENDATION

1. THAT Council publicly acknowledges what its current formal position is with DA 068-08.
2. THAT Council conducts urgent inspections of all other similar Service Stations in the Lithgow LGA to confirm if they are compliant with their conditions of Consent, including compliance with SCA requirements.

Signed: _____

MF Ticehurst

MOTION

THAT:

1. Council publicly acknowledges what its current formal position is with DA 068/08.
2. Council conducts urgent inspections of all other similar Service Stations in the Lithgow LGA to confirm if they are compliant with their conditions of Consent including compliance with SCA requirements.

MOVED: Councillor M F Ticehurst
This was LOST

SECONDED: Councillor J J McGinnes

A **DIVISION** was called by Councillors Ticehurst and McGinnes.

FOR

Councillor M F Ticehurst
Councillor C Hunter
Councillor J J McGinnes

AGAINST

Councillor R Thompson
Councillor H K Fisher
Councillor W McAndrew
Councillor G Danaher
Councillor W Marshall
Councillor N L Castle

ITEM:3 NOTICE OF MOTION - 30/03/09 - SUBSTANTIAL FINANCIAL RISES TO THE LITHGOW CITY COUNCIL FINANCIAL CONTRIBUTIONS TO THE LG SUPERANNUATION SCHEME

NOTICE OF MOTION

MOTION TITLE/TOPIC:

Substantial financial rises to the Lithgow City Councils financial contributions to the Local Government Superannuation Scheme (LGSS).

Listed by Councillor Martin Ticehurst.

Date: 22 March 2009.

REFERENCES:

Recent LGSA Weekly Newsletters and Media Reports.

BACKGROUND

The LGSA, ABC Radio, Prime TV News and WIN News recently reported that all Local Government Council and Shires will be hit with steep rises on their contributions to the LGSS.

This Notice of Motion seeks further information for Councillors, ratepayers and residents with answers to the following questions: -

- Q. The financial impact of the LGSS on the Lithgow City Council?
- Q. Whether the Lithgow City Council had set aside reserves during the "superannuation holiday" to cover future contingencies, and if not, any particular reason why?
- Q. Does the Lithgow City Council have any thoughts/strategies to deal with the problem of the LGSS as it affects them?
- Q. Will the current proposed Special Rate Variation of 5% cover any LGSS shortfall or is a further additional Special Rate Variation now required to be sought to cover any future shortfall over the next five years and if so, what percentage upon ratepayers would need to be sought?
- Q. Will or does the Lithgow City Council propose to pursue this course of action?
- Q. The number of employees covered by the defined benefits scheme; how many are each identified within Division B; C and D of the LGSS; and how many are to be identified or included in the new contributions sought by the LGSS and what is the full cost over the next five years?

ATTACHMENTS

LGSA Weekly Newsletters of 13 and 19 March, 2009.
LGSS letter to the Mid-Western Regional Council.

RECOMMENDATION

THAT Council's General Manager provide an urgent report to the Council, Councillors, ratepayers and residents on the financial implications to Lithgow City Council's contributions to the Local Government Superannuation Fund for the next five years.

Signed: _____

MF 

This item was **WITHDRAWN** due to the information being included in Item 8.

**ITEM:4 NOTICE OF MOTION - 30/03/09 - NSW SOCIAL PROFILE REPORT
ON THE LITHGOW LGA FOR MONTH OF FEBRUARY 2009**

NOTICE OF MOTION

MOTION TITLE/TOPIC:

NSW Social Profile Report on the Lithgow LGA for month of February 2009.

Listed by Councillor Martin Ticehurst.

Date: 22 March 2009.

REFERENCES:

Social Profile Report on the Lithgow LGA for month of February 2009 issued by the NSW Office of Liquor, Gaming and Racing.

BACKGROUND

The current Social Profile Report on the Lithgow LGA for month of February 2009 is provided for the general information of the Council, Councillors, ratepayers and residents,

Of particular note in the Report is that the Unemployment Rate in the Lithgow City Council Local Government Area is currently at 8.5% (or 716 people).

The Unemployment Rate for NSW is currently at 5.9% with Australia at 5.2%.

ATTACHMENTS

Social Profile Report on the Lithgow LGA for month of February 2009 issued by the NSW Office of Liquor, Gaming and Racing.

RECOMMENDATION

THAT Council notes the Social Profile Report on the Lithgow LGA for month of February 2009, particular the current Unemployment Rate of 8.5%.

Signed: _____



09-119 RESOLVED

THAT Council notes the Social Profile Report on the Lithgow LGA for month of February 2009, and the current Unemployment Rate of 6%.

MOVED: Councillor M F Ticehurst

SECONDED: Councillor J J McGinnes

CARRIED

**ITEM:5 NOTICE OF MOTION - 30/03/09 - FISH RIVER WATER SUPPLY -
CONFIRMATION OF CURRENT LEVEL 5 WATER RESTRICTIONS****NOTICE OF MOTION****MOTION TITLE/TOPIC:**

Fish River Water Supply Scheme (FRWSS) – Confirmation of current Level 5 Water Restrictions for all Users and the public disclosure of future water restrictions due to declining water levels in the Oberon Dam.

Listed by Councillor Martin Ticehurst.

Date: 22 March 2009.

REFERENCES:

FRWSS correspondence and recent local & regional media reports.

BACKGROUND

Confirmation is sought by ratepayers and residents on the recently introduced Level 5 Water Restrictions for users of the Fish River Water Supply Scheme; that if the Lithgow City Council is currently providing water from the FRWSS to the Marrangaroo Fields Estate and the Lithgow Golf Course, whilst the Council is apparently undertaking extended repairs to their Lithgow Water Reservoir, should these users be on Lithgow's Level 4 Water Restrictions or on Level 5 Water Restrictions whilst receiving their water from FRWSS?

Confirmation is also sought on recent media reports that should the Oberon Dam reach a 7% water level that this water level decrees that all remaining water remain in the Oberon Dam for use by the Oberon community ONLY.

Formal advice is requested from FRWSS, Sydney Water and Council Officers on what are the full details of future water restrictions for users of the FRWSS arising out of the declining water level in the Oberon Dam.

RECOMMENDATION

1. THAT Council confirms what the FRWSS policy is for the Marrangaroo Fields and the Lithgow Golf Course when using water supplied from the FRWSS.
2. THAT Council is formally advised by FRWSS, Sydney Water and Council Officers on what are the full details of future water restrictions for users of the FRWSS, arising out of the declining water levels in the Oberon Dam.

Signed: _____



1

09-120 RESOLVED

THAT:

1. Council confirms what the FRWSS policy is for the Marrangaroo Fields and the Lithgow Golf Course when using water supplied from the FRWSS.
2. Council is formally advised by FRWSS, Sydney Water and Council Officers on what are the full details of future water restrictions for users of the FRWSS, arising out of the declining water levels in the Oberon Dam.
3. Council be provided with an updated report on the FRWSS every three weeks.

MOVED: Councillor M F Ticehurst

SECONDED: Councillor J J McGinnes

CARRIED

ITEM:6 NOTICE OF MOTION - 30/03/09 - NSW INDEPENDENT PRICING AND REGULATORY TRIBUNAL - MARKET BASED ELECTRICITY PURCHASE COST ALLOWANCE - 2009 REVIEW

NOTICE OF MOTION

MOTION TITLE/TOPIC:

NSW Independent Pricing and Regulatory Tribunal (IPART) Market-based Electricity purchase cost allowance – 2009 review.

Listed by Councillor Martin Ticehurst.

Date: 15 March 2009.

REFERENCES:

IPART Market-based Electricity purchase cost allowance – 2009 review.

BACKGROUND

It has recently been announced that electricity prices for all NSW households are expected to rise by up to \$3.45 a week from July 1. The price increases of nearly 20 per cent are expected to be approved by the State Government.

The NSW Independent Pricing and Regulatory Tribunal (IPART) has said it would approve a 6 per cent price rise for Integral Energy. As well, the national regulatory body, the Australian Energy Regulator, has signalled that it is also prepared to approve additional rises of a further 9.5 per cent for Integral Energy.

IPART has said that these two amounts, together with allowances for inflation will result in substantial increases in electricity prices for the NSW consumers. A typical residential customer of Integral Energy on regulated tariffs can be expected to pay about \$3.45 more a week for electricity from July 1, 2009. This represents an increase of about 18.9 per cent for regulated residential customers of Integral Energy.

IPART's Electricity – Draft Report is currently on public exhibition including the internet with an invitation for public comment and submissions to be received by the 14 April 2009.

ATTACHMENTS

IPART Market-based Electricity purchase cost allowance – 2009 review.

RECOMMENDATION

THAT Council notes the Draft IPART Report and that the Council determine if it wishes to make a formal submission on IPART's draft electricity pricing.

Signed: _____



09-121 RESOLVED

THAT Council notes the Draft IPART Report and that the Council makes a formal submission on IPARTS draft electricity pricing.

MOVED: Councillor M F Ticehurst

SECONDED: Councillor J J McGinnes

CARRIED

GENERAL MANAGER REPORTS

ITEM:7 GM - 30/03/09 - 2009 NATIONAL GENERAL ASSEMBLY OF LOCAL GOVERNMENT - CALL FOR MOTIONS

REFERENCE

NIL

SUMMARY

Correspondence has been received from the Australian Council of Local Government in relation to the 2009 National General Assembly of Local Government.

COMMENTARY

The 2009 National General Assembly of Local Government will be held at the National Convention centre in Canberra between 21st and 24th June 2009.

The Assembly is the major event on the Annual local government events calendar and typically attracts more than 700 Mayors, Councillors and Senior Officers from Councils across Australia.

The Australian Government has also confirmed that the next meeting of Mayors and Shire Presidents as part of its Australian Council of Local Government will be held to coincide with the Assembly.

The Australian Government is increasingly looking to local government to play a role as a partner in tackling the major issues facing the nation and the Assembly is the opportunity to make sure that your Council's views are represented. The Assembly is also a great opportunity to hear from Senior Politicians and interesting key note speakers and is an unparalleled networking opportunity within the local government sector.

The theme for this years Assembly is *Rising to the Challenge - Infrastructure, Financing, Climate Change*.

In response to the feedback received at previous assemblies. The ALGA has revised the process for motions to ensure that policy debates relate to the current national priorities for local government. This year the ALGA is call for motions under the three major themes of the Assembly:

- Infrastructure
- Climate Change; and
- Local Government Financing

The ALGA is now calling for "Notices of Motions" to be submitted by Councils. To assist Councils in developing motions that fall under these themes, the ALGA has put together a discussion paper each theme.

Motions are to be received no later that Friday 24th April 2009.

Any proposed motions should be provided to the General Manager prior to 9am Monday April 13th 2009.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

ATTACHMENTS

NIL

RECOMMENDATION

THAT Council note the report on the call for Motion to the 2009 National General Assembly of Local Government.

09-122 RESOLVED

THAT:

1. Council note the report on the call for Motion to the 2009 National General Assembly of Local Government.
2. A motion be prepared in relation to allocating mining royalties to regional infrastructure.

MOVED: Councillor G Danaher

SECONDED: Councillor R Thompson

CARRIED

ITEM:8 GM - 30/03/09 - DRAFT MANAGEMENT PLAN 2009/2010 - 2011/2012

REFERENCE

Min O08-210 Ordinary Meeting of Council 15 December 2008
Min 09-96 Ordinary Meeting of Council 9 March 2009

SUMMARY

The Council's Draft Management Plan 2009/10 – 2011/12 is being prepared and is provided for the consideration of Council to place on public exhibition. Due to workload plus the recently advised shortfall in superannuation this report is proposing to hold an extra-ordinary Council meeting on Tuesday April 14, 2009 to consider the management plan.

COMMENTARY

The Draft Management Plan is being prepared 2009/10 – 2011/12 to detail Council's activities for the next 3 years and the Revenue Policy for 2009/10.

Superannuation Shortfall

Council has received the attached letter from the Local Government Superannuation Scheme (LGSS) dated 9 March 2009 regarding employer superannuation contribution rates for 2009/10.

The advised rates represent a substantial increase, an additional \$486,000, in contributions compared to previous years and will have a very serious impact on Council's operating budget, and the respective funds, i.e. water, sewer and waste.

Whilst the majority of Council's employees fall under the standard superannuation guarantee levy of 9% of superable salary, there are 41 staff members who belong to the defined benefits Division B scheme, four of whom have accrued the maximum points.

Superannuation Schemes

There are currently two superannuation schemes offered by LGSS that cover most local government employees.

The most recent scheme is known as the **Accumulation Scheme** and it's called that because the contributions, which are made by councils on an employee's behalf, accumulate with investment returns to a final amount of money on retirement. It is also described as a Defined Contribution scheme because the contribution to be made by employers is defined by legislation.

Members of this scheme will have 9% contributed by the council as a result of the Superannuation Guarantee charge. When an employee in this scheme retires, they receive whatever has accumulated over that time and the investment return on that money during the employee's membership of the scheme. This means that the investment risk is entirely the employee's.

Employees employed in local government after 1992 will be a member of this scheme and the issue about increased costs will not affect them.

The **Defined Benefits Scheme** is called that because the benefit on retirement is based on a multiple of the employee's final average salary. Fairly complicated and requiring the accumulation of points each year, a defined benefit scheme is a fairly old-fashioned scheme predominantly available for public servants, teachers, local government employees etc and closed by the NSW Government in 1992.

In a Defined Benefits Scheme, the investment risk is entirely the employers because they have to pay the benefit regardless of the investment performance of the scheme.

Actuaries engaged by the LGSS determine the amount employers pay. Defined Benefit schemes have a contribution calculated to be made by employers based on actuarial estimates of investment returns and taking into consideration when employees will retire and how much money needs to be available to pay their defined benefit. If investment returns exceed expectations, then the scheme will develop a surplus and if investment returns are below expectation, the scheme can fall into deficit.

When LGSS separated from State Super in 1997 it was discovered that there was a surplus in the Defined Benefit scheme. A contribution holiday was implemented by the LGSS because there was sufficient in the surplus that councils could partially reduce, and for a period of time even reduce entirely, their contributions. This meant that for several years there was a contribution holiday provided by the scheme to the councils where no contributions were sought. This was then followed by two years of 50% contributions.

In November 2008, LGSS did advise member Councils that it was likely contribution rates for 2009/10 would remain at the 2008/09 levels. However, they cite the ongoing global financial crisis as the impetus for the sudden spike in contribution rates.

The years 2008 and 2009 have been dreadful times for investment with a drop of about 40% in the value of Australian Shares.

The LGSS Board met on 25 February 2009 to consider this. The Actuarial report noted a deficit of \$300 million and, while it included three options for recouping that deficit by increasing employer contributions, a decision was made to increase the compulsory employer contribution effectively by 240% to 4.56 instead of 1.9. This would see the deficit redressed over five years if investment returns bounced back to the actuarial expectation of 7% per year in 2009/2010.

Defined Benefits Calculations for 2009/10

For 2009/10 there are two employer contribution formulae – one for members who have accrued 180 benefit points and another for members who have NOT accrued 180 benefit points.

Where employees have accrued 180 points:

2009/10 - (Members Elected Contribution Rate x 4.56) + (Superable Salary x 2.5%)

2008/09 - (Elected Member Contribution Rate x 1.90) + (Superable Salary x 2.5%)

Where employees have not accrued 180 points:

2009/10 - (Superable Salary x 2.5%) + (Superable Salary x 6.5%)

2008/09 - (Elected Member Contribution Rate x 1.90) + (Superable Salary x 2.5%)

LGSS has notified Council that only four of our Division B employees have accumulated 180 benefit points.

Based on the information provided by the Local Government Superannuation Scheme Council's estimated additional contributions for 2009/10 will be approximately \$486,000. This is currently unfunded in the Council budget and staff will be reviewing the budget to identify means of funding this amount.

As LGSS points out in their correspondence to member councils, defined benefit schemes have a long life span and over the course of time will move in and out of surplus. The scheme sponsors, i.e. Council, enjoy good times by way of contribution holidays, but must also bear the burden of bad times.

Any future movement in contribution rates is linked to the general economic and financial climate.

What discretion, if any, does Council have with regard to these payments?

Council is obliged under Commonwealth Superannuation Guarantee legislation to make payments into the scheme on behalf of employees. The amount to be contributed to the Retirement Scheme must equal the amount that an employer would have accrued had the employer paid Superannuation Guarantee contributions into an accumulation scheme.

The new contribution rates will be effective from 1 July 2009. The lateness of the notification of these contributions is of significant concern to Council as it was well progressed with balancing its budget.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

With the current notification from the LGSS Council will need to find an additional \$486,000 for the 2009/10 financial year.

LEGAL IMPLICATIONS

The Local Government Act 1993 and Local Government (General) Regulation 2005 outlines requirements for the preparation, exhibition and adoption of management plans. The Draft Management Plan must be exhibited for a minimum period of 28 days.

The extra-ordinary meeting is required prior to the April 20, 2009 Council meeting so as to achieve the required deadlines.

RECOMMENDATION

THAT Council:

1. Authorise the General Manager to review the budget to achieve appropriate financial results, including for its funds, i.e. water, sewer and waste;
2. Hold an Extra Ordinary Council meeting on Tuesday April 14, 2009 to consider the 2009/10 to 2011/12 Management Plan.

MOTION

THAT Council:

1. Authorise the General Manager to review the budget to achieve appropriate financial results, including for its funds, i.e. water, sewer and waste;
2. Hold an Extra Ordinary Council meeting on Tuesday April 14, 2009 to consider the 2009/10 to 2011/12 Management Plan.

MOVED: Councillor H K Fisher

SECONDED: Councillor G Danaher

AMENDMENT

THAT the Councillors review the budget to achieve appropriate financial results, including for its funds, i.e. water, sewer and waste

This proposed amendment moved by Councillor J J McGinnes **LAPSED** due to no seconder.

09-123 RESOLVED

THAT Council:

1. Authorise the General Manager to review the budget to achieve appropriate financial results, including for its funds, i.e. water, sewer and waste;
2. Hold an Extra Ordinary Council meeting on Tuesday April 14, 2009 to consider the 2009/10 to 2011/12 Management Plan.

MOVED: Councillor H K Fisher
CARRIED

SECONDED: Councillor G Danaher

REGIONAL SERVICES REPORTS

ITEM:9 REG - 30/03/09 - UPPER MACQUARIE COUNTY COUNCIL - CHIEF WEEDS OFFICERS REPORT FOR FEBRUARY 2009

REPORT FROM: ANDREW MUIR - GROUP MANAGER REGIONAL SERVICES

REFERENCE

Nil.

SUMMARY

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

COMMENTARY

Attached is the Upper Macquarie County Council Chief Weeds Officer Report for February 2009. It should also be noted that the Weeds Inspector for the Lithgow area, Mr Col Austin, has recently resigned after a total of 23 years service. Mr Austin is well known to many Council officers for his easy going and co-operative approach. It would not be unreasonable to acknowledge Mr Austin's service.

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

LEGAL IMPLICATIONS

Nil.

09-124 RESOLVED

THAT

1. The Upper Macquarie County Council Chief Weeds Officer's Report for February 2009 be received.
2. Correspondence be forwarded to Mr Col Austin acknowledging him for his service to Weed Control and thanking him for his co-operative approach with Lithgow City Council.

MOVED: Councillor H K Fisher
CARRIED

SECONDED: Councillor W McAndrew.

ITEM:10 REG - 30/03/09 - FUNDING OPTIONS FOR NEW COMMUTER CARPARKS

REPORT FROM: ANDREW MUIR - GROUP MANAGER REGIONAL SERVICES

REFERENCE

Policy and Strategy Committee Meeting of 4 November 2008 – Min No P08-127

SUMMARY

To provide a report on a recent report prepared for the Ministry for Transport on Opportunities for Private Sector Investment in Commuter Car Parks.

COMMENTARY

At its Policy and Strategy Committee meeting of 4 November 2008 Council considered a Notice of Motion by Councillor MF Ticehurst seeking a report on a recent review of funding options for commuter car parks. A copy of this report is attached to the business paper for Councillors information. The report, prepared by Macquarie Capital, specifically examines opportunities and options for the investment in new commuter car parks in the Sydney Metropolitan area particularly in relation to opportunities for private sector involvement.

The Council resolved to request the State Member, Mr Gerard Martin, to make representations to the Minister for Transport seeking that the Lithgow Rail Interchange be seriously considered for a new commuter car parking area on the western side of the Lithgow Railway Station Interchange. Whilst it is appreciated that the relationship between a report on private sector funding of commuter car parks in the metropolitan area and the request for new commuter car parking in Lithgow is somewhat limited, correspondence has been forwarded to the State Member requesting that such representations be made to the Minister for Transport.

POLICY IMPLICATIONS

Nil as a result of this report.

FINANCIAL IMPLICATIONS

Nil as a result of this report.

LEGAL IMPLICATIONS

Nil as a result of this report.

09-125 RESOLVED

THAT the report on the Review of Opportunities for Private Sector Investment in Commuter Car Parks and request to the State Member to make representations to Minister for Transport to consider a new commuter car park in Lithgow be noted.

MOVED: Councillor W McAndrew
CARRIED

SECONDED: Councillor H K Fisher.

**ITEM:11 REG - 30/03/09 - DEVELOPMENT APPLICATION / CONSTRUCTION
CERTIFICATE 017/09DACC AMENITIES / CLUBROOM CONRAN
OVAL**

REPORT FROM: REGIONAL SERVICES MANAGER – ANDREW MUIR

SUMMARY

To advise Council of the submission of Development Application/Construction Certificate No. 017/09 for Lithgow City Council for an amenities/clubroom building at Conran Oval off James Street Lithgow and recommend approval. Approval of the application will be recommended.

COMMENTARY

A Development Application/Construction Certificate has been received for the conversion of an existing shelter shed to an amenities block/clubroom between Conran and Watsford Ovals located on Lots 1 & 2 DP 115548 and Lot D DP 376167 off James Street Lithgow, owned by Lithgow City Council.

POLICY IMPLICATIONS

Council's Policy "Development Applications by Councillors and Staff and Relatives or on Council Owned Land" requires that applications be referred to Council or its appropriate committee for consideration and determination and that no aspect of the application be dealt with under delegated authority. The land which is subject of the application is actually a Crown Reserve where Council is the Trustee. However, it is considered appropriate that this application be submitted to Council as it involves additions and alterations to a building on Council controlled land.

FINANCIAL IMPLICATIONS

The project is being funded through the 2008/09 Management Plan with additional funding from the Floodplain Mitigation Program.

LEGAL IMPLICATIONS

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

09-126 RESOLVED

THAT Development Application/Construction Certificate No 017/09 be approved subject to the following conditions:

CONDITIONS

1. The development shall take place in accordance with the approved development plans containing Council's approved development stamp and all associated documentation submitted with the application, except as modified in red by Council and/or any conditions of this consent.

2. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
3. That the external cladding and roofing of the amenities block are of a natural tone, non-reflective condition.

Requirements prior to commencement of works

4. A practising Structural Engineer is to certify the roof design can withstand a ground snow load of 1kpa in accordance with AS1170.3
5. Natural light and ventilation is to be provided to both toilet areas in accordance with parts 3.8.4 and 3.8.5 of the Building Code of Australia.
6. Prior to commencing any construction works, Council is to be notified at least two days prior of the intention to commence building works, in accordance with Section 81A(2)(c) of the Act in Form 7 of Schedule 1 of the Regulations.
7. To contain soil and sediment on the property, controls are to be implemented prior to clearing of the site vegetation and the commencement of site works. This will include:
The installation of a sediment fence with returned ends across the low side of the site so that all water flows through. These shall be maintained at no less than 70% capacity at all times. Drains, gutters, roadways etc., shall be kept clean and free of sediment.
8. To prevent the movement of soil off site, a single entry/exit point to the property shall be constructed of 40mm blue metal aggregate or recycled concrete to a depth of 150mm. The length must be at least 5 metres with the width at least 3 metres.
Soil erosion fences shall remain and must be maintained until all disturbed areas are restored by turfing, paving, revegetation.
9. Prior to the commencement of any works on the land, a sign/s must be erected in a prominent position on the site:
 - a. Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person can be contacted outside working hours.
 - b. Stating that unauthorised entry to the work site is prohibited and
 - c. Showing the name, address and telephone number of the principle certifying authority for the work.The sign/s are to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

That minimal disturbance is caused to the site during construction works and any disturbed areas are to be generally made good and revegetated to the satisfaction of Council.

10. That the building is to be protected from the attack of subterranean termites by employing construction methods conforming with Australian Standard 3660.1. A durable notice must be permanently fixed to the building in a prominent location (such as the meter box) indicating:
- (i) the method of protection and
 - (ii) the date of installation of the system and
 - (iii) the installer's or manufacturers recommendations for the scope and frequency of future inspections for termite activity.

Requirements during construction

11. To ensure structural integrity, the maintenance of minimum health standards, the management of the buildings surrounds and the protection of the environment, compliance certificates are to be issued at significant stages throughout the construction period. These stages are:
- Pier holes/pad footings before filling with concrete.
 - Trenches complete with reinforcing and prior to filling with concrete.
 - Internal drainage carried out by licensed plumber prior to covering
 - Reinforcing steel in position and before concrete is poured (slab, footings, lintels, beams, columns, floors, walls and the like).
 - Framing when external wall and roof cladding is in place and prior to internal linings.
 - External drainage (including onsite waste disposal system) installed by a licensed plumber and prior to covering.
 - Wet area flashing prior to tiling or covering.
 - Stormwater drainage between building and discharge point (drainage pipes, soakage pits and the like) prior to covering.
 - Completion of the development and sign off to all conditions of the consent including landscaping, prior to occupation and use.
 - At each inspection, erosion and sediment control measures and site management will be inspected.

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

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

Monday to Friday	7.00am to 6.00pm
Saturday	8.00am to 1.00pm
Sunday and public holidays	No work

13. If a retaining wall greater than 600mm in height is required certification from a practising structural engineer is to be submitted too and approved by Council prior to the construction of the retaining walls commencing.
14. The disabled/female toilet is to comply with AS1428.1 – 2001, Design for access and mobility.

15. A hard stand surface disabled car space is to be constructed and linked to the amenities block via a walkway. In this regard the car park is to be a minimum of 3.5m x 5.5m and the walkway is to have a minimum width of 1m, maximum gradient of 1:20 in accordance with AS1428.1 – 2001, Design for access and mobility.
16. That all footings/piers are taken through filled ground to foundation material of uniform adequate bearing pressure.
17. That all timber sizes, spacing's and spans used in the construction of the building shall comply with the requirements of Australian Standard 1684 – 2006 "Timber Framing Code".
18. That glazing comply with the provisions of Part 3.6, Building Code of Australia, Housing Provisions.
19. Doors to sanitary compartments must either open outwards, slide, be readily removable from the outside of the compartment or provide a minimum 1,200 mm distance between the closet pan and the nearest part of the doorway.
20. That the stairway and construction (including flight, landings, goings, risers and the like) shall comply with the requirements of Part 3.9.1 of the Building Code of Australia, Housing Provisions. **Note: A landing is to be provided in accordance with Clause 3.9.1.3 if the floor to ground level is greater than 3 risers or 570mm.**
21. That rainwater drains are disposed of to the satisfaction of Council.
22. That all plumbing and drainage work be carried out by a licensed plumber and drainer and inspected by Council officers.

Removal of asbestos cladding & minor demolition works

23. The demolition work to be supervised by a competent person with due regard to safe working practices and in accordance with the requirements of the NSW WorkCover Authority;
Such work is to be carried out in accordance with the Occupational Health & Safety Regulations, 2001, and Australian Standard 2601.
24. Removal of dangerous or hazardous materials shall be carried out in accordance with the provisions of all applicable State legislation and with any relevant recommendations published by the National Occupational Health and Safety Commission (Worksafe Australia). Only competent persons, or competent and registered persons shall carry out removal. Removal of asbestos or materials containing asbestos fibres, shall be in accordance with the NOHSC code of practice.

- Precautions to be observed and procedures to be adopted during the removal of dangerous or hazardous materials other than asbestos, shall be in accordance with the relevant State regulations pertaining to those materials
25. All demolished material from the site shall be disposed of at the Lithgow Waste Management Facility or approved facility in accordance with Council & WorkCover requirements.

Requirements prior to Occupation

26. Prior to the use/occupation of the structure an Occupation Certificate must be issued by the Principal Certifying Authority.

MOVED: Councillor W Marshall
CARRIED

SECONDED: Councillor W McAndrew.

A **DIVISION** was called and was passed **UNANIMOUSLY**.

ITEM:12 REG - 30/03/09 - CROWN ROAD CLOSURES

REPORT FROM: DEVELOPMENT ENGINEER – PAUL CREELMAN

REFERENCE

Nil

SUMMARY

A Notice of intention has been received from the Department of Lands that they are considering the closure and disposal of several Crown public roads and/or unformed Council public roads:

COMMENTARY

A Notice of intention to close Crown Roads has been received by Council for the following parcels of land with the intention to be sold under the Crown Land Section 34(3), Crowns Lands Act 1989.

1. Wando Lane, Glen Davis.

Officers comments:

The parcels of land that have Wando Lane at their rear face Market Street, 3 of which are owned by the Crown. Council would have no objection to the closure of this section of lane

2. A section of Hughes Lane, Marrangaroo.

Officers comments:

The section of Lane in question is in front of Lot 96 DP1118361 and much of the road is currently occupied by the applicant. Councils only issue with the closure is the access to Lot 115 DP751651. Council should express concerns to the Lands Dept regarding future access to Lot 115 DP751651.

3. A section of Baaners Lane, Little Hartley.

Officers comments:

This is the second part of the process in which a new section of road has been constructed for a 7 lot subdivision, DA56/06, and acquired by Council and the section of crown road to be closed is no longer required. Council would have no objection to the closure of this section of road.

4. A section of Crown road on the property known as 175 Jerrys Meadow Road, Sodwalls is to be closed.

Officers comments:

The closure of this section of Crown Road will have no impact on adjoining lots. Council would have no objection to the closure of this section of road

5. A section of unformed Council road off Upper Turon Road, Capertee.

Officers comments:

The Lands Department require Councils written consent is required for the closure of this section of unformed road. Council would have no objection to the closure of this section of road.

6. Closure of a section of Torbane Rd, Capertee.

Officers comments:

This was previously considered by Council and Council resolved to:

- 1. Council endorse the application for the road closure affecting Torbane Road, Capertee and the Council seal be affixed to any documentation.*
- 2. The Crown Lands Office be advised that Council reserves the right to object to the final closure should local community objection be received as a result of the consultation process.*

Council has received many comments regarding this closure and as a result a meeting has been arranged by residents of the Capertee Valley, to hear the Department of Lands and Centennial Coal discuss the matter. The meeting will be held on 24 March and a verbal update will be provided at the Council meeting. Council may wish to make a submission on this proposed road closure as a result of the outcome of the meeting.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

09-127 RESOLVED

THAT:

1. Council offer no objections to the proposed road closures and sale of Crown Land at Wando Lane, Glen Davis, Baaners Lane, Little Hartley, Jerry's Meadows Rd, Sodwalls, and Upper Turon Rd Capertee.
2. Council express concerns to the Lands Dept regarding future access to Lot 115 DP751651 as a result of the proposed road closure at Hughes Lane, Marrangaroo, and ask that this be resolved prior to proceeding.
3. Council make a submission to the Crown lands Office as follows:
 - a) Council is aware of a number of concerns raised by the local community. These are:
 - * The proposed closure may impact on future bushfire maintenance and access to existing fire trails;
 - * The residents of Bogee have expressed concerns that an alternate means of egress from the Bogee area, should a major fire event occur, will be closed; and
 - * The loss of an existing access that provides a potential tourist trail.
 - b) Council is aware of the need by Centennial to have the road closures approved for operational and safety needs. Should the closures be approved by Crown Lands then it should be conditional on Centennial providing an alternate means of emergency access around the Mining Lease site."
4. The use of the common seal be authorised for any documentation as required to necessitate the relevant road closures.

MOVED: Councillor W McAndrew
CARRIED

SECONDED: Councillor G Danaher

ITEM:13 REG - 30/03/09 - 134/08DACC - CONSTRUCT MOUNTAIN BIKE/WALKING TRAIL AT HASSANS WALLS RESERVE

REPORT FROM: GROUP MANAGER REGIONAL SERVICES – ANDREW MUIR

REFERENCE

This application was called in by Council at its meeting of 5/8/08.

SUMMARY

To advise Council of the current position of DA 134/08 and recommend determination be undertaken through delegation to the General Manager.

COMMENTARY

Council is in receipt of a Development Application Construction Certificate from Central Tablelands Mountain Bike Club Inc. (CTMBC) for a proposed mountain bike/walking trail at Hassans Walls Reserve described as Lots 203 DP 751650 being Crown land and Lot 1 DP 1094395 owned by Lithgow City Council. The application has been consented to by the Minister for Lands.

Proposed works involve the construction of a downhill mountain bike course capable of hosting club and state level events. The CTMBC advise that they are without a quality downhill mountain bike track since the closure of the State Mine trail and are unable to bid on State or National races or promote the local area for downhill riding. The Lidsdale Forest venue will be lost due to planned logging in 2010 and this will leave the area without a mountain bike venue. The CTMBC state that in the Hassans Walls Reserve Council has the opportunity to provide a quality mountain bike facility for its residents and visitors. Due to National Park restrictions there are no legal downhill courses in the Sydney basin that are not situated on private property and very few courses within easy reach of Lithgow.

Lithgow is seen as an exceptional downhill mountain biking location and a high quality trail is proposed that traverses down various terrain features with close road access to provide a vehicle shuttle, parking area and easily accessible event centre. An in principle agreement has been reached with the Lithgow Pony Club to use their existing facilities and access issues from Hassans Walls Road are to be addressed through negotiation with existing landowners, including Council.

The trail would be constructed using experienced trail builders due consideration being given to environmental concerns while providing a challenging mountain bike trail for state and national events. Barricades would be erected to prevent trail bikes using the trail, but it would be available as a walking and jogging trail.

The CTMBC indicate the following advantages to Council from the development of this facility:

1. Lithgow City Council would be a participating partner in a project with potentially a national profile, without a significant resource input.
2. Council would be seen to be participating in objectives of the State Plan for outdoor recreation and therefore be able to claim and possibly assist with any funding made available for such initiatives.
3. The organising body would be able to direct any profits from events into improving the venue and its facilities and continue to promote Lithgow in a positive light as a tourist destination.
4. Many would argue it is very important with a population with a growing sedentary lifestyle and damning reports on local health problems this brings to encourage activity in young and old alike. Coupled with the need for more environmentally sustainable (non-motorised) recreation close to large urban areas council is in a unique situation to give many people the opportunity to enjoy greater access to our wonderful outdoor terrain.
5. On the news of implementing the closure of the State Mine Trail Council voted to assist the club in any way possible to secure a new venue.

The project required referral to the Sydney Catchment Authority (SCA). This referral was done on 7 August 2008. Correspondence was received from the SCA on 13 August 2008 advising that they required additional information to allow them to assess the application. Further information was sent to the SCA on 21 October 2008 but to date no response has been received as to if the information provided is acceptable. As a result of the communication issues with the SCA, the issue was raised by the General Manager and the Group Manager Regional Services at a high level meeting with the SCA on 17 March 2009. The SCA advised that the necessary response will be provided quickly to allow the issue to be finalised.

The application has identified the existing environment and the potential construction and operation impacts, on the environment. Impacts relating to the construction phase may include saltation and sedimentation, noise, increased traffic during construction, potential impacts to the local waterway and the generation of waste. The impacts likely to arise from operation may be increased traffic, noise, pollution of waterways, maintenance, and safety.

Location

Legal Description :	Lot 1 DP 1094395 & Lot 203 DP 751650
Property Address :	Hassans Walls Reserve Lithgow NSW 2790

Zoning

The land is zoned Open Space 6 and part is Environmentally Sensitive under Lithgow's local Environmental Plan 1994 and is permissible for recreational use and community facilities.

POLICY IMPLICATIONS

The application was called in by Councillor Ticehurst on 5/8/08.

Council Policy 7.6 for Development Applications By Councillors And Staff And Relatives Or On Council Owned Land is applicable to this application as the development is proposed partially on Council owned land being land used by the Lithgow Pony Club.

The policy states:

"...where the development application is on Council owned land, that such application be referred to Council or its appropriate committee for consideration and determination and that no aspect of the application be dealt with under delegated authority. "

In this case it is considered appropriate to request the Council to vary its policy stance and allow the General Manager to have delegation to determine the application. This request is due to the delay caused through the SCA referral process and the attempt by CTMBC to have a trail completed so that it can negotiate for championship events in 2009. The SCA are due to give Council their response after the close of the business paper so their conditions cannot be shown in this report, however it would be remiss of Council to require the application to go to the next Council meeting for the consideration of full conditions as it may inadvertently cause a loss of opportunity for CTMBC to negotiate for future events.

There are no other specific policy implications relating to the development.

FINANCIAL IMPLICATIONS

Nil in respect of the assessment of the DA/CC.

LEGAL IMPLICATIONS

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 79C of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000. Should Council concur with the recommendation, this will be provided to the General Manager for consideration in determination of the application.

ATTACHMENTS

Nil

RECOMMENDATION

THAT:

1. Council note the progress of DA/CC 134/08.
2. Council vary its policy in this instance and delegation be given to the General Manager to determine the development application/construction certificate.

MOVED

THAT:

1. Council note the progress of DA/CC 134/08.
2. Council vary its policy in this instance and delegation be given to the General Manager to determine the development application/construction certificate.

MOVED: Councillor W McAndrew

SECONDED: Councillor H K Fisher.

An **AMENDMENT** was moved

THAT:

1. Council note the progress on DA/CC 134/08
2. A further report, if available, on the development application / construction certificate be provided at the Extra Ordinary Meeting or next possible Council meeting.

MOVED: Councillor M F Ticehurst

SECONDED: Councillor C Hunter

On being put the Amendment was carried and became the Motion.

09-128 RESOLVED

THAT:

1. Council note the progress on DA/CC 134/08
2. A further report, if available, on the development application / construction certificate be provided at the Extra Ordinary Meeting or next possible Council meeting.

MOVED: Councillor M F Ticehurst

SECONDED: Councillor C Hunter

CARRIED

ITEM:14 REG - 30/03/09 - NSW HOUSING CODE IMPLEMENTATION

REPORT FROM: GROUP MANAGER REGIONAL SERVICES - ANDREW MUIR

SUMMARY

To inform Council of the implementation of the NSW Housing Code and its potential impact on Council.

COMMENTARY

The NSW Housing Code was introduced by the state government for commencement on 27 February 2009. The NSW Housing Code outlines how residential developments, including:

- Detached single and double storey housing,
- Home extensions, and
- Other ancillary development, such as garages and swimming pools

can proceed on lots of greater than 450 square metres as complying development with council or an accredited certifier sign-off. It also outlines how 41 types of minor developments can proceed as exempt development without approval.

The government through the Minister for Planning has outlined the following reasons for the implementation of the NSW Housing Code.

"The NSW Housing Code is needed for a variety of reasons, including to provide a more timely assessment for new detached house and house extensions. Overall, about 94 per cent of new detached house approvals in NSW last year required lodgement of a development application (DA).

The average time to process a DA for a typical detached house across NSW is 75 days. In Sydney, the gross determination time ranges between individual councils from 34 to 254 days.

Furthermore, there are currently 115 different exempt and complying development codes (114 councils, plus 38 councils using the existing voluntary Statewide standard). Even in neighbouring council areas, with a similar housing stock and lot sizes, there are markedly different rules for the same sorts of development."

The following comments are provided for the assistance of Council.

- Lithgow City Council in the last Development Monitoring Report prepared by the Department of Planning had an average processing time of **16 days for all developments, not just for detached houses and extensions**, far better than the figures being quoted by the Minister.
- Council has for a number of years been using State Environmental Planning Policy (SEPP) 60 for determination of exempt and complying development. Therefore, Council cannot be accused of not using legislation being promoted by the Department of Planning.

The introduction of the NSW Housing Code is viewed generally by local government as an attempt by the State Government to further erode councils planning powers and place development control into the hands of private certifiers working for developers. It is **not** an improvement to the system for the benefit of the ratepayers and residents of our council area.

Exclusions

There are a number of exclusion categories for residential developments that do not meet the requirement for assessment as Complying Developments and will still require lodgement of a Development Application/Construction Certificate. These include, but are not limited to:

- Development in the Lithgow Mine Subsidence Board District (unless the applicant has prior MSB approval)
 - Development on flood prone land
 - Development on unsewered land to which the Drinking Water Catchments Regional Environmental Plan No 1 applies
 - Development on land zoned rural and in the village zones except for alterations and additions and ancillary development
 - Development on Environmentally Sensitive Land
 - Development of land that comprises a Heritage Item, draft Heritage Item, is within a Heritage Conservation area or Draft Heritage conservation area that has been publicly exhibited after 1 March 2006.
-
- Any development on land listed on the State Heritage Register
 - Any development on land considered Bush Fire Prone
 - The proposed development does not meet the minimum allotment requirements or development standards established in the NSW Housing Code.

The Department of Planning has produced a series of information fact sheets and resource documents that can be found on line at www.planning.nsw.gov.au/housingcode.asp . The Department also intends to produce local handouts to identify the land based exclusion zones and provide specific guidance for customers.

POLICY IMPLICATIONS

There are no issues relating to policy within the Council's Policy Register. A 12 month transition period, until 27 February, 2010, is provided for full implementation of the Code. In this period the NSW Housing Code runs in conjunction with any codes and policies Council has been using, such as SEPP 60 and the South Bowenfels DCP. Within this period the applicant can nominate which planning controls they require their Complying Development Certificate (CDC) Application to be assessed under.

For consistency with future decisions and to reduce confusion, council staff will be suggesting that applicants nominate the NSW Housing Code for the assessment of their CDC.

Following the 12 month transition period, the provisions of the South Bowenfels DCP relating to Exempt and Complying Development will become obsolete. Council will need to modify this DCP to reflect the Code. Council's Policy and Planning Division will be addressing this within the development of the Comprehensive DCP to coincide with the commencement of a new Comprehensive LEP.

The Code removes the opportunity for neighbour notification to occur before development is approved. Whilst it has been claimed that development standards in the code ensure that development does not adversely impact on the enjoyment of neighbouring lands, this will remain to be seen over time.

FINANCIAL IMPLICATIONS

There will be a reduction in revenue to Council from reduced fees as a Development Application will no longer be required in some circumstances. The system is aimed at increasing the use of private certifiers but a continued reliance on Council to follow up on issues resulting from a private certifier's incompetence will potentially result in a cost to Council. Experience with the level of competence of some private certifiers suggests that this cost could be substantial. An increased number of applications being processed by private certifiers will also result in a reduction in revenue from fees to Council.

LEGAL IMPLICATIONS

The NSW Housing Code has been given its legal framework through State Environmental Planning Policy (Exempt and Complying Development Code) 2008 gazetted on 12 December 2008 and it came into force on 27 February 2009. As such it overrides any lower order plans such as the Local Environmental Plans, Development Control Plans or local policy.

The implementation of the SEPP has also required amendments to the Environmental Planning and Assessment Regulations including the specification of a period of 10 days for determination of Complying Development Certificates; changes to Section 149 (2) Certificates; and the introduction of new provisions to require councils or accredited certifiers to issue written notice of determination of a complying development certificate to the owner or occupier of any land within 40 metres of any boundary of the land to which the CDC relates within two days after the date of determination.

ATTACHMENTS

Nil

RECOMMENDATION

THAT the Council notes the information on the NSW Housing Code implementation.

09-129 RESOLVED

THAT:

1. The Council notes the information on the NSW Housing Code implementation.
2. Council write to the State Member, Gerard Martin MP seeking his advice on possible exemptions.

MOVED: Councillor H K Fisher
CARRIED

SECONDED: Councillor W McAndrew.

**ITEM:15 REG - 30/03/09 - 04/09DACC HOWARDS AND SONS
PYROTECHNICS CLARIFICATION OF RESOLUTION**

REPORT BY: GROUP MANAGER REGIONAL SERVICES – ANDREW MUIR

REFERENCE

Minute No.08-76 Council Meeting
Minute No.08-43 Policy & Strategy Meeting
Minute No. F08-144 Finance & Services

SUMMARY

To seek clarification as to the resolution made by Council at its Finance & Services meeting dated 2 December 2009. The recommendation is for assessment of a current application given that is for demolition and cleanup and no pyrotechnics works are to be undertaken.

COMMENTARY

Council is in receipt of DACC 004-09 from Howard & Sons Pyrotechnic for the demolition and cleanup of the current site. The application seeks the demolition of two damaged buildings; the removal of an existing inert metal debris pile; the demolition and rebuild of two residential related outbuildings being a double garage and garden shed; the rebuilding of the roof of the residence and non-structural repairs to the office building and staff amenities. The applicant has indicated that the work proposed will remediate damage caused by an explosion on the site in December of 2007. Further, the applicant has indicated that as part of this application, no works are proposed (or re-instating of manufacturing of pyrotechnics) on or in any of the manufacturing sheds currently on-site and does not seek approval for the operation of any continuation of manufacturing.

The application is simply for the demolition and re-build of structures that are inhabitable or structurally inadequate on site at this time.

At its Finance & Services meeting of 2 December 2008 (Res No. F08-144) Council resolved as well as others that;

- 3 *Council not grant any development application approvals until the report from WorkCover is received and made public.*

The applicant has sought clarification to this resolution, as this application does not seek to continue operation of manufacturing on site, it is simply a demolition and re-build of damaged buildings on-site from the explosion in December 2007.

POLICY IMPLICATIONS

There are no perceived policy implications associated with this application.

FINANCIAL IMPLICATIONS

The possible financial implications associated with this application are Council court costs should the applicant reserve their rights to appeal a 'deemed refusal' in the Land & Environment Court after the statutory period for the determination of an application under current legislation.

LEGAL IMPLICATIONS

As with any development application the applicant can reserve the right to appeal a decision made by a consent authority. In this case given the resolution made by the Council elect on 2 December 2008 a 'deemed refusal' can be considered after 40 days of an open application being lodged.

There is also an issue with Council resolving not to grant approvals pending the receipt of a Workcover report as it could be seen to be 'pre judging' an application prior to its lodgement and assessment on its merits. It is suggested that Council alter its stance and simply resolve that any such application be referred to the elected Council for determination.

RECOMMENDATION

THAT Council resolve to modify condition 3 of Resolution No. F08-144 with states:

“Council not grant any development application approvals until the report from WorkCover is received and made public”.

to

“Any development application for the continuation of pyrotechnics manufacturing or works associated with operation or manufacturing of pyrotechnics at the site be referred to Council for determination.”

09-130 RESOLVED

THAT Council resolve to modify condition 3 of Resolution No. F08-144 with states:

“Council not grant any development application approvals until the report from WorkCover is received and made public”.

to

“Any development application for the continuation of pyrotechnics manufacturing or works associated with operation or manufacturing of pyrotechnics at the site be referred to Council for determination.”

MOVED: Councillor G Danaher
CARRIED

SECONDED: Councillor W McAndrew.

A **SUPPLEMENTARY MOTION** was moved.

09-131 RESOLVED

THAT Council seek an update on the Workcover report in relation to the explosion in December 2007 and that on receipt, the report be provided to the Council and public.

MOVED: Councillor W McAndrew
CARRIED

SECONDED: Councillor H K Fisher.

**ITEM:16 REG - 30/03/09 - SUPPLY OF WATER FROM THE FARMERS CREEK
SUPPLY TO MARRANGAROO**

REPORT BY: GROUP MANAGER REGIONAL SERVICES - ANDREW MUIR

REFERENCE

Nil.

SUMMARY

To advise of investigations into the supply of water from the Farmers Creek (“Lithgow Water”) Supply to Marrangaroo.

COMMENTARY

Council officers have investigated the options and issues in supplying Lithgow Water to Marrangaroo. In summary, it is possible without the necessity for major works, but there could be some wider impacts that Council should be aware of particularly impacts on water pressure and possibly some dirty water issues. However, after discussions with Council’s Plumbers and Plant Operators this may be able to be minimised by ensuring that the correct sequence of events is followed in consultation with State Water (Fish River Water Supply). Should this be successful then it should be possible to ‘push’ water to the Marrangaroo area without the need to utilise the Marrangaroo Reservoir at Marrangaroo Fields which, due to its elevation and the use of a pumping arrangements, had resulted in pressure problems when it had been previously utilised. It should be noted that this would also result in Lithgow water being available to the wider Marrangaroo area and not just Marrangaroo Fields.

Prior to tonight’s meeting, a ‘test run’ was scheduled to turn off valves at the Fish River supply, flush and charge lines and turn on valves to push the water to the Marrangaroo area. The results of the test run will be reported to the meeting.

POLICY IMPLICATIONS

Policy 12.2 relates to water restrictions from a non-compliance perspective. Should the supply of Lithgow water to Marrangaroo prove successful, then the Marrangaroo area could go from Level 5 restrictions to Level 4.

FINANCIAL IMPLICATIONS

Although Council pays access charges to Fish River for its allocation which would not change, it would save on usage charges. Balanced against this would be the likely need to start up and operate the Clarence Transfer System on a more regular basis, plant and pump operating costs and potentially some additional wage costs particularly when testing and trialling.

LEGAL IMPLICATIONS

No specific legal implications.

ATTACHMENTS

Nil

09-132 RESOLVED

THAT:

1. If the testing to be carried out prior to the Council meeting is successful then Council commence supplying water from the Farmers Creek Supply to the Marrangaroo area.
2. Should the supply as indicated in recommendation No 1 occur, then the situation be monitored for a period of two months and if any negative impacts arise they be reported to Council for consideration. Should serious impacts arise, the General Manager shall be delegated authority to revert the area back to the Fish River Supply.
3. The level of water restrictions applicable for any period that water is supplied from the Farmers Creek system will be as for any other area supplied from this system (NB: This is currently level 4).

MOVED: Councillor H K Fisher

SECONDED: Councillor R Thompson

CARRIED

**ITEM:17 REG - 30/03/09 - 2007/2008 ANNUAL REPORT OF THE STATE
EMERGENCY SERVICE OF NSW**

REPORT FROM: GROUP MANAGER REGIONAL SERVICES – ANDREW MUIR

REFERENCE

Nil

SUMMARY

This report provides a summary of the Annual Report of the State Emergency Service (SES) of New South Wales for the 2007/2008 financial year.

COMMENTARY

Council has received correspondence from the State Emergency Service of New South Wales, providing their Annual Report for the 2007/2008 Financial Year. Of particular interest to Council are the following priorities the SES have identified in the next three (3) years:

- Working with councils to continue to improve the awareness of the community about how to protect themselves and their property from the effects of floods and storms;
- Working with councils, where required, to upgrade the facilities and vehicles of the State Emergency Service Units;
- Working with councils on Floodplain Risk Management Committees to assist in the development and implementation of a Floodplain Risk Management Plan for the Council area;
- Further upgrading of the State Emergency Service's flood intelligence so that they can provide timely and accurate information to communities threatened by floods; and
- Continuing to improve the public profile of the State Emergency Service by working closely with local media, councils and communities, and utilising their network of State Emergency Service trained community liaison officers.

A copy of the full report is available from the State Emergency Service website (www.ses.nsw.gov.au), or from Council's Regional Services Department upon request.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

09-133 RESOLVED

THAT Council note the information in relation to the 2007/2008 Annual Report of the State Emergency Service of New South Wales.

MOVED: Councillor H K Fisher

SECONDED: Councillor G Danaher

CARRIED

**ITEM:18 REG - 30/03/09 - 015/08DA HEALTH & FITNESS CENTRE - 9
 WOLGAN STREET PORTLAND NSW 2847**

REPORT BY: ANDREW MUIR - GROUP MANAGER REGIONAL SERVICES

SUMMARY

To assess and recommend determination of DA 015/08. Recommendation will be for refusal.

COMMENTARY

Council is in receipt of Development Application 015/08 from Portland RSL Club for the renovations and upgrading of an existing building to be utilised as a health & fitness facility and youth centre on land described as Lot 2 DP 204896 and known as 9 Wolgan Street, Portland. It is proposed to expand the current club facilities to include a gymnasium, indoor pool and spa facilities and associated ancillary infrastructure including locker rooms, and amenities.

Previously, Council officers proposed to recommend approval to an amended application that sought a eastern wall height of 5.5m. Under the provisions of the Environmental Planning & Assessment Act 1979 the recommendation was to approve the development subject to a deferred commencement approval requiring the applicant redesign the eastern wall of the development to minimise or alleviate the unacceptable impact on adjoining landowners.

Prior to the finalisation of the application Council resolved to hold a Citizens Access Meeting on site with the applicant and concerned landowners. (A copy of the minutes are highlighted in the submissions section of the report). After attending the onsite meeting Council officers received a further amendment to the application indicating that the applicant sought the application be assessed on the original plans which meant the plans reverted to the eastern wall height of 7.2m as originally proposed.

LOCATION OF THE PROPOSAL

Legal Description :	Lot 2 DP 204896
Property Address :	9 WOLGAN STREET PORTLAND NSW 2847

ZONING: The land is zoned Village 2(V) in accordance with Council's Local Environmental Plan 1994.

PERMISSIBILITY: The development is considered to be permissible in the zone being defined under the Environmental Planning & Assessment Model Provisions 1980 as a **recreation facility** meaning a building or place used for indoor recreation, a billiard saloon, table tennis centre, squash court, swimming pool, gymnasium, health studio, bowling alley, fun parlor or any other building of a like character used for recreation and whether used for the purpose of gain or not, but does not include a place of assembly.

The development is consistent with this provision of the EPA Model Provisions and is permissible in the zone, given development consent.

POLICY IMPLICATIONS (OTHER THAN DCP's)

There are no other perceived policy implications as part of this application.

FINANCIAL IMPLICATIONS (eg Section 94)

Financial implications are considered as part of this application as carparking has not been provided as part of this development. The applicant has indicated that they wish to use an existing Council owned parking area to support their application. This is considered to be an issue for Council consideration.

LEGAL IMPLICATIONS

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

Any Environmental Planning Instrument

Consider SEPPs, REPs & LEPs. RELEVANT Provisions of LEP (eg permissibility, development standards, heritage listing, advertising requirements of another authority who administers a SEPP or REP). Is a SEPP1 objection required?

LEP

The proposal is considered to be a recreational establishment, and as such is allowed within the village zone with development consent under Local Environmental Plan 1994 which states:

1 Objectives of the zone

The objectives of the zone are:

- (a) to promote development which is compatible with an urban function within a rural area,
- (b) to maintain the rural atmosphere of the village,
- (c) to safeguard residential amenity within the village, and
- (d) to prevent pollution of water supply catchments and water quality in major water storages.

2 Without development consent

Development for the purpose of single dwellings, where:

- (a) a sewer is available, or
- (b) the Council is satisfied by a geotechnical assessment that disposal of domestic waste water within the boundaries of the allotment is feasible.

3 Only with development consent

Any development except that permitted without consent or prohibited.

4 Prohibited

Development for the purpose of extractive industries; intensive livestock keeping establishments; junk yards; mines; offensive or hazardous industries.

It is considered that the application in its current form conflicts with the aims and objectives of the 2(v) zone whereby it does not;

- safeguard residential amenity within the village

SEPP

SEPP 64 - Advertising and Signage, is applicable to the development.

The proposal involves numerous building identification signs and a wall advertisement on the front elevation. The SEPP does not restrict the number of building identification signs which can be erected on a building, however it states that only one wall advertisement is allowed on each elevation. As such the proposal complies with the SEPP.

SEPP 11 – Traffic Generating Developments, is not applicable to the development, as the building does not exceed 2000sq/m in floor area.

SEPP 22 – Shops and Commercial Premises, relates to change of use only. As such is not applicable to this application.

SEPP 55 – A preliminary investigation has been submitted indicating that there is no visual signs of contamination.

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

If applicable, is the development consistent with the objectives of the draft instrument?

Nil

Any Development Control Plan

Council's car parking DCP applies to the site being a development that will increase the maximum car parking spaces required for the proposed development. However, due to the site being fully occupied concessions are being sought.

The Off Street Car Parking Development Control Plan is applicable to the proposal. The DCP states that recreational facilities must have provision for off street car parking however no criteria exists for recreational establishments. This introduces an issue of off street car parking and numbers considered to be practical in this instance. In the submission the applicant has indicated that proposed numbers within the centre at any one time would be at maximum 25, thus car parking numbers could be determined around this number. It could only be determined through the discretion of Council, or through the provision of a Planning Agreement, or other commercial arrangement to allow use of Council's adjoining carpark. Alternatively, should the applicant not propose to provide car parking for the development Council can either require car parking, or refuse the application.

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

Nil at this stage.

Any matters prescribed by the regulations that apply to the land

Council's Building Team leader has assessed the application and has provided comments within the submission section of the 79(c) report. However, this report has been submitted on plans indicating a eastern wall height of 5.5m. In correspondence with Council's Building Team Leader it was indicated that no additional BCA concerns or conditions would be required for the development, other than an increased impact on adjoining neighbours.

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

Amenity and Streetscape – The proposal will have a minimal visual impact on Wolgan Street because it proposes to re-establish the existing shop frontage, however the development in its current form proposes to create a 7.2m blank wall adjoining a residential premises on the rear boundary. A redesign of the proposal could minimise the effect of the development on any adjoining neighbour. However, with the final amendment reverting to the original 7.2m height at the eastern wall unacceptable impacts on the adjoining owners amenity can be supported. If approval is to be considered, only deferred commencement approval should be issued subject to a redesign of the proposed rear elevation that adjoins 4 Cullen Street. It is considered that in its current form Council cannot support the 7.2m height of the rear (eastern) elevation.

Bulk & Scale – As for amenity and streetscape it is considered that the bulk and scale issues relating to the impact on adjoining residential landowners will be unacceptable given the proposed development will extend to the property boundary, leaving no space within the allotment for landscaping or minimising the impact.

No other development within the stated 'commercial area' extends to the length this application proposes. The applicant has indicated that development to the north of the proposed development impacts on the adjoining landowner in the same way, however as part of the Foodworks application the development was notified to adjoining landowners with no submissions being received. It also must be stated that a lane exists between the adjoining landowners and the Foodworks development that does not occur with this current application.

As part of the original application the applicant submitted a shadow diagram indicating that the proposed development will overshadow an additional 50m² within the adjoining landowners backyard. This means that at the winter solstice an additional 50% of the back yard will be in shadow. It is considered in its current state, the overshadowing component of the accumulating impact is unacceptable.

Character – The façade to Wolgan Street has been architecturally treated to reduce the impact of the building on the streetscape. Utilising the original heritage frontage minimises any character impacts of the development. However no development with Wolgan Street frontage protrudes to the rear at a height similar to what is proposed by this development. Further, existing development in the vicinity tends to take into consideration the needs of adjoining residential premises by reducing the heights of skillions towards the rear of the properties.

Landuse Compatibility - The proposal is within Portland Central Business District and adjoins other commercial and residential development.

Noise – Only issues relating to the construction phase will have a detrimental noise impact. It is considered that given appropriate conditions these impacts can be minimised. Other noise generated from the development are delivery trucks and such.

Proposed trading hours are 5am to 8pm Monday to Friday, 7am-8pm Saturdays and 8am to 5pm Sundays.

Access and Traffic – The applicant has requested a concession in relation to off street car parking, as the development is proposed to take up the entirety of the site, and as such not comply with the provisions of Council's current DCP.

Services – All services are available to the site with the existing utilities being deemed adequate for the proposal.

Water and Soils – The proposal will connect to the Portland town water supply. The implication of stormwater runoff has been assessed by Council's Development Engineer, whose comments have been included later in this report.

Wastes – All waste storage has been designed to satisfy Council's requirements. All waste disposal is to be proposed to be undertaken through a private contractor.

Safety and Security – The proposal provides for good visibility of building entry and adjoining public areas. Access to the building will also be restricted to customers to hours of operation only.

Social/economic/cumulative impacts – The proposed development is a new gymnasium and health centre including an indoor swimming pool which will have a positive social impact on Portland. The facility is proposed to provide a modern convenient fitness centre which is considered to be of social and economic benefit to the town.

Landscaping – given the nature of the development and the take up of the entire site as part of the development no landscaping is being proposed.

Lighting – external under awning and car parking lighting is proposed for the site. It would be conditioned, should approval be granted that all external lighting be cast internally thus creating minimal impact on adjoining properties.

The Suitability of the site for the development

There are no known man made or natural hazards affecting the proposed development. It is considered that the site is suitable for the proposed development however given that size of the eastern wall and the impacts proposed to be accepted by adjoining landowners, the application cannot be supported.

Any submissions made in accordance with this Act or the Regulations

Due to the nature of the application neighbour notification was undertaken. Given the amended proposal the application was re-notified. Council received one submission during this period.

The submission highlighted several issues that are identified below, and include:

- Bulk & Scale & Privacy – encroachment of the development on the boundary of the land. A 7.2m blank wall will have a significant impact on the amenity of the adjoining land and impact through overshadowing, privacy and scale, given the village zone.
- Noise – air conditioner noise on the rear boundary may detrimentally affect the amenity of adjoining residential development.
- Lighting – Potential lighting impacts through external lighting in adjoining properties windows
- Car Parking – No provision of car parking has been lodged which could only mean that the area adjoining the current car park will increase and the impacts associated with that given existing residential development surrounding the proposed development

Further, Council's Development Engineer, Environmental Officer and Building and Development Officer have been asked to comment on the proposal. All indicated that conditional approval could be recommended and their conditions would be incorporated should Council wish to approve the application.

Conclusion

As the applicant has chosen to revert to the original proposal with a 7.2m external wall to the original proposal with a 7.2m external wall which will create unacceptable impacts a recommendation is to be made for refusal. Should approval be considered by Council, a deferred commencement approval should be considered to minimise issues relating to bulk and scale and to minimise the adverse impact on the amenity of the residential land to the east of the site.

No issues of the wider public interest have been raised in addition to the matters raised in the above report.

DISCUSSION AND CONCLUSIONS

It is considered because of the unacceptable impacts of the proposed development on adjoining landowners, car parking inadequacies, amenity and unacceptable bulk and scale issues associated with the development that the application cannot be supported in its current form.

09-134 RESOLVED

THAT development application 015-08DA be refused for the following reasons:

1. Unacceptable impact of the development on adjoining landowners with respect to amenity, overshadowing & bulk and scale.
2. The application cannot conform to the provisions of Councils Car Parking Development Control plan.
3. The application is antipathetic to the aims and objectives of the 2(v) Village zone.

MOVED: Councillor W Marshall **SECONDED:** Councillor G Danaher
CARRIED

A **DIVISION** was called.

FOR

Councillor G Danaher
Councillor W McAndrew
Councillor H K Fisher
Councillor R Thompson
Councillor W Marshall
Councillor N L Castle

AGAINST

Councillor J J McGinnes
Councillor C Hunter
Councillor M F Ticehurst

ITEM:19 REG - 30/03/09 - DEVELOPMENT APPLICATION 014/08DA SUBDIVISION INTO 5 LOTS - IVATT STREET LITHGOW NSW 2790 - REVIEW OF DETERMINATION

REPORT BY: ANDREW MUIR – GROUP MANAGER REGIONAL SERVICES

Reference: Development Application No.014/08 approved by Council on 2 December 2008

Minute No: F08-140

SUMMARY

Council is in receipt of review of determination request for Development Application No. 014/08 from Marie Edward Pty Ltd for a previously approved development application for a 5 lot subdivision on land described as Part Lot 12 DP 1077891, being known as corner of Sandford Ave and Ivatt Street, Lithgow. The review seeks Councils redetermination of the application given the conditions imposed originally as part of the approval.

PROPOSAL

To assess and recommend review of determination for DA 014/08. Recommendation will be for approval subject to amended conditions.

LOCATION OF THE PROPOSAL

Legal Description :	Part Lot 12 DP 1077891
Property Address :	IVATT STREET, LITHGOW NSW 2790

The land subject to this application is in two physically separated parcels that only have one legal description. The 4 new lots will be located on the corner of Sandford Avenue and Ivatt Street. The residual of the Lot is further up Ivatt Street and stretches across to Crane Road retaining a number of existing dwellings. That part of the property is unaffected by this application but makes up the fifth lot.

ZONING: The land is zoned 2(a) Residential in accordance with Council's Local Environmental Plan 1994.

PERMISSIBILITY: The applicant has applied for a review of the determination which provides for the following:

82A Review of determination

- (1) If the consent authority is a council, an applicant may request the council to review a determination of the applicant's application, other than:
 - (a) a determination to issue or refuse to issue a complying development certificate, or
 - (b) a determination in respect of designated development, or
 - (c) a determination in respect of integrated development, or
 - (d) a determination made by the council under section 116E in respect of an application by the Crown.

- (2) A request for a review may be made at any time, subject to subsection (2A).
- (2A) A determination cannot be reviewed:
 - (a) after the time limited for the making of an appeal under section 97 expires, if no such appeal is made against the determination, or
 - (b) after an appeal under section 97 against the determination is disposed of by the Court, if such an appeal is made against the determination.
- (3) The prescribed fee must be paid in connection with a request for a review.
- (3A) In requesting a review, the applicant may make amendments to the development described in the original application, subject to subsection (4) (c).
- (4) The council may review the determination if:
 - (a) it has notified the request for review in accordance with:
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations, and
 - (b) it has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan, as the case may be, and
 - (c) in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same development as the development described in the original application.
- (4A) As a consequence of its review, the council may confirm or change the determination.
- (5) The decision whether or not to review the determination must not be made by the person who made the determination unless that person was the council, but is to be made by a person who is qualified under subsection (6) to make the review.
- (6) If the council reviews the determination, the review must be made by:
 - (a) if the determination was made by a delegate of the council—the council or another delegate of the council who is not subordinate to the delegate who made the determination, or
 - (b) if the determination was made by the council—the council.
- (7) The council must give notice of the result of the review to the applicant as soon as practicable after the review.
- (8) If on the review the council grants development consent, or varies the conditions of a development consent, the council must endorse on the notice the date from which the consent, or the consent as varied, operates.
- (9) If on a review the council changes a determination, the changed determination replaces the earlier determination as from the date of the review.
- (10) If on a review the council grants development consent, or varies the conditions of a development consent, the council is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal made under section 97 in respect of its determination withdrawn at any time prior to the determination of that appeal.
- (11) A decision on a review may not be further reviewed under this section.

POLICY IMPLICATIONS (OTHER THAN DCP's)

The application was previously called in by Councillors under Policy 7.7 and approved at the Council meeting on 2 December 2008.

FINANCIAL IMPLICATIONS

Financial implications are applicable to the subdivision should Council resolve to financially contribute to the development by supplying kerb and guttering to the road reserve, removing the current drainage easement (currently being utilised by Council) and taking control of a public laneway, which is to the benefit of Council and surrounding landowners.

LEGAL IMPLICATIONS

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 82A of the Environmental Planning and Assessment Act 1979.

COMMENTARY

The request for a review has resulted from an on-site meeting held between the applicant, Councillors and Council officers pertaining to the conditions imposed by Council on the developer, given the current Council infrastructure on site and the limited access of the existing adjoining landowners.

Prior to approval Council officers met with the applicant trying to seek a compromise to the current issues on site. These included;

- the open council drainage basin which traverses the land
- the land access issues to adjoining landowners, and
- the current road which encroaches the land at the Ivatt St/Sandford Ave intersection.

At that meeting the developer indicated the issues that affected the land and indicated that through negotiations with Council officers he had extended the proposed laneway to alleviate the current access issues on-site to adjoining neighbours in Sandford Avenue.

In return the developer sought relaxation on the standards to the laneway so as not to make the proposal unviable. It was indicated on site that no road reserve or laneway exists on the land and the laneway was simply an avenue to rectify previous access anomalies.

Further, the developer indicated that the open drainage basin which runs through the site will be required to be removed as part of the subdivision. Currently, no kerb and guttering exists on the land and it was indicated that Council has been using the open drain to re-direct off street stormwater (primarily from Busby Street) for a period of years. The applicant sought relaxation on conditions as part of the approved subdivision, given Councils current benefit on-site.

The below conditions have been sought for re-determination as part the application approval: (the applicants comments are in italics, Council officer comments in bold)

Traffic and Access

- 5 The applicant shall provide kerb and gutter along the front of Ivatt Street from the proposed lane to join the kerb and gutter in Sandford Avenue. The kerb and gutter design shall be submitted to Councils Operations Manager for approval.

It was acknowledged that the approval states that the applicant must provide kerb and guttering. After discussions regarding the origins of the water and the reasons for that water entering our property it was agreed that Council would provide the kerb, guttering & associated drains along Ivatt Street from the proposed lane to Sandford Avenue.

Council through the review component under Section 82A of the Environmental Planning has the power to vary the proposed Condition. It is recommended that the condition be varied so Council can discuss mutually amenable outcomes for the area and adjoining landowners. As such the condition could be varied as follows:

The applicant in collaboration with Council shall provide kerb and gutter along the front of Ivatt Street from the proposed lane to join the kerb and gutter in Sandford Avenue.

- 8 The road that currently encroaches the private land at the intersection of Ivatt Street and Sandford Avenue will be dedicated to Council as road reserve.

Marie Edward Trust Pty Ltd originally offered a portion of their land to council as a donation at the corner of Ivatt and Sandford Avenues for use as part of the said intersection.

This was based on the proposal that in return Council agreed to the removal and relocation of the open, above ground Council stormwater drain and its dispersion point off Marie Edward land.

It is proposed that an extension of the previously proposed condition could alleviate the need for these two conditions. As such the condition could be proposed as follows:

The applicant in collaboration with Council shall remove the existing open drain and design and provide kerb and gutter along the front of Ivatt Street from the proposed lane to join the kerb and gutter in Sandford Avenue entirely within Councils road reserve.

Civil Construction

9. The proposed access lane be provided at a width sufficient to allow the residents of Sandford Avenue backing onto this proposed subdivision to reverse their cars. The matter of the width of the lane be referred to the Traffic Authority Local Committee to advise.

The width of the lane was proposed in the plans provided to council these plans are now stamped & approved and Marie Edward Trust believe provides enough room for residents to leave or enter their property without having to go to the traffic authority committee for advice.

Council through the review component under Section 82A of the Environmental Planning has the power to vary the proposed Condition.

16. The proposed lane be sealed by the proponent.

Legal advice has been obtained that suggests that Marie Edward trust are not required to put in a lane however as agreed previously Marie Edward Trust agreed voluntarily to provide a gravel access lane only. If this lane has to be a sealed the whole project is not viable. Lawfully, no laneway exists between adjoining land and the proposed development. The extension of the lane was negotiated through meetings with the developer and Council Officers in order to rectify current unlawful access arrangements on-site. It is proposed that Council relax these conditions to require the lane to be constructed to a all weather gravel standard.

17. Drainage for stormwater is to be carried through the land and adjacent properties are to be protected from overland flows from the development. Inter-allotment drainage is to be provided. Details are to be submitted to Council for approval prior to construction.

It has been agreed that the drainage of storm water across the property be removed by Council at their cost and that drainage control across the property to protect adjacent properties be constructed in accordance with the Marie Edward Trust approved drainage and lane plans. Council through the review component under Section 82A of the Environmental Planning has the power to vary the proposed Condition.

18. Condition 18 is simply a repeat of 17 and is recommended that it is deleted as part of this re-determination.

- 19 The stormwater drainage be provided for at the proponent's expense.

Currently the stormwater drainage across the property was installed by a previous council and it has been agreed on the onsite meeting that the removal of this drain will be at Council's cost.

*With the installation of kerb and guttering along Ivatt Street the storm water drain will no longer be required. **New condition 5 would rectify the need for this condition.***

- 22 The five existing large trees on the allotment remain.

*Currently Lithgow Council has no tree preservation order and Marie Edward Trust will endeavour to keep trees and vegetation that will not impact on the saleability of each allotment in relation to house placement suitability. Future purchasers/ owners will make application if they feel they need to remove the trees. Council only, through the review component under Section 82A of the Environmental Planning has the power to vary the proposed Condition. **Council has no lawful requirement under current legislation that allows for the retention of any tree on privately owned land.***

DISCUSSION AND CONCLUSIONS

The proposed re-determination has been submitted due to the current anomalies on the land. It is considered that the negotiated lane recommended by Council Officers will alleviate potential access pressure on adjoining development, whilst maintaining a residential outlook. Whilst it is conceded, that in future years, there may be pressure put on Council to seal the lane the applicant has volunteered a solution, through negotiations, to afford legal access to existing residents. The only other option is a right of way and council may have concerns with this option. It is considered that a negotiated agreement be sought through this re-determination that will allow all parties to benefit from this development.

09-135 RESOLVED

THAT the re-determination of development application 014/08 be approved subject to the following amended conditions:

1. Condition 5, 8 and 20 be removed and replaced by the following:
The applicant, in collaboration with Council, shall provide kerb and gutter along the front of Ivatt Street from the proposed lane to join the Kerb and gutter in Sanford Avenue. Subject to separate agreement on final costings, Council will fund fifty percent (50%) of this kerb and guttering providing it is given a minimum of 12 months notice of the commencement of construction for budgeting purposes."
2. Condition 9, 18 & 22 be deleted.
3. Condition 17 be replaced by the following condition;
The proposed lane be completed by the proponent to an all weather gravel construction.

MOVED: Councillor R Thompson
CARRIED

SECONDED: Councillor H K Fisher.

A **DIVISION** was called and was passed **UNANIMOUSLY**

ITEM:20 REG - 30/03/09 - CLARENCE TRANSFER SYSTEM UPGRADE - UPDATE ON PROGRESS

REPORT BY: GROUP MANAGER REGIONAL SERVICES - ANDREW MUIR

REFERENCE

Ordinary Meeting of Council – 15 December 2009

SUMMARY

To provide Council with an update on progress of the project to upgrade the Clarence Water Transfer System.

COMMENTARY

Council will recall from its Ordinary meeting of 15 December 2008 its decision to enter into a funding agreement with the Commonwealth of Australia for the upgrade of the Clarence Transfer System in accordance with a two stage funding agreement. It is proposed to update the Council on progress in line with the critical milestones of the project. The following table indicates the milestones agreed by Council and progress to date.

MILESTONE	FUNDING AGREEMENT COMPLETION DATE	STATUS
Stage 1		
Sign Funding Agreement	19 December 2008	Complete
Engage consultant for Options Study	22 December 2008	Complete
Complete Options Study	30 April 2009	Proceeding – currently on schedule
Determine preferred option to proceed	30 June 2009	TBA
Stage 2		
Engage consultants for environmental assessment and preliminary design	30 July 2009	TBA
Finalise detailed tender and design	March 2010	TBA

Commence construction	September 2010	TBA
Finalise project including transfer of saved water entitlements	April 2011	TBA

POLICY IMPLICATIONS

No specific policy implications arise from this report.

FINANCIAL IMPLICATIONS

This project is to be fully funded by the Commonwealth Government.

LEGAL IMPLICATIONS

No specific legal implications arise from this report.

ATTACHMENTS

Nil.

RECOMMENDATION

THAT Council note the report on the progress of the Clarence Transfer System upgrade.

09-136 RESOLVED

THAT Council:

1. Note the report on the progress of the Clarence Transfer System upgrade;
2. Investigate ways of expediting the use of water from Clarence across the Council area.

MOVED: Councillor W McAndrew

SECONDED: Councillor H K Fisher.

CARRIED

COMMUNITY AND CORPORATE SERVICES REPORTS

ITEM:21 COMM - 30/03/09 - DRAFT LITHGOW GOLF COURSE PLAN OF MANAGEMENT

REPORT FROM: GROUP MANAGER COMMUNITY AND CORPORATE – SUZANNE LOLLBACK

REFERENCE

Minute 07-519: Policy and Strategy Committee: 3 December 2007

Minute 05-09: Ordinary Meeting of Council: 27 January 2009.

SUMMARY

This report recommends that the DRAFT Lithgow Golf Course Plan of Management be advertised calling for public submissions for a period of 28 days.

COMMENTARY

Council Resolutions

On the 3 December 2007 the Council resolved:

That a Local Environmental Plan be prepared for the reclassification of the Union Theatre Stables as illustrated on the plan, Lithgow Golf Club, Fire Control Centre and Meadow Flat Rural Fire Service lands.

The report states that these lands be reclassified from 'community' to 'operational' land.

On the 27 January the Council resolved the following:

That a meeting be held as a matter of urgency with the Golf Club Management Committee to immediately put in place a long term lease agreement.

Classification of Land under the Local Government Act 1993

The land upon which the Lithgow Golf Course sits is currently classified as 'community' land under the Local Government Act 1993 (Act). As per the resolution of the Council of 3 December 2007, consideration will be given to changing the classification of the land to 'operational' as part of the development of a comprehensive Local Environmental Plan for the Council. This process is not expected to be completed until early 2010.

Under the Act, a lease cannot be granted unless a Plan of Management is in place that identifies the permissible uses of that land should a lease, licence or other estate be granted.

Lease

The Lithgow Golf Club Limited currently holds a lease over the golf course with the permitted uses of: public golf course, licensed club house, golf pro shop, upstairs manager's residence.

This lease has a commencement date of 1 May 2004 and a termination date of 30 April 2009. The Lithgow Golf Club Limited has requested the renewal of the lease.

The terms of the lease state under Clause 12.4 the following:

12.4 If the landlord allows the tenant to continue to occupy the property after the end of the lease period (other than under a new lease) then –

12.4.1 the tenant becomes a monthly tenant and must go on paying the same rent and other money in the same way that the tenant had to do under this lease just before the lease period ended (apportioned and payable monthly)

12.4.3 either the landlord or the tenant can end the monthly tenancy by giving, at any time, one month's written notice to the other expiring on any date....

Legal Advice

Legal advice has been received from Council's solicitors who advise the following:

Section 46 of the Local Government Act prohibits the leasing of Community Land unless certain conditions are satisfied, one of which is that the council shall firstly have adopted a Plan of Management in respect of the land, and another of which is that Lease must be consist with the Plan of Management.

As a consequence of entering into the lease in breach of the Section 46 prohibition, the Lease would be considered void.

The Lease has been registered under the provision of the Real Property Act 1900, with the consequence that the indefeasibility of title provisions of the Act become relevant.

Notwithstanding non-compliance with Section 46 as referred to above, there is clear authority that registration under the Real Property Act 1900 of a dealing (e.g. a Lease) conferring an estate or interest in land (e.g. a Leasehold estate) is paramount, and confers on the party receiving the estate or interest and an indefeasible title to that estate or interest, notwithstanding that the dealing may be void. In this instance, therefore, the registration of the Lease under the Real Property Act creates an enforceable Lease notwithstanding the Section 46 prohibition.

The Lease is for a term commencing on 1 May 2004 and ending at the conclusion of 30 April 2009. There is no option to renew. However, by virtue of Clause 12.4 of the Lease, the Lease may continue as a month to month tenancy after the end of the specified term.

Should Council wish to enter into a new long term Lease with Lithgow Golf Club Limited, Council should give consideration to the classification of the land, and if the existing Community Land classification is retained, Council must adopt a Plan of Management in respect of the land prior to entering into the new Lease, to avoid a further non-compliance with Section 46.

Implications of Legal Advice

The above legal advice identifies that the provision of a lease is in breach of the Act. However, as the lease was registered under the Real Property Act, it is an enforceable lease and may continue on a month by month basis. The advice also highlights that there is no option to renew the lease until a Plan of Management is in place (as the land is classified as 'community') or until such time as the land is classified as 'operational'.

On the 27 January, the Council resolved *'That a meeting be held as a matter of urgency with the Golf Club Management Committee to immediately put in place a long term lease agreement'*.

To achieve the outcome of a lease, and to comply with the Act until such time as the land is classified as 'operational', a Draft Plan of Management has been prepared and is submitted to Council for consideration. Under the Act the Plan of Management must be advertised for 28 days, allowing for a response time of 42 days.

The lease that is put in place will then be able to continue when the land is classified as 'operational'.

Legislative Framework for Plan of Management

It is a requirement under the Act that a Plan of Management be developed for 'community' land and that the Plan of Management specifies objectives for the management of the land.

This attached Draft Lithgow Golf Club Plan of Management details the objectives for the management of the land and the purposes for which a lease may be granted for the Lithgow Golf Course and Club House.

The Department of Local Government ***Public Land Management Practice Notes*** provide the following:

Classification as 'community' land reflects the importance of the land to the community because of its use or special features. Generally, it is land intended for public access and use, or where other restrictions applying to the land create some obligation to maintain public access. Community land:

- *Cannot be sold*
- *Cannot be leased, licenced or any other estate granted over the land for more than 21 years*
- *Must have a plan of management prepared for it.*

The minimum requirements under the Act are that a plan of management must:

- *categorise the land in accordance with s.36(4) and (5)*
- *contain objectives for the management of the land*
- *contain performance targets*
- *specify the means of achieving the objectives and performance targets*
- *specify how achievement of the objectives and performance targets is to be assessed (s.36(3))....*

For plans that are specific to one area of land made after 1 January 1999, the plan must also:

- *describe the condition of the land as at the adoption of the plan*
- *describe the buildings on the land as at adoption*
- *describe the use of the buildings and the land as at adoption*
- *state the purposes for which the land will be allowed to be used, and the scale and intensity of that use (s.36(3A)).*

Categorisation of Community Land

Community land must be categorised according to the list in the Act, s.36(4). The categories reflect land use and/or describe the physical characteristics of the land. Categorisation is intended to focus council's attention on the essential nature of the land and how that may best be managed. ...

Significance of categorisation

Categorisation of community land has always been an effective way in which to focus on the essential aspects of each area of land.

First, community land must be managed in accordance with the core objectives for the relevant category. They apply as a result of the legislation and are not optional. Other objectives may be nominated by council, but neither these nor any other part of a plan of management should be inconsistent with the core objectives. ...

Second, a council may only grant a lease, licence or other estate in community land if the purpose of the grant is consistent with the core objectives for the category. This applies regardless of the actual authorisation for leases etc contained in a plan of management.

Section 35 (4) of the *Local Government Act, 1993* requires all community land to be categorized as one or more of the following:

- (a) *natural area,*
- (b) *a sportsground*
- (c) *a park*
- (d) *an area of cultural significance*
- (e) *general community use.*

Plan of Management

A Draft Plan of Management has been prepared for Lot 1 DP 840412 commonly known as the Lithgow Golf Course. The Draft Plan of Management addresses the requirements under the Act.

This Draft Plan of Management categorises the subject land as:

Sportsground - *being land used or proposed to be used primarily for active recreation involving organized sports or the playing of outdoor games.*

The Plan expressly authorizes the provision of a lease and associated licenses over the golf course and club house with the permitted uses of: public golf course, licensed club house, golf pro shop, functions and meetings, and upstairs residence and/or office.

These activities are consistent with the categorization of the land as 'sportsground'.

POLICY IMPLICATIONS

This Plan of Management complies with the Local Government Act 1993.

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

The adoption of a Plan of Management will allow the Council to enter into a new Lease over Lot 1 DP 840412 commonly known as the Lithgow Golf Course.

ATTACHMENTS

1. Draft Lithgow Golf Course Plan of Management

RECOMMENDATION

THAT the Council:

1. Advertises for a minimum period of 28 days calling for public submissions on the Draft Lithgow Golf Course Plan of Management.
2. A report be put back to the Council on any public submissions along with the Draft Golf Course Plan of Management.

Councillor W McAndrew declared an interest and vacated the Chambers at 8.17pm.

This item was **WITHDRAWN**.

Councillor McAndrew returned at 8.24pm.

ITEM:22 COMM - 30/03/09 - RESPONSE TO BUSINESS OF AN URGENT NATURE - 27/01/09 FROM COUNCILLOR H K FISHER CONCERNING RTA STOCKPILE AT TUNNEL HILL

REPORT FROM: MANAGER COMMUNITY AND CULTURE – MATTHEW JOHNSON

REFERENCE

Min No 09-38: QWN 27/01/09 from Ordinary Meeting of Council 27/01/09

SUMMARY

This report provides information received from the RTA in response to Councillor Fisher's question of an urgent nature concerning the RTA stockpile at Tunnel Hill.

COMMENTARY

The following information is provided from Mr John Harrison at the RTA:

The stockpile site at Tunnel Hill is a recognised stockpile site for our roadworks. The bulk of the material at Tunnel Hill is the excavated basecourse from the Tunnel Hill project. This material was surplus from the original Tunnel Hill works. The asphalt has also been stockpiled for reuse as pavement material. These materials have been stockpiled for reuse at the Diamond Swamp project, between Lithgow and Bathurst. That project is due to commence on 19 Feb 2009. Cartage of the stockpiled material should commence in mid March.

In addition to the stockpiled fill material there was a large number of concrete pipes. These primarily were surplus from the Lidsdale project due to design changes. They have now been recycled and used on the Tabrabucca / Crudine project.

The stockpiling and subsequent reuse of these materials will save the RTA and taxpayers in excess of \$500,000.

It appears that the RTA has since commenced this remediation work. The area near the picnic tables has been cleaned and the concrete pipes and new roadbase removed. Some old road base remains.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

Local Government Act NSW 1993

ATTACHMENTS

NIL

RECOMMENDATION

THAT Council notes the above information in response to a Question of an urgent nature and that the Roads and Traffic Authority stockpile at Tunnel Hill is a recognised stockpile for road works and that the stockpile is being reused in other works.

09-137 RESOLVED

THAT Council press the Roads and Traffic Authority for a final clean up date in relation to the stockpile at Tunnel Hill and have the area returned to its natural state.

MOVED: Councillor H K Fisher

SECONDED: Councillor W McAndrew.

CARRIED

**ITEM:23 COMM - 30/03/09 - ESTABLISHMENT OF ALCOHOL FREE ZONE IN
 PORTLAND AND WALLERAWANG CBD AREAS**

REPORT FROM: MANAGER COMMUNITY AND CULTURE – MATTHEW JOHNSON

REFERENCE

Min No 368-04 Ordinary Meeting of Council 22/03/04

Min No 24-09 Ordinary Meeting of Council 27/01/09

SUMMARY

This report proposes the establishment of Alcohol Free Zones in the Portland and Wallerawang CBD areas for a further 4 years.

COMMENTARY

Council resolved at the ordinary meeting of Council of 27/01/09 resolution 24-09

That:

1. *Council endorse the attached proposal to re-establish the Alcohol Free Zone in the Lithgow CBD for a further 4 years and advertise it for public comment in accordance with Section 644A of the Local Government Act 1993.*

2. *Council includes the following areas in the Lithgow CBD Alcohol Free Zone:*
 - *Eskbank Street (from Mort Street to Railway Parade)*
 - *Cook Street Plaza*
 - *Bank Lane*
 - *Tatts Lane*
 - *Collins Laneway*
 - *Exchange Walkway*
 - *Bank Street between Main Street and Gray Street.*
3. *A further report be brought to Council giving consideration to expansion of alcohol free zones in other parts of Lithgow and other townships and villages.*
4. *A report be brought back to Council on the number of fines issued by Police over the past 5 years for breaching the previous alcohol free zones.*

In respect of points 1, 2 and 4 of the resolution, the Police and all affected licensees have been advised of the establishment of the Lithgow CBD zone which will come into effect once new signage is installed. Lithgow Police have advised that statistics are not available on the number of fines issued by Police over the past 5 years for breaching the previous alcohol free zones. Lithgow Police advises that the number of fines issued would be low and that their powers have been used to issues warnings, to move people on and to confiscate alcohol being consumed.

In respect of point 4 of the resolution, correspondence has been received from Sergeant Scott Russell, the Sector Commander for Portland and Wallerawang Police asking that Council re-establish the Portland alcohol free zone and establish a new alcohol free zone in Wallerawang CBD. Under the Local Government Act 1993, Alcohol Free Zones can be established for 4 years.

The current Alcohol Free Zone in Portland CBD lapsed in 2007. It appears also that there has not previously been an alcohol free zone in Wallerawang.

To establish the Alcohol Free Zones, Council is required under Section 644A of the Local Government Act 1993 to undertake a public consultation process prior to implementation. This process involves:

- Publishing a notice of the proposal in the Lithgow Mercury inviting representations on the proposal within 14 days of the date of publication.
- Sending a copy of the proposal to the Officer in Charge of the relevant Police Station and all liquor license holders and secretaries of registered clubs whose premises border on, adjoin or are adjacent to the proposed zone. A period of 30 days is given for representations to be made.

Affected Areas

Portland

The boundaries of the proposed re-established Portland CBD Alcohol Free Zone is unchanged from the previously lapsed zone which includes the area bounded by Williwa, Lett, Cox, Villiers and Cullen Streets as follows:

- Williwa Street from Lett Street to Saville Street.
- Lett Street from Vale Street to Williwa Street
- Scheidel Lane
- Cox Street from Villiers Street to Vale Street.
- Vale Street from Lett Street to Wolgan Street
- Wolgan Street from Villiers Street to Williwa Street.
- Villiers Street from Lett Street to Wolgan Street
- Wallerawang Road from Cullen Street to Wolgan Street
- Cullen Street from Wallerawang Road to Williwa Street

Wallerawang

The boundaries of the proposed Wallerawang CBD Alcohol Free Zone include:

- Main Street between Pipers Flat Road (Black Bridge) and the Royal Hotel including Daintree Lane, Blackberry Lane and Doggett Lane.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

Local Government Act NSW 1993

09-138 RESOLVED

THAT:

1. Council endorses the attached proposal to establish Alcohol Free Zones in the Wallerawang and Portland CBD areas for a further 4 years and advertise it for public comment in accordance with Section 644A of the Local Government Act 1993.
2. Council includes the following areas in the Portland CBD Alcohol Free Zone:
 - Williwa Street from Lett Street to Saville Street.
 - Lett Street from Vale Street to Williwa Street
 - Scheidel Lane
 - Cox Street from Villiers Street to Vale Street.
 - Vale Street from Lett Street to Wolgan Street
 - Wolgan Street from Villiers Street to Williwa Street.
 - Villiers Street from Lett Street to Wolgan Street
 - Wallerawang Road from Cullen Street to Wolgan Street
 - Cullen Street from Wallerawang Road to Williwa Street
3. Council includes the following area in the Wallerawang CBD Alcohol Free Zone:
 - Main Street between Pipers Flat Road (Black Bridge) and the Royal Hotel including Daintree Lane, Blackberry Lane and Doggett Lane.

MOVED: Councillor H K Fisher
CARRIED

SECONDED: Councillor G Danaher

COMMITTEE MEETINGS

ITEM:24 **COMM - 30/03/09 - SISTER CITY ADVISORY COMMITTEE**

REPORT FROM: ECONOMIC DEVELOPMENT OFFICER – ARABELLA PERUGINI-SHEERE

REFERENCE

Nil

SUMMARY

This report provides the Minutes of the Sister City Committee Meeting held on 2 February 2009 and recommends the in principle support for continuing the partnership with Shrewsbury & Atcham Borough Council – England; notifying other Sister Cities that overseas trips will be suspended until further notice and allocating funds for delegation visits.

COMMENTARY

The Sister City Committee met on 2 February 2009 to consider how to move forward with Council's Sister City commitments. There are three recommendations for Council's consideration.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The minutes of the meeting recommend to the Council that \$5000 be provided in the 2009/10 Management Plan to assist with hosting visiting delegations and providing promotional materials to visitors. It has been identified that some \$6,726.51 is retained in reserve from past years for Sister Cities projects. It is recommended that these funds be utilised and that \$5,000 not be provided in next years Management Plan.

LEGAL IMPLICATIONS

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

09-139 RESOLVED

THAT the Council:

1. Contacts Shrewsbury & Atcham Borough Council - England for an update regarding the schools debate and investigate ways to further this relationship.
2. Writes to the other Sister Cities explaining that as a result of the current economic climate, Council has suspended overseas trips and will review the situation at a later date. However, visiting delegations will be welcome.
3. Notes that \$6,726.51 is set aside in reserve for Sister Cities related projects and that these funds be utilised for any projects relating to Sister Cities.

MOVED: Councillor H K Fisher

SECONDED: Councillor G Danaher

CARRIED

**ITEM:25 COMM - 30/03/09 - TOURISM ADVISORY COMMITTEE MINUTES 3RD
FEBRUARY 2009**

REPORT BY: GROUP MANAGER COMMUNITY AND CORPORATE – SUZANNE LOLLBACK

REFERENCE

Min 09-76: Ordinary Meeting of Council 16 February 2009

SUMMARY

This report details the Minutes of the Tourism Advisory Committee Meeting held on 3 February 2009 for Council adoption.

COMMENTARY

At the Tourism Advisory Committee Meeting held on 3 February 2009, there were five (5) items discussed by the Committee.

1. Confirmation of Minutes
2. Presentation - Ironfest
3. Business Arising
4. Future Directions
5. Branding
6. Terms of Reference
7. Tourism Office Report
8. FORTO Grant Application
9. General Business
10. Tourism Reporting

The minutes contain updates on the Tourism Advisory Committee with recommendations for Council.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Note: A proposed allocation of \$40,000 has been included in the Draft Management Plan 2009/10-2011/12 for a Masterplan for Hassans Walls and Bracey's lookout.

LEGAL IMPLICATIONS

Nil

09-140 RESOLVED

THAT Council:

1. Notes the minutes of the Tourism Advisory Committee held on 3 February 2009.
2. Council advocates on behalf of Ironfest to Mr Bob Debus for support and assistance in seeking funding for the event
3. Council not support the provision of \$5,900 for the production and distribution of marketing collateral
4. Council considers a significant funding allocation in the 2009/10 – 2011/12 Management Plan for the completion of a Plan of Management for the Hassans Walls Reserve and upgrade of the Hassans Walls Lookout.
5. The draft Terms of Reference for the Tourism Advisory Committee be adopted by Council

MOVED: Councillor W Marshall

SECONDED: Councillor G Danaher

CARRIED

BUSINESS OF GREAT URGENCY

(as identified by Clause 241 of the Local Government (General) Regulations 2005)

BGU - 30/03/09 - COUNCILLOR W MCANDREW

1. Mr Mayor I refer to the recent removal of transportation costs and request that Council seek an urgent meeting through the State Member with the NSW Government to get this decision reversed.

09-141 RESOLVED

THAT the removal of transportation costs as allowable deduction from royalty payments and an urgent meeting through the State Member with the NSW Government be considered urgent and dealt with.

MOVED: Councillor W Marshall **SECONDED:** Councillor G Danaher
CARRIED

The Mayor declared the matter to be of great urgency in accordance with clause 241 of the Local Government (General) Regulations.

09-142 RESOLVED

THAT Council seek an urgent meeting through the State Member with the NSW Government to get this decision reversed in relation to the removal of transportation costs as allowable deductions from royalty payments.

MOVED: Councillor W McAndrew **SECONDED:** Councillor G Danaher
CARRIED

Meeting closed at 8.31pm.