



LITHGOW CITY COUNCIL

AGENDA

ORDINARY MEETING OF COUNCIL

TO BE HELD AT

THE ADMINISTRATION CENTRE, LITHGOW

ON

21 AUGUST 2006

AT 7.00pm

AGENDA

PRESENT

QUESTIONS FROM THE PUBLIC GALLERY

PRESENTATIONS - NIL

**CONFIRMATION OF THE MINUTES OF THE ORDINARY MEETING OF
COUNCIL HELD ON 17 JULY 2006**

DECLARATION OF INTEREST

NOTICES OF MOTION - NIL

NOTICE OF RESCISSION - NIL

CORRESPONDENCE AND REPORTS

General Manager Reports
Regional Services Reports
Community and Corporate Services Reports

REPORTS FROM DELEGATES

Councillor Castle - Association Mining Related Council
Councillor Castle - PACT Meeting
Councillor Ticehurst - Financial Issues in Local Government Workshop

COMMITTEE MEETINGS - NIL

QUESTIONS WITHOUT NOTICE

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GENERAL MANAGER REPORTS

ITEM:1 GM - 21/08/2006 - NSW GOVERNMENT REGIONAL CABINET
MEETING HELD ON 15 AUGUST 2006

REFERENCE

NIL

SUMMARY

This report provides Council with a briefing on the delegations to respective NSW Government Ministers during the NSW Regional Cabinet Meeting held in Bathurst on 15 August 2006.

COMMENTARY

As Council is aware the NSW Government recently held a Regional Cabinet Meeting in Bathurst as part of the Governments program of gaining the view, ideas and concerns of communities outside of the traditional metropolitan centres.

As a result of having access to the Ministers, Senior Staff and the Department Heads, a range of meetings were requested to discuss local issues and attempt to resolve some outstanding areas of concern between Council and the Government. The Government also took the opportunity to use the meeting as a consultation stage for the recently adopted State Plan. The State Plan is intended to guide the growth, development and enhancement of NSW for the next decade and calls, inter alia for a strengthening of ties between local and State Government to facilitate a greater and more efficient delivery of service to the community. The final plan is due for adoption by the Government in October 2006. Any Councillor wishing to make a submission on the plan is encouraged to do so, and such submissions can be made online at www.nsw.gov.au/stateplan

During the two day Regional Cabinet process Council was able to hold meetings with the following Ministers or Senior Staff and Heads of Departments.

Minister Burton

Discussions were held regarding the recent Landa Street audit and a joint program to upgrade the park for the residents of the Estate.

Minister McDonald

The Minister was unfortunately unable to attend the meeting, however, the Chief of Staff and Director General of the DPI met to discuss the issues and update of the environmental flow from Lake Lyell to the Cox's River. Discussions were also held with the option of the Clarence Transfer and other mine dewatering projects to improve the recreational and environmental effects of Lake Lyell.

Minister Hatzistergos

Minster Hatzistergos made a very exciting announcement of the development of a conference and education facility at the Portland Hospital for Sydney West Area Health Services, NSW Department Health and Community use. Council also took the opportunity to discuss the recent health statistics and explore avenues for State Government assistance to help improve both the immediate and long term issues.

Minister Debus

Council took this opportunity to raise its concerns with the recent GOS2 proposal and its likely impact to existing and proposed coal mining ventures in our region.

Minister Tripodi

Discussions were held with the Minister and his staff regarding the ability of the State Government to assist in providing Natural Gas to Portland. Discussions were also held regarding the augmentation of base load and peaking road power from the Mount Piper Power Site using new technology and satisfying the concerns and issues raised in the Governments Green Paper.

Minister Roosedaal

During this meeting, Council reinforced its support of the Bells Line Expressway as a means of greater connectivity with Central NSW and the metro areas but also more importantly the benefits in reduce road fatalities and major injuries to our community and the travelling parties of the regions and NSW in general.

Minister Kelly and Minister Campbell

Given both Ministers involvement in the process of Ethanal production in NSW, a joint meeting was held to discuss the options of a plant or mining/distribution centre on the mineral processing park. Both Ministers will talk to the respective Departments to highlight the potential and will facilitate the reinvestigation of the MPP Committee to highlight its relative advantages.

Minister Watkins

Minister Watkins visited Lithgow on his way back to Sydney to view issues such as Black Bridge and Sandford Avenue Bridge. Discussions were also held with matters such as the Geordie Street Crossing, lease of railway land, the Lithgow to Ulan Railway Line and also support for the Lithgow Heritage Railway Group.

Minister Tebbutt

Discussions were held with the Minister regarding an expansion of the technical high school program and the synergies between this program and Lithgow's program of being a learning city. Discussions were also held with the potential improved levels with TAFE, local industries and universities to retain and attract younger people with the skills need in our region.

As can be seen Council was fortunate to gain access to most of the Cabinet Ministers and were able to discuss many of the matters which have been a concern of Council and our community for some time. It should be noted the role played by our Local Member, Gerard Martin in securing these meeting and providing briefings and background information to his parliamentary colleagues.

POLICY IMPLICATIONS

The meetings / briefings held with the NSW Cabinet Ministers is in line with Policy decisions made by the Council to advance the many and varied issued discussed.

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

CONCLUSION

Council was fortunate to gain meetings / briefings with all of the requested Ministers and were given a good response / hearing to the matters raised. Council staff will now follow up on the matters with the various Government Departments in an attempt to gain resolution to the issues discussed.

ATTACHMENTS

NIL

RECOMMENDATION

THAT:

1. The report be noted.
2. Council forward a letter of appreciation to the Ministers for their time to consider the matter raised by Lithgow City Council.
3. Council thank the Local Member, Gerard Martin for his efforts in obtaining the meetings as requested.

ITEM:2 GM - 21/08/06 - TELECOMMUNICATIONS CHARGES

REFERENCE

A letter sent to the Prime Minister on 3 January 2006.

SUMMARY

This report outlines correspondence received in relation to telecommunications charges.

COMMENTARY

The Office of the Minister for Communications thanked Council for their letter dated 3 January 2006 to the Prime Minister concerning line rental charges and the unbundled local loop service (ULLS). Council's letter has been forwarded to the Minister for Communications, Information Technology and the Arts for reply as she has portfolio responsibility for the issues Council has raised. The Minister has asked the Assistant Advisory respond on her behalf.

The response to Council is provided below:

Before I address Council's specific concerns, I would like to point out that the role of the Government is very different to that of telecommunication service providers. This role is to establish the policy framework, including the laws and regulations under which all service providers operate. These laws provide for a range of consumer safeguards and provisions that facilitate the development of an efficient and competitive telecommunications market. There are now hundreds of service providers and over 100 licensed carriers, including Telstra and they must all comply with these laws.

Your correspondence raises two related but distinct issues: the charges for retail line rental services and the price Telstra's competitors pay to access its ULSS (i.e. the copper lines into customer's premises).

In relation to the first issue, the Government has assured all Australians that retail line rental pricing parity will remain a cornerstone of its telecommunications policy commitment. To maintain line rental pricing parity, in February 2006 the Government amended the price controls that apply to Telstra. These price controls now require Telstra to offer basic retail line rental service at the same price across Australia, with a cap of 22 cents on untimed local calls. The price of this service must remain frozen at its 31 December 2005 level until 30 June 2007 and thereafter can only increase at the rate of inflation.

Telstra is the primary universal service provider in Australia and it is required to provide basic telephony access to all people in Australia on an equitable basis upon request. However, Telstra does not shoulder the cost of this social obligation alone. Where the cost incurred for providing these services are greater than the revenue generated, then the additional costs are met through universal service obligation subsidies contributed by all licensed carriers.

In relation to the second issue, the ULLS allows a Telstra competitor to rent a copper line from a Telstra exchange to a customer's premise. By installing its own equipment in the exchange and at the customer premises, the competitor can provide its own telephony, broadband and other telecommunications services to the customer.

The Australian regulatory regime, like that in other developed countries, requires the owner of "bottleneck" infrastructure services to provide third party access at fair prices. This access is an important part of maintaining a competitive telecommunications market to the benefit of all Australians. Under the telecommunications access regime the Australian Competition and

Consumer Commission (ACCC) "declared" the ULLS in 1999. Since that time, ULLS pricing has always been set based on the four pricing band referred to in your letter, which reflect the different costs of providing the service in those geographic zones.

The ACCC supports a de-averaged approach to the pricing of Telstra's ULLS because tis most accurately reflect the cost of providing the service, and it also provides the right investment signals to industry. Cost based pricing means that there will be an ongoing incentive for competitors to invest in the most efficient infrastructure.

Most telecommunications costs vary geographically, yet telecommunications companies make the commercial decisions to charge uniform retail prices. This is due to a number of factors, including administrative efficiencies and promotion of customer satisfaction.

Pricing of ULLS is a matter for the ACCC. Under the access regime, the ACCC is required by law to ensure the prices Telstra receives for the ULLS are set at levels sufficient to recover the cost of providing the service. In fact, when providing guidance on ULLS prices, the ACCC assumes Telstra should recover the full replacement costs of a new network, rather than just recovering the written down value of the assets. The Government considers the ACCC as the independent, expert regulator is best placed to make these decisions.

The Government has already provided over \$1 billion to support equitable access to telecommunications services in regional Australia. It has also committed significant funding packages towards future-proofing equitable access by regional Australians to telecommunications services, including broadband. Such funding includes the \$1.1 billion connect Australia Program and the \$2 billion Communications Fund.

The response from the Department recognises Councils concern but fails to actually ensure that regional and rural areas will receive a fair and equitable Telecommunications service which competes at least on a par with the metro areas.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

ATTACHMENTS

1. Letter from Office of Minister Communications dated 1 august 2006
2. Letter from LCC to Prime Minister dated 3 January 2006.

RECOMMENDATION

THAT the information be received.

REGIONAL SERVICES REPORTS

**ITEM:3 REG -21/08/06 - DEVELOPMENT APPLICATION REPORT - DA 56/06,
SEVEN LOT SUBDIVISION, BANNERS LANE, LITTLE HARTLEY**

REPORT FROM: Environmental Planner - P. Moppett

SUMMARY

To present to Council a development application for the subdivision of land into seven rural small holding lots at Lot 265 DP 751644 Baaners Lane, Little Hartley, with a recommendation for approval subject to conditions.

COMMENTARY

A development application has been lodged for the subdivision of land into seven rural small holding lots at Lot 265 DP 751644 Baaners Lane, Little Hartley. The allotment has a total area of approximately 34.59ha and the land is some grazed open grassland with considerable amounts of timbered areas. The land is undulating to steep country and the lots will be from 1.91ha to 8.71ha. The land falls to the south and drains into a well defined unnamed stream system which flows into the Cox's River. The area has been heavily modified from its natural state by numerous subdivisions, roads, earthworks and dams. The lots would have access from a crown road off the end of Bonnie Blink Drive.

Dwelling sites have been chosen to ensure no encroachment or impact on drainage areas or watercourses, and to ensure maximum protection of existing trees and vegetation. A portion of the land to the south west is to be consolidated with the adjoining farm lot also owned by the developer.

POLICY IMPLICATIONS (OTHER THAN DCP's)

The prime policy in relation to the matter is Council's Local Environmental Plan. The land is zoned 1(c) Rural Small Holdings under the LEP and the development is permissible in the zone with Council consent. The Section 79C report addresses all the other issues in relation the LEP including the zone objectives.

FINANCIAL IMPLICATIONS

There are no immediate financial implications for Council.

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:

LOCATION OF THE PROPOSAL

Lot 265 DP 751644 Parish of Hartley, Baaners Lane, Little Hartley.

ZONING: The land is zoned 1(C) Rural Small Holdings under Council's current planning instrument Local Environment Plan 1994.

PERMISSIBILITY: The development is permissible in the zone subject to development consent. The application has been lodged in accordance with Clause 14 of Council's Local Environmental Plan 1994.

Any Environmental Planning Instrument

The development is permissible in the 1(c) zone subject to development consent. The application has been lodged in accordance with Clause 14 of Local Environmental Plan 1994. The objectives of the 1(c) zone are considered as follows:

To allow development of land for rural small holdings if the land is identified as suitable for that purpose.

Comment: The land has been identified for this type of development.

To ensure that allotments created for rural small holdings are of an area and subject to arrangements for water supply, domestic waste disposal, reduce traffic hazards, no pollution of catchments and water quality.

Comment: Appropriate arrangements have been made to address these issues in consultation with relevant authorities.

To ensure that development is carried out in a way that is sensitive to the environmental characteristics of the land.

Comment: The land is sensitive in relation to water quality and vegetation. The requirements of the Sydney Catchment Authority address the protection of natural features in their requirements. The clearing of further land will be minimized for access and bushfire prevention, and appropriate setbacks are provided from streams and watercourses.

To minimize the cost to the community of providing, extending and maintaining public amenities and services.

Comment: All services associated with this development are already available and adequate. Impacts associated with the additional wear and tear on public roads will require the payment of Section 94 Contributions. The holdings to the south will attain improved access through this proposal, with an upgrading of the access road. The intersection with Baaners Lane would be accurately located and upgraded, but Baaners Lane itself would remain unaltered to the northern end. Some widening would be required to the southern end approaching the subdivision intersection.

To ensure that rural small holdings development does not prejudice the interests of agricultural producers in the vicinity.

Comment: There is no sustainable agriculture occurring in the vicinity of this land. The properties to the north and east are rural small holdings and the properties to the south and west are larger grazing properties. The closest dwellings to those farms would be 70m with Lot 4 and 90m with Lot 7.

To allow development for a range of purposes which are compatible with the environmental capabilities of the land and which are unlikely to adversely affect land or other development in the vicinity or create unscheduled demands for service infrastructure.

Comment: The development as proposed is for the primary use for the zone, that is, rural small holdings. Appropriate arrangements have been made to address the issues in consultation with relevant authorities, and impact has been minimized.

LEP Clause 11:

(a) *The present use of the land, and the potential for sustained agricultural production of so much (if any) of the land as is prime crop and pasture land;*

Comment: The land has been used for grazing to date. However the land has not been used for any sustainable agricultural production and the size of the current or proposed allotments does not lend itself to this.

(b) *Vegetation, land capability and water resources (including the quality of the water, stability of water courses, ground water storage and riparian rights);*

Comment: Any further tree clearing could increase the potential for soil erosion and sedimentation and would be minimised. The proposed dwelling sites are located to minimize further clearing of land.

(c) *The future recovery from known or prospective areas of valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive materials;*

Comment: No know reserves of these are located on the site or in the vicinity. The Hartley Quarry is located some 2km away to the west.

(d) *The protection of areas of nature conservation significance or of high scenic or recreational value, and of items of heritage significance;*

Comment: The requirements of the Sydney Catchment Authority address the protection of natural features. The clearing of further land will be minimized for access and bushfire prevention, and appropriate setbacks are provided from streams and watercourses. There are no features of heritage significance relevant to this application.

(e) *The cost of providing, extending and maintaining public amenities and services;*

Comment: All services associated with this development are already available and adequate. Impacts associated with the additional wear and tear on public roads will require the payment of Section 94 Contributions. The developer would be required to upgrade part of Baaners Lane and the crown access road and dedicate that crown road section to Council as public road.

(f) *Development on adjoining land and on other land in the locality, including any cumulative impact;*

Comment: There are no known cumulative impacts associated with this development that may impact on adjoining land. The land is zoned for this type of development, being within the 1(c) zone and compatible with surrounding development.

(g) *The future expansion of settlements in the locality.*

Comment: The proposed location of the development is away from any settlements that have potential to expand. Given topographical constraints, this is not an issue.

State Environmental Planning Policy No 58 - The development falls within the Sydney Drinking Water Catchment Area therefore **SEPP 58 - Protection of Sydney's Drinking Water Catchment** applied to this development. In order to satisfy this requirement Council required the applicant to supply wastewater and stormwater management reports. The application was referred for comment on the subdivision under the SEPP prior to 9 June 2006, and the Sydney Catchment Authority responded that the development satisfies the matters for consideration, being effect on water quality, use of sustainable water quality management practices, and compatibility with relevant environmental objectives and water quality standards for the catchment.

The development is **Integrated Development** by virtue of it being bushfire prone land. The applicant was required to submit a bushfire plan which was referred to the NSW Rural Fire Service for their concurrence. The RFS concurred with the development and granted a Bushfire Safety Authority.

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

Nil

Any Development Control Plan

Council's **Rural Residential Development Control Plan** applies to the development. The development complies generally with the provisions of that document as follows:

(a) To provide opportunities for rural small holdings development on certain land within the city that has been identified as being suitable for that purpose.

Comment: The subject land has been zoned for the purpose, and the developer is taking advantage of the opportunity provided by the planning instrument to provide an extension to the existing rural small holdings settlement.

(b) To ensure that allotments created for rural small holdings are of an area and an arrangement that:

- i. Enables the provision of an adequate water supply.
- ii. Enables effective disposal of domestic waste.
- iii. Minimises the creation of traffic hazards.
- iv. Does not contribute to pollution of water supply catchments and
- v. Does not impact on water quality within the Nepean-Hawkesbury River System.

Comment: Through the provision and approval of a geotechnical report for effluent disposal on the land the developer has ensured that, subject to the development of the subdivision in line with the requirements of both Council and the SCA, there will be minimal adverse impact on water quality. Council regulations and the requirements of the NSW RFS would ensure that an adequate water supply is provided, and Council's engineer concurs with this in their conditions of consent.

The effective disposal of domestic waste would be in accordance with Council requirements and would be addressed at building stage for each lot.

(c) To enable other forms of development to be carried out on land within the area and the zone of the plan if they are in keeping with the rural character of the locality and are compatible with the existing or likely future rural residential land uses.

Comment: No other forms of development are proposed at this stage. The submissions received have highlighted the possibility of the potential for trail bike riding, horse riding and further clearing that may cause erosion problems. It is proposed that a restrictive covenant could be placed on the title of each lot to prevent the use of trail bikes. This could limit to potential for future damage. Only positive covenants could be imposed, and the developer will have to investigate the wording of any such covenants and it should be noted that enforcement would be problematic.

(d) To ensure that development is carried out in a way that is sensitive to land and environmental characteristics.

Comment: Compliance with the provisions of this DCP, the RFS and SCA requirements will ensure sustainable, responsible and environmentally effective treatment of the land.

(e) To minimise the cost to the community of providing, extending and maintaining public amenities and services.

Comment: All services associated with this development are already available and adequate. Impacts associated with the additional wear and tear on public roads will require the payment of Section 94 Contributions. The developer would be required to upgrade the access road and dedicate that crown road section to Council as public road.

(f) To ensure that rural small holdings development does not prejudice the interests of agricultural producers in the vicinity.

Comment: There is no sustainable agriculture occurring in the vicinity of this land. The properties to the north and east are rural small holdings and the properties to the south and west are larger grazing properties. The closest dwellings to those farms would be 70m with Lot 4 and 90m with Lot 7.

(g) To encourage further development within the city whilst minimising adverse impact on the natural attractions and amenity enjoyed by permanent residents and visitors.

Comment: It is not expected that the proposed subdivision would have an adverse impact on the natural attractions and amenity of the city, due to the isolated location.

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

Any matters prescribed by the regulations that apply to the land

Nil

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. There is expected to be some impact of the proposed development on the locality. There would be seven additional dwellings on the land, spread out over 34.59ha. The access would be via a dedicated public road onto the existing public road, and via rights of way to the lot entrances for Lot 3 and 4. Setbacks can be easily achieved within the proposed allotments.

Adjacent landuses to the north and east are similar in nature to that proposed i.e. rural small holdings. The land to the west is in larger holdings that are steep and heavily timbered. The land to the south is open grazing land.

To minimise dust impact the access road is required to be sealed.

The building envelopes have been located to protect the existing developments in the area from impact. However there may be expected to be some limited loss of privacy and a slight increase in noise. Building sites and effluent disposal areas have been located clear of access ways and water courses, and to minimise clearing of the land.

Utilities. The development would need to extend utility services to each allotment, primarily telephone and electricity. There is already power to existing residences in the area and therefore there should be minimal impact in extending those services.

Access. The proposed crown access road off Baaners Lane is intended to be dedicated as a public road and sealed to Council's current engineering standard. Stormwater runoff is to be controlled and suitable sediment control measures put in place along the access road and rights of way, in accordance with a Soil and Water Management Plan to be submitted as a condition of consent.

The southern end of Baaners Lane requires some widening to improve sight distances.

All allotment entrances would also require construction, and appropriate turning areas are to be provided at each end of the new access roads.

The subdivision is subject to Council's Section 94 Contributions Plan for rural roads and the developer will be required to pay \$3000 per new lot created for the use of Council's rural roads and the resulting 'wear and tear' on these roads.

Water supply. The site is not connected to the reticulated system; therefore provision should be made for the installation of minimum 45,000 litre water tanks with each dwelling in compliance with Council's policy.

Natural and Technological Hazards. The subject development site has not been identified by Council or the Sydney Catchment Authority as being subject to soil instability, subsidence, slip or mass movement.

The development site does not carry any other known risks of any natural, industrial or technological hazards, other than bushfire, and the proposed development will not increase the likelihood of such hazards occurring.

Bushfire. The subdivision complied generally with the requirements of the NSW Rural Fire Service. The RFS concurred with the development and requested compliance with their access provisions in regard to road construction.

The subdivision is subject to Council's Rural Fire Service Section 94 Contribution Plan, requiring the payment of \$200 per new lot for the provision of rural fire services.

Effluent Disposal. A geotechnical report has been provided and referred to the SCA, which suggests that the proposed development is able to provide effective onsite effluent disposal. The systems would be located to have regard for access roads, waterways and dams in the vicinity.

The SCA requested identification of effluent management envelopes for all lots on the approved plans, which was supplied. They have also identified requirements for effective erosion and sediment controls, access, rainwater tanks and a requirement for a soil and sediment erosion control plan.

Under the current provisions of SEPP 58 the developer has been able to satisfy SCA that the development will have a neutral or beneficial effect on water quality, and a subdivision of 7 lots is possible.

Flora and Fauna. Although one of the submissions received suggests that the site may contain the Copper Butterfly, this was noted by a resident in 2000 and not confirmed by NPWS. Also the altitude of the site is below 800m and therefore below the altitude (900m) at which the purple copper butterfly is known to occur. There are no other known issues relating to flora and fauna on the land.

Social and Economic Impact. As it has been shown above, the proposed development will be generally in keeping with the provisions of the planning instruments and is reasonably compatible with other similar development in the locality. Therefore, it is expected to have minimal social and economic impact.

Other. There are no known contamination or heritage issues relating to the proposed development.

The Suitability of the site for the development

Bushfire risk has been assessed and the development complies in general with the provisions of the NSW Rural Fires Act 1997 and a Bush Fire Safety Authority has been issued under Section 100B.

In all other aspects it would appear as though the site is suitable for the development.

Any submissions made in accordance with this Act or the Regulations

The development was notified to adjoining landowners for comment, and Council received several written submissions regarding the proposal.

The submissions received raised the following issues:

- Fragile area showing signs of severe erosion. Potential to be made worse by trail bike riding and further clearing. An example is given of a property in Baaners Lane where a track has been cleared of pine trees and mounds built for this purpose.

Developer's Response: As was noted in the DA this land was cleared in the mid 1970s. There is no erosion problem on this land. Little further clearing would be required to establish dwellings and effluent and stormwater management as detailed in the two reports prepared by Blue Mountains Geological and Environmental Services.

Officer's response: There are areas of bare ground on the land; however they would appear to be stable. The development as proposed would be bound by the requirements of both Council policy and SCA conditions in the construction of both dwellings and roads in respect of erosion and sediment control.

- Horse riding and trail bike riding are banned in National Parks to prevent degradation and contamination.

Developer's response: It is proposed that a restrictive covenant could be placed on the title of each lot to prevent the use of trail bikes. This could limit to potential for future damage.

Officer's response: Only positive covenants could be imposed, and the developer will have to investigate the wording of any such covenants.

- Copper Butterfly - sightings made by a resident in September and October 2000 on Lot 10, opposite the proposed subdivision. Verbally reported to LCC and NPWS. No confirmation from NPWS.

Developer's response: It is the understanding of the applicant that the habitat of the Copper Butterfly is restricted to locations above 900m elevation. The highest point on the subject land is slightly above 800m.

Officer's response: The possible sighting was noted by a resident in 2000 and not confirmed by NPWS. Also the altitude of the site is below 800m and therefore below the altitude (900m) at which the purple copper butterfly is known to occur.

- Bushfires and roads. Clearing of the subdivision site was done in 1992 to prevent bushfires moving from the west through the Baaners Lane area. This should be maintained.

Developer's response: As noted in the DA and above, clearing was completed in the mid 1970s. The local Rural Fire Service have on regular occasions, and as recently in early May 2006, graded the fire access trails through the area. There is no reason why this should not continue in the future.

Officer's response: The NSW Rural Fire Service have approved of the bushfire report as lodged by the applicant and have issued a Bushfire Safety Authority. Such report included bushfire maintenance provisions and fire emergency procedures.

- The existing Baaners Lane is dangerously narrow and has sections of poor visibility. Fire trucks moving through the locality to fight a fire could not pass other oncoming vehicles due to the narrow road.

Developer's response: While the roadway is narrow, visibility is clear from the Great Western Highway intersection to just south of Bonnie Blink. There are two bends where visibility is limited. This situation could be alleviated by reducing the speed limit and by strategic siting of convex mirrors to improve visibility.

Officer's response: Council's engineer has assessed the access situation and required widening of these bends.

- LCC advised a resident in 2004 that this land would not be subdivided due to the possible contamination of the Cox's River.

Developer's response: The subject land was zoned 1(c) Rural Small Holdings by the Local Environmental Plan 1994, and as such provided the aims and objectives of the LEP are met, subdivision such as proposed is allowable.

Officer's response: The land is zoned for this type of development, however would always be subject to the consideration of water quality. The geotechnical report and a number of site inspections by the SCA have established that there would be a neutral or beneficial effect on Sydney's current water supply.

- Adverse visual impact and possibilities of offensive odours from effluent trenches permeating existing dwellings. There are only minimal areas where waste disposal can be placed.

Developer's response: Absorption trench style septic systems have not been considered for this location. As is described in the BMG & ES report the nominated effluent management scheme for the proposal is the aerated wastewater which may be applied directly to the land by surface spray or drip irrigation. Offensive odours are unlikely from the nominated treatment system.

Officer's response: The geotechnical report and a number of site inspections by the SCA have established that there would be a neutral or beneficial effect on Sydney's current water supply. The systems proposed are subject to stringent maintenance regimes which should not result in odour issues.

The dwelling sites as proposed would be screened from adverse visual impact by a combination of existing vegetation and future landscaping. The only allotments which may have an impact would be Lot 1 and 5, and a landscaping condition could be placed on the consent to address this issue.

- Baaners Lane has illegal minimum widths will have an 8% increase in traffic - major impact on traffic and pedestrian safety. The Lane has conditions of poor visibility along stretches of the road which are particularly dangerous to drivers during inclement weather.

Developer's response: The applicant is unaware of the legality or otherwise. As noted above, visibility is clear except on the two bends south of Bonnie Blink. This could be improved as suggested.

Officer's response: Council's engineer has assessed the access situation and has required widening to improve visibility.

- The subdivision is relevant under SEPP 11. Baaners Lane should be made safer.

Developer's response: See comments regarding the speed limit and convex mirrors.

Officer's response: Council's engineer has assessed the access situation and required widening of Baaners Lane to improve visibility. As the subdivision is not directly accessed from an RTA road, SEPP 11 is not applicable.

- Compliance with the objectives of the LCC Rural Residential Development Control Plan which relate to pollution, traffic and landscape considerations.

Developer's response: We submit that this application meets these objectives.

Officer's response: The application complies with the provisions of this DCP as discussed in the report above, and in accordance with Council's engineer's comments that the development should meet requirements for roads construction and erosion and sediment control.

- The area may have aboriginal significance - anthropologists and archaeologists should be employed to do detailed studies in known aboriginal areas.

Developer's response: Detailed archaeological surveys for the nearby Rhyolite quarry have revealed no items of significance in the general area. As this land has no permanent water and has been largely cleared and grazed for approximately 30 years we believe that surveys would not yield any additional items.

Officer's response: Council Officer concurs with the comments made by the developer.

- Limited hours and time to view the plans on display.

Developer's response: No comment.

Officer's response: The DA was notified for the required period of time of 14 days, being from 16 March 2006 to 31 March 2006.

- No qualified wildlife survey has been carried out to investigate flora and fauna, already protected by the developers own "Sanctuary" sign.

Developer's response: The "Sanctuary" sign has no legal standing, and is designed to give the owners and adjoining neighbours to the south some privacy and security from recreational shooters.

Officer's response: From the information available to Council there is no evidence available to suggest that a full wildlife survey is warranted.

- The smallest lot is of 1.19ha which is below Council's minimum requirements for a semi rural allotment.

Developer's response: The proposal meets the requirement Clauses 14 (1) (a) and (b) of the LEP of 1994 which regulate the size of lots.

Officer's response: Council concurs with the comments made by the developer.

The public interest

Issues raised in relation to access, building sites, the environment and effluent disposal have been addressed both in Council's assessment and in the response received from the Sydney Catchment Authority. There are no other known public health and safety concerns. Section 94 contributions are payable for rural roads and provision of rural fire services.

DISCUSSION AND CONCLUSIONS

The application has been thoroughly assessed under Section 79C of the EP& A Act and it would appear as though it is appropriate for recommendation of approval subject to conditions.

ATTACHMENTS

1. Plan of subdivision.

RECOMMENDATION

THAT Development Application 56/06 for a seven (7) lot subdivision be approved subject to the following conditions:

Administrative Conditions

1. That the development shall be carried out in accordance with the application and plan submitted with the application or otherwise amended by the following conditions:
2. Submission of a plan of survey substantially in accordance with the application as submitted prior to the issue of a Subdivision Certificate.
3. The Council's Regional Services Department should be contacted to arrange the appropriate rural address numbers to be allocated to the subdivision.
4. The Crown road reserve is to be dedicated to Council as public road, and indicated as such on the survey plan. The road is to be fully constructed in accordance with Condition 6 prior to Council accepting dedication.

Traffic and Access

5. All development is to be constructed in accordance with Lithgow City Councils "Subdivision and Development Code" adopted by Council on the 28th of September 1992, Minute No. 1439. No civil works are to proceed until lodgement and approval of a Construction Certificate application.
6. Baaners Lane is to be widened in parts (where it does not already meet this condition) to a minimum 6 metres wide on the straight sections and 7 metres wide on any bends. This is to occur from Bonnie Blink Drive to the end of the development (that is the southern end of Lot 7). All sections of Baaners Lane that are widened or extended shall be constructed with a minimum 150mm roadbase (DGB 20) and sealed with a minimum two coat bitumen seal finish. The roadbase shall be compacted and shall be inspected by Councils Development Engineer prior to the final seal.

7. The internal accesses shall have a minimum 150mm roadbase (DGB 20) or equivalent material and shall be constructed to a two wheel drive, all weather non-skid vehicular surface. roadbase material shall be compacted flush with all allotment boundaries and the intersecting road pavement that it directly joins. Where access roads join sealed roads the seal shall continue from the edge of the existing sealed surface to the property boundary.
8. Traffic control and works signage shall be engaged where work and/or machinery may obstruct traffic whilst construction is being undertaken on Baaners Lane. All traffic control personnel shall be certified in the area of traffic control/ management. Council shall require you to submit a traffic control plan for approval prior to work commencement.
9. Access shall have a minimum sight distance of no less than 160 metres either side of the access to be constructed.
10. Access shall have an Entry/Exit splay of no less than 6 metres to allow for safe vehicular movements.
11. Worked as Executed plans are to be lodged with Council prior to the release of the Linen plans.
12. Preparation of soil erosion and sediment control plan is to be submitted with the engineering design. Such to address both short term and long term management of all disturbed areas, and to specify methods and structures to be employed to minimize any impact. Such is to be approved by Lithgow City Council and in accordance with DNR guidelines.

Environmental Protection

13. Should any new dams be proposed on the land the developer is to be guided by the Department of Infrastructure Planning and Natural Resources' Farm Dams Assessment Guide.
14. Prior to the issue of the Subdivision Certificate, Council is to be provided with a report from the Upper Macquarie County Council indicating:
 - Noxious plants are under adequate management; or
 - Noxious plant management has been undertaken and adequate control measures are in place; or
 - Noxious plants are not a concern for the property.
15. Effluent management envelopes for each lot must be delineated on the plan in accordance with the site plan prepared by Craven, Elliston and Hayes P/L (dated 20 September 2005 - ref. AUSBA-A3). There is to be a public positive covenant under Section 88E of the Conveyancing Act 1919, the prescribed authority being the Sydney Catchment Authority, placed over each lot requiring all effluent generated on the lots to be contained within the effluent management envelopes, for all wastewater to be treated to secondary standard as a minimum, for effluent disposal to incorporate evapotranspiration methods and for the type and size of the wastewater management system to be to the satisfaction of both Lithgow Council and the Sydney Catchment Authority.
16. An Erosion & Sediment Control Plan (E&SCP) is required if site works are proposed as part of the subdivision (such as boundary fencing and the construction of access driveways into allotments). The E&SCP is to be prepared by a person with knowledge and experience in the preparation of such plans and is to meet the requirements outlined in Chapter 2 of Landcom's "Soils and Construction: Managing Urban Stormwater" (2004) manual – the "Blue Book" – and be agreed by the Council.

17. Effective erosion and sediment controls are to be installed prior to any construction activity (including earthworks for the dwelling and site access). The controls must prevent sediment entering depressions and watercourses, and are to be regularly maintained and retained until works have been completed and groundcover established.
18. All measures for stormwater quality management as set out in the water management study prepared by Blue Mountains Geological and Environmental Services P/L (dated January 2006), including the sizing of rainwater tanks, the location of new and enlarged dams and new swales, are to be implemented except as varied below.
19. The unreferenced swale between sub-catchments 2Ai and 2Aii as shown on the drawing ref. AUSBA-A3 is to be extended approximately 60m in a southerly direction to ensure the capture of runoff from the building envelope on proposed Lot 6.
20. A swale of approximately 120m length is required between sub-catchments 4Bii and 4C below the building envelope for proposed Lot 7 to ensure that all runoff from that envelope is directed to the sediment basin L7.
21. There is to be a public positive covenant under Section 88E of the Conveyancing Act 1919, the prescribed authority being the Sydney Catchment Authority, placed over Lots 1, 2, 3, 4, 6 & 7 requiring that any water quality control structure on the lot ie. dam, sediment basin or swale, is to be maintained and retained with no development to occur within 1m of the structure.

Section 94 Conditions

22. A contribution of \$3000 per new lot being paid towards the upgrading of roads to be paid prior to the issue of the Subdivision Certificate, in accordance with Council's adopted Section 94 Contribution Plan for rural roads.
23. A contribution of \$200 per new lot being paid towards the provision of Rural Fire Services to be paid prior to the issue of the Subdivision Certificate, in accordance with Council's adopted Section 94 Contribution Plan for Rural Fire Services.

Other Conditions

24. Access is to comply with Section 4.3.1 of Planning for Bushfire Protection 2001.
25. The applicant shall consult with an authorised telecommunications authority and an authorised electricity authority for the provision of underground telephone and electricity services to each allotment. Confirmation of connection to each allotment shall be lodged with Council prior to the issue of a Subdivision Certificate.

ITEM:4 REG - 21/08/06 - UPDATE ON LEGAL MATTERS

REPORT FROM: ACTING GROUP MANAGER REGIONAL SERVICES – A MUIR

SUMMARY

This report provides an update on two matters that have been the subject of proceedings in the Land and Environment Court.

COMMENTARY

Cutcliffe -v- Council and Dukes – Great Western Highway, Marrangaroo

A costs hearing took place on 6 July 2006 and the judgement was handed down on 2 August 2008. The Court ordered the following:

1. Council to pay 85% of Cutcliffe's costs including the motion for costs.
2. Dukes to pay 50% of Council's costs awarded to Cutcliffe in No 1 above.
3. Dukes to pay Council's costs in relation to Council's motion for costs against Dukes.
4. Dukes' motion for costs against Council was dismissed.

Under the circumstances the orders issued by the Court represent a reasonable result.

Delaney -v- Council – Peachtree Road Megalong Valley

A notice of motion has been lodged by the Applicant seeking to appeal the Commissioner's decision. The grounds of the appeal are that the Commissioner erred in law in his interpretation of terms and wordings in relation to definitions outlined in his decision. Council's Solicitors have indicated that the appeal is likely to be hard fought and have recommended that they be instructed to brief a Barrister to argue the appeal.

POLICY IMPLICATIONS

No specific policy implications arise as a result of this report.

FINANCIAL IMPLICATIONS

The total costs in relation to the Cutcliffe and Dukes matter are yet to be calculated. A costs motion had been filed in relation to the initial decision on the Delaney matter. This will now be stood over pending the outcome of the appeal. Council's costs from this point are indeterminate but could potentially be substantial.

LEGAL IMPLICATIONS

The subject of this report.

RECOMMENDATION

THAT information be received.

ITEM:5 REG - 21/08/06 - UPGRADE TO CENOTAPH - QUEEN ELIZABETH PARK

REPORT FROM: ACTING GROUP MANAGER REGIONAL SERVICES – A MUIR

SUMMARY

To advise Council of upcoming upgrade works to the Cenotaph in Queen Elizabeth Park and ascertain a position if the works exceed the funding able to be sourced by the Lithgow RSL – Sub Branch.

COMMENTARY

Council has received representations from the Lithgow RSL – Sub Branch in relation to their desire to upgrade the Cenotaph in Queen Elizabeth Park. The works would involve concrete and brickwork, attractive fencing and enhanced landscaping. It is hoped that the new Cenotaph could be ready by Remembrance Day 2006. The sub branch have advised that they would be able to secure funding for the project up to a maximum of \$15,000.

Council staff would have the necessary skills to complete the majority of the works. An estimate has been prepared indicating a cost of \$19,659.59. The sub branch have requested that Council fund any expenditure in excess of \$15,000. This could be accommodated by undertaking part of the works 'in kind' and being a worthy project this is considered to represent a reasonable request.

POLICY IMPLICATIONS

The Council has no specific policy in relation to this particular type of situation. Council would simply have to weigh up the situation on its merits and any decision to assist in funding the works or otherwise should not be seen as precedential particularly as the works will be on Council lands.

FINANCIAL IMPLICATIONS

Should Council resolve to assist in the matter then its contribution would be up to \$5,000. This can be funded from the wages allocation and costed to Queen Elizabeth Park.

LEGAL IMPLICATIONS

No specific legal implications arise as a result of this report.

ATTACHMENTS

Nil

RECOMMENDATION

THAT Council provide a contribution of up to \$5,000 in 'in kind' works toward the Cenotaph upgrade project in Queen Elizabeth Park.

ITEM:6 REG - 21/08/06 - LITHGOW WORKMENS CLUB RLFC - REQUEST FOR FINANCIAL ASSISTANCE

REPORT FROM: Strategic Engineer – L. Kearney

SUMMARY

To advise of a request for financial assistance from Lithgow Workmen's Club RLFC should they be successful in hosting the 2006 Group 10 Grand Final.

COMMENTARY

Council has received correspondence from Lithgow Workmen's Club RLFC, requesting Council's assistance should they be successful in hosting the 2006 Group 10 Grand Final on Sunday, 3 September 2006 at Tony Luchetti Sportsground, Lithgow.

Due to the crowd control issues during the 2005 Group 10 Grand Final hosted at Tony Luchetti Sportsground, the refereeing fraternity of Group 10 have indicated that unless some degree of improved crowd control is implemented, they would not be prepared to officiate finals at the venue.

With these factors in mind, the Club have prepared a risk assessment, which has identified actions (in particular crowd management) required to be undertaken to ensure the safety and comfort of both spectators and participants during the finals of the 2006 Group 10 season.

The Club are anticipating a large crowd to attend the Grand Final, and for spectator comfort wish to allow spectators to view the game from the northern side line. For this to occur, the Club will be required to install adequate fencing surrounding the Number 1 playing field, and are proposing to hire water filled barriers to adequately enclose the field. The Club are requesting financial assistance from Council to contribute toward this expense.

The Club are further proposing to hire a portable building to be placed on the Number 3 playing field, which will house the referees and match officials, eliminating the safety risks to these officials by negotiating the vast crowd that is anticipated to congregate in front of the Ashley Grandstand. The Club are prepared to fully fund the expense of hiring this building.

It should be noted that other user groups do not allow any spectator access onto the playing surface of Tony Luchetti Sportsground, and require all persons (other than players and officials) to remain behind the southern fencing in front of the Ashley Grandstand. If the Club wish Council to allow access on to the field then both crowd control and security are their responsibility. Furthermore, entry fees are charged by the Club and for Council to then part fund crowd control barriers is considered well beyond the scope of its responsibilities.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The cost of hiring water filled barriers is expected to be \$1,600.00, which does not include the cost of transporting them from Sydney (approximately \$2,400.00).

LEGAL IMPLICATIONS

Nil

ATTACHMENTS

Nil

RECOMMENDATION

THAT Council advise Lithgow Workmen's Club RLFC that should it be successful in hosting the 2006 Group 10 Grand Final that spectators will only be allowed to view the game on the northern side of No 1 field if appropriate spectator barriers are put in place at no cost to Council and security is provided which includes ensuring that no alcohol is taken on to the field.

ITEM:7 REG - 21/08/06 - ROADS AND TRAFFIC AUTHORITY LIAISON MEETING

REPORT FROM: ACTING GROUP MANAGER REGIONAL SERVICES – A MUIR

SUMMARY

To advise Council of the recent commencement of liaison meetings between the Roads and Traffic Authority (RTA) and Council officers.

COMMENTARY

On 9 August 2006 the first of what is planned to be regular liaison meetings between Senior RTA and Council officers was held. It is anticipated that such meetings will be held on a six monthly basis to discuss areas of common interest to both parties. The following matters were discussed at the first meeting.

Issue	Action
Great Western Hwy 40 Bends	Central concrete median installed by RTA
Great Western Hwy Marrangaroo	Wire rope central barrier installed east & west of Tunnel Hill. May need to look at possible access closure on east side to extend barrier
Methven St & Martini Parade Lithgow	Funding in 06/07 financial year to design traffic signals. Construction funding to be sought in 07/08.
Castlereagh Highway	\$230,000 allocated in 06/07 to replace chainwire with wire rope/guardrail at various locations
Jenolan Caves Road	\$800,000 allocated in 06/07 to replace chainwire with wire rope/guardrail at various locations
Duckmaloi Road	\$280,000 allocated in 06/07 to replace chainwire with wire rope/guardrail at various locations
Great Western Highway – Riverlett Hill	\$30,000 allocated in 06/07 for design for curve widening & central median barrier
Great Western Highway – Riverlett Hill	\$52,000 allocated in 06/07 for upgrade of rest areas
Great Western Highway – Mt Victoria bottom curve	\$20,000 allocated in 06/07 for design for curve widening & guard fence
Lithgow Sportsground cycleway link	\$26,000 allocated to Council to develop and construct link
Lithgow School Crossing Supervisor Program	To continue
Castlereagh Highway – Springvale Colliery Access	Completed
Black Bridge, Wallerawang	Regional Road controlled by Council and RIC Bridge. Council to pursue options
Great Western Highway – South Bowenfels Drainage issues	RTA to investigate design plans to determine adequacy of drainage under highway
Great Western Highway – South Bowenfels – Median Maintenance	Council responsibility for Maintenance. Council will continue to undertake with Community Service Order Scheme recruits. Council has purchased signage to be able to undertake works in central median after submission of documentation to RTA
Great Western Highway – Pedestrian fencing opposite MacDonald's	RTA to replace with new fencing

Great Western Highway - Litter	RTA to provide Council with staff contact details to assist in coordinating litter collection
Road Safety Officer	Council and RTA officers to discuss an officer shared between LGA's.
Snow & Ice warning system – Great Western Highway – Lithgow to Bathurst	Has been functional for all but 3 days. However, to be upgraded in Spring and linked to the RTA traffic management system
Acceptance of former Castlereagh Highway (Wolgan Road) and flood protection works Duncan Street Lidsdale	To be resolved through on site meeting of officers and inviting a concerned resident

POLICY IMPLICATIONS

No specific policy implications arise as a result of this report.

FINANCIAL IMPLICATIONS

The main financial implications as a result of this report relate to the RTA. It should be noted that Council will receive \$26,000 in cycleway funding.

LEGAL IMPLICATIONS

No specific legal implications arise as a result of this report.

ATTACHMENTS

Nil

RECOMMENDATION

THAT the information be received.

COMMUNITY AND CORPORATE SERVICES REPORTS

ITEM:8 COMM- 21/08/06 - POLICY REGISTER

REPORT FROM: GROUP MANAGER COMMUNITY AND CORPORATE - KATHY WOOLLEY

REFERENCE

NIL

SUMMARY

This report provides Council with a draft Policies Register for consideration and following the completion of a recommended exhibition period, and a subsequent report to Council on any submissions received, Council will receive a finalised Policies Register for consideration.

COMMENTARY

Council is supplied with the following policies in draft form for consideration and it is recommended that the policies be placed on exhibition to seek any comment from the community prior to being presented back to Council for consideration.

The policies are a combination of those required for statutory purposes and those determined by the Council for operational purposes.

There was a briefing for councillors held on 1 August 2006 where a number of policies were discussed with the councillors attending. The comments and suggestions made at that briefing have been incorporated into the policies presented in draft form as attachments to this report.

There needs to be an ongoing process of creation and review of policies implemented and this is the first stage in ensuring Council has the appropriate and required policy statements in place for good governance.

POLICY IMPLICATIONS

Specifically, the policy regarding the provisions of fees, expense compensation and facilities for Councillors must be specified by a policy and which, in accordance with clause 253 of the Local Government Act 1993, has been exhibited for 28 days and thence advice on the contents of the Policy must be given to the Director-General of the Department along with any submissions received in the exhibition period, Council's comment on the submission and a copy of the public notice advertising the exhibition period.

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

ATTACHMENTS

1. Draft Policies Register

RECOMMENDATION

THAT the Draft Policies Register be received and an exhibition of the Policies be undertaken for 28 days at each of Council's offices, with the policies being available for a total of 42 days to anyone requesting copies, and that at the conclusion of which a report will be presented back to Council detailing any submissions received and recommending any further changes to the policies for Council's consideration.

ITEM:9 COMM - 21/08/06 - DRAFT POLICIES FOR RESTRICTED & SEX SERVICES PREMISES

REFERENCE

Item 5, 14 November 2005, Planning, Policy and Development Committee
Item 18, 7 August 2006, Finance and Services Committee

SUMMARY

This report provides the draft policies for restricted and sex services premises and recommends that the draft policies be placed on public exhibition for a period of 28 days in conjunction with the policy review process.

COMMENTARY

Further to Council's resolution of 14 November 2005, draft policies have been prepared for restricted (sex shops) and sex services (brothels) premises. These policies provide location requirements in accordance with Council's resolution of 7 August 2006, development guidelines and advice to applicants on the information required to be submitted with a development application. A copy of the draft policies are attached to the Business Paper.

It is suggested that the draft policies be exhibited for a period of 28 days in conjunction with the policies in the draft Policy Register.

In addition, Council's request to prepare a draft Local Environmental Plan to regulate restricted and sex services premises will be before the LEP Review Panel on Thursday, 17 August 2006 with the results being forthcoming a few days following.

To give Council and the community a greater understanding of the facility, a site visit to the John Moroney Correctional Centre has been arranged for Tuesday 3 October 2006.

All Councillors are invited to attend and invitations will also be forwarded to the community.

Given the security issues of visiting a Correctional Centre, Council must provide names and travel details of all visitors by 27 September 2006 to the Department of Corrective Services. Councillors are requested to advise the General Managers Personal Assistant by this date of their ability to attend.

POLICY IMPLICATIONS

The draft policies will form Council policy if adopted after exhibition.

FINANCIAL IMPLICATIONS

The costs of advertising can be funded from the Policy and Planning Recurrent Budget.

LEGAL IMPLICATIONS

Whilst the policies (if adopted after exhibition) will not carry the same legal weight as the provision of a local environmental plan or a consistently applied development control plan, it will form a basis to guide the development process and the consistent application of the policies will be helpful should any appeal process eventuate.

ATTACHMENTS

1. Draft Policy – Requirements for Restricted Premises
2. Draft Policy – Requirements for Sex Services Premises

RECOMMENDATION

THAT the draft policies for restricted and sex services premises be exhibited for a period of 28 days in conjunction with the policies of the draft Policy Register.

**ITEM:10 COMM - 21/08/06 - LITHGOW CORRECTIONAL CENTRE
CONSULTATIVE COMMITTEE**

REPORT BY: Group Manager Community and Corporate – K. Woolley

REFERENCE

NIL

SUMMARY

This report provides Council with an update on the development of an additional 250 bed minimum security addition to the Lithgow Correctional Centre following the meeting of the most recent Correctional Centre Consultative Committee held on 9 August 2006.

COMMENTARY

The General Manager and Group Manager Community and Corporate attended a meeting of the Lithgow Correctional Centre Consultative Committee and KirkConnell Correctional Centre on 9 August 2006.

The meeting was held at this facility to enable a site tour of a minimum security establishment to enable an appreciation of the type of development proposed for the extensions to the Lithgow facility.

The Lithgow facility extension is proposed to house an additional 250 beds in a minimum security arrangement located adjacent to the current facility.

The Department of Corrective Services is proposing to handle the extension to the Lithgow facility, the extension to the Cessnock facility and the creation of a new facility in the South Coast of NSW as one project. The project will be a matter of state significance and development application processing will be dealt with by the Department of Planning directly. The Department of Corrective Services sought Council's comment on providing assistance with approval for some preliminary site works but at this stage the details are unknown and Council will need to wait until the receipt of request or development application for any works to be undertaken.

The extension to the facility will create 80-100 construction jobs and a similar number of permanent full time jobs for the Lithgow region when the minimum security facility is operational. The proposed timetable for the development is for construction to begin in 2007 and completion and operation by 2009.

To give Council and the Community a greater understanding of the facility, a site visit to the John Moroney Correctional Centre has been accepted for Tuesday 3 October 2006. All Councillors are invited to attend and invitations will also be forwarded to the community.

Given the security issues of visiting a Correctional centre, Council must provide names and travel details of all visitors by 27 September 2006 to the Department of Corrective Services. Councillors are requested to advise the General Managers Personal Assistant by this date of their ability to attend.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

ATTACHMENTS

NIL

RECOMMENDATION

THAT:

1. The report be noted.
2. Council note the visit to the John Moroney Corrective facility on Tuesday 3 October 2006 and advise the General Managers Personal Assistant of their attendance by 25 September 2006.

ITEM:11 COMM - 21/08/06 - RESULTS OF THE COMMUNITY AUDIT OF EMORA PARK & DISCUSSIONS WITH THE DEPARTMENT OF HOUSING REPORT FROM: POLICY & PLANNING MANAGER - A MUIR

REPORT FROM: POLICY & PLANNING MANAGER: A MUIR

REFERENCE

Nil

SUMMARY

This report provides the results of the recent Community Audit of Emora Park and discussions with the Department of Housing. It recommends that the proposed plan of works be placed on public exhibition.

COMMENTARY

Introduction

Council has been successful in obtaining a \$20,000 grant for the Active Young Bowenfels Project under the Healthy Local Government Grants Program provided by the Local Government and Shires Association of NSW and the Department of Health. The Active Young Bowenfels Project involves the following:

- An audit undertaken by the Bowenfels Community and Council of existing infrastructure and maintenance at Emora Park.
- A program of activities developed in consultation with the community which engages young people and children in health promoting activities during school holidays.
- A research report, produced by the Sydney West Area Health Service, detailing activities undertaken, models for proposed intervention, an assessment of the 'walkability' of the Bowenfels Community and impact of community powered changes on the physical activity rates, usage etc of Bowenfels parks and facilities.

The Project involves a number of partners including the Sydney West Area Health Service, the Lithgow Information and Neighbourhood Centre, Council and has been supported by the local Department of Housing Officers.

The following report provides the outcomes of the audit undertaken with the Bowenfels Community on 29 July 2006. It aimed to identify possible actions which Council could undertake to expend the \$6,400 contribution in the Project towards small scale infrastructure improvements. In addition, discussions have been undertaken with the Department of Housing in relation to the maintenance of Emora Park. The results are also reported.

Results of Community Audit

Toilet Block

The toilet block has been closed for 9 years due to extensive vandalism rendering them unusable. However, access can be gained by climbing through the opening in the roof and have resulted in the occurrence of fires and broken water pipes.

Residents reported that most park users would access toilet facilities at their home and that toilet facilities in the Park only encourage drug users to 'shoot up' in the facility.

Preferred Action:

- Demolish the toilet block and stabilise the surface.

Other Options:

- Maintain the shell as a shade structure with possible future seating.
- Replace with alternate infrastructure such as playground equipment.

Trees and Plants

Safety issues were highlighted in relation to the line of sight from surrounding homes ie. pine trees at the rear of the Park and shrubs adjacent to the play area and trees obstructing lighting at the northern and western boundaries of the Park. Council has removed the shrubs shielding the play area from the homes and trimmed the trees covering the light in front of the play area.

Preferred Action:

- Remove trees which are creating visual and lighting obstructions and replace with appropriate shrubs. However, residents adjacent to the pine trees at the rear of the Park need to be consulted prior to removing these trees.

Fencing

The colourbond type fencing on the southern boundary of the Park attracts graffiti and would be best replaced with a pool type fence as on the eastern boundary. This would also promote casual surveillance of the Park.

Preferred Action:

- The matter is to be referred to the Department of Housing.

Children's Play Area

The following issues were identified:

- The soft fall (chipped bark) needs replenishing and Council has ordered the material.
- Broken glass was identified and dog faeces reported to be found in the soft fall material.
- The slippery dips have been removed due to ongoing vandalism.
- A perspex cover on a section of the play equipment was missing (approximately 60cm hole about 150cm from the ground).
- Syringes have been found in the play equipment in the past, however, during a community clean up last year, no syringes were found.
- The play equipment is in relatively good condition given its age and it is used frequently by children in the area.
- There are several broken and missing bricks on the low wall surrounding the play area.
- A small section of chain mesh fencing is missing at the north western edge of the area (a drop of approximately 150cm).

Preferred Action:

- Replenish the soft fall material.
- Check the soft fall regularly for contaminants.
- Replacement of the missing perspex cover on the play equipment.
- Replace the missing chain mesh fence.

Other Options:

- Replace the broken and missing brickwork on the low wall surrounding the play area.
- Replace the soft fall with a more durable material ie. rubberised surface.

Shade Structure Adjacent to Play Area

The wooden decking has a large hole and the seating is broken.

Preferred Action:

- The deck be completely removed and extend the soft fall material into the area.
- Remove the broken seating.

Other Option:

- Replace the broken seating with a more durable type of seating.

Cricket Nets

The cricket nets are well utilised during the cricket season and are in very good repair, apart from the need to repair a few small holes in the chain mesh. There could be some overhead netting provided in the first section of the batting crease area, however, the need is low considering the distance to the nearest house.

Preferred Option:

- Repair the small holes in the chain mesh.

Tennis Courts

The following issues were reported:

- There are large holes in the fencing.
- There are holes in the fence created by missing bricks and chain mesh which result in tennis balls dropping onto the level of the road.
- The surface is quite good, however, a tennis net and winder is required.
- The brick wall has been removed resulting in a large gap in the fencing.
- There is damage to the wire and bricks on the southern retaining wall end.

Preferred Actions:

- Repair the bricks on the wall and fencing.
- Replace the missing brick wall with chain mesh fencing.
- Purchase of a tennis net and winder to be kept at the Bowenfels Cottage.

Other Option:

- Converting the courts for basketball, but residents thought that a hoop would be destroyed. An alternative could be to provide a removable hoop at the Bowenfels Cottage.

Other Issues

The following issues were also identified:

- A worn dirt path exists between the Park entrance to the south east and the play area. This path could be formalised.
- A hole in the ground was reported but not identified. Council has since identified the hole and repaired such.
- A number of disused garbage bin frames existed. Council has removed all of these.

- The pergola requires missing bricks to be replaced and residents would like to see the planting of Wisteria type vines on the structure for shade.
- One of the recently installed garbage bins required re-concreting. Council has undertaken this work.
- There was numerous ideas for the barbeque structure such as reconnection, fencing off to deter vandalism and the possibility of connecting a power source for sound equipment.
- The brickwork around the Park poses safety issues as it is being broken off and thrown at people and property.

Discussions with Department of Housing

Discussions have been undertaken with the Department of Housing in relation to the maintenance of Emora Park. Council will undertake the following works, noting that some works have been undertaken or commenced:

- Trimming and removing identified vegetation around the Park to improve visibility. Council has removed shrubs and trimmed branches of trees to improve the visibility of the play area.
- Additional soft fall material has been ordered for the play area.
- The large spotlight in the Park will be relocated to provide better illumination of the Park.
- A general kerbside clean up in the vicinity of the Park is to be undertaken by the Community Service Order Scheme which at the time of writing was due to commence on 15 August 2006.
- The toilet facility will be demolished and advertised as part of the proposed works plan.
- Consider the provision of a tennis net and winder which if purchased would be kept at the Bowenfels Cottage when not in use.
- Assistance will be provided to the Department of Housing for the provision of a 'Spring Clean Up' kerbside collection service. This service will be provided by Council and will be guided by the conditions of Council's clean up collection services.
- A road safety campaign for the Landa Street area is being investigated to target speeding vehicles. Council is currently ascertaining material and funding opportunities with the RTA.
- Emora Park Maintenance Program for 2006/07 involves mowing based on an as needs basis which is generally monthly to bi-monthly during the growing season.

It is suggested that the above plan of works be placed on public exhibition for a period of 21 days from 24 August 2006.

POLICY IMPLICATIONS

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

FINANCIAL IMPLICATIONS

The works identified in the Community Audit as preferred options and during discussions with the Department of Housing have the following funding implications:

- Demolition of the toilet facility - \$5000
- Trimming and removal of vegetation (ie. large pine trees) - \$4,000
- Relocation of spotlight - \$500
- Provision of tennis net and winder - \$700
- 'Spring Clean Up' Collection Service - \$1000

In addition, there is estimated to be approximately \$4,000 of maintenance activities required to be undertaken to fulfil the preferred options identified in the Community Audit and outcomes of the discussion with the Department of Housing.

As part of the Young Bowenfels Project, \$6,400 can be directed towards small scale infrastructure improvements. For the remaining funds required to undertake all works Council can seek assistance from the Department of Housing and/or fund projects over a number of financial years.

LEGAL IMPLICATIONS

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

ATTACHMENTS

Nil

RECOMMENDATION

THAT

1. The proposed plan of works be placed on public exhibition for a period of 21 days from 24 August 2006.
2. A contribution towards the proposed works be sought from the Department of Housing.

ITEM:12 COMM - 21/08/06 - PROPOSED AMEDNMENT NO. 13 TO LITHGOW CITY LEP

REFERENCE

Item 10, 16 August 2004, Planning, Policy and Development Committee

SUMMARY

This report proposes amendments to the Lithgow City Local Environmental Plan 1994 to include lands previously located within the Evans Local Government Area.

COMMENTARY

Council may recall that the Evans Shire Environmental Planning Instruments, in particular clauses 15(4) and 15(10) of the Evans Local Environmental Plan No. 24 contain a mechanism for the creation of rural allotments between 1 and 20 hectares providing that not more than 35 allotments are created in each calendar year. These clauses create administrative problems and the potential for accusations to be levelled against staff. Therefore, further to Council's resolution of 16 August 2004, the Department of Planning (DOP) has agreed to extend the reduced lot yield of 35 contained in clause 15(10) to 0 until 31 December 2006. By 31 December 2006, the DOP expect Council to have prepared an amending Local Environmental Plan (LEP) for the former Evans Local Government Area (LGA) to include the following requirements:

- 100 hectare minimum allotment size for subdivision
- no concessional allotments.

In order to fulfil the DOP's expectation, Council must first resolve to repeal all Environmental Planning Instruments for the former Evans LGA as they relate to lands now within the boundaries of the Lithgow LGA and prepare a draft LEP for such lands. It is suggested that the draft LEP be an amendment to the Lithgow City Local Environmental Plan 1994.

The DOP has offered Council assistance in preparing the text to the draft LEP, but Council would need to prepare the accompanying mapping.

POLICY IMPLICATIONS

This report does propose changes to Council's current policy for regulating and guiding development, however, these changes are in line with previous resolutions of Council and the expectations of the DOP.

FINANCIAL IMPLICATIONS

The draft LEP and policy preparation will incur costs associated in the preparation of plans, mapping, policy, advertising and community consultation. However, these costs can be funded from the Policy and Planning Recurrent Budget.

LEGAL IMPLICATIONS

The Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000 set out the legal process that must be followed for the preparation of a LEP.

ATTACHMENTS

Nil

RECOMMENDATION

THAT

1. A draft Local Environmental Plan amending the Lithgow City Local Environmental Plan 1994 known as Amendment No. 13 be prepared to include the following:
 - a. Repeal all Environmental Planning Instruments for the former Evans Local Government Area as they relate to lands within the boundaries of the Lithgow Local Government Area.
 - b. Incorporate all lands within the former Evans Local Government Area now situated in the Lithgow Local Government Area into the one environmental planning instrument.
 - c. For the former Evans Local Government Area lands include provisions requiring 100 hectare minimum allotment sizes for subdivision and the deletion of concessional allotments.
2. Subject to the receipt of Department of Planning approval to proceed with the Draft Local Environmental Plan (Amendment No. 13), the plan be prepared in accordance with Part 3 of the Environmental Planning and Assessment Act 1979.

REPORTS FROM DELEGATES

**ITEM:13 DEL - 21/08/06 - ASSOCIATION OF MINING RELATED COUNCIL
MEETING HELD ON 28 JULY 2006**

REPORT BY: MAYOR, NEVILLE CASTLE

REFERENCE

NIL

SUMMARY

This report gives Council an idea of the subject's raised at the Associated Mining Related Councils Meeting held on 28 July 2006 in Gunnedah.

COMMENTARY

This meeting was attended by the General Manager, Mr Paul Anderson and the Mayor, Councillor Neville Castle representing Lithgow City Council.

The Association heard of a submission by the Nepean Action Group which were seeking a minimum 1km buffer zone from mining around rivers in the Southern Coal Fields Area. A document produced by this group was tabled at a recent Forum of Councils relating to the southern coal fields and was shown at the association meeting.

The Association was reminded that the development of mines needs to be looked at from both the view of the proponents of the mine, the development that it brings to the area as well as the environmental concerns. However, we must also be aware that some extremist's environmental groups proposed the banning of mining of all sorts. Therefore every argument for or against mining must be taking on its merits.

It was interesting to see that Broken Hill is about to adopt community consultative guidelines and implement community consultative committees for their mines for the first time. They were pleased to see that these have been operating reasonably successfully in other areas and they look forward to having similar success in their area.

The annual general meeting of the Association will be held in November with one very interesting report and address from Professor David Brereton. This will be given on the assessment of cumulative impacts of mining. He has done a case study in the Hunter Valley. It will be interesting to listen to the address and see what if any similarities there may be to our area and if so, what can be gained from learning from the Hunter Valley case study.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

ATTACHMENTS

NIL

RECOMMENDATION

THAT the information be received.

ITEM:14 DEL - 21/08/06 - PACT MEETING HELD ON 27 JULY 2006

REPORT BY: MAYOR, NEVILLE CASTLE

REFERENCE

NIL

SUMMARY

This report gives Council an idea of the subjects raised at the PACT meeting held on 27 July 2006.

COMMENTARY

At the last PACT meeting a number of issues were raised that have been previously raised at Lithgow Council, as well as an update given by the Police on the last 12 months crime figures.

In the last 12 months the figures for the Chifley Area Command are most encouraging (the Lithgow Local Government Area being part of the Chifley Command). The figures show that Chifley is the best or second best in most increases in improvements in most sections of crime. The figures include;

- break and enters down 20%;
- stolen vehicles down 28%;
- robberies down 31%;
- stealing down 27%.

Also good to report is that increased Police presence has meant that person searches have gone up 140%, moving on directions have gone up 183% and because of these figures drug detections have gone up 25%.

The problem of speeding at Dunn's Corner (McDonalds) is being addressed in the first instance by additional highway patrol in that area, as well as the investigation of a possible red light camera.

Motor and trail bikes have been causing problems on the private Coal Haul Road from Angus Place Colliery to Mount Piper. The Police have been made aware of this and have contacted some of the property owners adjacent to this road and it is very likely that the Police trail bikes may see some action in this area in the near future.

The ability to have CCTV installed at the station is one step closer with the equipment now having been bought and we are now only waiting for the correct line to be installed to be completed into the Police Station, so that when set up the Police will be able to watch the Council close circuit televisions in Main Street from the Police Station which will help in detecting crime a lot quicker.

Council was also asked to follow up numerous break-ins and vandalism in the Wallerawang area over the last few months. This has been referred to the Police and they believe after the arrest of one of two individuals that the numbers of offences have diminished greatly in recent times.

As for staffing issues, all staffing positions have been substantially filled at this point in time with all Constables now appointed or in the process of being appointed.

The following questions from the Public regarding the possibility of an extra pedestrian crossing in Main Street, this will need to be raised in the Traffic Authority Local Committee (TALC) which both Council and the Police meet and make a recommendation and so this issues will be raised at the next committee meeting.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

ATTACHMENTS

NIL

RECOMMENDATION

THAT the information be received.

ITEM:15 DEL - 21/08/06 - FINANCIAL ISSUES IN LOCAL GOVERNMENT WORKSHOP

REPORT BY: COUNCILLOR MARTIN TICEHURST

REFERENCE

Local Government and Shires Association Learning Solutions Councillor Professional Development Program – ‘Financial Issues in Local Government’ Workshop and the 2004/2005 Lithgow City Council General Purpose Financial Reports.

SUMMARY

The report outlines the attendance of Councillor Martin Ticehurst at a Financial Issues in Local Government Workshop in Sydney on Wednesday 9 August 2006 and confirmation of new independent financial information on the conduct of the audit of the Lithgow City Councils 2004/2005 General Purpose Financial Reports.

COMMENTARY

I am thankful for the Council’s assistance with the opportunity to attend the recent Financial Issues in Local Government workshop, conducted under the Local Government and Shires Association Learning Solutions Councillor Professional Development Program. The Financial Issues in Local Government workshop introduces Councillors (and Senior Staff) to Council financial responsibilities and provides accounting procedures to interpret Council budgets and management plans, reading quarterly reviews/ balance sheets, financial planning and assistance for Councillors to make informed decisions about financial issues with Local Government.

Mr Dennis Banicevic, a Senior Audit Consultant with PricewaterhouseCoopers, facilitated the workshop. Mr Banicevic has some forty Local Government Councils as clients and is well versed in the intricacies of how Local Government finances are structured. Mr Banicevic and PWC recently consulted to the Local Government Accounting Advisory Group, chaired by the Department of Local Government, in the preparation of the Local Government Code of Accounting Practice and Financial Reporting.

Amongst extensive information provided, the workshop confirmed that Councillors are no different to a constituted Board of Directors, they must act with due diligence and corporate governance. Further, that whilst an Auditors function is to check that what Councils are presenting is true and accurate, they do not generally check if all records are accurate, this process being a Councils responsibility.

As part of the workshop, I was fortunate to provide Mr Banicevic and other Councillors present with information on the recent controversy with the financial recognition by the Council of the Three Tree Lodge Aged Care Facility in Lithgow and the Portland Olympic Pool as ‘controlled assets’ valued at \$5.14 million in the Lithgow City Councils 2004/2005 General Purpose Financial Reports.

In brief, Mr Banicevic was of the opinion that both the Three Tree Lodge Aged Care Facility in Lithgow and the Portland Olympic Pool are **NOT** ‘controlled assets’ of the Lithgow City Council. Mr Banicevic was of the opinion that both the Three Tree Lodge Aged Care Facility in Lithgow and the Portland Olympic Pool were ‘controlled assets’ of their respective incorporated associations, Three Tree Lodge Lithgow Incorporated and Portland and District Olympic Pool Association Incorporated.

Mr Banicevic specifically noted that it was not possible (without a joint venture) for 'controlled assets' to be entered into two separate audited Financial Statements/Reports. Lithgow City Council and Three Tree Lodge Lithgow Incorporated held identical 'controlled assets' in their respective 2004/2005 General Purpose Financial Reports. Council's Auditors confirmed that no joint venture exists between the Council and Three Tree Lodge Lithgow Incorporated and it is publicly recognised that no joint venture exists between Council and the Portland and District Olympic Pool Association Incorporated.

In light of the new information provided by Mr Banicevic, it is now appropriate that Council request the Director-General of Local Government reconsider his recent advice to Council that, "In relation to the Councils General Purpose Financial Reports, the Department relies on the Councils Auditor to certify that the Council has followed appropriate Accounting Standards. The Auditor has provided an unqualified Audited Report for the 2004/2005 Financial Year for Lithgow City Council. Departmental Officers have reviewed (the) Lithgow City Councils Financial Reports for 2004/2005 and followed up areas of concern. We will continue to monitor the financial position of Lithgow City Council ..., through review of financial reports, budget summaries and other reports where necessary. There are no plans to conduct an investigation under Section 430 of the Act. Officers from the Finance Management Branch will be visiting your Council in the next month to discuss strategies that have been or will be implemented to improve the financial position of the Lithgow City Council."

Additionally, the Minister, Director-General, Councillors and ratepayers may hold serious financial concerns with respect to Council's due diligence and corporate governance with their acceptance of the recent '*independent*' Auditors review of the 'controlled assets' of the Three Tree Lodge Aged Care Facility Lithgow and Portland Olympic Pool; a review undertaken by the (same & Council's) Auditor? Further, the Minister and his Department may need to urgently re-visit their public decision to firstly have the Lithgow City Council placed onto 'Financial Watch' and then subsequently reversing their statement on the day of the Council's acceptance of the Auditors review.

Whilst it is accepted that Councils Auditors may be a long established reputable firm of Chartered Accountants, Councillors must act with due diligence and corporate governance. Questions remain as to why the Auditors continue to deny or address numerous other outstanding matters that have previously been raised concerning their conduct of the 2004/2005 Lithgow City Council General Purpose Financial Reports. Despite initial advice they would do so, the Auditors failed to appoint another independent senior Managing Partner to conduct their firms review into the 2004/2005 Lithgow City Council General Purpose Financial Reports.

For this matter to be properly and independently assessed within the processes of due diligence and corporate governance, it is appropriate that all Councillors support as a matter of urgency, the engagement of a highly reputable independent firm of Chartered Accountants to provide the Council with a full report on both the current financial position of the Lithgow City Council and the legal and financial position of 'controlled assets' of the Three Tree Lodge Aged Care Facility and the Portland Olympic Pool. Any such consultants should be provided with all available documentation, including those documents currently being withheld from Councillors, i.e. the HAC/ Council/Three Tree Lodge Tripartite Deed; Council/Portland Pool Deed of Agreement.

Mr Banicevic further recommended that advice and assistance be obtained from the Institute of Chartered Accountants of Australia, Sydney. Council may wish to seek legal advice, if not already provided from it's own contract Solicitors, Le Fevre & Co. whose principal is the Public Officer of Three Tree Lodge Lithgow Incorporated.

The Financial Issues in Local Government workshop is highly recommended to any other Lithgow City Councillors who have not yet attended.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

ATTACHMENTS

1. Summary under the Department of Local Government's Asset Accounting Manual for the Three Tree Lodge Aged Care Facility in Col Drewe Drive, Lithgow.

RECOMMENDATION

THAT:

1. That Council accept the report and support as a matter of urgency the engagement of a highly reputable independent firm of Chartered Accountants to provide the Council with a full report on both the current financial position of the Lithgow City Council and the legal and financial position of 'controlled assets' of the Three Tree Lodge Aged Care Facility and Portland Olympic Pool.
2. That Council advise the Minister for Local Government and the Director-General of their actions to resolve the outstanding financial issues concerning the 2004/2005 Lithgow City Council General Purpose Financial Reports.
3. That Council seek advice and assistance in this matter from the Institute of Chartered Accountants of Australia, Sydney.
4. That Council seek it's own legal advice from it's contract Solicitors, Le Fevre & Co.

COMMITTEE MEETINGS

Nil.

QUESTIONS WITHOUT NOTICE

Nil.

ATTACHMENTS

ITEM:2 GM - 21/08/06 - TELECOMMUNICATIONS CHARGES



Lithgow City Council
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OFFICE OF THE

MINISTER FOR COMMUNICATIONS,
INFORMATION TECHNOLOGY
AND THE ARTS

Senator the Hon Helen Coonan

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1 AUG 2006

Mr Paul J Anderson
General Manager
City of Lithgow Council
PO Box 19
LITHGOW NSW 2790

Dear Mr Anderson,

Retail line rental charges and the Unbundled Local Loop Service

Thank you for your letter of January 2006 to the Prime Minister concerning line rental charges and the unbundled local loop service (ULLS). Your letter has been forwarded to the Minister for Communications, Information Technology and the Arts for reply as she has portfolio responsibility for the issues you have raised. The Minister has asked me to respond on her behalf. I apologise for the delay in responding.

Before I address your specific concerns, I would like to point out that the role of the Government is very different to that of telecommunications service providers. This role is to establish the policy framework, including the laws and regulations under which all service providers operate. These laws provide for a range of consumer safeguards and provisions that facilitate the development of an efficient and competitive telecommunications market. There are now hundreds of service providers and over 100 licensed carriers, including Telstra, and they must all comply with these laws.

Your correspondence raises two related but distinct issues: the charges for retail line rental services and the price Telstra's competitors pay to access its ULLS (i.e. the copper lines into customer's premises).

In relation to the first issue, the Government has assured all Australians that retail line rental pricing parity will remain a cornerstone of its telecommunications policy commitment. To maintain line rental pricing parity, in February 2006 the Government amended the price controls that apply to Telstra. These price controls now require Telstra to offer a basic retail line rental service at the same price across Australia, with a cap of 22 cents on untimed local

calls. The price of this service must remain frozen at its 31 December 2005 level until 30 June 2007, and thereafter can only increase at the rate of inflation.

Telstra is the primary universal service provider in Australia and it is required to provide basic telephony access to all people in Australia on an equitable basis upon request. However, Telstra does not shoulder the cost of this social obligation alone. Where the cost incurred for providing these services are greater than the revenue generated, then the additional costs are met through universal service obligation subsidies contributed by all licensed carriers.

In relation to the second issue, the ULLS allows a Telstra competitor to rent a copper line from a Telstra exchange to a customer's premises. By installing its own equipment in the exchange and at the customer's premises, the competitor can provide its own telephony, broadband and other telecommunications services to the customer.

The Australian regulatory regime, like that in other developed countries, requires the owner of 'bottleneck' infrastructure services to provide third party access at fair prices. This access is an important part of maintaining a competitive telecommunications market to the benefit of all Australians. Under the telecommunications access regime the Australian Competition and Consumer Commission (ACCC) 'declared' the ULLS in 1999. Since that time, ULLS pricing has always been set based on the four pricing bands referred to in your letter, which reflect the different costs of providing the service in those geographic zones.

The ACCC supports a de-averaged approach to the pricing of Telstra's ULLS because this most accurately reflects the cost of providing the service, and it also provides the right investment signals to industry. Cost-based pricing means that there will be an ongoing incentive for competitors to invest in the most efficient infrastructure.

Most telecommunications costs vary geographically, yet telecommunications companies make the commercial decisions to charge uniform retail prices. This is due to a number of factors, including administrative efficiencies and promotion of customer satisfaction.

Pricing of ULLS is a matter for the ACCC. Under the access regime, the ACCC is required by law to ensure the prices Telstra receives for the ULLS are set at levels sufficient to recover the cost of providing the service. In fact, when providing guidance on ULLS prices, the ACCC assumes Telstra should recover the full replacement costs of a new network, rather than just recovering the written down value of the assets. The Government considers the ACCC as the independent, expert regulator is best placed to make these decisions.

The Government has already provided over \$1 billion to support equitable access to telecommunications services in regional Australia. It has also committed significant funding packages towards future-proofing equitable access by regional Australians to telecommunications services, including broadband. Such funding includes the \$1.1 billion Connect Australia programme and the \$2 billion Communications Fund.

I trust this information is of assistance. Thank you for bringing your concerns to the Government's attention.

Yours sincerely

A handwritten signature in cursive script, appearing to read "J Fields".

JEREMY FIELDS
Assistant Adviser

3 January 2006

The Honourable John W Howard MP
Prime Minister of Australia
GPO Box 59
SYDNEY NSW 2001

Dear Prime Minister

RE: TELECOMMUNICATIONS CHARGES

The Mayor and General Manager recently attended a CENTROC meeting in Bathurst where a presentation re a proposal by the ACCC for the de-averaging of telephone line rentals, was received.

As you would know at present this cost is averaged to approximately \$30 per month across Australia for all telephone line rentals. It is understood that if de-averaging is approved, costs will be set according to the tele-density of the local exchange, tentatively as follows:

- City CBD \$10
- Metropolitan \$20
- Regional \$35
- Rural and Remote \$144

This proposal and tentative charges have been confirmed with the Managing Director of Telstra Country Wide. This proposal will have a devastating effect on business and residents at a time when Council is trying with some success to reverse the rural population decline. Presumably it will also affect many other rural and regional areas in New South Wales.

This will be a critical matter for rural NSW (and Australia) and will be a very important factor for businesses and people consider living in "the bush", should it proceed. The claim by Telstra that rural people can rely on the mobile network is nothing short of ridiculous and shows an obviously lack of understanding with the market and reliability of the mobile network in regional and rural areas.

Please convey Councils objection to the relevant Minister. Your strong support of this objection would be much appreciated.

Yours faithfully

Mr Paul J Anderson
GENERAL MANAGER