



LITHGOW CITY COUNCIL

AGENDA

ORDINARY MEETING OF COUNCIL

TO BE HELD AT

THE ADMINISTRATION CENTRE, LITHGOW

ON

17 MARCH 2008

AT 7.00pm

# AGENDA

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**PRESENT**

**QUESTIONS FROM THE PUBLIC GALLERY - NIL**

**PRESENTATIONS - NIL**

**CONFIRMATION OF THE MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD ON 18 FEBRUARY 2008**

**DECLARATION OF INTEREST - NIL**

**NOTICES OF MOTION -** Councillor Ticehurst - Request for Reimbursement  
Councillor Ticehurst - Questions Without Notice  
Councillor Ticehurst - Request for support - Citizens Electoral Council

**NOTICE OF RESCISSION - NIL**

**MAYORAL MINUTE - NIL**

**CORRESPONDENCE AND REPORTS**

General Manager Reports  
Regional Services Reports  
Community and Corporate Services Reports

**CLOSED REPORTS -** Lake Lyell Caretaker

**REPORTS FROM DELEGATES -** Centroc Report

**COMMITTEE MEETINGS - NIL**

**QUESTIONS OF AN URGENT NATURE**

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

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**NOTICE OF MOTION**

10 MAR 2008

**MOTION TITLE/TOPIC:**

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

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

Listed by Councillor Martin Ticehurst

Date: 10 March 2008

**BACKGROUND**

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

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

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

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

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

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

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

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

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

This Bill must include the following provisions:

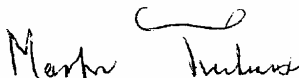
1. Parliament must establish a Federal agency to place Australian licensed retail Banks, Credit Unions and Building Societies under protection, freezing all existing home and family farm mortgages for a period of however many months or years are required to adjust the values to fair prices, and restructure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

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

#### **RECOMMENDATION**

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

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



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

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NOTICE OF MOTION

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- 10MAR 2008

MOTION TITLE/TOPIC:

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

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

Listed by Councillor Martin Ticehurst

Date: 10 March 2008

REFERENCE/S:

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

BACKGROUND

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

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

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

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

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

RECOMMENDATION

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

Signed:



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

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-10 MAR 2008

Doc. No .....  
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**NOTICE OF MOTION**

**MOTION TITLE/TOPIC:**

Questions with Notice submitted by Councillor Martin Ticehurst.

Listed by Councillor Martin Ticehurst

Date: 10 March 2008.

**BACKGROUND**

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

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

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

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

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

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

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

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

**RECOMMENDATION**

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

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

*Martin Ticehurst*

## GENERAL MANAGER REPORTS

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

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#### REFERENCE

NIL

#### SUMMARY

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

#### COMMENTARY

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

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

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

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

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

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

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

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

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

**POLICY IMPLICATIONS**

NIL

**FINANCIAL IMPLICATIONS**

NIL

**LEGAL IMPLICATIONS**

NIL

**ATTACHMENTS**

NIL

**RECOMMENDATION**

**THAT** the information be noted.

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

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**REFERENCE**

Min 008-03: Council Meeting 18 February 2008

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

**SUMMARY**

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

**COMMENTARY**

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

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

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

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

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

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

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

Minister Sartor's correspondence does not deny this position.

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

**POLICY IMPLICATIONS**

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

**FINANCIAL IMPLICATIONS**

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

**LEGAL IMPLICATIONS**

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

**ATTACHMENTS**

Nil

**RECOMMENDATION**

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

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

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**REFERENCE**

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

**SUMMARY**

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

**COMMENTARY**

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

**POLICY IMPLICATIONS**

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

**FINANCIAL IMPLICATIONS**

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

**LEGAL IMPLICATIONS**

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

**ATTACHMENTS**

Nil

**RECOMMENDATION**

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

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

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**REFERENCE**

NIL

**COMMENTARY**

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

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

**POLICY IMPLICATIONS**

NIL

**FINANCIAL IMPLICATIONS**

NIL

**LEGAL IMPLICATIONS**

NIL

**ATTACHMENTS**

NIL

**RECOMMENDATION**

**THAT:**

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

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

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**REFERENCE**

NIL

**SUMMARY**

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

**COMMENTARY**

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

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

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

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

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

Local Council elections were last held in 2004.

**POLICY IMPLICATIONS**

NIL

**FINANCIAL IMPLICATIONS**

NIL

**LEGAL IMPLICATIONS**

NIL

**ATTACHMENTS**

NIL

**RECOMMENDATION**

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

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

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**REFERENCE**

NIL

**SUMMARY**

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

**COMMENTARY**

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

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

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

**POLICY IMPLICATIONS**

This report satisfies Councils policy on such matters.

**FINANCIAL IMPLICATIONS**

NIL

**LEGAL IMPLICATIONS**

NIL

**ATTACHMENTS**

NIL

**RECOMMENDATION**

**THAT** the report be noted.

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

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**REFERENCE**

NIL

**SUMMARY**

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

**COMMENTARY**

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

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

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

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

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

**POLICY IMPLICATIONS**

This report is supporting of Council policies on:

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

**FINANCIAL IMPLICATIONS**

NIL

**LEGAL IMPLICATIONS**

NIL

## RECOMMENDATION

**THAT:**

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

## REGIONAL SERVICES REPORTS

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

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

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### REFERENCE

Nil

### SUMMARY

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

### COMMENTARY

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

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

The terms of reference of the inquiry are:

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

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

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

**POLICY IMPLICATIONS**

Nil.

**FINANCIAL IMPLICATIONS**

Nil at this stage.

**LEGAL IMPLICATIONS**

Nil at this stage.

**ATTACHMENTS**

Nil.

**RECOMMENDATION**

**THAT** the information be received.

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

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

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**REFERENCE**

DA 461/04  
Finance and Services Committee – 3 September 2007  
Ordinary Meeting - 17 December 2007  
Finance and Services Committee – 3 March 2008

**SUMMARY**

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

**COMMENTARY**

In 2005, Council issued development consent to DA 461-04 being the construction and operation of the Pinedale Open Cut Mine in Blackmans Flat. At Councils Finance and Services Committee meeting in September 2007 Council resolved to refuse a modification of consent to the approved operation when the applicant sought to utilise the public road infrastructure rather than other mechanisms as required by Councils condition. Now Council is in receipt of a further modification application seeking approval for the use of public roads for a period of no less than 6 years for the transportation of coal and to increase current maximum tonnages for the development to 350,000tpa from existing levels of 200,000tpa with justification indicating that the previous option proposed (utilisation of the private haul road for coal transportation) has not been negotiated subject to the following:

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

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

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

A comprehensive Section 79C planning report is attached.  
The two modifications sought are summarised below

### **Increased Tonnage**

The modification seeks to increase tonnages from the site from 200,000tpa to 350,000tpa which would be an increase of 75%. The increased tonnages have been sought as additional contracts to the local (Mt Piper) markets and as such in order to activate those additional contracts the modification is required to be approved. The potential impacts of the modification are arguable. The additional contracts proposed have the potential to reduce the life of the mine significantly. As part of the original Environmental Impact Statement (EIS) for the Pine Dale proposal it was indicated that the total resource within the mining lease area was 1.9 million tonnes. An increase in tonnage potentially decreases the life of the mine from approximately 10 years to approximately 6 years. This decreases the effect on the adjoining residents of Blackmans Flat and Lidsdale. Additionally, the Statement of Environmental Effects (SoEE) indicates that this increase in operation will have no additional affect on limits pertaining to noise, hours of operation or mining method. The alternative view is that the modification seeks to increase production to an additional 75% of the approved development. Therefore, there will be increased pressure placed on the adjoining area through such impacts as vehicle movements (both light and heavy), noise and amenity.

### **Transportation of Coal**

Council officers consider the issue of coal transportation to be one which requires careful consideration. The existing mining operations are situated adjacent to a private haul road and it seems incongruous that heavy vehicles would have to travel by public road when such a facility is so close. However, the applicant has indicated within the SoEE that there are private contractual issues which apparently make the potential usage of the private road improbable. The current development consent condition provides the following:

*13.2. The Applicant shall ensure that within six months of the commencement of operations, all coal is to be transported to Mt. Piper and Wallerawang Power Stations by means other than public roads.*

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

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

### **POLICY IMPLICATIONS**

There are no perceived policy consideration's pertaining to this report.

### **FINANCIAL IMPLICATIONS**

The only perceived financial consideration pertaining to this report relate to costs involved in appealing a consent in the Land & Environment Court. However, this is not a relevant consideration in the development assessment process.

## LEGAL IMPLICATIONS

The application must be assessed in accordance with the heads of consideration of Section 79C of the Environmental Planning & Assessment Act 1979. The proposal also constitutes Integrated Development under the Act.

Furthermore, the application is considered to be integrated development through the Roads Act 1993, and as such the RTA was advised of the modification and asked to comment. Further, due to the nature of Council's delegated authority to assess the application the Department of Planning were also notified of the application. Other government authorities notified through the modification process included the SCA, DECC & DPI. The correspondence is assessed separately below.

### The NSW Department of Planning

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

*The Department recognises the difficulties experienced by Enhance Place Pty Limited (the Applicant) in its attempts to gain access to the private haul road operated by Coal>Link. While it remains the Department's preferred position that coal transportation on the public road network should be avoided, it would seem that access to the Coal>Link road is not currently available to the Applicant on a satisfactory commercial basis.*

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

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

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

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

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

- ***prohibit the use of local council roads for transportation of coal from the mine;***
- ***avoid transportation of coal during times when school buses may be operating;***
- ***prohibit the use of public roads to deliver coal to Wallerawang Power Station and other domestic customers unless otherwise agreed to by Council; and***

- **allow the use of public roads to deliver coal to Mount Piper Power Station for a initial period of 12 months, with further use of public roads to be considered on a yearly basis by Council based on the Applicant's presentation of written evidence that it has used its best endeavours to achieve access to the Coal>Link road.**

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

- **Upon receiving a written request from the owner of any residence where subsequent noise monitoring shows the noise generated by the development (i.e. not including off-site traffic noise) is greater than, or equal to, 42 dB(A)<sub>(LAeq,15minute)</sub>, (unless a negotiated noise agreement is in place), the Applicant shall implement additional noise mitigation measures such as double glazing, insulation, and/or air conditioning at any residence on the land in consultation with the landowner.**

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

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

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

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

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

1. The proponent monitor the volume of vehicles entering and leaving the site, ensuring 'busy days' are captured. For this purpose it is recommended that a traffic classifier be installed in an appropriate location within the site, and reports provided to Lithgow City Council for assessment.

2. In the event that the volume of vehicles turning into the site exceeds 10km's per hour, that the intersection is upgraded to a higher standard based on the RTA Road Design Guide 'AUR' or 'CHR' as appropriate for the volumes and road safety requirements.
3. The proponent to monitor traffic incidents, including 'near misses' at or near the site access that involve vehicles intending to access or having left the site.
4. The proponent to prepare a traffic management plan that includes induction and regular reminders to haulage vehicle drivers relating to safe operation of the vehicles on public roads.

However, in concluding the RTA state in their correspondence that *it is noted that a private haul road may be accessed for haulage operations. The use of a private haul road mitigates the majority of public road safety and traffic impacts accompanying the proposal and further negotiations should be encouraged.*

Further, within the current correspondence the RTA have indicated that given the proposed access relocation the required intersection of the access and the Castlereagh Highway should be constructed to allow protected right turns from the highway, that is, type CHR and type AUL (RTA Road Design Guide) treatments that cater for deceleration and storage of the vehicle types accessing the site. If Pine Dale proposes to relocate the heavy vehicle entry opposite Council's Waste Disposal facility, they will be required to provide a treatment to complement this.

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

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

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

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

## Public Submissions

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

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

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

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

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

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

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

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

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

## Conclusions

Councillors should be aware that as part of the original development application extensive negotiations had taken place with the proponents in relation to conditions of consent prior to approval being given. Whilst general agreement was reached on draft conditions there remained two areas where this could not be achieved. Firstly, in relation to the life of the proposal Council recommended a limitation of 10 years which can only be extended through a Section 96 modification where ongoing environmental compliance would need to be demonstrated. In relation to haulage on public roads and access to other private means of transportation, Council was of the opinion that, irrespective of private matters of access, the proximity to the private haul road was too great a consideration to ignore. These concerns still exist for the current modification application. The fact that the use of a private haul road that is in such close proximity has been unable to be achieved to date is to say the least disappointing particularly, given the efforts that Council has put in to try and bring the parties to a solution. However, given the restrictive conditions proposed by the government agencies in this instance it is considered that Council can consider approval of the modification subject to the implementation of these conditions into the approval document.

## ATTACHMENTS

1. Complete 79C Planning Report under separate cover.

## RECOMMENDATION

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

1. The proponent monitor the volume of vehicles entering and leaving the site, ensuring 'busy days' are captured. For this purpose it is recommended that a traffic classifier be installed in an appropriate location within the site, and reports provided to Lithgow City Council for assessment.
2. In the event that the volume of vehicles turning into the site exceeds 10km's per hour, that the intersection is upgraded to a higher standard based on the RTA Road Design Guide 'AUR' or 'CHR' as appropriate for the volumes and road safety requirements.
3. The proponent to monitor traffic incidents, including 'near misses' at or near the site access that involve vehicles intending to access or having left the site.
4. The proponent to prepare a traffic management plan that includes induction and regular reminders to haulage vehicle drivers relating to safe operation of the vehicles on public roads.
5. The Castlereagh Highway is to be constructed to allow protected right turns from the highway, that is, type CHR and type AUL (RTA Road Design Guide) treatments that cater for deceleration and storage of the vehicle types accessing the site. The applicant is to relocate the heavy vehicle entry opposite Council's Waste Disposal facility access, and appropriate treatment is to complement this.

6. The proposed landscaping, signage and fencing are not to impede sight lines of traffic and/or pedestrians within the development, or when entering and leaving the development. Safe intersection sight distance is to be achieved.
7. The proponent is to provide a pavement design and intersection design for RTA approval prior to the commencement of works;
8. A Road Occupancy Licence is required prior to any works commencing within 3m of the travel lanes. Submission of a traffic control plan is required as part of this licence
9. A formal agreement in the form of a Works Authorisation Deed (WAD) may be required between the developer and the RTA should the developer wish to undertake 'private financing and construction' of the access with any highway. This agreement is necessary on works in which the RTA has a statutory interest.
10. All works associated with the development are to be at no cost to the RTA.
11. No coal transportation from the mine is to be carried out on any local council road, excepting Boulder Road from Castlereagh Highway to the entrance to Mt Piper Power Station;
12. No transportation of coal is to occur during times when school buses are operating. The applicant is to consult with Jones Bros Pty Ltd, and implement time restrictions appropriate to this condition into its amended Truck Management Plan which is to be submitted to Council for approval.
13. The use of public roads to deliver coal to Wallerawang Power Station and other domestic customers is prohibited unless alternative arrangements can be negotiated other than on public road
14. The use of public roads to deliver coal to Mount Piper Power Station is limited for a period of 12 months. Council will consider further use of public roads on a yearly basis and based on the Applicant's presentation of written evidence that it has used its best endeavours to achieve access to the Coal>Link road.
15. Upon receiving a written request from the owner of any residence where subsequent noise monitoring shows the noise generated by the development (i.e. not including off-site traffic noise) is greater than, or equal to, 42 dB(A)<sub>(LAeq,15minute)</sub>, (unless a negotiated noise agreement is in place), the Applicant shall implement additional noise mitigation measures such as double glazing, insulation, and/or air conditioning at any residence on the land in consultation with the landowner.  
***NOTE:*** *If within 3 months of receiving this request from the landowner, the Applicant and the landowner cannot agree on the measures to be implemented, or there is a dispute about the implementation of these measures, then either party may refer the matter to Council for resolution.*
16. Any condition imposed by the SCA, DECC or DPI approving the application.

17. A Section 94 Contribution will be required to be paid by the applicant in accordance with Council's current Section 94 Plan for Rural Roads. This contribution will be based on 5 cents per tonne per kilometre yearly calculation for the length of Council road utilised by the development. In this case Boulder Road.
18. The access to the development is to be relocated in accordance with the location identified with the Statement of Environmental Effects, lodged with the modification dated 8 February 2008.
19. Prior to construction of the access the applicant is to provide a detailed traffic plan indicating proposed internal coal haulage vehicle movements for Council approval. This will additionally include, but not limited to proposed bund wall relocation requirements and potential watercourse access improvements.

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

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

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**SUMMARY**

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

**COMMENTARY**

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

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

**POLICY IMPLICATIONS**

Policy 3.1 'Contracts- Disclosure on request of information contained in council contracts' which identifies information contained in council contracts which may be publicly disclosed upon request is potentially applicable should a contract be awarded. Policy 9.11 'Tenders- canvassing/lobbying of councillors and staff' is applicable to the process. Furthermore, Council's Policy on Tendering requires goods with an apparent value of \$150,000 to be put out to tender. The policy also provides that Council must determine between an open or selective tender process. In this case, an open tender process is considered more appropriate

**FINANCIAL IMPLICATIONS**

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

**LEGAL IMPLICATIONS**

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

**ATTACHMENTS**

Nil.

**RECOMMENDATION**

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

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

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

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### **Reason for Confidentiality**

#### **Reason for Confidentiality**

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

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

The matters and information are the following:

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

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

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

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

## **REFERENCE**

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

## **SUMMARY**

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

## **RECOMMENDATION**

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

## COMMUNITY AND CORPORATE SERVICES REPORTS

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

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

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#### REFERENCE

07-453: Council Meeting 15 October 2007

#### SUMMARY

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

#### COMMENTARY

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

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

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

#### POLICY IMPLICATIONS

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

#### FINANCIAL IMPLICATIONS

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

#### LEGAL IMPLICATIONS

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

#### ATTACHMENTS

1. Code of Conduct Version 4

#### RECOMMENDATION

**THAT** the changes to the Appendix of the Code of Conduct be adopted.

**ITEM:16            COMM - 17/03/08 - SECTION 356 DONATIONS**

**REPORT FROM: COMMUNITY AND CULTURE MANAGER – P.HALL**

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**REFERENCE**

- Minute 07-258 - Extraordinary Meeting 28 June 2007
- Minute 07-289 - Council Meeting 16 July 2007
- Minute 07-360 - Council Meeting 20 August 2007
- Minute 07-402 - Finance and Services Committee Meeting 3 September 2007
- Minute 07-424 - Council Meeting 17 September 2007
- Minute 07-455 - Council Meeting 15 October 2007

**SUMMARY**

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

**COMMENTARY**

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

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

Date	Organisation	Assistance	Amount
28.06.07	Various	Sponsorship	\$13,698.99
16.07.07	Kidney Health Kar Rally	Sponsorship- Lithgow team	\$ 100.00
20.08.08	Portland District Motor Sports Club	Sponsorship for a trophy	\$ 60.00
20.08.07	Portland Pool Association	Additional allocation for cost of operations	\$ 5,000.00
03.09.07	Newnes Hotel 100 year celebrations	Sponsorship Min 07 -	\$ 385.58
17.09.07	Rydal Show Society	Sponsorship Min 07-424	\$ 1,000.00
17.9.07	Greater Lithgow Regions Event Diary	Sponsorship	\$ 300.00
15.10.07	Country Women's Association – Lithgow Branch	Reimbursement of general rates	\$ 417.47
15.10.07	Board of State Mine Railway	Difference between business and residential rates	\$ 1,058.65
<b>Deficit</b>			<b>\$ 20.69</b>

\* includes Portland Pool \$5,000

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

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

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

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

<b>Date</b>	<b>Organisation</b>	<b>Amount</b>
16.1.08	LINC Disability Services Waiving of hire fee for Lake Wallace	\$175.00
21.01.08	NSW Rural Doctors Network Bush Bursary Country Women's Association Scholarship Scheme	Nil
23.1.08	Harmony Day celebrations	\$57.75
No date on letter	Bikebiz Bushfire Benefit Bash	\$363.00
<b>TOTAL</b>		<b>\$595.75</b>
Remaining		\$342.25

### **POLICY IMPLICATIONS**

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

### **FINANCIAL IMPLICATIONS**

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

### **LEGAL IMPLICATIONS**

Local Government Act 1993 s356 applies.

### **ATTACHMENTS**

1. LINC Mini Olympics (Doc 394826)
2. NSW Rural Doctors Network letter (Doc 395302)
3. LINC Lithgow Multicultural Interagency request (Doc 395076)
4. 2008 Bikebiz Bushfire Benefit Bash (Doc 398307)

### **RECOMMENDATION**

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

## DELEGATES REPORTS

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

#### REPORT FROM: NEVILLE CASTLE, MAYOR

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#### REFERENCE

NIL

#### SUMMARY

NIL

#### COMMENTARY

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

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

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

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

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

**POLICY IMPLICATIONS**

NIL

**FINANCIAL IMPLICATIONS**

NIL

**LEGAL IMPLICATIONS**

NIL

**ATTACHMENTS**

NIL

**RECOMMENDATION**

**THAT** the information be noted.

## QUESTIONS OF AN URGENT NATURE

# **ATTACHMENTS**

## **ORDINARY MEETING OF COUNCIL 17<sup>TH</sup> MARCH 2008**

Lithgow City Council  
Scanned

23 JAN 2008

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



Lithgow Information  
and Neighbourhood Centre

Lithgow Information and Neighbourhood Centre Inc

1 Padley St Lithgow 2790  
PO Box 289  
Telephone: 6352 2077  
Facsimile: 6353 1826  
Email: christine@linc.org.au  
Website: www.linc.org.au  
ABN: 31 175 063 234

Date 16/1/08

To: Leanne Kearney	From: Christine Boyd
Fax No: 63513858	<input type="checkbox"/> SAS programme Coordinator
Pages inc. 2	<input type="checkbox"/> LINC HACC Service
Subject: mini olympics	<input type="checkbox"/> Neighbourhood Centre
	<input type="checkbox"/> LINC Disability Services
	<input type="checkbox"/> LINC Services Manager
	<input type="checkbox"/> Adolescent & Family Counsellor
	<input type="checkbox"/> LINC Inc Board of Management

Urgent  Action  For Information  Reply  Your Comment

Message: Attention Leanne

I am writing to you in regards to booking Lake Wallace grounds for LINC Disability Services yearly Mini Olympics Carnival that has been held at the lake for the past few years.

We wish to again express our gratitude and appreciation for the assistance council has given us over the years by allowing our service to use Lake Wallace free of charge.

The Mini Olympics is one of the biggest social events of the year for people with a disability as competitors arrive from the upper Blue Mountains and Western region.

The Mini Olympics is only funded through the generosity of the community and council donating the Lake area for the Day. I am hoping your generosity will again extend to this very important event by waiving all fees and charges.

Otherwise the costs imposed will make it impossible to continue with this very important social activity. The proposed Date for this years event is 26<sup>th</sup> March.

LINC Disability Services are committed to ensuring that people with a disability are supported and encouraged in their community and social development.

Regards  
Christine Boyd  
LINC, SAS Programme Coordinator

Jan. 18 2008 08:57AM P2

PHONE NO. : 0263522277

FROM : LINC INC



NSW RURAL DOCTORS NETWORK  
www.nswrdn.com.au

Lithgow City Council  
Scanned

25 JAN 2008

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

21 January 2008

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

**Re: The 2008 Bush Bursary/Country Women's Association Scholarship Scheme**

Dear Mr Anderson

I am writing to inform the City of Lithgow Council of the Bush Bursary/Country Women's Association (CWA) Scholarship Scheme and to invite you to consider participating in the scheme in 2007. The Bush Bursaries and CWA Scholarships are offered annually to selected medical students in NSW and the ACT, and are financially supported by the rural shires of country NSW, the Country Women's Association and the NSW Rural Doctors Network (RDN).

If your Shire wishes to participate in the Scheme, RDN will invoice you for \$3,000 (+ GST) which will be provided to the medical student who, in return, will agree to spend two weeks of "rural placement" in your Shire in the University holidays during the year or over the Christmas break. RDN's role is to administer the scheme, promote the Bush Bursary to medical students in NSW/ACT and to select the successful recipients. RDN matches the successful students with a sponsoring shire council. Each sponsoring shire council nominates a placement coordinator (usually this is someone who works at the council). The placement coordinator is responsible for liaising with the sponsored student and organising the activities included in the placement.

The NSW Rural Doctors Network has been working on a longitudinal tracking study of all medical students who have received the Bush Bursary. Since the first BB/CWA scholarships were awarded in 1996, 161 students have benefited. The career choice and practice locations of these students have been tracked by RDN between 1996 and 2006.

Forty-one Shire, City or Municipal Councils have sponsored between 1 and 22 students each. Three students have been sponsored by other community organisations and the CWA have sponsored 13 students. Of the 161 students, 62% have been female and 39% have grown up in a rural community (outside Sydney, Wollongong and Newcastle).

HEAD OFFICE:  
SUITE 19, LEVEL 3  
133 KING STREET, NEWCASTLE 2300  
TELEPHONE (02) 4924 8000  
FACSIMILE (02) 4924 8010

SYDNEY OFFICE:  
PO Box 1111  
MASCOT, 1460  
TELEPHONE (02) 9313 5955  
FACSIMILE (02) 9313 5750

One hundred and one of these students had graduated from University by 2006 and one third were doing or had done their first postgraduate year in a base hospital. This is remarkable because of the small proportion of postgraduate places (less than 10%) available outside metropolitan areas.

Of these students 47 were on a vocational training program (15 general practice registrars and 32 specialist registrars) and two were vocationally registered GPs. The two GPs were in RRMA 5, nine of the 15 GP registrars were training in rural areas (RRMA 3-7) and four specialist registrars were training in rural areas. This is also encouraging as there are few specialist-training places outside metropolitan areas.

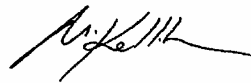
All students have enjoyed their placements. They loved being engaged in the community, both professionally and socially. Students from the country enjoyed having the financial freedom to spend time back there as a professional rather than a resident, and those not from the country gained invaluable knowledge and familiarity with rural issues, which is likely to expand their thinking in terms of future career options. This group were much more likely to mention an interest in the scholarship as a 'trial' prior to deciding whether or not to apply to study at a rural clinical school.

The number of students studying medicine is increasing, with students from the Universities of NSW, Newcastle, Sydney, Wollongong and the Australian National University all eligible to apply for a Bush Bursary placement in 2008. There are new medical schools at the University of Western Sydney, New England and Notre Dame whose first intake begin early in 2008, students from these universities will be able to apply for the Bush Bursary from 2009 onwards. There will be increasing numbers of students who will apply for the Bush Bursary, RDN would like to be able to offer as many Bush Bursary places as possible to expose this new generation of future doctors to rural medical practice and lifestyle.

Your contribution is significant in providing a positive experience of rural health, which is a known contributor to choosing a rural career. The evidence is mounting that this is the case.

If you would like any further information about the Bush Bursary scheme or the longitudinal evaluation please feel free to contact me - [mkelliher@nswrhdn.com.au](mailto:mkelliher@nswrhdn.com.au) or (02) 8337 8100. Enclosed with this letter is a fax back sponsorship form, if your council would like to participate in the Bush Bursary scheme in 2008 please return the form before **Monday the 31<sup>st</sup> of March**. I look forward to hearing from you soon.

Kind regards,



Ms. Marie Kelliher  
Project Officer - Education & Training

### 2008 BUSH BURSARY SPONSORSHIP RESPONSE FORM

Your shire is invited to sponsor and host a Bush Bursary Scholarship holder during 2008. Please complete the following details of you wish to participate or alternatively, if you wish to obtain further information please contact Marie Kelliher in the Sydney office of the NSW Rural Doctors Network (02) 9313 5955 or e-mail – [mkelliher@nswrpn.com.au](mailto:mkelliher@nswrpn.com.au)

Name of Shire Council:	_____
Name of Town for Rural Placement::	_____
Name of General Manager:	_____
Name of Placement Coordinator:	_____
Job title of Placement Coordinator:	_____
Mailing Address:	_____
	_____
	_____
E-mail:	_____
Telephone:	_____
Facsimile:	_____

Please return this form by **Monday the 31st of March 2008** to:

Marie Kelliher  
Project Officer – Education and Training  
PO Box 1111  
Mascot NSW 1460  
Fax: (02) 9313 5750  
Email: [mkelliher@nswrpn.com.au](mailto:mkelliher@nswrpn.com.au)



Lithgow Information  
and Neighbourhood Centre

**Lithgow Information and Neighbourhood Centre  
Inc**

Lithgow City Council

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23<sup>rd</sup> January 2008

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

Dear Mr Anderson,

RE: Lithgow Council Contribution to Harmony Day Celebrations

The Lithgow Multicultural Interagency is planning Harmony Day Celebrations for Lithgow to be held on Wednesday 19<sup>th</sup> March in the Union Theatre. The celebration will be a lunch time event with information stalls, food and performances of singing and dancing from a variety of groups from local and neighbouring areas.

The Multicultural Interagency would like to invite Lithgow Council to support the Harmony Day event by waiving the fee for the Union Theatre.

I look forward to hearing from you in the near future.

Yours Sincerely

Maeve Dunnett  
Lithgow Multicultural and Community Development Worker  
On behalf of the Lithgow Multicultural Interagency



Penny Hall  
Lithgow City Council  
PO Box 19  
Lithgow 2790

Dear Penny,

**RE: 2008 Bikebiz Bushfire Benefit Bash**

The Bikebiz Bushfire Bash is a motorbike event held on an annual basis, which promotes camaraderie amongst bike riders, whilst driving visitors into our region and supporting and raising vital funds for the regions Rural Fire Service. The event is in it's 6<sup>th</sup> year of being staged. The Bushfire Benefit Bash starts in Windsor, with riders traversing the Bell's Line of Road to Lithgow Showground, where a BBQ and entertainment are staged. The event is generally finished by approximately 2.00pm. The event is set to be held on the 9<sup>th</sup> March 2008.

As the representative of the Committee for the Bikebiz Bushfire Benefit Bash, I would like to request Councils co-operation in seeking to waive the hire fees of the Tony Luchetti Showground for this event.

Money raised from this event is utilised to fund and purchase special equipment for the volunteer bush fire fighters (RFS). Items purchased are generally specialised equipment not normally supplied by RFS that are purchased through public donation. This equipment is vital to enable our volunteers to work safer and more efficiently in fighting fires, protecting our communities from the threat of fires. All monies raised on the day are provided to the RFS to be expended.

The RFS is a worthy community supporter and is also a volunteer organisation. Monies raised from activities, in particular the 2008 Bikebiz Bushfire Bash, is invested back into supporting and protecting regional communities. We hope that Council favourably considers waiving the associated fees, thereby allowing all money raised from this event to be re-invested into the local community.

I await your reply on this issue.

Yours sincerely,

  
Alan Gerke  
Group Captain – North  
Rural Fire Service

T: 0407 237 473

The 6TH Annual  
**BIKEBIZ**  
**BUSHFIRE BRIGADE BASH**  
 Sunday March 9 at Lithgow Showground

Parramatta motorcycle dealer Bikebiz are proud to announce their sixth annual Bikebiz Bikers Back the Bushfire Brigade Bash as the motorcycling community joins forces to raise much needed funds for the Lithgow and District Rural Fire Service.

Hundreds of motorcyclists are expected to participate in the ride as they endeavour to raise in excess of \$5000 for the day to be donated to a very worthy cause.

In addition to the ride a lively entertainment lineup will greet the riders upon their arrival in Lithgow. With the attention aimed at raising funds for the Lithgow & Districts RFS, Yamaha Motor Australia have, as part of their commitment to the event, donated a BeeWee scooter as part of a quality raffle prize pool.

**Ride details:**

**Departure Point and Registration:** Meet at McDonalds McGraths Hill (Windsor) at 9:00am for a 10:00am departure.

**Destination Venue:** Lithgow Showgrounds, from 12:00 noon to 2:00pm

**Cost / Donation:** \$20 / person, includes donation & BBQ meal

**Event T Shirt & Prize Draw:** With the purchase of an event T Shirt (cost \$20) you will go into the draw to win a fantastic Yamaha BeeWee Scooter and other great prizes. Prize winners will be drawn and announced during the lunch entertainment at Lithgow Showground. Additional tickets will be available for purchase at \$10 each on the day

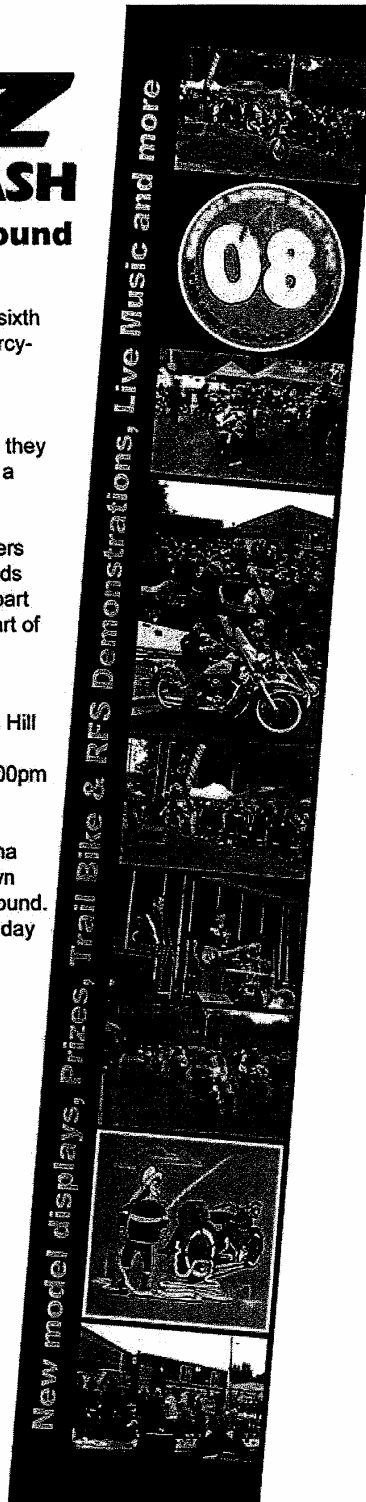


Purchase an event T Shirt  
 and go in the draw to

**WIN**  
 a Yamaha BeeWee  
 scooter and other  
 great prizes

*Additional tickets will be available  
 for purchase at \$10 on the day*

For more details on the event contact either:  
 Peter Ingram at Bikebiz on Email - [peteri@bikebiz.com.au](mailto:peteri@bikebiz.com.au)  
 Ph - 02 8830 0508, or Mick Woolfrey on 0415 375 592



Modification of Development  
Consent Application 461-04

**Pine Dale Open Cut Mine**  
**Proposal**

Applicant: Enhance Place Pty Ltd.



**SECTION 79C**  
**PLANNING REPORT**

**DEVELOPMENT ASSESSMENT REPORT PINE DALE SECTION 96  
MODIFICATION**

**PREAMBLE**

In 2005, Council issued development consent to DA 461-04 being the construction and operation of the Pinedale Open Cut Mine in Blackmans Flat. At Councils Finance and Services Committee meeting in September 2007 Council resolved to refuse a modification of consent to the approved operation when the applicant sought to utilise the public road infrastructure rather than other mechanisms as required by Councils condition. Now, Council is in receipt of a further modification application seeking approval for the use of public roads for a period of no less than 6 years for the transportation of coal and to increase current maximum tonnages for the development to 350,000tpa from existing levels of 200,000tpa with justification indicating that the previous option proposed (utilisation of the private haul road for coal transportation) has not been negotiated subject to the following:

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

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

The applicants have indicated within the modified document that they are willing to relocate the current access point approximately 75m to the north of the current heavy vehicle access point to minimize any potential concerns the current Blackmans Flat residents have in relation to the access point onto the Castlereagh Highway.

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

A comprehensive Section 79C planning report is attached.

## **PROPOSAL:**

Council is in receipt of a modification of consent application for an existing designated and integrated development application from Enhance Place Pty Ltd. who are seeking a modification to their existing approval, to allow production limits to increase to 350,000 and allow continual haulage of coal on public roads.

The Statement of Environmental Effects indicates that the purpose of the development would remain the same as the currently approved development, being to mine and provide coal to local power stations and other buyers in an environmentally responsible manner.

The proposed modifications to the approved development include an increase in the approved production from 200,000tpa to 350,000tpa and continued transport of coal at the increased production rate via public road network. The proposed increase in production would result in the need for an additional bulldozer within the area of mining and front-end loader within the crushing, stockpile and maintenance area. No additional processing equipment or increase to operational hours would be required. No other operational or design features would change as a result of the production increase.

Additionally, the applicants have indicated within the modified document that they are willing to relocate the current access point approximately 75m to the north of the current heavy vehicle access point to minimize any potential concerns the current Blackmans Flat residents have in relation to the access point onto the Castlereagh Highway.

It is asserted that the proposed modification would result in substantially the same environmental impacts as the operation currently approved. The applicant concludes in the Statement of Environmental Effects that the application satisfies the requirements of Section 96(2) of the Environmental Planning and Assessment Act 1979.

The modification seeks the following variations:

- (i) increase annual approved production from a maximum of 200,000tpa (Section 2.6.4 of EIS (RWC, 2004)), to 350,000tpa; and
- (ii) transport up to 350,000tpa to the Mt Piper and Wallerawang Power Stations via the public road network.
- (iii) Transferring coal transportation access 75m to the north of the current location.

The proposal is considered 'integrated development' under Section 91 of the Environmental Planning AND Assessment Act 1979 as it also requires a Section 138 permit under the Roads Act 1993 for the installation of a centre median at the heavy vehicle entrance. Figure 1, defines the development site.



Department of Primary Industries (DOPI), formerly the Department of Mineral Resources.

The legal property description of the proposal is described as the following:

Part Portion 29 DP 751636  
Part Portions 290 & 291 DP 751636  
Part Lot 31 DP 827626  
Lot 21 DP 751636  
Lot 33 DP 827626  
Part Lots 29 & 30 DP 827626  
Part Lot 27 DP 827626  
Part Lot 34 DP 827626  
Ben Bullen State Forest  
Crown Road Reserves

**ZONING:** The land is zoned General Rural - 1(a) & Forestry - 1(f) according to Council's Local Environmental Plan 1994.

**MATTERS FOR CONSIDERATION UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

**Any Environmental Planning Instrument**

Consider SEPPs, REPs & LEPs. RELEVANT Provisions of LEP (eg permissibility, development standards, heritage listing or advertising). Is a SEPP1 objection required.

On the 12 February 2004, the Minister Assisting the Minister for Infrastructure and Planning delegated the approvals process to Lithgow City Council subject to certain conditions. Those conditions included:

1. the delegation may only be exercised in relation to a development application lodged by Enhance Place Pty Ltd to Lithgow City Council for the Pine Dale Coal Extraction proposal.
2. the Council unless otherwise directed by me, the Minister, cannot refuse the subject development application;
3. the Council and its officers shall consult with the Department of Infrastructure, Planning and Natural Resources (the Department) in finalizing its report for determination;
4. the Council shall forward a copy of the draft instrument of consent to enable any conditions to be agreed to by the Department on behalf of the Minister.

On the 7<sup>th</sup> February 2007 the Minister for Planning the Honorable Frank Sartor issued a further delegation instrument that would allow Lithgow City Council to determine any application to modify the Pine Dale Coal Extraction development consent (DA No 461/04) under sections 96(1), 96(1A) and 96(2) of the Environmental Planning and

Assessment Act 1979.

### **Local Environmental Plan's**

Under the provisions of the Lithgow City council Local Environmental Plan (LEP) 1994, the development is zoned in Council's *General Rural 1(a) Zone*. The aims and objectives of that zone are outlined below. They include:

#### **Zone No 1 (a) Rural (General)**

##### **1 Objective of the zone**

*The objective of the zone is to promote the proper management and utilisation of natural resources by:*

- (a) protecting, enhancing and conserving:*
  - (i) rural land, in particular prime crop and pasture land, in a manner which sustains its efficient and effective agricultural production potential,*
  - (ii) soil, by controlling and locating development in accordance with soil capability,*
  - (iii) forests of existing and potential commercial value for timber production,*
  - (iv) valuable deposits of minerals, coal and extractive materials, by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits,*
  - (v) trees and other vegetation in environmentally sensitive areas, where the conservation of the vegetation is significant for scenic amenity or natural wildlife habitat or is likely to control land degradation,*
  - (vi) water resources for use in the public interest, preventing the pollution of water supply catchment and major water storages,*
  - (vii) localities of significance for nature conservation, including places with rare plants, wetlands and significant wildlife habitat, and*
  - (viii) items of heritage significance,*
- (b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture,*
- (c) facilitating farm adjustments,*
- (d) minimising the cost to the community of:*
  - (i) fragmented and isolated development of rural land, and*
  - (ii) providing, extending and maintaining public amenities and services,*
- (e) providing land for other non-agricultural purposes, in accordance with the need for that development, and*
- (f) providing for the separation of conflicting land uses.*

##### **2 Without development consent**

*Development for the purpose of agriculture (other than intensive livestock keeping establishments or ancillary dwellings); bushfire hazard reduction; forestry (other than ancillary dwellings); home based child care.*

##### **3 Only with development consent**

*Any development except that permitted without consent or prohibited.*

#### **4 Prohibited**

*Development for the purpose of boarding houses; bulky goods salesrooms and showrooms; commercial premises; motor showrooms; residential units; shops (other than general stores).*

The objective of the zone is to promote the proper management and utilisation of natural resources by:

**(a) protecting, enhancing and conserving:**

- (i) rural land, in particular prime crop and pasture land, in a manner which sustains its efficient and effective agricultural production potential;
- (ii) soil, by controlling and locating development in accordance with soil capability;
- (iii) forests of existing and potential commercial value for timber production;
- (iv) **valuable deposits of minerals, coal and extractive materials, by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits;**
- (v) trees and other vegetation in environmentally sensitive areas, where the conservation of the vegetation is significant for scenic amenity or natural wildlife habitat or is likely to control land degradation;
- (vi) water resources for use in the public interest, preventing the pollution of water supply catchment and major water storages;
- (vii) localities of significance for nature conservation, including places with rare plants, wetlands and significant wildlife habitat; and
- (viii) items of heritage significance;

**(e) providing land for other non-agricultural purposes, in accordance with the need for that development; and**

Further the application falls within the Forestry 1(f) zone and as such must comply with the provisions of that zone which indicate:

Zone No 1 (f) Rural (Forestry)

#### **1 Objectives of the zone**

The objectives of the zone are:

- (a) to identify land managed by the Forestry Commission under the *Forestry Act 1916*,
- (b) to preserve existing forests within the City of Lithgow, while allowing compatible development, and
- (c) to prevent pollution of water supply catchments and water quality in major water storages.

## **2 Without development consent**

Development for any purpose authorised by the Forestry Commission under the *Forestry Act 1916*.

## **3 Only with development consent**

Development for the purpose of extractive industries; mining; veterinary clinics.

## **4 Prohibited**

Any development except that permitted without consent or only with consent.

## **Regional Environmental Plan's**

The Drinking Water Catchments REP No.1 applies to the development. As part of the concurrence process the application was assessed under Module 5 of the NORBE assessment guide and referred to the SCA for concurrence. The SCA in its correspondence indicated that the development could be granted subject to development consent.

## **State Environmental Planning Policies applicable to the proposal are:**

### **State Environmental Planning Policy No 11 -- Traffic Generating Developments**

The issues incorporating the SEPP has been addressed in the impacts of the report.

*No change is proposed as part of the modification.*

### **State Environmental Planning Policy No 44 -- Koala Habitat Protection**

SEPP 44 – Koala Habitat Protection applies to the Lithgow City Local Government Area. One of the species identified in Schedule 2 of SEPP 44 as habitat trees, namely, Ribbon Gum (*Eucalyptus viminalis*), was identified on the Project Site. SEPP 44 states that potential Koala habitat is an area “.....of native vegetation where trees of the types listed in Schedule 2 [of SEPP 44] constitute at least 15% of the total number of trees in the upper and lower components of the tree component.” The few scattered Ribbon Gum identified along some drainage lines within the Project Site do not constitute 15% of the total tree cover, hence SEPP 44 does not apply.

*No change is proposed as part of the modification.*

### **State Environmental Planning Policy 55 - Remediation of Land**

The remediation of land is considered through the rehabilitation process involved within the development and requirements through General Terms of Approval issued by concurrence agencies.

*No change is proposed as part of the modification.*

**State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007**

It is considered that under the provisions of the SEPP the modification can be considered under Clause 16(2) Transport.

**State Environmental Planning Policy (Major Projects) 2005**

It is considered that under the provisions of the SEPP the modification can be considered by Council with no further state consideration under Clause 6(2)(a) of the SEPP.

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

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

Nil.

**Any Development Control Plan**

Is the proposal consistent with the DCP? If not, is a variance warranted?

Lands zoned Rural 1(a) where industrial developments are permitted under the LEP are also covered by the Greater Lithgow Development Control Plan No. 6 relating to Industrial development. The plan provides detailed guidance for the development of land for industrial purposes, and imposes standards on design and appearance of buildings, landscaping, parking, access, setbacks, storage areas, advertising signs, drainage, security fencing, requirements when adjoining residential areas, S94 contributions for coal related development, garbage and trade refuse storage and collection areas, and soil erosion and sediment control.

Industrial developments within rural zones must also conform to the DCP requirements on visual character, ribbon development, relationship with agricultural use, concentrations of industrial use, services and advertising signs.

The proposal seeks to additionally employ 2 people as such further Section 94 contributions would be applicable should Council recommend approval for the modification.

Additionally, the development would be required to comply with the provisions of Council's Rural Roads Section 94 Contributions Plan. Conditions would be additional to any approved modification.

**Any matters prescribed by the regulations that apply to the land**

Refer to clause 66, 66A & 66B of the Regulation. If a DA for demolition, the provisions of AS 2601-1991. Clause 66A Fire Safety considerations - DA that does not seek the

rebuilding, alteration, enlargement or extension of the building. Clause 66B Consent Authority may require buildings to be upgraded - DA comprising the rebuilding, alteration enlargement or extension, take into consideration whether appropriate to require the building to brought into conformity with BCA.

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**

The relevant matters are up to assessment and merit. **As a guide only**, the following may be considered if they are considered to be of relevance to the proposal. Amenity, streetscape, scenic quality, bulk, scale character, density, design, adjacent landuse compatibility, solar access, noise, access & traffic, utility services, heritage, water, soils, air, flora & fauna, wastes, safety, security, crime prevention, natural hazards, social, economic & cumulative impacts.

**Increased Tonnage**

The modification seeks to increase tonnages from the site from 200,000tpa to 350,000tpa an increase of 75%. The additional tonnages have been sought as additional contracts to the local (Mt Piper) markets and as such in order to activate those additional contracts the modification is required to be approved. The potential impacts of the modification are arguable. The additional contracts proposed have the potential to reduce the life of the mine significantly. As part of the original Environmental Impact Statement (EIS) for the Pine Dale proposal it was indicated that the total resource within the mining lease area was 1.9 million tonnes. An increase in tonnage potentially decreases the life of the mine from approximately 10 years to approximately 6 years. This decreases the long term effect on the adjoining residents of Blackmans Flat and Lidsdale. Additionally, the Statement of Environmental Effects (SoEE) indicates that this increase in operation will have no additional affect on limits pertaining to noise, hours of operation or mining method.

However, the applicant also states within the SoEE that exceedances of the noise level criteria are likely to occur during stripping and mining cell development activities, more widely when operations occur within Area C which is closer to the eastern receivers. The noise exceedances predicted are considered marginal to moderate and would be noticeable to some people but not noticeable to others. These noise exceedances would occur on a regular but infrequent basis, generally for 2 or 3 days per month.

It is considered that allowing the modification to be approved has the potential to activate acquisition clauses within the current consent. As such, it could be considered that Council could be incorporated should approval be recommended.

The alternative view is that the modification seeks to increase production to an additional 75% of the approved development. Therefore there will be increased pressure placed on the adjoining area through such impacts as vehicle movements (both light and heavy)

noise and amenity.

### **Transportation of Coal**

Council officers consider the issue of coal transportation to be one which requires careful consideration. The existing mining operations are situated adjacent to a private haul road and it seems incongruous that heavy vehicles would have to travel by public road when such a facility is so close. However, the applicant has indicated within the SoEE that, there are private contractual issues which apparently make the potential usage of the private road improbable. The current development consent condition provides the following:

*13.2. The Applicant shall ensure that within six months of the commencement of operations, all coal is to be transported to Mt. Piper and Wallerawang Power Stations by means other than public roads.*

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

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

### **The Suitability of the site for the development**

Does the proposal fit in the locality? Are there any natural or man made hazards? For example, bushfire or site contamination.

It is considered that due to the nature and scale of the proposed modification and restrictive conditions imposed by government authorities, it is considered that the impacts previously assessed can be substantially mitigated.

It is considered that the application can be approved subject to the substantial additional conditions proposed in the recommendations.

### **Any submissions made in accordance with this Act or the Regulations**

If relevant, consider public and authority submissions. Do submissions relate to valid Planning issues?

The development was notified to government authorities and adjoining landowners for comment with closing date for submissions being Friday 26 February 2008. Council received seven submissions regarding the proposal during the exhibition period, all objecting to the proposed modification. A summary of these public submissions and government authorities responses are outlined below.

### **SUMMARY OF SUBMISSIONS**

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

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

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

Cumulative Affect – given the number of industrial developments surrounding Blackmans Flat it is considered that an increase in traffic movements will once again increase the cumulative impacts surrounding Blackmans Flat.

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

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

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

Further Cumulative Impacts – continuing health and safety risks, noise dust, air and quality of life impacts are occurring from substantial industrial development in the vicinity of Blackmans Flat. The application must be assessed in accordance with the heads of consideration of Section 79C of the Environmental Planning & Assessment Act 1979. The proposal also constitutes Integrated Development under the Act.

#### **Government Authorities**

Furthermore, the application is considered to be integrated development through the

Roads Act 1993, and as such the RTA was advised of the modification and asked to comment. Further, due to the nature of Council's delegated authority to assess the application the Department of Planning were also notified of the application. Other government authorities notified through the modification process included the SCA, DECC & DPI. The correspondence is assessed separately below.

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

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

The Department recognises the difficulties experienced by Enhance Place Pty Limited (the Applicant) in its attempts to gain access to the private haul road operated by Coal>Link. While it remains the Department's preferred position that coal transportation on the public road network should be avoided, it would seem that access to the Coal>Link road is not currently available to the Applicant on a satisfactory commercial basis.

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

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

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

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

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

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

**evidence that it has used its best endeavours to achieve access to the Coal>Link road.**

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

- **Upon receiving a written request from the owner of any residence where subsequent noise monitoring shows the noise generated by the development (i.e. not including off-site traffic noise) is greater than, or equal to, 42 dB(A)<sub>(L<sub>Aeq,15minute</sub>)</sub>, (unless a negotiated noise agreement is in place), the Applicant shall implement additional noise mitigation measures such as double glazing, insulation, and/or air conditioning at any residence on the land in consultation with the landowner.**

These additional mitigation measures must be reasonable and feasible.

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

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

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

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

1. The proponent monitor the volume of vehicles entering and leaving the site, ensuring 'busy days' are captured. For this purpose it is recommended that a traffic classifier be installed in an appropriate location within the site, and reports provided to Lithgow City Council for assessment.

2. In the event that the volume of vehicles turning into the site exceeds 10km's per hour, that the intersection is upgraded to a higher standard based on the RTA Road Design Guide 'AUR' or 'CHR' as appropriate for the volumes and road safety requirements.
3. The proponent to monitor traffic incidents, including 'near misses' at or near the site access that involve vehicles intending to access or having left the site.
4. The proponent to prepare a traffic management plan that includes induction and regular reminders to haulage vehicle drivers relating to safe operation of the vehicles on public roads.

However, in concluding the RTA state in their correspondence that *it is noted that a private haul road may be accessed for haulage operations. The use of a private haul road mitigates the majority of public road safety and traffic impacts accompanying the proposal and further negotiations should be encouraged.*

Further, within the current correspondence the RTA have indicated that given the proposed access relocation the required intersection of the access and the Castlereagh Highway should be constructed to allow protected right turns from the highway, that is, type CHR and type AUL (RTA Road Design Guide) treatments that cater for deceleration and storage of the vehicle types accessing the site. If Pine Dale proposes to relocate the heavy vehicle entry opposite Council's Waste Disposal facility, they will be required to provide a treatment to complement this.

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

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

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

At the time of writing no information had been received by the DPI, SCA and DECC,

thus any finalisation of this application will be subject to these authorities concurring with the modification application and any conditions provided be implemented should approval be recommended. However, previously assessed modifications have indicated the following, from authorities notified:

**Department of Environment & Conservation (Environmental Protection Unit)**

In previous correspondence received from the Department of Environment and Climate Change (DECC) who indicated that based on the information provided, the proposal will not be integrated development (IDA) for the purposes of the EPA under the Protection of the Environment Operations Act 1997 as the activity is already licensed with the EPA, being environmental protection licence 4911, and the proposed modification does not trigger a requirement to vary environment protection licence 4911.

The conditions on environment protection licence 4911 will adequately cover any potential impacts associated with increasing the annual coal production from 200,000 to 350,000 tonnes.

Notwithstanding the above, the DEC would recommend that the applicant review and update as necessary, their Air Quality Monitoring Program (part of the Mining Operations Plan) to consider any increased dust generation that may be associated with the increased activity on site, and ensure that existing mitigation measures are sufficient to minimise such impacts.

**The Department of Environment & Conservation (Threatened Species Unit)**

No further considerations required.

**The Department of Primary Industries**

The Department of Primary Industries (Mineral Resources) indicated in their previous correspondence that it has no objection to the proposed modification relating to the current modification. They further indicated that the modification will not alter the current mining method or result in an increase in disturbed areas within the Mine Lease. As the rate of mining will be increased by the modification, the rehabilitation schedule will be accelerated.

The proposed increase in mining rate could bring about an increase in dust generated by the increased truck movements, however this can be mitigated by increased use of a water truck.

There will be an increase in noise levels at nearby residences when mining moves to Area C. This will occur whether or not the modification is granted. The increased noise levels will be over shorter time period if the rate of mining is increased.

It is considered that the proposed modification will not significantly increase the

environmental effects from the mining operation at the Pine Dale Coal Mine.

#### **Sydney Catchment Authority**

As part of the modification the application was forwarded to the SCA for comment. In their previous response the SCA indicated that concerns are raised however should Council resolve to approve the application the following conditions would be required to be incorporated, those being:

- Procedures and safeguards should be implemented to reduce coal material overspill and offsite loss from trucks onto the roadways and verges (and hence prevent material from entering waterways and impacting water quality); and
- Contingency plans and procedures (including prior planning, training and availability of equipment) should be developed to respond to a spill of fuel or coal materials during a hazardous material incident arising from a truck accident which may affect water quality.

#### **The public interest**

Have any genuine Planning issues been raised in public meetings? Is there genuine irrefutable concerns relating to public health & safety? Are any contributions payable?

Should Council consider that approval should be recommended additional section 94 monies would be required to be paid for two additional employees and Rural Roads contributions.

#### **Conclusions**

Councillors should be aware that as part of the original development application extensive negotiations had taken place with the proponents in relation to conditions of consent prior to approval being given. Whilst general agreement was reached on draft conditions there remained two areas where this could not be achieved. Firstly, in relation to the life of the proposal Council recommended a limitation of 10 years which can only be extended through a Section 96 modification where ongoing environmental compliance would need to be demonstrated. In relation to haulage on public roads and access to other private means of transportation, Council was of the opinion that, irrespective of private matters of access, the proximity to the private haul road was too great a consideration to ignore. These concerns still exist for the current modification application. The fact that the use of a private haul road that is in such close proximity has been unable to be achieved to date is to say the least disappointing particularly, given the efforts that Council has put in to try and bring the parties to a solution. However, given the restrictive conditions proposed by the government agencies in this instance it is considered that Council can consider approval of the modification subject to the implementation of these conditions into the approval document.

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

1. The proponent monitor the volume of vehicles entering and leaving the site, ensuring 'busy days' are captured. For this purpose it is recommended that a traffic classifier be installed in an appropriate location within the site, and reports provided to Lithgow City Council for assessment.
2. In the event that the volume of vehicles turning into the site exceeds 10km's per hour, that the intersection is upgraded to a higher standard based on the RTA Road Design Guide 'AUR' or 'CHR' as appropriate for the volumes and road safety requirements.
3. The proponent to monitor traffic incidents, including 'near misses' at or near the site access that involve vehicles intending to access or having left the site.
4. The proponent to prepare a traffic management plan that includes induction and regular reminders to haulage vehicle drivers relating to safe operation of the vehicles on public roads.
5. The Castlereagh Highway is to be constructed to allow protected right turns from the highway, that is, type CHR and type AUL (RTA Road Design Guide) treatments that cater for deceleration and storage of the vehicle types accessing the site. The applicant is to relocate the heavy vehicle entry opposite Council's Waste Disposal facility access, and appropriate treatment is to complement this.
6. The proposed landscaping, signage and fencing are not to impede sight lines of traffic and/or pedestrians within the development, or when entering and leaving the development. Safe intersection sight distance is to be achieved.
7. The proponent is to provide a pavement design and intersection design for RTA approval prior to the commencement of works;
8. A Road Occupancy Licence is required prior to any works commencing within 3m of the travel lanes. Submission of a traffic control plan is required as part of this licence
9. A formal agreement in the form of a Works Authorisation Deed (WAD) may be required between the developer and the RTA should the developer wish to undertake 'private financing and construction' of the access with any highway. This agreement is necessary on works in which the RTA has a statutory interest.
10. All works associated with the development are to be at no cost to the RTA.

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

approval. This will additionally include, but not limited to proposed bund wall relocation requirements and potential watercourse access improvements.