



LITHGOW CITY COUNCIL

AGENDA

FINANCE AND SERVICES COMMITTEE
MEETING OF COUNCIL

TO BE HELD AT

THE ADMINISTRATION CENTRE, LITHGOW

ON

06 MAY 2008

AT 6.30pm

AGENDA

PRESENT

QUESTIONS FROM THE PUBLIC GALLERY - NIL

PRESENTATIONS - NIL

**CONFIRMATION OF THE MINUTES OF THE FINANCE AND SERVICES
COMMITTEE MEETING OF COUNCIL HELD ON 7TH APRIL 2008**

DECLARATION OF INTEREST

NOTICES OF MOTION - NIL

NOTICES OF RESCISSION - NIL

CORRESPONDENCE AND REPORTS

General Manager Reports

Regional Services Reports

Community and Corporate Services Report

REPORTS FROM DELEGATES - NIL

COMMITTEE MEETINGS - NIL

CLOSED REPORTS - NIL

QUESTIONS WITHOUT NOTICE

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GENERAL MANAGER REPORTS

ITEM:1 GM - 06/05/08 - CONSIDERATION OF WAIVING PART OF SPORTSGROUND FEES

REFERENCE

Min 07- 424 Council meeting 17 September 2007
Min 07- 455 Council meeting 15 October 2007

SUMMARY

To advise on the results of discussions on charges for sporting fields for 2006/2007 and 2007/2008 in relation to specific sporting organisations.

COMMENTARY

At the Council meeting on 17th September 2007 it was resolved that Council “reconsider sporting bodies donations and hold meetings with the four major rugby league clubs.”

A meeting was subsequently held with five clubs in attendance:

1. Portland Colts
2. Wallerawang Warriors
3. Lithgow Bears
4. Lithgow Workmen’s Club
5. Portland Owners and Trainers Association

The meeting was advised that pre 2006/2007 only rugby league paid for use of electricity, ground rental and training fees due to the fact that they collected gate fees. In 2006/2007 **all** the sporting organisations that used electricity and sporting grounds were charged. The groups (Portland Colts, Wallerawang Warriors and Portland Owners and Trainers Association) queried the charges. The only income of these sporting bodies is from players’ fees and fundraising not gate takings. It was agreed that Council’s Operations Manager check the authenticity of the lighting charges at Kremer Park at Portland and Wallerawang.

2007/2008 invoices are not to be sent out until 2006/2007 invoices for these three groups are resolved. Details of accounts are as follows:

2006/2007 outstanding invoices for these groups

1. Portland Colts:

Invoice No. 157000 Electricity charges 10/4/07 to 6/9/07 \$2,541.00
Adjustment note CRN15454 Invoice No. 157183 Lighting charges at Kremer Park April 2007 to 16th August 2007 \$1,320
Invoice No. 156998 Ground rental for 2007 football season at Kremer Park \$786.50
Invoice No.156999 Ground training fee for 2007 football at Kremer Park \$786.50
None of the above amounts have been paid to date by Portland Colts.

2. Wallerawang Warriors:

Invoice No. 157007 Ground rental 2007 Football season \$786.50
 Invoice No. 157008 Ground rental – training 2007 Football season \$786.50
 Invoice No. 157182 06/07 Rugby league season-Wallerawang Warriors use of Wallerawang Oval \$1782.00
 None of the above amounts have been paid to date by Wallerawang Warriors.

3. Portland Owners and Trainers Association

Portland Owners and Trainers Association use of Kremer Park Invoice No. 157001 - \$1,210.00. This amount has not been paid by Portland Owners and Trainers Association.

Review of Lighting Charges at Sportsgrounds

Council's electrician has assessed the lighting usage and performance of Kremer Park and Wallerawang Oval and the Tony Luchetti Sportsground.

1. Wallerawang
 12 fittings at 1500watts ea - TOTAL 18kw
2. Portland
 16 fittings at 1500watts ea - TOTAL 24kw
3. Tony Luchetti
 76 fittings at 1500watts ea - TOTAL 114kw

Currently all users of all grounds pay the same rate per hour for the lights, being \$33.00 per hour. Revised lighting charges are proposed that would reflect usage and ongoing maintenance rather than be a general fee. The rate of \$33.00 per hr is applicable for Tony Luchetti and is a reasonable rate. A reasonable rate for Wallerawang is \$5.20/hr, \$6.00 and for Portland \$6.95/hr, \$7.00. These changes are formally proposed in the 2008/2009 draft fees and charges.

Lighting charges being queried:

Group	Amount invoiced	Hrs of usage	Cost per hour	Revised cost	New total	Difference Saving for group
1. Portland Colts	\$1,320.00 Invoice no. 157183	40	\$33.00	\$7.00	\$280.00	\$1,040.00
2. Wallerawang Warriors	\$1,782 Inv.no.157182	54	\$33.00	\$6.00	\$324.00	\$1,458

It is therefore recommended that the fees for invoices for these sporting grounds for lighting for the 2007/2008 year be readjusted to the above revised costs per hour.

POLICY IMPLICATIONS

If adopted, technically Council would be waiving part of an adopted charge. This can be accommodated in the Policy - Request for donation by waiving of fees for Council facilities

FINANCIAL IMPLICATIONS

Council would potentially forego \$2498 in income if the recommendation is adopted. However, under the circumstances, the collection of this income is unlikely.

LEGAL IMPLICATIONS

Nil

ATTACHMENTS

Nil

RECOMMENDATION

THAT:

1. \$1,040 be waived for 2006/7 season for Portland Colts and \$1,458 be waived for 2006/7 season for Wallerawang Warriors.
2. That ground rental fees remain for all groups including Portland Owners and Trainers Association for Kremer Park in accordance with the Fees and Charges Policy.
3. That the proposed changes to electricity charges proposed in the draft fees and charges, currently on exhibition with the draft management plan, be noted.

REGIONAL SERVICES REPORTS

ITEM:2 REG - 06/05/2008 - UPPER MAQUARIE COUNTY COUNCIL - MARCH
2008 WEEDS REPORT

REPORT FROM: GROUP MANAGER REGIONAL SERVICES, ANDREW MUIR

SUMMARY

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

COMMENTARY

Attached is the report from the Upper Macquarie County Council Chief Weeds Officer Report for March 2008.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

ATTACHMENTS

1. Upper Macquarie County Council Chief Weeds Officer's Report March 2008 (Doc:408729).

RECOMMENDATION

THAT the information be received.

ITEM:3 REG - 06/05/08 - INVINCIBLE COMMUNITY CONSULTATIVE COMMITTEE REQUEST - USE OF DEVELOPER CONTRIBUTIONS - CULLEN BULLEN PROGRESS ASSOCIATION & CULLEN BULLEN TIDY TOWNS

REPORT BY: GROUP MANAGER REGIONAL SERVICES – ANDREW MUIR

SUMMARY

This report outlines requests from Cullen Bullen Tidy Towns and Cullen Bullen Progress Associations to use developer contributions for the restoration of St Brendan's Church, Cullen Bullen and roof restoration and other remedial works to the Progress Hall at Cullen Bullen.

COMMENTARY

As part of the Ministerial consent issued under Part 3A of the Environmental Planning and Assessment Act 1979 for the establishment of the Invincible Open Cut Coal Mine, condition 12 indicates that a contribution of \$38,857.50 be paid to Council for the 'provision of community facilities in the Cullen Bullen area.' Additionally, as part of a Modification issued by the Minister for Planning an additional \$19,895.05 is to be paid by the company on or before the 31 May 2008. As such, after 31 May 2008, \$58,752.55 will have been collected by Council for provision of community facilities in the Cullen Bullen area.

A Community Consultative Committee (CCC) was also required to be formed as part of the consent and in its role the committee is in receipt of a request from the Cullen Bullen Tidy Towns for the restoration of Cullen Bullen (Saint Brendan's) Church, and additionally a request from the Cullen Bullen Progress Association for restoration of the Cullen Bullen Hall. Each request will be dealt with separately below.

Cullen Bullen Tidy Towns – Restoration work Cullen Bullen (Saint Brendan's) Church – the Tidy Towns group have indicated that this church is the only church left in Cullen Bullen open to all denominations. The works include (costs highlighted);

- Purchase and Installation of water tank, stand and fittings to rear of church building **\$1005.10**
- Purchase and installation of carpet and underlay for entire building **\$4,840.00**
- Restoration of 19 pews **\$3,000.00**
- Purchase and installation of two plain solid exterior doors and fittings **\$1938.00**
- Free standing church sign in front churchyard **\$323.00**
- Purchase exterior paint/brushes undercoat for external painting **\$300.00**
- Contribution to Lithgow City Council towards cost of community notice board **\$500.00**
- Complete memorial rock garden in front of Cullen Bullen Progress Hall **\$234.00**

The total submission amounts to \$12,140.10 which includes monies (\$500) proposed to be contributed to the construction of the Notice Board and rock garden (\$234) at the Cullen Bullen Hall.

Cullen Bullen Progress Association – Proposed Restoration works to Cullen Bullen Hall – this community hall is used predominantly by the people of Cullen Bullen as a meeting area. The works include (costs highlighted);

- Main Hall Roof, Guttering and downpipes **\$18,150.00**
- Catering Area Roof, Guttering and Downpipes **\$7348.00**
- Renovation of toilets at Community hall **\$17,539.83**

The total submission amounts to \$43,037.83 all of which is to be used on the restoration of the Cullen Bullen Hall.

It must be brought to the attention of the Council that should the requests be approved they will not be spent on public infrastructure in the sense that neither facility is owned by “the public”, i.e. Council. Whilst this is ultimately a matter for Council to determine, such a situation is at best unusual and at worst antipathetic to the intent of the legislation. However, balanced against this, there is no argument that the Cullen Bullen community would be the beneficiary of any expenditure on the church and the hall. The questions in this instance relate to whether the expenditure on buildings outside of ‘public’ ownership is appropriate and it may be necessary to hold discussions with each association/committee to refine their requests.

POLICY IMPLICATIONS

No specific policy applies to these set of circumstances.

FINANCIAL IMPLICATIONS

If all the requests were to be approved the cost would be approximately \$55,177.93 with no impact on the Council budget as the contributions are from an external funding source.

LEGAL IMPLICATIONS

Section 94 of the Environmental Planning and Assessment Act relates to local infrastructure contributions. Section 94 provides that (1) “if a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:

- (a) the dedication of land free of cost, or
- (b) the payment of a monetary contribution, or both”

RECOMMENDATION

THAT a meeting be convened between the Mayor, General Manager and Executives of Cullen Bullen Tidy Towns and the Cullen Bullen Progress Association to discuss their submissions on the application of funds from the Section 94 Contributions in relation to the Invincible Open Cut Mine.

ITEM:4 REG - 06/05/08 - DEVELOPMENT AND CONSTRUCTION APPROVALS

REPORT FROM: GROUP MANAGER REGIONAL SERVICES – ANDREW MUIR

SUMMARY

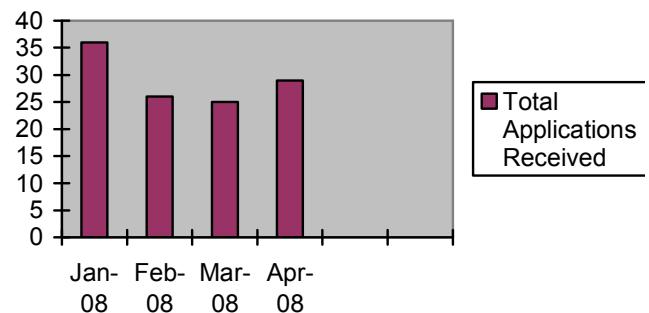
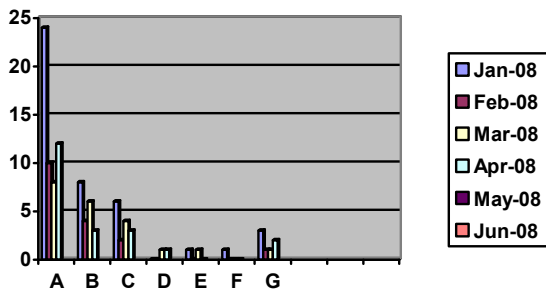
To provide statistical information on Development Applications and Construction Certificates processed.

COMMENTARY

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

	Minor Development Approvals (including carports, garages and patios) A	Dwelling Approval B	Dwelling Addition Approvals C	Other Residential Applications (including Dual Occupancies, Flats) D	Rural Subdivision Approvals E	Residential Subdivision Approvals F	Commercial/Industrial Approvals G	Total Applications Received
Jan 2008	24	8	6	0	1	1	3	36
Feb 2008	10	4	2	0	0	0	1	26
March 2008	8	6	4	1	1	0	1	25
April 2008	12	3	3	1	0	0	2	29

* includes Approvals from 23/03/2008 TO 25/04/2008



APPROVALS

Total Estimated Cost:	\$3,264,923
Average Approval Time	18 DAYS
Total Cost of Approvals from 10/12/2007	\$77,398,483
No. of Applications from 10/12/2007 to 25/04/08	87

RECOMMENDATION

THAT the information be noted.

**ITEM:5 REG - 06/05/08 - LEGAL ASSISTANCE - GOSFORD CITY COUNCIL v
 TAUSZIK**

REPORT BY: GROUP MANAGER REGIONAL SERVICES - ANDREW MUIR

REFERENCE

Nil.

SUMMARY

To advise of a request from the Local Government and Shires Associations for Council to contribute toward legal costs incurred by Gosford City Council in relation to a prosecution proceedings originally upheld in the Land and Environment Court but subsequently overturned in the Court of Criminal Appeal.

COMMENTARY

Council is in receipt of correspondence from the Local Government and Shires Associations advising that the Executives of the Associations have approved an application by Gosford City Council under the Association's Legal Assistance Policy and is subsequently requesting contributions from member councils towards Gosford's legal costs. The facts of the matter are set out in the attached correspondence from the Associations but in summary Gosford Council successfully prosecuted Mr Tauszik for the removal three trees from his property and the Land and Environment Court imposed a fine of \$25,000 and required two replacement trees to be planted.

The Court of Criminal Appeal held that consent for the removal of trees needed to be obtained under the relevant Tree Preservation Order (TPO) and not under the provisions of the Environmental Planning and Assessment Act, i.e. a development application. Therefore, any prosecution for the removal of trees had to be brought under the TPO within a period of 6 months of the offence being committed. Under these circumstances the Court found the Council was statute barred from bringing the proceedings and upheld the appeal.

The Associations believe that Gosford Council had put forward important legal principles and were also attempting to uphold the general principle of public compliance with a TPO in addition to discouraging the removal of trees to improve views.

In determining whether or not to contribute, Council may wish to decide whether the same situation could arise in the Lithgow Local Government area. However, as Lithgow City Council does not have a TPO in relation to the preservation/removal of trees on private lands, this situation could not occur.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Should Council decide to contribute, its proportion would be \$3,375.95. There is currently \$8,440 remaining in the 2007/2008 vote for development legal expenses which is likely to be fully expended in the remaining 2 months.

LEGAL IMPLICATIONS

Whilst the broad legal principles have been the subject of this report, Council is under no legal obligation to make a contribution.

ATTACHMENTS

1. Correspondence from the Local Government and Shires Associations.

RECOMMENDATION

THAT Council determine whether it wishes to contribute \$3,375.95 toward legal costs incurred by Gosford City Council.

COMMUNITY AND CORPORATE SERVICES REPORTS

**ITEM:6 COMM - 21/04/08 - SPONSORSHIP REQUEST - MACQUARIE
 PHILHARMONIA**

REFERENCE

NIL

SUMMARY

To advise Council of a request from the B-Rock Broadcasters for sponsorship of the Macquarie Philharmonic - Australia Inland Symphony Orchestra.

COMMENTARY

Correspondence has been received from B Rock Broadcasters in relation to the Macquarie Philharmonia. The Orchestra promotes established and up and coming musicians from Dubbo to the Blue Mountains.

The Broadcasters are seeking financial support from Lithgow City Council to help fund the Orchestra over the next four years. Tremendous support has already been received from Dubbo, Blayney and Oberon Shire Councils.

The Orchestra is looking to raise \$700,000 over the next years. Already \$400,000 has been pledged. All donations are tax deductible. There are three main four year Donor levels:

- Gold - \$2,500 per annum (\$10,000)
- Silver - \$1,250 per annum (\$5,000)
- Bronze - \$250 per annum (\$1,000)

B Rock are requesting Councils sponsorship from one of the above levels.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

A contribution provided in 2007/08 may be allocated from Sec 356 donations.

LEGAL IMPLICATIONS

NIL

RECOMMENDATION

THAT Council to determine the level of funding to be provided to the Macquarie Philharmonia Orchestra.

**ITEM:7 COMM - 06/05/08 - REGIONAL CONTRACT FOR BITUMEN
 EMULSION AND ROADSIGNS**

REPORT FROM - INTERNAL SERVICES MANAGER - C FARNSWORTH

REFERENCE

Nil

SUMMARY

To advise Council of our acceptance of two CENTROC contracts for bitumen and road signs (which also includes minor hardware).

COMMENTARY

The CENTROC supply team is made up of members from each member Council and they are in the process of developing regional contracts to share information on best practice and investigate cost saving deals in procurement.

They have recently achieved two successful three year contracts for bitumen and road signs, (which also includes minor hardware) using the CENTROC combined aggregated purchasing power to allow them to offer significant discounts to all.

In relation to bitumen and road signs the combined annual spending of all Councils in the CENTROC region has been \$1,600,000 for bitumen and in excess of \$1,000,000 for road signs and hardware, but with no individual Council spending more than \$150,000 for either product.

CENTROC called for companies interested in submitting tenders and assessed them upon receipt. Three were received for bitumen emulsion and six for road signs, though one of the six companies for the road sign contract was excluded due to non compliance with the specifications. Both contracts include a no fault option for termination and the supply team will monitor supply and purchase of the products at regular meetings held every six weeks.

The contracts were assessed on the following criteria:

1. Technical Compliance on Goods and Services
2. Compliance on Contract Clauses
3. Previous Experience
4. Customer Service
5. Delivery Performance
6. Environmental Sustainability
7. Quality Assurance
8. Occupational Health and Safety
9. Referees

	BITUMEN	ROAD SIGNS & HARDWARE
Price assessment	60%	40%
Non price assessment	40%	60%

A CENTROC assessment panel met in Parkes and has recommended Lithgow Council accept the CENTROC contract from Boral for bitumen and Artcraft for road signs and hardware.

The contracts are below the tender limit of \$150,000 and for this reason they have been authorised by the General Manager.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Purchase of bitumen and road sign and associated hardware within the adopted Management Plan.

LEGAL IMPLICATIONS

Nil

ATTACHMENTS

Nil

RECOMMENDATION

THAT the report be noted and the information received

QUESTIONS OF AN URGENT NATURE

ATTACHMENTS

ITEM:5 REG - 06/05/08 - LEGAL ASSISTANCE - GOSFORD CITY COUNCIL v TAUSZIK

Local Government
Association of NSW



Shires Association of NSW

Lithgow City Council
Scanned

Our ref: R90/0240-02 Out-15904
19 March 2008

28 MAR 2008

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

Doc. No
GDA Ref.
Years

Dear Mr Anderson

Legal Assistance – Gosford City Council v Tauszik

The Executives of the Local Government Association and the Shires Association approved an application by Gosford City Council for assistance under the Legal Assistance Policy in the matter of *Gosford City Council v Tauszik* [2006] NSWCCA 193.

Facts of the Matter

The *Environmental Planning and Assessment Act 1979* (the EP&A Act) allows a council to make a planning instrument and Gosford has the Gosford Planning Scheme Ordinance in place as one of its four planning instruments.

Gosford also has a Tree Preservation Order (the TPO) made by way of Clause 44 of the Gosford Planning Scheme Ordinance.

Mr Tauszik was prosecuted by way of the EP&A Act in the Land and Environment Court by council for the removal of three large Norfolk Island pine trees from the front of his property. Mr Tauszik did not have the approval of council to remove the trees.

Senior counsel had advised council that a prosecution of Mr Tauszik in the Land and Environment Court for a breach of the Gosford Planning Ordinance Scheme was appropriate.

The Land and Environment Court convicted Mr Tauszik and fined him \$25,000 and ordered him to replant 2 trees and pay council's costs in the matter.

Mr Tauszik appealed to the Court of Criminal Appeal against the decision of the Land and Environment Court.

The Court found that consent for the removal of the trees had to be obtained by way of the TPO and not the EP&A Act and therefore the removal of the trees was not an offence under the Gosford Planning Scheme Ordinance.

A prosecution under the TPO had to commence within six months of the offence being committed and the Court found that council was now statute barred from bringing proceedings against Mr Tauszik.

Gosford City Council put forward that two important legal principles were being considered by the Court.

1. That a breach of a TPO is a breach of the EP&A Act and not merely a breach of a council Order and that the issue of the different times allowed for the starting of proceedings against separate Subsections of the Act are no longer applicable, and

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ABN 49 853 913 882

2. That an error in the making of a TPO by a council does not result in the repeal of all earlier versions of that instrument.

Council was also attempting to uphold the general principles that there are obligations on the public to comply with a TPO and to discourage the removal of trees to improve views.

Council has incurred costs of \$547,351 in defending this matter and your councils proportion of the costs is \$3,375.95, based on your share of the Association's total membership subscriptions.

If you have any questions in regards to this matter please do not hesitate to contact the Association's Legal Officer, Frank Loveridge, direct on 02 9242 4125.

Yours sincerely



Bill Gillooly AM
Secretary General

**Local Government
 Association of NSW**

ABN: 49 853 913 882
 GPO Box 7003 SYDNEY NSW 2001
 Level 8 28 Margaret Street SYDNEY NSW 2000
 Tel: (02) 9242 4000 Fax (02) 9242 4111
 www.lgsa.org.au lgsa@lgsa.org.au



Shires Association of NSW

Tax Invoice

Invoice Number 52294
Date 20/03/08

Invoice to:
 City of Lithgow Council
 Po Box 19
 LITHGOW NSW 2790

Customer Code	Customer Reference
LITH	

Item Code	Item Description	Invoice Quantity	Per	Price	GST	Amount
GCC		1		3375.95	0.00	3,375.95

Your share of Council Contributions re: Gosford City Council's Legal Costs incurred in the Court of Criminal Appeal in the matter GCC v Tauszik NSWCCA 193

Attn: The General Manager

Terms: 30 Days	Total Includes GST of 0.00	Total 3,375.95
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Payment to: LGSA NSW BSB: 062005 Account No. 00090198