



LITHGOW CITY COUNCIL

AGENDA

ORDINARY MEETING OF COUNCIL

TO BE HELD AT

THE ADMINISTRATION CENTRE, LITHGOW

ON

17 JUNE 2008

AT 6.00pm

AGENDA

PRESENT

QUESTIONS FROM THE PUBLIC GALLERY

PRESENTATIONS

CONFIRMATION OF THE MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD ON 20TH MAY 2008

DECLARATION OF INTEREST

NOTICES OF MOTION - NIL

NOTICE OF RESCISSION - NIL

MAYORAL MINUTE - NIL

CORRESPONDENCE AND REPORTS

Regional Services Reports

Community and Corporate Services Reports

CLOSED REPORTS - Code of Conduct Committee

REPORTS FROM DELEGATES - Centroc Meeting

COMMITTEE MEETINGS - Code of Conduct Committee
Traffic Authority Local Committee

QUESTIONS OF AN URGENT NATURE

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REGIONAL SERVICES REPORTS

**ITEM:1 REG - 17/06/2008 - CORRESPONDENCE FROM GERARD MARTIN
 MP REGARDING HOWARD & SONS EVENT OF 8 DECEMBER 2007**

**REPORT FROM: ACTING GROUP MANAGER REGIONAL SERVICES - STEPHEN
DARLINGTON**

REFERENCE

Min 08-43 - Policy and Strategy Committee Meeting 06/05/08

SUMMARY

To advise of correspondence received from Gerard Martin MP in relation to matters involving Howard and Sons Pyrotechnics and the event of 8 December 2007.

COMMENTARY

Gerard Martins office has advised that representations have been made to Minister Della Bosca, asking for a prompt as possible finalisation of Work Cover's investigations regarding Howard and Sons Pyrotechnics and the event of 8 December 2007.

In relation to residents with outstanding insurance matters, Gerard Martin has advised that he has met on-site with a number of people to discuss their issues and have taken the matter up with the relevant Government Minister, most notably the Minister for Fair Trading and will continue to liaise with the residents on this matter.

Gerard Martin also noted that individual insurance claims for property damage are not being delayed by the finalisation of the Work Cover investigation. Indeed, some insurance companies have settled their claims months ago.

Gerard Martin advised he will continue to follow up on those matters still outstanding.

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

LEGAL IMPLICATIONS

Nil.

ATTACHMENTS

Nil.

RECOMMENDATION

THAT the information be received.

ITEM:2 REG - 17/06/2008 - FISH RIVER WATER SUPPLY

REPORT FROM: ACTING GROUP MANAGER REGIONAL SERVICES - STEPHEN DARLINGTON

REFERENCE

Nil.

SUMMARY

To advise of correspondence received from State Water regarding Fish River Water Supply.

COMMENTARY

At the Fish River Customer Council meeting held on 16 May 2008 it was resolved that no access to banked water may be made once Level Seven water restrictions are applied. The Customer Council also resolved that all customers fully explore ways to reduce the demand on the Fish River Water Supply scheme in view of the current drought and the Oberon Dam nearing 15% capacity. Currently the Oberon Dam is at 16.2% capacity.

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

LEGAL IMPLICATIONS

Nil.

ATTACHMENTS

Nil.

RECOMMENDATION

THAT the information be received.

**ITEM:3 REG - 17/06/2008 - FINANCIAL ASSISTANCE FOR UPGRADING
SLUDGE LAGOONS - LITHGOW SEWERAGE TREATMENT PLANT**

REPORT BY: GROUP MANAGER REGIONAL SERVICES - ANDREW MUIR

REFERENCE

Nil

SUMMARY

To advise of correspondence received from The Hon. Nathan Rees MP regarding Councils request for financial assistance to call tenders for the upgrading of sludge lagoons ahead of the construction of the second stage of the Lithgow Sewerage Scheme augmentation.

COMMENTARY

The Hon Nathan Rees MP has confirmed that funds have been allocated in the Country Towns Water Supply and Sewerage Program to enable Council to call tenders to upgrade the sludge lagoons.

It was also advised that Council may proceed to call tenders to upgrade the sludge lagoons as soon as it desires. Once a tenderer is selected Council will need to provide details back to The Minister so funding at a rate of 39% will then be provided for the eligible portion of the upgrade costs as a fixed sum.

The tender process has been undertaken by NSW Department of Commerce and a successful Tenderer chosen. The successful tenderer was Northcote Constructions P/L and the tendered amount was \$229,750.

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

LEGAL IMPLICATIONS

Nil.

ATTACHMENTS

Nil

RECOMMENDATION

THAT the information be received.

ITEM:4 REG - 17/06/08 - MAIN STREET LITHGOW IMPROVEMENT PROGRAM

REPORT FROM: GROUP MANAGER REGIONAL SERVICES ANDREW MUIR

SUMMARY

In response to a question without notice from Councillor BP Morrissey on 17/3/08 a program has been implemented to encourage owners of buildings and awnings fronting Main Street Lithgow to carry out any necessary improvements to their building to improve the aesthetics of the CBD.

COMMENTARY

The issue of the condition of shopfronts and awnings in Main Street Lithgow was raised at Council's meeting of 17/3/08. As a result an extensive inspection was made and photographic evidence obtained to determine what improvements were necessary to improve the quality of the buildings in the locality.

Following this process it was determined that improvements were necessary to a total of 65 premises in Main Street. The work was placed in order of priority and letters were sent to owners requesting that they cooperate to upgrade their buildings to an acceptable standard. A timeframe was given for responses back to Council. A large number of responses have been received with owners generally being cooperative with Council's request.

Follow-up letters will be sent to those owners who have not responded to the request and further action will be determined as required.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Should owners fail to cooperate it may be necessary to pursue action through relevant legislation.

RECOMMENDATION

THAT the information be received and noted.

**ITEM:5 REG - 17/06/08 - TABULAM COTTAGES PORTLAND DEVELOPMENT
APPLICATION 338/05**

REPORT FROM: GROUP REGIONAL SERVICES MANAGER – ANDREW MUIR

SUMMARY

To inform council of the response received from Noreen Hay MP, Parliamentary Secretary to the Minister for Health, Reba Meagher, regarding council concerns in the finalisation of works at Tabulam Cottages being Development Application No.338/05.

COMMENTARY

Council wrote to the Minister for Health, Reba Meagher, through the Local Member, Gerard Martin MP, on 21 February 2008, requesting action on a number of Council concerns on finalisation of the development. These issues related to the shortfall in carparking, the extent of the kerb and guttering, and rehabilitation of areas that were disturbed during construction.

Council officers subsequently met with representatives from the Department of Commerce on site on 8 April 2008 and outlined in detail Council's concerns relating to the site. These issues were reiterated in a letter to the Department of Commerce on 9 April 2008.

The letter from the Minister for Health advises of the meeting with Council officers and confirms that the Sydney West Area Health Services through the Department of Commerce is currently working with Council to resolve any outstanding issues from the Development Application.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Possible DA compliance issues.

RECOMMENDATION

THAT the advice from the Minister for Health be received.

COMMUNITY AND CORPORATE SERVICES REPORTS

ITEM:6 COMM - 17/06/2008 - SECTION 94 LEVIES

REPORT BY: GROUP MANAGER COMMUNITY AND CORPORATE SERVICES -
SUZANNE LOLLBACK

REFERENCE

Min 008-03: Council Meeting 18 February 2008

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

Min 008-19: Council Meeting 17 March 2008

SUMMARY

To advise of response received from the Minister for Planning, The Hon Frank Sartor MP regarding Section 94 Levies.

COMMENTARY

Council is in receipt of correspondence from Gerard Martin MP and The Minister for Planning, The Hon Frank Sartor MP advising that there are no plans to have section 94 contributions paid into a trust fund managed by NSW Treasury.

Six Councils in the Southwest of Sydney who are in designated growth corridor will have such an arrangement but that will be the extent of the proposal.

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

LEGAL IMPLICATIONS

Nil.

ATTACHMENTS

1. Letter of correspondence received (Doc. 408362).

RECOMMENDATION

THAT the information be received.

ITEM:7 COMM - 17/06/08 - UPDATE OF 2007/08 LOAN BORROWING PROGRAM

REPORT FROM: GROUP MANAGER COMMUNITY & COPORATE SERVICES - SUZANNE LOLLBACK

REFERENCE

Min 07-258: Extraordinary Meeting 28 June 2007 adoption of the 2007/08 Management Plan

SUMMARY

To advise Council of changes to the 2007/08 loan borrowing program with a recommendation that no funds be drawn down for the current financial year.

COMMENTARY

2007/08 LOAN BORROWING PROGRAM:

Following the adoption of the 2007/08 Management Plan on the 28 June 2007 Council advised the Department of Local Government we would borrow \$8,800,500 'new money' to undertake infrastructure works.

The funds were to be raised for the following purposes:

PURPOSE	AMOUNT
WASTE FUND:	
Waste Fund: Blackman's Flat	\$400,000
WASTEWATER FUND:	
STP Lithgow	\$4,400,500
WATER FUND:	
Infrastructure: Bulk Water	\$4,000,000
	\$8,800,500

The projects identified have not commenced this financial year and it is recommended no loan funds be sourced for 2007/08.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

RECOMMENDATION

Council note the change to the 2007/08 loan borrowing program from \$8,800,000 to Nil and no loan funds be drawn down.

ITEM:8 COMM - 17/06/08 - COUNCIL INVESTMENTS TO 31 MAY 2008

REPORT FROM - INTERNAL SERVICES MANAGER - CAROL FARNSWORTH

REFERENCE

Min 07-401: Finance & Services Committee Meeting 3 September 2007 (July 2007)
 Min 07-425: Council Meeting 17 September 2007 (August 2007)
 Min 07-480: Finance & Services Committee Meeting 5 November 2007 (15 Oct 2007)
 Min 07-528: Finance & Services Committee Meeting 3 December 2007 (31 Oct 2007)
 Min 07-554: Finance & Services Committee Meeting 17 Dec 2007 (30 Nov 2007)
 Min O08-09: Finance & Services Committee Meeting 4 Feb 2008 (31 Dec 2007)
 Min F08-18: Finance & Services Committee Meeting 3 March 2008 (31 Jan 2008)
 Min F08-38: Finance & Services Committee Meeting 7 April 2008 (29 Feb 2008)
 Min F08-39: Finance & Services Committee Meeting 7 April 2008 (31 Mar 2008)

SUMMARY

To advise Council of 2007/08 investments held for the period ending 31 May 2008.

COMMENTARY

The amount invested as at 31 May 2008 when compared to 30 April 2008 has increased by \$254,634.44.

INVESTMENT REGISTER 2007/08								
INSTITUTION	INV TYPE	DATE LODGED	DATE DUE	DAYS	INT	VALUE 31.05.08	VALUE 30.04.08	% OF TOTAL
ANZ	TD	02.06.08	02.07.08	30	7.49	613,732.48	589,249.96	4.30%
BANKWEST	TD	30.05.08	29.08.08	91	8.08	519,066.48	512,445.40	3.64%
	TD	04.03.08	02.06.08	90	8.10	509,061.64	509,061.64	3.57%
CBA	CMS Nt	20.06.06	20.06.11	1,825	7.31	500,000.00	500,000.00	3.51%
	On Call				7.20	1,373,411.53	667,528.08	9.63%
	Ethical	06.11.06	06.11.11	1,825	9.25	500,000.00	500,000.00	3.51%
	TD	11.05.08	11.06.08	30	7.54	535,838.17	532,383.66	3.76%
	TD	21.11.07	05.06.09	547	16.0	750,000.00	750,000.00	5.26%
CITIBANK	TD	12.05.08	12.08.08	90	7.96	560,603.10	550,245.67	3.93%
LG FINANCIAL	On Call				8.10	275,148.64	265,683.46	1.93%
	TD	06.11.07	06.11.08	365	7.55	306,524.05	306,524.05	2.15%
	TD	07.02.08	07.05.08	90	7.47	0	537,245.67	0.00%
	On Call				7.15	4,714.43	4,714.43	0.03%
IMBS	On Call				7.25	27,923.48	27,589.02	0.20%
	TD	06.05.08	06.08.08	92	8.02	1,135,522.75	1,114,769.71	7.96%
	TD	22.05.08	22.08.08	92	8.10	510,116.46	499,588.02	3.58%
	TD	05.03.08	03.06.08	90	8.10	815,810.89	815,810.89	5.72%
MACQUARIE	TD	28.03.08	30.06.08	92	7.95	2,500,000.00	2,500,000.00	17.53%
ALLIANCE	Managed	28.02.08	28.02.09	365		1,000,000.00	1,000,000.00	7.01%
ST GEORGE	TD	02.03.08	02.06.08	90	8.10	1,000,000.00	1,000,000.00	7.01%
	TD	15.04.08	14.07.08	90	7.95	820,196.17	820,196.17	5.75%
			TOTAL			14,257,670.27	14,003,035.83	100.00%

I, Carol G Farnsworth, Lithgow City Council Internal Services Manager (Responsible Accounting Officer) certify as required under Local Government (General) Regulations 2005, that Council's investments have been made in accordance with the Local Government Act 1993, Regulations and Lithgow City Council's Investment Policy.

POLICY IMPLICATIONS

All Council's investments are held in accordance with Lithgow City Council's Investment Policy.

FINANCIAL IMPLICATIONS

Investment income to date, 31 May 2008 is \$864,776.77. Interest is paid on the maturity date of the investment and managed funds report earnings quarterly.

LEGAL IMPLICATIONS

Investments are held in accordance with the Lithgow City Council's Investment Policy which accords with the requirements of the:

- Local Government Act 1993 - Section 625
- Local Government Act 1993 - Order dated 17 March 2000
- Local Government (General) Regulation 2005
- Trustee Amendment (Discretionary Investments) Act 1997- Section 14A(2), 14c(1) & (2)

RECOMMENDATION

THAT Council's 2007/08 investments for the period ending 31 May 2008 be received

ITEM:9 COMM - 17/06/08 - GOODS & SERVICES TAX CERTIFICATE 1ST JULY 2007 TO 30 APRIL 2008

REPORT FROM - INTERNAL SERVICES MANAGER - CAROL FARNSWORTH

REFERENCE

Nil

SUMMARY

To advise Council of reporting requirement for GST and seek authorisation for the Mayor, Deputy Mayor, General Manager and Responsible Accounting Officer to sign the 'Goods and Services Tax Certificate' for the period 1 May 2007 to 30 April 2008.

COMMENTARY

For the 2007/08 financial year the Department of Local Government requires Council to report on GST compliance for the period 1 May 2007 to 30 April 2008.

It is no longer mandatory for Councils to request their auditors to undertake a review of the GST system but Council is required to lodge a certificate of confirmation with the Department in the place of the audit review report.

This request allows the Commonwealth Commissioner of Taxation to make a determination concerning the amount of GST collected in the financial year in question. Accordingly, local governing bodies are requested to provide the DLG with this advice in June each year who in turn provide advice to the NSW Treasury for confirmation with the Commonwealth Commissioner of Taxation.

The Goods and Service Tax Certificate must be signed with a resolution of Council and which states:

To assist compliance with Section 114 of the Commonwealth Constitution, we specify that:

- *Voluntary GST has been paid by Lithgow City Council for the period 1 July 2006 to 30 April 2007*
- *Adequate management arrangements and internal controls were in place to enable the Council to adequately account for its GST liabilities and recoup all GST input tax credits eligible to be claimed.*
- *No GST non - compliance events by the Council were identified by or raised with the Australia Taxation Office*

Council has claimed refund of the following GST amounts in the required period:

MONTH	GST REFUNDS
2007	
May	97,667
June	146,529
July	101,115
August	77,465
September	114,983
October	162,052
November	109,936
December	31,057
2008	
January	75,765
February	94,030
March	139,140
April	78,022

As previously reported to Council the Australian Taxation Office completed a problem free GST audit of Council records in past years which extensively covered the following risk areas:

- Implementation Activities
- Management of Transitional Issues
- Risk Identification and Mitigation
- Internal control relating to computer system (including QA activities)
- Decision Making - Supplies (eg sales, Division 81 Fees and Charges)
- Contracts Management
- BAS Preparation - in depth on the October 2004 BAS
- Training and Succession Planning

- Grant Providers (Grant paid to other entities)
- Grants Received
- Recipient Created Tax Invoices - supplies and acquisition other than grants
- Acquisitions
- Tax Invoice Integrity - Supplier and Recipient
- Disposal and acquisition of assets
- Related Party Transactions
- Record keeping and Tax Invoice Management

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

ATTACHMENTS

1. Goods and Services Tax Certificate 1 May 2007 to 30 April 2008

RECOMMENDATION

THAT the information be received and Council authorise the Mayor, Deputy Mayor, General Manager and the Responsible Accounting Officer to sign the Goods and Services Tax Certificate for the period 1 May 2007 to 30 April 2008.

LITHGOW CITY COUNCIL
GOODS AND SERVICE TAX CERTIFICATE

Payment of Voluntary GST 1 May 2007 to 30 April 2008

To assist compliance with Section 114 of the Commonwealth constitution, we certify that:

- Voluntary GST has been paid by Lithgow City Council for the period 1 May 2007 to 30 April 2008
- Adequate management arrangements and internal control were in place to enable the Council to adequately account for its GST liabilities and recoup all GST input tax credits eligible to be claimed
- No GST non-compliance events by the Council were identified by or raised with the Australian Taxation Office.

Signed in accordance with a resolution of Council made on 17 June 2008

Mr Neville CASTLE
MAYOR

Mrs Barbara MORAN
DEPUTY MAYOR

Mr Paul ANDERSON
GENERAL MANAGER

Mrs Carol FARNSWORTH
RESPONSIBLE ACCOUNTING
OFFICER

**ITEM:10 COMM - 17/06/08 - QUESTION WITHOUT NOTICE - COUNCILLOR A
E THOMPSON**

REPORT BY: INTERNAL SERVICES MANAGER – CAROL FARNSWORTH

REFERENCE

NIL

SUMMARY

This report is provided to Council for information only and is a response to a question without notice from Councillor A Thompson on the 20 May 2008:

1. *Mr Mayor can a report be brought back to Council on the percentage of rates contributing to infrastructure and facilities?*

COMMENTARY

Income generated annually from rates, annual charges, fees, user charges, interest on investments and other revenue are classified as ‘consolidated revenue’ and its purpose is to fund Council’s ongoing operations and infrastructure purchases when income is not met by a specific purpose grant or contribution. For this reason it is difficult to exactly itemise the percentage of *rates only* used to purchase infrastructure assets.

The following table may further assist in the explanation.

**ACQUISITION OF ASSETS
GENERAL PURPOSE FINANCIAL REPORTS 2005/06 & 2006/07**

FINANCIAL YEAR	INCOME ON ASSETS				EXPENDITURE ON ASSETS	
	Specific Purpose Grants for Capital		Consolidated Revenue Utilised (Includes all other revenue Rates/ Fees / Interest on Investments etc)		Total Assets Purchased	
	\$'000	%	\$'000	%	\$'000	%
2005/06	2,761	43 %	3,617	57 %	6,378	100 %
2006/07	3,185	66 %	1,647	34 %	4,832	100 %

The only exception to this rule is in the case of a ‘special rate’ which may be granted by the Minister for Local Government and is solely used for a specific project over a period of time determined by LG Act.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

RECOMMENDATION

THAT the information be received.

**ITEM:11 COMM - 17/06/08 - TRANSFER OF DRAINAGE EASEMENT ON LOT
22 DP 789285, WILLIWA STREET, PORTLAND**

**REPORT FROM: GROUP MANAGER COMMUNITY & CORPORATE SERVICES – SUZANNE
LOLLBACK**

REFERENCE

Min No 07-48: Ordinary Council held 19 February 2007.

SUMMARY

This report seeks Council's approval to affix the Common Seal to the Transfer Releasing Easement on Lot 22 DP 789285 Williwa Street, Portland. This report was presented to the Council Meeting of 19 February 2007 omitting the Common Seal.

COMMENTARY

Council has received a request to release a 1.8 metre wide drainage easement on Lot 22 DP 789285, Williwa Street, Portland which Council is the beneficiary of. The subject land has been inspected and there is no evidence of any infrastructure within the existing easement and it is not required for any public purpose. Therefore, it is recommended that Council approve the releasing of the easement.

POLICY IMPLICATIONS

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

FINANCIAL IMPLICATIONS

The releasing of the easement is proposed at a nominal figure of \$1.00.

LEGAL IMPLICATIONS

The transfer to release the easement is occurring under the Real Property Act 1900.

RECOMMENDATION

THAT:

1. The 1.8 metre wide drainage easement on Lot 22 DP 789285 be release for the nominal sum of \$1.00 and any legal costs being borne by the transferee.
2. Council affix the Common Seal to the Transfer Releasing Easement on Lot 22 DP 789285.

DELEGATES REPORTS

ITEM:12 DELEGATES REPORT - CENTROC MEETING HELD ON 29TH MAY 2008

REPORT FROM: THE MAYOR, NEVILLE CASTLE

COMMENTARY

At the most recent Centroc Meeting, it was decided to have a minutes silence and respect and honour of the previous Mayor of Blayney Ted Wilson after his recent passing of Motor Neurone Disease.

Also at the start of the meeting I presented a motion from the Chair indicating Lithgow Council would contribute \$500 to the Motor Neurone Disease Foundation which has been started by Blayney Shire Council as one of the dying wishes of Ted Wilson. In moving the Motion I pointed out the additional difficulties faced by people with such diseases in living outside of a metropolitan area and hoping that at some stage money raised may well be for the provision of services closer to home to avoid lengthy travel and delay for people with such diseases. Also as part of the motion the members of Centroc were encouraged to consider organ donation. Most people believed that a tick on their licence is enough for organ donation to be automatic. However it was pointed out at the Ted Wilson Funeral that such is not the case and people indeed need to fill out a form to be registered as organ donors.

Centroc listened to an interesting presentation from Sharon Bentinck of Regional Development Australia, formerly the ACCC regarding what is happening in that sector. It was pointed out that with the closure of the ACCC a number of projects not only in our area but Australia wide were not going to be funded at this point in time. However, luckily through the work of the General Manager and myself and lobbying with the Federal Member, the Hon Bob Debus, the amount of \$150,000 was able to be secured for the Crystal Theatre.

Of the other projects in our area, they have now been referred to the new body of regional Development Australia and in deed some projects have now been referred to the Department of Health such as the Super Clinic at Forbes.

Jenny Bennett the executive Officer of Centroc gave a brief report and launch of the Centroc website. It has been pleasing to see that Jenny has worked on a number of projects, the website being one these. The website brings Centroc into the 21st century and certainly at first site, seems easy to navigate with a lot of helpful information for those who are interested.

The Centroc Board also received a report regarding the Bells Line of Expressway and a presentation to the Federal Senate Committee on Infrastructure in parliament House in Canberra.

The Bottom line for Centroc is that we have supported the Federal Budget announcement of \$1M for the Central West Transport Study, and we are in a position to provide as much information as we have available to us to help expedite the study so that the final route can be agreed to as soon as possible and money can then be spent on the planning for this very important piece of infrastructure.

It was also reported that infrastructure Advisory Team met with Mr Graeme Dunn from Cowra and spoke with him regarding his proposed route over the Blue Mountains. Those present at this presentation were less than impressed as his route went through major urban areas as well as Wentworth Falls Lake and a large section of World Heritage area. Mr Dunn's proposal gained no support from Centroc. Centroc have decided to have speakers at the following meeting from various State and Federal Parliament regarding regional development and as such will be inviting Tony Kelly, from State Parliament and Mr Grey in regards to the Federal Parliament.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

NIL

ATTACHMENTS

NIL

RECOMMENDATION

THAT:

1. The information be noted
2. The actions in agreeing to donate \$500 for the Motor Neurone Foundation as set out by Blayney Council be endorsed.

COMMITTEE MEETINGS

ITEM:13 **CODE OF CONDUCT COMMITTEE - 17/06/08 - CONFIDENTIAL REPORT - FAILURE TO PROVIDE COPY OF LEGAL ADVICE**

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.

Reason for Confidentiality

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

- (a) personnel matters concerning particular individuals (other than councillors)

RECOMMENDATION

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

**ITEM:14 CODE OF CONDUCT COMMITTEE - 17/06/08 - COMPLAINT BY
COUNCILLOR M F TICEHURST AGAINST MAYOR NEVILLE CASTLE**

Le Fevre & Co.

Solicitors & Attorneys

Incorporating Thompson and Le Fevre. Est. 1907

Our Ref: TJL:24316

10 June, 2008

The General Manager
Lithgow City Council
Council Chambers
PO Box 19
LITHGOW NSW 2790

By email: gm@lithgow.nsw.gov.au

Dear Sir,

Re: COUNCIL CODE OF CONDUCT COMMITTEE
- **COMPLAINT BY COUNCILLOR TICEHURST AGAINST**
- **MAYOR N. CASTLE**
- **FAILURE TO PROVIDE A COPY OF LEGAL ADVICE**

We confirm that the Code of Conduct Committee met on 6 June, 2008 and adopted its final report in the above matter and I enclose same herewith for Council's consideration.

Yours faithfully,
LE FEVRE & CO.

Per:
T.J. Le Fevre
Encl.

Principal: Allan J. Lindsay
Consultant: Tim Le Fevre

108 Main Street, Lithgow NSW 2790

P.O. Box 67, Lithgow NSW 2790

DX 3151 Lithgow

ABN: 27 759 019 416

Telephone: (02) 6352 2699 Facsimile: (02) 6352 1351

Email: info@lefevreco.com.au

Hours: 9a.m. to 5 p.m. Monday to Friday

Conveyancer: Fran Le Fevre

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REPORT

Lithgow City Council Code of Conduct Committee

**Complaint by Councillor Martin Ticehurst Against Mayor Neville Castle
Complaint of Failure to Provide Copy of Legal Advice;
Alleged Breach of Section 9, Lithgow City Council Code of Conduct**

Preamble

A complaint by Councillor Martin Ticehurst against the Mayor Neville Castle was referred for investigation to Council's Code of Conduct Committee by Ms Kathy Woolley in March, 2007.

The Committee comprising Mr. Ian Woodward solicitor, of Storey & Gough Solicitors, Deputy Mayor Barbara Moran, independent member Tim Le Fevre, met on 6th June, 2008 and considered its draft report to Council, having already provided copies of same to Councillor Ticehurst and the Mayor, and considered the response received. Having done so, the Committee resolved to adopt its draft report as its final report to Council and to submit same to Council for consideration in the form of the report hereunder and to notify the parties accordingly.

Report

The complaint was as follows:-

"I would also request that the Lithgow City Council Code of Conduct Committee conduct an investigation into whether the continued refusal by the Mayor Neville Castle and General Manager Paul Anderson to release to Councillor Martin Ticehurst, the alleged legal advice provided to the Code of Conduct Committee allegedly confirming:-

- that the previous Lithgow City Council Code of Conduct Committee report into the former General Manager, Mr Iain Stewart was indeed "confidential"; and
- Councillor Martin Ticehurst was the "publisher" of the public internet website, www.lithgowcouncil.com.

and whether the documents actually exist and whether their actions constitute alleged breaches by the Mayor, Neville Castle, General Manager, Mr Paul Anderson under Section 9 of the Lithgow City Council Code of Conduct, in that they have failed to provide Councillor Martin Ticehurst with access to information held by the Lithgow City Council.”

The Committee considered that Councillor Ticehurst was in fact making two separate complaints, one against the General Manager and one against the Mayor, both being similar complaints, relying on similar circumstances. The Committee comprising Ian Woodward Solicitor of Storey and Gough, Deputy Mayor Councillor Barbara Moran, and Mr T Le Fevre, met on 22nd March, 2007 to consider the complaints. The Committee resolved to investigate the complaints under Council’s Code of Conduct.

The Committee in due course considered the following material:-

1. The Complaint.
2. The Code of Conduct, Section 9.
3. The report of the Code of Conduct Committee to Council relating to the complaint by Councillor Fisher against Councillor Ticehurst, being a complaint that Councillor Ticehurst had published confidential Council material on his website without authority.
4. The confidential legal advices obtained from Michael Wright of Counsel and from Nick Abrahams of Deacons Lawyers.
5. The report of Mr Le Fevre to the Committee of his interview with the Mayor.

The Committee noted that Councillor Ticehurst’s complaint was general in its terms and referred to “continued refusal” by the Mayor to provide information, and did not identify or particularise any requests which Councillor Ticehurst may claim to have made of the Mayor; ie no dates, times, places of verbal requests, no particulars of the content of any such requests; and no particulars of any written requests. For there to have been a “continued refusal” to provide material, there must be at least one request. The Committee noted Mr Le Fevre’s report that he interviewed the Mayor and put the following question to him:-

“Has Councillor Ticehurst ever approached you individually, either formally or informally, with a request that you provide to him a copy of the legal advice obtained by the Code of

Conduct Committee in respect of the Complaint by Councillor Fisher against Councillor Ticehurst for publishing Council confidential documents on Councillor Ticehurst's website?"

The Mayor's reply was:-

"No"

The Committee has no further evidence before it. The threshold issue in this matter is:-
"did Councillor Ticehurst make a request of the Mayor to provide him with information to which he was entitled under Section 9 of the Council's Code of Conduct?"

The Committee is of the view that although a request may have been made by Councillor Ticehurst to Council for copies of the legal advices, no request has been made to the Mayor individually; and therefore the Committee is not satisfied that any breach of Section 9 of the Code could have been committed by the Mayor by virtue of his refusal to provide the information. In such circumstances, the Committee would need look no further into questions of privilege or confidentiality. Put simply, the onus is on Councillor Ticehurst to prove to the satisfaction of the Committee that a request or requests were made by him to the Mayor; he has provided no particulars of any such requests; the Mayor has denied that any request was made of him; therefore the Committee cannot be satisfied that such request or requests was or were made, and therefore the Committee cannot be satisfied that the alleged "continued refusal" by the Mayor to provide the material has been established.

The Committee accordingly find that Councillor Ticehurst's complaint is not sustained, and finds no prima facie breach of the Code by the Mayor under Section 9 of the Council's Code of Conduct.

The Committee further notes that Councillor Ticehurst's complaint did not meet the criteria currently laid down in the Code in relation to the manner in which complaints should be made.

The Committee therefore recommends to Council that Councillor Ticehurst's complaint in this instance be dismissed. The Committee further recommends to Council that no further action be taken in respect of the Complaint.

Dated: 6th June, 2008.

**ITEM:15 REG - 17/06/08 - TRAFFIC AUTHORITY LOCAL COMMITTEE
MEETING - MINUTES OF 5TH JUNE 2008**

**REPORT FROM: ACTING GROUP MANAGER REGIONAL SERVICES – STEPHEN
DARLINGTON**

SUMMARY

Details of the Minutes of the Traffic Authority Local Committee Meeting held on 5 June, 2008 for Council adoption.

COMMENTARY

At the Traffic Authority Local Committee Meeting held on 5 June 2008 there were 9 items discussed by the Committee, and it is considered that all these items be adopted by Council as per the Committee's recommendations.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

ATTACHMENTS

1. Minutes of the Traffic Authority Local Committee Meeting.

RECOMMENDATION

THAT the Minutes of the Traffic Authority Local Committee be adopted.

QUESTIONS OF AN URGENT NATURE