



A CENTRE OF REGIONAL EXCELLENCE

AGENDA

ORDINARY MEETING OF COUNCIL

TO BE HELD AT

THE ADMINISTRATION CENTRE, LITHGOW

ON

20 MARCH 2017

AT 7.00pm

---

# AGENDA

---

**ACKNOWLEDGEMENT OF COUNTRY**

**APOLOGIES**

**PRESENT**

**CONFIRMATION OF THE MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD ON 27 FEBRUARY 2017.**

**DECLARATION OF INTEREST**

**COMMEMORATIONS AND ANNOUNCEMENTS**

**PUBLIC FORUM**

**PRESENTATIONS**

**MAYORAL MINUTES**

**STAFF REPORTS**

General Managers Reports – Nil  
Environment and Development Reports  
Operation Reports  
Corporate and Community Reports

**COUNCIL COMMITTEE MINUTES**

Sports Advisory Committee Meeting - 28 February 2017

**DELEGATES REPORTS – Nil**

**NOTICES OF MOTION**

Bathurst Bullet Train Service – Councillor Coleman

**QUESTIONS WITH NOTICE**

Quarterly Reports – Councillor Ring

**NOTICE OF RECISSIONS – Nil**

**BUSINESS OF GREAT URGENCY**

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

---

---

# TABLE OF CONTENTS

---

<u>ITEM</u>	<u>TITLE</u>	<u>PAGE</u>
	<u>ENVIRONMENT AND DEVELOPMENT REPORTS</u>	<u>3</u>
<u>ITEM-1</u>	<u>ENVIRO- 20/03/17- REVIEW OF PLANNING LEGISLATION UPDATES</u>	<u>3</u>
	<u>OPERATION REPORTS</u>	<u>21</u>
<u>ITEM-2</u>	<u>OPER - 20/03/17 - WATER REPORT</u>	<u>21</u>
	<u>CORPORATE AND COMMUNITY REPORTS</u>	<u>24</u>
<u>ITEM-3</u>	<u>CORP - 20/03/17 - COUNCIL INVESTMENTS HELD TO 28 FEBRUARY 2017</u>	<u>24</u>
<u>ITEM-4</u>	<u>CORP - 20/03/17 - EXCESSIVE WATER PROPERTY 12840</u>	<u>26</u>
	<u>COUNCIL COMMITTEE MINUTES</u>	<u>28</u>
<u>ITEM-5</u>	<u>OPER - 20/03/17 - SPORTS ADVISORY COMMITTEE MEETING MINUTES 28 FEBRUARY 2017</u>	<u>28</u>
	<u>NOTICE OF MOTION</u>	<u>29</u>
<u>ITEM-6</u>	<u>NOTICE OF MOTION - 20/03/17 - BATHURST BULLET TRAIN SERVICE</u>	<u>29</u>
	<u>QUESTIONS WITH NOTICE</u>	<u>30</u>
<u>ITEM-7</u>	<u>QUESTION WITH NOTICE - 20/03/17 - QUARTERLY REPORTS</u>	<u>30</u>
	<u>BUSINESS OF GREAT URGENCY</u>	<u>32</u>

---

## ENVIRONMENT AND DEVELOPMENT REPORTS

### ITEM-1 ENVIRO- 20/03/17- REVIEW OF PLANNING LEGISLATION UPDATES

REPORT BY: JIM NICHOLS – ACTING GROUP MANAGER ENVIRONMENT & DEVELOPMENT

---

## SUMMARY

The purpose of this report is to provide an overview of the proposed amendments to the Environmental Planning and Assessment Act, 1979 (EP & A Act) as detailed in the Draft Environmental Planning and Assessment Bill 2017 currently on public exhibition from 10 January 2017 until 31 March 2017.

This report summarises the proposed changes and seeks Council endorsement to prepare and lodge a submission on the proposed legislation changes.

## COMMENTARY

### BACKGROUND

The proposed amendments build on recent policy, operational and legislative improvements to the NSW planning system and work undertaken by the Government and stakeholders in 2013 to identify improvements to the planning system. At that time, the Government proposed a range of reforms set out in the Planning Bill 2013 and the White Paper: *A New Planning System for NSW*. This Bill did not progress through Parliament and the current proposals build on areas of agreement from 2013 and further subsequent improvements.

For ease of review the proposals are set out according to the following themes:

- Enhancing community participation;
- Completing the strategic planning framework;
- Better processes for local development;
- Better processes of State significant development;
- Facilitating infrastructure delivery;
- Fair and consistent planning agreements;
- Confidence in decision-making;
- Clearer building provisions;
- Elevating the role of design;
- Enhancing the enforcement toolkit.

A range of initiatives are proposed under each theme. The following section will provide a brief overview and comment under each theme in the context of its anticipated impact on the planning framework of the Lithgow LGA.

### 1 *Enhancing Community Participation*

### **Community Participation Plans (CPP)**

Each planning authority under the EP&A Act including all Councils; NSW government agencies and the Secretary of the Department of Planning and Environment will have to prepare a community participation plan (CPP). This plan will explain how the authority will engage the community in plan-making and development decisions.

The CPP will set out how and when Council will undertake community participation in relation to upcoming proposals and development applications including the ways in which the community can provide their views and participate in plan-making decisions and the how the community can access information about planning proposals and decisions. The Regulations will set out the requirements for the exhibition timeframes, content and process for developing the CPP.

Council will be able to specify additional mandatory participation requirements in the CPP if it so chooses. Once made, the validity of a CPP will only be able to be challenged in proceedings commenced in the Court within three months of its publication.

To reduce duplication, where a broader community engagement plan can meet the requirements for CPPs under its community engagement strategy prepared under the Local Government Act 1993, it does not need to prepare a separate CPP provided it considers the principles under the EP&A Act to the extent that the strategy covers the Council's planning functions.

As part of this requirement for CPPs it is proposed to update the current minimum public exhibition requirements. For example all local development will be required to be exhibited for a minimum of 14 days.

#### Officer comment

Community participation improves planning outcomes by providing additional information and perspective to the planning process. The general principle of the CPP is supported and will provide transparency and a framework for Council to work within.

Lithgow City Council currently has a notification policy for development applications; a community engagement plan for the Community Strategic Plan and prepares and delivers a variety of project specific community consultation and engagement strategies in relation to strategic planning and major projects. The CPP would be an opportunity to consolidate the framework for all Councils planning functions in one transparent document.

Further clarification should be sought and concern expressed in relation to the proposed requirement that all local development be exhibited for 14 days. In rural and regional areas such as Lithgow, and where the take-up of complying development is not high, this requirement could further push out development application processing times for relatively minor developments such as those identified in Council's notification policy as not requiring exhibition. Further comment on the CPP content cannot be made at this time as the detail has not been made available.

### **Community participation principles**

Community participation principles will be set out in the EP&A Act including: the opportunity to provide meaningful participation; planning information should be in plain language and easily accessible, opportunity to participate in strategic planning as early as possible; participation should be inclusive; consultation by proponents of major development before application is made; planning decisions should be transparent and reasons for those decisions should be provided including how the community views were taken into account; participation methods should be appropriate having regard to the likely impact of the development.

#### Officer comment

The community consultation principles outlined are generally supported. The elevation of these principles into the EP&A Act signifies the importance of proper and appropriate community participation to the planning process and is a fundamental value of local government.

### **Statement of reasons for decisions**

It is proposed that decision makers including Council will be required to give reasons for their decisions to help community members to see how their views have been taken into account.

The statement of reasons should be proportionate to the scale and impact of the decision; that is, less complex projects have a more simplified statement. For complex developments, planning authorities will be encouraged to provide a summary page to make it easier for community members to understand the reasons.

The statement of reasons should highlight the considerations particularly important to the decisions such as the need to mitigate impact or areas of community concern. This will then be used to guide decisions about any future modifications to a development. The Department will develop guidance material on how these statements of reasons should be set out.

#### Officer comment

The general principle of a statement of reasons for planning decisions is supported. More detail in relation to the format and level of detail of such statements is required to be able to make informed comment on its function and impact on resources.

Council currently provides a brief reason for each development consent condition and details reasons for refusal of development applications in relation to Section 79C evaluation criteria. Whilst this initiative is supported it may have the potential to push out development application processing times in the initial implementation period whilst staff become experienced and proficient in producing appropriate statements.

### **Stronger consultation for major projects**

For state significant development, applicants will be asked to demonstrate how they have consulted with the community prior to lodgement as part of the applicant's environmental impact statement.

#### Officer comment

This is already happening in some circumstances; however the elevation of this into the Act and/or regulation is supported. It is particularly important in developments of

a controversial nature such as wind energy farms. It should be noted that Council is not the consent authority for state significant development.

### **Up-to-date engagement tools**

The Department of Planning and Environment will be developing guidance materials, on-line tools and applications and case studies of effective and innovative ways to engage the community, particularly on strategic planning. They also propose to issue community consultation guidelines for the use of social media, online campaigns and the NSW Planning Portal.

#### Officer comment

This is supported. However the publishing of these guidelines in a timely manner to support any legislative amendments is critical.

## **2    *Completing the strategic framework***

### **Local strategic planning statements**

It is proposed that Councils will be required to develop and publish local strategic planning statements. These statements are a new strategic document that will complete the line of sight or connection between regional and district plans and Council's LEP in the strategic planning hierarchy within the EP & A Act.

The purpose of the strategic planning statements will be to:

- tell the story of the LGA and set out the strategic context within which the LEP has been developed (including the rationale behind the application of zones and development controls);
- explain how strategic priorities at the regional and/or district level are given effect at the local level; and
- incorporate and summarise land use objectives and priorities identified through the Council's Community Strategic Plan (CSP) process.

Strategic planning statements will follow a basic structure and are required to be in plain language and make use of maps and graphical representations. The Department will issue guidance and model statement to assist Council's to prepare their statements however it is expected that statements will include:

- Twenty year vision for the local area including the role and character of towns and villages and precincts and how they will develop over time.
- Goals and actions to achieve the vision
- Links to planning controls
- Monitoring and reporting on progress – Council can choose to use their IP & R framework

Statements will be required to be reviewed at least every five years or every four years in line with CSP if Council so chooses. Implementation will be staged over coming years to align with current regional and district planning processes.

Officer comment

The principle of local strategic planning statements is supported as a tool to articulate how planning strategies, plans and controls deliver on the goals and visions of the community strategic plan and higher level plans such as regional and state plans.

It should be noted that as Lithgow is not a high growth area no district plan exists. The Central West and Orana Regional plan is currently in draft form.

The Lithgow Land Use Strategy 2010-2030 is essentially already a strategic planning statement and therefore depending on the standard format and structure of the statements may not be a significant task. However further comments cannot be made until the guidance and model statement is available.

Councils should be given an opportunity to have input into the implementation staging to consider available financial and staff resources to complete this task.

Keeping local environmental plans up to date

The EP&A Act requires Council to keep their LEPs under regular review, however it does not specify how often this is to occur. The Department recognises that in some areas very little changes in five years and it would not be appropriate or efficient to require a comprehensive review and remake of an LEP.

It is proposed that LEPs are reviewed every five years initially against a set of criteria to allow Council and the Minister for Planning to identify if any follow up actions (minor amendments) should be undertaken or whether a comprehensive review should be performed.

The proposed criteria include:

- Does a new regional plan or district plan necessitate a major change to local strategic plans or controls?
- Has there been demographic change in recent years or is one expected?
- Has there been, or is there expected to be significant infrastructure investment that requires major change to strategic plans or controls?
- Has there been a high number of planning proposals (LEP amendments/rezonings) in recent years?
- Does the LEP demonstrate consistency with relevant state policies, ministerial planning directions and regulations?
- Has the community requested significant changes to the LEP in recent years?

Officer comment

Regular and consistent review of LEPs is supported.

**More consistent development control plans**

It is proposed that the EP&A Act be amended to require DCPs follow a standard format. Whilst the format of DCPs will be made consistent, the content of the DCP provision will remain a matter for Councils. Councils may choose to adopt model DCP provisions if they choose to. The standard format will be developed in consultation with councils to ensure the right balance of consistency and flexibility to capture local contexts.



#### Officer Comment

Any initiative that assists the community and applicants to access and understand the planning provisions that relate to their land and interests is considered a positive one. However local place based considerations should not be lost in the effort to standardise provisions across the State and integrate with the NSW Planning Portal.

In the absence of detail in relation to the content of a standard format Council should highlight concerns regarding a restrictive template which would not allow local considerations of important environmental and place based planning controls and actively participate in any further consultation relating to the development of the DCP template.

It should be noted that Council is developing a new comprehensive DCP under the current framework and therefore the timing of the implementation of this initiative should be sought from the Department to determine its impact on this project.

### **3 Better processes for local development**

#### **Early consultation with neighbours**

It is proposed to make provision in the EP&A Act to make regulations to encourage or require certain activities such as early consultation with neighbours to be completed before a person lodges a development application or modification application.

Before making any such regulation, the Department will conduct further research into barriers to early consultation and possible incentives to overcome them. This will include tools to facilitate early conversation between neighbours including through the NSW Planning Portal; and incentives in the system, including in relation to fees, where an applicant can demonstrate issues have been resolved through early consultation.

The Department will conduct a pilot of selected local councils to trial different incentive mechanisms and administrative approaches to inform the future change in the regulations.

#### Officer comment

Early consultation with neighbours is supported in principle. However the practical implementation and additional administration mechanisms that may be required raises concern and the Department's recognition that further research is required prior to pursuing this initiative is supported.

The following key concerns and areas for further research should be highlighted:

- The potential for harassment and coercion techniques to be used to gain neighbour support particularly if fee incentives are to be implemented
- The potential for Council to be drawn into neighbour disputes starting with neighbour consultation requirements further draining on Councils resources
- What would constitute evidence of early neighbour consultation (letter, signing of plans?)

- What level of detail is needed to be provided to neighbours to start the conversation?
- How would Council be sure that neighbours have been consulted with the full and correct information from applicants?
- How would an ongoing conversation with neighbours occur over the life of the design and planning phase of a development?
- The administrative oversight of this requirement may far outweigh the benefits if it is implemented as a requirement under the Act.

Council welcomes further research into this initiative before committing to support of its implementation.

### **Efficient approvals and advice from NSW agencies**

State agency input into development applications can consist of advice, concurrence or general terms of approval. Development that requires approval under multiple Acts is known as “integrated development”. The Department is concerned with the delays in the delivery of advice from State agencies resulting in increased uncertainty and costs for applicants.

### **Step-in power to ensure timely approvals**

The proposed amendments will give the Secretary of the Department of Environment and Planning the reserve power to prevent delays and resolve conflicts between agencies.

The Secretary will be able to give advice, concurrence or general terms of approval (GTAs) on behalf of another agency where the agency has not provided the advice, granted or refused concurrence, or provided GTAs within statutory timeframes and/or the advice concurrence or GTA from two or more agencies are in conflict.

These powers to act in these situations will be reserve powers, exercised at the Secretary’s discretion.

The Regulation will also be amended to allow the Secretary to step in and restart the assessment process and timing where an agency had paused it, in order to make additional information request that is inconsistent with policy requirements.

These reserve “step in” powers will only apply to developments for which Council is the consent authority. They will not apply to state significant development or infrastructure or to activities under Part 5 of the EP&A Act.

### **Performance improvement approach**

To accompany the new powers, the Department will work with Councils and agencies to identify opportunities for improvement and supporting them to perform their roles.

### **Transparent digital platform**

The Department will develop an electronic system to digitise the transactions between Council and agencies and be linked to the on line lodgement facilities of the NSW Planning Portal to enable tracking of the progress of the concurrence and referral process.

The Department will collect data from this system and publish performance monitoring reports to promote self-regulation and identify opportunities for improvement.

### **Ongoing review of concurrence and referrals**

The Department will undertake a comprehensive, whole of government review of referrals and concurrences to identify unnecessary requirements; alternative tools to assess less complex impacts and whether decisions are being made at the right level of government.

#### Officer comment

The range of initiatives outlined above to improve agency approvals and advice is generally supported.

A large number of development applications in the Lithgow LGA require State agency input of one kind or another and delays with responses, requests for additional information and conflicting requests from multiple agencies do significantly add to development application processing times.

Council welcomes the ongoing review of concurrence and referrals to improve the outcomes from these processes. There is concern however that the “step in” powers will be used as a last resort and experience has shown that it is very rare for the Secretary to become involved in local development. The Council is currently experiencing delays with ‘integrated’ authorities on a monthly basis. It is difficult to foresee the Secretary becoming involved at Lithgow on such a regular basis. The proposed performance monitoring reports may instead assist in this regard.

### **Preventing the misuse of modifications**

The EP &A Act currently allows modification of development consent to correct minor errors, misdescription or miscalculations and /or to an extent that Council is satisfied the development has not significantly changed.

This provision has been over time misused to grant retrospective approvals for works that go beyond the original consent.

### **Strengthening deterrence of unauthorised works**

It is proposed to amend the Act to prevent planning authorities including the court, from approving a modification in relation to works already completed other than in minimal circumstances. The effect of this is that unauthorised works falling outside these parameters may be subject to enforcement action such as demolition or require a new building certificate.

#### Officer comment

This amendment is supported in principle. However caution should be given to the use of new building certificates as a mechanism to authorise works that are not consistent with the original development consent as building certificates, as they currently exist, do not have to consider planning considerations such as impact upon amenity. This would leave the only alternative in these circumstances as demolition of the unauthorised work and may leave Councils exposed to appeals to the Court for refusal to issue a building certificate.

### **Modifications must take into account reasons for original consent**

The current system allows for the modification provisions to be used to amend or remove conditions of development consent without proper consideration as to why those conditions were originally imposed.

It is proposed that a planning authority will be required to give reasons for a decision and in so doing explain the importance of certain conditions and the reasons for imposing them.

The proposed amendments will require planning authorities, when considering a modification application to consider the statement of reasons for the original consent.

#### Officer comment

This initiative is supported and will provide greater clarity and transparency around development consents and any modification thereto.

### **Improving the complying development pathway**

The Department has an ongoing program of work to simplify the planning rules around complying development. The aim is to improve the efficiency and uptake of this pathway for low impact projects. Key aspects of this work are: a user friendly simplified Housing Code; simplifying standards for complying development in greenfield areas; simplified controls for development in inland areas of NSW (LGA's west of the dividing range including Lithgow LGA) via an Inland Code; implementing an education program on exempt and complying development; enhancing the education of accredited certifiers in NSW; enhancing the NSW Planning Portal to allow on-line lodgement of complying development certificates (CDC) (and development applications).

The Department has also recently released a draft Medium Density Design Code and Medium Density Housing Code for public comment in December 2016. These are aimed at making it cheaper, easier and faster to build lower-rise medium density housing such as dual occupancy; terraces; townhouses and manor houses.

#### Officer comment

Whilst these initiatives are generally supported; the increased categories of development falling under the complying development pathway through the implementation of the additional SEPP codes is of concern. It is considered Councils should have more input into what is categorised as complying development in their areas.

It is felt that local values are being sacrificed for gains in consistency across the State and reduction in development processing times, matters that are not as relevant in rural and regional areas as barriers to development and business as it is in metro areas.

### **Ensuring the development meets the standards**

It is proposed to amend the EP&A Act to make it clear that where a CDC does not comply with the State Policy it can be declared invalid.

#### Officer comment

Supported

### **Improved information for councils and neighbours**

It is proposed to require certifiers who are intending to issue a CDC in metro areas to give a copy of the proposed certificate and any plans to the Council and direct neighbours and after issuing the CDC to give a copy of the certificate and endorsed plans to direct neighbours at the same time as they provide the information to Council.

In time neighbours will be able to access plans and certificates on the NSW Planning Portal, contributing to greater transparency in the system.

#### Officer comment

It appears that this requirement is for metro areas only and will not affect Lithgow LGA. However this should be clarified. If it were to be implemented in the Lithgow area there would be concern around the administrative impost of providing copies of proposed certificate and plans to neighbours prior to issue and then again upon issue given that the timeframes would be similar in any case. What is the purpose of this additional level of notification? What can the neighbour do with this information after the fact?

Further concern relates to who is classed as “neighbours” in greenfield areas and how private certifiers would gain access to property ownership information. Would they be requesting that information from Council, creating yet another drain on Council resources?

### **Limit some sensitive categories to council certifiers**

It is proposed that the regulation will be able to specify certain categories of development for which only a council certifier is authorised to issue a CDC. This is intended to ensure that the appropriate consideration of proposals with greater potential to impact local values or sensitive areas is given. It will provide Council with increased visibility over sensitive complying development in their areas and help improve monitoring and enforcement functions.

#### Officer comment

The underlying principle of complying development is that it is low impact development. Therefore complying development should not have potential to impact local values or sensitive areas.

It is considered that this fundamental principle is being eroded by the inclusion of further categories of complying development such as medium density housing. This is not considered to be low impact development in rural and regional areas and therefore should not be complying development.

It is incongruent to have “sensitive” categories of complying development for which only Council certifiers should be able to consider. It also suggests that there is an inherent flaw in the private certification system where private certifiers cannot be entrusted to certify development with the potential for greater impacts.

This proposal will further complicate the complying development pathway and create a two tiered system for certification.

### **Powers and Resources for councils**

Councils are the enforcement authority responsible for monitoring local development including complying development where the certificate is issued by a private certifier.

To assist Council in this role a new investigative power for Councils is proposed to enable Council to issue a temporary stop work order on the project the subject of a CDC, in order to investigate whether it is being constructed in accordance with the CDC. Work will be able to be stopped for seven days and the power will be limited to genuine complaints.

To assist resourcing of this enforcement role, it is proposed to establish a compliance levy. This would be part of the fee structure for CDCs whether issued by Council or private certifier. It may also extend to development applications.

The proposed amendments create the power to establish the compliance levy through a regulation. However further work is needed to determine the most efficient and equitable model for the levy.

#### Officer comment

These amendments are generally supported. However concerns relating to the impact upon Council's resources and the shifting of costs related to the regulation of the private certification scheme should be raised.

### **Levelling the playing field between complying development and development applications.**

Barriers to the adoption of complying development in greenfield areas exists due to restrictions that apply to complying development that do not apply to development applications.

It is proposed to correct this by amending the EP&A Act to allow for deferred commencement of CDC and allowing special infrastructure contributions to be required and planning agreements to be entered into for complying developments.

#### Officer comment

Supported

### **4 Better processes for State significant development**

It is proposed to amend the EP & A Act to improve the responsiveness and efficiency of conditions for State significant projects.

#### **Transferrable conditions**

Sometimes conditions are duplicated across more than approval, creating parallel systems that regulate the same impacts.

It is proposed to establish a system of "transferrable" conditions. These are conditions of development consent that no longer need to apply because they are substantially consistent with conditions subsequently imposed under other regulatory approvals or licences such as environmental protection licences (EPLs) or mining leases. Responsibility for enforcing these conditions will then lie with the government agency issuing that approval, lease or licence rather than the consent authority.

Where such approvals, lease or licences are able to be reviewed over time the legislation will specify that any amendments made will not be able to permit greater impacts than those allowed under the conditions of the original development consent.

#### **Clearer powers to update conditions on monitoring and environmental audit**

It is proposed to clarify that the Minister has the power to vary and revoke monitoring or environmental audit requirements in existing approvals. This will provide greater flexibility to ensure that older consents remain relevant, contemporary and enforceable.

#### **Clear basis modern approaches to managing impacts**

Amendments are proposed to clarify that the conditions of consent can require financial securities to fund decommissioning or rehabilitation of sites.

Consideration is also being given as to whether special provisions should be made with respect to conditions relating to offsets for impacts of proposed development to address any environmental impact, not just biodiversity impacts.

#### **Tools and guidance for better conditions**

The Department will develop guidance material on the scope of new conditioning powers for stakeholders and community on how to write consistent, robust and legally enforceable conditions of consent for consent authorities and will develop a data base of clear, enforceable standard or model conditions for major projects.

#### **Improved Environmental Impact Assessment**

##### **Environmental Impact Assessment (EIA) Improvement project**

The government have prepared and released for comment in late 2016 a discussion paper with ideas about how to improve the assessment of major projects. The feedback will be used to develop a draft set of guidelines that will be released for further consultation.

The release of the Integrated Mining Policy and Wind Energy Guidelines, and the development of Social Impact Assessment Guidelines are other initiatives that will contribute to these improvements.

#### **Discontinuing Part 3A**

##### **Discontinuing transitional arrangements**

Following the repeal of Part 3A in the EP & A Act in 2011 it continued to apply to certain projects approved or pending at the time of its repeal under transitional arrangements. These projects are continuing to be subject to modifications under the broader modification power of Section 75W. To prevent the ongoing use of Section 75W to modify Part 3A projects the transitional arrangement will be repealed and all existing approvals under Part 3A will be moved to the current State Significant Development and State Significant Infrastructure pathways.

##### Officer comment

Amendments are generally supported. It should be noted that Council is not the consent authority for state significant developments.

## **5 Facilitating Infrastructure Delivery**

### **Concurrence for Part 5 activities**

The proposed amendments extend the current ability of environmental planning instruments (REPs, SEPPs and LEPs) to require concurrence or notification of public authorities to activities under Part 5 within future infrastructure corridors.

#### Officer comment

Supported.

## **6 Fair and consistent planning agreements**

### **Clearer directions to councils**

The Government is developing a clearer policy framework for the role and use of planning agreements in the planning system.

The Bill clarifies and strengthens the Minister's power to make a direction about the methodology underpinning planning agreements.

The Department has recently released a suite of draft documents to improve the policy framework for planning agreements including a proposed ministerial direction, revised practice note and planning circular. If adopted, the direction will require that local councils have regard to specific principles, policy and procedures when negotiating or preparing a planning agreement.

### **Other improvements to infrastructure contributions**

The Government is undertaking other initiatives to improve infrastructure contributions including the preparation of Special Infrastructure Contributions (SIC) determinations for regional infrastructure in high growth areas; working with IPART, councils and industry to review current guidelines on the cost, design and provision of local infrastructure delivered through Section 94 contributions; and preparing guidelines and assessment criteria for requests by councils to vary the levy rate for Section 94A contributions in growth areas.

#### Officer comment

Noted and supported. Concern is raised regarding the timeliness of finalising such guidelines noting that the current 'Development contributions Practice notes' are dated July 2005.

## **7 Confidence in decision-making**

The Department has identified a number of amendments and initiatives designed at increasing the confidence in decision-making at all three levels of the planning system – local, regional and State significant development.

These proposals can be summarised as follows:

- deliver better local decisions through promoting the consistent use of local planning panels and establishing tools to ensure experts make decisions where needed;
- update the thresholds for regional development- that is development determined by regional planning panels; and



- strengthen decision-making in relation to state significant development through changes to emphasise the independence and determinative function of the current Planning and Assessment Commission.

### **Better local decisions**

The EP & A Act currently provides for independent hearing and assessment panels (IHAPs) to be set up by local councils. The role of these panels is to provide expert advice and recommendations to Council exercising planning functions, or to exercise planning functions on behalf of Council.

Under this model elected councils set the strategy, policy and standards for development while technical assessments and decisions are made by independent experts in line with council's framework.

Stakeholder feedback shows that many existing IHAPs are working well and are helping councils manage increasing workload and more complex and controversial applications.

It is proposed to make local planning panels a regular feature of the planning system.

### **Consistent provisions for local planning panels**

It is proposed that the current IHAP provisions will be replaced with updated provisions on local planning panels. These will set the basic rules about the constitution, membership and functions of local planning panels and allow the application of consistent performance reporting requirements.

Council may decide whether it wishes to establish a local planning panel. The Council also determines which planning functions are to be exercised by the panel.

A local planning panel is to have three members, an independent chair, another independent expert member and a community representative. The members are to be appointed by Council and the expert members will be required to have expertise in any of the following areas – planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism or government and public administration.

### Officer comment

Lithgow City Council has not to date established an IHAP.

### **Power to direct that a local planning panel make determinations**

The proposed amendments will allow the Minister to direct a council to establish a local planning panel to determine development assessments.

The Minister would exercise this power where it is needed to address sustained community concern about the timeliness or quality of council's planning decisions, or about conflict of interest.

### Officer comment

Used properly the local planning panel model may be a positive initiative to assist Council with its planning functions for more complex development assessments.

However the powers for the Minister to direct council to establish a planning panel could also be seen as an erosion of the power for elected councils.

More information should be sought on when the Minister would see fit to exercise this power.

#### **Ensuring delegation to council staff**

The new power of direction would also allow the Minister to require more planning functions are carried out by the council staff.

Any direction that determination functions are to be exercised by council staff will be supported by a best practice model which sets out which matters should be determined by staff on delegation and which should be reserved for the council or local planning panel.

#### Officer comment

Lithgow City Council currently provides significant delegation to staff to determine development applications and therefore is unlikely to be affected by this new power whilst this level of delegation remains in place.

#### **Refreshed thresholds for regional development**

Regional planning panels currently determine classes of development known as regionally significant development.

Changes proposed include the basic threshold increasing from \$20 million to \$30 million; all new schools will be treated as state significant development, while thresholds for alterations and additions to existing schools will be lowered to \$20 million.

It is also proposed to remove these thresholds from the EP & A Act and place them within an appropriate SEPP to allow them to be updated from time to time.

#### Officer comment

Supported

#### **Strengthening decisions at the state significant level**

##### **Independent Planning Commission**

It is proposed the name of the Planning and Assessment Commission will be changed to the Independent Planning Commission.

To emphasise the independent and determinative role of the Commission the SEPP (State and Regional Development) 2011 will prescribe the types of State significant proposals that are to be determined by the Commission.

#### Officer comment

Supported

##### **Fair and robust public hearings**

The EP & A Act will continue to enable the Minister to ask the Commission to hold a public hearing prior to determining state significant developments.

Public hearings will be held over two stages. Community members will have the opportunity at each stage to hear from the proponent and government officials.

A new public hearing process will apply.

Officer comment

Supported in principle, however further information is required as to how the decision making process is streamlined so as not to unduly delay decision making.

**Managing conflicts for panels**

To ensure a common approach to the conduct of members of planning bodies; it is proposed to develop model codes of conduct.

These codes of conduct will be adopted by the EP&A Regulations.

Officer comment

Supported

**Extended scope for internal review of decisions**

Applicants of development consents can sometimes be dissatisfied with council decisions due to conditions or refusal. In these cases the applicant can request that the council review the decision. Following the review Council can either uphold its original decision or change it.

It is proposed to expand the scope of internal reviews to include decisions about integrated development and state significant development.

Officer comment

Supported.

**8 Clearer building provisions**

**Simplified and consolidated building provisions**

The provisions for building regulation and certification are currently located in different areas of the EP&A Act as well as the EP&A Regulation. Ministerial oversight is also divided between the Minister for Planning and the Minister for Innovation and Better Regulation.

The proposed amendments will consolidate key provisions relating to building regulation and certification in a single part of the EP & A Act (Part 6).

**Consistency with development approvals**

The current wording of the EP & A Act and Regulation does not ensure that the construction certificates are consistent with development consents.

The proposed amendments place in the Act itself (rather than the Regulations) a clear requirement that a construction certificate must be consistent with the development consent. These amendments will also give the Court the ability to declare a construction certificate invalid if it is inconsistent with the consent. Proceedings to seek such a declaration will be limited to three months after the construction certificate has been granted.

The Department will develop guidance criteria to assist in determining whether construction certificates are consistent with development consents and to clarify what is required to meet the consistency test.

Officer comment

These amendments are supported; it is considered however that three months may not be long enough in rural areas.

**9 *Elevating the role of design***

Design in the built environment creates an urban environment that works for individuals and communities, is fit for purpose, attractive, safe, efficient, built to last and can adapt to the needs of future generations.

Design works alongside urban planning to help meet practical objectives including: preserving a neighbourhood's cohesion and identity; enhancing amenity; encouraging enjoyment and use of services, public and green spaces; and putting buildings, places, infrastructure and resources to best use.

**A new design object**

The amendments include new object in the EP&A Act, promoting good design in the built environment.

**Design-led planning strategy**

The office of the Government Architect will develop a design-led planning strategy, comprising incentives and measures to assist planning system users to achieve well-designed places.

Officer comment

Supported. Design is already a relevant consideration that may be taken into account by Council and other decision makers however the design object in the Act will allow it to be balanced alongside other objects.

**10 *Enhancing the enforcement toolkit***

In 2014 the enforcement system in the EP&A Act was strengthened through the introduction of tiered penalties, improved investigative tools for local councils and new powers for the Court. This approach provides for fines and court actions.

**Enforceable undertakings**

Enforceable undertakings are a commonly used tool that can improve compliance outcomes in cases where fines and prosecutions may be less useful. These give the regulator the power to enter into an agreement that then requires the consent holder to rectify harm that has occurred and to commit to improved behaviours in the future.

The amendments propose to give the Department and local councils the ability to enter into enforceable undertakings with holders of a development consent. In the event that the consent holder then breaches the terms of the agreement the regulator can then efficiently apply to the court to enforce those terms.

This is a faster and cheaper regulatory option than prosecuting the original breach of the consent.

Officer comment

Supported. Council would welcome the guidance material to assist in employing this new tool.

**CONCLUSION**

The above report outlines a major review of the EP & A Act and the Departments proposals to amend the Act and its Regulations. It also outlines a number of non-regulatory initiatives. Most of these amendments are considered to be positive in principle however for some proposals the level of detail provided in the exhibition material is insufficient to make an informed decision of their full impact on Council's planning processes and resources and therefore clarification will be sought.

In general terms the Department has set an ambitious body of work to be provided through reference materials and guidelines to support the proposed amendments. Past experience shows that the Department has not always delivered on these documents in a timely manner.

The submission that will be prepared will highlight the concerns and issues with the proposals as outlined in this report.

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**LEGAL IMPLICATIONS**

Nil

**RECOMMENDATION**

**THAT** authority be delegated to the Acting General Manager to lodge a submission to the Department of Planning and Environment raising the issues and concerns as set out in this report in response to the proposed changes to the Environmental Planning and Assessment Act 1979.

## OPERATION REPORTS

### ITEM-2            OPER - 20/03/17 - WATER REPORT

**REPORT BY: I STEWART – GROUP MANAGER OPERATIONS**

---

## REFERENCE

Min No 17-54:            Ordinary Meeting of Council held on 27 February 2017

## SUMMARY

This report provides an update on various water management issues.

## COMMENTARY

### **Current Dam Levels for both Farmers Creek No. 2 Dam and Oberon Dam**

Farmers Creek No. 2 Dam capacity on Monday 6 March 2017 was 48.5%. Oberon Dam capacity on Monday 6 March 2017 was 91.9%.

### **Current Water Usage from Each Supply**

Table 1 below indicates total output from the Oakey Park Water Treatment Plant (consumption), the volume transferred from the Clarence Water Transfer System (CWTS) and the volume of water purchased from Water NSW (Fish River Scheme) for 2016/2017.

**Table 1 - Oakey Park Monthly Output and Clarence Transfer 2016/2017**

Month	Oakey Park WTP (ML)	Clarence Transfer (ML)	Fish River Supply (ML)
July	112	0	58
August	97	0	66
September	95	0	66
October	111	0	66
November	124	0	56
December	148	0	47
January	112	0	96
February	104	0	69
<b>TOTAL</b>	<b>903</b>	<b>0</b>	<b>524</b>

### Oakey Park Water Quality Summary

Oakey Park Water Treatment Plant is currently supplying water to Lithgow. No health-based ADWG values were exceeded for the period 28/01/17 to 14/02/17.

### Treatment Plants Monitoring Results

Samples are taken on a monthly basis at various locations within the STPs and WTP. Nine samples were taken on 21/02/2017 and forwarded to Australian Laboratory Services (ALS) for testing. There was one (1) non-compliance at Portland STP as detailed below in Table 2. All test results are published on the Lithgow City Council website as required by the *Protection of the Environment Operations Act 1997*.

**Table 2 – Treatment Plants Monitoring Results**

Plant	Non Compliance	Licence Limit	Date Sampled	Cause of Non Compliance	Action Taken to Mitigate Adverse Effects of the Non Compliance	Action Taken to Prevent Future Reoccurrence Of Non Compliance
Portland STP	Faecal Coliforms 2800 units/ 100mL	600 units/ 100mL	21/02/17	Removal of Trickling Filter During Plant Upgrade	Increase Cleaning to Reduce load On Remaining Filter	

### Fish River Water Scheme Water Quality Summary

Fish River Water Supply supplied water to Lithgow, Marrangaroo, Wallerawang, Lidsdale, Portland, Cullen Bullen, Glen Davis and Rydal from 18/02/17 to 10/03/17. Fish River Water Supply is currently supplying water to Marrangaroo, Wallerawang, Lidsdale, Portland, Cullen Bullen, Glen Davis and Rydal. No health-based ADWG values were exceeded for the period 18/02/17 to 10/03/17.

### Current Water Restrictions Update

Level 1 restrictions are effective from Monday, 17 March 2014.

### Water Saving Schemes or Processes Update

Council's Rainwater Tank and Domestic Appliance Rebate Program continued with Council approving four (4) applications for household appliance rebates and no applications for water tank rebates for the period 15/02/17 to 10/03/17.

### Water Reticulation Complaints

Six (6) complaints were received during the period 18/02/17 to 10/03/17 concerning water quality issues in the following areas. Testing of the water was undertaken at these locations.

<b>Locality</b>	<b>Concern</b>	<b>Notes</b>
2 Main Street Portland	Reported dirty water.	Water was tested and complied with all ADWG health limits. Water was stirred up following burst main in this locality.
173 Springvale Lane Lidsdale	Reported dirty water.	Burst water main.
4 Hill Street Lithgow	Reported dirty water.	Water was tested and complied with all ADWG health limits. Water was stirred up following burst main in this locality.
3 Hutchinson Street Lithgow	Reported dirty water.	Water was tested and complied with all ADWG health limits. Water was stirred up following burst main in this locality.
10 Hill Range Cres. Lithgow	Reported dirty water.	Burst water main.
23 Padley Street Lithgow	Reported dirty water.	Water was tested and complied with all ADWG health limits. Water was stirred up following burst main in this locality.

Details of water complaints made in the last six (6) months are displayed in the attachment.

#### **POLICY IMPLICATIONS**

NIL

#### **FINANCIAL IMPLICATIONS**

NIL

#### **LEGAL IMPLICATIONS**

NIL

#### **ATTACHMENTS**

1. Water Quality Complaint Trend

#### **RECOMMENDATION**

**THAT** Council notes the water report.



## CORPORATE AND COMMUNITY REPORTS

### ITEM-3                    CORP - 20/03/17 - COUNCIL INVESTMENTS HELD TO 28 FEBRUARY 2017

**REPORT BY:            N DERWENT – FINANCIAL SERVICES MANAGER**

---

## REFERENCE

Min No 17-62:        Ordinary meeting of Council held on 27 February 2017

## SUMMARY

To advise Council of investments held as at 28 February in the 2016/17 financial year.

## COMMENTARY

Council's total investment portfolio, as at 28 February 2017 when compared to 31 January 2017, has increased by \$3,350,000.00 from \$23,950,138.43 to \$27,300,138.43.

While cash in Council's bank account decreased by \$8,426.96 from \$701,882.37 to \$693,455.41.

There is an overall increase in cash and investments of \$3,341,573.04 since 31 January 2017.

The increase in investments is primarily due to income received for 3<sup>rd</sup> rates instalment and the financial Assistance Grant.

If the movement in the bank account is negative, this is shown as a net redemption. If the movement in the bank account is positive this is shown as a net new investment.

The movement in Investments for the month of February 2017 were as follows:

Opening Balance of cash and investments as 01 February 2017	\$24,652,020.80
Plus New Investments – February 2017	\$6,350,000.00
Less Investments redeemed – February 2017	\$3,008,426.96
Closing Balance of cash and investments as at 28 February 2017	\$27,993,593.84

**See Figure 1** in attachment for summary of current investments held.

**See Figure 2** in attachment for a graph of historical and current investments to 28 February.

A large proportion of Council's investments are held as restricted assets for specific purposes. Restricted assets may consist of externally restricted assets which must be spent for the purpose for which they have been received e.g. Water, Wastewater,

Stormwater, Domestic Waste, Parking, or internally restricted assets which have been set aside by Council resolution. Some internal restrictions are held to fund specific liabilities such as employee leave entitlements and bonds and deposits.

### **POLICY IMPLICATIONS**

Investments are held in accordance with the Lithgow City Council's Investment Policy at the date of investing funds. On 27 October 2014 Council adopted a draft of the Investment Policy as Policy 8.7 which includes the Minister's Investment Order of 12 January 2011.

### **FINANCIAL IMPLICATIONS**

Interest received for month of January 2017 was \$21,897.08. Interest is paid on the maturity date of the investment. The budget for interest income is determined by the average level of funds held and the rate of return. Adjustments to the budget estimate are processed through Council's Quarterly Budget Review process. Interest Returns are determined by average funds invested and the rate of interest return.

### **LEGAL IMPLICATIONS**

Investments are held in accordance with the Lithgow City Council's Investment Policy at the date of investing the funds. On 27 October 2014 Council adopted a draft of the Investment Policy as Policy 8.7 and investments will comply with this Policy which includes the following:

- Local Government Act 1993 - Section 625
- Local Government Act 1993 - Order dated 12 January 2011
- Local Government (General) Regulation 2005
- Trustee Amendment (Discretionary Investments) Act 1997 Section 14A (2), 14c(1) & (2)

I, Neil Derwent, Lithgow City Council's 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.

### **ATTACHMENTS**

1. Investment Register 2016/17 and Cash Flow Chart

### **RECOMMENDATION**

**THAT** Investments of \$27,300,138.43 and cash of \$693,455.41 for the period ending 28 February 2017 be noted.

**ITEM-4            CORP - 20/03/17 - EXCESSIVE WATER PROPERTY 12840**

**REPORT BY: NEIL DERWENT – FINANCIAL SERVICES MANAGER**

---

**REFERENCE**

Min No 17-40: Ordinary Meeting of Council held on 6 February 2017

**SUMMARY**

To provide a report on a request from the owner of property 12840 seeking financial consideration for a excessive water account.

**COMMENTARY**

Council is in receipt of a request from the property owner seeking consideration in relation to excessive water consumption as a result of an underground concealed water leak.

The meter for the above property was read by Council staff on 26 July 2016 and this showed a high reading of 1,061KL, the meter reader notified someone on the property site and advised them there appeared to be an issue.

This read resulted in a water account being raised for:

Sewer Usage – Business - \$1,642.96  
Water Usage – Business - \$3,299.71

Total -            \$4,942.67

The following bill produced after this account also included the leak before it was fixed and it was made up of 112KLS being charged which is still over average for this property. This resulted in the water account being raised for:

Sewer Usage – Business - \$173.43  
Water Usage – Business - \$348.22

Total - \$521.75

Overall total requesting compensation - \$5,264.42 (\$200 rebate already applied)

A maximum allowance of \$200.00 was provided on 8 September 2016 as per Policy 8.1 'Excessive Water Usage Allowance for Breakages'.

Should Council determine to rebate the balance between the calculated average and the amount originally charged, a further adjustment of \$4,691.43 would be required.

The breakage has occurred on a private property and in this instance Council is not at fault and has been asked to consider removing or reducing the account.

Council Officers have investigated this request and denied removing or reducing the account as the policy only allows the \$200 concession.

### **Updated Information**

At its Ordinary Meeting held on 6 February 2017 Council resolved to defer a decision on this item to allow for further investigation and determine if there was obvious evidence of water leakage.

The Council officer who read the meter has reported that the meter was attached to a large shed on a cement slab. Following inspection with the occupant, the officer reported there were no visible signs of the leakage and that in his opinion, the leak was most likely under the slab and the water seeping into the ground beneath.

### **POLICY IMPLICATIONS**

Policy 8.1 'Excessive Water Usage Allowance for Breakages' and Policy 8.3 'Hardship Policy'. Councillors will be aware that Policy 8.1 is under review.

### **FINANCIAL IMPLICATIONS**

Possible write off of \$4,691.43

### **LEGAL IMPLICATIONS**

Nil

### **RECOMMENDATION**

**THAT** Council:

1. Offer no further consideration additional to the \$200.00 rebate previously applied to water consumption charges on the property 12840.
2. Advise the owner in writing of Council's resolution and confirm the availability of a negotiated repayment arrangement under policy.

## **COUNCIL COMMITTEE MINUTES**

### **ITEM-5 OPER - 20/03/17 - SPORTS ADVISORY COMMITTEE MEETING - 28 FEBRUARY 2017**

**REPORT BY: I STEWART – GROUP MANAGER OPERATIONS**

---

## **SUMMARY**

This report details the Minutes of the Sports Advisory Committee Meeting held on 28 February 2017.

## **COMMENTARY**

At the Sports Advisory Committee held on 28 February 2017, there were numerous items discussed by the Committee, including:

- 2017 LJ Hooker Reg Cowden Sports Star of the Year Awards
- Booking Requests

The following items were outside the Committee's delegations and require Council to formally consider the recommendations:

- Wallerawang Baseball Association – New Member

**THAT** Council accept John Kearney as the Sports Advisory Committee representative from Wallerawang Baseball Association.

## **POLICY IMPLICATIONS**

NIL

## **FINANCIAL IMPLICATIONS**

NIL

## **LEGAL IMPLICATIONS**

NIL

## **ATTACHMENTS**

1. Minutes of the Sports Advisory Committee meeting held 28 February 2017.

## **RECOMMENDATION**

### **THAT**

1. Council notes the Minutes of the Sports Advisory Committee held on 28 February 2017.
2. Council accepts John Kearney as the Sports Advisory Committee representative from Wallerawang Baseball Association.

## NOTICE OF MOTION

ITEM-6                      **NOTICE OF MOTION - 20/03/17 - BATHURST BULLET TRAIN SERVICE**

**REPORT BY:      COUNCILLOR C COLEMAN**

---

## COMMENTARY

The Bathurst Bullet commenced operating on 21 October 2012, it is operated by a two carriage endeavour railcar.

This service is highly utilised by the resident of Lithgow. Some of our residents use it to travel to medical appointments, some to work. A number of school age children are also travelling up the Blue Mountains to attend school.

It is often brought to my attention and my fellow councillors that two carriages are often full before it reaches Katoomba with a number of passengers having to stand until they disembark.

## POLICY IMPLICATIONS

Nil

## FINANCIAL IMPLICATIONS

Nil

## LEGAL IMPLICATIONS

Nil

## RECOMMENDATION

**THAT** Lithgow City Council writes to NSW Train link and ask them to consider another two carriage be attached to the Bathurst bullet considering the high demand of the service.

## QUESTIONS WITH NOTICE

### ITEM-7 QUESTION WITH NOTICE - 20/03/17 - QUARTERLY REPORTS

**REPORT BY: COUNCILLOR S RING**

---

## REFERENCE

Min No 17-64: Ordinary Meeting of Council 27 February 2017

## SUMMARY

To ask a number of questions in relation to the December Quarterly Budget review reported to Council on 27 February 2017.

## COMMENTARY

At the Council meeting of 27 February 2017 I foreshadowed some questions in relation to the December Quarterly Budget Review. These questions are as follows:

### Maintenance and Operating Budgets

ITEMS 5,6,8; (and relates to increased expenditure in Item 16 – value \$1,132,288) Decreased expenditure to fund roads due to incorrect original budget allocation of salaries and resources.

How did this occur and what impact if any has this had on any other council programs?

ITEM 7 \$62,107 decrease in revenue due to grant funding no longer being available. Why is this grant funding no longer available and what works does this relate to? Has the withdrawal of grant funding had an impact on the implementation of Councils Operational Plan and if so what?

### Operating Projects Budget

Item 26 Noxious weeds incorrect original budget allocation – why. How was this funded.

### Capital Project Budget

Item 27 and 28: Refer to grant funding Blast Furnace Park Works. Why was this included in the 2016/17 budget if the funds are not made available until next year. What impact has this had on this year's program of works for the Blast Furnace

Item 35: Increased expenditure of \$94,184 for Brown's Gap Road from prior years unspent special rate monies.

Given the number of complaint about the condition of roads in the LGA why was nearly \$100,000 of special rates funding not expended during the last financial Year.

Item 36 and 37 Increase expenditure (\$300,000) to fund future reservoir upgrades by transferring \$300,000 from telemetry upgrade.

What future reservoir upgrades have been identified and where is this money being transferred to?

Recommendation Page 7 of Item 20

Item 1 Deficit of \$267,351 – is this only for the quarter or a cumulative total for the first 6 months.

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**LEGAL IMPLICATIONS**

Nil

**RECOMMENDATION**

**THAT** the answers to the questions be provided.



## **BUSINESS OF GREAT URGENCY**

*In accordance with Clause 241 of the Local Government (General) Regulations 2005 business may be transacted at a meeting of Council even though due notice of the business has not been given to the Councillors. However, this can happen only of:*

- a) *A motion is passed to have the business transacted at the meeting: and*
- b) *The business proposed to be brought forward is ruled by the Chairperson to be of great urgency.*