



AGENDA

Extra Ordinary Meeting of Council

to be held at

Council Administration Centre

180 Mort Street, Lithgow

on

Monday 9 March 2020

at 6:00 pm

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1. Acknowledgement of Country

Acknowledgement of Country

I would like to acknowledge the traditional custodians of this land we are on here today, and pay respect to their elders both past, present and emerging.

Declaration of Webcasting

I inform all those in attendance at this meeting, that the meeting is being webcast and that those in attendance should refrain from making any defamatory statements concerning any person, Councillor or employee, and refrain from discussing those matters subject to Closed Council proceedings as indicated in clause 14.1 of the code of meeting practice.

2. Present

3. Apologies

4. Declaration of Interest

5. Mayoral Minutes

5.1. MAYORAL MINUTE - 09/03/2020 - EPA Proposed Application to Enter into an Enforceable Undertaking.

Report by Mayor – Councillor Ray Thompson

Summary

In August 2019 a failure of a Caustic Soda Tank at the Wallerawang Sewage Treatment Plant (STP) led to a discharge of the Caustic Soda into an unnamed watercourse on Council land and a private property adjacent to the STP. Council was issued with a number of Notices in relation to the Incident as part of an ongoing investigation being conducted by the NSW Environment Protection Authority (EPA). It is proposed that an application be made to the NSW EPA to enter into an Enforceable Undertaking.

Commentary

In August 2019 a failure of a Caustic Soda Tank at the Wallerawang Sewage Treatment Plant (STP) lead to a discharge of the Caustic Soda into an unnamed watercourse on Council land and a private property adjacent to the STP.

Council was issued with a Clean Up Notice to remediate the affected area in accordance with a Remedial Action Plan prepared by Consultants. These works are continuing with oversight from the NSW EPA and the Consultant.

Council was advised of the NSW EPA intent to investigate the matter and possible breaches of the *Protection of Environment Operations Act 1997* on 30 October 2019. Council has fully complied with the requirements of the NSW EPA, with formal interviews of staff being conducted recently.

The NSW EPA considers that there are sufficient grounds to proceed to prosecution for a range of offences under the *Protection of Environment Operations Act 1997*. Rather than proceed to prosecution there is an option of entering into an Enforceable Undertaking.

Enforceable Undertakings are voluntary and legally binding agreements between the EPA and a party, in this instance, the Council. The benefit of enforceable undertakings is that they are an efficient, flexible and transparent tool. They allow the EPA to obtain a set of fit-for-purpose commitments that address specific issues in response to an alleged breach. Enforceable undertakings are a more serious regulatory response than issuing a penalty notice but less serious than prosecution.

An enforceable undertaking contains details of the commitments Council makes in response to the alleged breach. The onus is Council to submit an application to the EPA proposing an enforceable undertaking.

The application is effectively an invitation, from Council to the EPA, to begin the process of negotiating an enforceable undertaking. The EPA is far more likely to enter into an enforceable undertaking when the party to the Enforceable Undertaking takes responsibility for their actions, responsibility for the pollution incident and/or admit to any wrongful acts, omissions or conduct.

An enforceable undertaking forms part of Council's compliance history and a copy of all enforceable undertakings are published on the EPA's public register. The EPA also issues a media release publicising the details of each finalised enforceable undertaking.

Policy Implications

Nil.

Financial Implications

- Budget approved - Nil
- Cost centre – Wastewater fund
- Expended to date – Nil
- Future potential impact – currently unknown, a further report will be provided after negotiations have occurred.

Legal Implications

The EPA can accept enforceable undertakings under section 253A of the POEO Act. These agreements are enforceable by the Land and Environment Court.

Attachments

Nil

Recommendation

THAT Council submit an application to enter into an Enforceable Undertaking and seek to commence negotiations with the NSW Environment Protection Authority without delay.

6. Staff Reports

6.1. Infrastructure Services Reports

6.1.1. IS - 09/03/2020 - Request for Works Woolnough Street Vale of Clwyd

Report by Director of Infrastructure & Services

Summary

To advise Council regarding the recent rainfall event causing damage to a privately owned and maintained right-of-carriageway benefiting residences of Woolnough Street, Lithgow.

Commentary

Regarding the issue of flooding in the vicinity of Woolnough Street, Council engineers conducted this site inspection on 10 February 2020 as a result of an email received from Councillors on 09 February 2020. Council staff were advised of serious safety concerns and Councillors requested advice dealing with any possible avenues of assistance Council could provide. In order to respond, a site inspection was required.

As noted above, Council engineers conducted the on-site inspection the day after Councillors informed staff of concerns in the area. This access is permitted under Section 191 and 191A of the Local Government Act, for the purpose of inspecting stormwater drainage. I also met with the residents to hear their concerns who directed me to areas of their property where they had concerns, particularly continued storm water flow down the rock formation to the rear of the residences. Staff have thoroughly investigated the matter and looked into the history of this issue by speaking with staff (with 40 years employment history with Council) and reviewing documentation held by Council with reference to this area. The main issue of note is the access to the properties off Woolnough Street, the access to which crosses a water course.

To start, please note that Council received a \$1 million payment from the Federal government, strictly for "projects and activities that they deem essential for the recovery and renewal of their communities". Projects must directly relate to the December 2019 bushfires natural disaster, .e.g removal of burnt trees and recovery co-ordination. To date, Council has easily accounted for expenditure for this full amount, across the recovery services being offered to affected residents. I understand from the Woolnough Street site meeting with residents on 10 February, there is the expectation that part of this money can be used to assist with this specific issue. While the flooding concerns in this area are understood, there are two concerns that must be brought to Council's attention.

Land Ownership

Firstly, this is not public land, nor a public road. Whilst there have been claims this access was constructed by Council, no evidence can be found in previous Operational Plans, long-term staff cannot recall this project and Council has no documented evidence as such. The access land is a private right of carriageway subject to a legal easement and is not a public road. The residents note that they arranged for the access to be widened at their own cost in the recent past, as they are entitled, as this is a private asset.

However, the private access has been constructed to a very poor standard, outside the requirements of Council's own specifications and standards for engineering design. The pipes do not have headwalls and they have been laid lower than the creek bed without any form of compacted base. Both factors give rise to persistent erosion and settlement, and encourage ongoing sediment build

up. Council informed the residents of these concerns in January 2016, during a site meeting regarding the issue of private fencing and flooding concerns as a result of that month's total rainfall of 166mm, with 36.8mm recorded on the 15th. At this meeting the residents were advised that the pipes underneath the access were not suitable, and a culvert or bridge was required. Record of this conversation has been documented.

While the private access has now partially collapsed, this is not a result of the bushfire. From the assessed standard of construction and non-compliance with engineering guidelines, Council's engineers can only conclude that, over time, persistent erosion would have continued regardless and ultimately resulted in this failure, whether the bushfire had occurred or not. Storm water was the cause of erosion, regardless of any ash contained therein.

Cause of Flooding Concerns

Flooding in the Redgate Street / Woolnough Street area of the Vale of Clwydd is a historic matter. Staff can recall flooding events occurring over the past 40 years. To assist this issue, in the area of Council's own responsibility, adjacent public stormwater assets have been upgraded to accommodate extended storm events (in the Redgate / Ramsay Street area). However, as noted, this was public infrastructure. East of Woolnough Street (within the vicinity of 5 Woolnough Street), the aboveground water course entirely comprises private land and it is not permissible for Council to perform works in this area without a relevant resolution of Council. As there is a long-term precedent and written evidence of historic flooding problems in this exact area, the administration advises exhibiting caution in stating that the flooding is a bushfire-fire related matter.

There have been several claims that this rainfall event occurred as a result of the bush fire and therefore, the resultant flood damage can be covered by bushfire recovery funding. However, heavy rainfall cannot be specifically linked to bushfire events. While it is acknowledged that this rain event occurred after a fire, this is not to say that the fire caused the rain. For example, please note the following events recorded in Lithgow, not preceded by bush fire:

- 20 December 2018 – 64.6mm.
- 29 November 2018 – 49.2mm
- 26 February 2018 – 51.0mm
- 22 March 2017 – 54.2mm.

To this effect, please note the attached images which detail the storm water behaviour in storm events of varying intensity. While it is acknowledged that resulting from the fire, soil erosion and debris was conveyed by stormwater to the area adjacent to the pipes, the maximum flow rate of the pipes is not sufficient to accommodate even a 1 in 5 year storm event, as shown by the images attached. A rainfall event typical of a 1 in 5-year average recurrence interval (ARI) is still likely to cause water pooling/ponding at the inlet of the storm water pipes underneath the Woolnough Street right of carriageway, and this effect is worsened for storm water events of a 1 in 10 and 1 in 50-year ARI. Noting the inadequate standard of construction, ongoing erosion was inevitable.

Summary

Ultimately, it is advised that rectification of this failure falls outside the conditions of the bushfire relief funding. This position is attributed to the prior advice issued by Council after rainfall in January 2016 and the non-compliance of the access regarding engineering standards of construction. Consequently, any works to resolve the matter will require the expenditure of public funding on private assets. To this effect, Council is bound to ensure that this any publicly funded work is in the best interests of the community as a whole (Section 8A of the Local Government Act 1993) and if the Council is to perform work on private property, it must either charge applicable costs or resolve a reduction (or waiving) of costs in an open meeting of Council (Section 67 of the Local Government Act 1993).

The Lithgow LGA has been included in the Natural Disaster Declaration for NSW Storms and Floods – 15 January onwards. The natural funding arrangements are only available for restoration of essential public assets that have been damaged as a direct result of an eligible disaster.

Policy Implications

Nil

Financial Implications

- Budget approved - Nil
- Cost centre - Nil
- Expended to date - Nil
- Future potential impact - Nil

Legal and Risk Management Implications

Council must strictly adhere to the terms of any grant funding allocations to avoid the risk of being required to repay grants from Council funds.

Attachments

1. Rainfall ARI scenarios [6.1.1.1 - 3 pages]

Recommendation

THAT Council:

1. Note the report on damage from the recent rainfall event to the privately owned right-of-carriageway benefiting residences of Woolnough Street, Lithgow.
2. Note that assistance to Woolnough Street residents to address flooding concerns does not meet the criteria for Council's Bushfire Recovery Grants nor other Commonwealth Disaster Recovery Funding Arrangements.

6.2. Finance and Assets Reports

6.2.1. FIN - 090320 - Bushfire Community Resilience & Economic Recovery Fund

Report by Chief Financial & Information Officer

Summary

Lithgow City Council has been offered Phase One funding from the Bushfire Community Resilience and Economic Recovery Fund (the Fund). Council is eligible for funding of \$250,000. The purpose of this report is to put forward priority projects and activities which meet the eligibility criteria for funding under the Fund guidelines.

Commentary

Phase One funding is meant to be quick and flexible in order to meet the immediate recovery needs of local communities. Councils are asked to undertake activities in two categories:

- Economic Recovery – events or initiatives to support local business and industry recovery; and
- Community Resilience – events or initiatives to support community recovery and wellbeing.

Applications for the fund are open until **31 March 2020**. Councils are asked to complete funded projects by **30 June 2020**. Extensions may be granted upon request.

Suggestions From Paul Toole MP

The Hon. Paul Toole MP has suggested that the following projects and activities be considered by Council for Phase One of the funding:

- Lithgow Show Society - 2020 gate entry for 2790 residents;
- Ironfest - 2020 discounted gate entry for 2790 residents;
- Lithgow Business Chamber - launch of Buy Local Gift Cards;
- Nigel Truslove – Portland community member - thank you breakfast and acknowledge event for RFS volunteers at The Foundations, Portland.

Hon. Paul Toole has provided an “invitation to apply” letter to representatives of each of the above organisations, providing information on the Fund.

Recommended Projects and Activities for the Funding Application

The administration recommends that the following projects and activities be included in the Phase One funding application:

- Lithgow Show Society – up to **\$30,000** for 2020 gate entry for Lithgow Local Government Area residents (invoice to be provided with details of the cost of free entry for local residents);
- Ironfest - **\$75,000** sponsorship arrangement for discounted gate entry for Lithgow Local Government Area residents (a minimum percentage discount for local residents would be negotiated with Ironfest organisers for inclusion in the sponsorship agreement);
- Lithgow Business Chamber - **\$20,000** for Year 1 funding of the Shop Local gift card program;
- Nigel Truslove – Portland community member - **\$20,000** contribution to the thank you breakfast and acknowledge event for RFS volunteers at The Foundations, Portland.
- Bushfire Expo - **\$50,000** budget for a Bushfire Expo to implement the resolution of Council at the 29 January 2020 Ordinary Meeting (Min. No. 20-13);
- Clarence / Dargan and Wolgan Valley community resilience events and activities - **\$15,000** budget (events and activities to be determined in consultation with the impacted communities); and
- Tourism marketing into Western Sydney - **\$40,000** budget.

The recommended projects and activities contribute to the Fund's required Disaster Recovery outcomes:

- The needs of vulnerable groups are addressed in disaster recovery;
- The community is aware of the disaster recovery process;
- The community can express its changing disaster recovery needs;
- Community members are aware of the risks of future disasters;
- The community has improved capacity and capability to respond to future disasters;
- Government, private sector and civil society and organisations are engaged in plans for mitigation and management of the recovery;

The guidelines also state that Councils are encouraged to partner with Business Chambers in delivering local initiatives. The extension or leveraging of existing initiatives and events is supported. Applications that request ongoing program funding are not eligible.

Policy Implications

Nil.

Financial Implications

- Budget approved - \$250,000 income and expenditure budgets to be included in the 2019/20 Quarter Three budget review.
- Cost centre - TBA
- Expended to date - nil.
- Future potential impact – nil.

Legal and Risk Management Implications

Nil.

Attachments

Nil

Recommendation

THAT Council endorse the following projects and activities for the application for Phase One funding from the Bushfire Community Resilience and Economic Recovery Fund:

- Lithgow Show Society – up to **\$30,000** for 2020 gate entry for Lithgow Local Government Area residents;
- Ironfest - **\$75,000** sponsorship arrangement for discounted gate entry for Lithgow Local Government Area residents;
- Lithgow Business Chamber - **\$20,000** for Year 1 funding of the Shop Local gift card program;
- Nigel Truslove – Portland community member - **\$20,000** contribution to the thank you breakfast and acknowledge event for RFS volunteers at The Foundations, Portland.
- Bushfire Expo - **\$50,000** budget for a Bushfire Expo;
- Clarence / Dargan and Wolgan Valley community resilience events and activities - **\$15,000** budget; and
- Tourism marketing into Western Sydney - **\$40,000** budget.

6.3. People and Services Reports

6.3.1. PS - 09/03/2020 - Farmers Creek Shared Pathway

Report by Director of People & Services

Summary

This report discusses the rollout of the shared pedestrian/cycle pathway along Farmers Creek and concerns raised by some residents in relation to its construction along Burton Street, Lithgow.

Commentary

The Farmers Creek Masterplan, developed for Council in 2016-17, provides Council and the community with a strategic framework for the development of the Farmers Creek Precinct. It includes strategies for vegetation and weed management, for linking public open space by way of a shared pedestrian/cycle pathway to recreational destinations and for encouraging greater community use and subsequent improved community health outcomes. When completed, the shared pathway will extend from the Visitor Information Centre to Waterworks Gully and with side connections to other places of interest.

To date, the shared pathway extends from the Geordie Street Crossing to Coalbrook Street past the Tony Luchetti Showground, JM Robson Aquatic Centre, Watsford Oval and Glanmire Oval, utilising both pre-existing and newly constructed pathways. In the past 2 – 3 years, the shared pathway has been extended from Watsford Oval to Coalbrook Street including a new pedestrian bridge over Farmers Creek.

In this first stage of Masterplan works, existing sections of pathway that don't meet the 2.5 metre wide shared path standard are being utilised rather than replaced in order to quickly and efficiently link as many recreational destinations as possible. The non-standard sections include the concrete pathway from Geordie Street Crossing to the Showground and the asphalt section between Sandford Avenue and Montague Street. The asphalt section will be replaced on a different alignment in a future stage of works.

Works being undertaken in the current year extend the shared path from Coalbrook Street to Saywell Park and possibly Lake Pillans and include:

- Construction of approximately 760 meters of 2.5-metre-wide concrete shared path between the Coalbrook Street pedestrian bridge and Sandford Avenue, between Tank Street and Guy and Burton Streets and from the new Burton Street bridge along Burton Street to Inch Street.
- Reconstruction of the Tank Street/ Macaulay Street intersection to improve safety.
- Utilising the existing asphalt pathway between Sandford Avenue and Montague Street off leash area.
- The construction of two new pedestrian bridges over State Mine Creek at Guy Street and Farmers Creek near Burton Street.

These works involve construction of a footpath to shared path standard along the eastern side of Burton Street to the Inch Street intersection where the narrow existing footpath will be used for pedestrians with cyclists using a marked on road lane on Inch Street between Burton Street and Saywell Park. Residents were notified of these intended works with a number of residents contacting Council raising concerns regarding potential loss of amenity and safety issues due to conflicts between bicycles and cars.

Burton Street is an essential part of the shared pathway, linking the pathway from Macauley and Guy Streets to Inch Street and to Lake Pillans, Blast Furnace and beyond. While the Farmers Creek

Masterplan did identify a possible alternative alignment along the creek corridor from Burton Street to Atkinson Street in a future stage of works, this has been investigated and found to be impractical due a number of constraints.

These constraints include the narrowness of the Farmers Creek corridor in this location, and the resultant high cost of constructing a pathway following the creek alignments requiring creek bank stabilisation and fencing, as well as the potential impacts that expected flooding would have on any infrastructure constructed in the creek corridor.

An initial option of including a section of boardwalk along the creek alignment was also dismissed due to the risk of the under sides harbouring vermin such as snakes and mice, and the required vegetation maintenance costs made this option unfeasible.

The eastern side of Burton Street currently has no formed footpath and is quite wide with good sightlines, therefore it has been determined to be the most logical and practical route for the pathway to proceed.

Burton Street is a no through road, with very low traffic volumes (residents only) and is reasonably wide and could accommodate a marked on-road cycle lane as an alternative to a concrete footpath within the road reserve. The impact of this option on residents is that it would eliminate the availability of kerb side parking for residents and visitors.

A resident site meeting is proposed to discuss the concerns the residents have raised in their submission.

A total of \$540,000 has been allocated in the current year budget for these works, 50% funded by a grant from Clubgrants Category 3 Infrastructure Grants. These funds will provide for extension of the shared path from Coalbrook Street to Saywell Park and possibly Lake Pillans.

Policy Implications

NIL

Financial Implications

- Budget approved - \$540,000
- Cost centre – PJ 400152
- Expended to date - \$64,639
- Future potential impact - \$475,361 to be expended.

Legal and Risk Management Implications

NIL

Attachments

1. Concerns - Farmers Creek Shared Pathway Works [6.3.1.1 - 2 pages]
2. Burton Street Residents letter [6.3.1.2 - 1 page]

Recommendation

THAT Council note the report on the Farmers Creek shared pathway along Burton Street and that a resident site meeting be held as soon as possible.

7. Council Committee Reports

7.1. PS - 09/03/2020 - Women's Advisory Committee Meeting Minutes - 4 February 2020

Report by Director of People & Services

Summary

The minutes of the Women's Advisory Committee (WAC) meeting of 4 February 2020 are presented for Council's consideration.

Commentary

Members of the WAC also attended a Councillor Information Session on 17 February 2020 to present their findings to Councillors on some of the identified needs of the women of the LGA and to make recommendations as to ways that Council can assist in improving the lives and experiences of women in the Lithgow LGA.

Policy Implications

The recommendations outlined below will contribute to having a lasting positive impact on our community and meet a range of outcomes from our Community Strategic Plan including:

- CC1.1 Local indigenous and Cultural and Linguistically Diverse communities are supported.
- CC1.2 We are responsive to the needs of an ageing population.
- CC1.3 We are a Family Friendly Community.
- CC1.4 Assistance is provided to community groups and organisations.
- CC1.5 Celebrate and grow volunteering.
- CC2.1 Increased awareness of local services and facilities.
- CC2.2 We provide a range of health services which meet the needs of the community.
- CC2.3 We provide learning opportunities which meet the needs of the community.

Financial Implications

- Budget approved - Nil
- Cost centre – N/A
- Expended to date - Nil
- Future potential impact – Approximately \$1,000, funded from an existing 2019/20 community events budget allocation.

Legal and Risk Management Implications

Nil.

Attachments

1. WAC minutes 4.02.20 [7.1.1 - 6 pages]

Recommendation

THAT Council:

1. Notes the minutes of the Women's Advisory Committee meeting held on 4 February 2020.
2. Agrees in principle to support the movement to advocate for a female specific health centre in Lithgow.
3. Supports the establishment and promotion of a "Safe Haven" community space.
4. Notes that financial support of approximately \$500 will be provided for a series of morning tea/ get togethers and activities, funded from an existing 2019/20 community events budget allocation.

5. Notes that Council will collaborate with PCYC to cover PCYC membership costs for individuals in financial hardship at a cost of approximately \$500, funded from an existing 2019/20 community events budget allocation.

8. Business of Great Urgency

In accordance with Clause 241 of the Local Government Act (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 if:

- 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.