

Local Government
Association of NSW



Late Motions

Annual Conference
As at 21 October 2005

2005

L 1 – Lane Cove

***Reduced Costs for Infringement Processing**

That the Infringement Processing Bureau be called upon to provide Council's that utilise hand held devices with an increased reduction to the infringement processing fee; and the Local Government and Shires Association be called upon to lobby State Government and their appropriate bodies to review and support a processing fee reduction for Council's using electronic transfer of information to the IPB.

Note from Council: All NSW Council's pay the IPB a designated fee to process and recover payment for the parking infringements that they issue. At present there are two levels of service that a Council can take up, being basic \$20 or premium \$18. The cheaper price offered to Council's who elect for the Premium Service reflects the efficiencies that the IPB are able to gain through standardising all correspondence with the customer and fully managing the document trail associated with the infringement.

Prior to July 2005, all NSW Council's issued handwritten PIN's (in triplicate) with one copy sent to the IPB, who would scan the PIN into their computer system, and recover payment on behalf of the issuing Council. Since July 2005, Council's have been able to purchase and use electronic hand held devices to issue PIN's. Each hand held device (and the associated software and technical support etc) represents a large capital outlay to the Council, in the order of \$10,000 - \$15,000. As a result of Council's capital investment in hand held devices, significant cost savings will be realised by the IPB. The use of hand held devices will enable the data relating to the PIN to be sent electronically to the IPB, thus removing the IPB's administrative burden of scanning each PIN and then archiving the paper copy. At present the IPB is proposing to that where a Council is issuing over 50% of their PIN's by hand held device, to grant the issuing Council a reduction in the processing fee of \$1.00 per infringement.

L2 - Lane Cove

***Evaluation of Bushfire Hazards by Rural Fire Service for Development Applications**

That the Rural Fire Service be called upon to review their assessment process, ceasing this broad scale approach and implementing a process that considers more strongly local conditions, for example bushland areas in already established urbanised areas.

Note from Council: Throughout N.S.W there are 9 councils that are under the jurisdiction of both the N.S.W Fire Brigade and the RFS. As a result these councils have to implement a District Fire Risk Management Plan, which includes conditions being set by the RFS when a DA is lodged to the council. When a DA is lodged with the council, and the property is located within a 'bush fire prone' area, the DA must be sent to the RFS for review. The report lodged by the RFS, may have to comply with the following provisions, as appropriate:-

- a) provide an Asset Protection Zone (APZ) incorporating at a minimum:
 - i. an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, with the property; and
 - ii. an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road;
- b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service.

Currently those conditions which are set by the RFS are undertaken through a 'desktop' assessment process where they will derive the information required from broad scale maps and site conditions, in addition to assessing the plans and the documentation of the DA. The conditions, which can range from colour-bond fencing, to fire sprinkler systems, or to something as simple as using metal materials in place of wood, are set depending on a number of factors which include topography, aspect, vegetation type, and fuel load. The conditions are then included into the DA conditions set by council.

The large portions of reports received by the RFS are straightforward and set reasonable conditions. However some assessments by the RFS have set conditions which do not take into consideration the urban location of the property resulting in conditions which are not consistent council plans. More specifically, it is when the RFS set the condition to install a colour-bond fence, for fire protection for the asset and the protection of fire fighter when fighting fires, that this difficulty arises.

The broad scale information, which the RFS uses to write their reports, is derived from a state level assessment which does not take into consideration the unique localities. All bushland areas in Lane Cove are long, linear and often dissected by roads and mowed parklands, and are in fact not as high a bushfire risk as the RFS assume it to be. Lane Cove's bushland area only makes up 10% of the whole area, thus the probability of a wild bushfire in Lane Cove is actually low. Without 'ground truthing' the bushfire hazard, the RFS will continue to set conditions which show no local consideration and create difficulty in managing these areas. In addition, as a result of this current practice, often the RFS will set different conditions for neighbouring properties, even though in a bushfire they will be subjected to almost mirror bushfire conditions. By addressing the issue of incorporating local conditions into the assessment process, it will minimize these two discrepancy of assessing APZs and inconsistent 'neighbouring' reports.

L3 - Lane Cove

Pollution Filtration in Urban Motorway Tunnels

That the State Government be called upon to now install and maintain pollution filtration equipment

to remove toxic particulate matter and noxious gases from the air-streams within urban motorway tunnels longer than 2km with longitudinal ventilation systems before they are exhausted from road tunnel ventilation stack(s).

To this end, the Government approve forthwith the installation of such particle filtration-systems and gas-detoxification equipment without further delay, to clean polluted air exiting the M5 East motorway tunnel, the Cross-City tunnel and the Lane Cove tunnel (now under construction)."; and that the NSW Local Government Association lobby the State Government to this effect.

Note from Council: By 2010, Sydney's road network will include the following road tunnels:- Sydney Harbour Tunnel 2.0km * 4 lanes, Eastern Distributor 1.4km * 4/5 lanes, Cross City Tunnel 2.1 km * 2/4 lanes, M5 east 4.0 km * 4 lanes, Lane Cove Tunnel 3.6 km * 5/6 lanes, M4 East extension 3.6km *6 lanes and F3-M2 extension.

The air pollutants emitted from vehicles include carbon monoxide, nitrogen oxides, hydrocarbons and particulate matter with an aerodynamic diameter of less than 10 microns. Adsorbed on the fine particle matter (PM) of 2.5 microns and less (PM2.5) are most of the cancer-causing polycyclic aromatic hydrocarbons (PAHs). The PM2.5 fractions are inhaled deep into the lungs where they are mainly soluble. The effect of this particulate matter on people's health is of special concern. The annual average of PM2.5 pollution in Sydney already exceeds the National Standard of $8\mu\text{g}/\text{M}^3$. Recent studies have gone a long way to show the effect that air pollution has on the cause and/or further development of lung disease.

Increasingly, scientific research is linking life-threatening illnesses, such as cancer, asthma and cardiopulmonary diseases, to exposure of particulate matter found in air pollution. Pregnant women exposed to levels of PAHs as found in Sydney are at risk of foetal retardation while the elderly are at higher risk of a myocardial infarct. Reports confirm that TWICE as many people die in Sydney from vehicle pollution within the regional air shed than from road accidents. Estimated cost of health impacts attributed to exposure to vehicle pollution is at least \$2 billion annually for Sydney alone.

Ventilation of road tunnels are of particular concern as the highly toxic plume collected from 10.8km of lane traffic within a 3.6km x 3 lane tunnel will not always be dispersed into the air shed without first striking the ground. World's best practice is to install particle filtration technology and gas-detoxification systems in heavily trafficked tunnels over 2km in length. The installation of such air-cleaning systems in e.g., Japan's traffic tunnels has been acknowledged by the RTA as efficient and effective. In-tunnel installation rather than in-stack(s) is recommended because it increases visibility, protects the motorist using the tunnel and reduces pollution of the local environment in the residential school and employment precincts.

These pollutants play havoc with the environment and, in particular, air quality. It borders on negligence to allow known toxic stack emissions to be directed into a localised atmosphere already exceeding the National Standard for PM2.5 when proven preventive measures and established technologies overseas are now available. Current reporting is based on monitoring the ground level

concentrations averaged out over 24 hours thus ignoring the short term exposure having much higher concentrations of pollutants for those who live, work, recreate or attend local schools within the direct fallout zones of road tunnel ventilation stacks. No long term health effects from road tunnels has been undertaken.

With increasing length of tunnels on the Sydney road network including the Sydney Harbour Tunnel, M5 East, Eastern Distributor, Cross City Tunnel, Lane Cove Tunnel and M4 East and F3-M2 tunnels planned, many drivers will now be exposed to alarmingly high levels of daily exposure without in tunnel filtration. This issue has regional significance potentially affecting the Councils of North Sydney, Sydney City, Willoughby, Lane Cove, Ryde, Hunters Hill, Ashfield, Burwood, Canada Bay, Marrickville, Rockdale, Hurstville, Hornsby, Ku-ring-gai, Blacktown and others. The Federal Australian Medical Association has supported the use of filtration and gas detoxification to reduce the negative health impacts from road tunnels in heavily populated cities.

L4 – Executive

***Options for one Local Government Association in NSW**

That a working party be established jointly with the Shires Association of NSW to explore the options identified in the paper titled "Options for One Local Government Association in NSW May 2005" with a view to formulating an agreed proposal for the consideration of all councils. Membership of the working party will be negotiated by the two Presidents.

L5 – Leichhardt

***Reforms to Public Housing in NSW**

That this Conference calls on the LGSA to request an urgent meeting with the NSW Minister for Housing to discuss the following issues:

- a) That this Conference does not support the NSW Government's plan for the Reshaping Public Housing" policy, released in May 2005 and due for implementation in November 2005;
- b) That this conference is committed to supporting a security of tenure for public housing tenants on all existing tenancies, and that it calls for the renewable tenancies clause in the new policy be abolished;
- c) That this Conference calls for adequate funding to be put into housing, for the expansion of existing department of housing stock, and improvements to maintenance backlogs and service;
- d) That this Conference supports a proposal for all public housing estates to have water tanks installed as a priority, as a means of taking responsibility for saving water;
- e) That the LGSA initiate a study into the current availability of affordable housing being medium to low housing rental in the inner west of Sydney; and

- f) That the LGSA continue to monitor and evaluate current and new initiatives relating to affordable housing that may contribute to relieving housing stress in the inner west of Sydney.

L6 – Randwick

***Contacting Australian Mayors Re: US Mayors' Climate Protection Agreement**

That the Local Government Association encourage all Councils to agree to:

1. Strive to meet or beat the Kyoto Protocol targets in our own communities, through actions ranging from anti-sprawl land-use policies and urban forest restoration projects, through to energy use reduction initiatives and public information campaigns;
2. Urge state and federal governments to enact policies and programs in line with Prime Minister Howard's 2002 commitment to meet the greenhouse gas emission reduction target set for Australia in the Kyoto Protocol, this being 108 percent of its 1990 baseline; and
3. Participate in a bipartisan national debate on ways in which Australia may achieve a 5 percent reduction in its 1990 baseline of Greenhouse Gas emissions to match that set for developing nations at Kyoto in 1997."

Note from Council: At its Ordinary Council Meeting held Tuesday 28th June, 2005 Council resolved to contribute to the creation of a ground swell of support for the Commonwealth Government to maintain the Prime Minister's commitment to meeting the intent of the Kyoto Protocol by adopting the above statement as Council policy and authorising the Mayor to encourage other Australian Mayors to endorse it as well.

Council has also been in contact with the Australian Local Government Association regarding this issue.

L7 – Broken Hill

***Dental Service**

That the Local Government Association of New South Wales request the Minister of Health takes immediate steps to provide increased funding for the purposes of the improvement of dental health services in Western New South Wales.

Note from Council: Broken Hill citizens do not have reasonable access to a public dental service. Individuals must wait years to obtain an appointment for essential denture services and weeks for emergency treatment. The problems have recently worsened and are at crisis point.

L8 – Broken Hill

***Health Service**

That the Local Government Association of New South Wales request the Minister for Health take immediate steps to investigate the current restructuring being undertaken in the Department of Health and prevent further health job losses and deterioration of services.

Note from Council: Broken Hill ratepayers are experiencing a decline in health services and job losses that will impact on the local economy.

L9 – Broken Hill

***Western land Leases**

That the Local Government Association of New South Wales seek support from the New South Wales State Government to consider selling residential Western Land Leases at a reasonable price of approximately \$1,000, to convert to freehold easing the burden on residents paying increased rents and rates.

Note from Council: This is designed to make it easier for people with homes on Western Lands leases to convert them to freehold. Rising land rates mean increases in Western Land's rent and Council rates with it being harder for people to pay both. If land could be bought outright there would be no more paperwork and there would be no more rent to pay on those pieces of land.

Most people cannot afford to convert land to freehold or they would already have taken this action. The State Government needs to make it more affordable and easier for people to convert.

L10 – Parramatta

***Amendment to Section 525 (1) and Section 526 (1) (a) and (3) of the Local Government Act 1993 – Application by Ratepayer for Re-categorisation of their Land**

That the Conference calls upon the State Government to amend Section 525 (1) and Section 526 (1)(a) and (3) of the Local Government Act 1993, so that a rateable person's application for re-categorisation of their land is limited to the current financial year.

Note from Council: A ratepayer can apply to Council 'at anytime' for a change in category back to 1993, the commencement of the current Act. Since councils are limited by rate pegging, the retrospective financial adjustment has adverse consequences on council's financial position.

Executive Note: If carried, the above motion will be held as covering the following motion.
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L 11 – Penrith

***Amendment to Section 525 (1) (a) and (3) of the Local**

Government Act 1993 –Application by Ratepayer for Re-categorisation of their Land

That the Local Government Association calls upon the State Government to amend Section 525(1) and Section 526(1)(a) & (3) of the Local Government Act 1993, so that a rateable person's application for re-categorisation of their land is limited to the current financial year.

Include examination of the view that desalination be considered as an expensive and energy-demanding measure of last resort.

The NSW Government has continually indicated its intention to build the world's largest reverse osmosis plant at Kurnell to solve Sydney's current water crisis. This one size fits all solution ignores the environmental terrestrial and marine impacts of this proposal and the huge energy demands of such a plant and the associated greenhouse gas production.

Council along with other experts consider that desalination should be the final option considered and that other more environmentally sustainable and cheaper options exist to meet Sydney's water demands.

The current proposal is unacceptable for many reasons including:

1. It will generate as much daily pollution as an additional 250,000 cars on our roads
2. It will consume the same amount of power as 120,000 homes need to operate daily
3. It does not solve the long term need to re-educate consumers to waste less water
4. Water will cost the community more. Just like petrol, prices will rise to accommodate the \$2 billion + dollars spent on building a desalination plant and its transport mechanisms
5. Neither the state government nor Sydney Water understand the desalination process enough to undertake consultation with the community
6. There will be no Environment Impact Statement undertaken for this development
7. Water experts have gone on record to say that desalination should be the LAST resort after all avenues of water recycling and water re-use have been exhausted.
8. Desalination will result in years of road works to install pipelines, followed by heavy truck movements on already busy roads
9. Seawater intake in the desalination process is at a high risk to marine life and the discharge of concentrated brine will affect our oceans
10. The proposal represents a further degradation of the Kurnell peninsula which contains items of natural, social and cultural significance for Aboriginal and Non-Aboriginal Australians.

That the Minister for Lands be requested to amend his Department's procedures for the closure of Crown public roads requiring an applicant to obtain Council's concurrence with their application.

Note from Council: The result of the new strategy and change in the Department of Land's procedure for the closing of Crown roads will be a significantly increased workload for Council with no avenue for cost recovery and no guarantee conditions normally imposed in supporting an application for a Crown road closure will be enacted.

There are two types of public roads, Crown public roads and Council public roads. The department of Lands is the road authority for Crown public roads and Council is the road authority for Council public roads, however only the Minister for Lands has the authority to close either type of public road.

Recently the Department implemented a new fee structure and strategy to streamline the costs and time involved in converting Crown roads to freehold.

Until 30 June 2007 the Department has halved most of their fees normally charge for a Crown road closure. This a strategy implemented by the Department to encourage the conversion of Crown roads to freehold.

Until this change all road closure applications in this Shire were initially made to Council together with an application fee. The Nowra office of the Department of Lands has now advised that applicants will be made directly to that office and they will then seek comment from Council in regard to those applications.

Previously when an application was received the proposed road closure was investigated by various divisions within Council and a report presented to Council recommending support or otherwise of the closure. In the case of a Crown road, a letter was forwarded to the Department advising of Council's decision.

There are two main issues resulting from the change in the Department's procedure.

- 1. Recovery of Costs.**

Council has set an application fee for the closure of a public road. This is a fee based on cost recovery for the internal investigation and preparation of a report to Council.

Regardless of whether a landowner makes an application to Council or the Department seeks comment from an application they have received the same procedure and resources are required from Council.

supports vulnerable people and their families, therefore contributing to community development and community wellbeing.)

The Eurobodalla SPIRIT (Suicide Prevention Information Referral and Intervention Team) fostering mental health at the community level program was established in 2001, in response to the growing problem of suicide in the community.

The original funding for SPIRIT came from the Commonwealth Department of Health and Aged Care, through the National Suicide Prevention Strategy. The auspicing body has been the South East NSW Division of General Practice Ltd.

The SPIRIT program has achieved the following outcomes (based on anecdotal evidence and staff assessment):

- Enhanced public education, awareness and understanding of suicide
- Improved community advocacy within government and non-government agencies
- Increased support for those affected by suicide
- Increased the number of media releases and interviews conveying positive mental health messages
- Improved access to information, resources and training on mental health and suicide prevention for service providers and members of the community
- Improved level of mental health literacy within the community. Mental Health team now conduct regular Mental Health First Aid courses.
- Implementation of an evidence based suicide intervention training program that aims to increase suicide help seeking options in the community
- Increased number of service providers aware of the community services available for individuals and families.

With State and Federal funding the benefits achieved by the Eurobodalla SPIRIT program could be developed at a National level, providing an excellent model for addressing the problem of suicide in our community.

L15 - Auburn

***EP&A Act – Existing use rights**

That Council through the Local Government Association make representations to the Minister for Planning, Infrastructure and Natural Resources, that Section 107 of the Environmental Planning and Assessment (EP&A) Act be amended to clarify, its original intention, that intent being to:

- a) ensure, that a non conforming use can continue within an area zoned otherwise, and that
- b) upon cessation of the non conforming use, the use of the land be only in accordance with the land use table prescribed by an environmental planning instrument.

Further, that other changes as required be made to Division 10 of the EP&A Act and Regulations to reflect the above resolution.

Note from Council: The original intent of the Act was to protect the legitimate continuing use of otherwise non conforming developments on land following adoption of new environmental planning instruments. Over time, and in the absence of clearly defined legislative provisions, the Courts have made broad interpretations as to what may be permissible development on sites that enjoy existing use rights. This has resulted, in the reluctant approval of some developments which have been unacceptable for both Councils and communities. Often in the face of strong community opposition, Councils are approving inappropriate developments on the basis of professional legal advice. This can occur with the full knowledge that the law does not protect the amenity and character of an area when Developers maximise returns that the law in the first instance should preclude.

L16 - Eurobodalla

***Pension rate rebates**

That the issues of indexation and financial responsibilities for pensioner rebates be referred to the LGA for consideration; in doing so the Association should be advised that Eurobodalla Council has formed the view that the total cost of Pension Rebates should be borne by other levels of Government.

Note from Council: The maximum amount of prescribed pensioner rebate has remained the same since 1989. Consideration should be given to increasing the prescribed maximum pensioner rebate on an annual basis by either CPI or the rate pegging amount. However the increase in cost of the indexation should be fully funded by the Government.

Given the number of eligible pensioners and the increasing costs of living it would seem more than appropriate to annually index the maximum amount for pension rebates. The provision of pensioner rebates for rates is a State Government responsibility therefore any increases in costs associated should be fully borne by other levels of State Government.

L17 – Shoalhaven

***Waste Minimisation Projects**

That the fund monies from each Local Government area be returned to the contributing communities for Waste Minimisation Projects.

Note from Council: The Southern Councils Group at its meeting held 9th September 2005 discussed the issue of the waste levy introduced by the NSW State Government to provide a suitable economic incentive to reduce the amount of waste going to land fill.

L18 – Hornsby

***Financial and Social Support for members of the refugee community**

The Local Government Association with the assistance of the Australian Local Government Association seek a commitment from the Federal Government to implement a strategy that provides adequate financial and social support for members of the refugee community released from mandatory detention on Bridging and Temporary Protection Visas, noting that these people are not

afforded access to Centrelink or Medicare benefits or paid employment.

Note from Council: The Motion is intended to raise awareness of the issues associated with people on Bridging and Temporary Protection Visas and their ineligibility to receive financial or social support from the Federal Government policy in this area.

Local Government Authorities throughout Australia are being asked by residents to respond to the needs of people in the community who are seeking refugee status and who have been placed on Bridging Visas and Temporary Protection Visas. Local Governments throughout the nation have responded to these calls for help in a variety of ways. The intent of this Motion address the problems at their core by lobbying the Federal Government to adopt a more humanitarian approach to supporting people seeking refugee status whilst their status is being determined. Specifically, the Motion calls for these people to be granted access to Centrelink and Medicare benefits and/or the right to engage in paid employment during this investigation period.

L19 – Bankstown *Increased Penalties for Repeat Offenders - Unauthorised Building Works

The Local Government Association of NSW seek introduction of a more effective penalty regime for offenders who repeatedly undertake unauthorised building works in defiance of local planning laws.

Note from Council: The current value of penalty infringement notices available to local government compliance officers for unauthorised building works is \$600 for an individual and \$1,500 for a corporation. These penalties can at times be insufficient, and as a result repeat offenders are not uncommon. The introduction of a higher tier offence for a second and repeat offender would reduce the likelihood of further breaches of Councils' planning and building laws and avoid the costs of prosecution in either the Local Court or the Land & Environment Court.

While builders may choose a council or a private provider to certify a development, responsibility for the enforcement of compliance with local planning laws lies solely with local councils. To deter builders from undertaking unauthorised building, and punish those that do, Councils may impose financial penalties themselves or seek larger court-ordered fines against those who breach local planning laws. Such breaches may include non-compliance with approved work hours, building without a construction certificate or undertaking additional and non-approved construction.

However, many councils are finding these penalty options ineffective, with an increasing number of builders, including many repeat offenders, engaging in unauthorised building. The number of notices that Bankstown City Council has had to issue for unauthorised building has increased at an alarming rate. In 2001, Bankstown City Council was required to issue just one notice for unauthorised building. By 2004, this figure had ballooned to twenty-five. This year, Council has already had to issue fifteen. Council is also issuing an increasing number of PINs for unauthorised building. In 2003, twenty-nine such PINs were issued. This figure increased to forty-one in 2004 and this year up to August, Council has already had to issue forty PINs. If this rate continues, the total number of PINs issued by Council in 2005 for unauthorised building will be around double what it

was just two years ago.

The penalty regime is clearly failing to deter many builders from breaking the law. There is a need for a more effective penalty regime with greater financial imposts for builders who repeatedly defy local planning laws.

Penalties are failing to deter offenders

Councils may issue on-the-spot penalty PINs under section 127A of the *Environmental Planning and Assessment Act 1979*, imposing fines for breaches of development consent ranging from \$600 for individuals and \$1500 for corporations. They have the advantage of being a relatively quick and easy means for Councils to exercise their punitive powers, especially compared to the long and costly process of prosecuting a matter through the courts (see below). However, in many construction projects, especially large developments, these fines are not regarded as onerous and fail to deter builders from engaging in unauthorised building. Accordingly, as the figures above demonstrate, more builders are engaging in unauthorised building, requiring Council to issue more infringements. If PINs are to be used effectively as a faster and simpler means to punish and deter unauthorised building, there is a clear need for them to impose greater financial harm on repeat offenders who are not being deterred by the limited fines currently available to Councils.

The other option available to Councils to punish unauthorised building is to pursue greater penalties through the courts. Under section 125 of the *Environmental Planning and Assessment Act 1979*, a council may prosecute a builder for a breaching the Act or not complying with an order given by the council under s121B of the Act. Court prosecutions present an extraordinary drain on council resources. As mentioned above, prosecution through the courts "is a long and costly process" (Joint Select Committee on the Quality of Buildings, *Report upon the Quality of Buildings*, p131). In pursuing a prosecution, Councils not only encounter large immediate legal expenses, but have staff and managers drawn away from other duties to attend to legal administrative business. Given the extra time, effort and cost involved in bringing a prosecution through the courts, there is no doubt that PINs offer a more effective and attractive means by which councils can punish unauthorised building. However, as PINs impose quite low fines, councils often prosecute more serious unauthorised building offences through the Courts in order to seek the application of a more appropriate penalty.

Fines are imposed by the Courts in a discretionary manner and can sometimes prove as unsatisfactory as PIN fines. The maximum penalty that a Court may issue for offences related to unauthorised building is \$1.1 million. But it is very rare for a Court to impose a penalty of this magnitude and councils often face the same dilemma as they do when issuing PINs - fines are not regarded as onerous and fail to deter builders from engaging in unauthorised building. For example, in a recent case pursued by Bankstown City Council, a builder who had already undertaken a significant amount of construction work without a construction certificate and in breach of the development consent was fined only \$1000 (*Bankstown City Council v Omar Abdul-Rahman*, Burwood

Local Court, 23 August 2005).

Even where Courts do impose heftier fines, offenders can still make a net financial profit where the value added to the property or development by unauthorised building far exceeds what the builder may have to pay in a fine. In a recent high profile case in Bankstown, a developer was fined \$30,000 for constructing an extra three penthouse apartments on the top level of an eleven storey residential development where he did not have development consent to do so (*Bankstown City Council v Taouk Constructions Pty Ltd* [2004] NSWLEC 402). The \$30,000 fine proved to be a paltry sum compared to the hundreds of thousands of dollars in value added to the property by the building of the extra apartments. In his judgment, His Honour McClellan J cited that the only stated excuse the developer had for the offence was that "it was a commercially compelling matter for me, on behalf of my own company, to complete the construction."

The effect of increased unauthorised building on council resources

The inadequate penalty regime is failing to deter unauthorised building. This is not only undermining the efforts of councils endeavouring to deliver good planning and building outcomes for their residents, but is amounting to an increasing drain on councils' resources. Councils like Bankstown have to dedicate increasing time, energy, resources and staff to policing and punishing unauthorised building, which in some cases, may be drawing resources away from other enforcement responsibilities in the areas of health standards compliance, pollution and fire safety. As the NSW Joint Select Committee on the Quality of Buildings noted, "Councils feel that this arrangement is not equitable and drains Council resources without recompense." (Joint Select Committee on the Quality of Buildings, *Report upon the Quality of Buildings*, p118).

The fact that exercising enforcement powers generally arouses additional administrative costs for councils is recognised by the penalty regime that operates under the *Protection of the Environment Operations Act 1997*. Councils may charge an administrative fee in addition to a penalty notice for an offence under that Act. Yet councils are unable to charge such a fee to cover the administrative costs involved in investigating and issuing fines for unauthorised building. Often, the cost involved exceeds the \$600 the Council receives back once the fine is paid. The ability to impose heftier fines for repeat offenders will enable councils to better recover the administrative costs associated with enforcing compliance with building regulation. Heftier fines would also lead to greater compliance with local planning laws, requiring councils to dedicate fewer resources towards enforcing compliance in this area.

Conclusions

Clearly, there is a need for a higher tier offence for a second or repeat offender that can be punished by way of a council-issued fine. At the moment, the inadequacy of PIN fines and Court-ordered penalties and the cost involved in punishing unauthorised building, especially through the courts, have created a situation where increasing numbers of repeat offenders engage in unauthorised building. For many, fines are seen as a minor hindrance or additional regulatory cost. The

commercial advantages to be garnered through unauthorised building often far outweigh the financial cost of fines currently available. In Bankstown, the growth in unauthorised building has created additional costs for the Council and is serving to undermine the City's planning controls. A heftier on-the-spot fine for repeat offenders that doesn't require a council to bring a prosecution through the courts will deter repeat offenders from engaging in authorised building. This will strengthen the integrity of local planning instruments, and stem the drain on council resources.

L20 - Canada Bay ***Amendments to the Environmental Planning and Assessment Act**

That this Conference calls upon the Local Government Association to voice its strong objection to the amendments to the Environmental Planning and Assessment Act, in particular, Part 3A applying to Major Infrastructure and Other Projects, which seriously erode the powers and responsibilities of Local Government.

Note from Council: The latest amendments to the Environmental Planning and Assessment Act constitutes a major attack upon the community's right to participate in the planning process. The NSW Minister for Planning will have absolute power to approve major developments and to decide on the criteria on which to base an approval. The changes will diminish accountability and transparency, limiting community involvement at a local level.

L21 – Broken Hill ***Speed Limit**

That the Local Government Association of New South Wales request the Minister for Roads conduct a review of the 50km/hr urban speed limit initiative with a view to increasing the urban speed limit to 60km/hr in certain locations where considered appropriate.

Note from Council: Broken Hill enjoys wide streets and in addition has signposting of 40km/hr zones in the central business district and at school locations. The concerns expressed in densely populated urban areas and in some other regional areas of the State, regarding traffic speed zones, are less significant in Broken Hill. In addition Broken Hill has medium traffic volumes and the driving public is aware of the need for local road safety.

L22 - Broken Hill ***Rates**

That the Local Government Association of New South Wales request the Minister of Local Government review the current rating system with a view to rectifying anomalies that exist in particular relation to land valuations and the base rate.

Note from Council: Broken Hill is experiencing increasing disparities in rates levied owing to a base rate of 49.9% with no higher rate being permitted and escalating land valuation in different parts of the City.

L23 – Manly

***NRMA Insurance (IAG Insurance)**

That the Local Government Association make representations to IAG Insurance asking that in light of the opposition and concerns expressed by many smash repairers to the newly introduced Preferred Repairer Network Scheme, they review the Scheme taking into account the issues raised by operators in the industry.

At an Ordinary Meeting of Council held on 19 September 2005, the NRMA Preferred Repairer network Scheme was discussed. At the meeting, Council agreed to fully support its local smash repairers and its local Automotive Groups with regard to the dispute to win a fairer deal for its ratepayers from NRMA insurance.

L24 – Ryde

***State Significant Development**

- 1) That a meeting be held with the Minister for Planning to express Local Government's concerns about the impact of the new State Significant Development legislation with the view of achieving amendments to the legislation, that protects the integrity of local planning laws and policies (including Section 94 Plans), and ensures that Local Government has a partnership role in the assessment and determination of State Significant Development.
- 2) That the Local Government Association seek legal advice on what options are available or Local Government to ensure adequate community consultation, full assessment of impacts, compliance with the Council's LEP, DCP and policies and the correct allocation of the developers' contributions.

Note from Council: Recently introduced legislation for State Significant Development does not define the role of Local Government. It also empowers the Minister for Planning to approve development that does not comply with Local Environmental Plans and other local planning policies including Section 94 Plans. Recent experience in Ryde has involved the calling in of a development by the Minister without any consultation with the Council by either the proponent or the Minister.

L25 – Wagga Wagga

***Acquisition of land for industrial development**

That the Local Government Association make representations to the State Government to have the Local Government Act 1993 and/or Regulations amended to enable Councils to acquire land for industrial development purposes, where there is clearly demonstrated market failure for this type of development based upon an adopted development strategy.

Note from Council: This Motion addresses inadequacies in existing legislation to enable Councils to compulsorily acquire land for industrial development where there is a demonstrated market failure in a Council's Local Government Area.

Wagga Wagga City Council has been attempting to acquire land for large scale industrial development adjacent to the City's existing industrial park.

Private sector developers in Wagga Wagga will not develop this type of land due to the long term nature and lack of return associated with this type of investment in regional cities. Accordingly, it is left to the Council to develop industrial parcels for large scale industrial development.

Council made application to the Minister to compulsorily acquire land for this type of development, which was rejected (on Crown Solicitor's advice) by the Minister. This leaves the Council in a position where it has no alternative other than to purchase land at whatever asking price the landowner determines and irrespective of the cost to public infrastructure such as water, sewerage and telecommunications.

Where it can be demonstrated that there is no market operating, Council argues that it is in the community's interest for the Minister to approve a compulsory acquisition under Just Terms Compensation.

L26 – Hunter's Hill

*** Management of Graffiti**

That the Local Government & Shires Association request the State Government to re-introduce to Parliament the proposed *Graffiti Control (Spray Paint Can Display) Bill 2001*, for urgent consideration and debate.

Executive Note: If motion 47 in the main business papers is carried it will be held as covering this motion.

Note from Council: There have been several attempts to introduce legislation that will limit or control the sale of spray cans. The most notable of these proposals was the proposed *Graffiti Control (Spray Paint Can Display) Bill 2001*.

The object of this Bill was to prevent retailers of spray paint cans from displaying full spray paint cans to the public in the course of their business if those cans are not properly secured against shoplifting.

The Bill proposed to make it an offence for any person who, in the course of any business in which spray paint is sold (which, as defined, includes offer or expose for sale) publicly displays a spray paint can containing spray paint unless the can is displayed:

- a) in a locked cage or cabinet, or
- b) within or behind an attended counter, or
- c) in any other manner prescribed by regulations.

Despite the continuing good efforts of many Council's to control graffiti, the problem continues to be a concern for local communities.

While many of the strategies for dealing with graffiti have been implemented and there has been some success, there will be a continuing problem while ever source of the material is not regulated.

History has proven many times that controlling problem health areas like smoking, alcohol and drugs will not succeed unless there is control over the source, (or raw materials), of the problem, only then will real success be achieved.

Graffiti spraying in many cases is not simply a cultural or social problem but may also be one of addiction. The treatment of which in many cases, is the removal, or severe limitation of access to the cause of the addiction.

The provision of appropriate legislation is needed to assist in dealing with this continuing problem.

L27 – Fairfield

*** Enhanced funding to Local Government**

That the LGA Executive develop a strategy to convince the Federal Government to consider how funding to Local Government can be enhanced considering the possibility of innovative revenue programs, such as fuel excise sharing to fund infrastructure backlogs, or rates concessions to low income households (Federally funded) to allow councils to increase rates income.

Note from Council: The Federal Government recently responded to the Hawker Report on Cost Shifting, indicating its commitment to developing an intergovernmental agreement (IGA), to have cost shifting recognized as a problem. This included having revenue allocated to Local Government from the relevant level of government if responsibilities are devolved and it is an opportune time for the LGA Executive to participate in the development of the IGA.

Since the mid-1970's successive governments have failed to ensure that a fair and equitable share of national taxation revenue has been directed to Local Government to balance the imposition of cost shifting that has occurred over this period. This failure has been exacerbated, in recent times, by the introduction of the GST. The Federal Government channels these funds through the States whereas much of these funds could be applied directly to Local Government to offset the effects of cost shifting.

Recent overseas examples of innovative revenue programs include Canada, where a share of fuel excise is directed to address infrastructure backlogs and New Zealand which has a new nationally-funded scheme to help low-income households pay rates, thus enabling councils to increase their overall rates income.

L28 – Holroyd *Changes to Parts 3 and 4 of the Environmental Planning and Assessment Act 1979

That the NSW Government amend the transitional provisions in regard to changes made under the Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005 to enable local Councils:

- a) to finalise draft DCPs where considerable resources have already been expended; and
- b) to allow exempt and complying DCPs linked to an LEP to be exempt from the new provisions so as not to require an LEP amendment before any new DCP can be introduced.

Note from Council: On 30 September 2005 new legislation was introduced which makes significant changes to Part 3 and 4 of the Environmental Planning and Assessment Act, 1979. Broadly, these changes affect the way Councils can prepare LEPs and DCPs, and also allow DCPs and stated development applications to be used to achieve master planning objectives (thus removing master plans from the planning framework). The new provisions allow for only one (1) DCP to apply to a site. Any amendments made to an existing DCP constitutes the making of a new DCP. This means that if a Council makes a new DCP, or amends an existing DCP from 30 September 2005, it will need to review any other DCPs that apply to that land and make any necessary amendments to comply with Section 74C of the Act (which only permits one (1) DCP per site).

This raises the following significant concerns:

- Councils cannot bring in any new DCP without reviewing all other DCPs as Councils can only have one (1) DCP apply to a site. Therefore, to bring in a new DCP Council would firstly need to consolidate all existing DCPs into one (1) “super” DCP, then exhibit a new draft DCP as a part of this “super” DCP.
- In order to finalise any site-specific DCPs, such DCPs would require significant amendment so that they would be the only DCP to apply to that site/precinct.
- There are significant complications in situations where Councils have an exempt and complying DCP linked an LEP (via a clause reference in the LEP). In order for Council to bring in any new DCP, whether it be a “super” DCP or a site-specific DCP, the LEP would require amendment to dissolve the exempt and complying DCP and insert all provisions into the LEP (or amend the relevant clause to refer to a new DCP). The key issue is that this must happen though before any other DCP can be introduced. This is because under the new legislation, only one (1) DCP can apply per site, and as long as Councils have a separate exempt and complying DCP linked to an LEP, there will always be more than one (1) DCP applying to land.

The above matters are a major legislative impediment to Councils being able to finalise draft DCPs on key issues where significant resources and time have already been expended.

L29 - Port Stephens

*** State Environmental Planning Policy 71**

That the Minister for Planning be requested to review State Environmental Planning Policy 71 (Coastal Protection) and State Environmental Planning Policy (State Significant Developments) so as to return local planning issues to Local Government.

Note from Council: Since January 2003 when SEPP71 became effective there have been a wide range of development applications handled by DIPNR. The requirements of SEPP71 have essentially been transferred to the State Significant Developments SEPP as part of a wider range of matters where DIPNR is the consent authority.

In some instances there are development applications, which do have regional or state significance, and DIPNR being the consent authority seems justifiable. However, the majority of these applications are of a relatively minor nature and have significance to the local community. Where the Minister becomes the consent authority the following occurs:

- All Development application fees are paid to DIPNR whilst the relative Council is required to provide information on the exhibition, erect signs, handle community consultation, provide details of relevant planning controls for DIPNR's assessment and also comment on the application;
- The person assessing the application is located in Sydney and has no local knowledge, no understanding of the background to policies and no responsibility or accountability to the local community;
- Local government is distanced from the decision making process on a wide range of applications which have the potential for significant resource and infrastructure implications for the relative Council;
- In coastal areas the Minister is the consent authority for residential subdivisions in excess of 25 lots. This means that Council and the community is distanced from the decision making process on matters which directly affect the local community.

Details of the State Significant SEPP can be viewed on the DIPNR website at <http://www.dipnr.nsw.gov.au/planningreform.html>

L30 – Port Stephens

*** Waste Management**

That:

1. Representations be made to the Treasurer and Minister for the Environment to allocate all revenue raised by the waste levy to waste reduction, resource recovery and landfill rehabilitation projects.
2. Representations be made to the Minister for the Environment to consider the re-design of the waste levy to include differential levies that balances the cause and effect of the waste levy on waste quantities with the potential for environmental harm for different waste types as defined in the "Environmental Guidelines: Assessment, classification and management of liquid and non-liquid wastes 1999".
3. Representations be made to the Minister for the Environment to consider the use of differential levies for commercial/industrial waste and domestic/household waste, so that the levy is applied in a more effective way to actually reduce waste and not merely raise revenue for Treasury.

Note from Council: The NSW waste levy is applied to all waste that is disposed of to landfill. The levy is currently \$22.00 per tonne in the Sydney region and \$15.00 per tonne in the Hunter, Illawara and Central Coast regions. At its core, the waste levy is a financial incentive mechanism designed to reduce waste to landfill and as such drive local government and the private waste sector to achieve

ensure that the four (4) pillars of sustainability can be achieved benefits to all. Communication and co-operation is the key to any successful relationship.

The fundamental issue is that a state government corporation, which makes a considerable profit, does not operate in a commercial sense to achieve a better environmental, social, economic or cultural outcome for the region.

L32 – Port Stephens

*** Pedestrian safety near schools**

That the Minister for Education be requested to urgently review traffic and pedestrian safety for both proposed and existing schools in New South Wales.

Note from Council: Local Councils are continuing to experience various forms of cost shifting from other levels of government. Of major concern is in the development of new state government facilities such as schools. The budget focus has been on the building construction and associated on-site works. Little, if any, recognition is given in the project costing phase to address the infrastructure impacted immediately surrounding the development such as footpaths and cycleway links, bus bays, bus shelters, safety fencing and car parking. These facilities are assumed at state level to be the responsibility of the local council.

In considering development applications for new schools, Councils are required to assess the impact in accordance with the EP&A Act and to condition accordingly. The intent is to ensure the additional demands on services and infrastructure are considered and require the developer to provide. In this regard the State Government essentially refuses and local government is required to fund works or accept a lesser standard of safety.

The result of the above is that there is a considerable number of schools which operate with sub-standard traffic facilities and this affects the pedestrian and vehicle safety for students and parents.

L33 – Marrickville

***Councillor Remuneration**

That the Association:

1. expresses its opposition to the determination of the Local Government Remuneration Tribunal to defer, at the request of the Minister for Local Government, any changes to the annual fee structure for 2005/2006; and
2. make urgent representations to the Minister for Local Government requesting that:
 - he require the Local Government Remuneration Tribunal to complete its current review as a matter of urgency;
 - the need for increases in Councillor fees be recognised in the review; and
 - the increase in annual fees be applied from 1 July 2005.

Note from Council: This Motion recognises the important role of local government elected

representatives and the ever increasing workload required to adequately carry out the role of a Councillor. It also recognises the importance of the need to appropriately remunerate elected representatives for their work within their respective communities to continue to attract future community leaders. It also expresses the Council's dissatisfaction with the Minister's intervention in relation to the Tribunal's determination of annual fees for 2005/2006 and the delay in the increase in fees.

When the Local Government Remuneration Tribunal handed down its report in April 2005 on annual fees payable to Councillors for 2005/2006 financial year, the Tribunal, at the request of the Minister for Local Government, deferred consideration of any increases in fees until such time as the Department of Local Government had completed its review of Councillor expenses and facilities policies and developed appropriate guidelines.

In July 2005, the Minister subsequently requested the Local Government Remuneration Tribunal to review its Determination made on 13 April 2005. The Tribunal's review is yet to be concluded.

It is important that Councillors are adequately remunerated for their service to their local communities, especially given the ever increasing time and commitment needed to adequately fulfil their role as a Councillor. It is also important that an appropriate message be sent to the community about the value of elected representatives in order to continue to attract quality candidates in the future.

L34- Kiama

*** Seniors Living State Environmental Planning Policy**

That the minister for Planning be requested to amend the State Environmental Planning Policy – Seniors Living (SEPPSL) by deletion of part (1) (a) of the State Environmental Planning Policy (Seniors Living) 2004 that states that the policy applies to land that "...adjoins land zoned primarily for urban purposes....."

Note from Council: The provision of the State Environmental Planning Policy that permits Seniors Living development on land that adjoins land zoned primarily for urban purposes potentially undermines planning strategies prepared in consultation with the community and threatens the protection of valuable agricultural land.

L35 – Eurobodalla

***Funding for Waterways Monitoring**

That the Local Government Association make representation to the NSW Government to reconsider their decision, under the NSW Shellfish program, to implement "*full cost recovery*" for the shell fish industry for water quality monitoring.

Note from Council: Eurobodalla Council has formed the view that the total cost of water quality and monitoring of waterways be borne by other levels of government who should accept full responsibility for their obligation for the public health and safety of the community.

The cost of water quality monitoring that faces coastal councils, in part as a result of the "*full cost*

recovery” policy for the shell fish industry under the NSW Shellfish Program will have devastating flow on affect to the economy and community of New South Wales. The State’s \$30m oyster industry will be forced to pay for environmental monitoring and growers are concerned that the industry will collapse if forced to pay what is considered as a public health and safety matter and the responsibility of state and federal governments.

There is a long history in the development of robust shellfish sanitation arrangements in NSW. In 1978 a major oyster poisoning incident occurred in Georges River, which led to the introduction of depuration and an aborted attempt at introducing classification in 1984. By comparison, in the US at the same time, shellfish safety had been regulated for over 50 years since 1925, and the National Shellfish Sanitation Program had been amended at least nine times. At the same time in the then European Economic Community a Directive had been adopted setting minimum water quality standards for shellfish growing estuaries. This supplemented decades of end product testing and the use of depuration in some European countries.

In the twenty year period between 1979 and the late 1990s change in NSW was slow. Both industry and government found it difficult to embrace expert’s recommendations, let alone implement a program with long term robustness. When a direction was determined, generally in response to a food illness crisis, either there were disputes between industry groups or government agencies which stalled the initiative.

There is no doubt that the decision in late 2001 of the NSW Government to introduce the Australian Shellfish Quality Assurance Program (ASQAP) into NSW was the correct decision. It not only brought NSW into line with the other Australian States and the Australian Government regarding shellfish sanitation, but most importantly guaranteed the introduction of a system of shellfish sanitation in NSW which met the standard of “accepted international practice”, a standard specified in the Wallis Lake oyster case decision in March 1999.

The ASQAP is recognised as equivalent for trading purposes to existing domestic programs in all leading international shellfish trading countries, especially the US and the EU and will open export possibilities in the future.

The ASQAP will continue to evolve and change as new testing methods and management strategies are developed, as has happened with the US and European programs. Greater international cooperation will also place pressure on regulators the world over to critically review all aspects of their programs. It is incumbent on Australia and NSW to keep abreast of these changes, and implement upgrades on a continuing basis.

The industry agreed with the findings of recent reports commissioned by the NSW Government which have considered funding arrangements for the NSW Shellfish Program. These reports were prepared by ACIL Tasman Consultants, the Centre for International Economics, Dr Chris Rodgers, Mr David Alton (both Alton and Rodgers are international shellfish experts) and the NSW Healthy Rivers Commission, and have all recommended or endorsed the application of the ‘public good’

and/or the 'polluter pay' principles to assist in funding the Program. Such principles have been applied in the EU and the US for many years, as they have in Asia, other Australian States and NZ. As a result these governments have all contributed in a significant way to the funding of their respective shellfish QAPs.

The industry concluded that if full 'user pay' cost recovery was implemented, it would have a dramatic and immediate impact on the structure of the NSW industry. The number of estuaries in which oyster farming occurred would be significantly reduced, as would the number of farmers. In particular, those farmers producing few if any oysters would no doubt exit the industry as would farmers operating in isolation in the one estuary. The loss of these farmers and estuaries would lead to fixed costs being spread over a smaller number of farmers, with a consequential increase in the state levy. It would also lead to an increase in the local levy of each estuary for the remaining farmers.

Given the cascading effect of such a process, it would be impossible to determine where it would settle if it settled at all. However, it is clear to the industry that about two thirds of the industry could be immediately impacted by the introduction of 'user pay' principles.

The industry considered that a modified 'user pay' approach should be applied to the NSW industry so that industry and government jointly fund the Program. The NSW Government should assist in funding the Authority's activities as recommended by the Kerin Funding Review (the public health 'public good' approach) and for the environmental data the Program provides to the community at large (the 'public good' from environmental monitoring). In addition, the NSW Government needs to address the financial impact on the industry of poor water quality resulting from pollution, and force those responsible for such pollution to also assist in funding the Program. The industry noted that if pristine estuarine water quality existed in NSW monitoring programs would be minimal as would their costs.

Applying these principles, the industry considered that the NSW Government should fund all pre-harvest costs, the cost of depuration plus 30% of the management costs. In reaching this position, it was noted that industry was prepared to continue to fund the cost of depuration. While noting this pragmatic approach by industry, a strict application of the 'polluter pay' principle required the polluter to pay for this depuration operation.

The industry noted that the NSW Government has the opportunity and mechanisms to pass on costs arising from the application of the 'polluter pays' principle to the polluters themselves and would encourage that approach.

The industry also noted that over the past twenty years the industry had faced massive adjustment pressures from other causes. In particular, the introduction of pacific oysters in Port Stephens and QX disease in the Georges River and more recently in the Hawkesbury River. Taken together these and other influences have reduced production of the Sydney Rock oyster in NSW by about one half. The industry will also face on-going adjustment pressures from market place competition, the Oyster Industry Sustainable Aquaculture Strategy (ISAS) project being introduced by the Department of Primary Industry, the land based assessment program of NSW Lands and the possible changes to the

State Environment Planning Policy 62 as recommended by the Healthy Rivers Commission. The Review Committee cautions that unless Government is sensitive to this position, Professor White's prediction of the near collapse of the industry by 2020 could be a real possibility.

L36 – Penrith

*** Model Code of Conduct Review**

The Department of Local Government be strongly requested to review the Model Code of Conduct with a view to its practicalities. It is suggested that this review should involve practical input from a Working Party, including Councillors from a wide range of Councils.

It is also requested that consideration should also be given to the equity between the Model Code of Conduct that applies to Councils and the Code of Conduct that is applicable to Members of State Parliament.

Note from council: When the Department of Local Government called for submissions from councils after the draft Model Code of Conduct was prepared, Penrith City Council wrote a letter to the Secretary General of the Associations detailing a number of concerns about the implementation of the Code. At a Council Policy Review Meeting held on 17 October 2005 when consideration was being given to a Report on the Model Code of Conduct, Councillors raised concerns about the practicalities of implementing a number of clauses within the Code.

Penrith City Council is aware that the Model Code of Conduct commenced on 1 January 2005. Since the implementation of the Code, Councillors have received a number of reports from staff about the implementation of the Code as well as such issues as the establishment of a Conduct Committee and gifts and benefits.

At the Council's Policy Review Meeting held on 17 October 2005 the Council gave consideration to a report about the Model Code of Conduct.

During the Council's Policy Review Meeting Councillors raised a number of concerns about the practicalities of implementing a number of the Clauses within the Code, particularly those Clauses that require the prior approval of the General Manager before they are allowed to undertake a certain action.

Some areas of concern that have been suggested before are as follows:

- Clause 9.2.1 details *"Councillors are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillor's rooms, and public areas of council's buildings during normal business hours for meetings"*. During the Council Meeting, concerns were raised by Councillors about the interpretation of *"normal business hours"*, and how practically this Clause would be implemented in obtaining the authority of the Council's General Manager to access the Council Building outside of the *"normal business hours"*.

- Under Clause 6.5 of the Code it states *“Perceptions of a conflict of interests are as important as actual conflict of interests. The onus is on you to identify a conflict of interests, whether perceived or real, and take the appropriate action to resolve the conflict in favour of your public duty”*. It is considered that this places excessive obligations on Councillors and staff to ensure that people do not perceive a conflict of interest.
- Under Clause 7.6 of the Model Code the practicalities of the gift provisions and guidance over gifts and benefits that would be seen to be as token need to be clarified. The issue relates to offers of *“Corporate Hospitality”* or *“Community Hospitality”* and when this is seen not to be of a token nature, eg. offers of hospitality by local sporting groups.
- Clause 8.8 of the Model Code states that the following is inappropriate *“Councillors approaching council staff other than directors or senior staff for information on sensitive or contentious matters”*. Many staff at Penrith City Council would discuss issues with Councillors on a daily basis. Managers are authorised by the General Manager to have interaction over their issues with Councillors. It is felt that this Clause is not practical. It is felt that the General Manager ought to be able to authorise certain staff to be approached concerning a range of issues.
- Councillors attending on-site inspections as set out in Clause 8.8 of the Model Code may be over restrictive.

These are only a few examples of the issues where it would appear that the Model Code of Conduct is in need of review. It is argued that a large metropolitan Council like Penrith City Council needs the flexibility in managing the issues identified in the Code of Conduct in order to ensure efficient and effective management of the City.

Council has obtained a copy of the Code of Conduct that applies for the State Parliamentarians and believes that the requirements within the Model Code of Conduct are extremely onerous in comparison.

L 37 - Leichhardt

*** Pakistan and Indian Governments War and Nuclear Budget**

Send an urgent Motion to the Local Government Association conference requesting Pakistan and Indian Governments to use all of their war and nuclear budget on the appeal.

L38 – Leichhardt

***Sea Walls**

That this Conference opposes cost shifting to councils by the State Government of financial responsibility for the repair of sea walls damaged from the wave effects of passing STA ferries and commercial shipping.

L39 – Broken Hill

*** Proposed New Industrial Relations Laws**

That the Local Government Association lobby the Federal Government opposing the proposed new industrial relations laws.

Note from Council: Broken Hill has a strong history in fighting for the Worker and it is well known that the Union Movement was founded in Broken Hill.

Executive Note: Identical motion to motion 8 in the Business Papers. If motion 8 is carried it will be deemed to include this motion

Council is concerned about the impact the introduction of the Federal Government's proposed new industrial relations laws will have on the Broken Hill Community and all other Australian Communities and the impact the proposed new laws will also have on the rights of workers to reject contracts and the potential to undermine collective bargaining and union representation.

Council is forwarding correspondence to the Prime Minister and Minister for Employment and Workplace Relations seeking clarification in respect of the effect of the proposed new industrial relations laws and unlawful dismissal, guaranteed conditions, who will pay for individuals to negotiate with management, implications of the GATS Treaty and maintaining percentage wage increases for lower income earners.

Council asks that the Association lobby to uphold the process of collective bargaining and the Australian tradition.

L40 – Mosman

***Registered Trailers Parked on Residential**

Streets

That the Local Government Association be requested to draw to the attention of the Minister for Roads the problem of the proliferation of registered trailers being parked on residential streets for prolonged periods with the view to addressing the problem through appropriate legislation. Such legislation to enable authorised Council officers to address the issue.

Note from Council: Council is continually being questioned as to why they permit trailers which are registered being parked in residential streets for prolonged periods. Complaints come from neighbours concerning the taking up of valuable car parking spaces, the proliferation of street litter and leaves beneath the vehicles and the general degradation of the aesthetics of the area. These trailers can be large trailers containing boats, which can also increase the likelihood of an accident as their size often causes an obstruction to the vision of oncoming drivers.

In many instances these trailers are parked twelve months of the year in the one location and as they are out in the weather their condition often deteriorates. As long as they remain registered there is little Council or the Police can do to have them removed off the street. These trailers can remain on the street continually, as they are not required to have a vehicle inspection to certify their roadworthiness.

With the vehicles being parked for extended periods of time it is very difficult for street sweepers to clean underneath the trailers particularly in the Autumn months when large amounts of leaves can accumulate beneath the vehicles which also catch litter and other debris.

The problem is a difficult one and I am not aware of a solution to it, however, it should be put to the Minister to facilitate a solution.

L41 – Mosman

*** Unregistered Vehicles Parked on Residential**

Streets

That the Local Government Association seek the support of the Minister for Local Government and the Minister for Roads in the case where vehicles are not abandoned, to amend the road transport (vehicle legislation) Act to make the offence “use an unregistered registrable vehicle on a road” an owner onus offence and one for which authorised Council officers can issue an infringement notice. (The act currently defines “use” to include “stand”, however to issue an infringement a Police Officer must obtain an admission from the person using or standing the vehicle or observe such actions.)

Note from Council: As with the previous motion a similar problem exists however the parking of an unregistered vehicle on a road is an offence. As stated in the motion it is very difficult for a Police Officer to issue an infringement notice (Council Rangers cannot) as the officer must catch the person in the act or obtain admission that the person did place the vehicle on the street.

If the owner of the vehicle advises the police officer that he or she was not aware who placed the vehicle on the street an infringement cannot be issued and the vehicle can still remain on the street. It is often through police bluff the vehicles can get removed. In the past Police Officers and Parking Patrol Officers authorised to issue infringements for unregistered vehicles on a public street to the owner however, this was withdrawn.

To improve the situation and improve the public safety issue Council Rangers should be authorised to issue infringement notices, for this offence as well as other defects such as not having a registration label, number plate or appropriate lights on the trailers.

L42 – Gosford

*** Alcohol-Free**

Zones

That the Local Government and Shires Associations support a review of the current Ministerial Guidelines on Alcohol-Free Zones to provide Council's with the authority to consider granting approval to the consumption of alcohol in association with alfresco dining on footway areas within Alcohol-Free Zones.

Note from Council: Many Councils are supportive of shop owners/proprietors offering outdoor dining areas to complement existing businesses such as cafes, restaurants, take-away food shops, etc. These areas are located on public footway areas adjacent to either a licensed or unlicensed premises and are usually occupied on the basis of a lease from the Council.

With the popularity of alfresco dining areas increasing, particularly in tourist areas and Central Business Districts (CBDs), there is a community trend for alcohol to be consumed in association with a meal. With the majority of these outdoor dining areas being located in tourist areas and CBDs often the area is within an Alcohol Free Zone (AFZ) which prohibits the consumption of alcohol.

The current Ministerial Guidelines on AFZs provided by the Department of Local Government, which are utilised by local Councils to implement and re-establish AFZs, do not make reference to or provision for alfresco wining and dining. Many Council's have alfresco dining in restaurant precincts which are also AFZs, the consumption of alcohol in these areas is in breach of the Act governing AFZs.

It has become apparent that the Guidelines for AFZs require reviewing to accommodate a state-wide trend for alfresco wining and dining whilst remaining a deterrent for excessive alcohol consumption which leads to a range of anti-social behaviour.

L43 – Parramatta * Operation of Code of Conduct Committees arising out of the Department of Local Government Model Code of Conduct provides for enquiries to be undertaken and reported accordingly. There is a potential risk of defamation for those involved,

That the conference calls upon the Department of Local Government to provide legal opinion about the ability of members Code of Conduct Committees to effectively undertake enquiries with all necessary parties and provide recommendations without the risk of defamation.

Note from Council: Those conducting enquiries and also persons providing evidence to the Committees are at possible risk of defamation proceedings. Councils may incur considerable legal costs prior to proper defence in such proceedings. In conducting enquiries of external parties, cautions should be provided which are likely to hamper effective evidence gathering.