



MINUTES OF THE MEETING OF SPECIAL COUNCIL MEETING

held on Wednesday 4 October 2023 commencing at 7.45 pm
in the Council Chambers, 43-51 Tanunda Road, Nuriootpa.

MINUTES

1. THE BAROSSA COUNCIL

1.1 Welcome

Welcome by Mayor Bim Lange declared the meeting open at 7.47 pm.

1.2 Members Present

Mayor Bim Lange, Crs John Angas, Don Barrett, David de Vries, Tony Hurn, Kathryn Schilling, Cathy Troup, Jane Evans, Bruce Preece, Jess Greatwich, Rick Lane

1.3 Leave of Absence

Nil

1.4 Apologies for Absence

Cr Heidi Thompson

2. DEBATE REPORTS

2.1 Office of the Mayor and CEO

2.1.1 MINOR VARIATION - LYNDOKH LAND PURCHASE **23/76890**

MOVED Cr de Vries

That Council authorise:

- (1) The Chief Executive Officer to amend the Contract for the Purchase of Land at 1312 Barossa Valley Way, Lyndoch to reflect the alternative Allotment 3 alignment as presented at Attachment 2 in this report.
- (2) The Chief Executive Officer to lodge a minor variation to the Development Application - 23014880 to reflect the alternative Allotment 3 alignment as presented at Attachment 2 in this report.
- (3) If legally necessary, the Mayor and Chief Executive Officer to sign and seal any relevant and associated documentation to give effect to parts 1 and 2 of this resolution.

SECONDED Cr Angas

CARRIED 2022-26/248

PURPOSE

To approve a minor variation to the Lyndoch Land Purchase contract and land division to facilitate the desired strategic outcome and rapid settlement of the land purchase.

REPORT

Background

Members are aware of the long-term strategy related to the Lyndoch Recreation Park and the acquiring of land to allow for the future needs and growth of the community.

Council approved and agreed with Burge Family Wines to purchase land adjacent to the park. The implementation of this decision is reaching its conclusion.

Introduction

To achieve the purchase of the subject land, Allotment 3 in the survey plan presented at Attachment 1, a land division (boundary realignment) was required.

The necessary steps to achieve the development approval have been undertaken and development approval has been granted. However, at final survey it was discovered, contrary to a prior wastewater approval, the wastewater system servicing the cellar door is also servicing the house and winery. This was not in accordance with the approved wastewater requirements; however, it is an approval in place over a decade ago and cannot be enforced.

The issue arising from this is that the wastewater disposal system cannot bridge across boundaries and with the cellar door included in the Allotment being purchased by Council it requires a new wastewater system to be installed, at either our or Burge Family Wines (BFW) cost, estimated to be in the order of \$50,000 with contingencies. The final documentation cannot be lodged to finalise the land division until this matter is dealt with. Without the final plan, new titles and settlement cannot occur.

Discussion

The current circumstances outlined in the introduction have various remedies:

The first is build the new wastewater system. However, during preliminary scoping and work on the design for BFW proposed development and Councils probable use of the land, there is no need for a new wastewater system in that area. This would be installing inefficient and unnecessary infrastructure. BFW proposed development site will require a new wastewater system in a different location. Council does not need the building or the wastewater system.

Sever and or decommission the existing wastewater system. This cannot occur as the existing wastewater system is required for activity on the site already, namely to servicing the existing cellar door and residence.

Implement a Land Management Agreement on the relevant parcels of land which in essence is a legal agreement to address the issue at a later stage and before use of the land by Council. This is problematic in two ways. It is essentially council contracting with itself, it makes no logical or legal sense, and still potentially requires the management of inefficient or unnecessary infrastructure in the future.

Change the land division alignment to leave the cellar door on allotment 2. See the updated land division plan at [Attachment 2](#). This for all intents and purposes is the simplest and quickest solution and carries very little cost associated with it. A small resurvey and minor variation fee, in the order of \$1500. It allows BFW to continue to operate unimpeded, supports Council in not having infrastructure it doesn't need and maintains a building it doesn't need, thereby creating long term savings and does not impact the strategic goals of Council and the community. The realignment is minor, and most of the land area is still being transferred to Council. The cellar door has no value to Council and as most of the land is still being received there is only minor variation in the unit price of the land, which is going to be offset by not having to depreciate or maintain (or remove if that is Councils ultimate decision) the building. In the initial assessment of cost and benefit the value of purchasing and repurposing the cellar door was \$375,000 for the purchase and the refitting \$500,000. This initiative avoids the refitting costs and the need to design infrastructure around the cellar door and having multiple disparate buildings on the site. This will generate savings in depreciation and maintenance over the life for the assets which far outweigh the purchasing price. The land is the critical strategic need. This is the recommended pathway at the current sale price as the small, amended land reduction is immaterial and by not having the cellar door Council creates long term savings in not having to manage (or remove) duplicate infrastructure.

The area being purchased at present without alteration to the land division is 5.603 hectares. The revised area is 5.464 hectares, which equates to a reduction of 2.48%. The change in unit rate for the land is \$7,264.46 per hectare or 2.55%.

To achieve this outcome Council needs to alter the approval for the land division and contract and authorise the Chief Executive Officer to make the necessary changes.

Summary and Conclusion

The various options to bring the land transfer to fruition are outlined and it is recommended that a small variation to the contract and land division be supported.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Land Division Plan 

Attachment 2 Amended Land Division Plan - Minor Variation 

Supporting references

Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan



Community and Culture



Infrastructure

Goal

The Barossa fosters community resilience, connection and wellbeing through its social planning, recreation, safety, education, preventative health and social strategies especially for our youth and vulnerable people.

The Barossa maintains and develops infrastructure that meets the needs of the region and is efficient.

Community infrastructure planning is aligned to both current and the future needs of the community

Legislative Requirements

Planning, Development and Infrastructure Act 2016

Local Government Act 1999

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

There are no material changes to the resourcing needs.

The proposal reduces the risk management considerations of managing further infrastructure and addresses the land division risk current at hand in achieving the strategic land purchase.

Financial resourcing is unchanged and strategic level with minor variation to the unit cost of the land being purchased increasing, however is still within the approved budget.

Based on advice the change to the land division is minor and can be approved through a minor variation process. The outcome in fact improves the land use planning outcomes and situation in that the existing cellar door will remain associated with the existing residence and winery on BFW land. It also removes the need to lease back the cellar door to BFW.

COMMUNITY ENGAGEMENT

Not necessary or required by legislation. The community are informed of the intent to purchase the land through a prior report to Council and media and communications undertaken to date.

2.2 Corporate Services and Business Innovation

2.2.1 CONSIDERATION OF FURTHER INVESTIGATIONS INTO STORMWATER DISPOSAL - ELIZABETH STREET TANUNDA **23/83563**

MOVED Cr Greatwich

That Council:

- (1) Having considered this report, approves the commencement of negotiations with the property owners of 18A Elizabeth Street in accordance with Option 3 with co-contribution of a minimum of 15% and not more than 25% of the construction funding gap presented and authorises the Chief Executive Officer or their delegate to enter into a legal agreement for the agreed works subject to the parameters set out for the compromise position.
- (2) Approves additional capital expenditure of up to \$175,389 to facilitate the increased scope of works, should the negotiations be successful, which shall be funded by bringing the sum forward from the Long Term Financial Plan from the Stormwater allocation.

SECONDED Cr de Vries

CARRIED 2022-26/249

PURPOSE

In accordance with Council policy and process, the property owners of 18A Elizabeth Street, Tanunda have initiated multiple review mechanisms following a Council decision in January 2023 to maintain the existing level of service and open stormwater drain infrastructure at their premises. This report provides updated advice and several alternate solutions for Council consideration.

REPORT

Background

In April 2022, the property owners of 18A Elizabeth Street, Tanunda (18A Elizabeth Street) wrote to Council to express their view that the level of service provided by the open swale drain at their property is unacceptable, due to trees and vegetation impeding the flow and health/environmental hazards associated with pooled water inducing mosquitos, insects, and rats. Of note, this was the adopted and agreed service level that was in existence without issue for over a decade prior to the current property owners contacting Council.

In adopting its Annual Business Plan and Budget for 2022/23, Council approved a stormwater drainage upgrade of the side entry pit and culvert infrastructure located within Council land outside 18A Elizabeth Street, with a capital stormwater budget allocation of \$30,000.

During the ongoing exchange of correspondence between the property owners and Council officers in relation to perceived issues associated with existing stormwater infrastructure at 18A Elizabeth Street, the property owners requested expansion of the approved capital works to include removal of the vegetation and trees within the stormwater swale covered by the drainage easement and requested construction of underground stormwater pipe infrastructure to transfer stormwater flows underground through the property by Council.

In response to this request and following the conclusion of the Caretaker Period associated with the 2022 Local Government Election, officers presented a report to Council at its meeting of 24 January 2023, presenting the property owner's request for an increase in stormwater infrastructure level of service at their premises. At this time Council resolved to maintain an overland stormwater flow pathway and open drain infrastructure at 18A Elizabeth Street, citing that this solution is consistent with the drainage arrangements and needs of the location and downstream properties.

Council did however approve minor service level upgrades, being additional capital expenditure of \$30,000, to undertake vegetation clearing and remediation works of the existing open channel to compliment the side entry pit upgrade and better long-term maintenance of the overland stormwater flow pathway inherent in the upgrades.

Introduction

An existing open stormwater drainage swale passes through 18A Elizabeth Street, from the front boundary to the rear boundary of the property. Historically this site has always featured open drain stormwater infrastructure to manage stormwater flows which collect within street infrastructure from both east and west of the property due to the natural topography of the street scape and location.

A land division process was approved over the 18 Elizabeth Street allotment in 2012 to create two new allotments (18 and 18A Elizabeth Street), with the 18A allotment designated to retain the exiting open swale stormwater drain for management of stormwater drainage within the local sub catchment. At the time of land division Council secured a drainage easement over the existing drain for the ongoing management of stormwater flows at the site.

Discussion

TIMELINE OF ACTIVITIES FOLLOWING COUNCIL DECISION OF 24 JANUARY 2023

March 2023

Following Council's decision in January 2022 to maintain the overland stormwater flow pathway at 18A Elizabeth Street, Officers proceeded to engage a contractor to

undertake the approved stormwater drainage upgrade of the Elizabeth Street side entry pit and culvert infrastructure on Council land adjacent the front boundary of the property, and vegetation clearance and remediation works of the existing open channel within the easement.

With the support of the property owners, the vegetation clearing was completed at Council's expense by 15 March 2023. Civil works to remediate the existing open swale drain and commence the side entry pit upgrade were scheduled to commence Monday 20 March 2023.

On Friday 17 March 2023, Council received correspondence from a legal firm representing the interests of the property owners at 18A Elizabeth Street. This correspondence indicated that that property owners do not consent to the proposed works to re-construct the open swale on the basis that the works are unlawful, with the proposed swale being unfit and contrary to any reasonable use of the service easement for drainage purposes.

Upon receipt of the above correspondence Council Officers placed the proposed capital works on hold pending the receipt of legal advice.

April- May 2023

Council Administration engaged Kelledy Jones Lawyers to review the legal matters involved, who under instruction from officers subsequently forwarded relevant advice to the legal representative of the property owners on 4 May 2023, setting out Council's position that the works to be undertaken by the Council are lawful and consistent with the use of the easement. It was also reiterated that the Council is entitled to enter the land to fulfill its obligations to carry out the appropriate maintenance of the Service Easement and that the proposed capital works to re-instate the open swale infrastructure would be undertaken in mid to late June 2023.

The correspondence stated in closing that Council has the benefit of a statutory easement for drainage purposes. In accordance with its rights and obligations, it may undertake the maintenance works as it has proposed and is not under any obligation to accede to the property owner's maintenance work demands. It was further stated that the underground culvert requested by the property owner is not only unnecessary for purposes of maintaining the easement and would require the expenditure of significant funds which the Council had determined is also not warranted in the circumstances of the matter.

May – July 2023

Concurrent to the above activity, the property owners initiated several mechanisms to seek a review of Council processes, decision making and information relevant to their property including a Freedom of Information application and an Internal Review of Council's Decision (made at the meeting of 24 January 2023) under section 270 of the *Local Government Act 1999*.

Given that the Section 270 Review related to the decision of Council to maintain the existing level of service and open swale stormwater infrastructure and the associated scope of the approved capital works to be undertaken at 18A Elizabeth Street, this

work has continued to be placed on hold pending the outcome of that review or any subsequent decision of Council in relation to the premises.

At this time of the writing of this report, processes associated with the Freedom of Information Application have concluded, however the Section 270 Internal Review of Council Decision is still underway.

In September 2023, Council was also engaged in a separate but related legal matter with the property owners of 18A Elizabeth Street and a neighbouring property owner which is independent to the design level of service for stormwater management at 18A Elizabeth Street but may be addressed should an alternate design be approved by Council.

August 2023

In August 2023, one of the property owners requested a meeting with the then Acting Chief Executive Officer (CEO) to seek an opportunity to engage in further negotiations and consideration of each party's position to arrive at a mutually agreeable solution for the ongoing management of stormwater at 18A Elizabeth Street.

At this meeting the property owner was advised that setting aside all other considerations, the current approved scope of works and solution is appropriate from an engineering point of view and will cater for the currently provided 1 in 2-year storm event. Further, any change in the design to an alternate solution will require amended calculations to inform the engineering design and to identify secondary impacts on adjoining and downstream stormwater infrastructure.

The property owner provided detailed feedback regarding further mitigating factors and views on the inappropriateness of the current approved level of service at their property and the Acting CEO agreed to facilitate further investigation to inform negotiations to achieve a mutually agreeable solution, noting that Council's current decision still stands and that compromise will be required along with consideration of an appetite for co-contribution to any proposed solution given that it will require funding in excess of the current approved budget.

Council subsequently engaged an independent hydrological consultant to prepare a stormwater upgrade options assessment to identify a broader range of solutions for consideration for the ongoing management of stormwater within the easement at 18A Elizabeth Street. The consultant's report is provided at [Attachment 1](#) and provides:

- A hydrological assessment of the immediate catchment area;
- A capacity assessment for the existing open swale drain within the easement; and
- A range of upgrade options including amendments to the current proposed open swale up to a fully underground solution with various intermediate solutions combining sub-surface and over land engineering designs.

Council Officers have prepared preliminary costings for the various options proposed (see [Attachment 2](#)).

ALTERNATE SOLUTIONS FOR STORMWATER MANAGEMENT AT 18A ELIZABETH STREET

Officers have reviewed hydrological advice set out at Attachment 1 against current land division requirements for properties within The Barossa Council township boundaries and recommend that Option 3 be considered (catering for a 5% Annual Exceedance Probability (EAP) or 1 in 20-year rainfall event) at an estimated cost of \$203,775 should Council have an appetite for upgrading the current level of service at 18A Elizabeth Street. It should be noted however that whilst Option 3 provides for an underground solution, there will still be a requirement for the easement located at the property to have provision for an overland flow of water and an unblocked path for the gap flow of water between the 1 in 20 and the 1 in 100 rainfall events which will not be able to be managed by the sub-surface infrastructure.

As such the recommended solution is a compromise position which will re-direct a significant portion of stormwater flows underground to improve the overall amenity for the property owner but will also require secondary overland drainage provision and a fencing treatment that does not restrict the flow of water in the event of a greater than 1 in 20 rainfall event.

A number of additional solutions for a higher level of service have been proposed, however they are not supported based on noted performance considerations including complexity, feasibility and cost estimates.

UPGRADE CONSIDERATIONS AND IMPLICATIONS

Legal Principles

Council Administration has confirmed that Council has clear rights to discharge stormwater via the easement and the servicing of the easement located on the property at 18A Elizabeth Street. Further, Council is not under any obligation (particularly with regard to unreasonable and significant costs) to provide an upgrade to the level of service which currently consists of an open drainage swale.

In addition to Council's obligations under various Acts, in accordance with the *Landscape SA Act 2019*, private property owners have a general responsibility for the maintenance of watercourses and to not obstruct or affect a watercourse or drainage flow path within their property.

On this basis, the matter of any decision to increase the level of service as requested by the property owners is not considered to be subject to the influence of legislative responsibilities or provisions, instead consideration should be given to whether the circumstances of the property owners at 18A Elizabeth Street are unique and subsequently influenced by principles relating to merit, consistency, procedural fairness, soundness of engineering design, community expectations and property owner rights, cost and precedent.

Whilst principles relating to merit, consistency and procedural fairness are covered more broadly by Council's adopted decision-making process, the following advice explores the remaining concepts to assist in decision making regarding the merits of supporting an increase in the level of service at the.

Further a final negotiated outcome has the ability to remove the risk of further legal costs.

Unique Characteristics of 18A Elizabeth Street, Tanunda

Whilst there are numerous easements across The Barossa Council area that are utilised for the discharge of stormwater, these are generally historical arrangements where the size of the land parcel accommodates a balance between stormwater infrastructure and the resident's capacity to achieve a reasonable standard of enjoyment of their property. Depending on the stormwater volume, topography and slope of the land parcel, the design of the open swale or culvert will also vary significantly.

In the case of 18A Elizabeth Street the land parcel was subdivided from the original adjoining allotment in January 2014 to facilitate infill housing, placing the existing natural stormwater course on the new allotment and resulting in the creation of a 3-metre-wide easement on the smaller residential block for drainage purposes. The easement has limited fall from the front of the property to the drain outlet at the rear of the property, resulting in a slower flow rate and higher risk of standing water, and requiring a minimum 1.3m wide and 300mm deep open drainage swale as per the current approved level of service.

Whilst the current property owners were aware of the easement when they purchased the property in late 2021, they believe that the condition of the current easement is unacceptable, noting it was more than acceptable up to this point, impacts on their capacity to secure their yard in a manner that they see fit and unduly detracts from their enjoyment of the land contained within the easement and excludes them from that part of their land over which they are the registered proprietors.

Engineering Levels of Service

Council's current approved level of service at 18A Elizabeth Street has been validated as meeting stormwater management requirements from an engineering and hydrological perspective.

A range of alternate options have been provided in Attachment 1 in response to the property owners request for an increased level of service, with associated advice as to their efficacy in various rainfall scenarios and feasibility from a cost and capital infrastructure perspective.

Community Expectations, Property Owner Rights and Reputational Risk

Community sentiment and ratepayer expectations regarding Council levels of service are subjective, however there is an intersect between reasonably based expectations for modern, sustainable, and appropriate engineering solutions for the management of local government responsibilities under various Acts and Regulations, and legal principles regarding the reasonable level of enjoyment a resident can expect on their own property. As such, consideration needs to be given more broadly to what is reasonable in terms of the responsible and sustainable management of financial resources across Council's many obligations for the delivery of mandatory services, including the maintenance and upgrade of public infrastructure, versus responding to the increasing expectations of property owners and broader consumers of Council services.

Consideration of a property owner's right to a reasonable level of enjoyment of their property is subject to a number of factors of relevance to 18A Elizabeth Street

Tanunda including the owners viewpoints of the use of the land, such as the size of the allotment versus the portion of land subject to conditions which render the land unusable to the owner, the nature of the infrastructure or activity carried out within the easement (including aesthetic and functional impact), and the property owners experienced loss of enjoyment due to perceived impacts on their health, safety and security.

It is anticipated that the requested increase in level of service at 18A Elizabeth Street may become more frequent across Council's infrastructure portfolio as Council seeks to respond to increasing pressure for additional affordable housing whilst balancing character preservation objectives, planning and building rules provisions, capacity to respond to the impacts of global warming and changing weather patterns and the renewal and upgrade of aging public infrastructure. As such, it is likely that Council will be required to make further decisions of this nature in the future.

Budget

The previously approved capital budget for the stormwater drainage upgrade of the Elizabeth Street side entry pit and culvert infrastructure along with vegetation clearance and re-instatement of the open swale at 18A Elizabeth Street was \$60,000. Whilst some funds were expended in 2022/23 to facilitate vegetation removal, design and legal costs the remainder of the funds (\$28,386) remain in the 2023/24 budget whilst the project was placed on hold.

Should Council consider it appropriate to upgrade the level of service at 18A Elizabeth Street in accordance with Option 3, an additional (\$175,389) would be required to fund the shortfall in budget.

Whilst the 2023/24 financial year capital budget is fully allocated, Council's Long Term Financial Plan has provision for \$4.5M in the next 10 years in stormwater capital investment that is not currently allocated to specific projects. It is proposed that this budget be used to fund any approved upgrade works by bringing funds forward and balancing it off in the out years to mitigate any immediate impact on the Long Term Financial Plan. Council will only incur a minor impact on depreciation and interest on borrowings if this approach is taken.

Costs associated with any approved upgrade may also be offset further by a co-contribution from the property owners of 18A Elizabeth Street not being less than 15% or more than 25% of the construction funding gap (\$26,308 - \$43,960), with any such sum to be negotiated directly with the owners following Council agreement to facilitate an increase in the level of service at the site. The rationale for a contribution is there are reasonable circumstances to consider the further increase in service level, but that there should be a co-contribution as proportionally the main beneficiary is the landowner, and the benefit is not significantly shared with the broader rate payer base. In considering this position Council also needs to weigh up the precedent of allowing a private contribution for an upgrade in this circumstance and its impact on future decisions when further requests are made for co-contribution to Council infrastructure where it is deemed that the requested service level intervention is not warranted.

Precedent

Numerous open swales pass through private properties within the Tanunda Elizabeth/ Julius Street/John Street/Maria Street stormwater drainage catchment and other stormwater catchments across Council Townships to manage local stormwater drainage flows. Many of these drains are not covered by drainage easements due to the historic nature of the drains and, as such, are maintained by the respective allotment owners.

Council records indicate that there are approximately 7kms of open swale drains within formal easements traversing private properties within Council's existing stormwater network. As such, any change to the level of service at 18A Elizabeth Street may introduce a precedent for a broader increase in the level of service at private residences across the Barossa Council area that will have a financial impact on Council.

Whilst each case will need to be assessed on its merits and some may require a different engineering treatment and design option based on inherent conditions at the site, Officers have prepared an analysis of costs assessment based on the application of Option 3 as a level of Service upgrade for the entire stormwater network currently traversing private properties. This 'Application of Service Levels to Network Assets Modelling Estimates' is provided at [Attachment 3](#).

A summary of key findings of this analysis is provided below:

- The cost of the application of service levels at a similar level as that being proposed for 18A Elizabeth Street across the network are between \$11.886M and \$12.875M for the preferred Option 3 – 1 in 20 year chance that a rain event of that size or larger could occur in any one year. Please note this does not mean the rain event won't occur more often, which is expected under current climate models as rainfall events are expected to be more intense.
- The highest level of treatment (which does not achieve a 1 in 100 year chance that a rain event of that size or larger could occur in any one year) is between \$17.719M and \$22.254M and still requires overland flow.
- The lowest level of treatment is between \$9.910M and \$9.936M, this would not change any flooding risk, instead it would simply move stormwater underground for an event less than a 1 in 2-year chance of a rain event.
- There is currently no resource capacity to deliver an Option 3 level of service across the network even if Council did consider it was necessary for the whole network.
- It is fully unfunded.
- The current long term financial plan has \$4.5M in stormwater estimates for the next four years, much of that will be needed for high priority projects already awaiting implementation in many of our townships.

Consideration of precedent should weigh up all scenarios as to the financial impacts with an assessment of the likelihood of demand for upgraded levels of service, the timing of any change or upgrade of the broader network in responding reactively to

property owner requests, community expectations for modern stormwater solutions (as set out above), increasing pressure for infill housing and smaller housing allotments, and Council appetite for planned and staged upgrades over an agreed interval (ie 15-20 years).

As outlined in the prior section, Council also needs to weigh up the precedent issue of co-contribution to infrastructure and the issues that may present in future.

Summary and Conclusion

Council has approved stormwater capital works at 18A Elizabeth Street, Tanunda that are lawful and consistent with the use of the easement. Further, Council is entitled to enter the land to fulfill its obligations to carry out the appropriate maintenance of the Service Easement.

The property owners of 18A Elizabeth Street do not consent to the proposed works to re-construct the open swale on the basis that the works are unlawful, with the proposed trench being unfit and contrary to any reasonable use of the service easement for drainage purposes. As such, the property owners have initiated a number of review mechanisms to challenge Council's decision to maintain the current level of service at their property and have instead continued to pursue requests to upgrade stormwater infrastructure to provide an underground solution.

The matter of any decision to increase the level of service as requested by the property owners is not considered to be subject to the influence of legislative responsibilities or provisions, instead consideration should be given to whether the circumstances of the property owners at 18A Elizabeth Street are unique and subsequently influenced by principles relating to merit, consistency, procedural fairness, soundness of engineering design, community expectations, cost and precedent.

An analysis of these factors and a recommended option for the delivery of an increased level of service by way of stormwater infrastructure upgrade at 18A Elizabeth Street have been presented in this report for Council consideration.

Any decision to upgrade the stormwater solution at 18A Elizabeth Street will have an impact on Council's financial position, with significant risk of precedent based cost liability across remaining stormwater infrastructure located within private residences, however this same risk is carried across a number of significant asset classes where Council has committed to a change in the level of service. In these instances, the risk is managed proactively with staged and prioritised implementation based on an assessment of risk.

The circumstances inherent in the case of the property owners at 18A Elizabeth Street are considered unique and have been subject to ongoing and complex conflict management and negotiation. As such, in order to facilitate an acceptable outcome for all parties, it is recommended that Council support the negotiation of a compromise position as outlined within Option 3, with a co-contribution to the funding shortfall, and an upgrade featuring underground infrastructure along with the maintenance of a revised overland water flow capacity and appropriate fencing and landscaping treatments so as not to impact the management of stormwater following rainfall events greater than a 1 in 20.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1	Stormwater Upgrade Options Assessment - 18A Elizabeth Street Tanunda 
Attachment 2	Cost Estimate 18A Elizabeth St - Tanunda 
Attachment 3	Application of Service Levels to Network Assets Modelling Estimates 

Supporting references

Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan



Infrastructure

Goal

7. Community infrastructure planning is aligned to both current and the future needs of the community

Strategies

- 7.2. Ensure both current and future infrastructure needs are met in a proactive rather than reactive way.

Legislative Requirements

Local Government Act 1999

Real Property Act 1886

Landscape SA Act 2019

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

The body of this report and Attachment 3 sets out analysis of legal, financial, resourcing and broader risk management considerations.

Option 3 set out in this report has been proposed as an alternative upgrade option to meet the request of the property owners at 18A Elizabeth Street, Tanunda for council to deliver an underground stormwater solution at the premises. It should be noted that this solution will still require some compromise with the property owners as an overland flow will still be required to cater for rain events that exceed a 1 in 20-year likelihood which will require an uninterrupted flow path unrestricted by solid fencing.

The proposed recommendation will require the bringing forward of \$175,389 from the Long Term Financial Plan to the Capital Budget number 312690.

COMMUNITY ENGAGEMENT

Nil

2.2.2 CONSIDERATION OF CHANGE OF SERVICE LEVEL - TANUNDA RECREATION PARK - KITCHEN INFRASTRUCTURE
23/85138

MOVED Cr Evans

That Council:

- (1) Approves the granting of exclusive use of the commercial kitchen facility at Tanunda Recreation Park to the Tanunda Football Club under a Shared Use Lease Agreement with special conditions requiring shared utilisation of the commercial kitchen at Council's instruction and absolute discretion to cater for significant large scale regional events; and
- (2) Approves the construction of a suitable secondary catering kitchen within the Show Hall facility to cater for small and medium events with the design and budget to be approved via a future report to Council for the 2024-2025 financial year.

SECONDED Cr de Vries

VARIATION

With the consent of the seconder, Cr Jane Evans as the mover sought leave of the meeting to vary the motion to include.

The Mayor put the question of leave of the meeting. Leave of the meeting was granted.

The motion was varied and read as follows:

That Council:

- (1) Approves the granting of exclusive use of the commercial kitchen facility at Tanunda Recreation Park to the Tanunda Football Club under a Shared Use Lease Agreement with special conditions requiring shared utilisation of the commercial kitchen at Council's instruction and absolute discretion to cater for significant large scale regional events; and
- (2) Approves the investigation of a suitable secondary catering kitchen within the Show Hall facility to cater for small and medium events conditional upon future Council approval of the design and budget via the future provision of a report to Council for the 2024-2025 financial year.

CARRIED 2022-26/250

PURPOSE

Following the recent completion of the Tanunda Recreation Park Clubrooms upgrade project a decision needs to be made regarding the level of service provided for kitchen facilities across the Clubrooms and Show Hall facility to inform lease and license negotiations with key stakeholders and ongoing show hall hire.

REPORT

Background

In 2020 Council upgraded the Tanunda Show Hall kitchen to a commercial kitchen standard in accordance with the Tanunda Recreation Park Masterplan. At this time, the upgrade was a significant project designed to offer a walk-in, walk-out hireable commercial kitchen for small, medium and large events and functions and food preparation activities with capacity to cater for in excess of 500 patrons.

Early utilisation of the upgraded kitchen was impacted by the onset of Covid 19 and due to limited marketing of the space, current utilisation of the Show Hall and Commercial Kitchen facility is adhoc/periodic and managed via Council's adhoc hirer booking system in accordance with the approved fees and charges register. To date, no licence or lease provisions have been exercised over the Show Hall and Kitchen due to the mandate to facilitate short term, event and function-based hire.

Introduction

Following the development of initial concept designs for the upgrade of the Tanunda Recreation Park Clubrooms and Changerooms in 2016, Council's Big Project team progressed an amended detailed design for the proposed works during 2022 featuring shared use of the existing commercial kitchen between the Show Hall and newly constructed Clubrooms, with canteen facilities for the Tanunda Football and Netball Clubs to also be serviced within the shared commercial kitchen footprint with access via the breezeway located between the two facilities. This design specification was put out for tender in June 2022 and subsequently approved for construction by Council at its meeting of 16 August 2022.

The newly constructed Tanunda Recreation Park Clubrooms and Changerooms have now been handed over to Council and are ready for occupancy by key stakeholders at the site. Occupancy arrangements will be negotiated under Council's recently approved Lease, Licence and Hire Permit Policy, however Officer's require Council direction on the level of service to be afforded Show Hall Hirers versus the Tanunda Football Club in relation to utilisation of the Commercial Kitchen to determine whether lease or licence conditions are applicable and appropriate under the circumstances.

Discussion

The decision to adopt a shared use model for the existing Commercial Kitchen at the site has introduced a number of service level impacts and changes within the kitchen facility including:

- Installation of additional cabinetry and under bench lockable storage to permanently store Football Club consumables, ingredients, cleaning products, crockery, utensils and equipment;
- Ongoing and frequent utilisation of the kitchen Thursday and Saturday Nights for Meal Preparation and Saturday home games for the Canteen.
- Modification of the cool room to segregate/secure the permanent storage of football club drinks, alcohol and consumables from adhoc show hall hirers;
- Introduction of additional permanent equipment to the kitchen area and expansion of food preparation and serving areas to cater for canteen services;
- Introduction of permanent food and drink storage and food preparation activity versus previous adhoc operating model requiring revised public health measures for cleaning, vermin control and food standards; and

- Increased utilisation and scheduling conflicts due to concurrent use between the Football Club and adhoc event-based hirers and kitchen hirers.

These changes have materially impacted the previous operating model of the commercial kitchen eliminating capacity for the Show Hall to be marketed as a walk-in, walk-out hireable commercial kitchen for small, medium and large events and functions. Instead the interim use of the facility by the Tanunda Football Club during clubroom construction as an ongoing heavily used and provisioned club kitchen and canteen has demonstrated that the approved shared use is incompatible with the maintenance of favorable conditions for adhoc hirers.

Of equal importance, the Football Club has also experienced a significant change in the level of service afforded to them under their previous exclusive use lease over the demolished clubrooms, which they agreed. Whilst they now have access to a higher level of service via the commercial kitchen on the understanding they would be sharing this space with adhoc hirers, the intended outcomes and cross sharing as outlined presents various usability challenges and risks to their organisation. Specifically, there are risks associated with the security of Football Club owned equipment, stock and consumables, health and regulatory compliance challenges have been introduced which are not entirely in the Club's control and scheduling clashes are occurring with key stakeholders utilising the Show Hall. The Football Club's capacity to generate revenue from third party hire of the clubrooms is also contingent upon their access to the commercial kitchen facility and its availability outside of the Club's own usage provisions.

Key considerations for the future operating model of this site include:

- Determination of priority access to the commercial kitchen – is it a Clubroom Kitchen first and foremost or a Show Hall Kitchen?
- Lease, Licence and Hire Permit Arrangements – what instrument is appropriate and reasonable for each stakeholder given the challenges with shared use.
- Balancing user's rights and responsibilities whilst optimising use of the various facilities and sustainably managing these valuable assets.
- Fairness and equity and consistency of levels of service in the context of like facilities and users at other sites across the Council area.
- Practical implications of the current operating model – impacts on user experience and capacity to maintain the kitchen to meet public health standards.
- Strategic long term objective for each facility.

In accordance with the above considerations, there are a number of potential solutions that could be considered to address the inherent challenges associated with shared use. Option 1 is for primary use of the commercial kitchen to be granted to the Football Club in accordance with exclusive use conditions under a Shared Use Agreement over the Clubrooms and Kitchen with special conditions requiring shared utilisation of the kitchen facility at Council's instruction and absolute discretion for significant regional events. In this scenario the Football Club would generate revenue from such bookings and be responsible for the ongoing care, maintenance and management of the kitchen under standard Shared Use Lease conditions of use for exclusively leased assets.

Alternatively, under Option 2, Football Club use could be governed by a licence during the playing season requiring shared use as above but with ongoing management of bookings, cleaning and maintenance by Council. This option will reduce the capacity for the Football club to hire out the clubroom to generate income to offset lease fees and present significant complexity in terms of roles and responsibilities and accountability for the maintenance and management of various improvements within the kitchen footprint. This option also does not address issues already experienced to date with the high impact and breadth of occupancy of the Football Club within the commercial kitchen facility.

Regardless of the option that is supported it is recommended that a second basic catering kitchen be installed in the existing seating storage area in the northeastern corner of the Show Hall to cater for general Show Hall hirers. This increase to the existing level of service at the site is recommended to minimise conflict between user groups and reduce the burden of the existing demand on the Commercial Kitchen to service both ongoing, frequent high volume users such as the Football Club and adhoc hirers who are seeking a sanitary walk in, walk out kitchen facility that is not used for ongoing meal preparation.

Preliminary designs for a second kitchen have been sourced and provisional costing prepared (see Attachment 1). It is proposed that design option 2 be further refined requiring and a detailed costing prepared for future Council consideration. It should be noted that the Tanunda Football Club have indicated that they have a number of second hand commercial grade kitchen appliances that were donated to the club for an upgrade of their previous clubroom kitchen that they are willing to donate to Council on the basis that this in-kind capital contribution is acknowledged in financial subsidies applicable to their lease fees upon negotiation of their new lease agreement under new Lease, Licence and Hire Permit Policy settings.

It should be noted that any investment would need to be considered in the 2024-25 financial year as Council's capital delivery team does not have the capacity to deliver any further projects with the current significant program underway.

Summary and Conclusion

To address inherent challenges with the current agreed shared use of the commercial kitchen between the Tanunda Show Hall and Tanunda Recreation Park Clubrooms it is recommended that The Tanunda Football Club be granted exclusive use of the kitchen facility with special conditions requiring shared utilisation of the commercial kitchen at Council's instruction and absolute discretion to cater for significant large scale regional events. It is also recommended that a second catering kitchen be installed within the Show Hall facility to cater for small and medium events.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Proposed Second Catering Kitchen at Tanunda Recreation Park - Sketch Design Options - October 2023 

Supporting references

Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

Infrastructure

Goal

7. Community infrastructure planning is aligned to both current and the future needs of the community

Strategies

- 7.2. Ensure both current and future infrastructure needs are met in a proactive rather than reactive way.

Legislative Requirements

Nil

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

A decision regarding the level of access and type of occupancy agreement to be executed between Council and the Tanunda Football Club for the Tanunda Recreation Park Clubrooms and Commercial Kitchen is required to mitigate risks associated with ambiguity around the ongoing use and maintenance of these assets.

The body of this report sets out key considerations regarding historical decisions in the design of infrastructure for the site, current relevant decision-making principles and options for a future operating model.

Council currently does not have capital budget provision for the implementation of a second catering kitchen within the Tanunda Show Hall. A report will be put to Council in the future to determine the level of service and associated investment for the catering kitchen.

COMMUNITY ENGAGEMENT

Nil

3. NEXT MEETING

Tuesday 17 October 2023 at 5.30pm

4. CLOSURE

Mayor Lange declared the meeting closed at 8.32pm.

Confirmed at Council Meeting on 17 October 2023

Date:..... Mayor:.....