NOTICE OF ORDINARY COUNCIL MEETING
Tuesday 19 March 2024
in the Council Chambers, 43-51 Tanunda Road, Nuriootpa,
commencing at 5.30pm.

A recording of the meeting will be available to view on the Council's website.

Martin McCarthy
CHIEF EXECUTIVE OFFICER
THE BAROSSA COUNCIL

A G E N D A

Welcome by Mayor

1. ATTENDANCE RECORD

1.1 Members Present

Apologies

Nil

Not Present

Nil

Leave of Absence

Nil

2 CONFIRMATION OF PREVIOUS MINUTES

2.1 Minutes of previous meetings – for confirmation:

2.1.1 Council meeting held on Tuesday 20 February 2024 at 5.30pm
2.1.2 Special Council meeting held on Wednesday 21 February 2024 at 5.30pm
2.1.3 Special Council meeting held on Wednesday 6 March 2024 at 5pm

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Nil

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Tuesday 16 April 2024 at 5.30pm

11. CLOSURE

MATTERS ARISING FROM PREVIOUS MINUTES

2.2.1 ADOPTION OF REVISED NORTHERN AND YORKE LOCAL GOVERNANCE ASSOCIATION CHARTER (PREVIOUSLY LEGATUS)

Author: Chief Executive Officer
24/26078

The Council considered the proposal of the review of Legatus, now named Northern and Yorke Local Government Association (NYLGA) at its February 2024 meeting of Council.

Council feedback was provided to NYLGA prior to its meeting of 23 February 2024. The NYLGA adopted the proposed Charter without any further amendment.

The final Charter is provided for Council information at the Attachment.

ATTACHMENTS

Attachment 1 Northern and Yorke Local Government Association - Adopted Charter

SUPPORTING REFERENCES

Nil

CENTRAL LOCAL GOVERNMENT REGION OF SOUTH AUSTRALIA
(REFERRED TO AS NORTHERN AND YORKE LOCAL GOVERNMENT ASSOCIATION)

LOCAL GOVERNMENT ACT 1999

CHARTER

1. INTRODUCTION

1.1 Name

The name of the subsidiary is the Central Local Government Region of South Australia referred to as 'Northern and Yorke Local Government Association' (NYLGA) in this Charter.

1.2 Definitions

'**the Act**' means the Local Government Act 1999 and includes all regulations made thereunder;

'**Annual General Meeting**' means the annual general meeting of the NYLGA held in accordance with Clause 3.7;

'**the Board**' means the Board of Management of the NYLGA set out at Clause 3;

'**Board Member**' means a member of the Board;

'**Budget**' means the annual budget adopted by the NYLGA pursuant to Clause 5.1;

'Business Plan' means the business plan adopted by the NYLGA pursuant to Clause 6.1;

'**Chairperson**' means the member of the Board appointed pursuant to Clause 3.5 and referred to as the President of NYLGA;

'**Chief Executive Officer**' means at any time the person appointed and holding office of Chief Executive Officer of the NYLGA pursuant to Clause 4 and includes a person acting in that position;

'**Constituent Councils**' means those councils identified at Clause 1.4;

'**Council**' means a council constituted under the Act;

'**Financial Statements**' has the same meaning as in the Act;

'**Financial Year**' means 1 July in each year to 30 June in the subsequent year;

'NYLGA' means the Northern and Yorke Local Government Association

'**Principal Member'** means the Mayor / Chair of the Constituent Councils.

Adopted 23 Feb 2024

'**Region**' means the collective geographical areas of the Constituent Councils;

1.3 **Interpretation**

In this Charter, unless the context otherwise requires:

1.3.1 headings do not affect interpretation;

1.3.2 singular includes plural and plural includes singular;

1.3.3 words of one gender include any gender;

1.3.4 a reference to a person includes a partnership, corporation, association, government body and any other entity;

1.3.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

1.3.6 an unenforceable provision or part of a provision of this Charter may be severed, and the remainder of this Charter continues in force, unless this would materially change the intended effect of this Charter;

1.3.7 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and

1.3.8 a reference to a 'Clause' means a clause of this Charter.

1.4 **Establishment**

Northern and Yorke Local Government Association is established under the Act.

The Constituent Councils are:

1.4.1 The Barossa Council;

1.4.2 Barunga West Council;

1.4.3 Clare and Gilbert Valleys Council;

1.4.4 Copper Coast Council;

1.4.5 The Flinders Ranges Council;

1.4.6 Regional Council of Goyder;

1.4.7 Light Regional Council;

1.4.8 Adelaide Plains Council;

1.4.9 District Council of Mount Remarkable;

1.4.10 Northern Areas Council;

1.4.11 District Council of Orroroo/Carrieton;

1.4.12 District Council of Peterborough;

1.4.13 Port Pirie Regional Council;

1.4.14 Wakefield Regional Council; and

1.4.15 Yorke Peninsula Council

1.5 **Local Government Act 1999**

This Charter must be read in conjunction with the Act. The NYLGA must conduct its affairs in accordance with the Act except as modified by this Charter as permitted by the Act.

1.6 **Objects and Purpose for which the NYLGA is Established**

The NYLGA is established to:

1.6.1 undertake advocacy, representational and coordinating roles on behalf of the Constituent Councils at a regional level;

1.6.2 provide strong advocacy in developing policy positions and speaking with one voice on issues and matters that affect Constituent Councils and the communities within the Region;

1.6.3 work collaboratively with the Local Government Association of South Australia and other regional local government bodies for the benefit of Constituent Councils;

1.6.4 act as a forum for discussion, information sharing and consideration of matters relating to the powers, functions and duties of the Constituent Councils under the Act and other statutory provisions in relation to the Region;

1.6.5 liaise, work with and make representations and submissions to the State and Commonwealth Governments and their instrumentalities on a regional basis for the benefit of the Region;

1.6.6 develop and facilitate further co-operation and collaboration between the Constituent Councils for their benefit and the benefit of the Region;

1.6.7 develop and manage policies and plans which guide the conduct of regional programs with the objective of securing the best outcomes for the Region;

1.6.8 undertake projects and activities that benefit Constituent Councils and the Region; and

1.6.9 build partnerships with those who can contribute to the development and delivery of projects and activities that benefit Constituent Councils and the Region.

2. POWERS AND FUNCTIONS OF THE NYLGA

The powers, functions and duties of the NYLGA are to be exercised in the performance of the NYLGA's objects and purposes, comprise:

2.1 Functions and Powers

In addition to those specified in the Act, the functions and powers of the NYLGA are:

2.1.1 subject to Clause 2.4 becoming a member of or co-operating or contracting with any other association or organisation;

2.1.2 subject to Clause 2.4 entering into contracts or arrangements with any Government agency or authority;

2.1.3 subject to Clause 2.4 appointing, employing, remunerating, removing or suspending the Chief Executive Officer;

2.1.4 subject to Clause 2.4 entering into contracts with any person for the acquisition and/or supply of goods and services;

2.1.5 raising revenue through subscriptions and levies from Constituent Councils, by arrangements with sponsor organisations, by arrangement or contract with any other person and by any other means not inconsistent with the objects and purposes of the NYLGA;

2.1.6 printing and publishing any newspapers, periodicals, books, leaflets, or other like writing;

2.1.7 appointing persons or committees to oversee the management of the NYLGA, to steer projects or to pursue geographic or functional interests of Constituent Councils or specific groups of Constituent Councils;

2.1.8 with the prior approval of the Board undertake its functions and exercise its power outside the areas of the Constituent Councils, including by providing services ancillary to the purposes of the NYLGA;

2.1.8.1 To the extent considered necessary or expedient to the performance of its functions by the Board; or

2.1.8.2 To provide services to an unincorporated area of the state;

2.1.9 subject to Clause 2.4 employing, engaging or retaining professional advisors to the NYLGA;

2.1.10 subject to Clause 2.4 instituting, initiating and carrying on legal proceedings;

2.1.11 making submissions for and accepting grants, subsidies and contributions to further its objects and purposes;

2.1.12 subject to Clause 2.4 acquiring, holding, dealing with and disposing of any personal property;

2.1.13 with the prior approval of the Constituent Councils purchasing, selling or otherwise acquiring, disposing of or encumbering any real property or interests therein;

2.1.14 opening and operating bank accounts;

2.1.15 accumulating surplus funds for investment purposes;

2.1.16 investing any of the funds of the NYLGA in any investment provided that:

2.1.16.1 in exercising this power of investment, the NYLGA must exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and

2.1.16.2 the NYLGA must avoid investments that are speculative or hazardous in nature;

2.1.17 borrowing money and incurring expenditure in accordance with Clause 2.4;

2.1.18 giving security for the discharge of liabilities; and

2.1.19 doing all other things that are incidental or conducive to the attainment of the objects and purposes of the NYLGA.

2.2 **Duties**

The NYLGA has the following duties:

2.2.1 to exercise the functions and powers of the NYLGA only in the performance and furtherance of the NYLGA's objects and purposes;

2.2.2 to comply with this Charter, the Act, all other applicable law and any lawful direction of the Constituent Councils.

2.3 **Other Powers, Functions and Duties**

NYLGA may exercise such other functions, powers and duties as are delegated to the NYLGA or authorised by the Constituent Councils from time to time.

2.4 **Borrowings and Expenditure**

2.4.1 The NYLGA has the power to incur expenditure as follows:

2.4.1.1 in accordance with a budget adopted by the NYLGA and approved by the Constituent Councils as required by the Act or this Charter; or

2.4.1.2 with the prior approval of the Constituent Councils; or

2.4.1.3 in accordance with the Act, in respect of expenditure not contained in a budget adopted by the NYLGA for a purpose of genuine emergency or hardship.

2.4.2 Subject to Clause 2.2 the NYLGA has the power to borrow money as follows:

2.4.2.1 in accordance with a budget adopted by the NYLGA as required by the Act or this Charter;

2.4.2.2 in respect of an overdraft facility or facilities up to a maximum amount of $100,000;

2.4.2.3 with the prior approval of the Constituent Councils.

2.5 **Property**

2.5.1 All property held by the NYLGA is held by it on behalf of the Constituent Councils.

2.5.2 No person may sell, encumber or otherwise deal with any property of the NYLGA without the prior approval of the Constituent Councils and the approval of the NYLGA by resolution of the Board.

2.6 **Delegation by the NYLGA**

2.6.1 The NYLGA may in accordance with this Charter and the Act by resolution delegate to a committee of the NYLGA, an employee of the NYLGA, a Constituent Council or to a person for the time being occupying a particular office or position of the NYLGA any of its powers and functions under this Charter or the Act but may not delegate:

2.6.1.1 the power to impose charges;

2.6.1.2 the power to borrow money or obtain any other form of financial accommodation not contained in a Budget adopted by the NYLGA;

2.6.1.3 the power to approve expenditure of money on the works, services or operations of the NYLGA not contained in a Budget adopted by the NYLGA and approved by the Constituent Councils;

2.6.1.4 the power to approve the reimbursement of expenses or payment of allowances to Board Members;

2.6.1.5 the power to adopt or revise a Budget or Business Plan of the NYLGA;

2.6.1.6 the power to adopt or revise financial estimates and reports.

2.6.2 A delegation is revocable at will and does not prevent the NYLGA from acting in a matter.

2.6.3 Where a power or function is delegated to an employee, or a person occupying a particular office or position, that employee or person is responsible to the Chief Executive Officer for the efficient and effective exercise or performance of that power or function.

3. BOARD OF MANAGEMENT

3.1 Structure

3.1.1 The NYLGA is a body corporate and is governed by the Act and this Charter.

3.1.2 The Board is the NYLGA's governing body and has the responsibility for the administration of the affairs of the NYLGA ensuring that the NYLGA acts in accordance with this Charter and all relevant legislation including the Act.

3.2 Membership of the Board

3.2.1 The Board shall consist of all of the principal members of the Constituent Councils.

3.2.2 Each Constituent Council may appoint one person, who must be an elected member of the Council, to act as a proxy Board Member. A proxy Board Member will act as the nominated Board Member for a Constituent Council only when the principal member of the Council is not present at or taking part in a meeting of the Board or an Annual General Meeting.

3.2.3 Each Constituent Council shall, following every periodic Local Government election and as necessary, give notice in writing to the Chief Executive Officer, of those persons who are its Board Member and proxy Board Member.

3.2.4 Unless written approval is provided by the Chair, a proxy Board Member may not act as the nominated Board Member for a Constituent Council more than two times in any twelve month period.

3.3 Functions of the Board

3.3.1 In addition to the functions of the Board set out in the Act, the functions of the Board include:

3.3.1.1 the formulation of business plans and strategies aimed at achieving the objects and purposes of the NYLGA;

3.3.1.2 providing effective governance and developing such policies and procedures as give effect to good governance and administrative practices;

3.3.1.3 to providing input and strategic and policy direction to the NYLGA;

3.3.1.4 monitoring, overseeing and evaluating the performance of the Chief Executive Officer of the NYLGA;

3.3.1.5 ensuring that ethical behaviour and integrity is established and maintained by the NYLGA, the Board and Board Members in all activities undertaken by the NYLGA;

3.3.1.6 ensuring that the activities of the NYLGA are undertaken in an open and transparent manner;

3.3.1.7 exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons.

3.4 **Propriety of Members of the Board**

3.4.1 The principles regarding conflict of interest prescribed in the Act apply to all Board Members in the same manner as if they were elected members of a council.

3.4.2 The Board Members are required to comply with Division 2, Chapter 5 (Register of Interests) of the Act.

3.4.3 The Board Members will at all times act in accordance with their duties of confidence and confidentiality and individual fiduciary duties including honesty and the exercise of reasonable care and diligence with respect to the performance and discharge of official functions and duties as required by Part 4, Division 1, Chapter 5 of the Act and Clause 23 of Part 2 of Schedule 2 to the Act.

3.5 **Chair of the Board**

3.5.1 A Chair and two Deputy Chairs shall be elected at Annual General Meetings by and from the Board Members. The Chair will be referred to as the President of NYLGA and the Deputy Chairs will be referred to as the Vice Presidents of NYLGA.

3.5.2 A proxy Board Member is not eligible to be elected to the office of Chair or Deputy Chair.

3.5.3 The Chair and Deputy Chairs shall hold office from the Annual General Meeting at which they are elected for a period of two years.

3.5.4 Nominations from Constituent Councils for the positions of Chair and Deputy Chairs must be in writing and must reach the Chief Executive Officer no later than one week prior to the date of the relevant Annual General Meeting that these positions become vacant.

3.5.5 If the Chair resigns as Chair, is removed from office as Chair, refuses or is unable to act as Chairperson or is no longer a Board Member, either one of the Deputy Chairs may act as Chair until the election of a new Chair at the next Annual General Meeting.

3.5.6 The Chair shall preside at all meetings of the Board and, in the event of the Chair being absent from a meeting, one of the Deputy Chairs chosen by those Board Members present shall preside and in the event of the Chair and both Deputy Chairs being absent from a meeting, the Board Members present shall appoint a Board Member

from amongst them, who shall preside for that meeting or until the Chair or a Deputy Chair is present.

3.6 **Proceedings of the Board**

Board Meetings

3.6.1 Ordinary meeting of the Board must take place at such times and places as may be fixed by the NYLGA Board.

3.6.2 An ordinary meeting of the Board will constitute an ordinary meeting of the NYLGA. The Board shall administer the business of the NYLGA at the ordinary meeting.

3.6.3 For the purposes of this subclause, the contemporary linking together by telephone, audio-visual or other instantaneous means ('telecommunications meeting') of the Board Members provided that at least a quorum is present, is deemed to constitute a meeting of the Board. Each of the Board Members taking part in the telecommunications meeting, must at all times during the telecommunications meeting be able to hear and be heard by each of the other Board Members present. At the commencement of the meeting, each Board Member must announce his/her presence to all other Board Members taking part in the meeting. A Board Member must not leave a telecommunications meeting by disconnecting his/her telephone, audio-visual or other communication equipment, unless that Board Member has previously notified the Chair of the meeting.

3.6.4 Meetings of the Board will be open to the public and Chapter 6 Part 3 of the Act extends to the NYLGA as if the NYLGA were a council and the Board Members were members of the council.

3.6.5 The Chief Executive Officers of Constituent Councils or their delegate may attend meetings of the Board and provide such advice and support as may be required by the Board from time to time.

Notice of Meetings

3.6.6 Notice of an ordinary meeting of the Board and an Annual General Meeting must be given by the Chief Executive Officer to each Board Member and Chief Executive Officer of the Constituent Councils at least five (5) clear days prior to the holding of the meeting.

3.6.7 The Chief Executive Officer must, in relation to a notice of a meeting of the Board for the purpose of considering the making of a recommendation to the Constituent Councils to wind up the NYLGA, provide the notice to all Board Members and the Chief Executive Officers of the Constituent Councils at least four (4) months before the date of the meeting.

3.6.8 Notice of a meeting of the Board must:

3.6.8.1 be in writing; and

3.6.8.2 set out the date, time and place of the meeting; and

3.6.8.3 be signed by the Chief Executive Officer; and

3.6.8.4 contain, or be accompanied by, the agenda for the meeting.

3.6.9 Any Constituent Council, the Chair or three (3) Board Members may by delivering a written request to the Chief Executive Officer require a special meeting of the Board to be held. The request to the Chief Executive Officer requiring a special meeting to be held must be accompanied by the agenda for the meeting and any written reports intended to be considered at the meeting and if an agenda is not provided the request is of no effect.

3.6.10 On receipt of the request pursuant to Clause 3.6.8 the Chief Executive Officer must send a notice of the special meeting to all Board Members and Chief Executive Officers of the Constituent Councils at least twenty four (24) hours prior to the commencement of the special meeting.

3.6.11 The Chief Executive Officer must, insofar as is reasonably practicable:

3.6.11.1 ensure that items on an agenda given to Board Members are described with reasonable particularity and accuracy; and

3.6.11.2 supply to each Board Member at the time that notice of a meeting is given a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).

3.6.12 Notice of a meeting of the Board may be given to a Board Member:

3.6.12.1 personally; or

3.6.12.2 by delivering the notice (whether by post, electronically or otherwise) to the usual place of residence of the Board Member or to another place authorised in writing by the Board Member; or

3.6.12.3 by leaving the notice for the Board Member at an appropriate place at the principal office of the Constituent Council for which the Board Member is the principal member; or

3.6.12.4 by a means authorised in writing by the Board Member as being an available means of giving notice.

3.6.13 A notice that is not given in accordance with Clause 3.6.11 is taken to have been validly given if the Chief Executive Officer considers it impracticable to give the notice in accordance with that Clause and takes action the Chief Executive Officer considers reasonably practicable in the circumstances to bring the notice to the attention of the Board Member.

3.6.14 The Chief Executive Officer must give notice to the public of the times and places of meetings of the Board at least five (5) clear days prior to

the holding of the meeting by causing a copy of the notice and agenda for the meeting to be placed on the website of the Constituent Councils and the NYLGA.

3.6.15 Subject to Clause 3.6.17, the Chief Executive Officer must also ensure that a reasonable number of copies of any document or report supplied to Board Members for consideration at a meeting of the Board are available for inspection by members of the public:

3.6.15.1 on the NYLGA website as soon as practicable after the time when the document or report is supplied to Board Members; or

3.6.15.2 in the case of a document or report supplied to Board Members at the Board Meeting, at the meeting as soon as practicable after the time when the document or report is supplied to Board Members.

3.6.16 The Chief Executive Officer may indicate on a document or report provided to Board Members under Clause 3.6.15.2 any information or matter contained in or arising from a document or report that may, if the Board determines, be considered in confidence in accordance with Clause 3.6.4 provided that the Chief Executive Officer at the same time specifies the basis on which an order could be made pursuant to the provisions of Chapter 6 Part 3 of the Act.

3.6.17 Clause 3.6.15 does not apply to a document or report:

3.6.17.1 that is subject to the operation of Clause 3.6.16; or

3.6.17.2 that relates to a matter dealt with by the Board on a confidential basis in accordance with Clause 3.6.4 and Chapter 6 Part 3 of the Act.

3.6.18 The Chief Executive Officer must maintain a record of all notices of Board meetings given under Clause 3.6.11 to Board Members.

Quorum

3.6.19 A meeting of the Board must not commence until a quorum is present and a meeting must not continue if there is not a quorum of Board Members present. A quorum of Board Members will comprise one half of the Board Members in office, ignoring any fraction, plus one.

Voting

3.6.20 Unless otherwise required at law or this Charter, all matters for decision of a meeting of the Board shall be decided by a simple majority of the Board Members present and entitled to vote. All Board Members, including the Chair present and entitled to vote are required to vote. All Board Members including the Chair are entitled to a deliberative vote and if the votes are equal the Chair or other Board Member presiding does not have a second or casting vote.

Confidentiality

3.6.21 All Board Members must keep confidential all documents and any information provided to them for their consideration prior to a meeting of the Board that is subject to the operation of Clause 3.6.16 or that relates to a matter dealt with by the Board on a confidential basis in accordance with Clause 3.6.4 and Chapter 6 Part 3 of the Act.

Minutes

3.6.22 The Chief Executive Officer must cause minutes to be kept of the proceedings at every meeting of the Board and ensure that the minutes are presented at the next ordinary meeting of the Board and where the Chief Executive Officer is absent or excluded from attendance at a meeting of the Board pursuant to Clause 3.6.4 the person presiding at the meeting shall cause the minutes to be kept.

3.6.23 Subject to Clause 3.6.25 a copy of the minutes of a meeting of the Board must be placed on public display at the principal offices of the Constituent Councils and the NYLGA within five (5) days after the meeting and kept on public display for a period of one (1) month.

3.6.24 Subject to Clause 3.6.25, a person is entitled, on payment of a fee fixed by the Board, to obtain a copy of any documents placed on public display.

3.6.25 Clauses 3.6.23 and 3.6.24 do not apply in relation to a document or part of a document dealt with by the Board on a confidential basis in accordance with Clause 3.6.4 and Chapter 6 Part 3 of the Act.

3.6.26 Subject to this Charter the Board may determine its own procedures to apply to proceedings at and conduct of meetings of which must be fair and contribute to free and open decision making where the Board has not determined a procedure and the procedure is not specified in this Charter, the procedures specified in Part 2 of the Local Government (Procedures at Meetings) Regulations 2013 will apply.

3.7 **Annual General Meeting**

3.7.1 The Annual General Meeting will:

3.7.1.1 be held not later than 30 September in each calendar year;

3.7.1.2 receive the NYLGA's Annual Report which may incorporate reports from committees and any representatives reports from other organisations;

3.7.1.3 receive the audited financial statement for the preceding financial year;

3.7.1.4 acknowledge the appointment of Board Members;

3.7.1.5 elect the Chair and two Deputy Chairs;

3.7.1.6 appoint representatives to other organisations;

3.7.1.7 consider any other business requiring consideration by the Board Members in a general meeting.

4. **CHIEF EXECUTIVE OFFICER**

4.1 The Board shall appoint a Chief Executive Officer of the NYLGA to manage the affairs of the NYLGA on such terms and conditions as may be determined by the Board and agreed by the Chief Executive Officer.

4.2 The Chief Executive Officer may, but not need, be an employee of the NYLGA and may be given a different title by resolution of the Board.

4.3 The terms and conditions of the appointment and remuneration of the Chief Executive Officer shall be reviewed annually according to any agreement that may be in place with the Chief Executive Officer.

4.4 The Board shall delegate responsibility for the day to day management of the NYLGA to the Chief Executive Officer, who will ensure that sound business and human resource management practices are applied in the efficient and effective management of the operations of the NYLGA.

4.5 The functions of the Chief Executive Officer shall be specified in the terms and conditions of appointment and shall include but are not limited to:

4.5.1 attending at all meetings of the Board unless excluded by resolution of the Board;

4.5.2 ensuring that the decisions of the Board are implemented in a timely and efficient manner;

4.5.3 providing information to assist the Board to assess the NYLGA's performance against its Business Plans;

4.5.4 appointing, managing, suspending and dismissing employees of the NYLGA;

4.5.5 determining the conditions of employment of employees of the NYLGA, within budgetary constraints set by the Board;

4.5.6 providing advice and reports to the Board on the exercise and performance of its powers and functions under this Charter or any Act;

4.5.7 ensuring that the NYLGA is at all times complying with Schedule 2 of the Local Government Act 1999;

4.5.8 co-ordinating and initiating proposals for consideration of the Board including but not limited to continuing improvement of the operations of the NYLGA;

4.5.9 ensuring that the assets and resources of the NYLGA are properly managed and maintained;

4.5.10 ensuring that records of activities and financial affairs required under this Charter, the Act or any other legislation are properly kept and maintained;

4.5.11 ensuring that the NYLGA's annual report is distributed to the Constituent Councils in time to be incorporated in their annual reports;

4.5.12 exercising, performing or discharging other powers, functions or duties conferred on the Chief Executive Officer by or under the Act or any other Act, and performing other functions lawfully directed by the Board; and

4.5.13 achieving financial outcomes in accordance with adopted plans and budgets of the NYLGA.

4.6 The Chief Executive Officer may delegate or sub-delegate to:

4.6.1 a committee;

4.6.2 an employee of the NYLGA;

4.6.3 an employee of a Constituent Council; or

4.6.4 a person for the time being occupying a particular office or position,

any power or function vested in the Chief Executive Officer. Such delegation or sub-delegation may be subject to any conditions or limitations as determined by the Chief Executive Officer is revocable at will and does not prevent the Chief Executive Officer from acting in relation to a matter.

4.7 A written record of all delegations and sub-delegations must be kept by the Chief Executive Officer at all times.

5. FINANCIALS

5.1 Budget

5.1.1 The proposed Business Plan and the Budget must be referred to the Constituent Councils at least eight (8) weeks prior to the date of the meeting at which the budget is to be adopted.

5.1.2 Constituent Councils may comment on the Business Plan and the Budget in writing to the Chief Executive Officer at least ten (10) business days before the meeting at which the Budget is to be adopted or through its Board Member at that meeting.

5.1.3 The NYLGA must adopt the Business Plan and Budget after 31 May and before 30 June for the ensuing Financial Year.

5.1.4 The NYLGA must provide a copy of its adopted Budget to the Constituent Councils within five (5) business days after the adoption of the Budget by the NYLGA

5.1.5 Reports summarising the financial position and performance of the NYLGA against the Budget must be prepared and presented to the

Board at each ordinary meeting of the Board and copies provided to the Constituent Councils.

5.1.6 The NYLGA must reconsider its Budget in accordance with the Act and in a manner consistent with the Act and may amend its Budget for a Financial Year at any time before the year ends.

5.1.7 The NYLGA must submit to each Constituent Council for approval, any proposed amendment to the Budget that provides for an additional financial contribution by the Constituent Councils.

5.1.8 The contents of the Budget must be in accordance with the Act.

5.2 **Financial Standards and Reporting**

5.2.1 The NYLGA must ensure that the Financial Statements of the NYLGA for each Financial Year are audited by the NYLGA's auditor.

5.2.2 The Financial Statements must be finalised and audited in sufficient time to be included in the Annual Report to be provided to the Constituent Councils pursuant to Clause 6.2.3.

5.3 **Financial Management**

5.3.1 The NYLGA shall keep proper books of accounts in accordance with the requirements of the Act and Local Government (Financial Management) Regulations 1999.

5.3.2 The NYLGA must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board.

5.3.3 The NYLGA will develop and maintain appropriate policies and procedures for all financial transactions including in relation to signing cheques and electronic funds transfer.

5.3.4 The Chief Executive Officer must act prudently in the handling of all financial transactions for the NYLGA.

5.4 **Levies**

5.4.1 The NYLGA may levy Constituent Councils or any of them for a specified purpose or purposes.

5.4.2 A levy must be imposed by a meeting of the Board.

5.4.3 The Chief Executive Officer must give notice of the levy to all affected Constituent Councils.

5.4.4 A levy will not be binding on Constituent Councils until the expiration of one calendar month from the date of the notice.

5.4.5 A Constituent Council which objects in writing to the imposition of the levy within one month of the date of the notice shall be exempt from payment of the levy until its objection is considered at a meeting of the Board.

5.4.6 The NYLGA must, after consideration of the objection of one or more Constituent Councils to a levy, confirm or vary the levy on that Council or exempt that Council from payment of the levy.

5.4.7 The Chair may convene an urgent meeting to consider an objection to a levy.

5.4.8 In the event that a Constituent Council does not wish to participate in an activity or activities to which the specified purpose or purposes of a levy relate, that Constituent Council may elect to be excluded from that activity or activities provided that the Board is satisfied that the Constituent Council will not receive a material benefit from the activity or activities.

6. MANAGEMENT FRAMEWORK

6.1 Business Plan

6.1.1 The NYLGA shall have a rolling Business Plan with respect to the forthcoming four years.

6.1.2 The Business Plan must:

(a) identify the NYLGA objectives over the period;

(b) identify the principal activities that the NYLGA intends to undertake to achieve its objectives;

(c) state the measures that are to be used to monitor and access the performance of the NYLGA over the period;

(d) set out the means by which activities are to be carried out with supporting financial projections setting out the estimates of revenue and expenditure as necessary for the period;

(e) address issues associated with arranging its affairs; and

(f) make provision for the review of the NYLGA Charter at least once in every 4 years.

6.1.3 The NYLGA shall consult with the Constituent Councils prior to adopting or amending the Business Plan.

6.1.4 The NYLGA shall ensure contents of the Business Plan is in accordance with the Act.

6.2 Annual Report

6.2.1 The NYLGA must each year, produce an Annual Report summarising the activities, achievements and financial performance of the NYLGA for the preceding Financial Year.

6.2.2 The Annual Report must incorporate the audited financial statements of the NYLGA for the relevant Financial Year.

6.2.3 The Annual Report must be provided to the Constituent Councils by 30 September each year.

6.3 **Audit**

6.3.1 The NYLGA must cause adequate and proper books of account to be kept in relation to all the affairs of the NYLGA and must establish and maintain effective auditing of its operations.

6.3.2 The NYLGA must appoint an Auditor in accordance with the Act on such terms and conditions as determined by the NYLGA.

6.3.3 The audited Financial Statements of the NYLGA, together with the accompanying report from the Auditor, shall be submitted to both the Board and the Constituent Councils by 30 September in each year.

6.4 **Audit and Risk Committee**

6.4.1 The NYLGA must establish an Audit and Risk Management Committee to be comprised of five (5) persons nominated by the NYLGA and approved by the Constituent Councils.

6.4.2 The members of the Audit and Risk Management Committee:

6.4.2.1 must include two (2) professionally qualified officers, one of each from the staff of the Constituent Councils;

6.4.2.2 must include at least 1 person who is not a member of the Board and who is determined by the Constituent Councils to have financial experience relevant to the functions of the Audit and Risk Management Committee;

6.4.2.3 may include elected members of the Constituent Councils;

6.4.2.4 must have regard to the Act in performing their duties.

6.4.2.5 The term of appointment of a member of the Audit and Risk Management Committee shall be for a term not exceeding two (2) years at the expiry of which such member will be eligible for reappointment.

7. **MISCELLANEOUS**

7.1 **New Members**

7.1.1 Subject to the provisions of the Act, a council may become a Constituent Council by the unanimous agreement of the Constituent Councils and this Charter may be amended to provide for the admission of a new constituent council or councils, with or without conditions of membership.

7.2 **Subscription**

7.2.1 Every Constituent Council shall be liable to contribute monies to the NYLGA each financial year.

7.2.2 The amount of each Constituent Council's subscription will be decided by the Board at the meeting where they adopt the Annual Budget and subscriptions will be due and payable within one month of a written request from the Chief Executive Officer for payment.

7.3 **Disqualification**

7.3.1 Subject to any legislative requirements, a Council which fails to pay its subscription or any other monies due to the NYLGA within six months from the date upon which the subscription or other monies become due and payable shall cease to be a Constituent Council.

7.3.2 The Chief Executive Officer will give notice in writing to the Council that its status as a Constituent Council has been terminated.

7.4 **Withdrawal**

7.4.1 Subject to the Act and this Charter, a Constituent Council may withdraw from the NYLGA by giving notice in writing of its intention to withdraw to the Chief Executive Officer provided that its subscription of the current year and other monies outstanding prior to the date of its giving notice of withdrawal have been paid to the NYLGA.

7.4.2 Written notice of an intention to withdraw under Clause 7.4.1 must be received by the Chief Executive officer prior to 31 December and subject to the Act and this Charter the withdrawal will take effect from the following 30 June.

7.4.3 Until a withdrawal becomes effective the Constituent Council proposing the withdrawal from the NYLGA will remain liable for all financial contributions in the remaining period.

7.4.4 A withdrawing Constituent Council is not entitled to any refund of the financial contributions made to the NYLGA.

7.4.5 The withdrawal of any Constituent Council does not extinguish the liability of that Constituent Council to contribute to any loss or liability incurred by the NYLGA at any time before or after such withdrawal in respect of any act or omission by the NYLGA prior to such withdrawal.

7.5 **Insurance and Superannuation Requirements**

7.5.1 The NYLGA shall register with the Local Government Mutual Liability Scheme and Local Government Workers Compensation Scheme and comply with the rules of those Schemes.

7.5.2 The NYLGA shall advise the Local Government Risk Management Services of its insurance requirements relating to Local Government Special Risks including buildings, structures, vehicles and equipment under the management, care and control of the NYLGA.

7.6 **NYLGA Winding Up**

7.6.1 The NYLGA may be wound up in accordance with the Act by unanimous resolution of the Constituent Councils.

7.6.2 In the event of a winding up, any surplus assets after payment of all expenses shall be returned to each Constituent Councils in proportion to the subscription paid by each Constituent Council in the financial year prior to the passing of the resolution wind up.

7.6.3 If there are insufficient funds to pay all expenses due by the NYLGA on winding up, a levy shall be imposed on all Constituent Councils in proportion to the subscription paid by each Constituent Council in the financial year prior to the passing of the resolution to wind up.

7.7 **Non-derogation and Direction by Constituent Councils**

7.7.1 The establishment of the NYLGA does not derogate from the power of any of the Constituent Councils to act independently or jointly in relation to a matter within the jurisdiction of the NYLGA.

7.7.2 Provided that the Constituent Councils have first agreed by unanimous resolution of each Constituent Council as to the action to be taken, the Constituent Councils may jointly direct and control the NYLGA.

7.7.3 Where the NYLGA is required pursuant to the Act or this Charter to obtain the approval of one or more of the Constituent Councils that approval must only be granted and must be evidenced by a resolution passed by either or all of the Constituent Councils granting such approval.

7.7.4 Unless otherwise stated in this Charter where the NYLGA is required to obtain the consent or approval of the Constituent Councils this means the consent or approval of all of the Constituent Councils expressed in the same or similar terms.

7.7.5 For the purpose of Clause 7.7.1, any direction given by the Constituent Councils must be communicated by notice in writing provided to the Chief Executive Officer of the NYLGA together with a copy of the relevant resolutions of the Constituent Councils.

7.8 **Alteration and Review of Charter**

7.8.1 This Charter will be reviewed by the Constituent Councils at least once in every four (4) years.

7.8.2 This Charter may be amended by a resolution passed by a simple majority of the Constituent Councils.

7.8.3 Before the Constituent Councils vote on a proposal to alter this Charter, they must take into account any recommendation of the Board.

7.9 **Disputes**

7.9.1 **General**

7.9.1.1 Where a dispute arises between the Constituent Councils or between a Constituent Council and the Authority (the parties to this Charter) which relates to this Charter or the Authority,

('the Dispute') the parties will use their best endeavours to resolve the Dispute and to act at all times in good faith.

7.9.2 **Mediation**

7.9.2.1 A party is not entitled to initiate arbitration or court proceedings (except proceedings seeking urgent equitable or injunctive relief) in respect of a Dispute unless it has complied with this Clause 7.9.2.

7.9.2.2 If the parties are unable to resolve the Dispute within thirty (30) days, the parties must refer the Dispute for mediation in accordance with the Mediation Rules of the Law Society of South Australia Incorporated, within seven (7) days of a written request by any party to the other party that the Dispute be referred for mediation, to:

(a) a mediator agreed by the parties; or

(b) if the parties are unable to agree on a mediator at the time the Dispute is to be referred for mediation, a mediator nominated by the then President of the Law Society or the President's successor.

7.9.2.3 In the event the parties fail to refer the matter for mediation in accordance with Clause 7.9.2.2, one or more of the parties may refer the matter for mediation in accordance with the Mediation Rules of the Law Society of South Australia Incorporated to a mediator nominated by the then President of the Law Society or the President's successor.

7.9.2.4 The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.

7.9.2.5 If mediation does not resolve the Dispute within 28 days of referral of the Dispute for mediation or such longer period agreed unanimously by the parties as evidenced by resolutions of each of the parties, any party may then refer the Dispute to Arbitration in accordance with Clause 7.9.3.

7.9.3 **Arbitration**

7.9.3.1 An arbitrator may be appointed by agreement between the parties.

7.9.3.2 Failing agreement as to an arbitrator the then Chairperson of the South Australian Chapter of the Institute of Arbitrators or his successor shall nominate an Arbitrator pursuant to these conditions.

7.9.3.3 A submission to arbitration shall be deemed to be a submission to arbitration within the meaning of the Commercial Arbitration Act 1985 (South Australia).

7.9.3.4 Upon serving a notice of arbitration the party serving the notice shall lodge with the arbitrator a deposit by way of security for the cost of the arbitration proceedings.

7.9.3.5 Upon each submission to arbitration, the costs of and incidental to the submission and award shall be at the discretion of the arbitrator who may in his or her sole discretion determine the amount of costs, how costs are to be proportioned and by whom they are to be paid.

7.9.3.6 Whenever reasonably possible performance of the obligations of the parties pursuant to this Charter shall continue during the mediation or arbitration proceedings and no payment by or to a party shall be withheld on account of the mediation and arbitration proceedings.

7.10 **Committees**

7.10.1 The Board may establish a committee of Board Members and/or other persons for the purpose of:

7.10.1.1 enquiring into and reporting to the Board on any matter within the NYLGA's functions and powers and as detailed in the terms of reference given by the Board to the Committee; or

7.10.1.2 exercising, performing or discharging delegated powers, functions or duties.

7.10.2 A member of a committee established under this Clause holds office at the pleasure of the Board.

7.10.3 The Board may establish advisory committees consisting of or including persons who are not Board Members for enquiring into and reporting to the Board on any matter within the NYLGA's functions and powers and as detailed in the terms of reference determined by the Board.

7.10.4 A member of an advisory committee established under this clause holds office at the pleasure of the Board.

7.10.5 The Chair of the Board is ex-officio a member of any committee or advisory committee established by the Board.

7.11 **NYLGA Common Seal**

7.11.1 The NYLGA shall have a common seal upon which its corporate name shall appear in legible characters.

7.11.2 The common seal shall not be used without the express authorisation of a resolution of the NYLGA Board and every use of the common seal shall be recorded in the minute book of the NYLGA.

7.11.3 The affixing of the common seal shall be witnessed by the Chair or a Deputy Chair and the Chief Executive Officer or such other person as the NYLGA may appoint for the purpose.

7.11.4 The common seal shall be kept in the custody of the Chief Executive Officer or such other person as the NYLGA may from time to time decide.

7.12 **Circumstances Not Provided For**

7.12.1 If any circumstance arises about which this Charter is silent, incapable of taking effect or being implemented according to its strict provisions, the Chair may decide the action to be taken to ensure achievement of the objects of the NYLGA and its effective administrator.

7.12.2 The Chair shall report any such decision at the next general meeting.

PROCEDURAL ITEMS

3.1 Petitions

3.1.1 PETITION - SEALING OF NELDNER ROAD

Author: Director Infrastructure and Environmental Services
24/26187

PURPOSE

A petition containing 40 signatories has been received regarding – to have Neldner Road, Tanunda bitumen sealed and to be finally included as a priority in the 2024/25 budget.

RECOMMENDATION

That Council receive and note the petition and decline to undertake the requested upgrade to a sealed road service level based on the prior assessment of Council and the factors determining that decision remain fundamentally unchanged.

REPORT

The petition seeks Council to have Neldner Road, Tanunda bitumen sealed and to be finally included as a priority in the 2024/25 budget has been presented by David Mahlo and Joy Brauer.

This request has been previously debated by prior Council, and the relevant report is provided at Attachment 2. The road service level for Neldner Road at that time is Class 4: Local Collector (Connecting activity nodes) and remains unchanged in its service level classification. Prior Councils did not support advancing this work ahead of the many other priorities. Further the request was raised as new initiatives in 2019 and 2020 and not supported for the same reasons of lower priority to other road priorities. As it currently stands this road ranks 170th in the prioritised list of unsealed roads that could be eligible for sealing.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Petition to seal Neldner Road Tanunda ⇩
Attachment 2 Neldner Road - Minutes extract - 15 October 2019 - Council declined recommendation to seal Neldner Road - proposed Bushman Street and Short Row ⇩

Supporting references
Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Corporate Plan

BS7 Governance - Provision of governance advice and support in the discharge of legislative responsibilities for policy development, delegations and authorisations, internal review of Council decisions, delegations and authorisations, Native Title claims

Legislative Requirements

Nil

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Nil

COMMUNITY ENGAGEMENT

Nil

FEBRUARY 2024.

1 OF 6

SEALING of NELDNER ROAD, TANUNDA.

SUMMARY.

THE FOLLOWING POINTS SUPPORT THE PETITION.

- IT IS POSSIBLY THE LAST GRAVEL ROAD IN THE VALLEY 'FLOOR'.
- THERE IS INCREASED USAGE AND VOLUMES OF TRAFFIC (INCL. TRUCKS)
- IT WOULD REQUIRE LESS THAN 1 KM OF BITUMEN.
- WOULD RELIEVE 'U' TURNS AND CONGESTION ON MAGNOLIA RD.
- FAITH COLLEGE COMPLEX BORDERS ONTO NELDNER RD.
- IT IS IN CLOSE PROXIMITY TO ALSO, BAROSSA ARTS CENTRE REX CENTRE, TANUNDA PRIMARY and CRECHE, & NEW RUGBY CENTRE.
- HEALTH & RESPIRATORY CONCERNS. ATTACHED PHOTO OF DUST CLOUDS
- MANY MORE LOCALS WOULD USE IT, IF SEALED, BASICALLY SHIFTING SOME TRAFFIC CONGESTION AWAY FROM THE TOWN.
- MAYBE A BIKE PATH COULD BE INCORPORATED, FOR SCHOOL CHILDREN TO SAFELY ACCESS THE SCHOOLS AND SPORTS FACILITIES.

THANK YOU FOR YOUR TIME AND CONSIDERATION OF OUR NEED.

WE REMAIN WITHOUT BIAS,

YOURS SINCERELY., YOUR PETITIONERS.

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2 OF 6.

NELDNER ROAD, TANUNDA.

WE THE UNDERSIGNED, RESPECTFULLY PETITION THE CEO, THE MAYOR, and the ELECTED COUNCILLORS of BAROSSA COUNCIL.;

"TO HAVE NELDNER ROAD, TANUNDA, BITUMEN SEALED.
AND TO BE FINALLY INCLUDED AS A PRIORITY IN THE 2024/25 BUDGET."

NAME.	SIGNATURE	ADDRESS. PHONE Nº.
Helen Lester	Helen Lester	36 Neldner Rd. 041 8853185
DON. Lester.		36 Neldner Rd. 0418853813
AMY CANUTE	A Canute	223 Basedow Rd. 0408050071
Allen Neldner		55 Neldner Rd. 0415763348
David Neldner	D.E. Neldner	55 Neldner Rd 85632036
Denise Habermann		1200 High Pass Rd. 0418835379
Fiona Habermann		107 Neldner Rd 0418 993825
Daniel Habermann		107 Neldner Rd 0408 816836
Kerry Blanchard		38 Neldner Rd 0422666278
Craig Simpson		38 Neldner Rd 0422666278
Joshua Simpson		38 Neldner Rd 0422666278
Jed Habermann		107 Neldner Rd 0455 993825
MAGGIE BEER		307 Magnolia Rd Vinoka —
COLIN BEER		" "
Lily Dumford		171 Magnolia Rd, Tanunda
Leanne Kraft		201 Magnolia Rd, Tanunda.
SHANE KRAFT		" " " "
		0414420730

3 OF 6

NELDNER ROAD, TANUNDA.

WE THE UNDERSIGNED, RESPECTFULLY PETITION THE CEO, THE MAYOR, and the ELECTED COUNCILLORS of BAROSSA COUNCIL.;

"TO HAVE NELDNER ROAD, TANUNDA, BITUMEN SEALED. AND TO BE FINALLY INCLUDED AS A PRIORITY IN THE 2024/25 BUDGET."

NAME.	SIGNATURE	ADDRESS. PHONE Nº.
Steven Wilksch		Principal Faith Lutheran College
Anton van Breda		Business Director Faith Lutheran College
Stephen Dutschke		Faith Lutheran College.
Jasmine Centerera		Teacher SS FLC.
Julia Nobes		Nurbotpa
Melanie Metz		Teacher Faith Lutheran College.
Nerida Harris		Faith Lutheran College

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NELDNER ROAD, TANUNDA.

WE THE UNDERSIGNED, RESPECTFULLY PETITION THE CEO, THE MAYOR, and the ELECTED COUNCILLORS of BAROSSA COUNCIL.;

"TO HAVE NELDNER ROAD, TANUNDA, BITUMEN SEALED. AND TO BE FINALLY INCLUDED AS A PRIORITY IN THE 2024/25 BUDGET."

NAME.	SIGNATURE	ADDRESS. PHONE Nº.
Ken Randall	Randall	Principal - Tanunda Primary School.
Indiana Wagland		Bucle - team leader
DAVID MAHLO	Mahlo	69 MURRAY ST ANGASTON. 0422-614-097
Joy Brauer	JD Brauer	1 Para Rd Tanunda 0412811011
Zoë Beer	(PROXY)	55 Neldner Rd Tanunda 0475135659
SUE PRIDEAUX	(PROXY)	55 NELDNER RD. 0434983118
Kim Chapman.	Chapman.	97 Needles Rd. 0422214231
GEOFFREY SCHRAPEL	Schrapel	Bethany Wines / 195. Bethany Rd JP - BARONS BAROSSA.
ANNA SCHRAPEL	Anna Schrapel.	Bethany Heritage SA / Bethany Wines 342 Bethany Road. Bethany.
ROBERT SCHRAPEL	Schrapel	FOUNDER OF BETHANY WINES 342 BETHANY WINES PTY LTD.

5 OF 6

NELDNER ROAD, TANUNDA.

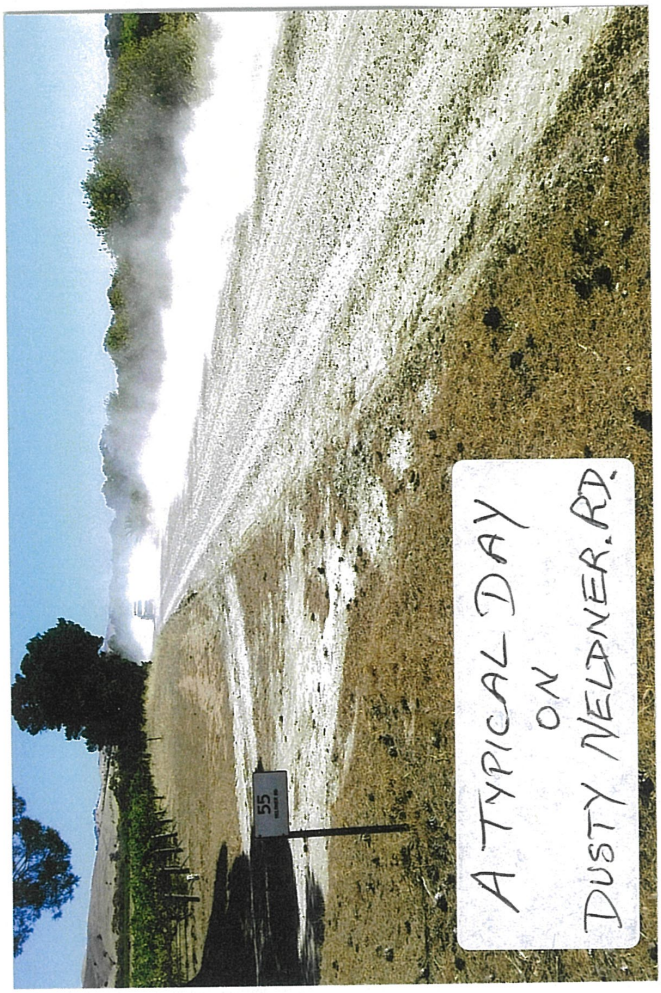
WE THE UNDERSIGNED, RESPECTFULLY PETITION THE CEO, THE MAYOR, and the ELECTED COUNCILLORS of BAROSSA COUNCIL.;

"TO HAVE NELDNER ROAD, TANUNDA, BITUMEN SEALED.
AND TO BE FINALLY INCLUDED AS A PRIORITY IN THE 2024/25 BUDGET."

NAME.	SIGNATURE	ADDRESS.	PHONE Nº.
Matilda Kraft		171 Magnolia rd tanunda	0429220384
Hayley Semmler		12 South Tce Nuriootpa	0446329716.
CHRISTINE CANUTE		14 Lehmann Rd. TANUNDA.	
DENNIS CANUTE		14 LEHMANN RD TANUNDA.	
CHRISTIAN CANUTE		223 BASEDOW RD. TANUNDA	
* OWNER, RUSDEN WINES		+ 221 MAGNOLIA RD TANUNDA	

6 OF 6.




A TYPICAL DAY
ON
DUSTY NELDNER RD.
55

2019/444

- alignment with new legislation and Council policies such as the *Safety of Children and Vulnerable Adults Policy* and supporting policies and processes;
- improved mechanisms for approving Temporary Volunteers and engaging Volunteers;
- changes in age requirement for clearances in line with the recently commenced *Children and Young People (Safety) Act 2017* and *Child Safety (Prohibited Persons) Act 2016*;
- updating recognition afforded to Volunteers to include years of service certificates;
- a more rigorous induction process and screenings for prospective Volunteers including interviews and referee checks;
- more detailed guidelines regarding the use of Council resources

Summary and Conclusion
Council is now asked to approve public consultation for a period of 28 days, on the Volunteer Management Policy and Volunteer Management Process, in accordance with Council's Public Consultation Policy. Upon conclusion of the public consultation period, any community feedback will be compiled and presented to Council, for consideration and final approval of the Policy and Process.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES
Attachment 1: The Barossa Council Volunteer Management Policy 17/50404
Attachment 2: The Barossa Council Volunteer Management Process 17/68838
Attachment 3: Draft Community Consultation and Communication Plan 19/58573

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

How We Work – Good Governance

Corporate Plan
6.2 Ensure that Council's policy and process frameworks are based on principles of sound governance and meet legislative requirements.
6.16 Provide contemporary internal administrative and business support services in accordance with mandated legislative standards and good practice principles.

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS
Financial Considerations
The cost of community consultation will be met from the existing Volunteer Services advertising budget line 233-820.
Resources
Once adopted, the Volunteer Management Policy and Process will be implemented within existing resources, and any additional requirements will be absorbed into Officer day-to-day duties.

Risk Management
Risk is minimised by ensuring that the Volunteer Management Policy and Process align with industry best practice standards, and current legislation. The updates also improve processes to enhance efficiency and oversight where necessary. Appropriate management of volunteers is a reputational matter for Council.

COMMUNITY CONSULTATION
The Barossa Council Volunteer Policy and Process will be released for public consultation for a period of 28 days, commencing 23 October 2019 and concluding at 5.00pm on 20 November 2019, in accordance with legislative requirements, the Council's Public Consultation Policy and the proposed Consultation and Communication Plan.

7.4.1 DIRECTOR WORKS AND ENGINEERING SERVICES - DEBATE

COPY

7.4.1.1
FOLLOW UP REPORT ON APPLICATION OF FUNDS TO ROAD SEALING
B9302

2019/445

MOVED Cr Haebich that Council receives and notes the draft Road Prioritisation List and instructs officers to scope up the upgrade and sealing of Bushman Street, Tanunda and Short Row, Angaston as the priorities outlined by the road data assessment for inclusion in the 2020-21 financial year budget and Business Plan.
Seconded Cr Wiese-Smith **CARRIED 2018-22/347**

PURPOSE

To consider the allocation of resources received through the increase to the Roads to Recovery Program, unallocated road reseal budget, capital savings taking into consideration the sealing of Neldner Road and remaining section of Bushman Street, Tanunda.

REPORT

At the 17 September 2019 meeting it was decided that a report be provided in accordance with Part 3 of the resolution taking into consideration the sealing of Neldner Road, Tanunda, and the remaining eastern section of Bushman Street, Tanunda.

Background

At the September meeting council
MOVED *Mayor Lange that*

(1) Council responds to Mayor Karen Redman, Town of Gawler, confirming Council's commitment to support a joint application (2021/2022) to the State Government's Regional Growth Fund Competitive Pool for approximately $678,000 financial assistance towards the delivery of the Strategic Cycling Connections Project which will complete the Barossa Trail to the Town of Gawler.

(2) If and when the Grant application is successful, Council will consider any future final budget allocation at that time.

(3) A further report be provided on other possible expenditure to utilise the Unallocated Road Reseal Budget 2019/2020 ($351,470) and any other possible capital project savings, taking into consideration the sealing of Neldner Road and remaining section of Bushman Street, Tanunda.

Seconded *Cr Miller* ***CARRIED 2018-22/319***

Introduction

As requested and presented to Council in September 2019 the road data assessment indicates the following are the next priorities for consideration of upgrading:

1) Short Row, Angaston (Jubilee Avenue to end)
2) Bushman Street, Tanunda (Macdonnell Street to end)
3) Bela Court, Lyndoch (Lyndoch Valley Road to end)
4) Altmann Street, Moculta (end to Linke Street)
5) Goldfields Road, Cockatoo Valley (various sections)
6) Fife Street, Angaston (Surface change to Lindsay Street)
7) Altmann Street, Moculta (Linke Street to Albert Presser Street)

COPY

Council has asked also for an assessment of Neldner Road and Bushman Street, Tanunda in setting future allocations of funds.

Neldner Road, Tanunda, from Basedow Road to Magnolia Road is classified as a rural rubble sheeted surface function priority 2,1 with medium to high social importance. The road was last re-sheeted in 2016 and is scheduled for another re-sheet in 2043 i.e. 27 years expected life remaining. Traffic count is as follows:

As at May 2018:
Morning peak – 25 vehicles 0800-0900hrs
Afternoon peak – 12 vehicles 1500-1600hrs
5-day week 24 hr average – 74 vehicles
7-day week 24 hr average – 61 vehicles

Bushman Street (east), Tanunda, is a township rubble sheeted surface function priority 5,4 with medium to high social importance. The road was last re-sheeted in 1999 and is due for another re-

2019/446

sheet in 2026 i.e. 7 years expected life remaining. There are no traffic counts on file for the unsealed section of Bushman Street.

Discussion

Neldner Road, Tanunda

Council has received 9 requests via pathway to upgrade the road, two New Initiatives were submitted for the FY2019/20 budget year, Council has also received a resident letter and a letter from Faith Lutheran College via Stephen Knoll's office requesting an upgrade of Neldner Road.

The earliest request on record to seal the road goes back to May 1997 when Council received a petition with 221 signatures, there was also a letter to the editor The Leader dated 4 June 1997.

The road sits at number 345 out of 407 within the draft Prioritisation List.

The cost to upgrade Neldner Road is estimated at approximately $600,000 including contingency.

Bushman Street (east), Tanunda

Council has received 2 requests via Pathway to upgrade the road, one New Initiative submission and multiple letters from a resident.

The road sits at number 2 out of 407 within the draft Prioritisation List, its high ranking is due to weighted preference of upgrading unsealed roads with townships.

The cost to upgrade Bushman Street is estimated at approximately $80,000 including contingency.

Both these projects are unfunded. Funding could be achieved by bringing forward unallocated Roads to Recovery funding of approximately $385,000 from the next four years plus utilising the unallocated Road Reseal Budget from FY2019/20 budget of $351,470 to deliver the works. Future works programmes would need to be adjusted (reduced) in the FY2021/22 budget year to release the necessary funding for the Barossa Trail connection to Town of Gawler should the Regional Growth Fund application be successful.

Capacity to deliver the works in the FY2019/20 budget year is limited with resources highly utilised delivering the current works programme, additional delivery resources could be bought in to manage the work at a cost of approximately $45,000, Timing may be a risk with the usual 2 week contractor/construction shut-down over the Christmas period and a push to get works completed ahead of the cooler weather.

Equally officers are currently assessing the next phase and priorities around footpath investment and this will be available for the setting of the 2020/21 financial year budget and business plan and these funds could be used to address footpath condition as well.

Summary and Conclusion

As previously reported at the September Council meeting the draft Road Prioritisation List scored each unsealed road by planning zone, existing housing density and service level (tourism, social and commercial use) and was based on existing data from the Infrastructure Asset Management Plans.

Should Council seek to fund road upgrades it is recommended to execute unsealed township road upgrades as per the prioritised listing. Short Row, the first priority, is estimated at approximately $46,000 to upgrade then approximately $80,000 to upgrade Bushman Street. Cost estimates have not been completed for the other roads listed above.

The recommendation from officers is clearly based on the road data. It is understood there are broader considerations that Council may wish to consider, an alternative resolution could be to defer the matter until the development of the 2020/21 budget and business plan as presently it is unlikely that an allocation of resources to a project at this time in the financial year could be achieved in any case.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Draft Road Prioritisation list – 19/24369

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

Infrastructure

COPY

2019/447

COPY

Business and Employment

Corporate Plan

3.6 Maintain and improve transport infrastructure to support economic, social and tourism activity with available resources and acceptable levels of service.

3.8 Ensure Council owned roads, bridges, footpaths, tracks and car parking are accessible, safe and maintained to an agreed level of service.

Legislative Requirements

Nil

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Project budgets will be considered as part of the FY2020/21 annual budget and business plan review

COMMUNITY CONSULTATION

No community consultation has been undertaken, should Council decide to progress with the road upgrades the usual construction notices and letter drops will be undertaken.

7.4.1.2

PROPOSED ROAD CLOSURE – 2019 WILLIAMSTOWN CHRISTMAS PARADE AND FAIR

B9032

MOVED Cr Wiese-Smith that the Commissioner of Police be advised that The Barossa Council endorses the closure of the following roads:

Victoria Terrace, Williamstown, from George Street to Queen Street between 3.00pm and 4.00pm, and

Queen Street, Williamstown, from Victoria Terrace to Memorial Drive between 3.00pm and 4.00pm

On Sunday 8 December 2019 to stage the 2019 Williamstown Christmas Parade and Fair.

Seconded Cr Johnstone **CARRIED 2018-22/348**

PURPOSE

The Williamstown Action Group has applied to The Barossa Council for support as they plan the 2019 Williamstown Christmas Parade and Fair on Sunday 8 December 2019.

REPORT

Background

Council has supported township Christmas parades for many years by organising and implementing the road closures and rubbish removal for the events.

The Parade will require a full street closure and diversion of traffic on the day and council operations staff will provide this support.

Summary and Conclusion

Council Operations staff has further assisted the local community to prepare and stage this event with assistance in the following areas

- Putting up the Christmas banners if required
- Street sweeping - as close as possible to the event
- Emptying of bins – also as close as possible to the event
- General main street tidy up

Council Officers will also request SAPOL direct that persons taking part in the 'Williamstown Christmas Parade and Fair' on the above roads be exempted from all Australian Road Rules relating to pedestrian behaviour on roads.

Attending to these items enables the Williamstown Action Group to successfully host the event each year as per the Community Plan.

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

PROCEDURAL ITEMS

3.4.1 QUESTION ON NOTICE – COUNCILLOR PREECE - WELCOME TO COUNTRY CEREMONY COSTS

24/29482

PURPOSE

To consider a question on notice provided in accordance with the *Local Government Act 1999* by Cr Preece at the March 2024 meeting of Council.

RECOMMENDATION

That Council receive and note the response and that the question and response be placed in the minutes.

QUESTION AND RESPONSE

Question

How much has it cost the ratepayers of The Barossa Council engaging an Aboriginal Elder to perform Welcome to Country at council events from its inception (clarified as the inception of having Welcome to Country at relevant events) until now?

Response

$9700 exclusive of GST.

From the available records the first formal Welcome to Country was paid for on 25 June 2021.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Nil

Supporting references

Nil

Mayor's Report - March Meeting 2024

24/24649

FEBRUARY/MARCH

14/02/2024	Stormwater Management Authority Meeting – Adelaide.
14/02/2024	Australia Regional Radio interview - Tanunda acknowledged as SA Number 1 Wotif 2024 Aussie Town of the Year Awards. *Tanunda, SA - Known as the 'red heart' of the Barossa, Tanunda sits in a prime position. From iconic heritage buildings to the beauty of the Barossa ranges and surrounding vineyards, it aptly derives its name from the Aboriginal word for watering hole. The town of Tanunda also boasts a strong European heritage thanks to the German immigrants who settled in the town in the 1800s.*
14/02/2024	Flow FM radio interview - Wotif 2024 Aussie Town of the Year Awards.
14/02/2024	Meeting with the newly elected Nuriootpa RSL President – Grant opportunities.
20/02/2024	Faith Lutheran College student presentation – 'Local Government Roles and Responsibilities'
21/02/2024	Travelling Life Radio Interview - Wotif 2024 Aussie Town of the Year Awards.
22/02/2024	Triple BFM Radio Interview – Growth and Infrastructure Plan.
22/02/2024	National Veterans Over 65 Carnival Presentation





27/02/2024 Meeting with John Geber regarding the Growth and Infrastructure Plan.

29/02/2024 Presentation at Good Shepherd School with Jo Moen, Director Corporate Services and Business Innovation – 'Leadership Roles and Responsibilities'.



29/02/2024 Regional Reform Roundtable meeting – Convened by Tony Piccolo, Member for Light, including Mayors and representatives from Light, Gawler, Adelaide Plains and Mid Murray Councils.

4/03/2024 Meeting and presentation – Delegation from China Department of Commence Shandong Province.







4/03/2024 ABC Adelaide radio interview regarding possible rail to the Barossa following RAA announcement.

8/03/2024 Representing Council at the International Women's Day luncheon with Dr Nicola Spurrier as the Guest speaker.



11/03/2024 SACA Community Cricket Awards Breakfast where The Barossa Council and the Tanunda Cricket Club were awarded with the Cricket Facility of the Year 2024.





ATTACHMENTS

Attachment 1 Barossa Beauty - E-mail from President of South Australian Veterans Cricket Association ⇩

From: Janine Harding
To: Janine Harding
Subject: FW: [EXTERNAL] Barossa Beauty!
Date: Tuesday, 27 February 2024 11:14:27 AM

From: President SAVCA <president@savca.com.au>
Date: 23 February 2024 at 12:31:56 pm ACDT
Subject: [EXTERNAL] Barossa Beauty!

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Dear SAVCA Members,

Your Association has just conducted an incredibly successful tournament in the Barossa. Last night we received accolades from all states and the New Zealanders for running a friendly and competitive carnival, with requests for us to do so again next year. The Mayor of the Barossa Council, Bim Lange, has offered support for future events and is extremely keen for us to venture north again.

The SAVCA community performed wonderfully. Our team, led by Tim Pellen and Colin Murdoch, just missed out on playing in the final but narrowly won the bronze medal, winning three of their four matches. Many of our players assisted other teams who were short of players. They performed with great credit and enthusiasm. Our umpires did their usual excellent job and were mentioned in despatches very positively by our visitors. Other members acted as hosts at each of the venues, freely giving up their time to make sure that competing teams were well looked after. Many wonderful partners came along to support the players, adding greatly to the positive atmosphere of the occasion.

The SAVCA Committee deserve great credit for taking a punt on holding the tournament, answering an open request from Veterans Cricket Australia. Our special thanks go to Tim Pellen, Stephen Brown, Bill Kidd and Frank Sergi for doing a brilliant job as the Organising Committee. Brett Nitschke and Stuart Swann along with their many volunteer supporters throughout the Barossa also deserve our great thanks.

The Barossa offers SAVCA excellent opportunities, for both local and Australia- wide events. Your Committee will be looking to include games in the Barossa in the future, so watch this space.

Cheers,

Dixie.

SA – VETERANS CRICKET ASSOCIATION INC.

Councillor's Report to Council - Cr Jess Greatwich - March Meeting 2024

24/24648

FEBRUARY

17/02/2024

On Saturday 17th February 2024 I was very pleased to be invited to attend the official unveiling of the Barossa Farmers Markets new demonstration kitchen, along with Crs Dave de Vries, John Angas, Tony Hurn, and Deputy Mayor Kathy Schilling. Also in attendance were Tony Pasin, MP, Federal Member for Barker and Aston Hurn, MP, State Member for Schubert. I was fortunate to meet the new Barossa Farmers Market Manager Scott Wood and see members of the Barossa Farmers Market Board including longstanding Board members Mark McNamara, Sheralee Menz and Elaine Ratcliff. I would particularly like to recognise the ongoing effort and commitment of Sheralee, Mark and Elaine to stewarding the Demonstration Kitchen project, entirely in a voluntary capacity.

The Barossa Farmers Market demonstration kitchen was funded part by South Australia state government funding, and was also supported by a range of local businesses – a true community effort!

The Market kitchen has been designed for versatility and accessibility and will support the Barossa Farmers Market in delivering a range of activations and programs, including cooking demonstrations, classes and workshops. These activations will support healthy eating programs, engagement with local Agricultural Shows, educational classes for school children and Barossa community members from diverse backgrounds.

In particular, the Demonstration Kitchen opens up a range of opportunities in the future to increase access to and engagement with the Barossa Farmers Market precinct outside of its traditional trading hours of Saturdays 7.30am to 11.30am.

All in attendance on the morning remarked how fortunate we are to have such a vibrant and thriving community asset in our region and commented on the need for consistent local support for this wonderful foodie hub.



(L-R Deputy Mayor Kathy Schilling, Elaine Ratcliff, BFM Chair, Sheralee Menz, BFM Board, Cr Jess Greatwich, Ashton Hurn, MP, Cr John Angas, Tony Pasin, MP and Mark McNamara, BFM Board)

Councillor's Report to Council - March Meeting 2024

24/29600

FEBRUARY

25/02/2024	Councillors Don Barrett, John Angas and Jane Evans attended the Eden Valley Institute and participated in the official opening of their revamped kitchen facilities. Through the Community Assistance Scheme Committee and Council, $10,000.00 was allocated towards the project.

MATTERS FOR INFORMATION

6.1 CCTV CAMERA UPDATE

Author: Manager Health Services and Community Safety
24/25619

In December 2023, The Barossa Council was approached by the Barossa Criminal Investigation Branch of South Australian Police (SAPOL), requesting that the Council explore the opportunity to install CCTV cameras within the Nuriootpa and Tanunda townships.

The Barossa Council is one of an increasing number of Councils to be approached by SAPOL to engage in the use of CCTV cameras. There are already a number of Councils sharing their CCTV network access with SAPOL at a Local Service Area (LSA) Police station level.

Recently, research into the matter has occurred by meeting with several other Councils. Each Council have set up different systems to accommodate their own specific needs and requirements.

There are many factors to be explored when considering the implementation of CCTV cameras.

1. Cameras
2. Recorders
3. Installation/infrastructure/power
4. Security of footage
5. Governance
6. Procurement and
7. Budget

The following price structure has been developed with no engagement with a professional security technology company, but by using the estimated pricing received from other Councils. It does not include the installation of stand-alone poles, but rather assumes cameras are to be attached to existing infrastructure.

Item	Estimated costing	Total
8 x Cameras	$6000 each	$48,000
Recorder	$25,000 each	$25,000
Average install	$1000 per camera	$8,000
Sim cards and cloud access	$50 per camera per month	$4,800 per year
Total		**$85,800**

Although CCTV cameras are encouraged in the community. Currently, it is not considered to be a core business function for Council to implement and administer.

It is recognised that at this stage, set-up and ongoing costs to Council would be significant, and the investment required at this stage cannot be supported.

Moving forward, as Council staff have carried out preliminary investigations into CCTV cameras, should local businesses require support and information, Council staff will assist where possible.

ATTACHMENTS

Nil

SUPPORTING REFERENCES

Nil

MATTERS FOR INFORMATION

6.2 TREES FOR LIFE - BUSH FOR LIFE REPORT

Author: Executive and Project Support Officer
24/25797

Trees for Life (TFL) have forwarded a copy of the 'Bush For Life Quarterly Report, October – December 2023) which is attached for information.

Currently there are six Bush for Life sites on Council land, with significant work occurring.

One of the sites is the Tanunda Heritage block, located on Menge/Magnolia Roads Tanunda. A recent visit to the site confirmed the presence of many nationally critically endangered orchids, which have now been added to the species list for the site.

ATTACHMENTS

Attachment 1 Bush For Life Quarterly Report - Q2_2023-24 ⇩

SUPPORTING REFERENCES

Nil

BUSH FOR LIFE

QUARTERLY REPORT

October to December 2023

TreesForLife

Site Owner: The Barossa Council

BFL Coordinator: Elisha Brunton

Profile	
Number of BFL sites owned	6
Number of site carer allocations (at end of quarter)	4
Staff on-ground work hours this quarter	52.25
Volunteer on-ground work hours this quarter	93.5 (group activities) + estimated 36 (unsupervised)
Carer movements this quarter	0 new carers and 0 retirements



Pterostylis psammophila (Two-bristle Greenhood) at Magnolia Road Reserve



Volunteers working on Monadenia at Altmann Rd

Comments:

This was a quiet quarter for bushcare; however busy with site visits for strategy and site hazard assessments. The bushcare activities that we are holding are achieving higher volunteer turnouts as I become increasingly targeted with volunteer communications and scheduling activities around volunteer availability.

At MAGNOLIA RD on 16/10/23, several stakeholders visited the site for an orchid hunt. We confirmed the presence of many nationally critically endangered *Pterostylis psammophila* (Two-bristle Greenhood) synonym: *Oligochaetochilus psammophilus* - as per the SA census. Jerry Smith from Botanic Gardens and State Herbarium stated that the defining characteristics include the overall greenness of the entire

plant including the labellum, plus growing in association with sand under Pine. This species has been added to the species list for the site.

Following this activity three TFL staff members slashed the core BFL area for Perennial Veldt-Grass.

Three locals attended the miniBAT at ALTMANN RD (see photo above), where we worked on Monadenia and Plantain, plus added a new orchid *Caladenia leptochila* to the species list (see photo below).

The BAT at MAGNOLIA RD RESERVE had great attendance with 7 volunteers working on Perennial Veldt Grass in the area adjacent to the newly discovered orchids. We were able to create a new area for the orchid to migrate into.

In December a BAT was held at BOEHM SPRINGS working on Yorkshire Fog and Arum Lily (see photo below). This is one of many more extra BATs to occur in the Northern and Yorke region for this financial year.

The Site Hazard Assessment at MOUNT RD in December showed that the Plantain sprayed in July 23 has significantly decreased in several areas. Small patches of Themeda were found on the weedy side which would be good to weed around next visit. This site is scheduled for an annual grass spray in March/April.

At the Site Hazard Assessment at GOTTWALD RD in December, a Shingleback lizard was found and the Wedge-tailed eagles were circling as in previous visits. Olive and Pentaschistis were identified to be worked on by BAT team next year.

At WINTERS RD 11/12/2023 a Site Hazard Assessment was conducted on the eastern side of the site. Impressive results were shown for a new focus area sprayed for Plantain in July. This area, just off of Alexander Murray Road towards the middle of the site, will increase resilience for the site, as most of the focus has been on the very eastern end. Follow up treatment with a BAT next year will increase the established weed fronts even further. The western side of the site was not visited on this occasion.

Another Hazard Assessment at WINTERS RD again on 21/12/2023, this time at the Western end following site damage reported by a member of public. It appears the logging trucks that have been removing pine trees on the neighbouring properties have been using the BFL site as a track to get from one site to another site. The fence has been ripped down in several areas with tyre marks leading from one site to the other. A large amount of soil disturbance and many native understorey plants have been driven over. The report was provided to Council immediately and the truck company have been contacted to cease driving on site. Remediation conversations are now in progress.



Caladenia leptochila added to species list – Altmann Rd



Volunteer removing weedy Arum Lily and Yorkshire fog to support growth of native Kangaroo Apple



Truck tyre tracks at Winters Rd



Truck tyre tracks at Winters Rd

Site activities during the quarter							
Date	**Site code**	**Site Name**	**Activity**	**OGW time (hrs)**	**# of vols**	**Total hours (staff + vols)**	**Main weeds/tasks**
16/10/2023	BR007	MAGNOLIA RD RES	MiniBAT	4.25	0	12.75	Orchid hunting, site strategy, treatment of Perennial Veldt Grass
23/10/2023	BR006	ALTMANN RD	MiniBAT	4	3	16	Monadenia, Plantain
3/11/2023	BR007	MAGNOLIA RD RES	BAT	8	7	72	Perennial Veldt Grass
6/12/2023	BR003	BOEHM SPRINGS	BAT	8.5	3	42.5	Yorkshire Fog, Arum Lily
6/12/2023	BR008	MOUNT RD	Support	0.5	0	0.5	Hazard Assessment, strategy
11/12/2023	BR002	WINTERS RD	Support	0.5	0	0.5	Hazard Assessment, strategy
11/12/2023	BR009	GOTTWALD RD	Support	0.5	0	0.5	Hazard Assessment, strategy
21/12/2023	BR002	WINTERS RD	Support	1	0	1	Hazard Assessment

On-ground Works Summary			
# BATs	2	**# Support visits**	4
# MiniBATs	2	**Total hours OGW (staff+vols)**	181.75

MATTERS FOR INFORMATION

6.3 GAWLER RIVER FLOODPLAIN MANAGEMENT AUTHORITY

Author: Executive and Project Support Officer
24/27990

Minutes and Key Outcome Summary of the Meeting of the Gawler River Floodplain Management Authority held 15 February 2024 are attached for information.

ATTACHMENTS

Attachment 1 Minutes and Key Outcome Summary - Gawler River Floodplain Management Authority meeting 15 February 2024 ⇩

SUPPORTING REFERENCES

Nil

MINUTES

GAWLER RIVER FLOODPLAIN MANAGEMENT AUTHORITY BOARD

9:45am Thursday 16 February 2024
Light Regional Council – 93 Main Street, Kapunda SA

1. Meeting of the Board

1.1 Welcome by the GRFMA Chairperson

Mr Ian Baldwin formally welcomed Board Members, Deputy Board Members, Observers and the Executive Officer and opened the 147th meeting of the Board.

1.2 Present

- Mr Ian Baldwin, Independent Board Member, Chair
- Cr Terry-Anne Keen, Adelaide Plains Council, Board Member
- Mr James Miller, Adelaide Plains Council, Board Member
- Cr Dante Mazzeo, Adelaide Plains Council, Deputy Board Member
- Mr Ashley Curtis, Adelaide Hills Council, Board Member
- Ms Natalie Armstrong, Adelaide Hills Council, Deputy Board Member
- Cr Bruce Preece, The Barossa Council, Board Member
- Mr Jake McVicar, The Barossa Council, Board Member
- Cr Paul Koch, Town of Gawler, Board Member
- Ms Whendee Young, Town of Gawler, Board Member
- Mr Richard Dodson, Light Regional Council, Board Member
- Mr Greg Pattinson, City of Playford, Board Member
- Mr David Hitchcock, Executive Officer

1.3 Apologies

- Cr Malcolm Herrmann, Adelaide Hills Council, Board Member
- Cr Brian Sambell, Town of Gawler, Deputy Board Member
- Cr Michael Phillips-Ryder, Light Regional Council, Board Member

1.4 Appointment of Observers

GRB 1/24 **Observers**
Moved: Cr Terry-Anne Keen
Seconded: Mr James Miller

That Cr Dante Mazzeo, Adelaide Plains Council, Deputy Board Member be appointed as Observer.

CARRIED UNANIMOUSLY

1.5 Declarations of Interest

Mr Greg Pattinson advised a material conflict of interest for item 6.2 Committee Members Term of Appointment and confirmed he will not be present for the item.

2. Confirmation of Minutes

2.1 GRFMA Ordinary Meeting Minutes

GB 2/24 **GRFMA Ordinary Meeting Minutes**
Moved: Cr Bruce Preece
Seconded: Mr Greg Pattinson

That the Minutes of the Gawler River Floodplain Management Authority Board meeting held on 14/12/2023 be confirmed as a true and accurate record of the meeting.

CARRIED UNANIMOUSLY

2.2 GRFMA Confidential Meeting Minutes

GB 3/24 **GRFMA Confidential Meeting Minutes**
Moved: Cr Bruce Preece
Seconded: Mr Richard Dodson

That the Minutes of the Confidential Gawler River Floodplain Management Authority Board meeting held on 14/12/2023 be confirmed as a true and accurate record of the meeting.

CARRIED UNANIMOUSLY

2.3 Actions on Previous Resolutions

The Board noted the actions with the following verbal updates:

- Motion 80/23: Reappointment of Auditor – written advice has been received from the auditors that they are pleased to resubmit an offer this year + 3.5% or CPI whichever is higher. The audit for the previous financial year was at a cost of $5,085 and this year it is quoted at $5,630. The Audit Committee has agreed to reappoint the auditors under the terms they have provided.
- Motion 112/23: Rental of Kemp Road Kingsford – discussions with staff at Light Regional Council are progressing. Access on the other side of the river, The Barossa Council, is worth a conversation to restrict the access subject to the landowners being comfortable.

2.4 Matters Arising from the Minutes

Nil

3. Questions on Notice

Nil

4. Motions on Notice

Nil

5. Presentations

Nil

6. Audit Committee

6.1 Audit and Risk Committee Meeting Minutes

GB 4/24 Audit and Risk Committee Meeting Minutes
Moved: Cr Terry-Anne Keen
Seconded: Cr Bruce Preece

That the GRFMA receives the minutes of the Gawler River Floodplain Management Authority Audit and Risk Committee meeting held on 5/02/2024.

CARRIED UNANIMOUSLY

6.2 Committee Members Term of Appointment

9:56am Mr Greg Pattinson left the meeting.

GB 5/24 Committee Members Term of Appointment
Moved: Cr Terry-Anne Keen
Seconded: Cr Bruce Preece

That the Committee Members to the GRFMA Audit and Risk Committee be reappointed for a further two years from 1 July 2024 until 30 June 2026:
1. *Mr Peter Brass, Independent Member and Chair*
2. *Cr Malcolm Herrmann, Adelaide Hills Council*
3. *Mr Greg Pattinson, City of Playford*

CARRIED UNANIMOUSLY

10:01am Mr Greg Pattinson returned to the meeting.

7. Technical Assessment Panel

Nil

8. Reports

8.1 Gawler River Flood Mitigation Business Case

GB 6/24 Gawler River Flood Mitigation Business Case
Moved: Mr James Miller
Seconded: Cr Terry-Anne Keen

That the GRFMA Board receives the report.

CARRIED UNANIMOUSLY

GB 7/24 Gawler River Flood Mitigation Business Case
Moved: Cr Bruce Preece
Seconded: Cr Paul Koch

That:
1. *Pursuant to Section 90(2) of the Local Government Act 1999, an Order is made that the public be excluded from attendance at the meeting.*
   In order to consider in confidence agenda item 8.1. Late Report Gawler River Flood Management Business Case, pursuant to Section 90(3)(b) (i) (II) of the Local Government Act 1999 on the basis of information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the GRFMA.
2. *This matter is confidential because the information herein provides information regarding consideration of flood mitigation infrastructure and to funding of considered works.*
3. *On the basis of this information, the principle that meetings of the GRFMA should be conducted in a place open to the public has been outweighed in this instance: the Committee consider it necessary to consider this matter in confidence.*

CARRIED UNANIMOUSLY

10:04am confidential session commenced.

GB 8/24 Gawler River Flood Mitigation Business Case
Kept in confidence

GB 9/24 Gawler River Flood Mitigation Business Case
Moved: Mr Greg Pattinson
Seconded: Mr James Miller

That the GRFMA makes provision of $150,000 in the draft 2024/2025 Annual Budget to support further development of the Business Case, as recommended by the Infrastructure SA, Assurance Review Report.

CARRIED UNANIMOUSLY

GB 10/24 Gawler River Flood Mitigation Business Case
Moved: Mr Richard Dodson
Seconded: Cr Bruce Preece

That the GRFMA requests the GRFMA Chairperson writes to the CEO, Department for Environment and Water advising the GRFMA:
1. *Acknowledges the hard work by all parties, and the leadership of the Department for Environment and Water, in progressing the Gawler River Flood Management Business Case.*
2. *Supports the merits of Option 8 (Modifications (10 mtr raise) Bruce Eastick North Para Flood Mitigation Dam – Enhanced Planning controls – Flood Awareness campaign) as identified in the Gawler River Flood Management Business Case, noting that Constituent Councils have not yet been engaged with this at this time.*
3. *Will seek support of Constituent Councils for provision of funding to support further development of the Business Case, in partnership with the State Government.*
4. *In recognition of the complexity of working relationships across a number of government agencies and Councils, seeks continuation of the existing governance arrangements and support in further development of the Business Case.*
5. *Will now prepare, in consultation with Constituent Councils, a suitable investment strategy with a view to working with the South Australian Government, to facilitate informed funding and investment decisions.*

CARRIED UNANIMOUSLY

GB 11/24 Gawler River Flood Mitigation Business Case
Moved: Mr Richard Dodson
Seconded: Cr Bruce Preece

That:
1. *Pursuant to Section 90(2) and Section 91(7) of the Local Government Act 1999, the GRFMA orders that the following aspects of item 8.1 Late Report Gawler River Flood Management Business Case be kept confidential in accordance with the GRFMA Boards reasons to deal with this item in confidence pursuant to Section 90(3)(b) (i) (II) of the Local Government Act 1999:*
   - *Report for Item 8.1.*
   - *Attachments for item 8.1.*
   - *Motion GB 8/24 except for release to the Constituent Council CEOs.*

2. *This order shall operate until reviewed and determined as part of the annual review by the Authority in accordance with Section 91(9)(a) of the Local Government Act 1999.*

CARRIED UNANIMOUSLY

10:43am confidential session concluded.

8.2 Gawler River Stormwater Management Plan

The Executive Officer provided a verbal update on discussions with the Stormwater Management Authority and is facilitating a further response from Water Technology .

GB 12/24 Gawler River Stormwater Management Plan
Moved: Cr Bruce Preece
Seconded: Cr Terry-Anne Keen

That the GRFMA:
1. *Receives the report.*
2. *Requests the GRFMA Executive Officer to convey anticipation of an expedient completion of the draft Gawler River Stormwater Management Plan to the Stormwater Management Authority.*

CARRIED UNANIMOUSLY

8.3 Financial Report

GB 13/24 Financial Report
Moved: Mr Greg Pattinson
Seconded: Mr Richard Dodson

That the GRFMA:
1. *Receives the financial report as of 31 January 2024 showing a cash bank balance of $59,648.90.*
2. *Notes internal cash lending for CAD offset is $182,740.*

CARRIED UNANIMOUSLY

GB 14/24 Financial Report
Moved: Cr Terry-Anne Keen
Seconded: Mr James Miller

That the GRFMA appoints Cr Bruce Preece as an authorised person with authority to facilitate payment of tax invoices pursuant to GRFMA business banking protocols.

CARRIED UNANIMOUSLY

8.4 Executive Officer Report

GB 15/24 Executive Officer Report
Moved: Ms Whendee Young
Seconded: Cr Bruce Preece

That the GRFMA Board receives the GRFMA Executive Officer report.

CARRIED UNANIMOUSLY

8.5 Draft GRFMA Annual Business Plan and Draft GRFMA 2024/2025 Budget

GB 16/24 Draft GRFMA Annual Business Plan and Draft GRFMA 2024/2025 Budget
Moved: Mr James Miller
Seconded: Mr Richard Dodson

That the GRFMA:
1. *Endorses the Draft 2024/2025 GRFMA Annual Business Plan and Draft 2024/2025 Budget as amended.*
2. *Following receipt of Constituent Council feedback considers adoption of the GRFMA draft Annual Business Plan and Annual Budget at the June 2024 meeting.*

CARRIED UNANIMOUSLY

9. Correspondence

Department for Environment and Water (DEW), refer agenda item 8.1.

10. Confidential

10.1 GRFMA Chairperson

GB 17/24 GRFMA Chairperson
Moved: Cr Bruce Preece
Seconded: Mr James Miller

That:
1. *Pursuant to Section 90(2) of the Local Government Act 1999, an Order is made that the public be excluded from attendance at the meeting.*
   In order to consider in confidence agenda item 10.1 GRFMA Chairperson pursuant to Section 90(3)(a) of the Local Government Act 1999 on the basis of: containing information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

2. *This matter is confidential because the information herein provides information regarding the position of GRFMA Chairperson.*

3. *On the basis of this information, the principle that meetings of the GRFMA should be conducted in a place open to the public has been outweighed in this instance: the Committee consider it necessary to consider this matter in confidence.*

CARRIED UNANIMOUSLY

11:04am confidential session commenced.

GB 18/24 GRFMA Chairperson
Moved: Cr Terry-Anne Keen
Seconded: Mr Greg Pattinson

That the verbal update from Mr David Hitchcock be received.

CARRIED UNANIMOUSLY

GB 19/24 GRFMA Chairperson
Moved: Cr Bruce Preece
Seconded: Ms Natalie Armstrong

That:
1. *Pursuant to Section 90(2) and Section 91(7) of the Local Government Act 1999, the GRFMA orders that the following aspects of item 10.1 GRFMA Chairperson be kept confidential in accordance with the GRFMA Boards reasons to deal with this item in confidence pursuant to section 90(3) (a) of the Local Government Act 1999:*
   - *Report for Item 10.1*
2. *This order shall operate until reviewed and determined as part of the annual review by the Authority in accordance with Section 91(9)(a) of the Local Government Act 1999.*

CARRIED UNANIMOUSLY

11:07am confidential session concluded.

11. Urgent Matters Without Notice

Nil

12. Next Meeting

Date and Time: Thursday 18 April 2024, 9:45am
Host: Adelaide Hills Council, Kersbrook Soldiers Memorial Park – 57 Glover St, Kersbrook, SA 5231

13. Closure

The Chairperson thanked the host Council and members for their attendance and contributions and closed the meeting at 11:09am.

Chair _____ Date _____

Gawler River Floodplain Management Authority

Adelaide Hills Council, Adelaide Plains Council, The Barossa Council,
Town of Gawler, Light Regional Council, City of Playford

KEY OUTCOMES SUMMARY

GRFMA Board Meeting – 15 February 2024

Gawler River Flood Management Business Case

The Board agreed to include a provision of $150,000 in the draft 2024/2025 Annual Budget to support further development of the Business Case, as recommended by the Infrastructure SA, Assurance Review Report.

The GRFMA Chairperson was requested to write to the CEO, Department for Environment and Water advising the GRFMA:

1. Acknowledges the hard work by all parties, and the leadership of the Department for Environment and Water, in progressing the Gawler River Flood Management Business Case.
2. Supports the merits of Option 8 (Modifications (10 mtr raise) Bruce Eastick North Para Flood Mitigation Dam – Enhanced Planning controls – Flood Awareness campaign) as identified in the Gawler River Flood Management Business Case, noting that Constituent Councils have not yet been engaged with this at this time.
3. Will seek support of Constituent Councils for provision of funding to support further development of the Business Case, in partnership with the State Government.
4. In recognition of the complexity of working relationships across a number of government agencies and Councils, seeks continuation of the existing governance arrangements and support in further development of the Business Case.
5. Will now prepare, in consultation with Constituent Councils, a suitable investment strategy with a view to working with the South Australian Government, to facilitate informed funding and investment decisions.

Audit Committee

Committee Members of the GRFMA Audit and Risk Committee were reappointed for a further two years from 1 July 2024 until 30 June 2026:

1. Mr Peter Brass, Independent Member and Chair
2. Cr Malcolm Herrmann, Adelaide Hills Council
3. Mr Greg Pattinson, City of Playford

The meeting confirmed appointment of Dean Newbery Pty Ltd as GRFMA external auditor for a term of three years with a two-year option, effective 1 July 2024, with the requirement that the Lead Audit Partner be rotated.

Financial Report

The financial report as of 31 January 2024 was received which showed a cash at bank balance of $59,648.90. It was noted internal cash lending for CAD offset is $182,740.

Cr Bruce Preece was appointed as an authorised person with authority to facilitate payment of tax invoices pursuant to GRFMA business banking protocols.

Contact: eo@grfma.com / 0407 717 368

Gawler River Floodplain Management Authority

Adelaide Hills Council, Adelaide Plains Council, The Barossa Council,
Town of Gawler, Light Regional Council, City of Playford

Draft 2024/2025 GRFMA Annual Business Plan and Draft 2024/2025 Budget

That meeting endorsed the Draft 2024/2025 GRFMA Annual Business Plan and Draft 2024/2025 Budget as amended. Following receipt of Constituent Council feedback the Board will consider adoption of the GRFMA draft Annual Business Plan and Annual Budget at the June 2024 meeting.

Confidential Items

The meeting considered, in confidence matters relating to:

1. The Gawler River Flood Management Business Case
2. GRFMA Chairperson recruitment.

Schedule of Ordinary GRFMA Meetings for 2024

- Thursday 18 April 2024, Adelaide Hills Council
- Thursday 20 June 2024, The Barossa Council
- Thursday 15 August 2024, Town of Gawler
- Thursday 17 October 2024, Adelaide Plains Council
- Thursday 12 December 2024, City of Playford

Next Meeting

Date: Thursday 18 April 2024
Host: Adelaide Hills Council

MATTERS FOR INFORMATION

6.4 GARAGE SALE TRAIL - IMPACT REPORT FOR 2023

Author: Sustainability Officer
24/28721

The Barossa Council has been participating in Garage Sale Trail since 2018 and in February 2022, resolved to partake in the initiative for the next four (4) years. The purpose of this report is to provide a summary of impact from the 2023 campaign.

Garage Sale Trail is a waste education and behaviour change program that aims to reduce the household waste and support the transition to a circular economy.

Garage Sale Trail in 2023 happened over two (2) weekends; 11 – 12 November, and 18 – 19 November 2023. The highlights from the local impact report, prepared by Taverner Research Group, for Garage Sale Trail are:

- 40 stalls registered locally, resulting in 73 garage sale events over the two weekends and 2,195 residents participated locally as a seller or shopper (up from 11 stalls, 15 events and 491 participants in 2022),
- 22,454 kg of avoided waste (up from 5,795kg in 2022). Top three (3) categories of reused items were homewares, clothing, and textiles/ books/ magazines/ DVD's,
- 44% of residents would not otherwise have hosted a garage sale and 25% would not otherwise have shopped at a garage sale,
- 76% had not previously participated. Top 3 reason for seller participation; declutter, avoid landfill, and make money. Top 3 reasons for shopper participation; save money, something unique, and shop sustainably.

The Barossa Council placed 3rd in 2023 on the Garage Sale Trail leaderboard for South Australia and this result was shared with community on The Barossa Council socials. Council is committed to Garage Sale Trail for a further two financial years, with the next Garage Sale Trail scheduled for 9 – 10 November, and 16 – 17 November 2024.

ATTACHMENTS

Attachment 1 Garage Sale Trail - Impact Report 2023 ⇩

SUPPORTING REFERENCES

Garage Sale Trail 2024

Impact Report 2023

The Barossa Council

Introduction

Garage Sale Trail is a waste education and behaviour change program that aims to reduce household waste and support the transition to a circular economy. It looks to educate and engage the community, reduce the volume of usable items in landfill and get more people buying and selling secondhand.

To assess whether the program was effective, Taverner Research Group was commissioned to conduct market research with those who participated in the program in 2023. This report summarises the key findings.

To help you benchmark your results, this year's research showed that on average council partners saw:

- Between 3%-6% of their residents get actively involved as a seller or shopper.
- 12% of residents reached by the ten-week education campaign.
- Cost of recovery averaged $274 per tonne reused, with each garage sale reusing 446 kilograms of unwanted items. 35% of which would otherwise have gone to landfill.

Snapshot of local & national results

Increasing community participation in the circular economy

2,195 ↑
People participated in the campaign in your council area

419,705 ↑
People participated in the campaign nationally

Eliminating waste for a healthier ecosystem

22,454 kg ↑
Reused locally

4,862,850 kg ↑
Reused nationally

Circulating dormant goods for a stronger economy

$17,719 ↓
Resale value created locally

$3,686,260 ↓
Resale value created nationally

Arrows denote change from 2022 - 2023

Foreword
by Sean Trewick

Cash in the Closet: Aussies mainstream the secondhand economy

In 2023, the significance of "economy" in the term "circular economy" has gained prominence. Rising costs of living and increased business costs have prompted both consumers and producers to re-evaluate the potential value embedded in post-use products.

Australians are increasingly turning to secondhand purchases to economise, with 70% of consumers citing cost savings as the main motivator for purchasing pre-loved goods.[1] Similarly, 58% of businesses view cost reduction as the primary advantage of incorporating circular economy practices.[2]

This economic narrative is introducing the circular economy to a wider audience and fostering long-term sustainable purchasing behaviours within Australian communities. This, in turn, is formalising opportunities for businesses in the secondhand market.

Championed by a growing Millennial and Gen Z consumer base,[3] the global secondhand market is on track to double between 2021 and 2027.[4] Australians are pivotal contributors to this sustainable consumption trend, ranking fourth globally in the frequency of secondhand purchases at 39%.[5]

Despite these positive trends, mainstream secondhand purchasing faces various barriers.

Recent research by Behaviour Works Australia[6] identified several barriers including lack of awareness of secondhand options, perceptions and social norms surrounding secondhand as a second-class alternative to buying new, distrust of purchasing secondhand items online, inertia of current purchasing habits, and secondhand shopping perceived to be time consuming.

To address these and other barriers, the research recommends that policymakers, industry leaders, entrepreneurs, and advocates should continue and expand efforts to encourage "buying secondhand instead of new" for individual consumers.

For over a decade, Garage Sale Trail has been dedicated to achieving this goal. Working together with a network of government and local community partners, Garage Sale Trail is scaling this impact across Australia.

By empowering individuals to recognise the economic potential of dormant, excess, and unwanted items, Garage Sale Trail is accelerating the growth and normalisation of secondhand trading across the country. Engaging tutorials and robust peer-to-peer education are proving effective in catalysing changes in consumer behaviour, while a structured national campaign provides guidance for individuals and organisations to take immediate action.

Through ongoing collaborative efforts, Garage Sale Trail aims to usher in a future where the majority of Australians regularly participate in secondhand sourcing behaviours, aligning with the transition towards net zero and the circular economy.



Sean Trewick is a circular economy researcher, consultant, and community leader in Australia. Over the past 5 years he has worked to catalyse several circular economy and regeneration themed non-profits and research hubs across Australia and Finland, including Circular Economy Victoria.

Participation

1. Increasing community participation in the secondhand economy

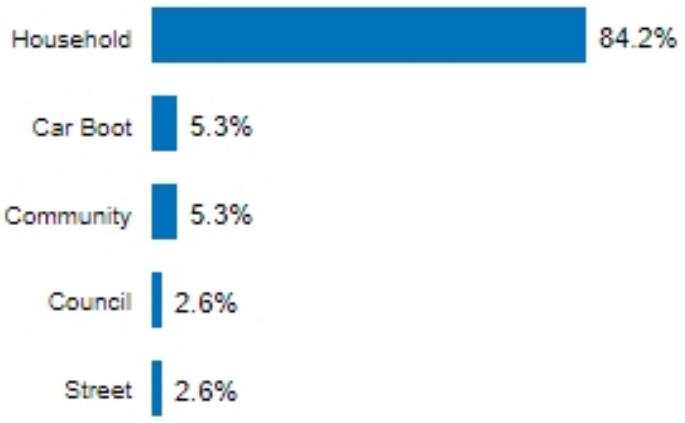
Performance indicator 1.1: Weekends of garage sales

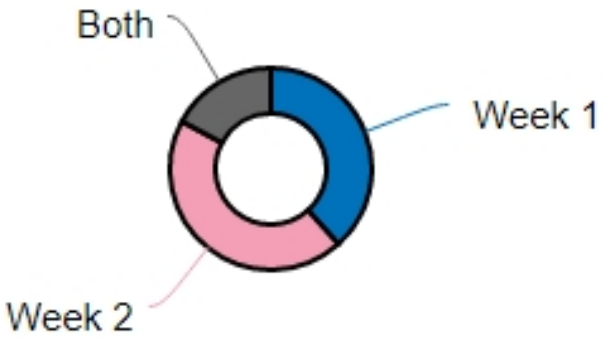
2,195

Residents participated locally as a seller or shopper

73

Total garage sale events hosted locally over the two weekends





Sales registered in weekend 1 versus weekend 2

40

Sales and stalls registered locally

INDIVIDUAL	37
GROUP	1
STALLS	2

Sales by type

Performance indicator 1.2: Trail Tutorials

0
Trail Tutorial registrations locally

93%
Will now make more sustainable lifestyle choices

98%
Enjoyed the sessions

Community interest in secondhand is growing
Total participation in the Garage Sale Trail program increased by 44% nationally, with a significant growth in the number of households registering for the program (up 32%).

Shopper numbers increased too, up 53% from an average of 32 shoppers per garage sale in 2022 to 49 in 2023. It is likely this reflects the significant increase in media generated (up 189%) as well as a greater demand for secondhand products due to cost of living pressures.

This is backed up by survey data which showed that the number one reason why shoppers got involved was to save money (80%). 48% of sellers participated to make money.

On a local government level, participating councils typically saw between 3%-6% of their population get actively involved as a seller or shopper.

Engagement in the Trail Tutorials waned
The Trail Tutorial online event series saw a decline in numbers in 2023 (down 69%). This may be due to a shorter promotional period (four weeks, compared to six in 2022) but also be an indicator of community fatigue with online events.

Despite the low registrations - 632 people registered to attend a Trail Tutorial nationally - they were impactful and well received, with 93% of participants saying the events inspired them to make more sustainable lifestyle choices and 98% saying they enjoyed the sessions.

Waste & Sustainability
2. Reducing & eliminating waste

Performance indicator 2.1: Educating, changing behaviour and creating a new social norm

7,296
Residents visited the Garage Sale Trail website

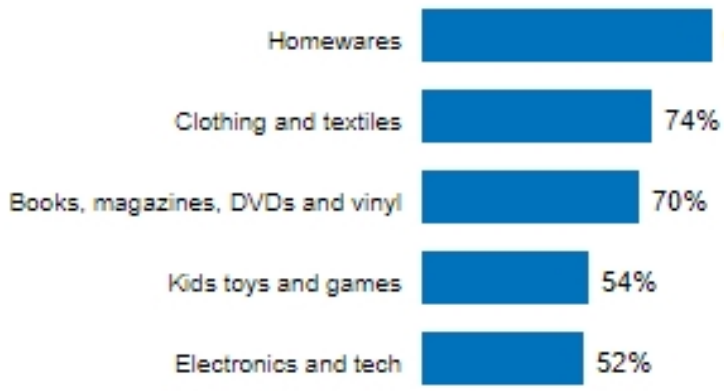
3,907
Residents reached by seller word of mouth

59%
Will consume less in the future & buy more items secondhand

Performance indicator 2.2: Preventing & avoiding waste

22,454 kg
Sold and reused locally

37%
Would otherwise have gone to landfill



Categories of items reused

Creating a new circular economy norm
While buying and selling secondhand is becoming increasingly popular, driven in large part by the appetite of Millennials and Gen Z, there are still barriers to overcome to make secondhand more mainstream.

The Garage Sale Trail program takes a peer-to-peer approach to help shift the social norm and increase participation in the secondhand economy.

In 2023, survey data showed that on average participating sellers told 99 people about their involvement in the event, helping to role model and make pre-loved more mainstream. Overall, messaging about the program and secondhand reached 12% of a participating council's population on average.

Keeping products in use for longer & preventing waste
As well as increasing the reach and number of people involved in the secondhand economy, the program is also playing a role in reducing and preventing usable items ending up in landfill:

- 85% of sellers said the program helped them to avoid sending items to landfill.
- On average each garage sale sold 90 items, representing 446 kg reused per sale.
- Of the items sold, sellers admitted that at least 36% would otherwise have gone to landfill or been illegally dumped on the kerbside.

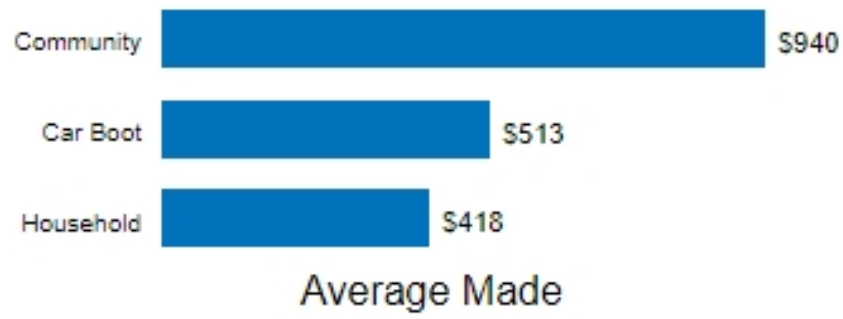
Across participating council areas, the cost of recovery averaged $274 per tonne reused, before factoring in any longer term behaviour change.

Economy
3. Circulating dormant goods for a stronger economy

Performance indicator 3.1: Raising household income

$17,719

Total generated locally



Performance indicator 3.2: Growing the secondhand market

44%

Would not otherwise have **hosted** a garage sale

25%

Would not otherwise have **shopped** at a garage sale

78%

Are more likely to sell unwanted items in the future

Helping Australians make and save money
Data shows that the rising cost of living is driving an increase in secondhand purchasing. This is evidenced by the increase in the number of people who shopped the trail in 2023, up 53%.

While buying secondhand provides an opportunity to save, selling pre-loved items is also providing Australians with a welcome cash boost. In 2023, sellers pocketed an average of $456.84 on the Garage Sale Trail, and on average, each $1 invested by a partner council generated $5.85 for the local community.

With cost of living pressures continuing, programs like Garage Sale Trail present an opportunity to engage new members of the community in the circular economy. This is reinforced by findings from consumer research which showed that a third (31%) of Australians will buy more items secondhand if economic conditions worsen.[7]

Increasing the supply and demand for secondhand products
Survey data showed that the Garage Sale Trail program is increasing both supply and demand for secondhand products.

Nationally:
- 53% of sellers would not otherwise have hosted a garage sale.
- 35% of shoppers would not otherwise have shopped at a garage sale.

For those that were new to secondhand selling, being involved in a national event was the primary motivator - 71% of first timers got involved for this reason Similarly, for those new to shopping, 89% said that having lots of events happening at the same time was what persuaded them to get involved.

Indications are that this change in behaviour will be sustained, with 81% of sellers stating they are now more likely to sell items they no longer need in the future and 74% of shoppers stating they are now more likely to buy secondhand products over new.

Community
4. Building more connected communities

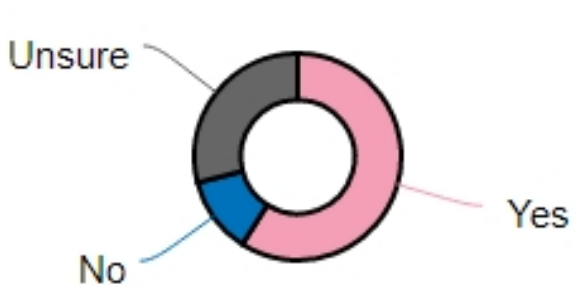
Performance indicator 4.1: Improving community connectedness

60
Average number of people met per garage sale

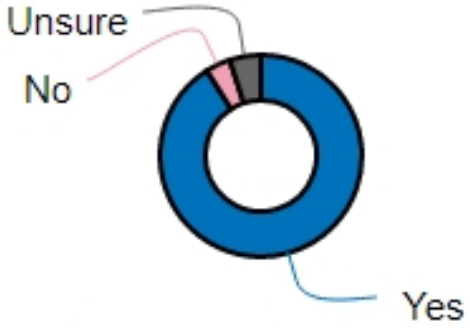
86%
Of people met were not previously known to the resident

74%
Felt more connected to the local community after participating

Performance indicator 4.2: Community engagement & experience



Sellers who would participate again



Shoppers who would participate again

65%
The event met or exceeded their expectations

Garage sales provide an opportunity to connect and build social cohesion
While there are lots of ways for residents to reuse their unwanted items, few of them compare to a garage sale in their ability to build in-person community connections.

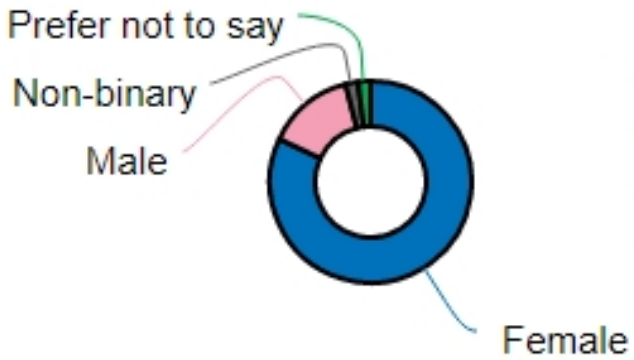
On average, a participating seller will meet 49 people each day of their garage sale, with 89% of people previously not known to them. And while very few get involved to meet their neighbours (7%), the social aspect of Garage Sale Trail is one of the biggest contributors to residents' positive sentiment towards the program.



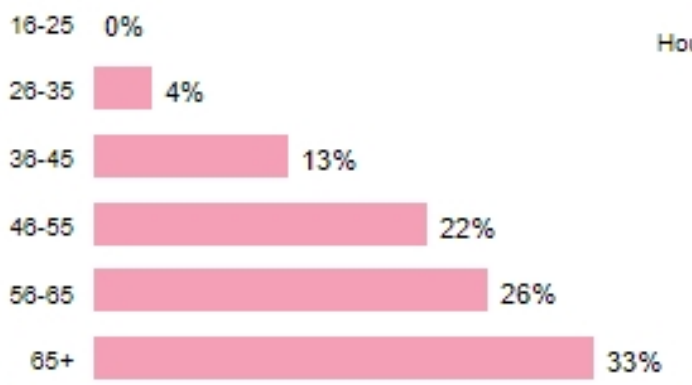
> *"Great idea, brings the neighbourhood out, builds comradery."*
>
> *- The Barossa Council resident"*

Demographics
5. Engaging new audiences

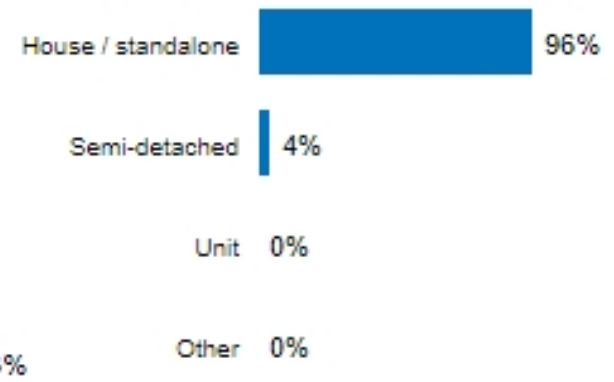
Participant demographics



Gender



Age

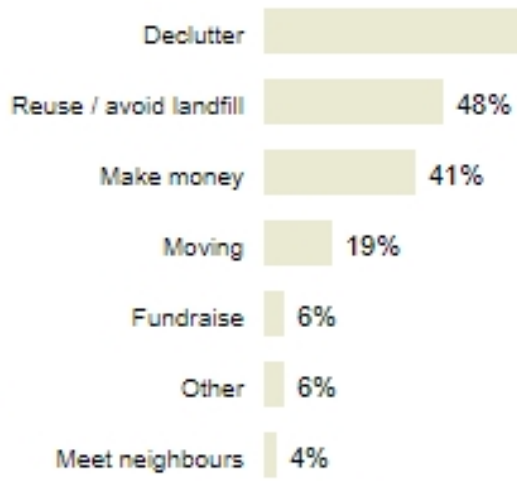


Type of dwelling

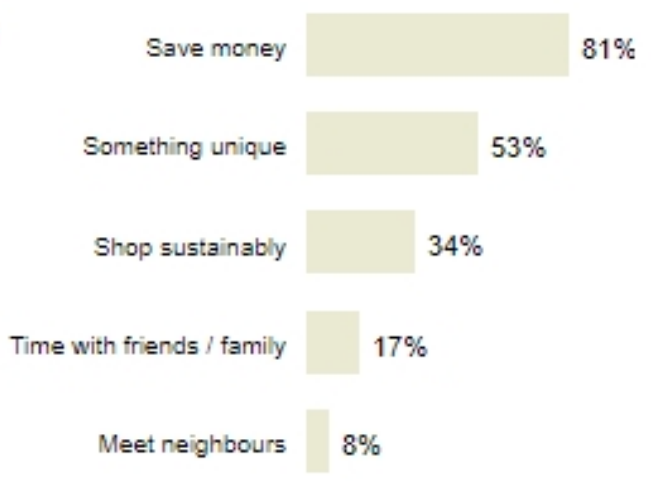
Performance indicator 5.1: Reaching new audiences

76%

Had not previously participated in a council event / program



Sellers - Reason for participating



Shoppers - Reason for participating

Garage Sale Trail engages an older audience who are not selling secondhand
Research by the Commonwealth Bank shows a great appetite amongst Australians to buy and sell secondhand but a significant lack of uptake in older generations such as Gen X and Baby Boomers. For these groups, only 9% and 4% respectively had used an online marketplace to sell pre-loved items.[8]

Garage Sale Trail flips this trend, with 77% of sellers coming from older groups that tend to be not as engaged in the secondhand economy. This reinforces the role of programs like Garage Sale Trail in creating a social norm around reuse and secondhand.

Engaging with culturally and linguistically diverse Australians
Increasing engagement with culturally and linguistically diverse communities was a priority and this year survey data enabled us to benchmark participation from these groups. In 2023, 6% of sellers spoke a language other than English at home and 21% were born outside of Australia.

The program reaches new audiences for council
68% of sellers stated they had not previously been involved in a council run initiative. Furthermore, 52% of those who attended a Trail Tutorial had not previously attended a sustainability workshop.

Both figures suggest the program is helping councils to reach new audiences.

National Context
6. Participation & campaign reach

Performance indicator 6.1: Reach of the waste education campaign

40,594,513
People cumulatively reached nationally

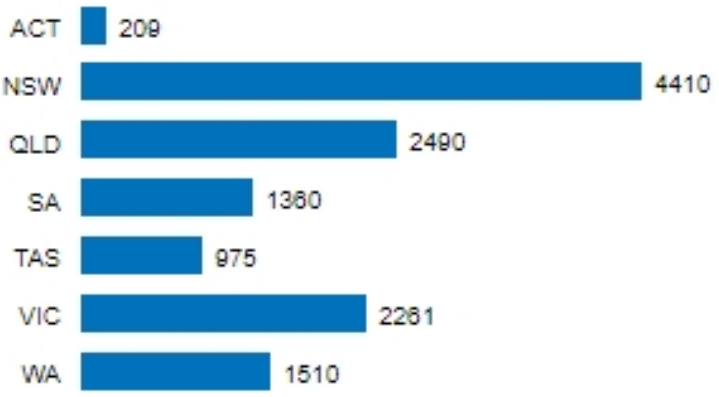
36,138,025
People cumulatively reached by the media campaign

3,656,788
People cumulatively reached by the digital marketing campaign

Performance indicator 6.2: Program participation

419,705
Australians participated in the program nationally

13,220
Garage sale events hosted nationally



Events by state / territory

Messaging about the circular economy reached a wider audience
The education campaign reached a cumulative audience of over 40 million Australians in 2023 and ran nationally across television, newspaper, radio, email and online marketing channels such as Google, Facebook and Instagram.

The reach of the campaign (excluding council promotions) almost doubled, largely due to a significant increase in media coverage particularly radio. Overall, media reach increased 189%, largely driven by the Garage Sale Trail PayPal research report, the cost of living crisis and resulting appetite from journalists to cover related stories.

Media highlights included:

- National television coverage on 7 News, 9 News, Studio 10 and Today Extra.
- 824 pieces of radio coverage secured reaching a cumulative audience of over 30 million Australians across every state and territory.
- Online coverage in 9Honey, Sydney Morning Herald, Daily Telegraph, The Age, Brisbane Times, WA Today, Time Out and Concrete Playground.

Impacts scaled across the country
With the increase in the reach of the campaign, came a resulting increase in impacts. Overall participation in the program increased by 44% nationally, with the biggest increases seen in states where there was significant growth in the partner council footprint; Tasmania (up 209%), Queensland (up 77%) and Victoria (up 20%).

Across the country, 419,705 Australians participated, extending the life of 4.8 million kgs of unwanted household items and generating a $3.6 million boost to local economies. These results were achieved thanks to the involvement of local and state government, community groups and media.

About This Report

This report was prepared by Taverner Research Group, a third-party market and social research company that works with government and private sector organisations across many sectors including waste and sustainability.

Data sources
Data contained in this report comes from the following sources:

- Participant registrations for the two weekends of garage sales, received through the Garage Sale Trail website between 1 September and 19 November 2023.
- Participant registrations for the Trail Tutorials, received through the ticketing website Humanitix between 1 September and 29 October 2023.
- Website, media and marketing monitors including Facebook, Google Analytics, Instagram and Streem media monitoring covering 1 September to 20 November 2023.
- Survey of Trail Tutorial attendees between 28 October - 5 November 2023 (hosted internally).
- Survey of garage sale sellers and shoppers between 11-29 November 2023 (hosted by Taverner Research Group).
- Fifth Quadrant research on behalf of Garage Sale Trail and PayPal conducted in September 2023 and completed by 1,005 Australians aged 18-75.

About the participant survey
In total, 1,374 people completed the participant survey, representing 25% of registered sellers.

While the response rate is considered statistically significant on a national level, response rates per council area were not at a high enough volume. For this reason, the relevant metro and regional averages for the state or territory have been applied to local participation data.

Notes for interpreting your report
A conservative approach was taken when calculating impacts. For example, some outlier data was excluded to avoid overestimating impacts. Aggregated data may be different (+ / - 1%) due to rounding.

In some instances, the sum of displayed responses to a single response exceeds 100%. This reflects answers to questions that allowed multiple answers from the same respondent.

More information
Michael Trigwell | Managing Director
michaelt@taverner.com.au
taverner.com.au

Citations:
1. eBay. 2023. Pre-loved fashion takes centre stage: eBay reveals fashion is being redefined with a growing trend towards pre-loved.
2. Planet Ark. 2023. Circularity in Australian Business 2023.
3. Monash University. 2023. Retail Sustainability Spotlight.
4. ThredUp. 2023. Resale Report.
5. Morning Consult. 2022. Consumers who purchased or sold secondhand goods in selected countries in 2022.
6. Macklin, J., Jungbluth, L. & Borg, K. 2023. Behavioural roadmap to circular consumption.
7. Garage Sale Trail PayPal Research Report 2023
8. Commonwealth Bank 2022. Circular Economy, The Impact of business-led action on future consumers

MATTERS FOR INFORMATION

6.5 STATE GOVERNMENT PROPOSED REFORMS TO KERBSIDE WASTE AND RECYCLING SERVICES

Author: Sustainability Officer
24/28850

The State Government, on 21 February 2024, announced planned reforms to kerbside waste and recycling services, *"aimed at ensuring households receive affordable, effective and convenient waste management services without additional costs" (Media release)*.

Draft reforms are expected to be released by the State Government for consultation soon, and the Local Government Association South Australia intends to contribute feedback through the Government's formal consultation period. The review of the Environment Protection (Waste to Resources) Policy 2021 (SA) has been paused while these reforms are explored.

It is expected that the proposed reforms will be largely focused on metropolitan councils, however a few may extend to regional councils. Essentially the headline discussion has been about "prohibit[ing] councils imposing kerbside rubbish collection fees based on weight and from charging households in metropolitan Adelaide additional fees for weekly general waste collection" (Media release). This is relevant to metropolitan councils who have trialled and/or have since changed to a weekly green organics bin and fortnightly red waste bin collection model, known as the Sustainable Kerbside Service. Green Industries South Australia (May 2023) released a guide and toolkit developed for local government councils called the 'SA Better Practice Guide: Sustainable Kerbside Service' (Practice Guide). The intent of this alternative kerbside service model is to deliver a step change in diversion of food waste to meet state targets. The Practice Guide reports that although many residents have access to a green organics bin, currently only 11% of food waste is recycled at kerbside state-wide, with the rest disposed in general waste bins that go directly to landfill. The Practice Guide asserts that this alternate service will not suit low-density regional councils and instead encourages exploration of fortnightly collection of three-bin service.

Key information about The Barossa Council kerbside waste and recycling service:

- Standard service levels per The Barossa Council Waste Management Services Policy – June 2023:

	Waste to Landfill (Red Bin)	Recyclable (Yellow Bin)	Green Organic (Green Bin)
Township	140L	240L	240L
Rural	140L	240L	240L Optional (subject to conditions)
Commercial	140L	240L	240L (Townships Only)

- The Barossa Council kerbside bins meet the Australian Standard for bin lid colours.

- We report on tonnes of recyclables (yellow bin) recovered to Green Industries SA to maximise the funding available through the Regional Transport Subsidies Program.
- Mandatory green organics bins for Townships were implemented July 2021.
- Waste auditing was last completed in 2019 and, by weight, 47% of what was in the red waste bin was identified as organic material that could have been recovered through a green organics bin. Re-auditing or visual inspections post rollout of mandatory green service in townships has not been completed to measure direct impact. The tonnes of material recovered through the green organics bin though in 2021/2022 was about 2,800 tonnes, compared to 1,600 tonnes in 2020/2021. The tonnes to landfill from the red waste bin reduced but not by the same amount, and this indicates that food waste is likely still going in the red waste bin.
- The Solid Waste Levy (EPA SA) is applied to every tonne of waste to landfill at $78/tonne and organic material in landfill creates carbon emissions that can be avoided. Green organic waste is exempt from levy and recovery of organic waste into compost is an example of the circular economy. In 2021/2022 about 4900 tonnes of waste went to landfill. To reduce tonnes to landfill we need residents to shift food waste from the red waste bin and into the green organics bin.

Presently, we consider the risk of the proposed reforms to The Barossa Council is low. We will continue to monitor the development of reforms and participate in consultation opportunities as appropriate.

ATTACHMENTS

Attachment 1 South Australia's kerbside collection rules to be updated _ Premier of South Australia_Media release 21 February 2024 ⇩

Attachment 2 Waste Management Services Policy - June 2023 ⇩

SUPPORTING REFERENCES

Environment Protection (Waste to Resources) Policy 2021 (SA)
SA Better Practice Guide: Sustainable Kerbside Services May 2023

Premier of South Australia

https://www.premier.sa.gov.au (https://twitter.com/pmalinauskasmp) (http://facebook.com/PMalinauskasMP)

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South Australia's kerbside collection rules to be updated

Release date: 21/02/24

The Malinauskas Government will prohibit councils imposing kerbside rubbish collection fees based on weight and from charging households in metropolitan Adelaide additional fees for weekly general waste collection.

The proposed reforms, which will undergo consultation, are part of a suite of changes aimed at ensuring households receive affordable, effective and convenient waste management services without additional costs.

Other measures within the Bill include mandating that metropolitan councils continue to provide a three-bin (general waste / comingled recycling / and food and garden organics or FOGO) kerbside collection regime to maximise resource recovery.

The Bill will also prohibit the recombining of waste from kerbside collection bins so that South Australian households can be confident their efforts to recycle in the home are continuing to support the circular economy.

It will also ensure that all new and replacement kerbside rubbish bins comply with Australian Standards such as ensuring all residual rubbish bins have red lids.

Reporting requirements for councils which currently report on kerbside collection performance to Green Industries SA (GISA) will be enhanced and mandated.

Under the new rules, councils will be required to report to the State Government (GISA) on diversion and recycling performance to improve resource recovery outcomes.

The State Government will soon be seeking public input on the draft legislation via www.epa.sa.gov.au

Quotes

Attributable to Susan Close

It is critical that we continue to find ways to reduce the amount of household waste that goes into landfill.

These new laws will assist the State Government to support improved kerbside resource recovery and diversion outcomes while ensuring residents are not adversely affected by the changes.

I encourage South Australians to have their say on this new legislation.

Government of South Australia

Premier of South Australia
https://www.premier.sa.gov.au/media-releases/news-items/south-australias-kerbside-collection-rules-to-be-updated
Mar 5, 2024 1:59 pm

THE BAROSSA COUNCIL
WASTE MANAGEMENT SERVICES POLICY

1.	Purpose

1.1. This policy sets out the entitlement of properties to waste, recycling and green organic collection services and disposal of other waste streams.

2.	Scope

2.1 This policy defines:

2.1.2 Council's role as a waste and recycling service provider;

2.1.3 the service mix that will be offered to protect public health and assist the community to waste less and recycle more;

2.1.4 criteria for cost recovery; and

2.1.5 eligibility criteria to ensure fair, just and financially sustainable access to services.

2.2 This policy applies to:

2.2.1 all Service Entitled Properties on the principle of equity to all residents;

2.2.2 the disposal of household waste (including rubbish, recyclables and green organic waste) via kerbside collection;

2.2.3 the operation of the Springton Transfer Station; and

2.2.4 the collection and disposal of hard waste (including e-waste) through a specific program.

2.3 This policy does not cover illegally dumped waste that Council collects as part of its general maintenance function.

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3.	Policy Statement

3.1 Council is committed to continuous improvement in waste and resource recovery. This policy promotes the protection of public health and environmentally responsible waste and resource recovery services with a key focus on maximising the diversion of materials from landfill and into recycling streams including green organics.

3.2.1 This policy is consistent with the Waste Management Hierarchy with regard to waste management practices within council, with the intent to achieve optimal environmental outcomes.

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3.2.2 Council will seek to operate at the highest possible level of the hierarchy, considering social, environmental and economic practicalities.



3.3 Council will seek to provide a fair, just and equitable waste and resource recovery service for residents.

Policy Statements

3.4 **Mandatory Service**

3.4.1 Council shall provide a Kerbside Waste Collection Service to all Service Entitled Properties within the Designated Waste Collection Areas and along the Approved Waste Collection Route with the exception of vacant land based on land use code or any property where the Contract Supervisor determines collection is not possible, and that the declared service charges will be applied accordingly.

3.4.2 Where Council cannot safely, lawfully or practically provide a Kerbside Waste Collection Service to a particular residential development, a private commercial waste and recycling service must be provided by the property owner or relevant community corporation or strata corporation, at their own expense.

3.5 Service Charge

3.5.1 Council require a service charge to be applied for prescribed service pursuant to Section 155 of the *Local Government Act 1999*.

3.5.2 A service charge for the General (Landfill) and Recycling Waste and Green Organics will be applied on all Service Entitled Properties within the Designated Waste Collection Area and along the Approved Collection Route with a dwelling, whether permanently occupied or not, and regardless of whether the service is required or utilised.

3.5.3 Where a tenant has opted for an additional Green Organics service, and the property owner has declined to accept the additional service charge, the tenant will be required to enter an agreement (license) with Council to have the charge billed directly. Any default on payment will result in the cancellation of the service and surrender of the bin. An administration fee is applicable in the event of a cancellation.

3.5.4 The pricing structure is to recover the cost of all direct and indirect costs associated with waste, recycling and green organic services

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3.5.5 Council will annually review the service charges and include in the Fees and Charges Register.

3.6 Standard Collection Service Provisions

3.6.1 Council's Kerbside Waste Collection Services are divided into three categories, Township services, Rural services and Commercial services. Each premise is entitled to collection in accordance with the standard service level outlined below.

	Waste to Landfill (Red Bin)	**Recyclable (Yellow Bin)**	**Green Organic (Green Bin)**
Township	140L	240L	240L
Rural	140L	240L	240L Optional (subject to conditions)
Commercial	140L	240L	240L (Townships Only)

Township Service

3.6.2 Residential Premises within the Designated Waste Collection Area (refer **Appendix B**) will receive:
- a mandatory weekly collection service for General (Landfill) Waste (140L Red Bin),
- a mandatory fortnightly collection service for Co-mingled Recycling (240L Yellow Bin)
- a mandatory fortnightly collection service for Green Organics Recycling (240L Green Bin).

3.6.3 Residential Premises will receive a Kitchen Caddy for compost, which is supplied by Council's contractor.

Rural Service

3.6.4 Residential Premises within rural areas (having property frontage to the Approved Waste Collection Route refer **Appendix A**) will receive:
- a mandatory weekly collection service for General (Landfill) Waste (140L Red Bin),
- a mandatory fortnightly collection service for Co-mingled Recycling (240L Yellow Bin).

3.6.5 Residential Premises within rural areas may apply to opt into a fortnightly collection service for Green Organics Recycling subject to local demand and where the Contract Supervisor determines collection is feasible.

Commercial Service

3.6.6 Commercial Premises within the Designated Waste Collection Area (refer **Appendix B**) can receive, on an optional basis:
- a weekly collection service for General (Landfill) Waste, and
- a fortnightly collection service for Co-mingled Recycling (240L Yellow Bin).
- A fortnightly collection service for Green Organics Recycling (240L Green Bin)

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3.7 New or Additional Service Provisions

3.7.1 Anything extra to one set of bins per rateable, eligible property for residents and small businesses is considered to be an additional collection.

3.7.2 A request for any new or additional commercial service or additional township/rural recycling services must be submitted to the Contractor.

3.7.3 A fee will be charged for any new or additional service that is approved by Council.

3.8 Special Circumstances Provisions

3.8.1 A request for a Special Circumstance Provision will need to be renewed on a biennial basis (to confirm eligibility, as the needs of residents or business may change).

Large Family

3.8.2 A property is eligible for a Family 240L Waste service (free of additional charge) if the household is a family of six or more members (not extended families), as evidenced by a current Medicare Card or a signed statutory declaration.

Special Medical Condition

3.8.3 A property is eligible for a Medical 240L Waste service (free of additional charge) for those residents where an extra volume of waste is produced due to a disability and/or medical condition. This does not include premises generating medical waste from a business, such as home massage, podiatry or similar.

3.8.4 To be eligible the resident must provide a letter from their medical practitioner or a signed statutory declaration stating the residents needs the extra capacity to dispose of additional waste associated with their disability or medical treatment.

Commercial/Small Business Premise

3.8.5 Commercial Premises and small businesses can upsize to 240L General (Landfill) Waste Bin at an additional cost and may request additional bins from the Contractor which are charged annually at the unit rate cost.

3.9 Service Exemption

Non-Collection Route

3.9.1 A permit exemption is available to a Residential Premise that has its main access off a road which is not included as an Approved Waste Collection Route.

Green Organic Service

3.9.2 A Residential Premises within the Designated Waste Collection Area (refer **Appendix B**) are eligible for a green organic service exemption if they are effectively managing green waste via composting as evidenced by photographs submitted to council and signed statutory declaration stating that no green waste will be placed in the General Waste or Recycling services.

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3.10 Collection locations

3.10.1 Bins will not be collected from other than the kerbside location or collection point, unless approval is given to Special On-Site Properties.

Kerbside

3.10.2 Collection will generally be undertaken from the kerbside adjacent to each eligible premise.

Collection Point

3.10.3 Within rural areas, a common collection point may be nominated for ease of waste collection by the Contractor. A common collection point will be as close as possible to eligible premise and no more than 5 kilometres from the access point to the premise.

3.10.4 Premises that are required to access a collection point are eligible for a reduction on the Service Charge:

a) if the service is provided no more than 500 metres from the collection point to the land the full annual service charge may be charged for the prescribed service.

b) if the service is provided more than 500 metres but no more than 2 kilometres from the collection point to the land, 75% of the annual service charge may be charged for the prescribed service.

c) if the service is provided more than 2 kilometres but less than 5 kilometres from the collection point to the land, 50% of the annual service charge may be charged for the prescribed service.

d) if the service is provided 5 kilometres or more from the collection point to the land, no annual service charge may be charged for the prescribed service (but nothing in this paragraph prevents a council from entering into an agreement for the provision of a prescribed service in respect of the collection of waste that involves the payment of an amount for the provision of the prescribed service).

Special On-Site Property

3.10.5 Residents within private land divisions with private access roads under strata management are entitled to the standard waste collection service.

3.10.6 It is the responsibility of the property owner or relevant community corporation or strata corporation to seek an indemnity direct with the Council's Contractor prior to the service commencing. This service will only be available if access is deemed satisfactory by the Contractor.

3.10.7 Aged care facilities and caravan parks may apply to the Contractor to have their bins picked up from within their premise rather than kerbside subject to a written agreement.

3.10.8 Multiple dwellings such as community and strata titles may apply to the Contractor to share bin services. All requests are subject to Council approval.

3.10.9 Council will maintain a Special On-Site Property register

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3.11 Collection Conditions

General

3.11.1 Council's contractor will provide bins in a safe working order and a maintenance service for repair and replacement when damaged.

3.11.2 Service recipients are responsible for washing or sanitising bins so as to prevent or minimise the discharge of fluids and the emission of offensive odours.

3.11.3 Service recipients are responsible for ensuring that the collection service requirements within clause 5.7.2 of the Waste Management By-law 2021 are maintained at all times.

Overweight/Over Flow

3.11.4 The Contractor may not collect a bin where it is evident upon visual inspection at the kerbside that it is overweight or over flowing with waste material.

3.11.5 It is the responsibility of the customer to rectify the situation before the bin will be collected.

Gross Contamination

3.11.6 The Contractor may not collect a bin where it is evident upon visual inspection at the kerbside or via the camera in the hopper that it contains gross contamination. Gross contamination refers to a high level of material that does not conform to acceptable materials specified in **Appendix C** (i.e. green waste in the recycling bin, general waste in the recycling bin etc.).

3.11.7 It is the responsibility of the customer to remove any contaminated material before the bin will be collected.

3.12 Replacement of stolen or damaged bins

3.12.1 Ratepayers/residents are responsible for contacting the Contractor for replacement of stolen or damaged bins.

3.12.2 Bins that are damaged or lost through negligence of the resident or through inappropriate use are to be repaired or replaced at a cost to the resident.

3.13 Bin Identification

3.13.1 Bin identification measures, including address labelling and radio frequency identification devices (RFID), will be adopted to minimise misuse of the service, support bin recovery, enable enhanced reporting and educational support and facilitate cost effective alternative service delivery options.

3.13.2 Bins are allocated to and remain with the property as part of the general, recycling and green waste collection service, but remain the property of the Contractor.

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3.14 Refusal, Decline, Cessation and Reinstatement of Service

3.14.1 A temporary refusal of service may be issued to a Residential Premise or eligible Commercial Premise where:

- there is a failure to place approved waste or recycling in the correct bin (i.e. high level of contamination – refer to acceptable items);
- insanitary or prohibited waste is placed out for collection;
- a bin presented for collection exceeds the maximum safe weight for a collection;
- the bin is presented in a location where it would be un-safe for the collection vehicle to empty due to local environmental conditions;
- the bin is presented in a location that is unrelated to the property where the bin is registered or not located within a nominated Collection Point;
- bin identification measures have been removed or modified without the consent of Council;
- the bin is not accessible from a public road way; or
- the correct bin is not presented for collection by the required time on the Council nominated collection day.

3.14.2 Council reserves the right to decline a request for a general waste service where an eligible premise does not take-up recycling service/s that are appropriate to the type, volume and nature of recyclable materials in that premises waste stream.

3.15 Councils Rights

3.15.1 Council reserves the right to:

- recover stolen or misappropriated bins;
- remove bins where there are repeated instances of bins not being stored between collection days on the site where they are registered;
- withdraw or cease a collection service where there is repeated misuse of waste and recycling services;
- withdraw or cease collection when deliberate and wilful damage of a bin provided by Council occurs;
- withdraw services for non-payment of fee-for-service or replacement bin charges; and
- charge bin replacement fees to re-deliver bins.

3.16 Street Bin/Council Parks and Facilities

3.16.1 Council's Street Bin collection service includes the collection of rubbish in streets, parks and public places by Council's contractor on either a bi-weekly basis for peak locations, or weekly collection service for other township locations. Street Bins are supplied, owned, repaired and replaced by Council's Contractor.

3.17 Waste Accepted Per Kerbside Service

3.17.1 Materials accepted in each of the bin receptacles is provided in **Appendix C**. Prohibited Waste is listed in **Appendix D**.

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3.18 Hard Waste Program

3.18.1 Council may offer up to two hard waste (including e-waste) programs per year. The extent and scope of these services will be subject to budget allocation.

3.18.2 Council may opt to work with community groups or organisations to identify programs to address waste and resource recovery.

3.19 Transfer Station

3.19.1 The Barossa Council operates a transfer station at 1508 Springton Road, Springton opposite Barossa Boundary Road which opens on the second Saturday of each month between 9am and 3pm.

3.19.2 The Transfer Station must operate in accordance with the EPA license.

3.19.3 Fees and Charges are reviewed annually.

3.19.3 The following will not be accepted at the Springton Transfer Station:

- permapine posts
- tyres
- loose paper
- plastic
- concrete
- car bodies
- gas bottles.

3.20 Hazardous Waste

3.20.1 Council does not provide a hazardous waste program, if this service is required please contact Council who can advise if suitable locations exist depending on the waste material.

4. Supporting Processes and Documents

Nil.

5. Related Policies

Nil.

6. Legislation and References

6.1 The following legislation and related documents are considered most relevant to waste management in The Barossa Council:

- *The Barossa Council Waste Management By-Law No. 7 of 2021*
- *Local Government Act 1999*
- *South Australian Public Health Act 2011*
  - *South Australian Public Health (General) Regulations 2013*
- *Environment Protection Act 1993*
  - *Environmental Protection (Waste to Resources) Policy 2010*
  - *South Australia's Waste Strategy*

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7.	Review

This Policy will be reviewed by [the Council / Document Control Officer] in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council's need changes.

8.	Further Information

8.1. This Policy is available on Council's website at www.barossa.sa.gov.au. It can also be viewed electronically at Council's principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.

8.2. Complaints regarding this Policy or its application can be made to the Customer Service team on 8563 8444 or barossa@barossa.sa.gov.au at first instance, who will refer you to the most appropriate officer according to Council's *Customer Service Policy* (see clause 8.1 above for availability).

9.	Document Control

Corporate Plan Link:	1.9 Participate in initiatives, or advocate for, improvement to recycling, re-use, and minimisation education initiatives to reduce waste disposed to landfill. 4.9 Provide residents kerbside waste collection and recycling services that reduce waste disposed to landfill 4.10 Facilitate access to hard and green waste facilities and associated recycling opportunities that reduce waste disposed to landfill and support the environment.		
Document Owner:	Director – Development and Community Services	**Document Control Officer:**	Director – Development and Community Services
Audience:	External	**Next Review Date:**	20/06/2027

Version history

Version No.	Date	Description of Change
1.0	7/6/2009	New Policy, June 2009
2.0	4/3/2018	Waste Management Service major review
3.0	11/7/2019	Amended to include availability 4.17.1 in the waste Management Services Policy, by deleting 'disposal' from the first sentence

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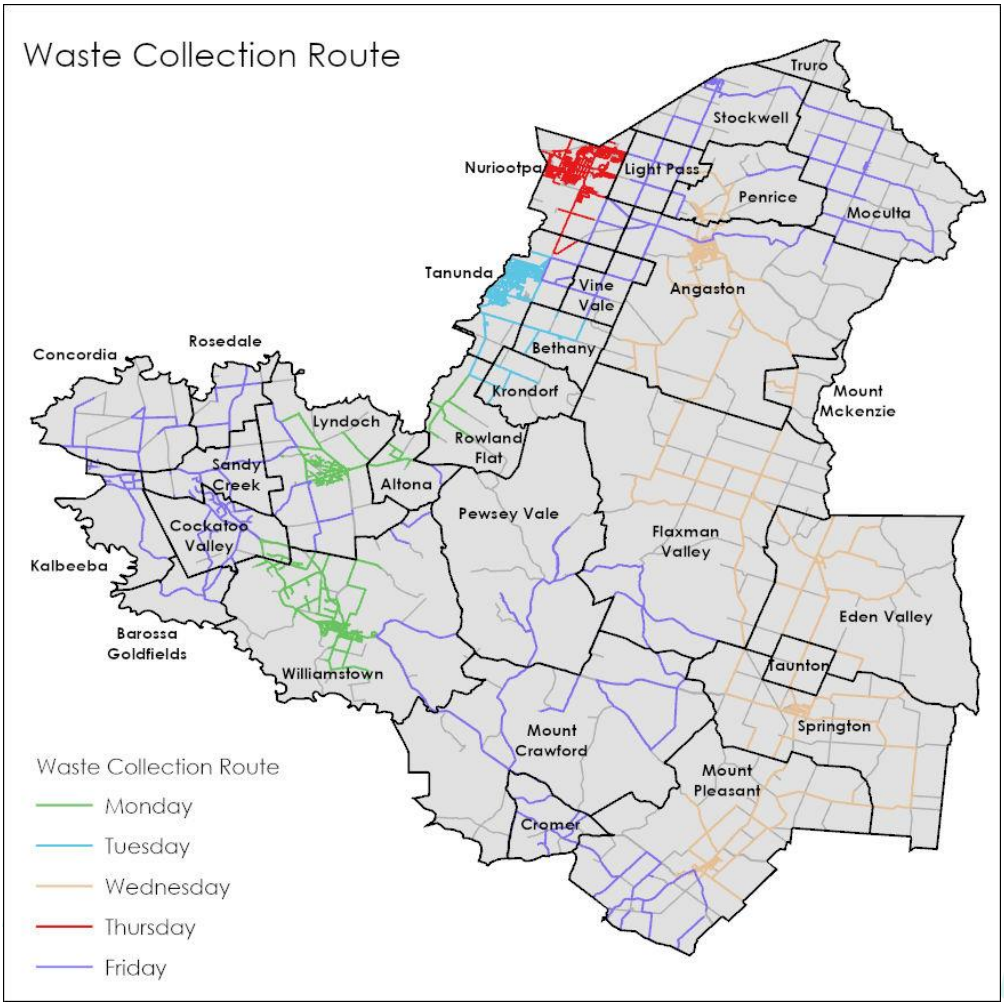
10. Definitions

Term	Definition
Approved Waste Collection Route	The route (approved between Council and the Contractor) which a service is provided for the collection and disposal of domestic waste and recyclables using 140L and/or 240L Mobile Bins outside of the Designated Waste Collection Areas, as shown in **Appendix A**.
Bin	A mobile garbage bin (MGB) provided by Council as a container for the temporary storage of waste and recycling.
Co-mingled Recycling	**Paper and Cardboard** (newspapers, magazines, egg cartons, cardboard boxes, envelopes, milk and juice cartons). **Metals** (tin, aluminium and steel cans, aerosol cans (empty), metal lids, aluminium foil tray and foil wrappers). **Rigid Plastic** (drink bottles, ice cream, yoghurt and margarine containers, milk and juice bottles, takeaway food containers, laundry and bathroom containers). **Glass** (bottles and jars).
Commercial premise	A premise lawfully used for a commercial, light industrial, institutional or other non-residential purposes and includes short term accommodation such as tourist accommodation in a hotel, back packer hostel or serviced apartment.
Designated Waste Collection Area	An area defined by Council in which a service is provided for the collection and disposal of domestic and commercial waste and recyclables using 140L and/or 240L Mobile Bins. Designated Waste Collection Areas are as marked on Council Designated Waste Collection Area maps (**Appendix B**) and are subject to change as a result of future subdivisions or planning requirements.
General (landfill) waste	That part of the waste stream remaining after the separation of organic, recyclable and hazardous or prohibited waste materials that is directed to landfill. Disposable nappies, Disposable masks, Disposable gloves, Damaged ropes and hoses, Garbage bags, Rags and old fabric, Broken glass and crockery (wrap in newspaper or place in a bag), Kitty litter crystals, Foam/polystyrene (food trays, cups and packaging).
Hard waste	Selected solid waste items, as specified by Council, which arise from residential premises that cannot be collected by the general waste, co-mingled or organics recycling collection services.
Hazardous waste	Listed waste having a characteristic described in schedule A list 2 of the *National Environment Protection (Movement of controlled waste between States and Territories) Measure*, as amended from time to time. eg explosives, flammable liquids, flammable solids.
Kerbside Waste Collection Service	Council's waste management services that typically requires bin presentation on the footpath and utilises smaller capacity Bins and a collection truck with a hydraulic lifting arm on the kerb (starboard) side of the vehicle.

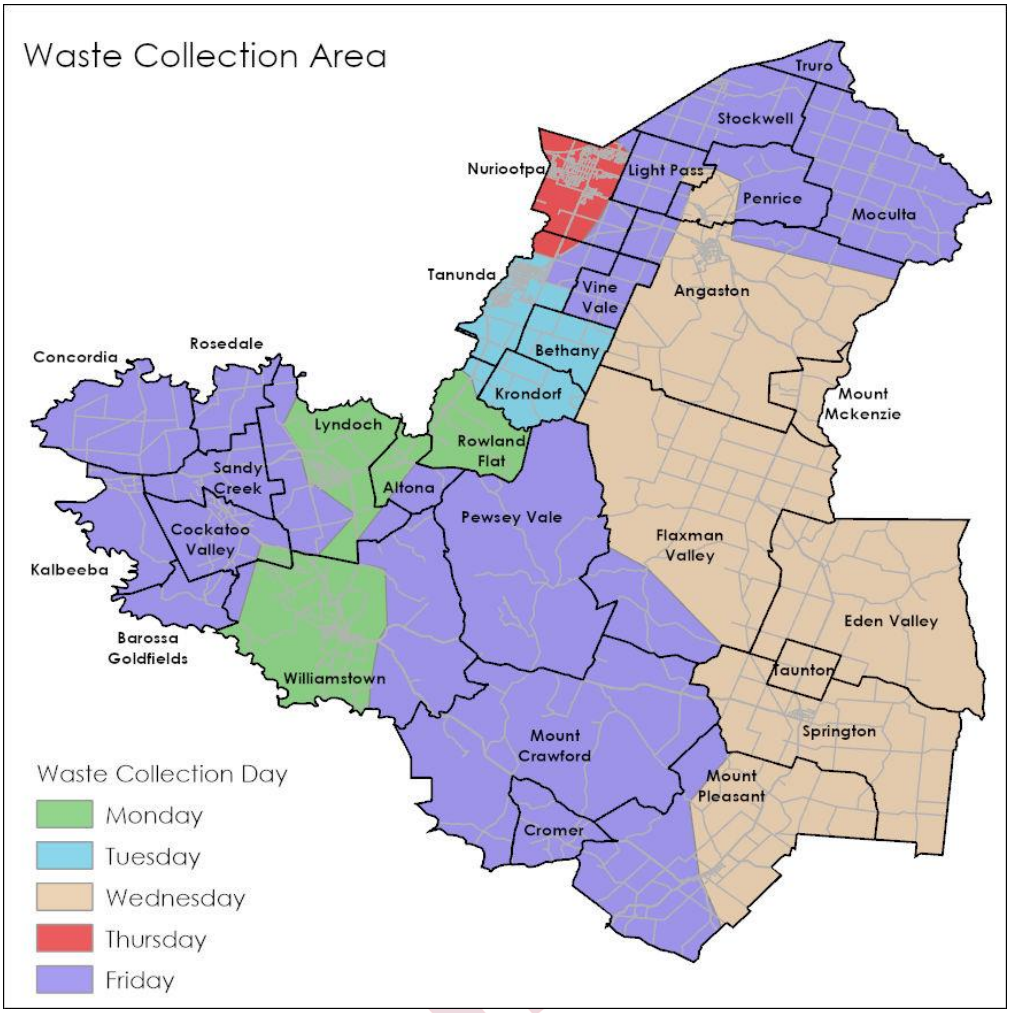
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Green Organics recycling	All food scraps (including dairy, meat, bones, seafood, fruit and vegetable scraps), lawn clippings, small cuttings, prunings and branches (up to 15cm wide x 60cm long), weeds, cut flowers, sawdust, tissues and paper towel, egg cartons, egg and oyster shells, coffee grounds, tea leaves and tea bags, pet waste (please place in a compostable bag or newspaper), pizza boxes, compostable paper and cardboard food packaging, compostable cups and cutlery, compostable kitchen caddy liners, shredded and small pieces of paper, newspaper.
Prescribed service	The collection, treatment or disposal (including by recycling) of waste.
Prohibited Waste	Materials that are not permitted to be placed in the kerbside collection as listed in **Appendix D**.
Recyclable material	Includes Paper and cardboard (newspapers and food packaging boxes and sleeves)Glass (bottles and cooking cars); Hard plastic (food containers and cartons); Metal (aluminium cans, tin cans and foil) Non-renewables (batteries and lightbulbs) Organic material (compostable material like food leftovers and garden waste)
Residential premise	A premise lawfully used as a dwelling or place of residence, including: a. a detached or semi dwelling, row house or townhouse; b. a home unit or apartment within a residential flat building or group dwelling; c. caretakers residence within a residential complex; and d. student accommodation, hostels, lodging and boarding houses (excluding tourist accommodation).
Service Charge	Council may impose an annual service charge on rateable land within its area to which it provides, or makes available, a prescribed service.
Service Entitled Property	Any premises entitled to the relevant collection service as set out in this Policy and at locations defined by the Approved Collection Route for that service. For the purposes of collection, service entitlement is based on rateable properties not on allotments or titles of land.
Street Bin	A receptacle for the disposal of waste and recyclable material usually in a street, park, or public area.

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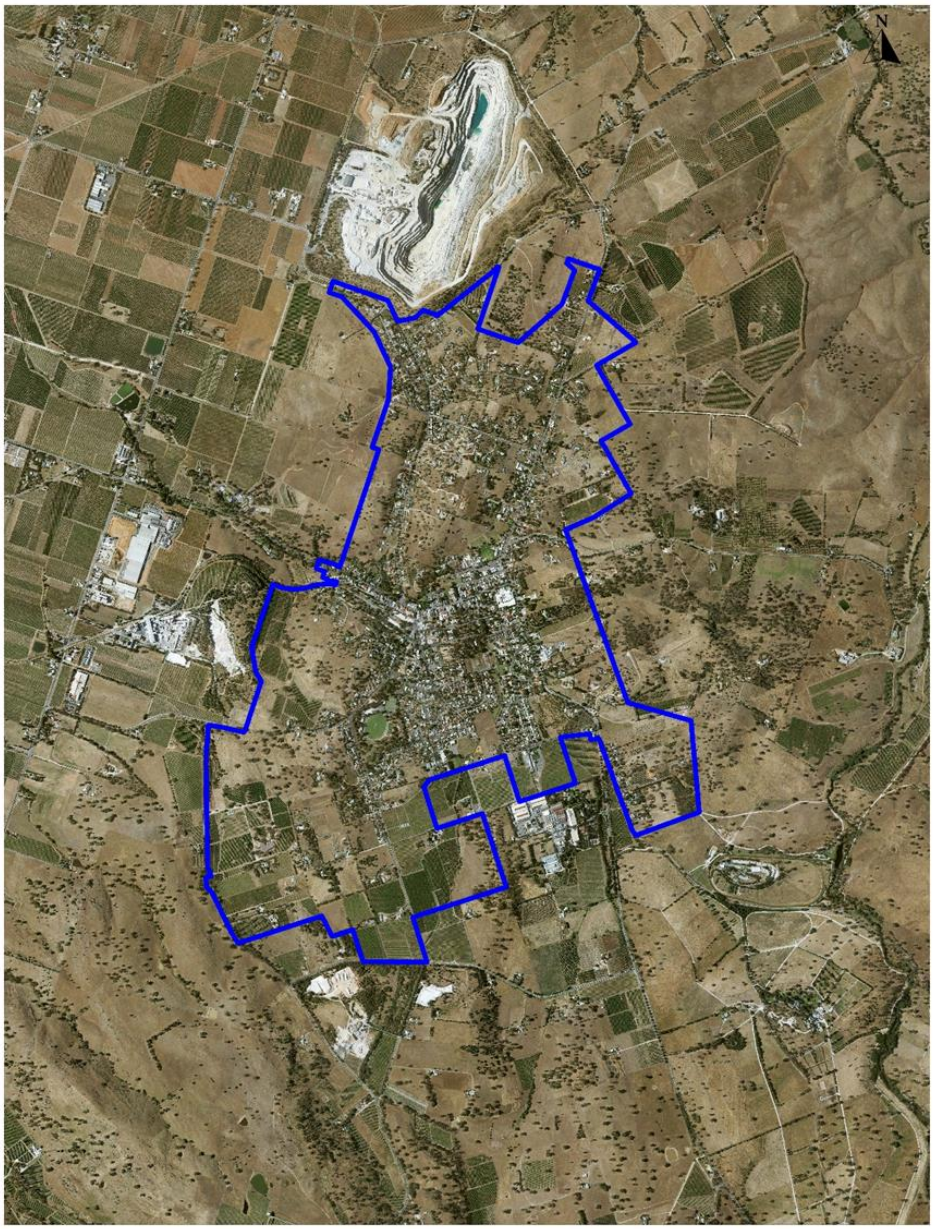


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Map – 1 Angaston-Penrice Designated Collection Area



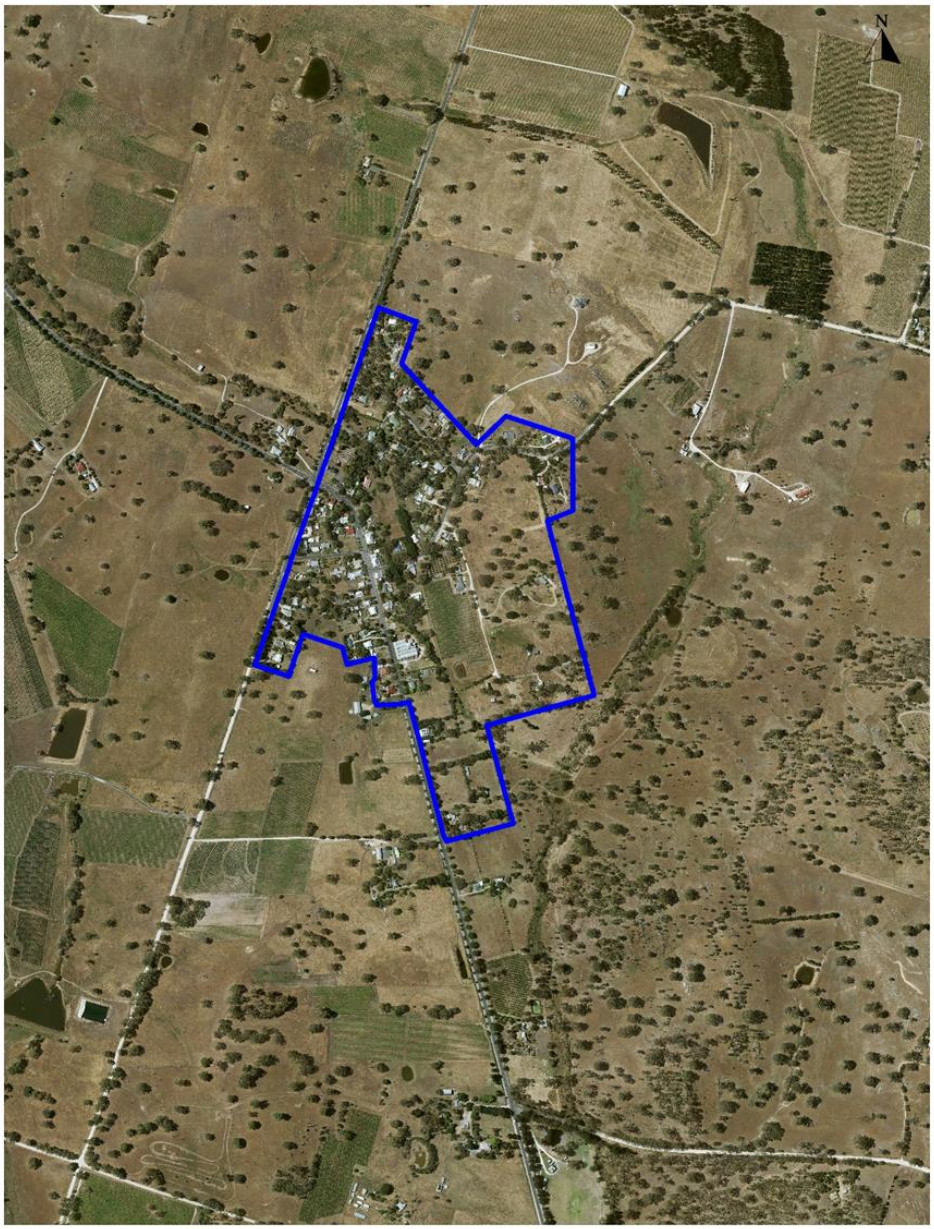
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Angaston and Penrice

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Map – 2 Eden Valley Designated Collection Area



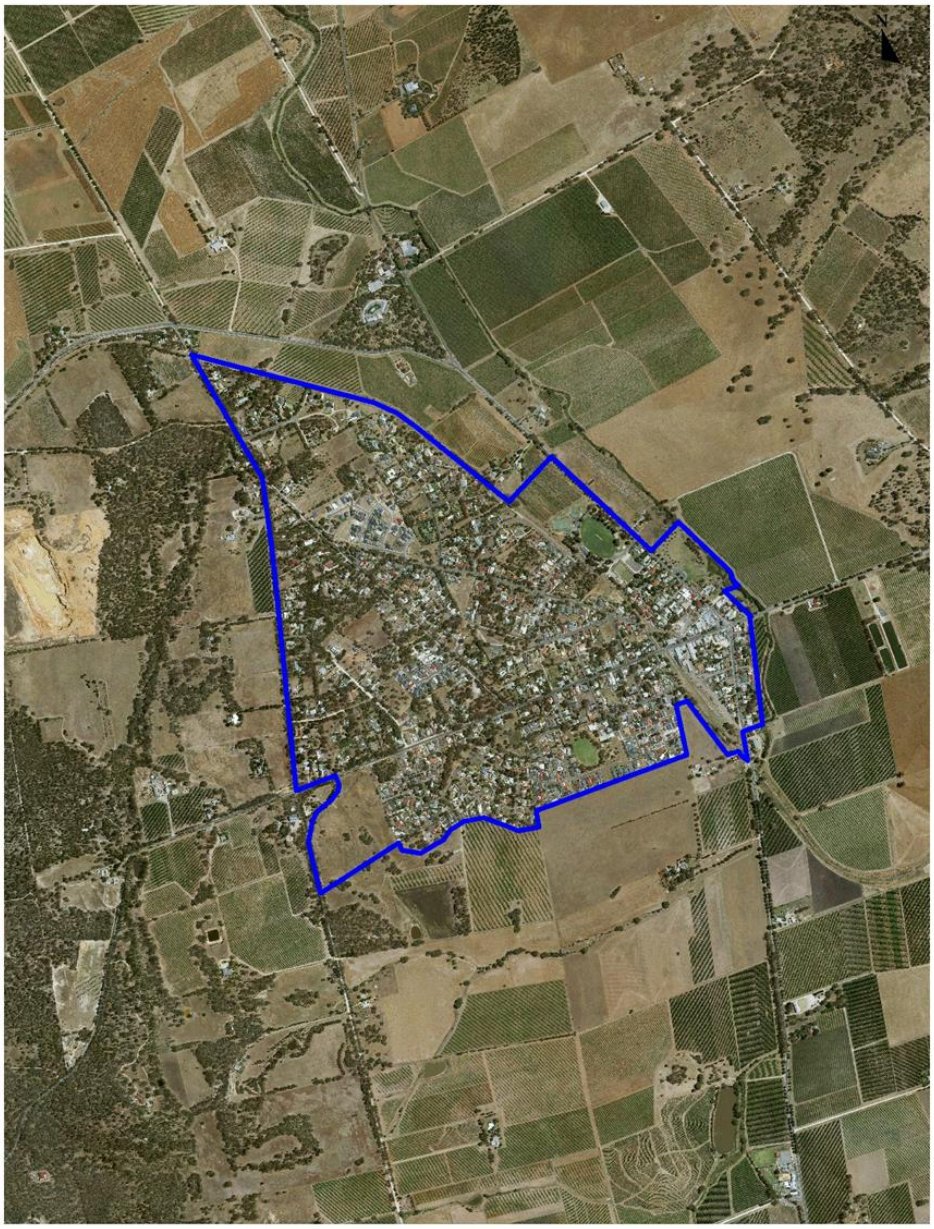
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Eden Valley

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Map – 3 Lyndoch Designated Collection Area



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Lyndoch

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Map - 4 Moculta Designated Collection Area



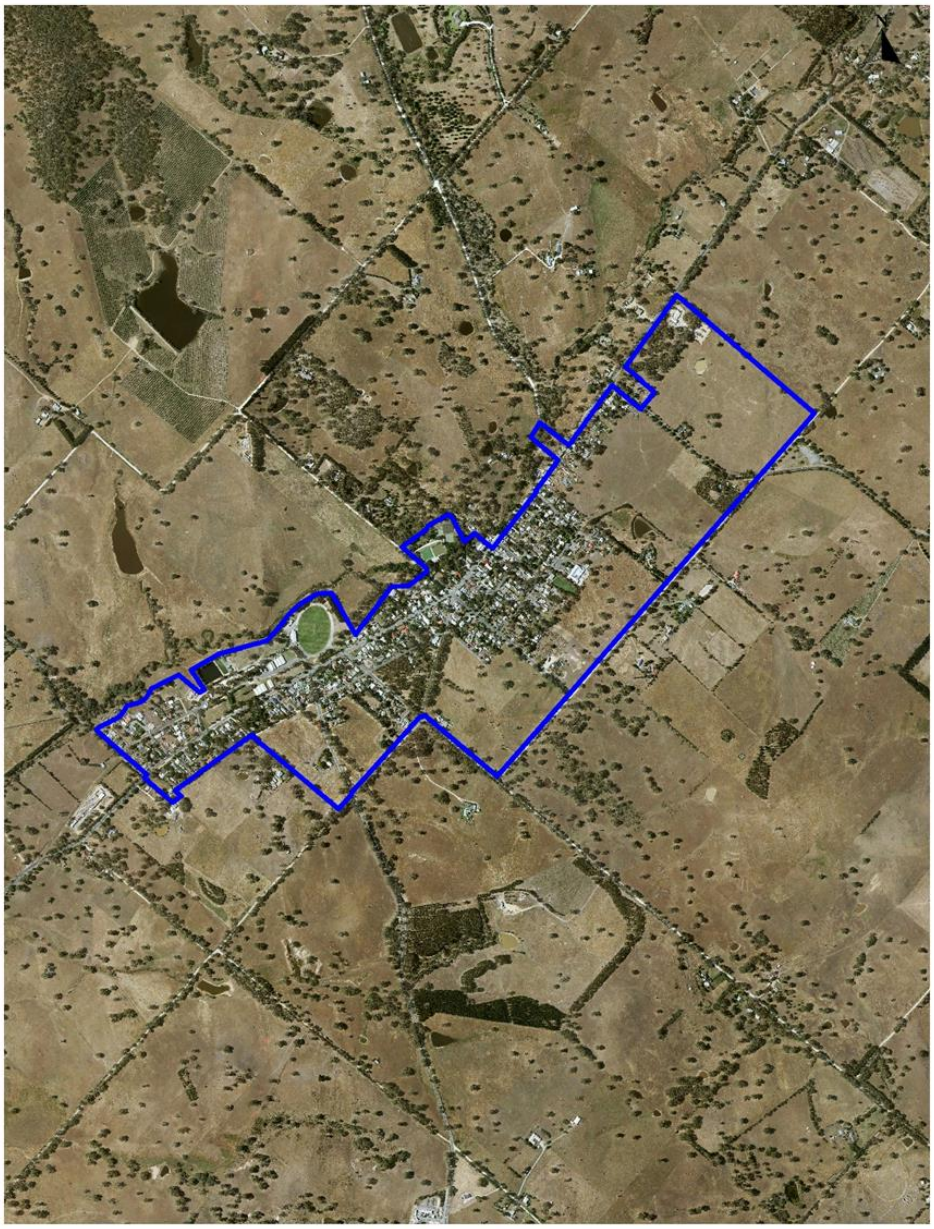
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Moculta

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Map – 5 Mounbt Pleasant Designated Collection Area



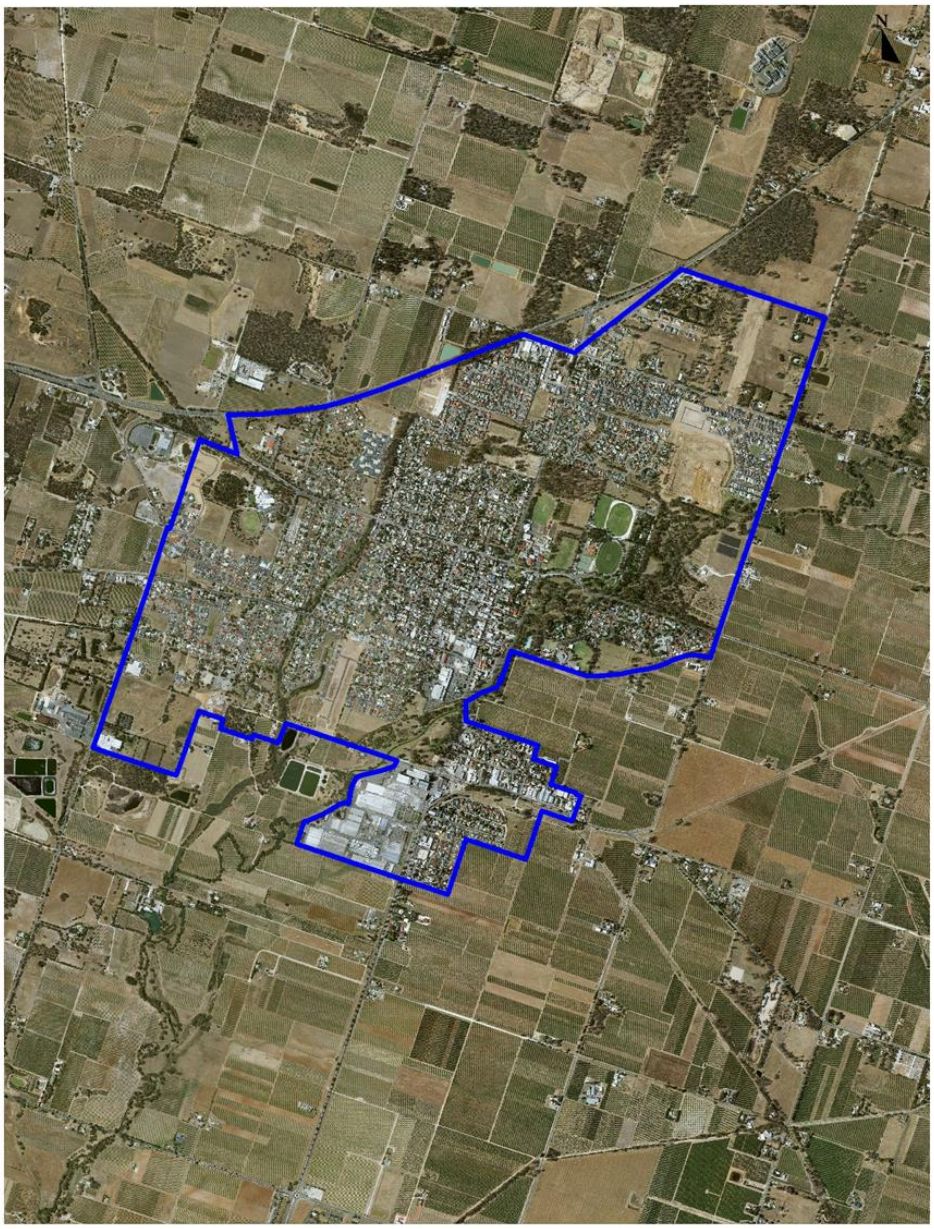
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Map – 6 Nuriootpa Designated Collection Area



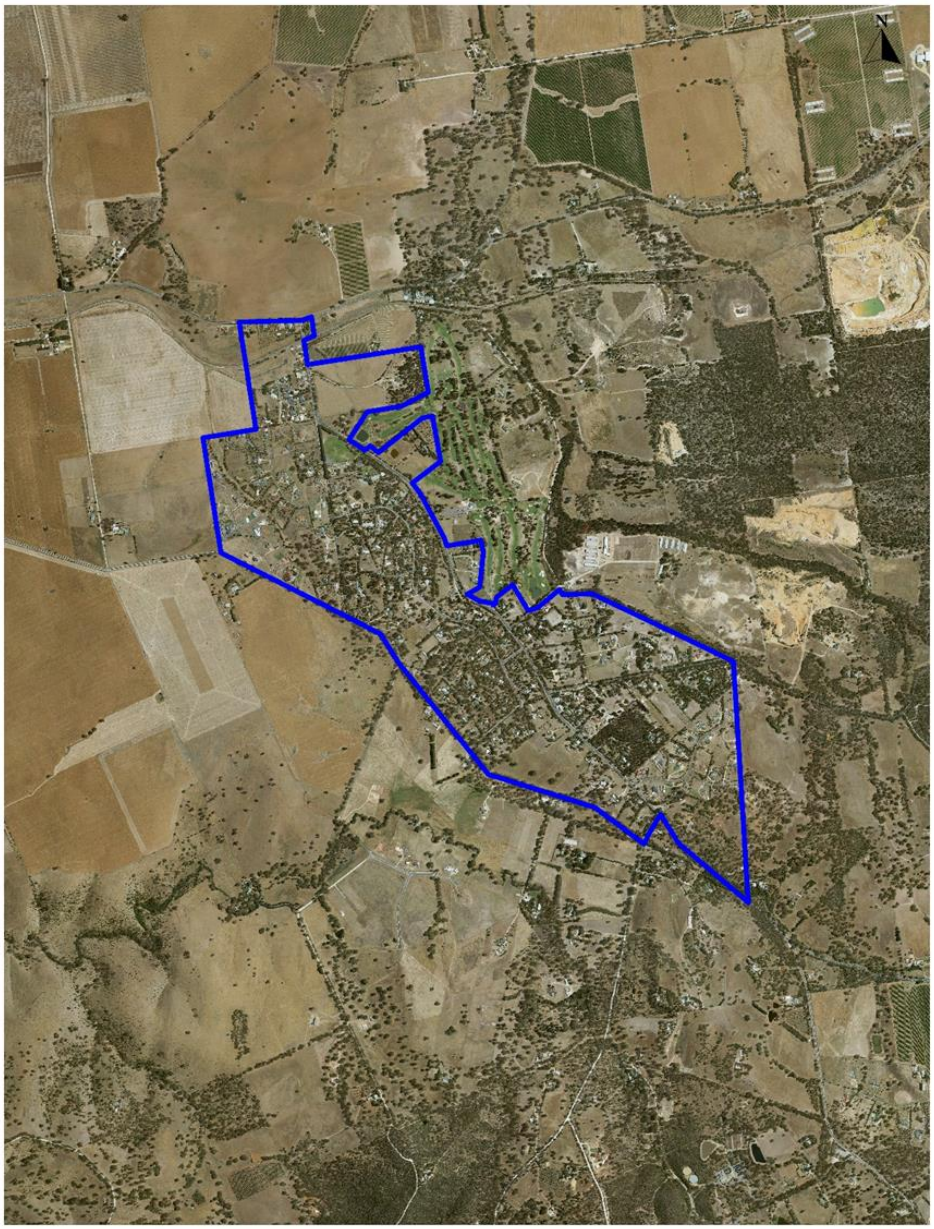
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Map – 7 Sandy Creek-Cockatoo Valley Designated Collection Area



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Map – 8 Springton Designated Collection Area



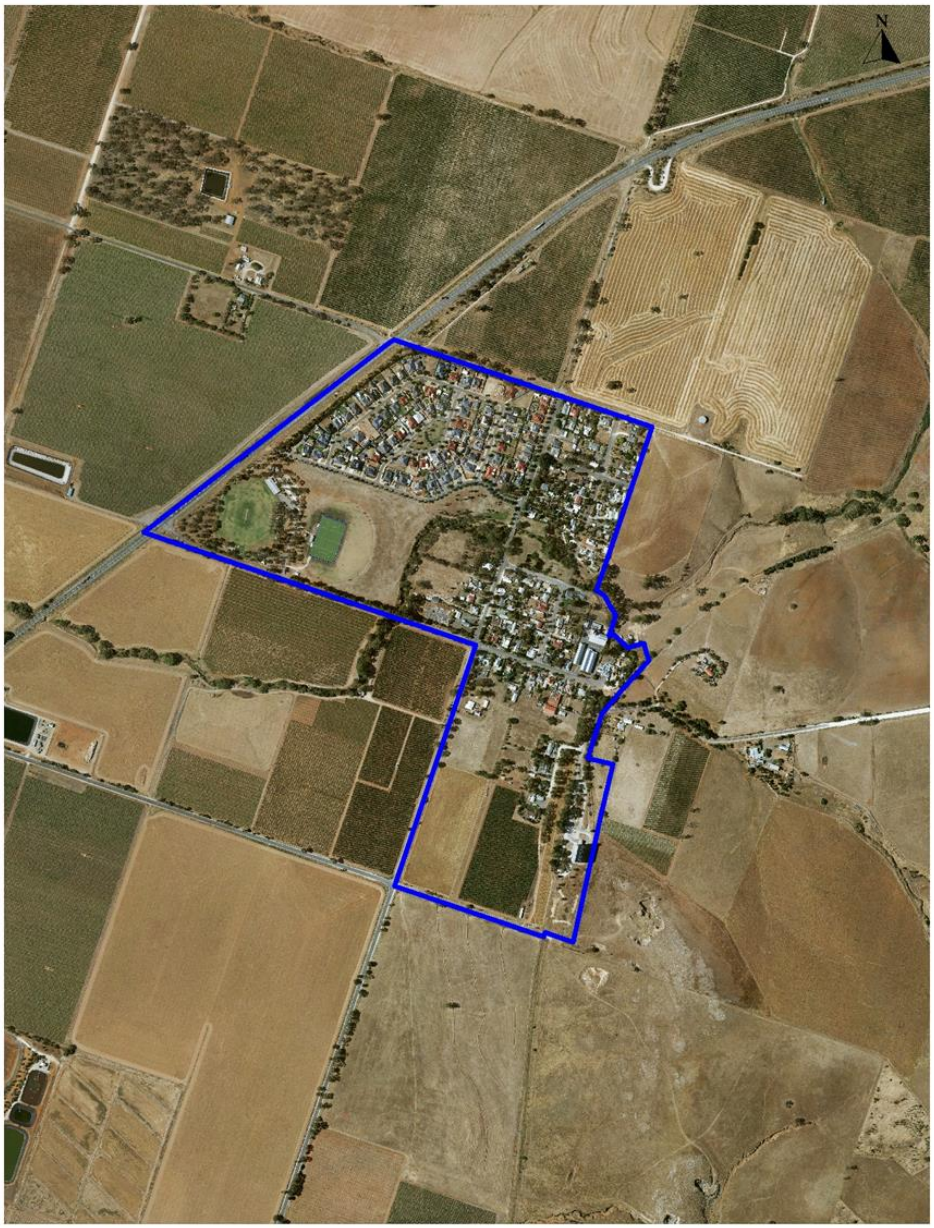
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Map – 9 Stockwell Designated Collection Area



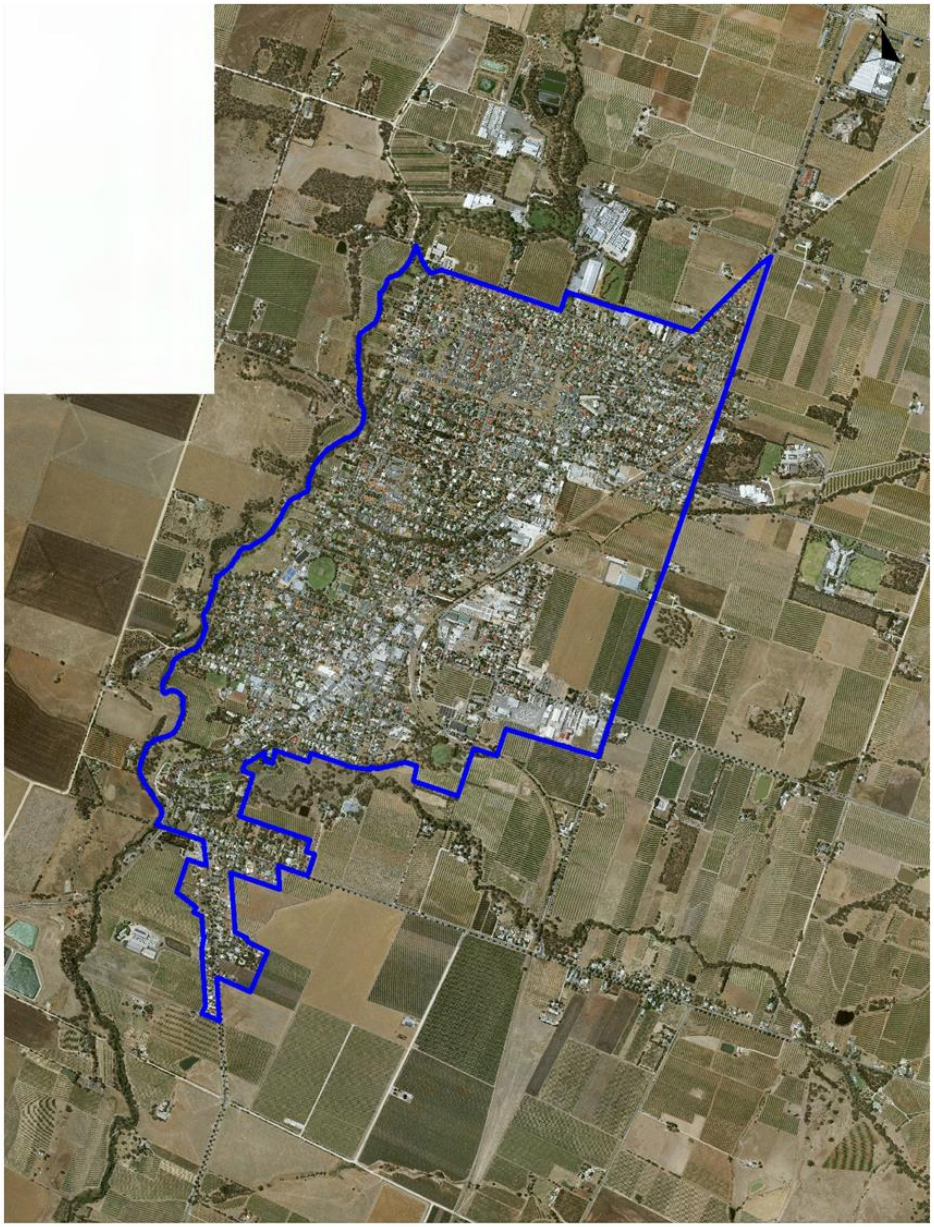
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Map – 10 Tanunda Designated Collection Area



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Tanunda

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Map – 11 Williamstown Designated Collection Area



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Appendix C – Acceptable Materials In Bins

Co-mingled Dry Recycling (yellow lid bins)

- Liquid paperboard cartons
- Rigid plastic containers with lids removed (recycle code 1-7);
- All paper, magazines and cardboard;
- Glass jars and bottles with lids removed (excluding crockery);
- Aluminium cans;
- Aluminium rigid and semi-rigid packaging
- Steel cans, aerosol spray cans;
- Metal lids

Organics Recycling Collection (green lid bins)

- Fruit and vegetable material;
- Bread, pastries and flours (including rice and corn flours);
- Teabags, coffee grounds;
- Food soiled paper products (hand towels, etc);
- Lawn/grass clippings;
- Plant and tree pruning (branches up to 15cm in diameter);
- Weeds, leaves, flowers;
- Fats;
- Bones; food scraps; fats; meats; fish (wrapped in newspaper)
- Cheese, yoghurt;
- Eggs, oyster shells
- Meat scraps, bones and seafood (cooked an draw)
- Compostable biodegradables (bag, polymers)

Solid Waste Collection (red lid bins)

- Plastic wrappers and plastic bags; (Ratepayers should seek to deposit at a facility that accepts soft plastics i.e. Supermarkets)
- Nappies;
- Soiled packaging;
- Broken glass (wrapped in newspaper)
- Ceramics
- Items that cannot be placed in the Co-mingled Dry Recycling or Organics Recycling bins.

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Appendix D – Prohibited Waste In Bins

The following substances are prohibited from collection by the Kerbside Waste Collection Service:

- hot ashes;
- liquids;
- dust and fine loose material unless it is securely wrapped in paper or plastic;
- pool chemicals;
- liquid paint;
- varnishes and solvents;
- waste listed as 'dangerous substances' under the Environment Protection Act;
- car batteries;
- acids and alkalis;
- earth, gravel, rocks: building materials – concrete, bricks masonry, tiles, sand, gravel;
- asbestos;
- bitumen;
- car bodies;
- engines;
- tyres;
- explosives and ammunition;
- gas bottles;
- medical or dental practice waste (eg Syringes, X-Rays etc);
- veterinary practice waste;
- animal carcasses;
- any other article or matter that is discarded in the course of medical, dental or veterinary
- practice or research that poses a significant risk to the health of a person who comes into contact
- with it, or to the environment at large;
- radio-active waste;
- any other item or substance that may constitute a hazard to the waste collectors, or to the
- mechanism of the collection vehicle, or to the environment at large.

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MATTERS FOR INFORMATION

6.6 INITIATION OF THE SITE CONTAMINATION DEVELOPMENT ASESSMENT SCHEME CODE AMENDMENT

Author: Director Development and Community Services
24/29293

The State Planning Commission (the Commission) has initiated the *Site Contamination Development Assessment Scheme Code Amendment.* A copy of the letter received from the Chair of the State Planning Commission is contained within Attachment 1.

The Code Amendment will review the scope of the Site Contamination Development Assessment Scheme and improve the way in which the planning system responds to site contamination risk. The primary objective of the amendment is to ensure that investigations are commensurate to the level of risk.

Further information on the Code Amendment is contained within Attachment 2.

Public consultation on the Code Amendment will be undertaken once the State Planning Commission has undertaken pre-consultation with key stakeholders and local government through the established Site Contamination Reference Group.

It is proposed that a draft submission will be presented to Council when the Code Amendment is released for public consultation.

ATTACHMENTS

Attachment 1 Letter - State Planning Commission - Initiaton of the Site Contamination Development Assessment Scheme Code Amendment ⇩

Attachment 2 Proposal - Site Contamination Development Assessment Scheme Code Amendment ⇩

SUPPORTING REFERENCES

Planning, Development & Infrastructure Act 2016

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STATE PLANNING COMMISSION

20861181

83 Pirie Street
Adelaide SA 5000

GPO Box 1815
Adelaide SA 5001

08 7109 7466
saplanningcommission@sa.gov.au

31 January 2024

Mayor Michael Lange
The Barossa Council

By email: mayor.lange@barossa.sa.gov.au

Dear Mayor Lange

Initiation of the Site Contamination Development Assessment Scheme Code Amendment

I write to advise you that the State Planning Commission (the Commission) has initiated the Site Contamination Development Assessment Scheme Code Amendment (the Code Amendment) pursuant to section 73(2)(a) of the *Planning, Development, and Infrastructure Act 2016* (the Act).

The Code Amendment seeks to review the scope of the Site Contamination Development Assessment Scheme to improve the way the planning system responds to site contamination risk, ensuring that investigations are commensurate to the level of risk.

A copy of the signed Proposal to Initiate is enclosed for your reference.

The Commission intends to undertake pre-consultation with key stakeholders and local government through the established Site Contamination Reference Group. Thereafter, public consultation will be undertaken in accordance with the Community Engagement Charter.

Should you require further information, please contact Mr Jason Bailey from Planning and Land Use Services within the Department for Trade and Investment on 08 7109 7161 or via email at: Jason.Bailey@sa.gov.au.

Yours sincerely

Stuart Moseley
Acting Chair

Cc: Mr Martin McCarthy, Chief Executive Officer, The Barossa Council
Enc Signed Proposal to Initiate the Site Contamination Development Assessment Scheme Code Amendment

PROPOSAL TO INITIATE AN AMENDMENT TO THE PLANNING & DESIGN CODE

Site Contamination Development Assessment Scheme Code Amendment

By the State Planning Commission (the Designated Entity)

Contact details:

PlanSA

Email: plansa@sa.gov.au

Phone: 1800 752 664



_____ (Signature)

A/CHAIR, STATE PLANNING COMMISSION

Date: 31/01/2024

This Proposal to Initiate document forms the basis for the preparation of a proposed amendment to the Planning and Design Code for the purpose of section 73(2)(a) of the *Planning, Development and Infrastructure Act 2016*.

PlanSA

Government of South Australia
Department for Trade and Investment

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1. INTRODUCTION

The State Planning Commission (the Commission) is an independent body providing advice and leadership on all aspects of planning and development in South Australia. A key role is to ensure the Planning and Design Code (the Code) is maintained, reflects contemporary values relevant to planning and is responsive to emerging trends and issues.

The Commission is proposing to initiate an amendment to the Code as it relates to the whole of South Australia.

The Commission proposes to amend the Code pursuant to section 73(2)(a) of the *Planning, Development and Infrastructure Act 2016* (the Act).

The Site Contamination Development Assessment Scheme Code Amendment (the Code Amendment) proposes to review the scope of the Scheme to improve the way the planning system responds to site contamination risk, ensuring that investigations are commensurate to the level of risk.

This Proposal to Initiate details the scope, relevant strategic and policy considerations, nature of investigations to be carried out and information to be collected for the Code Amendment. It also details the timeframes to be followed in undertaking the Code Amendment.

The Commission is the 'designated entity' responsible for conducting this Code Amendment process and is required to undertake consultation in accordance with the Community Engagement Charter and make final recommendations to the Minister for Planning (the Minister) prior to consideration whether to approve, amend or refuse the Code Amendment.

1.1. Designated Entity for Undertaking the Code Amendment

In accordance with section 73(2)(a) of the Act, the Commission will be the Designated Entity responsible for undertaking the Code Amendment process. As a result:

1.1.1. The Commission acknowledges that it will be responsible for undertaking the Code Amendment in accordance with the requirements Act.

1.1.2. The Commission intends to undertake the Code Amendment by utilising professional expertise of:

- Planning and Land Use Services (PLUS) employees from the Department for Trade and Investment (the Department) including:
  - Planning officers
  - Communications staff
  - Staff responsible for the technical management and operation of the online Planning and Design Code
  - Staff from the Environment Protection Authority (EPA).

1.2. Rationale for the Code Amendment

Context

A key responsibility of a planning authority is to ensure that a site is suitable for its intended use and does not pose an unacceptable risk to human health or the environment, taking into account the proposed use of the site.

Assessment of site contamination in the South Australian planning system seeks to be consistent with the *National Environment Protection (Assessment of Site Contamination) Measure 1999 (NEPM),* which aims to:

> *"establish a nationally consistent approach to the assessment of site contamination to ensure sound environmental management practices by the community which includes regulators, site assessors, environmental auditors, landowners, developers and industry.*
>
> *"provide adequate protection of human health and the environment, where site contamination has occurred, through the development of an efficient and effective national approach to the assessment of site contamination."*

More specifically section 6(5) of the NEPM states:

> *"Authorities of participating jurisdictions (at local and State government level) that consent to developments, or changes in land use, should ensure a site that is being considered for development or a change in land use, and that the authorities ought reasonably know if it has a history of use that is indicative of potential contamination, is suitable for its intended use."*

Prior to introduction of the Code in 2021, most development plans contained the following general policy:

> *Objectives:*
>
> *Protection of human health and the environment wherever site contamination has been identified or suspected to have occurred.*
>
> *Appropriate assessment and remediation of site contamination to ensure land is suitable for the proposed use and provides a safe and healthy living and working environment.*
>
> *Principle of Development Control:*
>
> *Development, including land division, should not occur where site contamination has occurred unless the site has been assessed and remediated as necessary to ensure that it is suitable and safe for the proposed use.*

This policy was often used in an on-merit assessment, with no statutory referral or prescribed information requirements.

The Commission and EPA worked to reform the way site contamination was assessed in South Australia over several years (2017-2021). The site contamination development assessment scheme established in 2021 (the Scheme) provides a risk-based approach to site contamination, requiring consideration of site contamination in development applications which involve a change to a more sensitive land use.

Objectives of the Scheme included:

- Safeguard community health by providing a consistent state-wide planning approach to site contamination assessment.
- Specify site contamination assessment steps that must be taken when a change to a more sensitive land use is proposed (including an application for land division).
- Ensure that investigations are consistent with the risk-based *National Environment Protection (Assessment of Site Contamination) Measure 1999* (NEPM).
- Ensure that land is suitable, or will be made suitable, for its intended use where a more sensitive land use is proposed.

In summary, the Scheme requires that, when land use changes to a 'more sensitive use', investigation requirements are triggered. More detailed investigations are required as risk increases to ensure that site contamination is adequately investigated as part of the development assessment process.

The Scheme currently involves the following steps:

1. Development applications that involve a change in use to a more sensitive use require the submission of a site contamination declaration (SDF) form and a Preliminary Site Investigation (PSI) upon lodgement.
2. Where a potentially contaminating activity (PCA) has been identified on the PSI, further investigations may be required in the form of a Detailed Site Investigation (DSI) and potentially also a Site Contamination Audit.
3. Development applications meeting the criteria in Part 9.1 of the Code require referral to the EPA for direction regarding the type of site contamination investigations required. Only the EPA have the power to require an audit to be undertaken.
4. Statement of Site Suitability confirms that the site is suitable for its intended use, including any remediation required prior to occupation.

The Scheme operates through the following instruments:

- *State Planning Commission Practice Direction 14 (Site Contamination Assessment)* (Practice Direction 14) sets out procedural requirements that apply to assessment of potential site contamination when land use changes to a more sensitive use. It contains the LUSH, the Site Contamination Declaration form, the Statement of Site Suitability form, the potentially contaminating activity class lists, standard conditions, and matters for the EPA to consider when assessing referrals.
- *Planning, Development and Infrastructure (General) Regulations 2017* (the Regulations) specify the required forms and reports to accompany development applications and prescribes the EPA as a referral body.
- the Code includes Site Contamination General Development Policies used to assess site contamination, as well as outlining when a development requires referral to the EPA in Part 9.

Background

Practice Direction 14 was originally issued by the Commission in March 2021, with an agreement to undertake a formal review of its operation within 12 months. The initial review of Practice Direction 14 in 2022 revealed that a broader investigation into the overall Scheme was required, focussing on:

- removing low risk development applications from the Scheme; and

- providing clarity on when site contamination assessments should be a condition/reserved matter.

This perspective was formed based on wider industry feedback received since the implementation of the Code and Practice Direction 14, as well as an interim review of how other interstate planning schemes manage site contamination matters.

SCRG

A Site Contamination Reference Group (SCRG) was originally established by the EPA in 2017 to provide input into the development of the Scheme. The SCRG consists of representatives from the development sector, site contamination sector, councils, PLUS and the EPA.

The SCRG was re-convened in 2022 to examine the outcomes of the Commission's review of the Scheme and table other matters of significance.

In general, it was agreed that there was a need to recalibrate the risk-based approach for site contamination in the planning system.

Areas for review

This Code Amendment seeks to investigate improvements to the Scheme to enable more streamlined assessment pathways in appropriate cases, whilst ensuring that site contamination investigations and assessment continue to be required to protect community health.

The Commission's review of the Scheme, with feedback from the SCRG, identified two main areas for review and improvement, summarised below:

1. Land-Use Sensitivity Hierarchy (LUSH)

Table 1 of Practice Direction 14 (shown in Figure 1) currently specifies a hierarchy of land use types to determine what constitutes a 'more sensitive use' for the purposes of a proposed change in land use or an application for land division for a 'sensitive use'.

This categorisation was created in collaboration with the EPA to capture increasing levels of human sensitivities depending on the nature of the existing land use.

Item	Land Use	Description and examples
1	Residential Class 1	Domestic residential
	Educational premises class 1	Pre-school or primary school premises
2	Residential Class 2	Commercial aged care or other residential care facility
3	Open space/recreation area	Parks, playgrounds, playing ovals and other recreation areas in the open
4	Educational premises class 2	Secondary School premises, University or other tertiary educational premises
	Hospitals	Hospitals and hospices where persons with vulnerable physiology typically reside
	Tourist Accommodation	Hotels, motels and other forms of tourist accommodation
	Community Centre	Land uses for social, recreational, educational purposes for local community, but not including school premises or university or other educational premises or indoor recreation centres
5	Commercial class 1	Shops, offices, consulting rooms and the like
6	Primary Production	Farming, horticulture and intensive animal husbandry
	Commercial class 2	Petrol stations, dry cleaners, warehouses and other commercial uses (other than Commercial class 1)
7	Industrial	Light, service, general or special industry

Figure 1 Current Land Use Sensitivity Hierarchy Table (LUSH)

Evaluation of how the Scheme applies to development applications has observed the need to undertake site contamination investigations for applications which may have maintained a low risk of site contamination. For example, applications for the following changes of land use would all trigger the requirement for a PSI:

- residential care to private residential
- light industry to shop
- industry to retail fuel outlet (petrol station)
- light industry to warehouse
- office to school
- farming land to open space.

In comparison to other interstate planning systems, South Australia is the only jurisdiction to regulate what constitutes a ‘more sensitive land use’ by ranking both sensitive and non-sensitive land uses and requiring further testing if moving from one land use to another.

This Code Amendment seeks to review the concept of a ‘more sensitive use’, which will involve a review of not only Practice Direction 14, but also the Code, Regulations and other practice directions.

2. Investigations as a reserved matter

The Commission seeks to ensure a process can be followed, where planning consent for low-risk changes of use cannot be withheld pending detailed site contamination investigations, particularly in instances where the site cannot be reasonably accessed to undertake site contamination investigations (known as a ‘constrained site’). In these

cases, site investigations may be more suitably undertaken at a later date, while ensuring appropriate consideration through reserved matters on the planning consent.

Some changes were made to Practice Direction 14 in April 2023 to acknowledge constrained sites, but this may be further reviewed through this Code Amendment process.

2. SCOPE OF THE CODE AMENDMENT

2.1. Affected Area

The Code Amendment will apply to the whole of South Australia.

2.2. Scope of Proposed Code Amendment

Current Policy	The Scheme operates in conjunction with the following provisions of the Code, which will be reviewed through this Code Amendment: • Part 4 – General Development Policies – Site Contamination • Part 8 – Administrative Terms and Definitions • Part 9 – Referrals - Part 9.1 Referral Body: Environment Protection Authority Current Code provisions are contained in **Attachment A**.
Amendment Outline	This Code Amendment proposes to review the parts of the Code which form part of the Scheme to improve the way the planning system responds to site contamination risk, ensuring that investigations are commensurate to the level of risk. More specifically, it is proposed to review the extent of developments which are captured by the term "more sensitive use' in PO1.1 of the Site Contamination General Development Policies: "Ensure land is suitable for use when land use changes to a more sensitive use." In turn, this will also require review of DTS/DPF 1.1: "Development satisfies (a), (b), (c) or (d): a) does not involve a change in the use of land b) involves a change in the use of land that does not constitute a change to a more sensitive use c) involves a change in the use of land to a more sensitive use on land at which site contamination is unlikely to exist (as demonstrated in a site contamination declaration form)

	d) involves a change in the use of land to a more sensitive use on land at which site contamination exists, or may exist (as demonstrated in a site contamination declaration form), and satisfies both of the following: i. a site contamination audit report has been prepared under Part 10A of the *Environment Protection Act 1993* in relation to the land within the previous 5 years which states that- A. site contamination does not exist (or no longer exists) at the land or B. the land is suitable for the proposed use or range of uses (without the need for any further remediation) or C. where remediation is, or remains, necessary for the proposed use (or range of uses), remediation work has been carried out or will be carried out (and the applicant has provided a written undertaking that the remediation works will be implemented in association with the development) and ii. no other class 1 activity or class 2 activity has taken place at the land since the preparation of the site contamination audit report (as demonstrated in a site contamination declaration form)."
Intended Policy	Instead of the term 'more sensitive use' and the LUSH in Practice Direction 14, it is proposed to investigate a scheme where site contamination investigations are required for changes to particular land uses most susceptible to site contamination (e.g. through exposure pathways), but only where those uses are located on potentially contaminated land. The nature of these particular land uses will be investigated having regard to the current LUSH, NEPM and *Environment Protection Act 1993* (the EP Act), while using land use definitions from Part 7 of the Code. Such land uses may include: • Dwelling (residential) • Pre-school

8

	• Supported accommodation • Retirement facility • Student accommodation • Sales office • Educational establishment (in the form of a primary school) • Educational establishment (in the form of a secondary school) • Hospital • Caravan and tourist park • Tourist accommodation • Community facility • Open Space • Recreation area • Golf Course • Place of worship The concept of 'potentially contaminated land' will also be explored and could include: • Land which: a) has been used for a potentially contaminating activity (currently defined in Practice Direction 14 as "a class 1 activity, class 2 activity or class 3 activity" which are listed in Schedule 1 of the Practice Direction); or b) is adjacent land to land which has been used for a Class 1 potentially contaminating activity and remediation has not been undertaken to make the land suitable and safe for a sensitive use. • Land which is the subject of a notation on the relevant title under section 103P of the EP Act that a site contamination audit report has been prepared. • Land which is subject to a notification of site contamination of underground water (known as a section 83A notification under the EP Act), or where such a notification exists on adjacent land, shown in the South Australian Property and Planning Atlas (SAPPA). • Land located within a Groundwater Prohibition Area as shown on the SAPPA. The Code Amendment will investigate an approach where relevant authorities would consider the previous history of land and adjacent land where applications propose certain changes of use, to consider whether a potentially contaminating activity has triggered the definition of potentially contaminated land. If the relevant authority is unsure whether such a use has been undertaken, they could request the applicant to provide a PSI under section 119(3)(a) of the Act (rather than requiring a PSI and

	consultant's declaration form upfront under section 119(1)(c) of the Act as prescribed under Schedule 8 clause 2A of the Regulations). The intended policy amendments will involve review of DO1, PO1.1 and DTS/DPF 1.1 of the Site Contamination General Development Policies, as well as Part 9.1 Referral Body: Environment Protection Authority. It will also involve review of (potential insertion, deletion, and modification) of various terms in Part 8 – Administrative Terms and Definitions, including: • *more sensitive use* • *non-sensitive use* • *sensitive receiver* • *sensitive use* • *site contamination* • *class 1 activity* • *class 2 activity*

3. STRATEGIC PLANNING OUTCOMES

Proposed Code Amendments occur within a state, regional and local strategic setting, which includes:

- State Planning Policies (SPPs)
- Regional Plans
- Other relevant strategic documents.

3.1. Summary of Strategic Planning Outcomes

The Code Amendment will align with the following key strategic outcomes:

- Protect communities from exposure to site contamination
- Enable the safe development and use of land
- Mitigate potential contamination of sites

3.2. Alignment with State Planning Policies

The State Planning Policies (SPPs) set out the State's overarching goals and requirements for the planning system. Under section 66(3)(f) of the Act, the Code must comply with any principle prescribed by a SPP.

The Code Amendment should be initiated because the strategic planning outcomes sought to be achieved through the Code Amendment align with or seeks to implement the following SPPs:

State Planning Policy (SPP)	Code Amendment Alignment with SPPs
SPP16: Emissions and Hazardous Activities	
Policy 16.2 Assess and manage risks posed by known or potential site contamination to enable the safe development and use of land. *Principles for Statutory Instruments:* The Code should include remediation policies to mitigate any potential contamination of sites and to facilitate the safe use of land.	The Code Amendment seeks to improve the way the planning system responds to site contamination risk, ensuring that investigations are commensurate to the level of risk. The Code and associated instruments will continue to manage risks posed by site contamination through remediation policies and ensuring the safe use of land. The Code Amendment will focus on reviewing procedural steps for when site contamination investigations are warranted, and ensuring that low risk development does not require unwarranted investigations. The Code Amendment will therefore remain consistent with SPP 16.2 and associated statutory principles.

3.3. Alignment with Regional Plans

As with the SPPs, the directions set out in Regional Plans provide the long-term vision as well as setting the spatial patterns for future development in a region. This includes consideration of land use integration, transport infrastructure and the public realm.

Given the Code Amendment will affect General Development Policies which can apply across the entirety of Soth Australia, all regional plans are relevant for this Code Amendment.

Regional Plan Identified Priorities or Targets	Code Amendment Alignment with Regional Plan
30 Year Plan for Greater Adelaide 2017 Update	
Emergency management and hazard avoidance A68. Update procedures and provide educational materials for planning authorities' rezoning and assessment matters related to site contamination.	The Code Amendment is consistent with the 30 Year Plan for Greater Adelaide 2017 Update, as, through review and updates to the Scheme, new and improved guidance materials and procedures will be prepared to assist practitioners to understand and implement the Scheme.
Other Regional Plans: Eyre and Western, Far North, Kangaroo Island, Limestone Coast, Mid North, Murray and Mallee, Yorke Peninsula (summary)	

Principle: Protect people, property and the environment from exposure to hazards Policy: Integrate adaptation to climate change and disaster risk reduction and hazard avoidance policies, standards and actions into strategic plans, Development Plan policies and development assessment processes using best practice models to: …protect human health and the environment where contamination has occurred	The Code Amendment aligns with other regional plans, as it seeks to update policies and processes regarding site contamination to continue to protect human health and the environment.

3.4. Alignment with Other Relevant Documents

Additional documents may relate to the broader land use intent within the scope of this proposed Code Amendment and therefore are identified for consideration in the preparation of the Code Amendment.

The following table identifies other documents relevant to the proposed Code Amendment:

Other Relevant Document	**Code Amendment Alignment with Other Relevant Document**
National Environment Protection (Assessment of Site Contamination) Measure 1999 (NEPM)	The Code Amendment will seek to align with the aims of the NEPM, including to: “provide adequate protection of human health and the environment, where site contamination has occurred, through the development of an efficient and effective national approach to the assessment of site contamination.” More specifically section 6(5) of the NEPM states: “Authorities of participating jurisdictions (at local and State government level) that consent to developments, or changes in land use, should ensure a site that is being considered for development or a change in land use, and that the authorities ought reasonably know if it has a history of use that is indicative of potential contamination, is suitable for its intended use.”

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4. INVESTIGATIONS AND ENGAGEMENT

4.1. Investigations Already Undertaken

The table below identifies what investigations have already been undertaken in support of the proposed Code Amendment.

Investigation Undertaken	**Summary of Scope of Investigations**	**Summary of Outcome of Recommendations**
Interstate Comparison of Site Contamination Assessment (PLUS)	Initial desktop review, then email enquiries to Australian State Governments, seeking information on the role of site contamination in interstate planning systems, focussing on: - trigger for site contamination assessment - sensitive land use hierarchy table - sensitive vs more sensitive land uses - definition of 'sensitive' - investigations - subdivision - referrals to EPA / environmental authority - overlays.	Observations documented in **Attachment B**
Series of interstate meetings on site contamination assessment schemes (EPA/PLUS)	Series of online meetings seeking interstate experiences with their respective site contamination assessment schemes. Topics included: - key elements of the scheme, achieving desired outcomes, response of industry and stakeholders - procedural trigger for when site contamination investigations are required - site contamination investigations/reports, who prepares - referral role of the EPA and what expertise relevant authorities rely upon when assessing site contamination - if a site is 'constrained' for the purpose of undertaking detailed site	Meeting notes documented in **Attachment C**

	investigations, how/when site contamination is assessed - whether site contamination investigations required to be completed prior to granting planning consent or dealt with as a reserved matter.	

4.2. Further Investigations Proposed

In addition to the investigations already undertaken and identified above, the table below outlines what additional investigations that will be undertaken to support the Code Amendment.

Further Investigations Proposed	**Explanation of how the further investigations propose to address an identified issue or question**
Principles for when the Scheme should apply	Map out the types of land use changes where site contamination should be considered, considering various risk/exposure levels, and the likely nature of investigations needed.
Investigate concept of 'sensitive use'	Investigations to consider how and whether 'sensitive use' could be used as a trigger for site contamination investigations, considering current definitions of 'sensitive use' and similar terms in the Code, EP Act, NEPM and interstate jurisdictions, compared to the current land uses in the LUSH.
Investigate concept of 'potentially contaminated land'	Investigations to consider whether the term 'potentially contaminated land' can be appropriately used to initiate site contamination investigations, and how such a term should be defined.
Devise appropriate standard conditions and/or reserved matters	Review standard conditions and consider reserved matters to be used where site contamination requires assessment
Environmental advice	Engage a qualified site contamination expert/s to review the existing Scheme and assist in consideration of potential changes.

4.3. Engagement Already Undertaken

The following engagement has occurred to inform the proposed Code Amendment:

- State Planning Commission Round Table on Site Contamination Assessment – 31 March 2022
- Local Government Assessment Manager Forum – 7 December 2022
- Site Contamination Reference Group (SCRG) Meeting – 14 December 2022
- Site Contamination Reference Group (SCRG) Sub-group meeting – 17 May 2023
- Site Contamination Reference Group (SCRG) Meeting – 19 June 2023

4.4. Further Engagement Proposed

In addition to the engagement already undertaken and identified above, the table below outlines what additional engagement will be undertaken to support the Code Amendment.

Further Engagement Proposed	**Explanation of how the further engagement propose to address an identified issue or question**
Ongoing consultation with the EPA	Consult with the EPA during preparation of proposed changes to the Scheme and present draft changes to the EPA for technical feedback
Additional meeting(s) of the SCRG	Draft policy and procedures to be presented to the SCRG for feedback, used to inform proposed amendments to the Code and associated instruments
Present changes to Local Government Assessment Managers Forum	Draft policy and procedures to be presented to the Local Government Assessment Managers Forum for feedback, used to inform proposed amendments to the Code and associated instruments
Community consultation	Broader community consultation to provide an opportunity for any interested community members to comment on the proposed outcomes of the Code Amendment.
Consultation with any person or body specified by the Commission under section 73(6)(e) of the Act.	The Engagement Plan will outline the specific method and nature of consultation.

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5. CODE AMENDMENT PROCESS

5.1. Engagement Plan

The Code Amendment process will occur in accordance with the Community Engagement Charter and *Practice Direction 2 – Consultation on the Preparation or Amendment of a Designated Instrument* (Practice Direction 2).

The Designated Entity will prepare an Engagement Plan prior to the commencement of engagement on the proposed Code Amendment. The Engagement Plan will include the following mandatory consultation requirements (which may be in addition to the engagement outlined in this Proposal to Initiate):

- Given the proposal is generally relevant to councils, the Local Government Association must be notified in writing and consulted on the proposed Code Amendment;
- Consultation must also occur with any person or body specified by the State Planning Commission under section 73(6)(e) of the Act.

5.2. Engagement Report

Once engagement on the Code Amendment is complete, the Designated Entity will prepare an Engagement Report under section 73(7) of the Act.

The Designated Entity must ensure that a copy of the Engagement Report is furnished to the Minister and published on the SA Planning Portal in accordance with Practice Direction 2.

The Engagement Plan and the Engagement Report will also be considered by the Commission during the final stages of the Code Amendment process. The Commission will provide a report to the Environment, Resources and Development Committee of Parliament under section 74(3) of the Act. The Commission's report will provide information about the reason for the Code Amendment, the consultation undertaken on the Code Amendment and any other information considered relevant by the Commission.

5.3. Code Amendment Timetable

The Code Amendment is intended to be undertaken in line with the timeframe outlined **Attachment D**.

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ATTACHMENT A

Current site contamination policies in the Planning and Design Code

21 November 2023

Part 4 – General Development Policies

Site Contamination

Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
DO 1	Ensure land is suitable for the proposed use in circumstances where it is, or may have been, subject to site contamination.

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature

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PO 1.1 Ensure land is suitable for use when land use changes to a more sensitive use.	DTS/DPF 1.1 Development satisfies (a), (b), (c) or (d): a) does not involve a change in the use of land b) involves a change in the use of land that does not constitute a change to a more sensitive use c) involves a change in the use of land to a more sensitive use on land at which site contamination is unlikely to exist (as demonstrated in a site contamination declaration form) d) involves a change in the use of land to a more sensitive use on land at which site contamination exists, or may exist (as demonstrated in a site contamination declaration form), and satisfies both of the following: i. a site contamination audit report has been prepared under Part 10A of the *Environment Protection Act 1993* in relation to the land within the previous 5 years which states that- A. site contamination does not exist (or no longer exists) at the land or B. the land is suitable for the proposed use or range of uses (without the need for any further remediation) or C. where remediation is, or remains, necessary for the proposed use (or range of uses), remediation work has been carried out or will be carried out (and the applicant has provided a written undertaking that the remediation works will be implemented in association with the development) and ii. no other class 1 activity or class 2 activity has taken place at the land since the preparation of the site contamination audit report (as demonstrated in a site contamination declaration form).

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Part 9 – Referrals

Part 9.1 Referral Body: Environment Protection Authority

Class of Development / Activity			Policies Relevant to the Referral	Purpose of Referral	Statutory Reference
Site contamination	Change in the use of land to a more sensitive use.	Change in the use of land to a more sensitive use on land at which site contamination exists or may exist as a result of one of the following: 1. class 1 activity (including where a class 1 activity exists or previously existed on adjacent land) 2. class 2 activity and the proposed use is a sensitive use or Change in the use of land to a more sensitive use on land where one or more of the following applies: 1. that is the subject of a notation on the relevant title under section 103P of the Environment Protection Act 1993 that a site contamination audit report has been prepared;	Site Contamination General Development Policies and Section 57 of Environment Protection Act 1993 that sets out criteria to be considered by the EPA in relation to the assessment of development applications.	To provide direction to the relevant authority on whether they must consider the advice of either a site contamination consultant or site contamination auditor regarding site suitability, including through the imposition of conditions of planning consent.	Development of a class to which Schedule 9 clause 3 item 9A of the Planning, Development and Infrastructure (General) Regulations 2017 applies.

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Class of Development / Activity			Policies Relevant to the Referral	Purpose of Referral	Statutory Reference
		2. subject to a notification of site contamination of underground water (known as a section 83A notification under the Environment Protection Act 1993), or where such a notification exists on adjacent land, shown on the South Australian Property and Planning Atlas; 3. located within a Groundwater Prohibition Area as shown on the South Australian Property and Planning Atlas No referral is required where, in relation to the subject land: 1. a site contamination audit report has been prepared under Part 10A of the Environment Protection Act 1993 in relation to the land within the previous 5 years which concludes one or more of the following: 1. site contamination does not exist (or no longer exists) at the land 2. the land is suitable for the proposed use or range of			

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Class of Development / Activity			Policies Relevant to the Referral	Purpose of Referral	Statutory Reference
		uses (without the need for any further remediation) 3. where remediation is, or remains, necessary for the proposed use (or range of uses), remediation work has been carried out or will be carried out (and the applicant has provided a written undertaking that the remediation works will be implemented in association with the development) 2. no other class 1 activity or class 2 activity has taken place at the land since the preparation of the site contamination audit report			
	Land Division	Subject to clause 1(4) of Schedule 9 of the Planning, Development and Infrastructure (General) Regulations 2017, development involving the division of land if— 1. Schedule 8 clause 2A(1)(b) applies to the application in respect of the development; and 2. site contamination exists or may exist at the land because of 1 or more of the following circumstances:	Site Contamination General Development Policies and Section 57 of *Environment Protection Act 1993* that sets out criteria to be considered by the EPA in relation to the assessment of	To provide direction to the relevant authority on whether they must consider the advice of either a site contamination consultant or site contamination auditor regarding site suitability, including through the	Development of a class to which Schedule 9 clause 3 item 9AB of the Planning, Development and Infrastructure (General)

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Class of Development / Activity			Policies Relevant to the Referral	Purpose of Referral	Statutory Reference
		1. a class 1 activity has been conducted on the land or on adjacent land; 2. a class 2 activity has been conducted on the land; 3. the land or adjacent land is the subject of a section 83A notification under the *Environment Protection Act 1993* that appears on the South Australian Property and Planning Atlas; 4. the land is within a groundwater prohibition area that appears on the South Australian Property and Planning Atlas; 5. the land is the subject of a notation on the certificate of title for the land under section 103P of the *Environment Protection Act 1993* that a site contamination audit report has been prepared.	development applications.	imposition of conditions of planning consent.	Regulations 2017 applies.

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ATTACHMENT B

Site Contamination - Interstate comparison by PLUS

June 2022

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SITE CONTAMINATION

Planning Assessment - Interstate Comparison by PLUS

June 2022

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PLANNING ASSESSMENT THEMES

- Trigger for Site Contamination Assessment
- Sensitive Land Use Hierarchy Table
- Sensitive vs More Sensitive Land Uses
- Definition of 'Sensitive'
- Investigations
- Subdivision
- Referrals to EPA / Environmental Authority
- Overlays

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TRIGGER FOR SITE CONTAMINATION ASSESSMENT

Planning Scheme	Application Type	Criteria
NT	Planning Application received for Rezoning, Development or Subdivision	More Sensitive (or Intensive) Use + Sensitive Subdivision
ACT	Change of Use	More Sensitive Land Use
TAS	(a) Development Application (b) Subdivision	(a) On Potentially Contaminated Land (b) Sensitive Use
VIC	Development Application	Sensitive Land Use or Land that is Potentially Contaminated
QLD	Development Application	Material change of use to a more sensitive land use or for the reconfiguring of a lot
NSW	Development Application	Where Sensitive uses are proposed
WA	Development Application	More sensitive land use on land already on the contamination register or due to subjective planning decision.

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HIERARCHY TABLE

- SA's Planning Scheme is the only one to contain a Hierarchy Table of Sensitive Land Uses.

- All of the other Planning Schemes either refer to a defined 'Sensitive Land Use' or take a subjective approach to what a Sensitive Land Use or More Sensitive Land Use' is and apply a suitable determination accordingly.

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SENSITIVE VS MORE SENSITIVE LAND USE

Planning schemes that assess applications based on a 'Sensitive' Land Use: VIC, TAS, NSW

Planning schemes that assess applications based on a 'More Sensitive' Land Use: NT, ACT, QLD, WA

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DEFINITION OF SENSITIVE LAND USE

Planning Scheme	Definition of Sensitive Land Use
NT	Defined as: Child-care centres, schools, aged care, residential and relevant local sensitive environments e.g., surface water, wetlands and reserves
ACT	No definition of 'Sensitive Land Use' (subjective planning decision)
TAS	Defined as: a residential use or a use involving the presence of people for extended periods except in the course of their employment such as a caravan park, childcare centre, dwelling, hospital or school.
VIC	Defined as Residential uses, child-care centres, kindergartens, pre-school centres or primary schools, even if ancillary to another use, and also for secondary schools and children's playgrounds.
QLD	Defined as: (a) caretaker's accommodation; or (b) a childcare centre; or (c) a community care centre; or (d) a community residence; or (e) a detention facility; or (f) a dual occupancy; or (g) a dwelling house; or (h) a dwelling unit; or (i) an educational establishment; or (j) a health care service; or (k) a hospital; or (l) a hotel, to the extent the hotel provides accommodation for tourists or travellers; or (m) a multiple dwelling; or (n) a relocatable home park; or (o) a residential care facility; or (p) a resort complex; or (q) a retirement facility; or (r) rooming accommodation; or (s) rural workers' accommodation; or (t) short-term accommodation; or (u) a tourist park; or (v) workforce accommodation.
NSW	No definition – but referred to as 'New residential or sensitive use development and recreational areas involving large numbers of people'
WA	Defined as: residential development, hospitals, hotels, motels, hostels, caravan parks, schools, nursing homes, child-care facilities, shopping centres, playgrounds and some public buildings. Includes uses with more frequent access or occupation of the site despite no change in actual land use'

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INVESTIGATIONS

Pre-Lodgement

None of the interstate Planning Schemes require Site Contamination investigations to be undertaken prior to lodgement of the development application.

Assessment

If the Planning Authority determines that investigations are required, then a Preliminary Site Investigation (PSI) (also termed 'Site Audit' or Preliminary Risk Screen Assessment (PRSA)) may be conditioned.

Planning Consent

If the outcome of the PSI is positive, then a Detailed Site Investigation (DSI), Audit, Remediation and /or Conditions will be imposed.

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SUBDIVISION

- Some of the Planning Schemes, make specific reference to Subdivision with regards to the triggers for Site Contamination Assessment (NT and QLD).
- The others just treat Subdivision as 'Development' for these purposes (i.e., no distinction in the application for development)
- NB some states require a separate and more thorough approvals process for sub-division from their planning commissions e.g., WA

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REFERRALS

- QLD does not have an independent EPA but the QLD Department of Environment and Science (DES) is also not triggered as a referral or technical advice agency for contaminated land under the Planning Act 2016.

- The other Planning Schemes will either make referrals to independent Site Auditors who are accredited by the EPA, or to the EPA directly.

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OVERLAYS – 'POTENTIALLY CONTAMINATED LAND'

- Some of the Planning Schemes contain Environmental Overlays.
- In VIC where land has been determined to be potentially contaminated, but it is difficult or inappropriate to meet environmental audit system requirements at the amendment stage, the application of the Environmental Audit Overlay (EAO) to the land allows deferment of these requirements.
- Applying the overlay ensures the requirements will be met in the future but does not prevent the assessment and approval of a planning scheme amendment.
- What constitutes 'Potentially Contaminated Land' is also outlined in the Victorian planning framework.

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ATTACHMENT C

Summary of interstate meetings on site contamination assessment schemes by EPA

August-September 2022

19426879

Summary of Meetings with EPA, DTI and interstate Planning, Environmental and Site Contamination Professionals to discuss interstate Site Contamination Assessment Schemes

Victorian Site Contamination Assessment Scheme

Date: 2 August 2022

Meeting attended by: Elinor Walker (State Planning Commission), Rhiannon Hardy (Department of Trade and Investment, Planning and Land Use Services), Phil Hazell (Environment Protection Authority), Melissa Chrystal (EPA), Wendy Boyce (EPA), Stuart Menzies (Department of Environment, Land, Water and Planning, Victoria), Nick Kennedy (EPA, Victoria), Rodney Wee (DELWP), Jimmy Papadimitriou (DELWP) and Jo Coupar (EPA, Victoria).

Summary of the scheme and meeting

The Victorian Site Contamination Development Assessment Scheme is a new scheme put into place in 2021 to better align the planning system with the *Environment Protection Act 2017* (Vic). Site contamination risks are now considered in Victoria's planning scheme at the rezoning stage and development application stage.

i. Rezoning of Land

Ministerial Direction 19 requires planning authorities to consult with the EPA in relation to certain types of rezoning proposals, resulting in a consideration of site contamination risks at the rezoning stage.

Where land is determined to be an area of known site contamination, an Environment Audit Overlay ('EAO') can be applied to such land. Where an EAO applies, *Ministerial Direction 19* allows the detailed assessment of site contamination to be deferred to the development application stage (as opposed to being largely dealt with at the rezoning stage).

When a sensitive use is proposed within an EAO, the Victorian planning provisions require an applicant to undertake an environmental audit or Preliminary Risk Screen Assessment ('PRSA') and comply with remediation requirements prior to the commencement of the proposed use.

ii. Development Applications

Ministerial Direction 1 applies to potentially contaminated land[1] where a use is proposed which could be significantly adversely affected by any contamination. Such uses include, residential, public open space, agriculture, a child-care centre, pre-school centre or a primary school (but not a secondary school).

[1] For the purpose of Ministerial Direction 1, 'potentially contaminated land' means land that is, or has been, used for industry; mining; or storing chemicals, gas, wastes or liquid fuel (if not ancillary to another use of the land). Land that is, or has been, used for farming or a petrol station is also typically considered to be potentially contaminated as such industries involve the storage of chemicals, gas, wastes or liquid fuels.

Prepared by EPA, October 2022

Planning authorities in Victoria are required to have regard to site contamination and whether land will be suitable for its intended use when assessing all development applications, however detailed site contamination assessment is primarily invoked in relation to a proposed sensitive use.

If land is potentially contaminated, then the relevant authority could ask for the applicant to provide a preliminary site investigation ('PSI') report. Another way in which relevant authorities inform themselves of site contamination risk is by requesting that an applicant provide a PRSA. The PRSA (undertaken pursuant to the *Environment Protection Act 2017* (Vic)) will determine whether or not an environmental audit is required. Experience to date shows that PRSAs are relied on more often than PSIs.

Where development applications involve technical site contamination matters, they may be informally referred[2] to EPA Victoria for advice. The EPA Victoria has no formal referral role at planning permit stage.

DELWP has prepared a Planner's Toolkit to provide guidance to planners when identifying potentially contaminated land for an EAO and when assessing planning permits for potentially contaminated land.

EPA staff key observations

- The *Environment Protection Act 2017* (Vic) and three inquiries resulted in changes to the Victorian planning system in relation to site contamination assessment
- The Victorian planning system includes Environmental Audit Overlays in areas of known site contamination. Overlays invoke the need for site contamination audits in relation to development in such areas.
- A PRSA is a key feature of the new Victorian system. It is a tool used to determine whether an audit will be required for the proposed land use at the subject site.
- The Victorian scheme is primarily invoked in relation to 'sensitive uses' and not 'a change to a more sensitive use'. However, councils are required to consider site contamination risks as part of every DA assessment in line with their DA assessment rules. *Ministerial Direction 19* requires planning authorities to consult with the EPA in relation to certain types of rezoning proposals. This means there is typically a greater emphasis on site contamination risks at the rezoning stage.
- The Victorian EPA does not receive site contamination DA referrals but they do receive informal referrals for advice about technical site contamination matters.
- In-house site contamination expertise varies between relevant authorities. Some relevant authorities may engage a third party site contamination consultant to review proposals.
- Victorian staff indicated no significant objections to the operation of the scheme from a stakeholder point of view.

[2] No fees are payable for informal referrals

Prepared by EPA, October 2022

New South Wales Site Contamination Assessment Scheme

Date: 17 August 2022

Meeting attended by: Elinor Walker (SPC), Rhiannon Hardy (DTI, PLUS), Phil Hazell (EPA) Wendy Boyce (EPA), Melissa Chrystal (EPA), Anthea White (EPA, NSW), Mitchell Bennett (EPA, NSW) and Victoria Lee (EPA, NSW).

Summary of the scheme and meeting

The management framework for contaminated land in NSW broadly consists of two tiers:

- the EPA NSW, which uses its powers under the *Contaminated Land Management Act 1997* ('CLM Act') to deal with contamination that is significant enough to warrant regulation given the site's current or approved use.
- planning authorities, who deal with other contamination under the planning and development process, including the *State Environmental Planning Policy (Resilience and Hazards) 2021* ('Resilience and Hazards SEPP') and the *Managing Land Contamination - Planning Guidelines* ('MLC Guidelines') on sites which do not pose an unacceptable risk under their current or approved use. This process determines what remediation is needed to make the land suitable for a different use.

i. EPA Assessment of Significant Sites

The CLM Act requires landowners to notify the EPA of site contamination (or suspected site contamination). The EPA will then undertake investigations to determine whether the site contamination is significant such that it warrants declaration of the site as 'significantly contaminated' site.

ii. Planning Authority Assessment of All Other Sites

The *Environment Planning and Assessment Act 1979* (NSW) ('EP&A Act') requires planning authorities to consider site contamination risks and site suitability for all development applications which involves acting in accordance with the MLC Guidelines and adherence with the Resilience and Hazards SEPP.

The Resilience and Hazards SEPP requires a planning authority to consider a preliminary investigations report where a change in use is proposed on a site with current and/or historical potentially contaminating activities ('PCAs') and which has been declared to be a 'significantly contaminated' site by the NSW EPA.

Planning authority assessments of other development applications are guided by the MLC Guidelines. The MLC Guidelines provide information around when site contamination reports (preliminary site investigations, detailed site investigations etc) should be requested and state that a planning authority should have certainty that a site can be made suitable for the intended use. Planning authorities typically do not employ in-house site contamination experts to assist with this assessment.

Formal referrals to the EPA exist for 'integrated developments' and certain types of other developments, including state significant developments. For other types of development proposals, the planning authority will determine if an informal referral to the EPA is warranted. The EPA needs to triage DA referrals based on the site contamination risk profile.

Prepared by EPA, October 2022

EPA staff key observations

- The MLC Guidelines were prepared in 1998. New guidance material has been drafted by the NSW Government, however has not yet been finalised: *Contaminated Land Planning Guidelines*
- The planning guidelines include a series of questions for planning authorities to consider in relation to site contamination at the DA assessment stage. The guidelines state that there needs to be certainty that a site can be made suitable for the intended use.
- The CLM Act requires notification to the EPA. It is the responsibility of landowners or polluters to notify the EPA about site contamination. The EPA then determines whether the contamination is 'significant' and therefore warrants the declaration of a site as 'significant'.
- Councils deal with site contamination DA related risks more often than the EPA. Some councils have site contamination experts but most don't.
- There are referrals to the EPA for integrated developments and certain types of other developments, including state significant developments as they will need to be licensed by the EPA.
- The EPA can stop the clock on DAs that are formally referred but councils also informally refer DAs to the EPA. The EPA needs to triage DA referrals based on priority/risks/needs etc.

Western Australia Site Contamination Assessment Scheme

Date: 29 August 2022

Meeting attended by: Phil Hazell (EPA), Wendy Boyce (EPA), Scott Douglas (EPA), Melissa Chrystal (EPA), Sheri-lynn Ludwig (Department of Planning, Lands and Heritage), Bill Richmond (Department of Water and Environmental Regulation), Andrew Miller (DWER) and Rohan Miller (DPLH).

Summary of the scheme and meeting

The WA system relies very heavily upon the site contamination registers set up under the *Contaminated Sites Act 2003* ('CS Act') and the *Contaminated Sites Regulations 2006* ('CS Regulations').

The CS Act requires an owner or occupier of a site or a person who suspects they have caused or contributed to site contamination to report suspected or known site contamination to DWER.

DWER will then classify these reported sites into one of seven classes:

1. report not substantiated
2. possible contaminated – investigation required
3. not contaminated – unrestricted use
4. contaminated – restricted use
5. remediated for restricted use
6. contaminated – remediation required, and
7. decontaminated.

Prepared by EPA, October 2022

Where land is classified as [2], [4], [5], [6] above, a 'memorial' will be lodged on the land title. Any application to subdivide, amalgamate or develop a site with a listed 'memorial' on the title will require the planning authority to refer to DWER for advice on site suitability. At this time DWER may seek further information from the proponent and will often require an audit be undertaken.

As part of their assessment, DWER will consider whether a proposed development involves a change in use to a more sensitive use. However, as an objective land use sensitivity hierarchy or similar has not been published, this results in conjecture and internal debate. If in doubt, DWER treats proposals as if they were a more sensitive use. Proposals for a more sensitive use would generally require an auditor to demonstrate that the site is suitable for the intended use.

DWER seek to respond to these development applications within 45 days as a matter of practice, but this deadline is not legislated. As timeframes are not legislated, there is no need to stop the clock if further information is required from the applicant.

After providing advice[3] in relation to conditions that should be attached to any development approval, DWER is subsequently responsible for determining whether their recommended conditions have been complied with prior to occupancy/use being permitted.

DWER assesses referred DAs at no cost (i.e. no fee is payable). In addition, DWER invests significant resources maintaining, updating and classifying contaminated sites into the seven classes.

EPA staff key observations

- The WA system relies very heavily upon the CS Act, the CS Regulations 2006, associated site contamination registers and notations on the title of land.
- Such legislation requires DA referrals to DWER for sites that have been previously classified as contaminated for various reasons including the fact that certain PCAs have been undertaken on such sites.
- DWER spends significant resources maintaining, updating and classifying contaminated sites into 7 classes.
- The site contamination register is publicly available but only has a certain number of classes of contamination identified publicly.
- DWER assesses referred DAs (for no cost) and provides advice only to the relevant planning authority about conditions that should be attached to any DA approval
- DWER is also subsequently asked to determine whether their recommended conditions have been satisfied before a development can be used/occupied
- DWER considers whether a proposed development involves a change in use to a more sensitive use and what PCAs may have occurred on the site when a DA is referred. Rather than having a definitive list of uses in a hierarchy of sensitivity land uses, DWER staff determine whether a development is a change to a more sensitive use through internal debate/discussions amongst experts.
- DWER often require audits to be undertaken as part of the DA assessment process.
- Development industry generally doesn't like audit requirements but it is generally accepted as part of the system.
- Planning authorities generally adopt the conditions advised by DWER.
- No significant complaints from development industry about the current operation of the scheme.

[3] DWER does not have the ability to direct the imposition of conditions

Prepared by EPA, October 2022

Queensland Site Contamination Assessment Scheme

Date: 30 August 2022

Meeting attended by: Elinor Walker (SPC), Phil Hazell (EPA), Rebecca Hughes (EPA), Scott Douglas (EPA), Melissa Chrystal (EPA), Sally Thomas (Department of Environment and Science, Qld), Ryan Allsopp (DES), Ken Mackenzie (Brisbane City Council), Bronwyn Cruse (DES) and Renelle Watson (BCC).

Summary of the scheme and meeting

The DES is required to maintain two registers that are central to the Queensland site contamination assessment scheme:

- the Environment Management Register ('EMR') and
- the Contaminated Land Register ('CLR').

The EMR is a list of sites upon which PCAs have occurred. The CLR is a register of sites that have been determined to be contaminated. Land owners, councils and auditors are required to notify the state government of contamination which will trigger the relevant site to be placed on the CLR.

A development application that proposes a 'material change in use' on a site listed on either register will trigger referral to the state government under the *Environment Protection Act 1994* (Qld). The state government will then assess these referrals and require statements of site suitability for the relevant sites as issued by a consultant or auditor.

EPA staff key observations

- There are two site contamination registers at the heart of the Qld scheme – contaminated sites register and environmental management register.
- A 'material change in use' DA and the site being on either register triggers referral to the State Government via the regulations under the Environment Protection Act. The State Government assesses referrals and provides concurrent approval. Assessment managers work for councils.
- Site suitability statements are issued by consultants or auditors.
- There is a requirement for landowners, councils or auditors to notify the state government of contamination which then triggers it being put on the register.
- Site contamination reports must be prepared by a 'suitably qualified person' and endorsed by an auditor. There is no definition prescribed for a 'suitably qualified person'.

Prepared by EPA, October 2022

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ATTACHMENT D

Timetable for Code Amendment by the State Planning Commission

Step	Responsibility	Timeframe
Preparation of the Code Amendment		
Engagement Plan prepared Investigations conducted; **Code Amendment Report** prepared Drafting instructions and draft mapping prepared	The Department on behalf of the Commission	8-12 weeks
Preparation of Materials for Engagement	The Department on behalf of the Commission	Informed by the Engagement Plan
Engagement on the Code Amendment		
Code Amendment Report released for public engagement in accordance with the Community Engagement Charter and the prepared **Community Engagement Plan**	The Department on behalf of the Commission	To be specified in the Engagement Plan
Consideration of Engagement and Finalisation of Amendments		
Submissions summarised; Amended drafting instructions provided, **Engagement Report** prepared	The Department on behalf of the Commission	8-12 weeks
Prepare report to the Commission	The Department	4 weeks
Consideration of Advice		
Decision Process		
Minister considers the **Code Amendment Report** and the **Engagement Report** and makes decision – decision published on the PlanSA Portal within 5 business days (policy is not live)	Minister	Unknown
Implementing the Amendment (operation of the Code Amendment)		
Implement the Code Amendment in the Planning and Design Code and the South Australian Property and Planning Atlas	The Department	Align with deployment process
Parliamentary Scrutiny		
Referral of adopted **Code Amendment** to Environment, Resources and Development Committee of Parliament – referred within 28 days of implementation		

DEBATE REPORT

7.1 Office of the Mayor and CEO

7.1.1 CONVERSION OF COMMUNITY LOAN - NURIOOTPA FUTURES ASSOCIATION.

Author: Chief Executive Officer
24/25208

PURPOSE

To pass a further resolution as requested by the Local Government Finance Authority for the Nurioopta Future Association to convert the current Cash Advance Debenture to a 7 year principal and interest loan, as intended by the original support provided.

RECOMMENDATION

That Council having noted the request of the Nuriootpa Future Association and their minutes, and noting the request aligns with the original approval of Council authorise:

(1) That council authorise the redraw of $15,000 or the amount the Nurioopta Future Association payments are in advance, so long as the resulting loan does not exceed $100,000.

(2) The current Cash Advance Debenture provide to the Nurioopta Futures Association be converted to a 7 (or maximum 10 year if the Chief Executive Officer determines it reasonable after final negotiations) year fixed interest principal and interest loan commencing as soon as possible.

(3) Authorise the Mayor and CEO to sign and seal all necessary documentation to give effect to part 1 of this resolution.

(4) That the Cash Advance Debenture of $100,000 shall be closed.

(5) The Nuriootpa Future Association enter into a new funding agreement as determined and authorised by the Chief Executive Officer for the principal and interest loan facility.

REPORT

Background
Provided at Attachment 1.

Introduction
The works to restore and commercialise the Coulthard House have been realised by the Nurioopta Future Association and the long-term tenant is now operating successfully from the house. This provides the anticipated revenue streams.

Discussion
As contemplated by the original approval the Cash Advance Debenture used to assist the works is no longer needed and can be converted to a principal interest loan.

The Local Government Finance Authority have requested that a new set of approvals be passe to convert the loan as originally contemplated and approved by the prior Council.
The Nuriootpa Futures Association wish to redraw the current advanced payments to complete the works at the barn to enable greater use during adverse weather an greater potential to generate income.

The conversation of the cash advance to the principal interest at $100,000 for seven years is affordable with the finances of the association on condition they maintain the commercial tenant.

Summary and Conclusion
The Cash Advance Debenture is no longer needed and as aligned with the original loan approval a new set of resolutions is requested.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Prior Minutes, Report and Information from 20 July 2021 ⇩
Attachment 2 Nurioopta Future Association - Relevant Minutes of February 2024 ⇩

Supporting references
Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

Community and Culture

Goal
4. 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.

Strategies
4.1. Build on a strong sense of community pride with active community groups and individuals participating in local decision making and community building activities.
4.2. Continue creating strong and sustainable community networks, and support young people to actively participate in the community and develop the leaders of the future.
4.3. Embrace place-making principles when developing community infrastructure and regulate planning and development in public spaces and active recreation.

Legislative Requirements
Section 123 of the Local Government Act

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Covered and unchanged from the original approval of 20 July 2021 and does not alter the risk profile of Council, financial outcomes as the funds are already borrowed just through a different financial product and requires no additional internal resources.

COMMUNITY ENGAGEMENT

No required or recommended.

OFFICE OF THE MAYOR AND CEO REPORT

DEBATE AGENDA

7.2.4 NURIOOTPA FUTURES ASSOCIATION - LOAN SUPPORT

Author: Chief Executive Officer
21/54020

PURPOSE

To consider advancing access to a community loan through the Local Government Funding Authority to support updates to Coulthard House and achieve a leasable property.

RECOMMENDATION

That Council:

(1) Support the Nuriootpa Future Association to access a Local Government Finance Authority Community Loan of up to $100,000 over a maximum term of 10 years subject to entering into a loan agreement with Council.

(2) Authorise the Mayor and Chief Executive Officer to sign seal and execute any relevant documentation to give effect to part 1 of this resolution.

REPORT

Background
The Nuriootpa Futures Association (NFA) has been caring for and managing the historic Coulthard House and surrounds for decades. As a not for profit group they have also been trying to activate the area and house.

Discussion
The NFA has written to Council seeking to access a community Local Government Finance Authority grant of up to $100,000, see Attachment 1.

Importantly the NFA have been able to negotiate a commercial lease. The loan is to undertake the necessary upgrades to achieve the lease which will provide significant and ongoing funding to the group. Further the lease will activate the street and house. Coupled with prior years of work on the adjacent open area and buildings for community use the NFA continues to drive the precinct further.

The NFA wants to be in the space of community and event support and development but the house itself requires significant annual funds that consume the capacity of the NFA's financial and volunteer resources and therefore it is difficult for them to reach their strategic goals.

The lease arrangement will assist in removing the financial burden, over a 10 year period. A financial model has been undertaken and is also at Attachment 1. The estimates, whilst paying the loan back over the 10 year period are:

1. Estimated fees and revenue related to the lease of $399,929;
2. Estimates costs associated with the lease of $218,086;
3. A cash and operating profit of $181,842 after paying the principle and loan payments.

Further Council is alerted that community borrowings are in essence access to our sectors borrowing capacity but should they not be paid by the group/club the liability falls to Council. In terms of Councils financial indicators, the borrowing costs and repayments in terms of principle and interest are neutral. They are neutral as the interest and principle owed is reimbursed to Council over the life of the loan, and in terms of the balance sheet the loan (being a liability) is offset by a debt owed to Council (an asset) and these values balance off to zero.

Should Council approve the loan NFA will be required to enter into a loan agreement with Council.

Further Council is alerted that a Treasury Management Policy review is being undertaken to consider placing limits on the amount of community loan funding that may be accessed, to manage risk. However, at present the Policy does not limit the extent and therefore assessment of support needs to be made on community benefit versus financial risk. The current Policy link is provided in the supporting references below.

Summary and Conclusion
The NFA is looking for support to undertake necessary upgrades to achieve a commercial lease of Coulthard House and based on the estimated financial model there is sufficient capacity to meet the loan commitments.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Nuriootpa Futures Association - Loan Request ⇩

Supporting references
policy-treasury-management.pdf (barossa.sa.gov.au)

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan


Community and Culture


Infrastructure


Natural Environment and Built Heritage

Goal
4. 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.

7. Community infrastructure planning is aligned to both current and the future needs of the community
2. The history of our region including aboriginal sites is reflected in our streetscapes and our historic buildings are maintained for future generations.

Strategies
4.1. Build on a strong sense of community pride with active community groups and individuals participating in local decision making and community building activities.
7.2. Ensure both current and future infrastructure needs are met in a proactive rather than reactive way.
2.1. Continue to maintain streetscapes that reflect the character and heritage of the region and facilitate opportunities to repurpose or find alternative uses of built heritage.

Advocacy Plan
Nil

Legislative Requirements
Local Government Act, Chapter 8

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Financial and risk considerations outlined in the body of the report.

There are no resourcing impacts not already budgeted for.

Current community borrowing commitments made are $706,413.41 this loan (and also the second community loan report in this agenda) will increase the commitments to $1,206,413.41. Please note this does not include interest payments, this is the loan amount currently outstanding.

COMMUNITY ENGAGEMENT

Consultation is not required under the Act or Policy.

PO Box 313 Nuriootpa SA 5355
nurifutures.secretary@gmail.com
0456 692 232

nurifutures.com.au

ABN: 20 365 449 500

5 July 2021

Mr Martin McCarthy
Chief Executive Officer
The Barossa Council
PO Box 867
Nuriootpa SA 5355

Dear Martin

The Board of Nuriootpa Futures Association (NFA) is in the final stages of securing a Commercial Lease on Coulthard House for 5years with the option of a further 5 years.

This opportunity allows for Coulthard House to be self-maintained ongoing and as a result keep this Iconic House for the future of the Barossa.

To enable the preparation for this Lease, NFA needs to borrow up to $100k using the Cash Advance Debenture (CAD) option for 2 years and then transfer to Normal Fixed loan rate for 8 yrs. (See Business Plan attached)

As we are a not-for-profit organisation and in the interest of the community of Nuriootpa and the Barossa Valley, we seek your assistance acquiring the necessary finance to proceed ASAP.

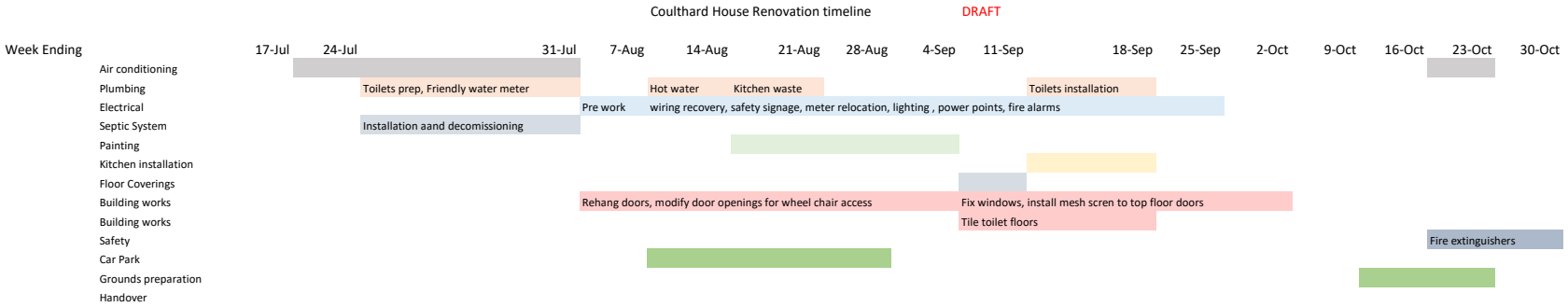
For your consideration and approval please!

Please see Contractor Timeline attached for our preparation to meet Lessee occupation needs.

Project Management - Lyndon Stoll (Chairman NFA)

Yours sincerely

Ian Firman
Secretary/Public Officer


Coulthard House Renovation timeline
DRAFT
Week Ending
17-Jul
24-Jul
31-Jul
7-Aug
14-Aug
21-Aug
28-Aug
4-Sep
11-Sep
18-Sep
25-Sep
2-Oct
9-Oct
16-Oct
23-Oct
30-Oct
Air conditioning
Plumbing
Toilets prep, Friendly water meter
Hot water
Kitchen waste
Toilets installation
Electrical
Pre work
wiring recovery, safety signage, meter relocation, lighting , power points, fire alarms
Septic System
Installation aand decomissioning
Painting
Kitchen installation
Floor Coverings
Building works
Rehang doors, modify door openings for wheel chair access
Fix windows, install mesh scren to top floor doors
Building works
Tile toilet floors
Safety
Fire extinguishers
Car Park
Grounds preparation
Handover

Coulthard House - Analysis for Leasing

PROJECT YEARLY COST NET (GST Exclusive)		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
SharePoint		2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31
NI - Income	Total Funding	100,000	-	-	-	-	-	-	-	-	-
NI - Capital	Total Capital	93,500	-	-	-	-	-	-	-	-	-
NI - Operating	Net Operating	13,971	16,452	17,006	17,571	18,313	16,765	19,507	20,122	20,749	21,388
	Project Annual Profit/(Loss)	20,471	16,452	17,006	17,571	18,313	16,765	19,507	20,122	20,749	21,388
	Project Cumulative - Profit/(Loss)	20,471	36,923	53,928	71,499	89,812	106,577	126,084	146,205	166,954	188,342

SECTION C: 10 Year Funding Requirements & Financial Outcomes

How will the proposal be funded?

Funding										
Cash Balance	5,000									
Borrowings	100,000									
Total	**105,000**	-	-	-	-	-	-	-	-	-

Is there a build or purchase cost for an asset?

Project Lease Preparation Costs										
Alrcon	32,000									
Electrical	14,000									
Plumbing	3,000									
Painting	10,500									
Floors	9,000									
Building	20,000									
Contingency	5,000									
Total	**93,500**	-	-	-	-	-	-	-	-	-

All Operating Revenue and Expenses below are *additional* ie., a result of the new initiative (with GST excluded) and do not include previous normal level operations

Net Operating Result Profit/(Loss)	**13,971**	**16,452**	**17,006**	**17,571**	**18,313**	**16,765**	**19,507**	**20,122**	**20,749**	**21,388**
Total Operating Revenue	34,150	37,383	38,131	38,893	39,849	40,646	41,459	42,288	43,134	43,996
Total Operating Expenses	18,629	19,348	19,508	19,671	19,848	22,157	20,191	20,368	20,548	20,731
Total Maintenance Expenses	1,550	1,583	1,617	1,652	1,687	1,724	1,761	1,799	1,837	1,877
Operational										
Operating Revenue										
Lease Fees	33,500	34,170	34,853	35,550	36,439	37,168	37,911	38,670	39,443	40,232
Other Income	650	3,213	3,277	3,343	3,410	3,478	3,547	3,618	3,691	3,765
Operating Expenses										
Reimbursed Costs										
Energy - electricity	250	255	260	265	271	276	282	287	293	299
Materials Water	200	204	208	212	216	221	225	230	234	239
ESL	200	204	208	212	216	221	225	230	234	239
Council rates	-	2,550	2,601	2,653	2,706	2,760	2,815	2,872	2,929	2,988
Other Costs										
Management Fee	2,178	2,221	2,265	2,311	2,369	2,416	2,464	2,514	2,564	2,615
Letting Fee and Once Off Fee	1,938	-	-	-	-	2,139	-	-	-	-
Repayments	11,364	11,364	11,364	11,364	11,364	11,364	11,364	11,364	11,364	11,364
Insurance (Landlord)	1,000	1,020	1,040	1,061	1,082	1,104	1,126	1,149	1,172	1,195
Insurance (Lessee)	1,500	1,530	1,561	1,592	1,624	1,656	1,689	1,723	1,757	1,793
Maintenance Expenses										
Plumbing repairs	500	510	520	531	541	552	563	574	586	598
Electrical repairs	500	510	520	531	541	552	563	574	586	598
Septic Tank	250	255	260	265	271	276	282	287	293	299
Land Tax	300	308	317	325	334	344	353	363	373	383

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TheBarossaCouncil

LOAN AGREEMENT

SCHEDULE

Council: **THE BAROSSA COUNCIL** ABN 47 749 871 215
43-51 Tanunda Road, Nuriootpa, 5355

Borrower:

Name: **NURIOOTPA FUTURES ASSOCIATION** ABN 20 365 449 500
Address: PO Box 313, NURIOOTPA SA 5355

Agreement: The Council agrees to lend to the Borrower who agrees to borrow the Principal on the terms stated in this Schedule and following.

Principal: Total $100,000.00

Advance/s: Unless the Borrower notifies the Council it requires advances only in stated instalments and times, the Council must advance the whole of the Principal to the Borrower on execution of this Agreement.

Purpose: To assist in the upgrade of Coulthard House for the preparation of the house to be commercially leased.

Repayment Term: Repayments, which are estimated for two years as this is a cash advance debenture, where interest rates can change, are due on receipt of an invoice from the Council (and subject to any written demand by the Council after an event of default), in quarterly instalments of approximately $512.50 per quarter from the Nuriootpa Futures Association.

After two years the Nuriootpa Futures Association shall repay the Principal of $100,000 in full or converted the loan to a Principle and Interest Loan of a term not longer than 8 years.

Redraw: Not available

Interest: 2.05% per annum floating rate.

Security: Nil.

Special Conditions:
(Any special conditions prevail over other provisions of this Agreement to the extent of any necessary inconsistency.)

For the term of this Agreement:

(a) The Borrower must consult the Council before any decision to:

- materially change the nature or scope of the Purpose as now envisaged;
- suspend or cancel the Purpose;

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TERMS

1. **Advance/s:** The Council must advance the Principal to the Borrower in the instalments and times stated in the Schedule.

2. **Purpose:** The Borrower must use the Principal only for the Purpose stated in the Schedule. Any of the Principal advanced and not promptly used for that Purpose must be promptly repaid.

3. **Security:** If any security is stated in the Schedule, that security must be provided to the Council before any advance of the Principal. The Borrower bears any costs of preparing, registering or discharging that security.

4. **Voluntary repayment:** At any time and without penalty or notice, the Borrower may repay the whole or any of the Principal advanced in permanent reduction of the loan – this will not change the overall amount of principal and interest owed to Council as shown in Appendix 1.

5. **Mandatory repayment:** The Borrower must repay the Principal advanced in the instalments and at the times stated in the Schedule for such repayment (as to which time is of the essence).

6. **Events of default:** The Borrower must repay the Principal outstanding and any interest at that time accrued but unpaid upon written demand by the Council following an event of default. Council reserves the right to vigorously pursue any outstanding balances in accordance with the governing legislation.

An ***event of default*** means:

   6.1 the Borrower fails to remedy their material breach of this Agreement within 30 days after written notice from the Council identifying the breach and requiring its remedy;

   6.2 the Council acting reasonably believes the Borrower has ceased to trade or is insolvent; or

   6.3 the Borrower amalgamates, merges or joins with another entity without first seeking the consent of the Council in writing.

7. **Interest:** The Borrower must pay to the Council interest on Principal outstanding at the rate/s and time/s stated in the Schedule for such payment.

8. **About payments:** Instalments of Principal and interest are payable without need for demand. The Borrower must not for any reason withhold a payment nor deduct an amount from a payment under this Agreement. A cheque is not payment until the cheque clears.

9. **About this Agreement:** This Agreement:

   9.1 may be executed in counterparts; each executed counterpart is deemed an original of this Agreement;

   9.2 is the whole contract between the parties about its subject matter and supersedes any prior contract or obligation between the parties about its subject matter;

   9.3 may be modified only by written agreement of all parties.

10. **Interpretation:** Words or expressions given meaning in the Schedule or elsewhere in this Agreement have those meanings. In this Agreement: singular includes plural and *vice versa*; reference to a person includes a body politic or corporate and an individual and *vice versa*; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward this Agreement or any portion of it.

11. **Notices:** To be effective, a notice under this Agreement must be in writing. A notice to the Council must be given in a manner as *Local Government Act 1999* allows and must be marked "Attention: Chief Executive Officer". A notice to the Borrower may be given by sending it by pre-paid letter post addressed to the Borrower care of the mailing address stated in the Schedule or as last notified, and is served when the letter would arrive in the ordinary course of post.

12. **Costs:** A party bears its own costs in connection with the preparation of this Agreement. The Council may recover from the Borrower any proper costs incurred in preparing or serving a notice of default or demand under this Agreement, or incurred in attempting a recovery under this Agreement.

13. **Other Agreements:** The Borrower is also bound by all terms in the Memorandum of Understanding.

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- grant a security interest to a third party (where a ***security interest*** means mortgage, charge (fixed or floating); pledge, hypothecation, lien or other security interest) over the assets of the Borrower;

- dispose, sell or otherwise deal with its key assets (where ***key assets*** mean any of the Borrower's current or future assets which are fundamental to the Purpose).

(b) Any use by the Borrower of the Council's name or logo requires prior specific approval by the Council. Such use must always be limited to promoting the Purpose.

(c) The Borrower will supply Council with annual financial documents including a bank statement showing all transactions in the preceding year until all loan repayments have been repaid to Council.

(d) The Borrower must submit annual audited financial statements for the life of the loan to Council's Manager Financial Services.

(e) The Borrower must promote/manage the Purpose in conformity with applicable laws and codes of practice.

(f) Any damage or destruction to Coulthard House and/or associated surrounding infrastructure at does not release the Borrower from repayment obligations under the Loan Agreement.

(g) The Borrower will apply to Council to transfer the loan to a Principle Interest loan within two (2) years of receiving the CAD payments or repay all Principal outstanding on or before [insert date]. The Principal Interest loan will be for no more than eight (8) years in duration.

.....
Signed for the Council
Name: MARTIN McCARTHY
Title: Chief Executive Officer
Date: 27/8/2021

.....
Signed for the Borrower – **Nurioopta Futures Assoc**
Name: IAN FIRMAN
Title: SECRETARY / PUBLIC OFFICER
Date: 26-08-2021

.....
Signed for the Borrower – **Nurioopta Futures Assoc**
Name: WILLIAM STOLL
Title: CHAIRMAN
Date: 26/8/2021

A person signing on behalf of a party warrants they have authority to bind that party for that purpose.

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NFA NURIOOTPA FUTURES ASSOCIATION

NFA SPECIAL BOARD MEETING MINUTES

Tuesday 19th August 2021, 8.00pm
The Vine Inn
Murray Street Nuriootpa

1. **Meeting Opening**

a) Meeting opened 6.01 pm

b) Attendees/ Apologies

Attendees	Apologies
Ian Firman	
Kathryn Schilling	
Paula Brown	
Serena Ahrns	
Lyndon Stoll	

Items for discussion

1. **Loan offer from Barossa Council**
   Loan agreement schedule tabled
   Motioned to accept loan and schedule by Ian Firman, Seconded Lyndon Stoll, all in favour.
   Motion carried.
   Ian Firman and Lyndon Stoll to meet with Martin McCarthy of Barossa Councill Thursday August 26th to sign agreement.

2. **Markets 2021/2022**
   Nuriootpa Meeting Place Markets plan

New Facilitators

Jan Hines, Rose, Serena Ahern with assistance from Paula Brown

Signage

Need to have new signs made A1 corflute. *Serena Ahrns to obtain quotes from Vista Print*
Apply to The Barossa Council to put signs up 1 week before each market; Kroemer's crossing, Tolley Reserve and any other sites decided. *Kathryn Schilling to submit council applications.*

Monthly tasks

3 Weeks out - email all stall holders on mailing list (google Docs) and confirm date, venue, time with booking form hard Copy and online versions)

- Collate public liability insurance policies for stall holders
- Commence social media posts
- Search for musicians
- Market Flyers and posters printed and delivered to Nuri and Tanunda Caravan parks and Visitor information Centre Tanunda.

1 Week out – *Serena Ahrns* *to contact stall holders* and encourage upfront payment and confirm those who require insurance cover through our insurer LCIS

- Setup signage at all locations, corflute and banner at Coulthard
- Promote confirmed stall holders on social media. *Kathryn Schilling to action*

Thursday night before- check weather forecast, over 25 KM winds or over 10 mil of rain cancel, and advise all stallholders.
Friday before- prepare site map, can send to stall holders but it is easier to do first in best dressed

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unless they require power.
Market day – setup from **7.30am** extra direction signage on roads around Nuriootpa e.g. Coop entrances, Vine Inn corner. Put out bins.
Depending on weather commence stall holders bump in front or rear of gardens
Market starts **9am** no further access to Coulthard Gardens for stall holders
Set up QR codes and any other restrictions that may be required e.g., entry exit
Each trader to have a copy of NFA QR Code displayed
12.15pm collect any cash payments from stall holders
Get feedback
1pm Market Closes
Collect all signage and store in Shed at Coulthard
Put bins away
Week after Market
Bank any cash money
Update spreadsheets
Repair any damaged signage
Start finding musicians (Faith, Nuri High, Adrian Kittson, Bobby Dazzler, Mr. Ukulele
Continue to promote for new stall holders
Other activities and workshops; children's craft, craft workshops etc.

Meeting closed 8.00 pm
Next meeting Tuesday September 14th 2021

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NFA NURIOOTPA FUTURES ASSOCIATION

Annual General Meeting Minutes

Tuesday 10th August 2021 7.30pm
Coulthard Community Barn
Nuriootpa

Welcome by chairperson: – Lyndon Stoll

Attendees: Debbie Stoll, Lyndon Stoll, Tracy Scholz, Jan Linke, Serena Ahrns, Jaden Ahrns, Colleen Nitschke, Dean Nitschke, Ian Mader, Pat Hatch, Kathryn Schilling, John James, Bridgette James, Louis deBerger ,Ian Firman, Susan Firman, Kevin Liu, Lyn Winter, Gavin Goudie, Bob Hicks, Caroline Lindsay, Marcus Head, Jill Head, Ian Falconberg, Trish Falconberg, Paula Brown , Cameron Ashmead, Amanda Mudge.
Apologies – Michelle Goudie, Chris Linden, Martin McCarthy, Darrin McGuire, Neil Retallick, Amanda Mudge, Jarrad Steinborner

Introduction of Guest Speaker

Officer in Charge for Barossa LSA
Chief Inspector Lauren Leverington

- Question on graffiti report at station with photo- report to police first- suggested camera Encourage community to ring 131444.
- Homeless issues - not much knowledge as little reported
- Foot patrols seasonal in some ways
- Opinion on meth in the valley – not a major issue yet
- Penrice Road intersection

Confirmation of minutes of the previous AGM –
Motion to accept / Moved Paula Brown / Seconded Debbie Stoll / All in Favour

Chairperson's report: - Lyndon Stoll
The past 12 months as chairperson of the NFA Board apart from Covid impacts has been most rewarding and I acknowledge the current board's involvement to accomplish this outcome.
I wish to thank the following board members Ian Firman, Paula Brown, Kathy Schilling and Serena Ahrns for their personal commitment, enthusiasm and fun in helping to create a vibrant Nuriootpa Community.

Current Years Activities

Coulthard House (External): Painting - had not been painted since 1996. – thanks Craig Marsten Painters
Gardening Equip (Fund Raising) – Mower, Maintenance Equip, fertilisers and sprays (thanks to Nutrien)
NFA Markets (Monthly) - Coulthard Lawns & Gardens
Coulthard Lawn & Gardens – Busy Bee's – thanks to the volunteers with special mention to Bob Hicks and Marcus Hearl
Barossa Council engagements and meetings – re grants, plans and support
Barossa Valley Hire – Events and Maintenance equip
The Coulthard Barn – Events (Maintenance and Prep)
Reunions
Birthdays
Functions
The Lawns – Busk til' Dusk (Vintage Festival 2021)
Monthly Markets
New Signage – re parking (Opposite High School)

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Numerous NFA Meetings – establishing Coulthard House future – Agreement to Lease
Meetings – CEO Barossa Council
CEO Coop Store (Barossa Central0
CEO Vine Inn Barossa
Agent – Homburg Real Estate: - Commercial Lease option
Tour Brochure - "Short Journey through Nuri/Light Pass in the Barossa Valley" – thankyou Ian for all your work.
NFA has now developed a website and is called www.nuriootpa.org.au – thanks to Paula and Serena
I have to acknowledge Kathy Schilling for her continual management of Communications –
Facebook
Instagram
Newsletters
Signage
Moved by Paula Brown as true and correct and seconded by Susan Firman, all in favour, motion carried

Treasurer's report and presentation: read by Paula Brown.

Moved by Katheryn Schilling as a true and correct record, seconded by Debbie Stoll, all in favour – Carried

Community Umbrella Groups AGM Reports

Nuriootpa War Memorial Swimming Pool
Presented by Tracey Scholz
- Working group - 32% increase in usage get copy of report

Barossa Bush Chapel
Presented by Bev Mewett

Friends of Nuriootpa Dog Park
Presented by Lynne Winter

Coulthard Barn & Gardens –
Presented by Bob Hicks
Accolade to Marcus for mowing lawns each fortnight
Need flowers for the front corner on Penrice /Murray Street

Election of Office Bearers –

All current Board Members are willing to continue for a further 12 months.
I now invite further nominations from this meeting
Caroline Nominated
If no further nominations, can we have a motion to accept the current Board as a whole
Moved Coleen Nitchke/ Seconded Deb Stolly/ All in Favour – motion carried

Meeting closed – 8.32pm

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Nuriootpa Futures Association
2020/21 Bank Reconciliation

	Pre 2020	2020-2021	Project Total	
Bank Account Balance				$ 9,808.12
- Nuriootpa Futures Association	$ 3,592.08	-$ 220.16	$ 3,371.92	
- Fundraising			$ 566.00	
- Vintage Festival Breakfast			-$ 467.40	
- Membership			$ 1,090.00	
- Strasssenfest			$ 540.00	
- Fellowship			-$ 215.82	
- Coulthard House	$ 207.90	-$ 676.49	-$ 468.59	
- Maintence Sponorship (Co-op)			$ -	
- Painting Project			-$ 5,290.00	
- Save the Nuri Pool			$ 69.64	
- 2021 Renovations			$ 314.18	
- Garden Gang			-$ 115.06	
			$ -	
Barn and Dairy Hire			$ 2,277.42	
			$ -	
Meeting Place Markets			$ 323.70	
Unpresented Cheques				
MY Fire Safety				-$ 289.30
Ian Firman				-$ 22.83
Craig Marston				-$ 7,500.00
Total			$ 1,995.99	$ 1,995.99

Community Umbrella
2020/21 Bank Reconciliation

Bank Account Balance				$ 6,796.44
Barossa Bush Chapel	$ 4,754.46	$ 32.68	$ 4,787.14	
Friends of the Nuriootpa Dog Park	$ -	$ 204.29	$ 204.29	
N.W.M.S.P	$ 1,361.37	$ 443.64	$ 1,805.01	
Community Total			$ 6,796.44	$ 6,796.44

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Account enquiry

Nuriootpa Futures Association

Selected accounts for all dates, cash basis

DATE	TYPE	NUMBER	CONTACT		AMOUNT
COMMUNITY UMBRELLA INCOME:BAROSSA BUSH CHAPEL					
				Opening balance	$0.00
14 May 2020	Receipt	RCPT0143	Barossa Bush Chapel		$4,754.46
01 Aug 2020	Payment	PYMT0159	Bev Mewett		-$30.50
01 Aug 2020	Payment	PYMT0158	W Plush		-$31.20
01 Apr 2021	Receipt	RCPT0243	Barossa Bush Chapel		$302.00
28 Jun 2021	Payment	PYMT0171	Barossa Bush Chapel		-$207.62
				CLOSING BALANCE	**$4,787.14**
COMMUNITY UMBRELLA INCOME:FRIEND OF THE NURIOOTPA DOG PARK					
				Opening balance	$0.00
03 Jun 2021	Receipt	RCPT0284	Lyn Winter		$193.30
18 Jun 2021	Receipt	RCPT0291	Barossa Valley Rotary Club		$1,000.00
28 Jun 2021	Payment	PYMT0173	Stratco		-$989.01
				CLOSING BALANCE	**$204.29**
COMMUNITY UMBRELLA INCOME:NURIOOTPA WAR MEMORIAL SWIMMING POOL					
				Opening balance	$0.00
30 Jun 2020	Journal	00016	Nuriootpa War Memorial Swimming Pool		$1,361.37
01 Jun 2021	Receipt	RCPT0286	Commonwealth Bank		$500.00
02 Jun 2021	Receipt	RCPT0285	Anthea Blenkiron		$24.00
09 Jun 2021	Journal	00023	-		-$5.36
28 Jun 2021	Payment	PYMT0172	Nuriootpa War Memorial Swimming Pool		-$75.00
				CLOSING BALANCE	**$1,805.01**

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Profit and loss

Nuriootpa Futures Association

For the year ending 30 June 2021, cash basis

CODE	ACCOUNT	AMOUNT
INCOME		
4-1000	Nuriootpa Futures Association	$3,869.97
4-1001	Fundraising	$1,094.98
4-1002	Barn and Facilities Hire	$2,290.00
4-1006	Misc Income	$131.27
4-1007	NFA Membership	$1,090.00
4-1014	Community Store Maintence	$9,640.70
4-1016	Sponorship	$12,500.00
4-1017	Save the Nuri Pool	$399.64
	Total Nuriootpa Futures Association	$31,016.56
4-4000	Community Umbrella Income	-
4-4002	Friend of the Nuriootpa Dog Park	$204.29
4-4003	Nuriootpa War Memorial Swimming Pool	$518.64
4-4001	Barossa Bush Chapel	$32.68
	Total Community Umbrella Income	$755.61
4-2000	Meeting Place Market	-
4-2002	Insurance	-$74.48
4-2003	Site Fees	$2,260.00
	Total Meeting Place Market	$2,185.52
4-6000	Strassenfest 2019	-
4-6004	Glass Sales	$40.00
4-6005	Site Fees	$500.00
	Total Strassenfest 2019	$540.00
	TOTAL INCOME	**$34,497.69**
	GROSS PROFIT	**$34,497.69**
EXPENSES		
6-1007	Facilitator Fee	$1,687.50
6-1012	Town Decorations	$50.82
6-1011	Gardening	$604.80
6-1010	Misc Expense	$1,057.64
6-1001	Advertising	$1,349.42
6-1014	Water Use and Supply	$7,094.84
6-1006	Expenses	$12.58

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Profit and loss

Nuriootpa Futures Association

For the year ending 30 June 2021, cash basis

CODE	ACCOUNT	AMOUNT
6-1002	Bank Charges	$6.49
6-1013	Insurance - General	$3,612.82
6-1015	Repairs & Maintenance	$27,717.74
6-1020	Sundry Expenses	-$27.90
6-1016	Utilities	$158.50
6-1017	Electricity	$846.85
	TOTAL EXPENSES	**$44,172.10**

NET POSITION

Income	$34,497.69
Cost of goods sold	$0.00
Gross profit	$34,497.69
Expenses	$44,172.10
Other income	$0.00
Other expenses	$0.00
NET POSITION	**-$9,674.41**

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Trial balance

Nuriootpa Futures Association

For the month ending 30 June 2021, cash basis

ACCOUNT CODE	ACCOUNT NAME	ACCOUNT TYPE	DEBIT	CREDIT
4-1000	Nuriootpa Futures Association	Income	-	$3,869.97
4-1001	Fundraising	Income	-	$1,094.98
4-1002	Barn and Facilities Hire	Income	-	$2,290.00
4-1006	Misc Income	Income	-	$131.27
4-1007	NFA Membership	Income	-	$1,090.00
4-1014	Community Store Maintence	Income	-	$9,640.70
4-1016	Sponorship	Income	-	$12,500.00
4-1017	Save the Nuri Pool	Income	-	$399.64
4-4000	Community Umbrella Income	Income	-	-
4-4002	Friend of the Nuriootpa Dog Park	Income	-	$204.29
4-4003	Nuriootpa War Memorial Swimming Pool	Income	-	$518.64
4-4001	Barossa Bush Chapel	Income	-	$32.68
4-2000	Meeting Place Market	Income	-	-
4-2002	Insurance	Income	$74.48	-
4-2003	Site Fees	Income	-	$2,260.00
4-6000	Strassenfest 2019	Income	-	-
4-6004	Glass Sales	Income	-	$40.00
4-6005	Site Fees	Income	-	$500.00
6-1007	Facilitator Fee	Expense	$1,687.50	-
6-1012	Town Decorations	Expense	$50.82	-
6-1011	Gardening	Expense	$604.80	-
6-1010	Misc Expense	Expense	$1,057.64	-
6-1001	Advertising	Expense	$1,349.42	-
6-1014	Water Use and Supply	Expense	$7,094.84	-
6-1006	Expenses	Expense	$12.58	-
6-1002	Bank Charges	Expense	$6.49	-
6-1013	Insurance - General	Expense	$3,612.82	-
6-1015	Repairs & Maintenance	Expense	$27,717.74	-
6-1020	Sundry Expenses	Expense	-	$27.90
6-1016	Utilities	Expense	$158.50	-
6-1017	Electricity	Expense	$846.85	-
-	Bank - Petty Cash/Float	Current asset	$125.00	-
1-1111	Bank - NFA Working Account	Current asset	$1,995.99	-
1-1110	Bank - Third Party Holding Account	Current asset	$6,796.44	-
1-1210	Accounts Receivable	Current asset	-	$256.00

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Trial balance

Nuriootpa Futures Association

For the month ending 30 June 2021, cash basis

ACCOUNT CODE	ACCOUNT NAME	ACCOUNT TYPE	DEBIT	CREDIT
-	The Community Co-operative Store (Nuriootpa) Limited	Current asset	-	-
-	Members At Call Account	Current asset	$1,823.96	-
-	Share Capital	Current asset	$2.00	-
2-1100	Accounts Payable	Current liability	$157.00	-
-	The Co-op Store Share Capital	Equity	-	$1,825.96
3-0100	Opening Balance Equity	Equity	$209.16	-
3-1000	Retained Earnings Surplus/(Accumulated Losses)	Equity	-	$18,702.00
		TOTAL	**$55,384.03**	**$55,384.03**

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CommonwealthBank
Commonwealth Bank of Australia
ABN 48 123 123 124 AFSL and
Australian credit licence 234945

Your Statement

Statement 88	(Page 1 of 1)
Account Number	06 5520 10154682
Statement Period	2 Jun 2021 - 1 Jul 2021
Closing Balance	$9,808.12 CR
Enquiries	13 1998 (24 hours a day, 7 days a week)

046

THE SECRETARY
NURIOOTPA FUTURES ASSOCIATION INCORP
PO BOX 313
NURIOOTPA SA 5355

Society Cheque Account

If this account has an attached overdraft limit or facility which is secured over your primary place of residence or over a residential Investment property you should ensure that the property is insured in accordance with the terms and conditions of the mortgage. If you have any queries about your insurance cover you should contact your insurer. Information on property insurance can also be found on www.moneysmart.gov.au. Note, if this account has an attached overdraft limit or facility and we send you a statement every 4 or 6 months, we will update your statement preference to every 3 months as part of changes made to the new Banking Code of Practice from 1 July 2019.

Name: NURIOOTPA FUTURES ASSOCIATION INCORPORATED

Note: Have you checked your statement today? It's easy to find out more information about each of your transactions by logging on to the CommBank App or NetBank. Should you have any questions on fees or see an error please contact us on the details above. Cheque proceeds are available when cleared.

The date of transactions shown here may be different on your other transaction lists (for example, the transaction list that appears on the CommBank app).

Date	Transaction	Debit	Credit	Balance
02 Jun	2021 OPENING BALANCE			$6,358.29 CR
10 Jun	Chq 000388 presented	78.65		$6,279.64 CR
11 Jun	Direct Credit 301500 COMMUNITY STORE CUST ID THECOOP		3,413.09	$9,692.73 CR
17 Jun	Direct Credit 279222 PAYPAL AUSTRALIA 1014223306170		0.11	$9,692.84 CR
17 Jun	Direct Credit 279222 PAYPAL AUSTRALIA 1014223306171		0.16	$9,693.00 CR
24 Jun	Chq 000389 presented	180.00		$9,513.00 CR
25 Jun	Transfer From Raw Impact CREDIT TO ACCOUNT		200.00	$9,713.00 CR
28 Jun	Transfer from NetBank Parade Fee Swim Pl		75.00	$9,788.00 CR
28 Jun	Transfer from NetBank BC Half Insurance		207.62	$9,995.62 CR
28 Jun	Chq 000391 presented 06 2067	187.50		$9,808.12 CR
01 Jul 2021	CLOSING BALANCE			$9,808.12 CR

Opening balance	-	Total debits	+	Total credits	=	Closing balance
$6,358.29 CR		$446.15		$3,895.98		$9,808.12 CR

6986.16601.1.1 ZZ258R3 0303 SL.R3.S911.D182.O V06.00.33

2021/563

COMMUNITY ENGAGEMENT

Nil

7.2.4
NURIOOTPA FUTURES ASSOCIATION - LOAN SUPPORT
21/54020

Pursuant to Section 75 of the *Local Government Act 1999,* Cr Schilling disclosed a Conflict of Interest in the matter Item number 7.2.4 – Nuriootpa Futures Association – Loan Support as she is on the Board of Management.

Cr Schilling left the meeting at 9:17am

MOVED Cr Hurn

That Council:

(1) Support the Nuriootpa Future Association to access a Local Government Finance Authority Community Loan of up to $100,000 over a maximum term of 10 years subject to entering into a loan agreement with Council.

(2) Authorise the Mayor and Chief Executive Officer to sign seal and execute any relevant documentation to give effect to part 1 of this resolution.

SECONDED Cr Wiese-Smith **CARRIED 2018-22/506**

Cr Schilling returned to the meeting at 9:18am

PURPOSE

To consider advancing access to a community loan through the Local Government Funding Authority to support updates to Coulthard House and achieve a leasable property.

REPORT

Background
The Nuriootpa Futures Association (NFA) has been caring for and managing the historic Coulthard House and surrounds for decades. As a not for profit group they have also been trying to activate the area and house.

Discussion
The NFA has written to Council seeking to access a community Local Government Finance Authority grant of up to $100,000, see Attachment 1.

Importantly the NFA have been able to negotiate a commercial lease. The loan is to undertake the necessary upgrades to achieve the lease which will provide significant and ongoing funding to the group. Further the lease will activate the street and house. Coupled with prior years of work on the adjacent open area and buildings for community use the NFA continues to drive the precinct further.

2021/564

The NFA wants to be in the space of community and event support and development but the house itself requires significant annual funds that consume the capacity of the NFA's financial and volunteer resources and therefore it is difficult for them to reach their strategic goals.

The lease arrangement will assist in removing the financial burden, over a 10 year period. A financial model has been undertaken and is also at Attachment 1. The estimates, whilst paying the loan back over the 10 year period are:

1. Estimated fees and revenue related to the lease of $399,929;
2. Estimates costs associated with the lease of $218,086;
3. A cash and operating profit of $181,842 after paying the principle and loan payments.

Further Council is alerted that community borrowings are in essence access to our sectors borrowing capacity but should they not be paid by the group/club the liability falls to Council. In terms of Councils financial indicators, the borrowing costs and repayments in terms of principle and interest are neutral. They are neutral as the interest and principle owed is reimbursed to Council over the life of the loan, and in terms of the balance sheet the loan (being a liability) is offset by a debt owed to Council (an asset) and these values balance off to zero.

Should Council approve the loan NFA will be required to enter into a loan agreement with Council.

Further Council is alerted that a Treasury Management Policy review is being undertaken to consider placing limits on the amount of community loan funding that may be accessed, to manage risk. However, at present the Policy does not limit the extent and therefore assessment of support needs to be made on community benefit versus financial risk. The current Policy link is provided in the supporting references below.

Summary and Conclusion
The NFA is looking for support to undertake necessary upgrades to achieve a commercial lease of Coulthard House and based on the estimated financial model there is sufficient capacity to meet the loan commitments.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Nuriootpa Futures Association - Loan Request

Supporting references
policy-treasury-management.pdf (barossa.sa.gov.au)

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

Community and Culture

Infrastructure

2021/565

Natural Environment and Built Heritage

Goal

4. 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.
7. Community infrastructure planning is aligned to both current and the future needs of the community
2. The history of our region including aboriginal sites is reflected in our streetscapes and our historic buildings are maintained for future generations.

Strategies

4.1. Build on a strong sense of community pride with active community groups and individuals participating in local decision making and community building activities.
7.2. Ensure both current and future infrastructure needs are met in a proactive rather than reactive way.
2.1. Continue to maintain streetscapes that reflect the character and heritage of the region and facilitate opportunities to repurpose or find alternative uses of built heritage.

Advocacy Plan
Nil

Legislative Requirements
Local Government Act, Chapter 8

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Financial and risk considerations outlined in the body of the report.

There are no resourcing impacts not already budgeted for.

Current community borrowing commitments made are $706,413.41 this loan (and also the second community loan report in this agenda) will increase the commitments to $1,206,413.41. Please note this does not include interest payments, this is the loan amount currently outstanding.

COMMUNITY ENGAGEMENT

Nil

7.2.5
LEGATUS - NOMINATIONS FOR OFFICE
21/54059

MOVED Cr de Vries

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TheBarossaCouncil

LOAN AGREEMENT

SCHEDULE

Council: **THE BAROSSA COUNCIL** ABN 47 749 871 215
43-51 Tanunda Road, Nuriootpa, 5355

Borrower:

Name: **NURIOOTPA FUTURES ASSOCIATION** ABN 20 365 449 500
Address: PO Box 313, NURIOOTPA SA 5355

Agreement: The Council agrees to lend to the Borrower who agrees to borrow the Principal on the terms stated in this Schedule and following.

Principal: Total $100,000.00

Advance/s: Unless the Borrower notifies the Council it requires advances only in stated instalments and times, the Council must advance the whole of the Principal to the Borrower on execution of this Agreement.

Purpose: To assist in the upgrade of Coulthard House for the preparation of the house to be commercially leased.

Repayment Term: Repayments, which are estimated for two years as this is a cash advance debenture, where interest rates can change, are due on receipt of an invoice from the Council (and subject to any written demand by the Council after an event of default), in quarterly instalments of approximately $512.50 per quarter from the Nuriootpa Futures Association.

After two years the Nuriootpa Futures Association shall repay the Principal of $100,000 in full or converted the loan to a Principle and Interest Loan of a term not longer than 8 years.

Redraw: Not available

Interest: 2.05% per annum floating rate.

Security: Nil.

Special Conditions:
(Any special conditions prevail over other provisions of this Agreement to the extent of any necessary inconsistency.)

For the term of this Agreement:

(a) The Borrower must consult the Council before any decision to:

- materially change the nature or scope of the Purpose as now envisaged;
- suspend or cancel the Purpose;

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TERMS

1. **Advance/s:** The Council must advance the Principal to the Borrower in the instalments and times stated in the Schedule.

2. **Purpose:** The Borrower must use the Principal only for the Purpose stated in the Schedule. Any of the Principal advanced and not promptly used for that Purpose must be promptly repaid.

3. **Security:** If any security is stated in the Schedule, that security must be provided to the Council before any advance of the Principal. The Borrower bears any costs of preparing, registering or discharging that security.

4. **Voluntary repayment:** At any time and without penalty or notice, the Borrower may repay the whole or any of the Principal advanced in permanent reduction of the loan – this will not change the overall amount of principal and interest owed to Council as shown in Appendix 1.

5. **Mandatory repayment:** The Borrower must repay the Principal advanced in the instalments and at the times stated in the Schedule for such repayment (as to which time is of the essence).

6. **Events of default:** The Borrower must repay the Principal outstanding and any interest at that time accrued but unpaid upon written demand by the Council following an event of default. Council reserves the right to vigorously pursue any outstanding balances in accordance with the governing legislation.

An ***event of default*** means:

   6.1 the Borrower fails to remedy their material breach of this Agreement within 30 days after written notice from the Council identifying the breach and requiring its remedy;

   6.2 the Council acting reasonably believes the Borrower has ceased to trade or is insolvent; or

   6.3 the Borrower amalgamates, merges or joins with another entity without first seeking the consent of the Council in writing.

7. **Interest:** The Borrower must pay to the Council interest on Principal outstanding at the rate/s and time/s stated in the Schedule for such payment.

8. **About payments:** Instalments of Principal and interest are payable without need for demand. The Borrower must not for any reason withhold a payment nor deduct an amount from a payment under this Agreement. A cheque is not payment until the cheque clears.

9. **About this Agreement:** This Agreement:

   9.1 may be executed in counterparts; each executed counterpart is deemed an original of this Agreement;

   9.2 is the whole contract between the parties about its subject matter and supersedes any prior contract or obligation between the parties about its subject matter;

   9.3 may be modified only by written agreement of all parties.

10. **Interpretation:** Words or expressions given meaning in the Schedule or elsewhere in this Agreement have those meanings. In this Agreement: singular includes plural and *vice versa*; reference to a person includes a body politic or corporate and an individual and *vice versa*; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward this Agreement or any portion of it.

11. **Notices:** To be effective, a notice under this Agreement must be in writing. A notice to the Council must be given in a manner as *Local Government Act 1999* allows and must be marked "Attention: Chief Executive Officer". A notice to the Borrower may be given by sending it by pre-paid letter post addressed to the Borrower care of the mailing address stated in the Schedule or as last notified, and is served when the letter would arrive in the ordinary course of post.

12. **Costs:** A party bears its own costs in connection with the preparation of this Agreement. The Council may recover from the Borrower any proper costs incurred in preparing or serving a notice of default or demand under this Agreement, or incurred in attempting a recovery under this Agreement.

13. **Other Agreements:** The Borrower is also bound by all terms in the Memorandum of Understanding.

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- grant a security interest to a third party (where a ***security interest*** means mortgage, charge (fixed or floating); pledge, hypothecation, lien or other security interest) over the assets of the Borrower;

- dispose, sell or otherwise deal with its key assets (where ***key assets*** mean any of the Borrower's current or future assets which are fundamental to the Purpose).

(b) Any use by the Borrower of the Council's name or logo requires prior specific approval by the Council. Such use must always be limited to promoting the Purpose.

(c) The Borrower will supply Council with annual financial documents including a bank statement showing all transactions in the preceding year until all loan repayments have been repaid to Council.

(d) The Borrower must submit annual audited financial statements for the life of the loan to Council's Manager Financial Services.

(e) The Borrower must promote/manage the Purpose in conformity with applicable laws and codes of practice.

(f) Any damage or destruction to Coulthard House and/or associated surrounding infrastructure at does not release the Borrower from repayment obligations under the Loan Agreement.

(g) The Borrower will apply to Council to transfer the loan to a Principle Interest loan within two (2) years of receiving the CAD payments or repay all Principal outstanding on or before [insert date]. The Principal Interest loan will be for no more than eight (8) years in duration.

.....
Signed for the Council
Name: MARTIN McCARTHY
Title: Chief Executive Officer
Date: 27/8/2021

.....
Signed for the Borrower – **Nurioopta Futures Assoc**
Name: IAN FIRMAN
Title: SECRETARY / PUBLIC OFFICER
Date: 26-08-2021

.....
Signed for the Borrower – **Nurioopta Futures Assoc**
Name: WILLIAM STOLL
Title: CHAIRMAN
Date: 26/8/2021

A person signing on behalf of a party warrants they have authority to bind that party for that purpose.

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NFA NURIOOTPA FUTURES ASSOCIATION

NFA SPECIAL BOARD MEETING MINUTES

Tuesday 19th August 2021, 8.00pm
The Vine Inn
Murray Street Nuriootpa

1. **Meeting Opening**

a) Meeting opened 6.01 pm

b) Attendees/ Apologies

Attendees	Apologies
Ian Firman	
Kathryn Schilling	
Paula Brown	
Serena Ahrns	
Lyndon Stoll	

Items for discussion

1. **Loan offer from Barossa Council**
   Loan agreement schedule tabled
   Motioned to accept loan and schedule by Ian Firman, Seconded Lyndon Stoll, all in favour.
   Motion carried.
   Ian Firman and Lyndon Stoll to meet with Martin McCarthy of Barossa Councill Thursday August 26th to sign agreement.

2. **Markets 2021/2022**
   Nuriootpa Meeting Place Markets plan

New Facilitators

Jan Hines, Rose, Serena Ahern with assistance from Paula Brown

Signage

Need to have new signs made A1 corflute. *Serena Ahrns to obtain quotes from Vista Print*
Apply to The Barossa Council to put signs up 1 week before each market; Kroemer's crossing, Tolley Reserve and any other sites decided. *Kathryn Schilling to submit council applications.*

Monthly tasks

3 Weeks out - email all stall holders on mailing list (google Docs) and confirm date, venue, time with booking form hard Copy and online versions)

- Collate public liability insurance policies for stall holders
- Commence social media posts
- Search for musicians
- Market Flyers and posters printed and delivered to Nuri and Tanunda Caravan parks and Visitor information Centre Tanunda.

1 Week out – *Serena Ahrns* *to contact stall holders* and encourage upfront payment and confirm those who require insurance cover through our insurer LCIS

- Setup signage at all locations, corflute and banner at Coulthard
- Promote confirmed stall holders on social media. *Kathryn Schilling to action*

Thursday night before- check weather forecast, over 25 KM winds or over 10 mil of rain cancel, and advise all stallholders.
Friday before- prepare site map, can send to stall holders but it is easier to do first in best dressed

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unless they require power.
Market day – setup from **7.30am** extra direction signage on roads around Nuriootpa e.g. Coop entrances, Vine Inn corner. Put out bins.
Depending on weather commence stall holders bump in front or rear of gardens
Market starts **9am** no further access to Coulthard Gardens for stall holders
Set up QR codes and any other restrictions that may be required e.g., entry exit
Each trader to have a copy of NFA QR Code displayed
12.15pm collect any cash payments from stall holders
Get feedback
1pm Market Closes
Collect all signage and store in Shed at Coulthard
Put bins away
Week after Market
Bank any cash money
Update spreadsheets
Repair any damaged signage
Start finding musicians (Faith, Nuri High, Adrian Kittson, Bobby Dazzler, Mr. Ukulele
Continue to promote for new stall holders
Other activities and workshops; children's craft, craft workshops etc.

Meeting closed 8.00 pm
Next meeting Tuesday September 14th 2021

Attachment 1

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NFA NURIOOTPA FUTURES ASSOCIATION

Annual General Meeting Minutes

Tuesday 10th August 2021 7.30pm
Coulthard Community Barn
Nuriootpa

Welcome by chairperson: – Lyndon Stoll

Attendees: Debbie Stoll, Lyndon Stoll, Tracy Scholz, Jan Linke, Serena Ahrns, Jaden Ahrns, Colleen Nitschke, Dean Nitschke, Ian Mader, Pat Hatch, Kathryn Schilling, John James, Bridgette James, Louis deBerger ,Ian Firman, Susan Firman, Kevin Liu, Lyn Winter, Gavin Goudie, Bob Hicks, Caroline Lindsay, Marcus Head, Jill Head, Ian Falconberg, Trish Falconberg, Paula Brown , Cameron Ashmead, Amanda Mudge.
Apologies – Michelle Goudie, Chris Linden, Martin McCarthy, Darrin McGuire, Neil Retallick, Amanda Mudge, Jarrad Steinborner

Introduction of Guest Speaker

Officer in Charge for Barossa LSA
Chief Inspector Lauren Leverington

- Question on graffiti report at station with photo- report to police first- suggested camera Encourage community to ring 131444.
- Homeless issues - not much knowledge as little reported
- Foot patrols seasonal in some ways
- Opinion on meth in the valley – not a major issue yet
- Penrice Road intersection

Confirmation of minutes of the previous AGM –
Motion to accept / Moved Paula Brown / Seconded Debbie Stoll / All in Favour

Chairperson's report: - Lyndon Stoll
The past 12 months as chairperson of the NFA Board apart from Covid impacts has been most rewarding and I acknowledge the current board's involvement to accomplish this outcome.
I wish to thank the following board members Ian Firman, Paula Brown, Kathy Schilling and Serena Ahrns for their personal commitment, enthusiasm and fun in helping to create a vibrant Nuriootpa Community.

Current Years Activities

Coulthard House (External): Painting - had not been painted since 1996. – thanks Craig Marsten Painters
Gardening Equip (Fund Raising) – Mower, Maintenance Equip, fertilisers and sprays (thanks to Nutrien)
NFA Markets (Monthly) - Coulthard Lawns & Gardens
Coulthard Lawn & Gardens – Busy Bee's – thanks to the volunteers with special mention to Bob Hicks and Marcus Hearl
Barossa Council engagements and meetings – re grants, plans and support
Barossa Valley Hire – Events and Maintenance equip
The Coulthard Barn – Events (Maintenance and Prep)
Reunions
Birthdays
Functions
The Lawns – Busk til' Dusk (Vintage Festival 2021)
Monthly Markets
New Signage – re parking (Opposite High School)

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Numerous NFA Meetings – establishing Coulthard House future – Agreement to Lease
Meetings – CEO Barossa Council
CEO Coop Store (Barossa Central0
CEO Vine Inn Barossa
Agent – Homburg Real Estate: - Commercial Lease option
Tour Brochure - "Short Journey through Nuri/Light Pass in the Barossa Valley" – thankyou Ian for all your work.
NFA has now developed a website and is called www.nuriootpa.org.au – thanks to Paula and Serena
I have to acknowledge Kathy Schilling for her continual management of Communications –
Facebook
Instagram
Newsletters
Signage
Moved by Paula Brown as true and correct and seconded by Susan Firman, all in favour, motion carried

Treasurer's report and presentation: read by Paula Brown.

Moved by Katheryn Schilling as a true and correct record, seconded by Debbie Stoll, all in favour – Carried

Community Umbrella Groups AGM Reports

Nuriootpa War Memorial Swimming Pool
Presented by Tracey Scholz
- Working group - 32% increase in usage get copy of report

Barossa Bush Chapel
Presented by Bev Mewett

Friends of Nuriootpa Dog Park
Presented by Lynne Winter

Coulthard Barn & Gardens –
Presented by Bob Hicks
Accolade to Marcus for mowing lawns each fortnight
Need flowers for the front corner on Penrice /Murray Street

Election of Office Bearers –

All current Board Members are willing to continue for a further 12 months.
I now invite further nominations from this meeting
Caroline Nominated
If no further nominations, can we have a motion to accept the current Board as a whole
Moved Coleen Nitchke/ Seconded Deb Stolly/ All in Favour – motion carried

Meeting closed – 8.32pm

SCANNED 20210827 085038

Nuriootpa Futures Association
2020/21 Bank Reconciliation

	Pre 2020	2020-2021	Project Total	
Bank Account Balance				$ 9,808.12
- Nuriootpa Futures Association	$ 3,592.08	-$ 220.16	$ 3,371.92	
- Fundraising			$ 566.00	
- Vintage Festival Breakfast			-$ 467.40	
- Membership			$ 1,090.00	
- Strasssenfest			$ 540.00	
- Fellowship			-$ 215.82	
- Coulthard House	$ 207.90	-$ 676.49	-$ 468.59	
- Maintence Sponorship (Co-op)			$ -	
- Painting Project			-$ 5,290.00	
- Save the Nuri Pool			$ 69.64	
- 2021 Renovations			$ 314.18	
- Garden Gang			-$ 115.06	
			$ -	
Barn and Dairy Hire			$ 2,277.42	
			$ -	
Meeting Place Markets			$ 323.70	
Unpresented Cheques				
MY Fire Safety				-$ 289.30
Ian Firman				-$ 22.83
Craig Marston				-$ 7,500.00
Total			$ 1,995.99	$ 1,995.99

Community Umbrella
2020/21 Bank Reconciliation

Bank Account Balance				$ 6,796.44
Barossa Bush Chapel	$ 4,754.46	$ 32.68	$ 4,787.14	
Friends of the Nuriootpa Dog Park	$ -	$ 204.29	$ 204.29	
N.W.M.S.P	$ 1,361.37	$ 443.64	$ 1,805.01	
Community Total			$ 6,796.44	$ 6,796.44

SCANNED 20210827 085038

Account enquiry

Nuriootpa Futures Association

Selected accounts for all dates, cash basis

DATE	TYPE	NUMBER	CONTACT		AMOUNT
COMMUNITY UMBRELLA INCOME:BAROSSA BUSH CHAPEL					
				Opening balance	$0.00
14 May 2020	Receipt	RCPT0143	Barossa Bush Chapel		$4,754.46
01 Aug 2020	Payment	PYMT0159	Bev Mewett		-$30.50
01 Aug 2020	Payment	PYMT0158	W Plush		-$31.20
01 Apr 2021	Receipt	RCPT0243	Barossa Bush Chapel		$302.00
28 Jun 2021	Payment	PYMT0171	Barossa Bush Chapel		-$207.62
				CLOSING BALANCE	**$4,787.14**
COMMUNITY UMBRELLA INCOME:FRIEND OF THE NURIOOTPA DOG PARK					
				Opening balance	$0.00
03 Jun 2021	Receipt	RCPT0284	Lyn Winter		$193.30
18 Jun 2021	Receipt	RCPT0291	Barossa Valley Rotary Club		$1,000.00
28 Jun 2021	Payment	PYMT0173	Stratco		-$989.01
				CLOSING BALANCE	**$204.29**
COMMUNITY UMBRELLA INCOME:NURIOOTPA WAR MEMORIAL SWIMMING POOL					
				Opening balance	$0.00
30 Jun 2020	Journal	00016	Nuriootpa War Memorial Swimming Pool		$1,361.37
01 Jun 2021	Receipt	RCPT0286	Commonwealth Bank		$500.00
02 Jun 2021	Receipt	RCPT0285	Anthea Blenkiron		$24.00
09 Jun 2021	Journal	00023	-		-$5.36
28 Jun 2021	Payment	PYMT0172	Nuriootpa War Memorial Swimming Pool		-$75.00
				CLOSING BALANCE	**$1,805.01**

SCANNED 20210827 085038

Profit and loss

Nuriootpa Futures Association

For the year ending 30 June 2021, cash basis

CODE	ACCOUNT	AMOUNT
INCOME		
4-1000	Nuriootpa Futures Association	$3,869.97
4-1001	Fundraising	$1,094.98
4-1002	Barn and Facilities Hire	$2,290.00
4-1006	Misc Income	$131.27
4-1007	NFA Membership	$1,090.00
4-1014	Community Store Maintence	$9,640.70
4-1016	Sponorship	$12,500.00
4-1017	Save the Nuri Pool	$399.64
	Total Nuriootpa Futures Association	$31,016.56
4-4000	Community Umbrella Income	-
4-4002	Friend of the Nuriootpa Dog Park	$204.29
4-4003	Nuriootpa War Memorial Swimming Pool	$518.64
4-4001	Barossa Bush Chapel	$32.68
	Total Community Umbrella Income	$755.61
4-2000	Meeting Place Market	-
4-2002	Insurance	-$74.48
4-2003	Site Fees	$2,260.00
	Total Meeting Place Market	$2,185.52
4-6000	Strassenfest 2019	-
4-6004	Glass Sales	$40.00
4-6005	Site Fees	$500.00
	Total Strassenfest 2019	$540.00
	TOTAL INCOME	**$34,497.69**
	GROSS PROFIT	**$34,497.69**
EXPENSES		
6-1007	Facilitator Fee	$1,687.50
6-1012	Town Decorations	$50.82
6-1011	Gardening	$604.80
6-1010	Misc Expense	$1,057.64
6-1001	Advertising	$1,349.42
6-1014	Water Use and Supply	$7,094.84
6-1006	Expenses	$12.58

SCANNED 20210827 085038

Profit and loss

Nuriootpa Futures Association

For the year ending 30 June 2021, cash basis

CODE	ACCOUNT	AMOUNT
6-1002	Bank Charges	$6.49
6-1013	Insurance - General	$3,612.82
6-1015	Repairs & Maintenance	$27,717.74
6-1020	Sundry Expenses	-$27.90
6-1016	Utilities	$158.50
6-1017	Electricity	$846.85
	TOTAL EXPENSES	**$44,172.10**

NET POSITION

Income	$34,497.69
Cost of goods sold	$0.00
Gross profit	$34,497.69
Expenses	$44,172.10
Other income	$0.00
Other expenses	$0.00
NET POSITION	**-$9,674.41**

SCANNED 20210827 085038

Trial balance

Nuriootpa Futures Association

For the month ending 30 June 2021, cash basis

ACCOUNT CODE	ACCOUNT NAME	ACCOUNT TYPE	DEBIT	CREDIT
4-1000	Nuriootpa Futures Association	Income	-	$3,869.97
4-1001	Fundraising	Income	-	$1,094.98
4-1002	Barn and Facilities Hire	Income	-	$2,290.00
4-1006	Misc Income	Income	-	$131.27
4-1007	NFA Membership	Income	-	$1,090.00
4-1014	Community Store Maintence	Income	-	$9,640.70
4-1016	Sponorship	Income	-	$12,500.00
4-1017	Save the Nuri Pool	Income	-	$399.64
4-4000	Community Umbrella Income	Income	-	-
4-4002	Friend of the Nuriootpa Dog Park	Income	-	$204.29
4-4003	Nuriootpa War Memorial Swimming Pool	Income	-	$518.64
4-4001	Barossa Bush Chapel	Income	-	$32.68
4-2000	Meeting Place Market	Income	-	-
4-2002	Insurance	Income	$74.48	-
4-2003	Site Fees	Income	-	$2,260.00
4-6000	Strassenfest 2019	Income	-	-
4-6004	Glass Sales	Income	-	$40.00
4-6005	Site Fees	Income	-	$500.00
6-1007	Facilitator Fee	Expense	$1,687.50	-
6-1012	Town Decorations	Expense	$50.82	-
6-1011	Gardening	Expense	$604.80	-
6-1010	Misc Expense	Expense	$1,057.64	-
6-1001	Advertising	Expense	$1,349.42	-
6-1014	Water Use and Supply	Expense	$7,094.84	-
6-1006	Expenses	Expense	$12.58	-
6-1002	Bank Charges	Expense	$6.49	-
6-1013	Insurance - General	Expense	$3,612.82	-
6-1015	Repairs & Maintenance	Expense	$27,717.74	-
6-1020	Sundry Expenses	Expense	-	$27.90
6-1016	Utilities	Expense	$158.50	-
6-1017	Electricity	Expense	$846.85	-
-	Bank - Petty Cash/Float	Current asset	$125.00	-
1-1111	Bank - NFA Working Account	Current asset	$1,995.99	-
1-1110	Bank - Third Party Holding Account	Current asset	$6,796.44	-
1-1210	Accounts Receivable	Current asset	-	$256.00

SCANNED 20210827 085038

Trial balance

Nuriootpa Futures Association

For the month ending 30 June 2021, cash basis

ACCOUNT CODE	ACCOUNT NAME	ACCOUNT TYPE	DEBIT	CREDIT
-	The Community Co-operative Store (Nuriootpa) Limited	Current asset	-	-
-	Members At Call Account	Current asset	$1,823.96	-
-	Share Capital	Current asset	$2.00	-
2-1100	Accounts Payable	Current liability	$157.00	-
-	The Co-op Store Share Capital	Equity	-	$1,825.96
3-0100	Opening Balance Equity	Equity	$209.16	-
3-1000	Retained Earnings Surplus/(Accumulated Losses)	Equity	-	$18,702.00
		TOTAL	**$55,384.03**	**$55,384.03**

SCANNED 20210827 085038

CommonwealthBank
Commonwealth Bank of Australia
ABN 48 123 123 124 AFSL and
Australian credit licence 234945

Your Statement

Statement 88	(Page 1 of 1)
Account Number	06 5520 10154682
Statement Period	2 Jun 2021 - 1 Jul 2021
Closing Balance	$9,808.12 CR
Enquiries	13 1998 (24 hours a day, 7 days a week)

046

THE SECRETARY
NURIOOTPA FUTURES ASSOCIATION INCORP
PO BOX 313
NURIOOTPA SA 5355

Society Cheque Account

If this account has an attached overdraft limit or facility which is secured over your primary place of residence or over a residential Investment property you should ensure that the property is insured in accordance with the terms and conditions of the mortgage. If you have any queries about your insurance cover you should contact your insurer. Information on property insurance can also be found on www.moneysmart.gov.au. Note, if this account has an attached overdraft limit or facility and we send you a statement every 4 or 6 months, we will update your statement preference to every 3 months as part of changes made to the new Banking Code of Practice from 1 July 2019.

Name: NURIOOTPA FUTURES ASSOCIATION INCORPORATED

Note: Have you checked your statement today? It's easy to find out more information about each of your transactions by logging on to the CommBank App or NetBank. Should you have any questions on fees or see an error please contact us on the details above. Cheque proceeds are available when cleared.

The date of transactions shown here may be different on your other transaction lists (for example, the transaction list that appears on the CommBank app).

Date	Transaction	Debit	Credit	Balance
02 Jun	2021 OPENING BALANCE			$6,358.29 CR
10 Jun	Chq 000388 presented	78.65		$6,279.64 CR
11 Jun	Direct Credit 301500 COMMUNITY STORE CUST ID THECOOP		3,413.09	$9,692.73 CR
17 Jun	Direct Credit 279222 PAYPAL AUSTRALIA 1014223306170		0.11	$9,692.84 CR
17 Jun	Direct Credit 279222 PAYPAL AUSTRALIA 1014223306171		0.16	$9,693.00 CR
24 Jun	Chq 000389 presented	180.00		$9,513.00 CR
25 Jun	Transfer From Raw Impact CREDIT TO ACCOUNT		200.00	$9,713.00 CR
28 Jun	Transfer from NetBank Parade Fee Swim Pl		75.00	$9,788.00 CR
28 Jun	Transfer from NetBank BC Half Insurance		207.62	$9,995.62 CR
28 Jun	Chq 000391 presented 06 2067	187.50		$9,808.12 CR
01 Jul 2021	CLOSING BALANCE			$9,808.12 CR

Opening balance	-	Total debits	+	Total credits	=	Closing balance
$6,358.29 CR		$446.15		$3,895.98		$9,808.12 CR

6986.16601.1.1 ZZ258R3 0303 SL.R3.S911.D182.O V06.00.33

PO Box 313 Nuriootpa SA 5355
nurifutures.secretary@gmail.com
0456 692 232

nurifutures.com.au

ABN: 20 365 449 500

5 July 2021

Mr Martin McCarthy
Chief Executive Officer
The Barossa Council
PO Box 867
Nuriootpa SA 5355

Dear Martin

The Board of Nuriootpa Futures Association (NFA) is in the final stages of securing a Commercial Lease on Coulthard House for 5years with the option of a further 5 years.

This opportunity allows for Coulthard House to be self-maintained ongoing and as a result keep this Iconic House for the future of the Barossa.

To enable the preparation for this Lease, NFA needs to borrow up to $100k using the Cash Advance Debenture (CAD) option for 2 years and then transfer to Normal Fixed loan rate for 8 yrs. (See Business Plan attached)

As we are a not-for-profit organisation and in the interest of the community of Nuriootpa and the Barossa Valley, we seek your assistance acquiring the necessary finance to proceed ASAP.

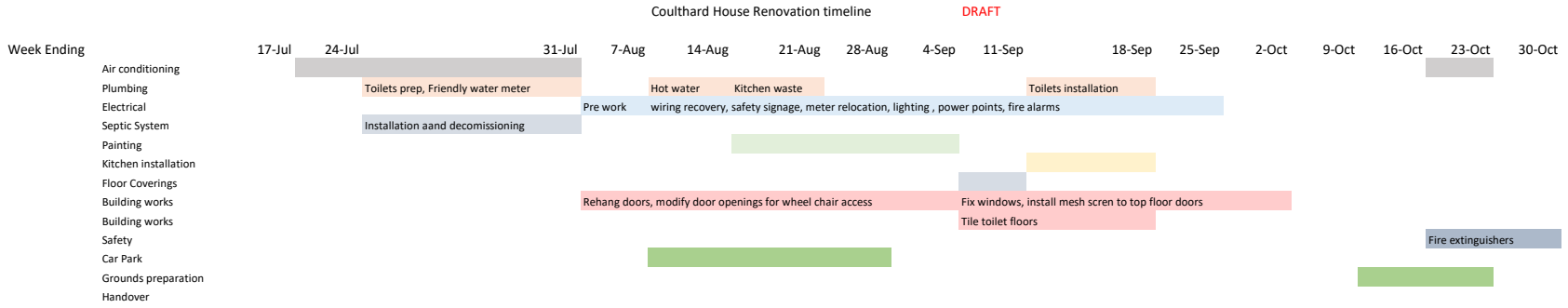
For your consideration and approval please!

Please see Contractor Timeline attached for our preparation to meet Lessee occupation needs.

Project Management - Lyndon Stoll (Chairman NFA)

Yours sincerely

Ian Firman
Secretary/Public Officer


Coulthard House Renovation timeline
DRAFT
Week Ending
17-Jul
24-Jul
31-Jul
7-Aug
14-Aug
21-Aug
28-Aug
4-Sep
11-Sep
18-Sep
25-Sep
2-Oct
9-Oct
16-Oct
23-Oct
30-Oct
Air conditioning
Plumbing
Toilets prep, Friendly water meter
Hot water
Kitchen waste
Toilets installation
Electrical
Pre work
wiring recovery, safety signage, meter relocation, lighting , power points, fire alarms
Septic System
Installation aand decomissioning
Painting
Kitchen installation
Floor Coverings
Building works
Rehang doors, modify door openings for wheel chair access
Fix windows, install mesh scren to top floor doors
Building works
Tile toilet floors
Safety
Fire extinguishers
Car Park
Grounds preparation
Handover

Coulthard House - Analysis for Leasing

PROJECT YEARLY COST NET (GST Exclusive)		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
SharePoint		2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31
NI - Income	Total Funding	100,000	-	-	-	-	-	-	-	-	-
NI - Capital	Total Capital	93,500	-	-	-	-	-	-	-	-	-
NI - Operating	Net Operating	13,971	16,452	17,006	17,571	18,313	16,765	19,507	20,122	20,749	21,388
	Project Annual Profit/(Loss)	20,471	16,452	17,006	17,571	18,313	16,765	19,507	20,122	20,749	21,388
	Project Cumulative - Profit/(Loss)	20,471	36,923	53,928	71,499	89,812	106,577	126,084	146,205	166,954	188,342

SECTION C: 10 Year Funding Requirements & Financial Outcomes

How will the proposal be funded?

Funding										
Cash Balance	5,000									
Borrowings	100,000									
Total	**105,000**	-	-	-	-	-	-	-	-	-

Is there a build or purchase cost for an asset?

Project Lease Preparation Costs										
Aircon	32,000									
Electrical	14,000									
Plumbing	3,000									
Painting	10,500									
Floors	9,000									
Building	20,000									
Contingency	5,000									
Total	**93,500**	-	-	-	-	-	-	-	-	-

All Operating Revenue and Expenses below are *additional* ie., a result of the new initiative (with GST excluded) and do not include previous normal level operations

Net Operating Result Profit/(Loss)	**13,971**	**16,452**	**17,006**	**17,571**	**18,313**	**16,765**	**19,507**	**20,122**	**20,749**	**21,388**
Total Operating Revenue	34,150	37,383	38,131	38,893	39,849	40,646	41,459	42,288	43,134	43,996
Total Operating Expenses	18,629	19,348	19,508	19,671	19,848	22,157	20,191	20,368	20,548	20,731
Total Maintenance Expenses	1,550	1,583	1,617	1,652	1,687	1,724	1,761	1,799	1,837	1,877
Operational										
Operating Revenue										
Lease Fees	33,500	34,170	34,853	35,550	36,439	37,168	37,911	38,670	39,443	40,232
Other Income	650	3,213	3,277	3,343	3,410	3,478	3,547	3,618	3,691	3,765
Operating Expenses										
Reimbursed Costs										
Energy - electricity	250	255	260	265	271	276	282	287	293	299
Materials Water	200	204	208	212	216	221	225	230	234	239
ESL	200	204	208	212	216	221	225	230	234	239
Council rates	-	2,550	2,601	2,653	2,706	2,760	2,815	2,872	2,929	2,988
Other Costs										
Management Fee	2,178	2,221	2,265	2,311	2,369	2,416	2,464	2,514	2,564	2,615
Letting Fee and Once Off Fee	1,938	-	-	-	-	2,139	-	-	-	-
Repayments	11,364	11,364	11,364	11,364	11,364	11,364	11,364	11,364	11,364	11,364
Insurance (Landlord)	1,000	1,020	1,040	1,061	1,082	1,104	1,126	1,149	1,172	1,195
Insurance (Lessee)	1,500	1,530	1,561	1,592	1,624	1,656	1,689	1,723	1,757	1,793
Maintenance Expenses										
Plumbing repairs	500	510	520	531	541	552	563	574	586	598
Electrical repairs	500	510	520	531	541	552	563	574	586	598
Septic Tank	250	255	260	265	271	276	282	287	293	299
Land Tax	300	308	317	325	334	344	353	363	373	383

Minutes of Board Meeting

Location: Coulthard Room
Date: 14/12/2023
Time: 6.00pm
Chair: Bob Hicks

Board Members Present:

Bob Hicks – Chair
Paula Brown – Treasurer/Secretary
Michelle Goudie
Deb Stoll

Apologies:

Kathryn Schilling
Rob Grope

[redacted]

3. Correspondence

In: [redacted]. Martin McCarthy Local Government Loan
[redacted]

[redacted]

[redacted]

[redacted]

5. Treasurer Report

As distributed, no questions from the board.

5.1 Local Government Loan Paula spoke re the correspondence regarding the loan. She outlined both options *ie* Principal and Interest loan and the current Overdraft. Paula talked re the loan repayments as advised from Martin and suggested that we take advantage of our Commonwealth

Bank Account and use it as a holding account with a direct payment going to it so we can feel confident the required loan funds are ready for each installment due. Deb raised the question that if we changed to a P&I we could not repay the loan earlier, however if we funds in the Commonwealth account we could at least earn interest on those funds. The Barn doors were addressed, and Deb suggested that we may be able to redraw our voluntary payments to help us pay for the doors and move forward. The motion was moved by Deb that, ***Paula with contact The Barossa Council and request the redraw of our voluntary repayments $15000.00 and then convert the loan to a Principal and Interest as soon as possible. Paula to calculate the funds required to maintain the payments and set up a regular transfer to the Commonwealth Bank Account to coincide with the receipt of the rent each month.*** 2nd Michelle all in favor.

[redacted]

Meeting Closed 6.50pm
Next Meeting Thursday 12th April

Paula Brown

Treasurer/Secretary

Nuriootpa Futures Association

DEBATE REPORT

7.1 Office of the Mayor and CEO

7.1.2 INTERNAL REVIEW OF COUNCIL DECISION - 18A ELIZABETH STREET DRAINAGE

Author: Chief Executive Officer
24/28803

PURPOSE

To review:

- the outcomes of the Independent Review of Council's decision of 24 January 2023, which improved the quality of the existing level of service to 18A Elizabeth Street, Tanunda drainage utilising Council's easement; and
- to reconsider the merits of this decision.

RECOMMENDATION

That Council having considered the Independent Review (under Section 270 of the *Local Government Act 1999* – the Act) of the 24 January 2023 decision of Council, noting the deputation of the landowners (and applicant for the review) at the Council meeting of 20 February 2024 and considering the findings of the independent reviewer, reaffirms the decision of 24 January 2023 being:

That Council:

(1) Having considered the request for a stormwater drainage level of service increase, resolves to maintain the existing level of service and open drain infrastructure which is consistent with, the drainage arrangements and needs of the location, and, downstream properties.

(2) Approves 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.

noting that part of the resolution has leady been carried out.

REPORT

Background

The decision of Council made on 24 January 2023 (as set out in the recommendation above) addressed minor drainage improvements to the Council service easement located in the location of 18 and 18A Elizabeth Street but was the subject of an application for review (under section 270 of the Act) by the residents of 18A Elizabeth Street Tanunda.

An important background point in this matter is that Council had, prior to this time, already budgeted to upgrade the side entry pit which would increase the service level to the general area.

The representations made by the residents of 18A Elizabeth Street to the Mayor and officers was a preference for undergrounding the water flow, which for over a decade and at the time of purchase by them had an overland flow through an undefined flow path via an easement in Council's favour. This service easement existed prior to the purchase of the property by the current landowners.

A separate matter of the stormwater discharge from a neighbour's property into the service easement has, largely, been resolved. The legal proceedings in the Magistrates Court by the owners of 18A Elizabeth Street against the owners of .18 Elizabeth Street, Tanunda, amongst other things, challenged the rights of 18 Elizabeth Street to discharge stormwater to the Council's stormwater service easement. Whilst the discharge of the stormwater now occurs through an alternative pathway and, hence, is no longer an issue, the landowners of 18A Elizabeth Street continue to pursue a claim for damages against the owners of 18 Elizabeth Street for the use of the easement to date. An update on this matter is contained later in the agenda.

The alternative easement discharge of stormwater from 18 Elizabeth Street was agreed by the Council to formalise the overland flow path through a drainage swale, and connection to the rear of the subject allotment which then connects to drainage infrastructure in Julius Street and ultimately discharges to the North Para River.

The Council also agreed to remove the vegetation and this has now been completed.

Previously Council had diverted significant waterflows from the subject area many years prior through works to intercept water upstream of the general location at William Street which is fully underground to Maria Street.

Introduction
The landowners, who provided a deputation to Council of their views on the matter at the February 2024 meeting, object to the overland swale solution for all stormwater flows and submitted a request to review the substantive decision under Section 270 of the Act.

The review has now been completed and the relevant documents are provided at Attachment 1 (the report) and Attachment 2 (supporting papers).

Discussion

January 2023

The decision of Council at its meeting of 24 January 2023 was as follows.

MOVED *Cr de Vries*

That Council:

(1) Having considered the request for a stormwater drainage level of service increase, resolves to maintain the existing level of service and open drain infrastructure which is consistent with, the drainage arrangements and needs of the location, and, downstream properties.

(2) Approves 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.

SECONDED *Cr Hurn* ***CARRIED 2022-26/121***

The findings of the independent review clearly articulate the balance between the service levels, cost and precedent, and has arrived at a conclusion pertaining to the decision that:

"Taking into account all the information as set out in this report, our view is that:

- the decision is lawful;
- the open drainage swale option is the preferred decision".

October 2023

The decision of Council of 4 October 2023 is as follows.

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***

As Council is aware, the then Acting Chief Executive Officer attempted to negotiate an alternative and higher-level service outcome with the landowners as per the report of 4 October 2023. The Acting CEO (at that stage had reverted to her Director role) and the Director of Infrastructure and Engineering Service met after that decision of Council and had ongoing communications with the landowners. Ultimately, a solution was unable to be negotiated, at that time, that reasonably aligned with the Council decision of 4 October 2023 and it was determined to await the legal review mechanism under the Local Government Act requested by the landowners. To enliven this option now will require consideration of risks associated with maladministration as the independent internal review has highlighted the best option as the open swale some $175K cheaper than the October 2023 resolution of option 3.

Legal Advice and Update

Legal advice in relation to this matter and an update to recent court proceedings has been provided and is outlined at confidential agenda item "Legal Advice – 18A Elizabeth Street Tanunda Drainage Matters".

It is recommended that Council defer debate on this item until the legal advice, presented later in the agenda, has been considered. The Mayor can alter the agenda order to achieve this outcome by deferring this agenda item until after the confidential item later in the meeting.

Summary and Conclusion

Council is now required to review the materials as they relate to the decision of January 2023 and determine if it reaffirms, varies, or changes the original decision. Due to the operation of Section 270 of the Local Government Act there is no requirement for a notice of motion to change the original decision.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Internal Review of Council Decision - Final Independent Report
Attachment 2 Attachments to the Internal Review
Attachment 3 Further Request from Residents of 18A Elizabeth Street Tanunda

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

7.1. Build on sound asset management practices to deliver sustainable services to ensure that infrastructure is adequate to support the community.

Legislative Requirements
Section 270 of the Local Government Act

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

The costs of the internal review are provided in detail at Attachment 3:

- Independent review, costs to date $9,490.
- Staffing resources, costs to date $5,292.
- Legal support to internal review not the reviewed $856.
- Additional legal support, costs to date (estimate) $3,500.
- Total costs to date $19,138.

- Recovered through application fee $20.

The costs of other activities, so that Council has full picture to date of managing the matter (these costs do not include Council staffing expenses devoted to this matter):

- Freedom of Information Request (completed) $11,133.
- Legal Costs – General $7,991.
- Legal Costs – Legal Case which Council was joined to: $14,808.
- Removal of Vegetation Works as approved (completed): $7,850.

Resourcing for the solution will change due to delay in implementation, that will be resolved through a quarter 3 budget adjustment depending on Council's decision.

The general risks are known to Council and are categorised as political risk and alignment with precedent and reasonable investment of community resources. Cost risk of delays and legal risk associated with any further challenges made to the resulting Council decision.

COMMUNITY ENGAGEMENT

Attachment 2 outlines the engagement undertaken and there has been various site and office meetings with the landowners along with various telephone conversations with elected members with the landowners. There is no expectation or requirement to undertake broader engagement.

Norman Waterhouse

THE BAROSSA COUNCIL

SECTION 270 REVIEW
FINAL REPORT

Drainage Easement

Felice D'Agostino
Norman Waterhouse Lawyers

FXD/SXP/10321-512643/2697819

1. **SECTION 270 APPLICATION**

1.1 The Council has received from Mr Paul and Mrs Dagmar Keady (**the Applicants**) a request pursuant to Section 270 of the *Local Government Act 1999* (**the LG Act**) for a review of the decision of the Council in relation to an open stormwater drainage swale drainage and swale remediation works at 18A Elizabeth Stret Tanunda (**the Review Application**).

1.2 The Council has engaged Norman Waterhouse to assist it with its consideration and determination of the Review Application.

2. **SECTION 270 LOCAL GOVERNMENT ACT 1999**

2.1 Section 270 of the LG Act requires the Council to, amongst other things, establish procedures for the review of decisions of the Council, employees of the Council and other persons acting on behalf of the Council.

2.2 The then Ombudsman stated in 2011:

> '*Internal review is a key accountability mechanism for local government. It enables people to test the merits of decisions that affect them.*'[1]

2.3 The current Ombudsman has confirmed that in relation to reviews of decisions, Section 270 of the LG Act requires councils to consider the merits of the decision under review[2]. Accordingly, a review of a decision under Section 270 of the LG Act encompasses a review of the legality of the decision as well as whether the decision was the best or preferable decision.

2.4 A merits review requires all aspects of a decision to be reviewed and a determination to be made as to the correct and preferable decision. This may result in the Council affirming, varying or setting aside the original decision. All relevant evidence and information are considered, including any new evidence and information.

[1] Valuing Complaints: An Audit of Complaint Handling in South Australian Councils, November 2011, page 61.
[2] Right of Review: An Audit of Local Government Internal Review of Council Decisions Procedure, November 2016, page 44.

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2.5 The Council may, pursuant to Section 270(4)(c) of the LG Act, refuse to consider an application for review if the applicant does not have a sufficient interest in the matter.

3. **DECISION**

3.1 The scope of the Review Application is the decision of the Council made at its meeting of 24 January 2023 in relation to an open stormwater drainage swale and drainage swale remediation works at 18A Elizabeth Stret Tanunda (**the Property**) as follows:

> That Council:
>
> (1) Having considered the request for a stormwater drainage level of service increase, resolves to maintain the existing level of service and open drain infrastructure which is consistent with, the drainage arrangements and needs of the location, and, downstream properties.
>
> (2) Approves 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.

4. **REVIEW - PROCESS**

4.1 **Process of Review**

4.1.1 The Council's Internal Review of Council Decision Process (**the Procedure**) provides that where the decision is a decision of the Elected Body, the Internal Review Contact Officer (**the IRCO**) will make a recommendation to the Chief Executive Officer (**the CEO**) to refer the application to an expert party/panel. The IRCO will be seeking a recommendation from the expert party/panel which will then be referred back to the Elected Body for a final determination on the review.

4.1.2 The Procedure further provides:

> 4.6.1 In carrying out an internal review of a decision, the reviewer will consider the merits of all the materials and information that were before the original decision-maker at the time of the decision and any additional relevant information or material

provided by the applicant or which has become available during the course of the review.

4.6.2 The reviewer will consider whether the original decision is legally and procedurally correct having regard to the following (where relevant and not restricted to), that the original:

- decision maker had the power to make the decision;
- decision maker considered all the matters which were relevant to the making of the decision at the time and did not take into account matters which were not relevant;
- decision maker did not exercise a discretion or power in bad faith, for an improper purpose or while subject to duress or the influence of another person;
- decision maker had no conflict of interest, bias or perceived bias;
- decision maker ensured that the findings of fact were based on evidence;
- decision was reasonable; and
- decision maker considered any relevant legislation, policies or processes.

The reviewer will also consider whether a different decision based on the evidence available or new evidence provided or found provides an improved outcome.

4.1.3 Our engagement is to consider the Review Application and prepare a report to assist the Council to make a decision in relation to the Review Application.

4.2 **Preliminary Report**

4.2.1 We prepared a preliminary report which was provided to the Council and the Applicants. The Applicants were invited to make submissions on the preliminary report and did so. The Applicant's submissions are contained in emails from the Applicants to Norman Waterhouse of the following dates (and include the attachments to the emails):

(a) 21 December 2023 9:23am;

(b) 21 December 2023 6:25pm;

(c) 21 December 2023 6:53pm;

(d) 21 December 2023 6:57pm;

(e) 22 December 2023 3:31pm;

(f) 3 January 2024 11:54am,

(referred to collectively herein as **the Preliminary Report Submissions**).

4.2.2 The Preliminary Report Submissions raised matters that we considered required a response from the Council to enable us to consider them in the preparation of our Final Report. To that end, we provided the Preliminary Report Submissions to the Council. The Council's Chief Executive Officer has provided his response to the Preliminary Report Submissions (**the CEO Response**).

4.3 **Documents and Information Considered**

4.3.1 We considered the following documents and information:

(a) the Procedure;

(b) the report considered by the Council at its meeting of 24 January 2023 regarding the stormwater drainage swale located on the Property;

(c) documents provided by the Council copies of which are attached at Appendix A;

(d) correspondence and documents provided to us by the Applicants, copies of which are attached at Appendix B;

(e) our notes of our meeting with the Applicants on 18 August 2023;

(f) our observation of the open stormwater drainage swale located on the Property;

(g) the report considered by the Council at its meeting of 4 October 2023 regarding the drainage swale on the Property;

(h) the Preliminary Report Submissions which are attached at Appendix C; and

(i) the CEO Response which is attached at Appendix D.

5. SUFFICIENT INTEREST

5.1 General Principles

5.1.1 Section 270(4) of the LG Act provides that the Council may refuse to consider an application for review if:

(a) the application is made by an employee of the council and it relates to an issue concerning his or her employment; or

(b) it appears that the application is frivolous or vexatious; or

(c) the applicant *does not have a sufficient interest in the matter.*

5.1.2 The Act does not define what 'sufficient interest' means in Section 270(4)(c).

5.1.3 In administrative law, the issue of whether a person has the right to bring proceedings challenging an administrative decision is referred to as 'standing'. Standing enables some applicants to access the Courts whilst other applicants are excluded from gaining access. Standing requirements apply at common law and can apply under legislation.

5.1.4 Some legislation enables any person to challenge a decision or make an application and other legislation limits the person who can challenge a decision or make an application. Standing rules seek to ensure that the most appropriate person to challenge the decision does so:

> '[T]he Courts should decide only a real controversy between the parties each of whom has a direct stake in the outcome of the proceedings.'[3]

[3] *Onus & Alcoa of Australia Ltd* (1981) 149 CLR 277, Gibbs CJ at 35.

5.1.5 A general test as to what is a sufficient interest in any given case is that stated by Gibbs J in *Australian Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493, it is likely the applicant will have a sufficient interest if he or she is likely to gain some advantage if the action they have brought succeeds or suffer some disadvantage if it fails.

5.1.6 We consider it appropriate to interpret Section 270(4)(c) as a limitation on the persons who may seek a review of a decision under Section 270. We consider that limitation is similar to the rules of standing in administrative law. We consider interpreting Section 270(4)(c) in that way is consistent with the objects of the LG Act.

5.2 **The Applicants' Interest**

5.2.1 The Applicants own and reside at the Property.

5.2.2 We are satisfied the Decision impacts the Applicants and, on that basis, we are of the opinion the Applicants have a sufficient interest in the Decision.

5.3 **Excluded from Review**

5.3.1 Our investigation does not address the issue concerning the discharge of stormwater from 18 Elizabeth Street Tanunda into the drainage swale which, as we understand it, is currently before the courts. We consider the Review Application can be considered separately to that issue.

6. RELEVANT LEGISLATIVE PROVISIONS AND COUNCIL POLICY

6.1 Local Government Act 1999

6.1.1 Section 8 of the LG Act provides as follows:

> A council must act to uphold and promote observance of the following principles in the performance of its roles and functions -
>
> (a) provide open, responsive and accountable government;
> (b) be responsive to the needs, interests and aspirations of individuals and groups within its community;

(c) participate with other councils, and with State and national governments, in setting public policy and achieving regional, State and national objectives;

(d) give due weight, in all its plans, policies and activities, to regional, State and national objectives and strategies concerning the economic, social, physical and environmental development and management of the community;

(e) seek to co-ordinate with State and national government in the planning and delivery of services in which those governments have an interest;

(ea) seek to collaborate, form partnerships and share resources with other councils and regional bodies for the purposes of delivering cost-effective services (while avoiding cost-shifting among councils), integrated planning, maintaining local representation of communities and facilitating community benefit;

(f) seek to facilitate sustainable development and the protection of the environment and to ensure a proper balance within its community between economic, social, environmental and cultural considerations;

(g) manage its operations and affairs in a manner that emphasises the importance of service to the community;

(h) seek to ensure that council resources are used fairly, effectively and efficiently;

(i) seek to provide services, facilities and programs that are adequate and appropriate and seek to ensure equitable access to its services, facilities and programs;

(ia) seek to balance the provision of services, facilities and programs with the financial impact of the provision of those services, facilities and programs on ratepayers;

(j) achieve and maintain standards of good public administration;

(k) ensure the sustainability of the council's long-term financial performance and position.

7. RELEVANT BACKGROUND

7.1 An existing open stormwater drainage swale passes through the Property, from the front boundary to the rear boundary of the Property (**the Drainage Swale**). 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 streetscape and location.

7.2 The stormwater flow path over the Drainage Swale is from a side entry pit in Elizabeth Street, into the Drainage Swale discharging at the rear of the Property into a concrete culvert drain in 19 Julius Street, Tanunda.

7.3 In approximately 2005, stormwater drainage upgrade works were completed by the Council to divert major stormwater flows away from the Elizabeth Street low point, via extensive new underground stormwater drainage infrastructure in Elizabeth Street, William Street, John Street and Maria Street. Stormwater flows still traverse through the remaining open drainage swale system, including through the Property.

7.4 In around 2012, 20 Elizabeth Street Tanunda was subdivided into two allotments (18 and 18A), with the 18A allotment designated to retain the exiting drainage swale for management of stormwater drainage within the local sub catchment. At the time of the land division, the Council obtained a drainage easement over part of the Property upon which the Drainage Swale is located (**the Easement**) for the ongoing management of stormwater flows. The Easement is 3 metres wide along the eastern boundary of the Property adjoining 18 Elizabeth Street, Tanunda (**the neighbours**).

7.5 In December 2021, the Applicants purchased the Property and were aware of the Easement and how it was managed as an overland flow. At the time the Applicants purchased the Property, the land on which the Easement and accordingly the Drainage Swale was located, was covered with mature vegetation and trees.

7.6 In March 2022, the Applicants met with the Council's Manager Engineering Services (**the MES**). The Applicants set out in an email to the MES of 13 March 2022 its views that the Drainage Swale was not adequate. In this email the Applicants stated:

7.6.1 as it passes the stormwater gathers dirt, leaves etc which build up and dam and causes stormwater to flood into the rear of the Property;

7.6.2 water pools in the Drainage Swale which is then a breeding ground for mosquitos, insects etc and a repository for untreated wastewater from the road gutters etc;

7.6.3 a solution might be:

(a) the removal of the current vegetation/trees on the Drainage Swale which impede water flow;

(b) move the stormwater gutter entrance closer to the line of the eastern boundary of the property and put in an underground pipe to carry the stormwater along the Property's eastern boundary.

7.7 On 13 April 2022, the MES responded to the Applicants' email of 13 March 2022 and advised:

7.7.1 stormwater drainage upgrade works to improve the inlet capacity of the side entry pit drainage system in the Elizabeth Street verge in front of the Property were proposed for inclusion in the upcoming financial year capital stormwater infrastructure budget;

7.7.2 open earth drainage swales are common throughout the Barossa region;

7.7.3 the method of stormwater drainage selected by the owner at the time for the development was for an overland flow path with an easement to the Council;

7.7.4 there is currently no upgrade works planned by the Council through the Property and the Drainage Swale is designated as existing earth swale.

7.8 On 19 April 2022 the Applicants emailed the MES stating amongst other things:

'It is understood that the stormwater swale on your easement is inadequate and environmentally unhygienic. There is vegetation and large trees on the easement impeding water flows which predate the grant of your easement.'

7.9 The Applicants further emailed the MES on 3 May 2022 stating:

> '*Your stormwater easement on our land is choked by vegetation, a haven for vermin such as rats and mosquitoes and is totally inadequate for its purpose. Remedying the drain in Elizabeth Stret will not alter this problem.*'

7.10 The Applicants repeated in their email of 10 May 2022 that the Drainage Swale was overgrown with vegetation and trees impeding the flow path and causing flooding.

7.11 On 15 September 2022, the Applicants met with the Mayor, the MES and the Council's Director Works and Engineering (**the DWE**). At that meeting, the option of installing an underground culvert was discussed and the Applicants were advised that option would need to be put to the Council for its consideration. The Applicants were also advised that as the Council was in caretaker mode, the earliest opportunity for this option to be considered by the Council was January 2023.

7.12 At the Council meeting of 24 January 2023, the Council considered an officer report (**the January Report**) which contained a recommendation consistent with the Decision.

7.13 Following the Decision, a contractor was engaged to undertake the approved stormwater drainage upgrade of the Elizabeth Street side entry pit and culvert infrastructure adjacent to the front boundary of the Property, and vegetation clearance and remediation works to the Drainage Swale. The vegetation clearing was completed by 15 March 2023. Civil works to remediate the Drainage Swale and commence the side entry pit upgrade were scheduled to commence on Monday 20 March 2023.

7.14 The Council received a letter from solicitors for the Applicants dated 17 March 2023 which stated the Applicants understood the easement would be a 3 metre wide dirt strip upon which would be constructed of a bare earth 1.3 metre wide trench at ground level, 1 metre at the base and 300mm deep. The letter stated that:

> '*[the Applicants] .. are concerned that the trench will be dangerous to the unwary …*
>
> *….*

.. the proposed trench is unfit and contrary to any reasonable use of this service easement for drainage purposes.

…. The manner in which the easement is proposed to be used by the Council would not only unduly detract from the enjoyment by our clients of the easement but would effectively act to exclude our clients from that part of their land over which they are registered proprietors.'

7.15 Upon receipt of the letter from the Applicants' solicitor, the works comprising the upgrade to the side entry pit and to remediate the Drainage Swale were placed on hold.

7.16 The Council's solicitor responded to the letter from the Applicants' solicitor by letter dated 4 May 2023 refuting the statements made by the Applicants' solicitor in their letter of 17 March 2023. By further correspondence dated 1 June 2023 directly to the Applicants, the Council's solicitor provided details of the proposed works to the Drainage Swale including a construction diagram of the proposed trench. The following details were provided regarding the works approved to be undertaken to the Drainage Swale in accordance with the Decision:

> … the earth drainage trench will be reinstated.
>
> … Council remains open to finishing the sides of the drainage trench with a layer of foam and grass seed.
>
> Ballast rock is proposed to be installed at the drainage inlets from the adjacent property into the Councils drainage trench.
>
> Concrete is proposed to be installed at the rear (southern) end of the drainage trench to channel stormwater flows to the adjoining downstream drain located within 19 Julius Street Tanunda for a distance of 5-8 metres from the boundary.
>
> … Council is open to finishing the balance of the easement with a layer of loam and grass seed. It will also provide a basic level of service to the easement, but it will not irrigate the area.[4]

[4] In this report a reference to the **Open Drainage Swale Option** is a reference to the works approved to be undertaken to the Drainage Swale by the Decision with the details of those works as set out in the correspondence from the solicitors for the Council to the Applicants dated 1 June 2023.

7.17 The Applicants responded by email dated 19 June 2023 to the Council's solicitors stating the details provided '*…. regarding landscaping, trench design etc are not satisfactory on health, safety and engineering grounds.*'

7.18 Between 16 June 2023 – 11 July 2023, the Applicants and the DWE corresponded by email regarding other options including a pipe and spoon drain. The option of a pipe was discounted by the DWE as not appropriate as the size required would not be achievable due to the level of the outflow. The DWE also advised that a spoon drain could be used as the base of the Drainage Swale however the rest of the Drainage Swale would still be required, and the spoon drain would simply replace the bare earth base. The DWE provided further details of the proposed trench in response to the Applicants' request for further details.

7.19 As at the time of this report, the works to the side entry pit and to the Drainage Swale have continued to be placed on hold.

7.20 Since the making of the Review Application, there has been a meeting between the Applicants and the Council's Acting CEO for the purposes of engaging in discussions to attempt to reach a mutually agreeable resolution. At that meeting, the Applicants were advised that the current proposed works to remediate the Drainage Swale are appropriate from an engineering point of view and will cater for the currently provided 1 in a 2-year storm event.

7.21 The Council engaged an independent hydrological consultant to prepare an assessment of stormwater upgrade options to identify a range of solutions for the management of stormwater within the Easement. The Council considered an officer report which attached a report of the hydrological consultant (**the Hydrological Report**) and preliminary costings for the options for the Council's consideration at its meeting of 4 October 2023 (**the October Report**).

7.22 At the Council meeting of 4 October 2023, the Council resolved as follows:

> 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.

7.23 There has been a meeting and extensive ongoing correspondence since the Council agreed to an alternative, co-funded option, on 4 October 2023.

8. **REVIEW – APPLICANTS' SUBMISSIONS**

8.1 The Applicants have set out their position with respect to the Decision in the following correspondence that we have been provided with:

8.1.1 email to the elected members dated 29 March 2023;

8.1.2 email to Felice D'Agostino of Norman Waterhouse dated 15 August 2023;

8.1.3 letter to Felice D'Agostino of Norman Waterhouse dated 22 August 2023.

8.2 In the documents identified above, the Applicants have expressed the following views with respect to the Decision:

8.2.1 the option of a dirt swale as it currently exists is inappropriate. The dirt, weeds and debris stop the stormwater from draining, causing ponding and making the drain a muddy bog;

8.2.2 when it rains, the trench will be a dirt bog carrying water and debris from the roadway and gutters across the Property;

8.2.3 the option of a dirt trench is unacceptable. It will scour and erode with high rainfall events and act as a sump in low rainfall events. It will encourage weed growth and trap debris which will impede the drain. Landscaping and maintenance requirements will be on going and expensive;

8.2.4 a spoon drain still has the problems of erosion and scouring on the dirt sides and skirt. Grass verges and the balance of the easement will require ongoing maintenance at considerable cost;

8.2.5 the Applicants' dogs can escape onto Elizabeth Street as can their young grandchildren;

8.2.6 the trench will be dangerous to the unwary;

8.2.7 it will mean the Council has effectively resumed a 3 metre strip of their land from front to back.

8.3 In addition, the Applicants say that the following matters ought to be considered:

8.3.1 a cost/benefit analysis of the merits of various options should be undertaken including consideration of the maintenance and ongoing costs and the health, safety, environmental and engineering aspects of each option;

8.3.2 the impact on the Applicants as the landowners, their quality of life and their use of the land;

8.3.3 that the standards that the Council would apply to private developers is an appropriate standard to apply to the Easement and the Applicants are entitled to the same level of service as applied to new residential developments including the requirement to construct underground drainage where possible;

8.3.4 the impact of each option on the Applicants' neighbours;

8.3.5 that the Applicants' situation is unique as the Drainage Swale is fed directly by stormwater from the Council side entry pit;

8.3.6 that the volume and velocity of stormwater flow has changed with the construction of the children's oval and redesign of the side pit;

8.3.7 that the drainage infrastructure will need to last for decades;

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8.3.8 the potential cost to the Council of needing to redirect the neighbours' stormwater away from the easement[5];

8.3.9 the Applicants' opinions and circumstances.

8.4 The Applicants are aggrieved that based on the meeting of 15 September 2022 with the Mayor, the MES and DWE, they believed that an underground culvert option would be recommended to the Council for its consideration at its meeting on 24 January 2023.

8.5 The Applicants are also aggrieved by the content of the January Report which in their opinion was misleading and inaccurate for the following reasons (as set out in the Applicants' letter to Felice D'Agostino of Norman Waterhouse dated 22 August 2023):

1. There is no mention of our meeting with Mayor Lange, Mr Clark and Mr Kaesler on 15 September 2022 nor of the commitment we were given that a culvert was the preferred way to go to resolve the drainage issues on our land.
2. Despite Mr Kaesler's comment in his penultimate paragraph, TBC does not have an easement similar to ours. We know because we asked and have checked the list provided by Mr Clark. Our situation is exceptional and unique. As far as we are aware we are the only easement which is fed directly by a side pit with a large Council catchment, adjacent to our home, then feeding into a rear concrete culvert along 19 Julius Street, along which TBC does not have an easement!
3. There is no disclosure of staff members permitting the Verhees to deposit their stormwater onto our property. There was no disclosure that TBC had agreed to be responsible for the Verhees stormwater, the legal basis of why TBC assumed this responsibility nor what role this commitment played in the recommendation put to Council. ie the construction of a drain which would give the Verhees ready access to our land[6].
4. We were not advised that the Recommendation had changed; no options or alternatives were presented in the Report. Nor were any options discussed with us.
5. We were not given the opportunity of putting our concerns to TBC including the impact of the dirt swale on us.

[5] A stated in clause 5.3 the issue concerning the discharge of stormwater from 18 Elizabeth Street Tanunda into the Drainage Swale has not been considered as part of the Review Application.
[6] A stated in clause 5.3 the issue concerning the discharge of stormwater from 18 Elizabeth Street Tanunda into the Drainage Swale has not been considered as part of the Review Application.

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6. There has been no health, safety or environmental reports obtained to assess the various drainage options.
7. Important matters such as the ongoing maintenance costs to TBC of a dirt swale etc were not presented or considered.
8. We have consulted with an engineer. He has warned us continual wetting can cause cracking in our foundations. There is a already in the concrete apron. None of this was considered.
9. We believe that if the meeting was advised of what was proposed ie a dirt trench and how it would impact us then at the very least the elected members would have wanted alternative options to be presented to them for consideration.

9. REVIEW – PRELIMINARY RESPONSE SUBMISSIONS

9.1 The Applicants provided photographs taken on 21 December 2023 showing water in the Drainage Swale[7]. The Applicants state these photographs:

> '*…. show the water flow from the new Tanunda oval into the easement when the sprinklers are on…..The water just pools and sits in the drain attracting mosquitos etc. There is insufficient water flow to drain the water through the easement. The open drain option means this will be recurrent*.'

9.2 The Applicants provided further photographs of recent rain[8]. These photographs show water in the Drainage Swale and flooding at the front of the Property. The Applicants also provided a document they obtained online titled *Damage to Buildings on Clay Soils Technical Bulletin 5.1 Australian Council of National Trusts (Walsh, 1984)*.[9] That publication discusses the damage that may be caused to existing buildings by movements of expansive clays resulting from soil moisture changes.

9.3 The Applicants provided a written response to the Preliminary Report and further photographs by email to Norman Waterhouse of 21 December 2023 6:53pm. The Applicants state we have given insufficient weight to their situation

[7] See email from the Applicants to Norman Waterhouse of 21 December 2023 9:23am (in Appendix C).
[8] See email from the Applicants to Norman Waterhouse of 21 December 2023 6:25 pm (in Appendix C).
[9] See attachment to email from the Applicants to Norman Waterhouse of 21 December 2023 6:25 pm (in Appendix C).

and Council's responsibility for its stormwater. The Applicants' submissions in summary are set out below.

9.3.1 There is clear evidence the Council has a conflict of interest in favour of the Verhees. The Applicants refer to many emails between the Council Officers and the Verhees including assurances that the Council would include floodways onto the Applicants' land with the proposed construction.

9.3.2 50% of the cost for the underground culvert option does not relate to work to the Easement. The cost for the Open Drainage Swale Option would have increased since the quote dated 27 February 2023. The cost of the works to the Easement for the Open Drainage Swale Option is higher than the cost of the works required for the underground culvert option[10].

9.3.3 Since the Applicants purchased the Property, the volume of stormwater flowing into the Easement has increased due to the recent works completed to the oval. Water enters the Easement from the oval independently of rain. The photographs provided show water flowing into the Easement from the oval sprinkler system.

9.3.4 This problem has been the subject of continual complaints from the public. Funds were allocated by the Council in June/July 2022 for this purpose. The underground culvert option includes new side entry pits on the oval side of Elizabeth Street with a new pipe across Elizabeth Street discharging into the Easement.

9.3.5 Considerable weight should be given to the fact the works will be expected to last decades and should represent a long-term solution to an ongoing stormwater problem in Elizabeth Street including flooding in the Property and neighbours' properties.

9.3.6 The Open Drainage Swale Option has an AEP of 50%. It is expected to flood regularly onto the Property. There has been a failure to give appropriate weight to the impact on the Applicants' and neighbouring properties of the effect of continual flooding. Council's guidelines to

[10] This submission is discussed in more detail in paragraph 10.3.5.

developers are an AEP of 1% for open drains and 5% for covered drains and this has not been considered. Similarly, the erosion, scouring and ongoing maintenance issues and cost and the various health, environmental and security issues of the Open Drainage Swale Option. Water will pool in any proposed dirt drain causing health and other problems.

9.3.7 The photographs provided show the Open Drainage Swale after the Council did interim works to enable stormwater to flow and the dimensions and impact are similar to what the Applicants will experience with the Open Drainage Swale Option which is unacceptable and unfair.

9.3.8 The Council has not identified any similar easement to the Applicants'.

9.3.9 The problems with erosion/contraction of clay soils on the Easement affecting concrete paths and footings are real.

9.3.10 The Applicants relied on the Council not approving a subdivision or house plans knowing that the land was flood prone from its stormwater. The Council knew there was a stormwater problem at the time of the subdivision and had the opportunity to do something about it. The Applicants discussed the Easement with the Council engineer prior to purchase and were told there were no problems with it.

9.3.11 The Applicants are willing to continue discussions with the Council and contribute to the cost of the underground culvert option.

9.3.12 The Applicants suggest mediation.

9.4 Mrs Keady provided a written submission which formed part of the written submission referred to in paragraph 9.3 setting out those matters which she suggests are not fair, just or reasonable. Ms Keady also refers to instances in which the Applicants were not treated fairly, justly or reasonably including occasions that Ms Keady suggests they were treated rudely and dismissively by the Council.

9.5 The Applicants submit that the Council '*has expert advice of an AEP flood frequency that an open drain with an AEP of 50% will significantly affect the value of our home and land.*' The Applicants' submission is that '*a dirt trench*

potentially flooding every year or two would obviously affect our home's value' and that this has been substantially contributed to by the works performed by the Council on the oval since the Applicants purchased the Property.[11] The Applicants have provided a letter from a real estate agent stating *'The lefthand side boundary easement creation would have a direct impact on the future value of the property. This is due to the land becoming unuable for any value adding and the high level of potential flood impact that would turn buyers away'.* (sic)[12]

9.6 The Applicants provided two pieces of correspondence from them to the Council of 20[13] and 31 October 2023[14]. The Applicants state they do not consider it fair or reasonable to be required to contribute to the assessed cost of the underground culvert option.

9.7 The Applicants have, in correspondence to the Council which has been provided to us, put forward another option which involves the Council resuming a 1 metre strip of land along the boundary of their property and 18 Elizabeth Street.

10. **REVIEW - ANALYSIS**

10.1 **Lawfulness**

10.1.1 We have considered the Decision and in our opinion the Council has not acted unlawfully.

10.2 **Procedure**

10.2.1 We have also considered the matters set out in paragraph 4.6.2 of the Procedure and in our view:

(a) to the extent the Council did not, as asserted by the Applicants, consider all relevant matters, it's consideration of the Review Application provides the Council with the opportunity to do so. We do not consider there is any evidence the Council took into account any irrelevant matters;

[11] See email from the Applicants to Norman Waterhouse 22 December 2023 3:31pm.
[12] See attachment to email from the Applicants to Noman Waterhouse 3 January 2024 11:54am.
[13] See attachment to email from the Applicants to Norman Waterhouse 21 December 2023 6:53pm.
[14] See email from the Applicants to Norman Waterhouse 21 December 2023 6:57pm.

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(b) there is no evidence the Council made the Decision in bad faith, for an improper purpose or while subject to duress or influence of another person;

(c) there is no evidence of conflict of interest, bias or perceived bias.

The Applicants contend in the Preliminary Report Submissions that Council's concern has been to provide the Verhees with access to discharge their stormwater into the Easement and this includes the Council's undisclosed pecuniary interest where the Council has agreed to pay the cost of relocating the Verhees stormwater infrastructure.

We have indicated at paragraph 5.3 that we have not considered the issue concerning the discharge of stormwater from 18 Elizabeth Street Tanunda into the Drainage Swale. We also indicated that we consider the Review Application can be considered separately to that issue. We maintain that view and accordingly the analysis in this report and the recommendations made in this report have not been influenced by that issue. To the extent the Applicants consider the Decision was influenced by this issue (which we do not make any comment or finding on) the Council will, in its determination of the Review Application, be reconsidering all relevant information;

(d) the Decision appears to be based on evidence;

(e) the Decision was reasonable;

(f) the Council appears to have considered relevant legislation and policies.

10.3 **Merits Assessment**

10.3.1 In undertaking a merits review, we have had regard to the principles in Section 8 of the Act, and consider the following provisions in Section 8 are particularly relevant to the Decision:

> A council must act to uphold and promote observance of the following principles in the performance of its roles and functions -

…..

(b) be responsive to the needs, interests and aspirations of individuals and groups within its community;

(g) manage its operations and affairs in a manner that emphasises the importance of service to the community;

(h) seek to ensure that council resources are used fairly, effectively and efficiently;

(ia) seek to balance the provision of services, facilities and programs with the financial impact of the provision of those services, facilities and programs on ratepayers.

10.3.2 We have considered the Applicants' grievances with respect to the January Report. We have also noted Mrs Keady's concerns, disappointment and frustrations provided as part of the Preliminary Report Submissions. Mrs Keady expresses her views about matters that she suggests have not been or are not fair, just or reasonable.

10.3.3 ***Recommended Option***

(a) The Applicants were clearly of the view that the installation of an underground culvert on the Property would be presented and indeed recommended to the Council in place of the Drainage Swale. We accept the Applicants were left with that clear impression following the meeting of 15 September 2022.[15] The January Report did discuss the option of an underground culvert but recommended the retention of the Drainage Swale.

(b) We can understand the Applicants' complaint in this regard. We accept that following the meeting of 15 September 2022, the Applicants were left with the impression that an underground culvert option would be recommended to the Council. The Applicants were aware that it would ultimately be a matter for the Council to determine whether or not to proceed and allocate the requisite funds to do so. Therefore, it cannot be said that the Applicants had an expectation that the Council would agree to an underground culvert.

[15] See email of the Applicant to the DWE dated 16 September 2022.

(c) It is our view that Council administration was not obliged to submit a report which recommended an underground culvert even if the Applicants were led to believe such a recommendation would be made. Council officers must have absolute freedom to make such recommendations that they consider appropriate in the public interest. However, whilst the Applicants could have (and indeed did) review the January Report themselves prior to the Council meeting, a customer service approach would have been to notify the Applicants of the recommendation in circumstances where it was clear it would not have been what they were expecting. Whilst this is not a matter that affects the validity or merits of the Decision, we have considered it as it is raised by the Applicants their Review Application. We have given this issue further consideration as the Applicants have made the following statement in their correspondence to the Council of 20 October 2023:

> We were not consulted and were not given an opportunity to comment on your report[16] prior to it being presented to Council.
> ….
> Council's policy of not consulting with us prior to Council passing resolutions is unfortunate. It would be useful if we could meet with Council representatives to discuss all options, have a purposeful discussion and present to Council the result of those discussions.

Whilst we are not clear what the Applicants mean by 'consulting' with them prior to passing resolutions, the Applicants have the opportunity to make deputations to the Council. Further, if the Applicants suggest they ought to be consulted and/or have input in relation to the content of a Council officer report, we reject that assertion for the reasons set out above.

10.3.4 ***Content of January Report***

(a) The Applicants' grievance with what they say are inaccurate or misleading aspects of, and omissions from, the January Report have, in our view, been addressed to some extent by the

[16] This is a reference to the October Report.

October Report. In addition, the Review Application presents the Applicants with the opportunity to put to the Council all information they consider to be relevant for the Council to consider in determining the best or preferrable decision.

10.3.5 ***Options***

(a) We acknowledge the difficulty in determining the best option for the Drainage Swale noting there are benefits and costs to the various options as set out in the Hydrological Report. The two options that we consider are relevant for consideration in relation to the Review Application are the Open Drainage Swale Option and option 3 in the Hydrological Report (**the Underground Culvert Option**). Whilst the Hydrological Report includes other options, we do not consider those other options are meritorious for the reasons that in the case of some of those other options, they are significantly more costly than the Underground Culvert Option with little additional benefit[17] and in the case of those options that are less costly than the Underground Culvert Option they are still more costly than the Open Drainage Swale Option with little additional benefit[18].

There is a significant difference in cost between the Open Drainage Swale Option and the Underground Culvert Option. We do note that the Underground Culvert Option also includes work on 19 Julius Street, Tanunda.

The Applicants contend in the Preliminary Report Submissions that:

- 50% of the cost for the Underground Culvert Option does not relate to work to the Easement;
- the cost for the Open Drainage Swale Option would have increased since the quote dated 27 February 2023; and
- the cost of the works to the Easement for the Open Drainage Swale Option is higher than the cost of the works required for the Underground Culvert Option.

[17] See for example Options 4 and 5 in the Consultant's report attached to the October Report.
[18] See for example Options 1A and 2 in the Consultant's report attached to the October Report.

`

It is not clear to us the basis for the above assertion regarding cost or how the Applicants have reached the above conclusions. In any event, it appears that to achieve a 5% AEP the entirety of the works contemplated by the Underground Culvert Option would be required. This is, in our view, clear when considering the other options presented in the Hydrological Report. For example, option 1A provides for a culvert only with no other works and achieves a 50% AEP. Option 2 provides for a culvert and some other works and achieves a 20% AEP. Accordingly, we consider it is appropriate to consider the entire cost for the Underground Culvert Option and not just the cost of the works to the Easement. We note that the Hydrological Report relates to the assessment of Council stormwater drainage system upgrade options in relation to existing arrangements at 18A Elizabeth Street. Accordingly, the various upgrade options presented in the Hydrological Report have been presented on that basis and with that purpose in mind.

There is also a significant difference in terms of performance between the Underground Culvert Option and the Open Drainage Swale Option. The question is which of the two options is the best or preferrable one. The answer to this question requires a consideration of various factors and the weight to be given to those factors. In our view the following are relevant factors when considering the best or preferable decision (in no particular order):

(i) Council's responsibilities;

(ii) performance of each option;

(iii) cost of each option;

(iv) benefit to the community of each option;

(v) benefit to the Applicant of each option;

(vi) precedent setting;

(vii) community standards and expectations.

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10.3.6 ***Council Responsibilities***

(a) The LG Act contains a number of provisions relevant to the Council's role with respect to stormwater drainage and stormwater infrastructure[19]. The Easement means the Council has a positive right to direct water through the Drainage Swale. The Open Drainage Swale Option represents Council's approach to the maintenance of the Drainage Swale.

(b) It is relevant to note that in approximately 2005, stormwater drainage upgrade works were completed by the Council to divert major stormwater flows away from the Elizabeth Street low point, via extensive new underground stormwater drainage infrastructure in Elizabeth Street, William Street, John Street and Maria Street. The October Report acknowledges that minor stormwater flows still traverse through the remaining open drainage swale system, including through the Property.

(c) It is also relevant to note that the works approved by the Council to the side entry pit and to the Drainage Swale have been placed on hold. The Applicants provided photographs of the condition of the Drainage Swale taken on 7 September 2023 showing water in the Drainage Swale which appears to be pooling and either not moving at all or moving very slowly. The DWE is of the view that the works to the side entry pit and the Open Drainage Swale Option will address the issue of the water pooling in the Drainage Swale. The Applicants have provided photographs and have made written submissions in the Preliminary Report Submissions in relation to the current flows through the Drainage Swale. The photographs show flooding to the front of the Property. The Open Drainage Swale Option would be an improvement on the current situation in terms of performance. That said, as we have already observed there would be a more

[19] The following is a non-exhaustive list of the relevant provisions of the Act:
- paragraphs (b), (d) and (f) of Section 7 (functions of a council);
- Section 4 (definition of 'road work');
- Section 215;
- Section 296; and
- Schedule 1A.

significant improvement to performance with the Underground Culvert Option.

(d) The Applicants also state that since they purchased the Property, the volume of stormwater flowing into the Easement has increased due to the recent works completed to the oval and that water enters the Easement from the oval independently of rain. The Applicants submit that the photographs provided as part of the Preliminary Report Submissions show water flowing into the Easement from the oval sprinkler system.

The CEO Response states that the new oval is estimated to most likely decrease the prior flows at this site due to three main issues:

- The construction profile it is expected that less surface water runoff will occur due to soakage and water retention within the soil profile. The construction area of the new oval previously was compacted dirt, with minimal grass and no sub-surface irrigation and in our view has more surface run off due to these factors.

- Further, the construction of the new oval has full irrigation and sub-surface drainage which direct the waterflow away from the source of the normal flows to 18 A Elizabeth Street.

- And finally the stormwater flow path from the oval is now managed and exists downstream from 18A Elizabeth Street, see last paragraph in this section.

The CEO Response acknowledges a recent instance of an irrigation malfunction on the new oval, as a result of various factors including large downpours that caused a temporary issue but states this is not reflective of the actual day to day design of the sporting precinct and adjacent stormwater flows. The engineering design is provided with the CEO Response and the CEO response states:

> I have indicated where the water direction for the new oval goes. The main water drainage for the new oval is highlighted in the attached at the bottom right of the plan, which drains to Elizabeth Street downstream from 18A Elizabeth Street, to William Street and then via open or underground infrastructure to the North Para River. This water flow is to the significant infrastructure previously installed some years prior which mitigates large flow traversing the easement at 18A Elizabeth Steet previous discussed and explored in the S270 review.

(e) The Applicants submit that there have been continual complaints from the public and that *'[c]onsiderable weight should be given to the fact the works will be expected to last decades and should represent a long-term solution to an ongoing stormwater problem in Elizabeth Street including flooding in the property and neighbours' properties.* The Council must be responsive to the needs, interests and aspirations of individuals as well as groups within its community and must seek to provide services, facilities and programs that are adequate and appropriate[20]. However this is to be balanced with the financial impact on ratepayers of providing those services, facilities and programs and equality of access to services, facilities and programs.

(f) The Applicants submit in the Preliminary Report Response that they *'…relied on the Council not approving a subdivision or house plans knowing that the land was flood prone from its stormwater. The Council knew there was a stormwater problem at the time of the subdivision and had the opportunity to do something about it. The Applicants discussed the easement with the Council engineer prior to purchase and were told there were no problems with it'.* This submission is one to the effect that the Drainage Swale is ineffective. However as set out in the October Report the works approved by the Council to the side entry pit and to the Drainage Swale are *'.. appropriate from an engineering point of view and will cater for the currently provided 1 in 2-year storm event*.' The issue is one of performance. The Underground Culvert Option has a higher performance level. As

[20] See Section 8(b).

we have discussed throughout this report performance is one factor to be considered but not the only factor.

10.3.7 ***Performance***

(a) As confirmed in the October Report 'Council has approved stormwater capital works at 18A Elizabeth Street, Tanunda that are lawful and consistent with the use of the easement'. The October Report also states:

> 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.

(b) The Open Swale Drainage Option (together with the works to the side entry put) has been put forward as an option that will accommodate the use of the Drainage Swale for drainage purposes consistent with the Easement. This is clearly stated in the October Report as follows:

> 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.

(c) We accept the Open Drainage Swale Option will accommodate the purpose for which the Council has the Easement. However, we acknowledge the Applicants disagree with the above proposition. We also accept that the mere fact that the Open Drainage Swale Option will accommodate the purpose for which the Council has the Easement does not mean it is the best or preferrable option.

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(d) The Hydrological Report provides that Option 1 which is the closest option to the Open Drainage Swale Option will achieve 50% AEP.

(e) The Underground Culvert Option will achieve a greater performance standard that the Open Drainage Swale Option which the Hydrological Report estimates to be 5% AEP. The October Report notes that:

> 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.

(f) The Applicants submit that with the Open Drainage Swale Option it is expected to flood regularly onto the Property and there has been a failure to give appropriate weight to the impact on the Applicants' and neighbouring properties of the affect of continual flooding. The Applicants refer to the Council's guidelines to developers which is for an AEP of 1% for open drains and 5% for covered drains. The Applicants also submit that photographs provided show the Open Drainage Swale after the Council did interim works to enable stormwater to flow and the dimensions and impact are similar to what the Applicants will experience with the Open Drainage Swale Option which they submit is unacceptable and unfair. We have acknowledged the difference in performance between the Underground Culvert Option and Open Drainage Swale Option. There is a significant difference. However, we are of the view that performance is not the only factor to be taken into account in determining the best or

preferrable decision. We discuss in this report the other factors we consider to be relevant.

(g) The Applicants also refer to erosion, scouring and ongoing maintenance issues and cost and the various health, environmental and security issues of the Open Drainage Swale Option. The October Report notes of the existing situation regarding the Easement that *'…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.'*

10.3.8 ***Cost***

(a) The current estimates available for the cost of the Open Drainage Swale Option is $60,115 and for the Underground Culvert Option is $203,775. We refer to paragraph 10.3.5 which sets out the Applicants' submissions regarding the breakdown of the costs for each option and what is relevant in their submission be taken into account.

10.3.9 ***Benefits***

(a) The Underground Culvert Option will achieve an outcome that benefits the Applicants. The Applicants may dispute that, but the fact of the matter is the Drainage Swale existed as an open swale at the time they purchased the Property and the Underground Culvert Option will redirect a significant portion of the stormwater underground. However, there will still need to be provision made for some overland water flow. Therefore, to the extent that the Applicants are seeking a solution that removes all overland water flowing through the Property the Underground Culvert Option will not provide that solution. We note the Applicants have stated they have consulted with an engineer who has warned them that continual wetting can cause cracking in their foundations. However, the Applicants have not provided engineering advice to this effect although we acknowledge the likely considerable cost to do so. As part of the Preliminary Report Submissions the Applicants have provided information by way of the document titled *Damage to Buildings on Clay Soils*

Technical Bulletin 5.1 Australian Council of National Trusts (Walsh, 1984) which discusses the damage that may be caused to existing buildings by movements of expansive clays resulting from soil moisture changes. The CEO response states it merely '…*reflects the risk of clay soils which occur around our state and any wet and dry cycle can result in these outcomes regardless of water flows across the land, as is evidence throughout the State of SA due to the nature of clay soils'.* We agree with that response.

(b) In addition, as we have already noted, the Underground Culvert Option will still require provision to be made for some overland water flow.

(c) The Applicants submit that the Council *'has expert advice of an AEP flood frequency that an open drain with an AEP of 50% will significantly affect the value of [their] home and land.'* The Applicants' submission is that *' a dirt trench potentially flooding every year or two would obviously affect our home's value' and that this has been substantially contributed to by the works performed by the Council on the oval since the Applicants purchased the Property.* The Applicants have provided a letter from a real estate agent stating *'The lefthand side boundary easement creation would have a direct impact on the future value of the property. This is due to the land becoming unusable for any value adding and the high level of potential flood impact that would turn buyers away'.* (sic) The CEO response is in summary as follows:

- the overland flow has always existed (pre and post land division) and has been reduced (significantly) in years past which was known when the Property was transferred to the Applicants;

- any solution that is implemented (with a pipe be it the 1 in 2 or 1 in 20 solutions) will actually further reduce the overland flow, will improve the land and improve its value through either a better managed overland flow solely or combination

of overland and underground system, compared to the situation at purchase of the Property which was a unmanaged and meandering overland flow;

- what valuation changes occur is not relevant to the requirements of section 6(a) of LG Act with respect to Council being an informed decision maker on the question of the stormwater management treatments to be applied by the Council. It is irrelevant as it does not go to the fundamental reason Council would make or not make any such investments which is about the social, economic and community wellbeing and development of its area;

- the valuation from Harcourts and in particular the reference to the 'lefthand side boundary easement creation' suggests they have not taken into account that the Easement was present at the time of purchase of the Property by the Applicants and it is reasonable to assume that a discounted value was realised at that time.

We are not persuaded by the Applicants' submission in this regard. Our primary reason is that the Easement existed at the time they purchased the Property and if the Applicants' submission that the Easement affects the value of the Property then. It must also be accepted that it affected its value at the time the Applicants purchased the Property.

(d) There is general community benefit to stormwater being managed and dealt with in a manner that seeks to balance various factors including risk, performance and cost.

10.3.10 ***Precedent***

(a) It is appropriate that consideration is given to issues of consistency, fairness and equity. The Applicants assert that their situation is unique and say there are no other similar drainage swales in the Council's area. They, in particular, refer to the fact that the side entry pit on Elizabeth Street directs water into the

Drainage Swale. The October Report states that there are numerous easements across the Council's area that are utilised for the discharge of stormwater and that Council records indicate that there are approximately 7kms of open swale drains within formal easements traversing private properties within the Council's existing stormwater network. We do not consider that the Applicants situation is unique insofar as the purpose and use of the Easement including the use of the Easement for stormwater to be directed through it from the side entry pit. The size of the Property relative to the area of the Easement does appear to be a factor that the October Report suggest is not common for other drainage swales that cross private property. The October Report states:

> 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.

(b) In relation to precedent the October Report notes:

> 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.
>
> ….
>
> 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.

(c) The October Report estimates the cost of applying consistency across the Council area as follows:

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.

  …….

- 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[21], 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).

(d) Issues of consistency and fairness are important considerations in this case. Council resources must be used fairly, and the Council must seek to balance the provision of services, facilities

[21] We are advised this is a typographical error and should read 10 years.

and programs with the financial impact on ratepayers. The best or preferred decision must take these principles into account.

(e) We accept that the Drainage Swale is not unique insofar as it is used for drainage purposes, in particular to carry stormwater from the side entry pit on Elizabeth Street through to the rear of the Property and through to Julius Street. However, the size of the area relative to the size of the Property is not common in other drainage swales in the Council's area. The Applicants submit that the Open Drainage Swale Option *'means the Council has effectively resumed a 3 metre strip of [their] land from front to back.'* In considering this submission we have had regard to the fact that the Easement existed at the time the Applicants purchased the Property albeit at that time the Drainage Swale contained mature vegetation and trees which have been removed. The Applicants purchased the Property with the knowledge of the existence of the Easement and the area over which it applied.

(f) However the fact the Applicants were aware of the Drainage Swale at the time they purchased the Property, whilst relevant, is not determinative of the issue at hand and nor does it mean the Applicants are required to accept a situation where the Drainage Swale cannot be used for the purposes for which the Council holds the Easement or that substantially deprives the Applicants of proprietorship or possession of part of the Property.

(g) The Applicants have cited Stanley J in *KI Seaport Pty Ltd (ACN 167 774 058) v Abstraxion Pty Ltd* (ACN 125 885 109)[22] (**KI Seaport**) presumably in support of their submission that the Easement unduly detracts from their enjoyment of their land and has substantially deprived them of their ownership or possession of the Property. In KI Seaport, his Honour referred to cases which had held various grants of right to constitute valued easements as follows[23]:

[22] [2020] SASC 113; 137 SASR 78.
[23] At [70].

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> The grant of other rights which have been recognised as valid easements include: an easement to pollute water and cast noxious matter onto adjoining land[24]; a right to discharge surplus water from the dominant tenement when reasonably necessary[25]; a right to the exclusive use of a drain[26]; and a right to the uninterrupted passage and running of water through water pipes[27].

(h) His Honour held in KI Seaport[28]:

> The question being one of degree and evaluation, I do not consider that the buried pipelines and settlement dam on piece 51 can properly be characterised as conferring upon Abstraxion the exclusive use of piece 51 let alone depriving KI Seaport of its reasonable use and enjoyment of its land. All easements interfere with the servient tenement to some extent. It is almost invariably the case that the proprietor of a servient tenement is very nearly deprived of possession of the space occupied by pipes and so much of the soil on each side as is necessary for access for maintenance and repair. Yet there is no doubt as to the validity of an easement of this kind.[43]

10.3.11 ***Community Standards and Values***

(a) In reviewing the Decision and determining the best or preferrable decision the Council ought to have regard to community standards or community values[29]. That is, the Council ought to consider what is the best or preferable decision in accordance with community standards or values. The elected membership of the Council, as local representatives of the Council's community, are best placed to have the knowledge and appreciate local community standards and values. We are of the view that in this case the community would expect the Council to ensure the Drainage Swale is able to be used for drainage purposes and does not deprive the Applicants of their reasonable use and enjoyment of the Property and that a decision as to which option is best or preferrable ought to be made having regard to these primary considerations. Other

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24 *Kirkcaldie v Wellington City Corporation* [1933] NZLR 1101.
25 *Municipality of Waterloo v Hinchcliffe* (1866) 5 SCR (NSW) 273.
26 *Simmons v Midford* [1969] 2 Ch 415, [1969] 2 All ER 1269.
27 *Rance v Elvin* (1985) 50 P&CR 9 (CA).
28 At [71].
29 Visa Cancellation Applicant v Minister For Immigration and Citizenship [2011] AATA 690.

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considerations relate to cost, consistency, fairness, the public interest and the interests of Applicants.

(b) We have not had regard to the matters set out in paragraph 4.6.2 of the Procedure.

(c) The balancing process required in this case is not a simple mathematical exercise. We have not merely ascribed a value to the various factors for each option and reached a conclusion based on the option with the highest value. Instead, we have considered each factor and asked ourselves what is the best or preferable decision. In our view the primary considerations suggest the preferrable decision is the Open Drainage Swale Option. None of the other considerations in our view suggest a different outcome is appropriate and indeed factors relating to cost, consistency and fairness support an outcome that the Open Drainage Swale is the preferred decision. The cost for the Underground Culvert Option is substantial and it is appropriate that the Council consider the costs of applying the same approach to other drainage swales in the Council's area.

(d) Notwithstanding our view as to the preferrable decision in this case we would strongly encourage the Council to continue to attempt to reach a resolution with the Applicants that can satisfy at least some of their concerns. In our view the decision of the Council to negotiate an Underground Culvert Option with a cost contribution by the Applicants has significant merit. We are unable to find that the preferred decision is the Underground Culvert Option with a cost contribution by the Applicants because such a decision requires the agreement of the Applicants and at this stage we understand there is no such agreement. Whilst we note that the Applicants have stated as part of the Preliminary Report Response that they are willing to continue discussions with the Council and contribute to the cost of the Underground Culvert Option we maintain we are unable to recommend this as the preferred decision. This is on the basis the Applicants have not provided the amount of the contribution they would be prepared to make (notwithstanding they are aware

of the Council's requested contribution) and in correspondence to the Council on 20 October the Applicants stated they did not consider it was fair or reasonable to make a contribution. We note that the October Report provides the following rationale for the contribution with which we agree with:

> 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.

10.4 **Outcome of Review Application**

10.4.1 It is important to acknowledge the clear distress this is causing the Applicants and it is therefore necessary to determine and conclude the Review Application as this matter has been ongoing for some time.

10.4.2 The Applicants have, as part of the Preliminary Report Response, suggested in correspondence to the Council which has been provided to us, another option which involves the Council resuming a 1 metre strip of land along the boundary of their property and 18 Elizabeth Street. We have not considered that as part of the Review Application as it goes beyond the remit of this review which is dealing with the Decision regarding the service level to the Easement. There is of course nothing that would stop the Council from considering that in the future.

10.4.3 We note that the Council and the Applicants have to some extent continued to engage in discussions regarding this matter including in relation to the Underground Culvert Option and if the Council wishes to continue those discussions it can do so.

10.4.4 The Applicants have suggested mediation. This is something the Council could consider separately to the Review Application. However, we do not see any benefit in delaying the conclusion of the Review Application. If mediation is something the Council and Applicants wish to undertake this can occur irrespective of the outcome of the Review Application.

11. CONCLUSION

11.1 Taking into account all the information as set out in this report, our view is that:

11.1.1 the Decision is lawful;

11.1.2 the Open Drainage Swale Option is the preferred Decision.

12. RECOMMENDATIONS

12.1 That subject to paragraph 11.2, the Council determines the Review Application on the basis the preferred decision is the Open Drainage Swale Option.

Norman Waterhouse



Felice D'Agostino
Principal
T 08 8210 1202
fdagostino@normans.com.au

1 March 2024

FXD/SXP/10321-512643/2697819

APPENDICES

FXD/SXP/10321-512643/2697819

Bronwyn Egarr

From: Janine Lennon
Sent: Wednesday, 11 May 2022 8:44 AM
To: Paul Keady
Subject: RE: [EXTERNAL] Re: 18 & 18A Elizabeth Street, Tanunda 5352 - Stormwater Infrastructure/pipes
Attachments: Decision Notification Form - Development Approval Granted - 20 Elizabeth Street Tanunda - Land Division.PDF; Plan of Proposed Division - Allotments 1 and 2 in Filed Plan 151290 - 20 Elizabeth Street Tanunda - Land Division.PDF

Attached is a copy of the approved land division plan for your property and the decision notification form.

Kind regards,
Janine

From: Janine Lennon <>
Sent: Wednesday, 11 May 2022 8:39 AM
To: Paul Keady <keadypaul@gmail.com>
Subject: RE: [EXTERNAL] Re: 18 & 18A Elizabeth Street, Tanunda 5352 - Stormwater Infrastructure/pipes

Hi Paul,

Once again I recommend that you obtain legal advice, whilst not my area of expertise, it is the drainage easement on your Certificate of Title that allows stormwater drainage from other properties through your site.

Kind regards,
Janine

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 10 May 2022 6:48 PM
To: Janine Lennon <jlennon@barossa.sa.gov.au>
Subject: [EXTERNAL] Re: 18 & 18A Elizabeth Street, Tanunda 5352 - Stormwater Infrastructure/pipes

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Hi Janine,

Thank you for your email today.

We have asked but Council has not yet provided us with any statutory or other authority giving Council the power to permit 18 Elizabeth street to discharge their stormwater onto our land.
To be clear, we dispute that Council has such power.

The registered easement is for Councils stormwater purposes only. The registered easement does not benefit 18 Elizabeth Street.

What you suggest is that Council can unilaterally create an unregistered third party encumbrance on our land but without notice to any incoming purchaser of the burdened land nor to the registered owner.

Further, Council has not disclosed to us what has supposedly been "permitted " by Council ie terms and conditions of any such permit, where, how and for how long 18 Elizabeth street can discharge their stormwater onto our land etc?

1

We would appreciate full details of what Council has "permitted 18 Elizabeth Street to do in relation to our land please and a copy of Councils decision to grant that permission.

Regards
Paul and Dagmar

On Tue, 10 May 2022 at 3:11 pm, Janine Lennon <jlennon@barossa.sa.gov.au> wrote:

Good afternoon Paul, Dagmar, Darren & Jennifer,

I have been cc'd into some correspondence between parties with regard to stormwater infrastructure.

18A Elizabeth Street has a stormwater easement in the form of an open swale on the property.

18 Elizabeth Street is permitted to drain stormwater into this swale.

Council has not at any time granted "Development Approval" for stormwater infrastructure (eg pipes) to cross from 18 Elizabeth Street to 18A Elizabeth Street, and any pipes protruding from 18 to 18A Elizabeth Street could be considered to be an unauthorised encroachment of private property onto another private property. Please be clear these pipe/s are not considered development and are not a matter for the *Planning, Development & Infrastructure Act 2016*

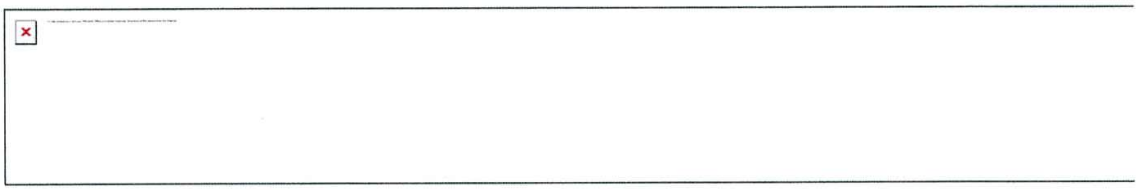
As this is a matter between two neighbours regarding privately owned property, resolving the matter is outside of Council's jurisdiction and if agreement cannot be met between neighbours the most appropriate course of action is to apply to the Supreme Court for a determination of the matter in accordance with the *Encroachments Act 1944*. Please see the information sheet at the following link: https://lawhandbook.sa.gov.au/ch31s05.php

I trust that this information assists, should you need further information I recommend gaining legal advice from an appropriately qualified individual (eg a lawyer).

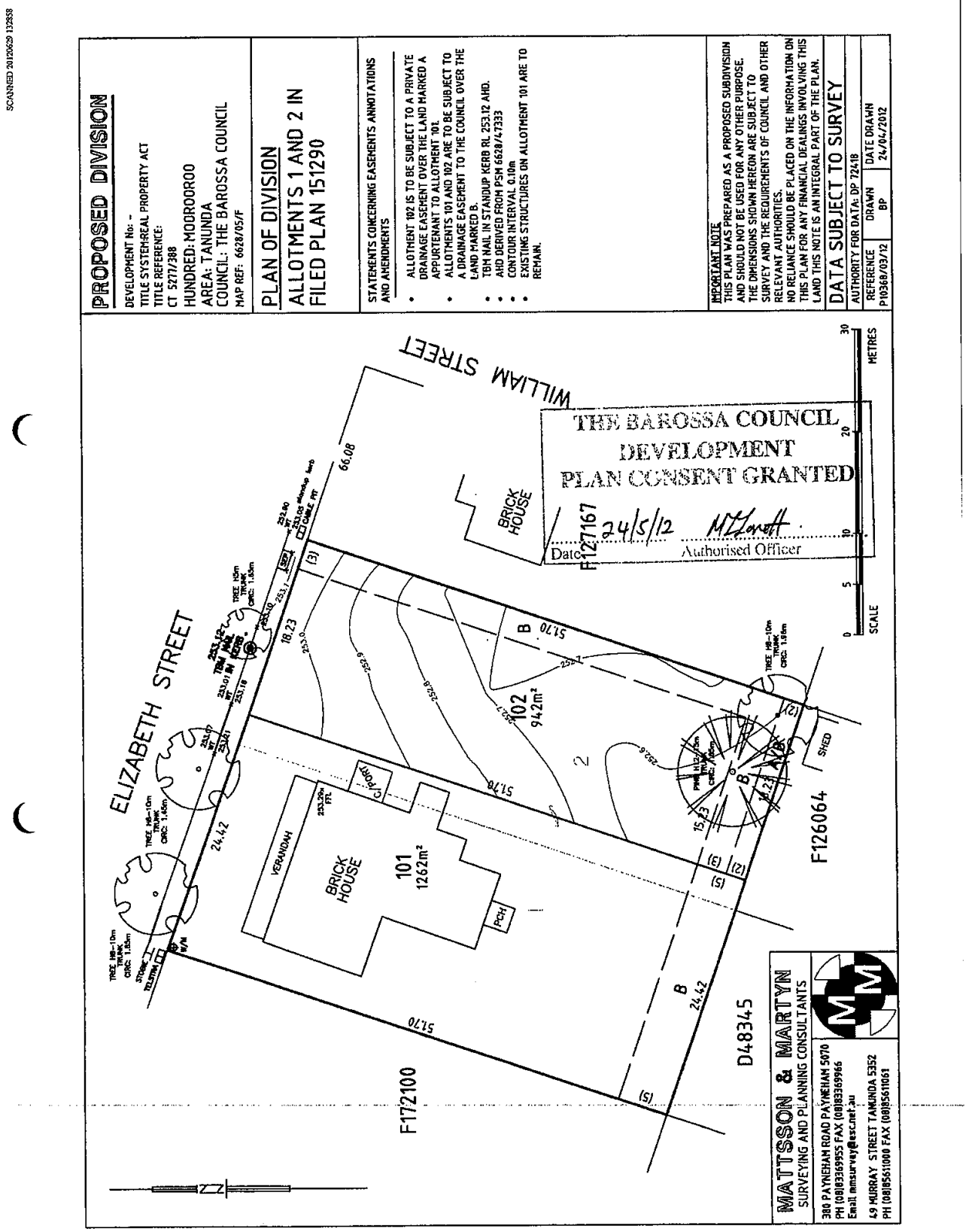
Kind regards,

Janine

Janine Lennon
Senior Assessment Officer, Planning
T: 08 8563 8485



The Barossa Council | 43-51 Tanunda Road | PO Box 867 NURIOOTPA SA 5355
T: 08 8563 8444 | F: 08 8563 8461 | www.barossa.sa.gov.au | Visit us on Facebook


PROPOSED DIVISION
DEVELOPMENT No: -
TITLE SYSTEM:REAL PROPERTY ACT
TITLE REFERENCE:
CT 5277/388
HUNDRED: MOOROOROO
AREA: TANUNDA
COUNCIL: THE BAROSSA COUNCIL
MAP REF: 6628/05/F
PLAN OF DIVISION
ALLOTMENTS 1 AND 2 IN
FILED PLAN 151290
STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS
ALLOTMENT 102 IS TO BE SUBJECT TO A PRIVATE DRAINAGE EASEMENT OVER THE LAND MARKED A APPURTENANT TO ALLOTMENT 101.
ALLOTMENTS 101 AND 102 ARE TO BE SUBJECT TO A DRAINAGE EASEMENT TO THE COUNCIL OVER THE LAND MARKED B.
TBM NAIL IN STANDUP KERB RL 253.12 AHD.
AHD DERIVED FROM PSM 6628/47333
CONTOUR INTERVAL 0.10m
EXISTING STRUCTURES ON ALLOTMENT 101 ARE TO REMAIN.
IMPORTANT NOTE
THIS PLAN WAS PREPARED AS A PROPOSED SUBDIVISION AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THE DIMENSIONS SHOWN HEREON ARE SUBJECT TO SURVEY AND THE REQUIREMENTS OF COUNCIL AND OTHER RELEVANT AUTHORITIES.
NO RELIANCE SHOULD BE PLACED ON THE INFORMATION ON THIS PLAN FOR ANY FINANCIAL DEALINGS INVOLVING THIS LAND THIS NOTE IS AN INTEGRAL PART OF THE PLAN.
DATA SUBJECT TO SURVEY
AUTHORITY FOR DATA: DP 72418
REFERENCE P10368/03/12
DRAWN BP
DATE DRAWN 24/04/2012
THE BAROSSA COUNCIL
DEVELOPMENT
PLAN CONSENT GRANTED
Date 24/5/12
Authorised Officer
F127167
WILLIAM STREET
ELIZABETH STREET
BRICK HOUSE
VERANDAH
PCH
PORCH
SHED
101
1262m²
102
942m²
66.08
18.23
24.42
51.70
15.43
F172100
F126064
D48345
SCALE
METRES
MATTSSON & MARTYN
SURVEYING AND PLANNING CONSULTANTS
380 PAYNEHAM ROAD PAYNEHAM 5070
PH (08)8336955S FAX (08)83369966
Email mmsurvey@esc.net.au
49 MURRAY STREET TANUNDA 5352
PH (08)85611000 FAX (08)85611061

SCANNED 20120629 132359

DECISION NOTIFICATION FORM

DEVELOPMENT ACT 1993

FOR DEVELOPMENT APPLICATION
VG

DEVELOPMENT NUMBER
960/D016/12

COUNCIL DEVELOPMENT NUMBER
960/677/2012

REGISTERED ON 23 May 2012

TO:	P Knight and L Knight Mattsson and Martyn Surveyors PO Box 2489 MARDEN SA 5070

LOCATION OF PROPOSED DEVELOPMENT:

Subject Land: 20 Elizabeth Street, TANUNDA

CT: CT-5277/388

NATURE OF PROPOSED DEVELOPMENT:

Land Division

FROM: THE BAROSSA COUNCIL

In respect of this proposed development you are informed that:

Nature of Decision	Decision	No. of Conditions
Development Plan Consent	GRANTED	(REFER ATTACHED)
Land Division Consent	GRANTED	(REFER ATTACHED)
DEVELOPMENT APPROVAL	GRANTED	

Reasons for this decision, any conditions imposed, and the reasons for imposing those conditions are set out on the attached sheet.

No work can commence on this development unless a Development Approval has been obtained.

Date of Decision: 24 May 2012
Signed: M Lovett
Date: 24 May 2012
Expiry: 24-May-2013

	Development Assessment Commission or delegate
√	Council's Chief Executive Officer or delegate
	Private Certifier
√	Sheets Attached

LDDN

CONDITIONS OF DEVELOPMENT APPROVAL

DEVELOPMENT NO: 960/D016/12

COUNCIL DEVELOPMENT NO: **960/677/2012**

DEVELOPMENT PLAN CONSENT CONDITIONS

1. The development shall be undertaken in accordance with the plans and documentation (as amended) accompanying the application, unless varied by the following conditions.

LAND DIVISION CONSENT REQUIREMENTS

1. A certified survey plan being lodged with the Development Assessment Commission for Certificate purposes.
2. The financial, augmentation and easement requirements of the SA Water Corporation shall be met for the provision of water supply. (SA Water).

LDDN

SCANNED 20120629 132359

The Barossa Council



24 May 2012

P Knight and L Knight
Mattsson and Martyn Surveyors
PO Box 2489
MARDEN SA 5070

Dear Sir/Madam

DEVELOPMENT NO.	960/677/2012
NATURE OF DEVELOPMENT	Land Division
SUBJECT LAND	20 Elizabeth Street, TANUNDA

Council advises that the above development application has been assessed against the Development Plan and subsequently **Development Plan Consent** has been **granted**.

A copy of the Decision Notification form is attached, including any conditions imposed.

You are reminded that Section 86(1)(a) of the Development Act, 1993 provides for a right of appeal to the Environment, Resources and Development Court against this decision, or the imposition of conditions attaching to the authorisation, ***within two months***, after receipt of this notice (Section 86(4) of the Act).

Please note that any appeal has to be lodged with the Court and **not** with the Council.

Council is unable to act as a representative for other parties before the Court and Council officers can provide preliminary advice only regarding the Court's procedures. If you wish to pursue an appeal, you are strongly urged to seek independent advice on the matter.

For assistance in lodging an appeal, it is suggested that you contact the Court which is located in the Sir Samuel Way Building, Victoria Square, Adelaide or phone (08) 8204 0300.

PLEASE NOTE THAT NO WORK CAN COMMENCE ON THE LAND AS A RESULT OF THIS CONSENT. THIS CONSENT RELATES SOLELY TO THE PLANNING ASSESSMENT. A BUILDING ASSESSMENT MUST BE COMPLETED AND GRANTED BEFORE THE FINAL DEVELOPMENT APPROVAL CAN BE ISSUED.

Please contact the undersigned if you require further assistance.

Yours faithfully

M Lovett

Maxine Lovett
PLANNER

FORM 09A

43-51 Tanunda Rd Nuriootpa SA 5355 (PO Box 867) ~ Tel: (08) 8563 8444 ~ Fax: (08) 8563 8461
barossa@barossa.sa.gov.au ~ www.barossa.sa.gov.au ~ ABN: 47 749 871 215

Bronwyn Egarr

From: Paul Keady <keadypaul@gmail.com>
Sent: Wednesday, 11 May 2022 2:16 PM
To: Janine Lennon
Subject: Re: [EXTERNAL] Re: 18 & 18A Elizabeth Street, Tanunda 5352 - Stormwater Infrastructure/pipes

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OK,
Thanks for your time and assistance.

Regards Paul

On Wed, 11 May 2022, 2:14 pm Janine Lennon, <jlennon@barossa.sa.gov.au> wrote:

Hi Paul,

As previously advised infrastructure and easement provision is not my area of expertise and therefore I would not be able to lend any assistance to you in this matter, all I have done is read your Certificate of Title and explain what it means in my layman's terms.

Kind regards,

Janine

From: Paul Keady <keadypaul@gmail.com>
Sent: Wednesday, 11 May 2022 1:51 PM
To: Janine Lennon <jlennon@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18 & 18A Elizabeth Street, Tanunda 5352 - Stormwater Infrastructure/pipes

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Thanks for the clarification.

If it's convenient we would like the opportunity to sit down with you Steve etc to try and sort out this easement issue. There are obviously planning and drainage matters to consider. The current situation with the condition of the easement is intolerable from all aspects of health, environment and drainage.

Regards

Paul

On Wed, 11 May 2022, 1:13 pm Janine Lennon, <jlennon@barossa.sa.gov.au> wrote:

Hi Paul,

The term "drainage" refers to any liquid drainage either effluent or stormwater or both, in your case Easement B is the drainage easement to Council (approval document that I sent you earlier and is on your CT), it allows for stormwater and/or effluent drainage, as a general rule any easement wider than

1

3.0m (such as the one along your rear boundary) will allow for both stormwater and effluent drainage to be contained within it.

Kind regards,

Janine

From: Paul Keady <keadypaul@gmail.com>
Sent: Wednesday, 11 May 2022 12:47 PM
To: Janine Lennon <jlennon@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18 & 18A Elizabeth Street, Tanunda 5352 - Stormwater Infrastructure/pipes

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Janine, do you have a plan showing the CWMS easement? If so please email me a copy. It is not shown on our CT.

Regards

Paul

On Wed, May 11, 2022 at 10:15 AM Janine Lennon <jlennon@barossa.sa.gov.au> wrote:

Hi Paul,

Once the stormwater leaves your neighbour's site, it is "Council's stormwater"

You also have a CWMS easement on your site that the neighbour's effluent drains into, similarly once the effluent gets to the easement, it becomes "Council's effluent"

Kind regards,

Janine

From: Paul Keady <keadypaul@gmail.com>
Sent: Wednesday, 11 May 2022 8:50 AM
To: Janine Lennon <jlennon@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18 & 18A Elizabeth Street, Tanunda 5352 - Stormwater Infrastructure/pipes

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Thanks for your prompt response Janine.

We have had legal advice. That advice is the easement is for Councils stormwater only as expressed on title.

We again ask for full details of Councils permit to our neighbour.

Regards

Paul

On Wed, 11 May 2022, 8:38 am Janine Lennon, <jlennon@barossa.sa.gov.au> wrote:

Hi Paul,

Once again I recommend that you obtain legal advice, whilst not my area of expertise, it is the drainage easement on your Certificate of Title that allows stormwater drainage from other properties through your site.

Kind regards,

Janine

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 10 May 2022 6:48 PM
To: Janine Lennon <jlennon@barossa.sa.gov.au>
Subject: [EXTERNAL] Re: 18 & 18A Elizabeth Street, Tanunda 5352 - Stormwater Infrastructure/pipes

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Hi Janine,

Thank you for your email today.

We have asked but Council has not yet provided us with any statutory or other authority giving Council the power to permit 18 Elizabeth street to discharge their stormwater onto our land.

To be clear, we dispute that Council has such power.

The registered easement is for Councils stormwater purposes only. The registered easement does not benefit 18 Elizabeth Street.

What you suggest is that Council can unilaterally create an unregistered third party encumbrance on our land but without notice to any incoming purchaser of the burdened land nor to the registered owner.

Further, Council has not disclosed to us what has supposedly been "permitted " by Council ie terms and conditions of any such permit, where, how and for how long 18 Elizabeth street can discharge their stormwater onto our land etc?

We would appreciate full details of what Council has "permitted 18 Elizabeth Street to do in relation to our land please and a copy of Councils decision to grant that permission.

Regards

Paul and Dagmar

On Tue, 10 May 2022 at 3:11 pm, Janine Lennon <jlennon@barossa.sa.gov.au> wrote:

Good afternoon Paul, Dagmar, Darren & Jennifer,

I have been cc'd into some correspondence between parties with regard to stormwater infrastructure.

18A Elizabeth Street has a stormwater easement in the form of an open swale on the property.

18 Elizabeth Street is permitted to drain stormwater into this swale.

Council has not at any time granted "Development Approval" for stormwater infrastructure (eg pipes) to cross from 18 Elizabeth Street to 18A Elizabeth Street, and any pipes protruding from 18 to 18A Elizabeth Street could be considered to be an unauthorised encroachment of private property onto another private property. Please be clear these pipe/s are not considered development and are not a matter for the *Planning, Development & Infrastructure Act 2016*

As this is a matter between two neighbours regarding privately owned property, resolving the matter is outside of Council's jurisdiction and if agreement cannot be met between neighbours the most appropriate course of action is to apply to the Supreme Court for a determination of the matter in accordance with the *Encroachments Act 1944*. Please see the information sheet at the following link: https://lawhandbook.sa.gov.au/ch31s05.php

I trust that this information assists, should you need further information I recommend gaining legal advice from an appropriately qualified individual (eg a lawyer).

Kind regards,

Janine

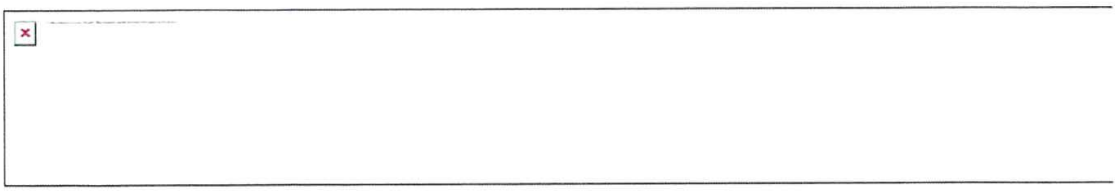
Janine Lennon
Senior Assessment Officer, Planning
T: 08 8563 8485

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Janine Lennon
Senior Assessment Officer, Planning
T: 08 8563 8485

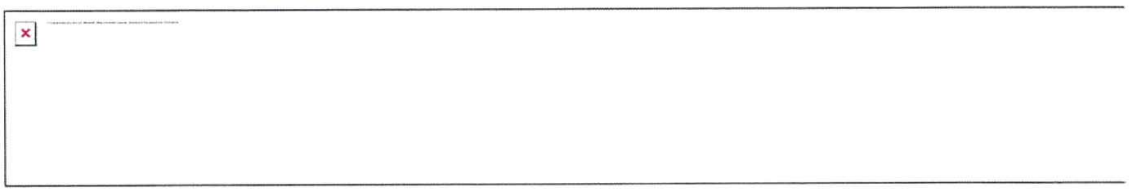
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Janine Lennon
Senior Assessment Officer, Planning
T: 08 8563 8485



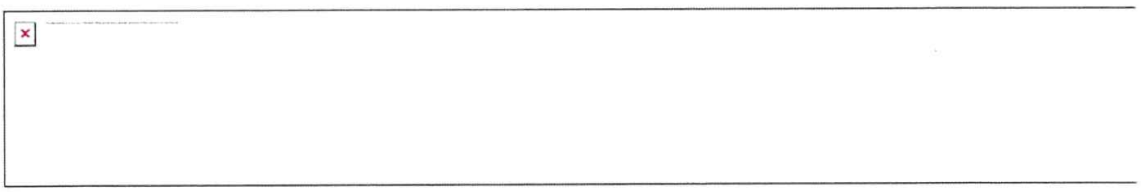
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Bronwyn Egarr

From: Steven Kaesler
Sent: Wednesday, 25 May 2022 6:08 PM
To: Paul Keady
Cc: Bronwyn Egarr
Subject: FW: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda 5352

Hi Paul,

We respond to your email dated 23 May 2022. With reference to the 2 dot points:

I am not able to access your planning documents on your behalf, to access these documents you can contact The Barossa Council at development@barossa.sa.gov.au with your request and one of the Planning Technical Support Officers will action this for you.

Regarding the drainage flow path through your property, whilst there is no Council stormwater infrastructure located in your property, there is an easement to The Barossa Council for drainage purposes and this allows Council to access the land to ensure free drainage. There is also a general responsibility for property owners to maintain the waterway and not obstruct or affect a watercourse within their property. As previously mentioned, Council is undertaking hydraulic review of the external catchment and once this is complete we can discuss further the types of work required within the easement to ensure free flow is maintained.

Regards,
Steve.

Steven Kaesler
Manager, Engineering Services
E: skaesler@barossa.sa.gov.au | T: 08 8563 8473

The Barossa Council

The Barossa Council | 43-51 Tanunda Road | PO Box 867 NURIOOTPA SA 5355
www.barossa.sa.gov.au | T: 08 8563 8444

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From: Paul Keady <keadypaul@gmail.com>
Sent: Monday, 23 May 2022 9:15 AM

To: Steven Kaesler <skaesler@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda 5352

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Hi Steven,

Are you iable to respond to my email dated 10 May please?

Regards Paul

On Tue, 10 May 2022, 2:44 pm Paul Keady, <keadypaul@gmail.com> wrote:

Hi Steven,

Thank you for your email dated 6 May, above.

We would appreciate your assistance and advice regarding the following:

1. Will you email us copies of the available documents? Alternatively where and when can we view them?

2. Please clarify who is responsible to ensure that the easement is maintained and fit for purpose as a stormwater drain. We have shown you that the easement is overgrown with vegetation and trees which impede the flow path and cause flooding. The current level of service from Council is inadequate and this situation will only get worse with further vegetation growth.

Otherwise we await your reply to the matters previously raised by us.

Regards
Paul & Dagmar Keady

On Fri, May 6, 2022 at 7:23 PM Steven Kaesler <skaesler@barossa.sa.gov.au> wrote:

Hi Paul,

We refer to your email received 3 May 2022.

As mentioned in our phone conversation the same day, whilst I can address the engineering issues relating to your property at 18A Elizabeth Street, the matters relating to planning are best answered by this Section of Council. To that end, Council's Senior Planning Assessment Officer, Janine Lennon, has provided the following short form response which I include below:

The easement is to Council for drainage purposes, the property owners wont get consulted regarding which other properties drain through Council's easement.

As the current property owners, the Keady's can definitely view the previous Land Division Application (960/677/2012)

2

The Keady's bought the site with the easements already on it (one of the reasons why there is a 48 hours cooling off period after the real estate agent provides them with the land legalities at the time of purchase), therefore there is no need for Council to ask each new land owner's permission to use easements.

The Keady's can definitely see old copies of the Barossa Development Plan, if our library doesn't have a copy, State Records will definitely have a copy for them to view: Maps and Plans | State Records of South Australia (archives.sa.gov.au) it was not our document it was a State Government document, therefore we are not required to keep copies ourselves.

The Keady's may view the approved building plans and the Decision Notification Form for the property next door 960/276/2019 (as well as the relevant Development Plan see above) but viewing the assessment file would require a Freedom of Information request. In accordance with the Development Act 1993 and associated Regulations, Council was not permitted to consult with the neighbours regarding this development. The approved plans show the stormwater pipes linking into the existing stormwater system (no new pipes crossing the boundary were proposed or approved) as a part of this proposal.

I would suggest that if the Keady's neighbours have installed stormwater pipes that encroach on the Keady's property then it would be most appropriate for the Keady's to ask the neighbours to remove that encroachment, and if a polite request isn't successful it could be followed up by law see: https://lawhandbook.sa.gov.au/ch31s05.php .

My thoughts are that the Keady's may wish to invest in some legal advice regarding the encroachment, but the matter appears to be outside of Council's jurisdiction.

I trust that this information assists.

Janine Lennon,

Senior Assessment Officer, Planning

Planning Services.

Separate to the above, and as mentioned, once I have received information from the hydraulic consultant concerning the catchment data I will contact you to discuss this further.

Regards,

3

Steve

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 3 May 2022 11:23 AM
To: Steven Kaesler <skaesler@barossa.sa.gov.au>
Cc: Matt Elding <melding@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda 5352

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Hi Steven,

Thank you for your reply.

There are matters raised in our emails which you have not addressed nor have you provided any of the documentation we have requested.

We request the following documentation/information please:

1. The original documentation relating to the subdivision approval and stormwater management of 18A Elizabeth Street, Tanunda. This would have been in about 2014/2015. As the owners of 18A Elizabeth Street, Tanunda we are entitled to this information. Please include a copy of the stormwater management plan approved by Council for the stormwater easement on 18A Elizabeth Street, Tanunda.

3. You say

" approval for discharge of stormwater from 18 Elizabeth Street is granted to this watercourse swale, however it is acknowledged that no pipe work shall be allowed to cross boundaries. The Development Assessment 960/276/2019 notes it should discharge to rainwater tank first with overflow to rear / swale."

We ask that you provide us with the following:

a. A copy of the Development Assessment 960/276/2019 and approval which apparently affects our land.

b. Who on behalf of the Council made this assessment/approval and when?

c. Were the then owners of 18A Elizabeth consulted? If not, why not. If so, when and by who?

d. Please refer us to the legal authority that Council relies upon that gives it the legal power to permit 18 Elizabeth Street, Tanunda to discharge their stormwater directly on our land without the permission of the owners of 18A Elizabeth Street, Tanunda.

4

e. A copy of the storm water management plan submitted by the developer of 18 Elizabeth Street, Tanunda relating to the discharge of stormwater from 18 Elizabeth Street, Tanunda onto 18A Elizabeth Street, Tanunda.

f. A diagram disclosing where Council apparently permitted access of stormwater onto our land from 18 Elizabeth Street, Tanunda.

g. Details of the anticipated amount/flow of stormwater from 18 Elizabeth Street, Tanunda onto 18A Elizabeth Street, Tanunda.

h. Who from Council advised the owners of 18 Elizabeth Street, Tanunda that it was permissible for them to place pipes on our land to discharge their stormwater?

4. You have referred us to "*https://cdn.barossa.sa.gov.au/downloads/guidelines/Guidelines-for-undertaking-Land-Division-document-March-2021.pdf*" being the current Council guidelines for Land Division. That document appears operative from March 2021. Do you say that those guidelines now apply to Council's easement on our property?

Please provide us with the following:

a1. Councils guidelines/regulations for Land Divisions in approx 2014 which applied to the subdivision of 18A Elizabeth Street, Tanunda including the Stormwater management requirements

a2. Councils guidelines/regulations for Land Developments in approx 2019 which applied to Development Assessment 960/276/2019 referred to above, including the stormwater management requirements.

5. On our Certificate of Title there is reference to the Storm water easement which benefits Council, no one else. There was no disclosure in writing by Council that Council had permitted 18 Elizabeth Street, Tanunda to discharge its stormwater directly onto our land. Why?

6. Generally it appears that Council has sought to benefit 18 Elizabeth Street Tanunda without legal authority and without any reference to the owners of 18A Elizabeth Street, Tanunda. Why?

All of the above documents affect our land. Should you refuse to provide us with any of the above documents then please provide your reasons for such refusal.

Steven, we hope that we can discuss our concerns with you in a respectful and co--operative manner. Your stormwater easement on our land is choked by vegetation, a haven for vermin such as rats and mosquitos and is totally inadequate for its purpose. Remedying the drain in Elizabeth will not alter this problem.

We want to know what was discussed/approved when 18A Elizabeth was subdivided in 2014, what Council has approved in 2019 and what were and are our respective rights and responsibilities regarding the stormwater

easement. Once informed of the facts we can then deal with you on this matter in a professional and informed basis. That will be difficult if you fail to provide us with relevant information/documents affecting our property.

We look forward to your prompt response to the above and in due course discussing the storm water flow with you following your hydraulic consultants report.

Regards

Paul & Dagmar Keady

On Mon, May 2, 2022 at 6:14 PM Steven Kaesler <skaesler@barossa.sa.gov.au> wrote:

Hi Paul.

We acknowledge your email received today for operational maintenance work relating to stormwater adjacent 18A Elizabeth Street Tanunda. I have logged requests for both kerb and gutter sweeping and drain cleaning. This work is planned to be soon performed as part of Council's street sweeping and drain cleaning operations.

Regarding the upgrade of the stormwater side entry pit in front of your property, this work is proposed to be included within Council's 2022/23 financial year Capital stormwater budget, which is to be considered for approval at up-coming meetings of Council's elected members. The final scope of construction works is not yet to be detailed.

Regarding Council's requirements and level of service for stormwater drainage systems, this is outlined in Council's land development guidelines – refer to the link below. Section 8 refers to Stormwater Drainage:

Guidelines-for-undertaking-Land-Division-document-March-2021.pdf (barossa.sa.gov.au)

Regarding Council easement for stormwater purposes through your property, approval for discharge of stormwater from 18 Elizabeth Street is granted to this watercourse swale, however it is acknowledged that no pipe work shall be allowed to cross boundaries. The Development Assessment 960/276/2019 notes it should discharge to rainwater tank first with overflow to rear / swale.

In terms of the street stormwater drainage to the watercourse through your property, we have engaged a hydraulic consultant to assess the external catchment to determine the flows for both frequent low rainfall events and infrequent large storm events. Once I have received this information in coming weeks, I will re-engage a conversation with you and discuss further the options available.

I hope this information is helpful to date. I look forward to discussing further.

Regards,

Steve

From: Paul Keady <keadypaul@gmail.com>
Sent: Monday, 2 May 2022 8:24 AM
To: Steven Kaesler <skaesler@barossa.sa.gov.au>
Cc: Matt Elding <melding@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda 5352

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Hi Steven,

We look forward to your response to our earlier emails with you.

7

We note that your drain at the front of our house is clogged with leaves etc. Can you please have the drain regularly cleaned to avoid flooding in Elizabeth Street when it rains.

Regards

Paul & Dagmar

On Tue, Apr 19, 2022 at 8:24 PM Steven Kaesler <skaesler@barossa.sa.gov.au> wrote:

Hi Paul.

Many thanks for your follow up email. I would be very pleased to work through this matter with you to ensure the options available to you and Council are all explored. I will respond to your emails with further information as mentioned. Feel free to stay in contact as required.

Regards,

Steve

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 19 April 2022 8:18 PM
To: Steven Kaesler <skaesler@barossa.sa.gov.au>
Cc: Matt Elding <melding@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda 5352

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Hi Steven,

I confirm your telephone discussion today with me. You were ringing me about my email sent to you earlier today.

You asked me what I expected of Council and what we would consider to be an appropriate level of service by Council for the stormwater easement. You have not indicated what the levels of service are or how Council defines what is adequate. From your comments it seems that Council provides different levels of service. We would appreciate it if you would provide us with the definition of each level so we can address our concerns under that criteria.

May I repeat, our hope is to work with Council to remedy the current unsatisfactory situation with Council's stormwater easement on our land. We have made suggestions. You may have some ideas. As the Council's engineer you are able to suggest solutions.

Who pays what can be discussed.

Photographs of the condition of the easement would be useful for Council when considering your report. Do you have some? We can send some to you assuming your email inbox will allow us to do so. In due course an inspection by Counsellors would be useful.

Regards

Paul Keady

On Tue, 19 Apr 2022 at 12:33 pm, Paul Keady <keadypaul@gmail.com> wrote:

Hi Steven,

Thank you for your email. We contacted you because there is a stormwater problem in Elizabeth Street and on the easement you hold over our land. We explained the problem with Council's stormwater easement on our land to you. It is obvious. It would be helpful to our discussions if you would indicate that Council recognizes that a problem exists.

We remain hopeful that Council will assist us remedy what is an unsatisfactory system for the passage of your storm water via your easement over our land. You are aware of the flooding issues for us and for our rear neighbours as a result of your stormwater passing down the swale. We understand Council has been on notice of this for some years.

9

You make the statement " Neighbouring properties are able to contribute stormwater flows to the easement allocated for stormwater purposes".

The easement benefits Council only. Please explain what you mean by this.

If you suggest that any legal right exists for other parties to access Councils easement on our land then please provide us with full details including any documentation approving such access and copies of any emails or correspondence with the previous owners of our property regarding such access..

Please advise whether Council has yet prepared engineering specs for the proposed new drainage pit at the front of our premises. We ask that we be kept informed and consulted about the proposed work.

It is understood that the stormwater swale on your easement is inadequate and environmentally unhygienic. There is vegetation and large trees on the easement impeding water flow which predate the grant of your easement. You indicate that it was the method selected by the developer at the time of sub-division. With respect, it was Council's responsibility to ensure that adequate provision was made for stormwater drainage as part of the approval process.

To assist us understand the history of this matter and your comments please provide us with correspondence and emails between Council and the developer/owner regarding the stormwater easement and any document outlining Council's consideration and consent to the current swale. Please include any environmental engineering and/or flow report.

You suggest that the addition of a pipe would still require a swale. Please provide us with the modelling to support this statement.

We look forward to your response.

Regards

Paul & Dagmar Keady

On Wed, Apr 13, 2022 at 6:10 PM Steven Kaesler <skaesler@barossa.sa.gov.au> wrote:

Hi Paul.

We respond to your email dated 13 March 2022. We appreciate your patience in terms of the extra time taken to respond to this, due to the many Council customers requesting stormwater drainage information in recent weeks.

We confirm that stormwater drainage upgrade works to improve the inlet capacity of the side entry pit drainage system in the Elizabeth Street verge in front of 18A Elizabeth Street, Tanunda, is proposed for inclusion in the upcoming 20/23 Financial Year Council capital stormwater infrastructure budget. This budget has yet to be finally approved by the Elected Members.

In terms of open earth drainage swales in townships, these are common within older Towns throughout the Barossa region, including Tanunda. Approximately 15 years ago, the overland flow paths through the central part of Tanunda were significantly reduced with the construction of underground stormwater pipe systems directing stormwater away from your property and down William Street / John Street / Maria Streets. There is of course still a residue catchment which is required to drain through the low point designated at 18A Elizabeth Street.

As part of any land division process, the land owner, or developer, is required to address the management of stormwater drainage associated with the proposed development. The method of stormwater conveyance selected by the owner at the time for the development was for an overland flow path with an easement to Council. Neighbouring properties are able to contribute stormwater flows to the easement allocated for stormwater purpose. Generally for works associated with land divisions, Council is unable to enforce requirements for land division upgrade works in excess of reasonable stormwater management solutions, or request a higher level of service, if this is not agreed by the developer.

Council is also not in itself able to commit to capital drainage upgrade works on private land without specific permission of the elected members, and then only to the extent shown within the township stormwater drainage management plan or where the designated level of service is required to be reinstated due to dilapidation. In accordance with the Tanunda Stormwater Drainage Management Plan (SDMP) there is currently no upgrade works planned by Council through the 18A Elizabeth Street property, this is designated as existing earth swale. However, I would be happy for Council staff to perform a desktop review of the hydrological and hydraulic parameters of the local Elizabeth Street catchment for a range of storm events. If there were an underground pipe system in place through your property, it is already understood that an overland flow path would still be required for the larger flows in extreme storm events.

We hope that the above information addresses the questions raised in your email. If you require any clarification, please feel free to contact me.

Regards,

Steve

On Sun, 13 Mar 2022 at 1:12 pm, Paul Keady <keadypaul@gmail.com> wrote:

Dear Steve,

Thank you for making your time available for us to view and chat with us about the storm water drain and easement at our home. We understand that in the 2022/2023 financial year Council proposes to re-design and contract a new drainage inlet at the front of our premises which will then feed into the drainage easement on the side of our land.

Steve, as discussed there are a number of issues for us which we raised with you and which we hope can be resolved to our mutual satisfaction and benefit.

At present the easement is simply a dirt rill running from your footpath in Elizabeth Street, down along our border fence with 18 Elizabeth Street, then draining into a side drainage way in our rear neighbours yard in Maria Street.

As it passes, the storm water gathers dirt leaves, etc which build up, dam and then cause the storm water to flood into the rear of our land and into the rear of our Maria Street neighbours and adjoining land holders.

Whilst rectification of the drainage culvert in Elizabeth Street should prevent water pooling in Elizabeth Street, the water still has to go somewhere and the existing drainage along our land, an open dirt floodway, is inadequate. It is also a health/environmental hazard as the water pools in the easement which is then a breeding ground for mosquitos, insects etc and a repository for untreated waste water from the road, gutters etc.

We are open to working with Council to arrive at an agreed solution which will facilitate the storm water flow and alleviate our problems and those of the our neighbours.

A solution might be as follows:

1. The removal of the current vegetation/trees on the easement which impedes the water flow. For the most part, this vegetation/trees predates the grant of Councils easement. We have obtained quotes and the cost is estimated at around $8000.00 to $10,000.00.

2. To move the storm water gutter entrance closer to the line of our eastern boundary fence and to then put in an underground pipe to carry the storm water along our eastern boundary to connect into the existing concrete culvert along our rear neighbours fence then flowing into Council's Maria street drainage system.

What we are requesting of Council is assistance with the cost of the above works including drainage design. When assessing if or in what amount Council will assist financially may we make the observation it is surprising that when Council approved the sub-division and development of 18A Elizabeth Street, in 2014 or so, including requiring the subject storm water easement, that underground storm water drainage was not required at that time.

Again, our thanks for your consideration of this matter and we look forward to working with you on this issue.

Regards

Paul & Dagmar Keady

0409836179

Steven
Manager, Engineering Services
T: 08 8563 8473

The Barossa Council | 43-51 Tanunda Road | PO Box 867 NURIOOTPA SA 5355
T: 08 8563 8444 | F: 08 8563 8461 | www.barossa.sa.gov.au | Visit us on Facebook

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Bronwyn Egarr

From: Ben Clark
Sent: Tuesday, 15 November 2022 9:53 AM
To: Paul Keady
Cc: Bronwyn Egarr
Subject: RE: [EXTERNAL] 18A Elizabeth Street, Tanunda

Hi Paul,

Apologies for the delay – I have been doing my due diligence before responding to your queries. I can provide the following responses to your questions below:

1. Regardless of whether the 1993 plans called the stormwater swale, a stormwater swale or a water course, they still noted that the stormwater would be directed to this location, therefore the approval of the 1993 development application is considered to constitute an approval by Council (or delegate) for 18 Elizabeth Street to direct stormwater to the stormwater swale.
2. If you would like a copy of the 1993 plans you will need to submit an FOI request and through that process we will need to request the copyright owner's permission to provide him with a copy
3. As detailed, access was granted via the 1993 application as per the approved plan you reviewed.
4. As above you viewed the approved plan, and the extent of detail provided regarding the disposal of water into the stormwater swale
5. Could you please clearly articulate exactly what breach of approval you are referring to with regard to point 5 and 960/276/2019.

Regards,

Ben Clark
Director, Works and Engineering |
E: bclark@barossa.sa.gov.au | T: 08 8563 8470

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 11 October 2022 12:26 PM
To: Ben Clark <bclark@barossa.sa.gov.au>
Cc: Mayor Lange <mayor.lange@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] 18A Elizabeth Street, Tanunda

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Dear Ben,

I inspected the 1993 D/A plans submitted by 18 Elizabeth Street Tanunda, referred to in your email below.

Your conclusions do not accord with the documents, including D/A 960/276/2019, nor with the facts.
In 1993 Council did not have an easement over 18A Elizabeth Street, Tanunda. There are other relevant matters.

We note the Council's Customer Service Charter and Customer Service Policy.

Over the last 6 Months we have asked for details about Stephen's "permission" for our neighbours to access the easement on our land. A simple request that remains unanswered.

Please provide us with the details sought which include:
1. The date of Stephen's permission.
2. If in writing, please provide us with a copy. If oral, the precise terms and conditions of his approval.
3. Please provide us with a copy of our neighbours application to access the easement.

1

4.The location on our boundary where access was granted and by what means was any discharge of water to occur.
5. Why were our neighbors excused from complying with the approval and conditions in D/A 960/276/2019?

We share Bim's hope that all issues regarding the easement can be settled once Council's works are complete.

Regards
Paul & Dagmar

On Wed, 21 Sep 2022 at 4:44 pm, Ben Clark <bclark@barossa.sa.gov.au> wrote:

Hi Mr Keady,

Thank you for your email. We have received your request via Mayor Lange and will organise for a report to be provided to the new Council for them to make a decision on the possible expanded works through the easement at 18A Elizabeth Street.

In regards to the easement and the neighbour's stormwater run-off I have reviewed available documentation and can provide the following update:

- It appears that an approved development application in 1993 showed stormwater being discharged directly into the drainage easement on your property – so Steve was correct in the information he provided, in that any subsequent development has approved the stormwater to be plumbed into the existing
- Council can permit anyone to access their stormwater and/or septic water infrastructure there is absolutely no requirement for Council to ask permission of the property owner (upon which the easement lies)
- With that said Council hasn't granted for the infrastructure (eg pipes) to cross into your property from 18 Elizabeth Street – you would need to get a Licensed Surveyor to undertake a boundary survey to determine your boundary and if the infrastructure is encroaching on your land. These pipers are not considered development and would need to be dealt with under the Encroachment Act 1994

If you have any further questions, please let me know.

Regards,

2

Ben Clark
Director, Works and Engineering |
E: bclark@barossa.sa.gov.au | T: 08 8563 8470

From: Paul Keady <keadypaul@gmail.com>
Sent: Friday, 16 September 2022 11:27 AM
To: Ben Clark <bclark@barossa.sa.gov.au>
Subject: [EXTERNAL] 18A Elizabeth Street, Tanunda

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Dear Ben,

Thank you for meeting with us yesterday. We enjoyed meeting you and we appreciate your input regarding our issues with Council's drainage easement on our land and that there appears an agreed template to move forward with an underground culvert subject to Council allocating the necessary funds.

We will happily cooperate with Council to make this all happen.

We have sent an email to Mayor Lange requesting that the new Council approve those funds at the first available meeting so we can hopefully get construction commenced before the 2023 winter rains. Any assistance from you would be greatly appreciated.

Ben, we are frustrated and stressed about our neighbour issues with their stormwater running onto our land.

The problem is that some person from Council has apparently given an unfettered permission to our neighbours, the Verhees, to discharge their stormwater into your easement on our land.

Relying on this permission, our neighbours have dug drainage trenches and put pipes discharging their waste water on our land, effectively creating a drainage easement for themselves without our consent.

I won't go through the various emails we have had with Stephen and Janine. There are many. Suffice to say that both have asserted that our neighbours have Council's permission to discharge their storm water onto Council's easement on our land.

We have not been provided with the details of this permission.

We would like to know by who, when and on what terms this permission was granted and why neither we or the previous owners of our land were consulted.

In particular, we ask for a copy of our neighbours Application Form and the permitting Decision by Council.

We note that in our neighbours D/A plans their stormwater was supposed to be piped to the rear of their yard (960/276/2019). Their plans do not show any pipes or stormwater crossing our boundary. Instead, our neighbours dug a trench under our boundary fence and put a pipe into the easement for their stormwater. They say they had Council's permission to do that. They filed a Certificate of Compliance that the development was completed in accordance with the approved plans. That doesn't appear factually correct.

Council's D/A approval contains a condition that our neighbours were not to discharge any stormwater onto adjoining properties i.e. our land. (see condition 3).

On the Certificate of Title, Council only is the beneficiary of the easement. Our legal advice is unequivocal. Council cannot create easement rights for third parties without our knowledge or consent.

The current situation is that our neighbours assert that they have Council's permission to discharge their waste water onto our land and this permission extends along the total length of our boundary, whether by pipe (3 of them) or surface trench.They refuse to discuss contributing to a fence and they will not agree our boundary with them.

We will now have to serve a Notice to Fence on them. They rely on Councils "permission" to assert that a fence will impede their access to the easement. We dispute that assertion.

That issue will have to be decided by a Court. The cost will be substantial. Council officers will have to give evidence. A mess.

Would you please investigate this matter and we look forward to your advice about what has occurred and moving forward, what is Council's position on our neighbour's access to our land.

Regards

Paul & Dagmar Keady

Bronwyn Egarr

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 24 January 2023 8:00 AM
To: Mayor Lange
Subject: [EXTERNAL] Re:
Attachments: logo_92499e77-9dfb-468f-9a53-5c4a27f54f2a.png

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Bim I have sent you a draft letter.

Problem with the recommendation is that partial removal of the vegetation will exacerbate the flooding problems and make subsequent construction work more difficult.
Talk soon.

On Tue, 24 Jan 2023, 7:48 am Mayor Lange, <mayor.lange@barossa.sa.gov.au> wrote:

Hi Paul

I would not recommend delaying, the strategy is to get this work done, which needs to be done anyhow and will likely resolve the flow matters prior to winter.

If we delay there is no chance any works can be scheduled before winter, staff have geared up for this work and checked the necessary treatment.

If this does not address the issues then further treatment (please note you mentioned a culvert that is not a preferred model if we had to go that way) will be considered again all other priorities, however if this does address the matters it is a less costly, more efficient and consistent application of stormwater management in the area.

Could you also please address Council correspondence to my Council address mayor.lange@barossa.sa.gov.au and not my private address it assists me and Council to comply with our State Records Act requirements.

Finally there is little benefit in writing to me or CEO, the matter is on the agenda and needs to be dealt with for the reasons outlined above. As explained I, nor the officers, get to determine the outcome including a delay only the Council can do that.

My recommendation is to proceed with this treatment, it is work that needs to be done in any case rather than delay anything otherwise there will be no resolution prior to the winter season.

Kind regards
Bim

Sent from my iPhone

Bim Lange
Mayor
E: mayor.lange@barossa.sa.gov.au | T: 08 8563 8444

The Barossa Council

The Barossa Council | 43-51 Tanunda Road | PO Box 867 NURIOOTPA SA 5355
www.barossa.sa.gov.au | T: 08 8563 8444

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On 23 Jan 2023, at 8:18 pm, Paul Keady <keadypaul@gmail.com> wrote:

Will do.
I have prepared a letter to you as Mayor and meeting Chair, and Mr McCarthy, requesting that consideration of the agenda item concerning our land be deferred to Council's March meeting to give us and our neighbours time to be informed by Council what is proposed regarding the easement and for us to prepare submissions and reports for Council in support of a culvert.

I want to talk to you before I send it to you.

I will be at tomorrow's meeting.

Cheers

On Mon, Jan 23, 2023 at 7:45 PM Michael Lange <michaeljameslange@bigpond.com> wrote:
yep around midday Paul

Sent from my iPhone

On 23 Jan 2023, at 7:09 pm, Paul Keady <keadypaul@gmail.com> wrote:

OK Bim, understood.

Can I call you about tomorrow's meeting please?

On Mon, 23 Jan 2023, 4:43 pm Michael Lange, <michaeljameslange@bigpond.com> wrote:

Paul,
Reports to Council are prepared by the officers and with oversight from the CEO.

When we met I indicated that the clearance of the easement could be catered for but any upgrade to subsurface drainage would be subject to a Council capital allocation which has been identified in the report with costing.
The elected members could choose to undertake that work however the Officer's recommendation is consistent with other similar procedures and subject to council's final decision.
I am aware of previous emails between you and Ben where he indicated he would put the report to the January meeting.
The decision is with Council not the officer or me.
Regards
Bim

Sent from my iPhone

> On 23 Jan 2023, at 6:24 am, Paul Keady <keadypaul@gmail.com> wrote:
>
> Good morning Bim,
> Would you please call me today to discuss the agenda item concerning our property 18A Elizabeth Street Tanunda
>
> The proposals are not as we discussed last year.
>
> There has been no warning or discussion with us about this.
>
> In fairness we should at least have had some warning and have the opportunity of putting our submissions to council.
>
> A number of our neighbours subject to periodic flooding will also wish to be heard.
>
> This is very distressing.
>
> Bim,thanks for your time and we look forward to hearing from you.
>
> Cheers Paul
>
> On Sun, 22 Jan 2023, 8:42 am Michael Lange, <michaeljameslange@bigpond.com> wrote:
> yep presented extremely well
> cheers
>
> Sent from my iPhone
>
> > On 22 Jan 2023, at 7:49 am, Paul Keady <keadypaul@gmail.com> wrote:

Cheers.

The Tanunda leg was a sensational day.

On Sun, 22 Jan 2023, 7:26 am Michael Lange, <michaeljameslange@bigpond.com> wrote:
i haven't had a chance to read agenda will get to it tomorrow
still following tour down under

Sent from my iPhone

> On 21 Jan 2023, at 5:13 pm, Paul Keady <keadypaul@gmail.com> wrote:
>
>
> Hi Bim,
>
> We have just read the agenda for the next council meeting.
> The proposal regarding the stormwater drain on our property is not as we discussed with you, Ben and Stephen.
>
> Would you please explain why?
>
> We have had no notice of this and are most concerned.
>
> Regards
> Paul
>
>
>

Bronwyn Egarr

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 21 February 2023 8:41 AM
Cc: Benn Kromwyk; Mayor Lange; Ben Clark; Andrew Evans
Subject: [EXTERNAL] Re: Fw: 18A Elizabeth St - Confirmation of works

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Dear Benn,

I confirm our meeting yesterday, 20 February, 2023, with Mayor Lange. Thank you taking the time to discuss Councils proposed works with us.

We agreed that ALL vegetation including trees and stumps, are to be removed from the easement.

We note that Council proposes to retain the existing dirt swale despite our requests that Council install underground drainage.

Existing rocks and stones displaced by the works are to be placed on the rear of our property. We can show the contractor the location.

We look forward to your advice as to when the works are to commence. We will need notice to secure our dogs.

Regards

Paul & Dagmar Keady

On Tue, Feb 21, 2023 at 8:23 AM Dagmar Keady <dagmar.keady@yahoo.com> wrote:

Sent from Yahoo Mail on Android

----- Forwarded message -----
From: "Benn Kromwyk" <bkromwyk@barossa.sa.gov.au>
To: "dagmar.keady@yahoo.com" <dagmar.keady@yahoo.com>
Cc: "Ben Clark" <bclark@barossa.sa.gov.au>, "Mayor Lange" <mayor.lange@barossa.sa.gov.au>, "Andrew Evans" <aevans@barossa.sa.gov.au>
Sent: Tue, 21 Feb 2023 at 7:25 am
Subject: 18A Elizabeth St - Confirmation of works

Hi Paul,

Thanks for meeting with us yesterday,

As discussed, please see the below contact details for the contractor undertaking the work

CAVCO – Larry Ph: 0448 676 332

I can confirm, that the vegetation in and lining the existing swale will be removed where required to enable the construction works required to formalise the natural earth swale.

The new swale way will be constructed as close to the property boundary where possible.

The above contractor has been notified to undertake the works, once a date and time as been confirmed I will let you know.

If you have any further questions please don't hesitate to ask.

Regards

Benn

Benn Kromwyk
Capital Project Officer
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

43-51 Tanunda Road | PO Box 867 NURIOOTPA SA 5355
www.barossa.sa.gov.au | T: 08 8563 8444

We acknowledge the Ngadjuri, Peramangk and Kaurna people and their ancestral connection to land and pay respects to Elders past, present and emerging.

This email, together with any attachments, may contain information that is subject to copyright or confidentiality, and is intended for the named recipient(s) only. If you have received this in error, please notify the sender by reply email and delete this email from your system(s). Further, you are not permitted to use, reproduce, publish or disclose the contents of this email. Emails may be monitored and/or accessed by Council staff and, in limited circumstances, by third parties, including for compliance with the *Freedom of Information Act 1991* and *State Records Act 1997*.
No representation is made that this email is free of viruses. Virus scanning is recommended and is the sole responsibility of the recipient.

Bronwyn Egarr

From: Benn Kromwyk
Sent: Tuesday, 28 February 2023 11:19 AM
To: dagmar.keady@yahoo.com
Subject: FW: 18A Elizabeth St - Confirmation of works

Hi Paul,

Hope this email finds you well?
Councils Arb crew is programmed to remove the vegetation within the swale at 18A Elizabeth St this Thursday (2/3/2023)
& possible Friday (3/3/2023) (depending on how much they achieve on Thursday).
FYI, no one from the property is required from our end to be home during the works.

Can I please ask in way of these works, could your dogs please remain inside while the crews are onsite and also could you please take down the black tube fencing on the side of the property for easier access?

The large Ash tree at the rear of the swale will be removed by councils contractors (Urbans) at a later date, which will be confirmed with yourself. Urbans will also be removing the stumps at the same time they are removing the Ash tree.
CAVCO are not undertaking the tree removals now, if you would still like a quote for the pine tree removal I am happy for you to make contact with Urbans PH: 8290 2000

At this stage CAVCO are planning to be onsite from the 14/3/2023 (pending weather) to undertake the swale construction works.

I hope the above information makes sense, if you have any further questions please feel free to ask.

Kind Regards

Benn Kromwyk
Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

From: Benn Kromwyk
Sent: Tuesday, 21 February 2023 7:25 AM
To: dagmar.keady@yahoo.com
Cc: Ben Clark <bclark@barossa.sa.gov.au>; Mayor Lange <mayor.lange@barossa.sa.gov.au>; Andrew Evans <aevans@barossa.sa.gov.au>
Subject: 18A Elizabeth St - Confirmation of works

Hi Paul,

Thanks for meeting with us yesterday,
As discussed, please see the below contact details for the contractor undertaking the work

CAVCO – Larry Ph: 0448 676 332

I can confirm, that the vegetation in and lining the existing swale will be removed where required to enable the construction works required to formalise the natural earth swale.
The new swale way will be constructed as close to the property boundary where possible.

The above contractor has been notified to undertake the works, once a date and time as been confirmed I will let you know.
If you have any further questions please don't hesitate to ask.

Regards
Benn

Benn Kromwyk
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Bronwyn Egarr

From: Benn Kromwyk
Sent: Wednesday, 1 March 2023 2:54 PM
To: Paul Keady
Subject: RE: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

Hi Paul,

Thanks for the response and the permission.
I can confirm that the Arb crew will remove and reinstall the fence panel as required.

Urban Tree Contractor have confirmed they will be removing the Ash within the swale on the 8/3/2023. On this day, they will require the dogs again to remain inside and we will remove/reinstall the tube fence panel as required for access.

Any questions, please feel free to ask.

Regards

Benn Kromwyk
Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

From: Paul Keady <keadypaul@gmail.com>
Sent: Wednesday, 1 March 2023 7:34 AM
To: Benn Kromwyk <bkromwyk@barossa.sa.gov.au>
Subject: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Dear Benn,

We received your email late yesterday and are in Adelaide returning late tonight.

Your workman have our permission to unbolt the side fence to facilitate access. The poles cannot be removed. They are cemented.

Please ensure the fence is replaced when the work is finalised.

Regards

Paul

1

Bronwyn Egarr

From: Paul Keady <keadypaul@gmail.com>
Sent: Thursday, 2 March 2023 4:03 AM
To: Benn Kromwyk
Subject: Re: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Benn,

Please provide us with the design and engineering specifications for the work on the easement on our property.

Also, a copy of the hydrological report, we have yet to receive that.

Cheers Paul

On Wed, 1 Mar 2023 at 2:53 pm, Benn Kromwyk <bkromwyk@barossa.sa.gov.au> wrote:

> Hi Paul,
>
> Thanks for the response and the permission.
>
> I can confirm that the Arb crew will remove and reinstall the fence panel as required.
>
> Urban Tree Contractor have confirmed they will be removing the Ash within the swale on the 8/3/2023. On this day, they will require the dogs again to remain inside and we will remove/reinstall the tube fence panel as required for access.
>
> Any questions, please feel free to ask.
>
> Regards
>
> **Benn Kromwyk**
> Project Manager - Capital Delivery
> E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466
>
> **From:** Paul Keady <keadypaul@gmail.com>
> **Sent:** Wednesday, 1 March 2023 7:34 AM
> **To:** Benn Kromwyk <bkromwyk@barossa.sa.gov.au>
> **Subject:** CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

1

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Please ensure the fence is replaced when the work is finalised.

Regards

Paul

Bronwyn Egarr

From: Benn Kromwyk
Sent: Monday, 6 March 2023 8:23 AM
To: Paul Keady
Subject: RE: Re: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

Hi Paul,

As a general rule Council does not release detailed engineering design plans, hydrology analysis or other technical reports for Council engineering projects to residents.

In regards to the scope of works alongside your property in Council's stormwater easement, Council's Elected Body have approved the construction of a 1m wide (at the base) and approx. 300mm deep earth swale in 2022-23 financial year.

As you may appreciate, the earth swale depth is governed by the current drain outlet level at the southern end of the easement within your property.

I trust the above information assists.

Regards

Benn Kromwyk
Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

From: Paul Keady <keadypaul@gmail.com>
Sent: Thursday, 2 March 2023 4:03 AM
To: Benn Kromwyk <bkromwyk@barossa.sa.gov.au>
Subject: CM: Re: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

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Cheers Paul

On Wed, 1 Mar 2023 at 2:53 pm, Benn Kromwyk <bkromwyk@barossa.sa.gov.au> wrote:

> Hi Paul,
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> Thanks for the response and the permission.
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> I can confirm that the Arb crew will remove and reinstall the fence panel as required.

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Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

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Please ensure the fence is replaced when the work is finalised.

Regards

Paul

Bronwyn Egarr

From: Benn Kromwyk
Sent: Wednesday, 8 March 2023 8:48 AM
To: Paul Keady
Subject: RE: Re: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

Hi Paul,

The distance at the top will be approx. 1.3m wide
FYI – The request for yourself to obtain a copy of the hydraulic report has been sent through to management. Once I receive confirmation I will deliver you a copy.

Regards

Benn Kromwyk
Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 7 March 2023 7:38 PM
To: Benn Kromwyk <bkromwyk@barossa.sa.gov.au>
Subject: Re: Re: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Benn,

1 metre at the base, what distance at the top?

Paul

On Mon, 6 Mar 2023 at 8:48 am, Paul Keady <keadypaul@gmail.com> wrote:

Benn, in previous emails we were advised we would receive the hydrology report.

What remediation works does Council propose for the balance of the easement and what will prevent the earth swale from eroding?

Cheers Paul

On Mon, 6 Mar 2023 at 8:23 am, Benn Kromwyk <bkromwyk@barossa.sa.gov.au> wrote:

Hi Paul,

As a general rule Council does not release detailed engineering design plans, hydrology analysis or other technical reports for Council engineering projects to residents.

In regards to the scope of works alongside your property in Council's stormwater easement, Council's Elected Body have approved the construction of a 1m wide (at the base) and approx. 300mm deep earth swale in 2022-23 financial year.

As you may appreciate, the earth swale depth is governed by the current drain outlet level at the southern end of the easement within your property.

I trust the above information assists.

Regards

Benn Kromwyk
Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

From: Paul Keady <keadypaul@gmail.com>
Sent: Thursday, 2 March 2023 4:03 AM
To: Benn Kromwyk <bkromwyk@barossa.sa.gov.au>
Subject: CM: Re: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

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Benn,

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Cheers Paul

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Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

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Please ensure the fence is replaced when the work is finalised.

Regards

Paul

From: Martin McCarthy
Sent: Wednesday, 8 March 2023 3:33 PM
To: Paul Keady; Mayor Lange
Cc: Cr Kathryn Schilling
Subject: 18A Elizabeth Street, Tanunda - easement - response
Attachments: CT - Volume 6129 - Folio 238.pdf; D92546 EPL Deposited Plan Copy.pdf

Categories: TRIM

Dear Mr Keady

As I outlined with the Mayor I have reviewed the matter and he communicated that recently I understand.

As you are aware the discharge of stormwater is via drainage easement to the benefit of Council. Council can authorise any such discharge as occurs from the side entry pit, this is no different to the neighbour. This should have been known by you the easement is clearly visible on your title and a matter you would have been aware of when you undertook the purchase, if not I would recommend you refer back to the land agent. Copy of title and authorised survey attached.

Council is not and will not get involved in a matter between neighbours, that is for you to take your own civil action as you see fit. We have simply responded to your requests for service related to easement management and questions you have raised.

We have committed and are undertaking the upgrades as approved by Council.

If you wish to make application to access legal or other documents of Council related to your neighbour you will need to lodge a FOI (Freedom of Information) application and it will be assessed accordingly by accredited officers, which likely will require consultation with your neighbour. You can refer to the link below to assist in lodging such an application.

Freedom of information • The Barossa Council

Alternatively if you believe we are breaching the law you can report this to relevant authorities or serve the Council with a legal claim, which we will refer to our solicitors and insurance company.

Works being undertaken are consistent with communication that we are placing a new side entry pit in and removing the vegetation.

Thank you for writing to me on this matter and has been explained on occasions by the Mayor, now Cr Schilling I believe, and staff we are undertaking work that is reasonable to manage, our easement as is our responsibility. It has been outlined we will monitor the waterflows and if further intervention is required we will consider that in due course.

Regards
Martin

Martin McCarthy
Chief Executive Officer
E: mmccarthy@barossa.sa.gov.au | T: 08 8563 8444

From: Paul Keady <keadypaul@gmail.com>
Sent: Wednesday, 8 March 2023 2:39 PM
To: Martin McCarthy <mmccarthy@barossa.sa.gov.au>; Mayor Lange <mayor.lange@barossa.sa.gov.au>
Subject: [EXTERNAL] 18A Elizabeth Street, Tanunda - easement

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Dear Mr McCarthy,

We are the owners of 18A Elizabeth Street, Tanunda. We understand you are familiar with some aspects of our dealings with Council and with our neighbours of 18 Elizabeth Street, Tanunda, Mr & Mrs Verhees.
Mayor Lange advised us that he has conferred with you regarding our concerns. He has advised us that following your review you assert:
1. Council can authorize our neighbours to discharge their stormwater onto our land, into the easement:
2. Regardless of the legal position it would be unreasonable now to expect the neighbour who has this right under their development approval to do otherwise.

We note:

1. Council has an easement for drainage purposes running along our boundary with the Verhees.That easement was granted vide D92546 on 6/1/2014. That easement is for drainage purposes as defined in Schedule 6 of the RPA Act 1886 to the Barossa Council **only.**

2,. Our land is not affected by any other easements/rights of way etc unless registered on the Certificate of title. (See Section 84 Real Property Act 1886).

3. In email correspondence with Council employees, Mr Kaesler (see emails including 2 May 2022 & 3 May 2022 ff), Ms Lennon (see emails 10 May 2022) and Mr Clark (see emails including 16 September 2022, 21 September and ff), we were advised that Council has given permission to our neighbours to discharge their stormwater onto our property. Mr Clark asserted that Council has an unfettered right to give anyone permission to access the easement on our property without our permission!

4. We have asked for details, including the legal authority relied upon by Council, regarding this permission but that has not been provided to us.

The legal situation is unequivocal. Council does not have legal authority to permit our neighbour to access our land for their stormwater. We have expert legal opinion to that effect which was discussed with Mayor Lange.

We have served a Notice to Fence under the Fences Act on the Verhees. They assert they have Council's permission to run their stormwater onto our land. They rely upon the advice from Mr Kaesler and Ms Lennon. That advice from them is misconceived and should be corrected.

Once again, we ask that you clearly advise the legal authority you say gives you the right to authorize the Verhees to run their stormwater on our land and any D/A approval that you assert that applies to our land for this purpose.

Neither the 1993 or 2019 D/A approvals gives the Verhees any such right.

Please also advise why Council is involved in this issue between us and our neighbours. It shouldn't involve Council and Council is obliged to adopt a neutral stance. Any assessment of claimed historic rights is a legal issue and a matter for a Court, not Council staff.

Council is doing work on the easement as we speak. The construction details have not been discussed with us. We put you on notice that we prohibit any works that give access to the easement to any third party or neighbour for stormwater or any purpose other than permitted to Council under section 223LG of the Real Property Act.

We look forward to hearing from you.

Yours faithfully

Paul & Dagmar Keady
0409836179

LAND SERVICES SA

Product	Register Search (CT 6129/238)
Date/Time	08/03/2023 03:23PM
Customer Reference	462
Order ID	20230308007529

REAL PROPERTY ACT, 1886
South Australia

The Registrar-General certifies that this Title Register Search displays the records maintained in the Register Book and other notations at the time of searching.

REGISTRAR - GENERAL SOUTH AUSTRALIA

Certificate of Title - Volume 6129 Folio 238

Parent Title(s) CT 5277/388

Creating Dealing(s) RTC 12061249

Title Issued 29/01/2014 **Edition** 4 **Edition Issued** 15/12/2021

Estate Type

FEE SIMPLE

Registered Proprietor

PAUL JOSEPH KEADY
JAGMAR KEADY
OF 18A ELIZABETH STREET TANUNDA SA 5352
AS JOINT TENANTS

Description of Land

ALLOTMENT 102 DEPOSITED PLAN 92546
IN THE AREA NAMED TANUNDA
HUNDRED OF MOOROOROO

Easements

SUBJECT TO EASEMENT(S) OVER THE LAND MARKED A ON DP 92546 FOR DRAINAGE PURPOSES (RTC 12061249)

SUBJECT TO SERVICE EASEMENT(S) OVER THE LAND MARKED B ON DP 92546 FOR DRAINAGE PURPOSES TO THE COUNCIL FOR THE AREA (223LG RPA)

Schedule of Dealings

NIL

Notations

Dealings Affecting Title	NIL
Priority Notices	NIL
Notations on Plan	NIL
Registrar-General's Notes	NIL
Administrative Interests	NIL

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LAND SERVICES SA

Product	Historical Search
Date/Time	08/03/2023 03:23PM
Customer Reference	462
Order ID	20230308007529

Certificate of Title

Title Reference: CT 6129/238

Status: CURRENT

Parent Title(s): CT 5277/388

Dealing(s) Creating Title: RTC 12061249

Title Issued: 29/01/2014

Edition: 4

Dealings

Lodgement Date	Completion Date	Dealing Number	Dealing Type	Dealing Status	Details
10/12/2021	15/12/2021	13679394	TRANSFER	REGISTERED	PAUL JOSEPH KEADY, DAGMAR KEADY
10/12/2021	15/12/2021	13679393	DISCHARGE OF MORTGAGE	REGISTERED	12161946
04/07/2014	06/08/2014	12161946	MORTGAGE	REGISTERED	AUSTRALIA & NEW ZEALAND BANKING GROUP LTD.
17/02/2014	17/03/2014	12085286	TRANSFER	REGISTERED	MATTHEW JOHN WHITELUM, KIM TERESE WHITELUM
17/02/2014	17/03/2014	12085285	DISCHARGE OF MORTGAGE	REGISTERED	11960416
25/06/2013	16/07/2013	11960416	MORTGAGE	REGISTERED	HOMESTART FINANCE

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PURPOSE:	DIVISION	AREA NAME:	TANUNDA	APPROVED: MATTHEW LETHBRIDGE 23/10/2013	D92546
MAP REF:	6628/05/F	COUNCIL:	THE BAROSSA COUNCIL	DEPOSITED: SEAN FROST 06/01/2014	SHEET 1 OF 2
LAST PLAN:		DEVELOPMENT NO:	960/D016/12/001/36324		40013_text_01_v04_Version_4

AGENT DETAILS: MATTSSON & MARTYN
380 PAYNEHAM ROAD
PAYNEHAM SA 5070
PH: 83369955
FAX: 83369966

AGENT CODE: MAT2

REFERENCE: 10368/03/12

SURVEYORS CERTIFICATION: I Jeffrey Ian Mattsson , a licensed surveyor do hereby certify - 1) That this plan has been made from surveys carried out by me or under my personal supervision and in accordance with the Survey Act 1992. 2) That the field work was completed on the 9th day of July 2012
23rd day of October 2013 Jeffrey Ian Mattsson Licensed Surveyor

SUBJECT TITLE DETAILS:

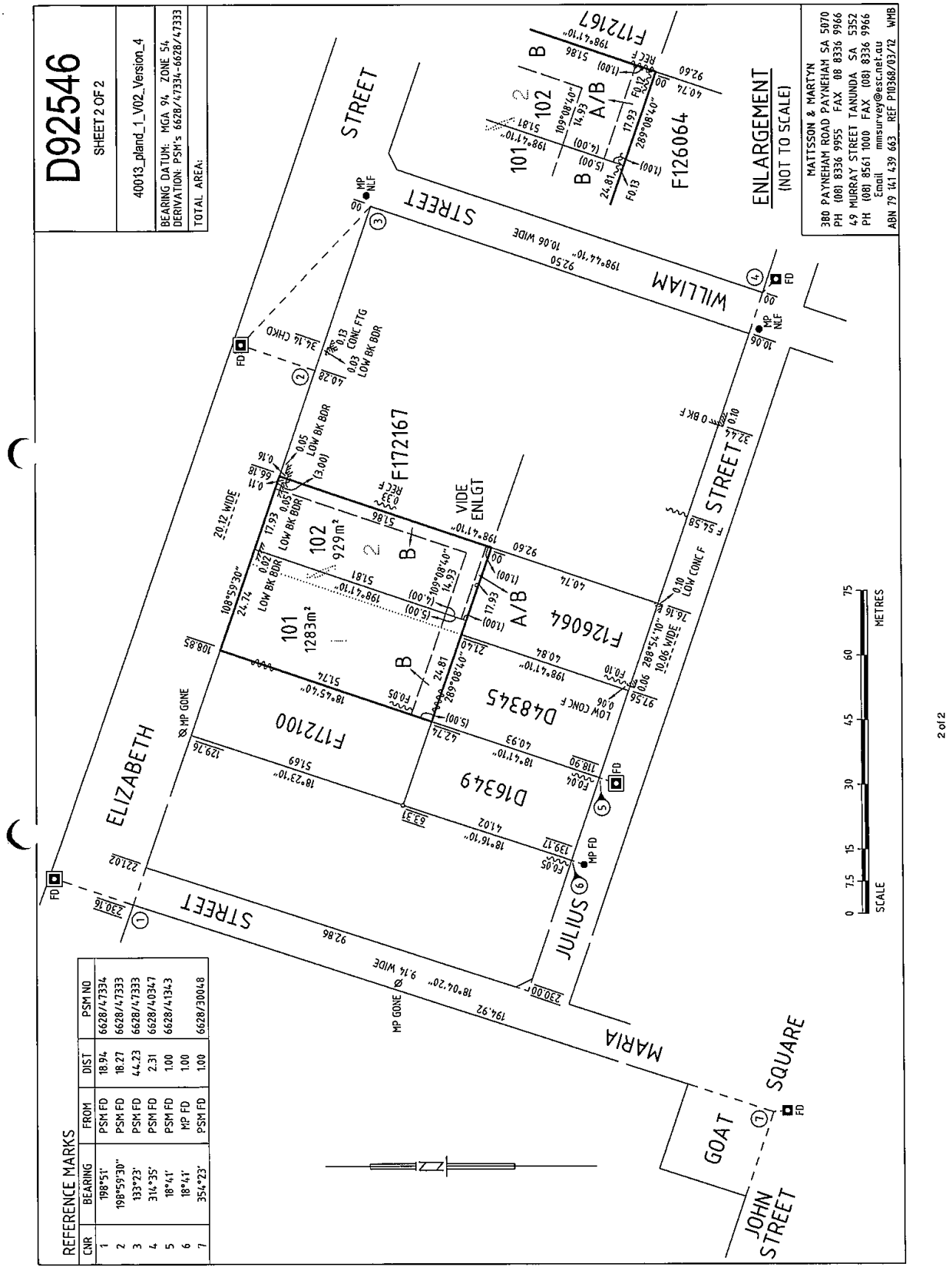
PREFIX	VOLUME	FOLIO	OTHER	PARCEL	NUMBER	PLAN	NUMBER	HUNDRED / IA / DIVISION	TOWN	REFERENCE NUMBER
CT	5277	388		ALLOTMENT(S)	1	F	151290	MOOROOROO		SECTION 39
				ALLOTMENT(S)	2	F	151290	MOOROOROO		SECTION 39

OTHER TITLES AFFECTED:

EASEMENT DETAILS:

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION
NEW	102	SHORT	EASEMENT(S)	A	FOR DRAINAGE PURPOSES	101	
NEW	101.102	SERVICE	EASEMENT(S)	B	FOR DRAINAGE PURPOSES	COUNCIL FOR THE AREA	223LG RPA

ANNOTATIONS: NO OCCUPATION ON SUBJECT LAND UNLESS SHOWN OTHERWISE


D92546
SHEET 2 OF 2
40013_pland_1_V02_Version_4
BEARING DATUM: MGA 94 ZONE 54
DERIVATION: PSM's 6628/47334-6628/47333
TOTAL AREA:
MATTSSON & MARTYN
380 PAYNEHAM ROAD PAYNEHAM SA 5070
PH (08) 8336 9955 FAX 08 8336 9966
49 MURRAY STREET TANUNDA SA 5352
PH (08) 8561 1000 FAX (08) 8336 9966
Email mmsurvey@esc.net.au
ABN 79 141 439 663 REF P10368/03/12 WMB
ENLARGEMENT
(NOT TO SCALE)
ELIZABETH STREET
WILLIAM STREET
JULIUS STREET
MARIA STREET
GOAT SQUARE
JOHN STREET
F172167
F126064
F172167
D48345
D16349
F17210O
101
1283m²
102
929m²
A/B
B
2
VIDE ENLGT
LOW BK BDR
LOW CONC F
CONC FTG
MP NLF
MP FD
MP GONE
FD
SCALE
METRES
0 7.5 15 30 45 60 75
2 of 2
REFERENCE MARKS
CNR | BEARING | FROM | DIST | PSM NO
1 | 198°51' | PSM FD | 18.94 | 6628/47334
2 | 198°59'30" | PSM FD | 18.27 | 6628/47333
3 | 133°23' | PSM FD | 44.23 | 6628/47333
4 | 314°35' | PSM FD | 2.31 | 6628/40347
5 | 18°41' | PSM FD | 1.00 | 6628/41343
6 | 18°41' | MP FD | 1.00 |
7 | 354°23' | PSM FD | 1.00 | 6628/30048

Bronwyn Egarr

From: Benn Kromwyk
Sent: Tuesday, 14 March 2023 7:27 AM
To: Paul Keady
Subject: RE: Re: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

Hi Paul,

FYI – you may already know but I thought I will let you know anyway. the stumps with be removed on Wednesday 15/3/2023.
At this stage CAVCO will begin works on the Monday 20/3/2023 (if this date changes I will let you know asap)

Regards

Benn Kromwyk
Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

From: Paul Keady <keadypaul@gmail.com>
Sent: Saturday, 11 March 2023 4:15 PM
To: Benn Kromwyk <bkromwyk@barossa.sa.gov.au>
Subject: Re: Re: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Hi Benn,

Thanks for the hydrological report.

We look forward to hearing from you about our yard security.
Also you are aware that we are proposing to erect a boundary fence along the unfenced portion of our side boundary with our neighbours in 18 Elizabeth Street

Please ensure that your construction design takes this into account.

Cheers
Paul

On Thu, 9 Mar 2023, 7:50 am Paul Keady, <keadypaul@gmail.com> wrote:

> Thanks Benn,
>
> Council is aware that we have small dogs. We also have very young grandchildren. Please advise how our backyard is to be secure with a 300mm trench through the easement?
> We are worried they will be able to escape onto a busy road.
>
> Cheers
> Paul
>
> On Wed, Mar 8, 2023 at 8:48 AM Benn Kromwyk <bkromwyk@barossa.sa.gov.au> wrote:
>
> > Hi Paul,

The distance at the top will be approx. 1.3m wide

FYI – The request for yourself to obtain a copy of the hydraulic report has been sent through to management. Once I receive confirmation I will deliver you a copy.

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Benn Kromwyk
Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 7 March 2023 7:38 PM
To: Benn Kromwyk <bkromwyk@barossa.sa.gov.au>
Subject: Re: Re: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Benn,

1 metre at the base, what distance at the top?

Paul

On Mon, 6 Mar 2023 at 8:48 am, Paul Keady <keadypaul@gmail.com> wrote:

> Benn, in previous emails we were advised we would receive the hydrology report.
>
> What remediation works does Council propose for the balance of the easement and what will prevent the earth swale from eroding?
>
> Cheers Paul

On Mon, 6 Mar 2023 at 8:23 am, Benn Kromwyk <bkromwyk@barossa.sa.gov.au> wrote:

Hi Paul,

As a general rule Council does not release detailed engineering design plans, hydrology analysis or other technical reports for Council engineering projects to residents.

In regards to the scope of works alongside your property in Council's stormwater easement, Council's Elected Body have approved the construction of a 1m wide (at the base) and approx. 300mm deep earth swale in 2022-23 financial year.

As you may appreciate, the earth swale depth is governed by the current drain outlet level at the southern end of the easement within your property.

I trust the above information assists.

Regards

Benn Kromwyk
Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

From: Paul Keady <keadypaul@gmail.com>
Sent: Thursday, 2 March 2023 4:03 AM
To: Benn Kromwyk <bkromwyk@barossa.sa.gov.au>
Subject: CM: Re: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

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Benn,

Please provide us with the design and engineering specifications for the work on the easement on our property.

Also, a copy of the hydrological report, we have yet to receive that.

Cheers Paul

On Wed, 1 Mar 2023 at 2:53 pm, Benn Kromwyk <bkromwyk@barossa.sa.gov.au> wrote:

Hi Paul,

Thanks for the response and the permission.

I can confirm that the Arb crew will remove and reinstall the fence panel as required.

Urban Tree Contractor have confirmed they will be removing the Ash within the swale on the 8/3/2023. On this day, they will require the dogs again to remain inside and we will remove/reinstall the tube fence panel as required for access.

Any questions, please feel free to ask.

Regards

Benn Kromwyk
Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

From: Paul Keady <keadypaul@gmail.com>
Sent: Wednesday, 1 March 2023 7:34 AM
To: Benn Kromwyk <bkromwyk@barossa.sa.gov.au>
Subject: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Dear Benn,

We received your email late yesterday and are in Adelaide returning late tonight.

Your workman have our permission to unbolt the side fence to facilitate access. The poles cannot be removed. They are cemented.

Please ensure the fence is replaced when the work is finalised.

Regards

Paul

Bronwyn Egarr

From: Martin McCarthy
Sent: Tuesday, 14 March 2023 1:08 PM
To: Paul Keady
Subject: RE: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda - easement - response

Hi Paul

Thanks for the conversation just now.

I will have the following two actions taken from our conversation:

1. I will, upon reflection now seek a formal legal advice, on the general question as to easement management; my question will be limited to general principles of the rights and obligations so as to check the position and not the specifics of this particular case so as to keep any costs down.
2. Contact the neighbour and discuss the options to discharge stormwater via the street, no matter what formal advice is provided.

I will be back in touch in the next week or so once that is undertaken.

Kind regards
Martin

Martin McCarthy
Chief Executive Officer
E: mmccarthy@barossa.sa.gov.au | T: 08 8563 8444

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 14 March 2023 12:20 PM
To: Martin McCarthy <mmccarthy@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda - easement - response

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Martin, we are not sure what you are asking us.

We are having a conference this evening with our barrister, James Roder. If you wish to discuss this further then I suggest we talk.

Cheers

On Tue, 14 Mar 2023, 12:02 pm Martin McCarthy, <mmccarthy@barossa.sa.gov.au> wrote:

> Hi Paul
>
> That actually helps me greatly. So if I understand your wish if the neighbour discharges into a pipe in the same location they do now (noting it is still our easement be it above or below ground) you have no concerns, even though it is your view it is your land be it a pipe or overland, is that correct? And therefore my proposal to discharge to the road and then via the side entry pit will satisfy your legal concern?

Thanks Martin

Martin McCarthy
Chief Executive Officer
E: mmccarthy@barossa.sa.gov.au | T: 08 8563 8444

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 14 March 2023 11:45 AM
To: Martin McCarthy <mmccarthy@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda - easement - response

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Martin, this was all sorted when we met with Bim, Ben Clark and Steven Kaesler on 15 September, 2022. It was agreed that a submission would be put to Council for funds to construct an underground culvert. All problems solved including neighbour being able to put ug pipe into the culvert.

We were not consulted about Steven's report and recommendations to Council on 24 January. Put bluntly, we were shafted. We don't know why.

Nobody has consulted with us, including our neighbour.

Martin, you know all this.

Consultation, discussion and goodwill usually results in solutions.

Cheers

On Tue, 14 Mar 2023 at 11:28 am, Martin McCarthy <mmccarthy@barossa.sa.gov.au> wrote:

Hi Paul

Noted.

We can speak with neighbour to discharge to street if that solves your concerns, noting the same water and flow will enter our easement? Would this satisfy you?

Kind regards

Martin

Martin McCarthy
Chief Executive Officer
E: mmccarthy@barossa.sa.gov.au | T: 08 8563 8444

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 14 March 2023 11:25 AM
To: Martin McCarthy <mmccarthy@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda - easement - response

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Martin,

The difference between our neighbour discharging their stormwater over our boundary and from the roadway is obvious.

You are aware that the D A approvals preclude our neighbours from accessing our land.

Martin, we don't know what is behind Councils bias. We will let our solicitors deal with this now.

Cheers

On Tue, 14 Mar 2023 at 10:33 am, Martin McCarthy <mmccarthy@barossa.sa.gov.au> wrote:

Hi Paul

I have answered your question approval to discharge to the easement is a product of prior planning approvals.

The Council issued the approval pursuant to the terms within their planning approval.

You would need to lodge a FOI to ascertain those details.

Alternatively, if you are not satisfied by that I can issue a further approval now under delegation in any case if that would assist.

Kind regards

Martin

Martin McCarthy
Chief Executive Officer
E: mmccarthy@barossa.sa.gov.au | T: 08 8563 8444

4

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 14 March 2023 10:29 AM
To: Martin McCarthy <mmccarthy@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda - easement - response

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Thanks Martin,
We will disagree on that point. Our legal advice is solid.

The terms of the easement to Council are clear and unequivocal. Have you had legal advice on this point?

Has Council given our neighbours such permission and if so what are the details? ie by whom, when and on what terms?

Cheers

On Tue, Mar 14, 2023 at 10:23 AM Martin McCarthy <mmccarthy@barossa.sa.gov.au> wrote:

> Hi Paul
>
> Yes they can discharge to our easement.
>
> What I am referring to if we ask the neighbour to discharge to the road and then via the side entry pit it will still discharge via our easement, same water and same flow just different pathway.
>
> Regards
>
> Martin

Martin McCarthy
Chief Executive Officer
E: mmccarthy@barossa.sa.gov.au | T: 08 8563 8444

5

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 14 March 2023 10:20 AM
To: Martin McCarthy <mmccarthy@barossa.sa.gov.au>
Subject: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda - easement - response

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Dear Mr McCarthy,

Thank you for your comments.

Please clarify what you mean when you say:

"Council can authorise any such discharge as occurs from the side entry pit, this is no different to the neighbour."

Does your reference to "side entry pit" mean the pit on Council land in Elizabeth street?

What do you mean "this is no different to the neighbour"?

You have not answered our requests for details regarding Council's "permission" to our neighbour to access our land. A response would be appreciated noting we have requested these details on numerous occasions..

Regards

Paul & Dagmar Keady

On Wed, Mar 8, 2023 at 3:32 PM Martin McCarthy <mmccarthy@barossa.sa.gov.au> wrote:

> Dear Mr Keady

As I outlined with the Mayor I have reviewed the matter and he communicated that recently I understand.

As you are aware the discharge of stormwater is via drainage easement to the benefit of Council. Council can authorise any such discharge as occurs from the side entry pit, this is no different to the neighbour. This should have been known by you the easement is clearly visible on your title and a matter you would have been aware of when you undertook the purchase, if not I would recommend you refer back to the land agent. Copy of title and authorised survey attached.

Council is not and will not get involved in a matter between neighbours, that is for you to take your own civil action as you see fit. We have simply responded to your requests for service related to easement management and questions you have raised.

We have committed and are undertaking the upgrades as approved by Council.

If you wish to make application to access legal or other documents of Council related to your neighbour you will need to lodge a FOI (Freedom of Information) application and it will be assessed accordingly by accredited officers, which likely will require consultation with your neighbour. You can refer to the link below to assist in lodging such an application.

Freedom of information • The Barossa Council

Alternatively if you believe we are breaching the law you can report this to relevant authorities or serve the Council with a legal claim, which we will refer to our solicitors and insurance company.

Works being undertaken are consistent with communication that we are placing a new side entry pit in and removing the vegetation.

Thank you for writing to me on this matter and has been explained on occasions by the Mayor, now Cr Schilling I believe, and staff we are undertaking work that is reasonable to manage, our easement as is our responsibility. It has been outlined we will monitor the waterflows and if further intervention is required we will consider that in due course.

Regards

Martin

Martin McCarthy
Chief Executive Officer
E: mmccarthy@barossa.sa.gov.au | T: 08 8563 8444

From: Paul Keady <keadypaul@gmail.com>
Sent: Wednesday, 8 March 2023 2:39 PM
To: Martin McCarthy <mmccarthy@barossa.sa.gov.au>; Mayor Lange <mayor.lange@barossa.sa.gov.au>
Subject: [EXTERNAL] 18A Elizabeth Street, Tanunda - easement

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Dear Mr McCarthy,

We are the owners of 18A Elizabeth Street, Tanunda. We understand you are familiar with some aspects of our dealings with Council and with our neighbours of 18 Elizabeth Street, Tanunda, Mr & Mrs Verhees.

Mayor Lange advised us that he has conferred with you regarding our concerns. He has advised us that following your review you assert:

1. Council can authorize our neighbours to discharge their stormwater onto our land, into the easement:

2. Regardless of the legal position it would be unreasonable now to expect the neighbour who has this right under their development approval to do otherwise.

We note:

1. Council has an easement for drainage purposes running along our boundary with the Verhees.That easement was granted vide D92546 on 6/1/2014. That easement is for drainage purposes as defined in Schedule 6 of the RPA Act 1886 to the Barossa Council **only.**

2,. Our land is not affected by any other easements/rights of way etc unless registered on the Certificate of title. (See Section 84 Real Property Act 1886).

3. In email correspondence with Council employees, Mr Kaesler (see emails including 2 May 2022 & 3 May 2022 ff), Ms Lennon (see emails 10 May 2022) and Mr Clark (see emails including 16 September 2022, 21 September and ff), we were advised that Council has given permission to our neighbours to discharge their stormwater onto our property. Mr Clark asserted that Council has an unfettered right to give anyone permission to access the easement on our property without our permission!

4. We have asked for details, including the legal authority relied upon by Council, regarding this permission but that has not been provided to us.

The legal situation is unequivocal. Council does not have legal authority to permit our neighbour to access our land for their stormwater. We have expert legal opinion to that effect which was discussed with Mayor Lange.

We have served a Notice to Fence under the Fences Act on the Verhees. They assert they have Council's permission to run their stormwater onto our land. They rely upon the advice from Mr Kaesler and Ms Lennon. That advice from them is misconceived and should be corrected.

Once again, we ask that you clearly advise the legal authority you say gives you the right to authorize the Verhees to run their stormwater on our land and any D/A approval that you assert that applies to our land for this purpose.

Neither the 1993 or 2019 D/A approvals gives the Verhees any such right.

Please also advise why Council is involved in this issue between us and our neighbours. It shouldn't involve Council and Council is obliged to adopt a neutral stance. Any assessment of claimed historic rights is a legal issue and a matter for a Court, not Council staff.

Council is doing work on the easement as we speak. The construction details have not been discussed with us. We put you on notice that we prohibit any works that give access to the easement to any third party or neighbour for stormwater or any purpose other than permitted to Council under section 223LG of the Real Property Act.

We look forward to hearing from you.

Yours faithfully

9

Paul & Dagmar Keady

0409836179

Bronwyn Egarr

From: Benn Kromwyk
Sent: Thursday, 16 March 2023 1:33 PM
To: Paul Keady
Subject: 18A Elizabeth St - Swale works

Hi Paul,

Just keeping you in the loop,
Larry (CAVCO) has confirmed they will start the swale works on Monday 20th March, as previously discussed. Larry will focus on clearing the swale way of debris and rock for the first few days, from there we will set the *levels and pins to show the location/design of the swale.*
As previously discussed, could please leave you dogs inside or off site while the crew is onsite.

Regards

Benn Kromwyk
Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

43-51 Tanunda Road | PO Box 867 NURIOOTPA SA 5355
www.barossa.sa.gov.au | T: 08 8563 8444

We acknowledge the Ngadjuri, Peramangk and Kaurna people and their ancestral connection to land and pay respects to Elders past, present and emerging.

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From: Iliana Mulraney <imm@bllawyers.com.au>
Sent: Friday, 17 March 2023 4:15 PM
To: Martin McCarthy
Cc: Syd McDonald
Subject: [EXTERNAL] 18A Elizabeth Street Tanunda - Service Easement (BLL 223087)
Attachments: Letter to the Barossa Council - 17 March 2023.pdf

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Dear Mr McCarthy,

Please find **attached** our letter dated 17 March 2023 for your attention.

Regards,

On behalf of Syd McDonald

BOTTEN LEVINSON Lawyers

Iliana Mulraney
Legal Secretary
e. imm@bllawyers.com.au
t. 8212 9777 | **m.**
Botten Levinson Lawyers | Level 1, 28 Franklin Street, Adelaide SA 5000
www.bllawyers.com.au

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1

BOTTEN LEVINSON Lawyers

Our ref: SM/223087

17 March 2023

Mr Martin McCarthy
Chief Executive Officer
Barossa Council
Murray Street
NURIOOTPA SA 5350

By email: mmccarthy@barossa.sa.gov.au

Dear Mr McCarthy,

18A Elizabeth Street Tanunda - Service Easement

This firm acts for Paul and Dagmar Keady who are the registered proprietors of the land comprised in Certificate of Title Volume 6129 Folio 238 and known as 18A Elizabeth Street, Tanunda (**our clients' land**).

The Barossa Council is the dominant tenement of a 3 metre wide easement for drainage purposes along our clients' eastern boundary.

The easement was created as part of the sub-division deposited in January 2014 which created our clients' land.

The easement is for drainage purposes only and in favour of the Barossa Council. The Barossa Council is, of course, a Council constituted under the *Local Government Act 1999*.

From approximately March 2022 our clients have engaged with the Council regarding their concerns about the condition of the easement and requested appropriate remedial works.

Our clients subsequently contacted Mayor Lange and with his assistance a meeting was held with our clients, Mayor Lange, Mr Clark and Mr Kaesler at the Council's offices in Nuriootpa on 15 September 2022 (**the September meeting**).

At the September meeting our clients were informed that the condition of the easement had been reviewed and that it had been decided to put a recommendation to Council, at its January 2023 meeting, for an allocation of funds to construct an underground culvert to carry Council's stormwater from the Elizabeth Street side pit to the rear boundary of our clients' land.

Our clients subsequently confirmed this arrangement in writing with the Mayor, Mr Kaesler and Mr Clark. No advice to the contrary was received.

The recommendation put to the Council for its 24 January 2023 meeting was contrary to that what was agreed in the September meeting. The recommendation was to "... *maintain the existing level of service and open drain infrastructure ...* " The Council ultimately resolved to follow the recommendation.

Level 1 Darling Building
28 Franklin Street, Adelaide
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e. info@bllawyers.com.au
www.bllawyers.com.au

BL Lawyers Pty Ltd trading as Botten Levinson Lawyers ABN 36 611 397 285 ACN 611 397 285
sm:p223087_003.docx

Our clients have written extensively to Mayor Lange and Counsellor Schilling outlining their objections to the process followed by the Council and that they were misled by Council officers.

Our clients have now been advised that the easement will be a 3 metre wide dirt strip on which the Council proposes to construct a 1.3 metre wide trench at ground level, 1 metre at the base and 300mm deep (**proposed works**). It will be bare earth.

Our clients are concerned that the trench will be dangerous to the unwary. As you will appreciate, any attempt by our clients to secure their yard to make it safe for young children, dogs, etc, will require them to prevent access to the drainage trench. Plainly, the proposed trench is unfit and contrary to any reasonable use of this service easement for drainage purposes. That is, it is trite law that "*an easement must not unduly detract from the enjoyment of the servient land. An easement must not exclude the servient owner from the land. A right that would substantially deprive the servient owner or proprietorship or possession of part of its land is not a valid easement*".[1]

The manner in which the easement is proposed to be used by the Council would not only unduly detract from the enjoyment by our clients of the easement but would effectively act to exclude our clients from that part of their land over which they are registered proprietors. In short, the proposed usage of the easement by the Council is utterly inconsistent with its usage as an easement and on the face of it unlawful.

In the circumstances our clients wish to be clear that it does not consent to the proposed works and considers them unlawful. Our clients reserve all of their rights in respect to the Council's contemplated action including to seek damages and/or injunctive relief and will rely on this and prior correspondence as necessary, including on the question of costs.

Our client observes that there remains a clear and identified solution whereby Council could lawfully use the easement within its identified parameters and would likely overcome other legal issues in the vicinity which the Council is aware of. That solution is, of course, installing an appropriately sized culvert within the easement in the event the Council wishes to make use of the easement.

Yours faithfully



Syd McDonald
BOTTEN LEVINSON
Mob: 0411 554 253
Email: sm@bllawyers.com.au

[1] *KI Seaport Pty Ltd v Abstraxion Pty Ltd* (2020) 137 SASR 78.

sm:p223087_003.docx

From: Syd McDonald <sm@bllawyers.com.au>
Sent: Friday, 17 March 2023 4:34 PM
To: Martin McCarthy
Cc: Lucy Dillon
Subject: [EXTERNAL] RE: 18A Elizabeth Street Tanunda - Service Easement (BLL 223087)

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Dear Mr McCarthy,

We would be grateful if you would provide us with the details of the Council's proposal.

Regards,

Syd

BOTTEN LEVINSON Lawyers

Syd McDonald
Principal
e. sm@bllawyers.com.au
t. 8212 9777 | **m.** 0411 554 253
Botten Levinson Lawyers | Level 1, 28 Franklin Street, Adelaide SA 5000
www.bllawyers.com.au

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From: Martin McCarthy <mmccarthy@barossa.sa.gov.au>
Sent: Friday, 17 March 2023 4:21 PM
To: Iliana Mulraney <imm@bllawyers.com.au>
Cc: Syd McDonald <sm@bllawyers.com.au>
Subject: RE: 18A Elizabeth Street Tanunda - Service Easement (BLL 223087)

Thanks

efore I respond formally, have you been informed that it wont be bare earth?

Otherwise I believe you may need to talk to your client further.I

I will have our solicitors respond on due coursed once I understand the response to my question above.

Regards
Martin

Martin McCarthy
Chief Executive Officer
E: mmccarthy@barossa.sa.gov.au | T: 08 8563 8444

From: Iliana Mulraney <imm@bllawyers.com.au>
Sent: Friday, 17 March 2023 4:15 PM
To: Martin McCarthy <mmccarthy@barossa.sa.gov.au>
Cc: Syd McDonald <sm@bllawyers.com.au>
Subject: [EXTERNAL] 18A Elizabeth Street Tanunda - Service Easement (BLL 223087)

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Dear Mr McCarthy,

Please find **attached** our letter dated 17 March 2023 for your attention.

Regards,

On behalf of Syd McDonald

BOTTEN LEVINSON Lawyers

Iliana Mulraney
Legal Secretary
e. imm@bllawyers.com.au
t. 8212 9777 | **m.**
Botten Levinson Lawyers | Level 1, 28 Franklin Street, Adelaide SA 5000
www.bllawyers.com.au

Please notify us immediately if this communication has been sent to you by mistake.
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From: Martin McCarthy
Sent: Monday, 27 March 2023 8:30 AM
To: Paul Keady; Bim Lange; Syd McDonald
Cc: Michael Kelledy
Subject: RE: [EXTERNAL] 18a Elizabeth Street, Tanunda

Dear Paul

You will receive further correspondence today.

I can try and have our contractor recommence the agreed work (which is in the draft correspondence our solicitors are reviewing), which would have been completed last Monday, if you provide that approval but I cannot guarantee they would be available.

Otherwise please as instructed direct your correspondence to our solicitors as you and your legal representative have been informed.

Regards
Martin

Martin McCarthy
Chief Executive Officer
E: mmccarthy@barossa.sa.gov.au | T: 08 8563 8444

From: Paul Keady <keadypaul@gmail.com>
Sent: Monday, 27 March 2023 8:22 AM
To: Martin McCarthy <mmccarthy@barossa.sa.gov.au>; Bim Lange <michaeljameslange@bigpond.com>; Syd McDonald <sm@bllawyers.com.au>
Subject: Re: [EXTERNAL] 18a Elizabeth Street, Tanunda

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Dear Mr McCarthy,

As predicted it is raining and your stormwater is creating a quagmire on our land following Council's works on the easement.

Please accept this email as our request for Council's urgent attention to avoid flooding on our property and that of our neighbours.

Regards
Paul and Dagmar Keady

On Fri, 24 Mar 2023, 3:00 pm Martin McCarthy, <mmccarthy@barossa.sa.gov.au> wrote:

> Hi
>
> Thanks but we are now legally represented on this matter and our solicitors will respond in due course . I have instructed my staff and councillor to not respond at this time.
>
> I ceased activity at your solicitors request.

Please do not correspond directly on this matter noting I have informed you of our legal representation and have your solicitors correspond if necessary.

Regards
Martin

Martin McCarthy
Chief Executive Officer
Office of the Mayor and CEO
E: mmccarthy@barossa.sa.gov.au | T: 08 8563 8444

The Barossa Council

The Barossa Council | 43-51 Tanunda Road | PO Box 867 NURIOOTPA SA 5355
www.barossa.sa.gov.au | T: 08 8563 8444

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On 24 Mar 2023, at 2:03 pm, Paul Keady <keadypaul@gmail.com> wrote:

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Dear Mr McCarthy,

Our solicitors forwarded to us your email dated 21 March 2023 and they are aware that we are writing directly with you. They remain instructed and will hold a watching brief pending further developments with you.

Please direct future correspondence to us.

We remain hopeful that we can engage in mutually respectful discussions with you to resolve our easement issues.

You have chosen to cease any work on the easement. As you are aware, the easement is not in a fit state to drain stormwater from Elizabeth Street. Rain is forecast and flooding on our land and our neighbours land will occur. Something needs to be done. What do you propose?

Yours faithfully

Paul & Dagmar Keady

Begin forwarded message:

From: Paul Keady <keadypaul@gmail.com>
Date: 29 March 2023 at 5:51:21 am ACDT
To: Mayor Lange <mayor.lange@barossa.sa.gov.au>, Cr John Angas <jangas@barossa.sa.gov.au>, Cr Don Barrett <dbarrett@barossa.sa.gov.au>, Cr David de Vries <ddevries@barossa.sa.gov.au>, Cr Jane Evans <jevans@barossa.sa.gov.au>, Cr Jess Greatwich <jgreatwich@barossa.sa.gov.au>, Cr Tony Hurn <thurn@barossa.sa.gov.au>, Cr Rick Lane <rlane@barossa.sa.gov.au>, Cr Bruce Preece <bpreece@barossa.sa.gov.au>, Cr Kathryn Schilling <kschilling@barossa.sa.gov.au>, Cr Heidi Thompson <hthompson@barossa.sa.gov.au>, ctoup@barossa.sa.gov.au
Subject: [EXTERNAL] 18A Elizabeth Street, Tanunda 5352 - Keady

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Dear Councillor,

We are the owners of 18A Elizabeth Street, Tanunda.

On 24th January 2023 the Barossa Council considered an Agenda item relating to our home at 18A Elizabeth Street, Tanunda. That item related to Council's use of a stormwater easement on our land, adjacent to our home. That easement is currently a dirt strip. The easement is for Council's use to drain its stormwater from Elizabeth Street into Julius Street.

Since March 2022 we have been communicating with various employees of the Barossa Council, Mayor Lange and more recently some Councillors. Unfortunately, our concerns have not been resolved and both we and Council have engaged solicitors. In due course the legal process will play out at great cost and inconvenience to us all. A pity that this could not have been avoided.

We are writing to you and to all the Councillors of the Barossa Council as we just want you to know why it has been necessary for us to seek legal advice and to hear our hurt and frustration as to how we have been treated by Council's management.

Since March 2022 we have been corresponding with Mr Kaesler about our concerns with the easement on our land. The easement was overgrown with vegetation and trees blocking the water flow from Elizabeth Street to the rear discharge point in our yard. We saw rats and suffered mosquitos. When it rained it was a wet bog. It flooded our land and our neighbours. Mr Kaesler advised us that in his opinion the level of service by Council was appropriate

Whilst we were trying to get something done about the condition of the easement, Council officers were concerned to promote the interests of our neighbours who had run pipes to discharge their stormwater on our land. We were getting nowhere with Council officers.

Friends advised us to contact Mayor Lange. We did so and he responded by attending our home. Mayor Lange was sympathetic and indicated he thought it was Council's responsibility to rehabilitate the easement. He offered to arrange a meeting with the engineering team. We were elated that finally we had made some progress.

Mayor Lange arranged the meeting at Council chambers, Nuriootpa, held on 15 September 2022. Attending were Mayor Lange, Mr Clarke, Mr Kaesler, Paul & Dagmar Keady. At that meeting we were advised that the agreed solution to the drainage problems on the easement was for Council to construct an underground culvert. It was stated that the new side pit in Elizabeth Street would increase the volume and velocity of the water flow along the easement. A hydrology report was produced.

It was discussed that there would be a delay as the Council needed to approve the funds and that the Council was in caretaker mode pending the elections. Mr Clarke indicated a total cost of about $80,000.00. No other option for the stormwater flow was discussed.

It was agreed that all construction works ie. constructing the new side pit and clearing vegetation off the easement, would be deferred pending Council's approval as it would be cheaper for all the work to be completed at the same time. It was noted that this solution would also resolve our difficulties with our neighbours as they could connect an underground pipe into the culvert to discharge their stormwater.

We left that meeting with the clear understanding that there was a commitment by those present to put to Council, at its January 2023 meeting, a recommendation to approve funding for an underground culvert to carry Council's stormwater from the new side pit in Elizabeth Street, along the easement to the rear junction on our land and then into Julius Street. We were elated and thanked all present.

We sent an email to Mayor Lange, copied to Mr Clark and to Mr Kaisler, confirming this agreement.

Council elections were held and we sent a follow up email to Mr Clark to enquire whether anything further was required of us.

The Agenda item and Report with Recommendations presented to you at your meeting on 24 January 2023 were not what had been discussed and agreed with us at the 15 September 2022 meeting.

We were not informed of any reason why the agreed recommendation was not put to Council for approval. We relied on the integrity of those attending the meeting on 15 September 2022 that this commitment would be upheld.

We immediately contacted Mayor Lange. We were upset. We prepared correspondence to go to your meeting requesting an adjournment. Mayor Lange advised us to allow the Agenda item to proceed because that at least would mean the vegetation would be removed before the winter rains. We accepted his advice.

As stated, the Agenda item you considered and approved on 24 January 2023 was not as agreed with us. Please note:

1. None of our correspondence with Council officers was provided to you to give some context about our concerns with the condition of the easement.

2. We were not advised of the Agenda item nor were we provided with the Report or Recommendations. We didn't have an opportunity to give you our response to the matters raised in that report.

3. You were not advised of our meeting with Mayor Lange, Mr Ben Clarke and Mr Steven Kaisler at Council's Offices, Nuriootpa, on 15 September 2022, nor the commitment given to us at that meeting.

4.We have walked this area of Tanunda and there are concrete gutters on private premises running the stormwater into the street. In fact, the stormwater passing on our property enters a concrete drain into 19 Julius Street then into your underground concrete pipes.

5. This is not a piece of temporary infrastructure. It would have a life of many decades and accommodate climate change projections.

We have always prepared to meet and discuss options with Council regarding how best to deal with the stormwater flow over our land. Instead, we were ignored.

The vegetation has now been removed by Council from the easement. We have a dirt strip some 3 metres wide. We were told that the Council proposes to construct a dirt trench, 1.3 metres wide, 300mm (12 inches) deep, 52 metres along the easement on our land. When it rains, the trench will be a dirt bog carrying water and detritus from the roadway and gutters across our land. We can't secure our back yard without blocking the trench. Our dogs can escape onto Elizabeth Street as can our young grandchildren. The trench will be dangerous to the unwary. We are told that the balance of the easement is to be left as bare dirt.

Council's proposal for the easement effectively resumes a 3-metre strip of our land from front to back.

We have written to various Councillors with our concerns. We are advised to wait and see until after the trench is constructed. With respect, we live here. We know what to expect.

Construction of the trench was to commence on 20 March 2023. Significant funds were to be expended. As a last resort we had our solicitors write to Mr McCarthy on 17 March 2023 setting out our legal position and concerns. Mr McCarthy has advised us that the Barossa Council is now legally represented.

The work has not proceeded. The easement is churned up dirt and incapable of draining stormwater. Flooding into our yard occurred with the recent rains. We reported that to Mr McCarthy. In its current condition we will have recurrent flooding of our land and potentially

that of our neighbours. The rain this morning has left us with a flooded quagmire. Drive past, have a look.

Our purpose in writing this email is for you to understand our frustration and that legal proceedings are our last resort. The legal costs incurred by ourselves and the Council will far exceed the cost of the work which was agreed on 15 September 2022. We are saddened that there was a practical solution that was costed and ready to go and that now we will all have to resort to costly legal proceedings to potentially get to the same practical solution agreed in September 2022. We are not villains or whingers. We moved to Tanunda 2 years ago as retirees. We love it here. We have met so many lovely people.

Would you put in a fence with a gap 1.3m wide and 300mm deep? No, it would be useless to secure your dogs, children etc. That's what we will have with the trench. Would you dig an open trench 1.3m wide, 300mm (12 inches) deep along your land and not worry about visitors, children falling into it etc? Not likely, it would be an injury risk. But, that's what is offered to us.

The easement is on our land. We should be consulted when decisions are made by Council about our land. That happened on 15 September 2022. It has not happened since.

We could have simply worked together and avoided the need for lawyers and solved the problem together.

Each of you was elected on the promise to be responsive to the public, to ensure management accountability and act on the legitimate concerns of ratepayers. We acknowledge and thank Mayor Lange, and Councillors Schilling and Evans for engaging with us. They can't change Council's decision of 24 January 2023. We know that. But that doesn't change the fact it was a decision taken without any input from us, the landowners.

There are only two options for your stormwater drainage on the easement. The recommendation was for the cheap option. There was no assessment as to how it would affect us, not just now but everyday.

We extend an invitation to each of you to come to 18A Elizabeth Street, Tanunda, look at the easement, talk to us if you please, and decide for yourself how you would feel in our position. No appointment necessary. We don't ask that you agree with us. Just understand us.

We are happy to provide you with copies of correspondence we have had with Council Officers including those referred to above.

Yours faithfully

Paul & Dagmar Keady

0409836179

Kelledy Jones

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4 May 2023

Mr Syd McDonald
Botten Levinson Lawyers
Level 1, 28 Franklin Street
Adelaide SA 5000

VIA EMAIL: sm@bllawyers.com.au

CC: mmccarthy@barossa.sa.gov.au

18A ELIZABETH STREET, TANUNDA - EASEMENT

Dear Syd

As you are aware from our email exchange in April, we act for the Barossa Council in this matter.

We do not take issue with your statements about the existence and details of the easement for drainage purposes, save that we say its genesis dates to 1993 when the then DC of Tanunda issued a Planning Decision Notification in respect of a proposed extension to the property at 18 Elizabeth Street, Tanunda. We do, however, reject entirely any suggestion that your clients have, at any time, been misled by Council officers about the current differences of opinion about maintenance of the easement.

As recognized by you, the Council has determined in its considerations of the issue of maintenance of the easement, to retain the existing level of service by way of an open drain, consistent with the drainage arrangements and needs of the location and downstream properties. It has already undertaken the vegetation clearance and has committed to remediation and improvement works to the existing open channel to complement the side entry pit upgrade. Accordingly, the Council position is that the appropriate action to resolve the matters raised by your clients, is to rehabilitate the easement with the construction of a trench, of the same width and length as the existing swale, but to allow for excess stormwater and any debris to be discharged by waterflow direction through to Julius Street.

The Council is aware of and has taken into account, all relevant considerations around the current condition of the easement. It has, however, determined that the solution, as per your clients' request for remedial works, does not and will not involve the construction of an underground culvert. The Council does not share the concerns of your client that the drainage trench will be dangerous to the unwary and will not be unfit and will be contrary to any reasonable use for drainage purposes. Indeed, the Council solution in this matter does not detract in any way from the situation as it currently exists and has existed for some time. It is to be noted, however, that the Council remains open to reasonable suggestions as to 'finishing' the area, including for example, with rip wrap or grassing of the swale on condition that it does not impact the flow of the stormwater.

This Service Easement, as annotated on the Plan of Division, is a statutory easement that exists by virtue of section 223LG of the *Real Property Act 1886*. It is an easement in gross in favour of the Council and does not raise any issues of concern around the dominant/servient tenement considerations to which you allude. As you will be aware, the existence of this type of and this particular easement in favour of the Council, means that the Council enjoys the necessary power to undertake the works as proposed, for the purpose of maintaining and ensuring the appropriate use thereof. In this regard, the resultant easement configuration will not be dissimilar to the existing swale configuration. The works will not, as per your clients' assertion, result in a 'bare earth' facility and your clients were, in fact, informed of this by the Council Project Manager. Rather, the drainage trench will include a concrete floor and ballast rock throughout the inlets.

In addition, in the circumstances of this particular easement, it is to be noted that the Council is entitled to permit the adjacent property to access the easement for stormwater drainage purposes, a permission that is both within and consistent with the terms of the easement. This is in the context of the fact that the easement is for drainage purposes and in favour of the Council which is able to authorize the adjacent property to do as it is doing.

The works to be undertaken by the Council are lawful and consistent with the use of the easement. The Council is entitled to enter the land to fulfill its obligations to carry out the appropriate maintenance of the Service Easement (see section 223LG(2) of the RP Act). It may break the surface, dig, open up, and use the land for purposes of fixing, taking up, repairing, re-laying or examining the drain to ensure that it is fit for the purpose of the drainage function and in this regard may enter the land, if necessary with vehicles and equipment. Given the objections raised by you to the proposed works, followed by your clients' then demands to the Council for works to be undertaken, followed again by your statement that the works should not be undertaken, the Council contractor has left the site. The contractor will be unable to return for an 8-10 week period. It is expected, therefore, that the works will be undertaken in mid to late June. The Council will keep your clients informed in this regard.

In closing, the 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 your client's maintenance work demands. Indeed, what has been proposed by your clients' in terms of the underground culvert, is not only unnecessary for purposes of maintaining the easement, it is also disproportionate to the Council's maintenance responsibilities. It would require the expenditure of significant funds which the Council has determined, is not warranted in the circumstances of the matter.

Whilst not necessarily to the satisfaction of your clients, we consider that this now resolves the matter.

Yours sincerely
KELLEDY JONES LAWYERS

MICHAEL KELLEDY
Direct Line: 08 8113 7103
Mobile: 0417 653 417
Email: mkelledy@kelledyjones.com.au

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From: Paul Keady <keadypaul@gmail.com>
Sent: Friday, 19 May 2023 11:07 AM

To: Michael Kelledy <mkelledy@kelledyjones.com.au>
Subject: 18A Elizabeth Street, Tanunda 5352

Dear Mr Kelledy,

We refer to your letter dated 4 May 2023 to our former lawyers, Botten Levinson. Please note that for the moment we are self-represented and all correspondence should be addressed to us.

There are considerable differences in our opinion about what is required, historical matters and the way that the Council officers have dealt with us. However, facts are facts.

The meeting on 15 September, 2022, with Mayor Lange, Mr Clark and Mr Kaesler and the agreement reached at that meeting is beyond doubt as is the failure of any Council officer to engage with us regarding the proposed trench prior to the meeting of Council on 24th January, 2023 or since.

The current dispute could have been avoided had we been paid the courtesy of consultation as to why the original proposal, by the above Council officers, of the construction of an underground culvert, would not proceed despite their commitment to do so.

We don't propose to litigate this matter through correspondence with you. We are all aware of the provisions of Section 223LG of the RPA and we have had the benefit of advice in that regard. You will note in our correspondence to Council our commitment to co-operate and engage with it. Sadly, our offer has not been reciprocated.

We do note that the proposed trench is a substantial variation of the swale that existed prior to the clearance work performed by your client. It is an unreasonable response to your client's stormwater disposal requirement and ignores our rights as the land owner to have reasonable enjoyment of our land upon which the easement is situated. In essence your client proposes to have sole possession of that part of our land over which it has a mere easement

To avoid confusion between us, would you please provide us with the following:

1. A detailed plan of the proposed works, showing the exact location of the trench including its dimensions.

2. We were told that the trench would have a bare earth base and sides as would the easement. You infer that the base of the trench is to be concrete. We have not been told that before. Please advise what is proposed for the base of the trench, the sides and the surrounds.

3. What is proposed by way of landscaping/rehabilitation of the balance of the easement that is currently "bare earth".

4. Has Council addressed the safety aspects of having an open trench on our premises? If so please provide us with Council's report in this regard. Safety is a major issue for us. We have elderly friends, grandchildren including toddlers and the tripping, falling, drowning danger is quite obvious. It must be addressed. Will your client indemnify us in writing for any injury or damage which may occur due to the trench?

The swale will meet construction and building standards and will easily be visible. The land is and remains available for drainage. If Council is alleged to be a cause of injury or damange from our responsibilities then Councils insurer will manage any such claims.

5. Pursuant to section 43 of the Dog and Cat Management Act, 1995 we are legally obliged to prevent our small dogs from wandering at large. The opening in the trench prevents us from doing so. With the trench we cannot secure our yard. We have raised this with your client. No response. What is their response please?

This responsibility is that of the owner of the dog, the management of the swale is in accordance with our responsibilities. Council can look at a grate or simple solution that does not impede waterflow to assist.

6. We are surprised to read your comments regarding our neighbours' access to the easement without our consent. You are aware that we have on numerous occasions asked for details of any determination by Barossa Council in this regard. Please provide us with the details of any approval by Barossa Council that you suggest authorizes our neighbour to access our land directly for drainage purposes (not that we accept the proposition made by you at law, we don't).

This has been answered in your representation to them and I have informed them they can apply for information under FOI. Happy to release what you believe is necessary to release.

7. Does your client's construction plans provide for our neighbour to cross our boundary with them to access the proposed drainage trench? If so, please advise full details including the location on our boundary and the means of access.

Yes – already answered under 6 above.

8. We have served a Notice to Fence on our neighbour in relation to the current unfenced portion of our boundary. A fence will be constructed. Does your client's proposed construction impact this?
No

9. Mr McCarthy committed in writing to discuss with our neighbours running their stormwater by pipe to the street. Has he done that? Please advise details.

Yes, they refused.

10. The issue of our neighbour's stormwater access to our land is a local dispute involving a fence. Please advise on what basis Council is acting on our neighbour's behalf?

We are not acting on their behalf we are answering the questions raised. The neighbour has a righ to discharge as outlined at 6. Council has no interest in the fencing matter.

As previously indicated, we remain committed to working cooperatively with the Barossa Council regarding the proposed work and the issues raised by us to try and achieve an agreed outcome. Your client is welcome to deal with us directly in this regard. Legal proceedings should only be necessary when all other avenues are exhausted.

A prompt response to the above is appreciated.

Yours faithfully,

Paul & Dagmar Keady.

Dear Ms D'Agostino,

We confirm that you attended our premises on Friday 18 August 2023. Thank you for your time and for listening to us. It was refreshing for us to be heard and to voice our concerns, and frustration, regarding our dealings with various officers of the Barossa Council. We had rain that morning and you had the opportunity of viewing the easement/swale. It's not a pretty sight.

Our email dated 15 August, 2023 provided you with a summary of the history of this matter and the events leading up to and occurring at the Council meeting on 24th January, 2023. We adopt that email as part of your Review.

You also have our letter dated 19 June 2023 requesting a section 270 Review of the Barossa Councils (TBC) decision dated 24 January 2023, in relation to 18A Elizabeth Street, Tanunda, ("the premises") being Debate Report No 22/74352 authored by Mr Steven Kaesler, Manager Engineering Services.

The following is a summary for your assistance in understanding the issues in this matter.

1. The History.

a. We are the registered proprietors of the premises as from 15 December 2021.

b. The premises were created by Deposited Plan D92546 on 29/01/2014, subdivided from 20 Elizabeth Street, Tanunda.

c. TBC has the benefit of an easement "for Drainage Purposes" created pursuant to section 223LG RPA. That easement is 3 metres wide and runs along our eastern boundary with 18 Elizabeth Street, Tanunda. The easement takes TBC's stormwater from an existing side pit in Elizabeth Street, which flows into the easement and exits at the rear boundary into 19 Julius Street, which has a concrete culvert to carry the stormwater into underground pipes in Julius Street. TBC does not have a stormwater easement over 19 Julius Street, Tanunda.

d. When we purchased the premises, the easement was covered with vegetation, mature trees and date palms. The flow way was silted up, there was little drainage and generally the swale was unfit for purpose, as was the side pit from Elizabeth Street, which was constantly being clogged by leaves and debris from the gutters and roadway, causing flooding in this section of Elizabeth Street.

d. The condition of the swale causes flooding along the easement, into our rear yard, and into the rear neighbours yards, particularly Mr Greers of 17 Julius Street, Tanunda. Mr Greer has complained to TBC on a number of occasions without result.

e. At the time of purchase we were not aware that the swale was inadequate to cope with TBC's stormwater. We found that out with a couple of major rain events in March 2022.

f. In March 2022, we had major flooding in Elizabeth Street. The side pit was inadequate to cope with the rain event and flooding along the easement and it quickly proved inadequate to cope with that stormwater that could access the easement. We complained to TBC.

g. On approx. 11 March 2022, Mr Kaesler of TBC attended the premises. We discussed the easement problems with him. Following this meeting we wrote to him on 13 March 2022 about our problems with the condition of the easement.

h. On 14 March 2022, we met with the Verhees regarding a boundary fence. They insisted that they have TBCs permission to run their stormwater across our boundary with them, onto our land. They maintain that position.

i. On 13 April 2022 we received an email response from Mr Kaesler. He referred to a permission for our neighbours to access the easement. This was gratuitous as we had not raised this in our email to him. It is logical to conclude that the Verhees had contacted TBC following our discussion with them on 14 March, above.

j. On 19 April 2022, we emailed Mr Kaesler requesting particulars of any approval for the Verhees to deposit their stormwater directly onto our land.
Despite numerous requests we have never been provided with these details.

k. Further emails between us on 19 April, 2022 are enclosed. We note Mr Kaeslers comment "Very happy to work through this with you to ensure options available to us and Council are explored."
Didn't happen.

l. On 2 May we received an email from Mr Kaesler. He refers to Section 8 Guidelines for Undertaking Land Division March 2021. Note Paragraph 8.12. Minimum Requirement, not to scour and to be grass lined.

m. We replied requesting further particulars on 3 May 2022.

n. Email from Steven Kaesler dated 6 May 2022, quoting Ms Lennon, re Planning Department and email trail from Ms Lennon attached.

Emails with Mr Kaesler are **ATTACHMENT A.**

Email from Ms Janine Lennon dated 10 May 2022 is **ATTACHMENT B.**

Mayor Lange.

o. We were going nowhere with our dealings with Mr Kaesler. We were advised to contact Mayor Lange to discuss our stormwater issues. It was stated that he was formerly employed by TBC, in charge of Capital Works, and would understand our problems.

q. On 17 July 2022 we sent an email to Mayor Lange seeking his assistance.

r. On 29 July 2022, Mayor Lange attended our premises. Mayor Lange indicated it was TBC's responsibility to remove the vegetation on the easement. He indicated he would arrange a meeting with Council's Officers to discuss the condition of the easement and remedial options. We were relieved. We were making progress.

s. On 15 September 2022, we met with Mayor Lange, Mr Ben Clark and Mr S. Kaesler at TBC's office at Nuriootpa. We were advised by Mr Clark and Mayor Lange that an underground culvert was the best option to carry Council's stormwater from the proposed upgraded side pit in Elizabeth Street along the easement discharging into the existing concrete culvert in 19 Julius Street, Tanunda. No other option was discussed.
Mr Clark indicated that the approximate cost of all works would be about $80,000.00.
Mr Kaesler had an expert report on flow analysis which he gave to us.
The TBC was in caretaker mode pending the Local Government elections. A new side pit in Elizabeth Street, which was approved on 14 June 2022, budget, $30,000.00, and the vegetation removal could have

proceeded immediately. It was discussed and agreed that it would be cost effective for these works to be put on hold until TBC approval for the proposed culvert. It was noted that the earliest approval date would be the January meeting of the new Council.
We also discussed the Verhees stormwater discharge. It was stated by Mr Clark that the Verhees stormwater could be connected by running underground pipes to the culvert. It was stated by Mayor Lange that a culvert was the way to go as it would solve both problems i.e. ours with the easement condition, TBC and Verhees with the Verhees stormwater.

Please note our emails with Mayor Lange on 15/09/22 confirming our agreement at the meeting that day i.e. "....for the new Council to allocate funds to install a culvert on the easement at the same time as the other works are conducted" and Mayor Lange's response
"thanks Paul ..the more I listen to the conversation I believe the long term fix is definitely the way to go up front. cheers"

Please also note our email dated 15 September 2022 addressed to Mayor Lange and copied to Mr Clark and Mr Kaesler.

Our various emails to Mayor Lange are **ATTACHMENT C.**

t. Following the meeting on 15 September 2022, Council elections were held, Bim Lange was returned as Mayor.

C. MR CLARK.

u. On 16 September 2022 we emailed Mr Clark confirming the culvert proposal and detailed our problems with the Verhees. Mr Clark was to investigate and advise the details of the purported "permission " by TBC for the Verhees to access our land.

His response referred to a 1993 D/A which predated the creation of the premises and is not noted or referred to on the Certificate of Title of the premises or on the Plan of Subdivision.

u. On 20 December 2022 we emailed Mr Clark seeking his assurances that all was on track for the submission to TBC for approval for funds to construct the culvert at the January meeting.

v. He responded on 21 December that a report would go to Council at its January meeting to "determine the support of the Elected Members for the expenditure".
In context, we understood him to mean that his report would be as previously agreed.

ATTACHMENT D.

w. On 21 September 2022 TBC requested its contractor to address expanded works ie a culvert.
x. On 19 December 2022 we sent the Verhees an email enclosing a fence quote and advising them that "Council has confirmed that you have no approval by it to access the easement on our land along the proposed boundary fence".
See emails with Mr Clark, **Attachment D.**
The Verhees responded by email dated 23 December, 2022 confirming their view that they were entitled to deposit their stormwater on the easement on our land.

y. On 21 January 2023, we checked the agenda for the Council meeting for 24 January 2023. We were stunned and upset. The recommendation was not as agreed. We had no warning. We were misled.

z. We then had an email exchange with Mayor Lange commencing 21 January 2023 regarding the Debate Report going to Council on 24 January 2023.

Mayor Lange advised us to allow the Recommendation to proceed as drafted as any delay would mean that the vegetation would not be cleared prior to the winter rains. In a telephone conversation with Mayor Lange on 24 January, we raised the culvert agreement. Mayor Lange advised that this issue was a matter for the elected members but if we delayed then it was unlikely that funds would be allocated, and works commenced, until at least late 2023, due to a shortage of materials.

ATTACHMENT E.

aa. We continued to engage with Mayor Lange and also contacted other Counsellors regarding the impact of Council's decision on our home. Counsellor Schilling was kind and attended our premises.

BENN KROMWYK

bb. Other than our short email exchange with Mr Clark in December 2022, we heard nothing from him or Mr Kaesler prior to Council's meeting on 24 January 2023. The clearance of the vegetation and drainage works were referred to Mr Kromwyk.

cc. We first met with Mr Kromwyk on 20 February, 2023 at our premises. He attended with Mayor Lange. Mr Kromwyk advised us what trees and vegetation were being removed and the time table for that to occur. He indicated that it was proposed to construct a dirt drain. Mr Kromswyk indicated that the design details would be discussed with us prior to work commencement.
Separately, we discussed the Verhees problem with Mayor Lange and he agreed to raise this issue with Mr McCarthy, CEO of TBC.

dd. We had a number of email exchanges with Mr Kromwyk. He made it clear that he was instructed to put into effect Councils adopted Recommendation and that any variance was "above his pay grade"

ee. On 2 March we sent a text message to Mayor Lange that we had not received any documents detailing the proposed drainage construction nor had they been discussed with us.

Mr Kromwyk advised us TBC proposed to construct an open dirt trench, 1 metre wide at the bottom, 1.3 metres wide at the top, and 300mm deep. It was indicated the TBC might consider putting loam and grass seed onto the easement which otherwise would be left as bare dirt.

Our emails with Mr Kromwyk are **ATTACHMENT F.**

ff. On 7 March 2023 we received a text from Mayor Lange indicating that he had discussed the Verhees depositing their stormwater on our property with Mr McCarthy and that the Verhees had D/A approval to do so. This is incorrect. The only D/A that related to our land specifically precluded the Verhees from putting their stormwater onto our land.

Mr MCCARTHY

gg. On 8 March 2023 we emailed Mr McCarthy with our concerns regarding TBC's continued insistence that the Verhees could directly deposit their stormwater onto our land.

That email trail is **ATTACHMENT G.**

hh. On 17 March, 2023 we instructed our solicitors, Botten Levinson, to write to TBC outlining our objections to the proposed construction works. Thereafter we had correspondence with Mr Kelledy of Kelledy Jones Lawyers. He provided us with a rough construction diagram of the proposed trench. Of

significance to us, TBC proposed to construct drain ways for the Verhees stormwater to cross our eastern boundary despite our objections.

ATTACHMENT H.

ii. Following that letter, TBC ceased work and that situation has continued ever since.
You have viewed the current condition of the easement.

jj. There has been subsequent correspondence regarding the Verhees accessing our land on the easement. The relevance of this correspondence is that TBC has apparently committed to be responsible for the Verhees Stormwater.

You read the relevant paragraph in the Affidavit of Jennifer Verhees sworn 27 June, 2023 and filed in the Magistrates Court.

2. MEETING 24 JANUARY 2023.

1. The youtube recording of TBC Meeting on 24 January 2023 shows the discussion of debate report 7.4.1. This recording shows that Mayor Lange, Mr Ben Clark and Mr Steven Kaesler were present. None of those persons advised this meeting that they had met with us on 15 September 2022, nor of their agreement that an underground culvert was the appropriate drainage solution at that time.

b. Ms Janine Lennon was in attendance at this meeting. None of Ms Lennon, Mr Clark, Mr Kaesler or Mayor Lange advised the Council meeting that someone at TBC had made a commitment to the Verhees that they could deposit their stormwater directly onto our land.

c. The Council discussion considered whether we "knew" of the easement at the time we purchased 18A Elizabeth Street, Tanunda. Our circumstances, alternative solutions or the merits of an increased level of service were not considered. Nor was the impact on us of the existing level of service considered at all.

2. The Debate Report presented to TBC on 24 January 2023 was misleading and inaccurate, Inter alia:

1. There is no mention of our meeting with Mayor Lange, Mr Clark and Mr Kaesler on 15 September 2022 nor of the commitment we were given that a culvert was the preferred way to go to resolve the drainage issues on our land.

2. Despite Mr Kaesler's comment in his penultimate paragraph, TBC does not have an easement similar to ours. We know because we asked and have checked the list provided by Mr Clark. Our situation is exceptional and unique. As far as we are aware we are the only easement which is fed directly by a side pit with a large Council catchment, adjacent to our home, then feeding into a rear concrete culvert along 19 Julius Street, along which TBC does not have an easement!

3. There is no disclosure of staff members permitting the Verhees to deposit their stormwater onto our property. There was no disclosure that TBC had agreed to be responsible for the Verhees stormwater, the legal basis of why TBC assumed this responsibility nor what role this commitment played in the recommendation put to Council. ie the construction of a drain which would give the Verhees ready access to our land.

4. We were not advised that the Recommendation had changed; no options or alternatives were presented in the Report. Nor were any options discussed with us.

5. We were not given the opportunity of putting our concerns to TBC including the impact of the dirt swale on us.

6. There has been no engineering, health, safety or environmental reports obtained to assess the various drainage options.

7. Important matters such as the ongoing maintenance costs to TBC of a dirt swale etc were not presented or considered.

8. We have consulted with an engineer. He has warned us that continual wetting and drying of a dirt trench can cause cracking in our foundations. There is already cracking in the concrete apron abutting the easement. None of this was considered.

9. We believe that if the meeting was advised of what was proposed ie a dirt trench and how it would impact us then at the very least the elected members would have wanted alternative options to be presented to them for consideration.

Our correspondence with TBC and Council officers outlines other concerns regarding the proposed works including safety, our dogs, erosion, scouring etc..

10. On 9 June 2023 TBC arranged for us to meet with Mr Clark and Mr Kaesler. They attended our premises. After discussion Mr Clark agreed to come back to us with further information.

Thereafter we had email correspondence with Mr Clark where he discussed a concrete spoon drain. Mr Clark was to provide us with details of a maintenance program, etc but it seems that TBC is now awaiting this Review.

Our recent email trails with Mr Clark and Mr McCarthy is **ATTACHMENT I.**

FURTHER-

A. Verhees -
a. TBC is aware that we have legal advice confirming that TBC does not have the authority under section 223 LG to grant 3rd party access to the Verhees to our land. We have initiated injunctive proceedings against the Verhees in the Magistrates Court, Elizabeth. The Verhees assert that they have had such permission from TBC since their D/A approval 960/276/2019. However, the terms of that approval by TBC were unequivocal; the Verhees were not to put their stormwater onto the easement (our land). Condition 3.
Further it is known that the Verhees did not comply with stormwater conditions of that D/A. They ran their stormwater pipe onto our land, not to the rear of their yard as planned. Mr Kaesler was shown this but no action has been taken by TBC.
These proceedings have been adjourned until 15 September,2023 for further mention.

b. Emails from Ms Janine Lennon (see attachment B) and Mr McCarthy (see attachment G email 8 March 2023) suggested that TBC was adopting a neutral stance in our stormwater dispute with the Verhees. However TBC continued to support the Verhees and to assert a permission whilst refusing to provide us with any details to support that position. In affidavit evidence in the Magistrates Court, Jennifer Verhees has sworn that TBC has agreed to be responsible for their stormwater. This explains why the Verhees have since March 2022 asserted we should deal with TBC, not them. This financial interest was not disclosed to us nor to the Council at its meeting on 24 January 2023.

We have recently received threatening emails from Mr McCarthy and Mr Clark. They have abetted a trespass on our land to unblock encroaching pipes from the Verhees. They know these pipes are not on the

easement and were not blocking the easement. One of these pipes is the one contrary to TBC's D/A approval 960/276/20198.

B. We have lodged a number of Complaints with TBC regarding various Council Officers bias in favour of the Verhees. We have made numerous requests, but TBC has not provided us with any details of the purported approval by TBC for the Verhees to access our land.

Other relevant documents are:

1. Our email to Mayor Lange and Counsellor Schilling dated 14 March 2023. **ATTACHMENT J.**

2. Our email to Counsellors of TBC dated 29 March 2023; **ATTACHMENT K.**

3. Our FOI request and the paucity of documents discovered. **ATTACHMENT L.**

4. Our emails with Kelledy Jones, solicitors for TBC. You will note that the plan of the trench includes drainways from the Verhees onto our land despite our objection. Mr Kelledy has not provided any details of the purported TBC permission to the Verhees. (see Attachment H).

5. Photos taken 22 August 2023 showing the current condition of the easement. **ATTACHMENT M.**

Our issue with the Verhees should be a separate matter to TBC's construction of drainage on the easement on our property. However, Officers of TBC assert that TBC has given permission to the Verhees to run their stormwater directly onto our land. This has meant that any discussions to resolve the type of works on the easement are fruitless as long as TBC proposes to construct drain ways for the Verhees stormwater onto our property.

SUMMATION & RECOMMENDATIONS.

Ms D'Agostino, you invited us to comment on the various options for drainage along the easement. As we indicated, we are not engineers.

Your Review will objectively assess the facts leading up to and presented to TBC at its meeting on 24 January 2023.

The aftermath is relevant as evidence how TBC has implemented the decision of 24 January 2023.

Please consider the following:

1. Before any drainage option is considered there should be a proper and professional cost/benefit analysis provided by TBC to assess the respective merits of various options for drainage along the easement.
2. That analysis should consider, inter alia, the ongoing maintenance and associated costs which TBC will incur, the health, safety, environmental and engineering impacts of each option;
3. Up front cost is only one factor. It should not be the determining factor;
4. The impact on us as the landowners, on our quality of life and our use of our land on which the easement is situated;
5. The recognition that the standards that TBC would apply generally to private developers is an appropriate standard to apply to the easement;
6. The impact of each option on our neighbours:
7. That our situation is unique. The easement is directly fed by stormwater from a Council side pit TBC has not identified any other easement similar to ours.

8. That the volume and velocity of stormwater flow over the easement has changed with the construction of the children's oval and redesign of the side pit in Elizabeth Street.
9. That we are entitled to a similar level of service as applied to new residential developments including the provision/requirement to construct underground drainage where possible;
10. This drainage construction will have to last for decades. It should not be a temporary solution nor a solution that will require ongoing maintenance. As Mayor Lange stated -"do it right, do it once".
11. The potential cost to TBC of having to redirect the Verhees stormwater away from the easement.
12. There should be proper discussion and consultation with us. We are entitled to be heard and to be given the opportunity to have our opinion and circumstances considered.

Any option is currently complicated by TBC's insistence on giving the Verhees direct access to deposit their stormwater on our land, over our objection and without our consent. TBC refuse to provide us with details.

The legal issues are currently before the Magistrates Court. Should the Verhees lose, then TBC has apparently accepted the financial responsibility of re directing the Verhees stormwater. Why we don't know. It is an unusual use of ratepayer's fund. TBC's bias is obvious and unexplained.
No one has talked to us about how to resolve this issue other than our meeting on 15 September 2022. Perhaps they should.

When we purchased 18A Elizabeth Street, Tanunda we were excited to be commencing the final chapter of our lives. We had retired, sold up in Adelaide and were looking forward to enjoying a relaxed life as part of the Barossa community. Instead our life at home over the last 18 month has been a nightmare. We are depressed, can't sleep and suffering anxiety and mental anguish. We have no relationship with our neighbours. On a daily basis we worry whether it will rain with the fear of flooding and living with a muddy bog. We don't want to live this way but are forced to by the actions, and inaction, of TBC. We have asked for consideration by TBC and by Councillors, but have been ignored and treated with contempt.

The option of a dirt swale as it exists is inappropriate. The dirt, weeds and debris stop the stormwater from draining, causing ponding and making the drain a muddy bog. It is unhygienic, an eyesore and precludes us from any use of our land.

The option of a dirt trench, as proposed by Mr Kromwyk is unacceptable for the reasons set out in our correspondence with TBC. It will scour and erode with high rainfall events and act as a sump in low rainfall events. It will encourage weed growth and trap debris which will impede the drain. It is dangerous to us, our guests and grandchildren and means that we can't secure our yard. This option totally ignores our rights as landowners. It seems the purpose of this option is to provide floodways from the Verhees property onto our land. Landscaping and maintenance requirements will be ongoing and expensive.

A spoon drain, 750mm wide, still has the problems of erosion and scouring on the dirt sides and skirt. Grass verges and the balance of the easement will require ongoing maintenance by TBC at considerable cost. The culvert on our rear neighbours property is 450mm wide. The spoon drain will act as a funnel with flooding at the exit point. The spoon drain will preclude us from having any real use of the easement.

A culvert was decided by the experts as being the best option at our meeting on 15th September 2022. It is an obvious solution. It is consistent with TBC's stormwater requirements for private developers and consistent with current standards to put stormwater and other infrastructure underground where possible.

It was clearly stated to us in the meeting on 15 September 2022 that the best option was an underground culvert. It had been discussed by the engineers present, including the Mayor and took account of our circumstances, our shared use of the easement and TBC's concern to avoid conflict over the Verhees stormwater by connecting their stormwater outlet underground. A costing had been done and approved by those present. We don't know what changed.

Finally, per Stanley J:

"an easement must not unduly detract from the enjoyment of the servient land. An easement must not exclude the servient owner from the land. A right that would substantially deprive the servient owner or proprietorship or possession of part of its land is not a valid easement".
(K.I. Seaport ty Ltd v Abstraxion Pty Ltd (2020) 137 SASR 78.)

Thank you for considering our situation

Regards
Paul & Dagmar Keady
22/08/2023

ATTACHMENTS:

A. Emails between us and Mr Kaesler. They have printed with the earliest at on the last page.
B. Email from Ms Janine Lennon dated 10/05/2022. Note her comment that "...the matter is outside Council's jurisdiction", etc.
C. Emails between us and Mayor Lange on 15 September 2022. Please note the recommendation for a culvert and Mayor Langes response to us. Also, that Mr Clark and Mr Kaesler were copies in on this email.
D. Emails with Mr Clark.
   Please note that Mr Clark is the Director of Works and Engineering. He received our email to Mayor Lange on 15 September 2022. Our email on 16 September 29022 follows that up and sets out our concerns regarding the Verhees stormwater approval.
   We confirmed with him "there appears an agreed template to move forward with an underground culvert subject to Council allocating the necessary funds."

   Please note our email to Mr Clark dated 20 December 2022 and his response dated 21 December 2022. No mention of any change to the previously agreed recommendation.
E. Emails between us and Mayor Lange regarding the Recommendation to be put to Council on 24 January 2023.
   Please note Mayor Lange's advice to us in his email dated 24 January 2023. We accepted that advice.
F. Emails with Mr Kromwyk regarding the proposed construction work.
G. Emails with Mr McCarthy regarding the Verhees. Please note our emails to Mr McCarthy dated 14 March 2023 and his responses.
H. Email – Botten Levinson to TBC dated 17 march 2023.
   Email – Kelledy Jones to Botten Levinson Lawyers dated 4 may 2023.
   Our email to Kelledy Jones dated 19 May 2023.
   Resonse from Kelledy Jones Lawyers dated 1 June 2023 including a plan for the dirt trench showing neighbouring flow paths.
I. Emails between us Mr McCarthy and Mr Clark – re us blocking the Verhees encroaching pipes.
J. Email to Mayor Lange and Councillor Schilling dated 14 March 2023- re: the proposed trench. No response from the Mayor.
K. Copy of our letter to the Councillors of TBC. We received no response from any of the Councillors.
L. FOI application form and Schedule attached. We rely on the non-disclosure to assume that documents in answer to our FOI application do not exist.
M. Photos of the swale in its current condition.

ATTACHMENT A

Steven Kaesler <skaesler@barossa.sa.gov.au> Jun 20, 2022, 4:38 PM

to me, Bronwyn

Hi Paul.

I recalled the email sent a few minutes ago to correct the date of the Council meeting, now corrected below.

Thanks for your email. I apologise for the delay in responding to your last email, last week has been a particularly busy week.

Further to my last email on 25 May I can inform you that the stormwater catchment analysis work is near complete. Also, at the Council Meeting held Tuesday 14 June, the draft budget was endorsed for consultation, which included the proposed capital stormwater work previously outlined for Elizabeth Street. I will be in contact again shortly once we have reviewed the catchment analysis.

Regards,
Steve

Steven Kaesler

Hi Steven,

We would appreciate the courtesy of a response please.

Regards Paul

On Fri, 10 June 2022, 8:31 am Paul Keady, <keadypaul@gmail.com> wrote:
Hi Steven,

Would you please provide us with an update on the hydraulic report.
As indicated previously, the current situation is completely unsatisfactory and we want to move forward to get something done about it.

Regards
Paul & Dagmar

On Wed, May 25, 2022 at 6:08 PM Steven Kaesler <skaesler@barossa.sa.gov.au> wrote:
Hi Paul,

We respond to your email dated 23 May 2022. With reference to the 2 dot points:

I am not able to access your planning documents on your behalf, to access these documents you can contact The Barossa Council at development@barossa.sa.gov.au with your request and one of the Planning Technical Support Officers will action this for you.

Regarding the drainage flow path through your property, whilst there is no Council stormwater infrastructure located in your property, there is an easement to The Barossa Council for drainage purposes and this allows Council to access the land to ensure free drainage. There is also a general responsibility for property owners to maintain the waterway and not obstruct or affect a watercourse within their property. As previously mentioned, Council is undertaking hydraulic review of the external catchment and once this is complete we can discuss further the types of work required within the easement to ensure free flow is maintained.

Regards,
Steve.

Steven Kaesler
Manager, Engineering Services
E: skaesler@barossa.sa.gov.au | T: 08 8563 8473

From: Paul Keady <keadypaul@gmail.com>
Sent: Monday, 23 May 2022 9:15 AM
To: Steven Kaesler <skaesler@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda 5352

.

Hi Steven,

Are you able to respond to my email dated 10 May please?

Regards Paul

On Tue, 10 May 2022, 2:44 pm Paul Keady, <keadypaul@gmail.com> wrote:
Hi Steven,

Thank you for your email dated 6 May, above.

We would appreciate your assistance and advice regarding the following:

1. Will you email us copies of the available documents? Alternatively where and when can we view them?

2. Please clarify who is responsible to ensure that the easement is maintained and fit for purpose as a stormwater drain. We have shown you that the easement is overgrown with vegetation and trees which impede the flow path and cause flooding. The current level of service from Council is inadequate and this situation will only get worse with further vegetation growth.

Otherwise we await your reply to the matters previously raised by us.

Regards
Paul & Dagmar Keady

On Fri, May 6, 2022 at 7:23 PM Steven Kaesler <skaesler@barossa.sa.gov.au> wrote:
Hi Paul,

We refer to your email received 3 May 2022.

As mentioned in our phone conversation the same day, whilst I can address the engineering issues relating to your property at 18A Elizabeth Street, the matters relating to planning are best answered by this Section of Council. To that end, Council's Senior Planning Assessment Officer, Janine Lennon, has provided the following short form response which I include below:

> *The easement is to Council for drainage purposes, the property owners wont get consulted regarding which other properties drain through Council's easement.*
>
> *As the current property owners, the Keady's can definitely view the previous Land Division Application (960/677/2012)*
>
> *The Keady's bought the site with the easements already on it (one of the reasons why there is a 48 hours cooling off period after the real estate agent provides them with the land legalities at the time of purchase), therefore there is no need for Council to ask each new land owner's permission to use easements.*
>
> *The Keady's can definitely see old copies of the Barossa Development Plan, if our library doesn't have a copy, State Records will definitely have a copy for them to view: Maps and Plans | State Records of South Australia (archives.sa.gov.au) it was not our document it was a State Government document, therefore we are not required to keep copies ourselves.*
>
> *The Keady's may view the approved building plans and the Decision Notification Form for the property next door 960/276/2019 (as well as the relevant Development Plan see above) but viewing the assessment file would require a Freedom of Information request. In accordance with the Development Act 1993 and associated Regulations, Council was not permitted to consult with the neighbours regarding this development. The approved plans show the stormwater pipes linking into the existing stormwater system (no new pipes crossing the boundary were proposed or approved) as a part of this proposal.*
>
> *I would suggest that if the Keady's neighbours have installed stormwater pipes that encroach on the Keady's property then it would be most appropriate for the Keady's to ask the neighbours to remove that encroachment, and if a polite request isn't successful it could be followed up by law see: https://lawhandbook.sa.gov.au/ch31s05.php .*

My thoughts are that the Keady's may wish to invest in some legal advice regarding the encroachment, but the matter appears to be outside of Council's jurisdiction.

I trust that this information assists.

Janine Lennon,
Senior Assessment Officer, Planning
Planning Services.

Separate to the above, and as mentioned, once I have received information from the hydraulic consultant concerning the catchment data I will contact you to discuss this further.

Regards,
Steve

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 3 May 2022 11:23 AM
To: Steven Kaesler <skaesler@barossa.sa.gov.au>
Cc: Matt Elding <melding@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda 5352

Hi Steven,

Thank you for your reply.

There are matters raised in our emails which you have not addressed nor have you provided any of the documentation we have requested.

We request the following documentation/information please:
1. The original documentation relating to the subdivision approval and stormwater management of 18A Elizabeth Street, Tanunda. This would have been in about 2014/2015. As the owners of 18A Elizabeth Street, Tanunda we are entitled to this information. Please include a copy of the stormwater management plan approved by Council for the stormwater easement on 18A Elizabeth Street, Tanunda.
3. You say
" approval for discharge of stormwater from 18 Elizabeth Street is granted to this watercourse swale, however it is acknowledged that no pipe work shall be allowed to cross boundaries. The Development Assessment 960/276/2019 notes it should discharge to rainwater tank first with overflow to rear / swale."
We ask that you provide us with the following:
a. A copy of the Development Assessment 960/276/2019 and approval which apparently affects our land.
b. Who on behalf of the Council made this assessment/approval and when?
c. Were the then owners of 18A Elizabeth consulted? If not, why not. If so, when and by who?
d. Please refer us to the legal authority that Council relies upon that gives it the legal power to permit 18 Elizabeth Street, Tanunda to discharge their stormwater directly on our land without the permission of the owners of 18A Elizabeth Street, Tanunda.

e. A copy of the storm water management plan submitted by the developer of 18 Elizabeth Street, Tanunda relating to the discharge of stormwater from 18 Elizabeth Street, Tanunda onto 18A Elizabeth Street, Tanunda.
f. A diagram disclosing where Council apparently permitted access of stormwater onto our land from 18 Elizabeth Street, Tanunda.
g. Details of the anticipated amount/flow of stormwater from 18 Elizabeth Street, Tanunda onto 18A Elizabeth Street, Tanunda.
h. Who from Council advised the owners of 18 Elizabeth Street, Tanunda that it was permissible for them to place pipes on our land to discharge their stormwater?

*4. You have referred us to "**https://cdn.barossa.sa.gov.au/downloads/guidelines/Guidelines-for-undertaking-Land-Division-document-March-2021.pdf**" being the current Council guidelines for Land Division. That document appears operative from March 2021. Do you say that those guidelines now apply to Council's easement on our property?*

Please provide us with the following:

a1. Councils guidelines/regulations for Land Divisions in approx 2014 which applied to the subdivision of 18A Elizabeth Street, Tanunda including the Stormwater management requirements
a2. Councils guidelines/regulations for Land Developments in approx 2019 which applied to Development Assessment 960/276/2019 referred to above, including the stormwater management requirements.

5. On our Certificate of Title there is reference to the Storm water easement which benefits Council, no one else. There was no disclosure in writing by Council that Council had permitted 18 Elizabeth Street, Tanunda to discharge its stormwater directly onto our land. Why?
6. Generally it appears that Council has sought to benefit 18 Elizabeth Street Tanunda without legal authority and without any reference to the owners of 18A Elizabeth Street, Tanunda. Why?

All of the above documents affect our land. Should you refuse to provide us with any of the above documents then please provide your reasons for such refusal.

Steven, we hope that we can discuss our concerns with you in a respectful and co--operative manner. Your stormwater easement on our land is choked by vegetation, a haven for vermin such as rats and mosquitos and is totally inadequate for its purpose. Remedying the drain in Elizabeth will not alter this problem.

We want to know what was discussed/approved when 18A Elizabeth was subdivided in 2014, what Council has approved in 2019 and what were and are our respective rights and responsibilities regarding the stormwater easement. Once informed of the facts we can then deal with you on this matter in a professional and informed basis. That will be difficult if you fail to provide us with relevant information/documents affecting our property.

We look forward to your prompt response to the above and in due course discussing the storm water flow with you following your hydraulic consultants report.

Regards

Paul & Dagmar Keady

On Mon, May 2, 2022 at 6:14 PM Steven Kaesler <skaesler@barossa.sa.gov.au> wrote:
Hi Paul.

We acknowledge your email received today for operational maintenance work relating to stormwater adjacent 18A Elizabeth Street Tanunda. I have logged requests for both kerb and gutter sweeping and drain cleaning. This work is planned to be soon performed as part of Council's street sweeping and drain cleaning operations.

Regarding the upgrade of the stormwater side entry pit in front of your property, this work is proposed to be included within Council's 2022/23 financial year Capital stormwater budget, which is to be considered for approval at up-coming meetings of Council's elected members. The final scope of construction works is not yet to be detailed.

Regarding Council's requirements and level of service for stormwater drainage systems, this is outlined in Council's land development guidelines – refer to the link below. Section 8 refers to Stormwater Drainage:
Guidelines-for-undertaking-Land-Division-document-March-2021.pdf (barossa.sa.gov.au)

Regarding Council easement for stormwater purposes through your property, approval for discharge of stormwater from 18 Elizabeth Street is granted to this watercourse swale, however it is acknowledged that no pipe work shall be allowed to cross boundaries. The Development Assessment 960/276/2019 notes it should discharge to rainwater tank first with overflow to rear / swale.

In terms of the street stormwater drainage to the watercourse through your property, we have engaged a hydraulic consultant to assess the external catchment to determine the flows for both frequent low rainfall events and infrequent large storm events. Once I have received this information in coming weeks, I will re-engage a conversation with you and discuss further the options available.

I hope this information is helpful to date. I look forward to discussing further.

Regards,
Steve

From: Paul Keady <keadypaul@gmail.com>
Sent: Monday, 2 May 2022 8:24 AM
To: Steven Kaesler <skaesler@barossa.sa.gov.au>
Cc: Matt Elding <melding@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda 5352

Hi Steven,

We look forward to your response to our earlier emails with you.

We note that your drain at the front of our house is clogged with leaves etc. Can you please have the drain regularly cleaned to avoid flooding in Elizabeth Street when it rains.

Regards
Paul & Dagmar

On Tue, Apr 19, 2022 at 8:24 PM Steven Kaesler <skaesler@barossa.sa.gov.au> wrote:
Hi Paul.

Many thanks for your follow up email. I would be very pleased to work through this matter with you to ensure the options available to you and Council are all explored. I will respond to your emails with further information as mentioned. Feel free to stay in contact as required.

Regards,
Steve

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 19 April 2022 8:18 PM
To: Steven Kaesler <skaesler@barossa.sa.gov.au>
Cc: Matt Elding <melding@barossa.sa.gov.au>
Subject: Re: [EXTERNAL] Re: 18A Elizabeth Street, Tanunda 5352

Hi Steven,

I confirm your telephone discussion today with me. You were ringing me about my email sent to you earlier today.

You asked me what I expected of Council and what we would consider to be an appropriate level of service by Council for the stormwater easement. You have not indicated what the levels of service are or how Council defines what is adequate. From your comments it seems that Council provides different levels of service. We would appreciate it if you would provide us with the definition of each level so we can address our concerns under that criteria.

May I repeat, our hope is to work with Council to remedy the current unsatisfactory situation with Council's stormwater easement on our land. We have made suggestions. You may have some ideas. As the Council's engineer you are able to suggest solutions.
Who pays what can be discussed.

Photographs of the condition of the easement would be useful for Council when considering your report. Do you have some? We can send some to you assuming your email inbox will allow us to do so. In due course an inspection by Counsellors would be useful.

Regards
Paul Keady

On Tue, 19 Apr 2022 at 12:33 pm, Paul Keady <keadypaul@gmail.com> wrote:
Hi Steven,

Thank you for your email. We contacted you because there is a stormwater problem in Elizabeth Street and on the easement you hold over our land. We explained the problem with Council's stormwater easement on our land to you. It is obvious. It would be helpful to our discussions if you would indicate that Council recognizes that a problem exists.

We remain hopeful that Council will assist us remedy what is an unsatisfactory system for the passage of your storm water via your easement over our land. You are aware of the flooding issues for us and for our rear neighbours as a result of your stormwater passing down the swale. We understand Council has been on notice of this for some years.

You make the statement " Neighbouring properties are able to contribute stormwater flows to the easement allocated for stormwater purposes".
The easement benefits Council only. Please explain what you mean by this.

If you suggest that any legal right exists for other parties to access Councils easement on our land then please provide us with full details including any documentation approving such access and copies of any emails or correspondence with the previous owners of our property regarding such access..

Please advise whether Council has yet prepared engineering specs for the proposed new drainage pit at the front of our premises. We ask that we be kept informed and consulted about the proposed work.

It is understood that the stormwater swale on your easement is inadequate and environmentally unhygienic. There is vegetation and large trees on the easement impeding water flow which predate the grant of your easement. You indicate that it was the method selected by the developer at the time of sub-division. With respect, it was Council's responsibility to ensure that adequate provision was made for stormwater drainage as part of the approval process.
To assist us understand the history of this matter and your comments please provide us with correspondence and emails between Council and the developer/owner regarding the stormwater easement and any document outlining Council's consideration and consent to the current swale. Please include any environmental engineering and/or flow report.

You suggest that the addition of a pipe would still require a swale. Please provide us with the modelling to support this statement.

We look forward to your response.

Regards
Paul & Dagmar Keady

On Wed, Apr 13, 2022 at 6:10 PM Steven Kaesler <skaesler@barossa.sa.gov.au> wrote:
Hi Paul.

We respond to your email dated 13 March 2022. We appreciate your patience in terms of the extra time taken to respond to this, due to the many Council customers requesting stormwater drainage information in recent weeks.

We confirm that stormwater drainage upgrade works to improve the inlet capacity of the side entry pit drainage system in the Elizabeth Street verge in front of 18A Elizabeth Street, Tanunda, is proposed for inclusion in the upcoming 20/23 Financial Year Council capital stormwater infrastructure budget. This budget has yet to be finally approved by the Elected Members.

In terms of open earth drainage swales in townships, these are common within older Towns throughout the Barossa region, including Tanunda. Approximately 15 years ago, the overland flow paths through the central part of Tanunda were significantly reduced with the construction of underground stormwater pipe systems directing stormwater away from your property and down William Street / John Street / Maria Streets. There is of course still a residue catchment which is required to drain through the low point designated at 18A Elizabeth Street.

As part of any land division process, the land owner, or developer, is required to address the management of stormwater drainage associated with the proposed development. The method of stormwater conveyance selected by the owner at the time for the development was for an overland flow path with an easement to Council. Neighbouring properties are able to contribute stormwater flows to the easement allocated for stormwater purpose. Generally for works associated with land divisions, Council is unable to enforce requirements for land division upgrade works in excess of reasonable stormwater management solutions, or request a higher level of service, if this is not agreed by the developer.

Council is also not in itself able to commit to capital drainage upgrade works on private land without specific permission of the elected members, and then only to the extent shown within the township stormwater drainage management plan or where the designated level of service is required to be reinstated due to dilapidation. In accordance with the Tanunda Stormwater Drainage Management Plan (SDMP) there is currently no upgrade works planned by Council through the 18A Elizabeth Street property, this is designated as existing earth swale. However, I would be happy for Council staff to perform a desktop review of the hydrological and hydraulic parameters of the local Elizabeth Street catchment for a range of storm events. If there were an underground pipe system in place through your property, it is already understood that an overland flow path would still be required for the larger flows in extreme storm events.

We hope that the above information addresses the questions raised in your email. If you require any clarification, please feel free to contact me.

Regards,
Steve

On Sun, 13 Mar 2022 at 1:12 pm, Paul Keady <keadypaul@gmail.com> wrote:
Dear Steve,

Thank you for making your time available for us to view and chat with us about the storm water drain and easement at our home. We understand that in the 2022/2023 financial year Council proposes to re-design and contract a new drainage inlet at the front of our premises which will then feed into the drainage easement on the side of our land.

Steve, as discussed there are a number of issues for us which we raised with you and which we hope can be resolved to our mutual satisfaction and benefit.

At present the easement is simply a dirt rill running from your footpath in Elizabeth Street, down along our border fence with 18 Elizabeth Street, then draining into a side drainage way in our rear neighbours yard in Maria Street.

As it passes, the storm water gathers dirt leaves, etc which build up, dam and then cause the storm water to flood into the rear of our land and into the rear of our Maria Street neighbours and adjoining land holders.

Whilst rectification of the drainage culvert in Elizabeth Street should prevent water pooling in Elizabeth Street, the water still has to go somewhere and the existing drainage along our land, an open dirt floodway, is inadequate. It is also a health/environmental hazard as the water pools in the easement which is then a breeding ground for mosquitos, insects etc and a repository for untreated waste water from the road, gutters etc.

We are open to working with Council to arrive at an agreed solution which will facilitate the storm water flow and alleviate our problems and those of the our neighbours.

A solution might be as follows:

1. The removal of the current vegetation/trees on the easement which impedes the water flow. For the most part, this vegetation/trees predates the grant of Councils easement. We have obtained quotes and the cost is estimated at around $8000.00 to $10,000.00.
2. To move the storm water gutter entrance closer to the line of our eastern boundary fence and to then put in an underground pipe to carry the storm water along our eastern boundary to connect into the existing concrete culvert along our rear neighbours fence then flowing into Council's Maria street drainage system.

What we are requesting of Council is assistance with the cost of the above works including drainage design. When assessing if or in what amount Council will assist financially may we make the observation it is surprising that when Council approved the sub-division and development of 18A Elizabeth Street, in 2014 or so, including requiring the subject storm water easement, that underground storm water drainage was not required at that time.

Again, our thanks for your consideration of this matter and we look forward to working with you on this issue.

Regards

Paul & Dagmar Keady
0409836179

ATTACHMENT B

Tue, May 10, 2022, 3:11 PM

Janine Lennon <jlennon@barossa.sa.gov.au>
to

Good afternoon Paul, Dagmar, Darren & Jennifer,

I have been cc'd into some correspondence between parties with regard to stormwater infrastructure.

18A Elizabeth Street has a stormwater easement in the form of an open swale on the property.

18 Elizabeth Street is permitted to drain stormwater into this swale.

Council has not at any time granted "Development Approval" for stormwater infrastructure (eg pipes) to cross from 18 Elizabeth Street to 18A Elizabeth Street, and any pipes protruding from 18 to 18A Elizabeth Street could be considered to be an unauthorised encroachment of private property onto another private property. Please be clear these pipe/s are not considered development and are not a matter for the *Planning, Development & Infrastructure Act 2016*

As this is a matter between two neighbours regarding privately owned property, resolving the matter is outside of Council's jurisdiction and if agreement cannot be met between neighbours the most appropriate course of action is to apply to the Supreme Court for a determination of the matter in accordance with the *Encroachments Act 1944*. Please see the information sheet at the following link: https://lawhandbook.sa.gov.au/ch31s05.php

I trust that this information assists, should you need further information I recommend gaining legal advice from an appropriately qualified individual (eg a lawyer).

Kind regards,
Janine

ATTACHMENT C

Paul Keady keadypaul@gmail.com

Jul 17, 2022, 6:11 PM
to Bim

Good afternoon Mr Lange,

My wife and I have moved from Adelaide to Tanunda and recently purchased the above property. We are writing to you at the suggestion of mutual friends about the condition of the storm water easement which flows from Elizabeth Street, along our eastern boundary, then into our rear neighbour's yard, 17 Julius street.

The easement is overgrown with trees and vegetation impeding water flow, is silted up and causes flooding in our backyard and our rear neighbours yards, both of whom have apparently complained to Council on numerous occasions. It is also a health hazard for us attracting vermin, including rats, and mosquitoes.

We have been discussing this issue with Mr Kaesler, Council Engineer, who has advised us that Council has allocated funds to replace the drain on Elizabeth Street which flows into the easement. We understand that there has been no funds allocated to maintain or remediate the easement. Mr Kaesler suggests we put a submission to Council about the easement. Mr McCarthy has advised us about the process.

We would appreciate your advice on this matter. It is very important to us.

If time permits then perhaps we can show you the condition of the easement following the recent rain.

We hope this contact from us does not cause you any concern. It is not our intention to avoid proper protocol but rather to benefit from your experience in matters such as ours.

Regards
Paul and Dagmar Keady
0409836179

Paul Keady <keadypaul@gmail.com>
to Bim

Dear Bim,

By separate email I have sent you the request for the new Council to allocate funds to install a culvert on the easement at the same time as the other works are conducted.

Bim, thank you for your assistance with this issue. We were frustrated that our easement concerns were being sidelined. We were dismayed and angry when we read our neighbours' Development plans and approval documents which are contrary to what had been represented to us. Hopefully Ben will sort that out.

Good luck with the election. You will certainly get our vote!

Regards
Paul & Dagmar

Michael Lange <michaeljameslange@bigpond.com> Thu, Sep 15, 2022, 2:56 PM

to me

thanks Paul
the more i listen to the conversation i believe the long term fix is definitely the way to go up front.
cheers

Sent from my iPhone

> On 15 Sep 2022, at 2:30 pm, Paul Keady <keadypaul@gmail.com> wrote:
>
>

Paul Keady** <keadypaul@gmail.com>* ***Tue, Oct 11, 2022, 12:35 PM

to Michael

Bim, you have been copied into emails between Ben and I. Ignore them. It is a matter for Ben and I to sort this out properly.

Good luck with the election!

Cheers
Paul

michaeljameslange@bigpond.com Tue, Oct 11, 2022, 12:52 PM

to me

Paul
Cheers thanks for keeping in the loop

ATTACHMENT ~~B~~ C

Paul Keady keadypaul@gmail.com

Thu, Sep 15, 2022, 2:14 PM
to Bim, bclark, Steven

Dear Mayor Lange,

Thank you for making your time available this morning for us to meet with you, Mr Clark and Mr Kaesler. We appreciate your advice and the assistance of Council's staff in helping us to resolve what has been a longstanding issue with the wastewater easement on our land.

Council has allocated funds to replace the drainage pit in Elizabeth Street and that the works were to proceed later this year. We understand that Council proposes to clear the easement of vegetation and trees which currently are impeding the flow of stormwater causing flooding at the rear of our property and that of our rear neighbours. We are grateful for this advice.
We will of course do all that we can to assist Council with this work.

Council has received a hydrologist's report wherein the maximum flow rates have been calculated with recommendations as to the necessary size of an underground culvert to cope with stormwater events.

We request that Council now proceed to construct the recommended culvert as part of the proposed works on your easement to carry your waste water from Elizabeth Street to the rear of our premises. There are obvious financial benefits in having all the work carried out at the same time as well as minimizing any inconvenience. Taking into account the usual weather pattern, there is considerable benefit for this work to be done over the summer/early autumn period to avoid the winter rains.

In summary, the easement would not cope with the increased flow of stormwater from Elizabeth Street that a new drain would produce, flooding would result for us and our rear neighbours. If the vegetation was cleared without a culvert for drainage then we would have a mud bog with the winter rains and flooding.

We appreciate that Council is currently in caretaker mode and that our request cannot be considered until a new Council meets after the November elections. We would appreciate it if this matter could be given some priority and placed before the new Council when possible.

Again our thanks to you, Ben and Stephen for your assistance.

Regards

Paul & Dagmar Keady

Paul Keady <keadypaul@gmail.com>

Thu, Sep 15, 2022, 2:30 PM

to Bim

Dear Bim,

By separate email I have sent you the request for the new Council to allocate funds to install a culvert on the easement at the same time as the other works are conducted.

Bim, thank you for your assistance with this issue. We were frustrated that our easement concerns were being sidelined. We were dismayed and angry when we read our neighbours' Development plans and approval documents which are contrary to what had been represented to us. Hopefully Ben will sort that out.

Good luck with the election. You will certainly get our vote!

Regards

Paul & Dagmar

Michael Lange <michaeljameslange@bigpond.com>

Thu, Sep 15, 2022, 2:56 PM

to me

thanks Paul

the more i listen to the conversation i believe the long term fix is definitely the way to go up front.

cheers

Sent from my iPhone

ATTACHMENT D2

Paul Keady <keadypaul@gmail.com> *Sep 16, 2022, 11:27 AM*

to bclark

Dear Ben,

Thank you for meeting with us yesterday. We enjoyed meeting you and we appreciate your input regarding our issues with Council's drainage easement on our land and that there appears an agreed template to move forward with an underground culvert subject to Council allocating the necessary funds.
We will happily cooperate with Council to make this all happen.

We have sent an email to Mayor Lange requesting that the new Council approve those funds at the first available meeting so we can hopefully get construction commenced before the 2023 winter rains. Any assistance from you would be greatly appreciated.

Ben, we are frustrated and stressed about our neighbour issues with their stormwater running onto our land.

The problem is that some person from Council has apparently given an unfettered permission to our neighbours, the Verhees, to discharge their stormwater into your easement on our land.

Relying on this permission, our neighbours have dug drainage trenches and put pipes discharging their waste water on our land, effectively creating a drainage easement for themselves without our consent.

I won't go through the various emails we have had with Stephen and Janine. There are many. Suffice to say that both have asserted that our neighbours have Council's permission to discharge their storm water onto Council's easement on our land.
We have not been provided with the details of this permission.
We would like to know by who, when and on what terms this permission was granted and why neither we or the previous owners of our land were consulted.
In particular, we ask for a copy of our neighbours Application Form and the permitting Decision by Council.

We note that in our neighbours D/A plans their stormwater was supposed to be piped to the rear of their yard (960/276/2019). Their plans do not show any pipes or stormwater crossing our boundary. Instead, our neighbours dug a trench under our boundary fence and put a pipe into the easement for their stormwater. They say they had Council's permission to do that. They filed a Certificate of Compliance that the development was completed in accordance with the approved plans. That doesn't appear factually correct.
Council's D/A approval contains a condition that our neighbours were not to discharge any stormwater onto adjoining properties i.e. our land. (see condition 3).

On the Certificate of Title, Council only is the beneficiary of the easement. Our legal advice is unequivocal. Council cannot create easement rights for third parties without our knowledge or consent.

The current situation is that our neighbours assert that they have Council's permission to discharge their waste water onto our land and this permission extends along the total length of our boundary, whether by pipe (3 of them) or surface trench.They refuse to discuss contributing to a fence and they will not agree our boundary with them.

We will now have to serve a Notice to Fence on them. They rely on Councils "permission" to assert that a fence will impede their access to the easement. We dispute that assertion.

That issue will have to be decided by a Court. The cost will be substantial. Council officers will have to give evidence. A mess.

Would you please investigate this matter and we look forward to your advice about what has occurred and moving forward, what is Council's position on our neighbour's access to our land.

Regards
Paul & Dagmar Keady

Ben Clark <bclark@barossa.sa.gov.au> Sep 21, 2022, 4:44 PM

to Mayor, me

Hi Mr Keady,

Thank you for your email. We have received your request via Mayor Lange and will organise for a report to be provided to the new Council for them to make a decision on the possible expanded works through the easement at 18A Elizabeth Street.

In regards to the easement and the neighbour's stormwater run-off I have reviewed available documentation and can provide the following update:

- It appears that an approved development application in 1993 showed stormwater being discharged directly into the drainage easement on your property – so Steve was correct in the information he provided, in that any subsequent development has approved the stormwater to be plumbed into the existing
- Council can permit anyone to access their stormwater and/or septic water infrastructure there is absolutely no requirement for Council to ask permission of the property owner (upon which the easement lies)
- With that said Council hasn't granted for the infrastructure (eg pipes) to cross into your property from 18 Elizabeth Street – you would need to get a Licensed Surveyor to undertake a boundary survey to determine your boundary and if the infrastructure is encroaching on your land. These pipers are not considered development and would need to be dealt with under the Encroachment Act 1994

If you have any further questions, please let me know.

Regards,

Ben Clark
Director, Works and Engineering |
E: bclark@barossa.sa.gov.au | T: 08 8563 8470

From: Paul Keady <keadypaul@gmail.com>
Sent: Friday, 16 September 2022 11:27 AM
To: Ben Clark <bclark@barossa.sa.gov.au>
Subject: [EXTERNAL] 18A Elizabeth Street, Tanunda

.

Paul Keady <keadypaul@gmail.com> Oct 4, 2022, 12:47 PM

to Ben, bcc: Dagmar

Ben, your email dated 21 September 2022 is the first mention of a 1993 D/A approval. Please provide us with a copy.

Regards

Paul and Dagmar

Eliza Wedge <ewedge@barossa.sa.gov.au> Oct 5, 2022, 10:37 AM

to me

Hi Paul and Dagmar,

Ben has referred your request for plans to myself to assist with.

As the documents you seeks are not for your property I cannot provide a copy of the plans without the copyright owner's consent, but you can see them. We're happy to facilitate a time to view the plans here at the office.

If you would like to let me know when you would like to come into the office I will try make some time in my schedule. Feel free to give me a call to discuss.

Kind regards,

Eliza Wedge
Administration and Technical Support Officer |
E: ewedge@barossa.sa.gov.au | T: 08 8563 8481

Paul Keady <keadypaul@gmail.com> Oct 5, 2022, 10:58 AM

to Eliza

Dear Eliza,
Thank you for contacting us.

I have to drop into the library about 2pm today. Does this suit you?

Regards
Paul

Paul Keady <keadypaul@gmail.com> Oct 11, 2022, 12:26 PM

to Ben, Mayor

Dear Ben,

I inspected the 1993 D/A plans submitted by 18 Elizabeth Street Tanunda, referred to in your email below.

Your conclusions do not accord with the documents, including D/A 960/276/2019, nor with the facts.
In 1993 Council did not have an easement over 18A Elizabeth Street, Tanunda. There are other relevant matters.

We note the Council's Customer Service Charter and Customer Service Policy.

Over the last 6 Months we have asked for details about Stephen's "permission" for our neighbours to access the easement on our land. A simple request that remains unanswered.

Please provide us with the details sought which include:
1. The date of Stephen's permission.
2. If in writing, please provide us with a copy. If oral, the precise terms and conditions of his approval.
3. Please provide us with a copy of our neighbours application to access the easement.

4.The location on our boundary where access was granted and by what means was any discharge of water to occur.
5. Why were our neighbors excused from complying with the approval and conditions in D/A 960/276/2019?

We share Bim's hope that all issues regarding the easement can be settled once Council's works are complete.

Regards
Paul & Dagmar

Ben Clark <bclark@barossa.sa.gov.au> Nov 15, 2022, 9:53 AM

to Bronwyn, me

Hi Paul,

Apologies for the delay – I have been doing my due diligence before responding to your queries. I can provide the following responses to your questions below:

1. Regardless of whether the 1993 plans called the stormwater swale, a stormwater swale or a water course, they still noted that the stormwater would be directed to this location, therefore the approval of the 1993 development application is considered to constitute an approval by Council (or delegate) for 18 Elizabeth Street to direct stormwater to the stormwater swale.
2. If you would like a copy of the 1993 plans you will need to submit an FOI request and through that process we will need to request the copyright owner's permission to provide him with a copy
3. As detailed, access was granted via the 1993 application as per the approved plan you reviewed.
4. As above you viewed the approved plan, and the extent of detail provided regarding the disposal of water into the stormwater swale
5. Could you please clearly articulate exactly what breach of approval you are referring to with regard to point 5 and 960/276/2019.

Regards,

Ben Clark
Director, Works and Engineering |
E: bclark@barossa.sa.gov.au | T: 08 8563 8470

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 11 October 2022 12:26 PM
To: Ben Clark <bclark@barossa.sa.gov.au>
Cc: Mayor Lange <mayor.lange@barossa.sa.gov.au>

Paul Keady <keadypaul@gmail.com> Nov 26, 2022, 8:38 AM

to Ben, Bim

Dear Ben,

Thank you for your email dated 15 November and thank you for clarifying that the only approval/permission by the Barossa Council for 18 Elizabeth Street to access the swale/easement on 18A Elizabeth Street Tanunda dates back to a 1993 development approval. That development approved a stormwater discharge by 18 Elizabeth Street

onto 20 Elizabeth Street ONLY at the rear corner of the boundary between then 18 & 20 Elizabeth Streets, Tanunda.

Ben, we look forward to working with Council to expedite the remedial works on the easement. The easement is a mosquito breeding ground. Are we able to move forward to have the easement cleared of vegetation now we are entering what should be a drier period?

Let us know if there is anything we can do to assist. We appreciate being kept in the loop.

Tue, Dec 20, 2022, 12:11 PM

Paul Keady *<keadypaul@gmail.com>*
to Ben, Bim, bcc: Dagmar

Hi Ben,

Would you please confirm that all is on track for a submission to be put to Council at its January meeting to authorize the engineering costs for works on the easement on our land, as discussed with you in our meeting at Council.
Do you need anything from us to assist this process?

Regards

Paul & Dagmar Keady

Ben Clark <bclark@barossa.sa.gov.au> Wed, Dec 21, 2022, 11:13 AM

to me, Bim

Hi Mr Keady,

A report will be going to Council in the January meeting to determine the Elected Members support for the expenditure.

I will advise the outcome post the January meeting.

Thanks,
Ben

Ben Clark
Director, Works and Engineering |
E: bclark@barossa.sa.gov.au | T: 08 8563 8470

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, 20 December 2022 12:12 PM
To: Ben Clark <bclark@barossa.sa.gov.au>
Cc: Bim Lange <michaeljameslange@bigpond.com>
Subject: [EXTERNAL] 18A Elizabeth Street, Tanunda 5352

Paul Keady <keadypaul@gmail.com> Wed, Dec 21, 2022, 9:49 PM

to Dagmar, Ben, Bim

Thanks for the update Ben.

Cheers
Paul

ATTACHMENT E

Paul Keady *<keadypaul@gmail.com>* ***Sat, Jan 21, 5:13 PM***
to Bim

Hi Bim,

We have just read the agenda for the next council meeting.
The proposal regarding the stormwater drain on our property is not as we discussed with you, Ben and Stephen.

Would you please explain why?

We have had no notice of this and are most concerned.

Regards
Paul

Michael Lange <michaeljameslange@bigpond.com> Sun, Jan 22, 7:26 AM

to me

i haven't had a chance to read agenda will get to it tomorrow
still following tour down under

Sent from my iPhone

> On 21 Jan 2023, at 5:13 pm, Paul Keady <keadypaul@gmail.com> wrote:
>
>

Paul Keady *<keadypaul@gmail.com>* ***Sun, Jan 22, 7:49 AM***

to Michael

Cheers.

The Tanunda leg was a sensational day.

Michael Lange <michaeljameslange@bigpond.com> Sun, Jan 22, 8:42 AM

to me

yep presented extremely well
cheers

Sent from my iPhone

On 22 Jan 2023, at 7:49 am, Paul Keady <keadypaul@gmail.com> wrote:

Paul Keady *<keadypaul@gmail.com>* *Mon, Jan 23, 6:24 AM*

to Michael

Good morning Bim,
Would you please call me today to discuss the agenda item concerning our property 18A Elizabeth Street Tanunda

The proposals are not as we discussed last year.

There has been no warning or discussion with us about this.

In fairness we should at least have had some warning and have the opportunity of putting our submissions to council.

A number of our neighbours subject to periodic flooding will also wish to be heard.

This is very distressing.

Bim,thanks for your time and we look forward to hearing from you.

Cheers Paul

Michael Lange <michaeljameslange@bigpond.com> Mon, Jan 23, 4:43 PM

to me

Paul,
Reports to Council are prepared by the officers and with oversight from the CEO.
When we met I indicated that the clearance of the easement could be catered for but any upgrade to subsurface drainage would be subject to a Council capital allocation which has been identified in the report with costing.
The elected members could choose to undertake that work however the Officer's recommendation is consistent with other similar procedures and subject to council's final decision.
I am aware of previous emails between you and Ben where he indicated he would put the report to the January meeting.
The decision is with Council not the officer or me.
Regards
Bim

Sent from my iPhone

On 23 Jan 2023, at 6:24 am, Paul Keady <keadypaul@gmail.com> wrote:

Paul Keady *<keadypaul@gmail.com>* ***Mon, Jan 23, 7:09 PM***

to Michael

OK Bim, understood.

Can I call you about tomorrow's meeting please?

Michael Lange <michaeljameslange@bigpond.com> Mon, Jan 23, 7:45 PM

to me

yep around midday Paul

Sent from my iPhone

On 23 Jan 2023, at 7:09 pm, Paul Keady <keadypaul@gmail.com> wrote:

Paul Keady <keadypaul@gmail.com> Mon, Jan 23, 8:18 PM

to Michael

Will do.
I have prepared a letter to you as Mayor and meeting Chair, and Mr McCarthy, requesting that consideration of the agenda item concerning our land be deferred to Council's March meeting to give us and our neighbours time to be informed by Council what is proposed regarding the easement and for us to prepare submissions and reports for Council in support of a culvert.

I want to talk to you before I send it to you.

I will be at tomorrow's meeting.

Cheers

Mayor Lange <mayor.lange@barossa.sa.gov.au> Tue, Jan 24, 7:48 AM

to me

Hi Paul

I would not recommend delaying, the strategy is to get this work done, which needs to be done anyhow and will likely resolve the flow matters prior to winter.

If we delay there is no chance any works can be scheduled before winter, staff have geared up for this work and checked the necessary treatment.

If this does not address the issues then further treatment (please note you mentioned a culvert that is not a preferred model if we had to go that way) will be considered again all other priorities, however

if this does address the matters it is a less costly, more efficient and consistent application of stormwater management in the area.

Could you also please address Council correspondence to my Council address mayor.lange@barossa.sa.gov.au and not my private address it assists me and Council to comply with our State Records Act requirements.

Finally there is little benefit in writing to me or CEO, the matter is on the agenda and needs to be dealt with for the reasons outlined above. As explained I, nor the officers, get to determine the outcome including a delay only the Council can do that.

My recommendation is to proceed with this treatment, it is work that needs to be done in any case rather than delay anything otherwise there will be no resolution prior to the winter season.

Kind regards
Bim

Sent from my iPhone

Bim Lange
Mayor
E: mayor.lange@barossa.sa.gov.au | T: 08 8563 8444

ATTACHMENT F

Tue, Feb 21, 8:23 AM

Hi Paul,

Thanks for meeting with us yesterday,

As discussed, please see the below contact details for the contractor undertaking the work

CAVCO – Larry Ph: 0448 676 332

I can confirm, that the vegetation in and lining the existing swale will be removed where required to enable the construction works required to formalise the natural earth swale.

The new swale way will be constructed as close to the property boundary where possible.

The above contractor has been notified to undertake the works, once a date and time as been confirmed I will let you know.

If you have any further questions please don't hesitate to ask.

Regards

Benn

Benn Kromwyk
Capital Project Officer

Paul Keady <keadypaul@gmail.com> Wed, Mar 1, 7:33 AM

to bkromwyk

Dear Benn,

We received your email late yesterday and are in Adelaide returning late tonight.

Your workman have our permission to unbolt the side fence to facilitate access. The poles cannot be removed. They are cemented.

Please ensure the fence is replaced when the work is finalised.

Regards

Paul

Hi Paul,

Thanks for the response and the permission.
I can confirm that the Arb crew will remove and reinstall the fence panel as required.

Urban Tree Contractor have confirmed they will be removing the Ash within the swale on the 8/3/2023. On this day, they will require the dogs again to remain inside and we will remove/reinstall the tube fence panel as required for access.

Any questions, please feel free to ask.

Regards

Benn Kromwyk
Project Manager - Capital Delivery
E: bkromwyk@barossa.sa.gov.au | T: 08 8563 8466

From: Paul Keady <keadypaul@gmail.com>
Sent: Wednesday, 1 March 2023 7:34 AM
To: Benn Kromwyk <bkromwyk@barossa.sa.gov.au>
Subject: CM: [EXTERNAL] 18A Elizabeth Street, Tanunda

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Dear Benn,

We received your email late yesterday and are in Adelaide returning late tonight.

Your workman have our permission to unbolt the side fence to facilitate access. The poles cannot be removed. They are cemented.

Please ensure the fence is replaced when the work is finalised.

Regards

Paul

Paul Keady *<keadypaul@gmail.com>* *Thu, Mar 2, 4:02 AM*

to Benn

Benn,

Please provide us with the design and engineering specifications for the work on the easement on our property.

Also, a copy of the hydrological report, we have yet to receive that.

Cheers Paul

Benn Kromwyk <bkromwyk@barossa.sa.gov.au> Mon, Mar 6, 8:23 AM

to me

Hi Paul,

As a general rule Council does not release detailed engineering design plans, hydrology analysis or other technical reports for Council engineering projects to residents.

In regards to the scope of works alongside your property in Council's stormwater easement, Council's Elected Body have approved the construction of a 1m wide (at the base) and approx. 300mm deep earth swale in 2022-23 financial year.

As you may appreciate, the earth swale depth is governed by the current drain outlet level at the southern end of the easement within your property.

I trust the above information assists.

Regards

Benn Kromwyk

Benn Kromwyk <bkromwyk@barossa.sa.gov.au> Thu, Mar 16, 1:33 PM

to me

Hi Paul,

Just keeping you in the loop,
Larry (CAVCO) has confirmed they will start the swale works on Monday 20th March, as previously discussed.
Larry will focus on clearing the swale way of debris and rock for the first few days, from there we will set the levels and pins to show the location/design of the swale.
As previously discussed, could please leave you dogs inside or off site while the crew is onsite.

Regards

Ben Kromwyk

ATTACHMENT G

Paul Keady <keadypaul@gmail.com>
to mmccarthy@barossa.sa.gov.au, Mayor

Wed, Mar 8, 2:39 PM

Dear Mr McCarthy,

We are the owners of 18A Elizabeth Street, Tanunda. We understand you are familiar with some aspects of our dealings with Council and with our neighbours of 18 Elizabeth Street, Tanunda, Mr & Mrs Verhees.
Mayor Lange advised us that he has conferred with you regarding our concerns. He has advised us that following your review you assert:
1. Council can authorize our neighbours to discharge their stormwater onto our land, into the easement:
2. Regardless of the legal position it would be unreasonable now to expect the neighbour who has this right under their development approval to do otherwise.

We note:

1. Council has an easement for drainage purposes running along our boundary with the Verhees.That easement was granted vide D92546 on 6/1/2014. That easement is for drainage purposes as defined in Schedule 6 of the RPA Act 1886 to the Barossa Council only.

2,. Our land is not affected by any other easements/rights of way etc unless registered on the Certificate of title. (See Section 84 Real Property Act 1886).

3. In email correspondence with Council employees, Mr Kaesler (see emails including 2 May 2022 & 3 May 2022 ff), Ms Lennon (see emails 10 May 2022) and Mr Clark (see emails including 16 September 2022, 21 September and ff), we were advised that Council has given permission to our neighbours to discharge their stormwater onto our property. Mr Clark asserted that Council has an unfettered right to give anyone permission to access the easement on our property without our permission!

4. We have asked for details, including the legal authority relied upon by Council, regarding this permission but that has not been provided to us.

The legal situation is unequivocal. Council does not have legal authority to permit our neighbour to access our land for their stormwater. We have expert legal opinion to that effect which was discussed with Mayor Lange.

We have served a Notice to Fence under the Fences Act on the Verhees. They assert they have Council's permission to run their stormwater onto our land. They rely upon the advice from Mr Kaesler and Ms Lennon. That advice from them is misconceived and should be corrected.

Once again, we ask that you clearly advise the legal authority you say gives you the right to authorize the Verhees to run their stormwater on our land and any D/A approval that you assert that applies to our land for this purpose.

Neither the 1993 or 2019 D/A approvals gives the Verhees any such right.

Please also advise why Council is involved in this issue between us and our neighbours. It shouldn't involve Council and Council is obliged to adopt a neutral stance. Any assessment of claimed historic rights is a legal issue and a matter for a Court, not Council staff.

Council is doing work on the easement as we speak. The construction details have not been discussed with us. We put you on notice that we prohibit any works that give access to the easement to any third party or neighbour for stormwater or any purpose other than permitted to Council under section 223LG of the Real Property Act.

We look forward to hearing from you.

Yours faithfully

Paul & Dagmar Keady
0409836179

Martin McCarthy <mmccarthy@barossa.sa.gov.au> Wed, Mar 8, 3:32 PM

to me, Mayor, Cr

Dear Mr Keady

As I outlined with the Mayor I have reviewed the matter and he communicated that recently I understand.

As you are aware the discharge of stormwater is via drainage easement to the benefit of Council. Council can authorise any such discharge as occurs from the side entry pit, this is no different to the neighbour. This should have been known by you the easement is clearly visible on your title and a matter you would have been aware of when you undertook the purchase, if not I would recommend you refer back to the land agent. Copy of title and authorised survey attached.

Council is not and will not get involved in a matter between neighbours, that is for you to take your own civil action as you see fit. We have simply responded to your requests for service related to easement management and questions you have raised.

We have committed and are undertaking the upgrades as approved by Council.

If you wish to make application to access legal or other documents of Council related to your neighbour you will need to lodge a FOI (Freedom of Information) application and it will be assessed accordingly by accredited officers, which likely will require consultation with your neighbour. You can refer to the link below to assist in lodging such an application.

Freedom of information • The Barossa Council

Alternatively if you believe we are breaching the law you can report this to relevant authorities or serve the Council with a legal claim, which we will refer to our solicitors and insurance company.

Works being undertaken are consistent with communication that we are placing a new side entry pit in and removing the vegetation.

Thank you for writing to me on this matter and has been explained on occasions by the Mayor, now Cr Schilling I believe, and staff we are undertaking work that is reasonable to manage, our easement as is our responsibility. It has been outlined we will monitor the waterflows and if further intervention is required we will consider that in due course.

Regards
Martin

Paul Keady *<keadypaul@gmail.com>* *Tue, Mar 14, 10:20 AM*

to Martin

Dear Mr McCarthy,

Thank you for your comments.

Please clarify what you mean when you say:

"Council can authorise any such discharge as occurs from the side entry pit, this is no different to the neighbour."

Does your reference to "side entry pit" mean the pit on Council land in Elizabeth street?

What do you mean "this is no different to the neighbour"?

You have not answered our requests for details regarding Council's "permission" to our neighbour to access our land. A response would be appreciated noting we have requested these details on numerous occasions..

Regards

Paul & Dagmar Keady

Martin McCarthy
Mar 14, 2023, 10:23 AM

Mar 14, 2023,
10:23 AM
Mar 14, 2023,
10:23 AM

Martin McCarthy <mmccarthy@barossa.sa.gov.au>
to me

Hi Paul

Yes they can discharge to our easement.

What I am referring to if we ask the neighbour to discharge to the road and then via the side entry pit it will still discharge via our easement, same water and same flow just different pathway.

Paul Keady *<keadypaul@gmail.com>* *Tue, Mar 14, 10:28 AM*

to Martin

Thanks Martin,
We will disagree on that point. Our legal advice is solid.

The terms of the easement to Council are clear and unequivocal. Have you had legal advice on this point?

Has Council given our neighbours such permission and if so what are the details? ie by whom, when and on what terms?

Cheers

Martin McCarthy <mmccarthy@barossa.sa.gov.au> Tue, Mar 14, 10:33 AM

to me

Hi Paul

I have answered your question approval to discharge to the easement is a product of prior planning approvals.

The Council issued the approval pursuant to the terms within their planning approval.

You would need to lodge a FOI to ascertain those details.

Alternatively, if you are not satisfied by that I can issue a further approval now under delegation in any case if that would assist.

Kind regards

Paul Keady *<keadypaul@gmail.com>* ***Mar 14, 2023, 11:24 AM***

to Martin, bcc: Syd

Martin,

The difference between our neighbour discharging their stormwater over our boundary and from the roadway is obvious.

You are aware that the D A approvals preclude our neighbours from accessing our land.

Martin, we don't know what is behind Councils bias. We will let our solicitors deal with this now.

Cheers

Martin McCarthy <mmccarthy@barossa.sa.gov.au> Mar 14, 2023, 11:28 AM

to me

Hi Paul

Noted.

We can speak with neighbour to discharge to street if that solves your concerns, noting the same water and flow will enter our easement? Would this satisfy you?

Paul Keady *<keadypaul@gmail.com>* *Tue, Mar 14, 11:45 AM*

to Martin

Martin, this was all sorted when we met with Bim, Ben Clark and Steven Kaesler on 15 September, 2022. It was agreed that a submission would be put to Council for funds to construct an underground culvert. All problems solved including neighbour being able to put ug pipe into the culvert.
We were not consulted about Steven's report and recommendations to Council on 24 January. Put bluntly, we were shafted. We don't know why.

Nobody has consulted with us, including our neighbour.

Martin, you know all this.

Consultation, discussion and goodwill usually results in solutions.

Martin McCarthy <mmccarthy@barossa.sa.gov.au> Tue, Mar 14, 12:02 PM

to me

Hi Paul

That actually helps me greatly. So if I understand your wish if the neighbour discharges into a pipe in the same location they do now (noting it is still our easement be it above or below ground) you have no concerns, even though it is your view it is your land be it a pipe or overland, is that correct? And therefore my proposal to discharge to the road and then via the side entry pit will satisfy your legal concern?

Thanks Martin

Paul Keady *<keadypaul@gmail.com>* *Tue, Mar 14, 12:19 PM*

to Martin

Martin, we are not sure what you are asking us.

We are having a conference this evening with our barrister, James Roder. If you wish to discuss this further then I suggest we talk.

Cheers

Martin McCarthy <mmccarthy@barossa.sa.gov.au> Tue, Mar 14, 1:08 PM

to me

Hi Paul

Thanks for the conversation just now.

I will have the following two actions taken from our conversation:

1. I will, upon reflection now seek a formal legal advice, on the general question as to easement management; my question will be limited to general principles of the rights and obligations so as to check the position and not the specifics of this particular case so as to keep any costs down.
2. Contact the neighbour and discuss the options to discharge stormwater via the street, no matter what formal advice is provided.

I will be back in touch in the next week or so once that is undertaken.

Paul Keady *<keadypaul@gmail.com>* *Mar 14, 2023, 1:25 PM*

to Martin

Hi Martin,

Thank you for your reply. We await hearing from you.

Cheers
Paul and Dagmar

Paul Keady *<keadypaul@gmail.com>* *Wed, May 3, 8:58 AM*

to ***Martin****, bcc: Syd*

Hi Martin,

Please provide us with an update on your discussions with our neighbours regarding their stormwater disposal.

Otherwise, our lawyers have still not had a response from yours regarding the easement. The delay is disappointing.

Cheers
Paul and Dagmar

Martin McCarthy <mmccarthy@barossa.sa.gov.au> Wed, May 3, 9:03 AM

to mkelledy@kelledyjones.com.au, me

Hi

Your solicitors will be receiving a response very shortly I signed off on our full legal position late last week.

Paul Keady <keadypaul@gmail.com> Wed, May 3, 5:30 PM

to Martin

When are you going to speak to our neighbour?

Martin McCarthy <mmccarthy@barossa.sa.gov.au> Wed, May 3, 5:33 PM

to me

Hi

You will receive information on this also to your solicitor.

Attachment H. 14.

BOTTEN LEVINSON Lawyers

Our ref: SM/223087

17 March 2023

Mr Martin McCarthy
Chief Executive Officer
Barossa Council
Murray Street
NURIOOTPA SA 5350

By email: mmccarthy@barossa.sa.gov.au

Dear Mr McCarthy,

18A Elizabeth Street Tanunda - Service Easement

This firm acts for Paul and Dagmar Keady who are the registered proprietors of the land comprised in Certificate of Title Volume 6129 Folio 238 and known as 18A Elizabeth Street, Tanunda (**our clients' land**).

The Barossa Council is the dominant tenement of a 3 metre wide easement for drainage purposes along our clients' eastern boundary.

The easement was created as part of the sub-division deposited in January 2014 which created our clients' land.

The easement is for drainage purposes only and in favour of the Barossa Council. The Barossa Council is, of course, a Council constituted under the *Local Government Act 1999*.

From approximately March 2022 our clients have engaged with the Council regarding their concerns about the condition of the easement and requested appropriate remedial works.

Our clients subsequently contacted Mayor Lange and with his assistance a meeting was held with our clients, Mayor Lange, Mr Clark and Mr Kaesler at the Council's offices in Nuriootpa on 15 September 2022 (**the September meeting**).

At the September meeting our clients were informed that the condition of the easement had been reviewed and that it had been decided to put a recommendation to Council, at its January 2023 meeting, for an allocation of funds to construct an underground culvert to carry Council's stormwater from the Elizabeth Street side pit to the rear boundary of our clients' land.

Our clients subsequently confirmed this arrangement in writing with the Mayor, Mr Kaesler and Mr Clark. No advice to the contrary was received.

The recommendation put to the Council for its 24 January 2023 meeting was contrary to that what was agreed in the September meeting. The recommendation was to "... *maintain the existing level of service and open drain infrastructure ...* " The Council ultimately resolved to follow the recommendation.

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BL Lawyers Pty Ltd trading as Botten Levinson Lawyers ABN 36 611 397 285 ACN 611 397 285
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Our clients have written extensively to Mayor Lange and Counsellor Schilling outlining their objections to the process followed by the Council and that they were misled by Council officers.

Our clients have now been advised that the easement will be a 3 metre wide dirt strip on which the Council proposes to construct a 1.3 metre wide trench at ground level, 1 metre at the base and 300mm deep (**proposed works**). It will be bare earth.

Our clients are concerned that the trench will be dangerous to the unwary. As you will appreciate, any attempt by our clients to secure their yard to make it safe for young children, dogs, etc, will require them to prevent access to the drainage trench. Plainly, the proposed trench is unfit and contrary to any reasonable use of this service easement for drainage purposes. That is, it is trite law that "*an easement must not unduly detract from the enjoyment of the servient land. An easement must not exclude the servient owner from the land. A right that would substantially deprive the servient owner or proprietorship or possession of part of its land is not a valid easement*".[1]

The manner in which the easement is proposed to be used by the Council would not only unduly detract from the enjoyment by our clients of the easement but would effectively act to exclude our clients from that part of their land over which they are registered proprietors. In short, the proposed usage of the easement by the Council is utterly inconsistent with its usage as an easement and on the face of it unlawful.

In the circumstances our clients wish to be clear that it does not consent to the proposed works and considers them unlawful. Our clients reserve all of their rights in respect to the Council's contemplated action including to seek damages and/or injunctive relief and will rely on this and prior correspondence as necessary, including on the question of costs.

Our client observes that there remains a clear and identified solution whereby Council could lawfully use the easement within its identified parameters and would likely overcome other legal issues in the vicinity which the Council is aware of. That solution is, of course, installing an appropriately sized culvert within the easement in the event the Council wishes to make use of the easement.

Yours faithfully

Syd McDonald
BOTTEN LEVINSON
Mob: 0411 554 253
Email: sm@bllawyers.com.au

[1] *KI Seaport Pty Ltd v Abstraxion Pty Ltd* (2020) 137 SASR 78.

sm:p223087_003.docx

Kelledy Jones

T. 08 8113 7100
Level 6/19 Gilles Street
Adelaide SA 5000
GPO Box 2024 SA 5001
ABN 66 159 460 723
kelledyjones.com.au

4 May 2023

Mr Syd McDonald
Botten Levinson Lawyers
Level 1, 28 Franklin Street
Adelaide SA 5000

VIA EMAIL: sm@bllawyers.com.au

CC: mmccarthy@barossa.sa.gov.au

18A ELIZABETH STREET, TANUNDA - EASEMENT

Dear Syd

As you are aware from our email exchange in April, we act for the Barossa Council in this matter.

We do not take issue with your statements about the existence and details of the easement for drainage purposes, save that we say its genesis dates to 1993 when the then DC of Tanunda issued a Planning Decision Notification in respect of a proposed extension to the property at 18 Elizabeth Street, Tanunda. We do, however, reject entirely any suggestion that your clients have, at any time, been misled by Council officers about the current differences of opinion about maintenance of the easement.

As recognized by you, the Council has determined in its considerations of the issue of maintenance of the easement, to retain the existing level of service by way of an open drain, consistent with the drainage arrangements and needs of the location and downstream properties. It has already undertaken the vegetation clearance and has committed to remediation and improvement works to the existing open channel to complement the side entry pit upgrade. Accordingly, the Council position is that the appropriate action to resolve the matters raised by your clients, is to rehabilitate the easement with the construction of a trench, of the same width and length as the existing swale, but to allow for excess stormwater and any debris to be discharged by waterflow direction through to Julius Street.

The Council is aware of and has taken into account, all relevant considerations around the current condition of the easement. It has, however, determined that the solution, as per your clients' request for remedial works, does not and will not involve the construction of an underground culvert. The Council does not share the concerns of your client that the drainage trench will be dangerous to the unwary and will not be unfit and will be contrary to any reasonable use for drainage purposes. Indeed, the Council solution in this matter does not detract in any way from the situation as it currently exists and has existed for some time. It is to be noted, however, that the Council remains open to reasonable suggestions as to 'finishing' the area, including for example, with rip wrap or grassing of the swale on condition that it does not impact the flow of the stormwater.

This Service Easement, as annotated on the Plan of Division, is a statutory easement that exists by virtue of section 223LG of the *Real Property Act 1886*. It is an easement in gross in favour of the Council and does not raise any issues of concern around the dominant/servient tenement considerations to which you allude. As you will be aware, the existence of this type of and this particular easement in favour of the Council, means that the Council enjoys the necessary power to undertake the works as proposed, for the purpose of maintaining and ensuring the appropriate use thereof. In this regard, the resultant easement configuration will not be dissimilar to the existing swale configuration. The works will not, as per your clients' assertion, result in a 'bare earth' facility and your clients were, in fact, informed of this by the Council Project Manager. Rather, the drainage trench will include a concrete floor and ballast rock throughout the inlets.

In addition, in the circumstances of this particular easement, it is to be noted that the Council is entitled to permit the adjacent property to access the easement for stormwater drainage purposes, a permission that is both within and consistent with the terms of the easement. This is in the context of the fact that the easement is for drainage purposes and in favour of the Council which is able to authorize the adjacent property to do as it is doing.

The works to be undertaken by the Council are lawful and consistent with the use of the easement. The Council is entitled to enter the land to fulfill its obligations to carry out the appropriate maintenance of the Service Easement (see section 223LG(2) of the RP Act). It may break the surface, dig, open up, and use the land for purposes of fixing, taking up, repairing, re-laying or examining the drain to ensure that it is fit for the purpose of the drainage function and in this regard may enter the land, if necessary with vehicles and equipment. Given the objections raised by you to the proposed works, followed by your clients' then demands to the Council for works to be undertaken, followed again by your statement that the works should not be undertaken, the Council contractor has left the site. The contractor will be unable to return for an 8-10 week period. It is expected, therefore, that the works will be undertaken in mid to late June. The Council will keep your clients informed in this regard.

In closing, the 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 your client's maintenance work demands. Indeed, what has been proposed by your clients' in terms of the underground culvert, is not only unnecessary for purposes of maintaining the easement, it is also disproportionate to the Council's maintenance responsibilities. It would require the expenditure of significant funds which the Council has determined, is not warranted in the circumstances of the matter.

Whilst not necessarily to the satisfaction of your clients, we consider that this now resolves the matter.

Yours sincerely
KELLEDY JONES LAWYERS



MICHAEL KELLEDY
Direct Line: 08 8113 7103
Mobile: 0417 653 417
Email: mkelledy@kelledyjones.com.au

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Gmail

Paul Keady <keadypaul@gmail.com>

18A Elizabeth Street, Tanunda 5352

2 messages

Paul Keady <keadypaul@gmail.com> Fri, May 19, 2023 at 11:07 AM
To: mkelledy@kelledyjones.com.au

Dear Mr Kelledy,

We refer to your letter dated 4 May 2023 to our former lawyers, Botten Levinson. Please note that for the moment we are self-represented and all correspondence should be addressed to us.

There are considerable differences in our opinion about what is required, historical matters and the way that the Council officers have dealt with us. However, facts are facts.

The meeting on 15 September, 2022, with Mayor Lange, Mr Clark and Mr Kaesler and the agreement reached at that meeting is beyond doubt as is the failure of any Council officer to engage with us regarding the proposed trench prior to the meeting of Council on 24th January, 2023 or since.

The current dispute could have been avoided had we been paid the courtesy of consultation as to why the original proposal, by the above Council officers, of the construction of an underground culvert, would not proceed despite their commitment to do so.

We don't propose to litigate this matter through correspondence with you. We are all aware of the provisions of Section 223LG of the RPA and we have had the benefit of advice in that regard. You will note in our correspondence to Council our commitment to co-operate and engage with it. Sadly, our offer has not been reciprocated.

We do note that the proposed trench is a substantial variation of the swale that existed prior to the clearance work performed by your client. It is an unreasonable response to your client's stormwater disposal requirement and ignores our rights as the land owner to have reasonable enjoyment of our land upon which the easement is situated. In essence your client proposes to have sole possession of that part of our land over which it has a mere easement

To avoid confusion between us, would you please provide us with the following:

1. A detailed plan of the proposed works, showing the exact location of the trench including its dimensions.

2. We were told that the trench would have a bare earth base and sides as would the easement. You infer that the base of the trench is to be concrete. We have not been told that before. Please advise what is proposed for the base of the trench, the sides and the surrounds.

3. What is proposed by way of landscaping/rehabilitation of the balance of the easement that is currently "bare earth".

4. Has Council addressed the safety aspects of having an open trench on our premises? If so please provide us with Council's report in this regard. Safety is a major issue for us. We have elderly friends, grandchildren including toddlers and the tripping, falling, drowning danger is quite obvious. It must be addressed. Will your client indemnify us in writing for any injury or damage which may occur due to the trench?

5. Pursuant to section 43 of the Dog and Cat Management Act, 1995 we are legally obliged to prevent our small dogs from wandering at large. The opening in the trench prevents us from doing so. With the trench we cannot secure our yard. We have raised this with your client. No response. What is their response please?

6. We are surprised to read your comments regarding our neighbours' access to the easement without our consent. You are aware that we have on numerous occasions asked for details of any determination by Barossa Council in this regard. Please provide us with the details of any approval by Barossa Council that you suggest authorizes our neighbour to access our land directly for drainage purposes (not that we accept the proposition made by you at law, we don't).

7. Does your client's construction plans provide for our neighbour to cross our boundary with them to access the proposed drainage trench? If so, please advise full details including the location on our boundary and the means of access.

8. We have served a Notice to Fence on our neighbour in relation to the current unfenced portion of our boundary. A fence will be constructed. Does your client's proposed construction impact this?

9. Mr McCarthy committed in writing to discuss with our neighbours running their stormwater by pipe to the street. Has he done that? Please advise details.

10. The issue of our neighbour's stormwater access to our land is a local dispute involving a fence. Please advise on what basis Council is acting on our neighbour's behalf?

As previously indicated, we remain committed to working cooperatively with the Barossa Council regarding the proposed work and the issues raised by us to try and achieve an agreed outcome. Your client is welcome to deal with us directly in this regard. Legal proceedings should only be necessary when all other avenues are exhausted.

A prompt response to the above is appreciated.

Yours faithfully,

Paul & Dagmar Keady.

Paul Keady <keadypaul@gmail.com> Fri, May 19, 2023 at 6:27 PM
To: Dagmar Keady <dagmar.keady@yahoo.com>, James Roder <jroder@hzc.com.au>

This is the letter I sent to Mr Kelledy today.

Cheers paul
[Quoted text hidden]

Gmail

Paul Keady <keadypaul@gmail.com>

18A Elizabeth Street, Tanunda 5352 (KJ 230081)

11 messages

Michael Kelledy <mkelledy@kelledyjones.com.au> Thu, Jun 1, 2023 at 3:17 PM
To: Paul Keady <keadypaul@gmail.com>
Cc: Martin McCarthy <mmccarthy@barossa.sa.gov.au>

Dear Mr Keady

I have received instructions from the Council and, in the interests of expediency and expedition, respond to your requests below by embedding against each one, a response in red.

Kind regards

Michael Kelledy

Lawyer

Kelledy Jones

T. 08 8113 7103 | M. 0417 653 417

Level 6/19 Gilles Street Adelaide SA 5000 | GPO Box 2024 SA 5001

kelledyjones.com.au

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From: Paul Keady <keadypaul@gmail.com>
Sent: Friday, 19 May 2023 11:07 AM
To: Michael Kelledy <mkelledy@kelledyjones.com.au>
Subject: 18A Elizabeth Street, Tanunda 5352

Dear Mr Kelledy,

We refer to your letter dated 4 May 2023 to our former lawyers, Botten Levinson. Please note that for the moment we are self-represented and all correspondence should be addressed to us. Noted and, hence, this direct response.

There are considerable differences in our opinion about what is required, historical matters and the way that the Council officers have dealt with us. However, facts are facts.

The meeting on 15 September, 2022, with Mayor Lange, Mr Clark and Mr Kaesler and the agreement reached at that meeting is beyond doubt as is the failure of any Council officer to engage with us regarding the proposed trench prior to the meeting of Council on 24th January, 2023 or since.

The current dispute could have been avoided had we been paid the courtesy of consultation as to why the original proposal, by the above Council officers, of the construction of an underground culvert, would not proceed despite their commitment to do so.

We don't propose to litigate this matter through correspondence with you. We are all aware of the provisions of Section 223LG of the RPA and we have had the benefit of advice in that regard. You will note in our correspondence to Council our commitment to co-operate and engage with it. Sadly, our offer has not been reciprocated.

We do note that the proposed trench is a substantial variation of the swale that existed prior to the clearance work performed by your client. It is an unreasonable response to your client's stormwater disposal requirement and ignores our rights as the land owner to have reasonable enjoyment of our land upon which the easement is situated. In essence your client proposes to have sole possession of that part of our land over which it has a mere easement

To avoid confusion between us, would you please provide us with the following:

1. A detailed plan of the proposed works, showing the exact location of the trench including its dimensions.

It was determined that a detailed plan of the proposed works to not be, technically, necessary. This is because only simple drainage trench rehabilitation works are proposed.

The location and dimensions of the drainage trench have previously been provided to you. These have not changed.

The plan reflected through the specification of works is attached.

2. We were told that the trench would have a bare earth base and sides as would the easement. You infer that the base of the trench is to be concrete. We have not been told that before. Please advise what is proposed for the base of the trench, the sides and the surrounds.

In keeping with the Council decision to maintain the current level of service of the drain, the earth drainage trench will be reinstated.

As per the letter of 4 May 2023, the Council remains open to finishing the sides of the drainage trench with a layer of loam and grass seed.

Ballast rock is proposed to be installed at the drainage inlets from the adjacent property into the Council's drainage trench.

Concrete is proposed to be installed at the rear (southern) end of the drainage trench to channel stormwater flows to the adjoining downstream drain located within 19 Julius Street Tanunda for a distance of 5-8 metres from the boundary.

3. What is proposed by way of landscaping/rehabilitation of the balance of the easement that is currently "bare earth".

As above, the Council remains open to finishing the balance of the easement with a layer of loam and grass seed. It will also provide a basic level of service to the easement, but will not irrigate the area.

4. Has Council addressed the safety aspects of having an open trench on our premises? If so please provide us with Council's report in this regard. Safety is a major issue for us. We have elderly friends, grandchildren including toddlers and the tripping, falling, drowning danger is quite obvious. It must be addressed. Will your client indemnify us in writing for any injury or damage which may occur due to the trench?

The swale will meet construction and building standards and will be easily visible. The land is and remains available for drainage. If there is any injury or damage that can fairly and reasonably be said to be attributable to the Council's actions in respect of its responsibilities, its insurer will manage any claim(s).

5. Pursuant to section 43 of the Dog and Cat Management Act, 1995 we are legally obliged to prevent our small dogs from wandering at large. The opening in the trench prevents us from doing so. With the trench we cannot secure our yard. We have raised this with your client. No response. What is their response please?

This responsibility lies with you as the owner of the dog. The management of the swale is in accordance with the Council's responsibilities. The existence of the easement was known at time of the purchase of the land. The Council is prepared to install a grate or simple solution that does not impede waterflow if you believe that will assist.

6. We are surprised to read your comments regarding our neighbours' access to the easement without our consent. You are aware that we have on numerous occasions asked for details of any determination by Barossa Council in this regard. Please provide us with the details of any approval by Barossa Council that you suggest authorizes our neighbour to access our land directly for drainage purposes (not that we accept the proposition made by you at law, we don't).

This has been answered in my correspondence, sent to your (then) legal representatives. Further information may be sought by a freedom of information application.

7. Does your client's construction plans provide for our neighbour to cross our boundary with them to access the proposed drainage trench? If so, please advise full details including the location on our boundary and the means of access.

Yes – already answered as per question 6. above.

8. We have served a Notice to Fence on our neighbour in relation to the current unfenced portion of our boundary. A fence will be constructed. Does your client's proposed construction impact this?

No.

9. Mr McCarthy committed in writing to discuss with our neighbours running their stormwater by pipe to the street. Has he done that? Please advise details.

Yes. The Manager Engineering Service spoke to the neighbours who cited unreasonable cost and right of access to the easement, as their reasons for refusal. Again, explained as per question 6.

10. The issue of our neighbour's stormwater access to our land is a local dispute involving a fence. Please advise on what basis Council is acting on our neighbour's behalf?

The Council is not acting on any person's behalf. It is answering the questions raised. The neighbour has a right to discharge as per question 6. above. The Council does not have any interest in the fencing matter.

As previously indicated, we remain committed to working cooperatively with the Barossa Council regarding the proposed work and the issues raised by us to try and achieve an agreed outcome. Thank you. Your client is welcome to deal with us directly in this regard. It is now aware of this offer. Legal proceedings should only be necessary when all other avenues are exhausted. Agreed.

A prompt response to the above is appreciated.

Yours faithfully,

Paul & Dagmar Keady.

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1731K

Paul Keady <keadypaul@gmail.com> Thu, Jun 1, 2023 at 3:42 PM
To: James Roder <jroder@hzc.com.au>

Hi James,

It seems that the Council is determined to bully us.

Can we have a chat when you have read this response.

Cheers Paul
[Quoted text hidden]

3 attachments



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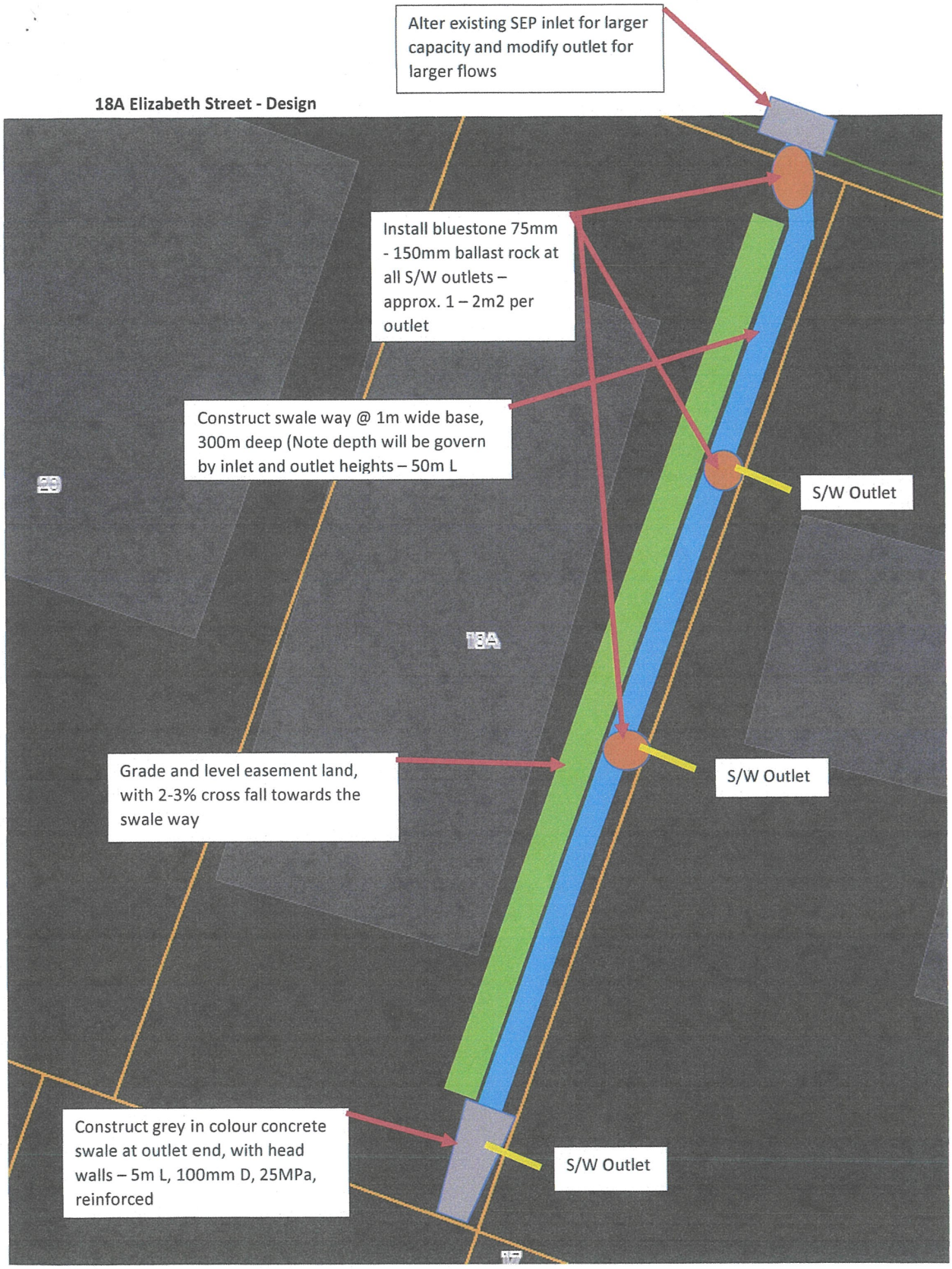


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Paul Keady <keadypaul@gmail.com> Thu, Jun 1, 2023 at 3:45 PM
To: Michael Kelledy <mkelledy@kelledyjones.com.au>

Dear Mr Kelledy,



Note – All existing vegetation on the council easement is to be removed and ground 300mm below

Gmail

Paul Keady <keadypaul@gmail.com>

RE: 18A Elizabeth Street Tanunda (KJ 230081)

6 messages

Michael Kelledy <mkelledy@kelledyjones.com.au> Tue, Jun 20, 2023 at 10:17 AM
To: Paul Keady <keadypaul@gmail.com>

Safely received the below, Mr Keady.

Michael Kelledy

Lawyer

Kelledy Jones

T. 08 8113 7103 | M. 0417 653 417

Level 6/19 Gilles Street Adelaide SA 5000 | GPO Box 2024 SA 5001

kelledyjones.com.au

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From: Paul Keady <keadypaul@gmail.com>
Sent: Monday, 19 June 2023 6:32 PM
To: Michael Kelledy <mkelledy@kelledyjones.com.au>
Subject: 18A Elizabeth Street Tanunda

Dear Mr Kelledy,

We refer to your letters dated 4 May 2023 and 1 June 2023.

Council Officers, Mr Clark and Mr Kaesler, met with us on Friday 9 June 2023. They stated that they would reassess the drainage specifications and come back to us with an updated plan of what is proposed to be constructed on our land. The details provided by you of Council's intention regarding landscaping, trench design etc are not satisfactory on health, safety, and engineering grounds. We will deal directly with the Council on these issues.

A LTO search of 19 Julius Street, Tanunda shows that Council does not have an easement to run its stormwater from our property onto our rear neighbours land. Please advise the legal basis that permits your client to do so.

Mr Kaesler confirmed that the Barossa Council does not take any responsibility for drainageways on private property that are not Council easements. We asked Mr Clarke to provide us with the address of other properties with Barossa Council drainage easements, similar to ours, so we may ascertain what level of service they enjoy. He is to get back to us about that.

Since we first raised the issue of the condition of the easement on our property, our attempts to engage with the Barossa Council have been side tracked by the insistence of various Council Officers to promote the interests of our neighbour to run their stormwater onto our land.

In that regard we note the following:

1. Section 84, RPA 1886.
2. Section 223LG, RPA 1886.
3. The plan of sub-division and Certificate of Title for our land.
4. The terms of the approval of Development Application 960/276/2019, and the express condition not to run stormwater onto our land.

5. Your clients acquiescence to the Verhees breaching the terms of that approval by illegally running a stormwater pipe onto our land then falsely certifying that they had complied with the terms of this D/A.
6. Council's failure to disclose to our conveyancer particulars of any Council authority, encumbrance or condition granted to the Verhees affecting our land, as required by the Local Government Act, 1999 and the Land Business (Sale and Conveyancing) Act, 1994.
7. Your client has a conflict of interest regarding our stormwater dispute with the Verhees. Your client is exposed should its advice to the Verhees be incorrect,or,to us for the non-disclosure of this purported encumbrance on our land.

Our requests for details of the Barossa Council's purported permission/authority to the Verhees have been deliberately ignored. Your correspondence continues that obfuscation. No details have been provided. The comments in your letter of 4 May 2023 provide no legal basis for Council's position.

It is extraordinary that neither Council nor the Verhees have tried to engage with us to resolve the Verhees drainage problems. Your client is clearly acting in the interests of the Verhees and expending rate payers funds to assist them. Perhaps it might have been better to talk to us rather than try to bully us.

We now advise that we will be blocking the Verhees access to our land. This includes blocking existing pipes and drainage ways.

Your client is on notice that should it attempt to construct drainage ways from 18 Elizabeth Street onto our land then we will block and/or remove the same and initiate proceedings claiming trespass/nuisance, damages and costs. We trust that won't be necessary.

Yours faithfully,

Paul & Dagmar Keady

P

Paul Keady <keadypaul@gmail.com> Tue, Jun 20, 2023 at 10:20 AM
To: Michael Kelledy <mkelledy@kelledyjones.com.au>

Thank you.
[Quoted text hidden]

Paul Keady <keadypaul@gmail.com> Fri, Jul 7, 2023 at 10:45 AM
To: Michael Kelledy <mkelledy@kelledyjones.com.au>

Dear Mr Kelledy,

We have lodged a review application with Council regarding its decision dated 24 January 2023 affecting the easement on our land. We hope there is the potential to resolve our differences with Council through continuing discussions.

Despite our numerous requests we have not been provided with details regarding Councils purported decision to allow our neighbour to deposit their stormwater on our land.

As an interested party affected by any such decision we request that we be formally notified in writing of the details of this decision. Pursuant to section 270 of the LGA we have the right to seek a Review of any such decision but Councils refusal to provide us with the details of its decision has deliberately frustrated our ability to avail ourselves of our rights under section 270..

We look forward to your response to our query regarding 19 Julius Street. This is relevant to our Review application.

Yours faithfully

Paul & Dagmar Keady

[Quoted text hidden]

Michael Kelledy <mkelledy@kelledyjones.com.au> Fri, Jul 7, 2023 at 11:13 AM
To: Paul Keady <keadypaul@gmail.com>
Cc: Martin McCarthy <mmccarthy@barossa.sa.gov.au>

Dear Mr Keady

I refer to your email below.

You will note that I have copied Mr McCarthy into this email.

I am aware that your (former?) lawyers were advised that the Council was within its lawful rights to allow the run off of stormwater into the easement and why. As for the '*details of its decision*', in this regard, I am unable to assist you further. I will await any relevant instructions from Mr McCarthy – or, otherwise, being copied in to any response directly to you.

[Quoted text hidden]

Paul Keady <keadypaul@gmail.com> Fri, Jul 7, 2023 at 11:28 AM
To: Michael Kelledy <mkelledy@kelledyjones.com.au>

Dear Mr Kelledy,

Thank you for your prompt response. We expect to hear from you or Mr McCarthy in due course. We are in the process of lodging a formal complaint with Council which Mr McCarthy will receive shortly.

We also confirm that we do not accept that Council is within its lawful rights as suggested by you. To the contrary, we assert that the Council is acting illegally, with bias and with disregard to an obvious conflict of interest. Our email to you dated 19 June, 2023 outlines our position.

Yours faithfully,

Paul & Dagmar Keady
[Quoted text hidden]

Paul Keady <keadypaul@gmail.com> Wed, Jul 12, 2023 at 7:48 AM
To: James Roder <jroder@hzc.com.au>

James - recent communications with Kelledy
[Quoted text hidden]

Attachment I.

CORRESPONDENCE WITH BEN CLARK

Paul Keady *<keadypaul@gmail.com>* *Fri, Jun 16, 10:35 AM*

to Ben, Steven, bcc: Bim, bcc: Dagmar

Dear Ben & Steven,

It was good to meet with you again last friday and thank you for your time.

We understand from what you said that you both were not aware of the precise specifications regarding the remedial drain proposed by Council for the easement on our property. Would you please provide us with a plan and precise specifications for what Council proposes regarding this drain including what is proposed for the balance of the easement.

We raised with you security, safety, health,maintenance and engineering issues which we ask you also address.

As indicated, we forecast that we will be lodging a review application with Council and it is important that we have as much detail from you as possible to ensure that all issues are appropriately addressed.

We confirm our advice that we do not consent to our neighbours, the Verhees, depositing their stormwater onto our property by crossing our boundary with them. Please ensure that any plan reflects our decision in this regard.

Yours faithfully

Paul & Dagmar Keady

Ben Clark <bclark@barossa.sa.gov.au> Mon, Jun 19, 8:58 PM

to me, Steven

Hi Mr Keady,

As agreed – below is the information agreed to at our meeting on 9 June 2023.

- The formalised engineering design is being formalised and will be provided to you later in the week
- In regards to the maintenance of the easement – that will be the responsibility of the Council – upon completion a maintenance plan will be developed
- Council would be willing to consider a box culvert subject to you funding the difference ~$50k
- I am putting together a list of properties that have an easement running through their property in your general vicinity – I will have this list to you in the next 2 days.

I trust this answers your immediate questions and will provide the rest of the required information to you later this week.

Ben Clark

Ben Clark <bclark@barossa.sa.gov.au> Tue, Jun 20, 1:47 PM

to me, Steven

Good Afternoon Mr Keady,

Please find below a list of property addresses that Council has a drainage easement through in the general vicinity of your property.

18A Elizabth Street, TANUNDA
20 Elizabeth Street
21A Julius Street, Tanunda
21B Julius Street, TANUNDA
24 Julius Street, TANUNDA
23 John Street, TANUNDA
16A Julius Street, TANUNDA
19 John Street, TANUNDA
21A John Street, TANUNDA
21B John Street, TANUNDA
28 John Street, TANUNDA
19 Maria Street, TANUNDA
36 Elizabeth Street, TANUNDA
34 Elizabeth Street, TAUNDA

Thanks,
Ben

Paul Keady *<keadypaul@gmail.com>* ***Jun 20, 2023, 2:00 PM***

to Ben

Thanks Ben. We will have a look.

Is there any reason a simple concrete spoon drain wouldn't work?

Paul

Ben Clark <bclark@barossa.sa.gov.au>

Jun 20, 2023, 3:20 PM

to Steven, me

Hi Mr Keady,

Council will provide some information regarding the use of a spoon drain as a part of design options to be provided later in the week.

Ben Clark

Paul Keady *<keadypaul@gmail.com>* *Jun 21, 2023, 1:28 PM*

to Ben

Thank you. One engineering option discussed with us is a pipe, much cheaper than a culvert. Please consider.

Paul

Paul Keady *<keadypaul@gmail.com>* *Jun 22, 2023, 10:21 AM*

to ***Steven, Bim, Cr,*** *Ben*

Good morning Ben,

We have checked the list you gave us of easements in the Tanunda area. We note:

1.Where there is a drain to/from the roadway there is either a concrete culvert or concrete drain.
2. We assume that the majority of easements must be in the back yard as there is no visible drain to the front.
3. Ours is the only dirt swale from the roadway down the side of the house.
4. We suggest that you do what we have done and check the easements nominated by you. They bear no relationship to that on our land which is unique.

With the recent rains the side of our house is flooded. See the Attached photo.

This is not good enough. Do something.

Yours faithfully,

Paul & Dagmar Keady

Ben Clark <bclark@barossa.sa.gov.au> Jun 22, 2023, 11:17 AM

to me, Steven, Bim, Cr

Hi Mr Keady,

Thank you for you email, in relation to the water in your property – we are able to implement the solution and with your request for action are you providing support for us to proceed as per the correspondence previously sent to your solicitors?

Ben Clark

Paul Keady *<keadypaul@gmail.com>* *Jun 22, 2023, 12:21 PM*

*to **Ben, Steven, Bim, Cr**, Dagmar*

Ben, our land and our neighbours are flooding because of the condition Barossa left the easement and you are seriously asking us to agree to a proposal which you yourself have identified as deficient? Not impressive.

Ben Clark <bclark@barossa.sa.gov.au> Jun 22, 2023, 1:18 PM

to Martin, me, Steven, Bim, Cr, Dagmar

Thank you for the response Mr Keady – at no stage has Council said that the proposed solution is deficient.

I will take your response as a refusal to proceed with the currently proposed solution.

Paul Keady *<keadypaul@gmail.com>* *Jun 22, 2023, 2:25 PM*

to Ben, Steven, Bim, Cr, Dagmar, Martin

Ben, you stated to us and witnesses that the trench design needed to be reassessed and you and Steven would do that and get back to us this week.

Ben Clark <bclark@barossa.sa.gov.au> Jun 23, 2023, 2:50 PM

to me, Steven, Bim, Cr, Dagmar, Martin

Hi Mr Keady,

Please find as agreed the engineering drawings for the proposed stormwater solution.

Regards,
Ben

Paul Keady *<keadypaul@gmail.com>* *Jun 23, 2023, 4:18 PM*

*to **Ben, Steven, Bim, Cr, Martin**, Dagmar*

Thank you Ben,

Before we comment would you please address the alternatives we raised ie concrete spoon drain and a pipe. We raised this as the only options discussed to date were the culvert in September 2022 and since 24 January, a dirt

swale. Perhaps there is some middle ground between cost and function. There may be other options which could be considered as part of our Review Application. Your assistance appreciated.

Cheers

Ben Clark <bclark@barossa.sa.gov.au> Jun 23, 2023, 4:48 PM

to me, Steven, Bim, Cr, Dagmar, Martin

Hi Mr Keady,

A pipe is not appropriate as the size required will not be achievable due to the level of the outflow. A spoon drain could be used as the base of the swale, however the rest of the swale as per the engineering would still be required – it would simply replace the bare earth base. Please note that the concrete spoon has not been costed, budgeted or approved by Council.

Thanks,
Ben

Paul Keady *<keadypaul@gmail.com>* *Jun 24, 2023, 10:58 AM*

to Ben, Bim, Steven, Cr, Martin, Dagmar

Dear Ben,

Thank you for the plans provided. Would you please advise the following:

1. The width of the proposed swale at top and at bottom.
2. The depth.
3. The angle from top to button
4. Dirt base - what is to stop it from scouring and eroding and weed growth.
5. Dirt sides - what is to stop it eroding and collapsing.
6. Dirt easement. We understand that Council intends to leave the 3m x 50m easement as bare dirt. What is to stop weed growth, erosion and water pooling in the swale?
7. We note that an hydrologists report was commissioned. What flow rate and dimensions is the swale designed to accommodate ie 1 in 10, 1 in 20 or 1 in 100 flood event? Why as this selected? The existing swale is insufficient to cater for any flood event.
8. Mr Kaesler previously advised that the Council's Stormwater Management Plan applies to this development. As per section 8.12 the minimum requirement is for the trench to be grass lined and to not scour. Why does this not apply to us at least?
9. Council has removed all the vegetation from the easement. On what basis does Council propose to leave it as bare dirt? This is a reduction in the standard of service.
10. The benefit of a spoon drain is obvious, it will not scour or erode. It will minimize maintenance. Why can we not consider it?
11. With a spoon drain why does the swale width need to be maintained at 1m plus? We ask because there are a number of spoon drains in the Tanunda area where the width is much less including our rear neighbour whose drain is 450mm wide.
12. The rear drain is 450mm wide. The proposed swale on our land is over 1000 wide. That will act like a funnel and cause flooding at the back corner, which already occurs. What is proposed to prevent this happening.
13. Council's solicitors provided us with a construction plan of the proposed swale. Is this plan still the proposed construction plan including drain ways from our neighbours property?

We look forward to your response.

Regards

Paul & Dagmar

Paul Keady *<keadypaul@gmail.com>* *Jul 3, 2023, 6:16 PM*

to Ben, Bim, Steven, Cr, Martin

Hi Ben

Would you to respond to our request, above, for details of the proposed construction works in the next few days please.

Thank you

Cheers
Paul

Ben Clark <bclark@barossa.sa.gov.au> Jul 5, 2023, 4:25 PM

to me, Bim, Steven, Cr, Martin

Hi Mr Keady,

Please see the responses below and the updated engineering plans attached. I would also add that your request for additional concrete spoon drain and narrowing of the base width has been considered and can be incorporated into the proposed swale work to accommodate the base flows.

1. The width of the proposed swale at top and at bottom.
    - The swale is proposed to be formed within the 3 metre width of the easement. The design swale base is shown 750mm wide at the base with a consistent formation for the length of the easement.
2. The depth.
    - The swale design is a straight grade from the Elizabeth Street side entry pit invert to the rear of easement outfall invert. Relative to the existing undulating swale surface, the proposed swale depth varies from matching existing surface levels at the start and end to a nominal 150mm below existing surface in between - up to nominal 200mm below existing surface in places closer to the rear of the easement.
3. The angle from top to button
    - Batter slopes vary adjacent the house from nominal 3.5% up to 7% where the house is on the edge of easement boundary and the drain width is restricted by the existing concrete path. The batter slopes in the rear of the easement are nominally 3-4%.
4. Dirt base - what is to stop it from scouring and eroding and weed growth.
    - The swale was approved by Council as grassed swale. A concrete spoon drain in the swale base would be additional investment but would provide additional erosion protection for the frequent base flows.
5. Dirt sides - what is to stop it eroding and collapsing.
    - The swale sides are grassed. This is expected to be stable for the more infrequent high level flows. The grassed side batters are not considered at risk of collapse due to the shallow batter slope.
6. Dirt easement. We understand that Council intends to leave the 3m x 50m easement as bare dirt. What is to stop weed growth, erosion and water pooling in the swale?
    - A concrete spoon drain in the swale base would line the swale floor for the extent of the easement and would provide erosion protection for the frequent base flows.

7. We note that an hydrologists report was commissioned. What flow rate and dimensions is the swale designed to accommodate ie 1 in 10, 1 in 20 or 1 in 100 flood event? Why as this selected? The existing swale is insufficient to cater for any flood event.
   - The swale is required to be open to cater for unrestricted flow of the 1 in 100 year storm event. A range of storm events are calculated to determine feasibility of a base flow pipe arrangements for frequent flows with the more infrequent gap flows up to the 1 in 100 year storm required to continue to be transferred as overland flow. This is a standard stormwater design methodology.

8. Mr Kaesler previously advised that the Council's Stormwater Management Plan applies to this development. As per section 8.12 the minimum requirement is for the trench to be grass lined and to not scour. Why does this not apply to us at least?
   - The statement referred above is from Council's "Standards and Requirements for the Design, Construction, and Development of Infrastructure Assets – Guidelines for undertaking Land Division". This document is for new land divisions and can't be automatically applied to retrospectively address pre-existing development constraints. The proposed treatment of open swale addresses the key stormwater design criteria of flow capacity, erosion protection, consistent Level of Service and cost.

9. Council has removed all the vegetation from the easement. On what basis does Council propose to leave it as bare dirt? This is a reduction in the standard of service.
   - The existing level of service was previously open earth swale and the proposed treatment was like for like. The vegetation removal was agreed to be removed by the land owner as requested, even beyond the extent of the Council easement.

10. The benefit of a spoon drain is obvious, it will not scour or erode. It will minimize maintenance. Why can we not consider it?
   - The scope of the proposed work is described in the Council report relating to this matter. A concrete spoon drain in the swale base would be additional investment but would provide additional erosion protection for the frequent base flows.

11. With a spoon drain why does the swale width need to be maintained at 1m plus? We ask because there are a number of spoon drains in the Tanunda area where the width is much less including our rear neighbour whose drain is 450mm wide.
   - The drain is 750mm wide to provide capacity for conveyance of the 1 in 100 year event flows at the available grade, plus freeboard to the adjacent house floor level.

12. The rear drain is 450mm wide. The proposed swale on our land is over 1000 wide. That will act like a funnel and cause flooding at the back corner, which already occurs. What is proposed to prevent this happening.
   - As previously described, the 750mm wide swale has the benefit of transferring flow rates at a wider width to reduce flow height and flow velocity, which reduces scour potential. The hydraulic depth will deepen as it enters the rear property culvert to take up the cross section capacity of the culvert.

13. Council's solicitors provided us with a construction plan of the proposed swale. Is this plan still the proposed construction plan including drain ways from our neighbours property?
   - The plan provided by the solicitor has been augmented with additional detail, as requested. The design elements are unchanged, being straight graded 750mm wide open swale.

Paul Keady *<keadypaul@gmail.com>* *Jul 7, 2023, 10:50 AM*

to Ben, Bim, Steven, Cr, Martin

Dear Ben,

Thank you for providing the additional information which we requested in our email exchange above. What you have now provided differs significantly from the work initially proposed following the Council motion of 24 January 2023. We have gone from a 19th Century solution to a 20th Century solution. We are in the 21st Century which is why councils require underground drainage and utilities where possible.

Please update the plan provided by Kelledy Solicitors giving us a longitudinal view of what is now proposed to be constructed on our land, including any proposed flow paths from our neighbours. We confirm that we will stop any attempt by Council to divert our neighbours' stormwater onto our land.

Your most recent advice is that the Council proposes to install grass to prevent erosion, scouring etc. Council has the responsibility to maintain the easement. This will include establishing the grass, (we assume that turf will be laid), watering, cutting etc. This will be a substantial recurrent expense for Council and a significant inconvenience for us. Please provide us with details of how Council proposes to manage its maintenance responsibilities including watering access and costs.

Thank you in anticipation of your response.

Ben Clark <bclark@barossa.sa.gov.au> Jul 7, 2023, 1:26 PM

to me, Bim, Steven, Cr, Martin

Good afternoon Mr Keady,

The longitudinal view is no different to what has previously been provided to you, this includes the existing drainage outlets from your neighbour as shown on the previously provided plans.

Noting you have requested a Section 270 review, do you plan to approve the currently proposed development? If not, we will not undertake any further work or discussion until the outcome of the Section 270 is determined.

Regards,

Paul Keady *<keadypaul@gmail.com>* ***Jul 7, 2023, 3:55 PM***

to Ben, Bim, Cr, Martin, Steven, bcc: Dagmar

Good afternoon Ben,

Would you please respond to our enquires regarding the maintenance requirements and program for the proposed development on our land.

We foresee the indefinite maintenance requirements will be onerous and costly. There will be in excess of 100 sq metres of lawn. We want to know how this will affect us.
Have you considered alternatives that you will discuss with us?

Ben, when we spoke with you and Steven you both indicated that you were not familiar with the proposed development details. There has been progress. Let's continue with this.

Cheers Paul

Ben Clark <bclark@barossa.sa.gov.au> Jul 7, 2023, 5:03 PM

to me, Bim, Cr, Martin, Steven

Good afternoon,

Thank you for your prompt reply – again at this stage we are comfortable that the solution provided will provide the necessary outcomes including the management of all water including the neighbouring property. As a result we don't intend to develop any further alternatives.

In response to your query regarding the maintenance – we are comfortable that the solution is manageable however as previously stated unless you are agreeable to the proposed design the team will not be investing any more time in determining costs and maintenance plans. I will note however and as previously advised – we will use appropriate species that will not require regular watering.

If you are not agreeable to the current proposal we will stop any further work being undertaken and await the result of the Section 270 review.

Thanks,
Ben

Ben Clark

Paul Keady *<keadypaul@gmail.com>* *Jul 11, 2023, 8:19 AM*

to ***David****, Ben, Bim, Cr, Martin, Steven*

Good afternoon Ben,

On the 5th July, you suggested an entirely new proposal to manage Council's stormwater on our easement, having earlier dismissed the idea of a concrete spoon drain. This is after some 6 months of Council telling us that a dirt trench was the only option Council would consider.

Please be respectful that this is occurring on our land and we have to live with what occurs whilst you go on to other things.

You propose construction works on our land, yet you refuse to provide us what you propose to maintain the easement. A few obvious issues for us as the landowners:

1. Is the grass to be laid turf or seed? If seed, do you think the grass will grow during winter? Weed and vegetation suppression and clearing?
2. The grass will need to be watered. Where is the water to come from? Who is to do the watering? How often will Council employees be coming on our land?
3. Council has numerous parks and gardens it maintains. You can provide us with the details requested.
4. We asked if you had considered alternatives to dirt & grass.We are happy to discuss this which may lessen the maintenance requirements & cost to Council.

Ben, we have made it clear to Council & to Council's solicitors that whilst Council has the benefit of the easement on our land, our neighbours do not and we do not consent to works running their stormwater onto our land. Please respect our wishes.

To be clear, we have not ever denied Council the right to perform works as envisaged under section 223LG of the Real Property Act 1883. What we have questioned is the type of construction proposed and the lack of consultation with us.

In the meantime it has been open to Council to do interim works to ensure that stormwater flows along the easement do not flood ours or adjacent properties. Our requests have been ignored and there has been extensive flooding on our property and neighbouring properties. You are aware of this but have done nothing.

Yours faithfully

Paul & Dagmar Keady

ATTACHMENT J

On 14 Mar 2023, at 7:49 am, Paul Keady <keadypaul@gmail.com> wrote:

Dear Bim,

We have been dealing with Benn Kromwyk regarding the various works on the easement on our land. The vegetation has been cleared, the stumps will be ground out next week and then the final work a week or two later.

You are no doubt tired of hearing from us. You know our disappointment.

We are writing to you again to try and get the culvert solution back on track.

The only information of the current works we have is word of mouth from Benn. We have not received any written notification from Council regarding the design or scope of the proposed works. We have no plan of the works and no opportunity to comment or engage about this.

These are the facts as we know them from Benn:

1. The current shallow swale will be replaced with an open dirt trench 1.3m wide at the top and 1 metre at its base. It will be 300mm deep. The sides will be steep.
2. The trench will be a safety hazard and dangerous for kids, guests etc. Tripping, falling for the unwary.
3, We can't secure our yard thus risking our little dogs escaping on to a busy Elizabeth Street. We can't block the trench.
4. The balance of the easement will be left as a 3 metre wide dirt strip.
5. Water will pool in the trench. The soil will become saturated and degrade. The sides will collapse over time.The base of the trence will be dirt.
6. Weeds and vegetation will inevitably grow in the trench and block flow. It will silt up.
7. The trench will require ongoing maintenance at the cost of the Barossa Council.

Waiting and seeing will not change any of the above. This is not fair or reasonable to us.

The benefits of an underground culvert are:

1.Much of the cost will have been expended by clearing the land and constructing the entry, exit points and trench. Benn told us that he thinks he can save some thousands of dollars by redesigning the work at the Elizabeth side pit. Benn has done the costings on a culvert, following our meeting on 15/9/22. It makes good financial sense to do this properly now rather than possibly have to do it again wasting money.
2. This piece of infrastructure is to last for generations, if it's done properly. Little to no maintenance required.
3. Neighbours can connect their storm water via underground pipes solving that problem.
4. We can secure our yard, dogs etc. No safety or health hazard.
5. We can landscape the easement, over the top of the culvert.

In summary, the construction proposed will create immediate and ongoing problems. It is also extremely unfair. All the premises with stormwater drains we checked in this area have concrete spoon drains.

We are also in a different category to those premises where Council doesn't have an easement. Council's current requirements for stormwater drainage infrastructure is for it to be underground drainage where possible. For an above ground drain the minimum requirement is for a grass base. But apparently not for us!

We have been advised by you and Councillor Schilling to wait until the works are complete. We appreciate this advice. However the more we find out about what is proposed the clearer it is that it will cause us the problems identified above. This is not fanciful for us. It is a real problem.

Bim/Kathryn, a simple plea, can you help? How can we get this back on track to where we were at our meeting on 15 September 2022?

Again, sorry to trouble you Bim and you, Kathryn. We have copied you into this email to keep you informed.

Bim, if nothing is to be done then we have no option but to seek a review of Council's decision of 24 January 2023 and look to our legal options.

Regards
Paul & Dagmar

Cr Kathryn Schilling <kschilling@barossa.sa.gov.au> Tue, Mar 14, 2:13 PM

to me

Thanks Paul

The works are still underway and I will raise your requests for improved finish with the Director.

I understand Ben has responded to your fencing request, and Martin spoke to you today, a fence can be erected on condition we can access the easement and you do not block the waterflow. This will not alter if a pipe is installed (please note a culvert is a open cross over) as you still cannot impact the easement.

As outlined Council considered both solutions and we will continue to monitor. I cannot alter the decision of the full Council.

I do think we should wait the see the end result before making any further decisions.

Regards

Kathryn Schilling
Councillor
E: kschilling@barossa.sa.gov.au | T: 08 8563 8444

Paul Keady <keadypaul@gmail.com> ***Tue, Mar 14, 2:43 PM***

to Cr

Thanks Kathryn. No, we haven't received any information from Benn regarding a fence. Kathryn we understand that you can't alter the Council's decision. We feel very frustrated that we were not consulted prior to the decision being made.

We do appreciate your communication with us.

Regards
Dagmar and Paul

ATTACHMENT K

Dear Counsellor,

We are the owners of 18A Elizabeth Street, Tanunda.

On 24th January 2023 the Barossa Council considered an Agenda item relating to our home at 18A Elizabeth Street, Tanunda. That item related to Council's use of a stormwater easement on our land,adjacent to our home. That easement is currently a dirt strip. The easement is for Council's use to drain stormwater from Elizabeth Street into Julius Street.

Since March 2022 we have been communicating with various employees of the Barossa Council, Mayor Lange and more recently some Councillors. Unfortunately our concerns have not been resolved and both we and Council have engaged solicitors. In due course the legal process will play out at great cost and inconvenience to us all. A pity that this could not have been avoided.

We just want you to know why it has been necessary for us to seek legal advice and to hear our hurt and frustration as to how we have been treated by Council's management.

Since March 2022 we had been corresponding with Mr Kaesler about our concerns with the easement on our land. The easement was overgrown with vegetation and trees blocking the water flow from Elizabeth Street to the rear discharge point in our yard. We saw rats and suffered mosquitos. When it rained it was a wet bog. Mr Kaesler advised us that in his opinion the level of service by Council was appropriate

Whilst we were trying to get something done about the condition of the easement, Council officers were concerned to promote the interests of our neighbours who had run pipes to discharge their stormwater on our land.
We were getting nowhere with Council.

Friends advised us to contact Mayor Lange. We did so and he responded by attending our home. Mayor Lange was sympathetic and indicated he thought it was Council's responsibility to rehabilitate the easement. We were elated that finally we had made some progress.

Mayor Lange arranged a meeting at Council chambers, Nuriootpa, held on 15 September 2022. Attending were Mayor Lange, Mr Clarke, Mr Kaesler, Paul & Dagmar Keady. At that meeting we were advised that the best solution to the drainage problems on the easement was for Council to construct an underground culvert. It was stated that the new side pit in Elizabeth Street would increase the volume and velocity of the water flow along the easement.
It was discussed that there would be a delay as the Council needed to approve the funds and the Council was in caretaker mode pending the elections. Mr Clarke indicated a total cost of about $80,000.00. No other option for the stormwater flow was discussed.

It was also discussed and agreed that all construction works would be deferred pending Council's approval as it would be cheaper for all the work to be completed at the same time. It was noted that this solution would also resolve our difficulties with our neighbours as they could connect an underground pipe into the culvert to discharge their stormwater.

We left that meeting with the clear understanding that there was a commitment by those present to put to Council, at its January meeting, a recommendation to approve funding for an underground culvert. We were elated and thanked all present.

We sent an email to Mayor Lange, copied to Mr Clark and to Mr Kaisler, confirming this agreement.

Council elections were held and we sent a follow up email to Mr Clark to enquire whether anything further was required of us.

The Agenda item and Report with Recommendations presented to you at your meeting on 24 January 2023 were not what had been discussed and agreed with us.

We were not advised of any change from the above agreement nor have we been provided with any explanation. We relied on the integrity of those attending the meeting on 15 September 2022 that this commitment would be upheld.

We immediately contacted Mayor Lange. We were upset. We prepared correspondence to go to your meeting requesting an adjournment. Mayor Lange advised us to allow the Agenda item to proceed because that at least would mean the vegetation would be removed before the winter rains. We accepted his advice.

The Agenda item you considered and approved on 24 January 2023 was not as agreed with us. Please note:

1. None of our correspondence with Council officers was provided to you to give some context about our concerns with the condition of the easement.
2. We were not advised of the Agenda item nor were we provided with the Report or Recommendations. We didn't have an opportunity to give you our response to the matters raised in that report.
3. You were not advised of our meeting with Mayor Lange, Mr Ben Clarke and Mr Steven Kaisler at Council's Offices, Nuriootpa, on 15 September 2022, nor the commitment given to us at that meeting.
4.We have walked this area of Tanunda and there are concrete gutters on private premises running the stormwater into the street. In fact, the stormwater passing on our property enters a concrete drain into 19 Julius street then into your underground concrete pipes.

We were always co-operative with Council and would have been prepared to discuss options with Council regarding how best to deal with the stormwater flow over our land. Instead, we were ignored.

The vegetation has now been removed by Council from the easement. We have a dirt strip some 3 metres wide. We were told that the Council proposes to construct a dirt trench, 1.3 metres wide, 300mm (12 inches) deep, 52 metres along the easement on our land. When it rains, the trench will be a dirt bog carrying water and detritus from the roadway and gutters across our land. We can't secure our back yard without blocking the trench. Our dogs can escape onto Elizabeth Street as can our young grandchildren. The trench is dangerous to the unwary. We are told that the balance of the easement is to be left as bare dirt.

Council's proposal for the easement effectively resumes a 3 metre strip of our land from front to back.

We have written to various Counsellors with our concerns. We are advised to wait and see until after the trench is constructed. With respect, we live here. We know what to expect.

Construction of the trench was to commence on 20 March 2023. Significant funds were to be expended. As a last resort we had our solicitors write to Mr McCarthy on 17 March 2023 setting out our legal position and concerns. Mr McCarthy has advised us that the Barossa Council is now legally represented.

The work has not proceeded.The easement is churned up dirt and incapable of draining stormwater. Flooding into our yard occurred with the recent rains. We reported that to Mr McCarthy. If left in its current condition we will have recurrent flooding of our land and potentially that of our neighbours.

Our purpose in writing this email is for you to understand our frustration and that legal proceedings are our last resort. The legal costs will far exceed the cost of the work which was agreed on 15 September 2022.

Consider this. Would Council allow you to put in a pool fence with a gap 1.3m wide and 300mm deep? No, it would be dangerous. That's what we will have with the trench. Would the Council dig an open trench 1.3m wide, 300mm (12 inches) deep along land accessed by the public and not worry about visitors, children falling into it etc? Not likely. But, that's what is offered to us.

It seems that Council has no understanding that the easement is on our land and that we should be consulted when decisions are made by Council about our land. That happened on 15 September 2022. It has not happened since.

The lawyers will now do what they will do. Perhaps though, you might consider how we feel. We have been unheard, misled, and ignored.

Each of you was elected on the promise to be responsive to the public, to ensure management accountability and act on the legitimate concerns of ratepayers. We acknowledge and thank Mayor Lange, and Counsellors Schilling and Evans for engaging with us. They can't change Council's decision of 24 January 2023. We know that. But that doesn't change the fact it was a decision taken without any input from us, the landowners.

We extend an invitation to each of you to come to 18A Elizabeth Street, Tanunda, look at the easement, talk to us if you wish, and decide for yourself how you would feel in our position. No appointment necessary.

We are happy to provide copies of all correspondence we have had with Council Officers including those referred to above.

Yours faithfully

Paul & Dagmar Keady

Reference: B13753 Attachment 2.

26 July 2023

Paul and Dagmar Keady
18A Elizabeth Street
Tanunda SA 5352

Dear Paul and Dagmar Keady,

FREEDOM OF INFORMATION APPLICATION – PARTIAL DETERMINATION

I refer to the application which you lodged with the Barossa Council (the **Council**) under the *Freedom of Information Act 1991* (the **Act**) on 29 May 2023 requesting access to:

1. *Development Application 960/677/2012 files including correspondence/emails between the Barossa Council and the developer regarding stormwater management.*

2. *Development Assessment 960/276/2019 files including correspondence/emails between the Barossa Council and the developer.*

3. *Internal emails and correspondence from March 2022 to date by Council officers, Mr Kaesler, Mr Clark, Ms Lennon, Mr McCarthy and Mayor Lange relating to the discharge of stormwater from 18 Elizabeth Street, Tanunda onto the stormwater easement on 18A Elizabeth Street, Tanunda 5352.*

4. *Records and/or reports including emails for the period 1 August 2022 to date relating to a meeting held at Barossa Council on 15 September 2022 between Paul & Dagmar Keady, Mayor Bim Lange, Steven Kaesler and Ben Clark relating to stormwater drainage on 18A Elizabeth Street, Tanunda.*

5. *Engineering and/or construction records, including emails between Council Officers, relating to the design, specifications and cost of drainage options to be constructed on the stormwater easement on 18A Elizabeth Street Tanunda for the period Is March 2022 to date. Such documents to include safety and/or environmental assessments relating to the construction of drainage on 18AElizabeth Street, Tanunda.*

6. *Emails, internal memoranda and notes between Barossa Council Officers, specifically Steven Kaesler, Ben Clark, Janine Lennon, Martin McCarthy and Mayor Bim Lange, related to Council meeting Agenda item No.7.4.1 Stormwater Upgrade Works – 18A Elizabeth Street, Tanunda, dated 24 January 2023, including the debate report No. 22/74352 authored by the Manager, Engineering Services.*

*(*the **Application***)*

(08) 8563 8444 | barossa@barossa.sa.gov.au | barossa.sa.gov.au
43-51 Tanunda Road (PO Box 867), Nuriootpa SA 5355 | ABN: 47 749 871 215

I also refer to the Council's letter to you of 16 June advising you that it had extended the time within which to determine your application until 27 July 2023.

The Council has now undertaken and completed a review of its records in relation to the application. The review identified 23 documents as falling within the scope of the Application (the **Documents**). The content of each of the Documents has been reviewed to determine whether or not any information contained within them is exempt from disclosure under Schedule 1 to the Act.

As this process of review is now complete I, as an accredited FOI officer under the Act, make a partial determination to provide you with access to 17 Documents. Access is provided in full to 12 of the Documents (documents 1 - 3, 5, 6, 11, 12, 15 - 19), while 5 have been partially released (documents 7,8, 20, 22 and 23) (the **Determination**). There is one document (document 9) that has been determined exempt in accordance with Clause 9(1) Schedule 1 to the Act because it is an internal working document of the Council. **Enclosed** with this letter is a table which identifies the grounds on which this partial Determination is made in respect of each Document.

Three of the Documents (documents 4, 13 and 14) currently remain the subject of consultation pursuant to Division 2 of Part 3 of the Act and we are awaiting a response from one party, out of four, who have been consulted. Two parties consulted formed the view that the documents could be released and one party formed the view that the document is partially exempt from disclosure pursuant to Schedule 1 clause 7(b) to the Act. Accordingly, I determine to release documents 5 and 6 in full and document 7 is partially exempt from disclosure because it relates to the business affairs of the party. The document consists of information that has a commercial value to the party and the disclosure could reasonably be expected to diminish the commercial value, with such disclosure being, on balance, contrary to the public interest.

Documents 20, 21, 22 and 23 are all either exempt or partially exempt as the contents are subject to legal professional privilege.

The requests in relation to 1 and 2 of the Application are refused in accordance with section 20(1)(b) of the FOI Act as the documents are otherwise available for public inspection pursuant to the *Development Regulations 2008*.

Due to large file sizes, the documents will be made available via our file sharing platform Objective Connect. You will separately receive an email with instructions on how to register and access the documents. Alternatively, if you wish to collect copies of the documents from our Principal Office, you may do so by paying a fee of $0.25 per page for photocopying.

Should you be dissatisfied with the outcome of the Determination, you have the right to have it reviewed. According to section 39 of the Act, you are entitled, within **30 days** of the date of this letter to apply to the Ombudsman for a review of the Determination, unless you are granted an extension of time by the Ombudsman. Such an application must be in writing and must be accompanied with the relevant application fee.

If you have any questions regarding the Determination, please contact me 8563 8448.

Yours sincerely

Naomi Minett

Accredited FOI Officer

(08) 8563 8444 | barossa@barossa.sa.gov.au | barossa.sa.gov.au
43-51 Tanunda Road (PO Box 867), Nuriootpa SA 5355 | ABN: 47 749 871 215

Attachment 2

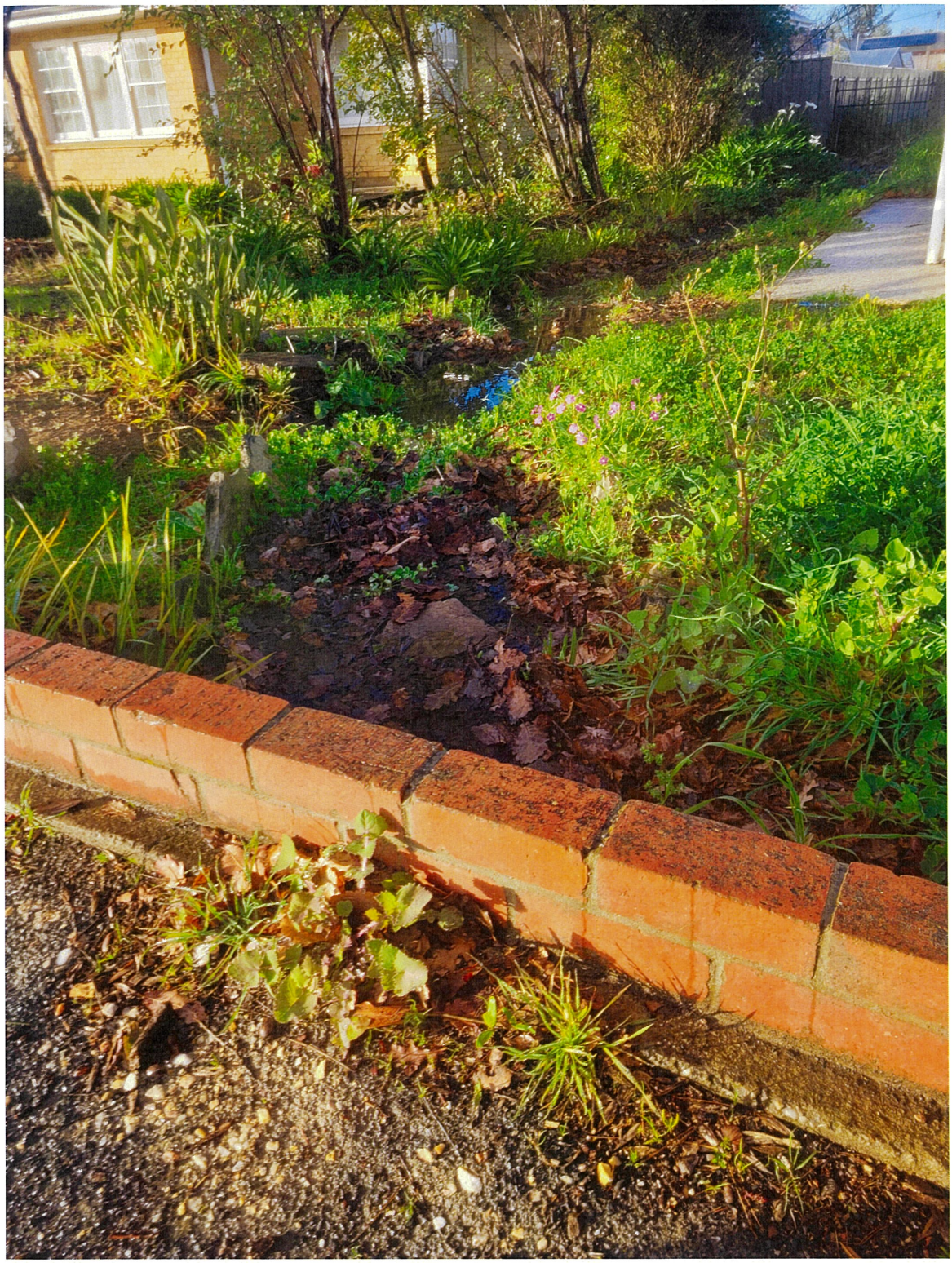
FREEDOM OF INFORMATION APPLICATION – DOCUMENT SCHEDULE

No	Description	Date	Access	Other
1	Email of S Kaesler to N Gilbert	28 March 2022	Release in full	
2	Email of R Williams enclosing hydrology report	28 July 2022	Release in full	
3	Email of B Kromwyk to prospective tenderers and attachments	3 August 2022	Release in full	
4	Email of Cavco Earthmoving to Council and attachments	22 August 2022	TBC	Pending consultation
5	Email of REMO Contractors to Council and attachments	22 August 2022	Release in full	
6	Email of Bardell Excavations to Council and attachments	24 August 2022	Release in full	
7	Email of Kent Civil to Council and attachments	24 August 2022	Partial release	Partially exempt Schedule 1 clause 7(b) (business affairs)
8	Email of B Kromwyk to various	29 August 2022	Partial release	Pending consultation
9	Tender Evaluation Report	30 August 2022	Exempt	Exempt Schedule 1 clause 9 (internal working document)
10	Email of B Kromwyk to Cavco Earthmoving	31 August 2022	TBC	Pending consultation

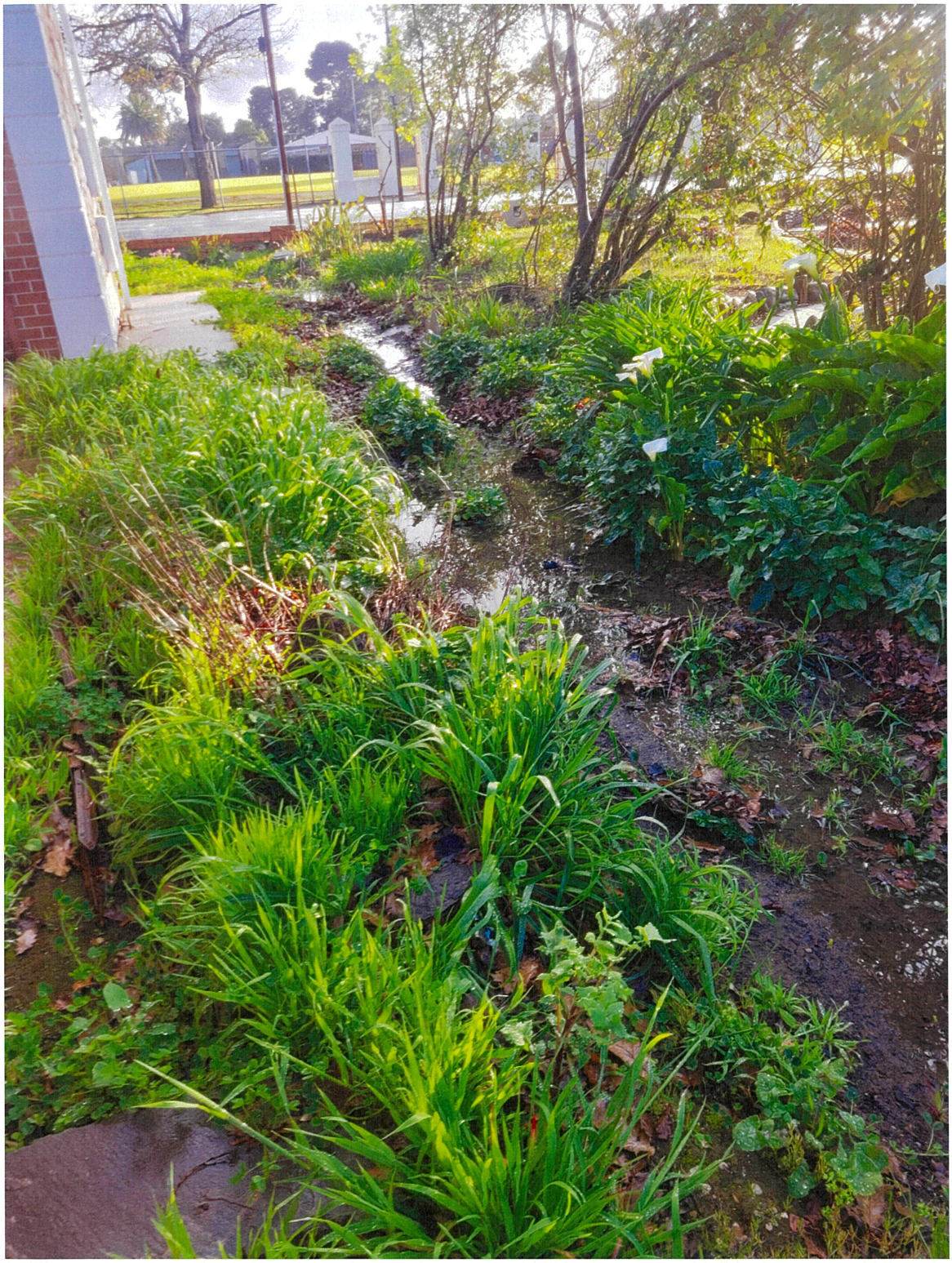
11	Email of J Lennon to various	15 September 2022	Release in full	
12	Email of B Kromwyk to Cavco Earthmoving	23 November 2022	Release in full	
13	Email of Cavco Earthmoving to B Kromwyk, including two (2) quotes for drainage works	5 December 2022	TBC	Pending consultation
14	Email of Cavco Earthmoving to B Kromwyk, including revised quote for drainage works	27 February 2023	TBC	Pending consultation
15	Email of S Kaesler to various recipients	6 March 2023	Release in full	
16	Email of B Clark to various internal recipients	12 March 2023	Release in full	
17	Email of B Clark to various internal recipients	17 March 2023	Release in full	
18	Summary notes by B Kromwyk	22 March 2023	Release in full	
19	Email of Mayor Lange to M McCarthy	29 March 2023	Release in full	
20	Email of S Kaesler to various internal recipients, including attachments	11 April 2023	Release in part	Schedule 1 clause 10 exemption subject to legal professional privilege
21	Email of Mayor Lange to M McCarthy	27 April 2023	Exempt	Schedule 1 clause 10 exemption subject to legal professional privilege

22	Email of B Kromwyk to G Carter	15 May 2023	Release in part	Schedule 1 clause 10 exemption subject to legal professional privilege
23	Email of A Evans to various internal recipients	24 May 2023	Release in part	Schedule 1 clause 10 exemption subject to legal professional privilege









Sent from Yahoo Mail on Android





March 2023





June 2023





February 2022



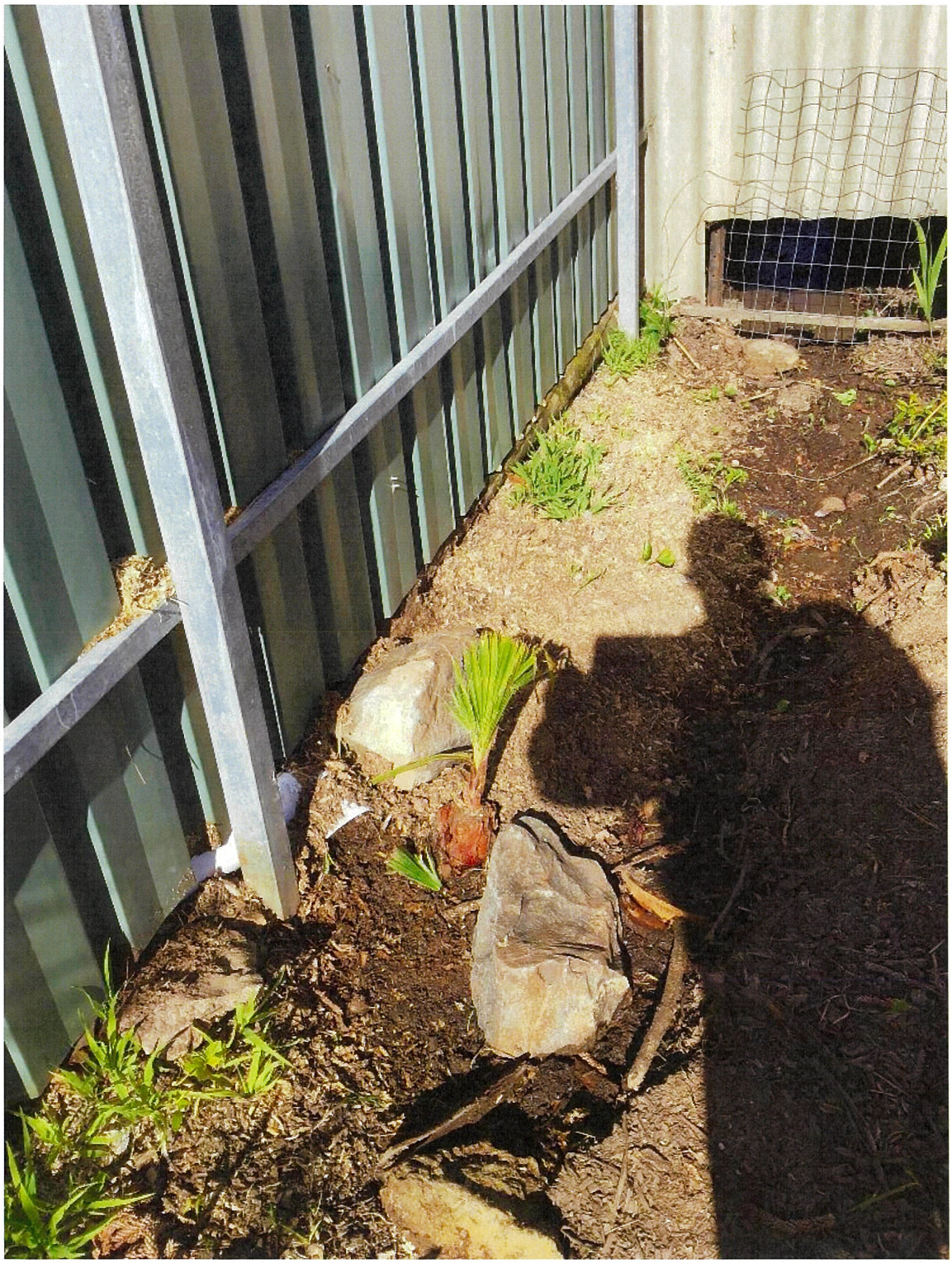
May 2022





June 2022





Sophia Pishas

Subject: FW: 18a Elizabeth Street, Tanunda.

From: Paul Keady <keadypaul@gmail.com>
Sent: Tuesday, August 15, 2023 12:58 PM
To: Felice D'Agostino <FDAgostino@normans.com.au>
Subject: 18a Elizabeth Street, Tanunda.

Dear Ms D'Agostino,

We confirm that you will be attending our premises on Friday 18 August 2023 at 2pm. We look forward to meeting with you.

In due course please advise who will be attending with you.

We refer to our letter to Council dated 19 June 2023 requesting a section 270 Review in relation to the Barossa Councils (TBC) decision dated 24 January 2023, in relation to 18A Elizabeth Street, Tanunda, ("the premises") being Debate Report No 22/74352 authored by Mr Steven Kaesler, Manager Engineering Services.

You are instructed by TBC to conduct an external review of this decision. We do not know what communications you have had with TBC nor what documents you have received from them. TBC is a client of your firm, Norman Waterhouse Lawyers.

We are in the process of putting together our submission, including attaching relevant documents but will not be in a position to get that to you prior to Friday.

The purpose of this letter is to give you a summary of what has occurred.

There are two issues, which should be independent of each other, but are connected due to TBC's insistence that our neighbours ("the Verhees") had permission and the authority of TBC to run their stormwater directly onto our land, into the easement.

The first issue is TBC's decision on 24 January 2023 to retain the existing level of service to the easement. From the age of the vegetation and condition of the swale it is obvious that there was no :"service" by TBC on the easement.
The second issue is that the works proposed by TBC in response to TBC's Determination includes flow ways from the Verhees into the easement. We do not consent to this and have advised TBC that it does not have the legal authority to do this to us. TBC asserts that it can do so but refuses to provide any details of any such decision or authority by TBC.
TBC is aware that we have legal advice confirming our view that TBC does not have the authority under section 223 LG to grant 3rd party access to the Verhees to our land. We have initiated injunctive proceedings against the Verhees in the Magistrates Court, Elizabeth. The Verhees assert that they have had such permission from TBC since their D/A approval 960/276/2019. However, the terms of that approval by TBC were unequivocal, the Verhees were not to put their stormwater onto the easement (our land). Condition 3.
These proceedings have been adjourned until late September for further mention.

TBC has adopted a biased position regarding our neighbourhood dispute with the Verhees. This seems to flow from advice given by TBC allowing the Verhees to vary the conditions of D/A 960/276/2019.

TBC is expending funds providing the Verhees with advice, has authorised Council officers to access our land to allow the Verhees stormwater to flow onto our land and has committed to bear the costs of alternative stormwater arrangements for the Verhees.
Generally TBC has ignored us, tried to bully us and has threatened us regarding the Verhees stormwater. We have emails from TBC to support these accusations.

The intermingling of these issues has meant that there has been no solution to the easement issues with TBC. Normally we would expect that there would be consultation, discussion of options and a path forward readily achieved.
It is inevitable to conclude that TBC's attitude to construction works on the easement is dictated by the Verhees interest, and TBC's interest not to be wrong in its advice to the Verhees.

Summary:

1. In December 2021 we purchased the premises. We were aware of the easement, 3 metres wide along the eastern boundary of the premises adjoining 18 Elizabeth Street, Tanunda (the neighbours).
2. At the time of purchase the easement was covered with dense vegetation, mature trees and bushes, date palms and was generally a silted up swale.
3. The stormwater flow path is from a side pit in Elizabeth Street, into the easement discharging at the rear of the premises into a concrete culvert drain in 19 Julius Street, Tanunda. TBC does not have an easement over 19 Julius treet, Tanunda.
4. The easement was created in 2014 as a part of the subdivision from 20 Elizabeth Street that created the premises.
5. TBC had not carried out any remedial works or maintenance on the easement. We discovered that the flow path quickly clogged with leaves and other debris and was totally inadequate for purpose. Flooding occurred onto our land and into the land of rear neighbours. Complaints had apparently been historically made.
6. In March 2022 we had some major rain events. The side pit clogged up, flooding occurred into Elizabeth Street and along the easement. We complained to TBC and met with Mr Kaesler.
7. Thereafter we had correspondence with Mr Kaesler and others at TBC.
8. In June 2022 TBC approved expenditure to renovate the side pit. Some $30,000.00 was allocated. That work has not occurred.
9. In July 2022 we consulted with Mayor Lange. He visited the premises. He agreed that the easement was TBC's responsibility and needed to be cleared. He committed to arrange a meeting with TBC Officers to discuss drainage along the easement
10. On 15 September 2022, we met with Mayor Lange, Mr Ben Clark and Mr S. Kaelsler at TBC's office at Nuriootpa. We were advised by these persons that an underground culvert was the best option to carry Council's stormwater from the proposed upgraded side pit in Elizabeth Street along the easement discharging into the existing concrete culvert in 19 Julius Street, Tanunda. No other option was discussed. Mr Clark indicated that the approximate cost of ll works would be about $80,000.00. The TBC was in caretaker mode pending the Local Government elections. A new side pit in Elizabeth Street, which was approved on 14 June 2022, budget,$30,000.00, and the vegetation removal could have proceeded immediately. It was discussed and agreed that it would be cost effective for these works to be put on hold until TBC approval for the proposed culvert. It was noted that the earliest approval date would be the January meeting of the new Council.
11. We also discussed the neighbours' (the Verhees) stormwater discharge onto our land. It was proposed by TBC that the Verhees could run underground stormwater pipes connecting to the culvert. It was stated by Mayor Lange that a culvert was the way to go as it would solve both problems i.e. ours with the easement condition, TBC and Verhees with the Verhees stormwater.
12. Later on 15 September 2022, we confirmed by email with Mayor Lange, Mr Clark and Mr Kaesler what had been agreed between us at this meeting.
13. On 16 September, 2022 we sent an email to Mr Clark confirming the culvert resolution and outlining our difficulties with the Verhees regarding our Fence discussion with them. He was to investigate our concerns in that regard.
14.Further emails followed about the Verhees. In December 2022 we emailed Mr Clark enquiring that all was proceeding with the submission for TBC at a meeting in January 2022. Mr Clark's response suggested it was.
15. At the Council meeting on 24 January 2023, the Recommendation put forward by Mr Clark and Mr Kaesler was contrary to what we discussed and agreed on 15 September 2022.

16. We were given no warning or notice that their position had changed. Nor were we given any opportunity to put any submission to TBC at its meeting. We were misled and blindsided.
17. We attempted to communicate with Mayor Lange and Counsellors of TBC. Some were sympathetic. We were advised to accept the decision and it could be later revisited.
18. Other than our short email exchange with Mr Clark in December 2022, we heard nothing from him or Mr Kaesler prior to Council's meeting on 24 January 2023. The clearance of the vegetation and drainage works were referred to Mr Kromwyk.
19. We first met with Mr Kromwyuk on 20 February, 2023 at our premises. He attended with Mayor Lange. Mr Kromwyk advised us what trees and vegetation were being removed and the time table for that to occur. He indicated that it was proposed to construct a dirt drain. Mr Kromswyk indicated that the design details would be discussed with us prior to work commencement.
Separately, we discussed the Verhees problem with Mayor Lange and he agreed to raise this issue with Mr McCarthy, CEO of TBC.
20.We had a number of email exchanges with Mr Kromwyk. He made it clear that he was instructed to put into effect Councils adopted Recommendation and that any variance was "above his pay grade"
21. Despite our requests, we had not received any documents detailing the proposed drainage construction nor had it been discussed with us.
For the first time we were made aware that TBC proposed to construct "An open dirt trench, 1 metre wide at the bottom, 1.3 metres wide at the top, and 300mm deep.On our enquiry, it was indicated the TBC might consider putting loam and grass seed onto the easement which otherwise would be left as bare dirt."
2. On being questioned, Mr Kromwyk conceded that the proposed construction works included defined flow ways from the Verhees property onto our land.We protested. We were ignored.
23.On 17 March, 2023 we instructed our solicitors, Botten Levinson, to write to TBC outlinding our objections to the proposed construction works. Thereafter we had correspondence with Mr Kelledy of Kelledy Jones Lawyers. He provided us with a rough construction diagram of the proposed trench. Of significance to us, TBC proposed to construct drain ways for the Verhees stormwater to cross our eastern boundary despite our objections.
24. Following that letter, TBC ceased work and that situation has continued ever since.
25. Emails in June/July with Mr Clark suggested that TBC was open to constructing a concrete spoon drain. We understand that any further discussion with TBC has been put on hold pending the results of this review.
26. We assume you are in possession of correspondence between us and Mr Kelledy. If not we will provide copies in due course.

Some of our concerns with the dirt swale and the level of service proposed by TBC are set out in part in our letter dated 29 March 2023 to all TBC's Counsellors. You will need to get a copy of this from TBC.

27. You can access the youtube recording of TBC Meeting on 24 January 2023, in particular the discussion of debate report 7.4.1. This recording shows:

a. That Mayor Lange, Mr Ben Clark and Mr Steven Kaesler were present. These were the persons we met on 15 September 2022. .None of these persons advised this meeting that they had met with us on 15 September 2022, nor of their agreement that an underground culvert was the appropriate drainage solution at that time.
b. Ms Janine Lennon Lennon was in attendance at this meeting. None of Ms Lennon, Mr Clark, Mr Kaesler or Mayor Lange advised the Council meeting that someone at TBC had made a commitment to the Verhees that they could deposit their stormwater directly onto our land. These persons all knew that this was contested by us.
c. The Council discussion only considered whether we "knew" of the easement at the time we purchased 18A Elizabeth Street, Tanunda. Our circumstances, alternative solutions or the merits of an increased level of service were not considered. Nor was the impact on us of the existing level of service.

2. The Debate Report presented to TBC on 24 January 2023 was misleading and inaccurate.
Inter alia:
1.There is no mention of our meeting with Mayor Lange, Mr Clark and Mr Kaesler on 15 September 2022.
2. Despite Mr Kaesler's comment in his penultimate paragraph, TBC does not have a similar level of service over any of Councils easements similar to ours. We know because we asked and have checked the list provided by Mr Clark. Our situation is exceptional.

3. There is no mention of staff members permitting the Verhees to deposit their stormwater onto our property or the impact on us of the decisions taken on providing access for the Verhees to run their stormwater onto our property.
4. We were misled that the Recommendation would accord with our agreement on 15 September 2022.
5. We were not advised that the Recommendation had changed, nor was any alternative discussed with us.
6. We were not given the opportunity of putting our concerns to TBC including the impact of the dirt swale on us.
7. There was no identification of the proposed works, i.e. dirt trench, no engineering plans or assessment, no health and safety considerations.
8. We have received advice from an engineer that with the constant wetting and drying of a dirt trench adjacent to our foundations that there is a real risk of cracking. None of this kwas reported or considered.

There has recently been acrimonious emails between us and Mr MCarthy and Mr Clark. They have threatened us and trespassed on our land to unblock encroaching pipes from our neighbour.

We have lodged a number of Complaints with TBC regarding various Council Officers bias in favour of the Verhees. We have made numerous requests for TBC to provide us with details of the purported approval by TBC for the Verhees to access our land. No success.

We are not sure if these Complaints have been included in your section 270 Review. We ask because we have correspondence from the Mayor that our Complaint against Mr MCarthy is part of this Review.

Please clarify that for us.

There are still documents outstanding from our FOI request. We hope they will be available to us shortly.

Please note that this is only preliminary information for you to consider and to put into context what has occurred and why such a simple matter that would normally be resolved by discussion has reached this stage.

We have indicated on a number of occasions to TBC that we are available to discuss our concerns and to try and reach an agreement with them. That includes mediation. To date we have not had a response.

We reserve our right to put further information before you, including submissions.

Yours faithfully,

Paul & Dagmar Keady

From: Paul Keady <keadypaul@gmail.com>
Sent: Friday, September 15, 2023 6:32 PM
To: Felice D'Agostino <FDAgostino@normans.com.au>
Subject: Fwd: Scan Doc

Dear Ms D'Agostino,

My applogies that I have been delayed responding to you. I have recently had a knee replacement which has made mobility difficult to obtain documents from the Barossa Council, which I was able to do yesterday.These documents have just been provided to us under our FOI request.

The attached documents are relevant to the financial cost of the proposed easement works as follows:

1. Document 1 relates to the work in Elizabeth Sttreet, in the side pit and footpath, NOT on our land. We understand these works were budgeted by Council in June 2022.
2. Document 2 appears to relate to the cost of remediation of the easement, removal of vegetation trees etc and for a culvert. It is dated 5 December 2022.
3. Document 3 appears to be a quote for the dirt swale approved by Council. This quote does not include the cost of the removal of vegetation/treesetc. The total amount be increased to include that amount.

The relevance of Document 2 and Document 3 is that the total cost of a culvert, as quoted,and the dirt swale, as quoted plus vegetation removal, is not as agreat a difference as we were led to believe.

Yours faithfully

Paul & Dagmar Keady



4.

Spencer Webb

From: Admin - CavcoEarthmoving <admin@cavcoearthmoving.com.au>
Sent: Thursday, 18 August 2022 9:10 AM
To: Benn Kromwyk
Subject: [EXTERNAL] Elizabeth street drainage
Attachments: elizabeth street.docx

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Morning ben

Please find attached the quotation for the drainage works on Elizabeth street Tanunda.
If you have any question please feel free to contact me.

Kind regards Larry

Cavco Earthmoving Pty Ltd
ABN No. 62-120 506 578
PO Box 69
SMITHFIELD SA 5114
admin@cavcoearthmoving.com.au

Attention: Benn Kromwyk

Quote for Elizabeth Street drainage works

Cavco Earthmoving would like to thank you for the opportunity to tender on the above-mentioned project and submit the following quotation for the drainage works at Elizabeth Street Tanunda.

Total quotation - $19,300 plus GST

Cavco Earthmoving have allowed for the scope of works as per the schedule and below inclusions and exclusions –

Inclusions –

- Mobilization and Demob of machines to site.
- Set up temporary fencing for site compound. Setting up flagging and bunting around work area with appropriate signage.
- Developing and maintaining management plans, quality, OHS&W and environmental documentation
- Saw cut kerb and bitumen ready for works
- Excavate and instal 600x300 RCBC IN TO PIT
- Form up to extend existing SEP to a triple SEP.
- Supply and instal new triple SEP LID.
- Supply and instal 600x600 Grate to go over culvert.
- Reinstate concrete kerb and bitumen footpath/ roadway
- Excavate in creek bed in front of house, line with geo cloth and instal rip rap.
- Clean out drain on Elizabeth Street and Langmeil street
- Backup area around rock
- Clean work area and demobilize

Cavco Earthmoving Pty Ltd
ABN No. 62-120 506 578
PO Box 69
SMITHFIELD SA 5114
admin@cavcoearthmoving.com.au

Attention: Benn Kromwyk

Revised Quote for Elizabeth Street drainage works

Cavco Earthmoving would like to thank you for the opportunity to tender on the above-mentioned project and submit the following quotation for the drainage works at Elizabeth Street Tanunda. Due to the price increase of material please find attached a revised quotation for the drainage work at Elizabeth Street Tanunda.

The new price - $25,985 plus GST

Cavco Earthmoving have allowed for the scope of works as per the schedule and below inclusions and exclusions –

Inclusions –

- Mobilization and Demob of machines to site.
- Set up temporary fencing for site compound. Setting up flagging and bunting around work area with appropriate signage.
- Developing and maintaining management plans, quality, OHS&W and environmental documentation
- Saw cut kerb and bitumen ready for works
- Excavate and instal 600x300 RCBC IN TO PIT
- Form up to extend existing SEP to a triple SEP.
- Supply and instal new triple SEP LID.
- Supply and instal 600x600 Grate to go over culvert.
- Reinstate concrete kerb and bitumen footpath/ roadway
- Excavate in creek bed in front of house, line with geo cloth and rock
- Clean out drain on Elizabeth Street and Langmeil street
- Backup area around rock

Exclusions –

- Sub-standard ground, non-load bearing ground and/or hard ground or rock
- No allowance to handle environmentally contaminated materials. Should there be a requirement to classify, dispose, and/or treat contaminated materials, the cost to provide this service is not included in this quote
- No allowance to divert and/or modify existing electrical, Telstra, gas, stormwater, water and irrigation services
- Council to notify local residence about work before commencing
- Any unforeseen circumstances

If you have any questions or need clarification on any of the above, please do not hesitate to contact me on [redacted] I will be more then happy to discuss further and assist where I can.

Yours faithfully,

Larry Cavallaro

13

Spencer Webb

From: Admin - CavcoEarthmoving <admin@cavcoearthmoving.com.au>
Sent: Monday, 5 December 2022 11:28 AM
To: Benn Kromwyk
Subject: [EXTERNAL] elizabeth street Tanunda
Attachments: 18aelizabeth street.docx; elizabeth street.docx

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Morning Ben,
Hope all is well. Please find attached both quotations for Elizabeth street works. One is a revised quote, due to the increase of materials the price had to be altered. The second quote is for 18A Elizabeth street. If you would like to discuss in more detail please feel free to contact me. Kind regards Larry Cavallaro

Cavco Earthmoving Pty Ltd
ABN No. 62-120 506 578
PO Box 69
SMITHFIELD SA 5114
admin@cavcoearthmoving.com.au

Attention: Benn Kromwyk

Quote for 18a Elizabeth street drainage week.

Cavco Earthmoving would like to thank you for the opportunity to tender on the above-mentioned project and submit the following quotation for the 600X300 RCBC RUN alongside 18 A Elizabeth Street Tanunda.

Total quotation - $75,850 plus GST

Cavco Earthmoving have allowed for the scope of works as per the schedule and below inclusions and exclusions –

Inclusions –

- Mobilization and Demob of machines to site.
- Set up temporary fencing for site compound. Setting up flagging and bunting around work area with appropriate signage. Set up another compound across the road to stockpile spoil.
- Developing and maintaining management plans, quality, OHS&W and environmental documentation
- Get job located. Work out levels
- Get trees and shrubs removed between both dwellings, cut down and remove off site.
- Take down brick fence and footing at start of job, reinstate once tree contractor and job is completed
- Box out for 50 M of 600X300 RCBC stockpile spoil across the road
- Lay bases and crowns, mortar joins and instal rock wrap over joins.
- Backfill sides with sand and leg ram inlayers to top of culvert.
- Backfill on top of culvert and compact
- Core in to culvert to allow for 6 stormwater house outlets.
- Supply and spread sandy loam 50 m alongside both houses.

- Reinstate footing and brick wall.
- Clean work area and demobilize

Exclusions –

- Sub-standard ground, non-load bearing ground and/or hard ground or rock
- No allowance to handle environmentally contaminated materials. Should there be a requirement to classify, dispose, and/or treat contaminated materials, the cost to provide this service is not included in this quote
- No allowance to divert and/or modify existing electrical, Telstra, gas, stormwater, water and irrigation services
- Council to notify local residence about work before commencing
- Council and contractor to negotiate with home owner about tree and shrub removal before job commences
- Only allowed for 50 m of 600x300 RCBC Bases and crowns, extra charge will occur if more are needed.
- No allowances for any IPs to be installed along the culvert drain.
- All material to be spread out on job, no dumping fees are allowed.
- Any unforeseen circumstances

If you have any questions or need clarification on any of the above, please do not hesitate to contact me on [redacted] I will be more then happy to discuss further and assist where I can.

Yours faithfully,

Larry Cavallaro

Cavco Earthmoving Pty Ltd
ABN No. 62-120 506 578
PO Box 69
SMITHFIELD SA 5114
admin@cavcoearthmoving.com.au

Attention: Benn Kromwyk

Revised Quote for Elizabeth Street drainage works

Cavco Earthmoving would like to thank you for the opportunity to tender on the above-mentioned project and submit the following quotation for the drainage works at Elizabeth Street Tanunda. Due to the price increase of material please find attached a revised quotation for the drainage work at Elizabeth Street Tanunda.

The new price - $25,985 plus GST

Cavco Earthmoving have allowed for the scope of works as per the schedule and below inclusions and exclusions –

Inclusions –

- Mobilization and Demob of machines to site.
- Set up temporary fencing for site compound. Setting up flagging and bunting around work area with appropriate signage.
- Developing and maintaining management plans, quality, OHS&W and environmental documentation
- Saw cut kerb and bitumen ready for works
- Excavate and instal 600x300 RCBC IN TO PIT
- Form up to extend existing SEP to a triple SEP.
- Supply and instal new triple SEP LID.
- Supply and instal 600x600 Grate to go over culvert.
- Reinstate concrete kerb and bitumen footpath/ roadway
- Excavate in creek bed in front of house, line with geo cloth and rock
- Clean out drain on Elizabeth Street and Langmeil street
- Backup area around rock

- Clean work area and demobilize

Exclusions –

- Sub-standard ground, non-load bearing ground and/or hard ground or rock
- No allowance to handle environmentally contaminated materials. Should there be a requirement to classify, dispose, and/or treat contaminated materials, the cost to provide this service is not included in this quote
- No allowance to divert and/or modify existing electrical, Telstra, gas, stormwater, water and irrigation services
- Council to notify local residence about work before commencing
- Any unforeseen circumstances

If you have any questions or need clarification on any of the above, please do not hesitate to contact me on [redacted] I will be more then happy to discuss further and assist where I can.

Yours faithfully,

Larry Cavallaro

14

Spencer Webb

From: Admin - CavcoEarthmoving <admin@cavcoearthmoving.com.au>
Sent: Monday, 27 February 2023 2:20 PM
To: Benn Kromwyk
Subject: [EXTERNAL] elizabeth street swale
Attachments: 18aelizabeth streetswale.docx

CAUTION: This Message originated outside your organization. Treat all attachments and hyperlinks with suspicion.

Afternoon Ben

Hope all is well, please find attached revised quote for swale works at Elizabeth street. If you have any questions please feel free to contact me.

Kind regards Larry

Cavco Earthmoving Pty Ltd
ABN No. 62-120 506 578
PO Box 69
SMITHFIELD SA 5114
admin@cavcoearthmoving.com.au

Attention: Benn Kromwyk

Quote for 18a Elizabeth Street drainage week.

Cavco Earthmoving would like to thank you for the opportunity to tender on the above-mentioned project and submit the following quotation to construct a swale alongside 18 A Elizabeth Street Tanunda.

Total quotation - $52,000 plus GST

Cavco Earthmoving have allowed for the scope of works as per the schedule and below inclusions and exclusions –

Inclusions –

- Mobilization and Demob of machines to site.
- Set up temporary fencing for site compound. Setting up flagging and bunting around work area with appropriate signage. Set up another compound across the road to stockpile spoil.
- Developing and maintaining management plans, quality, OHS&W and environmental documentation
- Work out levels for swale works
- Construct 50 m of swale along side 18 A Elizabeth street, excavate invert of swale to worked out level, shape sides to suit.
- Cart out all excavated material and stockpile all silt across the road,
- Rock around house stormwater outlets, as per discussion with council.
- Clean work area and demobilize

Exclusions –

- Sub-standard ground, non-load bearing ground and/or hard ground or rock
- No allowance to handle environmentally contaminated materials. Should there be a requirement to classify, dispose, and/or treat contaminated materials, the cost to provide this service is not included in this quote
- No allowance to divert and/or modify existing electrical, Telstra, gas, stormwater, water and irrigation services
- Council to notify local residence about work before commencing
- Council and contractor to negotiate with home owner about tree and shrub removal before job commences
- Council to get stumps removed/ grinded if required.
- No geo cloth supplied in this quotation as discussed with council.
- No allowance for dumping of excess spoil, only allowed to stockpile across the road. Hourly rate will occur to cart spoil away.
- No allowance for rockwork or concrete work, only around stormwater house outlets.
- No allowance to take down front brick fence.
- Any unforeseen circumstances

If you have any questions or need clarification on any of the above, please do not hesitate to contact me on [redacted] I will be more then happy to discuss further and assist where I can.

Yours faithfully,

Larry Cavallaro

Please note: If the brick fence at the front of the house has to be removed to gain access to the property. An additional $5,100 will be added to the price to remove and to reinstate brick fence to its original state.

From: Paul Keady <keadypaul@gmail.com>
Sent: Friday, 8 September 2023 9:48 AM
To: Felice D'Agostino <FDAgostino@normans.com.au>
Subject: Re: The Barossa Council - section 270

Dear Ms D'Agostino,

Thank you for your email dated 7 September 2023.

We have not received expected documents per our FOI request to the Barossa Council.
So, no further documents at this stage.

Attached are some photos taken yesterday showing the flooding on the easement adjacent to our home.
We have been advised by an engineer that cracking in our concrete paths will worsen with the continual expansion/contraction of the clay swale and that this will also affect our concrete footings over time.

Yours faithfully

Paul & Dagmar Keady

On Thu, 7 Sept 2023, 11:24 am Felice D'Agostino, <FDAgostino@normans.com.au> wrote:

> Dear Mr and Mrs Keady
>
> I am writing you to let you know that I am still at the stage of obtaining and reviewing information relevant to your section 270 application. I hope to complete that in the next couple of weeks. That being the case if there is other information you would like to provide to me please let me know. As I mentioned at our

meeting, I am happy to receive information up to my preliminary report and then your submissions on the preliminary report.

Kind regards,

Felice D'Agostino
Principal

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T 08 8210 1202 | M 0423 301 204 | F 08 8210 1234 | W normans.com.au

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From: Paul Keady <keadypaul@gmail.com>
Sent: Thursday, December 21, 2023 9:23 AM
To: Felice D'Agostino <FDAgostino@normans.com.au>
Subject: Fwd:

Dear Ms D'Agostino,

Enclosed please today's email and photos
to TBC.
Please accept this as part of our response to your interim report.

This visualizes what an open dirt drain means for us.

Yours faithfully

Paul and Dagmar

---------- Forwarded message ---------
From: **Paul Keady** <keadypaul@gmail.com>
Date: Thu, 21 Dec 2023, 9:17 am
Subject:
To: Ben Clark <bclark@barossa.sa.gov.au>, Steven Kaesler <skaesler@barossa.sa.gov.au>, Martin McCarthy <mmccarthy@barossa.sa.gov.au>

Good morning,

The attached photos, taken this morning, show the water flow from the new Tanunda oval into the easement when the sprinklers are on, which is frequently now its summer.
This water just pools and sits in the drain attracting mosquitos etc.

There is insufficient water flow to drain the water through the easement.

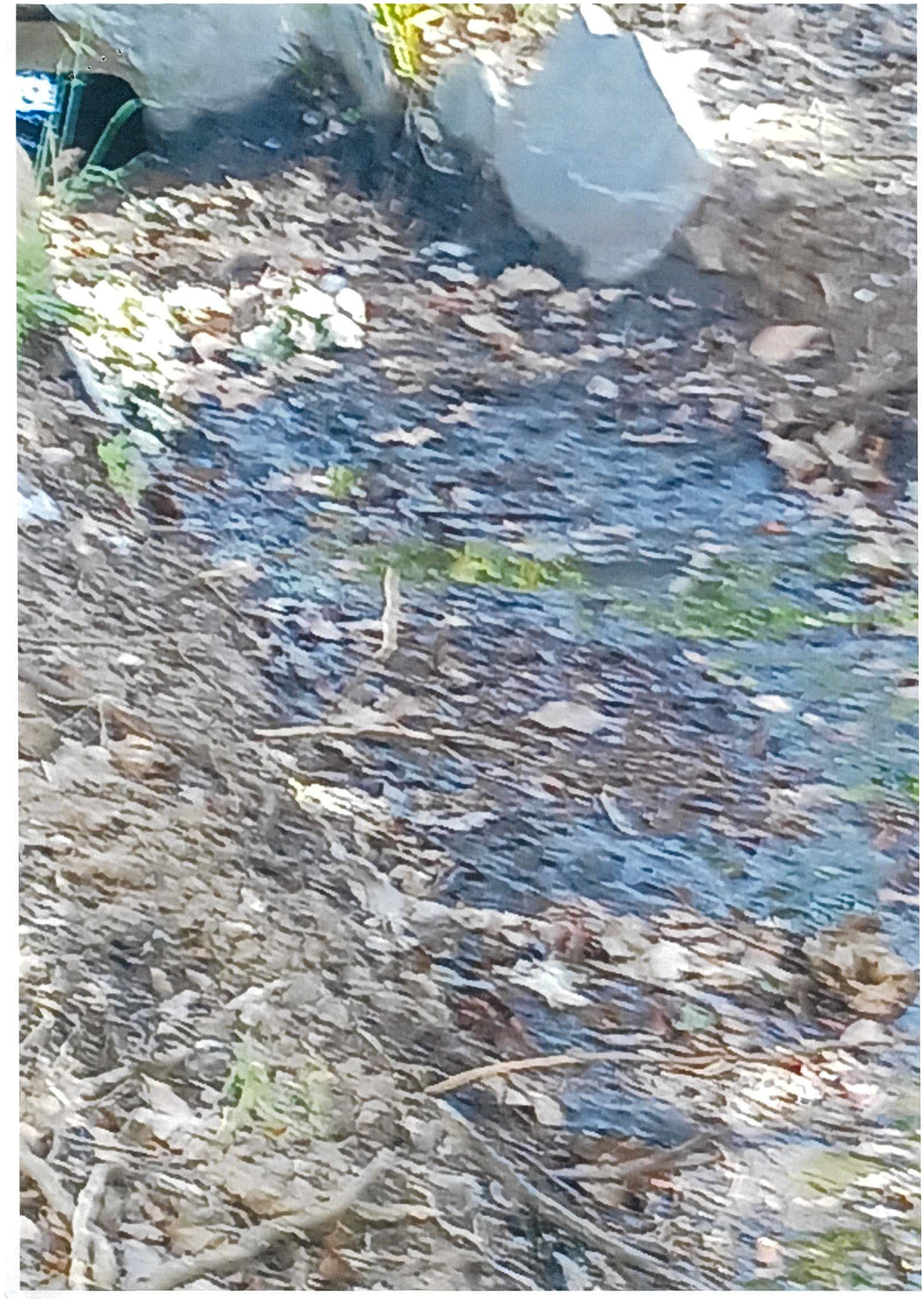
The open drain option means this will be recurrent.

You are welcome to come and have a look.

1

Cheers
Paul and Dagmar





From: Paul Keady <keadypaul@gmail.com>
Sent: Thursday, 21 December 2023 6:25 PM
To: Felice D'Agostino
Subject: Fwd:
Attachments: 20231212_130530.jpg; 20231212_130508.jpg; 20231210_102551.jpg; IMG-20231128-WA0005.jpg; IMG-20231128-WA0006.jpg; 20231128_080145.jpg; Damage-to-Buildings-on-Clay-Soil.pdf

Dear Ms D'Agostino,

These are some photos of recent rain. It was only a moderate event last week or so. You can see the flooding at the front of our house. The street scene is flooding on the roadway opposite our house from the duplicate SEP.
The document Damage to Buildings on Clay soil I obtained off the internet. There is a wealth of material confirming the potential for footpath and foogtging damage from expansion/contraction from wetting and drying of clay soils.

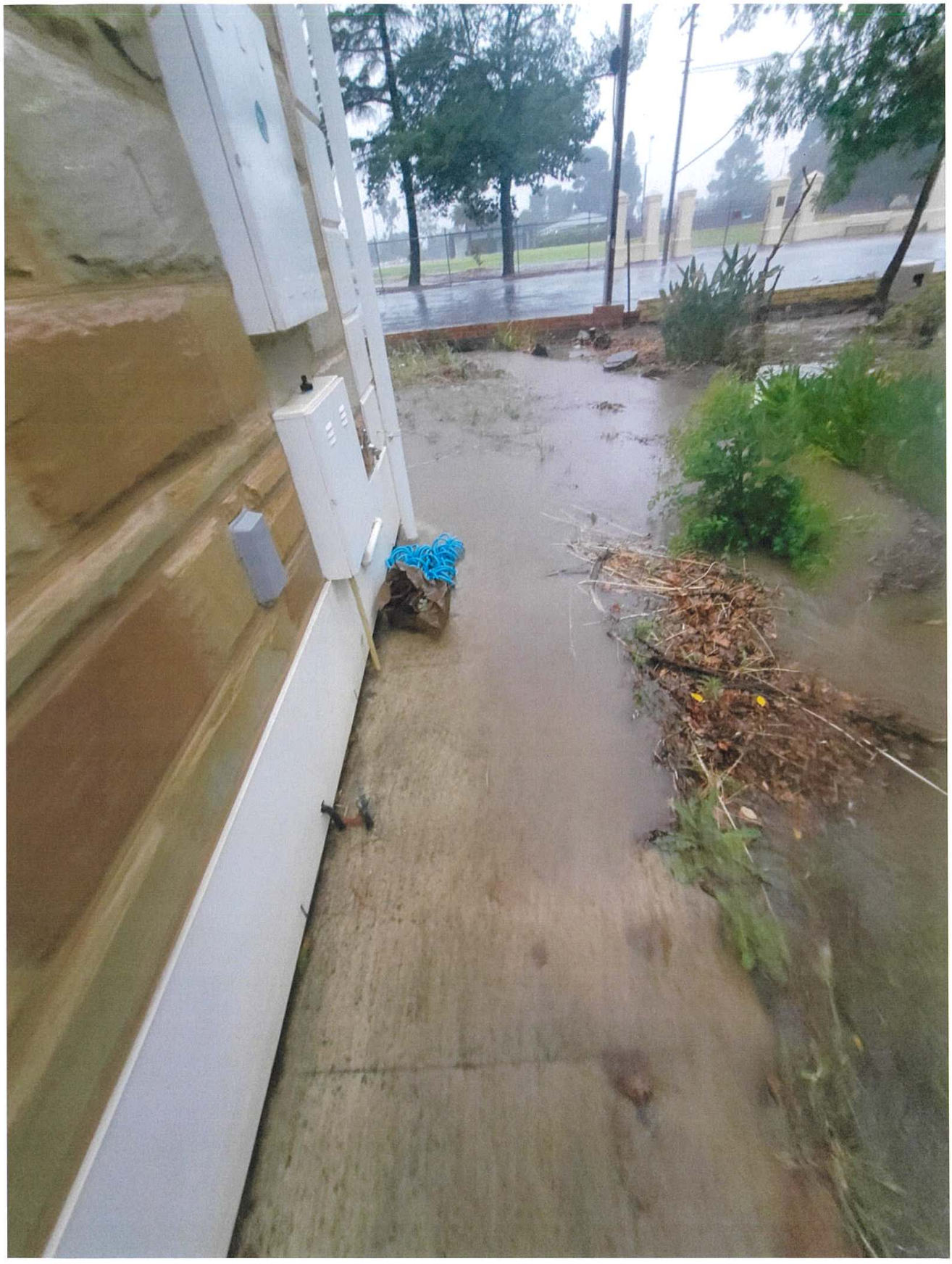
Regards
Paul

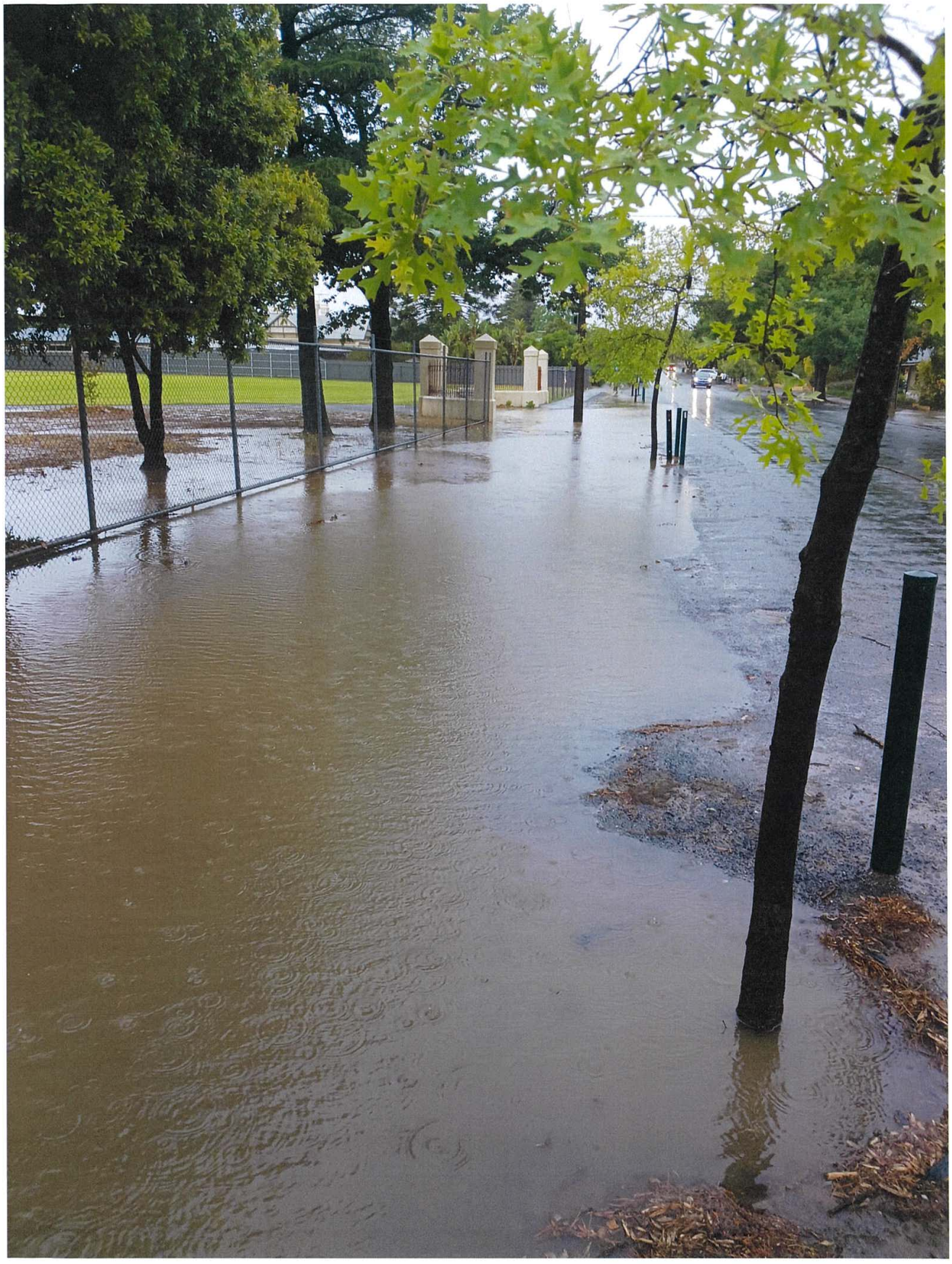












DAMAGE TO BUILDINGS ON CLAY SOILS



TECHNICAL BULLETIN 5.1

Australian Council of National Trusts

AUSTRALIAN COUNCIL OF NATIONAL TRUSTS
and
NATIONAL TRUST OF AUSTRALIA (VICTORIA)
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COVER

An Edwardian Hall, founded on a heavy basaltic clay in Melbourne.

The sub-floor space was poorly ventilated and so soil moisture-contents were higher below the centre than at the perimeter of the building. In the past, underpinning with relatively shallow concrete pads had been conducted in an attempt to arrest movements arising from this difference in soil moisture-content. Distortions in the building continued to grow and the support of structural beams was eventually threatened. After consideration of the costs and possible effectiveness of repair options, a decision was made to replace the building.



DAMAGE TO BUILDINGS ON CLAY SOILS

by D. A. Cameron and P. F. Walsh,
CSIRO Division of Building Research, Melbourne, Australia

Technical Bulletin 5.1

Published with the assistance of the
Commonwealth Government National Estate Programme.

FOREWORD

This publication was produced by the Victorian National Trust in 1984 and is the fifth in a series of Technical Bulletins. It is published under the aegis of the Australian Council of National Trusts and is designed to complement the Conservation Bulletins series. Subjects published and planned to be covered are set out in Appendix E.

The Council records its thanks to Mr D. A. Cameron and Dr P. F. Walsh, Commonwealth Scientific and Industrial Organization and to the Steering Committee for the production of this Bulletin.

R. D. Davidson
Chairman
Australian Council of National Trusts

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INTRODUCTION

Foundation movements are a major cause of distress to established buildings. The main cause of such movements in Australia is the swelling and shrinking of expansive clays resulting from soil moisture changes. There are two aspects to this problem. Firstly, buildings must be managed in a manner that reduces the possibility of damage. Secondly, if foundation movements do occur, the damage should be repaired and measure taken to stabilize the footing system.

To achieve these aims, a sound knowledge of foundation behaviour is required. For example, unless the cause of the distress is clearly identified and appropriate remedial measures selected, there is a danger of further failure.

This report is concerned mostly with the damage that may be caused to existing buildings by movements of expansive clays resulting from soil moisture changes. However, in order to give this particular problem its proper perspective, some discussion of other forms of foundation behaviour is appropriate.

THE NATURE OF FOUNDATION MATERIALS

The foundation of a building is defined as the soil or rock upon which the footings are constructed. The term 'soil' is used in the engineering sense to mean the sand, silt or clay material below the organic top-soil layer. The various types of soil are distinguished by the size of the particles. Sands comprise material down to 0.06 mm. Silts include the range 0.06 to 0.002 mm, and clays consist of particles finer than 0.002 mm. When soils contain mixed types, it is usually the properties of the finer particles that predominate. For example, a sandy clay behaves more like a clay than a sand.

Obviously, if sound rock is present at or near the surface, it provides an ideal stable material upon which to found a building. Sydney sandstone is an excellent foundation. If the depth to sound rock is moderate, the piles or piers can be driven or drilled to the rock, giving a stable base. For small buildings, or where the depth to rock is excessive, the building is commonly founded within the soil layer. The expected performance of such material depends upon whether it is sand, silt or clay, as well as on loading and environmental factors.

Granular materials, including sands and gravels, are usually trouble free. Loose sands or heavily loaded sands can experience some settlement problems, but usually the settlement occurs immediately upon loading. Consequently, problems with older buildings are not likely unless a change is made in the loading. One less obvious way in which this could occur is by pumping water from the soil in an adjoining building site excavation. This may result in a significant lowering of the natural water level or water table and will effectively increase the load within the soil above the newly established water level. The additional 'load' may initiate settlement in loose sands or soft silts and clays. Other building activities such as blasting or piling can cause settlement due to compaction of vibration-sensitive sand.

It is important that those who are responsible for existing buildings that may be affected by new contruction on adjacent sites make a careful prior survey of the condition of the building in order to facilitate claims and repairs if damage eventuates.

Silts are fine-grained soils with particle size and properties intermediate between the two major groups of sands and clays. Such materials do not have the strength that comes from the plasticity of clays or from the particle to particle contact friction in sands. Moreover, silts can be subject to large settlements occurring over a long period. Loose silts are generally unsuitable as a foundation. Medium to dense silts may behave similarly to either clays or sands depending on the size and shape of the particles.

Clays are the finest grained soils. The upper limit on grain size is 0.002 mm, but most of the clay particles will be even smaller. With decreasing grain size, the surface area of the particles for a given volume increases and,

consequently, surface effects dominate the physical and chemical behaviour of the clay. The individial particles of clays are plate-like crystals of clay minerals, and the properties of these minerals also influence clay behaviour Therefore it is not surprising that there is no single laboratory test that fully describes a clay's characteristics.

When considering clay as a foundation material, the following three properties are of particular interest:

soil strength, more commonly expressed as load-bearing capacity,
settlement due to loading, and
potential expansive movement.

The bearing capacity of a clay, defined as the maximum load per unit area the soil can sustain without failing, should not be a problem in an existing building unless major changes in loading occur or the moisture content of the clay is dramatically increased. Protection of the foundation material from excessive moisture, due to either inadequate site drainage or plumbing leaks, is essential to proper maintenance of any building and should rarely be a cause of a bearing capacity failure.

Load settlement of clays is more likely to be a problem. Clays undergo settlement in two phases. Initial settlement is associated with water slowly squeezing out of a saturated clay as a direct result of the pressures applied by the building. This form of settlement decreases with time and can be readily predicted by standard engineering tests. In some cases this may be reduced by preloading the foundation material.

The second phase of load settlement results from slip of the clay grain-to-grain contact. Secondary settlement can proceed for centuries. As an example, it has been estimated that the London clays are settling at rates up to 300 mm per century. The rate of movement can be reduced by lowering bearing pressures (underpinning with wide pads) or transferring building loads to a more rigid foundation material (deep underpinning with piers).

Most people connected with the building industry are well aware of the problems of settlement of foundations under load. In Australia, clays are normally unsaturated (or dry) and load settlement problems are confined usually to relatively small deposits of marine clays and swamp sediment. Consequently, the major cause of footing failures is movements associated with changes in the moisture content of clays. Such changes cause either soil swelling or shrinkage, and the clays that exhibit this behaviour are termed expansive clays. Their distinctive behaviour is more commonly referred to as reactivity. The nature of these clays are described in detail in the next section.

CHARACTERISTICS OF EXPANSIVE CLAYS

All clays can swell or shrink and the amount of movement depends on the moisture change and the nature of the clay. Some of the most important factors that determine the potential reactivity of a clay are given below

(a) **Mineral composition.** The reactivity of a clay is influenced by the mineral composition of its plate-like particles. Montmorillonite mineral particles can swell substantially as water molecules penetrate the layers of their crystal structure. This effect does not occur with the more stable kaolinite mineral where only inter-particle movements are involved. Illite behaves in an intermediate fashion. Clay minerals can be identified and their relative proportions estimated by X-ray diffraction and spectrophotometric techniques, but rarely would such laborious methods be justified except for major projects.

(b) **Particle size.** Most expansive-clay behaviour is attributable to the influence of forces in the thin films of water surrounding and connecting grains of clay. With smaller grain sizes, the number and significance of these connections increases, which likewise increases the soil reactivity. The reactivity of the clay is moderated also by the amount of inert sand or silt particles present with the clay in the soil. The distribution of particle sizes may be determined in the laboratory, but it is a relatively time-consuming test.

(c) **Electrolyte composition.** The behaviour of a clay is influenced by the chemicals or electrolytes dissolved in the soil-water films at the grain interfaces. This dependence is most evident in the influence of lime stabilization on clays, where soil electrolytes are replaced by the calcium in the lime, thereby causing a reduction in the plasticity and expansive behaviour of some clays. However, in practice it is extremely difficult to ensure that the lime is dispersed uniformly throughout the foundation material.

(d) **Soil profile.** The soil profile is a record of the variation with depth below ground level of the different layers of foundation material, which are distinguishable by their colour, texture and composition. It can influence the reactivity of clay soil foundations in two ways. First, if the clay layer is very shallow, the total expansive movement will be lessened. Second, and more commonly, an upper soil layer of inert sandy or silty material can act as a moisture barrier and so reduce the amount of moisture change in the underlying clay layers.

So the behaviour of an expansive clay depends on a variety of parameters, some of which are difficult to quantify. It can be quite difficult to determine whether a particular clay profile is expansive and some guidance on this problem will be given in the next section.

5

IDENTIFICATION OF AN EXPANSIVE CLAY

In Melbourne, it has been possible to classify the expansive behaviour of the various soil profiles on the basis of geological maps. This has proved satisfactory because of the following special conditions.

(a) Most of Melbourne has residual soils which are formed by gradual weathering of the base rock *in situ*. Thus, their properties can be associated reliably with the underlying rock type. Also, the soils are generally consistent over large areas of the same rock type. In these circumstances, the classification of expansive behaviour can be based on a geological map. This is not possible for alluvial soils whose properties can vary significantly over a small area.

(b) The local climate consists generally of a dry, hot summer and a wet winter. Moreover, the clays are usually shallow (1 to 3 m depth). Thus, the extremes of seasonal moisture conditions can be used as a guide to the probable moisture changes under a building.

(c) In Melbourne, the clays have been studied extensively. This work has encompassed laboratory tests and field observations of actual houses, experimental footing systems and ground-movement stations. These data are not available for other regions.

On the other hand, in Sydney, much of the inner city area has been built on sandstone or on shallow sandy clay soils over sandstone, and consequently expansive clay movements are not significant. In the west of Sydney (e.g. Penrith, Blacktown and Campbelltown), the clays are sometimes deeper and potentially expansive. Sydney's climate provides substantial summer rainfall and consequently the changes in moisture conditions from summer to winter are not usually severe. However, in times of prolonged droughts, significant shrinkage movements, perhaps 10 to 40 mm, can occur.

Brisbane's more humid climate tends to diminish potential expansive clay movements although occasional drought does induce significant movement. Conditions are even more favourable in Perth, with the main city and suburban area being founded on sand. Hobart rarely encounters dry seasons severe enough to cause problems. Deep alluvial soils in the Tamar Valley south of Launceston have been known to present the occasional problem.

The situation is less favourable in Adelaide. The black earths (locally called Bay of Biscay soils) are highly expansive and also quite permeable. Adelaide has a very hot, dry summer and relatively heavy autumn/ winter rainfall, so that changes in moisture contents due to seasonal surface effects can occur to considerable depths. Moreover, many of these areas are underlain by a highly plastic but almost impermeable clay ('Hindmarsh clay'). This clay is capable of substantial movements although the moisture changes that induce such movements may take decades to penetrate deeply into the clay.

In the rural areas of Australia, data on engineering properties of soils often do not exist. Invariably the reactivity of clay deposits has to be determined from first principles. Some of the more common methods of achieving this goal are as follows:

(a) **Experience and observation.** Perhaps one of the simplest methods is the observation of buildings, pavements, and fences in the area. These structures can be distorted by movements of highly expansive soils. Often such soils are well known by the local building department. Where there are no signs of distress to structures in an area where laboratory tests predict large movements, some circumspection is warranted before accepting the laboratory results.

(b) **Field experimentation.** A variety of field experiments is possible. A simple technique is to estimate the potential movement from the extremes of moisture content in the soil. The moisture content is measured at the end of a dry spell over various depths and again at a similar location in wet conditions. The movement is estimated by a simple formula relating movement to soil moisture change, which has been shown to be applicable for Melbourne Clays (refer Appendix A1).

Ground movement stations provide useful information. The movement at the surface and at depth is compared with a deep stable bench mark. Rods are installed in the ground at the required depths for monitoring. The sides of the rods are isolated from the soil. Observations are required over a range of moisture conditions and therefore one or more seasons are required to obtain any meaningful information. Accordingly, this technique may be practicable for major projects.

(c) **Simple laboratory testing.** The potential reactivity of clays is often related to index tests such as linear shrinkage, plastic limit, or proportion of clay-sized particles. An example of a simple classification system is given in Appendix A2. The reactivity of a clay certainly increases with these quantities but the relationship is not clear-cut and seems to depend on other clay properties that are not easily measured.

Simple correlations with index test values ignore the importance of the depth of the clay profile and the depth to which drying or wetting can occur. For Melbourne clay types and climate, experience has indicated that fairly stable sites could have clays with linear shrinkage values as high as 18%, although 12% would be more typical. Values above 20% were associated usually with highly expansive clay sites.

(d) **Precise laboratory testing.** In the laboratory, the expansion or shrinkage of clay samples can be induced by changing the moisture condition over a known range. The clay movement for a given moisture change is then conveniently termed the instability index of the soil. Once this instability index has been determined, ground movements at a particular site may be approximated by multiplying its value by the anticipated changes in soil moisture state with depth.

Measurements of this kind offer potential for a fairly

MOISTURE CHANGES IN CLAYS

accurate and rational theory for expansive clays. The more sophisticated tests are slow and expensive and therefore are often more suited to research than immediate practical design. However, other more simple test methods are available that are most likely adequate for engineering design problems.

Terminology and Definitions

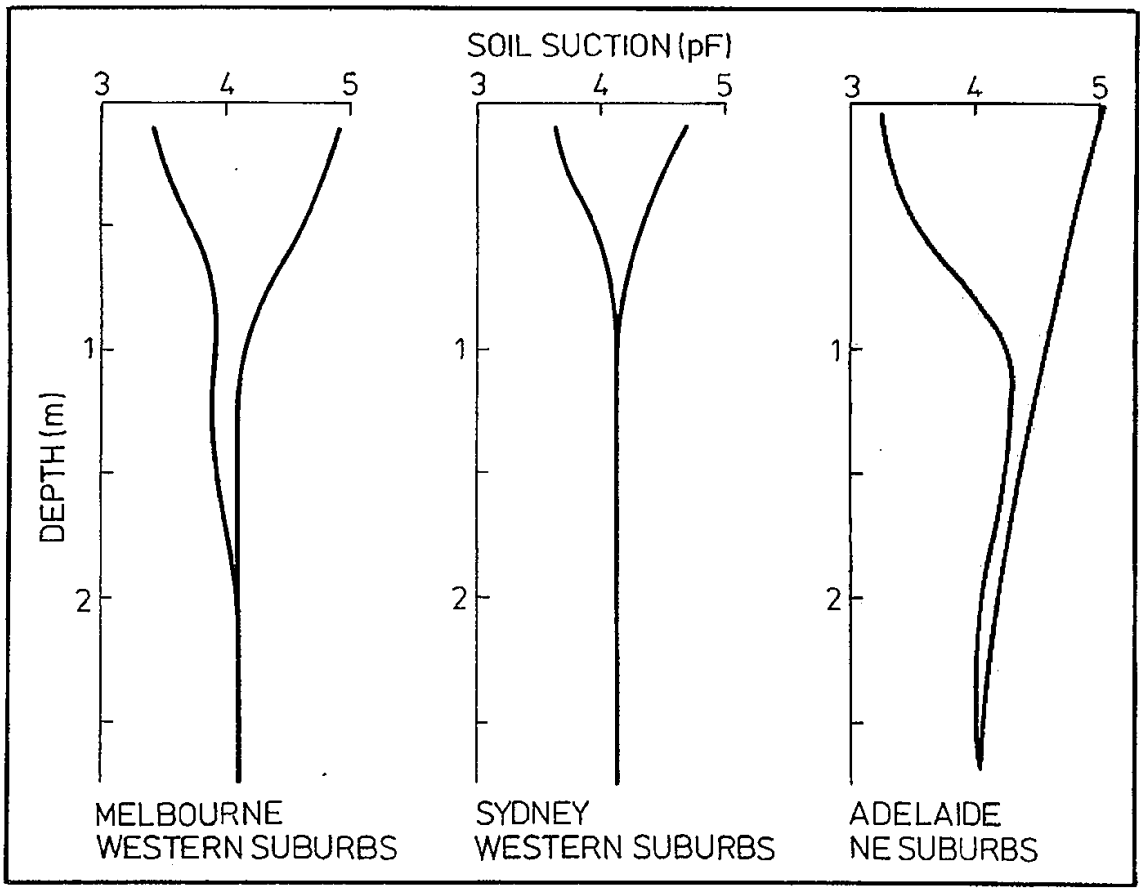
In order to discuss soil moisture changes, it is necessary to introduce the following basic technical concepts:

(a) **Soil moisture content.** The moisture content of soil is defined as the ratio of the weights of soil moisture and dry soil, expressed as a percentage. The significance of this moisture content value depends upon the type of clay. For example, at 25% moisture content, one clay may seem dry but another clay may be in a very moist state.

(b) **Soil suction.** A more useful concept is that of soil suction, which is a measure of the internal stress caused by the small amounts of water at the particle-to-particle interfaces. The common unit of suction is the pF unit defined in Appendix A3. Generally, soil suctions can vary from pF 2.5 to pF5 under natural climatic conditions. High suction values are associated with dry soils and low suctions with wet soils. Over the normal range of suctions, moisture content is approximately linearly proportional to suction for a particular soil.

Soil suctions are commonly determined from measurements of the relative humidity of the air within the soil. Generally, good temperature control

Figure 1: Typical seasonal suction variations.



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is necessary for reliable readings and measurements of suction are conducted in a laboratory rather than on site. (Further information on soil suction is presented in Appendix A3).

(c) **Instability index.** The instability index, as described earlier, is the percentage change in the height of a clay sample for a unit change in suction (%/pF). Typical values are commonly 3 to 6%, but for highly expansive clays the value may exceed 10%. (Refer Appendix A4 for methods of determination.)

Soil suction changes can occur around and under a building as a consequence of the following:

(a) Seasonal climatic effects.
(b) Interaction (the effect of the presence) of the building with natural seasonal moisture changes.
(c) Interaction of the urban infrastructure with natural seasonal moisture changes.
(d) Extraction of moisture by trees or recovery of soil moisture subsequent to tree felling.

Each factor is considered in some detail in the following discussion.

Seasonal Climatic Effects

Under natural conditions, the suction in the soil depends on the climate and vegetation. Over much of Australia, summer is a time of moisture loss with hot dry conditions. In winter, rainfall usually exceeds evapo-transpiration and wetter soil conditions prevail. These semi-arid conditions give rise to the typical seasonal suction profiles shown in Figure 1, where the variation in suction decreases with depth and finally reaches a stable value.

For more even climates, seasonal changes are not as significant and natural variations in suction are associated with exceptional droughts and wet seasons.

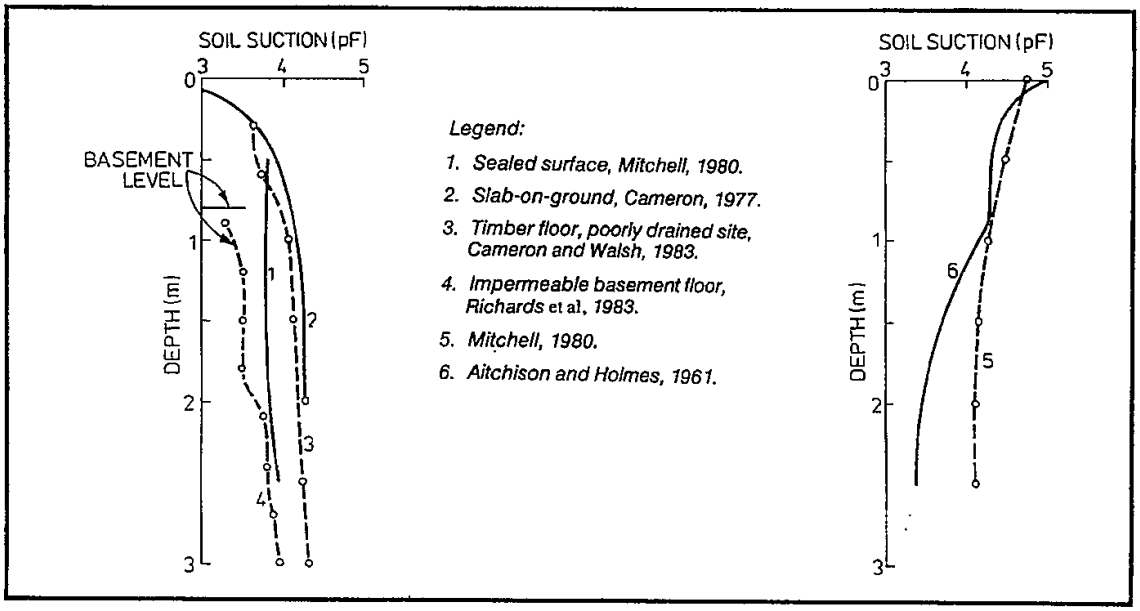
Interaction of the Building with Natural Seasonal Moisture Changes

When a building is first erected, the natural soil suction profile may lie anywhere within the range from the seasonally dry to seasonally wet profiles. The building then interferes with these conditions by sheltering the soil from rainfall and evapo-transpiration. If the building has a slab-on-ground or a suspended floor with poor sub-floor ventilation, the soil surface can be considered to be sealed. Consequently, soil suction near the centre of the building will come to equilibrium with the stable soil suction value at depth (refer Figure 2). The soil remote from the building will still undergo seasonal suction changes.

Below the centre of the building, there would be a long-term soil movement of either swelling or shrinking depending upon the initial soil suction. If the building was erected in the dry season (high suctions) there would be a long-term swelling, and the reverse would apply. This movement may continue for years or decades. Near the edge of the building, the soil suctions would be intermediate between the centre and seasonal values away from the influence of the building, and some seasonal variation would be expected. The resultant building deformation would tend to be as shown in Figure 3a.

Figure 2: Typical suction profiles beneath buildings.

Figure 2a: Sealed surfaces. *Figure 2b: Ventilated sub-floors.*



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Figure 3: Typical deformation patterns.

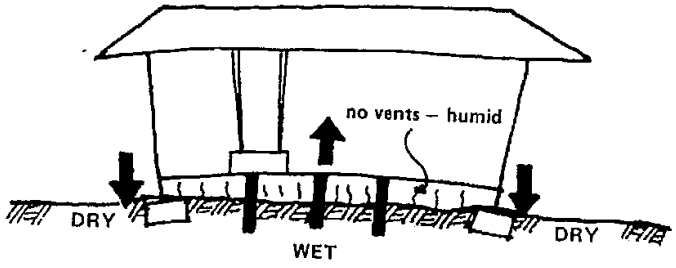


Figure 3a: Floor with no ventilation and poor site drainage.

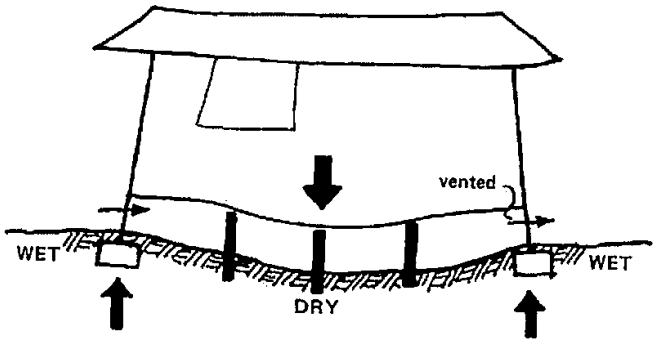


Figure 3b: Floor with ventilated crawl space and good site drainage.

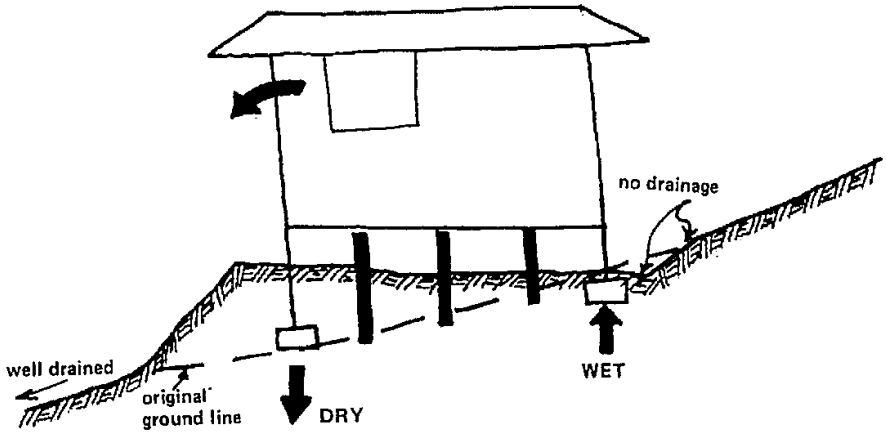


Figure 3c: Cut and fill site with poor drainage of the face of the cut.

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This seasonal movement may not be completely reversible. A long-term shrinkage settlement can result from the moisture cycling under heavy loads.

Where the building is on a well-drained site and has a well-ventilated sub-floor space, the soil under the building will eventually become very dry as demonstrated by the suction profiles in Figure 2b. The resultant soil shrinkage may cause subsidence of the sub-floor supports as shown in Figure 3b. Such movements have been observed in some small multi-storey buildings as well as in houses.

Soil suctions under a building can be lowered also by plumbing leaks, bad drainage, site aspect, and garden watering. Plumbing leaks can produce disastrous movements, and should be remedied as soon as possible. Poor drainage is not uncommon. Particular care should be taken to ensure that surface water does not collect adjacent to footings and that roof drainage is maintained properly. The effects of inefficient drainage are often most noticeable on cut-and-fill sites where water accumulates in the cut area yet drains freely from the filled area on the opposite side of the building. Consequently, the soil heaves along one side but shrinks along the other, and the building almost leans downhill (refer Figure 3c).

Differential drying can arise from the site aspect, with an exposed north side of the building experiencing more severe drying cycles than the shaded southern area. Garden watering has produced failures, usually from the excessive use of fixed watering installations. Proper maintenance of moisture conditions in a garden is essential to prevent either excessive soil drying or wetting.

Trees can have an enormous effect on soil suctions and will be discussed separately.

Interaction of the Urban Infrastructure with Natural Seasonal Moisture Changes

For very deep clays, long-term changes in moisture conditions will occur as a region changes from a natural grassed, wooded area, or market garden with established drainage and seepage areas, to an urban environment with paving, buildings, gardens and efficient stormwater drainage. Changes from septic to sewerage systems will also change the overall soil suction profiles. These changes are superimposed on the seasonal and local effects mentioned in the previous section. They have their most significant influence on the deeper layers of clay, say from 3 to 15 m. To some extent, swelling movements are restricted by the soil overburden pressures (or self weight) at depth, but nonetheless large movements are possible. Moreover, these movements occur below the level of most footing systems. The movement may proceed very slowly; for example, movements in Adelaide have been recorded over a period of 30 years. Generally, if the deep-seated movement takes place over a wide area, buildings may not be adversely affected unless building sites are located across a boundary of the affected area, or soil reactivity varies sharply within the area allowing differential ground movements to occur.

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Extraction of Moisture by Trees or Recovery of Soil Moisture Subsequent to Tree Felling

Trees require substantial amounts of water. During dry spells, tree roots draw moisture from the soil. If soil water storage is not fully replenished, the roots will extend in search of further soil moisture in subsequent dry periods. Clays will shrink with extraction of moisture (increasing suction) and subsequently, overlying structures may settle.

The removal of large trees poses the converse of this problem. As soil moisture is gradually restored, clays swell and heave. Shallow seated footings may be uplifted by the soil, depending to a large extent on the loads carried by the footings.

There are many factors that determine the extent of moisture removal by trees. Some of the more important factors are as follows:

(a) **Soil profile.** Obviously, the proportion of expansive clay in the profile is a determining factor in assessing the potential for damage to a building. However, the soil profile can also affect tree root growth patterns and hence the potential zone of drying. For example, the presence of a water table or rock layer may control the extent of root growth since roots will not penetrate either of them. Furthermore, if an expansive clay is covered by non-expansive soil layers, the depth of root penetration relative to the depth of the top layers will determine the overall movement.

(b) **Proximity of trees.** The lateral root systems of trees act as the primary soil moisture collector. Limited field data (Yeager 1935) indicates that soil moisture conditions and tree species are the main factors in determining lateral root spread. In persistently wet soil, roots tend to be more concentrated and penetrate deeper.

For convenience, the lateral root spread can be related to the height of the tree, H, and may vary from 0.4 to 2.1 H in natural field conditions (Yeager 1935). So the potential zone of soil drying in terms of the tree height can vary considerably.

(c) **Number of trees.** The competition for soil moisture between the roots of neighbouring trees may extend the normal lateral root spread of individual trees.

(d) **Tree species.** The species of tree determines the tree's potential water uptake, the pattern of root development for a given site, and its ability to survive in dry soil conditions. In other words, the species can determine the zone of soil drying and the extent of drying within that zone.

(e) **Age of tree.** The age of the tree relative to the building is important when considering whether it is safe to remove a tree. If the tree is much older than the building, a careful analysis of soil conditions will be required to prevent damage by heaving foundations. If however the tree is younger than the building, then the maximum possible heave after the tree is removed will be less than the soil shrinkage that has already occurred. Damage may still occur if old settlement cracks have been filled

with rigid fillers. As the foundations heave back the filler is compressed, causing bulging of wall renders.

To demonstrate the potential extent of suction changes in clays occurring as a result of moisture extraction by trees, a few typical suction profiles have been reproduced from the literature in Figure 4. Generally, the suction data have been determined during investigations of building damage in which a suction profile in the ground between tree and building has been compared to the profile in an adjoining area relatively devoid of trees. Such studies give valuable information regarding the possible depth and extent of the tree drying effect.

Figure 4: Typical suction profiles near trees.

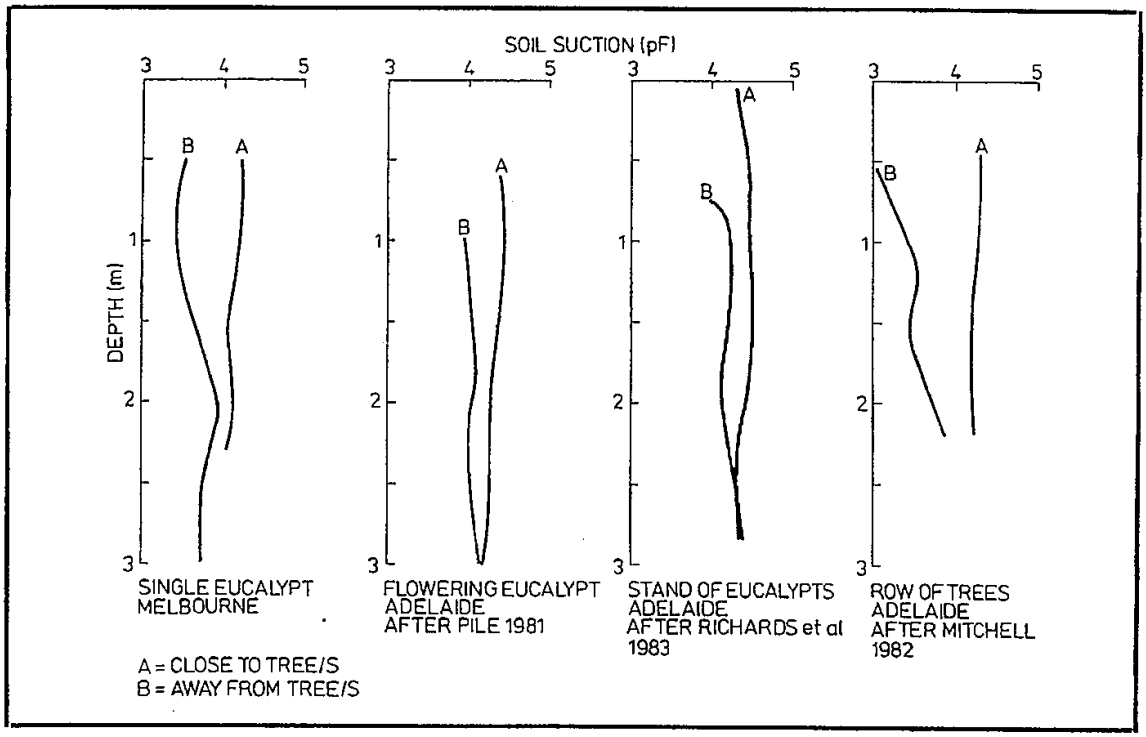
RESPONSE OF BUILDINGS TO FOUNDATION MOVEMENTS

The tolerance of a building to foundation movements brought about by moisture changes in clays is determined by the type of construction of its footings and walls and the building materials used.

Footings

The footings of old buildings are frequently inadequate. Concrete for footings became part of general building practice only towards the end of the 19th century, but steel reinforcement for concrete was not introduced until the 1920s. The addition of reinforcement led eventually to the concept of the footing as a beam with some capacity (or stiffness) to span local ground movements. Prior to this time, footings were used only to transmit building loads to the soil and therefore non-structural footings of rubble, stone, or brick were common.

Reinforced concrete strip-footings are capable of some beam action, which increases with both the level of reinforcement and the depth of the section. Increasing the footing depth is also advantageous in those expansive clay areas where the depth of moisture change is relatively shallow. As the depth of the footing approaches the depth of negligible moisture change, potential movements at the footing base decrease to zero. However, deep footings can interfere with normal soil moisture distribution, thereby creating differential moisture conditions and hence soil pressures either side of the footing sufficient to rotate it. The increased surface area of the footing can also give rise to high friction forces in a swelling soil.



Deep basements or cellars act as an extended footing system and thereby reduce building movements when compared with similar buildings seated on shallow footings.

Deep piers or piles that penetrate the zone of soil suction change can be most effective in resisting the effects of reactive soils. However, problems can still occur in older buildings. First, shrinking soils remove side friction support so that friction piles may become effectively overloaded as the soil dries, and some load settlement may occur. Second, swelling soils can cause uplift of piers (or piles), the magnitude of which is controlled by the depth of the pier and the load carried by it. If the pier is not reinforced, uplift forces can cause tensile failure of the pier section.

A further problem exists with the footing beams supported by the piers or piles. In the case of swelling clay soils, the underside of the beam must be isolated adequately from the surface soil movement, otherwise the beam may be pushed up off its pile supports.

Walls

Walls vary considerably in their tolerance to footing movements. Apart from the type of wall, tolerance to movement can depend upon the number and size of openings, the height to length ratio of the wall, the degree of articulation in the wall, and the pattern of the ground movement. Articulation is the segmentation of long walls into smaller panels with the use of vertical construction joints, full height windows, and/or independent infill panels over openings. Its effect is to accommodate movements by providing freely opening and closing joints in the wall.

The type of wall material and construction has a considerable effect. Modern brick-veneer construction is thought to be between 2 and 3 times as accommodating as cavity brick. Common wall types in order of increasing tolerance to footing movement are stone masonry, cavity brick, brick veneer and weatherboard.

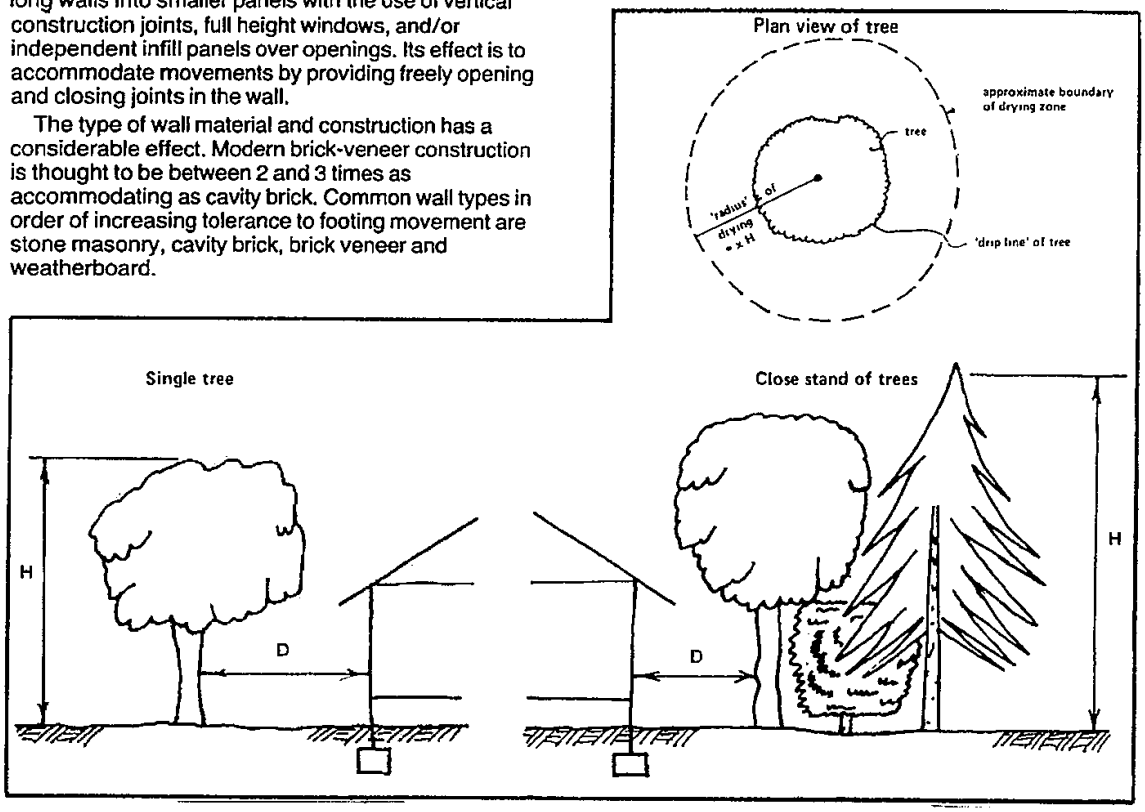
SUMMARY OF EMPIRICAL TREE PLANTING RULES TO AVOID BUILDING DAMAGE

Some of the many factors that influence the magnitude of soil suction changes caused by trees have been discussed already. The extent to which subsequent expansive clay movements are translated into building movement and damage is governed by the nature of the particular building.

To minimize the risk of damage, empirical tree planting rules state the minimum safe horizontal distance (D), in terms of a proportion of the tree's maximum height (H), at which a tree can be planted from a building's perimeter (Figure 5). A brief review of the available literature on tree damage to buildings is presented in Appendix B. Wherever possible, damage observations have been related to D:H ratios.

Building damage is unlikely if D:H exceeds 1 for single trees and 1.5 for dense stands, rows, or clusters of trees. These limits may be relaxed if the soil profile or clay reactivity is such as to limit potential shrinkage settlement, the building is relatively tolerant to distortion, or its footings are able to resist movement. For example, investigations have shown that the risk of damage to conventional brick-veneer dwellings in Melbourne is minimal for a D:H ratio greater than 0.5. Unfortunately, there is very little evidence at present to allow variations in the D:H limits for different species of trees, although it should be possible theoretically.

Figure 5: the D:H ratio for empirical tree planting rules.



INVESTIGATION AND REPAIR OF BUILDING DAMAGE

Effective repair of buildings cannot be achieved without a proper investigation of the problem to uncover the cause (or causes) of damage. Further analysis of the site may then be required to determine the feasibility of rectifying the damage. In all circumstances, the initial diagnosis should be approached with an open mind and must be carried out methodically.

Causes of Damage

Most of the causes of wall cracking can be classified according to the stage of planning or construction of the building during which they occur, as described below:

(a) **Site investigation.** Either a site investigation was not required or the investigation failed to reveal potential problems. In the case of older buildings, where the emphasis was placed on soil bearing capacity, the possibility of reactive clay movements may not have been explored.

At sites where load settlement could be a problem, important information may not be revealed if the investigation has not been carried out to suitable depths or has not been extended adequately to encompass the whole site. The properties of the soil within a depth below the footing equal to twice the footing breadth influence the load-settlement behaviour of the foundation. The number of exploratory boreholes required is dependent largely on the site conditions. For example, it is well-known in Melbourne that Quaternary basalt flows can vary considerably across a site. As a consequence, one corner of a building may be underlaid by rock and the opposite corner by a considerable depth of residual soil.

(b) **Footing design.** The designer may misinterpret the site investigation report or, in the absence of a report, wrongfully assume certain soil properties. Again, lack of knowledge of soil moisture movements has resulted in inadequate designs for older buildings. A further problem may exist where footings have been designed structurally, but the designer has failed to consider the susceptibility of the superstructure to cracking, and deflection tolerances have been exceeded.

(c) **Site drainage provisions.** Drainage is an essential consideration to prevent excessive moisture movements and consequent heave or consolidation of soft or loose soils. Therefore the specification of site drainage should be a design responsibility that must be coordinated with landscaping requirements.

(d) **Construction.** Faults in construction arise commonly from poor workmanship, mis-reading of plans, and ignorance of the properties of building materials. Concrete shrinks and subsequently cracks, and often the cracks are taken wrongly as an indication of settlement. Masonry expands and so can induce vertical cracking in long runs of walls at restraints such as building corners. Green hardwood timber in subfloors or wall frames can distort significantly as it dries, thereby cracking the building elements it supports.

(e) **Post-construction maintenance.** In terms of moisture movements in reactive clays, the more common problems include location of trees too close to the building, and neglect of either site drainage or the maintenance of plumbing lines. A further problem may exist with pier and beam construction where a gap was provided beneath the beam to isolate it from soil heave, but has later been filled during landscaping of the surrounding area.

Other causes of damage do exist which do not come into any of the above categories. For example, the dewatering of foundation excavations in neighbouring properties, vibrations arising from either blasting or traffic, and underground mining, all lie largely outside the direct control of the property owners.

A Routine Investigation Procedure

To ensure a thorough diagnosis of the cause of building movements, each investigation should follow a planned, standardized procedure. One suggested routine is as follow:

Record construction data.
Obtain the history of the damage.
Record crack locations and widths.
Conduct a level survey of the building.
Ascertain the typical soil profile of the site.
Obtain soil samples at depth across the site.
Carry out laboratory or field tests if required.
Analyse the above information.

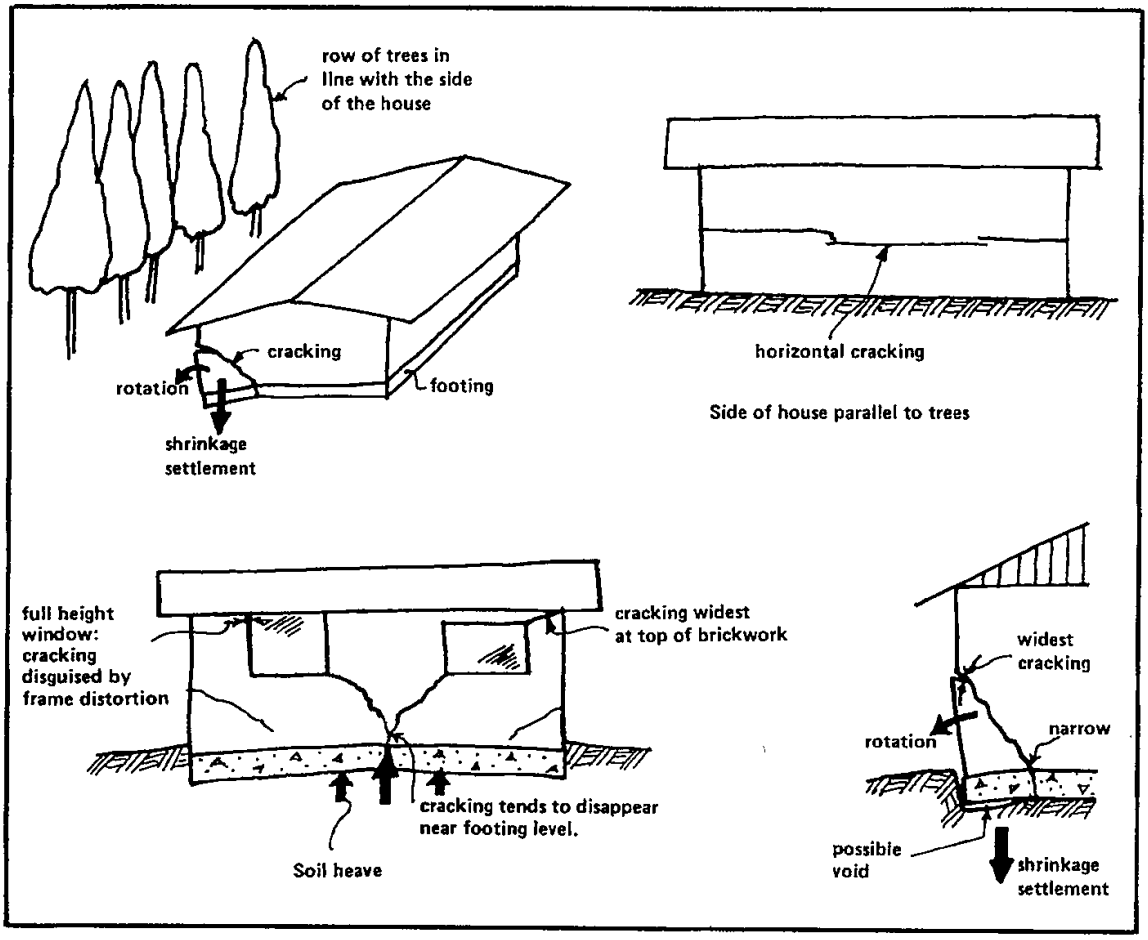
Construction data are essential in determining qualitatively the susceptibility to movement of the building as a whole. The type of footings, their dimensions and reinforcing, as well as the wall contruction, are all important factors. In some cases, construction plans may not be available and an excavation must be carried out to gather the necessary data.

The history of damage may provide clues to the cause of movement. Cracks that appear in summer or early autumn are unlikely to be caused by soil consolidation, but rather by soil shrinkage, Cracks that open in summer but close to some extent in winter are due probably to reactive clays, while cracks that progressively get larger as time proceeds can be due to either secondary consolidation of soft clays or extended drying of reactive clays by growing trees.

The date when damage was first noticed can verify whether any substantial changes in the environment of the building could have been responsible for the movement. For example, in the case of tree damage, damage could be expected to appear within 5 to 10 years of tree planting in a semi-arid climate. In more temperate climates, however, damage may not become apparent until the first major drought after planting.

The location, direction, and width of cracking provide clues as to the mode of deformation of the footings and the magnitude of the differential movement. Horizontal cracking indicates that a wall has bowed, possibly as a result of footing rotation. Cracks that are wider at the top of a wall than at the bottom occur when footings are

Figure 6: Common crack patterns and their causes.



in the centre-heave or hogging mode. Dishing movements have the reverse effect. Figure 6 illustrates some common crack patterns and their causes.

The widths and frequency of cracking are used to assess the extent of damage (Appendix C), which may help to provide a more rational basis for selection of an appropriate remedial treatment.

Level surveys of damaged buildings are often particularly valuable. With due regard to original building tolerances, they can still provide a reliable picture of differential movements across a floor. Generally, with older buildings, levels may be taken only on masonry walls preferably at or near the damp proof course. Timber floor levels will probably be unreliable due to either previous re-stumping operations or possible fungal decay problems at the time of inspection.

Once the mode of footing deformation has been established, the reasons for the foundation movement must be investigated. A quick check of the soil profile will soon confirm the probability of soil consolidation or reactive clay movement. If the latter is suspected, a comparison of soil moisture conditions beneath the high and low spots of the building will be essential to the investigation.

Remedial Treatments

Knowing the cause of the damage, a remedial treatment may be assigned that takes into consideration the present extent of damage and both the risk and cost of further damage.

In severe cases of load settlement, a form of underpinning is normally recommended to stabilize the movement of the building. Underpinning provides new support to the building and can either be designed to decrease foundation pressures using wide underpins (Figure 7a) or to transfer the foundation loads by means of piers to a deeper and stronger base (Figure 7b). The latter result may be achieved also by small diameter 'root' piles (Figure 7c) which are, in effect, concrete piers cast by a pressure injection technique (Koreck 1978).

Figure 7: Underpinning techniques for load settlement.

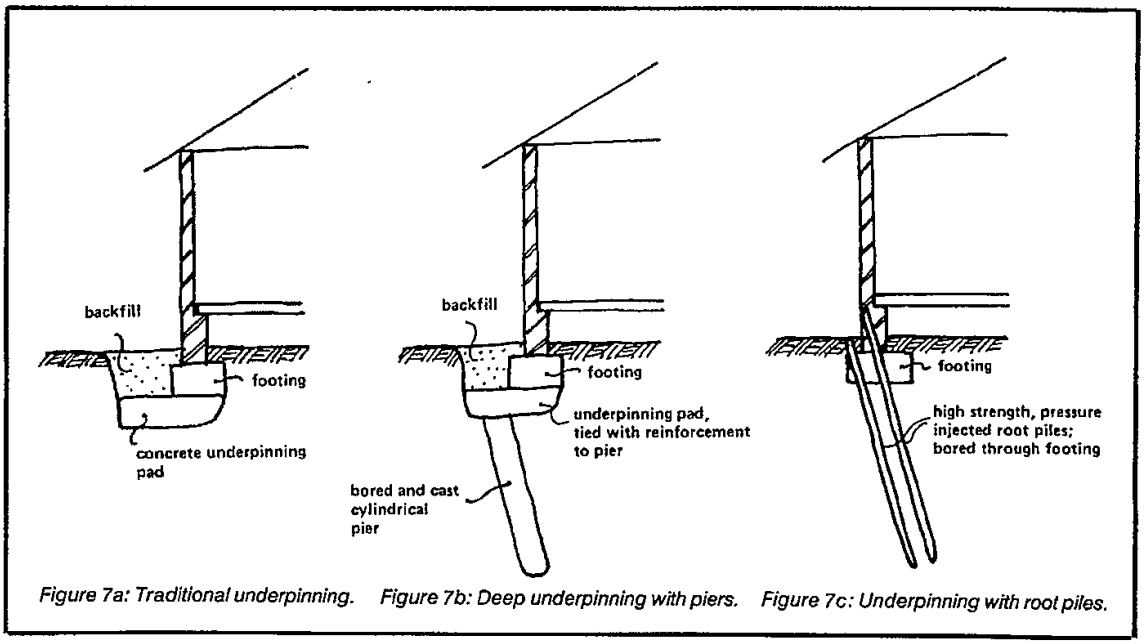
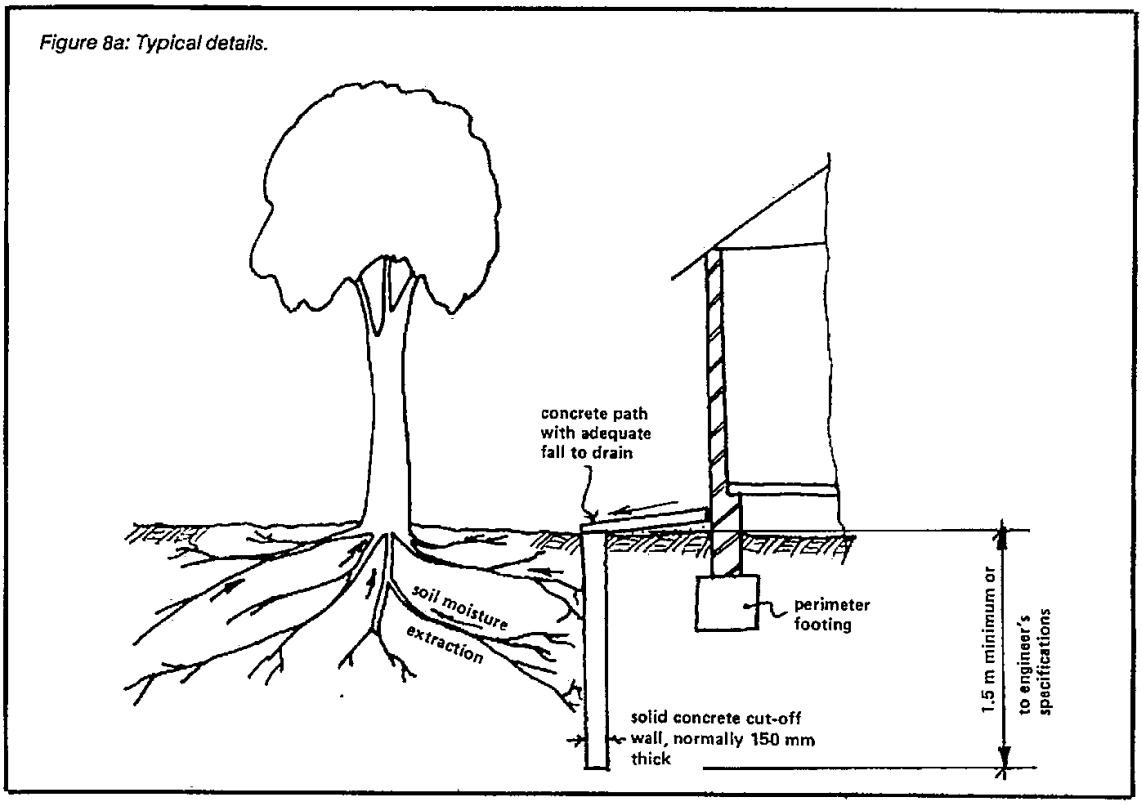


Figure 7a: Traditional underpinning. *Figure 7b: Deep underpinning with piers.* *Figure 7c: Underpinning with root piles.*

Figure 8: Cut-off wall construction.

Figure 8a: Typical details.



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Figure 8b: Construction of a concrete cut-off wall.



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However, the use of underpinning in cases of damage due to expansive clay movements is limited and needs to be carefully designed to suit the particular situation. In such cases, the strength of the soil is rarely in question and the underpinning is required to stiffen the footing system or carry the footings to a stable depth. If shrinkage settlement has been responsible for the building damage, the latter option by itself may be adequate to stabilize the building. Where soil heave is a problem, the existing footing system should be structurally tied to the deep underpins. Root piles may then be the most satisfactory solution.

Alternative solutions consist of balancing differences in soil moisture distribution about the building. Lime stabilization will not be discussed as an option because of lack of experience with this technique and the recently reported failures of field trials (Poor 1975, 1976, 1978). Where damage is slight and the expected risk of further damage is low, moisture differences may be corrected by simple watering programmes and rectification of obvious causes of soil drying. Water is often required to penetrate deeply into a clay. Therefore, watering of narrow trenches cut into the clay or of regularly spaced, shallow boreholes is preferred to hosing of the soil surface.

Where the damage is more severe, a vertical cut-off wall may be installed beside the building to help redistribute and equilibrate soil moisture conditions. The cut-off wall consists normally of a thin (150 mm) but continuous concrete wall to a depth of at least 1.5 m (see Figure 8). The actual design depth is governed by particular site conditions. The services of a geotechnical engineer may be required to estimate this depth.

Figure 9: Soil swell v. vertical restraining load.

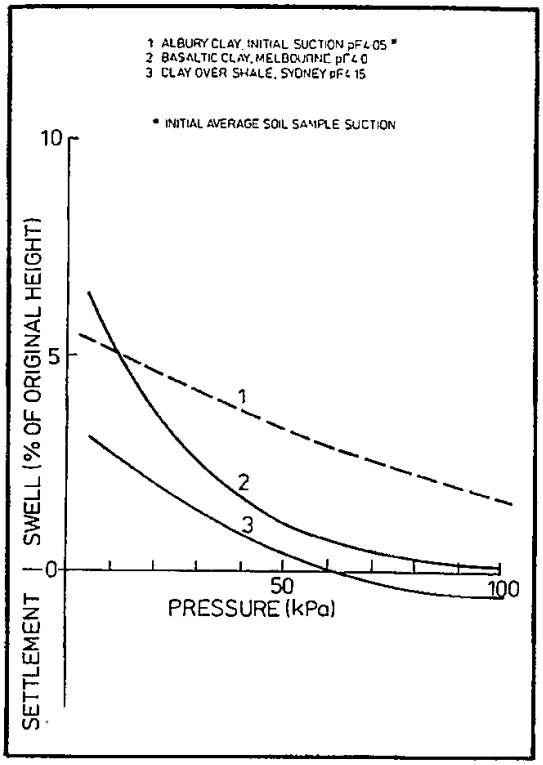


TABLE 1

REMEDIAL TREATMENTS FOR TREE-DAMAGED BUILDINGS OF SINGLE STOREY BRICK VENEER CONSTRUCTION

Level of damage	Treatment
Slight	Regular watering below the drip line of the tree (line below the outer extremity of the foliage).
Low	1. Trees which are within a distance from the building equal to one-third of their height to be regularly pruned (foliage only) and soil water reservoirs to be employed, or 2. Remove trees within one-third their height to the building.
Moderate	1. Regular deep root-pruning of trees within one half their height to the building, 2. Removal of trees within one half their height to the building, 3. Employ deep cut-off walls as root barriers and soil moisture redistributors, or 4. Employ deep underpinning.
Severe	1. Remove trees within three quarters of their height to the building, 2. Use cut-off walls, or 3. Employ deep underpinning.

Remedial Treatments for Tree Damaged Buildings

Taking the particular case of footings damaged by tree root absorption of soil moisture, remedial actions can be recommended that match the degree of damage as outlined in Table 1.

Cut-off walls, underpinning, and tree felling are the passive options in that they require little attention after the initial action, unlike the alternatives of soaking and pruning. In this respect, they are attractive options to property owners. However, both cut-off walls and underpinning need to be engineered carefully with due consideration to the extent and depth of soil drying or subsequent tree root development. Furthermore, cut-off walls are impractical where there is evidence of substantial drying below a depth of 2 m.

In certain circumstances, underpinning may turn out to be the only option. Table 1 gives remedial treatments for modern housing but not for larger buildings where foundation pressures may be much higher. As demonstrated in Figure 9, soil heave is dependent on load or pressure. Therefore, if the foundation pressures are relatively high, the possibility of soil recovery upon moisture restoration and hence closure of cracking may be correspondingly low. Laboratory soil-swell testing may be required to justify recommended remedial treatments in such cases.

Where soil shrinkage has been severe, regardless of loading conditions, it is most likely that full recovery of the building movement will not be possible, as many reactive clays suffer small but irrecoverable losses of volume as they dry out.

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APPENDIX A — IDENTIFICATION OF EXPANSIVE CLAYS

A1. **Soil Movement for Change in Soil Moisture Content**

Richards (1967) proposed the following relationship:

$h/H \simeq (SG/3)(W_2 - W_1)/(100 + W_1 SG)$

h = vertical soil movement (m) in a layer of clay soil, H(m) thick, which experiences an average moisture content change from W_1 to W_2%.

SG = soil specific gravity (g/cm³).

The above expression has been demonstrated to provide good estimates of seasonal soil movement (Holland and Lawrence 1980, Holland & Cameron 1981). The soil profile is divided into small layers and the vertical soil movements are calculated for each layer and added to give the total movement value. Soil moisture data are commonly in the form of suctions rather than moisture contents. Suction values are converted to moisture contents using an approximate linear correlation established for the particular soil in the laboratory.

The expression assumes that the soil voids are filled with water and therefore should theoretically only apply to either saturated or quasi-saturated soil. Thus, errors may become more significant as soil moisture contents fall below the plastic limit. Also, it assumes that swelling strains are equal in both the horizontal and vertical directions, i.e. the vertical strain is equal to 1/3 of the volumetric strain. This may be so for dry, heavily fissured soil, but the proportion of vertical movement will increase as swelling continues, closing fissures and producing large lateral soil pressures. In one field trial, McKeen and Hamberg (1981) demonstrated that between 0.7 and 0.8 times the volume change took place vertically. However their method of predicting the soil volume change was different to that described herein.

A serious limitation of the expression is that it does not take into account the effects of loads on the soil and so may be used only to estimate relatively shallow seasonal ground-movements and not movements beneath loaded footings. Therefore, estimates will tend to be conservative.

A2. A Simplified Classification of Soil Reactivity (Williams & Donaldson 1980)

The classification is based solely on the plastic index (PI) of the whole soil sample. Normally, laboratory determinations of PI are carried out on the fines of the sample, so that a correction must be made to this value as follows:

PI of whole soil = (PI of fines) (mass of fines fraction)/(mass of whole sample)

The classification is then:

PI (%) of whole sample	Expansiveness
<12	low
$12<PI<24$	medium
$24<PI<32$	high
>32	very high

Figure A1: Typical suction-moisture content relationships for different soil types.

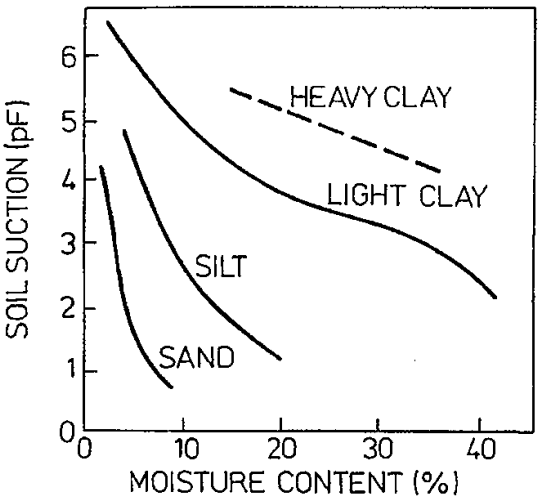
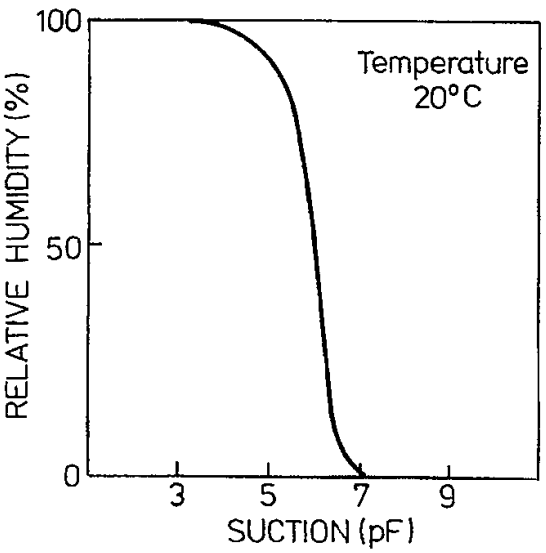


Figure A2: Relative humidity v. suction, 20°C.



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A3. Soil Suction and its Measurement

As demonstrated in Figure A1, soil suction is not only a function of moisture content but depends upon the type of soil. As distinct from soil moisture content, soil suction is a measure of internal soil pressures.

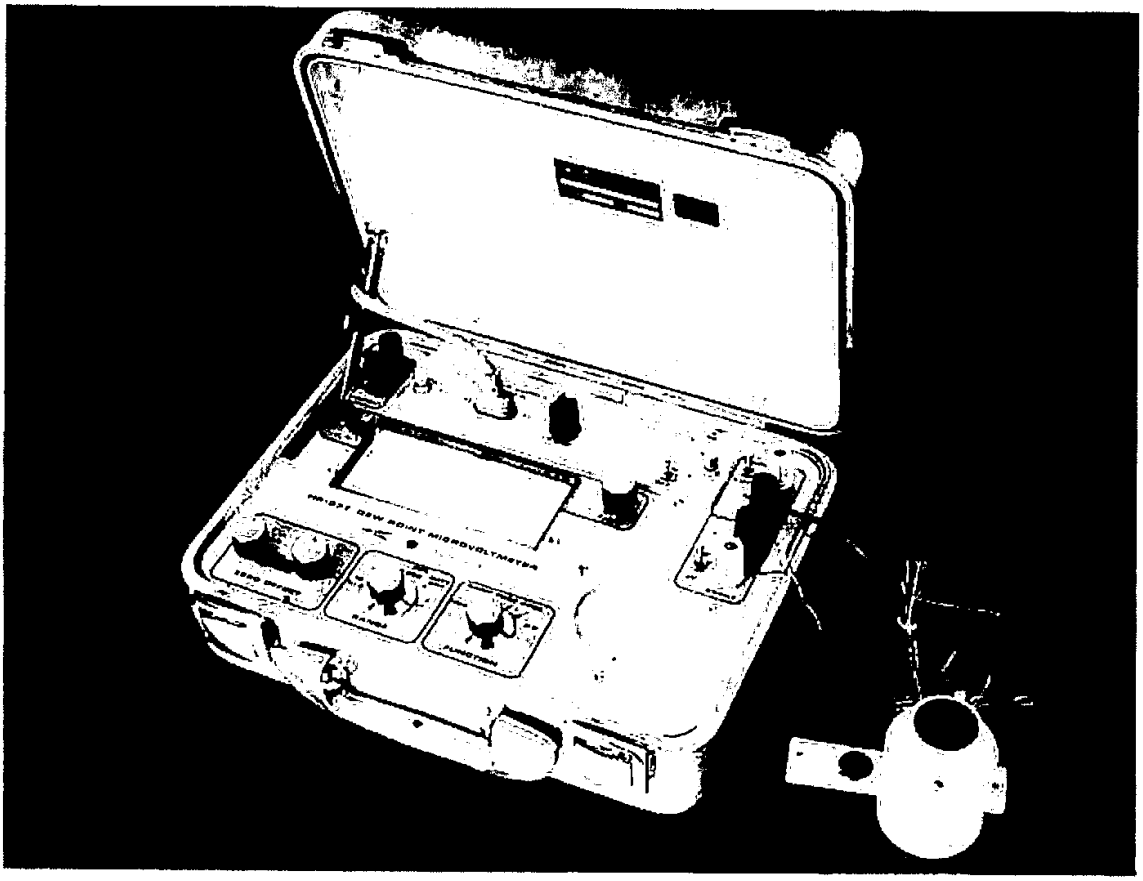
Therefore the units of measurement of suction are those of pressure. However, rather than use kPa, it has been found convenient to use a logarithmic unit, pF, which is defined as

$$\text{suction, pF units} = \log_{10}(\text{suction, kPa units}) + 1$$

Soil suction has two basic components; solute and matrix suction. The former is associated with the osmotic potential that occurs between solutions of different salt concentrations which are separated by a semi-permeable membrane. The latter consists of soil water surface-tension and electromagnetic forces, which act on the clay particles. A more detailed explanation of soil suction is given by Peter (1979). The soil suction measured in engineering laboratories is commonly total soil suction, which is a function of the relative humidity and the temperature, as demonstrated in Figure A2. The wet and dry-bulb hygrometer principle is regarded as the most reliable method of measuring relative humidity within the range of humidities shown in Figure A2. Therefore psychrometers employing this principle are commonly used. At least one commercial soil psychrometer is available under the American trade name, Wescor. The laboratory model is shown in Figure A3.

Alternatively, soil suction can be measured by using calibrated filter papers as indirect soil water sensors. Essentially the method consists of equilibrating the internal moisture stresses of the filter paper and soil which are kept in contact in a sealed container over a period of a week, determining the moisture content of the paper and then, from calibration data for the filter paper, deriving the corresponding value of soil suction (McQueen and Miller 1968, or Department of Main Roads, NSW 1977, 1980), the latter method requires the soil to be kneaded to ensure good contact with the soil. It is not known as yet how significantly this affects the soil suction value.

Figure A3: Wescor soil suction equipment.



A4. **The Instability Index**

The instability index is determined by measuring the percentage change in height of a soil sample caused by a known change in soil suction. Ideally, either solute or matrix suction may be varied. Membrane oedometers have been designed to provide such control (Peter 1979).

Investigation of solute suction effects may be important in certain saline areas, however it is accepted generally that matrix suction changes more often control clay behaviour.

Owing to the tedious nature of membrane oedometer testing, more simple methods of estimating the instability index for total suction change have been evolved. Shrink-swell tests on undisturbed specimens are being used more widely. In this method, two sub-samples of similar suction are prepared from a clay sample. One sub-sample is loaded to the required pressure, it is then innundated, and the sample swell is recorded over a period of 1 to 2 days. The final suction of the sub-sample can be measured.

The other sub-sample is either allowed to air-dry to an equilibrium mass or is dried at constant temperature in a vacuum dessicator over a supersaturated salt solution. Volume or length changes of the soil cores are measured during drying. The latter drying technique is preferable, since the relative humidity or suction of the sample is known once the soil mass reaches equilibrium. (e.g. for an ammonium chloride solution at 20°C, the equivalent suction is pF 5.5), whereas in the former case the end suction is often assumed. The various tests are depicted in Figure A4.

To calculate the instability index, the total percentage change of sample height in the swelling and shrinking tests is divided by the change in suction from the wet to the dry soil states. The method assumes that the instability index is a constant over the range of total suctions considered.

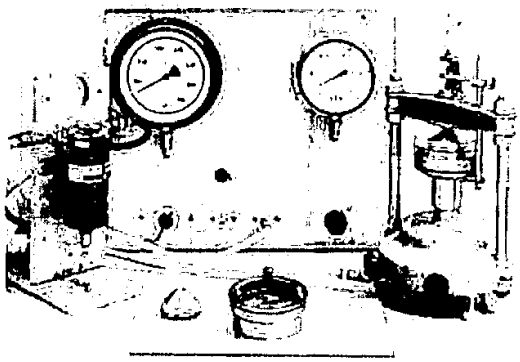
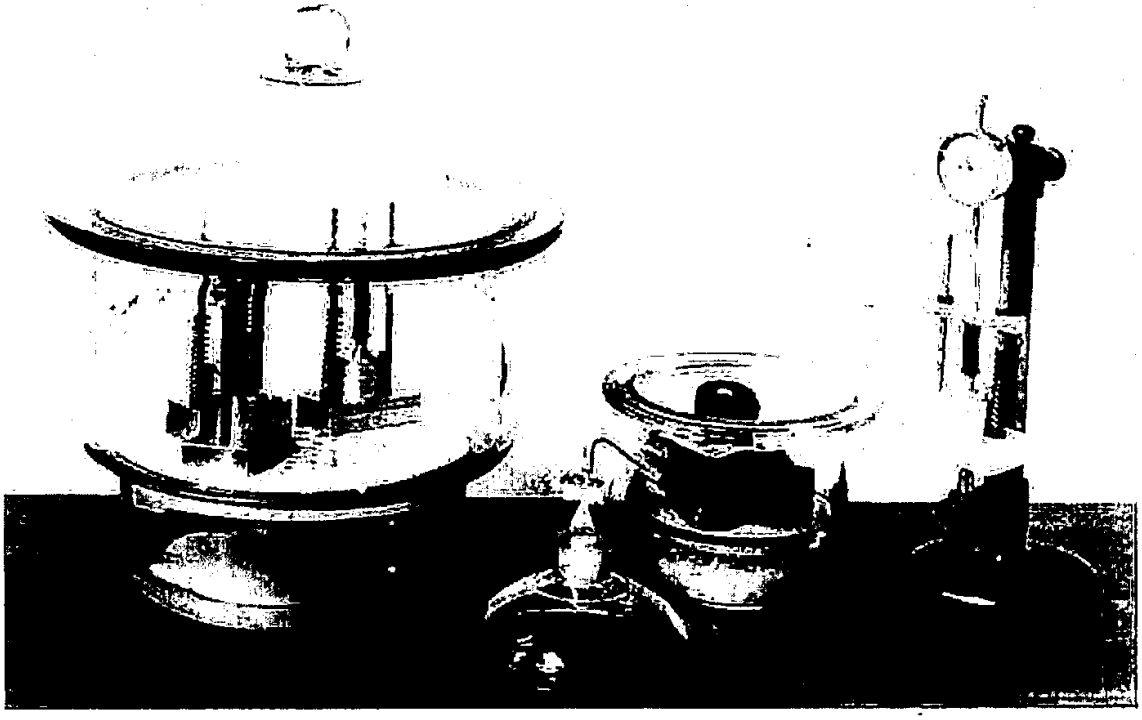


Figure A4: Laboratory methods of estimating the instability index.

Figure A4: (above) Swell testing cells.

Figure A4b: (below) Shrinkage testing. Spring-loaded shrinkage specimens in a vacuum dessicator over a saturated salt solution and soil cores with drawing pins embedded at their ends for length measurements.



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APPENDIX B — REVIEW OF EMPIRICAL PLANTING RULES FOR TREES NEAR BUILDINGS

Owing to the complex nature of the problem of tree damage, simple empirical relationships have been sought between the ratio D:H (the closest distance of the tree to the building divided by the height of the tree) and the extent of drying and the frequency or severity of building damage.

Bozozuk (1962) demonstrated the effect of a row of elm trees 17 m high in a Canadian clay by monitoring the shrinkage settlement with depth (Figure B1). Surface movement decreased as D:H increased. Close to the row of trees, soil drying extended beyond 4 m but diminished rapidly at D:H values greater than 0.5. It may be concluded from the figure that a 1 m deep footing at a D:H of 0.75 would have experienced less than 10 mm of movement, depending on the stiffness of that footing.

Figure B1: Shrinkage settlement v. depth and distance from row of elm trees, Canada.

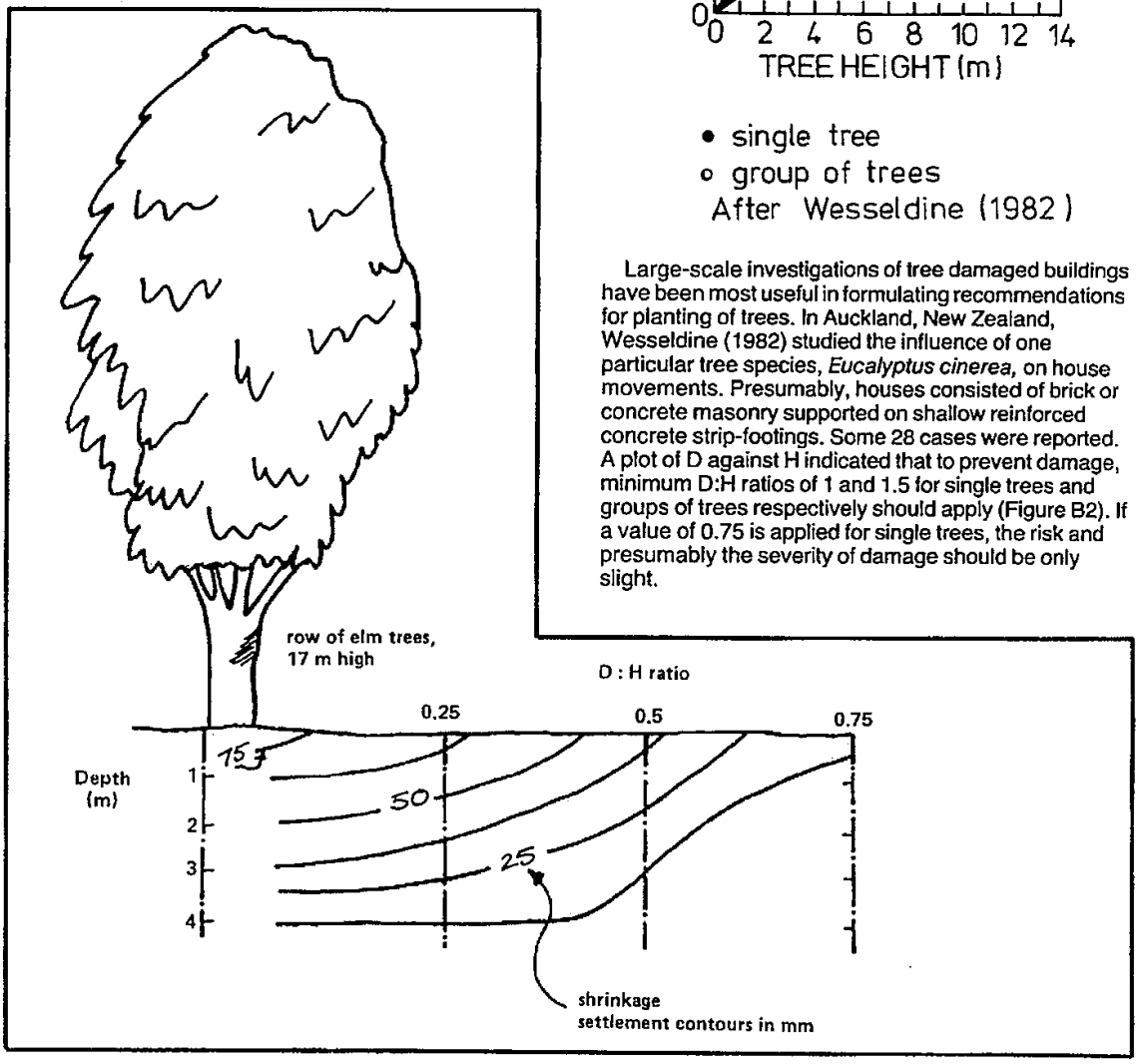
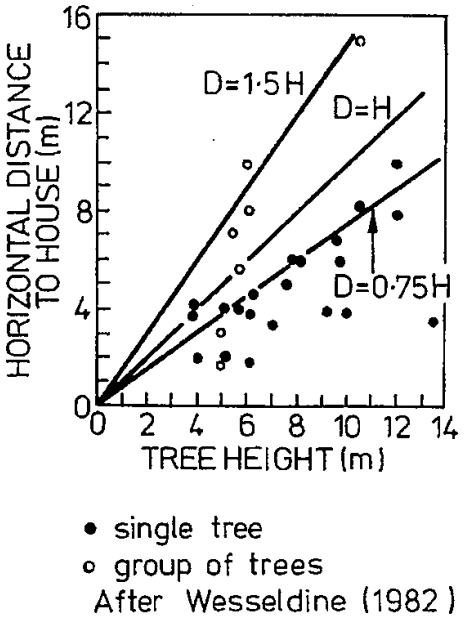


Figure B2: D:H ratios for Eucalyptus cinerea, *Auckland, NZ.*



Large-scale investigations of tree damaged buildings have been most useful in formulating recommendations for planting of trees. In Auckland, New Zealand, Wesseldine (1982) studied the influence of one particular tree species, *Eucalyptus cinerea*, on house movements. Presumably, houses consisted of brick or concrete masonry supported on shallow reinforced concrete strip-footings. Some 28 cases were reported. A plot of D against H indicated that to prevent damage, minimum D:H ratios of 1 and 1.5 for single trees and groups of trees respectively should apply (Figure B2). If a value of 0.75 is applied for single trees, the risk and presumably the severity of damage should be only slight.

CSIRO investigations indicate that for Melbourne conditions, a D:H ratio of 0.75 for either groups or single trees should restrict adequately the incidence of damage to modern brick veneer houses founded on conventional shallow strip footings (Cameron and Walsh 1981). An attempt was made to demonstrate the relationship between the degree of damage and D:H (Figure B3). However, lack of data and variations in reactivity of clays, soil profile and tree species impaired the demonstration. The degree of damage was drawn from the classification system of Tomlinson *et al.* (1978) which is reproduced in full in Appendix C. Holland (1979) also found that damage became markedly less severe for D:H greater than 0.5.

A similar approach was adopted by Tucker and Poor (1978) in a study of a suburban subdivision in Texas. Houses were typically brick veneer on concrete raft slabs. Trees included fruitless mulberry, elm, cottonwood and willows. Rather than relate D:H to a qualitative degree of damage, the researchers chose the measured differential vertical slab movement (Figure B4). Their plot does not distinguish between the movements brought about by the trees and that occurring normally as a consequence of moisture movements beneath slabs. However, at D:H greater than 2, it can be reasonably assumed that the trees have negligible effect and so the corresponding plotted points at or above this value represent the possible range of slab centre-heave in this subdivision. Therefore, the plot indicates that the effect of trees is not significant until approximately a D:H of 1.

Figure B3: Degree of damage v. D:H Melbourne.

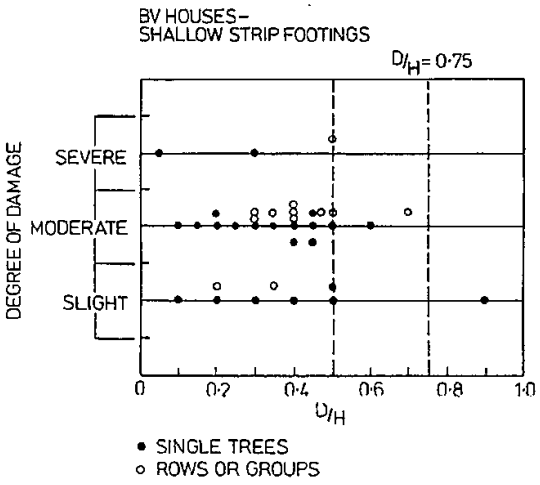
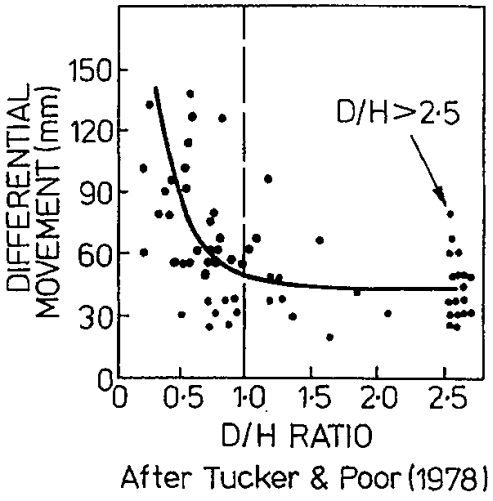


Figure B4: Differential slab movement v. D:H, Texas.



In England, Cutler and Richardson (1981) ignored consideration of the extent of damage but concentrated on the relationship between D and the frequency of any reported building damage for different tree species. Presumably the buildings involved were predominantly cavity brick construction supported by plain concrete strip footings. Since the authors gave estimates of ranges of common tree heights, their data can be summarized in terms of D:H ratios. Conservatively assuming that only the minimum tree height was achieved, the frequency of damage was equal to or greater than 10% for D:H equal to 1 for the following species — oak, elm, Sorbus species, horse chestnut, cherry, plum, apple and pear. However, if the *average* tree height is assumed, only the horse chestnut poses a 10% risk at a D:H of 1.

Trees that represented a moderate risk in the study included ash, willow, poplar, birch, plane and conifers. The last two were found to be involved in building damage at a frequency of less than 10% at a D:H ratio of only 0.5.

In summary, damage to buildings on clay sites will be most unlikely if minimum D:H ratios of 1 and 1.5 are adhered to for single trees and rows, respectively. Damage should, at worst, be slight. Obviously, some relaxation of this planting rule can be permitted after consideration of the factors determining the risk of damage, particularly the degree of expansiveness of the clay, the soil profile, and the susceptibility of the particular construction to movement. Unfortunately, lack of data on the effect of tree species prevents comprehensive allowances for this factor, but some concessions may be made for plane trees and some conifers.

APPENDIX C — CLASSIFICATION OF DAMAGE ACCORDING TO CRACK WIDTH AND FREQUENCY
After Tomlinson, Driscoll and Burland (1978)

Category of damage	Degree of damage	Description of typical damage*	Approximate crack width (mm)
		Hairline cracks of less than about 0.1 mm width are classed as negligible	0.1#
1	Very slight	Fine cracks which can easily be treated during normal decoration. Perhaps isolated slight fracturing in building. Cracks rarely visible in external brickwork.	1.0#
2	Slight	Cracks easily filled. Re-decoration probably required. Re-current cracks can be masked by suitable linings. Cracks not necessarily visible externally; some external repointing may be required to ensure weathertightness. Doors and windows may stick slightly.	5.0#
3	Moderate	The cracks require some opening up and can be patched by a mason. Repointing of external brickwork and possibly a small amount of brickwork to be replaced. Doors and windows sticking. Service pipes may fracture. Weathertightness often impaired.	5 to 15# (or a number of cracks 3.0)
4	Severe	Extensive repair work involving breaking-out and replacing sections of walls, especially over doors and windows. Window and door frames distorted, floor sloping noticeably##. Walls leaning## or bulging noticeably, some loss of bearing in beams. Service pipes disrupted.	15 to 25# but also depends on number of cracks
5	Very severe	This requires a major repair job involving partial or complete rebuilding. Beams lose bearings, walls lean badly and require shoring. Windows broken with distortion. Danger of instability.	usually 25# but depends on number of cracks

*Account must be taken of the location in the building or structure where cracking occurs and also the function of that building.

#Crack width is one factor in assessing degree of damage and should not be used on its own as direct measure of it.

##Local deviations of slope, from the horizontal or vertical, of more than 1/100 will normally be clearly visible. Overall deviations in excess of 1/150 are undesirable.

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From: Paul Keady <keadypaul@gmail.com>
Sent: Thursday, 21 December 2023 6:53 PM
To: Felice D'Agostino
Subject: Keady
Attachments: 20231128_080839.jpg; 20231128_080422.jpg; 20231128_080732.jpg; 20231128_080735.jpg; Screenshot 2023-08-19 171857.png; Screenshot 2023-08-19 172053.png; Screenshot 2023-08-19 171713.png; IMG-20231209-WA0001.jpg; 18A Elizabeth Stree1.docx further submissions D'Agostino.docx; Dear Ms D.docx dagmar.docx; Dear Ms Moen 20th Oct (1).docx

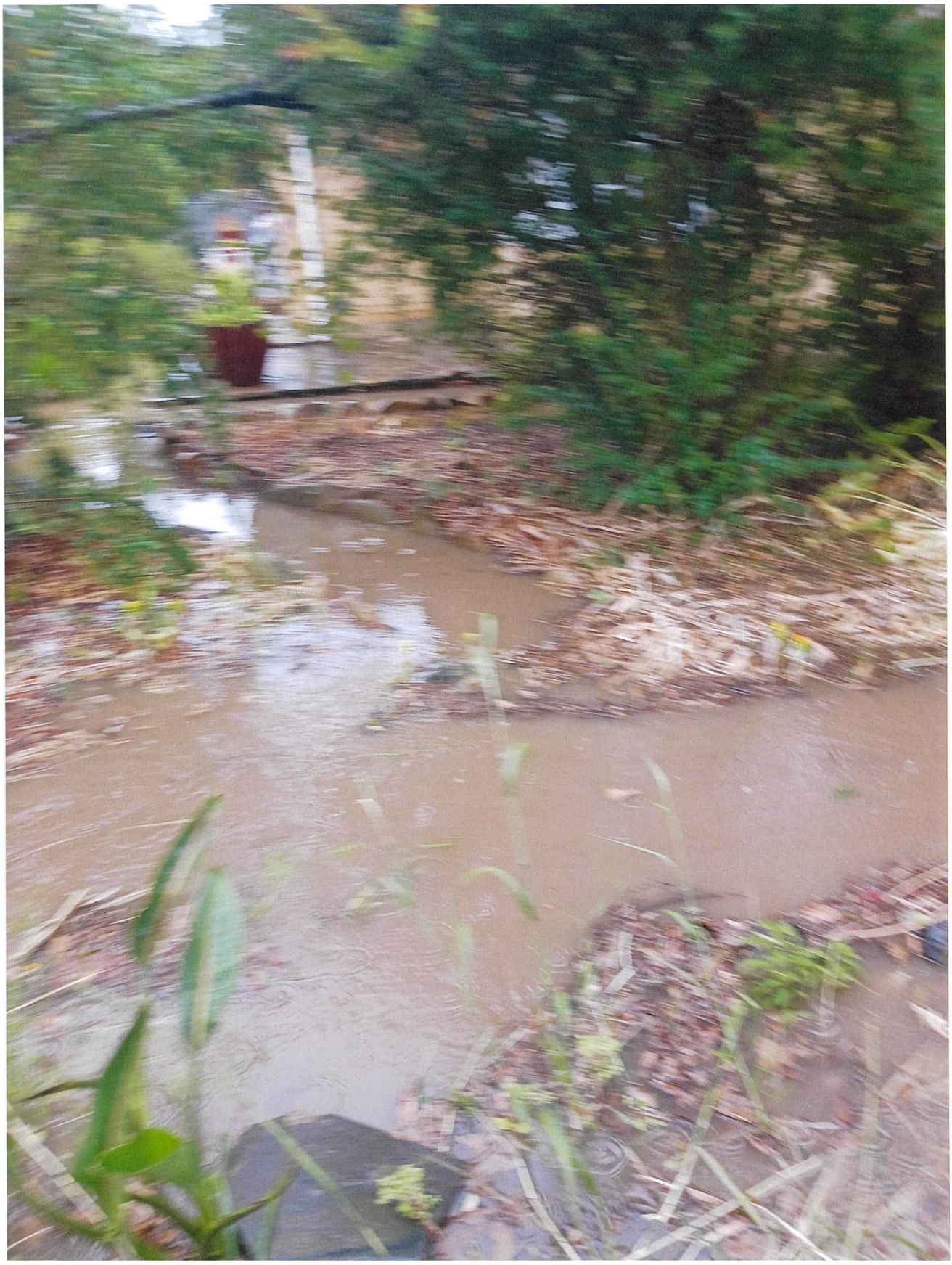
Dear Ms D'Agostino,

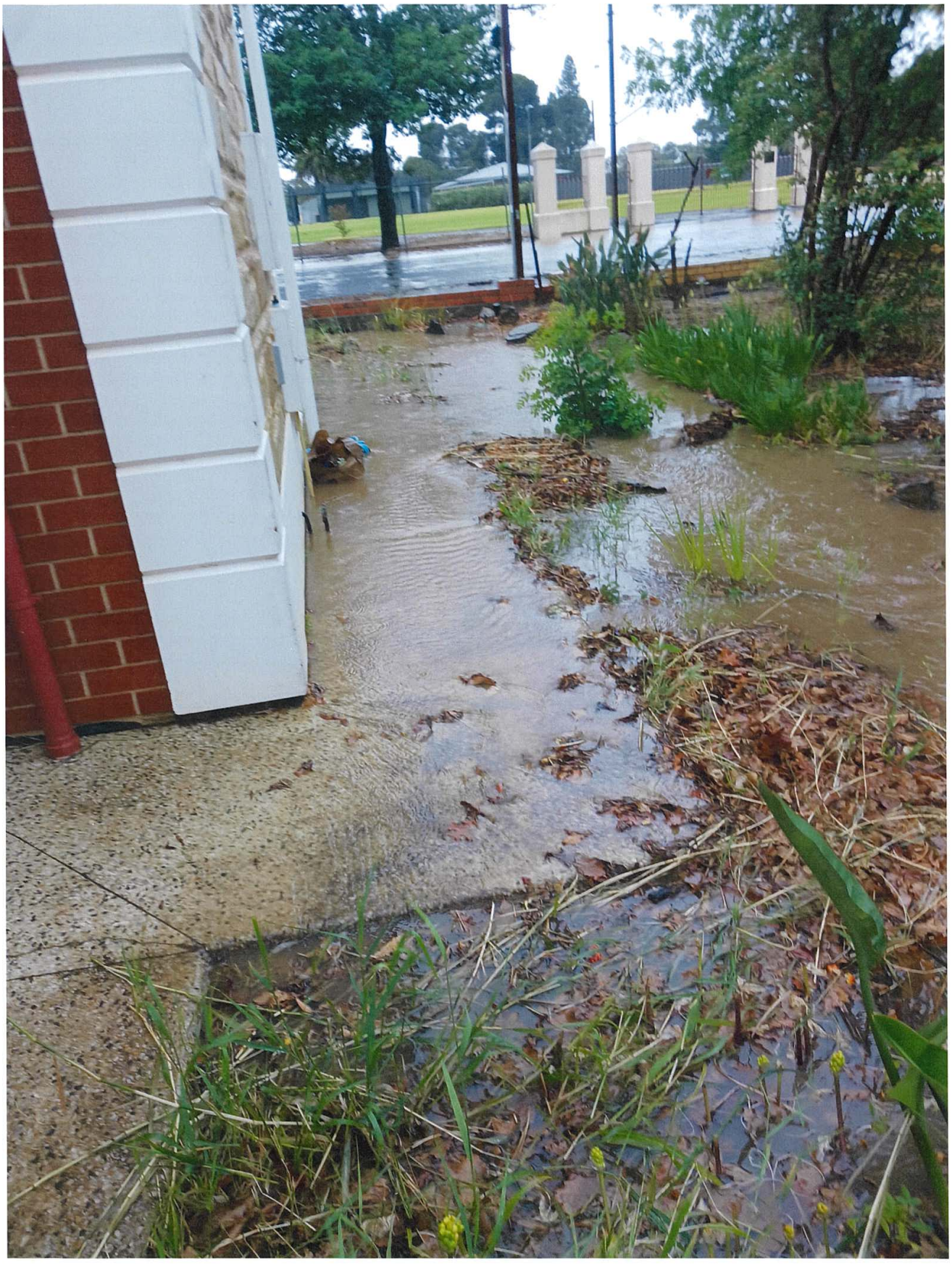
Enclosed please find our response to your interim Report.
Various photographs are included which should be self explanatory however if you require further information then let us know.

Unfortunately the letter dated 31 October 2023 wouldn't download. You will receive it by separate email.

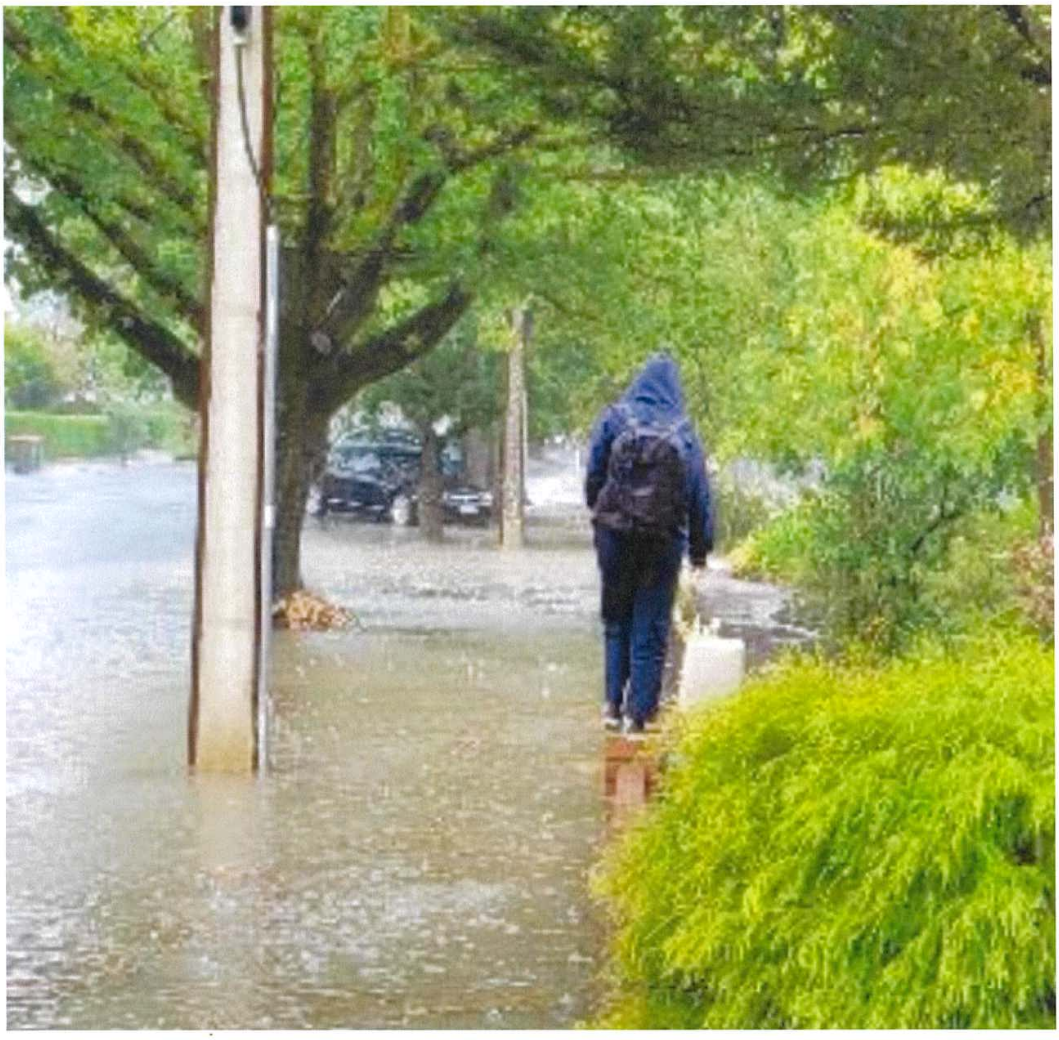
Cheers
Paul

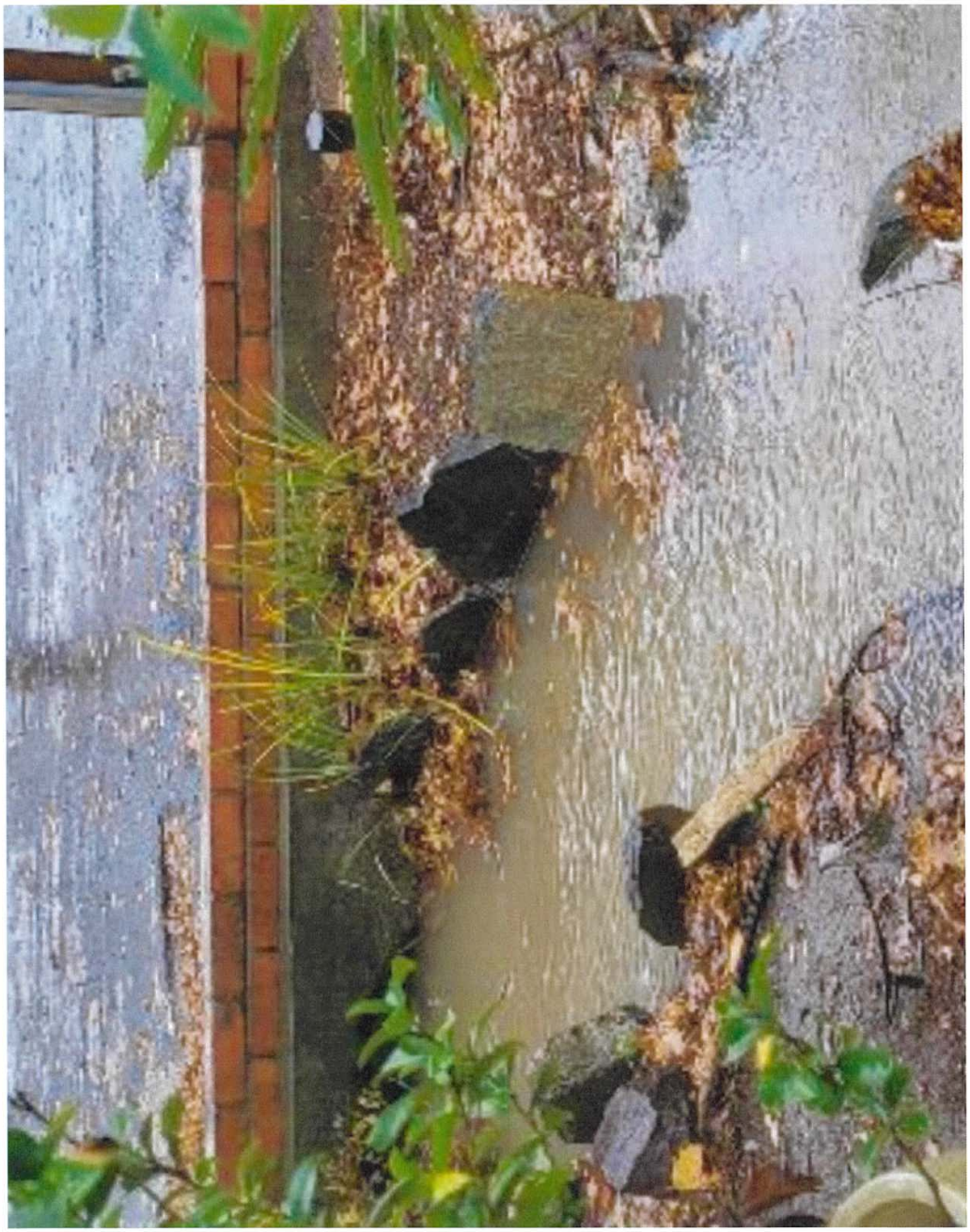


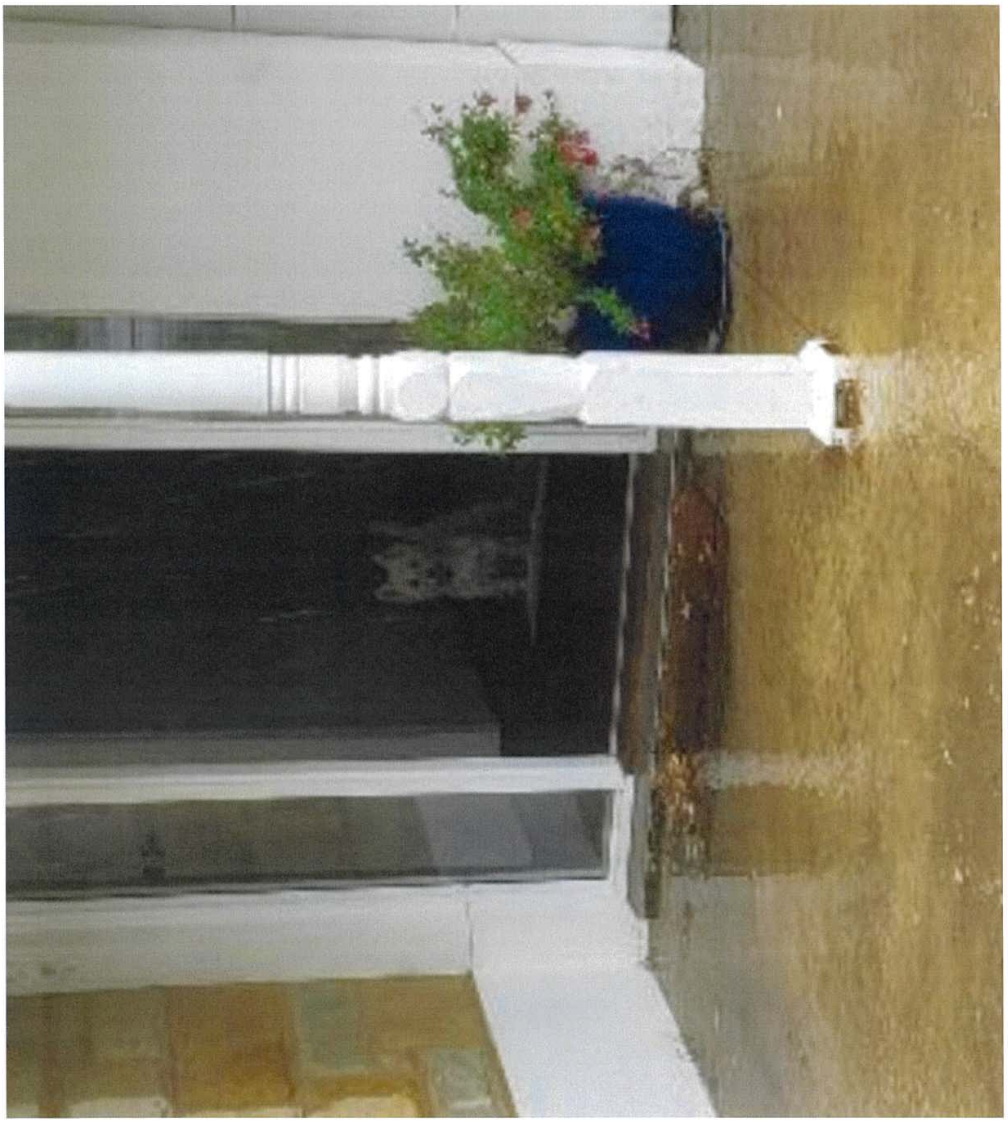














18A Elizabeth Street,
Tanunda 5352

21 December 2023

Dear Ms D'Agostino,

Receipt is acknowledged of your email attaching your Preliminary Report dated 29 November 2023.

The findings in your report are a matter of weight and interpretation. You have given insufficient weight to our situation and Council's responsibility for its stormwater.

We comment as follows:

1. Paragraph 9.2.1(c) – there is clear evidence that Council has a conflict of interest in favour of the Verhees. Council's concern has been to provide them with access to discharge their stormwater onto our land. This includes Council's undisclosed pecuniary interest where Council has agreed to pay the cost of relocating the Verhees' stormwater infrastructure.

2. Paragraph 5.3.1 – the issue concerning the discharge of stormwater from 18 Elizabeth Street (Verhees) onto our property should be a separate issue. However it is clear from correspondence with various Council Officers that our discussions regarding the easement were tainted by this issue. The recent Court List of Documents filed by the Verhees discloses many emails between them and Council Officers including assurances from Mr Kromwyk that Council would include floodways onto our land with the proposed construction.

3. Paragraph 9.3.5 – Options.

   You give weight to the Report to Council at its meeting on 4 October 2023.

   a. With respect, an analysis of the cost of Option 3 discloses that approximately 50% of that cost (approx. $100K) is to replace SEPS and works in Elizabeth Street to upgrade Councils infrastructure.
   b. You comment that even with option 3, 5% AEP, an overland flow path to accommodate a 1% AEP will be required, but you recommend a solution which gives a 50% AEP recurrent flooding next to our home!
   c. The option 1 recommended by you was previously contracted to cost $52,000.00 plus GST plus the cost of the works in Elizabeth Street. You have that quote from Cavco Earthmoving to Council dated 27 February 2023. That cost would have now increased. See our letters to Ms Moen attached.
   d. If you leave aside the cost of Councils infrastructure works in Elizabeth Street, which are a decision for Council, Option 3 is cheaper for the works on our land

than option 1. The additional cost for the works on 19 Julius Street are to provide a long term solution for neighbourhood flooding problems at an acceptable AEP.

e. The assessed cost of works on our land for Option 3 is about 50k, with the balance of 50K being spent on 19 Julius Street. This includes a large contingency.

f. You don't mention that since our purchase, the volume of stormwater flowing into the easement has increased due to the Oval works recently completed. We get water into the easement from the Oval independently of rain now. We sent you some recent photographs showing the flooding problems in Elizabeth Street. You have photographs showing water flowing into the easement from the oval sprinkler system.

g. This problem has been the subject of continual complaints from the public. Funds were allocated by Council in June/July 2022 for this purpose. Option 3 includes new SEPs on the oval side of Elizabeth Street, with a new pipe across Elizabeth Street discharging into the easement.

h. Considerable weight should be given to the fact that the proposed works will be expected to last for decades and should represent a long term solution to an ongoing stormwater problem in Elizabeth Street, including flooding of ours and neighbours properties, maintenance of the easement , scouring etc.

i. Option 1, has an AEP 50%. It is expected to flood regularly onto our land and neighbouring properties.

j. You have failed to give appropriate weight to the impact on us and neighbouring properties of the affect of continual flooding. Council's guidelines to developers are an AEP of 1% for open drains and 5% for covered drains. This is informative but not considered by you. Similarly, the erosion, scouring and ongoing maintenance issues and cost and the various health, environmental and security issues of this option. Grass needs water and Council won't water or maintain it.

k. It is obvious that in time of low flows, such as today with the sprinkler water, that water will pool in any proposed dirt drain causing health and other problems.

l. May we quote the Mayor that the long term solution is appropriate. In simple terms, do it once, do it properly.

m. The attached recent photos show the drain after Council did interim works to enable stormwater to flow along the easement. The dimensions and impact are similar to what we will experience with the proposed dirt drain/swale, Option 1. This is unacceptable and unfair to expect us to have such a drain alongside our house.

a. We are content to contribute to Option 3. The amount and manner of our contribution is something we hope to be able to discuss with Council.

4. To summarize:
   a. Council has a problem with its stormwater infrastructure in Elizabeth Street leading into the easement on our property. That infrastructure is no longer fit for purpose. It is old, clogs up and cannot handle stormwater flows from Elizabeth Street and the Tanunda ovals. It needs to be replaced.
   b. The costings of the infrastructure works in Elizabeth Street have been included into the overall cost of work on the easement, in the case of Option 3, doubling the cost.
      Councils own costings and quotes previously obtained from Cavco show that the actual cost of Option 3 on our land is less than Option 1, recommended by you.
   c. An infrastructure solution which enables Council to drain its stormwater and balancing our rights as the land owner, our enjoyment of life etc should be possible. Option 1 does not do that.
   d. This is long term infrastructure designed to facilitate the ongoing drainage of Council's stormwater from Elizabeth Street to Julius Street and should avoid flooding our and neighbouring properties.
   e. The proposed infrastructure benefits the community, our neighbours and generations to come.
   f. Despite our requests, Council has not been able to identify any easement similar to ours. Our situation is unique and we are entitled to have our circumstances assessed and treated fairly.
      The works on the easement follow infrastructure works proposed for Elizabeth Street to accommodate the increased flows from the Tanunda Oval and from Elizabeth Street. There is no precedent. The works are for Council's benefit.

5. We suggest that the problems with expansion/contraction of clay soils on the easement affecting concrete paths and footings are real and are a matter of notice. We are not able to get an engineering report in a reasonable time. The cost is significant. We have provided you with an engineering paper which is relevant. Council is aware of this problem.

6. Much is said about us buying our home knowing there was an easement on our land. We relied on Council not approving a subdivision or house plans knowing that the land was flood prone from its stormwater. Mr Clark and others have stated to us that the sub-division should never have been approved in its current form.

7. Council knew there was a stormwater problem at the time of the sub-division and had the opportunity to do something about it.
   We discussed the easement with a Council engineer prior to purchase and were told that there were no problems with the easement. A few months later we were flooded!

8. At paragraph 11.2 we note your recommendation that we continue discussions with Council. We are willing to do so.

9. Discussions are difficult when Council officers are restricted to the parameters of Council resolutions, into which we have had no input.

10. May we suggest that given the practical nature of the dispute and that the situation at hand remains unsatisfactory and unresolved, that in accordance with section 271 of the LGA 1999 and clause 4.2 of the Council's internal Review of Council Decisions Policy that you include in your recommendations that this matter be referred to mediation to attempt to come to a mutually acceptable resolution which can then be put to TBC for its consideration.

11. We encourage this course and are confident that with the assistance of an independent mediator a way forward will be found.

12. In the unfortunate event that it is necessary to proceed to litigation, we would expect the Court to order mediation as a matter of course but after significant funds are expended on legal costs. We suggest that there is merit to avoid this and proceed to mediation now.

We assume from your comments that you have had access to the various correspondence between us and TBC. Our letters dated 20 October 2023 and 31 October 2023 are attached.

By separate correspondence Dagmar wishes to provide you with her thoughts generally on this matter. It's our forever home and has become a very emotional issue for us including the way we have been treated. Thank you for hearing us.

Yours faithfully

Paul & Dagmar Keady

Dear Ms D'Agostino,

I read your preliminary report with great disappointment, as I feel we were not heard. Both Paul and I come from a background of social justice, and I strongly believe that what is happening to us is not fair or just.

This all began because we wanted to extend our fence, so our dogs could have access to outside via a doggie door in the laundry and to block off the view to the front road to minimize the Westie from barking. The neighbours disagreed to a fence as it would not enable them to deposit their storm water across our land and into the easement. Is it fair or unjust to have neighbour's storm water flow onto our land?

The neighbours insist that they have council's permission to access the easement under our fence, across our land and into the easement. Fair or unjust?

We have requested documentation showing permission and entry points into our property for their water flow from the council. None has ever been received and we were even informed " Well, if they don't have permission I will give retrospective permission". Fair, unjust or bullying?

In a meeting, it was suggested that an underground culvert would be the most appropriate solution, however that needed to be presented to council. We waited, only to hear

- The Keadys want a higher level of service. No, we wanted a service that worked Fair or unjust?
- The Keadys bought the house with an easement. Yes, the expectation was that the easement would do its job without causing damage to our house and neighbouring properties. Fair or unjust?

When we asked a council member, why it wasn't presented as discussed, the reply was " Its too expensive?"

When asked why we weren't informed prior to the meeting, the response was "My Bad". Fair, unjust, rude or dismissive?

Emails flowed between Paul and Council. One in particular seems so unkind and bullying. " Well, if you want the culvert you can pay $50,000 which is the difference between the dirt swale and the culvert ."

Through Freedom of Information, we discovered that at the time in March 2023 when the council received quotes, the actual cost difference between the dirt swale and underground culvert was $8,000. Had the council contacted us and discussed this honestly and openly, we would have paid the actual difference of $8000. This would have resolved the situation with the neighbours, resolved the issues with the easement and created a solution which was functional and satisfactory. It would have also saved lots and lots of money, for the council, neighbours and us. However, as overheard in a public place , "I don't care how much money this is costing, it's not my money" Fair or unjust?

We saw as part of the court proceedings with the neighbours that council has agreed, in the event the storm water pipes were unable to go under our fence, across our land and into the easement, they will pay for the storm water to be redirected to the road. Why is council paying for infrastructure on private property? Fair or unjust?

When I asked a council member why this was proposed, he denied any knowledge of this and said it would only occur if council gave the wrong information or misinformed our neighbours. Did council give us appropriate support? I don't think so; there has been a clear bias in favour of our neighbours. Fair or unjust?

Which brings me to other comments made about 18A Elizabeth Street, by both management and elected council members.

- The sub-division should never of gone ahead
- The council should not have approved the sub- division
- A house should not have been built so close to swale.
- We have always know that it would be a problem
- I'm dealing with a problem not of my doing

So, going by what I was told re the neighbour's storm water and payment of redirection; shouldn't council rectify this problem? Fair or unjust?

Negotiations took a turn for the better when a solution orientation approach was taken. However , the council proposed that we co-contribute to the solution. We agreed to look at it, but is it fair that we are asked to pay for the pipe from the oval, under the road, through our property and that of our neighbours? I was under the impression that storm water management was the role of the council.

Now that the new oval is complete across the road from our property there is an increased flow of water. It is directed towards the easement on our property. We did not know this was to happen or the actual impact of the extra water flow. It impacts as the water sits there to stagnate. Fair or unjust?

I am deeply disappointed that you stated that a dirt swale is adequate. An easement is for councils benefit, and when the block of land was approximately 46 m wide a 3 m wide easement was workable, but our block is approximately 21 m wide and a 3 m wide open dirt easement is not. Fair or unjust?

Also, a dirt swale has an AEP of 1:2, which does not fulfill local council's requirements. So, are you saying that it's reasonable that we can expect to be flooded once every 2 years? Fair, appropriate or unjust?

Ms D'Agostino we moved to the Barossa to have a new adventure, not to fight. We are not expecting service beyond others. What we do expect is a fair and just outcome of a basic service, which we currently don't have. Your assertions that dirt swale is adequate is not fair, appropriate or just as

- The dirt swale clogs up, doesn't flow and is not maintained by council
- Stagnate water is a breeding grown for mosquitoes and health issues
- Stagnate water damages housing infrastructure
- The open swale is disproportionate to the usable land

We bought the house in good faith, knowing that there are two easements on the property. One easement works and one doesn't. We just ask that the council fulfill their responsibility and asking you to be fair and just with your recommendations.

I could also outline the significant impact this has had on our health, but I won't as I am an optimist who believes most people are good and come from a point of being kind, fair and just and that ultimately this can be worked through in an appropriate and respectful manner.

Your sincerely
Dagmar Keady

Dear Ms Moen,

We are grateful that you took the time to listen to Dagmar, have taken a solution orientated approach and have met with us and provided your feedback in a timely manner.

We read your report to the Council. You sent it to us the afternoon before the Council meeting on 4 October 2023. We were not consulted and were not given an opportunity to comment on your report prior to it being presented to Council.

Council passed a resolution limiting the scope of negotiations we can have with you.

We met with you and Mr Clark on Tuesday 10 October 2023 to discuss a financial contribution by us as set out in the Council resolution dated 4 October 2023.

You seek a contribution from us in relation to option 3. Whilst you specify a percentage, 15%, you have not set out how you arrive at that percentage nor how you calculate a sum of $18000 - $20000 as being a reasonable contribution.

At the outset, we reject the notion that we are a beneficiary of the proposed stormwater construction works. The Barossa Council is the primary beneficiary noting your responsibility to collect and transport your stormwater from Elizabeth Street into Julius Street. The Barossa Community benefits by alleviating flooding in Elizabeth Street and our neighbourhood benefits by resolving ongoing flooding issues in Elizabeth Street.

We would prefer not to have your stormwater, pipes etc on our land.

It will assist our discussion if some basic facts and principles are agreed.

FACTS:

1. On 19 July 2022, Council approved expenditure of $30,000.00 to upgrade its Council's stormwater infrastructure in Elizabeth Street, adjoining 18A Elizabeth Street, Tanunda. This included replacing the existing side entry pit (SEP).

2. Council approved an updated quotation from CavcoEarthmoving dated 5 December 2022 for the sum of $25,985.00 for these works.

3. A meeting was held on 16 September 2022 between the Keadys, Mayor Lange, Mr Kaesler and Mr Clark, to discuss issues with Council's stormwater easement on 18A Elizabeth Street, Tanunda. You have our version of what was said and agreed.

4. On 5 December 2022, Council received a quotation from CavcoEarthmoving for the sum of $75,850.00, to install underground stormwater drainage infrastructure, a culvert, in Council's easement on 18A Elizabeth Street, Tanunda. That quote included vegetation removal.
The cost of the culvert and associated works included in that quote was about $60,850.00 being less the sum of $15000.00 later spent on vegetation removal.

5. On 24 January 2023, Council resolved to allocate $30,000.00 to remove vegetation and remediate the existing dirt swale on our land.
We were not consulted nor had the opportunity to comment on the proposed works on our land.

6. In February/March 2023 the vegetation was removed and cost about $15,000.00.

7. Council's plans for a dirt drain included running 3 drainage ways from 18 Elizabeth Street, onto 18A Elizabeth Street. The Keady's objected to this. Council ignored the Keady's objections.

8. On 28 February 2023 CavcoEarthmoving quoted Council the sum of $52,000.00 to construct the dirt swale. This amount did not include vegetation removal, which had already occurred.

9. **As at 28 February 2023 the difference in cost, as quoted to Council, between an underground culvert and a dirt drain was $8,850.00. The Keadys were not advised of this.**

10. A letter from Keady's solicitors, Botten Levinson, dated 17 March 2023 to Council advised that proposed dirt drain was unlawful.

11. Council has left the easement in an unfit state for drainage and has refused to perform interim works to prevent water pooling and flooding the Keady's land.

12. On 16 June 2023 we met with Mr Clark and Mr Kaesler. On 20 June 2023 Mr Clark provided a list of addresses which he said were subject to Council easements. On inspection none of these properties had stormwater easements in any way similar to that on 18A Elizabeth Street. In most cases Council does not have a registered easement on the nominated property.

13. Council has obtained a further hydrologists report setting out various options for draining Council's stormwater along the Keady's land.

14. On 4 October 2023, Ms Moen prepared a report recommending option 3, which includes, inter alia, an underground pipe across Elizabeth Street, along the side of our land, running across 19 Julius Street into Council's drainage infrastructure in Julius Street. The assessed cost by Council staff is about $203,000.00, including contingency. Additional expenditure of $175,389.00 was approved by Council subject to contribution by the Keadys.

PRINCIPLES:

1. The Barossa Council is responsible for stormwater infrastructure on its land. This includes the capital costs for any upgrades or new infrastructure. Ratepayers are not requested to contribute to such costs.

In this instance Council allocated $30,000.00 in July 2022 for a capital upgrade of the SEP and drainage infrastructure in Elizabeth Street, to the boundary of 18A Elizabeth Street. The quoted cost as at 5 December 2022 from the contractor, CavcoEarthmoving was $25,985.00.
The assessed costs set out in Option 3, above, are now approximately $100,000.00.

The Barossa Council is the beneficiary of these works. It solves a flooding problem in Elizabeth Street. The existing SEPs are deficient in design. The inlets are narrow and clog with leaves and debris causing flooding in Elizabeth Street.

During major rainfall or hail events, stormwater backs up and is a flooding hazard for the residents of Elizabeth Street from William Street to Maria Street.
This situation is exacerbated by Council works at the Tanunda ovals.

There is neither precedent nor Council Policy requiring ratepayers to contribute to Council infrastructure in these circumstances.

2. The Barossa Council is responsible for the maintenance of the easement on the Keady's land.

Prior to the removal of the trees and vegetation from the easement, stormwater would pool, not flow and flooded the Keady's land and neighbouring properties. The hydrologist rates the existing drain on the easement as a 1:1 which means it floods annually and continuously.
The dirt swale was and is not fit for the drainage of Council's stormwater.

The Council resolution of 24 January 2023, provided for the removal of this vegetation at Council's expense, because it was Council's responsibility to do so. Council is responsible to ensure that any infrastructure is maintained.

3. Council is responsible for the cost of negotiating the cost, design and construction of its stormwater infrastructure on properties neighbouring our land.

The assessed cost under Option 3, of constructing a drainage pipe, from the rear boundary of 18A Elizabeth Street along 19 Julius Street, is approximately $50,000.00, including contingency.
Council has not sought contribution from the landowner of 19 Julius Street.

4. The assessed cost of a pipe laid along Council's easement on our land is approximately $50,000.00. If the contingency is deducted the cost is closer to $45,000.00.

The quoted costs to Council to construct a dirt drain, as proposed following Council's resolution dated 24 January 2023, was $52,000.00. That amount would have increased by now.

Accordingly the proposed pipe per Option 3 is cheaper by some $7000.00 for the works to be constructed on our land.

In this circumstance we do not consider it is fair or reasonable to require us to contribute where the assessed cost represents a saving to Council of at least $7000.00.

COURT PROCEEDINGS:

We have not been able to reach agreement with the Verhees, our neighbours, to construct a boundary fence. They maintain they have Council's permission to run their stormwater onto our land. We do not accept this assertion.

We have requested details of such permission including an FOI application. No details have been provided.

The only relevant Development approval disclosed by Council is 960/276/2019. Condition 3, provides, inter alia, that the Verhees shall not permit their stormwater to ... "run onto or over land of an adjoining owner".

The plan attached to this approval shows the Verhees stormwater being directed by pipe to the rear boundary of the Verhees land. Instead the Verhees are discharging their stormwater onto our land.

We initiated proceedings in the Magistrates Court seeking an order under the Fences Act and proceedings seeking an injunction to restrain the Verhees from running their stormwater onto our land.

The Verhees have cross claimed against the Barossa Council joining you as a party to these proceedings. They seek an indemnity from you for any costs, damages etc awarded to us. The Barossa Council has agreed with the Verhees to bear the costs of relocating the Verhees stormwater infrastructure should our action be successful.

The Barossa Council has a contingent liability of having to pay our costs, the Verhees' costs, its own costs, any damages awarded to us and the Verhees stormwater infrastructure costs.

If our claims proceed to hearing then we expect the legal costs for each party will be at least $15000.00 -$20,000 in the Magistrates Court. The Verhees solicitors have filed an application to have the Court proceedings transferred to the District Court. Should that occur then legal costs will be not less than $30,000 per party. To this will be added our damages and the Verhee's stormwater relocation costs to Elizabeth Street. The cost will be substantial.

The Barossa Council has a potential liability to pay legal costs of between $45000.00 to $90,000.00, our damages and the Verhee's stormwater costs of say $15,000.00. The total is somewhere between $60,000.00 to $130,000.00.

In addition, there is the potential for further claims by residents against Council should the issue of Council's powers of approval be decided in our favour.

These costs could and should have been avoided. Nobody from the Council has been willing to discuss the Verhees stormwater with us. Our discussions with Council on 15 September 2022 had resolved the Verhees stormwater issues.

The Court proceedings are adjourned to 24 November 2023. The Court may refer all matters for Mediation. This will incur additional legal costs.

OPTIONS:

Once again we are hamstrung from discussing options with you. You are limited by Council's resolution which is Option 3.

We can suggest at least two options that would save Council substantial construction costs, save legal fees, resolve the Section 270 Review and limit your exposure to the Verhees' stormwater costs.

Council's policy of not consulting with us prior to Council passing resolutions is unfortunate. It would be useful if we could meet with Council representatives to discuss all options, have a purposeful discussion and present to Council the result of those discussions.

Dealing with Option 3, we offer to save Council the cost of landscaping, quoted at $5000.00 plus the additional cost of maintaining the easement, say $1000.00 annually.
We disagree with the concept of grassing the easement, about 150sq metres. It does not suit the Barossa climate and we ask, how are you going to water and maintain it?

We are open to discussing a satisfactory resolution of the Verhees' stormwater with you to save Council substantial costs in that regard.

Please note that we intend to file a deputation request with Council regarding the above and our easement issues in general. We feel this would be a valuable opportunity to present the information to the counsellors and to be able to answer questions they might have.
Please ensure that we are given at least one weeks' notice of you submitting your supplementary report for Council's consideration.

Please note we are assuming that you will be connecting our stormwater, and existing pipes along the easement from 20 Elizabeth Street, to any stormwater infrastructure you construct.

Similarly we require notice should you propose connecting the Verhees' stormwater to any infrastructure on our land without our prior consent.

Yours faithfully,

Paul & Dagmar Keady

From: Paul Keady <keadypaul@gmail.com>
Sent: Thursday, 21 December 2023 6:57 PM
To: Felice D'Agostino
Subject: Fwd: Stormwater drainage infrastructure

Dear Ms D'Agostino,

This is the letter dated 31 October 2023 referred to in our response. Correspondence from Council indicated that neither option suggested by us would be satisfactory for technical reasons.
There have been numerous options discussed . Some may work. We hope so.

Cheers
Paul

---------- Forwarded message ---------
From: **Paul Keady** <keadypaul@gmail.com>
Date: Tue, Oct 31, 2023 at 5:30 PM
Subject: Stormwater drainage infrastructure
To: Joanne Moen <jmoen@barossa.sa.gov.au>

Dear Ms Moen,

We refer to your conversation today with us and your advice that you will be submitting a report to the Barossa Council at its next general meeting on 21 November 2023.
We hope to address Council that day on our easement issues.

You indicated that further consideration may be given to any options we present for consideration.

Those options would include:

1. The original specifications and option suggested by Mr R. Williams on 28 July 2022 i.e. a 600 x 300 rbc which we understand would be a 1 in 20, 5% AEP. This was quoted, including vegetation removal, at $75,850.00. The work in Elizabeth Street was quoted at $25,985.00. The vegetation has been removed. Total cost $101,835.00, less vegetation removal $15000.00 = $76835.00. A saving in excess of $125,000.00 on option 3.

2. The Barossa Council resume a 1 metre strip of land along our boundary with 18 Elizabeth Street, Tanunda.
All options that we have seen assume a drain less than 1 metre in width.
The value of our land on today's market would be approx $20,000.00 - $25000.00 at approx $400.00 - $500.00 per sq metre for 50sq metres.
This option enables Council to own a 1 metre strip along the boundary and Council can construct a drain of its choosing. Council can also allow neighbours to connect into its drain. Council's ongoing maintenance obligations will be solely a matter for Council.
We would be prepared to transfer this land to Council for no consideration provided:
1. Council bears all costs associated with the transfer including survey, LTO and legal costs.
2. Council bears the cost of moving any existing services including SA water off that portion of land transferred to it..
3. The existing drainage easement in favour of Council be removed and discharged from our title.
4. The Council and us go 50/50 in the cost of a new boundary fence from Elizabeth Street to the rear boundary with 19 Julius street.
5. The existing easement for 20 Elizabeth remains and include a one metre easement to 18A Elizabeth Street to enable our stormwater to discharge into Council's new infrastructure..

The cost of this option will depend on what drainage type is selected by Council in Elizabeth Street and along the boundary to Julius Street. The cost saving compared to Option 3 would be in excess of $100,000.00 subject to Council's drainage decision.
The cost of the subdivision, survey etc is more than offset by the value of the capital asset (land) that Council receives together with a resolution of the drainage issues in Elizabeth Street and with 18 Elizabeth Street.
It also has the advantage of resolving all current and potential legal issues between us.

Any option to be considered will require fine tuning, goodwill and a commitment to resolve issues which may arise to achieve the desired result.

As we have indicated many times, we are prepared to sit down with you or any Council officers, whoever it is that we can discuss options with a view to a positive resolution for all.

Yours faithfully

Paul and Dagmar

From: Paul Keady <keadypaul@gmail.com>
Sent: Friday, 22 December 2023 3:31 PM
To: Felice D'Agostino
Subject: 18A Elizabeth Street, Tanunda

Dear Ms D'Agostino,

Our apologies but there is a further matter that is relevant to your review and to Council's decision about the easement generally.

It has been pointed out to us that now Council has expert advice of an AEP flood frequency that an open drain with an AEP of 50% will significantly affect the value of our house and land.
It is a matter that we would need to disclose on any future sale.

We are trying to get confirmation from a Real Estate agent but most are now on holidays.
We would respectfully suggest that a dirt trench potentially flooding every year or two would obviously affect our home's value. This has been substantially contributed to by the works performed by Council on the Tanunda Ovals since our purchase.

Yours faithfully

Paul & Dagmar Keady

From: Paul Keady <keadypaul@gmail.com>
Sent: Wednesday, 3 January 2024 11:54 AM
To: Felice D'Agostino
Subject: Fwd: Attached 18a Elizabeth street, Tanunda
Attachments: SKM_C300i23123110200.pdf

Dear Ms D'Agostino,

Enclosed please find letter dated 30 December 2023 from Mr Jordan Varley of Harcourts Barossa Valley.

Regards
Paul; & Dagmar Keady

30th December 2023

TO P & D KEADY

FROM—JORDAN VARLEY
SALES MANAGER

To Paul & Dagmar

Thank you for the opportunity to provide you with a market opinion at 18a Elizabeth Street, Tanunda.

When appraising a property, I take the following into consideration: condition of the market, median house and land values at the time of appraisal, presentation and condition of the home and any recent property sales in the area.

The lefthand side boundary easement creation would have a direct impact on the future value of the property. This is due to the portion of land becoming unuable for any value adding and the high level of potetial flood impact that would turn away potetial buyers.

We look forward to working with you again in the future to achieve your real estate goals.

Kind regards

Jordan Varley

Harcourts Barossa Real Estate
104 Murray Street, Tanunda, SA, 5352
P 08 8563 3511 **E** barossa@harcourts.com.au **W** barossa.harcourts.com.au **ABN.** 60127442184
RLA 237291

From: Martin McCarthy <mmccarthy@barossa.sa.gov.au>
Sent: Friday, January 19, 2024 7:21 AM
To: Felice D'Agostino <FDAgostino@normans.com.au>
Subject: Section 270 Review - Keady - Response to further matters

Hi Felice

Please see response as requested following.

From my review of the information provided there are only two matters raised which I categorise as needing response, namely the value of the property and the new oval.

Summation of Submissions

In relation to the communications of 31 October with Jo Moen, 21 December outlining Mr Keady's responses and photos, and the views of Dagmar they are, in my view, a repeat of fundamental work and negotiations facilitated to date. Further, they are matters that you have already reviewed, or are irrelevant to the review, such as their view of the treatment they have received and their associated feelings.

Issues of cracking have been previously responded to and the materials provided do not attest to anything other than a document which reflects the risk of clay soils which occur around our state and any wet and dry cycle can result in these outcomes regardless of water flows across the land, as is evidence throughout the State of SA due to the nature of clay soils.

I don't see any further response is necessary and in my view do not raise any new issues or errors in the S270 assessment.

If I don't have the components of any new information that require addressing correct, please let me know.

Response 1 – Value of Property

On the matter of the value of the property, my response is that this has not been assessed in any way by Council and nor in my view is relevant to Council decision making. This is due to the following factors:

1. Notwithstanding the landowner's viewpoints, the overland flow has always existed (pre and post land division), it has been reduced (significantly) in years past (history you already have addressed) and formalised in an easement since land division and highlighted in an easement, which was known when the property was transferred to the current landowners. Any solution we implement (with a pipe be it the 1 in 2 or 1 in 20 solutions) will actually further reduce that overland flow and will improve the land, by any logical and sound reasoning this will improve its value. I also argue the valuation to the land would increase as the solution (all those provided) will improve the land

through either a better managed overland flow solely or combination of overland and underground system, from when they purchased it versus the situation at purchase which was a unmanaged and meandering overland flow.

2. What valuation changes occur is not relevant in my view to Section 6(a) of LG Act requirements of an informed decision maker on the question of the stormwater management treatments to be applied by Council. My argument isnot only based on the fact that it is not relevant but more importantly it is irrelevant; any decision made by Council on this, as a decision making basis, could mean Council makes an investment decision or service decision based on what the financial outcome to the resident/s are and not need, risk and public good. This would put Council at risk of challenge legally, politically and with oversight bodies. If the rationale to include valuation changes to properties was part of decision making and lets say the decision related to an investment in upgrading a road for safety purposes vs beautifying a main street for aesthetic and presentation purposes, the Council may beautify the main street as it raises the valuation more, which intern could raise greater rates; when in fact the more relevant investment based on needs, risk, limited funding is the core road infrastructure when weighing up relevant factors. It is irrelevant as it does not go to the fundamental reason Council would make or not make any such investments which is about the social, economic and community wellbeing and development of its area. I see the investment in stormwater no differently and could quite significantly, if such factors were factored into decision making, result in perverse outcomes not aligned to the public good Council exist for but rather the greatest financial benefit.

3. Finally on this matter, the Harcourts comments are not fully informed which is clearly articulated in their correspondence referring to the "lefthand side boundary easement creation". They are demonstrating they have not taken into account that the easement was present at the time of purchase for which it is reasonable to assume that a discounted value was realised at that time. As the letter states they are stating it is being created, which is factually incorrect, it has already been created. The perverse application of this landowners rationale could be used to justify even greater personal contribution as they are reaping a greater personal benefit, rather than a measure of the best investment needed for the greatest community benefit (normal the social, economic and community benefit not individual financial benefit), this is not how Council makes sound decisions for the wider public good.

4. The matter at hand is a fair and reasonable treatment to manage water flows, upon which Council has provided various options and it is the matter at hand that is relevant.

Response 2 – New Oval

The new oval is estimated to actually not increase, most likely decrease, the prior flows at this site. This is due to three main issues;

1. the construction profile it is expected that less surface water runoff will occur due to soakage and water retention within the soil profile. The construction area of the new oval previously was compacted dirt, with minimal grass and no sub-surface irrigation and in our view has more surface run off due to these factors.

2. Further, the construction of the new oval has full irrigation and sub-surface drainage which direct the waterflow away from the source of the normal flows to 18 A Elizabeth Street.

3. And finally the stormwater flow path from the oval is now managed and exists downstream from 18A Elizabeth Street, see last paragraph in this section.

Therefore the construction of the new oval will not increase and will likely reduce and compliment prior extensive investments in the stormwater network for Elizabeth Street, and this the assertion on the normal course of business is refuted.

There was however a recent instance of an irrigation malfunction on the new oval, as a result of various factors including large downpours that caused a temporary issue, we acknowledge that. This however is not reflective of the actual day to day design of the sporting precinct and adjacent stormwater flows.

Regardless, Council has offered an upgrade to the service levels on our easement which would mitigate the rare occurrence of infrastructure failure on the new oval.

I have also provided the independent engineering design. I have indicated where the water direction for the new oval goes. The main water drainage for the new oval is highlighted in the attached at the bottom right of the plan, which drains to Elizabeth Street downstream from 18 A Elizabeth Street, to William Street and then via open or underground infrastructure to the North Para River. This water flow is to the significant infrastructure previously installed some years prior which mitigates large flow traversing the easement at 18A Elizabeth Steet previous discussed and explored in the S270 review.

In Summary

In closing, Council has agreed to upgrade the service levels provided to that allotment and to the benefit of the broader allotments in close locality.

The issues are well known and explored and as outlined in our report, considering the significant precedent of the service levels, the proposed solutions are reasonable in Councils view. No two properties and circumstances are 100% alike, however the broad principle of open swales and drainage in the area is common in our Council and this State.

The interim and very basically constructed open swale actually shows the solution works for them as it did for the rear neighbour.

The landowners were fully cognisant of the overland flow and easement involved prior to purchase by their own admissions.

On the matter of the suggested S271 mediation, this is not the remit of the S270 question being asked by the applicants which, as you are fully aware, is the review of the substantive decision and new information and attempts to resolve matters associated with that decision. In my view we have attempted to mediate an outcome already. However, if that is a recommendation it would be put to Council and I would only recommend the process if the costs are paid by the applicant given the costs the Council and community have already incurred for this review, the FOI, other legal costs, other engineering costs which run to well over $25K not including officer time.

If you require anything further please let me know.

Kind regards
Martin

Martin McCarthy
Chief Executive Officer
E: mmccarthy@barossa.sa.gov.au | T: 08 8563 8444

TheBarossaCouncil

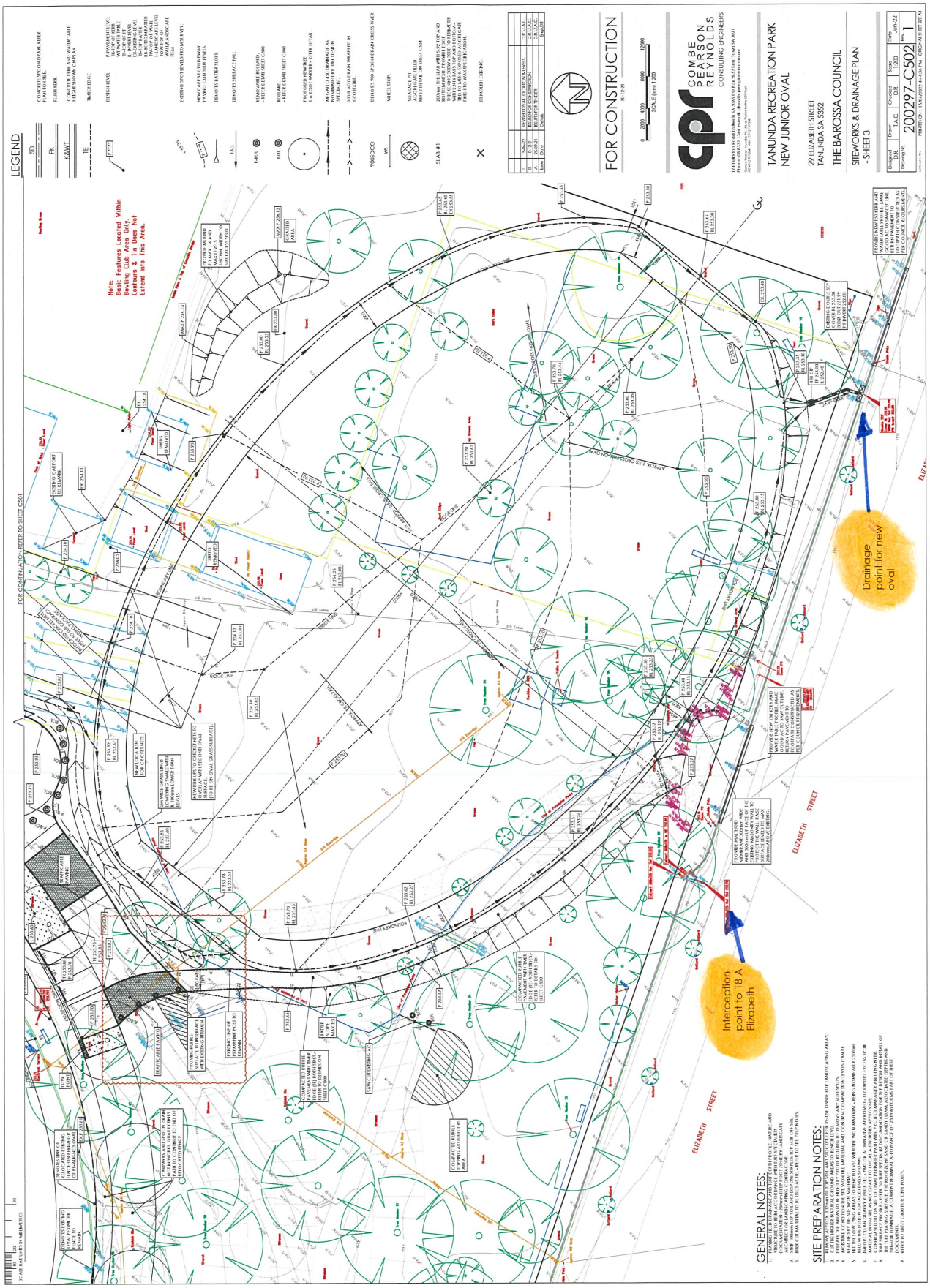


43-51 Tanunda Road | PO Box 867 NURIOOTPA SA 5355
www.barossa.sa.gov.au | T: 08 8563 8444

We acknowledge the Ngadjuri, Peramangk and Kaurna people and their ancestral connection to land and pay respects to Elders past, present and emerging.

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LEGEND
FOR CONSTRUCTION
COMBE PEARSON REYNOLDS
CONSULTING ENGINEERS
TANUNDA RECREATION PARK
NEW JUNIOR OVAL
29 ELIZABETH STREET
TANUNDA SA 5352
THE BAROSSA COUNCIL
SITEWORKS & DRAINAGE PLAN
- SHEET 3
200297-C502
Drainage point for new oval
Interception point to 18A Elizabeth
ELIZABETH STREET
GENERAL NOTES:
SITE PREPARATION NOTES:

Dear Counsellors, 10 March 2024.

Thank you for considering the storm water situation in Elizabeth Street and on the storm water easement on 18A Elizabeth Street.

We understand that a report will be submitted to you as part of your meeting Agenda for your meeting on 20 March 2024 which will include the Review by Council's solicitor, Ms D'Agostino.

Ms D'Agostino was to Review your Resolution dated 24 January 2023. She chose to review your Resolution dated 4 October 2023. We were not asked about that. It seems she did not have the SBEC report. Her "best and preferred" option 1, does not comply with any of the applicable Australian or Council standards. This option does not resolve the flooding in Elizabeth Street, and condemns us and our neighbour to regular flooding.

Ms D'Agostino does suggest that we engage and continue discussions to find a way forward. We agree.

As part of your deliberations may we ask that you consider the following:

1. Our Deputation submission dated 7 February 2024, and the attachments and photographs, including the report dated 6 February 2024 from Schmidt Bentley Engineering Consulting;
2. Councils Standards and Requirements for the Design, Construction and Development of Infrastructure Assets, particularly Section 8 –Storm water;
3. The recurrent flooding in Elizabeth Street from the two old SEPs. Both will need to be replaced at some time.
4. Option 3 identified by Southfront in its report to the Barossa Council dated 19 September 2023, is the best option presently being considered. It will alleviate the recurrent flooding in Elizabeth Street and achieve a reasonable AEP on the drainage easement.
5. Your Resolution dated 4 October2023 approved option 3, subject to further discussion regarding a financial contribution from us. We accept Option 3. We offered to contribute to Option 3, and are prepared to do.
6. The problem with your storm water is the same whether we or other persons bought 18A Elizabeth Street.
7. Please allow us to consult with Council. As an alternative we have requested Mediation as a means of avoiding further expense and unnecessary legal costs. We are prepared to share the cost with you.
8. We don't want conflict. We are confident if there is goodwill on both sides that we can reach an amicable arrangement without unnecessary expense.

Regards

Paul & Dagmar Keady

DEBATE REPORT

7.1 Office of the Mayor and CEO

7.1.3 ANNUAL REVIEW AGAINST THE STRATEGIC POLICY PLATFORM AND EXPECTED BEHAVIOURAL NORMS OF THE COUNCIL AND ITS ELECTED MEMBERS

Author: Mayor
24/25222

PURPOSE

To set how Council wishes to review its performance against the Strategic Policy Platform and Expected Behavioural Norms of the Council and its Elected Members.

RECOMMENDATION

That Council endorse the Mayor and Deputy to engage a consultant, design and manage the review process as outlined in the report.

REPORT

Background and Introduction
On the 21 March 2023 Council adopted the Strategic Policy Platform and Expected Behavioural Norms of the Council and its Elected Members (Framework) document. The relevant document is provided at the link.

When Council adopted this strategic document, it did so with two clear intent being:

1. To set the preliminary viewpoints of the newly Elected body to inform decision making and the updates to the Community Plan.
2. To set an expected level of contemporary behaviour norms over and above the expectations of the base level mandatory government set Behavioural Standards.

In adopting the paper if committed "to review its performance against these self-set standards on an annual basis via an internal (or if it chooses and external) process."

Discussion
It has now been 12 months since the framework document adoption and as committed to by Council, a review of our performance against the self-set standards is due.

It is suggested that I, as the Mayor and Deputy Mayor engage, through the Chief Executive Officer, an appropriate consultant to develop a simple survey and request all Elected Members to respond to the survey. They will then collate the information, debrief the Council, write a formal report for Council and depending on the outcomes, suggest ways to address any opportunities. At this time, it is not recommended that anyone other than Elected Members be invited to or respond to the survey and it is not for administration to be involved at this level in the view of the

Chief Executive Officer. In essence the review is a self-assessment of our performance and trigger to reflect, assess, discuss and grow as an Elected body.

I am informed there are funds available in the Office for the Mayor and CEO budget to support this simple process, expected to be in the order of $5,000 to $10,000.

Summary and Conclusion
The annual review that Council committed to is due and a simple process has been suggested and is now for Council to determine how it will undertake this process.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Nil

Supporting references
Strategic-Policy-Platform-and-Expected-Behavioural-Norms-of-the-Council-and-its'-Elected-Members-2022-26.pdf (barossa.sa.gov.au)

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Corporate Plan

BS7 Governance - Provision of governance advice and support in the discharge of legislative responsibilities for policy development, delegations and authorisations, internal review of Council decisions, delegations and authorisations, Native Title claims

Legislative Requirements
Nil

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Can be funded from existing resources and is sound and industry leading practice.

COMMUNITY ENGAGEMENT

None recommended or required.

DEBATE REPORT

7.1 Office of the Mayor and CEO

7.1.4 NORTHERN AND YORKE LOCAL GOVERNMENT ASSOCAITION - MINUTES AND PROXY MEMBER NOMINATION

Author: Chief Executive Officer
24/26081

PURPOSE

To appoint a proxy member of the Northern and Yorke Local Government Association (NYLGA) under the newly adopted Charter.

RECOMMENDATION

That Council appoint Cr….. pursuant to Clause 3.2.2 of the Charter for the Northern and Yorke Local Government Association, as the nominated proxy Board Member of Council.

Or

That Council having considered the need for a proxy Board Member elect not to appoint a Councillor to the position.

REPORT

As outlined in the 'Matters Arising from Previous Minutes' the new Charter for the NYLGA has been adopted.

The new Charter states:

> "Each Constituent Council may appoint one person, who must be an elected member of the Council, to act as a proxy Board Member. A proxy Board Member will act as the nominated Board Member for a Constituent Council only when the principal member of the Council is not present at or taking part in a meeting of the Board or an Annual General Meeting."

The member of the Board is the Principal Member of the Council.

Should Council wish to nominate a proxy it may do so to attend and have voting rights when the Mayor isn't in attendance, this is limited to two times per annum, unless approved by the Chair of NYLGA. The NYLGA has four meetings per annum.

It is recommended if Council wishes to appoint a proxy it do so for the remaining term of Council to ensure continuity.

If there are more than one nomination, the election process is recommended to be by testing the nominations by resolution.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Nil

Supporting references
Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Corporate Plan

BS7 Governance - Provision of governance advice and support in the discharge of legislative responsibilities for policy development, delegations and authorisations, internal review of Council decisions, delegations and authorisations, Native Title claims

Legislative Requirements
Section 43 of the Local Government Act

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

There is nil change in financial, resource or risk considerations.

COMMUNITY ENGAGEMENT

Not recommended or required to undertake any engagement nor has any been undertaken.

DEBATE REPORT

7.1 Office of the Mayor and CEO

7.1.5 ANGAS RECREATIONAL PARK - SUPPORT TO ERECT GOAL POST NETS - ANGASTON FOOTBALL CLUB

Author: Chief Executive Officer
24/28862

PURPOSE

To ratify support to erect goal post nets by Angaston Football Club at the Angas Recreation Park at no cost to Council.

RECOMMENDATION

That Council ratify the Chief Executive Officers letter of support for the Angaston Football Club proposal for the erection of goal post nets, on the conditions outlined within the letter.

REPORT

Background
In 2019/20 and 2021/22 Council considered a request to erect and fund football goal nets at the Angas Recreation Park. These submissions were not supported on the basis it was not a service level Council at that time would fund.

Discussion
The Angaston Football Club have approached Council for a letter of support to seek a Telstra grant for the above purpose. The club has outlined they will pay all costs if they are successful in receiving the grant, acknowledging some minor in-kind support maybe required. As a self-funded and safety initiative a qualified letter of support was provided as the club approached Council on Friday 1 March 2024 with the grant program closing on Wednesday 6 March 2024.

Summary and Conclusion
The request is to support the grant application and ratify the Chief Executive Officers conditional support letter.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Conditional Letter of Support ⇩

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

7.1. Build on sound asset management practices to deliver sustainable services to ensure that infrastructure is adequate to support the community.

Legislative Requirements

Nil

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Nil financial management consideration, except potential minor in-kind support from existing resources.

COMMUNITY ENGAGEMENT

No engagement required or recommended.

Reference: 24/28857

5 March 2024

Mr Keith Jamerson

Via email: granicusds@internode.on.net

Dear Keith

I refer to your request for a letter of support to erect football goal net infrastructure at the Angas Recreation Park main oval.

On behalf of Council, I write to outline that in principle and on the following conditions, the proposal is supported by Council:

1. That the Angaston Football Club agrees to fund all costs of purchase, erection, maintenance and future replacement including satisfying any necessary engineering needs.
2. That the Angaston Football Club if it is successful in its grant application will enter into an arrangement to give effect to condition 1.
3. Council ratifies this letter at its meeting of 19 March 2024.

I wish you well for the application and would be pleased to confirm these arrangements on 20 March 2024 once Council's decision is made.

Yours sincerely

Martin McCarthy
Chief Executive Officer

(08) 8563 8444 | barossa@barossa.sa.gov.au | barossa.sa.gov.au
43-51 Tanunda Road (PO Box 867), Nuriootpa SA 5355 | ABN: 47 749 871 215

Sincerely,

Name
Position, The Barossa Council

(08) 8563 8444 | barossa@barossa.sa.gov.au | barossa.sa.gov.au
43-51 Tanunda Road (PO Box 867), Nuriootpa SA 5355 | ABN: 47 749 871 215

DEBATE REPORT

7.1 Office of the Mayor and CEO

7.1.6 TOWN OF GAWLER BOUNDRY REFORM PROPOSAL - ENGAGEMENT OF CONSULTANT AND INITIAL WORKS, COMMITMENTS, IMPACTS AND COMMENTS

Author: Chief Executive Officer
24/29486

PURPOSE

To note the appointment of the independent investigator and review initial request and their impact and endorse responses to the investigator.

RECOMMENDATION

That Council receive and note the report and assessment of impact and resourcing needs and provide the following input for the consultants consideration:

(1) That the general public consultation processes:
   a. Be deferred until after the statutory requirements placed upon Council are completed, approximately August 2024 and thus time the engagement to get the best possible engagement from community.
   b. Must be open to all residents of effected and neighbouring Councils, not just those within the nominated reform area as the changes could have significant impact on broader community and the financial viability of Councils.
   c. Include multiple methods of receiving input including a mailout to every resident as per item b. above, online survey, personal and written feedback.

(2) That Elected Members be engaged through a face-to-face meeting, survey and are provided briefings at each relevant decision or data analysis point through a face-to-face meeting with the provision of necessary data and information to inform those meetings.

(3) That relevant regional associations and industry groups be engaged including Barossa Australia, Regional Development Australia, SA Primary Producers, SATIC and others identified for all Councils by the consultant.

REPORT

Background and Introduction
The reform proposal of the Town of Gawler has been under consideration now for some 5 years, officially. Recently the Commissions (Boundaries Commission) contrary to Councils request proceed to appoint the independent investigator, BDO has been awarded the contract.

Recently, representatives of BDO briefed me on the initial data requests and consultation specification.

This report deals with the immediate impacts of this information, which is provided at Attachment 1.

Discussion

Work Impact

The work to support the review is an unknown quantity at present. Preliminary information that is being sought has been preliminarily assessed as follows:

- All financial analysis will take a high level of analysis and interpretation due to the nature of the request being specifically about areas within the reform submission, data is not managed at that level.
- No data collection methodology or counting rules have been provided thus there is a real risk that data will have significant differences across the Councils and require reassessment and analysis during the process, assistance has been sought to set those counting rules so there is significantly less rework and continuity of data which will assist BDO in their task.
- Information on strategy and plans can be readily provided, however the current plans being the fundamental strategic and operational basis of Council are under review as per the legislative requirements. The community plan, asset and infrastructure plans, budget and business plans and corporate plan all are under review during the current period.
- General information sought on a range of other factors like enterprise agreements, human resource information is easily available.

Due to the known workloads on the Executive at present, and critical vacancies in the organisation, this work will impact other work priorities over the coming 6 months.

Current estimates to deliver the simpler information is that can be provided on or about the 31 March 2024. The more complex work, depending on recruitment and commencement of a new Manager, Financial Services the 30 April and updated strategic documents not until August 2024.

In relation to support for the investigation as it proceeds, I have meet with Light Regional Council, Chief Executive Officer and engaged with a relevant consultant. It has been agreed to pursue a proposal from this consultation to assist with the strategic and other responses through the processes. Once this is received and assessed a further report will come to Council.

Governance and Management of the Investigations

As a significant threat to the operations, strategies, and finances of The Barossa Council, this matter will be managed at the Executive level. In relation to managing the investigation, no costs of Council can be recovered (see Matter for Information Report of 23 January 2024 which provides the response of the Commission to Councils latest submission), therefore the impact on workloads will mean an impact other work. This cannot be accurately determined at this time and as the investigations proceeds it will become more apparent.

The prior Council did establish a Section 41 Committee of Council to manage matters of boundary reform, this can be enlivened if Council wishes, however at this time it is recommended that the Executive continue to manage the investigation and report through to full Council at appropriate times.

Consultation Model

The consultation model and identified stakeholders list is provided at Attachment 1, and is sound and appropriate in the main. The methodology of collection and analysis and ability to review needs is also well defined. The actual detail of questions, scale and how surveys and the like, will be designed will no doubt be developed by BDO as they proceed with the investigations. It is also recommended that alternative pathways for input need to be provided for those who want to provide personal, written or other forms of input and not just a survey.

The information provided is also seeking what engagement methodology would be desired by Elected Members. Members are asked to provide this feedback at the Council meeting. It is suggested that BDO should engage in a meeting and survey and also be present to brief Council at every decision and milestone point. This would be determined by BDO's project plan which at this time has not been provided, nor requested.

It is further considered that appropriate regional bodies should being invited to respond including Barossa Australia, Regional Development Australia, South Australian Primary Producers, SATIC and others Council may identify.

In relation to the public consultation processes, the proposal of the Town of Gawler could have significant community impacts on a broader scale than the nominated area, this is evidence by multiple commentary and information that the outcomes could be very different from the proposal as it is understood there is no limit to what may occur or be recommended by BDO to the Commission. This in turn could have significant financial viability issues for a range of Councils and thus their communities. For these reasons, the engagement should be open to any residents and ratepayers of the effected Council and those bordering these Councils. Any public consultation will need a wide array of input methods not just an online survey as people may wish to provide responses in person or written not just respond to a predetermined survey.

Further the timing of the work is problematic. The Barossa Council has at least 6 other engagement processes programmed for this period they are:

- Statutory consultation on Community Plan Review – a draft is scheduled to be tabled with Council at the April workshop and April Council meeting, thereafter engagement in late April and early May 2024, subject to Council input to the draft and adoption for consultation.
- Statutory consultation on the budget and business plan – scheduled for late May 2024.
- Statutory consultation on the asset and infrastructure plans – scheduled for July 2024.
- Current growth and investment strategy due to close in May 2024.
- Statutory Elector Representation Review scheduled for August/September 2024 and again in December 2024/January 2025 .
- The recently endorsed Wellbeing Plan partnership work with Wellbeing SA, which has consultation processes as well for the community.

Coupled with the above work of Council there will likely be engagement needs around the Concordia development.

It is therefore problematic as the community is already being asked for significant input and assistance through consultation and engagement and further engagement may see challenges with buy-in and response rates.

Summary and Conclusion
The report outlines the initial assessment of the information request and brings Council up to date with the reform proposal processes. It will impact resourcing and therefore other work will be deferred as a result of the legislative need to provide the information; it is difficult at this time to ascertain what maybe deferred. As Council are aware, due to the Commissions response to our latest submission no costs of Council can be recovered.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Initial Information Requested and Proposed Engagement Document from BDO ⇩

Supporting references
Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan


Natural Environment and Built Heritage


Community and Culture


Infrastructure


Health and Wellbeing


Business and Employment

Goal

1. The Barossa has sustainable farmland providing diverse and stable returns, while protecting the unique natural environment and biodiversity of the region.
2. The history of our region including aboriginal sites is reflected in our streetscapes and our historic buildings are maintained for future generations.
3. We take a proactive approach in responding to key environmental challenges such as climate change, water security and waste management.
4. 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.

5. We are a strong community that is welcoming, safe and enjoys a quality lifestyle that celebrates our local identities, diversities, cultures and histories including our Aboriginal heritage.
6. The Barossa maintains and develops infrastructure that meets the needs of the region and is efficient.
7. Community infrastructure planning is aligned to both current and the future needs of the community
8. To have a connected and safe transport network that meets the needs of our community
9. Our community has fair and equitable access to the resources and services they need to lead a safe, healthy, inclusive and connected lifestyle
10. Our region enjoys the benefits of sustainable community groups, networks and facilities that encourage everybody to participate in the community.
11. The Barossa has a strong local economy that adapts, innovates and thrives on change and strives for a diverse industry base that provides a sustainable range of business and job opportunities for people.
12. We are a visitor destination of choice
13. The Barossa is competitive and in a strong position to attract both private and public investment in the development of new and existing businesses, services and industry.

Strategies

1.1. Ensure land use planning and resource use protects the quality of the natural environment, the existing character of rural landscapes, historic significance and the high value of agricultural land.
1.2. Support tourism development that is sensitive to the natural environment and ensures that the unique character of the rural landscape is appropriately managed and promoted.
1.3. Build on the conservation of the region's natural heritage including bush eco-systems, grassy woodlands, agricultural landscapes and recreational green spaces.
2.1. Continue to maintain streetscapes that reflect the character and heritage of the region and facilitate opportunities to repurpose or find alternative uses of built heritage.
2.2. Ensure clearly defined townships are maintained to manage residential and commercial development that is sensitive to the natural environment and areas of historical significance.
3.1. Support community-based sustainability initiatives to help reduce the Barossa's contribution to the climate crisis and build on the capacity of local residents and industry to mitigate negative impacts.
3.2. Collaborate with partners and our community to support innovative approaches to waste minimisation, and increase reuse and recycling opportunities.
3.3. Ensure long term confidence in the Barossa's capacity to access water to meet its industrial, domestic and environmental needs.
4.1. Build on a strong sense of community pride with active community groups and individuals participating in local decision making and community building activities.
4.2. Continue creating strong and sustainable community networks, and support young people to actively participate in the community and develop the leaders of the future.
4.3. Embrace place-making principles when developing community infrastructure and regulate planning and development in public spaces and active recreation.

5.1. Support the development of activities that celebrate the history, art and culture of the Barossa and its people.
5.2. Create places where people want to live and plan for the future in a coordinated, affordable, appropriate and proactive way.
5.3. Create vibrant public spaces that provide places for creative development, cultural interaction and social connections.
5.4. Recognising and celebrating the community successes and learning from opportunities.
6.1. Advocate for and identify funding opportunities that support the development of community, cultural, health and other facilities and infrastructure to meet personal and commercial needs of residents and businesses.
6.2 Continue to ensure that infrastructure considers place-making is inclusive and accessible for all.
6.3. The use of new and emerging technologies, alternative and renewable materials where appropriate and cost effective will be trailed.
7.1. Build on sound asset management practices to deliver sustainable services to ensure that infrastructure is adequate to support the community.
7.2. Ensure both current and future infrastructure needs are met in a proactive rather than reactive way.
8.1. Support opportunities to increase community transport and access to services and facilities.
8.2. Ensure a high quality road, shared paths and footpath network throughout the Barossa in partnership with all levels of government.
9.1. Work towards combating loneliness and social isolation and ensuring that people enjoy a sense of inclusion and feel connected.
9.2. Promote a healthy community through a planned approach to public health, and sustainable access to allied, primary and mental healthcare services and facilities.
10.1. Children and young people are supported to feel safe and to engage, thrive and feel empowered within the community.
10.2. Advocate for and encourage services that ensure equity and support inclusion and at risk members of the community.
10.3. Build on the capacity of community members to participate in cultural, creative, recreational, sporting and learning opportunities.
11.1. Work closely with State Government, Federal Government and other key stakeholders to support economic growth, development and job creation.
11.2. Support proactive population growth that is incremental, well managed and is backed up by local planning and development opportunities.
11.3. Promote the Barossa as a place for business's to thrive, invest, innovate, take measured risks and prosper.
12.1. Encourage and support the sector to further promote and develop tourism experiences including ecological, cultural and agricultural tourism.
12.2. Support economic development and destination awareness through events, festivals, creative enterprise and attractions.
12.3. Provide experiences and infrastructure that continue to support the needs of the tourism market.
13.1. Foster small business and industry confidence and growth that translates into innovation and strong employment figures.
13.2. Attract investment for new and innovative industries, and facilitate business growth by supporting local industry and their capacity to compete for government contracts.

Legislative Requirements
Part 2 – Reform Proposal under the Local Government Act 1999

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

It is impossible to actually determine the input expectations and needs, potential risk which could be significant financial, political, community and other risks involved. The concerns and issues have been raised in the body of this report.

COMMUNITY ENGAGEMENT

There will be engagement undertaken by the investigator and a plan at high level has been provided. The detail related to questions and how online processes will be managed so they are robust, will no doubt be developed as BDO work through the investigation process.

The significant issue is timing, as outlined in the body of the report.

Attachment 1. Request for Information

Town of Gawler Boundary Change Proposal: Initial Information Request from Councils

Please:

- Provide a contact name, email address and phone number for each key area.
- Indicate a date by when information can be provided, by whole of council and by area of interest if appropriate.
- If information is not available or not relevant to your council, provide a comment in the third column.

Information Requested	Indicative time for provision	Comments and Document Provided
1. Financial Information *(areas of interest and for the whole council)*	*Key Council contact for finances:* *Key Council contact for infrastructure:*	
1.1. 2023-24 property rating data for rateable properties in each proposed boundary change area, including: 1.1.1. assessment number 1.1.2. postal address 1.1.3. capital value assessment 1.1.4. land use code 1.1.5. rates charged, including any: levies, waste charges, rebates or rate cap		
1.2. Breakdown of actual operating/capital revenue (fees and charges) and costs for FY23 and detailed budget for FY24		
1.3. Information on property-based services offered, e.g.: 1.3.1. waste and recycling (bin type data etc) 1.3.2. street cleaning 1.3.3. street lighting 1.3.4. community transport services 1.3.5. wastewater		
1.4. Schedule of all current fees and charges		

Attachment 1. Request for Information

Information Requested	Indicative time for provision	Comments and Document Provided
1.5. Council Asset Information for assets in each proposed boundary change area, including: 1.5.1. type of asset 1.5.2. asset valuation 1.5.3. asset conditions reports 1.5.4. planned upgrades 1.5.5. maintenance schedules 1.5.6. depreciation 1.5.7. any lease or management agreement with third parties		
1.6. Council Grant revenue with financial and non-financial concerns for each proposed boundary change area, including: 1.6.1. General Purpose grants 1.6.2. Commonwealth, such as Road Funding 1.6.3. Other grants		
1.7. Rating Policy and 2023-24 Rating Flyers provided to rate payers (flyer explaining the rates)		
1.8. Breakdown of actual operating/capital revenue and costs for future financial periods (10 years)		
1.9. Population estimates: Number of residents and profile (adult/child) for council overall and within each proposed boundary change area. *Note: also relevant to other streams*		
1.10. Rebate policy		
1.11. Information on separate services charges not included in rates, such as: 1.11.1.Waste management charge 1.11.2.Bill collection 1.11.3.Waste water management charge		

Attachment 1. Request for Information

Information Requested	Indicative time for provision	Comments and Document Provided
1.12. Grant agreements or applications which impact any proposed boundary change area		
1.13. Copies of all significant contracts held by the councils that may be impacted by the proposal (by proposed boundary change area)		
1.14. List of any current outstanding ratepayer debtors affected by each proposed boundary change area		
1.15. Council Service levels		
1.16. GIS Local Government Road lengths within each proposed boundary change area		
2. Land Use and Planning Information	*Key Council contact for planning:*	
2.1. Council-specific planning processes and policies		
2.2. Council-specific planning development controls		
2.3. Council business plan		
2.4. Infrastructure deeds or other agreements that may be affected by any of the proposed boundary changes		
2.5. Any relevant reports or documents (planning, land use, environmental) not in the public domain		
3. Council Employee Information	*Key Council contact for human resources:*	
3.1. Enterprise Bargaining Agreements for all staff		
3.2. Organisational charts, including staff numbers		

Attachment 1. Request for Information

Information Requested	Indicative time for provision	Comments and Document Provided
3.3. List of internal representative committees, such as WH&S, staff representatives, consultation committees, including staff representatives		
3.4. Industrial body key contacts (to inform about investigation and staff survey)		
3.5. Documents outlining key activities by division, such as directorate/departmental/division business plans		
3.6. Most recent reports relating to staff engagement, such as staff survey reports		
3.7. Methods by which your council currently communicates with staff (for example toolbox sessions, town hall meetings, emails, etc)		
4. Representation Information	*Key Council contact for governance:*	
4.1. Final report from most recent representation review		
4.2. Any relevant reports or documents about representation that are not in the public domain		
5. Community and Services Information	*Key Council contact for community services:*	
5.1. Information on the following within each proposed boundary change area: 5.1.1. Parks, gardens and playgrounds 5.1.2. Libraries 5.1.3. Community centres 5.1.4. Walking and bike paths 5.1.5. Sporting and recreation facilities 5.1.6. Clubs 5.1.7. Known local businesses or business groups 5.1.8. Other facilities (for example historic sites)		

Attachment 1. Request for Information

Information Requested	Indicative time for provision	Comments and Document Provided
5.2. Data on the use of community facilities and infrastructure, including footfall, postcode data, etc		
5.3. Community hubs you are aware of, both physical and virtual		
5.4. Council policies or programs relevant to local businesses		
5.5. Known local community, sporting and business groups that may be impacted		
5.6. How do you communicate with: 5.6.1. Resident communities 5.6.2. Community and sporting groups 5.6.3. Other groups, such as street traders, business groups, etc		
5.7. Any information about 'communities of interest' relevant to the inquiry that your council has defined		
5.8. Any relevant reports or documents about: 5.8.1. community and services, such as plans for community, walking and cycling, social infrastructure, sport and recreation and environment 5.8.2. previous engagement with residents or subgroups about the proposed boundary changes		

Attachment 2. Proposed Stakeholder Engagement

Town of Gawler Boundaries Inquiry:
Proposed Stakeholder Engagement

Council feedback is invited about the proposed engagement, the proposed stakeholders to be engaged, and the methodology to engage them during the Inquiry. Councils are particularly invited to provide information and contact details about known stakeholders who may be impacted or otherwise have an interest in the proposal.

Background

The South Australian Local Government Boundaries Commission (the Commission) was established in 2019 under the *Local Government Act 1999*. The Commission is an independent body that investigates and assesses council boundary change proposals and makes recommendations to the Minister.

In December 2019, the Town of Gawler made a proposal to the Commission to expand its boundaries to include seven areas within the Light Regional Council, The Barossa Council and the City of Playford. The proposal also included to remove two areas from the Town of Gawler and shift them to the City of Playford.

The Commission has considered the proposal and consulted with impacted councils. It has decided that the proposal will proceed to an inquiry.

BDO has been appointed as the Investigator for the proposal. Following the investigation, BDO will provide a report to the Commission to enable it to make recommendations to the Minister for Local Government on whether the council boundary changes should proceed as proposed, proceed differently than proposed, or should not proceed.

Stakeholder Engagement Duration

Late February-May 2024

Purpose of Engagement

- Inform key stakeholders about the Town of Gawler's proposal.
- Obtain objective information about the impacts of the proposal across five streams:
    1. Financial Matters
    2. Land use and planning matters
    3. Council employee matters
    4. Representation matters
    5. Community and service matters
- Obtain information about stakeholders' perspectives about the proposal and its elements, particularly in regard to Council employee matters and community and service matters.

High-Level Approach

The engagement approach will be three staged:

1. Setting the Stage: Initial meetings with Councils' leadership teams and elected officials (if appropriate) to inform them of the process, request provision of initial input/documentation, and request a list of stakeholders to engage (particularly council staff, community and sporting groups, any business/private sector stakeholders)

Requested 27 February 2024

DRAFT

2. Detailed Engagement: Targeted engagement with stakeholders identified by the Commission, the investigator and councils through requests for information, interviews and focus groups, and a survey.
3. Validation: Confirming our understanding and use of information received from stakeholders where there is any ambiguity or lack of clarity.

Key Messages

Stage 2 of Engagement:

- We are seeking information from you about [area outlined in interest in review outlined in 'Key Stakeholders' below].
- You are requested/invited to [engage as per the relevant engagement method in 'Key Stakeholders' below].
- Information from you/your feedback will inform BDO's findings and recommendations to the Commission.
- [where appropriate] You will have the opportunity to check how we use the information you provide us once we review and consider it.

Stage 3 of Engagement:

- We have received information or feedback from you about the Town of Gawler's proposal to change its boundaries.
- We would like to check our understanding/the accuracy of that information.
- Please find attached the information we understood from our interview/focus group/the information you provided. Let us know if any of the information is inaccurate or should be clarified.

Key Stakeholders

Note: The list of stakeholders will be informed by Stage 1 engagement with impacted councils.

Where a stakeholder cannot participate in an interview/focus group or wishes to provide additional information following an interview, they will be invited to provide feedback in writing. Secondary interviews or focus groups may conducted when circumstances warrant.

Stakeholder	Interest in Review	Engagement Method
CEO/Leadership team at Town of Gawler	Have key information about the proposal from Town of Gawler perspective Have access to information specific to the matters investigated and oversight of staff with information	Initial email Meetings/Interviews in Stage 1 Requests for information during Stage 2 (either CC or potentially direct contact—as per their requests. Planned to be by email, with follow up phone calls if required) Written engagement for Stage 3 (validation)

DRAFT

Attachment 2. Proposed Stakeholder Engagement

Stakeholder	Interest in Review	Engagement Method
CEOs/Leadership teams at Light Regional Council, the Barossa Council and the City of Playford	Key roles in areas impacted by Town of Gawler's proposal Have access to information specific to the matters investigated and oversight of staff with information	Initial email Meetings/Interviews in Stage 1 Requests for information during Stage 2 (either CC or potentially direct contact—as per their requests. Planned to be by email, with follow up phone calls if required) Written engagement for Stage 3 (validation)
Staff generally at Town of Gawler, Light Regional Council, the Barossa Council and the City of Playford	Their interests and rights may be impacted by the general proposal or specific elements of it, including potential for transfer of staff (and therefore potential impact on conditions of employment)	Stage 2: Initial information through email (potential for another method, if appropriate, if currently used by the relevant council) Survey seeking feedback
Specific staff subject matter experts at Town of Gawler, Light Regional Council, Barossa and City of Playford: – Planning – Financial – Community services (including libraries, recreation and leisure services) – Infrastructure (including Town Services, Roads and Environment) – Governance (re Representation Matters)	Have information specific to the matters investigated during the Inquiry	Following engagement with Leadership Teams seeking key contacts, engagement during Stage 2 through: Written requests for information Meetings seeking additional information and clarification. Limited written engagement may occur during Stage 3 for validation (or this may occur through engagement with Executive staff)
Australian Services Union Australian Workers Union Shop, Distributive and Allied Employees Association (at this stage appears to be relevant to Playford only—to be confirmed) Possibly United Voice (if any industrial and commercial canteens are impacted) Including any staff representatives of the above	Represent staff who may be impacted by the proposal	Stage 2: Email informing of process and of staff survey If required, meetings.
Local Government Bodies: LGA; SAROC: Legatus; GAROC: North	Potential impact to members	Stage 2: Letter with invitation to provide written feedback Offer an interview (or seek one, depending on information received) of up to one hour initially
Department for Infrastructure and Transport	Planning and infrastructure implications (if any) Provides support for Ministers for Infrastructure and Transport; Regional Roads and Local Government; and Police, Emergency Services and Correctional Services (responsibility for road safety)	Stage 2: Letter with invitation to provide written feedback Offer an interview (or seek one, depending on information received) of up to one hour initially

Requested 27 February 2024

Attachment 2. Proposed Stakeholder Engagement

Stakeholder	Interest in Review	Engagement Method
Rate payers and community members	Potential impact on rates and services. General interest	Stage 1: Commission media release that BDO will seek input from the community. I*f possible*, Letters to potentially impacted properties. Potential for other communication methods currently employed by councils, if appropriate. Stage 2: Invitation on Commission website and councils' websites (if they permit) seeking written feedback.
Local community services, sporting community groups, businesses and business groups in relevant areas	Potential impact to services received, grants, and rates (where applicable). General interest	Stage 1: Commission media release about BDO's engagement and that BDO will seek input from the community Stage 2: Invitation seeking written feedback on Commission website and councils' websites (if they permit), and direct correspondence to identified groups and businesses. Potential for other communication methods currently employed by councils, if appropriate. Targeted stakeholder engagement through focus groups or interviews, depending on information received Stage 3: Validate information received
Electoral Commission of South Australia	Potential changes in representative structures	Stage 2: Invitation to provide written input Offer an interview (or seek one) of up to one hour initially
Developers, including Concordia Land and Springwood	Have existing relationships with councils; potential impact from change in relevant policies and procedures	Stage 2: Invitation to provide written feedback Offer an interview (or seek one) of up to one hour
Elected members	Elected to act on behalf of communities potentially impacted by proposal	*Input sought on how elected members should be engaged*
Minister for Local Government	Final approval	All communication is to be through the Commission. No direct engagement by BDO

Requested 27 February 2024

DEBATE REPORT

7.2 Corporate Services and Business Innovation

7.2.1 MONTHLY FINANCE REPORT AS AT 29 FEBRUARY 2024

Author: Senior Accountant
24/28746

PURPOSE

The Uniform Presentation of Finances report provides information as to the financial position of Council, including notes on material financial trends and transactions.

RECOMMENDATION

That Council receive and note the Monthly Finance Report as at 29 February 2024 as provided at Attachment 1.

REPORT

The Monthly Finance Report (as at 29 February 2024) is Attached. The report has been prepared comparing actuals to the original adopted budget 2023/24.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Monthly Finance Report Council February 2024 ⇩

Supporting references

Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Corporate Plan
BS6 - Finance - Transparency and accountability regarding Council activity and expenditure. Provision of organisational performance report (outcomes), activity report (outputs), a range of statutory reporting (e.g. public health, tax, superannuation), financial reporting

Legislative Requirements
Local Government (Financial Management) Regulations 2011, Regulation 9(1)(b) LGA Information paper no.25 – Monitoring Council Budget Performance.

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

To enable Council to make effective and strategic financial decisions, a regular up to date high level financial report is provided.

COMMUNITY ENGAGEMENT

Community Consultation was part of the original budget adoption process in June/July 2023, as per legislation. This report is advising Council of the monthly finance position compared to that budget.

MONTHLY FINANCE REPORT

AS AT 29 February 2024
FOR YEAR ENDING 30 JUNE 2024

Uniform Presentation of Finances

	Notes	% Actual Expenditure to Original Budget	Original Budget (Full-Year) $'000	Revised Budget (Q2) (Full-Year) $'000	Actual Result (Year-to-Date) (Full-Year) $'000
OPERATING ACTIVITIES:		***Operating***			
Operating Income			45,014	46,017	42,280
					0
Less Operating Expenses		**55.59%**	(47,359)	(47,780)	(26,326)
Operating Surplus / (Deficit)			**(2,345)**	**(1,763)**	**15,954**
CAPITAL ACTIVITIES:					
Net Outlays on Existing Assets		***Capital***			
Capital Expenditure on Renewal and Replacement of Existing Assets		85.15%	(8,031)	(10,574)	(6,838)
Add back Depreciation, Amortisation & Impairment			10,170	10,170	5,933
					0
Add back Proceeds from Sale of Replaced Assets			224	206	256
Subtotal			**2,363**	**(198)**	**(649)**
Net Outlays on New and Upgraded Assets					
Capital Expenditure on New and Upgraded Assets		49.58%	(14,822)	(16,708)	(7,349)
Add back Amounts Received Specifically for New and Upgraded Assets			2,796	2,281	1,608
Add back Proceeds from Sale of Surplus Assets			0	0	0
Subtotal			**(12,026)**	**(14,427)**	**(5,741)**
Net Lending/(Borrowing) for the Financial Year			**(12,008)**	**(16,388)**	**9,564**
Total % Capital Budget Spent		**62.08%**			

NOTES

1) 2023/24 Capital Expenditure to end of February includes:
- The Big Project - Tanunda Rec Park - $1.47M
- Upgrade Tanunda Oval - $1.43M
- Bridges - $70k
- Road Resheeting $869k
- Mt Pleasant Caravan Park Upgrade - $1.0M
- The Big Project -Barossa Rugby Park - $3.39M
- Drainage $266k
- Streetscaping $99k
- Footpaths & Kerbing $284k
- Sealed Roads $1.89M
- The Big Project - Lyndoch Rec Park - $141k

DEBATE REPORT

7.3 Infrastructure and Environment Services

7.3.1 THE REX AND COMMUNITY ENERGY UPGRADES FUND ROUND 1 OPPORTUNITY

Author: Sustainability Officer
24/28750

PURPOSE

The purpose of this report is to provide information about a funding opportunity that will reduce energy bills and carbon emissions[1] at The Rex and seek support for two (2) actions to enable a grant submission to be coordinated.

RECOMMENDATION

That Council:

(1) Increase the agreed level of Service for The Rex to include closer monitoring of energy usage through installing a Business Monitoring System (BMS),

(2) Support the submission of a grant application for Community Energy Upgrades Fund Round 1 for facility upgrades at The Rex, with a cash contribution by Council up to $242,000 (50% of total project cost), and

(3) Approve the deferral of heat pump budget and works to financial year 2024 – 2025.

REPORT

Background
The Department of Climate Change, Energy, the Environment and Water (DCCEEW) has released grant funding to support local governments to improve energy efficiency of council owned and/ or operated facilities. The purpose of releasing this funding to support the transition of Australia's economy to net-zero emissions by 2050[2].

The Community Energy Upgrades Fund will co-fund energy efficiency and electrification upgrades for local governments to deliver reduced energy bills and emissions from local government owned and/or operated facilities. The grant amount is 50% of the eligible expenditure (cash contribution). Applications for the competitive grant close 30 April 2024 and if selected, projects must be completed by 31 March 2027. Attachment 1 provides detailed grant eligibility requirements.

[1] Carbon emissions, greenhouse gas emissions and carbon pollution are often used interchangeably to refer to carbon dioxide and methane emissions. Carbon emissions are a primary driver of global warming and climate change.
[2] Net Zero - DCCEEW

Introduction
The Grant encourages "integrated projects that bring together several activities". The Type 2 Energy Reports completed at The Rex in July 2023 support that it's a combination of initiatives, rather than a primary action, that is needed to improve the energy efficiency of the facility and reduce energy bills. The Rex's total energy use comprised of 64% gas and 36% electricity (2022) and 27% of total electricity consumptions was generated onsite (197.5k AC solar output). The Rex solar system currently generates 10% of its total energy needs (gas & electricity).

The activities that are recommended at The Rex to reduce energy use and carbon impact, and for the Community Energy Upgrades Fund Round 1 application are:

- Upgrade Building Management System (BMS) including lighting controls,
- Structural airlocks to improve the efficiency of HVAC. Heating, cooling, and ventilation equipment contributes to over 60% of the yearly electrical consumption and cost.
- Boiler/ heat pump reconfiguration

The total project value opportunity (bundled) is $484,000 and would require a co-contribution from Council of $242,000 (50% of total project cost). This spend would be incurred financial year 2024 – 2025.

Discussion
Prioritising The Rex for this grant opportunity, over other council owned buildings, maximises the funding amount available. The Rex also delivers other economic and social benefits which is an assessment criterion of the grant and will provide us opportunities to talk to community about how Council is improving energy use and reducing carbon impact at a community facility.

The boiler/ heat pump reconfiguration makes up a significant component of the financial commitment, however the existing asset's serviceable life and reliability will require maintenance or replacement soon regardless and that is costed at more than the grant co-contribution requirement.

Upgrading the BMS will provide the following benefits: real time measurement to ensure that The Rex operates within its designed energy framework, real time fault detection to ensure minimised energy waste if failures occur, assist decision makers to make informed choices when planning improvements, gather data to verify energy meters and avoid over charges, ensure lighting is only active when required.

Should we be unsuccessful with the grant application and subsequent funding, the reconfiguration of the boiler and heat pumps would proceed as approved and the remaining works deferred for future funding.

Summary and Conclusion
The Community Energy Upgrades Fund Round 1 provides an opportunity at The Rex to complete works at a reduced cost to council that will deliver lower energy bills and carbon emissions at this facility.

To support this grant application, the heat pump budget and works need to be deferred to financial year 2024 – 2025 and the agreed Level of Service adjusted to facilitate an upgrade to the Business Monitoring System.

If successful in obtaining the grant funding, a co-contribution of up to $242,000, which is 50% of the total project cost, is required in financial year 2024 - 2025. This financial

contribution is less than what is expected to be required for maintenance or replacement for just one of the recommended grant activities in the short to medium term.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Community Energy Upgrades Fund Round 1 - Grant opportunity guidelines

Supporting references
Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan



Infrastructure



Natural Environment and Built Heritage

Goal

6. The Barossa maintains and develops infrastructure that meets the needs of the region and is efficient.
3. We take a proactive approach in responding to key environmental challenges such as climate change, water security and waste management.

Strategies

6.3. The use of new and emerging technologies, alternative and renewable materials where appropriate and cost effective will be trailed.
6.1. Advocate for and identify funding opportunities that support the development of community, cultural, health and other facilities and infrastructure to meet personal and commercial needs of residents and businesses.
3.1. Support community-based sustainability initiatives to help reduce the Barossa's contribution to the climate crisis and build on the capacity of local residents and industry to mitigate negative impacts.

Corporate Plan

CS3 Assets - Planning, construction, maintenance, and operation of Council's assets (Transport, Bridges, Community Wastewater Management System, Community, Cultural, Recreation and Stormwater)
BS8 Grants - Support and lead grant applications to lever up budget allocations where appropriate through research, grant writing and letters of support.
CS17 Natural Resources - Regional development and management of the environment including natural resource management to ensure the region is managed sustainably and the environment is protected and enhanced.

Legislative Requirements
Nil

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Currently asset number 313388 has a budget of $340,000 with current expenditure of $20,205 leaving a remaining budget of $319,794. This proposal seeks to provide the $242,000 required for the grant from the remaining budget in 31388.

There is high confidence that the proposed works will deliver reduced energy consumption and cost savings. Solutions are known technology and low risk.

COMMUNITY ENGAGEMENT

No community consultation required; changes are within Administration delegations.

Australian Government
Department of Industry, Science and Resources
Department of Climate Change, Energy, the Environment and Water

Grant Opportunity Guidelines

Community Energy Upgrades Fund Round 1

Opening date:	21 December 2023
Closing date and time:	5:00pm Australian Eastern Standard Time on 30 April 2024 Please take account of time zone differences when submitting your application.
Commonwealth policy entity:	Department of Climate Change, Energy, the Environment and Water (DCCEEW)
Administering entity:	Department of Industry, Science and Resources (DISR)
Enquiries:	If you have any questions, contact us on 13 28 46.
Date guidelines released:	21 December 2023
Type of grant opportunity:	Targeted competitive

Template Version – April 2022

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1. Community Energy Upgrades Fund processes

The Community Energy Upgrades Fund Round 1 is designed to achieve Australian Government objectives

This grant opportunity is part of the above grant program which contributes to the Department of Climate Change, Energy, the Environment and Water (DCCEEW)'s Outcome 1: Support the transition of Australia's economy to net-zero emissions by 2050; transition energy to support net zero while maintaining security, reliability and affordability; support actions to promote adaptation and strengthen resilience of Australia's economy, society and environment; and take a leadership role internationally in responding to climate change. DCCEEW works with stakeholders to plan and design the grant program according to the *Commonwealth Grants Rules and Guidelines (CGRGs).*

↓

The grant opportunity opens

We/DISR publish the grant guidelines on business.gov.au and GrantConnect.

↓

You complete and submit a grant application

You complete the application form, addressing all the eligibility and assessment criteria in order for your application to be considered.

↓

We assess all grant applications

We assess the applications against eligibility criteria and notify you if you are not eligible. The Committee assess eligible applications against the assessment criteria including an overall consideration of value with money and compare it to other eligible applications.

↓

The Committee makes grant recommendations

The Committee provide advice to the decision maker on the merits of each application.

↓

Grant decisions are made

The decision maker decides which applications are successful.

↓

We notify you of the outcome

We advise you of the outcome of your application. We may not notify unsuccessful applicants until grant agreements have been executed with successful applicants.

↓

We enter into a grant agreement

We will enter into a grant agreement with successful applicants. The type of grant agreement is based on the nature of the grant and will be proportional to the risks involved.

↓

Delivery of grant

You complete the grant activity as set out in your grant agreement. We manage the grant by working with you, monitoring your progress and making payments.

↓

Evaluation of the Community Energy Upgrades Fund Round 1

DCCEEW will evaluate the specific grant activity and Community Energy Upgrades Fund Round 1 as a whole. We base this on information you provide to us and that we collect from various sources.

1.1. Introduction

These guidelines contain information for the Community Energy Upgrades Fund Round 1

This document sets out:

- the purpose of the grant program/grant opportunity
- the eligibility and assessment criteria
- how we consider and assess grant applications
- how we notify applicants and enter into grant agreements with grantees
- how we monitor and evaluate grantees' performance
- responsibilities and expectations in relation to the opportunity.

This grant opportunity and process will be administered by the Department of Industry, Science and Resources (the department/DISR) on behalf of the Department of Climate Change, Energy, the Environment and Water (DCCEEW).

We have defined key terms used in these guidelines in the glossary at section 14.

You should read this document carefully before you fill out an application.

2. About the grant program

The Community Energy Upgrades Fund (the program) will deliver $100 million over 2 funding rounds and will run over 3 years from 2024-25. The program will co-fund energy efficiency and electrification upgrades for local governments to deliver reduced energy bills and emissions from local government owned and/or operated facilities. The program will contribute to Australia meeting its emission reduction targets of 43 percent by 2030, net zero emissions by 2050, and support 82% renewable electricity generation by 2030. It will also support the Commonwealth-led National Energy Performance Strategy (NEPS).

The objectives of the program are to support:

- the Government's broader efforts to reduce emissions and improve energy performance and contribute to Australia meeting its emission reduction targets of 43 percent by 2030, Net-Zero emissions by 2050 and 82% renewable electricity generation by 2030
- local governments to decarbonise their operations and reduce energy bills through energy efficiency and load flexibility upgrades and electrification of their facilities
- the improvement in energy performance necessary to more easily utilise renewable electricity and improve system reliability.

The intended outcomes of the program are:

- reduced energy bills and emissions from local government owned and/or operated facilities
- installed energy efficiency, load flexibility and electrification technology that is commercially available
- improved capability of local governments and the wider community to implement energy upgrades and electrification projects in their facilities.
- increased capacity of domestic supply chains and labour force to support significant future investment in energy efficiency upgrades
- improved workforce skills in delivering and operating energy transition projects.

We administer the program according to the *Commonwealth Grants Rules and Guidelines* (CGRGs)[1].

3. Grant amount and grant period

3.1. Grants available

The Australian Government has announced a total of $100 million over 2 funding rounds from 2024-25 to 2026-27 for the program. For Round 1 up to $50 million is available.

- The minimum grant amount is $25,000
- The maximum grant amount is $2,500,000.

You are required to contribute towards the grant activities. The grant amount will be up to 50 per cent of eligible expenditure. Contributions to your project must be cash.

You are responsible for the remaining eligible and ineligible project costs.

Other funding can come from any source including state, territory and local government grants. We cannot fund your project if it receives funding from another Commonwealth government grant.

You can apply for a grant for your project under more than one Commonwealth program, but if your application is successful, you must choose either the Community Energy Upgrades Fund Program Round 1 grant or the other Commonwealth grant.

3.2. Project period

You must complete your project by 31 March 2027.

The maximum project length is 24 months.

4. Eligibility criteria

We cannot consider your application if you do not satisfy all eligibility criteria.

4.1. Who is eligible to apply for a grant?

To be eligible you must:

- have an Australian Business Number (ABN)

and be one of the following entities:

- a Local Government Body
- a Joint Local Government Body (as defined in section 14).

Joint applications are acceptable, provided you have a lead organisation who is the main driver of the project. All parties within the joint application must be an eligible entity and be eligible to apply. For further information on joint applications, refer to section 7.2.

4.2. Additional eligibility requirements

We can only accept applications where you:

- declare that your targeted facility/ies or building/s is owned, managed or leased by local government at the time of application. Existing facilities and buildings owned by local government but tenanted by others are eligible

[1] https://www.finance.gov.au/government/commonwealth-grants/commonwealth-grants-rules-guidelines

- declare that you will share your knowledge and learnings with other local governments and similar commercial facilities during and at the completion of your project, including the completion of a proforma case study
- provide all relevant mandatory attachments as outlined in section 7.1.

We cannot waive the eligibility criteria under any circumstances.

4.3. Who is not eligible to apply for a grant?

You or a member of your Project Partnership are not eligible to apply if they are not a Local Government Body or a Joint Local Government Body.

You are not eligible to apply if you or a member of your Project Partnership is:

- an organisation included on the National Redress Scheme's website on the list of 'Institutions that have not joined or signified their intent to join the Scheme'
- an employer of 100 or more employees that has not complied with the *Workplace Gender Equality Act (2012)*
- any organisation not included in section 4.1.

5. What the grant money can be used for

5.1. Eligible grant activities

To be eligible your project must:

- be aimed at meeting the objectives of the grant opportunity, as outlined in Section 2.
- have at least $50,000 in eligible expenditure
- be aimed at energy efficiency and/or electrification and/or load flexibility upgrades that reduce costs and emissions for local government's facilities or operations using commercially available technologies.

Eligible activities must directly relate to the project and may include one or more of the following:

- load flexibility/demand management systems, e.g. air-conditioning controls upgrades including demand management capabilities at a civic centre
- electrification upgrades, e.g. the replacement of a gas boiler with a heat pump and heat recovery at an aquatic centre
- electric vehicle charging infrastructure, e.g. smart electric vehicle charging for multiple vehicles at a depot for local government vehicles
- energy efficiency upgrades, e.g. variable speed drives fitted to electric motors at a wastewater treatment plant
- behind the meter renewables generation and storage, e.g. a rooftop solar power system with a virtual power plant enabled energy storage system at a childcare centre.

Integrated projects that bring together several activities and encompass multiple sites are encouraged e.g. an energy upgrade at a community centre including energy efficient building envelope improvements, energy efficient equipment, a solar power and battery storage system and disconnection of the gas supply.

We may also approve other activities, any additional activities must be in line with objectives and outcomes in section 2.

5.2. Eligible expenditure

You can only spend the grant on eligible expenditure you have incurred on an agreed project as defined in your grant agreement.

- For guidance on eligible expenditure, refer to appendix A.
- For guidance on ineligible expenditure, refer to appendix B.

We may update the guidance on eligible and ineligible expenditure from time to time. If your application is successful, the version in place when you submitted your application applies to your project.

If your application is successful, we may ask you to verify project costs that you provided in your application. You may need to provide evidence such as quotes for major costs.

Not all expenditure on your project may be eligible for grant funding. The program delegate (who is a manager within the department with responsibility for administering the program) makes the final decision on what is eligible expenditure and may give additional guidance on eligible expenditure if required.

To be eligible, expenditure must:

- be a direct cost of the project
- be incurred by you for required project activities.

You must incur the project expenditure between the project start and end date for it to be eligible unless stated otherwise.

You must not commence your project until you execute a grant agreement with the Commonwealth. We are not responsible for any expenditure you incur until a grant agreement is executed. The Commonwealth will not be liable, and should not be held out as being liable, for any activities undertaken before the grant agreement is executed.

5.3. What the grant money cannot be used for

For guidance on ineligible expenditure, refer to appendix B.

6. The assessment criteria

You must address all assessment criteria in your application. The Committee will assess your application based on the weighting given to each criterion.

The application form asks questions that relate to the assessment criteria below. The amount of detail and supporting evidence you provide in your application should be relative to the project size, complexity and grant amount requested. You should provide evidence to support your answers. The application form displays character limits for each response.

We will only award funding applications that score at least 50 per cent against each assessment criterion.

6.1. Assessment criterion 1

Describe how your project will reduce local government greenhouse gas emissions and/or provide load flexibility (30 points).

You must demonstrate this through:

a. explaining how impactful your project will be in relation to energy efficiency, load flexibility, electrification and/or emission reductions

b. explaining how your project will reduce operational costs of local governments in the longer term

c. providing calculated energy savings, emissions reductions and load flexibility capacity utilising the abatement calculator on business.gov.au.

To avoid penalising Councils already purchasing emissions-free electricity and to provide a level playing field the national full fuel cycle electricity emission factor in 2030 (0.31 tCO2e/MWh as per Australia's Emissions Projections 2023) is used in the calculator. Emission reduction will be assessed on a $ grant funding requested per tonne abatement. Load flexibility will be assessed by taking into consideration the type of flexibility and benefits provided such as capacity, duration, control and compatibility with network orchestration.

6.2. Assessment criterion 2

Wider impact of the grant funding (20 points).

You must demonstrate this through identifying:

a. how your project builds the capability and skills of local governments and the wider community to undertake energy upgrades. For example, implementing projects not typically undertaken by local governments in your region/situation due to unfamiliarity/perceived risk, and in so doing providing an example that can be followed by others

b. explaining how you intend to share your knowledge from the project for local government and community benefit.

6.3. Assessment criterion 3

Capacity, capability and resources to deliver the project (30 points).

You must demonstrate this through:

a. detailing the technical feasibility of your project

b. submitting a project plan including:

- describing your resources, including, personnel, physical resources and facilities that you will use to deliver the project
- your access, and future access to, any land, infrastructure, capital equipment, technology and intellectual property required to undertake eligible activities
- how you plan to manage the project including scope, funding, governance, implementation methodology and timeframes
- how you plan to identify and mitigate delivery risks, in particular technical risks such as technology selection, installation quality, electrical capacity and connection constraints (but also including national security, financial, land access and environmental risks)
- how you plan to identify and mitigate work health and safety risks
- how you plan to secure required regulatory and other approvals.

6.4. Assessment Criterion 4

Economic and social benefits (20 points).

You must demonstrate this through identifying:

a. the impact of grant funding on your project. You should include information of the impact on your local community, project site and your projects viability without grant funding, including

specific reference to the location of your community (rural, regional, remote) and its financial resourcing

b. any broader regional, social, economic and environmental benefits of your project.

7. How to apply

Before applying you should read and understand these guidelines, the sample application form and the sample grant agreement published on business.gov.au and GrantConnect.

Applicants should read all eligibility and assessment criteria closely and attach detailed evidence that supports the assessment criteria.

You will need to set up an account to access our online portal. You can only submit an application during a funding round. You can only submit one application per round. If your application is successful in Round 1 you will not be eligible for Round 2. If you are part of a joint application (either as a Lead Body, Project Partner or member of a Joint Local Government Body) and are eligible to apply, you cannot submit a separate application in the same round. If a joint application is successful in Round 1, all parties will be considered ineligible for Round 2.

To apply, you must:

- complete and submit the application through the online portal
- provide all the information requested
- address all eligibility and assessment criteria
- include all necessary attachments.

You are responsible for making sure your application is complete and accurate. Giving false or misleading information is a serious offence under the *Criminal Code Act 1995* If we consider that you have provided false or misleading information we may not progress your application. If you find an error in your application after submitting it, you should call us immediately on 13 28 46.

After submitting your application, we will not contact you for clarification if we find an error or any missing information, including evidence that supports your eligibility/merit.

You can view and print a copy of your submitted application on the portal for your own records.

If you need further guidance around the application process, or if you have any issues with the portal, contact us at business.gov.au or by calling 13 28 46.

7.1. Attachments to the application

You must provide the following documents with your application:

- a project plan including a detailed project budget, planning, timeframes, implementation methodology, project risk assessments or reports and risk mitigation (in particular technical risks such as technology selection, installation quality, electrical capacity and connection constraints)
- detailed evidence that supports assessment criteria responses (where applicable). This could include energy audits, feasibility studies or other technical documentation as relevant to the proposed activities
- letter of support from each project partner (where applicable)
- recent electricity, gas and/or fuel bill/s relevant to the proposed activities
- completed abatement calculator (available on business.gov.au).

You must attach supporting documentation to the application form in line with the instructions provided within the form. You should only attach requested documents. The total of all attachments cannot exceed 20MB. We will not consider information in attachments that we do not request.

7.2. Joint (consortia) applications

We recognise that some Local Government Bodies may want to join together as a group to deliver a project. In these circumstances, the group must appoint a Lead Body. Only the Lead Body can submit the application form and enter into the grant agreement with the Commonwealth. The application must identify all other members of the proposed group (each a Project Partner) and include a letter of support from each of these Project Partners. Each letter of support should include:

- details of the Project Partner
- an overview of how the Project Partner will work with the Lead Body and any other Project Partners in the group to successfully complete the project
- an outline of the relevant experience and/or expertise the Project Partner will bring to the group
- the roles/responsibilities the Project Partner will undertake, and the resources it will contribute (if any)
- details of a nominated management level contact officer from each Project Partner.

You must have a formal arrangement in place with all Project Partners prior to execution of the grant agreement.

If you are part of a joint application (either as a Lead Body or Project Partner or member of a Joint Local Government Body) and are eligible to apply, you cannot submit a separate application in the same round. If a joint application is successful in Round 1, all parties will be considered ineligible for Round 2.

7.3. Timing of grant opportunity processes

You can only submit an application between the published opening and closing dates. We cannot accept late applications.

If you are successful, we expect you will be able to commence your project around September 2024.

Table 1: Expected timing for this grant opportunity

Activity	Timeframe
Assessment of applications	4 weeks
Approval and announcement of successful applicants	4 weeks
Negotiations and award of grant agreements	1-3 weeks
Notification to unsuccessful applicants	2 weeks
Earliest start date of project	September 2024
Project completion date	31 March 2027
End date of grant commitment	30 June 2027

7.4. Questions during the application process

If you have any questions during the application period, contact us at business.gov.au or by calling 13 28 46.

8. The grant selection process

8.1. Assessment of grant applications

We first review your application against the eligibility criteria.

If eligible, your application will be assessed against the assessment criteria. Only eligible applications will proceed to the assessment stage.

We consider your application on its merits, based on:

- how well it meets the criteria
- how it compares to other applications
- whether it provides value with relevant money.[2]

When assessing the extent to which the application represents value with relevant money, we will have regard to:

- the overall objective/s of the grant opportunity
- the evidence provided to demonstrate how your project contributes to meeting those objectives
- the relative value of the grant sought
- the spread of projects across geographical areas and the extent to which the geographic location of the application matches identified government priorities.

If applications are scored the same, the committee will consider value for money and geographical spread to recommend applications for funding.

8.2. Who will assess applications?

We will establish a committee comprised of DCCEEW departmental officials to assess applications. The Committee may also seek additional advice from independent technical experts or advisors to inform the assessment process.

[2] See glossary for an explanation of 'value with money'.

The Committee will assess your application against the assessment criteria and compare it to other eligible applications in a funding round before recommending which projects to fund. The Committee, and any expert or advisor, will be required to perform their duties in accordance with the CGRGs. The Committee will make a recommendation to the decision maker for approval.

8.3. Who will approve grants?

The decision maker decides which grants to approve taking into account the recommendations of the Committee and the availability of grant funds.

The decision makers decision is final in all matters, including:

- the grant approval
- the grant funding to be awarded
- any conditions attached to the offer of grant funding

We cannot review decisions about the merits of your application.

The decision maker will not approve funding if there are insufficient program funds available across relevant financial years for the program.

9. Notification of application outcomes

We will advise you of the outcome of your application in writing. If you are successful, we advise you of any specific conditions attached to the grant.

You can submit a new application for the same (or similar) project in any future funding rounds however if you are successful in Round 1 you will not be considered eligible for Round 2. You should include new or more information to address the weaknesses that prevented your previous application from being successful. If a new application is substantially the same as a previous ineligible or unsuccessful application, we may refuse to consider it for assessment.

9.1. Feedback on your application

If you are unsuccessful, we will give you an opportunity to discuss the outcome with us, noting that any feedback will be based on your application and no comparative statements will be made with other applications.

10. Successful grant applications

10.1. The grant agreement

You must enter into a legally binding grant agreement with the Commonwealth. The grant agreement has general terms and conditions that cannot be changed. A sample grant agreement is available on business.gov.au and GrantConnect.

We will manage the grant agreement through the online portal. This includes issuing and executing the grant agreement. Execute means both you and the Commonwealth have accepted the agreement. You must not start any Community Energy Upgrades Fund Round 1 activities until a grant agreement is executed. We are not responsible for any expenditure you incur and cannot make any payments until a grant agreement is executed.

The approval of your grant may have specific conditions determined by the assessment process or other considerations made by the program delegate. We will identify these in the offer of grant funding.

If you enter an agreement under the Community Energy Upgrades Fund Program Round 1, you cannot receive other grants for the same activities from other Commonwealth granting programs.

The Commonwealth may recover grant funds if there is a breach of the grant agreement.

We will use a standard grant agreement.

You will have 30 days from the date of a written offer to execute this grant agreement with the Commonwealth. During this time, we will work with you to finalise details.

The offer may lapse if both parties do not sign the grant agreement within this time. Under certain circumstances, we may extend this period. We base the approval of your grant on the information you provide in your application. We will review any required changes to these details to ensure they do not impact the project as approved by the program delegate.

10.2. Specific legislation, policies and industry standards

You must comply with all relevant laws, regulations and Australian Government sanctions in undertaking your project. You must also comply with the specific legislation/policies/industry standards that follow. It is a condition of the grant funding that you meet these requirements. We will include these requirements in your grant agreement.

In particular, you will be required to comply with:

- state/territory legislation in relation to working with children.
- local government planning requirements
- local government building approval requirements
- state/territory legislation relation to Workplace Health and Safety
- state/territory electrical safety regulations
- energy audits should meet AS/NZS 3598 2014.

10.3. How we pay the grant

The grant agreement will state the:

- maximum grant amount we will pay
- proportion of eligible expenditure covered by the grant (grant percentage)
- any financial contribution provided by you or a third party.

We will not exceed the maximum grant amount under any circumstances. If you incur extra costs, you must meet them yourself.

We will make payments according to an agreed schedule set out in the grant agreement. Payments are subject to satisfactory progress on the project.

We set aside 10 per cent of the total grant funding for the final payment. We will pay this when you submit a satisfactory end of project report demonstrating you have completed outstanding obligations for the project. We may need to adjust your progress payments to align with available program funds across financial years and/or to ensure we retain a minimum 10 per cent of grant funding for the final payment.

10.4. Grant Payments and GST

If you are registered for the Goods and Services Tax (GST), where applicable we will add GST to your grant payment and provide you with a recipient created tax invoice. You are required to notify

us if your GST registration status changes during the project period. GST does not apply to grant payments to government related entities[3].

Grants are assessable income for taxation purposes, unless exempted by a taxation law. We recommend you seek independent professional advice on your taxation obligations or seek assistance from the Australian Taxation Office. We do not provide advice on tax.

11. Announcement of grants

If successful, your grant will be listed on the GrantConnect website 21 calendar days after the date of effect.

We will publish non-sensitive details of successful projects on GrantConnect. We are required to do this by the *Commonwealth Grants Rules and Guidelines*, Section 5.3. We may also publish this information on business.gov.au. This information may include:

- name of your organisation
- title of the project
- description of the project and its aims
- amount of grant funding awarded
- Australian Business Number
- business location
- your organisation's industry sector.

12. How we monitor your grant activity

12.1. Keeping us informed

You should let us know if anything is likely to affect your project or organisation.

We need to know of any key changes to your organisation or its business activities, particularly if they affect your ability to complete your project, carry on business and pay debts due.

You must also inform us of any changes to your:

- name
- addresses
- nominated contact details
- bank account details.

If you become aware of a breach of terms and conditions under the grant agreement, you must contact us immediately.

You must notify us of events relating to your project and provide an opportunity for the Minister, Assistant Minister or their representative to attend.

12.2. Reporting

You must submit reports in line with the grant agreement. We will provide the requirements for these reports as appendices in the grant agreement. We will remind you of your reporting obligations before a report is due. We will expect you to report on:

[3] See Australian Taxation Office ruling GSTR 2012/2 available at ato.gov.au

- progress against agreed project milestones and outcomes
- project expenditure, including expenditure of grant funds
- contributions of participants directly related to the project.

The amount of detail you provide in your reports should be relative to the project size, complexity and grant amount.

Unless advised otherwise, grantees will also be required to complete a proforma case study which is to be submitted with their end of project report (template is provided on business.gov.au). This will assist the Commonwealth to evaluate energy upgrade outcomes at a project and program level.

We will monitor the progress of your project by assessing reports you submit and may conduct site visits to confirm details of your reports if necessary. Occasionally we may need to re-examine claims, seek further information or request an independent audit of claims and payments.

12.2.1. Progress reports

Progress reports must:

- include details of your progress towards completion of agreed project activities
- show the total eligible expenditure incurred to date
- include evidence of expenditure
- be submitted by the report due date (you can submit reports ahead of time if you have completed relevant project activities).

We will only make grant payments when we receive satisfactory progress reports.

You must discuss any project or milestone reporting delays with us as soon as you become aware of them.

12.2.2. Ad-hoc reports

We may ask you for ad-hoc reports on your project. This may be to provide an update on progress, or any significant delays or difficulties in completing the project.

12.2.3. End of project report

When you complete the project, you must submit an end of project report.

End of project reports must:

- include the agreed evidence as specified in the grant agreement
- identify the total eligible expenditure incurred for the project
- include evidence of expenditure
- include a declaration that the grant money was spent in accordance with the grant agreement and to report on any underspends of the grant money
- be submitted by the report due date.

12.3. Audited financial acquittal report

We may ask you to provide an independent audit report. An audit report will verify that you spent the grant in accordance with the grant agreement. The audit report requires you to prepare a statement of grant income and expenditure. The report template is available on business.gov.au and GrantConnect.

12.4. Grant agreement variations

We recognise that unexpected events may affect project progress. In these circumstances, you can request a variation to your grant agreement, including:

- changing project milestones
- extending the timeframe for completing the project but within the maximum time period allowed in program guidelines
- changing project activities.

The program does not allow for an increase of grant funds.

If you want to propose changes to the grant agreement, you must put them in writing before the project end date. You can submit a variation request via our online portal.

If a delay in the project causes milestone achievement and payment dates to move to a different financial year, you will need a variation to the grant agreement. We can only move funds between financial years if there is enough program funding in the relevant year to allow for the revised payment schedule. If we cannot move the funds, you may lose some grant funding.

You should not assume that a variation request will be successful. We will consider your request based on factors such as:

- how it affects the project outcome
- consistency with the program policy objective, grant opportunity guidelines and any relevant policies of the department
- changes to the timing of grant payments
- availability of program funds.

12.5. Compliance visits

We may visit you during the project period, or at the completion of your project to review your compliance with the grant agreement. For large or complex projects, we may visit you after you finish your project. We will provide you with reasonable notice of any compliance visit.

12.6. Record keeping

We may also inspect the records you are required to keep under the grant agreement.

12.7. Evaluation

DCCEEW will evaluate the grant program to measure how well the outcomes and objectives have been achieved. We may use information from your application and project reports for this purpose. We may also interview you, or ask you for more information to help us understand how the grant impacted you and to evaluate how effective the program was in achieving its outcomes. We may contact you up to two years after you finish your project for more information to assist with this evaluation. Information we request may include a recent copy of a relevant fuel bill/s and/or authorisation allowing the department to access your meter data.

12.8. Acknowledgement

If you make a public statement about a project funded under the program, including in a brochure or publication, you must acknowledge the grant by using the following:

‘This project received grant funding from the Australian Government.’

If you erect signage in relation to the project, the signage must contain an acknowledgement of the grant.

13. Probity

We will make sure that the grant opportunity process is fair, according to the published guidelines, incorporates appropriate safeguards against fraud, unlawful activities and other inappropriate conduct and is consistent with the CGRGs.

These guidelines may be changed from time-to-time by DISR. When this happens, the revised guidelines will be published on GrantConnect.

13.1. Enquiries and feedback

For further information or clarification, you can contact us on 13 28 46 or by web chat or through our online enquiry form on business.gov.au.

We may publish answers to your questions on our website as Frequently Asked Questions.

Our Customer Service Charter is available at business.gov.au. We use customer satisfaction surveys to improve our business operations and service.

If you have a complaint, call us on 13 28 46. We will refer your complaint to the appropriate manager.

If you are not satisfied with the way we handle your complaint, you can contact:

General Manager
Business Grants Hub
Department of Industry, Science and Resources
GPO Box 2013
CANBERRA ACT 2601

You can also contact the Commonwealth Ombudsman with your complaint (call 1300 362 072). There is no fee for making a complaint, and the Ombudsman may conduct an independent investigation.

13.2. Conflicts of interest

Any conflicts of interest could affect the performance of the program. There may be a conflict of interest, or perceived conflict of interest, if our staff, any member of a committee or advisor and/or you or any of your personnel:

- has a professional, commercial or personal relationship with a party who is able to influence the application selection process, such as an Australian Government officer or member of an external panel or
- has a relationship with or interest in, an organisation, which is likely to interfere with or restrict the applicants from carrying out the proposed activities fairly and independently or
- has a relationship with, or interest in, an organisation from which they will receive personal gain because the organisation receives a grant under the grant program/grant opportunity.

As part of your application, we will ask you to declare any perceived or existing conflicts of interests or confirm that, to the best of your knowledge, there is no conflict of interest.

If you later identify an actual, apparent, or perceived conflict of interest, you must inform us in writing immediately.

Conflicts of interest for Australian Government staff are handled as set out in the Australian Public Service Code of Conduct (Section 13(7)) of the *Public Service Act 1999*. Committee members and other officials including the decision maker must also declare any conflicts of interest.

We publish our conflict of interest policy[4] on the department's website. The Commonwealth policy entity also publishes a conflict of interest policy on its website.

13.3. Privacy

Unless the information you provide to us is:

- confidential information as per below, or
- personal information as per below.

we may share the information with other government agencies for a relevant Commonwealth purpose such as:

- to improve the effective administration, monitoring and evaluation of Australian Government programs
- for research
- to announce the awarding of grants.

We must treat your personal information according to the Australian Privacy Principles (APPs) and the *Privacy Act 1988* (Cth). This includes letting you know:

- what personal information we collect
- why we collect your personal information
- to whom we give your personal information.

We may give the personal information we collect from you to our employees and contractors, the committee, and other Commonwealth employees and contractors, so we can:

- manage the program
- research, assess, monitor and analyse our programs and activities.

We, or the Minister, may:

- announce the names of successful applicants to the public
- publish personal information on the department's websites
- provide names and contact information of successful applicants to members of both houses of the Parliament .

You may read our Privacy Policy[5] on the department's website for more information on:

- what is personal information
- how we collect, use, disclose and store your personal information
- how you can access and correct your personal information.

13.4. Confidential information

Other than information available in the public domain, you agree not to disclose to any person, other than us, any confidential information relating to the grant application and/or agreement, without our prior written approval. The obligation will not be breached where you are required by law, Parliament or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).

[4] https://www.industry.gov.au/publications/conflict-interest-policy

[5] https://www.industry.gov.au/data-and-publications/privacy-policy

We may at any time, require you to arrange for you; or your employees, agents or subcontractors to give a written undertaking relating to nondisclosure of our confidential information in a form we consider acceptable.

We will treat the information you give us as sensitive and therefore confidential if it meets all of the following conditions:

- you clearly identify the information as confidential and explain why we should treat it as confidential
- the information is commercially sensitive
- disclosing the information would cause unreasonable harm to you or someone else
- you provide the information with an understanding that it will stay confidential.

We may disclose confidential information:

- to the committee and our Commonwealth employees and contractors, to help us manage the program effectively
- to the Auditor-General, Ombudsman or Privacy Commissioner
- to the responsible Minister or Assistant Minister
- to a House or a Committee of the Australian Parliament.

We may also disclose confidential information if:

- we are required or authorised by law to disclose it
- you agree to the information being disclosed, or
- someone other than us has made the confidential information public.

13.5. Freedom of information

All documents in the possession of the Australian Government, including those about the program, are subject to the *Freedom of Information Act 1982* (Cth) (FOI Act).

The purpose of the FOI Act is to give members of the public rights of access to information held by the Australian Government and its entities. Under the FOI Act, members of the public can seek access to documents held by the Australian Government. This right of access is limited only by the exceptions and exemptions necessary to protect essential public interests and private and business affairs of persons in respect of whom the information relates.

If someone requests a document under the FOI Act, we will release it (though we may need to consult with you and/or other parties first) unless it meets one of the exemptions set out in the FOI Act.

14. Glossary

Term	Definition
administering entity	When an entity that is not responsible for the policy, is responsible for the administration of part or all of the grant administration processes.
application form	The document issued by the program delegate that applicants use to apply for funding under the program.
assessment criteria	The specified principles or standards, against which applications will be judged. These criteria are also used to assess the merits of proposals and, in the case of a competitive grant opportunity, to determine application ranking.
Assistant Minister	The Commonwealth Assistant Minister for Climate Change and Energy.
behind the meter	The energy system located on the customers side of the utility meter.
Commonwealth Grants Rules and Guidelines (CGRGs)	Establish the overarching Commonwealth grants policy framework and articulate the expectations for all non-corporate Commonwealth entities in relation to grants administration. Under this overarching framework, non-corporate Commonwealth entities undertake grants administration based on the mandatory requirements and key principles of grants administration.
completion date	The expected date that the grant activity must be completed and the grant spent by.
date of effect	Can be the date on which a grant agreement is signed or a specified starting date. Where there is no grant agreement, entities must publish information on individual grants as soon as practicable.
Department	The Department of Industry, Science and Resources.
decision maker	A Senior Responsible Officer within DCCEEW.
Committee	The body established to consider and assess eligible applications and make recommendations to the decision maker for funding under the program.
eligible activities	The activities undertaken by a grantee in relation to a project that are eligible for funding support as set out in 5.1.
eligible application	An application or proposal for grant funding under the program that the program delegate has determined is eligible for assessment in accordance with these guidelines.

Term	Definition
eligibility criteria	Refer to the mandatory criteria which must be met to qualify for a grant. Assessment criteria may apply in addition to eligibility criteria.
eligible expenditure	The expenditure incurred by a grantee on a project and which is eligible for funding support as set out in 5.2.
eligible expenditure guidance	The guidance that is provided at Appendix A.
grant	For the purposes of the CGRGs, a 'grant' is an arrangement for the provision of financial assistance by the Commonwealth or on behalf of the Commonwealth: a. under which relevant money[6] or other Consolidated Revenue Fund (CRF) money[7] is to be paid to a grantee other than the Commonwealth; and b. which is intended to help address one or more of the Australian Government's policy outcomes while assisting the grantee achieve its objectives.
grant activity/activities	Refers to the project/tasks/services that the grantee is required to undertake.
grant agreement	A legally binding contract that sets out the relationship between the Commonwealth and a grantee for the grant funding, and specifies the details of the grant.
grant funding or grant funds	The funding made available by the Commonwealth to grantees under the program.
grant opportunity	Refers to the specific grant round or process where a Commonwealth grant is made available to potential grantees. Grant opportunities may be open or targeted, and will reflect the relevant grant selection process.
grant program	A 'program' carries its natural meaning and is intended to cover a potentially wide range of related activities aimed at achieving government policy outcomes. A grant program is a group of one or more grant opportunities under a single Portfolio Budget Statement Program.
GrantConnect	The Australian Government's whole-of-government grants information system, which centralises the publication and reporting of Commonwealth grants in accordance with the CGRGs.
grantee	The organisation which has been selected to receive a grant.

[6] Relevant money is defined in the PGPA Act. See section 8, Dictionary.

[7] Other CRF money is defined in the PGPA Act. See section 105, Rules in relation to other CRF money.

Term	Definition
Joint Local Government Body	A joint organisation or regional organisation with its own ABN, established for the purposes of enabling local governments to work together, and where Local Government Bodies are the only members of the organisation.
Lead Body	The Local Government Body appointed by the Project Partners to submit the grant application and enter into the grant agreement with the Commonwealth in accordance with section 7.2.
load flexibility	Managing electricity demand at a site in response to generation, network, or market signals.
Local Government Body	A local governing body as defined under the Local Government (Financial Assistance) Act 1995. a. a local governing body established by or under a law of a State, other than a body whose sole or principal function is to provide a particular service, such as the supply of electricity or water; b. a body declared by the Minister, on the advice of the relevant State Minister, by notice published in the Gazette, to be a local governing body for the purposes of this Act; or c. any of the following: ▪ The Australian Capital Territory ▪ Anangu Pitjantjatjara Yankunytjatjara ▪ Maralinga Tjarutja ▪ Gerard Community Council Aboriginal Corporation ▪ Nipapanha Community Aboriginal Corporation ▪ Yalata Community Council Incorporated ▪ Cocos (Keeling) Islands Shire Council ▪ Lord Howe Island Board ▪ Norfolk Island Regional Council ▪ Outback Communities Authority ▪ Shire of Christmas Island ▪ Silverton Village Committee Incorporated ▪ Tibooburra Village Committee Incorporated
Minister	The Commonwealth Minister for Climate Change and Energy.

Term	Definition
personal information	Has the same meaning as in the *Privacy Act 1988* (Cth) which is: Information or an opinion about an identified individual, or an individual who is reasonably identifiable: a. whether the information or opinion is true or not; and b. whether the information or opinion is recorded in a material form or not.
program delegate	A manager within the department with responsibility for administering the program.
program funding or program funds	The funding made available by the Commonwealth for the program.
project	A project described in an application for grant funding under the program.
Project Partner	A Local Government Body who has agreed with one or more other Local Government Bodies to collectively deliver a project eligible for a grant under the program in accordance with section 7.2.
value with money	Value with money in this document refers to 'value with relevant money' which is a judgement based on the grant proposal representing an efficient, effective, economical and ethical use of public resources and determined from a variety of considerations. When administering a grant opportunity, an official should consider the relevant financial and non-financial costs and benefits of each proposal including, but not limited to: ▪ the quality of the project proposal and activities; ▪ fitness for purpose of the proposal in contributing to government objectives; ▪ that the absence of a grant is likely to prevent the grantee and government's outcomes being achieved; and ▪ the potential grantee's relevant experience and performance history.

Appendix A. Eligible expenditure

This section provides guidance on the eligibility of expenditure. We may update this guidance from time to time; check you are referring to the most current version from the business.gov.au website before preparing your application.

The program delegate makes the final decision on what is eligible expenditure and may give additional guidance on eligible expenditure if required.

To be eligible, expenditure must:

- be incurred by you within the project period
- be a direct cost of the project
- be incurred by you to undertake required project audit activities (where applicable)
- meet the eligible expenditure guidelines.

A.1 How we verify eligible expenditure

If your application is successful, we may ask you to verify the project budget that you provided in your application when we negotiate your grant agreement. You may need to provide evidence such as quotes for major costs.

The grant agreement will include details of the evidence you may need to provide when you achieve certain milestones in your project. This may include evidence related to eligible expenditure.

If requested, you will need to provide the agreed evidence along with your progress reports.

You must keep payment records of all eligible expenditure, and be able to explain how the costs relate to the agreed project activities. At any time, we may ask you to provide records of the expenditure you have paid. If you do not provide these records when requested, the expense may not qualify as eligible expenditure.

At the end of the project, you may be required to provide an independent financial audit of all eligible expenditure from the project.

A.2 Plant and equipment expenditure

Plant is usually an input to the project or the tools or infrastructure used to undertake the project. Plant is likely to have a value or use outside of the project and you can build or obtain it with minimal technical risk or new learning.

A.3 Newly purchased plant and pre-existing purchased plant

Only depreciation of newly purchased and pre-existing purchased plant is eligible expenditure. Depreciation is the decline in asset value of an item of plant allowed through the Commissioner of Taxation's effective life schedules. The depreciation must be proportional to the time you use it on the project. In extraordinary situations, for instance, where the plant is subject to heavy usage, and where this is in accordance with Commissioner of Taxation's rules, you may apply a higher rate of depreciation.

You can only claim depreciation of the plant for the time you use it on the project. However, you can claim all eligible depreciation charges in full for each item of purchased plant as you deploy it.

Running costs for purchased or pre-existing plant are eligible expenditure but must be readily verifiable and may include items such as rent, light and power, repairs and maintenance.

A.4 Hired/leased plant

You must calculate eligible expenditure for hired, rented, or leased plant by the number of payment periods where you use the plant for the project multiplied by the period hiring fee. If you purchase plant under a hire purchase agreement, or you use a lease to finance the purchase of the plant, the cost of the item of plant, excluding interest, is capitalised, and then depreciated.

Running costs for hired or leased plant are eligible expenditure but you must be able to verify them. They may include items such as rent, light and power, and repairs and maintenance.

A.5 Constructed plant

Only depreciation of constructed plant is eligible expenditure. Depreciation is the decline in asset value of an item of plant allowed through the Commissioner of Taxation's effective life schedules. The depreciation must be proportional to the time you use it on the project. In extraordinary situations, for instance, where the plant is subject to heavy usage, and where this is in accordance with Commissioner of Taxation's rules, you may apply a higher rate of depreciation.

Where you lease a project facility you may claim leasehold improvements where they are for your specific needs. The improvement cost is eligible expenditure if it is capitalised in your financial statements (balance sheet) and depreciated as above.

The starting value for constructed plant depreciation calculations is the capitalised construction cost or capitalised leasehold improvement cost for the plant item according to Australian Taxation Office (ATO) requirements. You can only claim depreciation of the plant for the time you use it on the project. However, you can claim all eligible depreciation charges in full for each item of purchased plant as you deploy it.

Once fully completed, running costs for constructed plant are eligible expenditure but you must be able to verify them. They may include items such as rent, light and power, repairs and maintenance.

A.6 Labour expenditure

Eligible labour expenditure for the grant covers the direct labour costs of employees you directly employ on the core elements of the project. We consider a person an employee when you pay them a regular salary or wage, out of which you make regular tax instalment deductions.

We consider costs for technical, but not administrative, project management activities eligible labour expenditure. However, we limit these costs to 10 per cent of the total amount of eligible labour expenditure claimed.

We do not consider labour expenditure for leadership or administrative staff (such as CEOs, CFOs, accountants and lawyers) as eligible expenditure, even if they are doing project management tasks.

Eligible salary expenditure includes an employee's total remuneration package as stated on their Pay As You Go (PAYG) Annual Payment Summary submitted to the ATO. We consider salary-sacrificed superannuation contributions as part of an employee's salary package if the amount is more than what the Superannuation Guarantee requires.

The maximum salary for an employee, director or shareholder, including packaged components that you can claim through the grant is $175,000 per financial year.

For periods of the project that do not make a full financial year, you must reduce the maximum salary amount you claim proportionally.

You can only claim eligible salary costs when an employee is working directly on agreed project activities during the agreed project period.

A.7 Labour on-costs and administrative overhead

You may increase eligible salary costs by an additional 30 per cent allowance to cover on-costs such as employer paid superannuation, payroll tax, workers compensation insurance, and overheads such as office rent and the purchase or provision of computing equipment directly required or related to the delivery of the project.

You should calculate eligible salary costs using the formula below:

$$\text{Eligible salary costs} = \text{Annual salary package} \times \frac{\text{Weeks spent on project}}{\text{52 weeks}} \times \text{percentage of time spent on project}$$

You cannot calculate labour costs by estimating the employee's worth. If you have not exchanged money (either by cash or bank transactions) we will not consider the cost eligible.

Evidence you will need to provide can include:

- details of all personnel working on the project, including name, title, function, time spent on the project and salary
- ATO payment summaries, pay slips and employment contracts.

A.8 Contract expenditure

Eligible contract expenditure is the cost of any agreed project activities that you contract others to do. These can include contracting:

- another organisation
- an individual who is not an employee, but engaged under a separate contract.

All contractors must have a written contract prior to starting any project work—for example, a formal agreement, letter or purchase order which specifies:

- the nature of the work they perform
- the applicable fees, charges and other costs payable.

Invoices from contractors must contain:

- a detailed description of the nature of the work
- the hours and hourly rates involved
- any specific plant expenses paid.

Invoices must directly relate to the agreed project, and the work must qualify as an eligible expense. The costs must also be reasonable and appropriate for the activities performed.

We will require evidence of contractor expenditure that may include:

- an exchange of letters (including email) setting out the terms and conditions of the proposed contract work
- purchase orders
- supply agreements
- invoices and payment documents.

You must ensure all project contractors keep a record of the costs of their work on the project. We may require you to provide a contractor's records of their costs of doing project work. If you cannot provide these records, the relevant contract expense may not qualify as eligible expenditure.

A.9 Other eligible expenditure

Other eligible expenditures for the project may include:

- building modifications where you own the modified asset and the modification is required to undertake the project
- purchase, hire or lease of equipment required to undertake eligible project activities
- knowledge sharing sessions and production of educational materials that directly relate to eligible project activities
- staff training that directly supports the achievement of project outcomes
- financial auditing of project expenditure, the cost of an independent audit of project expenditure (where we request one) up to a maximum of 1 per cent of total eligible project expenditure
- costs you incur in order to obtain planning, environmental or other regulatory approvals during the project period. However, associated fees paid to the Commonwealth, state, territory and local governments are not eligible
- domestic travel, including flights and ground transportation, limited to the reasonable cost of travel and accommodation required to conduct eligible project activities
- contingency costs up to a maximum of 10 per cent of the eligible project costs. Note that we make payments based on actual costs incurred.

Other specific expenditures may be eligible as determined by the program delegate.

Evidence you need to supply can include supplier contracts, purchase orders, invoices and supplier confirmation of payments.

Appendix B. Ineligible expenditure

This section provides guidance on what we consider ineligible expenditure. We may update this guidance from time to time; check you are referring to the most current version from the business.gov.au website before preparing your application.

The program delegate may impose limitations or exclude expenditure, or further include some ineligible expenditure listed in these guidelines in a grant agreement or otherwise by notice to you.

Examples of ineligible expenditure include:

- energy upgrades using fuels other than electricity and solar thermal
- gas and other fossil fuel efficiency projects
- the purchase of electric vehicles (charging infrastructure is eligible)
- Remote Area Power Supplies
- deemed white certificates (Victorian Energy efficiency Certificates (VEECs) and NSW Energy Savings Certificates (ESCs)
- administration costs
- expenditure that does not relate to the upgrade of existing energy infrastructure, e.g. installing a heating system at an unheated aquatic centre
- research not directly supporting eligible activities, e.g. feasibility studies
- activities, equipment or supplies that are already being funded through other sources
- costs incurred prior to execution of the grant agreement
- any in-kind contributions
- financing costs, including interest
- capital expenditure for the purchase of assets such as office furniture and equipment, motor vehicles, computers, printers or photocopiers and the construction, renovation or extension of facilities such as buildings and laboratories unless required for eligible project activities
- costs involved in the purchase or upgrade/hire of software (including user licences) and ICT hardware (unless it directly relates to the project)
- costs such as rental, renovations and utilities that are not specified under Appendix A
- non-project-related staff training and development costs
- insurance costs (the participants must effect and maintain adequate insurance or similar coverage for any liability arising as a result of its participation in funded activities)
- debt financing
- costs related to obtaining resources used on the project, including interest on loans, job advertising and recruiting, and contract negotiations
- depreciation of plant and equipment beyond the life of the project
- maintenance costs
- costs of purchasing, leasing, depreciation of, or development of land
- routine operating expenses not accounted as labour on-costs – including communications, overheads and consumables, e.g. paper, printer cartridges, office supplies
- ongoing upgrades, updates and maintenance of existing ICT systems and computing facilities, including websites, customer relationship management systems, databases, the cost of

ongoing subscription based software and IT support memberships, and warranties for purchases that are not directly related to the project

- recurring or ongoing operational expenditure (including annual maintenance, rent, water and rates, postage, legal and accounting fees and bank charges)
- costs related to preparing the grant application, preparing any project reports (except costs of independent audit reports we require) and preparing any project variation requests
- projects that don't meet regulatory or planning requirements
- overseas costs (unless approved by the program delegate)
- overseas travel costs.

This list is not exhaustive and applies only to the expenditure of the grant funds. Other costs may be ineligible where we decide that they do not directly support the achievement of the planned outcomes for the project or that they are contrary to the objective of the program.

You must ensure you have adequate funds to meet the costs of any ineligible expenditure associated with the project.

DEBATE REPORT

7.3 Infrastructure and Environment Services

7.3.2 REQUEST TO INSTALL BENCH SEAT AND PLAQUE

Author: Executive and Project Support Officer
24/28819

PURPOSE

To consider a request to accept the donation and installation of a new bench seat with memorial plaque in Nuriootpa.

RECOMMENDATION

That Council accepts the donation of and provides consent to Bryony Cook for the installation of a new bench seat with commemoration plaque for Jesse Daly at a Nuriootpa location to be determined by the Open Space Team, subject to compliance with the Memorials on Community Land Policy.

REPORT

Background
The installation of memorial symbols within Community Land requires the approval of Council. Council's Memorials on Community Land Policy is attached for information.

Discussion
Bryony Cook has written to Council on behalf of her family, offering to donate a new bench seat in Nuriootpa, to commemorate their nephew, Jesse Daly.

"My name is Bryony Cook and I am the aunt of Jesse Daly, a young man who has been a resident of the Barossa Valley for the past 9 years.

Jesse has been supported by Barossa Enterprises since moving there and has enjoyed a wonderfully full and purposeful life surrounded by amazing carers and friends.

Devastatingly, Jesse received a life-shortening Motor Neurone Disease diagnosis in September: a very aggressive mutation which is expected to end his life in the next 6 months.

Jesse has recently had to relocate from all he has loved and known in the past decade, to Adelaide to best meet his rapidly changing medical needs.

We his family, are planning for a future that will no longer contain our beautifully happy boy and are trying to look forward to how we would like to celebrate and commemorate his life.

Visiting a grave or memory garden in a cemetery doesn't feel fitting and we are searching for an alternative. We would love to be able to sit somewhere in a garden, on a walking trail or path and remember the joy he brought to us.

To that end, would Barossa Council accept a donation of a park bench, located somewhere in one of your beautiful gardens, with a small memorial plaque?
We would raise and donate the funds required for all costs associated."

Summary and Conclusion
The application outlines the connection Jesse has to the Barossa as required at 4.1.1 of the Policy.

Should Council approve the request, officers will work with the family to determine a mutually agreeable site for the bench seat and the wording for the plaque.

Council's Manager Infrastructure and Environmental Services has no objection to the proposal.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Memorials on Community Land - adopted 17 September 2019

Supporting references
Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Legislative Requirements
Nil

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

The Cook family will pay all costs associated with the installation of the bench seat and plaque.

The bench seat will be selected by the Open Space team to complement the existing street furniture.

COMMUNITY ENGAGEMENT

Community consultation is not required under legislation or Council Policy.

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THE BAROSSA COUNCIL MEMORIALS ON COMMUNITY LAND POLICY

Corporate Plan Link:	6.2 Ensure that Council's policy and process frameworks are based on principles of sound governance and meet legislative requirements.		
Policy Owner:	CEO or DCCS	**Previous Approval Date(s):**	20 Oct 2009
Document Control Employee:	Manager Community Projects	**Current Approval Date:**	17 Sept 2019
HPE Content Manager Ref:	19/31010	**Next Review Date:**	By Oct 2023

1. Purpose

The purpose of this Policy is to provide compassionate, consistent and accountable guidance on Council's position regarding:

1.1 Community requests for the installation of Memorials on Community Land.
1.2 Community installations of Road Side Memorials.
1.3 Scattering of ashes on Community Land.

There is no legislative requirement for Council to have a policy in this area; however various sections of the Local Government Act 1999 require that any alterations (including additions) to Community Land and Roads under Council's care and control must be authorised by Council.

2. Scope

The Memorials on Community Land Policy provides guidance for the management and placement of all existing and proposed plaques and memorials (including trees) within the Council area, whether they are in or on buildings or other community facilities, pavements or roadsides, parks, gardens, cemeteries, streets or any other area of council owned or managed public open space.

3. Definitions

Memorial	An object or image including garden beds, trees, park benches, etc. constructed, erected, planted, painted or other indicators commemorating a deceased person.
Roadside Memorial	A symbol with the following criteria: • Not more than 1m2 in size • Non – reflective • Installed with no concrete footings (ie pushed into earth only) • Placed within the road reserve and not on the carriageway or footpath A Roadside Memorial does not include a roadside crash marker (black or red).
Community Land	All local government land (except roads) that is owned by a council or under a council's care, control and management and that has not been excluded as Community Land, or had the Community Land

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	Classification revoked pursuant to Chapter 11, Part 1, Division 3 of the *Local Government Act 1999*.
Road	A public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes: (a) a bridge, viaduct or subway; or (b) an alley, laneway or walkway
Road Reserve / Verge	The road verge is the area of land between the back of the kerb or road edge and the adjoining property boundary.

4. Policy Statement

4.1 Memorials on Community Land

4.1.1 Memorials on Community Land may be approved for persons who had a significant connection to the Barossa (eg resident, volunteer, community leader) as determined by a report to Council.

4.1.2 The installation of Memorials within Community Land requires the approval of Council. No Memorials depicting personal circumstances are to be located on Community Land, unless approved by Council and must meet the following criteria:

- Be in keeping with any existing master plan or strategy relevant to the site
- Will not adversely impact the existing site use
- Will not compromise the aesthetic or cultural integrity of the site
- Will not compromise either public or personal safety
- Will not be placed in any designated memorial garden
- Applicants are to meet all costs associated with the purchase and installation. Ongoing maintenance thereafter will be at a Service Level determined by Council, as resources permit. Council, at its discretion, may waive the maintenance requirements.
- Replacement or removal of the Memorial due to loss/damage or asset depreciation will be at the discretion of Officers. The longevity and replacement of Memorials is not guaranteed.
- Council may require the family member or applicant to remove, alter or relocate a Memorial at their expense, if it requires maintenance, poses a risk to public or personal safety or is uncompliant with Council's Policies and Processes, master plan or strategies relevant to the site or Land the Memorial is on. If this cannot be achieved, Council reserves the right to remove, alter or relocate Memorials at its discretion. For example: as Community needs change, so may the preferred use of Council reserves / recreation parks / parks. Existing Memorials give families no guarantee that Council may not sell or redevelop the site at any time in the future. Council Employees will notify affected family members wherever possible prior to removal, alteration or relocation.

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- The Memorial will not commemorate a person that is already memorialised within The Barossa Council region (except for a memorial within a cemetery managed by The Barossa Council).
- The Memorial demonstrates sensitivity and will not cause offense.
- Council will use best endeavours to contact relatives in the event that a memorial on community land needs to be removed or relocated.

4.1.3 Application Process

- A person wishing to place or construct a Memorial on Community Land should make a written application to Council, addressed to the Chief Executive Officer via The Barossa Council, 43-51 Tanunda Road, Nuriootpa, SA 5355, or via email barossa@barossa.sa.gov.au. The application will be processed by delegated Officers.
- Acknowledgement of receipt will be provided within 5 working days and the application will be referred to the Director Corporate and Community Services (DCCS) or delegate.
- The application for a Memorial on Community Land (not a Roadside Memorial) will be included in the Council meeting agenda as the Manager's Debate Report to the next Council meeting. Applicants should be aware that the application letter (including any contact details provided) may be attached to the Manager's Debate Report, and that the Council meeting agenda is a publicly available document and will be accessible via Council's website. It is the applicant's responsibility to notify Council within a reasonable period of time if they wish for contact details to be redacted.
- The Council's decision will be reported to the applicant by the DCCS or delegate in writing within seven (7) working days of the next meeting. Council meeting minutes are also available on Council's website www.barossa.sagov.au.

4.2 Roadside Memorials

4.2.1 Roadside Memorials may be placed on the Roadside or Road Reserve in memory of the person who lost their life at that place.

4.2.2 The presence of Roadside Memorials needs to be treated with sensitivity, as they are of significant importance to families and friends that have lost loved ones.

4.2.3 However they can:

- be upsetting to some members of the community
- be distracting to Road users, thereby creating a safety hazard
- result in visitors stopping at Memorials, potentially creating a traffic hazard especially on points of the road network which have been identified as an area of increased risk.
- add complexity to maintenance activity on the Road Verge by increasing the number of obstructions
- complicate and delay the progress of programmed capital and / or maintenance works due to the need to remove or relocate the Memorial.

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4.2.4 Roadside Memorials may be erected in memory of a person/s that has lost their life as a result of a road crash within the Council region and:

- be approached with a flexible, balanced, compassionate approach to individual preferences, road safety considerations, and nearby residents / businesses.
- will be situated as close as practical to the accident location providing that the safety of the public, resources, buildings and fixtures is not compromised.
- shall not obstruct the use of the Road or Road Verge by pedestrians, cyclists or road users.
- has a contact person nominated for inclusion in Council's records.

4.2.5 Time period, appearance, location and installation of Roadside Memorial installations should be:

- temporary in nature, installed for a period of up to 15 months. However, should family or friends of the deceased person wish it to remain in situ for a longer period, this may be negotiated with Council.
- no more than 1m2
- located at least:
  - 1 metre outside the line of any guidepost
  - 2 metres away from the edge of any Road
  - 1 metre from the edge of any public access way or footpath
- not located:
  - where they may obstruct the role of any traffic control item
  - in close proximity to residential dwellings or businesses, without permission from the property owner
  - on landscaped Verges
  - on traffic islands, medians or roundabouts
  - within 30 metres of traffic signals
  - within 30 metres of a curve of the road
  - on any existing Roadside object, structure or within trees or vegetation without permission from Council.
- not to be installed with fixed footings
- not to compromise the health or integrity of any tree or vegetation

4.2.6 Any Roadside Memorial placed which does not meet the criteria above may be removed and stored in accordance with 4.2.10.

4.2.7 If a Roadside Memorial has fallen into disrepair or unreasonably interferes with road management or maintenance activities, in accordance with 4.2.10, Officers will contact the family (where possible) to request that the Memorial be maintained, moved or removed, whatever is appropriate.

4.2.8 Roadworks near Memorials

- Where construction or road works are required to be undertaken and will impact on a Roadside Memorial, including maintenance activities, Officers will remove the Memorial in accordance with 4.2.10.
- The Memorial may be reinstated as close as practical to the original location at the conclusion of the works.

4.2.9 Removal and Storage/disposal

When necessary, either fifteen (15) months after the passing of the person, unless otherwise agreed, or if a Memorial does not comply with this Policy, Officers will attempt to contact the family or friends of the deceased person to arrange for its modification, relocation or removal. In the event that the Roadside Memorial owner cannot be contacted, placing a 'notice of intent to modify, relocate or

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remove' as per attached template, on the Roadside Memorial will be considered and placed on the Memorial for a period of no less than three (3) months. At the conclusion of this time, the Memorial will be photographed and registered in Council's Electronic Records Management System in accordance with Council's Knowledge Management Policy.

Where practical, Memorials will be relocated and stored at a secure location. After a storage period of 12 months, and if the family have not been able to be contacted, a Roadside Memorial may be disposed of.

4.2.10 A Memorial Register will be maintained to document the location, number and contact details of applicants.

4.3 Scattering of Ashes

Requests for scattering of ashes of deceased persons or animals on Community Land will not be approved.

5.	**Supporting Process**

Notice of intent to modify, relocate or remove memorial template Ref: 19/34465

6.	**Related Policies**

Local Government Land By-Law

7.	**Legislation and References**

None

8.	**Review**

This Policy will be reviewed by [the Council / Document Control Employee] in consultation with the relevant stakeholders, within twelve (12) months of each new council or more frequently if legislation or Council's need changes.

9.	**Further Information**

9.1. This Policy is available on Council's website at www.barossa.sa.gov.au. It can also be viewed electronically at Council's Principal Office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.

9.2. Complaints regarding this Policy or its application can be made to the Customer Support Team on 8563 8444 or barossa@barossa.sa.gov.au at first instance, who will refer you to the most appropriate Employee according to Council's Customer Service Policy and Complaints Handling Process (see clause 9.1 above for availability).

Signed: ..... **Dated:** 24/09/2019.....

[Mayor Michael Lange or
Chief Executive Employee under delegation]

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10.	Policy Version History

Version No:	Approval Date:	Description of Change:
Eg. 1.0	20/10/2009	New Policy
Eg. 2.0	17/09/2019	General review, update to new template and addition of Roadside Memorials Policy and Scattering of Ashes

DEBATE REPORT

7.4 Development and Community Services

7.4.1 DOG REGISTRATION FEES 2024-2025

Author: Administrative Assistant - Regulatory Services
24/3336

PURPOSE

To determine the annual dog registration fees for the 2024/2025 financial year.

RECOMMENDATION

That Council:

Retains its current dog registration fees and rebates with no increase as detailed in this report for the 2024/2025 financial year for uploading onto the Dogs and Cats Online (DACO) system.

Non-Standard Dog (Not desexed and not Microchipped)	$88.00
Standard Dog	$44.00
Working Dog	$25.00
Racing Greyhound (Registered with Greyhound Racing SA	$25.00
Assistance Dogs (No charge, per legislation)	Free
Late Registration Renewal fee (if paid after 31 August)	$25.00
Standard Dog Rebate	50%
Concession Rebate	50%
Training Rebate	10%
Puppy Training Rebate (first year of registration only)	10%
Partial Year Rebate (New Registrations - 1 January to 31 May)	50%

REPORT

Introduction
Dog registration fees are set by each council at their discretion under the *Dog and Cat Management Act 1995 (the Act)*. Best practice is to review and consider a schedule of dog registration fees annually, as part of annual budget processes.

REPORT

Discussion
In accordance with the Act all dogs in South Australia must be registered at 3 months of age in Dogs and Cats Online (DACO).

It is a requirement of Council to set dog registration fees in keeping with this Act. Council have endorsed registration fees until 31 May 2024 and now require fees to be endorsed for 2024-2025 financial year.

DACO has proved successful in simplifying the process to register a dog or cat, allowing owners to complete and manage dog and cat registrations directly into the online database.

Legislation mandates all dogs to be microchipped by three months of age, and all dogs born after 1 July 2018 to be desexed by six months of age, unless the dog is eligible for an exemption.

To provide consistency across council's, the Dog and Cat Management Board introduced and adopted a 'standard' and a 'non-standard' registration category. This forms the basis of council's registration fees.

In setting the registration fees for 2024/2025 it is recommended that due to the current economic climate that fees remain the status quo with no increase. In the prior financial year, Council adopted an increase across all registration categories.

This recommendation has been formed based on current data of all South Australian Councils set dog registration fees for 2023/2024, obtained by the Dog and Cat Management Board, noting particularly where The Barossa Council dog registration fees sit comparingly. (see below comparison tables).

Proposed Dog Registration Fees, Rebates and Charges 2024/2025

Registration Category	Fee description	2023-2024	2024-2025 Proposed
Non-Standard Dog	Not desexed and not microchipped	$88.00	$88.00
Standard Dog	desexed and microchipped	$44.00	$44.00
Working Dog	Working livestock dog	$25.00	$25.00
Racing Greyhound	Greyhound registered with GRSA	$25.00	$25.00
Assistance Dogs	Free per legislation	$0	$0
Late Registration Renewal fee	If renewed after 31 August	$25.00	$25.00
Daily Holding Fee	Daily holding and maintenance	$15.00	$25.00
Impounding fee	Dogs impounded	$80.00	$85.00

	Rebates
Standard dog (both desexed and microchipped)	50%
Training (applies to standard dog only)	10%
Puppy Training (applies to first year registration only)	10%
Concession	50%
Partial year (1 January to 31 May)	50%

The history of fees, together with the proposed fees for 2024/2025 are provided in the following table.

	Maximum Fee (Non-Standard Dog)	**Standard Dog**
2024/2025 (proposed)	$88.00	$44.00
2023/2024	$88.00	$44.00
2022/2023	$84.00	$42.00
2021/2022	$84.00	$42.00

2020/2021	$80.00	$40.00
2019/2020	$80.00	$40.00
2018/2019	$80.00	$40.00

Current 2023-2024 average dog registration fee comparison for South Australia metropolitan council's and rural councils as tabled below, with The Barossa Council falling into the rural council average.

	Non Standard Dog	**Standard Dog**
SA Council Average dog registration fee	$78.00	$39.00
Metro Council Average (18 Councils) 24% Contribution to State Gov. Dog Management Fund	$92.00	$46.00
Rural Council Average (50 Councils) 12% contribution to State Gov. Dog Management Fund	**$74.00**	**$36.00**

Comparisons to neighbouring council's current 2023-2024 dog registration fees tabled below.

	Non Standard Dog	**Standard Dog**
Adelaide Hills Council	$106.00	$53.00
Town of Gawler	$98.00	$50.00
Alexandrina Council	$96.00	$48.00
The Barossa Council	**$88.00**	**$44.00**
City of Playford	$83.50	$41.70
Mid Murray Council	$80.00	$40.00
Light Regional Council	$77.00	$38.50

A summary of the number of registrations for each of the registration classes are provided below for the current financial year to date 8 February 2024.

Number Dog Registrations per category – 2023/24 YTD		
Registration Type	**Regular**	**Concession**
Standard Dog (Desexed and Microchipped)	3038	1036
Standard Dog (Desexed, Trained and Microchipped)	172	54

Non-Standard Dog (Full Registration)	828	286
Working Livestock Dog	340	
Racing Greyhounds (Registered with Greyhound Racing SA)	53	
Assistance Dogs (No fee)	0	
Late Registration Renewal Fee (if paid after 31 August)	387	

Standard Dog

Council is required to provide a rebate off the 'non-standard' fee for a 'standard' dog registration. The Dog and Cat Management Board (the Board) recommends that this rebate be set at 50%.

A standard dog, is a dog that is both desexed and microchipped. Councils are obliged to provide a percentage rebate (deducted from the non-standard dog fee) for a dog that is both desexed and microchipped.

This current year, 4300 dogs have been registered as being desexed and microchipped to 8 February 2024.

Non-Standard Dog

A non-standard dog, is a dog that is neither desexed or microchipped, or a dog that is only desexed (and not microchipped) or only microchipped (and not desexed) is classed as a non-standard dog. The full registration fee applies to this category.

The desexing requirement applies to new generations of dogs and does not apply to dog born before 1 July 2018.

This is designed to encourage dog owners to have their dogs desexed and microchipped in line with the requirements of the State Government, in order to be eligible for a cheaper registration fee.

1101 dogs are registered as non-standard in the 2023-2024 financial year to date.

Concession Card Holders
The Barossa Council have historically offered a further 50% reduction in fees to concession card holders. This rebate shall be applied after other rebates have been calculated as is the present case. DACO has the ability to verify the status of a concession instantly through an interface with federal government databases.

In line with the recommendations of the Board, the holder of the following concession cards will be eligible for the concession discount.

- Department of Veteran Affairs – Gold or White Card
- Pensioner Card
- Senior Health Care Card
- Health Care Card

All concessions, except the Health Care Card, will be a permanent concession. The Health Care Card is a temporary concession and will be required to be validated each registration year.

There have been 1376 concession rebates applied to date in this current financial year.

Training Rebate
The Board no longer provides a recommendation or guidance about the training rebate for dog registrations, and has left it to individual councils. Traditionally, a training rebate has been provided to encourage responsible dog ownership via a 10% rebate off the dog registration fee to owners who train their dogs.

As in previous years, it is recommended that this remain to encourage dog owners to attend obedience training by providing a discount on the registration fee**.** The rebate is calculated as a percentage of the maximum fee.

The following is the currently endorsed standard for the training rebate to apply. Council officers must be satisfied that the dog has been trained to an appropriate level and can:

- Walk on a loose lead in a distracting or unfamiliar environment; and
- Recalls on command while off lead in an unfamiliar environment; and
- Sit, drop and advanced stay on command; and
- Remains calm and easily controlled around other people and other dogs; and
- Displays greeting manners.

Once the dog demonstrates that it meets these requirements it will be deemed to be trained for life, or until Council Officers form the view that the dog no longer meets these standards.

To encourage attendance at puppy pre-school classes, it is proposed that Council will continue to provide a training rebate for the first year of registration to owners that have completed puppy pre-school.

A total of 226 dogs received this training rebate this current year.

Working Livestock Dog
Working livestock dogs are those that are kept *primarily* for the purpose of herding, droving, protecting, tending or working stock. It is proposed to continue to provide a set fee for registering working livestock dogs. No other rebates apply.

Working Livestock Dogs are exempt from the desexing requirements. DACO provides a process to validate a working dog's status.

To date, there are 340 working dog's in the council area.

Partial Year Registration Rebate
A partial year rebate is currently offered for new registrations received after 1 January. This rebate acknowledges new ownership and provides incentive to new owners registering their recently acquired dogs during the second half of the registration year.

This rebate is applied after all other applicable rebates have been applied and is currently set at 50% of the fee otherwise payable. It is proposed that this rebate remains at 50% for 2024/25 and does not apply to registration renewals.

66 new partial year registrations have been registered from 1 January 2023 to 8 February 2024.

Late renewal fee
A $25 late registration renewal fee per dog is applied mid-September, this fee is to cover costs associated with ensuring that all known dogs are registered in DACO and to encourage owners to register their dogs within the renewal period of July and August.

This current year to date, 387 late fees have been applied.

Dog Management Fund
All South Australian councils are required to pay to the State Government, via The Board, a percentage of every dog registration received. For rural councils, which includes The Barossa Council, this contribution is set at 12% rural councils; and 24% for metropolitan councils.

Council's contribution to The Board, to date, is $32,348.

Exemptions
The legislation enables veterinarians to exempt a dog from microchipping or desexing requirements for reasons which relate to the health, well-being, growth and development of a dog. Council must accept these exemptions.

Exemptions do not alter the registration fees otherwise payable. Meaning that a dog with a veterinary exemption from the requirements to be microchipped or desexed, will attract the relevant fee for a non-standard dog. Owners are exempt from being compliant with the mandatory microchip / desexing requirements as per the Act.

Dog Business Registrations
Section 35 of the Act requires Council to offer the option for owners to register their dogs under a business registration. Which allows owners to register a set number of dogs, rather than individual dogs. In the past this has been used for dog breeders and trainers, but is not commonly used since the inception of DACO.

Other Revenue
Council collects revenue for expiation notice, fines recovered by Fines Enforcement and Recovery Unit and pound fees under the provisions of the Act. These are variable revenue sources and dependent on animals impounded and offences being committed.

22 expiations notices have been issued for owning or keeping an unregistered dog since August 2023.

Summary and Conclusion
Based, in part, on the current economic landscape for 2024-2025, this report recommends no changes to the current dog registration fee structure for the coming financial year.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Nil

Supporting references
Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Corporate Plan

CS1 Animals - Management of animal issues including attacks, harassment, complaints, lost companion animals, registration, cage hire and collection, wandering animals, breeders

CS8 Compliance, Monitoring and Enforcement - Conducting compliance, monitoring and responding to non-compliance associated with planning, building, swimming pool, fire safety, public health and safety

BS7 Governance - Provision of governance advice and support in the discharge of legislative responsibilities for policy development, delegations and authorisations, internal review of Council decisions, delegations and authorisations, Native Title claims

Legislative Requirements
Dog and Cat Management Act 1995

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

A significant effort by officers throughout the course of the 2023-2024 financial year has seen an increase in dog registration revenue. A compliance focus will continue to maximise registrations. As at 8 February, council has 1% unrenewed dogs.

The table below highlights dog management revenue, expenditure and registration numbers since 2020-2021.

	2020-2021 Actual	**2021-2022 Actual**	**2022-2023 Actual**	**2023-2024 YTD – Feb 24**
Registrations Numbers	5,809	5,907	5,754	5859
Registration Revenue (100%)	($227,070)	($240,000)	($257,345)	($267,664)
Other Revenue *(Dog Pound, expiations)*	($8,020)	($9,150)	($8,935)	($4,407)
Total Revenue	**($235,090)**	**($249,150)**	**($266,280)**	**($272,071)**
Operational Expenses	$516,015	$498,972	$459,855	$245,895
Net	**$280,925**	**$249,882**	**$170,244**	**$26,176**
Included in above:				
State Government Contribution (12%)	$27,248	$28,800	$31,312	$32,348

Resourcing
Council's Regulatory Services team continues to receive high numbers of Animal related requests for service. A four-year comparison on the number of dog and cat related requests requiring some level of service provision is provided below.

Dog and Cat related requests

2023-2024	558 (to date 8 February 2024)
2022-2023	802
2021-2022	657
2020-2021	676

Risk Considerations
Increasing registration fees raises the risk of adding to financial hardship for some dog owners and an increased possibility of dog owners choosing to not renew their dog registration, this has potential for additional pressure on resources to follow up compliance, and therefore additional compliance costs.

COMMUNITY ENGAGEMENT

Nil

DEBATE REPORT

7.4 Development and Community Services

7.4.2 CONSIDERATION AND ADOPTION OF COMMITTEE RESOLUTIONS - BAROSSA BUSHGARDENS

Author: Executive and Project Support Officer
24/25279

PURPOSE

The minutes of Council Section 41 Committees are presented here for consideration and adoption by Council.

RECOMMENDATION

That Council having reviewed the minutes of the Barossa Bushgardens S41 Committee meeting held 14 February 2024, adopt the resolutions contained therein.

REPORT

Discussion
The consideration and adoption of recommendations of Council Committees to Council requires assessment by Council to ensure compliance obligations under section 6(a) of the *Local Government Act 1999*. The relevant minutes received in the past month are therefore presented for Council adoption.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Minutes of Barossa Bushgardens Committee - Wednesday 14 February 2024 ⇩

Supporting references
Nil.

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

Natural Environment and Built Heritage

Health and Wellbeing

Goal
3. We take a proactive approach in responding to key environmental challenges such as climate change, water security and waste management.
10. Our region enjoys the benefits of sustainable community groups, networks and facilities that encourage everybody to participate in the community.

Strategies

3.1. Support community based sustainability initiatives to help reduce the Barossa's contribution to the climate crisis and build on the capacity of local residents and industry to mitigate negative impacts.

10.3. Build on the capacity of community members to participate in cultural, creative, recreational, sporting and learning opportunities.

Corporate Plan

CS17 Natural Resources - Regional development and management of the environment including natural resource management to ensure the region is managed sustainably and the environment is protected and enhanced

CS19 Social Inclusion - Advocate and work in collaboration with core service providers to ensure vulnerable people have increased access and inclusion.

BS4 Council and Committees - Provision of support to Council and Committees through the provision of required information, agendas, and minutes. Council and Committees are provided with support to enable informed decisions

Legislative Requirements

Local Government Act and Regulations
Landscape South Australia Act 2019 and Landscape South Australia (General) Regulations 2020

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Identified in the body of the minutes, and is included within endorsed Council budget.

COMMUNITY ENGAGEMENT

Not required by Council.

2024/1

MINUTES OF THE MEETING OF BAROSSA BUSHGARDENS COMMITTEE
held on Wednesday 14 February 2024 commencing at 1.00pm
in the Council Chambers, 43-51 Tanunda Road, Nuriootpa.

MINUTES

1. ATTENDANCE RECORD

1.1 Members Present

Russell Johnstone, Louise Mason, Bryce Lillecrapp, Kate Jenkins, Cr Kathryn Schilling (1:07pm) and Neil Purdham (Friends of Barossa Bushgardens).

Staff – Glen Carter (Manager, Works and Operations), Kim Thompson (Senior Environmental Officer), Doreen Von Linde (NRC Coordinator), Penny Devlin (Nursery Manager), and Chris Kruger (Minute Secretary).

Apologies

Andrew Fairney and Trevor Waldhuter.

Not Present

Nil

Leave of Absence

Nil

2. CONFIRMATION OF PREVIOUS MINUTES

2.1 Minutes of previous meetings – for confirmation:

2024/2

MOVED Cr Schilling

That the Minutes of the Barossa Bushgardens Committee held on Wednesday 13 December 2023 at 1:00pm, as circulated, be confirmed as true and correct records of the proceedings of those meetings.

SECONDED B Lillecrapp **CARRIED BB 2022-26/16**

2.2 Matters arising from previous minutes

Meeting Date	Resolution/Action	Status	Actioning Officer
8 February 2023	Investigate the efficiency of the existing solar panels on the Natural Resource Centre	Pending	Coordinator, Building and Facility Maintenance
14 June 2023	Drafting of Event calendar, identifying strategies and target audiences	Calendar can be accessed at **CM# 23/114674**	Manager, Works and Operations
14 June 2023	Future direction of S41 Committee – Manager, Works and Operations to seek input from key stakeholders to enable the development of a Discussion Paper, examining operating models of like-minded organisations. A report to be presented to a future S41 Committee Meeting.	Ongoing – will form part of the review of the Strategic Plan.	Senior Environmental Officer
11 October 2023	R Johnstone to seek expressions of interest from Barossa Australia in relation to	Pending	R Johnstone

	representation from the tourism sector on the Barossa Bushgardens S41 Committee.		
11 October 2023	NRC Coordinator to explore opportunities for cross promotion with the Arid Lands Botanic Gardens Port Augusta.	Pending	NRC Coordinator
11 October 2023	Engage with Mayor Lange to seek inclusion in cycling trails, with linkage to the Bushgardens.	Pending	R Johnstone
11 October 2023	Review of Barossa Bushgardens Masterplan and Strategic Plan	Pending	Committee members
11 October 2023	Draft a proposal for the next Council Budget cycle including a review of the Masterplan and possible engagement with a consultant. Key Stakeholders to be engaged prior to a report being presented to Council.	Pending	Director, Infrastructure and Environmental Services
11 October 2023	Northern and Yorke Landscape Board Funding Draft funding applications for up to five	Ongoing Funding received to organise the following events: Community Environment	NRC Coordinator

2024/4

	proposals and submit for consideration prior to 1 November 2023 deadline.	Forum, Youth Environment Day and Reconciliation Day Grant agreements have now been returned.	
13 December 2023	Event Calendar – Template to be amended to include FoBB, and Feedback Forms to be developed.	Pending .	NRC Coordinator
13 December 2023	Provision of Seeding Natives Workshop		A Fairney
13 December 2023	Feros Care to be approached to ascertain interest on participating in a program similar to Nature and Natter,	Ongoing – K Thompson has made contact and awaiting a response.	Senior Environmental Officer
14 February 2024	Audit of parking requirements at Barossa Bushgardens	Pending	NRC Coordinator and volunteers

3. MATTERS FOR INFORMATION

3.1 MATTERS ARISING FROM PREVIOUS MINUTES

3.2 REVIEW OF BAROSSA BUSHGARDENS URBAN DESIGN FRAMEWORK AND STRATEGIC PLAN

3.3 VISITATION TO THE BAROSSA BUSHGARDENS

3.4 RISK MANAGEMENT/WORK HEALTH AND SAFETY

3.5 MARKETING INITIATIVES AND SALES OPPORTUNITIES

3.6 CORRESPONDENCE

3.7 PARTNER PROJECTS UPDATE

2024/5

3.8 STRATEGIC PLAN PROGRESS REPORT

3.9 CHAIRPERSON'S REPORT

3.10 FRIENDS OF BAROSSA BUSHGARDENS UPDATE

4. DEBATE REPORT

4.1 FINANCE REPORT
24/22529

MOVED B Lillecrapp

That Barossa Bushgardens Committee receive and note the report.

SECONDED L Mason **CARRIED BB 2022-26/11**

PURPOSE

To provide progress on budget income and expenditure as at 31 January 2024.

REPORT

Discussion
At the end of January, the expenditure across each cost centre is progressing well.

Green Adelaide have now confirmed funding of the Natural Resource Centre for 2024-26. It is anticipated that the Service Agreement will be forwarded shortly.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Barossa Bushgardens Finance Report Attachment 1

Supporting references
Nil.

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan



Natural Environment and Built Heritage



Health and Wellbeing

Goal
3. We take a proactive approach in responding to key environmental challenges such as climate change, water security and waste management.

2024/6

10. Our region enjoys the benefits of sustainable community groups, networks and facilities that encourage everybody to participate in the community.

Strategies

3.1. Support community based sustainability initiatives to help reduce the Barossa's contribution to the climate crisis and build on the capacity of local residents and industry to mitigate negative impacts.

10.3. Build on the capacity of community members to participate in cultural, creative, recreational, sporting and learning opportunities.

Corporate Plan

CS17 Natural Resources - Regional development and management of the environment including natural resource management to ensure the region is managed sustainably and the environment is protected and enhanced

CS20 Sport and Recreation - Provide a broad range of sporting, recreational and leisure facilities/ services/programs at a range of facilities, parks and open space areas

BS4 Council and Committees - Provision of support to Council and Committees through the provision of required information, agendas, and minutes. Council and Committees are provided with support to enable informed decisions

Legislative Requirements

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Nil.

COMMUNITY ENGAGEMENT

Not required under Legislation or Council's Public Consultation Policy.

5. CONFIDENTIAL AGENDA

Nil

6. URGENT OTHER BUSINESS

Barossa Bushgardens Carpark – amendment to proposed location.

Page 13 of the Urban Design Framework has identified an area adjacent to the Retail Nursery as the position of the proposed car park.

Glen Carter displayed a copy of the Conceptual Plan for the Car Parking at the Barossa Bushgardens, which highlighted an alternative position to the north, on the other side of the driveway. This site has been deemed to be more suitable for several reasons including better drainage, with the creation of an arrival zone, directing visitors into the Visitor Centre, and then in to the gardens. It is anticipated that bollards

2024/7

would be installed on the service road. The alternative location would also allow for expansion if needed in the future, and an event overflow parking area.

Glen Carter suggested that an audit be conducted to determine the number of cars to determine the final design.

MOVED B Lillecrapp

(1) That Barossa Bushgardens Committee endorse the proposed location of the car park, as detailed in the conceptual plan.
(2) A Concept Plan be developed and presented to the Committee at a future S41 Committee meeting.

SECONDED L Mason **CARRIED BB 2022-26/18/2**

Friends of Barossa Bushgardens representation on S41 Committee

Kate Jenkins advised the Committee that Neil Purdham has been invited to attend the S41 Committee meetings as proxy representative for the Friends of the Barossa Bushgardens.

MOVED B Lillecrapp

That Barossa Bushgardens Committee endorse the appointment of Neil Purdham as proxy representative of the Friends of Barossa Bushgardens.

SECONDED L Mason **CARRIED BB 2022-26/19/3**

7. NEXT MEETING

Wednesday 10 April 2024 at 1.00pm.

8. CLOSURE

Chairman Johnstone declared the meeting closed at 3:05pm.

Confirmed at Barossa Bushgardens Committee Meeting on 10 April 2024

Date:..... Chairperson.....

DEBATE REPORT

7.4 Development and Community Services

7.4.3 TOY LIBRARY PROPOSAL

Author: Manager Library Services, Coordinator – Library Experience and Programs and Coordinator – Library Collection and Access Services

24/25975

PURPOSE

To seek Council endorsement for a Toy Library service to be provided by The Barossa Council Public Library, subject to grant funding application being successful.

RECOMMENDATION

That Council approve the proposal for a Toy Library to be operated by The Barossa Council Public Library, subject to obtaining external funding.

REPORT

Background

In November 2023 Barossa Libraries held an early childhood conference for 28 local health and allied health professionals to discuss and interpret the Australian Early Development Census (AEDC) data for the Barossa community. The AEDC data is collected to provide evidence to support policy, planning and action for health, education and community support for early childhood. The conference day and subsequent working group and Council lead outcomes were a key recommendation in the Library Services Review 2022.

The AEDC data provides a snapshot of school readiness on a range of domains. Children who start school 'on track' (as opposed to 'vulnerable') across the five domains are more likely to go on to achieve academically, have increased well-being and positive life course outcomes (e.g. fewer negative events, improved health) (AEDC Research Snapshot, 2014 - The impact of socio-economics and school readiness for life course educational trajectories (aedc.gov.au)). Children who begin school developmentally behind their peers are unlikely to catch up and often fall further behind (summarised in Hertzman et. al., 2011). Taken together this means that improving child development in the early years has positive life-long individual, family and community outcomes.

Important local findings from the 2021 census were that 25.8% of children starting school had special needs or were identified by their teacher as requiring further assessment; and 18% were vulnerable on one or more AEDC developmental domains. Discussion at the conference focussed on what local children and families need to thrive, and identifying the barriers in our region to achieving this.

Generating projects and programs to decrease the number of children vulnerable on the emotional maturity domain (currently 11.9%) was identified as a priority at the

conference. Emotional maturity measures a child's ability to self-regulate, form relationships in a pro-social way and empathise with others. Strong skills in this domain in early childhood predict success, wellbeing and mental health in adults. Family level factors, such as parents playing with their children, help support the development of emotional maturity by allowing children to express and cope with feelings, and role play situations which may generate strong emotions of fear, excitement or anxiety. At the community level, inequitable access to services, materials and programs can contribute to emotional immaturity (Dept of Education Western Australia, 2017).

Introduction

Toy Libraries facilitate child development by providing low-cost access to play resources such as toys, games, puzzles and dress ups (Visit a toy library : Words Grow Minds). There are over 280 toy libraries registered with Toy Libraries Australia (Home | Toy Libraries Australia). Requests for a local Toy Library have been received during previous library consultations. There is currently no Toy Library operating in the Barossa Council area, meaning the families of the 3,362 children aged under 12 years in the region (2021 Census) must travel to other Council areas to access equivalent services.

Toy Libraries operate by providing quality educational items for loan to local families for a small annual fee. Items in the collection are selected to cover a range of growth and development stages and informed by knowledge of local requests and needs (e.g. in the Barossa region, toys that encourage emotional maturity). They enable families to 'try before they buy' expensive toys, borrow rather than purchase toys that might only be used for a short period of time or are large and cumbersome to store, and give children access to a curated range of new to them toys at a very low cost. The latter is particularly relevant given the increase in cost of living experienced by the community. Toys Libraries include items used for active or outdoor play, performing arts, sensory play, imaginative play, science and technology education, fine and gross motor skill development, language and numeracy skills, construction and building, and family games.

Toy Libraries also have sustainability and environmental benefits. It is estimated that 27 million toys are thrown out every year in Australia (Toy recycling program to reduce plastics in landfill launched by Big W and TerraCycle - ABC News). Toy Libraries are an example of the sharing economy, of which public libraries are leaders. In a sharing economy the focus on individual ownership of items is replaced with access to goods via borrowing, hiring or sharing. The sharing economy reduces waste, increases use per item, facilitates equitable access to goods, and reduces the need for storage (Baden et al, 2020). The Barossa Toy Library will also provide opportunities to educate the community on toy recycling, and teaching young children the value of sharing, rather than purchasing, consumer items.

Proposal

The Barossa Library is proposing a Toy Library for families with children aged 0-12 years at the Lyndoch and Mount Pleasant Library branches. These locations have been selected for practical reasons (they have sufficient space to store and access the toys) and the need due to a lack of toy shops in those areas.

The Toy Library will be available to all current and new public library members residing in the Barossa region for a small annual fee (e.g $20 to $30, with a reduced fee available to Health Care Card holders). Members will initially be able to borrow up to 3 toys at a time, for up to 4 weeks. Borrowing limits will form part of a Barossa Toy Library lending policy which will be regularly reviewed and adjusted based on toy numbers and service use.

The Toy Library will be established using grant funding to purchase toys, storage containers, and shelving units. An ongoing fee of $20/year for registration with Toy Libraries Australia will be covered from the existing library budget. Additional toys and the repair of toys or purchase of replacement parts will be funded through various avenues including grant opportunities, donation of quality toys in good working order, community toy drives, and the annual membership fee. This means the Toy Library will be cost neutral to Council.

Toys will be selected in collaboration with the allied health and education professionals network arising from the AEDC conference day. These professionals have expertise in child development, and specific experience with the needs of children and families in the Barossa region. Consideration will be given to the toy's emotional maturity benefits (such as items that encourage role play, taking turns and interacting with others), size and cost (e.g. large toys that are difficult for families to store), quality (for longevity and sustainability), cultural significance (e.g. traditional Aboriginal or German games) and benefit to specific development stages and/or children living with a disability (e.g. sensory items, language based toys). Community requests for toys will also be considered. Preference will be given to developing partnerships with and supporting local toy retailers where possible.

Each Toy Library will be open at set times during existing library open hours and staffed by Library volunteers. Times will be selected based on community needs, volunteer availability, and to coincide with library children's program delivery. This volunteer role will also be promoted to people living with a disability and their carers via Barossa Enterprise and other local disability support organisations. Benefits to volunteers in the program include development of digital skills and social interaction. Toys and items will not be moved between library branches; customers will need to visit the Lyndoch or Mt Pleasant Library to borrow and return.

Budget

Establishment costs for the Toy Library depend on the number of items purchased and the cast of each, with the addition of some set costs. Estimations are provided in Table 1. Initially the Library will apply for funding from the Libraries Board Innovation Fund (applications close 31 March 2024). If this is unsuccessful other sources of funding will be sought.

Table 1: Estimates of budget to establish Toy Library

Expense detail	Estimated cost
Collection items	$5000 (approx. 100 toys)
Registration and annual fee with Toy Libraries Australia	$220 (assuming 100-149 library members)
Shelving units	$1000
Bags/boxes for accessible storage	$1600 (for approx. 100 toys)
Marketing	In kind
Total	**$7,820**

Ongoing costs, including Toy Library Australia fee (approx. $200 annually, final figure based on number of members), new toys, repairing broken items, and replacing lost parts, will be covered by the membership fee and additional grants.

Summary and Conclusion

In summary, early childhood is an optimal time for community interventions that improve child development, and flow on to benefit wellbeing, mental and physical health, and academic outcome trajectories. The Barossa Toy Library is an excellent and appropriate Council lead response to the vulnerabilities identified in the Australian Early Development Census Data. It will provide accessible, low-cost borrowing of toys for families in the Barossa region and is a natural extension to the existing public library service.

Based on the information contained in this report it is recommended that Council supports the Toy Library proposal and the submission of subsequent grant applications to fund the initiative.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Nil

Supporting references

Further information on the Australian Early Development Census is available at Australian Early Development Census (aedc.gov.au), including a User Guide for Local Government User Guide: Local Government (aedc.gov.au) and the research snapshot of lifecourse educational trajectories The impact of socio-economics and school readiness for life course educational trajectories (aedc.gov.au)

Herztman et. al., 2011. Measuring in support of early childhood development. Measuring in support of early childhood development - PMC (nih.gov)

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan



Health and Wellbeing

Goal

10. Our region enjoys the benefits of sustainable community groups, networks and facilities that encourage everybody to participate in the community.

Strategies

10.1. Children and young people are supported to feel safe and to engage, thrive and feel empowered within the community.
10.2. Advocate for and encourage services that ensure equity and support inclusion and at risk members of the community.
10.3. Build on the capacity of community members to participate in cultural, creative, recreational, sporting and learning opportunities.

Corporate Plan

CS16 Library - Provision of public library services across multiple physical branches, online and via outreach programs. This includes providing access to a physical and online collection

Legislative Requirements

Libraries Act 1982

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Safety
The Toy Library will be established with a relevant risk assessment and strict criteria for item inclusion in each collection sub-category. The risk assessment will be informed by Toy Libraries Australia recommendations and the experience of other Toy Libraries operated by South Australian Public Libraries. Examples including avoiding choking hazards for toys intended for children under 3 years, and not including items with button batteries in the collection.

Hygiene
Toy Libraries Australia provide evidence-based recommendations for cleaning toys that have been borrowed. There guidelines will be adopted by the Barossa Toy Library, including recommendations if family members have been unwell whilst using the toys, and specific information on how different toy types can be cleaned.

Council Policies
A collection and lending policy, and associated processes, will be developed for this service.

COMMUNITY ENGAGEMENT

Community consultation is not required under Legislation or Council Policy.

DEBATE REPORT

7.4 Development and Community Services

7.4.4 BUDGET ALLOCATION FOR INDEPENDENT ENGINEERS REPORT ON BEHALF OF THE BAROSSA ASSESSMENT PANEL

Author: Director Development and Community Services
24/28893

PURPOSE

To consider a decision of the Barossa Assessment Panel, at its meeting of 5 March 2024, to defer development application 23035013 in order to request an independent engineering report, subject to allocation of funds by Council to commission the independent report.

RECOMMENDATION

That Council:

(1) Agrees to commission and fund an independent report by a qualified and experienced engineer in relation to Development Application 23035013, Construction of 160ML Irrigation Dam at Lot 4 Duck Ponds Road, Stockwell, as per the resolution of the Barossa Assessment Panel at its meeting 5 March 2024.

(2) Approve a budget variance of up to $5,000 to the support the report.

REPORT

Background
The Barossa Assessment Panel (the Panel), being a Relevant Authority in its own right under the *Planning, Development and Infrastructure Act 2016,* is charged with assessing certain types of development applications.

Pursuant to Section 83 of the *Planning, Development and Infrastructure Act 2016,* the Council is responsible for "*the costs and other liabilities associated with the activities of the Panel*".

At the 5 March 2024 meeting, the Panel resolved to defer a matter for further independent advice. The decision of the Panel is subject to expenditure of funds to commission the independent report.

Introduction
On 5 March 2024, the Barossa Assessment Panel considered a Development Application (DA 23035013) for the construction of a 160ML irrigation dam (with maximum fill of 11 metres and maximum cut of 6.5 metres) at Lot 4 Duck Ponds Road, Stockwell.

A copy of the Panel agenda and associated plans are contained within Attachment 1.

The Panel resolved to defer the application for further information, with consent of the applicant, as per the following resolution and minutes contained within Attachment 2:

PANEL DECISION

Moved: J Evans Seconded: M Wohlstadt

Deferral of Planning Consent
The Barossa Assessment Panel, having considered the application for consent to carry out development of land and pursuant to the provisions of the *Planning, Development and Infrastructure Act 2016* resolves to DEFER Planning Consent with the consent of the applicant, for Application No. 23035013 by Access Planning (SA) Pty Ltd to undertake the Construction of a 160 ML irrigation dam, with maximum fill of 11 metres and max cut of 6.5 metres at Lot 4 Duck Ponds Road Stockwell (CT 5229/947 for a period of two months in order to enable, under delegation of the Panel through the Assessment Manager:

- undertake an independent assessment by a suitably qualified geotechnical engineer of the Dam Hazard and Consequence Category Assessment and all other design documents associated with construction of the dam, noting its proximity to the township of Stockwell; and
- Advise of any other information that may be relevant to assist in mitigating the risk associated with the construction of the dam.

CARRIED

There is no budget allocation for the proposed expenditure. The Council is therefore requested to consider whether to allocate funds.

Discussion
The Development Application for a 160ML irrigation dam is proposed to support ongoing and future vineyards within the Stockwell environs. The application was deferred for further information, with consent of the applicant, as per the above resolution.

Prior to reaching decision to defer the application, the Barossa Assessment Panel heard from, and asked questions of, the applicant as well as their technical advisors.

In addition, technical advice was also provided by Councils Manager – Engineering Services regarding the adequacy of the Dam Hazard and Consequence Category Assessment commissioned by the applicant. Comments were received in relation to the structural adequacy of the proposed dam, the proposed monitoring program to ensure any breach and/or leaks can be detected and rectified as early as possible and the hydraulic flow downstream in event of a catastrophic failure.

A summary of the Engineering Services comments as contained within the agenda report are as follows:

> *Engineering Services have reviewed the report. We note that the summary of results and risk associated with the dam development. We believe a turkey nest dam has scope for better control and mitigation of risk than a naturally filled dam.*

Further information and civil work design is required for the site development, which Engineering Services will need to review. A Reserved Matter is recommended.

The primary concern of the Panel was the risk to the township of Stockwell in the event of a catastrophic breach of the dam. Despite the applicant's report that outlined the residual risk level and the advice of Council's Engineering Services team, the Panel requested an independent assessment to verify the adequacy of the risk assessment and maintenance methodology proposed by the applicant.

As there is no budget for this report, Council is being asked to allocate funds to support the Panel's decision. It is estimated that the cost to commission the report would be in the order of $2,500 to $5,000. In event that Council were to fund the report, the independent report would be commissioned and upon completion, would be presented back to the Panel for a decision whether to approve or refuse the application.

While Section 83 of the *Planning, Development and Infrastructure Act 2016* states that the Council is responsible for "*the costs and other liabilities associated with the activities of the Panel*", the *Local Government Act 1999* also requires that funds can only be expended where allocated for within the current budget. The allocation of funds to commission an independent assessment of a report is subject to expenditure of funds that do not have a budget allocation and therefore can only be granted by Council.

Should Council choose not to allocate budget in accordance with the resolution of the Panel, the application will simply be returned to the 2 April 2024 Panel meeting and the panel will be asked to make a decision. The decision would need to be made in the absence of an independent report but based on the technical report provided as part of the application and informed by the advice from Council's Engineering Services staff.

In reviewing the merit of this request, it should be noted that an independent review may aid in the resolution of this matter. Regardless, it is arguable that the requested report may have little to no influence on the outcome of the application with respect to how much weight can be placed on a report of this type, from a planning development assessment perspective. In event of an appeal, there will be costs incurred by Council in defending an appeal and in funding reports by suitably qualified experts such as in the nature of geotechnical and hydrology.

However, it should also be noted that the decision of the Panel to request an independent report does raise question of precedent. It is not a normal practice for Council to expend resources associated with review of a report that has been commissioned by an applicant by an appropriately qualified professional and reviewed by Council's engineering resources.

The other implication of Council requesting a further independent assessment is that it may transfer risk to Council should it proceed. In event that Council commissions an independent report and it advises the proposal is satisfactory, in event of a breach at a later time, there may be questions of liability attached to Council as well as the engineer undertaking the review.

When considering all of the above discussion, it is ultimately recommended that Council allocate funds associated to the resolution of the Barossa Assessment Panel.

Summary and Conclusion
Council is requested to fund an independent engineering report associated with Development Application 23035013. For reasons outlined in this report, it is recommended that Council agree to fund the independent report.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Report Item 6.2 presented to the 5 March 2024 Barossa Assessment Panel

Attachment 2 Minutes of the 5 March 2024 Barossa Assessment Panel

Supporting references
Bil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan



Natural Environment and Built Heritage

Goal

1. The Barossa has sustainable farmland providing diverse and stable returns, while protecting the unique natural environment and biodiversity of the region.

Strategies

1.1. Ensure land use planning and resource use protects the quality of the natural environment, the existing character of rural landscapes, historic significance and the high value of agricultural land.

Legislative Requirements
Planning, Development and Infrastructure Act 2016

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

A budget allocation of between $2,500 - $5,000 is required to facilitate the resolution of the Barossa Assessment Panel.

COMMUNITY ENGAGEMENT

Not required.

6.2 23035013 - Lot 4 Duck Ponds Road Stockwell

APPLICANT:	David Hutchison of Access Planning on behalf of the Applicant, Dorrien Estate Winery
REPRESENTORS:	Kevin Walsh, Railway Terrace Stockwell

APPLICATION DETAILS

PROPOSAL	Construction of a 160 ML irrigation dam with maximum fill of 11 metres and maximum cut of 6.5 metres
APPLICANT	Access Planning (SA) Pty Ltd
OWNER	Dorrien Estate Winery Pty Ltd
APPLICATION NO	23035013
CERTIFICATE(S) OF TITLE	CT 5229/947
AREA	40.4 ha
CURRENT USE	Primary Production, agriculture (cropping and grazing)
PLANNING AND DEVELOPMENT CODE VERSION	Version 2023.17 – 23 November 2023
PLANNING AND DESIGN CODE EXTRACT LINK	Relevant Code Extract
ZONE	Rural
OVERLAYS	Character Preservation District Hazards (Bushfire – Medium Risk) Hazards (Flooding – Evidence Required) Limited Land Division Native Vegetation Prescribed Water Resources Area Water Resources
APPLICATION TYPE	Performance Assessed
PUBLIC NOTIFICATION	Notified – No Sign Required
REFERRALS	Nil
PREVIOUS APPLICATIONS	960/729/2001 – Vineyard 960/1135/2005 – Winery (10,000 Tonne Annual Crush) and Associated Vineyard (lapsed)
ASSESSING OFFICER	Janine Lennon, Consultant Planner
RECOMMENDATION	That Planning Consent be GRANTED subject to Reserved Matters and Conditions

INTRODUCTION

The applicant seeks Development Approval for the '*Construction of a 160 ML irrigation dam, with maximum fill of 11 metres and maximum cut of 6.5 metres*' at Allotment 4 Duck Ponds Road, Stockwell.

The proposed development was subject to Performance Assessment and public notification. The application was notified in accordance with Section 107 of the

Planning, Development and Infrastructure Act 2016 and four representations were received.

This application is subject to a decision of the Barossa Assessment Panel (BAP) for the following reason:

(1) Representations have been received as a result of public notification and the representors have indicated a desire to be heard in support of their representation.

No statutory referrals were applicable, although the Department of Environment and Water was informally consulted in relation to the proposal.

The site is in a Rural Zone where a dam is an envisaged form of development.

The proposed dam will sit approximately 500 metres east of the Stockwell township and upstream of the township adjacent Stockwell Creek. The dam will be visible from locations on Duck Ponds Road and from adjoining properties primarily to the north and south with approximately 8 metres of fill for the southern wall of the dam, and 11 metres of fill for the northern wall.

It is considered that the proposal supports the primary production use of the land and will have an acceptable level of visual impact. As such, Planning Consent is warranted, subject to a recommended Reserved Matter and Conditions of Consent.

SITE AND LOCALITY
The site for the proposed dam is an irregular shaped allotment with a frontage to Duck Ponds Road of approximately 1.4 km. The site has a maximum depth of approximately 610 metres with total site area of approximately 40.4 hectares.

The site is used for agriculture (cropping and grazing) with numerous small clumps of mature native vegetation located primarily along watercourses across the site.

The site is positioned on the northern side of Duck Ponds Road and is generally surrounded by broad acre farming and low intensity agriculture on large allotments. The land is undulating, reflecting its position on the northern part of the Barossa Range. There are limited vistas generally of open fields interspersed with native trees and shrubs.

There are dwellings located on the adjoining allotments with the closest dwelling to the proposed dam being approximately 165 metres away.

The nearest township is Stockwell which is located approximately 500 metres west of the proposed dam.

Figure 1 below contains a zone map and details of the location of the site.



Figure 1: *Zone Map and Locality*

An aerial view of the site and locality are contained in ***Figure 2*** and ***Figure 3***.

Site photos are provided in ***Figure 4*** to ***Figure 16.***

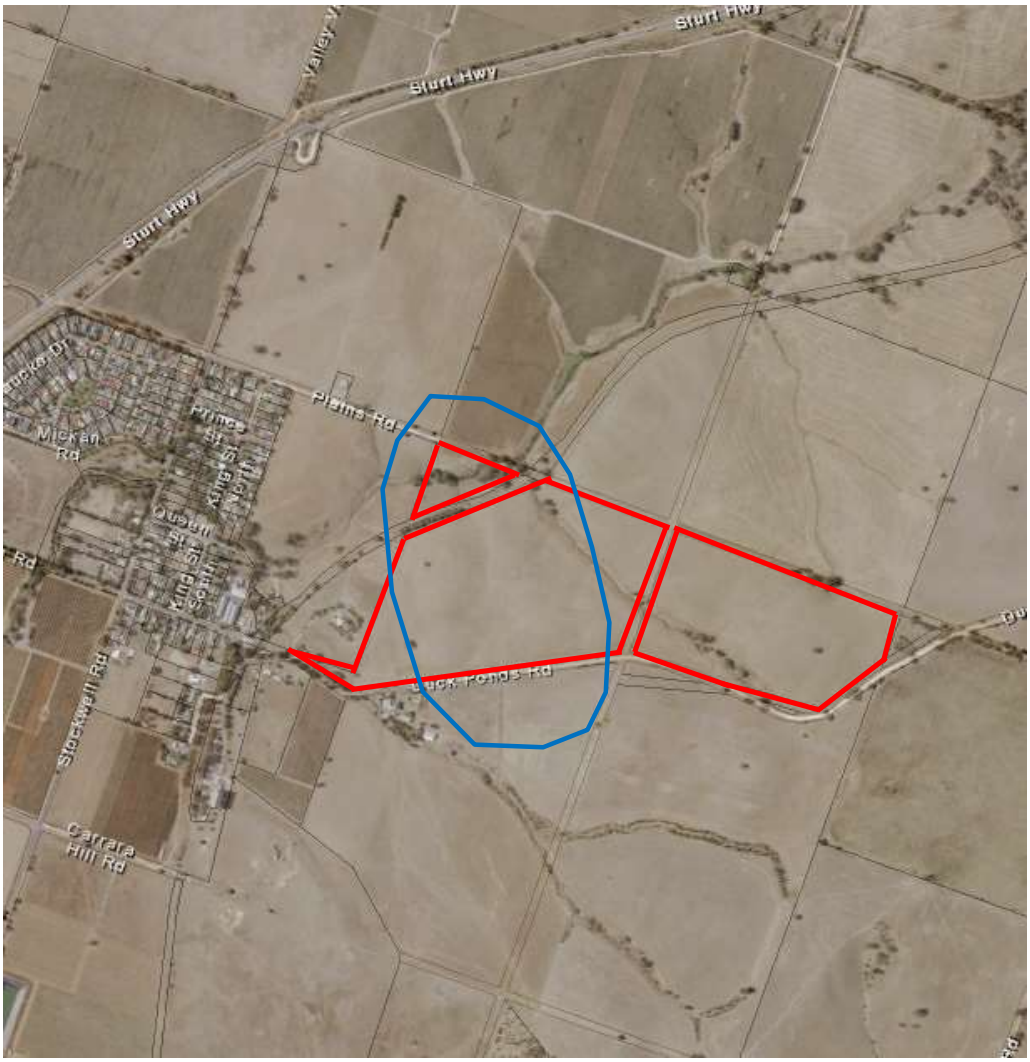


Figure 2: *Aerial – Locality, subject site in red, locality in blue*



Figure 3: *Aerial – Site*



Figure 4: *Site Photo – looking west along Duck Ponds Road adjacent site*



Figure 5: *Site Photo looking north-west toward site of proposed dam*



Figure 6: *Site Photo looking north toward site of proposed dam*



Figure 7: *Site Photo looking north-east toward site of proposed dam*



Figure 8: *Site Photo looking east along Duck Ponds Road*



Figure 9: *Site Photo looking south from hill to west of proposed dam within site*



Figure 10: *Site Photo looking south-west from site toward Stockwell township*



Figure 11: *Site Photo looking north-east from site toward Stockwell*



Figure 12: *Site Photo looking north-west from site along escarpment*



Figure 13: *Site Photo looking north from site*



Figure 14: *Site Photo looking north-east toward site of proposed dam*



Figure 15: *Site Photo looking east toward site of proposed dam*



Figure 16: *Site Photo looking south toward Duck Ponds Road from site*

PROPOSAL
The application seeks development approval for the construction of an irrigation dam, components of which are as follows:

- Earth wall, turkey nest dam covered with a plastic liner.
- Maximum capacity 160 ML
- Maximum wall height 14 metres
- Maximum fill height 11 metres
- Freeboard of 600 mm to accommodate potential wave action, and/or rain event at "full" level.
- Overflow 180 mm pipe then by natural flow to Stockwell Creek
- To be filled from Barossa Infrastructure Limited (BIL) water supply
- Water to be supplied via existing infrastructure in Plains Road

Whilst viticulture is not included as a component of this proposal, the purpose of the dam is described as being intended to provide water security for future viticulture development on the subject land.

Attachment 1 provides a copy of the application and associated documentation.

APPLICATION TYPE
The site is located within the Rural Zone under the Planning and Design Code.

The proposed development is not listed in Tables 1-4 and therefore defaults to 'Performance Assessed' pathway under Table 3 of the Rural Zone.

PUBLIC NOTIFICATION
(1) The application was subject to public notification in accordance with Table 5 – Procedural Matters – Notification of the Rural Zone.
(2)
(3) The proposed development in nature of a dam is a type of development not listed in Table 5 as being exempt from public notification. The proposal is not deemed to be a minor form of development.

Class of Development (Column A)	*Exceptions (Column B)*
1. Development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	*a) None specified.*
2. Any development involving any of the following (or of any combination of any of the following): *b)* *a) advertisement* *b) agricultural building* *c) air handling unit, air conditioning system or exhaust fan* *d) ancillary accommodation* *e) building work on railway land* *f) carport*	*c) None specified.*

g) dwelling *h) dwelling addition* *i) farming* *j) fence* *k) horse keeping* *l) internal building works* *m) land division* *n) outbuilding* *o) private bushfire shelter* *p) protective tree netting structure* *q) replacement building* *r) retaining wall* *s) shade sail* *t) solar photovoltaic panels (roof mounted)* *u) swimming pool or spa pool* *v) temporary accommodation in an area affected by bushfire* *w) tree damaging activity* *x) verandah* *y) water tank.*	

The table below provides details of the public notification process:

Representations:	Four Representations were received as follows: • Nick Clowser • Alea Devine • Greg Schubert • Kevin Walsh
Person wishing to be heard:	Of the four representations received, one representor wishes to be heard as follows: • Kevin Walsh of Railway Terrace, Stockwell. No late representations were received.
Applicant	David Hutchison of Access Planning on behalf of the Applicant, Dorrien Estate Winery Pty Ltd, wishes to appear to respond to the representation.
Time period for Public Consultation	3 January 2024 to 23 January 2024

An aerial view showing the representors' properties is contained in ***Figure 17*** *below*.



Figure 17: *Blue dots indicate representors properties. Note: Two of the four representations received came from the same site*

The table below summarises the contents of the representations and the applicant's response:

Summary of Representations

Representor/s	**Applicant's Response**
Dam failure	
• *Risk from catastrophic dam failure as Stockwell township is downstream.* • *If dam storage area is incorrect in the Hazard Report, what else is incorrect?* • *Have historic high intensity rainfall events eg 1983, 1992 and 2022 been considered in the risk assessment?* • *Belief that the hazard assessment has underestimated risk and value of potential damage.* • *Hazard assessment is incorrect as water flows to the south side of Duck Ponds Road affect Railway Terrace dwellings.* • *The soil in this location is highly soluble and prone to erosion.*	• *Rainfall pattens are based on 1:100-year event.* • *Dam burst modelling follows established industry guidelines.* • *Rainfall in the surrounding catchment will not result in an increased risk of dam failure as it is not a catchment dam.* • *Modelling has been undertaken by a qualified engineer and results reviewed by a qualified and experienced engineer.* • *Development of the dam will involve the diversion of water from within the existing limited catchment around the dam which will be undertaken with erosion measures in place.*

Vineyard demand

- *With the oversupply of grapes, purchasing and redeveloping existing irrigated vineyards would be more prudent than creating new vineyards.*
- *The proposal will add additional low value grapes to an existing oversupply.*
- *There will be potential to result in additional frost fans close to the Stockwell township.*

- *No viticulture or frost fans are being proposed at this time.*

Vehicle traffic

- *Heavy vehicle traffic has been diverted away from Stockwell township; will this bring it back?*

- *Other than construction vehicles which will be required during the construction of the dam, traffic associated with the proposed development will be unchanged.*

A copy of the representations are contained in ***Attachment 2*** and the applicant's response is contained in ***Attachment 3***.

REFERRALS

External
Pursuant to Schedule 9 of the *Planning, Development and Infrastructure (General Regulations 2017* and Part 9 of the Planning and Design Code, the application was not subject to any referrals.

Informal discussions occurred with the Department for Environment and Water regarding whether a referral was necessary pursuant to Schedule 9. The Department advised that a turkey nest dam, to be filled with Barossa Infrastructure Ltd (BIL) water (private water supplier), is not subject to referral.

Internal
The following internal advice has been received from staff:

Engineering Services	*Engineering have reviewed the report. We note that the summary of results and risk associated with the dam development. We believe a turkey nest dam has scope for better control and mitigation of risk than a naturally filled dam.* *Further information and civil work design is required for the site development, which Engineering Services will need to review. A Reserved Matter is recommended.*

ASSESSMENT
Please refer to the following link, the Planning and Design Code extract for this proposal, dated 23 November 2023, Version 2023.17:

Planning and Design Code Extract Link	Relevant Code Extract

Seriously at Variance
Pursuant to Section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016*, it is recommended that the Panel determine that the proposed development is not seriously at variance with the relevant provisions of the Planning and Design Code.

A dam is an envisaged form of development within the Rural Zone. The irrigation dam is intended to facilitate future horticulture/viticulture land use, subject to a future development approval. Horticulture is also an envisaged use within the Rural Zone. The proposal is therefore not considered to be Seriously at Variance with the provisions of the Planning and Design Code.

Character Preservation (Barossa Valley) Act 2012
Pursuant to Section 6(2) of the *Character Preservation (Barossa Valley) Act 2012*, having regard to the Objects of the Act, it is recommended that the Panel determine that the proposed development does not adversely impact the character values of the district. The character values of the district are:

(a) the rural and natural landscape and visual amenity of the district
(b) the heritage attributes of the district
(c) the built form of the townships as they relate to the district
(d) the viticultural, agricultural and associated industries of the district
(e) the scenic and tourism attributes of the district

The proposal will support the viticultural, agricultural and associated industries of the district (clause (d)). The proposal will result in modification to the land form, which has potential to impact the rural and natural landscape and visual amenity of the district (clause (a)) and the scenic and tourism attributes of the district (clause (e)). The siting of the dam is such that it is not directly visible from the escarpment, with views predominantly from the north and south. The proposal is considered to have an acceptable level of visual impact, so as to preserve the rural and natural landscape and scenic and tourism attributes of the district.

Further discussion is contained under the Assessment section below in relation to the Character Preservation District Overlay.

Assessment
Detailed assessment of the proposal has taken place against the relevant provisions of the Planning and Design Code as quoted above. It is noted that a small portion of the allotment is located within the Resource Extraction Zone (approximately 1,450 sqm) but as this portion of the site is not affected by the location for the proposed dam, the assessment has not considered the provisions of this Zone.

Commentary is provided below under headings:

Land Use and Form of Development

Rural Zone	
Desired Outcomes	
DO1	*A zone supporting the economic prosperity of South Australia primarily through the production, processing, storage and distribution of primary produce, forestry and the generation of energy from renewable sources.*
DO2	*A zone supporting diversification of existing businesses that promote value-adding such as industry, storage and warehousing activities, the sale and consumption of primary produce, tourist development and accommodation.*
Relevant Performance Outcomes/Designated Performance Features	
Land use and Intensity	
PO 1.1 *The productive value of rural land for a range of primary production activities and associated value adding, processing, warehousing and distribution is supported, protected and maintained.*	*DTS/DPF 1.1* *Development comprises one or more of the following:* *a) Advertisement* *b) Agricultural building* *c) Brewery* *d) Carport* *e) Cidery* *f) Commercial Forestry* *g) Dairy* *h) Dam* *i) Distillery* *j) Dwelling* *k) Dwelling addition* *l) Farming* *m) Horse keeping* *n) Horticulture* *o) Industry* *p) Intensive animal husbandry* *q) Low intensity animal husbandry* *r) Outbuilding* *s) Renewable energy facility* *t) Shop* *u) Small-scale ground mounted solar power facility* *v) Stock slaughter works* *w) Tourist accommodation* *x) Transport distribution* *y) Verandah* *z) Warehouse* *aa) Winery* *bb) Workers' accommodation*

A dam is an envisaged form of development within the Rural Zone, pursuant to DTS/DPF 1.1 (h). It is therefore considered that the proposed development will satisfy Performance Outcome 1.1.

Character Preservation Overlay

Character Preservation District Overlay	
Desired Outcomes	
DO1	*Recognise, protect and enhance the special character of Character Preservation Districts.*

DO2	*The long term use of land outside of townships for primary production and associated value adding enterprises is assured and promoted.*
Relevant Performance Outcomes/Designated Performance Features	
Built Form and Character	
PO 2.2 *Development contributes to and maintains the historic identity and character of townships through appropriate:* *a) form* *b) scale* *c) siting* *d) design* *e) landscaping*	*DTS/DPF 2.2* *None are applicable.*
Built Form and Character in the Rural Areas	
PO 3.1 *Preservation of existing natural features including topography, watercourses and mature trees.*	*DTS/DPF 3.1* *None are applicable.*
PO 3.2 *Buildings and structures do not interrupt views of the skyline through measures including being sited below ridge lines.*	*DTS/DPF 3.2* *None are applicable.*
PO 3.3 *Buildings and structures harmonise with the natural features of the landscape and reinforce the rural character through the use of muted, neutral, non-reflective landscape colours on external surfaces.*	*DTS/DPF 3.3* *None are applicable*
PO 3.4 *Large buildings and structures are sited and oriented to minimise their visual bulk, particularly if close to roads or in open settings where there are no other buildings or mature trees in close proximity.*	*DTS/DPF 3.4* *None are applicable.*
PO 3.5 *Buildings and structures are grouped to create compact clusters well set back from public roads.*	*DTS/DPF 3.5* *None are applicable.*
Earthworks	
PO 4.1 *Excavation and filling of land is limited to that associated with:* *a) minimising the visual impact of buildings or structures* *or* *b) construction of water storage facilities.*	*DTS/DPF 4.1* *Excavation and/or filling of land is:* *a) no greater than 1.5 metres from natural ground level* *b) only undertaken in order to reduce the visual impact of buildings or structures or to construct water storage facilities.*

The Character Preservation District Overlay seeks to recognise, protect and enhance the area's special character with a further remit to assure long term use of the land outside of townships for primary production activities.

The dam site is located within rural land approximately 500 metres west of the Stockwell township. The site is primarily used for agriculture (cropping and grazing). The local character is defined by the presence of farming activities interspersed with agricultural buildings, some dwellings and the township of Stockwell. Large irrigation

dams are a visual element within the northern portion of the Barossa Valley and have typically been assessed by Councils within the district as an acceptable addition to the existing landscape.

It is always a balanced decision when assessing large scale structures such as dams that can intrude into a landscape. In determining that the proposal accords with Overlay policies it is considered important to acknowledge that the dam has an intended purpose of horticulture irrigation, and its bulk and scale is a factor of its function in addition to its form.

Having regard to the Character values of the district and Overlay policies, it is considered that the proposed dam will not detrimentally affect the special character of the district for the following reasons:

- Irrigation dams are a typical component of horticulture.
- The Overlay specifically envisages higher levels of cut and/or fill for the purpose of water storage.
- Whilst the fill will be up to 11 metres high in parts, there will be limited opportunities to view the fill, with no part of the dam expected to be visible from the plains;
- The dam will support a primary production operation within the Rural Zone.

As mentioned earlier, the siting of the dam is such that it will not be directly visible from the escarpment, with views predominantly visible from the north and south. Accordingly, it is considered that the visual impact of the dam is acceptable and will preserve the rural and natural landscape and scenic

The siting of the dam is such that it is not directly visible from the escarpment, with views predominantly from the north and south. The proposal is considered to have an acceptable level of visual impact, so as to preserve the rural and natural landscape and scenic and tourism attributes of the district.

Prescribed Water Resources Area Overlay

Desired Outcomes	
DO1	*Sustainable water use in prescribed water resources areas maintains the health and natural flow paths of surface water, watercourses and wells.*
Relevant Performance Outcomes/Designated Performance Features	
PO 1.1 *All development, but in particular development involving any of the following:* *a) horticulture* *b) activities requiring irrigation* *c) aquaculture* *d) industry* *e) intensive animal husbandry* *f) commercial forestry* *has a lawful, sustainable and reliable water supply that does not place undue strain on water resources in prescribed water resource areas.*	*DTS/DPF 1.1* *Development satisfies either of the following:* *a) the applicant has a current water licence in which sufficient spare capacity exists to accommodate the water needs of the proposed use* *or* *b) the proposal does not involve the taking of water for which a licence would be required under the Landscape South Australia Act 2019.*

The proposed irrigation dam will be filled using water purchased from Barossa Infrastructure Ltd (BIL), which is primarily sourced from SA Water's Warren Reservoir. The Department of Environment and Water advise that they have no licensing concerns with regard to BIL supplying water to this site.

On this basis, it is considered that the proposal will satisfy Performance Outcome 1.1.

Water Resources Overlay

Desired Outcomes	
DO1	*Protection of the quality of surface waters considering adverse water quality impacts associated with projected reductions in rainfall and warmer air temperatures as a result of climate change..*
DO2	*Maintain the conveyance function and natural flow paths of watercourses to assist in the management of flood waters and stormwater runoff.*
Relevant Performance Outcomes/Designated Performance Features	
Water Catchment	
PO 1.1 *Watercourses and their beds, banks, wetlands and floodplains (1% AEP flood extent) are not damaged or modified and are retained in their natural state, except where modification is required for essential access or maintenance purposes.*	*DTS/DPF 1.1* *None are applicable.*
PO 1.2 *Development avoids interfering with the existing hydrology or water regime of swamps and wetlands other than to improve the existing conditions to enhance environmental values.*	*DTS/DPF 1.2* *None are applicable.*
PO 1.3 *Wetlands and low-lying areas providing habitat for native flora and fauna are not drained, except temporarily for essential management purposes to enhance environmental values.*	*DTS/DPF 1.3* *None are applicable.*
PO 1.4 *Watercourses, areas of remnant native vegetation, or areas prone to erosion that are capable of natural regeneration are fenced off to limit stock access.*	*DTS/DPF 1.4* *None are applicable.*
PO 1.5 *Development that increases surface water run-off includes a suitably sized strip of vegetated land on each side of a watercourse to filter runoff to:* *a) reduce the impacts on native aquatic ecosystems* *b) minimise soil loss eroding into the watercourse.*	*DTS/DPF 1.5* *A strip of land 20 metres or more wide measured from the top of existing banks on each side of the watercourse is free from development, livestock use and revegetated with locally indigenous vegetation.*
PO 1.6 *Development resulting in the depositing or placing of an object or solid material in a watercourse or lake occurs only where it involves any of the following:*	*DTS/DPF 1.6* *None are applicable.*

a) the construction of an erosion control structure *b) devices or structures used to extract or regulate water flowing in a watercourse* *c) devices used for scientific purposes* *d) the rehabilitation of watercourses.*	
PO 1.7 *Watercourses, floodplains (1% AEP flood extent) and wetlands protected and enhanced by retaining and protecting existing native vegetation.*	*DTS/DPF 1.7* *None are applicable.*
PO 1.8 *Watercourses, floodplains (1% AEP flood extent) and wetlands are protected and enhanced by stabilising watercourse banks and reducing sediments and nutrients entering the watercourse.*	*DTS/DPF 1.8* *None are applicable.*
PO 1.9 *Dams, water tanks and diversion drains are located and constructed to maintain the quality and quantity of flows required to meet environmental and downstream needs.*	*DTS/DPF 1.9* *None are applicable.*

The dam is to be located within a saddle landform, with both sides of the saddle catchment ultimately feeding into Stockwell Creek. The dam has been designed to contain not only its intended storage but also a 1% AEP flood event as well as any wave action resulting from inclement weather, thereby mitigating the potential to produce flood flows in a significant weather event. No watercourses are to be modified with the construction of the proposed dam.

The proposal is considered to satisfy the above-mentioned Performance Outcomes.

Clearance from Overhead Powerlines

General Development Policies	
Clearance from Overhead Powerlines	
Desired Outcomes	
DO1	*Protection of human health and safety when undertaking development in the vicinity of overhead transmission powerlines.*
Relevant Performance Outcomes/Designated Performance Features	
PO 1.1 *Buildings are adequately separated from aboveground powerlines to minimise potential hazard to people and property.*	*DTS/DPF 1.1* *One of the following is satisfied:* *a) a declaration is provided by or on behalf of the applicant to the effect that the proposal would not be contrary to the regulations prescribed for the purposes of section 86 of the Electricity Act 1996* *b) there are no aboveground powerlines adjoining the site that are the subject of the proposed development.*

DTS/DPF 1.1 clause has been met and therefore the related Performance Outcome 1.1 will be achieved.

Vehicular access

Rural Zone	
Relevant Performance Outcomes/Designated Performance Features	
Siting and Design	
PO 2.1 *Development is provided with suitable vehicle access.*	*DTS/DPF 2.1* *Development is serviced by an all-weather trafficable public road.*
General Development Policies	
Transport, Access and Parking	
Desired Outcomes	
DO1	*A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.*
Relevant Performance Outcomes/Designated Performance Features	
Vehicle Access	
PO 3.1 *Safe and convenient access minimises impact or interruption on the operation of public roads.*	*DTS/DPF 3.1* *The access is:* *a) provided via a lawfully existing or authorised driveway or access point or an access point for which consent has been granted as part of an application for the division of land* *or* *b) not located within six metres of an intersection of two or more roads or a pedestrian activated crossing.*

Vehicle access to the site is gained via farm gates adjacent Duck Ponds Road, approximately 350 metres from the edge of the Stockwell township. This road is unsealed but is all-weather formed and is suitable to serve access for construction and ongoing management.

Other Overlays
The following Overlays have been considered in the assessment of the proposed development but are not considered to be applicable to the proposal given that:

Hazards (Bushfire – Medium Risk) Overlay
There are no habitable buildings on-site.

Hazards (Flooding - Evidence Required) Overlay
There are no water courses that traverse the land where the dam is proposed.

Limited Land Division Overlay
No division of land is proposed as part of this application.

Native Vegetation Overlay
No native vegetation is identified to be removed as part of the development. The Native Declaration form has been signed by the applicant.

CONCLUSION
The proposal comprises the '*Construction of a 160ML irrigation dam, with max fill of 11 metres and max cut of 6.5 metres'*. The application was subject to 'Performance Assessment' and public notification. The application was notified in accordance with Section 107 of the *Planning, Development and Infrastructure Act 2016* and four representations were received, one of which has requested to be heard.

This report has provided a detailed assessment of the proposal against the relevant provisions of the Planning and Design Code.

The nature of the proposal is acceptable as an envisaged use within the Rural Zone.

The primary assessment issues relate to visual impact. It is considered that the dam will have an acceptable visual impact taking into account its purpose and function, that such structures are anticipated within the Character Preservation District for water storage purposes and that it is sited within a saddle that has limited visual impact beyond its immediate locality. While the dam will be visible from some locations (predominantly north and south), its visual impact will not sufficiently be detracting on the landscape and related special character of the District.

A key concern for representors was the failure risk of the dam. The applicant has provided extensive submission as to how the dam will be constructed and maintained. This matter is principally a matter for Building Consent but Council's Engineering Services staff have requested that further civil and structural engineering design take place, prior to grant of Development Approval.

Assessment has identified that the proposed development is reasonably consistent with the Desired Outcome and Performance Outcomes of the Rural Zone and other relevant provisions of the Planning and Design Code, such that Planning Consent is warranted, subject to a Reserved Matter and recommended Conditions of Consent.

RECOMMENDATION 1

Seriously at Variance
The Barossa Assessment Panel, having considered the application, resolves that the development proposal has sufficient merit, and is not seriously at variance with the Planning and Design Code.

RECOMMENDATION 2

Character Preservation
Pursuant to Section 6(2) of the *Character Preservation (Barossa Valley) Act 2012*, the Barossa Assessment Panel has had regard to the objects of that Act and, in resolving to grant Planning Consent, will further the Objects of that Act.

RECOMMENDATION 3

Granting of Planning Consent
The Barossa Assessment Panel, having considered the application for consent to carry out development of land and pursuant to the provisions of the *Planning, Development and Infrastructure Act 2016* resolves to GRANT Planning Consent for Application No. 23035013 by Access Planning (SA) Pty Ltd to undertake the

Construction of a 160 ML irrigation dam, with maximum fill of 11 metres and max cut of 6.5 metres at Lot 4 Duck Ponds Road Stockwell (CT 5229/947) subject to the following Reserved Matter, Conditions and advisory notes:

Reserved Matters
Pursuant to Section 102(3) of the *Planning, Development and Infrastructure Act 2016,* the Relevant Authority reserves its decision in relation to the following matter:

(1) Full civil and structural engineering design.

Council Conditions

(1) The development shall be undertaken in accordance with the endorsed plans and documentation (as amended) accompanying the application except where varied by any condition(s) listed below.

- Locality Plan, Prepared by Pinion Advisory dated 30 October 2023, Drawing No 17000-DA001
- Pre Development Plan, Prepared by Pinion Advisory dated 30October 2023
- Post Development Plan, Prepared by Pinion Advisory, dated 30 October 2023
- Sections Sheet, Prepared by Pinion Advisory, dated 30 October 2023
- Photos Sheet, Prepared by Pinion Advisory, dated 30 October 2023
- Planning Report prepared by Access Planning dated 2 January 2024
- Dam Hazard and Consequence Category Assessment, Old Salem Dam, Prepared by Pinnacle Advisory dated November 2023

(2) The capacity of the storage dam shall not exceed 160 ML.

(3) The dam and all associated works (including the spillway, the overflow channel) shall be designed by and constructed under the supervision of a suitably qualified and experienced engineer.

(4) The dam walls shall be constructed in accordance with sound engineering specifications and practice, being capable at all times of retaining the designed capacity.

(5) The spillway shall be designed to pass safely an estimated 1 in 100 year average recurrence interval flood. The spillway shall be constructed from non-erodable materials such as reinforced concrete and/or rock-filled gabion mattresses, to the satisfaction of the Relevant Authority.

(6) The overflow channel shall be constructed to carry safely any water from the spillway to the watercourse adjacent to the dam, to the satisfaction of the Relevant Authority.

(7) The overflow channel shall:

(a) be constructed from materials that shall result in the provision of a stabilised waterway; and
(b) enter the watercourse adjacent to the dam in such a manner so as not to cause erosion of the watercourse.

(8) That all earth constructed surfaces shall be compacted, grassed or similar and ground cover established, to minimise erosion and run-off, to the satisfaction of the Relevant Authority.

(9) Prior to the filling/use of the dam authorised herein, a certificate verifying adequacy of construction in accordance with the approved design shall be supplied to Council by a suitably qualified engineering professional, to the reasonable satisfaction of the Relevant Authority.

Advisory Notes

(1) Any portion of Council's infrastructure damaged as a result of work undertaken within the development site or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.

(2) Any variation of this approved development and/or the conditions of consent will require a separate request and approval by the relevant authority. Approval of this application does not necessarily imply that future requests for variations would be approved. Any future request will be assessed by having regard to the relevant rules and requirements in force at the time any request is lodged.

(3) The applicant is reminded of its general environmental duty, as required by Section 25 of the Environment Protection Act 1993, to take all reasonable and practicable measures to ensure that the activities on the whole site including during construction, do not pollute the environment in a way which causes or may cause environmental harm.

(4) Construction shall not take place on any Sunday or Public Holiday or after 7.00 pm or before 7.00 am on any other day, and all practicable steps must be taken during construction to minimise the impact of noise emissions on neighbouring properties.

(5) The applicant is advised that this consent does not permit anyone to clear, remove limbs or trim native vegetation. Any proposal to clear, remove limbs or trim native vegetation will require approval or confirmation of exemption from the Native Vegetation Council. An interactive guide is available to help owners and others determine the requirements that apply under the *Native Vegetation Act 1991*, https://www.environment.sa.gov.au/topics/native-vegetation/interactive-guide. Any specific queries regarding the clearance, removal or trimming of native vegetation should be directed to the South Australian Native Vegetation Council.

(6) Any noise generating activity undertaken at the site must be undertaken in accordance with the provisions of the Environment Protection (Noise) Policy 2007, and such that any resulting noise is not considered a nuisance, to the satisfaction of Council, including any existing infrastructure.

(7) You are advised that construction or alteration of any footpath, kerb, gutter or crossover on Council land will require a permit, under the *Local Government Act 1999* from Council's Works and Engineering Services. It is

illegal to undertake work on Council land without permission If the existing entranceway (driveway cross-over) is to be removed it must be re-instated with kerb and gutter, including appropriate restoration of the footpath and verge, to Council's standard specification. Please contact Council's Works and Engineering Services to confirm the required standards. Driveway cross-overs which affect a pedestrian footpath should maintain the level of the footpath or be consistent with the proposed footpath levels in instances where the footpath has not been constructed. When final Development Approval is applied for this should be shown on the plans. Please note that construction is to be in accordance with the *Disability Discrimination Act* and relevant Australian Standards. Further enquiries should be directed to the Works and Engineering team on 8563 8444.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Application and Associated Documentation ⇩
Attachment 2 Representations Received ⇩
Attachment 3 Applicants Response to Representations ⇩

Development Locations

Location 1

Location reference
LOT 4 DUCK PONDS RD STOCKWELL SA 5355

Title Ref
CT 5229/947

Plan Parcel
D40747 QP14

Additional Location Information

Council
THE BAROSSA COUNCIL

Location 2

Location reference
LOT 4 DUCK PONDS RD STOCKWELL SA 5355

Title Ref
CT 5229/947

Plan Parcel
D40747 QP4

Additional Location Information

Council
THE BAROSSA COUNCIL

Location 3

Location reference
LOT 4 DUCK PONDS RD STOCKWELL SA 5355

Title Ref
CT 5229/947

Plan Parcel
D40747 QP5

Additional Location Information

Council
THE BAROSSA COUNCIL

Location 4

Location reference
LOT 4 DUCK PONDS RD STOCKWELL SA 5355

Title Ref
CT 5229/947

Plan Parcel
D40747 QP8

Additional Location Information

Council
THE BAROSSA COUNCIL

Zone Overlays

Zones
- Rural
- Resource Extraction

Sub-zones
(None)

Overlays
- Character Preservation District
- Hazards (Bushfire - Medium Risk)
- Hazards (Flooding - Evidence Required)
- Limited Land Division
- Native Vegetation
- Prescribed Water Resources Area
- Water Resources

Variations
- Minimum Site Area (Minimum site area is 25 ha)
- Minimum Site Area (Minimum site area is 32 ha)
- Minimum Dwelling Allotment Size (Minimum dwelling allotment size is 25 ha)
- Minimum Dwelling Allotment Size (Minimum dwelling allotment size is 60 ha)

Application Contacts

Applicant(s)

Stakeholder info
Access Planning (SA) Pty Ltd
PO Box 39
Plympton
SA
5038

Contact

Stakeholder info
Access Planning (SA) Pty Ltd
PO Box 39
Plympton
SA
5038

Invoice Contact

Stakeholder info
Access Planning (SA) Pty Ltd
PO Box 39
Plympton

SA
5038

Land owners

Stakeholder info
Dorrien Estate Winery Pty Ltd
PO Box 442
Tanunda
SA
5352

Nature Of Development

Nature of development
Earth Bank Dam

Development Details

Current Use
Broadacre farming

Proposed Use
Dam

Development Cost
$1,200,000.00

Proposed Development Details
Earth Bank Dam

Element Details

You have selected the following elements

Other - Rural - $1,200,000.00
- Dam

Septic/Sewer information submitted by applicant

Does this development require a septic system, i.e. septic tank and/or waste water disposal area?
No

Certificate of Title information submitted by applicant

Does the Certificate of Title (CT) have one or more constraints registered over the property?
No

Consent Details

Consent list:
- Planning Consent
- Building Consent

Have any of the required consents for this development already been granted using a different system?

No

Planning Consent

Apply Now?
Yes

Who should assess your planning consent?
Assessment panel/Assessment manager at The Barossa Council

If public notification is required for your planning consent, who would you like to erect the public notification sign on the land?
Relevant Authority

Building Consent

Do you wish to have your building consent assessed in multiple stages?
No

Apply Now?
No

Consent Order

Recommended order of consent assessments
1. Planning Consent

Do you have a pre-lodgement agreement?
No

Declarations

Electricity Declaration

In accordance with the requirements under Clause 6(1) of Schedule 8 of the Planning, Development and Infrastructure (General) Regulations 2017, the proposed development will involve the construction of a building which would, if constructed in accordance with the plans submitted, not be contrary to the regulations prescribed for the purposes of section 86 of the Electricity Act 1996.

Native Vegetation Declaration

The proposed development will not or would not, involve the clearance of Native Vegetation under the Native Vegetation Act 1991, including any clearance that may occur in connection with a relevant access point and/or driveway, and/or within 10m of a building (other than a residential building or tourist accommodation), and/or within 20m of a dwelling or addition to an existing dwelling for fire prevention and control, and/or within 50m of residential or tourist accommodation in connection with a requirement under a relevant overlay to establish an asset protection zone in a bushfire prone area.

Submission Declaration

All documents attached to this application have been uploaded with the permission of the relevant rights holders. It has been acknowledged that copies of this application and supporting documentation may be provided to interested persons in accordance with the Act and Regulations.

Documents

Document	Document Type	Date Created
17000- PA DAM ASSESSMENT REPORT.pdf	Technical Report - Other	24 Nov 2023 1:32 PM
17000- OLD SALEM - DA.pdf	Site Plans	24 Nov 2023 1:32 PM
Register_Search_CT 5229 947 5.pdf	Certificate of Title	24 Nov 2023 1:32 PM

Application Created User and Date/Time

Created User
epn.hutchinsd@sa.gov.au

PINNACLE DRINKS
OLD SALEM DAM

DRAWING LIST

DWG No.	REV	DWG TITLE
17000-DA000	01	HEADER SHEET
17000-DA001	01	LOCALITY PLAN
17000-DA002	01	PRE DEVELOPMENT PLAN
17000-DA003	01	POST DEVELOPMENT PLAN
17000-DA004	01	SECTIONS SHEET
17000-DA005	01	PHOTOS SHEET

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DA SUBMISSION
NOT FOR CONSTRUCTION

DATE: 30/10/2023
DWG No: 17000-DA000 REV1

Drawing file: \\10.0.10\Pinion-Adstore\01 Artwork\ADL\17000 PSK Old Salem - Detail Design\04 Drawings\17000[DA-10.dwg - 03/11/2023 12:33 PM Original Size: ISO FULL BLEED A1 (841.00 X 594.00 MM)



LEGEND

PROPOSED WATER STORAGE

1 SURROUNDING PROPERTIES/ FARM SHEDS

NORTH

DA SUBMISSION
NOT FOR CONSTRUCTION

-50 0 50 100 150 200 250 500m
SCALE 1: 5000 ORIGINAL SIZE A1

REV	ISSUED	D.DWN	APRVD	REVISION DESCRIPTION
01	10/30/2023	QM	MA	DA SUBMISSION

REV	ISSUED	D.DWN	APRVD	REVISION DESCRIPTION

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SURVEY INFORMATION: COORDINATES
MGA 94 ZONE 56
ALL LEVELS ARE TO A.H.D.

REFERENCED PLANS:

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DES./DRAWN:	QM
CHECKED:	BL
APPROVED:	MA
DATE:	25/10/2023
PROJECT REF.:	PDR OLD SALEM
CLIENT:	PINNACLE DRINKS
PROJECT:	OLD SALEM DAM LOCALITY PLAN
DRAWING No.	17000-DA001
SHEET	1 OF 5
REVISION	01

Drawing file: 17000[2]DA-3D.dwg Saved at: 2/11/2023 1:53:32 PM Printed at:2/11/2023 1:59:09 PM Original Size: ANSI A (8.50 x 11.00 inches)



DA SUBMISSION
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-20 0 20 40 60 80 100 200m
SCALE 1: 2000 ORIGINAL SIZE A1

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01	10/30/2023	QM	MA	DA SUBMISSION

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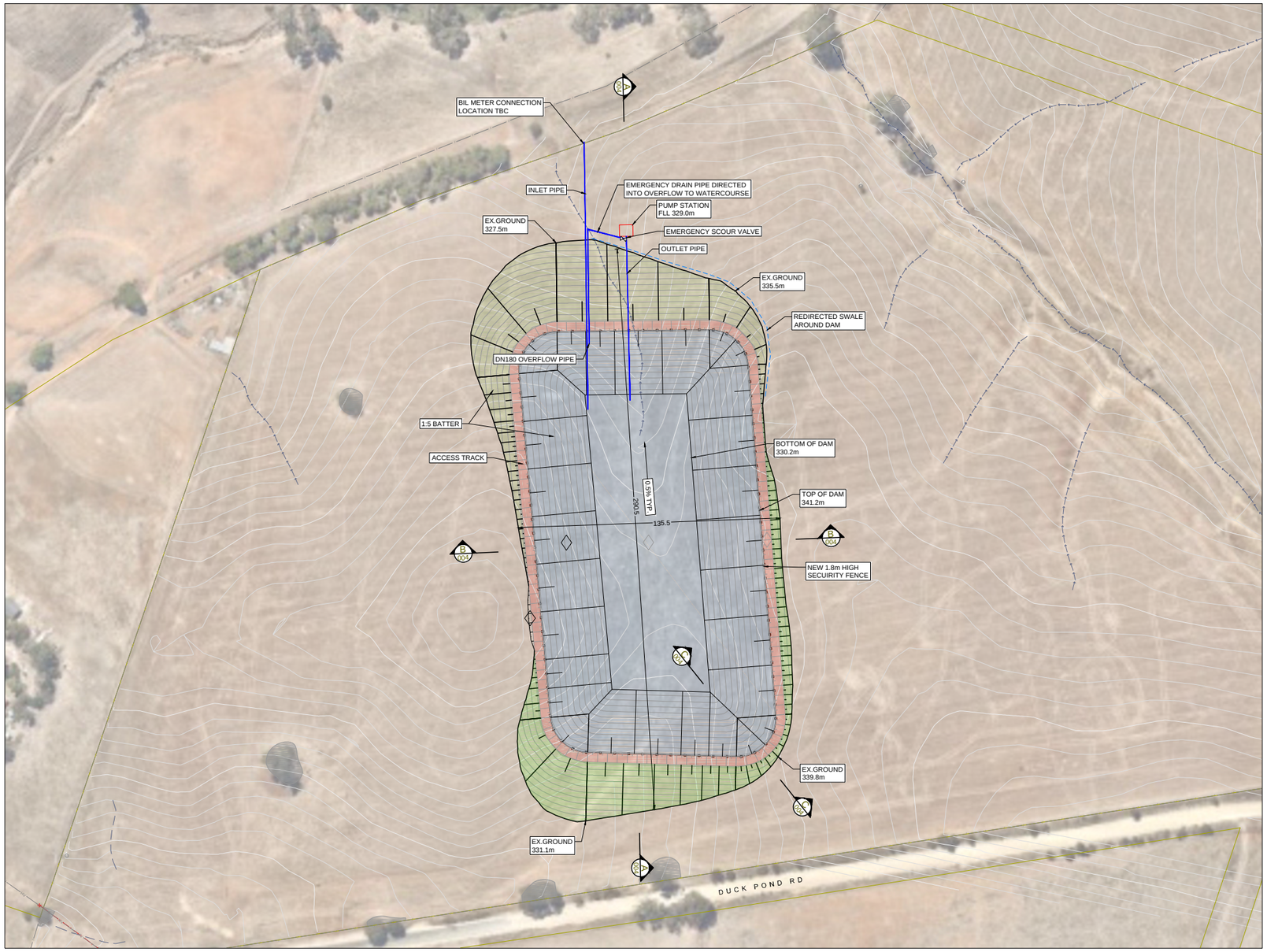
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COORDINATES
MGA 94 ZONE 56
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REFERENCED PLANS:

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DES./DRAWN:	QM
CHECKED:	BL
APPROVED:	MA
DATE:	25/10/2023
PROJECT REF.:	PDR OLD SALEM
CLIENT:	PINNACLE DRINKS
PROJECT:	OLD SALEM DAM PRE DEVELOPMENT PLAN
DRAWING No.	17000-DA002
SHEET	2 OF 5
REVISION	01

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EXISTING LEGEND

- BOUNDARY LINE
- EXISTING CONTOUR
- EXISTING WATER COURSE

SITEWORKS LEGEND

- PROPOSED CONTOUR
- PIPELINE
- FENCELINE

PAVEMENT LEGEND

- RUBBLE AREA
- STORAGE AREA
- OUTSIDE BATTER AREA

DA SUBMISSION
NOT FOR CONSTRUCTION

-10 0 10 20 30 40 50 100m
SCALE 1:1000 ORIGINAL SIZE A1

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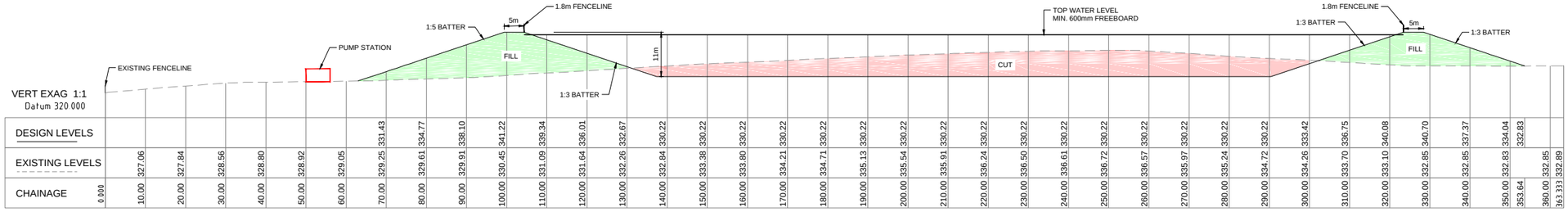
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SURVEY INFORMATION: COORDINATES MGA 94 ZONE 56 ALL LEVELS ARE TO A.H.D.
REFERENCED PLANS:

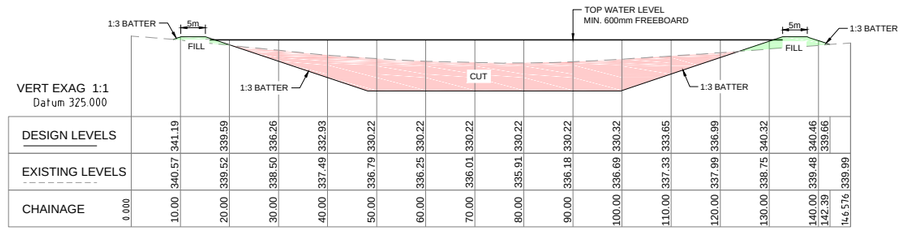
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DES./DRAWN:	QM
CHECKED:	BL
APPROVED:	MA
DATE:	25/10/2023
PROJECT REF.:	PDR OLD SALEM
CLIENT:	PINNACLE DRINKS
PROJECT:	OLD SALEM DAM POST DEVELOPMENT PLAN
DRAWING No.	17000-DA003
SHEET	3 OF 5
REVISION	01

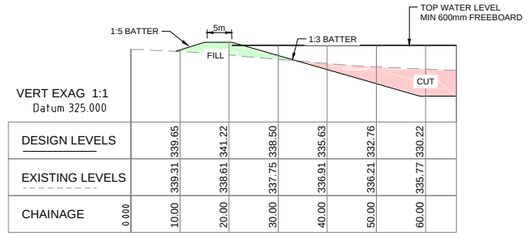
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SECTION "A"
SCALE 1:500 @ A1



SECTION "B"
SCALE 1:250 @ A1



SECTION "C"
SCALE 1:250 @ A1

-5 0 5 10 15 20 25 50m
SCALE 1:500 ORIGINAL SIZE A1

REV	ISSUED	D.DWN	APRVD	REVISION DESCRIPTION
01	10/30/2023	QM	MA	DA SUBMISSION

REV | ISSUED | D.DWN | APRVD | REVISION DESCRIPTION

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REFERENCED PLANS:
DES./DRAWN: QM
CHECKED: BL
APPROVED: MA
DATE: 25/10/2023
PROJECT REF.: PDR OLD SALEM
CLIENT: PINNACLE DRINKS
PROJECT: OLD SALEM DAM SECTIONS SHEET
DRAWING No.: 17000-DA004
SHEET 4 OF 5
REVISION 01

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NOTE :
REFER DWG DA002 FOR PHOTO LOCATIONS



PHOTO - 1



PHOTO - 2



PHOTO - 3

Drawing file: 17000 DA-3D.dwg - Saved at: 2/11/2023 12:33:39 PM - Printed at:2/11/2023 1:13:57 PM - Original Size: ANSI A (8.50 x 11.00 Inches)

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REV	ISSUED	D.DWN	APRVD	REVISION DESCRIPTION

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DES./DRAWN: QM
CHECKED: BL
APPROVED: MA
DATE: 25/10/2023
PROJECT REF.: PDR OLD SALEM

CLIENT: PINNACLE DRINKS
PROJECT: OLD SALEM DAM
PHOTOS SHEET
DRAWING No. 17000-DA005
SHEET 5 OF 5
REVISION 01

ACCESS PLANNING

Access Planning (SA) Pty Ltd
ABN 57 089 702 241
PO Box 39
Plympton SA 5038
Telephone 0418 832 334
dhutchison@accessplanning.com.au
www.accessplanning.com.au

2nd January 2024

Ref: 9597Cnclrept.

The Chief Executive Officer
The Barossa Council
PO Box 867,
Nuriootpa SA 5355

Attention Ms. Janine Lennon

Dear Janine

Re **PROPOSED DAM DUCK PONDS ROAD - PIECE 5 DEPOSITED PLAN 40747 STOCKWELL**

1.0 INTRODUCTION

A development application has been prepared on behalf of the applicant Pinnacle Drinks to construct a new 160 ML storage dam on the subject land.

The subject land is primarily located in the Rural zone, although a small section of the southwestern corner of the land falls with the Resource Extraction zone.

The following Overlays apply to the property.

- Character Preservation District (Not In Township)
- Hazards (Bushfire - Medium Risk)
- Hazards (Flooding - Evidence Required)
- Limited Land Division
- Native Vegetation
- Prescribed Water Resources Area
- Water Resources

A dam is a consent use in both zones but is an envisaged land use in the Rural zone. It is subject to development approval as it involves the construction of a levee bank greater than 3.0 metres in height,

This report outlines the context of the proposed development including background information and project benefits. It also provides the following:

.

- An analysis of the nature of the development
- A description of the subject land and locality.
- A description of the proposed works on the subject land.
- An assessment of the development against the relevant provisions of the Code.

2.0 THE PROPOSED DEVELOPMENT

The dam has been more than adequately described in the submissions prepared by Pinion Advisory which form part of the suite of information and plans lodged in support of the development.

The development can however be summarised as follows:

- Earth wall – Turkey Nest Dam constructed from compacted low permeability material and covered with a plastic liner (HDPE).
- Capacity 160ML
- Maximum wall height 14m.
- Maximum fill height 11m.
- Freeboard 600mm to accommodate a 0.25m wave action (calculated using Hawksley's formula) and 0.15 m rainfall inflow (168 h 1 in 100 ARI as per ANCOLD guidelines).
- Overflow 180mm pipe then by natural flow to Stockwell Creek. Flow rate at 18L per second.
- Sited on an undefined shallow drainage line with water to be retained in the dam.
- Will be filled with non-drinking water supplied by Barossa Limited Infrastructure (BLI). BIL's source water is a blend of stormwater catchment, Murray River water and treated wastewater from the Barossa Council area.
- Water will be supplied to the dam from infrastructure located in Plains Road on the northern side of Stockwell Creek (subject to a separate application).
- A small pump shed is to be located at the base of the dam (subject to a separate application).
- Natural flows from the land to the diverted around the dam by a swale drain to Stockwell Creek, as per the natural flows on the land.

Construction
As evidenced by other dams on nearby properties, the local soil is suitable for dam construction. It has been assumed that no rock will be encountered, and the design of the storage has been completed on this basis. If rock is encountered, it will be removed without blasting. Further geotechnical investigation and selection will minimise permeability of the internal clay liner and confirm slope stability of the embankments.

Topsoil will be stripped and stockpiled within the property. The most suitable topsoil and subsoil material will be used to cover the external batters to protect the constructed clay embankment from erosion and drying/cracking.

All excavated material will need moisture to reach the right condition for compaction. Water will be sourced from nearby resources for construction water. This water will also be available for dust suppression.

The embankments will be constructed by the movement and compaction of material won on site. Some material will be compacted in situ, and some brought from elsewhere on-site.

Care will be taken in design and construction phases to balance cut and fill so there is no need to cart earth to or from site.

Development is proposed over the winter months to minimise the likelihood of dust.

The dam is intended to provide water security for future viticulture development on the subject land.

ACCESS PLANNING

2.1 Project Benefits

Key benefits that will be achieved from the project are:

2.1.1 Economic
- Increase the available storage of irrigation water for future vineyards.
- Nett increase in vineyard production in excess of what could be achieved on the subject land without access to water.
- Facilitate further investment and job creation in viticulture in the region to leverage the established markets of Pinnacle Drinks.

2.2.2 Environmental
- Provide additional storage for and use of recycled water generated in the locality.
- Reduced reliance on River Murray sourced water.
- Prevention of wastewater entering the environment.

2.2.3 Social
- The development is in keeping with the character of the rural area it is located within.
- The site has been selected to minimise visual impact on neighbours or travelling public.
- The site has been selected to maximise the future use of productive land.
- Security of water for and the development of future vineyards will ensure the long-term viability and employment for workers within the wine industry.

3.0 SUBJECT LAND AND LOCALITY

3.1 Subject Land

The subject land is identified in Certificate of Title Volume 5229, Folio 947. It comprises piece 5 of one of 4 pieces of land which together make up all of the land comprised in one allotment as identified in Deposited Plan 40747.

The Certificate of Title is contained attachment 1 to this report.

The land has a frontage to Duck Ponds Road of some 645m, to an un-named and undeveloped road reserve to the east of 313m, to the old rail corridor of some 345m and to the west, to an adjoining property of some 386m, all enclosing an area of approximately 23.5ha.

The subject land is shown in Figure 1 below.

The land is undulating with a general fall to the north with shallow and undefined waterways sited centrally on the land and adjacent to Duck Ponds Road, with a more defined water way cutting across the north-eastern corner of the land, these are identified by the blue lines on the aerial image above.

The land has been cropped in the past and other than a few scattered trees is devoid of native vegetation and structures.

Access to the land is from Duck Ponds Road, a well-maintained gravel road with sufficient width to accommodate two traffic.



Figure 1: The subject land

3.2 The Locality

The wider locality is shown in the Figure 2 below. Much of the land can be similarly described as the subject land, as comprising undulating terrain cut by intermittent waterways and given over to a combination of broadacre farming and horticulture in the nature of vineyards.

Land to the immediate south of the property is located in a Resource Extraction zone, although there is no evidence of the land being mined or quarried at present. This land accommodates a farmhouse and sheds sited adjacent to Duck Ponds Road. There is house also sited on the land to immediate west of the property.

The small township of Stockwell sits some 300m to the west of the subject land and the old rail reserve runs along the eastern margins of the Township, then loops to the east along the southern edge of Stockwell Creek.



Figure 2: The subject land, zoning and locality

5.0 PLANNING ASSESSMENT

The subject land is located within a Rural and Resource Extraction Zone. I have not canvassed the relevant provisions of the latter zone as it applies only to a very small section of the land in the south-western corner of the property (refer zoning information in Figure 2 above).

That said, the relevant provisions for the Resource Extraction Zone provide that land not in use for resource extraction can be used for a range of low-intensity activities that maintain access to future resources. Nominated uses include farming, horse keeping and horticulture. (Resource Extraction Zone PO/ DTS/DPF 1.3). To the extent that is relevant a dam is an ancillary use to each of the three low impact land uses, and, moreover, the proposed dam is located outside of the Resource Extraction Zone.

A dam is a consent use in the Resource Extraction Zone, so the fact that the part of the land falls within this zone does not alter the manner in which the application must be processed.

The land is also subject to assessment against the following overlays.

Character Preservation District - Not In Township
The Character Preservation District Overlay seeks to recognise, protect and enhance the special character of Character Preservation Districts.

Hazards (Bushfire - Medium Risk)
The Hazards (Bushfire - Medium Risk) Overlay seeks to ensure development responds to the medium level of bushfire risk by siting and designing buildings to mitigate threat and

impact of bushfires on life and property and facilitating access for emergency service vehicles.

Hazards (Flooding - Evidence Required)
The Hazards (Flooding - Evidence Required) Overlay adopts a precautionary approach to mitigate potential impacts of potential flood risk through appropriate siting and design of development.

Limited Land Division
The Limited Land Division Overlay seeks to limit fragmentation of land to avoid undermining primary production.

Native Vegetation
The Native Vegetation Overlay seeks to protect, retain and restore areas of native vegetation.

Prescribed Water Resources Area
The Prescribed Water Resources Area Overlay seeks to ensure the sustainable use of water in prescribed water resource areas.

Water Resources
The Water Resources Overlay seeks to protect the quality of surface waters in South Australia.

I have not assessed each of the relevant overlays above and in particular note that the development is not affected by any of the policies in the Bushfire, Limited Land Division and Native Vegetation Overlays.

The relevant Code provisions are reproduced in Attachment 2.

5.1 Rural Zone

In recognising the need for productive rural land to be preserved for a range of primary production activities the Code nominates a dam as an envisaged land (Rural Zone PO/ DTS/DPF 1.1). The dam is intended as a precursor to the future development of the land for horticulture, which is also an envisaged land use, and as such the development accords with the primary intent of the zone.

Access to the land for construction purposes is via Duck Ponds Road, which is a wide, well-maintained, all-weather gravel road used for a wide range of vehicular traffic including heavy commercial vehicles associated with primary production activities undertaken in the area.

Vehicles used for construction purposes will be delivered to the land and will stay on the property until construction is completed, after which they will be removed. Some daily domestic traffic will result from workers attending the site but once completed the development will not require access by heavy vehicles. Vehicle movement required for the development would be similar to the type of traffic that would otherwise be associated with the use of the land for its existing use for cropping, with seasonal access for heavy vehicles (harvesters, tractors, grain trucks and the like). The development thus accords with PO/ DTS/DPF 2.1.

ACCESS PLANNING

5.2 Character Preservation District Overlay

DO 1
Recognise, protect and enhance the special character of Character Preservation Districts.

DO 2
The long term use of land outside of townships for primary production and associated value adding enterprises is assured and promoted.

PO 2.1
Development occurring at the edge of townships is sympathetic to the rural landscape and reinforces a clear transition between townships and rural landscape through measures including:
a) being of a low scale
b) orientating residential development towards the rural area
c) ensuring visual separation from the rural area through landscaping and road reserves.

PO 3.1
Preservation of existing natural features including topography, watercourses and mature trees.

PO 4.1
Excavation and filling of land is limited to that associated with:
b) construction of water storage facilities.

DTS/DPF 4.1
Excavation and/or filling of land is:
a) no greater than 1.5 metres from natural ground level
b) only undertaken in order to reduce the visual impact of buildings or structures or to construct water storage facilities.

Large dams are not a particularly obvious feature of the rural character of the locality although there are numerous small turkey nest dams scattered across the landscape, most of which are similarly sited as the proposed development at the head of shallow valleys rather than across streams. The proposed dam is nestled in a shallow valley with intermittent views across it from a relatively short section of Duck Ponds Road. Views from this vantage point will be largely across the grassed batter slope of the southern face of the dam and the water held in the dam. Views of the dam and in particular the dam wall are also available from Plains Road, which is a dead-end road terminating some 300m to the north-west of the dam. Views from this vantage point will be of the grassed earthen wall of the dam, which will blend into the background of the rising land either side of the dam. The dam is otherwise reasonably well hidden from view by the undulating topography of the land in the locality.

It is noted that the extent to the earth wall will involve excavation and filling well in excess of 1.5m. I do not consider that to be unusual for the construction of even a small dam in the locality and consider the restriction on excavation and filling is more applicable to the siting of buildings and structures than to features such as dams.

5.3 Hazards (Flooding - Evidence Required) Overlay

DO 1 Development adopts a precautionary approach to mitigate potential impacts on people, property, infrastructure and the environment from potential flood risk through the appropriate siting and design of development.

A detailed flood hazard assessment of the dam has been undertaken and forms part of the application documents. The assessment is based on a worst-case scenario involving a full dam and catastrophic failure of the northern wall of the dam releasing high volumes of water over a short period of time, with the majority of water in dam lost in the first 30 minutes of a breach (refer Figure 2 in the Dam Assessment report). The report assigns a significant risk downstream in the event of a catastrophic failure of the dam walls.

Clearly it is in the interest of the applicant to ensure that the dam is maintained to a proper extent to ensure that failure of the walls does not occur. To this end, and to minimise the likelihood of dam wall failure there will be an emergency release valve on the outlet pipe of the dam. This will have the ability to release water at a controlled rate in the case of the dam needing to be emptied rapidly to prevent a wall failure.

The dam will be offline with a piped inlet from the BIL supply which will control the rate at which the dam is filled. The inlet will be valved to enable isolation when the dam is full. The dam is designed with a 0.6m freeboard which accommodates a 0.25m wave action and 0.15 m rainfall inflow (168 h 1 in 100 ARI as per ANCOLD guidelines). The 180 mm overflow pipe is designed to accommodate unabated inflow at 18 L/s (with no pumped outflow).

Proper maintenance of the dam is essential to ensure its continued effectiveness and safety and to this end regular monthly inspections are proposed and any required repairs, and upgrades will be undertaken by the applicant to ensure the integrity of the dam walls.

Further, the risk is also minimised by the fact that the dam has a limited upstream catchment and is primarily filled by pumped water, as such high-volume storm events are unlikely to contribute to high water input into the dam that might then contribute to failure of the dam walls.

It has been recommended that an Operations, Maintenance and Surveillance (OMS) Manual be prepared in accordance with ANCOLD, 2003 prior to the dam being commissioned. The manual should include but not necessarily be limited to the following:

- Design intent
- Operations and inspections
- Water management procedures
- Criteria of mechanical and electrical works
- Dam surveillance
- Maintenance and on-going works

Operational Management Plans with the OMS document should specifically highlight all designer requirements for operation and response actions which must be met to ensure the ongoing safety of the dam.

5.4 Prescribed Water Resources Area and Water Resources Overlays

Prescribed Water Resources Area Overlay
DO 1
Sustainable water use in prescribed water resources areas maintains the health and natural flow paths of surface water, watercourses and wells.

PO 1.2
Development comprising the erection, construction, modification, enlargement or removal of a dam, wall or other structure that will collect or divert surface water flowing over land is undertaken in a manner that maintains the quality and quantity of flows required to meet the needs of the environment as well as downstream users.

Water Resources Overlay
DO 1
Protection of the quality of surface waters considering adverse water quality impacts associated with projected reductions in rainfall and warmer air temperatures as a result of climate change.

DO 2
Maintain the conveyance function and natural flow paths of watercourses to assist in the management of flood waters and stormwater runoff.

PO 1.9
Dams, water tanks and diversion drains are located and constructed to maintain the quality and quantity of flows required to meet environmental and downstream needs.

(see also General development Policies, Design PO 5.1)

The proposed dam is predominantly a storage dam for water sourced outside of the local environment. It impacts only a very small catchment and is sited in a shallow valley with no discernible water course. A shallow swale is proposed on the eastern side of the dam to divert local flows from the land to the east of the dam to Stockwell Creek. Only very limited amounts of run-off from within the land will be collected in the dam and as such its impact on downstream flows is thus likley to be minimal.

Water quality is maintained by BIL with the water being tested on a regular basis to ensure its suitability for a range of uses. As a pumped storage with very limited natural inflow, water levels can be maintained to ensure that water is not disposed of outside of the dam, although even if, in the rare event water escapes into the natural environment, the quality of water is suitable for disposal into Stockwell Creek.

5.5 General Development Policies

Interface between Land Uses
DO 1
Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.

As noted above the proposed use is a benign development with limited visual impact on adjoining land uses, noting in particular the location of the dwelling on the adjoining land to immediate south of the subject land. It is a use that will co-exist with the potential for land to the south to be used for extractive Industry purposes, it produces no noise or ongoing traffic impacts aside from those that will occur during construction.

6.0 CONCLUSION

The proposed development to build a 160ML storage dam for the supply of water for the future development of viticulture on the subject land will have a minimal impact on the natural features of the land and sites easily within the rolling hills of the locality.

The foregoing assessment against the relevant provisions of the SA Planning and Design Code identifies the development as an envisaged use in the Rural Zone and a use entirely suitable to and appropriately sited on the subject land. I have concluded from the assessment that the development is not seriously at variance with, and in fact is substantially in accordance with the relevant provisions of the Code and as such warrants the favourable consideration of the Development Assessment Panel.

Should you require further information please contact me on 0418832334 or by email and dhutchison@accessplanning.com.au.

Yours sincerely



David Hutchison BA, Grad Dip, PIA, CPP
Access Planning (SA) Pty Ltd

Attachment 1
Certificate of Title

LAND SERVICES SA

Product	Register Search (CT 5229/947)
Date/Time	06/11/2023 12:53PM
Customer Reference	
Order ID	20231106005112

REAL PROPERTY ACT, 1886 South Australia

The Registrar-General certifies that this Title Register Search displays the records maintained in the Register Book and other notations at the time of searching.

REGISTRAR - GENERAL SOUTH AUSTRALIA

Certificate of Title - Volume 5229 Folio 947

Parent Title(s)	CT 2707/4, CT 4140/630, CT 4140/631				
Creating Dealing(s)	RTD 7772295				
Title Issued	24/11/1994	**Edition**	5	**Edition Issued**	11/09/2013

Estate Type

FEE SIMPLE

Registered Proprietor

DORRIEN ESTATE WINERY PTY. LTD. (ACN: 003 775 139)
OF PO BOX 442 TANUNDA SA 5352

Description of Land

ALLOTMENT COMPRISING PIECES 4, 5, 8 AND 14 DEPOSITED PLAN 40747
IN THE AREA NAMED STOCKWELL
HUNDREDS OF BELVIDERE AND MOOROOROO

Easements

NIL

Schedule of Dealings

NIL

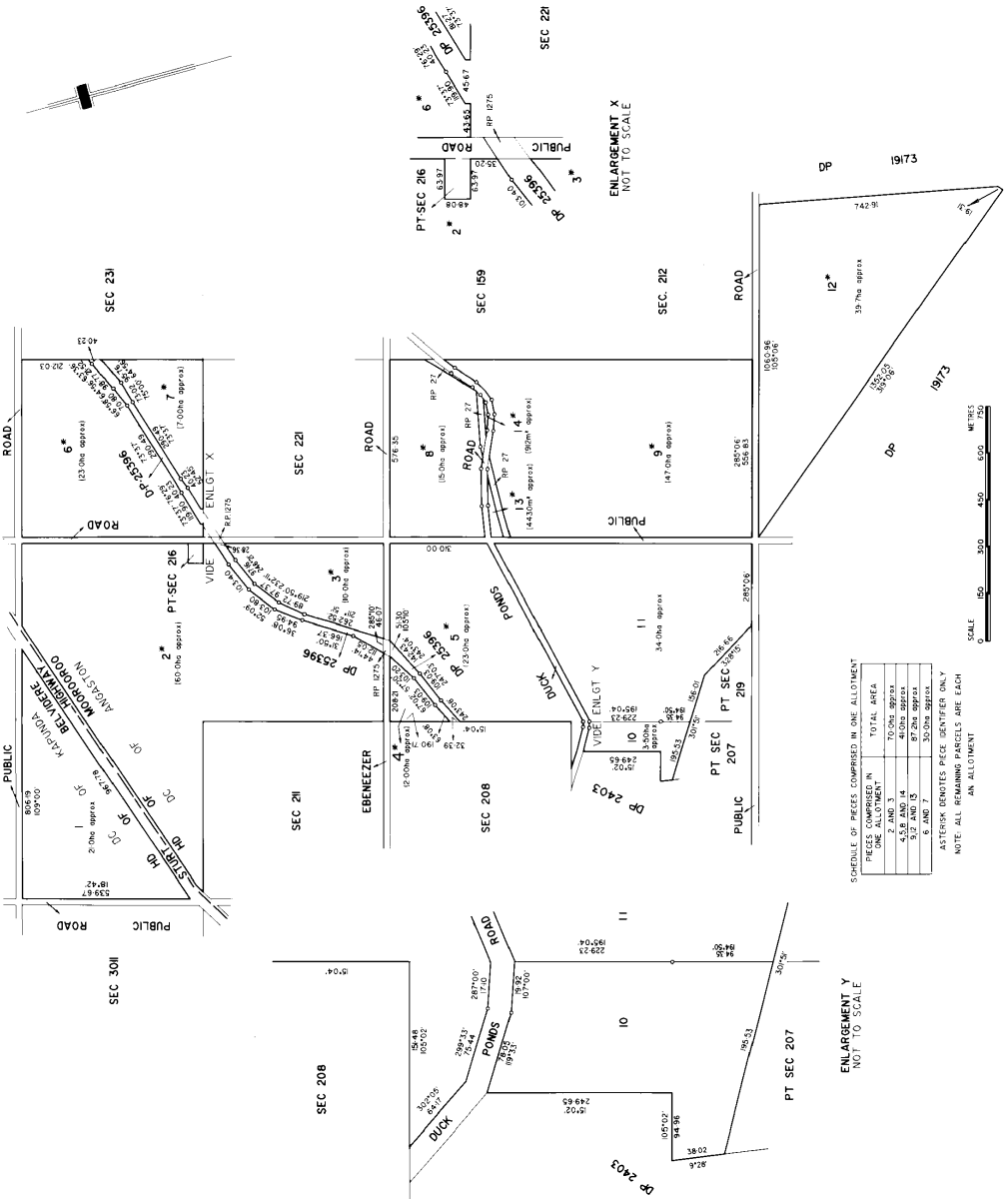
Notations

Dealings Affecting Title	NIL
Priority Notices	NIL
Notations on Plan	NIL
Registrar-General's Notes	NIL
Administrative Interests	NIL

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PINNACLE DRINKS

OLD SALEM DAM

November 2023

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Document status

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Glossaries

The following glossaries contain definitions for some technical terms found in this report.

Glossary of terms related to consequence category assessment.

Term	Definition
Competence class	In undertaking Consequence Category Assessments for dams, the Water Management (Safety of Dams) Regulations 2015 specify the competence class required by a person. Competence class is either Class 3, Class 2, Class 1, Expert Team, or unclassified.
Flood assessment (initial-level and comprehensive-level)	Analysis of the physical impact of a flood. Level of detail can be **initial**, which implies use of general assumptions to estimate impacted area, depth, and duration as according to guidelines. Level of detail can be **comprehensive,** which implies that a hydraulic modelling software is used to simulate floodwaters and produce flood maps.
Sunny-day failure	A flood assessment which assumes that dam failure is caused by conditions unrelated to heavy rainfall. Further explanation is provided in section 2.3.3.
Rainy-day failure	A flood assessment which assumes that dam failure is caused by conditions related to heavy rainfall and natural flooding. Further explanation is provided in section 2.3.3.
Population at risk (PAR)	The number of people considered to be on location of an impacted site. This number assumes that no action is taken to evacuate.
Potential for loss-of-life (PLL)	Product of PAR and how hazardous an impact is at a particular site. Represents the expected number of deaths calculated through a probability analysis. Factors such as water hazard, warning time, and evacuation efforts are included.
Total PAR/PLL	Combined total of weighted PAR/PLL from all locations impacted by an event such as a dam failure.
Incremental PAR/PLL	Total PAR/PLL caused by dam failure alone; total PAR/PLL minus natural flooding PAR/PLL. Incremental PAR/PLL is a key factor which is used to determine a dam consequence category. In many dam failure scenarios (sunny-day failures) incremental PAR/PLL will equal total PAR/PLL.
Damage severity	Categorisation of damage severity of a dam failure in terms of financial, business, environmental and social impacts. Categories and their qualifiers are defined in ANCOLD guidelines.
Consequence category (CONCAT)	A hazard classification assigned to dams in Australia which describes the expected negative results of a reasonable worse-case dam breach. Does not consider the precise likelihood of such a breach nor the structural integrity of the dam.

Glossary of terms relating to 2D hydraulic modelling.

Term	Definition
2D hydraulic model	A model which allows for water to travel in any direction over a surface rather than just through a predefined channel/path.
Catchment	Area of land surfaces on which rainfall lands on and contributes runoff to a discharge point or stream.
Computational cell	In 2D hydraulic modelling, is the finite element within a larger hydraulic mesh. Boundary elevations are used to calculate flow between neighbouring cells.
Courant	In 2D hydraulic modelling, is a number that refers to the ratio of water velocity to cell size. A courant number of 1 should not be exceeded in most cases to ensure model accuracy.
Digital elevation model (DEM)	A software file which contains detailed elevation data, similar to satellite imagery except where each pixel refers to the elevation of that point.
Equation sets	Sets of equations used in 2D hydraulic modelling. Some sets (SWE-ELM) take momentum into account but take a long time to simulate. Other sets (diffusion wave) disregard momentum to speed up simulation times. The high velocities and surges associated with dam failure models require momentum equations for accurate results.
GPS RTK	Global positioning system using real-time kinematics: a type of GPS technology that uses live correction data to obtain a position as accurate as within 10 mm, typically within 50mm.
Manning's *n*	A roughness coefficient used in hydraulic calculations which represents the friction applied on water flow by a particular surface. Lower values refer to less resistant surface types which allow for less restricted and faster flowrates.
Normal depth	In a shallow sloping channel, is the depth at which a particular flowrate will naturally tend to flow at depending on the slope of the channel bed (denoted by S).
ML	Megalitre; equal to 1 million litres or 1000 cubic metres.

Executive summary

At the request of PINNACLE DRINKS, Pinion Advisory has conducted a dam consequence category assessment for a proposed earth wall irrigation dam named 'Old Salem', located on Duck Ponds Rd, Stockwell.

The purpose of a dam consequence category assessment is to assess and categorise the estimated damages and loss of life in the event of a dam breach. This assessment does not assess the structural integrity of the dam nor the likelihood of a failure. This assessment aligns with ANCOLD guidelines and has been implemented in various states. Given the proximity of Old Salem dam to Stockwell township, it's crucial to comprehend the associated risks. National and state standards have been consistently applied in this evaluation, with reference to ANCOLD as appropriate.

The consequence category for Old Salem dam was calculated using a comprehensive-level flood assessment using HEC-RAS hydraulic modelling software to understand the impacts most precisely at downstream locations. Both a PAR (population at risk) and a PLL (potential for loss-of-life) assessment was performed to thoroughly assess the consequence category. This report outlines the procedure and detailed results obtained by modelling a reasonable worst case dam failure scenario. Results will include a calculated PAR, a calculated PLL, an estimated severity of damages.

Through both a PAR assessment and a PLL assessment, the proposed ANCOLD consequence category of Old Salem Dam is **SIGNIFICANT**. Which has been determined by the PAR assessment.

This document should be read in conjunction with the development application for Old Salem Dam.

1 Old Salem Dam location and details

1.1 Location and downstream sites

Old Salem Dam has a proposed FSL capacity of 160 ML and at Duck Ponds Rd, Stockwell. Sites downstream of wall include:

- Dock Ponds Road
- Stockwell Hotel
- Stockwell Road
- Sturt Highway

Site visit photos taken at the dam and downstream sites are attached as **Appendix A**.



Figure 1: Old Salem Dam location

1.2 Dam details

General pertinent design details for Old Salem dam are listed in Table 1.

Table 1: Old Salem Dam pertinent details

Feature	Proposed dam details
Name	Old Salem
Location	E 321962, N 6187960
Dam type	Earth wall
Proposed Construction date	Winter 2024
Maximum wall height	14 m
Dam crest elevation	341.2
Full-supply level (FSL)	340.6
Overflow pipe size	180 mm
Total freeboard	0.6 m
Total capacity	160 ML
Dam crest length	640 m
Dam crest width	5 m
dam wall batters	3H:1V
Storage area	2.5 km^2

2 Comprehensive dam-break modelling

A 2-dimensional hydraulic modelling software named HEC-RAS (version 6.4.1), was used to simulate the flooding impacts of a dam failure.

2.1 Input data

The model incorporated data as outlined in Table 2.

Table 2: HEC-RAS 2D model data

Data	Purpose	Source
Digital elevation model (DEM)	Hydraulic model terrain with 0.5 m resolution.	*Geoscience Australia* 2018 LiDAR obtained from *Elvis*[1].
GPS-RTK survey data	Verify DEM offset and specific features.	Site visit on 17 October 2023.
Global Manning's coefficient of $n = 0.005$	Roughness coefficient for typical terrain (grass and light vegetation)	-
Dam stage-storage curve	Impacts the hydrograph of the dam breach	Estimated from dam model in CAD.

2.2 Limitations and assumptions

The following limitations exist in 2D hydraulic modelling in HEC-RAS:

- Infiltration of floodwater into the ground is not modelled effectively allowing floodwaters to continue flowing downstream indefinitely. This mimics a fully saturated floodplain prior to the dam break occurring.
- Culverts must be manually included in the model from survey data. Many culverts have no significant impact on peak floodwater levels and often get blocked from debris. Culverts less than 800 mm in diameter are ignored and assumed blocked.
- Water body water elevations are recorded as ground elevation in digital elevation, inaccurately under-representing the depths of drains and rivers.
- Dam breach size progression is estimated using an empirical formula.
- Temporal inaccuracies can exist in digital elevation (such as road crest elevations that have changes since road works). Significant features are verified during survey when possible.

[1] Elevation and Depth – Foundation Spatial Data: https://elevation.fsdf.org.au/

2.3 Model failure scenario

A reasonable worst-case break scenario was established as the dam failure model initiation point. A worst-case scenario consists of the maximum dam volume (spilling volume), most hazardous failure mode, and most damaging breach site.

2.3.1 Initial reservoir volume

Modelling was carried out on a full storage, with total volume of 160 ML.

2.3.2 Breach site

Only the northern and southern walls were modelled in response to the topography of the proposed site. The northern and southern walls will be constructed using fill, while the eastern and western walls will utilize the natural valley of the site. The northern wall will have piping within the embankment, making it more likely for breaching.

2.3.3 Failure mode

The following table describes the failure mode.

Table 3: Failure mode

	Failure
Failure mechanism	Piping (wall leak expelling material)
Risk factors	Faulty earth wall design or construction; high soil permeability/hydraulic gradient. Can also be caused by earthquake.
Spontaneity	Anytime. Can occur spontaneously without being detected.
Risk impact	Smaller flood volumes. Flooding occurs spontaneously with minimal warning.

2.4 Hydraulic model run parameters.

Model run parameters adopted for the HEC-RAS project are outlined in Table 4.

Table 4: HEC-RAS model parameters.

Parameter	Adopted value
Model duration	180 mins
Modelled length	2km
Nominal computation cell size	4.0m
Default manning's coefficient	0.035
Adaptive time-step	10sec
Equation set	SWE-ELM
Breach parameter calculator	Froehlich (2008)[2]
Failure method	Piping for both walls
Initial dam stage	341.2 m AHD
Initial dam volume	160 ML
Breach final bottom width[2]	8 m
Breach side slopes[2]	0.7
Breach formation time[2]	16.8 mins
Breach formation progression	Half-sinewave
Breach weir coefficient	1.44

[2] Froehlich, David. (2008). Embankment Dam Breach Parameters and Their Uncertainties. Journal of Hydraulic Engineering-ASCE - J HYDRAUL ENG-ASCE. 134. 10.1061/(ASCE)0733-9429(2008)134:12(1708).

3 Comprehensive model results

A series of model iterations to improve accuracy and test sensitivity eventually resulted in a final flood model to be used as the comprehensive flood model for hazard assessment.

3.1 Dam breach hydrograph

Using the dam breach parameters obtained from the 'Froehlich (2008)' parameter calculator, the modelled dam presented a breach hydrograph as shown in Figure 2. Peak flow reaches 132m³/s at approximately 15 minutes after breach progression begins.

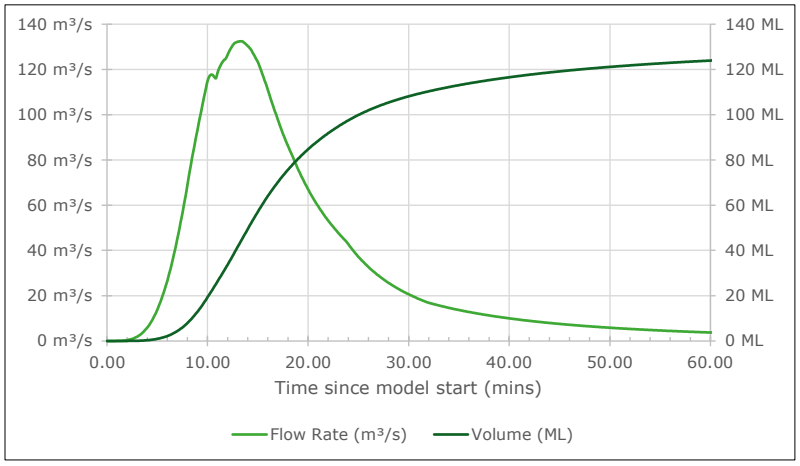


Figure 2: Dam break hydrograph-Southern Wall

It should be noted that this hydrograph is highly dependent on the nature of the breach and the stage of the reservoir at the time. Such parameters are highly variable and impossible to predict. The breach progression parameters produced using the 'Froehlich (2008)' parameter calculator are an estimation based on a large meta-analysis of 74 historical earth wall dam breaches.

3.2 Mapping results

From the inputs and setup described previously, HEC-RAS produced flood maps for the modelled dam breach. These flood maps are considered comprehensive flood maps as they show the water depth, velocity, and depth×velocity (hazard product) at all locations. A flood map is stored for every 10 seconds of simulation time, however additional flood maps can be generated which represent the maximum occurring flood statistics within the inundation area. These 'maximum' flood maps are not a snapshot of the flood at a point in time, but instead show the maximum impact of the flood at all locations regardless of when these impacts occur.

A complete map showing maximum depth is attached to this report as **Appendix C**.

3.3 Flood hazard mapping

The combination of the maximum depth, maximum velocity, and maximum hazard product flood maps is utilised to measure the approximate level of hazard impacted upon areas within the inundation zone. The key in the following diagram is used as a guide to help discern whether the level of impact is significant enough to include or exclude a potential PAR. This is done by classifying present peak flooding into one of six categories: H1 to H6.

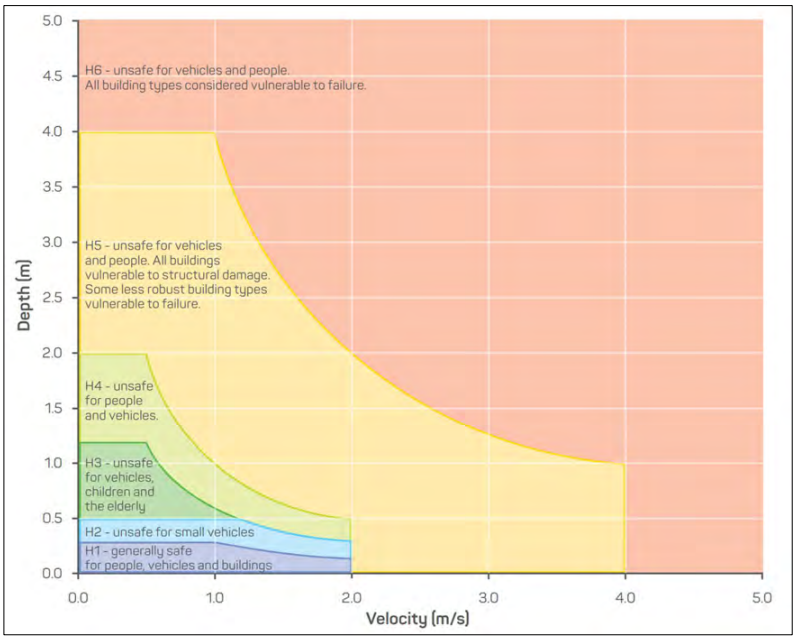


Figure 3: General flood hazard vulnerability curves[3]

Extra consideration to line of sight and local risks is used to determine when H1 and H2 may still pose a hazard to traffic in scenarios where vehicles may aquaplane on shallow water depths. A complete map showing maximum depth is attached to this report as **Appendix D**.

[3] Australian Disaster Resilience Guideline 7-3: Flood Hazard (AIDR 2017).

4 Hazard assessment

This section provides details for the identification of hazard sites, and calculation of population at risk and potential loss-of-life estimates.

4.1 Hazard site identification

Hazard mapping was used to identify non-excludable sites as contributions to PAR. This was done by comparing the hazard category of the site with the expected type of population (i.e., general population pedestrians, able-bodied adult pedestrians, vehicles). Floods on roads where vehicles are likely to hit shallow water at significant speed are still considered an aquaplaning hazard even if they don't qualify as a vehicle instability hazard. The identified hazard sites are given below.

Table 5: Hazard identification

Site	Population type	Hazard level	Included
Duck Ponds Road	General vehicles	H3	Yes
Stockwell Road	General vehicles	H5	Yes
Stockwell Hotel	General pedestrians	H1	No
20-22 Stockwell Road	General pedestrians	H2	No
2-15 Duck Ponds Road	General pedestrians	H1	No
2,4 Queen Street	General pedestrians	H1	No
2-7,9,11 King Street	General pedestrians	H1	No
1-11 Stockwell Road	General pedestrians	H1	No

4.2 Methods for assigning PAR and PLL

Methods endorsed by ANCOLD are utilised to provide consistent and best estimates for both PAR and PLL at populated hazard sites.

4.2.1 PAR and PLL at roads

For public roads with vehicular traffic, the *Flooded Cars*[4] method developed by J. Campbell et. al. is implemented using a consistent and repeatable approach. The *Flooded Cars* assessment is supplemented with road traffic statistics, a sight distance survey, and a calculation of emergency stopping distance[5] to estimate both a PAR and PLL for the road site. ANCOLD specifies the *Flooded Cars* assessment to determine this risk, this assessment is a probability analysis based on historical data.

4.3 Site PARs and PLLs

Summaries of the PAR and PLL assessments for each included hazard sites.

4.3.1 Duck Ponds Road, Stockwell Road

No direct data was available for calculating the AADT of Roads, conservative high estimation of 4000 AADT was used. A *Flooded Cars* assessment was conducted to calculate PAR and PLL and is attached as **Appendix E**.

4.4 Site inundation and hazard statistics summary

From the Flooded Car assessment, a total PAR and PLL for all sites combined is provided below.

Table 6: Total PAR and PLL

Site	PAR	PLL
Duck Ponds Road	0.9	0.007
Stockwell Road	0.4	0.002
Total	**1.3**	**0.009**

[4] J. Campbell, G. Parker, P. Southcott, M. Wallis (2013). *Flooded cars: Estimating the consequences to itinerants exposed to dambreak floods on roads*. ANCOLD.
[5] AustRoads (2021). *Guide to Road Design Part 3: Geometric Design, Ch. 5.3 Stopping Sight Distance (SSD).* AustRoads.

5 Severity of damage and loss

The severity of damages and losses are based on categories defined in ANCOLD's *Guidelines on the Consequence Categories for Dams*. Each sub-category has definition of damage severity which range from minor to catastrophic. The final damage severity of the dam failure is the rating given to the single highest rated sub-category. In most cases, the qualifier for damage severity is clear. However, in disputable cases, reasonable and safe assumptions have been made in the process of assigning damage severity levels.

For this assessment, the highest specified damaged severity level across all categories was determined to be **MEDIUM**.

5.1 Total infrastructure cost

Infrastructure damage was determined to have severity level of **MINOR**, with infrastructure costs considered less than $10 million to replace.

Table 7: Infrastructure damage costs ANCOLD severity level

Impact Type	Qualifier	Severity Level
Total infrastructure costs	*< $10M*	**MINOR**

5.2 Impact on dam owners' business

For the impact on the dam's owner's business, the maximum severity level was **MEDIUM.**

Table 8: Impact on dam owners' business ANCOLD severity levels

Impact Type	Qualifier	Severity Level
Importance to the business	*Restrictions needed during peak days and peak hours*	**MEDIUM**
Effects on owner's services	*Reduced services are possible with reasonable restrictions*	**MEDIUM**
Effect on continuing credibility	*Severe widespread reaction*	**MEDIUM**
Community and political reaction	*Severe widespread reaction*	**MEDIUM**
Impact on financial viability	*Able to absorb in 1 financial year*	**MINOR**
Value of water in storage	*Can be absorbed in 1 financial year*	**MINOR**

5.3 Health and social impact

For health and social impact, the maximum severity level was **MINOR.**

Table 9: Health and social impact ANCOLD severity levels

Impact Type	Qualifier	Severity Level
Human health	*< 100 people affected*	**MINOR**
Loss of community services	*< 100 people affected*	**MINOR**
Cost of emergency management	*< 1000 person-days*	**MINOR**
Dislocation of people	*< 100 people affected*	**MINOR**
Dislocation of businesses	*Able to absorb in 1 financial year*	**MINOR**
Employment affected	*< 100 jobs lost*	**MINOR**
Loss of heritage	*Local facility*	**MINOR**
Loss of recreation facility	*Local facility*	**MINOR**

5.4 Environmental impact

For environmental impact, the maximum severity level was **MEDIUM.**

Table 10: Environmental impact ANCOLD severity levels

Impact Type	Qualifier	Severity Level
Area of impact	*< 1km²*	**MINOR**
Duration of impact	*< 1 year*	**MINOR**
Stock and fauna	*Discharge would contaminate water supplies used by stock and fauna. Health impacts not expected.*	**MEDIUM**
Ecosystems	*Discharge would have short term impacts on ecosystems with natural recovery expected after one wet season. Remediation possible.*	**MEDIUM**
Rare and endangered species	*Species exist but minimal damage expected. Recovery within one year.*	**MINOR**

6 ANCOLD consequence category assessment

A consequence category assessment has been undertaken in accordance with these national and state standards:

- *Guidelines on the Consequence Categories for Dams*. ANCOLD, October 2012.

Given that the flood assessment is comprehensive level, the ANCOLD consequence category can be calculated using the PAR or PLL method.

6.1 Downstream CONCAT assessment

Downstream dams which would potentially be subject to a cascade failure limit the minimum consequence category determination. As this dam is an offline turkey's nest dam there exists no dam downstream which would be considered a cascade failure risk. Therefore, this failure mode has been excluded from this assessment.

6.2 PAR CONCAT assessment

Based on a total incremental PAR of 1.3, and a 'MEDIUM' severity of damage and loss, ANCOLD proposes a Consequence Category of **SIGNIFICANT** for Old Salem Dam.

Table 11: Old Salem Dam consequence category based on PAR.

Population at Risk	Severity of Damage and Loss			
	Minor	Medium	Major	Catastrophic
<1	Very Low	Low	Significant	High C
≥1 to ≤10	Significant	Significant	High C	High B
>10 to ≤100	High C	High C	High B	High A
>100 to ≤1000		High B	High A	Extreme
>1000			Extreme	Extreme

6.3 PLL CONCAT assessment

Based on a total incremental PLL of 0.009, and a 'MEDIUM' severity of damage and loss, ANCOLD proposes a Consequence Category of LOW for Old Salem Dam.

Table 12: Old Salem Dam consequence category based on PLL.

Potential Loss-of-Life	Severity of Damage and Loss			
	Minor	Medium	Major	Catastrophic
<0.1	Very Low	Low	Significant	High C
≥0.1 to ≤1	Significant	Significant	High C	High B
>1 to ≤5		High C	High B	High A
>5 to ≤50		High A	High A	Extreme
>50			Extreme	Extreme

6.4 Final assignment and justification

Through both a PAR assessment and a PLL assessment, the proposed ANCOLD consequence category of Old Salem Dam is **SIGNIFICANT.**

6.5 Summary of results

The summary of results for the ANCOLD consequence category assessment of Old Salem Dam.

Table 13: Summary of Old Salem Dam consequence category assessment results.

Assessment criteria	Old Salem Dam
Damage severity level	MEDIUM
Total incremental PAR	1.3
Total incremental PLL	0.009
PAR assessment CONCAT	SIGNIFICANT
PLL assessment CONCAT	LOW
Downstream assessment CONCAT	None
Assessment nominated	PAR

APPENDIX A. SITE PHOTOS



Figure A- 1: Northern wall of Old Salem dam



Figure A- 2: Culvert under discontinued railway connecting to northern watercourse



Figure A- 3: Northern wall flow path towards Stockwell



Figure A- 4: View of proposed Old Salem dam from Plains Rd



Figure A- 5: Proposed Old Salem dam site view towards Duck Ponds Rd



Figure A- 6: Stormwater culvert under Stockwell Rd.



Figure A- 7: Culvert directing flow from Ducks Ponds Rd to watercourse

APPENDIX B. OVERFLOW DESIGN

Old Salem is a proposed earth-fill turkey's nest dam with a controlled fill from BIL's water network. To reduce the risk of overtopping the dam, a piped overflow has been design. To ensure the overflow and freeboard (height between full water level and crest of dam) is sized sufficiently, a combination of wave height, flooding from rainfall and 'uncontrolled' fill into the dam were assessed.

WAVE HEIGHT

To ensure the freeboard is adequately sized for wave action caused by prevailing winds, the wave height can be calculated by Hawksley's formula:

$$H = 0.0138(F)^{0.5}$$

Where the H is wave height measured in meters and F is the fetch distance over the longest exposed water surface. The minimum depth for wave action is 0.25m.

RAINFALL

To estimate the amount of water that open storage can flood from rainfall, as per ANCOLD guidelines an average rainfall intensity of 1% AEP and a duration equivalent to a 168-hour (week-long) rainfall event was assessed. This information was sourced from SILO- Long Paddock as the closest available data for Stockwell.

'UNCONTROLLED' FILL

Due to filling regime and on-going visual checks and routine maintenance around the dam, it's unlikely that the in-fill will go unchecked longer than a week. Therefore, the volume will be accumulated by a peak day fill over a week.

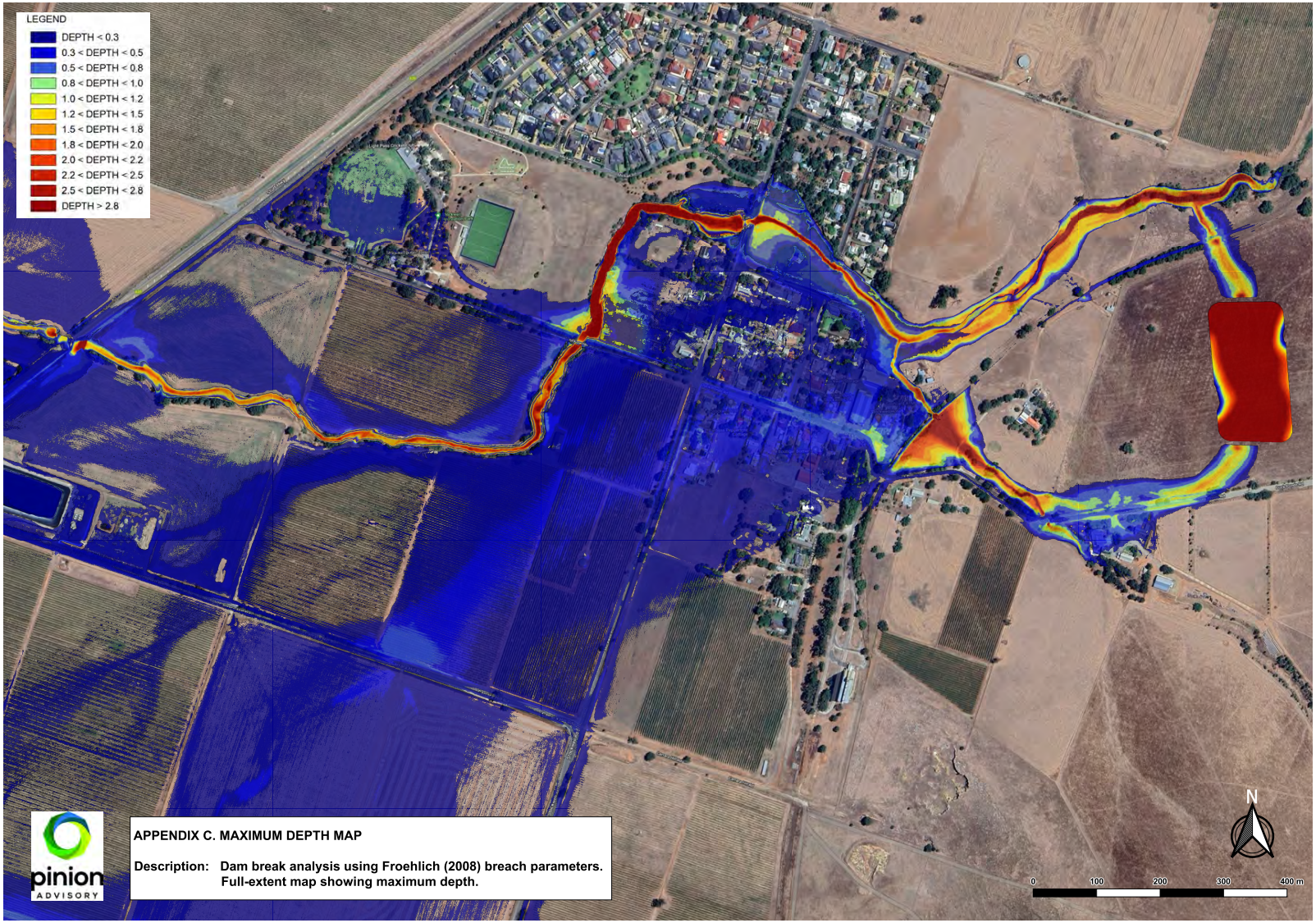
Table 14: Overflow parameters

Item	Old Salem Dam	Volume
Hawksley's wave height	0.25 m	-
Rainfall 1% AEP event 168 hrs	0.15 m	3.3 ML
'Uncontrolled' fill @ 1 ML/day	0.274 m	7.0 ML
Total	0.674 m	10.8 ML

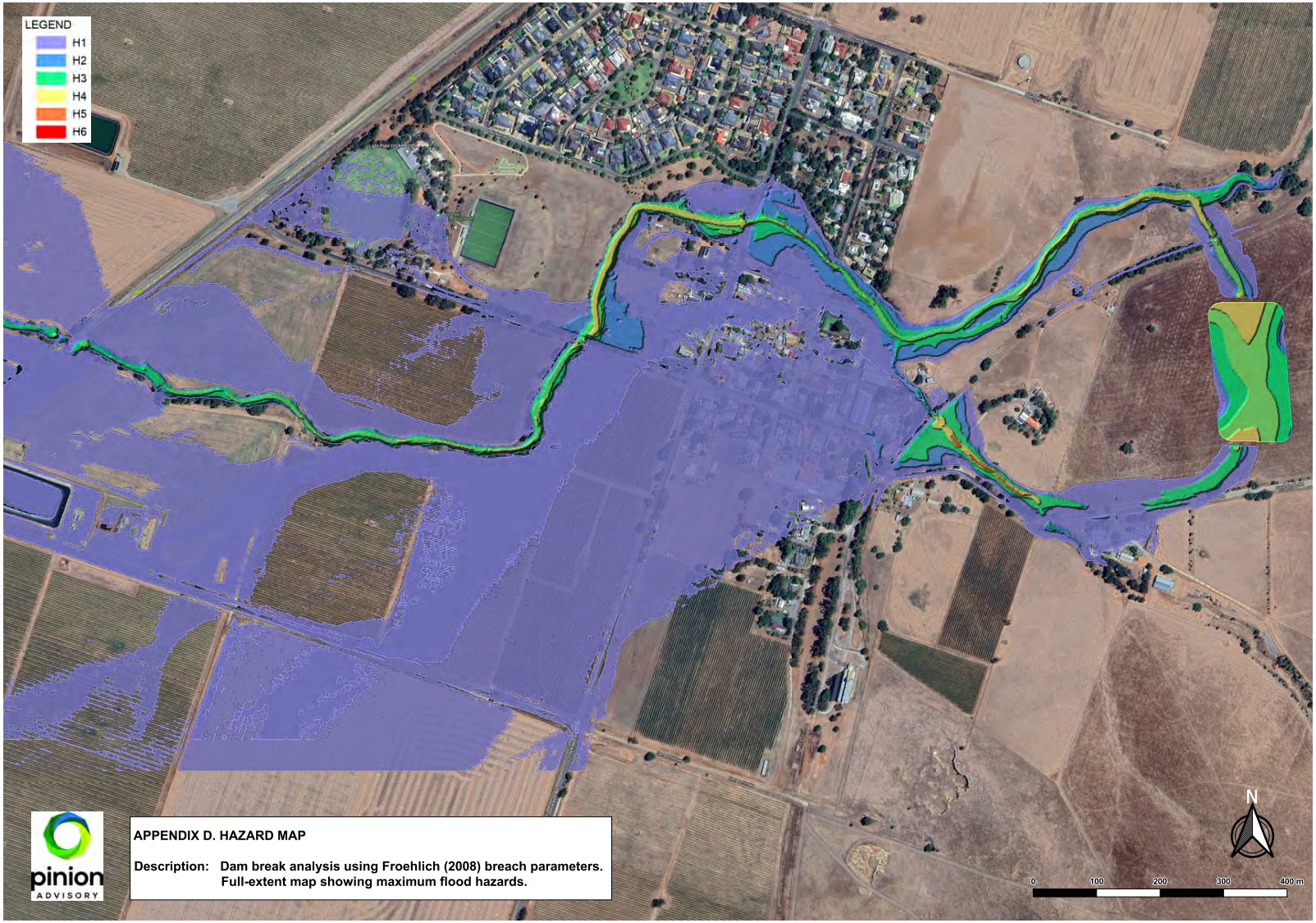
The resultant wave height is less than the proposed 0.6 m freeboard, so there will be no overtopping due to wave action. Plastic (HDPE) liner will be installed which will protect the embankments from erosion.

An outflow of 17.9 L/s over the week is needed to drain the 'uncontrolled' fill and rainfall to full water level. A 180 mm diameter vertical outlet with an operating hydraulic head of 120 mm (required water above drain to maintain full flow) has been implemented within the design.

APPENDIX C. MAXIMUM-DEPTH MAP


LEGEND
DEPTH < 0.3
0.3 < DEPTH < 0.5
0.5 < DEPTH < 0.8
0.8 < DEPTH < 1.0
1.0 < DEPTH < 1.2
1.2 < DEPTH < 1.5
1.5 < DEPTH < 1.8
1.8 < DEPTH < 2.0
2.0 < DEPTH < 2.2
2.2 < DEPTH < 2.5
2.5 < DEPTH < 2.8
DEPTH > 2.8
pinion
ADVISORY
APPENDIX C. MAXIMUM DEPTH MAP
Description: Dam break analysis using Froehlich (2008) breach parameters.
Full-extent map showing maximum depth.
N
0
100
200
300
400 m

APPENDIX D. HAZARD MAP


LEGEND
H1
H2
H3
H4
H5
H6
APPENDIX D. HAZARD MAP
Description: Dam break analysis using Froehlich (2008) breach parameters.
Full-extent map showing maximum flood hazards.
pinion
ADVISORY
N
0
100
200
300
400 m

APPENDIX E. FLOODED CARS ASSESSMENT

Project: Old Salem Dam

Road: Stockwell Road

Date: 02/10/2023

Table A1: Inundation statistics

Parameter	Combined	North	South
Length of Road Hazard	100 m	100 m	100 m
Duration of Hazard (T_I)	*15 mins*	15 mins	15 mins
Maximum Depth	3.00 m	-	-
Maximum Water Velocity	4.0 m/s	-	-
Maximum Depth-Velocity Product	5.00 m²/s	-	-
Damage to Road (Significant damage only)	Road surface		

Table A2: Traffic statistics

Parameter	Combined	North	South
Lane Traffic Distribution - Business Hours (8am-6pm)	-	50%	*50%*
Lane Traffic Distribution - After-hours (6pm - 8am)	-	50%	*50%*
Heavy Vehicle % - Business hours	-	10.0%	10.0%
Average annual daily traffic (AADT)	4000	*2000*	*2000*
Number of vehicles (N_v) - Business hours	*3200*	*1600*	*1600*
Number of vehicles (N_v) - After-hours	*800*	*400*	*400*
N_v/hr - Business hours	*320.0*	*160.0*	*160.0*
N_v/hr - After-hours	*57.1*	*28.6*	*28.6*
Effective AADT - Business hours	*7680*	*3840*	*3840*
Effective AADT - After-hours	*1371*	*686*	*686*
Vehicle Speed	-	80 km/h	80 km/h
People per Vehicle	*1.5*	*1.5*	*1.5*
Inundation Transit Time (T_v)	*4.50 secs*	*4.50 secs*	*4.50 secs*
Scenario A temporal probaility ($P_{T:S-A}$) - Business hours	*0.40*	*0.20*	*0.20*
Scenario A temporal probaility ($P_{T:S-A}$) - After-hours	*0.07*	*0.04*	*0.04*
Traffic volume ID for $P_{T:S}$ contributions - Business hours	*2*	*2*	*2*
Traffic volume ID for $P_{T:S}$ contributions - After-hours	*2*	*3*	*3*
Traffic volume classification - Business hours	*Moderate*	*Moderate*	*Moderate*
Traffic volume classification - After-hours	*Moderate*	*Low*	*Low*
Use combined traffic volume ID?	TRUE		

Table A3: 'Flooded Cars' scenarios and risk contributions for traffic volumes

Traffic volume classification	Scenario A Vehicles present when the flood arrives	Scenario B Vehicles driving into the flooded area	Scenario C Vehicles driving over the damaged road after flooding
High Traffic Volume $P_{T:S-A} \geq 0.5$	***High contribution*** Use calculated $P_{T:S-A}$	***High contribution*** $P_{T:S-B} = 1.0$	***Negligible contribution*** May assume $P_{T:S-C} = 0$
Moderate Traffic Volume $0.05 \leq P_{T:S-A} < 0.5$	***Moderate contribution*** Use calculated $P_{T:S-A}$	***High contribution*** $P_{T:S-B} = 1.0$	***Negligible contribution*** May assume $P_{T:S-C} = 0$
Low Traffic Volume $P_{T:S-A} < 0.05$ $AADT \geq 500$ $AADT \times T_I \geq 1.0$	***Negligible contribution*** May assume $P_{T:S-A} = 0$	***High contribution*** $P_{T:S-B} = 1.0$	***Negligible contribution*** May assume $P_{T:S-C} = 0$
Very Low Traffic Volume $P_{T:S-A} < 0.05$ $AADT < 500$ $AADT \times T_I < 1.0$	***Negligible contribution*** May assume $P_{T:S-A} = 0$	***Negligible contribution*** May use $P_{T:S-B} = 0$	***High contribution*** $P_{T:S-C} = 1.0$

Table A4: Calculated contributing vehicles from scenarios

Scenario	Description	Calculated $P_{T:S}$		Override $P_{T:S}$	
		North	South	North	South
$A_{(BH)}$	*Vehicles present when the flood arrives*	*0.200*	*0.200*		
$A_{(AH)}$		*0.036*	*0.036*		
$B_{1(BH)}$	*First vehicle arriving at flood*	*0.5*	*0.5*		
$B_{1(AH)}$		*0.5*	*0.5*		
$B_{2(BH)}$	*Subsequent vehicles arriving at flood*	*39*	*39*		
$B_{2(AH)}$		*7*	*7*		
$C_{(BH)}$	*First vehicle arriving at damaged road*	*0.5*	*0.5*	*0*	*0*
$C_{(AH)}$		*0.5*	*0.5*	*0*	*0*

Table A5: 'Flooded Cars' suggested values for probability of driver inaction

Descriptor	$P_{NE:T}$	Guidance (for sunny day)
Virtually certain	*0.999*	
Very likely	*0.99*	*Situation of high speed, short sight distance, night time resulting in driver not being aware of the dambreak until they are upon it.*
Likely	*0.9*	
Neutral	*0.5*	
Unlikely	*0.1*	*Good sight distance and appropriate breaking distance (speed) resulting in being able to stop before the flood, but depth of water is low for drivers may try entering regardless (driver experience).*
Very unlikely	*0.01*	
Virtually impossible	*0.001*	

Table A6: Calculation of probability of driver inaction

Parameter	Combined	North	South
Vehicles following pioneer - BH	-	*39*	*39*
Vehicles following pioneer - AH	-	*7*	*7*
Sight Distance (SD) - BH	-	**400 m**	**400 m**
Sight Distance (SD) - AH	-	*120 m*	*120 m*
Road slope on approach	-	**-2%**	**2%**
Driver reaction time	*1.5 secs*	-	-
Light vehicle road friction coefficient	*0.46*	-	-
Heavy vehicle road friction coefficient	*0.29*	-	-
Driver likelihood of willingly proceeding through flood	**0%**	-	-
Crashed cars visiblity to following vehicle - BH	**100%**	-	-
Crashed cars visiblity to following vehicle - AH	**100%**		
Sight Stopping Distance (SSD)† - Light vehicles	-	*91 m*	*86 m*
Sight Stopping Distance (SSD)† - Heavy vehicles	-	*127 m*	*115 m*
SSD standard deviation - Light vehicles	-	*10%*	*10%*
SSD standard deviation - Heavy vehicles	-	*20%*	*20%*
SD/SSD Difference - Light vehicles - BH	-	*342%*	*366%*
SD/SSD Difference - Heavy vehicles - BH	-	*216%*	*249%*
SD/SSD Difference - Light vehicles - AH	-	*32%*	*40%*
SD/SSD Difference - Heavy vehicles - AH	-	*-5%*	*5%*
$P_{NE:T}$ - Light vehicles - BH	-	*0.002*	*0.002*
$P_{NE:T}$ - Heavy vehicles - BH	-	*0.002*	*0.002*
$P_{NE:T}$ - Light vehicles - AH	-	*0.002*	*0.002*
$P_{NE:T}$ - Heavy vehicles - AH	-	*0.841*	*0.500*
$P_{NE:T}$ - All vehicles weighted average - BH	-	*0.002*	*0.002*
$P_{NE:T}$ - All vehicles weighted average - AH	-	*0.085*	*0.051*
$P_{NE:T}$ - Pioneer (no crashed/stopped vehicles present) - BH	-	*0.002*	*0.002*
$P_{NE:T}$ - Pioneer (no crashed/stopped vehicles present) - AH	-	*0.085*	*0.051*
$P_{NE:T}$ - Following vehicle - BH	-	*0.002*	*0.002*
$P_{NE:T}$ - Following vehicle - AH	-	*0.002*	*0.002*
$P_{NE:T}$ - Weighted average for following vehicles - BH	-	*0.000*	*0.000*
$P_{NE:T}$ - Weighted average for following vehicles - AH	-	*0.000*	*0.000*

Table A7: 'Flooded Cars' factors for vulnerability

Factor	Qualifier	Value
Road speed base factor (BF)	*40 - 80 km/h*	*0.01*
	90 - 110 km/h	*0.1*
Impact (I)	*Impact with safety barrier or run off road*	*0.2*
	Impact with ditch, fence, or small tree	*0.4*
	Impact with large tree, off embankment or into breach	*2.0*
Water Present (W)	*Vehicle not in water but has impact accident*	*1.0*
	Vehicle ends up in shallow slow-moving water	*2.0*
	Vehicle ends up in deep fast-moving water	*(0.7 ≤ $V_{D:A}$ ≤ 0.999)†*
Time of Day (TD)	*Business hours*	*1.0*
	After-hours	*2.0*
Response Time (RT)	*< 30 min*	*1.0*
	≥ 30 min	*2.0*

$$V_{D:A} = BF \times I \times W \times TD \times RT$$

† In a situation where an accident occurs in 'deep, fast-flowing water', a vehicle is virtually certain to be swept off the road with a high probability of drowning of the passengers. As such, this is an override situation with $V_{D:A}$ between 0.7 and 0.999.

Table A8: Calculation of vulnerability from factors

North	BF	I	W	TD	RT	$V_{D:A}$ Calculated	$V_{D:A}$ Override
$A_{(BH)}$	*0.01*	**0.4**	**2**	*1*	**1**	*0.008*	
$A_{(AH)}$	*0.01*	**0.4**	**2**	*2*	**1**	*0.016*	
$B_{1(BH)}$	*0.01*	**0.4**	**2**	*1*	**1**	*0.008*	
$B_{1(AH)}$	*0.01*	**0.4**	**2**	*2*	**1**	*0.016*	
$B_{2(BH)}$	*0.01*	**0.4**	**2**	*1*	**1**	*0.008*	
$B_{2(AH)}$	*0.01*	**0.4**	**2**	*2*	**1**	*0.016*	
$C_{(BH)}$	*0.01*	**0.4**	**1**	*1*	**1**	*0.004*	
$C_{(AH)}$	*0.01*	**0.4**	**1**	*2*	**1**	*0.008*	
South							
$A_{(BH)}$	*0.01*	**0.4**	**2**	*1*	**1**	*0.008*	
$A_{(AH)}$	*0.01*	**0.4**	**2**	*2*	**1**	*0.016*	
$B_{1(BH)}$	*0.01*	**0.4**	**2**	*1*	**1**	*0.008*	
$B_{1(AH)}$	*0.01*	**0.4**	**2**	*2*	**1**	*0.016*	
$B_{2(BH)}$	*0.01*	**0.4**	**2**	*1*	**1**	*0.008*	
$B_{2(AH)}$	*0.01*	**0.4**	**2**	*2*	**1**	*0.016*	
$C_{(BH)}$	*0.01*	**0.4**	**1**	*1*	**1**	*0.004*	
$C_{(AH)}$	*0.01*	**0.4**	**1**	*2*	**1**	*0.008*	

Table A9: 'Flooded Cars' probability of accident given driver inaction

Vehicle stability criteria	Population at risk scenario	Vehicle Speed	
		50 km/h	100 km/h
D × V ≤ 0.45 m²/s with limiting D < 0.4 m and V < 3.0 m/s	A - Vehicles present when the flood arrives	0.1	0
	B - Vehicles arriving at flood	0.1	0
	C - Vehicles arriving at minimally damaged road	N/A	N/A
	C - Vehicles arriving at minimally washed-out culvert/bi	N/A	N/A
D × V ≥ 0.45 m²/s with limiting D > 0.4 m and V > 3.0 m/s	A - Vehicles present when the flood arrives	0.8	0
	B - Vehicles arriving at flood	0.8	0
	C - Vehicles arriving at significantly damaged road	0.1	0
	C - Vehicles arriving at significantly washed-out culv/br	0.8	0

Table A10: Calculation of PAR and PLL

North	$P_{T:S}$	$PAR_{vehicle}$	$P_{NE:T}$	$PAR_{Weighted}$	$P_{A:NE}$	$V_{D:A}$	$PLL_{Scenario}$
$A_{(BH)}$	0.200	1.500	1.000	0.125	0.800	0.008	0.001
$A_{(AH)}$	0.036	1.500	1.000	0.031	0.800	0.016	0.000
$B_{1(BH)}$	0.500	1.500	0.002	0.000	0.800	0.008	0.000
$B_{1(AH)}$	0.500	1.500	0.085	0.037	0.800	0.016	0.000
$B_{2(BH)}$	39.000	1.500	0.000	0.000	0.800	0.008	0.000
$B_{2(AH)}$	7.000	1.500	0.000	0.000	0.800	0.016	0.000
$C_{(BH)}$	0.000	1.500	0.002	0.000	0.100	0.004	0.000
$C_{(AH)}$	0.000	1.500	0.085	0.000	0.100	0.008	0.000
South							
$A_{(BH)}$	0.200	1.500	1.000	0.125	0.800	0.008	0.001
$A_{(AH)}$	0.036	1.500	1.000	0.031	0.800	0.016	0.000
$B_{1(BH)}$	0.500	1.500	0.002	0.000	0.800	0.008	0.000
$B_{1(AH)}$	0.500	1.500	0.051	0.022	0.800	0.016	0.000
$B_{2(BH)}$	39.000	1.500	0.000	0.000	0.800	0.008	0.000
$B_{2(AH)}$	7.000	1.500	0.000	0.000	0.800	0.016	0.000
$C_{(BH)}$	0.000	1.500	0.002	0.000	0.100	0.004	0.000
$C_{(AH)}$	0.000	1.500	0.051	0.000	0.100	0.008	0.000
			PAR:	***0.373***		**PLL:**	***0.002***

Project: Old Salem Dam

Road: Ponds Duck Road

Date: 02/10/2023

Table A1: Inundation statistics

Parameter	Combined	East	West
Length of Road Hazard	500 m	500 m	500 m
Duration of Hazard (T_I)	15 mins	15 mins	15 mins
Maximum Depth	1.00 m	-	-
Maximum Water Velocity	4.0 m/s	-	-
Maximum Depth-Velocity Product	3.00 m²/s	-	-
Damage to Road (Significant damage only)	Road surface		

Table A2: Traffic statistics

Parameter	Combined	East	West
Lane Traffic Distribution - Business Hours (8am-6pm)	-	50%	50%
Lane Traffic Distribution - After-hours (6pm - 8am)	-	50%	50%
Heavy Vehicle % - Business hours	-	10.0%	10.0%
Average annual daily traffic (AADT)	1400	700	700
Number of vehicles (N_v) - Business hours	1120	560	560
Number of vehicles (N_v) - After-hours	280	140	140
N_v/hr - Business hours	112.0	56.0	56.0
N_v/hr - After-hours	20.0	10.0	10.0
Effective AADT - Business hours	2688	1344	1344
Effective AADT - After-hours	480	240	240
Vehicle Speed	-	50 km/h	50 km/h
People per Vehicle	1.5	1.5	1.5
Inundation Transit Time (T_v)	36.00 secs	36.00 secs	36.00 secs
Scenario A temporal probaility ($P_{T:S-A}$) - Business hours	1.12	0.56	0.56
Scenario A temporal probaility ($P_{T:S-A}$) - After-hours	0.20	0.10	0.10
Traffic volume ID for $P_{T:S}$ contributions - Business hours	1	1	1
Traffic volume ID for $P_{T:S}$ contributions - After-hours	2	2	2
Traffic volume classification - Business hours	High	High	High
Traffic volume classification - After-hours	Moderate	Moderate	Moderate
Use combined traffic volume ID?	TRUE		

Table A3: 'Flooded Cars' scenarios and risk contributions for traffic volumes

Traffic volume classification	Scenario A Vehicles present when the flood arrives	Scenario B Vehicles driving into the flooded area	Scenario C Vehicles driving over the damaged road after flooding
High Traffic Volume $P_{T:S-A} \geq 0.5$	***High contribution*** Use calculated $P_{T:S-A}$	***High contribution*** $P_{T:S-B} = 1.0$	***Negligible contribution*** May assume $P_{T:S-C} = 0$
Moderate Traffic Volume $0.05 \leq P_{T:S-A} < 0.5$	***Moderate contribution*** Use calculated $P_{T:S-A}$	***High contribution*** $P_{T:S-B} = 1.0$	***Negligible contribution*** May assume $P_{T:S-C} = 0$
Low Traffic Volume $P_{T:S-A} < 0.05$ $AADT \geq 500$ $AADT \times T_I \geq 1.0$	***Negligible contribution*** May assume $P_{T:S-A} = 0$	***High contribution*** $P_{T:S-B} = 1.0$	***Negligible contribution*** May assume $P_{T:S-C} = 0$
Very Low Traffic Volume $P_{T:S-A} < 0.05$ $AADT < 500$ $AADT \times T_I < 1.0$	***Negligible contribution*** May assume $P_{T:S-A} = 0$	***Negligible contribution*** May use $P_{T:S-B} = 0$	***High contribution*** $P_{T:S-C} = 1.0$

Table A4: Calculated contributing vehicles from scenarios

Scenario	Description	Calculated $P_{T:S}$		Override $P_{T:S}$	
		East	West	East	West
$A_{(BH)}$	*Vehicles present when the flood arrives*	0.560	0.560		
$A_{(AH)}$		0.100	0.100		
$B_{1(BH)}$	*First vehicle arriving at flood*	0.5	0.5		
$B_{1(AH)}$		0.5	0.5		
$B_{2(BH)}$	*Subsequent vehicles arriving at flood*	13	13		
$B_{2(AH)}$		2	2		
$C_{(BH)}$	*First vehicle arriving at damaged road*	0.5	0.5	0	0
$C_{(AH)}$		0.5	0.5	0	0

Table A5: 'Flooded Cars' suggested values for probability of driver inaction

Descriptor	$P_{NE:T}$	Guidance (for sunny day)
Virtually certain	*0.999*	
Very likely	*0.99*	*Situation of high speed, short sight distance, night time resulting in driver not being aware of the dambreak until they are upon it.*
Likely	*0.9*	
Neutral	*0.5*	
Unlikely	*0.1*	*Good sight distance and appropriate breaking distance (speed) resulting in being able to stop before the flood, but depth of water is low for drivers may try entering regardless (driver experience).*
Very unlikely	*0.01*	
Virtually impossible	*0.001*	

Table A6: Calculation of probability of driver inaction

Parameter	Combined	East	West
Vehicles following pioneer - BH	-	13	13
Vehicles following pioneer - AH	-	2	2
Sight Distance (SD) - BH	-	400 m	400 m
Sight Distance (SD) - AH	-	120 m	120 m
Road slope on approach	-	-2%	2%
Driver reaction time	1.5 secs	-	-
Light vehicle road friction coefficient	0.46	-	-
Heavy vehicle road friction coefficient	0.29	-	-
Driver likelihood of willingly proceeding through flood	0%	-	-
Crashed cars visiblity to following vehicle - BH	100%	-	-
Crashed cars visiblity to following vehicle - AH	100%		
Sight Stopping Distance (SSD)† - Light vehicles	-	43 m	41 m
Sight Stopping Distance (SSD)† - Heavy vehicles	-	57 m	53 m
SSD standard deviation - Light vehicles	-	10%	10%
SSD standard deviation - Heavy vehicles	-	20%	20%
SD/SSD Difference - Light vehicles - BH	-	826%	868%
SD/SSD Difference - Heavy vehicles - BH	-	598%	661%
SD/SSD Difference - Light vehicles - AH	-	178%	190%
SD/SSD Difference - Heavy vehicles - AH	-	109%	128%
$P_{NE:T}$ - Light vehicles - BH	-	0.002	0.002
$P_{NE:T}$ - Heavy vehicles - BH	-	0.002	0.002
$P_{NE:T}$ - Light vehicles - AH	-	0.002	0.002
$P_{NE:T}$ - Heavy vehicles - AH	-	0.002	0.002
$P_{NE:T}$ - All vehicles weighted average - BH	-	0.002	0.002
$P_{NE:T}$ - All vehicles weighted average - AH	-	0.002	0.002
$P_{NE:T}$ - Pioneer (no crashed/stopped vehicles present) - BH	-	0.002	0.002
$P_{NE:T}$ - Pioneer (no crashed/stopped vehicles present) - AH	-	0.002	0.002
$P_{NE:T}$ - Following vehicle - BH	-	0.002	0.002
$P_{NE:T}$ - Following vehicle - AH	-	0.002	0.002
$P_{NE:T}$ - Weighted average for following vehicles - BH	-	0.000	0.000
$P_{NE:T}$ - Weighted average for following vehicles - AH	-	0.000	0.000

Table A7: 'Flooded Cars' factors for vulnerability

Factor	Qualifier	Value
Road speed base factor (BF)	*40 - 80 km/h*	*0.01*
	90 - 110 km/h	*0.1*
Impact (I)	*Impact with safety barrier or run off road*	*0.2*
	Impact with ditch, fence, or small tree	*0.4*
	Impact with large tree, off embankment or into breach	*2.0*
Water Present (W)	*Vehicle not in water but has impact accident*	*1.0*
	Vehicle ends up in shallow slow-moving water	*2.0*
	Vehicle ends up in deep fast-moving water	*(0.7 ≤ $V_{D:A}$ ≤ 0.999)†*
Time of Day (TD)	*Business hours*	*1.0*
	After-hours	*2.0*
Response Time (RT)	*< 30 min*	*1.0*
	≥ 30 min	*2.0*

$$V_{D:A} = BF \times I \times W \times TD \times RT$$

† In a situation where an accident occurs in 'deep, fast-flowing water', a vehicle is virtually certain to be swept off the road with a high probability of drowning of the passengers. As such, this is an override situation with $V_{D:A}$ between 0.7 and 0.999.

Table A8: Calculation of vulnerability from factors

East	BF	I	W	TD	RT	$V_{D:A}$ Calculated	$V_{D:A}$ Override
$A_{(BH)}$	0.01	0.4	2	1	1	0.008	
$A_{(AH)}$	0.01	0.4	2	2	1	0.016	
$B_{1(BH)}$	0.01	0.4	2	1	1	0.008	
$B_{1(AH)}$	0.01	0.4	2	2	1	0.016	
$B_{2(BH)}$	0.01	0.4	2	1	1	0.008	
$B_{2(AH)}$	0.01	0.4	2	2	1	0.016	
$C_{(BH)}$	0.01	0.4	1	1	1	0.004	
$C_{(AH)}$	0.01	0.4	1	2	1	0.008	
West							
$A_{(BH)}$	0.01	0.4	2	1	1	0.008	
$A_{(AH)}$	0.01	0.4	2	2	1	0.016	
$B_{1(BH)}$	0.01	0.4	2	1	1	0.008	
$B_{1(AH)}$	0.01	0.4	2	2	1	0.016	
$B_{2(BH)}$	0.01	0.4	2	1	1	0.008	
$B_{2(AH)}$	0.01	0.4	2	2	1	0.016	
$C_{(BH)}$	0.01	0.4	1	1	1	0.004	
$C_{(AH)}$	0.01	0.4	1	2	1	0.008	

Table A9: 'Flooded Cars' probability of accident given driver inaction

Vehicle stability criteria	Population at risk scenario	Vehicle Speed	
		50 km/h	100 km/h
D × V ≤ 0.45 m²/s with limiting D < 0.4 m and V < 3.0 m/s	*A - Vehicles present when the flood arrives*	*0.1*	*0*
	B - Vehicles arriving at flood	*0.1*	*0*
	C - Vehicles arriving at minimally damaged road	*N/A*	*N/A*
	C - Vehicles arriving at minimally washed-out culvert/bi	*N/A*	*N/A*
D × V ≥ 0.45 m²/s with limiting D > 0.4 m and V > 3.0 m/s	*A - Vehicles present when the flood arrives*	*0.8*	*0*
	B - Vehicles arriving at flood	*0.8*	*0*
	C - Vehicles arriving at significantly damaged road	*0.1*	*0*
	C - Vehicles arriving at significantly washed-out culv/br	*0.8*	*0*

Table A10: Calculation of PAR and PLL

East	$P_{T:S}$	$PAR_{vehicle}$	$P_{NE:T}$	$PAR_{Weighted}$	$P_{A:NE}$	$V_{D:A}$	$PLL_{Scenario}$
$A_{(BH)}$	0.560	1.500	1.000	0.350	0.800	0.008	0.002
$A_{(AH)}$	0.100	1.500	1.000	0.088	0.800	0.016	0.001
$B_{1(BH)}$	0.500	1.500	0.002	0.000	0.800	0.008	0.000
$B_{1(AH)}$	0.500	1.500	0.002	0.001	0.800	0.016	0.000
$B_{2(BH)}$	13.000	1.500	0.000	0.000	0.800	0.008	0.000
$B_{2(AH)}$	2.000	1.500	0.000	0.000	0.800	0.016	0.000
$C_{(BH)}$	0.000	1.500	0.002	0.000	0.100	0.004	0.000
$C_{(AH)}$	0.000	1.500	0.002	0.000	0.100	0.008	0.000
West							
$A_{(BH)}$	0.560	1.500	1.000	0.350	0.800	0.008	0.002
$A_{(AH)}$	0.100	1.500	1.000	0.088	0.800	0.016	0.001
$B_{1(BH)}$	0.500	1.500	0.002	0.000	0.800	0.008	0.000
$B_{1(AH)}$	0.500	1.500	0.002	0.001	0.800	0.016	0.000
$B_{2(BH)}$	13.000	1.500	0.000	0.000	0.800	0.008	0.000
$B_{2(AH)}$	2.000	1.500	0.000	0.000	0.800	0.016	0.000
$C_{(BH)}$	0.000	1.500	0.002	0.000	0.100	0.004	0.000
$C_{(AH)}$	0.000	1.500	0.002	0.000	0.100	0.008	0.000
			PAR:	***0.877***		**PLL:**	***0.007***

Details of Representations

Application Summary

Application ID	23035013
Proposal	Construction of a 160ML irrigation dam, with max fill of 11m and max cut of 6.5m (total storage area of approx. 2.5km2)
Location	LOT 4 DUCK PONDS RD STOCKWELL SA 5355

Representations

Representor 1 - Kevin Walsh

Name	Kevin Walsh
Address	[redacted]
Submission Date	16/01/2024 07:21 AM
Submission Source	Online
Late Submission	No
Would you like to talk to your representation at the decision-making hearing for this development?	Yes
My position is	I oppose the development

Reasons

The specific reasons I believe that planning consent should be granted/refused are: Looking at the flood hazard mapping assessment and comparing it to the damage severity I believe that the risk and value of potential damage has been grossly underestimated. My family and I live at 6 railway Terrace in Stockwell and I don't believe that the computer generated flood hazard assessment has taken into consideration how the flood water will actually flow should the dam wall fail. The assessment estimates approximate less than 10million in damages but looking at the hazard map and seeing how many houses would be inundated I think that this value to repair the water damage to be completely insufficient. I also believe that the hazard assessment is incorrect as any water that flows over to the south side of duckponds road inevitably ends up affecting most residents in Railway Terrace which has been raised and proven over the last 18 months. These water course issues should be taken into consideration when completing an assessment of this application as any future development within the immediate area and towards Stockwell road would be greatly effected given that there is still no solution for an run-off rain water let alone an influx due to dam wall failure. Please when assessing this application take the current water drainage issues raised with the Barossa Council into consideration and come up with a viable solution before construction is granted and undertaken on this project as there is still no current solution for inundation when we get 20mm of rain in a downpour let alone a 160ML dam failing.

Attached Documents

Representation-on-Application-Performance-Assessed-Development-version-2-1-1325935.pdf

REPRESENTATION ON APPLICATION – PERFORMANCE ASSESSED DEVELOPMENT

Planning, Development and Infrastructure Act 2016

Development Number:	23035013
Nature of Development:	Construction of 160ML irrigation dam
Zone/Sub-zone/Overlay:	Rural
Subject Land:	CT5229/947
Contact Officer:	The Barossa Council
Phone Number:	08 8563 8444
Close Date:	23/1/2024

My name*: Kevin Walsh My phone number: [redacted]

My postal address*: [redacted] My email: [redacted]

** Indicates mandatory information*

My position is:
- ☐ I support the development
- ☐ I support the development with some concerns (detail below)
- ☒ I oppose the development

The specific reasons I believe that planning consent should be granted/refused are:

Looking at the flood hazard mapping assessment and comparing it to the damage severity I believe that the risk and value of potential damage has been grossly underestimated.

My family and I live at 6 railway Terrace in Stockwell and I don't believe that the computer generated flood hazard assessment has taken into consideration how the flood water will actually flow should the dam wall fail.
The assessment estimates approximate less than 10million in damages but looking at the hazard map and seeing how many houses would be inundated I think that this value to repair the water damage to be completely insufficient.
I also believe that the hazard assessment is incorrect as any water that flows over to the south side of duckponds road inevitably ends up affecting most residents in Railway Terrace which has been raised and proven over the last 18 months. These water course issues should be taken into consideration when completing an assessment of this application as any future development within the immediate area and towards Stockwell road would be greatly effected given that there is still no solution for an run-off rain water let alone an influx due to dam wall failure.

Please when assessing this application take the current water drainage issues raised with the Barossa Council into consideration and come up with a viable solution before construction is granted and undertaken on this project as there is still no current solution for inundation when we get 20mm of rain in a downpour let alone a 160ML dam failing.

[attach additional pages as needed]

Government of South Australia
Department for Trade and Investment

Note: In order for this submission to be valid, it must:

- be in writing; and
- include the name and address of the person (or persons) who are making the representation; and
- set out the particular reasons why planning consent should be granted or refused; and
- comment only on the performance-based elements of the proposal, which does not include the:
  - Click here to enter text. [*list any accepted or deemed-to-satisfy elements of the development*].

I:	☒ wish to be heard in support of my submission*
	☐ do not wish to be heard in support of my submission
By:	☒ appearing personally
	☐ being represented by the following person: Click here to enter text.

**You may be contacted if you indicate that you wish to be heard by the relevant authority in support of your submission*

Signature: Kevin Walsh Date: 16/1/2024

Return Address: Click here to enter text. *[relevant authority postal address]* or

Email: Development@barossa.sa.gov.au *[relevant authority email address]* or

Complete online submission:
plan.sa.gov.au/have_your_say/notified_developments/current_notified_developments

Representations

Representor 2 - Greg Schubert

Name	Greg Schubert
Address	[redacted]
Submission Date	22/01/2024 04:40 PM
Submission Source	Online
Late Submission	No
Would you like to talk to your representation at the decision-making hearing for this development?	No
My position is	I oppose the development

Reasons

- This entire property is 53.70ha or 537,000 square metres. The proposal indicates the Salem dam has a surface area of 2.5 square km = 1,000,000 square metres. This appears to be a major error in the submission? What other information supplied within the proposal is also wrong based on these calculations? Does this miscalculation also influence the information regarding the potential impact to the local community in the event of a dam breach? - The global viticulture industry is currently experiencing a massive oversupply of wine grapes. This is also the case in the local Barossa industry with many local growers unable to find a buyer for fruit in the current 2024 vintage. The industry doesn't need additional production when it has been recognised that the Australian production should in fact be reduced by approx 25%. - Rather than develop additional green field sites as this proposal supports, it would be far more prudent to pursue the purchase of existing vineyards available within the Barossa Valley with established irrigation and management infrastructure already in place. -The Salem property further encroaches into broadacre farm land increasing the risks for all farming parties. - The Salem property contains stoney red clay based soils that are highly soluble and prone to erosion. Existing evidence of erosion on the property suggests that intensive activity and heavy traffic enhances this matter. - Historical rainfall records and local flooding records show that large rainfall events have taken place within this catchment - 1983 Nuriootpa floodwaters from the Stockwell, Truro and Moculta regions, 1992 indicate over 150mm rainfall within a 1.5 hour window. 2022 summer rainfall events all experienced high surface water run off on the property attributing to erosion risk and bank integrity. Are these extreme weather events considered as part of the risk assessment outside of "typical" annual rainfall patterns? - The quality of the current grape production on the balance of the property is below premium - the industry doesn't need additional low value tonnes compounding the oversupply problems. - Although the risk of the dam breaching is very low, is this risk worth having on the table for a comparatively small increase in overall vineyard area and production on this site (as above, there are many existing and more financially attractive locations suitable for wine grape production within the Barossa production zone). - Existing vineyards in the region all have frost fans installed on the properties. If the Salem dam is approved will this also then have a knock on effect in the years ahead as the owners develop additional vineyard area. Frost fans would potentially impact neighbors including residents in the Stockwell township. - The Barossa Council have diverted heavy truck traffic away from Duckponds Road onto Bastian Hill Road east of Stockwell. Will this development include the return of regular heavy transport through the Stockwell township? This is obviously not what the Council desire and certainly wouldn't be approved by local residents..

Attached Documents

Representations

Representor 3 - Alea Devine

Name	Alea Devine
Address	[redacted]
Submission Date	23/01/2024 11:18 AM
Submission Source	Online
Late Submission	No
Would you like to talk to your representation at the decision-making hearing for this development?	No
My position is	I oppose the development
Reasons If it busts it will take out my property and my neighbours. We already have issues with flooding when heavy rain	

Attached Documents

Representations

Representor 4 - Nick Clowser

Name	Nick Clowser
Address	[redacted]
Submission Date	23/01/2024 11:21 AM
Submission Source	Online
Late Submission	No
Would you like to talk to your representation at the decision-making hearing for this development?	No
My position is	I oppose the development
Reasons If the dam busts or overflows my property will get flooded we already have flooding problems when we get heavy rain I do not like the idea of a massive dam near my house	

Attached Documents

ACCESS PLANNING

Access Planning (SA) Pty Ltd
ABN 57 089 702 241
PO Box 39
Plympton SA 5038
Telephone 0418 832 334
dhutchison@accessplanning.com.au
www.accessplanning.com.au

30th January 2024

Ref: 9597resptoreps.

The Chief Executive Officer
The Barossa Council
PO Box 867,
Nuriootpa SA 5355

Attention Ms. Janine Lennon

Dear Janine

Re **PROPOSED DAM DUCK PONDS ROAD - PIECE 5 DEPOSITED PLAN 40747 STOCKWELL**

I refer to the 4 submissions received in response to the public notification of the above development.

As the submissions raise common issues, I have summarised the matters of concern and respond accordingly.

Issues raised include:

1. flood risk,
2. need for additional viticulture,
3. risk of erosion,
4. potential for frost fans as a result of future viticulture development,
5. additional heavy vehicle traffic on Duck Ponds Road.

1 Flood Risk

The issue of flood risk has been dealt with in the submission lodged with the application, which is repeated below.

Hazards (Flooding - Evidence Required) Overlay

DO 1 Development adopts a precautionary approach to mitigate potential impacts on people, property, infrastructure and the environment from potential flood risk through the appropriate siting and design of development.

A detailed flood hazard assessment of the dam has been undertaken and forms part of the application documents. The assessment is based on a worst-case scenario involving a full dam and catastrophic failure of the northern wall of the dam releasing high volumes of water over a short period of time, with the majority of water in dam lost in the first 30 minutes of a breach (refer Figure 2 in the Dam Assessment report). The report assigns a significant risk downstream in the event of a catastrophic failure of the dam walls.

Clearly it is in the interest of the applicant to ensure that the dam is maintained to a proper extent to ensure that failure of the walls does not occur. To this end, and to minimise the likelihood of dam wall failure there will be an emergency release valve on the outlet pipe of

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the dam. This will have the ability to release water at a controlled rate in the case of the dam needing to be emptied rapidly to prevent a wall failure.

The dam will be offline with a piped inlet from the BIL supply which will control the rate at which the dam is filled. The inlet will be valved to enable isolation when the dam is full. The dam is designed with a 0.6m freeboard which accommodates a 0.25m wave action and 0.15 m rainfall inflow (168 h 1 in 100 ARI as per ANCOLD guidelines). The 180 mm overflow pipe is designed to accommodate unabated inflow at 18 L/s (with no pumped outflow).

Proper maintenance of the dam is essential to ensure its continued effectiveness and safety and to this end regular monthly inspections are proposed and any required repairs, and upgrades will be undertaken by the applicant to ensure the integrity of the dam walls.

Further, the risk is also minimised by the fact that the dam has a limited upstream catchment and is primarily filled by pumped water, as such high-volume storm events are unlikely to contribute to high water input into the dam that might then contribute to failure of the dam walls.

It has been recommended that an Operations, Maintenance and Surveillance (OMS) Manual be prepared in accordance with ANCOLD, 2003 prior to the dam being commissioned. The manual should include but not necessarily be limited to the following:

- Design intent
- Operations and inspections
- Water management procedures
- Criteria of mechanical and electrical works
- Dam surveillance
- Maintenance and on-going works

Operational Management Plans with the OMS document should specifically highlight all designer requirements for operation and response actions which must be met to ensure the ongoing safety of the dam.

It is important to reiterate that the flood modeling has been based on a catastrophic failure of the dam wall. I am instructed that the only way such a failure is likley to occur would be by explosive detonation of the wall.

Through regular inspections as proposed there is normally ample time to prevent any failure of the dam wall once an issue is detected. Noting that it is clearly in the best interest of the applicants to ensure that the dam was is maintained in a structurally sound condition.

The applicant will be mitigating the chance of a catastrophic failure by:

- having a plastic lining to the dam,
- Leak detection and drainage,
- Controlled emergency discharge,
- Outer bank seeded for stabilisation,
- Design Freeboard allows for wave action, 24h of BIL inflow and 1:100 rainfall,
- Overflow is designed to cater for maximum BIL inflow and 1:100 rainfall event.

The dam design is such it will not be affecting the pervious catchment, so site runoff is no more or less than pre-development.

I can confirm that rainfall patterns based on 1:100 event and the Dam burst modelling and assessment follows ANCOLD guidelines a highly regarded industry standard software. Given the dam is a pumped storage runoff into the dam from the surrounding catchment is not an issue and water volumes in the dam can be controlled quite separately from infill from external sources.

Modelling has been conducted by a qualified engineer and results reviewed by qualified and experienced engineer.

2. Need for additional viticulture,

This application is not a viticultural use of the land so comments in respect to the need for further viticultural development are irrelevant. Moreover, it is entirely up to applicant to determine the extent to which they need to development additional viticultural land and the capability of the land to accommodate viticulture.

3. Risk of erosion,

I have seen any particular evidence of significant erosion on the land other than in short sections along the creek to the northeast of the proposed dam. Development of the dam will involve the diversion of water from within the existing limited catchment around the dam which will be undertaken with erosion protection measures in place.

4. Potential for frost fans as a result of future viticulture development,

As not viticulture and hence frost fans form part of the current application the representers concerns regarding these issues are irrelevant to an assessment of the application at hand.

5. Additional heavy vehicle traffic on Duck Ponds Road.

Other than construction vehicles required during the construction of the dam, traffic associated with the proposed development will be unchanged, noting that the land is required to accessed by heavy farm vehicles in its present use for cropping.

6.0 CONCLUSION

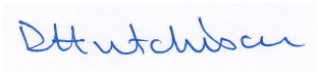
I consider that the concerns expressed in the submissions received misunderstand the flooding impacts which as iterated on a number of occasions only result from a catastrophic failure of the dam wall.

I confirm that I will be attending at the Panel meeting at which the application is to be considered to respond to any verbal submission or new matters raised.

Should you require further information please contact me on 0418832334 or by email and dhutchison@accessplanning.com.au.

Yours sincerely

ACCESS PLANNING



David Hutchison BA, Grad Dip, PIA, CPP
Access Planning (SA) Pty Ltd

BAROSSA ASSESSMENT PANEL

MINUTES OF THE MEETING OF THE BAROSSA ASSESSMENT PANEL
held on

Tuesday, 5 March 2024, commencing at 5.00 pm

in the Council Offices, 43-51 Tanunda Road, Nuriootpa

TheBarossaCouncil

MINUTES

I N D E X

1. Welcome 3

2. Attendance 3

3. Confirmation of Minutes 3

4. Business Arising from Minutes 4

5. Declaration of Interest by Members of the Panel 4

6. Reports – Application for Decision (Planning, Development and Infrastructure Act 2016)

6.1 23034819 - Lot 101 Biscay Road Tanunda 5

6.2 23035013 - Lot 4 Duck Ponds Road Stockwell 7

7. Reports – Review of Assessment Manager Decisions (Planning, Development and Infrastructure Act 2016) 8

Nil

8. Reports – Panel Updates 8

Nil

9. Reports – Other Business

9.1 Assessment Manager Quarterly Report - October 2023 to December 2023 8

10. Reports – Confidential 8

Nil

11. Next Meeting 8

12. Closure of Meeting 9

1. WELCOME

The Presiding Member welcomed everyone, and opened the meeting at 5.00 pm.

2. ATTENDANCE

2.1 Present

Panel Members

Michael Wohlstadt	Presiding Member
Susan Giles	Member
Jane Evans	Member
Grant Hewitt	Member
Graham Burns	Deputy Member
Aaron Curtis	Assessment Manager

Council Staff

Jake McVicar	Director, Development and Community Services
Marie Thom	Minute Secretary

2.2 Apologies

Nil.

2.3 Absent

Nil.

3. CONFIRMATION OF MINUTES

PANEL DECISION

Moved: G Hewitt Seconded: G Burns

That the minutes of the Barossa Assessment Panel meeting held on Tuesday 6 February 2024 be received and confirmed.

CARRIED

4. BUSINESS ARISING

Nil.

5. DECLARATION OF INTEREST BY MEMBERS OF THE PANEL

The following disclosures have been made in relation to:

Item	Panel Member
6.1 – Application 23034819 - Lot 101 Biscay Road Tanunda	Jane Evans
J Evans declared a conflict of interest in respect to report item 6.1 on the basis that she has known the representors Robert O'Callaghan and James March of Rockford Wines personally, and worked with them on a voluntary basis assisting with community initiatives for a number of years.	
.1 – Application 23034819 - Lot 101 Biscay Road Tanunda	Michael Wohlstadt
M Wohlstadt declared a conflict of interest in relation to report item 6.1 on the basis that he prepared a planning opinion on behalf of Grant Burge and Rockford Wines through his planning consultancy business, Planning Advisory Services.	

6. REPORTS – APPLICATION FOR DECISION (PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016)

J Evans and M Wohlstadt left the meeting at 5.01 pm due to an earlier stated conflict of Interest.

PANEL DECISION

Moved: G Hewitt Seconded: S Giles

That the panel appoint Mr Graham Burns as Acting Presiding Member for report item 6.1, Application 23034819, Lot 101 Biscay Road Tanunda due to Mr Michael Wohlstadt declaring a conflict of interest.

CARRIED

6.1 23034819 - Lot 101 Biscay Road Tanunda

Representors
Ms Amy Heinicke, Managing Director of Rockford Wines and Mr Grant Burge provided a joint submission and addressed the panel at 5.10 pm and answered questions from the panel.

Applicant
Mr Mark Baade Planning Consultant from Waveconn Operations Pty Ltd addressed the Panel at 5.27 pm and answered questions from the Panel.

PANEL DECISION

Moved: S Giles Seconded: G Hewitt

Not Seriously at Variance
The Barossa Assessment Panel, having considered the application, resolves that the development proposal has sufficient merit, and is not seriously at variance with the Planning and Design Code.

CARRIED

PANEL DECISION

Moved: S Giles Seconded: G Hewitt

Character Preservation
Pursuant to Section 6(2) of the *Character Preservation (Barossa Valley) Act 2012*, the Barossa Assessment Panel has had regard to the objects of that Act and, in determining this application, has resolved that there are potential impacts on the character values of the district, but is worthy of further consideration

CARRIED

PANEL DECISION

Moved: G Hewitt Seconded: S Giles

Granting of Planning Consent
The Barossa Assessment Panel, having considered the application for consent to carry out development of land and pursuant to the provisions of the *Planning, Development and Infrastructure Act 2016* resolves to GRANT Planning Consent for Application No. 23034819 by Waveconn Operations Pty Ltd to undertake the construction of a telecommunications facility including: 30 metre monopole, antennas, equipment cabinets and fencing at Lot 101 Biscay Road, Tanunda (CT 5282/151) subject to the following conditions and advisory notes:

Council Conditions

(1) The development shall be undertaken in accordance with the endorsed plans and documentation (as amended) accompanying the application except where varied by any condition(s) listed below.

- Locality Pan, Prepared by Waveconn, Drawing No. AS 5352-005-00

- Site Plan, Prepared by Waveconn, Drawing No AS 5352-005-P1, Revision B-1 Dated 8 August 2023
- Site Layout, Prepared by Waveconn, Drawing No. AS5352-005-P2, Revision B-1, Dated 8 August 2023
- Site Elevation, Prepared by Waveconn, Drawing No AS5352-005-P3, Revision B-1, Dated 8 August 2023
- Planning Report prepared by SAQ Consulting Pty Ltd, dated 30 November 2023

(2) The equipment cabinets associated with the telecommunications facility shall be clad using a muted colour, such as Colorbond "Woodland Grey".

Advisory Notes

(1) Any portion of Council's infrastructure damaged as a result of work undertaken within the development site or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.

(2) Any variation of this approved development and/or the conditions of consent will require a separate request and approval by the relevant authority. Approval of this application does not necessarily imply that future requests for variations would be approved. Any future request will be assessed by having regard to the relevant rules and requirements in force at the time any request is lodged.

(3) The adjoining owners should be advised of the proposed work on the boundary and matters such as access to perform work, removal of fences, finished levels and retaining walls should be resolved before building work commences. This approval does not create an automatic right to access neighbouring land.

(4) Any works associated with the development such as tree planting, tree removal, footpath renewal or construction of new vehicle entrances proposed to be undertaken within the road reserve (ie the road carriageway, verge or footpath area) requires an independent approval from Council pursuant to the *Local Government Act 1999*. Further enquiries should be directed to the Works and Engineering team on 8563 8444.

(5) The applicant is reminded of its general environmental duty, as required by Section 25 of the *Environment Protection Act 1993,* to take all reasonable and practicable measures to ensure that the activities on the whole site including during construction, do not pollute the environment in a way which causes or may cause environmental harm.

(6) Construction shall not take place on any Sunday or Public Holiday or after 7:00 pm or before 7:00 am on any other day, and all practicable steps must be taken during construction to minimise the impact of noise emissions on neighbouring properties.

(7) The applicant is advised that this consent does not permit anyone to clear, remove limbs or trim native vegetation. Any proposal to clear, remove limbs or trim native vegetation will require approval or confirmation of exemption from the Native Vegetation Council. An interactive guide is available to help owners and others determine the requirements that apply under the *Native Vegetation Act 1991*, https://www.environment.sa.gov.au/topics/native-vegetation/interactive-guide. Any specific queries regarding the clearance, removal or trimming of native vegetation should be directed to the South Australian Native Vegetation Council.

(8) The applicant is advised that any proposal to clear, remove limbs or trim native vegetation should be undertaken after first notifying the Native Vegetation Council of intended works.

CARRIED

J Evans and M Wohlstadt returned to the meeting at 6.05 pm.

M Wohlstadt resumed the position of Presiding Member.

6.2 23035013 - Lot 4 Duck Ponds Road Stockwell

Representor
Kevin Walsh was not in attendance for the meeting.

Applicant
Mr David Hutchinson from Access Planning (SA) Pty Ltd, Ms Bridget Lindsay from Pinion Advisory and Mr Chris Timms from Dorrien Estate Winery jointly addressed the Panel at 6.09 pm and answered questions from the Panel.

Mr Steve Kaesler, Manager, Engineering Services addressed the panel at 6.43 pm and answered questions from the Panel.

The applicants removed themselves from the meeting at 7.01 pm to consider the panels request for deferral of the application.

The applicants returned to the meeting at 7.02 pm and advised the panel they consent to the application being put on hold for period of no more than two months, pending additional information for consideration of the panel.

PANEL DECISION

Moved: J Evans Seconded: M Wohlstadt

Deferral of Planning Consent
The Barossa Assessment Panel, having considered the application for consent to carry out development of land and pursuant to the provisions of the *Planning, Development and Infrastructure Act 2016* resolves to DEFER Planning Consent with the consent of the applicant, for Application No. 23035013 by Access Planning (SA) Pty Ltd to undertake the Construction of a 160 ML irrigation dam, with maximum fill of 11 metres and max cut of 6.5 metres at Lot 4 Duck Ponds Road Stockwell (CT

5229/947 for a period of two months in order to enable, under delegation of the Panel through the Assessment Manager:

- undertake an independent assessment by a suitably qualified geotechnical engineer of the Dam Hazard and Consequence Category Assessment and all other design documents associated with construction of the dam, noting its proximity to the township of Stockwell; and
- Advise of any other information that may be relevant to assist in mitigating the risk associated with the construction of the dam.

CARRIED

7. REPORTS – REVIEW OF ASSESSMENT MANAGER DECISIONS (PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016)

Nil.

8. REPORTS – PANEL UPDATES

Nil.

9. REPORTS – OTHER BUSINESS

9.1 Assessment Manager Quarterly Report - October 2023 to December 2023

PANEL DECISION

Moved: G Hewitt Seconded: G Burns

That the report be received.

CARRIED

10. REPORTS – CONFIDENTIAL

Nil.

11. NEXT MEETING

Tuesday 2 April 2024 commencing at 5.00 pm

12. CLOSURE OF MEETING

The Presiding Member declared the meeting closed at 7.14 pm.

Confirmed

Date:…….. Chairman: ……

DEBATE REPORT

7.4 Development and Community Services

7.4.5 BAROSSA STOBIE POLE COMMUNITY ART PROJECT

Author: Collaborative Project Officer
24/28906

PURPOSE

To seek Council endorsement of the Barossa Stobie Pole Community Art Project and in-kind support for the project through use of the Rowland Flat Community Centre.

RECOMMENDATION

That Council:

(1) Endorse The Barossa Stobie Pole Community Art Project; and

(2) Endorse an in-kind contribution of $1,915 for The Barossa Stobie Pole Community Art Project for use of the Rowland Flat Community Centre for a period of two years, and that a Licence Agreement with Southern Barossa Alliance be prepared to reflect this.

(3) Appoint Cr …… to the project's Design Approval Team.

REPORT

Introduction and Background
A local group of budding mosaic artists is seeking Council's support to deliver an exciting community art project that will beautify the area and provide increased opportunities for social connection and creative expression that will enhance wellbeing for participants.

In 2023, the Seeds of Hope Suicide Prevention Network secured funding from Black Dog Ride to create three "Reflection Sofas" on Council reserves in Angaston, Mount Pleasant and Lyndoch.

Council provided the concrete foundations upon which the Hebel block 'sofas' were constructed. A local mosaic artist was contracted by Seeds of Hope to provide artistic direction and to lead a group of community members in each town to embellish their sofa with mosaic artwork. Most had never attempted mosaic work before, and as a direct result of the project, have developed new skills and made new friends.

Following the official launch of the Reflection Sofas in November 2023, a number of community members expressed interest in maintaining connection with each other and in continuing to develop their artistic skills through involvement in another community art project, hence the "Barossa Stobie Pole Community Art Project" was developed.

The group approached Southern Barossa Alliance (SBA) who readily agreed to auspice the Barossa Stobie Pole Community Art Project, subject to Council's approval and in-kind support.

The group has secured donations of mosaic materials, equipment and storage lockers that can be utilised for the project. The group will seek further donations of materials. Mosaic artists from the region have expressed interest in being involved through providing expertise for the project.

It is proposed that, as a pilot, the project be confined to Lyndoch during the initial stage. This will achieve better "placemaking" outcomes through using art on stobie poles to create an impact by enhancing and linking public spaces in a confined area. This would not be possible if the project was spread randomly across a large geographical area early in the project.

Discussion

History of Stobie Pole Art in SA

This year marks 100 years since James Cyril Stobie invented the "stobie pole" that has become a South Australian icon, built to withstand termites, fire and flood.

Often described as ugly, the stobie pole has become a blank canvas for many artists and community groups.

In 1983 SA's first artist-in-residence, Ann Newmarch, pioneered stobie pole art in the City of Prospect. Since then, many councils have followed suit. During 2013-2021, Campbelltown Council supported the Ripple Community Arts Inc group to deliver the "Drainwaves" project that involved installing mosaic art works on ugly bio-retention pits in the Lochiel Park Village development. The Hindmarsh Greening group has been actively involved in beautifying the City of Charles Sturt through decorating stobie poles and flowerpots with mosaics and painting for over 30 years. (Attachment 1)

Artists and community groups can apply online to SA Power Networks to paint or mosaic a stobie pole. It's a tradition in the state that has been supported by various councils who often facilitate these activities as they recognise the value of art in public spaces. These councils have clear guidelines and the community groups involved have extensive experience in engaging with their communities in producing stobie pole art. Their experience can inform The Barossa Council's approach to supporting the delivery of the Barossa Stobie Pole Community Art Project.

Art and Wellbeing

The relationship between art and wellbeing is well documented "…In recent decades, we have come to understand the intrinsic health benefits to artistic and leisure activities. Art can help us to emotionally navigate the journey of battling an illness or injury, to process difficult emotions in times of emergency and challenging events. The creation and enjoyment of the arts helps promote holistic wellness and can be a motivating factor in recovery……" World Health Organisation (Attachment 2).
This wellbeing impact was confirmed through a survey of participants of the Reflection Sofa Project, who stated they enjoyed the project as it enabled them to:

- Create a piece of art for my community
- Meet new people and socialise
- Learn new skills
- Be creative
- Have something to look forward to each week

Through the Barossa Wellbeing Plan in partnership with Wellbeing SA (approved at the February 2024 Council meeting), Council will develop a tool to measure wellbeing outcomes. This tool will be applied to the Barossa Stobie Pole Community Art Project so that the impact of the project can be measured and promoted.

Council's In-kind Contribution
As much of the interest in the Barossa Stobie Pole Community Art Project has come from residents who live in southern Barossa, SBA is seeking Council approval to use the underutilised Rowland Flat Community Centre for the project. (Note participation in the project will be open to anyone who is interested). The undercover area of the Community Centre would be an ideal location in which to place lockers that would be used to store art materials. It would also serve as an ideal location in which to create the art pieces during fine weather. The back 'laundry' area of the Community Centre is large enough to accommodate a work bench that could be used during inclement weather and has flooring that would withstand this use. The Centre is also wheelchair accessible.

Council approval is sought to waive 100% of the licence fee for the use of Rowland Flat Community Centre for the Barossa Stobie Pole Community Art Project. Council's Lease, Licence and Permit Policy only allows for a 40% reduction as SBA is a not-for-profit organisation. Only those organisations with Registered Charity or Registered Not for Profit status are eligible for 100% fee waiver. The licence would be for 18 hours per week for 2 years and on specific days and times of the week so that the Centre would be available for use by other community members on other days when required. The value of this in-kind contribution would be $1,915.

This in-kind investment will return widespread community benefit through beautifying State-owned infrastructure that is maintained by Council, and through providing wellbeing outcomes for project participants and residents and visitors who enjoy experiencing visual art. Beautification of stobie poles will enhance tourism and residents will identify more with their local area.

Project Governance
The Barossa Stobie Pole Community Art Project will be auspiced by SBA who will provide $20m Public Liability Insurance.

If approval and support from Council is forthcoming, a Barossa Stobie Pole Community Art Project Committee will be established, comprised of members of the mosaic group and at least one member from SBA. The Project Committee will be responsible for overseeing delivery of the project that will involve liaison with Council and SA Power Networks, consulting with community and seeking donations of materials. It will report to SBA on a regular basis.

In the longer term, the group aims to become incorporated as an Association in its own right, similar to Ripples Community Arts Inc in Campbelltown.(Attachment 3)

Design Approval Process
SA Power Networks provides details of the approval process required by them on their website (Attachment 4).

As an example of best practice, the City of Charles Sturt has actively supported public art on stobie poles for 30 years and refers to the SA Power Networks website in its own guidelines (Attachment 5). The Council and SA Power Networks have a long-standing

relationship of trust with Hindmarsh Greening, a group of artists, who have beautified many stobie poles and public spaces over the years.

The Barossa Stobie Pole Community Art Project Committee will follow SA Power Network's guidelines and a process that will involve:

- Identifying suitable stobie poles in the pilot project region.
- Consulting with residents/businesses directly adjacent to selected stobie pole sites to gain approval and design ideas.
- Developing designs.
- Seeking approval for the selected stobie poles and designs from both Council* and SA Power Networks.
- Creation of mosaics to industry best practice standards.
- Installation of artworks following safety guidelines.
- Finishing works with an anti-graffiti coating product.
- Providing images of the finished works, artists' names and details for Council's and SA Power Networks' records.
- Maintaining the finished artwork should it be damaged.

*To ensure the designs comply with Council's image and branding, a small Council Design Approval Team will be formed comprised of:

- Manager Community Services
- Team Leader Communications and Engagement
- An elected member – to be nominated

This team will meet as required with the Project Committee to view and approve batches of proposed designs within an agreed turnaround timeframe to prevent project delays.

The group has been advised that generally SA Power Networks readily approves applications for public art on stobie poles if the relevant local council is supportive.

Summary and Conclusion

This grass roots community art project will provide an opportunity for social connection for residents through the development of creative skills whilst beautifying infrastructure in the Council area. The link between art and wellbeing is well established and this will be demonstrated through the Barossa Stobie Pole Community Art Project. Other Councils have successfully facilitated similar projects, generating outcomes in both community wellbeing and placemaking.

In addition to aligning with Council's Community Plan, the project is relevant to the Regional Public Health Plan that has Mental Health and Suicide Prevention as one of the Lighthouse Projects. It also complements Council's Creative Industries Project and will add value to tourism activities through enhancing public spaces and creating attractions. Other benefits are that art works on stobie poles generally deter unlawful graffiti and mosaic works generally have a life expectancy of at least 50 years.

Council's endorsement of the project and provision of in-kind support will enable this exciting community art initiative to proceed and succeed.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Nil

Supporting references
(1)Hindmarsh Greening Facebook site
(2)World Health Organisation- Arts and Health
(3)Ripples Community Arts
(4) SA Power Networks – Stobie Pole Art Approval Process
(5)City of Charles Sturt Stobie Pole Art Guidelines

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan



Community and Culture



Health and Wellbeing

Goal

4. 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.
5. We are a strong community that is welcoming, safe and enjoys a quality lifestyle that celebrates our local identities, diversities, cultures and histories including our Aboriginal heritage.
9. Our community has fair and equitable access to the resources and services they need to lead a safe, healthy, inclusive and connected lifestyle
10. Our region enjoys the benefits of sustainable community groups, networks and facilities that encourage everybody to participate in the community.

Strategies

4.1. Build on a strong sense of community pride with active community groups and individuals participating in local decision making and community building activities.
4.3. Embrace place-making principles when developing community infrastructure and regulate planning and development in public spaces and active recreation.
5.1. Support the development of activities that celebrate the history, art and culture of the Barossa and its people.
5.3. Create vibrant public spaces that provide places for creative development, cultural interaction and social connections.
5.4. Recognising and celebrating the community successes and learning from opportunities.
9.1. Work towards combating loneliness and social isolation and ensuring that people enjoy a sense of inclusion and feel connected.
10.3. Build on the capacity of community members to participate in cultural, creative, recreational, sporting and learning opportunities.

Legislative Requirements
Nil

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

- Following the prescribed approval process will reduce risk.
- Southern Barossa Alliance is the auspice for the project and has $20m Public Liability Insurance.
- There were no reportable incidents during the Reflection Sofa Project.

COMMUNITY ENGAGEMENT

This report has been developed following consultation with interested community members and Southern Barossa Alliance. Consulting with residents/businesses directly adjacent to selected stobie pole sites is a requirement of SA Power Networks approval process and will be undertaken prior to the design and installation of art works.

DEBATE REPORT

7.4 Development and Community Services

7.4.6 DRAFT ANCILLARY ACCOMMODATION AND STUDENT ACCOMMODATION DEFINITIONS REVIEW CODE AMENDMENT

Author: Director Development and Community Services
24/29305

PURPOSE

To endorse a submission prepared in relation the draft Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment.

RECOMMENDATION

That Council endorse the draft submission on the Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment contained within Attachment 1.

REPORT

Introduction
On 4 March 2024, the Minister for Planning Nick Champion MP, released the Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment for public submissions.

A copy of the letter from Planning and Land Use Services, advising notice of the proposed Code Amendment is contained within Attachment 2. A copy of the fact sheet summarising the Code Amendment is contained within Attachment 3.

The code amendment will review the technical definitions for 'ancillary accommodation' and 'student accommodation' to enable self-contained accommodation.

The code amendment is on public consultation until 15 April 2024. Importantly, the Code Amendment has come into interim effect which means the definitions come into immediate effect.

Discussion
The Code Amendments seeks to amend the technical definitions for both ancillary and student accommodation to enable self-contained style accommodation options.

Under the current Planning and Design Code, ancillary accommodation cannot comprise of a self contained residence whilst student accommodation requires common facilities for shared use, such as kitchen and laundry facilities.

The proposed amendments would no longer require ancillary accommodation

buildings (granny flats) to share kitchens, bathrooms, laundries etc. with the main dwelling, whilst student accommodation would also be able to include self-contained facilities.

The proposed amendment seeks to go some way to address current market housing conditions, by providing for a greater range of housing options to support both affordability and ageing in place.

The Code Amendment is supported in that it provides greater certainty in terms of what is permitted within ancillary accommodation. Currently, there is uncertainty as to what facilities are permitted within buildings.

Staff have prepared a submission contained within *Attachment 1* that provides support to the Code Amendment as it provides greater clarification to residents and provides opportunity to diversify housing options within the Council area.

Summary and Conclusion
It is recommended that Council endorse the submission contained in *Attachment 1*, which provides support for greater clarification and options for housing supply to be embedded into the Planning and Design Code.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1	Draft Submission ⇩
Attachment 2	Advice Planning and Land Use Services - Notice of consultation - Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment ⇩
Attachment 3	Fact Sheet - Changing the Definition of Ancillary and Student Accommodation ⇩

Supporting references
www.yoursay.sa.gov.au/ancillary-student-accommodation-code-amendment

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

Natural Environment and Built Heritage

Goal

1. The Barossa has sustainable farmland providing diverse and stable returns, while protecting the unique natural environment and biodiversity of the region.
2. The history of our region including aboriginal sites is reflected in our streetscapes and our historic buildings are maintained for future generations.

Strategies

1.1. Ensure land use planning and resource use protects the quality of the natural environment, the existing character of rural landscapes, historic significance and the high value of agricultural land.
2.2. Ensure clearly defined townships are maintained to manage residential and commercial development that is sensitive to the natural environment and areas of historical significance.

Legislative Requirements
Planning, Development & Infrastructure Act 2016

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Nil

COMMUNITY ENGAGEMENT

The community have the opportunity to provide public submissions as part of the current consultation process which concludes on 11 April 2024.

Reference: TRIM

19 9 March 2024

Code Amendment Team
Planning and Land Use Services Division
Department for Trade and Investment

By email: plansasubmissions@sa.gov.au

Dear Sir/Madam,

Submission – Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment

Thank you for notice of the release of the above-mentioned Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment on 29 February 2024.

Council supports the proposed amendments to definitions of Ancillary Accommodation and Student Accommodation as outlined within the Code Amendment released for public consultation.

The Code Amendment provides greater certainty for applicants and Relevant Authorities in respect to the types of facilities permitted within ancillary accommodation.

The current definition may preclude facilities such as a kitchen, bathroom or laundry facilities which are common and expected within ancillary accommodation.

The proposed change recognises the importance of ancillary accommodation to support housing choice and diversity of housing, especially given the housing market pressures currently experienced.

We look forward to the outcome from the consultation process and how the proposed changes will be implemented on a permanent basis.

Sincerely,

Martin McCarthy
Chief Executive Officer

(08) 8563 8444 | barossa@barossa.sa.gov.au | barossa.sa.gov.au
43-51 Tanunda Road (PO Box 867), Nuriootpa SA 5355 | ABN: 47 749 871 215

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Government of South Australia
Department for Trade and Investment

#21210729

29 February 2024

Planning & Land Use Services

83 Pirie Street
Adelaide SA 5000

GPO Box 1815
Adelaide SA 5001
DX 171

Tel 1800 752 664

Mr Martin McCarthy
Chief Executive Officer
The Barossa Council

By email: mmccarthy@barossa.sa.gov.au

Dear Mr McCarthy

Notice of consultation by the Chief Executive of the Department for Trade and Investment on the *Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment.*

The Chief Executive of the Department for Trade and Investment has now released the *Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment* (the Code Amendment) for consultation as required under the *Planning, Development and Infrastructure Act 2016* (the Act).

In February 2024, the Minister for Planning agreed to a Proposal to Initiate the Code Amendment under section 73(2)(b) of the Act, which enables the Chief Executive to propose an amendment to the Planning and Design Code (the Code).

The Code Amendment proposes to review the definitions for 'ancillary accommodation' and 'student accommodation' to allow these forms of accommodation to be self-contained.

Due to the urgency of supporting self-contained ancillary accommodation in response to the housing crisis, the Code Amendment has come into effect on an interim basis at the same time as being released for consultation.

We are now seeking your feedback, with public consultation being undertaken from 29 February 2024 until 11 April 2024.

Consultation is taking place in accordance with the engagement plan prepared by the Chief Executive and as required by the Community Engagement Charter under the Act.

Where to get more information

The proposed Code Amendment and supporting information can be viewed on the PlanSA website at:
https://plan.sa.gov.au/en/ca/accommodation-definitions-review

Hard copies of the Code Amendment will be available for viewing during standard opening hours at:

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- Planning and Land Use Services – 83 Pirie Street, Adelaide.

There will be an online information session on Tuesday 19 March at 2pm. The session will be available on Eventbrite at:
https://www.eventbrite.com.au/e/851250301567?aff=oddtdtcreator

How to provide feedback

Written submissions are to be provided no later than 5.00 pm on **11 April 2024** via:

- The YourSAy engagement platform: www.yoursay.sa.gov.au/ancillary-student-accommodation-code-amendment

- The online submission form via the PlanSA website: https://plan.sa.gov.au/en/ca/accommodation-definitions-review

- Email: plansasubmissions@sa.gov.au (subject: Submission – Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment)

- Post:

  Code Amendment Team
  Planning and Land Use Services Division
  Department for Trade and Investment
  GPO Box 1815
  ADELAIDE SA 5001.

We anticipate the final engagement report and Code Amendment will be provided to the Minister for Planning for determination in mid-2024. These documents will be published on the PlanSA portal within five (5) business days of the Minister's decision.

Should you have any questions regarding the Code Amendment, please contact the Code Amendment Team on 1800 752 664 or email plansa@sa.gov.au.

Yours sincerely



Marc Voortman
DIRECTOR, PLANNING
PLANNING & LAND USE SERVICES
On behalf of the Chief Executive, Department for Trade and Investment

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PlanSA

FACT SHEET

Changing the definition of ancillary and student accommodation

To help provide a more diverse and affordable range of housing options, the South Australian government is proposing to change the existing Planning and Design Code definitions for “ancillary accommodation” (often referred to granny flats) and “student accommodation”.

The Planning and Design Code contains the planning rules and policies that guide what can be developed in South Australia. Sometimes the Code is amended to better serve the community.

What is changing and why?

The proposed changes will allow ancillary and student accommodation to be self-contained. This means they can have their own bathroom, kitchen and laundry.

The changes are a response to the state’s current housing crisis and are expected to increase rental stock and housing diversity. They also aim to provide more affordable housing options for the South Australian community.

Other aspects of the definitions will remain unchanged. This means that ancillary accommodation must still be subordinate to a main dwelling and have limited floor area. Student accommodation must still incorporate common facilities for shared use by students.

The proposed amendment complements recent changes to the planning regulations that ensure homeowners can lease ancillary accommodation (such as granny flats) to anyone they choose. This has enabled a greater number of granny flats to be made available to the rental market.

When will the change occur?

The draft Code Amendment will come into effect on an interim basis on the same day as it is released for public consultation (29 February 2024), known as ‘early commencement’.

The early commencement process is used when the Minister considers that the immediate application of the policy changes is necessary in the interests of orderly and proper development, and to counter applications for undesirable development ahead of the outcome of consideration of this Code Amendment by the Minister.

plan.sa.gov.au

Government of South Australia
Department for Trade and Investment

How can I have my say?

To learn more and provide your feedback on the proposed changes, visit yoursay.sa.gov.au/ancillary-student-accommodation-code-amendment during the 6-week consultation period from 29 February 2024 to 15 April 2024.

DEBATE REPORT

7.4 Development and Community Services

7.4.7 BUILDING INDEMNITY INSURANCE REVIEW

Author: Manager Development Services
24/29444

PURPOSE

To endorse a submission prepared in relation to the Building Indemnity Insurance Review.

RECOMMENDATION

That Council endorse the draft submission in relation to the *Building Indemnity Insurance Review* contained within Attachment 1.

REPORT

Background
Under the *Building Work Contractors Act 1995* and associated Regulations, it is compulsory in South Australia for builders to take out a Building Indemnity Insurance (BII) policy on all domestic construction projects that require Development Approval and have a value of $12,000 or greater.

The scheme protects homeowners against a builder not completing the works and the subsequent defect liability period, which in South Australia continues for five years post completion. BII protects homeowners against losses relating to non-completion and breach of statutory warranty where a builder has died, disappeared or become insolvent up to a value of $150,000 per project.

Introduction
Consumer and Business Services (CBS) and Treasury are reviewing the BII scheme to understand if it is fit for purpose. This includes examining what is covered by BII, the minimum thresholds for cover, maximum cover limits and identification of gaps in consumer protection and awareness.

A round of stakeholder interviews were completed in late 2023, prior to the release of a consultation paper on 12 February (refer *Attachment 2*). Consultation runs until 25 March 2024. Following the review of feedback through the consultation, recommendations to the State Government will be made in June/July 2024.

Discussion
BII is a statutory consumer protection requirement and CBS is the authority responsible for the compliance and enforcement of the *Building Work Contractors Act 1995*. Local Government is not typically responsible for statutory consumer protections, however, the BII scheme overlaps with Council's responsibilities relating to construction work as set out in the *Planning, Development and Infrastructure Act 2016*.

Council's responsibilities relating to the administration of BII under the *Building Work Contractors Act 1995* are set out under the *Planning, Development and Infrastructure (General) Regulations.* Regulation 36 prescribes that a BII certificate must be lodged with the Relevant Authority during the assessment of Building Consent (where a building work contract has been entered into) or otherwise prior to or at time of giving notice of the intended commencement of building work.

Under the *Regulations*, Council or a Private Accredited Professional is obliged to request the BII certificate at time of Building Consent or otherwise where a building work contract has not been entered into, request the BII Certificate as a Condition of Consent. Upon Council receiving notification of commencement of building work, Council will assess whether the BII Certificate has been lodged.

Observations of the current situation

There are a number of current issues/gaps with the scheme and the opportunity to review the suitability of the scheme is welcomed. The following issues/gaps are identified:

- The minimum value ($12,000) for domestic construction, subject of BII, is low and has not kept pace with inflation;
- Experience is that BII claims for building work are predominantly associated with construction of new dwellings or alterations/additions to dwellings rather than construction of outbuildings and ancillary domestic structures;
- Residential flat buildings are a complex type of residential development and it is essential that they are subject of BII. These developments can be highly complex to resolve if a BII claim is made because they are undertaken by residential builders, will involve multiple owners/consumers and work is dependent upon multiple parties (ie. construction of fire-walls);
- Council almost always receives the BII certificate at time of receipt of the commencement of building work, not during assessment of Building Consent;
- It is common that a BII certificate is not provided at time of notification of commencement. Once building work has commenced, it can be time and resource intensive to 'stop works' by way of Enforcement Notice. Delays attributed to absence of the BII can result in lost time for developers and scheduling issues but at the same time places the consumer at risk should a BII Certificate not be in place;
- There are instances where Councils are not advised of the commencement of building work and Council will not know if the BII is in place;
- At time of request for the BII certificate, it is common for builders/homeowners to advise Council that the development is being undertaken as an "owner builder'. In some cases, this is to avoid the need to obtain a BII certificate. Some Councils are seeing significant increases in the number of "owner builders". The term "owner builder" is not defined under the *Building Work Contractors Act 1995* but rather is a common term to indicate that the building work is being coordinated by the homeowner, who is not a licensed building work contractor.

Recommendations

The following recommendations are outlined within The Barossa Council's submission as contained within Attachment 1:

Scope of BII coverage

It is suggested there should be an increase in the value for domestic building work, noting the current policy limit up to $150,000 is not sufficient in order to completely rebuild a dwelling if there are issues identified in the construction.

Timing of providing the BII Certificate

It is suggested the BII Certificate should be provided during the building assessment, such that the Certificate cannot be conditioned after grant of Development Approval. Another alternative could be to enable the BII Certificate to be reserved after grant of Building Consent but prior to grant of Development Approval. This would mean that Development Approval could not be issued until the BII Certificate has been submitted.

BII avoidance behaviour and "owner builders"

More rigorous criteria for exemptions from BII should be implemented. Guidelines to define who is an "owner builder" and eligibility criteria etc. would be beneficial. For example, the Victoria Building Authority sets requirements for "owner builder" eligibility, including completion of an "owner builder" eLearning assessment and construction induction training for the project.

Responsibility for compliance

Greater powers for CBS to address instances of construction without the BII Certificate are supported. It may be appropriate for CBS to undertake audits of Licensed Building Work Contractors to assess whether BII obligations are being met.

Summary and Conclusion
It is recommended that Council endorse the submission contained in *Attachment 1*, which makes recommendations to improve the BII scheme.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 Draft Submission - Building Indemnity Insurance Review ⇩
Attachment 2 Building Indemnity Insurance Review Consultation Paper ⇩

Supporting references
https://yoursay.sa.gov.au/building-indemnity-insurance-review-consultation

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

Natural Environment and Built Heritage

Goal

1. The Barossa has sustainable farmland providing diverse and stable returns, while protecting the unique natural environment and biodiversity of the region.

2. The history of our region including aboriginal sites is reflected in our streetscapes and our historic buildings are maintained for future generations.

Strategies

1.1. Ensure land use planning and resource use protects the quality of the natural environment, the existing character of rural landscapes, historic significance and the high value of agricultural land.

2.2. Ensure clearly defined townships are maintained to manage residential and commercial development that is sensitive to the natural environment and areas of historical significance.

Legislative Requirements

Building Work Contractors Act 1995
Planning, Development and Infrastructure Act 2016
Planning, Development and Infrastructure (General) Regulations 2017

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Local Government is not typically responsible for statutory consumer protections but does interact with the scheme through provisions under the *Planning, Development and Infrastructure (General) Regulations 2017*.

The scheme protects homeowners against a builder not completing the works and the subsequent defect liability period, however current issues with the scheme pose risks to consumers in event that a builder has died, disappeared or become insolvent.

COMMUNITY ENGAGEMENT

A consultation paper was released on 12 February and consultation will run until 25 March 2024. Following the review of feedback through the consultation, recommendations to the State Government will be made in June/July 2024.

Reference: TRIM

19 March 2024

Building Indemnity Insurance Review Team
South Australian Government Financing Authority (SAFA)

By email: biireview@sa.gov.au

Dear Sir/Madam,

Submission – Building Indemnity Insurance Review

Thank you for opportunity to make submission in respect to the above-mentioned Building Indemnity Insurance (BII) Review, which commenced consultation on 12 February 2024.

Council has identified a number of current issues/gaps with the existing scheme and the proposed review of the scheme to determine its suitability is welcomed.

Current issues with the BII scheme identified by staff include:

- It is common that a BII Certificate is not provided at time of notification of commencement. Once building work has commenced, it can be time and resource intensive to 'stop works' by way of Enforcement Notice. Delays attributed to absence of the BII can result in lost time for developers and scheduling issues but at the same time places the consumer at risk should a BII Certificate not be in place;

- There are instances where Council is not advised of the commencement of building work and as a result Council will not know if the BII is in place;

- At time of request for the BII certificate, it is common for builders/homeowners to advise Council that the development is being undertaken as an "owner builder". In some cases, this may be to avoid the need to obtain a BII certificate. It is understood that some Councils are seeing significant increases in the number of "owner builders".

The Barossa Council recommends the following improvements as part of a revised BII Scheme:

Scope of BII coverage

It is suggested there should be an increase in the value for domestic building work, noting the current policy limit up to $150,000 is not sufficient in order to completely rebuild a dwelling if there are issues identified in the construction.

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Timing of providing the BII Certificate

It is suggested the BII Certificate should be provided during the building assessment, such that the Certificate cannot be conditioned after grant of Development Approval. Another alterative could be to enable the BII Certificate to be reserved after grant of Building Consent but prior to grant of Development Approval. This would mean that Development Approval could not be issued until the BII Certificate has been submitted.

BII avoidance behaviour and "owner builders"

More rigorous criteria for exemptions from BII should be implemented. Guidelines to define who is an "owner builder" and eligibility criteria etc. would be beneficial. For example, the Victoria Building Authority sets requirements for "owner builder" eligibility, including completion of an "owner builder" eLearning assessment and construction induction training for the project.

Responsibility for compliance

Greater powers for CBS to address instances of construction without the BII Certificate are supported. It may be appropriate for CBS to undertake audits of Licensed Building Work Contractors to assess whether BII obligations are being met.

We thank you for the opportunity to make submission during the public consultation period and we look forward to the outcome from the consultation process and how the above recommended improvements can be implemented into the revised BII scheme.

Yours sincerely,

Martin McCarthy
Chief Executive Officer

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Building Indemnity Insurance
Review Consultation Paper

February 2024

Government of South Australia

SOUTH AUSTRALIA

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We acknowledge Aboriginal people as the state's first peoples, nations and Traditional Owners of South Australian land and waters. We recognise that their unique cultural heritage, customs, spiritual beliefs and relationship with the land are of ongoing importance today, and we pay our respects to Elders past, present and emerging leaders of the future.



Treasurer's Foreword

I am pleased to present the South Australian government's *Building Indemnity Insurance Review Consultation Paper*.

Housing security is a priority for this government and a cornerstone policy of creating a better quality of life for all South Australians. As such, the government recognises the need for a robust safety net in place when building a home.

This consultation is an opportunity to listen to individuals and industry across a range of aspects of Building Indemnity Insurance – and to simplify and strengthen the scheme to protect South Australians and support builders in the long term.

Hon. Stephen Mullighan
Treasurer

Minister's Foreword

South Australia's Building Indemnity Insurance scheme is designed to give homeowners strong protections for their investment so they know that once work has started, it will be completed and any defects remedied.

Unfortunately, as recent events have indicated, this has not always been the case, with some consumers left with no, or insufficient, cover when a builder has gone into liquidation.

This consultation will seek insights from consumers, builders, industry groups and any other interested stakeholder, that will help us ensure this program is providing adequate cover for both industry and consumers in protecting these significant investments.

Minister Michaels
Minister for Consumer and Business Affairs



Purpose and scope of the review

Purpose

The Government of South Australia is conducting a review of Building Indemnity Insurance (BII) arrangements and related consumer protections in South Australia.

An integral part of the review is understanding stakeholders' experiences and views on these matters.

Scope

The aims of the review are to:

- Develop a long-term solution for the administrative framework for BII by the South Australian Government.
- Review and strengthen consumer protections.

  This includes examining whether existing BII cover is fit for purpose, by examining factors such as what is covered by BII, the minimum thresholds, and maximum cover limits; and addressing gaps in consumer protection and consumer education.

How to be involved

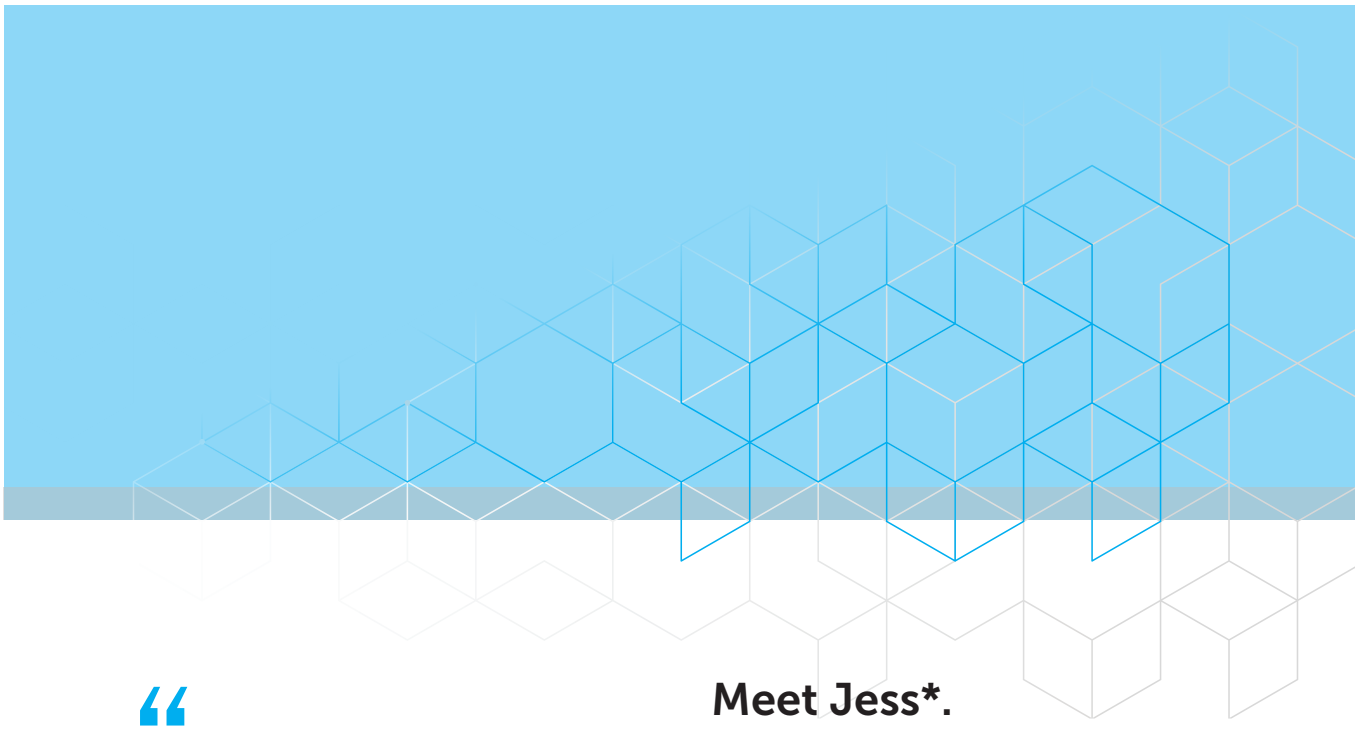
The consultation process is being supported by an independent engagement organisation.

There are a range of ways in which you can be involved in this consultation process:

- You can read this paper, and then complete the survey.
- You can also prepare a submission using the guidelines.
- You can register to be part of an interview or workshop.

Purpose of this consultation paper

This consultation paper has been designed to support people who wish to complete the survey, or provide a submission to the review. It provides some background information about BII, outlines the challenges being experienced with the system, and outlines the things we would like to explore in the review.



“Builds shouldn’t be able to start without insurance.

It would be great to empower owners so they can get insurance in place.”

- MARIE

Meet Jess*.

In 2020, Jess who has a disability was able to sign a contract to build a home, as part of a group of allotments provided exclusively to people on low incomes or living with a disability.

Jess’s mum Marie* supported her during the process and was very proactive about making sure that Building Indemnity Insurance was in place for the build. She repeatedly sought the certificates from the builder.

The builder was upfront about their difficulties in getting the insurance, however they eventually reassured her that it was in place, although they still failed to produce the certificate.

When the builder went into administration, they found out that BII was not in place and they had no insurance to cover the price escalation in contracting with a new builder.



What is Building Indemnity Insurance?

Building Indemnity Insurance (BII) is compulsory insurance that a builder must take out when performing major *domestic building work*. It provides protection to the builders' customers if the builder dies, disappears or becomes insolvent before finishing the building work, or for defective work on a completed home, for up to five years post completion.

What work requires Building Indemnity Insurance?

BII is required for domestic building work that:

- Is being performed by a building work contractor under a contract with a customer or on their own behalf (such as speculative building work or build-to-rent); AND
- Has a contract value of $12,000 or more; AND
- Requires approval under the *Planning, Development and Infrastructure Act 2016* ("council approval").

"Domestic building work" is work involved in constructing, erecting, altering, repairing, adding to or demolishing a building that is intended to be used as a place of residence.

This commonly includes houses, townhouses, units and some apartments (high-rise apartments are not currently covered).

It also includes other building work within, or on the boundary of, the "curtilage" of the house. This includes structures like sheds, swimming pools and gazebos that are built within a normal house block.

There are some exemptions.

The following types of work do not require BII:

- Subcontracts to another builder who is contracted to perform the work (the head contractor must meet any BII requirements).
- Contracts solely for demolition work.
- Residential buildings that are over three storeys and contain two or more separate dwellings.

Work performed by a genuine owner builder does not require BII but any builders who perform work for them valued at $12,000 or more must take out BII for their work. A person who sells or rents two or more buildings in a five-year period that they have built or improved, is considered to be a building work contractor (unless they can prove otherwise) and is required to be licensed as a builder and take out BII.

What does the insurance cover?

BII covers the additional costs of completing a building project above the original contract price. This includes the costs of fixing any defects in the work already performed. The customer still needs to pay the remainder of their contract price as part of the costs for the new builder.

BII also covers the costs of performing rectification of defective work for projects within the 5-year statutory warranty period after completion of a home.

Under the *Building Work Contractors Act 1995* ('the Act'), an insurer is required to provide a minimum of $80,000 of insurance cover for BII. The two insurers operating in South Australia provide a policy limit above this amount, being $150,000. The policy provides cover up to a maximum limit of $150,000 per project and has an excess of $400. It covers the original owner and any subsequent owner (for up to 5 years after completion of the project).

When does cover commence?

Cover commences as soon as the insurance is taken out. Under the Act, a builder cannot perform building work until an insurance policy is in force.

Under the *Planning, Development and Infrastructure (General) Regulations 2017*, there is a certification process for BII. A person must not commence domestic building work unless or until a copy of a certificate of insurance in relation to that work has been lodged with the relevant authority. The certificate of insurance is to be lodged:

- When the application for building consent is lodged - this applies if there is a domestic building work contract for the building work prior to the building consent application being lodged, or if the building work is to be performed by a builder on their own behalf, or
- In any other case, prior to or at the time of giving notice of the intended commencement of the building work - this notice is to be provided before the building work commences.

Until the insurance is taken out, any deposit and other payments made to the builder are not covered by BII. There are limits on the amount that a builder can take as a deposit (usually 5% plus some third-party costs) to limit this risk.

Who takes out the insurance?

The builder takes out the insurance and must provide a copy of the certificate of insurance to the customer before commencing the building work. The builder passes on the cost of the insurance to the customer.

Builders are limited in the amount of work they can insure on an annual basis to manage the risk of insolvencies. The insurer grants the builder an annual eligibility or turnover limit, which allows the builder to insure building projects up to the value of the annual limit. As new works are insured, the available 'limit' or 'cap' is reduced by the value of the building work. The annual limit reinstates to the full approved limit on the eligibility renewal date.

The insurance can be provided by any insurer, so long as the policy meets the minimum requirements under the Act. Currently, almost all BII is provided by QBE through an arrangement with the Government of South Australia, which fully underwrites this. While at least one other insurer is operating in the South Australian market, there are no insurers with scale or appetite to underwrite the majority of the market.

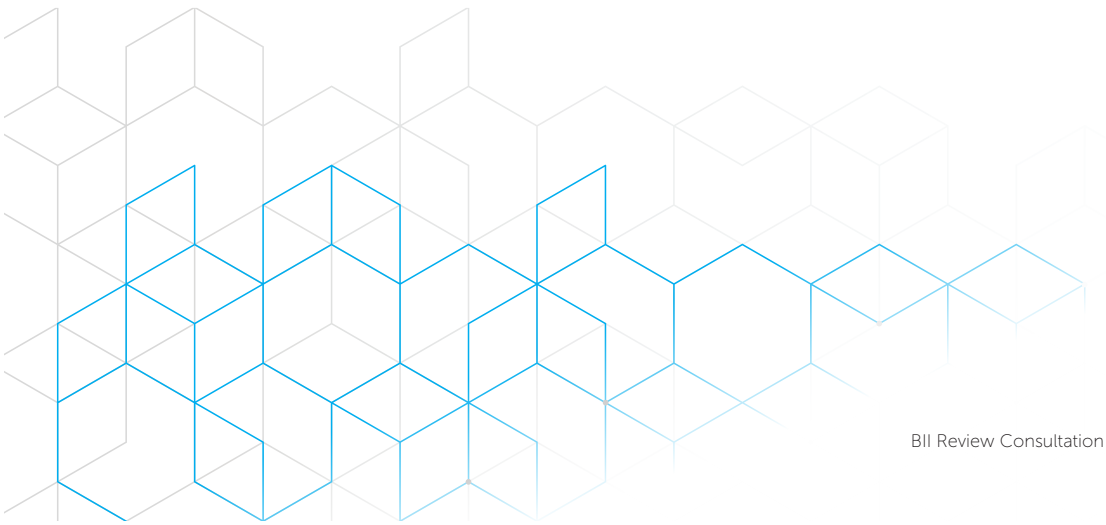
Who checks that insurance is in place?

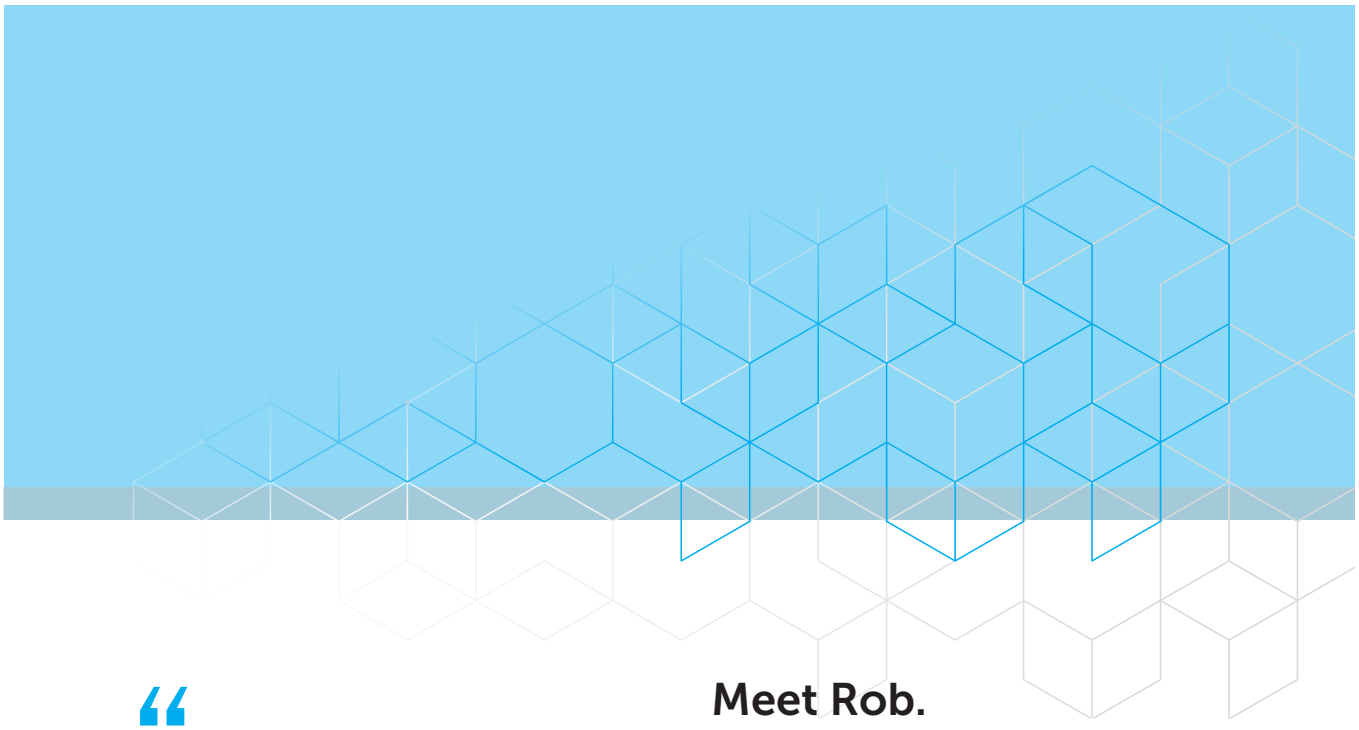
The primary checks to ensure that BII is in place are through the development approval process. When a person applies for development approval and a builder has been engaged for the project, they must supply a copy of the BII certificate with their application. The relevant authority (e.g. local council or private accredited professional) is obliged to check that BII is in place before granting building consent. Builders normally apply for building consent as part of the development approval process for their customers.

Where a person applies for building rules consent before engaging a builder, they must supply a copy of the BII certificate to the local council on or before giving notice of commencement of the building work to the council.

Customers should ensure that they have received a copy of the BII certificate from their builder. QBE has an online register to allow people to easily check whether a BII policy is in place. QBE will also email a copy of the certificate to the builder's customer, using details supplied by the builder.

Consumer and Business Services is the licensing authority for builders and can take action against builders who fail to take out BII.





“It is important to have insurance in place and it’s good to have it. Our system is a lot better than elsewhere in Australia. I have noticed in the last 9 months, the certificate has changed as it now has a link to show that it is a genuine certificate - this is a fantastic idea.”

- ROB

Meet Rob.

Rob owns and runs a small boutique building company and navigates his insurance through a broker, who is very supportive. “They help you to jump through hoops, and they are a very important part of the system”, says Rob.

While Rob says builders welcomed the across the board increase in caps in response to rising construction costs, the reporting thresholds didn’t change so it put some builders into another reporting category they’re not used to.

Rob would like to see a mechanism where both caps and reporting thresholds are reviewed as standard practice during times of rising prices.

In addition, Rob would like more checks and balances to ensure that construction doesn’t commence unless a certificate is produced.



Why are we doing a review?

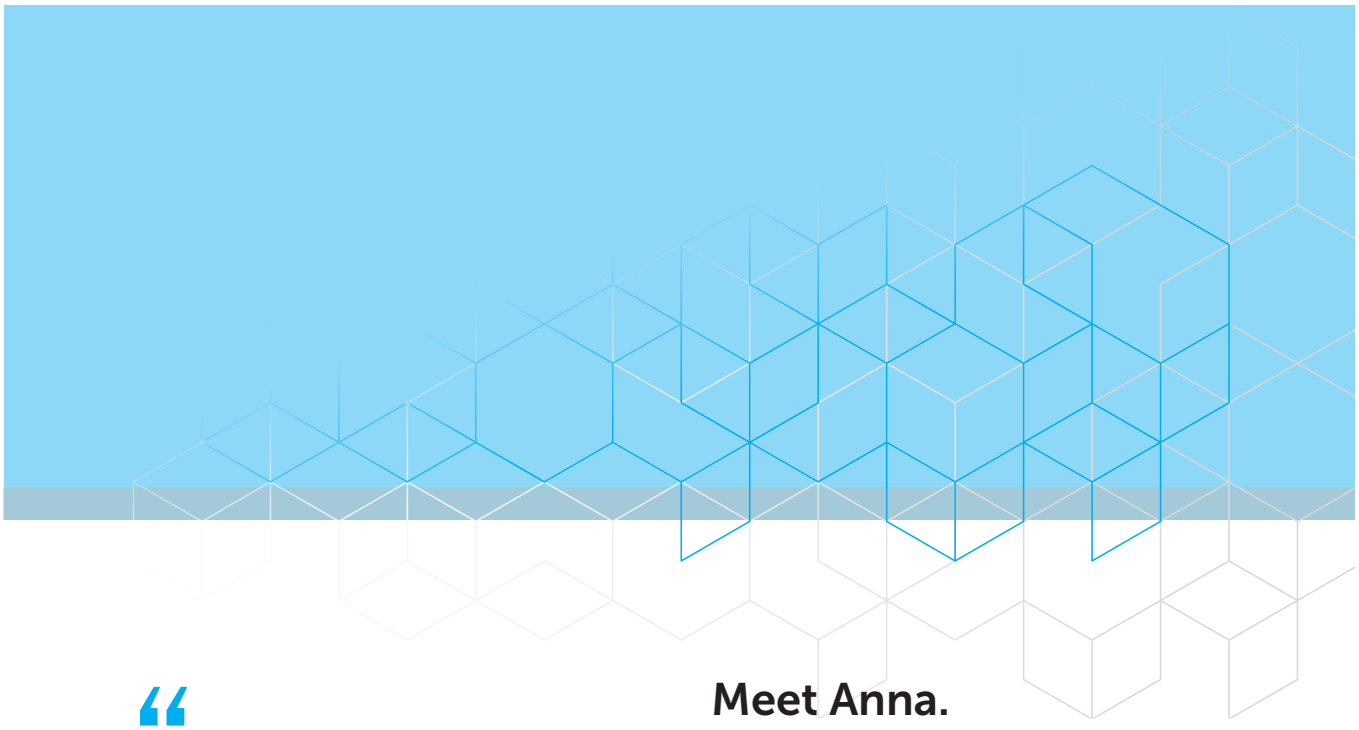
It has been ten years since the last review of building indemnity insurance arrangements, and more than six years since the insurance cover limit was last reviewed. Combined with increased residential building sector activity in recent years and the emergence of a number of consumer protection challenges such as fraudulent insurance certificates and uninsured building works, it is timely to review arrangements to ensure they best meet the needs of South Australian consumers and builders.

The key areas we are reviewing are listed below, but we welcome your feedback on any aspects of BII and related consumer protections.

- Cover – who should be covered, and what should they be covered for.
- Benefits – the capped amount of insurance claimable, and how high value projects are considered.
- Navigating the system – how it supports builders to put the cover in place, how gaps in protection such as uninsured works occur, and how everyone navigates the claims process.

What we want to discuss in this review

In the following section we pose key questions that we want your feedback on as part of the consultation process. There might be other issues that you wish to raise, and you can do so by making a submission, completing the survey, or registering for an interview or workshop.



"I was incredibly vulnerable. I didn't have anyone who was out there for me.

We have no experience in the building industry and don't know anyone who does.

We need support for the biggest financial risk we will ever take."

- ANNA

Meet Anna.

Anna wanted to replace their tired house with a bigger and better home for her family. While initially the process went well, after a while, her builder became unreliable, missing meetings and failing to meet commitments made to them.

Just two days after they had paid $80,000 for an incomplete roof, the builder went into administration, leaving Anna and her family in limbo. Early hopes from the administrator that another builder might take over the business were dashed and upon receiving quotes from other builders they discovered that the home would cost significantly more than their original planned budget to complete.

While BII was in place for this build, the coverage limit of $150,000 is not enough, and means that Anna and her family cannot afford to finish building their home when prices have risen so much. They are now stuck renting and paying a mortgage on a property they might never be able to live in.

Anna found it difficult to navigate the system after the builder went into administration.



Cover - what and who should be covered?

We want to explore what types of building works should be covered by BII, and what should not. We also want to understand who cover should be available to, and when that cover should commence.

For example we want to know:

- If swimming pools and tennis courts should be covered.
- If multi-storey residential developments should also be covered.
- If deposits should be covered.
- If developers should be covered.
- If $12,000 is the right minimum threshold for BII.
- At what point in the contracting or construction process should BII be required.

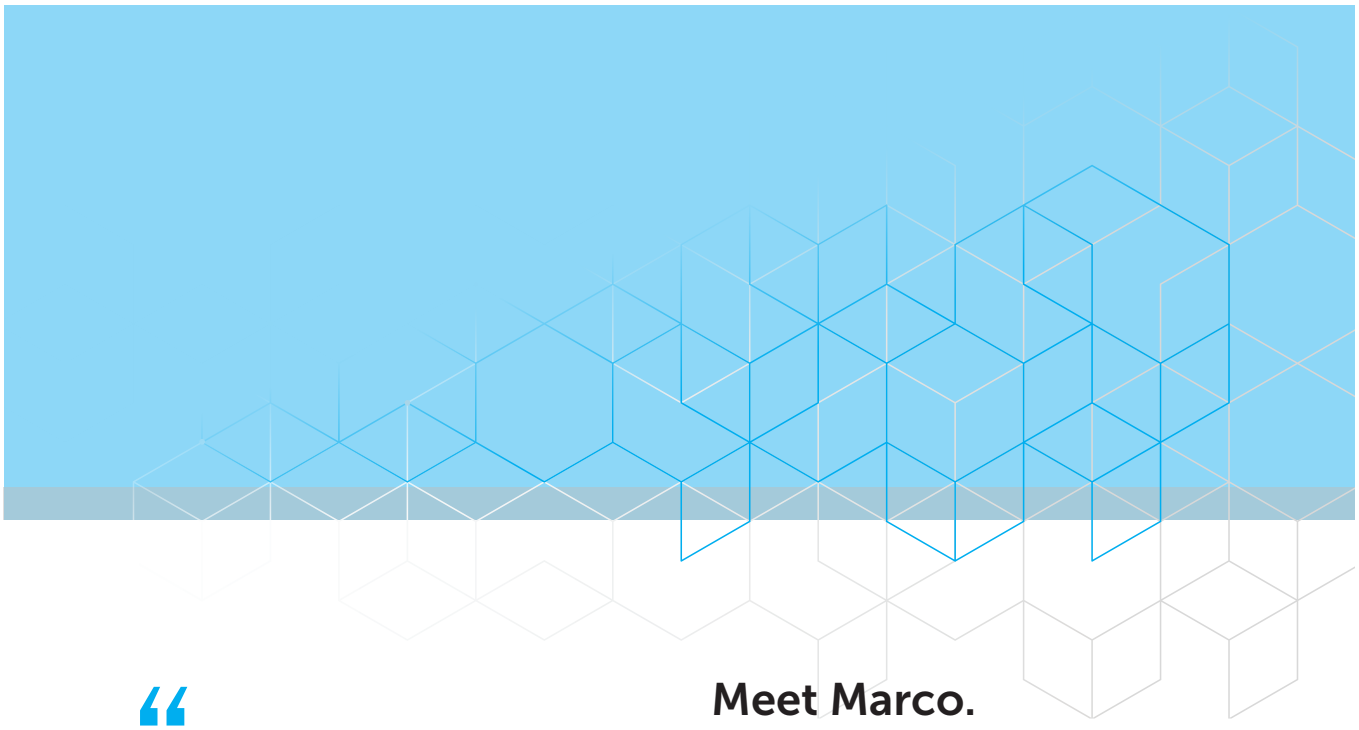
Scheme Benefits

We want to explore the levels of cover to understand if the current levels are adequate. We also want to explore how high value projects should be insured under BII.

For example we want to know:

- If the maximum insurance cover of $150,000 is appropriate.
- Your views on adding categories to the insurance cover, such as a maximum amount of cover for deposits.
- If the maximum insurance cover should be a percentage of the contract.
- Your views on offering additional cover above the mandatory limit for higher value projects.

If you have feedback and ideas on cover or benefits, please click here to fill out the survey, or send us a submission.



"Clients get sent a certificate but usually aren't aware of what BII is before then. Some people are more aware of the insurance now as it has been a very public issue lately."

- MARCO

Meet Marco.

Marco owns and runs a medium size building company.

After many years having BII, Marco is interested in exploring ways to automate/simplify the system to make the review process simpler and certificates to be issued instantly, to support the workflow for builders and their clients. Education is also really important.

Marco would also like to see the $150,000 limit changed to be a percentage of the contract price.

"The amount might be fine for a lower value build, but for a $5m home, it wouldn't cover much at all. Perhaps above a certain threshold it could be left up to the owner to decide if they want to be part of the scheme."



How you navigate the system

How people interact with the system is also important to explore. We want to understand the opportunities for improvement that would make that interaction smoother and more efficient for all stakeholders.

For example we want to understand:

- Who should take out the insurance.
- What information is needed to support people interacting with the system.
- Which checks and balances should be in place to protect builders and homeowners.
- What challenges are faced by builders and brokers in the current process for assessing and reviewing eligibility limits.
- Your views on ways to improve the system and how it will impact a builder's ability to manage their building works pipeline.
- Your views on the current brokers/ distribution system.

If you have feedback and ideas on navigation, please fill out the survey, or send us a submission.

Get involved

There are multiple ways to provide your feedback to the review:

- Read this guide and complete a survey.
- If you want to tell us more, please send us a submission.
- If you want to share your story, register for a one-on-one interview.
- Register your interest in being part of a workshop, where you will be part of a group and will together discuss your experiences and perspectives on BII.

Building Indemnity Insurance
Review Consultation Paper

February 2024

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Government of South Australia

SOUTH AUSTRALIA

DEBATE REPORT

7.4 Development and Community Services

7.4.8 DRAFT STATE-WIDE BUSHFIRE HAZARDS OVERLAY CODE AMENDMENT

Author: Manager Development Services
24/29460

PURPOSE

To endorse a submission prepared in relation the *draft* State-Wide Bushfire Hazards Overlay Code Amendment.

RECOMMENDATION

That Council endorse the draft submission on the State-Wide Bushfire Hazards Overlay Code Amendment contained within Attachment 1 and the accompanying Review of Proposed Changes (Attachment 2) and Policy Comparison and Review Table (Attachment 3).

REPORT

Introduction
The State Planning Commission commenced community engagement on a draft State-wide Bushfire Hazards Overlay Code Amendment, pursuant to Section 73(6) of the *Planning, Development and Infrastructure Act 2016*, on 23 November 2023. The consultation concludes on 5 April 2024.

A copy of the Summary Document explaining the proposed *State-Wide Bushfire Hazards Overlay Code Amendment*, prepared by Planning & Land Use Services, is contained in Attachment 4.

The Code Amendment proposes to update the spatial application of the six hazard (Bushfire Risk) Overlays in the Planning and Design Code based on:

- More current vegetation (2015) data in the hazard modelling;
- More recent grassfire fuel modelling the spatial areas, having regard to farming, cropping, grazing and potential grass fuel;
- Amended forest modelling to identify small-scale spatial data, considering patch sizes, patch shape and contiguous/disparate vegetation.

The Barossa Council has three of the six Hazard (Bushfire Risk) Overlays being Medium, High and Urban Interface. Planning policies within these areas address access, design and siting requirements, clearance to native vegetation and on-site water supply for firefighting purposes.

The spatial application of these overlays also determines bushfire-related Building Rules (under National Construction Code) with reference to Australian Standard 3959

– Construction of Buildings in Bushfire Prone Areas and South Australian variations within Ministerial Building Standard (MBS 008).

The proposed mapping changes will result in changes to hazard risk levels in some locations. Where there is an increase in the risk level, the level of bushfire assessment both in terms of planning and building assessment, will increase, to reflect the increased risk from bushfire attack.

In addition to review of the spatial application of the Overlays, the following changes are proposed:

- New Deemed to Satisfy criteria and assessment pathways within the Planning & Design Code for dwellings, dwelling additions and ancillary accommodation;
- Amendment to Practice Direction 12 – Conditions, to specify conditions that must be imposed on a development authorisation issued by a relevant authority;
- Amendment to the *Planning, Development and Infrastructure Regulations 2017* to require development applications in High Bushfire Hazard Areas to be provided with a Bushfire Attack Level assessment completed by the CFS or a person authorised by the CFS.

Discussion

The intent to update bushfire hazard mapping and associated policies and to bring about a consistent approach to bushfire hazard mapping across all parts of the State is supported. Updated mapping based on current data is also supported. However, detailed review of the proposed Code Amendment suggests there are a number of issues with the Code Amendment that require review before implementation.

Identified issues include timing of the Code Amendment, inconsistency with relevant State Planning Policies, inconsistent mapping and policy between Council areas, dated mapping sets which result in irregular zone mapping, unusual and inconsistent outcomes arising from the hazard mapping and policy drafting issues and inconsistencies between proposed overlays.

Other concerns include the resourcing implications of the increase in high hazard risk areas for CFS and ongoing concerns regarding compliance administration.

The following headings are identified as basis of issues contained within the draft submission in Attachment 1:

Timing of Code Amendment

The Greater Adelaide Regional Plan is yet to be drafted. Progressing with the Code Amendment first means that the Code Amendment will precede the Regional Plan which is not consistent with the intent of State Planning Policy (SPP) 15.

Consistency with State Planning Policy

SPP 5 (Climate Change) and 15 (Natural Hazards) which promote avoidance of development in high hazard areas. More consideration should be given to avoidance and whether the proposed policies adequately address sensitive developments such as hospitals, telecommunications towers, major transport infrastructure, energy base stations and water services in bushfire hazard areas.

Impacts on The Barossa Council

The Code Amendment will greatly increase the level of complexity for planning staff in assessing bushfire hazard risk and such changes will increase cost upon applicants in meeting bushfire hazard requirements. Some changes seem to increase level of policy layering unreasonably.

General mapping concerns

The proposed mapping appears to have been generated by artificial intelligence with limited to no subsequent human validation or ground truthing of what changes mean practically when undertaking development using real examples or case studies. The result appears to be an inconsistent approach to how High hazard areas have been applied or extended, or in some cases reversed, and how urban interface boundaries have been determined.

High Bushfire and Hazard Areas

The adopted modelling appears to have inherent limitations with evidence of areas other than "*25 percent forest vegetation; that is, forest/woodland/shrub greater than 1 metre in height*" being shown as a High Bushfire Hazard Area. An example is in the south-east of Lyndoch township where areas that are 95% vineyard are proposed as "High", but surrounding areas that appear to have identical characteristics are zoned "Medium". The modelling appears to capture roadside or railway reserve vegetation in some areas but not others and includes extensive areas of vineyards – eg. In the Light Pass area.

The application of a 100m 'buffer' around small clumps of trees also results in illogical outcomes, likewise the use of outdated 'built up' area information sees random properties in townships designated as 'High' surrounded on three sides by the urban interface overlay. These outcomes result in unnecessary policy layering and complexity and will result in confusion as to how policies should be applied for development assessment.

Hazards (Bushfire – Urban Interface) Overlay mapping

The greatest number of issues identified appear to relate to the Hazards (Bushfire – Urban Interface) Overlay in terms of where it has or hasn't been applied, how it has been removed from some townships but newly applied to others, how it relates to township boundaries and growth areas, and the scope and spatial application or extent of proposed written policies.

A major change is that the 'internal' boundary of the interface overlay has been removed where it applies in Angaston, Lyndoch, Nuriootpa and Tanunda. In those townships, the interface overlay current comprises a 500m band with a 'doughnut' type effect with land more than 500m from the edge of the overlay forming the 'hole' and therefore currently not covered by the overlay and not having any hazard rating. The proposed approach is to remove this internal boundary and for land beyond 500m being included in the overlay. It is noted that the approach proposed to be applied to The Barossa Council appears to differ to other townships such as Mount Barker which is to be within the Hazards (Bushfire – Urban Interface) Overlay for the first time – with the 'doughnut' effect. The rationale behind the change is unclear and results in inconsistency between Council areas.

Hazards (Bushfire – Urban Interface) Overlay policies

The proposal to insert a policy requiring a designated area capable of accommodating the required on-site water supply for land within the interface overlay is logical and is supported. However, the Code Amendment seems to broaden the requirement for water supply and access for emergency vehicles to now cover all land within the interface area regardless of the adjacent bushfire hazard rating, whereas MBS 008 requires water supply within 500m of a high bushfire risk area. The proposed policies apply this requirement to all land within 100m of 'Medium' and 'General' hazard areas which means applicants will be required to provide a designated area capable of accommodating an on-site water supply that is not actually required under MBS 008.

Development areas and proposed growth areas

Council has recently invested significant resources into a *Growth and Infrastructure Investment Strategy* which identifies various opportunities for future residential development within and adjacent to townships. It is noted that the majority of areas identified for future growth opportunities are to be removed from the urban interface overlay and placed in a 'Medium' or 'High' hazard area. These actions will potentially restrict development in previously targeted development areas or restrict Council's future vision for those areas.

Referrals and Bushfire Attack Level Assessments

The Hazards (Bushfire – Urban Interface) Overlay implies that an independent person can supply a relevant certificate relating to land division but Council seeks confirmation if this is possible. If not, the policy needs to be changed. Similar to experience with changes to site contamination, experience is that this will significantly increase cost for applicants in obtaining an independent assessment. In addition, it is unclear if there is a large enough pool of professionals with expertise and capacity to undertake the relevant certificate.

Resourcing of changes proposed

Information within the proposed Code Amendment suggests there will be significant increase in areas within the state subject to High Bushfire Hazard risk, thereby resulting in significant increase in referrals to the CFS. It is understood the CFS are already under resourcing pressure to respond to current workload pressures. With an increase in referrals, the CFS is likely to be overwhelmed by the level of additional work posed by the additional referrals. What additional resources are proposed to be allocated to CFS to administer the additional workload attributed to the Code Amendment.

Compliance Administration

Further, the system relies heavily on the application of conditions of consent to development within bushfire hazard areas. Experience with the current system is that there is too much emphasis on the side of assessment as opposed to follow up compliance to verify adequacy of completed bushfire requirements and compliance with conditions of consent. From experience, there is a high leel of non-compliance of development with bushfire requirements and such outcome is likely to undermine the intent of effective bushfire hazard mitigation. More resources are needed to address compliance with the system.

Summary and Conclusion
It is recommended that Council endorse the submission contained in *Attachment 1*, which identifies a number of issues arising for the Code Amendment which should be reviewed before it is brought into effect. The submission also supports deferral of the Code Amendment until all Regional Plans have been finalised and approved.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1	Draft Submission - State-wide Bushfire Hazards Overlay Code Amendment ⇩
Attachment 2	Review of Proposed Changes - Draft State-wide Bushfire Hazards Overlay Code Amendment ⇩
Attachment 3	Hazard and Interface Policy Comparison and Review - Draft State-wide Bushfire Hazards Overlay Code Amendment ⇩
Attachment 4	Summary Document - Updating South Australia's Bushfire Hazard Mapping and Planning Rules ⇩

Supporting references
yoursay.sa.gov.au/state-wide-bushfire-hazards-code-amendment

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

Natural Environment and Built Heritage

Goal
1. The Barossa has sustainable farmland providing diverse and stable returns, while protecting the unique natural environment and biodiversity of the region.
2. The history of our region including aboriginal sites is reflected in our streetscapes and our historic buildings are maintained for future generations.

Strategies
1.1. Ensure land use planning and resource use protects the quality of the natural environment, the existing character of rural landscapes, historic significance and the high value of agricultural land.
2.2. Ensure clearly defined townships are maintained to manage residential and commercial development that is sensitive to the natural environment and areas of historical significance.

Legislative Requirements
Planning, Development and Infrastructure Act 2016
Planning, Development and Infrastructure (General) Regulations 2017

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Nil

COMMUNITY ENGAGEMENT

The community have the opportunity to provide public submissions as part of the current consultation process until 5 April 2024.

Reference:

19 March 2024

Submission – State-wide Bushfire Hazards Overlay Code Amendment
State Planning Commission
Department for Trade and Investment
GPO Box 1815
ADELAIDE SA 5001

STATE-WIDE BUSHFIRE HAZARDS OVERLAY CODE AMENDMENT – THE BAROSSA COUNCIL SUBMISSION

Thank you for the opportunity to provide comment on the Draft State-wide Bushfire Hazards Overlay Code Amendment which has been released for public consultation. Council considered this matter at the Council meeting on 19 March 2024 and we are pleased to provide the following comments and recommendations.

Council supports the need to update bushfire hazard mapping and associated policies, and for a consistent approach to be applied across all parts of the State. The opportunity to update hazard mapping based on current data is also supported. Notwithstanding, we consider there are a number of issues with the Code Amendment that we consider should be reviewed before implementation. Identified issues include timing of the Code Amendment, inconsistency with relevant State Planning Policies, inconsistent mapping and policy between Council areas, dated mapping sets which result in irregular zone mapping, unusual and inconsistent outcomes arising from the hazard mapping and policy drafting issues and inconsistencies between proposed overlays. We also have concerns regarding the resourcing implications of the increase in high hazard risk areas for CFS and we express ongoing concerns regarding compliance administration.

Detailed comments are provided under headings below:

Timing

The Principles for Statutory Instruments contained in State Planning Policy (SPP) 15 indicate that "*Regional Plans should identify areas susceptible to natural hazards and consider risk mitigation and adaptation strategies*" and that the "*identification of new growth areas should seek to avoid natural hazards*". The principles then indicate that the Planning and Design Code should include policy that mitigates the adverse impacts from natural hazards, particularly flood and fire and that Overlays will be used to identify risks relating to bushfire and other natural hazards.

In this context, Council is mindful that drafting of the Greater Adelaide Regional Plan is still ongoing, together with a number of other Regional Plans. Given the timing of the Greater Adelaide Regional Plan, it is considered that the Code Amendment should be delayed until all Regional Plans have been completed. Progressing with the Code Amendment first means that the Code Amendment will precede the Regional Plan which is not consistent with intent of SPP 15.

Consistency with State Planning Policy

The Code Amendment investigations assess the proposed changes against various selected policies within *SPP 5: Climate Change* and *SPP 15: Natural Hazards*, concluding that the proposed changes align with and support the SPP policies. A closer analysis suggests this is not entirely clear as we have some question whether more consideration should be given to avoidance and whether the proposed policies adequately address sensitive developments such as hospitals, telecommunication towers, major transport infrastructure, energy base stations and water services in bushfire hazard areas, and whether the timing of the changes is appropriate.

Council believes that insufficient consideration has been given to avoidance of development in high hazard areas whereas the proposed policies appear to be primarily focussed on mitigation and management. In this context, we question whether the proposed Code Amendment satisfies SPP policies 5.5 and 15.2. While the proposed changes to regulated tree exemptions appears to satisfy policy 15.6, the acceptance of new development in high hazard areas in return for providing an asset protection zone and the like will still result in ongoing removal of native vegetation.

Impacts on The Barossa Council

The Code Amendment has significant impacts on The Barossa Council primarily due to more properties being designated as High hazard, fewer properties being located within Urban Interface areas, and of the remaining properties within Urban Interface areas, being subject to increased siting, design and procedural requirements.

The mapping changes see properties currently in High moving into Medium or vice-versa; properties currently in Urban Interface moving into High hazard or Medium hazard; properties currently in High or Medium moving into Urban Interface; the Urban Interface being removed entirely from some townships; and the Urban Interface newly applied to a township and rural living area. In addition, new mapping and modelling sees a large number of properties having multiple hazard ratings.

Significantly more properties will be subject to siting, design, referral and procedural requirements contained within the Hazards (Bushfire) Overlay and Hazards (Bushfire - Urban Interface) Overlay.

More proposals will require referral and/or a BAL assessment. In respect to the Hazards (Bushfire - Urban Interface) Overlay, new policies relating to siting and design are intended to apply to all properties within 100 metres of the Hazards (Bushfire) Overlay whereas existing policies within the Code only apply to land division and access and only to properties within 100 m of a high bushfire hazard area.

The effect of the change is to greatly increase level of complexity for planning staff in assessing bushfire hazard risk and such changes will increase cost upon applicants in meeting bushfire hazard requirements. Some changes, such as increase in the Hazards (Bushfire – Urban Interface) seem to increase level of policy layering unreasonably. There is also likely to be consequential impacts upon housing affordability as a result of increased assessment timeframes and costs of meeting bushfire

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hazard requirements, which works against the State Government's agenda of increasing housing supply to address affordability.

General mapping concerns

The proposed mapping appears to have been generated by artificial intelligence with limited to no subsequent human validation or ground truthing of what changes mean practically when undertaking development using real examples or case studies. The result appears to be an inconsistent approach to how High hazard areas have been applied or extended, or in some cases reversed, and how urban interface boundaries have been determined.

Instances exist where hazard area and urban interface boundaries appear to have been simply based on the "Built-up Areas" base layer information, resulting in unusual outcomes where allotments that are not designated on the base layer as 'built-up' are proposed to be designated as High Bushfire Hazard Area, despite those allotments currently containing a dwelling or being subject to recent development of dwellings, in particular where zoned within an area intended for urban development. This layer appears to have been dated and not reflective of current development activity. Adjacent allotments with dwellings are designated as 'built-up' and proposed to be included in the Hazards (Bushfire – Urban Interface) Overlay.

An unusual outcome from using the 'built-up' areas base layer is for Altona, a rural living zoned area, being included in the Hazards (Bushfire – Urban Interface) Overlay, despite being currently zoned High hazard. We understand the "Built-up Areas" data is maintained by the Department for Environment and Water and is updated quarterly, however, it is clearly evident that this information is several years out of date.

The review of the Code Amendment and proposed mapping has also identified issues and anomalies evidently carried through from initial bushfire hazard mapping in the previous Development Plan through to transition into the Planning and Design Code. Council's planning team would welcome the opportunity to discuss those aspects.

High Bushfire Hazard Areas

The adopted modelling appears to have inherent limitations with evidence of areas other than "*25 per cent forest vegetation; that is, forest / woodland / shrub greater than 1 metre in height*" being shown as a High Bushfire Hazard Area. An example is in the south-east of Lyndoch township where areas that are 95% vineyard are proposed as High, but surrounding areas that appear to have identical characteristics are zoned Medium. The modelling appears to capture roadside or railway reserve vegetation in some areas but not others and includes extensive areas of vineyards - e.g. in the Light Pass area. The application of a 100m 'buffer' around small clumps of trees also results in illogical outcomes, likewise the use of outdated 'built-up area' information sees random properties in townships designated as High surrounded on three sides by the urban interface overlay. These outcomes result in unnecessary policy layering and complexity and will result in confusion as to how policies should be applied for development assessment.

Hazards (Bushfire - Urban Interface) Overlay mapping

The greatest number of issues identified appear to relate to the Hazards (Bushfire – Urban Interface) Overlay in terms of where it has or hasn't been applied, how it has been removed from some townships but newly applied to others, how it relates to township boundaries and growth areas, and the scope and spatial application or extent of proposed written policies.

A major change is that the 'internal' boundary of the interface overlay has been removed where it applies in Angaston, Lyndoch, Nuriootpa, and Tanunda. In those townships the interface overlay currently comprises a 500 m band with a 'doughnut' type effect with land more than 500 m from the edge of the overlay forming the 'hole' and therefore currently not covered by the overlay and not having any hazard rating. The proposed approach is to remove this internal boundary and for land beyond 500 m being included in the overlay. It is noted that the approach proposed to be applied to The Barossa Council appears to differ to other townships such as Mount Barker which is to be within the Hazards (Bushfire – Urban Interface) Overlay for the first time - with the 'doughnut' effect. The rationale behind the change is unclear and results in inconsistency between Council areas.

It is also unclear why the urban interface overlay has been removed from townships like Moculta and Eden Valley, but newly applied to Springton and the Altona rural living area. Tthese spatial issues reinforce the perception that there was limited to no validation or ground truthing of the artificially intelligence generated maps, which result in unintended outcomes.

It is suggested the following approach apply to determining Hazards (Bushfire - Urban Interface) Overlay boundaries:

- Baseline should be the existing hazard boundaries within the Code which in the majority of instances in The Barossa Council align with the original hazard boundaries in the former Development Plan;
- Inclusion: any neighbourhood, employment, activity centre zone, deferred urban, plus any rural living zone within a township boundary (as shown in the planning strategy) - i.e. those adjacent to Angaston, Lyndoch, Tanunda and Williamstown
- Exclusion: any standalone rural living zone - e.g. Altona, Cockatoo Valley
- Review currency of existing and whether the previous Development Plan contained anomalies - e.g. Mount Pleasant.

Hazards (Bushfire - Urban Interface) Overlay policies

Another major issue identified is the proposed scope of the new written policies within the Hazards (Bushfire – Urban Interface) Overlay. Current overlay policies apply to land divisions creating public roads or resulting in 10 or more new allotments that are within the overlay (i.e. up to 500 m from the edge); land division resulting in 10 or more new allotments and within 100m of a Hazards (Bushfire - General Risk) Overlay, Hazards (Bushfire - Medium Risk) Overlay or Hazards (Bushfire - High Risk) Overlay, and roads within 100m of a Hazards (Bushfire - General Risk) Overlay, Hazards (Bushfire - Medium Risk) Overlay or Hazards (Bushfire - High Risk) Overlay.

The wording of the Code Amendment applies the same scope (i.e. 100 m from a hazard area) for habitable buildings, tourist accommodation and buildings for at risk communities, referring to "*within 100m of the Hazards (Bushfire) Overlay*". Likewise, inclusion of entire townships within the overlay will see some land division policies apply to every land division proposal regardless of their distance from a hazard area. Council questions if the amendment writers simply made an error referring to "*Hazard (Bushfire) Overlay*" whereas the intent was to say "*High Bushfire Hazard Area*"?

The proposal to insert a policy requiring a designated area capable of accommodating the required on-site water supply for land within the interface overlay is logical and is supported. However, the Code Amendment seems to broaden the requirement for water supply and access for emergency vehicles to now cover all land within the interface area regardless of the adjacent bushfire hazard rating, whereas Ministerial Building Standard MBS 008 only requires water supply within 500 m of a

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high bushfire risk area. The proposed policies apply this requirement to all land within 100 m of Medium and General hazard areas which means applicants will be required to provide a designated area capable of accommodating an on-site water supply that is not actually required under MBS 008.

It is also considered impractical to provide an asset protection zone within allotments within interface areas given their size.

Development areas and proposed growth areas

Council has recently invested significant resources into a *Growth and Infrastructure Investment Strategy* which identify various opportunities for future residential development within and adjacent to townships. It is noted that the majority of areas identified for future growth opportunities are to be removed from the urban interface overlay and placed in a Medium or High hazard area. These actions will potentially restrict development in previously targeted development areas, or restrict Council's future vision for those areas.

The Code Amendment seems to defer bushfire hazard assessment to land division stage rather than earlier in the development process. As envisaged in SPP 15, areas of potential hazard are to be identified in Regional Plans which are yet to be completed as noted previously. The Code Amendment proposes a 'fast-track' process to update bushfire hazard mapping as urban areas are developed and/or vegetation is removed with the ability to readily update bushfire mapping and overlays, indicating that this process will "*ensure that new development is designed and sited according to the actual hazard risk on the ground*." Council is concerned that not assessing hazard and risk upfront (i.e. at master planning or land division stage) could result in development proposals being subject to excessive requirements and unnecessary BAL assessments or referrals.

In this regard it is noted that New South Wales has addressed this issue and has adopted a streamlined process which allows the assessment of bush fire provisions at subdivision stage within development areas with subsequent exemptions from reassessment when land owners are ready to develop their lots. This is through "*Post-Subdivision Bush Fire Attack Level Certificates*" that may be issued assigning BALs to all individual lots within the subdivision. The Commission is urged to consider a similar concept, especially for targeted growth areas such as Concordia.

Referrals and BAL assessments

The Hazards (Bushfire – Urban Interface) Overlay implies that an independent person can supply a relevant certificate relating to land division, but Council seeks confirmation if this is possible. If not, the policy needs to be changed. Similar to experience with changes to site contamination, experience is that this will significantly increase cost for applicants in obtaining an independent assessment. In addition, it is unclear if there is a large enough pool of professionals with expertise and capacity to undertake the relevant certificate.

Definitions

Council supports the introduction of a new definition of "at risk communities" but it is questioned why tourist accommodation has not been included but a campground has. Questions also arise about why the definition does not use the same terminology and groupings used in other definitions.

Written policies within Overlays

An analysis was conducted of the proposed policies for the Hazards (Bushfire) Overlay and Hazards (Bushfire – Urban Interface) Overlay. This process comprised a review of the policy itself and a comparison between the two overlays where the same or similar policies are proposed. This analysis is attached and we would welcome opportunity to further discuss these policies.

Resourcing of changes proposed

Information within the proposed Code Amendment suggests there will be significant increase in areas within the state subject to High Bushfire Hazard risk, thereby resulting in significant increase in referrals to the CFS. It is understood the CFS are already under resourcing pressure to respond to current workload pressures. With an increase in referrals, the CFS is likely to be overwhelmed by the level of additional work posed by the additional referrals. What additional resources are proposed to be allocated to CFS to administer the additional workload attributed to the Code Amendment.

Compliance administration

Further, the system relies heavily on the application of conditions of consent to development within bushfire hazard areas. Experience with the current system is that there is too much emphasis on the side of assessment as opposed to follow up compliance to verify adequacy of completed bushfire requirements and compliance with conditions of consent. From experience, there is a high level of non-compliance of development with bushfire requirements and such outcome is likely to undermine the intent of effective bushfire hazard mitigation. More resources are needed to address compliance within the system.

Conclusion

Council supports the need to update bushfire policies but as highlighted within the above submission, we consider there are a number of issues arising from the Code Amendment which should be significantly reviewed before it is brought into effect. We also support the delay of the Code Amendment until all Regional Plans have been finalised and approved.

I thank you for the opportunity to make submission during the consultation period and look forward to receiving feedback of how our submission has informed the next steps through the Code Amendment process.

Yours sincerely

Martin McCarthy
Chief Executive Officer

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Draft State-wide Bushfire Hazards Overlay Code Amendment

Review of proposed changes

Prepared for The Barossa Council by Paul Mickan, Consultant

6 March 2024

CHANGES PROPOSED IN THE CODE AMENDMENT

The following is an overview of the changes proposed by the draft Code Amendment:

- Updated mapping based on new and revised modelling of vegetation, forest and grassfire fuel hazard
- Reconfigured bushfire hazard overlays
- Combined overlay for low, medium, and high hazard areas
- New assessment pathways for minor forms of development and habitable buildings in certain circumstances
- Additional and revised policies within overlays
- New definition of "at risk communities"
- Extension of bushfire policies to apply to tourist accommodation, pre-schools, boarding houses and other 'at risk' communities
- Additional referral requirements
- Simplified provisions for future routine and procedural updating of bushfire hazard mapping

FORESHADOWED CONSEQUENTIAL AND RELATED CHANGES

The Code Amendment also foreshadows various consequential and related changes to support and give full effect to intended outcomes:

- Changes to the *Planning Development and Infrastructure Regulations 2017*:
    - Requirement to provide a Bushfire Attack Level (BAL) assessment with certain applications for planning consent
    - Revised regulated tree provisions to reduce the exclusion from the definition of development for tree damaging activity in relation to a regulated tree from 20 metres to 10 metres, to avoid the unnecessary removal of regulated trees
    - Provision to trigger a CFS referral for certain land divisions within the Hazards (Bushfire – Urban Interface) Overlay and within 100 metres of a High Bushfire Hazard Area
- Changes to Ministerial Building Standard MBS 008 Designated bushfire prone areas - additional requirements:
    - Updated references to align with the terminology introduced by the Code Amendment
    - Standard to apply to Class 9 buildings (hostels, boarding houses etc)
    - Change the deemed to apply BAL level within areas identified as General hazard from BAL Low to BAL 12.5)
- Changes to the State Planning Commission's Practice Direction 12 – Conditions

The above changes will be subject to separate legislative processes. While the Code Amendment indicated that changes to MBS 008 would be co-ordinated with the Code Amendment consultation, it is noted that this has not occurred.

CHANGES DIRECTLY AFFECTING THE BAROSSA COUNCIL

The Code Amendment has significant impacts on The Barossa Council primarily due to more properties being designated as High hazard, fewer properties being located within Urban Interface areas, and of the remaining properties within Urban Interface areas, more being subject to siting, design, and procedural requirements.

The mapping changes see properties currently in High moving into Medium or vice-versa; properties currently in Urban Interface moving into High hazard or Medium hazard; properties currently in High or Medium moving into Urban Interface; the Urban Interface being removed entirely from some townships; and the Urban Interface newly applied to a township and rural living area. In addition, the new mapping and modelling approach sees a large number of properties having multiple hazard ratings. The issues relating to the methodology applied to determine the new hazard mapping are discussed in more detail later.

Significantly more properties will be subject to siting, design, referral, and procedural requirements contained within the Hazards (Bushfire) Overlay and Hazards (Bushfire - Urban Interface) Overlay. These newly affected properties are those additional properties that will be within the High Bushfire Hazard Area where higher standards and CFS referral obligations apply, and the additional properties in the Hazards (Bushfire - Urban Interface) Overlay that will now be adjacent to a High hazard area whereas they currently are not.

More proposals will require referral and/or a BAL assessment. In respect to the Hazards (Bushfire - Urban Interface) Overlay, new policies relating to siting, design, are intended to apply to all properties within 100 metres of the Hazards (Bushfire) Overlay whereas existing policies within the Code only apply to land division and access, and only to properties within 100 m of a high bushfire hazard area. The issues relating to the Hazards (Bushfire - Urban Interface) Overlay are discussed in more detail later.

ASSESSMENT AGAINST STATE PLANNING POLICIES

State Planning Policies (SPPs) are the highest order policy document in South Australia's planning system, outlining matters of importance in land use planning and development. They provide a policy environment aimed at enhancing our liveability, sustainability, and prosperity. The SPPs are given effect through planning instruments including Regional Plans and the Planning and Design Code. Accordingly, SPPs must be considered when amending the Planning and Design Code.

The Code Amendment investigations assess the proposed changes against various selected policies within SPP 5: Climate Change and SPP 15: Natural Hazards, concluding that the proposed changes align with and support the SPP policies. A closer analysis suggests this is not clear cut, with question marks over whether more consideration needs to be given to avoidance, whether the proposed policies adequately address sensitive developments namely hospitals, telecommunication towers, major transport infrastructure, energy base stations and water services in bushfire hazard areas, and whether the timing of the changes is appropriate.

The following SPP objectives and policies are referred to in the investigations:

> **SPP 5: Climate Change**
>
> *Objective*
> To build the resilience of communities, development and infrastructure from the adverse impacts of natural hazards.
>
> *Policies*
> 5.5 Avoid development in hazard-prone areas or, where unavoidable, ensure risks to people and property are mitigated to an acceptable or tolerable level through cost-effective measures.

5.9 Encourage development that does not increase our vulnerability to, or exacerbate the impacts of climate change and which makes the fullest possible contribution to mitigation.

SPP 15: Natural Hazards

Objective
To build the resilience of communities, development and infrastructure from the adverse impacts of natural hazards

Policies
15.1 Identify and minimise the risk to people, property and the environment from exposure to natural hazards including … bushfire… including taking into account the impacts of climate change.

15.2 Locate and design development in accordance with a risk hierarchy of 'avoid', 'accommodate' and 'adapt'.

15.3 Avoid locating sensitive developments and communities in areas at high risk of hazards – namely hospitals, telecommunication towers, major transport infrastructure, energy base stations and water services – or ensure that these developments are subject to a higher level of assessment.

15.6 Avoid development in high or extreme hazard risk areas (such as bushfire risk areas) that will necessitate the removal of native vegetation.

Note: The investigations do not include correct wording of policies 15.1 and 15.2 rather they misquote the wording from climate change policies 5.5 and 5.9. Arguably, this error challenges the validity of the investigations.

SPP 15 indicates that the planning system can be used to prevent development in areas of known high risk whilst also acknowledging that appropriate design standards can be used to prepare new developments in places that are exposed to acceptable levels of risk. The SPP also indicates that the location of critical services and infrastructure also needs to take account of hazard risks. Has sufficient consideration been given to the risk hierarchy, in particular avoidance?

Analysis of the Code Amendment suggests that too little consideration has been given to avoidance of development in high hazard areas whereas the proposed policies appear to be primarily focussed on mitigation and management, and in this context it fails to satisfy policies 5.5 and 15.2.

It is also evident that by not presenting any policies relating to key infrastructure and services, the Code Amendment fails to satisfy policy 15.3. While the proposed changes to regulated tree exemptions is an attempt to satisfy policy 15.6, the apparent acceptance of new development in high hazard areas in return for providing an asset protection zone and the like will still result in ongoing removal of native vegetation.

The Principles for Statutory Instruments contained in SPP 15 indicate that "Regional Plans should identify areas susceptible to natural hazards and considering risk mitigation and adaptation strategies" and that the "identification of new growth areas should seek to avoid natural hazards". The principles then indicate that the "Planning and Design Code should include policy that mitigates the adverse impacts from natural hazards, particularly flood and fire. Overlays will be used to identify risks relating to bushfire, flooding and other natural hazards." In the Role of SPPs section

the following pertinent example is given suggesting a timing 'protocol' applies to creating new policies:

> **Example – How to apply the State Planning Policies**
>
> State Planning Policies establish state directions around a particular issue. In this example, SPP 15: Natural Hazards is applied across other system tools in relation to Bushfire Risk. Currently under development, the Atlas will contain detailed mapping on where these hazards occur. In setting a strategic land use vision for a planning region, Regional Plans will be required to consider the spatial impacts of these hazards. The Planning and Design Code will set the planning policy for development applications that ensures development in bushfire prone areas is risk assessed and managed. In some cases, development proposals may require referrals to a specialist entity for advice on bushfire related issues, with the specialist entity able to direct a decision or the attachment of conditions to an approval.

In this context it is arguable that the Code Amendment should have been delayed until all Regional Plans, and the Greater Adelaide Regional Plan in particular, have been completed - i.e. a Regional Plan comes first, then Code policies follow.

DISCUSSION

General mapping concerns

It appears the mapping has been generated by artificial intelligence with no subsequent human validation or ground truthing. The result is an inconsistent approach to how High hazard areas have been applied or extended, or in some cases reversed, and how urban interface boundaries have been determined.

Instances exist where hazard area and urban interface boundaries appear to have been simply based on the "Built-up Areas" base layer information. This approach results in unusual outcomes where allotments that are not designated on the base layer as 'built-up' are proposed to be designated as High Bushfire Hazard Area (despite those allotments currently containing a dwelling); whereas adjacent allotments with dwellings are designated as 'built-up' and proposed to be included in the Hazards (Bushfire – Urban Interface) Overlay. In other instances allotments within the Rural Zone shown as built-up are proposed to be within the urban interface overlay yet nearby allotments within a neighbourhood zone and containing a dwelling are removed from the interface and now proposed to be High or Medium. An unusual result from using the built-up areas base layer is for Altona, a rural living zoned area, being included in the Hazards (Bushfire – Urban Interface) Overlay where it is currently High hazard. Apparently the "Built-up Areas" data is maintained by the Department for Environment and Water and supposedly is updated quarterly, but it is evident that the information for Lyndoch in particular is several years out of date.

No attempt has been made to list every concern with the proposed mapping boundaries, with the exception of existing development areas in townships and proposed growth areas proposed in the draft *Growth and Infrastructure Investment Strategy*. It is assumed that detailed adjustments to mapping would be discussed and negotiated with the State Planning Commission.

The review of the Code Amendment and proposed mapping has also identified issues and anomalies evidently carried through from initial bushfire hazard mapping in the previous Development Plan through to transition into the Planning and Design Code. For example, some areas at Williamstown previously excluded from bushfire protection planning provisions in the Development Plan are not currently included in the Hazards (Bushfire - Urban Interface) Overlay. Again, rather than attempting to list each issue it is expected these can be negotiated with the Commission.

As an aside it is observed that although merging of the current General, Medium and High overlays into a single suite of written policies has merit, it ironically results in an additional spatial layer.

High Bushfire Hazard Areas

The adopted modelling appears to include areas other than "25 per cent forest vegetation; that is, forest / woodland / shrub greater than 1 metre in height" - e.g. area SE of Lyndoch which seems 95% vineyard is proposed as High, but surrounding areas that appear to have identical characteristics are Medium. The modelling appears to capture roadside or railway reserve vegetation in some areas but not others and includes extensive areas of vineyards - e.g. in the Light Pass area. The application of a 100m 'buffer' around small clumps of trees also results in illogical outcomes, likewise the use of the 'built-up area' information sees random properties in townships designated as high surrounded on three sides by the urban interface overlay.

Hazards (Bushfire - Urban Interface) Overlay mapping

The greatest number of issues relate to the Hazards (Bushfire – Urban Interface) Overlay in terms of where it has or hasn't been applied, how it has been removed from some towns but newly applied to others, how it relates to township boundaries and growth areas, and the scope and spatial application or extent of proposed written policies.

A major change is that the 'internal' boundary of the interface overlay has been removed where it applies in Angaston, Lyndoch, Nuriootpa, and Tanunda. Currently the interface overlay comprises a 500 m band over selected townships and several adjacent areas. Obviously where a township is less than 1000 m wide the overlay covers the entire area, but in the case of the above townships it results in a 'doughnut' effect with land more than 500 m from the edge of the overlay forming the 'hole' and therefore currently not covered by the overlay and not having any hazard rating.

The proposed approach is to remove this internal boundary and for land beyond 500 m being included in the overlay. It is noted that the approach applied to The Barossa Council differs to other townships such as Mount Barker which is to be within the Hazards (Bushfire – Urban Interface) Overlay for the first time - with the 'doughnut' effect. The rationale behind the change is unclear.

It is also unclear why the urban interface overlay has been removed from towns like Moculta and Eden Valley, but newly applied to Springton and the Altona rural living area. All these spatial issues reinforce the perception that there was no validation or ground truthing of the artificially intelligence generated maps.

In addition it is suggested the following approach apply to determining Hazards (Bushfire - Urban Interface) Overlay boundaries:

- Baseline should be the existing hazard boundaries within the Code which in the majority of instances in The Barossa Council align with the original hazard boundaries in the former Development Plan
- Inclusion: any neighbourhood, employment, activity centre zone, deferred urban, plus any rural living zone within a township boundary (as shown in the planning strategy) - i.e. those adjacent to Angaston, Lyndoch, Tanunda and Williamstown
- Exclusion: any standalone rural living zone - e.g. Altona, Cockatoo Valley
- Review currency of existing and whether the previous Development Plan contained anomalies - e.g. Mount Pleasant

Hazards (Bushfire - Urban Interface) Overlay policies

Another major issue it the proposed scope of the new written policies within the Hazards (Bushfire – Urban Interface) Overlay. Current overlay policies apply to land divisions creating public roads or resulting in 10 or more new allotments that are within the overlay (i.e. up to 500 m from the edge); land division resulting in 10 or more new allotments and within 100m of a Hazards (Bushfire - General Risk) Overlay, Hazards (Bushfire - Medium Risk) Overlay or Hazards (Bushfire - High Risk) Overlay, and roads within 100m of a Hazards (Bushfire - General Risk) Overlay, Hazards (Bushfire - Medium Risk) Overlay or Hazards (Bushfire - High Risk) Overlay.

The wording of the Code Amendment applies the same scope (i.e. 100 m from a hazard area) for habitable buildings, tourist accommodation and buildings for at risk communities, referring to "within 100m of the Hazards (Bushfire) Overlay". Likewise inclusion of entire townships within the overlay will see some land division policies apply to every land division proposal regardless of their distance from a hazard area. The Technical Guide for Practitioners accompanying the Code Amendment tends to imply that the new policies for habitable buildings etc are only to apply to buildings within 100 m of a High Bushfire Hazard Area and not General or Medium. Is it possible that the amendment writers simply made an error referring to "Hazard (Bushfire) Overlay" whereas the intent was to say "High Bushfire Hazard Area"?

Under Ministerial Building Standard MBS 008 a water supply for fire-fighting is required within an urban interface area that is within 500 m of a high bushfire risk area. The proposal to insert a policy requiring a designated area capable of accommodating the required on-site water supply is logical and should be supported. However the Code Amendment seems to broaden the requirement for water supply and access for emergency vehicles to now cover all land within the interface area regardless of the adjacent bushfire hazard rating - i.e. while MBS 008 only requires the supply within 500 m of a high bushfire risk area, the proposed policies are to apply to all land within 100 m of any hazard area. Unless MBS 008 is to be amended (no indication this is the intent) the policy requires a designated area capable of accommodating an on-site water supply that is not required under MBS 008 and presumably there is no obligation to install a system.

It is also considered impractical to provide an asset protection zone within allotments within interface areas given their size.

Development areas and proposed growth areas

Several existing development areas and potential growth areas identified in the draft *Growth and Infrastructure Investment Strategy* are to be removed from the urban interface overlay and placed in a Medium or High hazard area - e.g. Tanunda East and Gods Hill Road at Lyndoch. These actions will potentially restrict development in previously targeted development areas, or hamper Council's future vision for those areas. It is observed that Concordia is largely within the Medium Bushfire Hazard Area. A detailed analysis of the changes as they relate to the above areas in included in Appendix A.

Unfortunately the Code Amendment seems to defer bushfire hazard assessment to land division stage rather than earlier in the development process. As envisaged in SPP 15 areas of potential hazard are to be identified in Regional Plans which are yet to be completed as noted previously. The Code Amendment proposes a 'fast-track' process to update bushfire hazard mapping with the investigations indicating "as urban areas are developed and/or vegetation is removed, the bushfire mapping and overlays can be more readily updated to ensure that new development is designed and sited according to the actual hazard risk on the ground. This process also negates the need for a full

Code Amendment process, including community engagement." This approach of not assessing hazard and risk upfront (i.e. at master planning or land division stage) could result in development proposals being subject to excessive requirements and unnecessary BAL assessments or referrals.

It is noted that New South Wales has addressed this issue and has adopted a streamlined process which allows the assessment of bush fire provisions at subdivision stage within development areas. The process can exempt allotments from reassessment of bushfire issues when land owners are ready to develop their lots. The state has introduced "Post-Subdivision Bush Fire Attack Level Certificates" that may be issued assigning BALs to all individual lots within the subdivision. An applicant can rely on this Post-Subdivision BAL Certificate for Complying Development up to and including BAL-29. It is suggested that the Commission be urged to consider a similar concept, especially for targeted growth areas.

Referrals and BAL assessments

The Hazards (Bushfire – Urban Interface) Overlay implies that an independent person can supply a relevant certificate relating to land division, but is this the case?

Definitions

There are several questions around the new definition of “at risk communities”:

- Why is tourist accommodation not included but a campground is?
- Why does the definition not use the same terminology used in other definitions - e.g. it refers to "Retirement and supported accommodation" whereas there defined terms "Retirement village" and "Supported accommodation"; why use "campground" instead of "Caravan and tourist park"?
- Why does it only list "Pre-schools" when it is just one of the uses nested under "Child care facility"? Why not all?
- Why list "nursing home" when it is nested under "Supported accommodation" in the definitions table?

The new “Certified BAL Declaration” refers to “a person authorised by” the Country Fire Service of South Australia (sic) whereas the updated definition of “Relevant certificate” refers to "on behalf of". Are these one and the same? If so, then they should be consistent. It is also noted that the new Certified BAL Declaration definition incorrectly refers to the Country Fire Service of South Australia rather than the organisations’ correct title of “South Australian Country Fire Service”.

Regulations and Ministerial Building Standards changes

The proposed changes to Schedule 8 require provision of a BAL Assessment applications for planning consent for developments in a High Bushfire Hazard Area. As a BAL Assessment will be required for identical developments in the Hazards (Bushfire – Urban Interface) Overlay within 100m from a High Bushfire Hazard Area, it seems logical that the same requirement apply in those situations. It is noted that this provision also incorrectly refers to the Country Fire Service of South Australia rather than the organisations’ correct title of “South Australian Country Fire Service”.

An observation is also made regarding showing any designated area that is able to accommodate a dedicated water supply. Unless this is already required under the complex wording in Schedule 8 – Plans, Clause 14, consideration should be given to explicitly stating that site plans are required to show the location and dimensions of the proposed dedicated area.

Written policies within Overlays

An analysis was conducted of the proposed policies for the Hazards (Bushfire) Overlay and Hazards (Bushfire – Urban Interface) Overlay. This process comprised a review of the policy itself and a comparison between the two overlays where the same or similar policies are proposed.

The existing Hazards (Bushfire - Urban Interface) Overlay only contains policies relating to land division with five of those policies applying to land division within the whole overlay, and two policies only applying to land within 100 metres of a Hazards (Bushfire - General Risk) Overlay, Hazards (Bushfire - Medium Risk) Overlay or Hazards (Bushfire - High Risk) Overlay.

The Code Amendment introduces new policies into the overlay relating to built form, non-habitable buildings, verandahs, carports, habitable buildings, tourist accommodation and buildings for at risk communities, and additional policy relating to access. Within these new and additional policies reference is made to "within 100m of the Hazards (Bushfire) Overlay" which by implication means they apply to land within 100 m of a High Bushfire Hazard Area, Medium Bushfire Hazard Area or General Bushfire Hazard Area.

These changes will mean development proposals will be subject to additional and perhaps unnecessary policies for no apparent benefit. As an example, a verandah which is 90 m from a General Bushfire Hazard Area will be subject to the same policies as one within a High Bushfire Hazard Area. In a sense the first 100 m of the Hazards (Bushfire - Urban Interface) Overlay is a defacto Hazards (Bushfire) Overlay. These changes have been made without proper explanation or justification and their impacts need to be considered.

The overlays contain numerous instances where the Deemed To Satisfy/Designated Performance Feature repeats all or most of the wording in the Performance Outcome itself which seems unnecessary, confusing or contradictory. It seems a contradiction where a PO to envisage a particular outcome, for the DTS/DPF to then effectively say "No". Below are several examples:

Performance Outcome	***Deemed To Satisfy/Designated Performance Feature***
PO 1.1 Development in a **High Bushfire Hazard Area** that significantly increases the potential for fire outbreak as a result of the spontaneous combustion of materials, spark generation or through the magnification and reflection of light is not located in areas of unacceptable bushfire risk.	DTS/DPF 1.1 The site of the development is not located in a High Bushfire Hazard Area.
PO 5.4 Where 10 or more new allotments are proposed, land division includes more than one avenue of evacuation in the event of a bushfire.	DTS/DPF 5.4 Land division creates less than 10 allotments.
PO 5.1 Land division for habitable buildings, tourist accommodation and buildings for at risk communities is limited to those zones that specifically envisage these land uses.	DTS/DPF 5.1 The site of the land division is not located within a High Bushfire Hazard Area."
PO 2.3	DTS/DPF 2.3

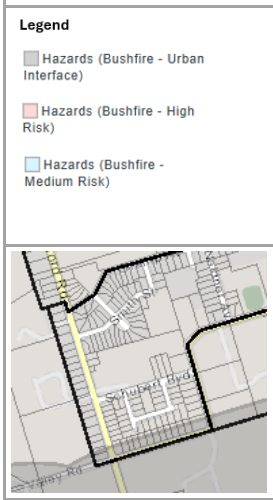
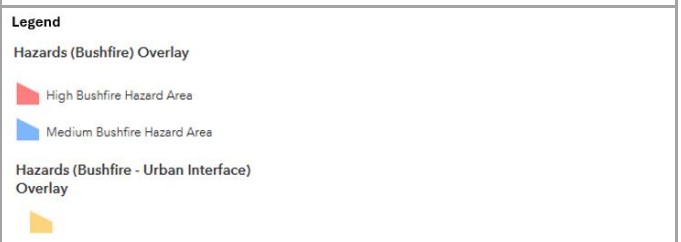
Buildings, which are for at risk communities and located within 100m of the Hazards (Bushfire) Overlay, are provided with at least two separate and safe exit points to enable multiple avenues of evacuation for residents, occupants, and visitors in the event of a bushfire.	Buildings for at risk communities are located more than 100m from the Hazards (Bushfire) Overlay

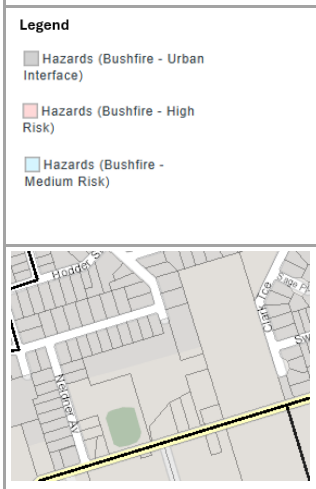
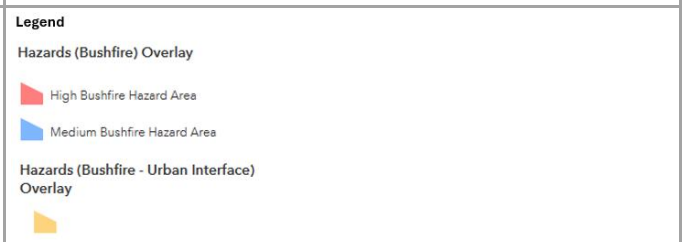
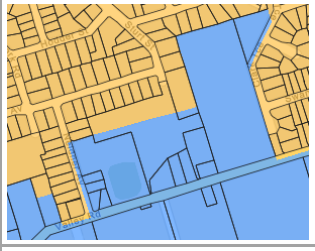
A more appropriate approach would be to simply state "None are applicable."

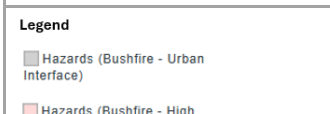
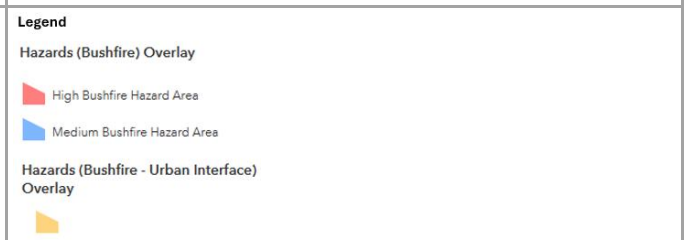
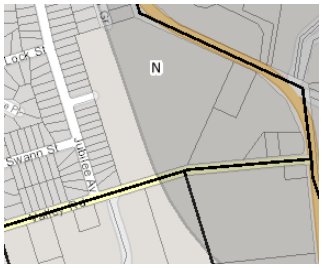
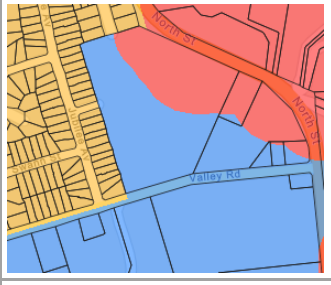
Detailed comments and suggested changes to written policies are contained in Appendix B. It is suggested that the analysis is attached to Council's submission.

Appendix A

Analysis of impacts on existing development areas and potential 'growth areas' identified in the Draft Growth and Infrastructure Investment Strategy

ANGASTON		
Location	**Valley Road west (Neighbourhood Zone) [Existing /GIIS Growth Area 3]**	
Existing provisions		**Proposed provisions**
		
		
Majority is not within the Hazards (Bushfire - Urban Interface) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply		Removed from the Hazards (Bushfire - Urban Interface) Overlay, majority designated as a Medium Bushfire Hazard Area with a small portion designated as a High Bushfire Hazard Area CFS referral or provision of a relevant certificate: Yes for land division and Yes for habitable buildings within the small portion designated as a High Bushfire Hazard Area BAL rating: 12.5 for land in Medium Bushfire Hazard Area; BAL determined by a site assessment carried out in accordance with AS 3959 for small portion within High Bushfire Hazard Area MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. Where located in the High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.

ANGASTON		
Location	**Valley Road centre (Neighbourhood Zone) [Existing /GIIS Growth Area 3]**	
Existing provisions		**Proposed provisions**
		
		
Not within the Hazards (Bushfire - Urban Interface) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply		Removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a Medium Bushfire Hazard Area CFS referral or provision of a relevant certificate: No for land division; No for habitable buildings BAL rating: 12.5 MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.

<table>
<tr><td colspan="3">ANGASTON</td></tr>
<tr><td>Location</td><td>Valley Road east (Neighbourhood Zone) [Existing /GIIS Growth Area 3]</td><td> 
</td></tr>
<tr><td>Existing provisions</td><td colspan="2">Proposed provisions</td></tr>
<tr><td> 
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<tr><td> 
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</td></tr>
<tr><td>Majority is within the Hazards (Bushfire - Urban Interface) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: assume Low

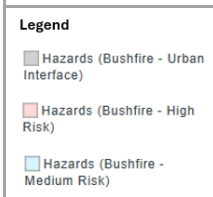
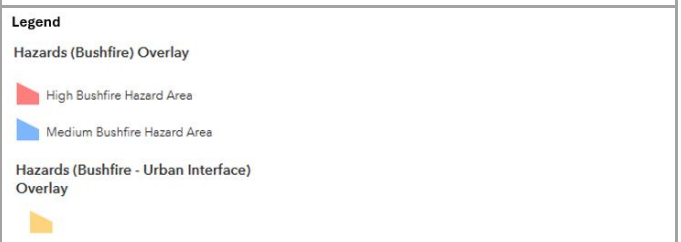
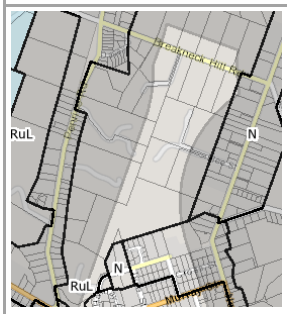
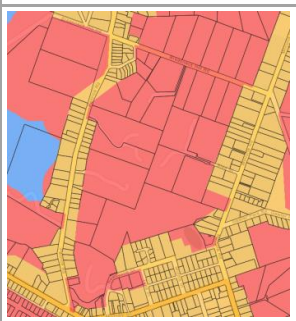
MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply</td><td colspan="2">Removed from the Hazards (Bushfire - Urban Interface) Overlay, half designated as a High Bushfire Hazard Area and half designated as a Medium Bushfire Hazard Area

CFS referral or provision of a relevant certificate: Yes for land division and habitable buildings within the portion designated as a High Bushfire Hazard Area; No for land designated as Medium Bushfire Hazard Area

BAL rating: 12.5 for land in Medium Bushfire Hazard Area; BAL determined by a site assessment carried out in accordance with AS 3959 for land within High Bushfire Hazard Area

MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. Where located in the High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.</td></tr>
</table>

<table>
<tr><td colspan="3">ANGASTON</td></tr>
<tr><td>Location</td><td>East of Penrice Road (Rural Living Zone) [GIIS Growth Area 1]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
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<tr><td colspan="2"> 
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<tr><td colspan="2">Partly within the Hazards (Bushfire - Urban Interface) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: assume Low

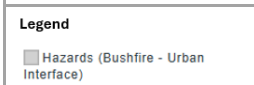
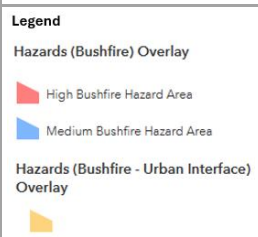
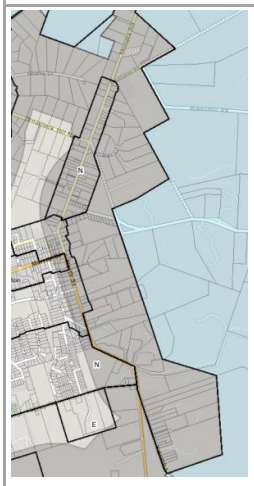
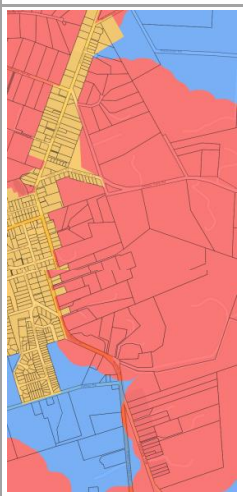
MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply</td><td>Removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a High Bushfire Hazard Area

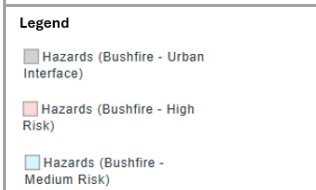
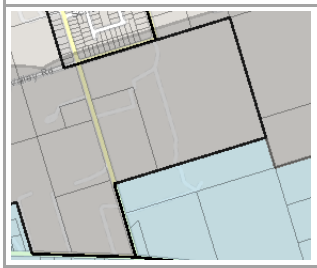
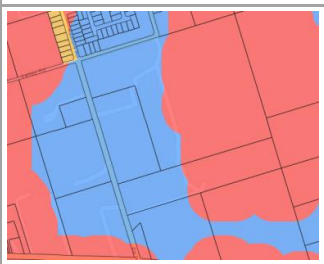
CFS referral or provision of a relevant certificate: Yes for land division and Yes for habitable buildings

BAL rating: determined by a site assessment carried out in accordance with AS 3959

MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. As it is a High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.</td></tr>
</table>

ANGASTON		
Location	East of Moculta Road and North Street (Rural Living Zone) [GIIS Growth Area 1]	
Existing provisions		**Proposed provisions**
		
		
Wholly within the Hazards (Bushfire - Urban Interface) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply		Removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a High Bushfire Hazard Area CFS referral or provision of a relevant certificate: Yes for land division and Yes for habitable buildings BAL rating: determined by a site assessment carried out in accordance with AS 3959 MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. As it is a High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.

<table>
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<tr><td>Location</td><td>Radford Road (Rural Living Zone) [GIIS Growth Area 1]</td><td> 
</td></tr>
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<tr><td colspan="2"> 
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<tr><td colspan="2">  </td><td>  </td></tr>
<tr><td colspan="2">Wholly within the Hazards (Bushfire - Urban Interface) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: assume Low

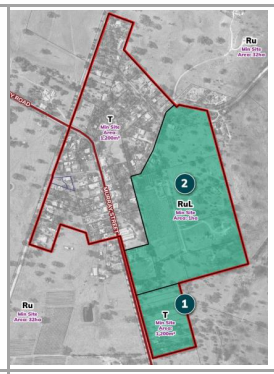
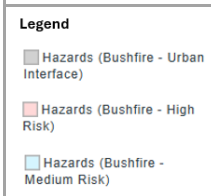
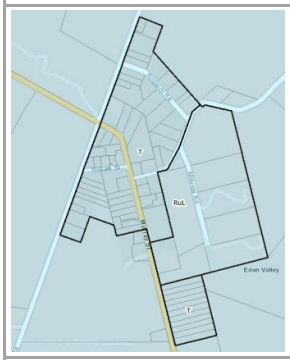
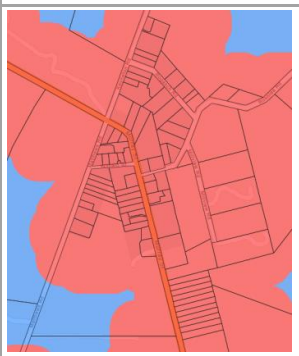
MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply</td><td>Removed from the Hazards (Bushfire - Urban Interface) Overlay, half designated as a High Bushfire Hazard Area and half designated as a Medium Bushfire Hazard Area

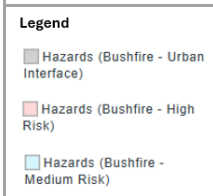
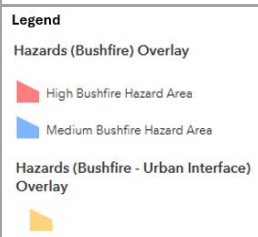
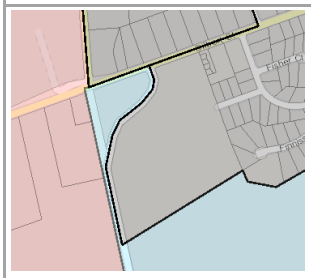
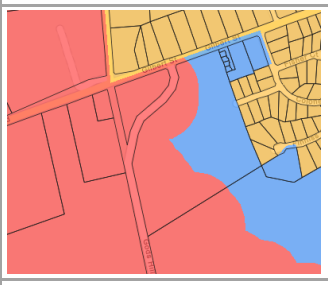
CFS referral or provision of a relevant certificate: Yes for land division and habitable buildings within the portion designated as a High Bushfire Hazard Area; No for portion designated as Medium Bushfire Hazard Area

BAL rating: 12.5 for land in Medium Bushfire Hazard Area; BAL determined by a site assessment carried out in accordance with AS 3959 for land within High Bushfire Hazard Area

MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. Where located in the High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.</td></tr>
</table>

EDEN VALLEY		
Location	Murray Street/Eden Valley Road (Township Zone - infill development) [GIIS Growth Area 1] and Millview Road (Rural Living Zone potential intensification) [GIIS Growth Area 2]	
Existing provisions		**Proposed provisions**
		
		
Wholly within the Hazards (Bushfire - Urban Interface) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: Assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply		Removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a High Bushfire Hazard Area CFS referral or provision of a relevant certificate: Yes for land division and Yes for habitable buildings BAL rating: determined by a site assessment carried out in accordance with AS 3959 MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. As it is a High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.

<table>
<tr><td colspan="3">LYNDOCH</td></tr>
<tr><td>Location</td><td>Gods Hill Road (Township Neighbourhood Zone) [Existing]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
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</td></tr>
<tr><td colspan="2">  </td><td>  </td></tr>
<tr><td colspan="2">Wholly within the Hazards (Bushfire - Urban Interface) Overlay and wholly within 500 m of land to the West in the Hazards (Bushfire - High Risk) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: Low for land between 100 - 500 m from the high bushfire risk area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within 100 m of the high bushfire risk area

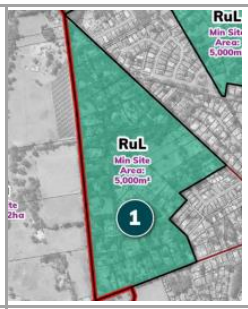
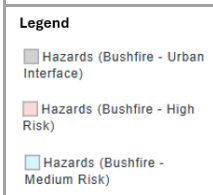
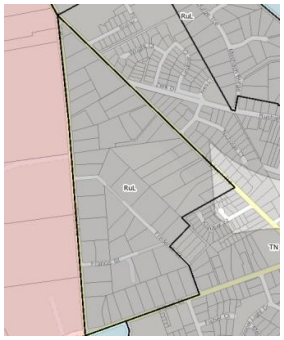
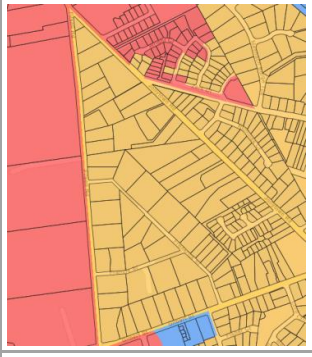
MBS 008: Is a designated bushfire prone area due to being within 500 m of a high bushfire risk area therefore water supply requirements apply</td><td>Removed from the Hazards (Bushfire - Urban Interface) Overlay, half designated as a High Bushfire Hazard Area, half as a Medium Bushfire Hazard Area

CFS referral or provision of a relevant certificate: Yes for land division within 100 metres of the High Bushfire Hazard Area; No for habitable buildings

BAL rating: Low for land between 100 - 500 m from the high bushfire risk area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within 100 m of the high bushfire risk area

MBS 008: will be a designated bushfire prone area due to being within 500 m of a high bushfire risk area therefore water supply requirements will apply

Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. Where located in the High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.</td></tr>
</table>

<table>
<tr><td colspan="3">LYNDOCH</td></tr>
<tr><td>Location</td><td>Filsell Road/Jollytown Road (Rural Living Zone) [GIIS Growth Area 1]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
</td><td> 
</td></tr>
<tr><td colspan="2">  </td><td>  </td></tr>
<tr><td colspan="2">Majority within the Hazards (Bushfire - Urban Interface) Overlay. Majority is within 500 m of land to the West in the Hazards (Bushfire - High Risk) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: Low for land between 100 - 500 m from the high bushfire risk area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within 100 m of the high bushfire risk area

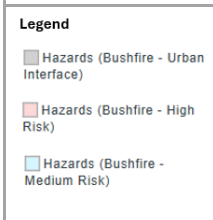
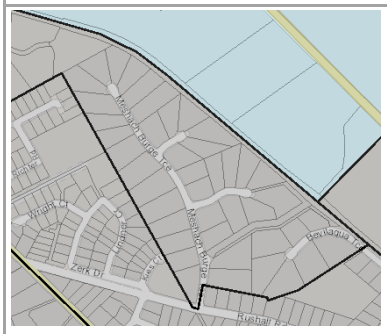
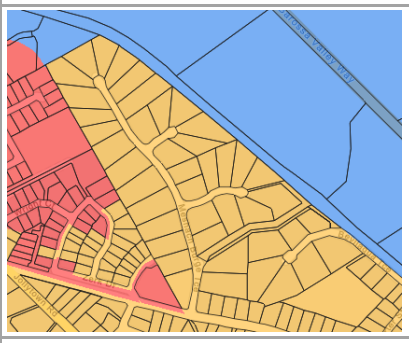
MBS 008: Majority is a designated bushfire prone area due to being within 500 m of a high bushfire risk area therefore water supply requirements apply</td><td>Retained in the Hazards (Bushfire - Urban Interface) Overlay. Majority is within 500 m of a High Bushfire Hazard Area to the West

CFS referral or provision of a relevant certificate: Yes for land division within 100 metres of the High Bushfire Hazard Area; No for habitable buildings

BAL rating: Low for land between 100 - 500 m from the high bushfire risk area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within 100 m of the high bushfire risk area

MBS 008: majority will be a designated bushfire prone area due to being within 500 m of a high bushfire risk area therefore water supply requirements will apply

Asset protection zone: Habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development.</td></tr>
</table>

<table>
<tr><td colspan="3">LYNDOCH</td></tr>
<tr><td>Location</td><td>Meshach Burge Terrace (Rural Living Zone) [GIIS Growth Area 1]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
</td><td> 
</td></tr>
<tr><td colspan="2">  </td><td>  </td></tr>
<tr><td colspan="2">Wholly within the Hazards (Bushfire - Urban Interface) Overlay. Northern end is within 500 m of land to the West in the Hazards (Bushfire - High Risk) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: Low

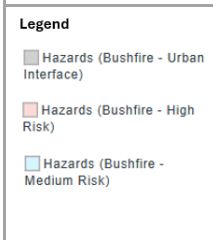
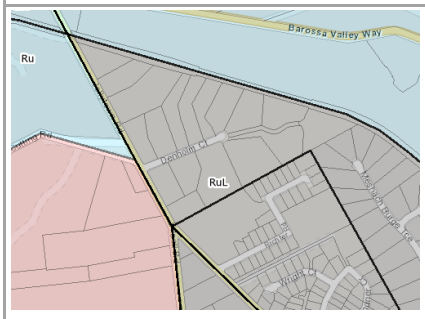
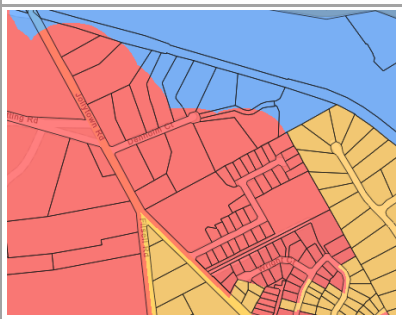
MBS 008: Northern end is a designated bushfire prone area due to being within 500 m of a high bushfire risk area therefore water supply requirements apply. No requirement for balance</td><td>Retained in the Hazards (Bushfire - Urban Interface) Overlay. Wholly within 500 m of a High Bushfire Hazard Area to the North West and West

CFS referral or provision of a relevant certificate: Yes for land division and Yes for habitable buildings within 100 metres of the High Bushfire Hazard Area

BAL rating: Low for land between 100 - 500 m from the High Bushfire Hazard Area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within 100 m of the High Bushfire Hazard Area

MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone: Habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development.</td></tr>
</table>

<table>
<tr><td colspan="3">LYNDOCH</td></tr>
<tr><td>Location</td><td>Denholm Court (Rural Living Zone) [GIIS Growth Area 1]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
</td><td> 
</td></tr>
<tr><td colspan="2"> 
</td><td>  </td></tr>
<tr><td colspan="2">Wholly within the Hazards (Bushfire - Urban Interface) Overlay. Within 500 m of land to the West in the Hazards (Bushfire - High Risk) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: Low for land between 100 - 500 m from the high bushfire risk area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within 100 m of the high bushfire risk area

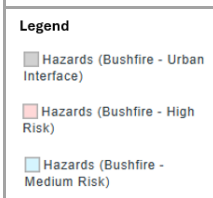
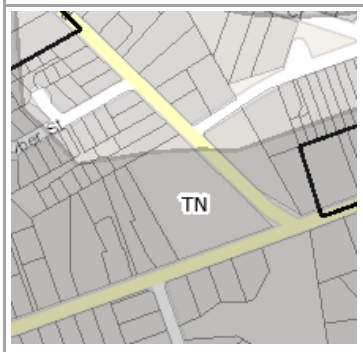
MBS 008: Is a designated bushfire prone area due to being within 500 m of a high bushfire risk area therefore water supply requirements apply</td><td>Removed from the Hazards (Bushfire - Urban Interface) Overlay, designated partly as a High Bushfire Hazard Area, partly as a Medium Bushfire Hazard Area

CFS referral or provision of a relevant certificate: Yes for land division and Yes for habitable buildings in the High Bushfire Hazard Area; No for land division and No for habitable buildings in the High Bushfire Hazard Area

BAL rating: 12.5 for land within the Medium Bushfire Hazard Area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within the High Bushfire Hazard Area

MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. Where located in the High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.</td></tr>
</table>

<table>
<tr><td colspan="3">LYNDOCH</td></tr>
<tr><td>Location</td><td>Gilbert Street (Council reserve) [GIIS Growth Area 3]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
</td><td> 
</td></tr>
<tr><td colspan="2"> 
</td><td> 
</td></tr>
<tr><td colspan="2">Majority within the Hazards (Bushfire - Urban Interface) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: Assume Low

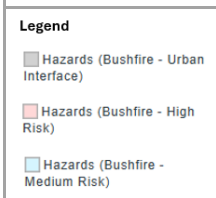
MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply</td><td>Wholly within the Hazards (Bushfire - Urban Interface) Overlay

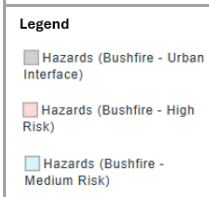
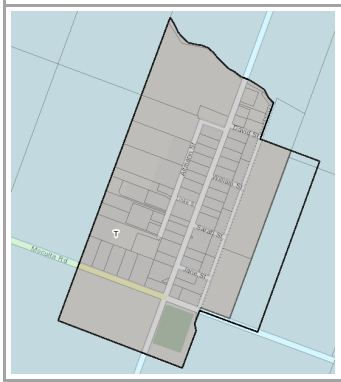
CFS referral: No for land division; No for habitable buildings

BAL rating: Assume Low

MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply

Asset protection zone: Not required</td></tr>
</table>

LYNDOCH		
Location	Off Bevilaqua Terrace (Council reserve) [GIIS Growth Area 3]	
Existing provisions		**Proposed provisions**
		
		
Wholly within the Hazards (Bushfire - Urban Interface) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: Assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply		Wholly within the Hazards (Bushfire - Urban Interface) Overlay. Majority located within 100 m of Hazards (Bushfire) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: Assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply Asset protection zone: Habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development.

<table>
<tr><td colspan="3">MOCULTA</td></tr>
<tr><td>Location</td><td>South of Moculta Road, West of Truro Road and East of Elizabeth Street [Existing / GIIS Growth Area 1]</td><td>  </td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
</td><td> 
</td></tr>
<tr><td colspan="2">  </td><td>  </td></tr>
<tr><td colspan="2">Largely within the Hazards (Bushfire - Urban Interface) Overlay with a portion East of Elizabeth Street in the Hazards (Bushfire - Medium Risk) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: Assume Low for majority; 12.5 for the portion East of Elizabeth Street within the Hazards (Bushfire - Medium Risk) Overlay

MBS 008: Portion East of Elizabeth Street within the Hazards (Bushfire - Medium Risk) Overlay is a designated bushfire prone area therefore water supply requirements apply</td><td>Removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a Medium Bushfire Hazard Area.

CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings

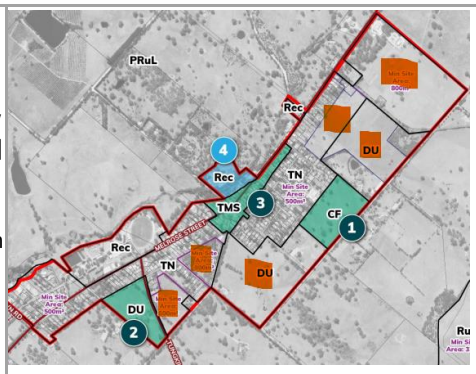
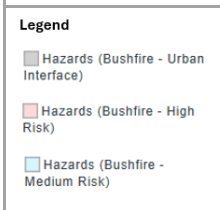
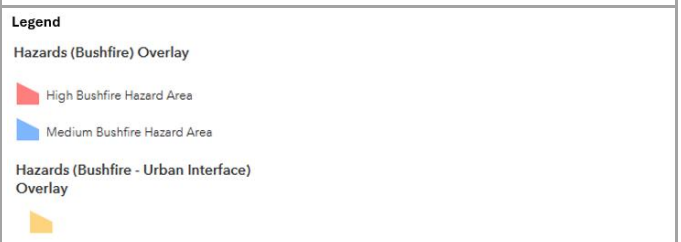
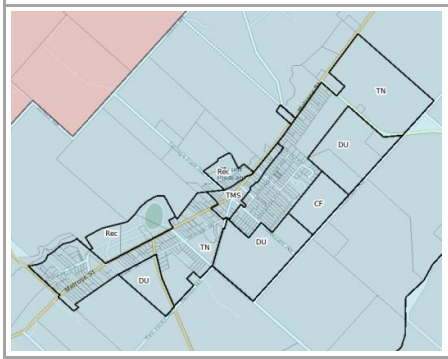
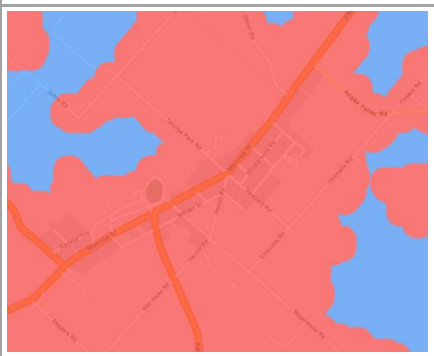
BAL rating: 12.5

MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.</td></tr>
</table>

<table>
<tr><td colspan="3">MOUNT PLEASANT</td></tr>
<tr><td>Location</td><td>Township Neighbourhood Zone and Deferred Urban Zone [Existing]

Chibnalls Road (Existing Community Facilities Zone) [GIIS Growth Area 1]

South-West of Tungkillo Road (Deferred Urban Zone) [GIIS Growth Area 2]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
</td><td> 
</td></tr>
<tr><td colspan="2"> 
</td><td>  </td></tr>
<tr><td colspan="2">Wholly within the Hazards (Bushfire - Medium Risk) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: 12.5

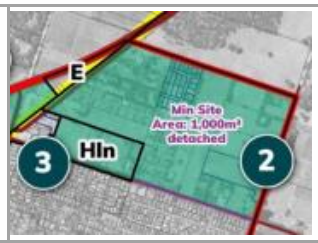
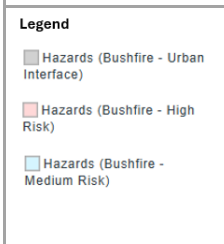
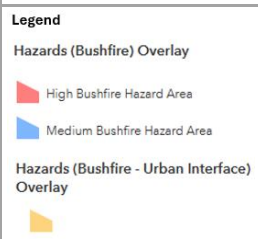
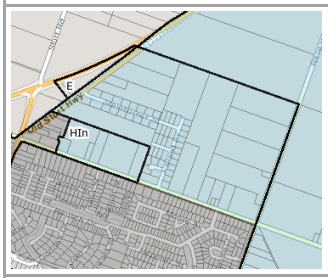
MBS 008: Is a designated bushfire prone area therefore water supply requirements apply</td><td>Redesignated as a High Bushfire Hazard Area

CFS referral or provision of a relevant certificate: Yes for land division and Yes for habitable buildings

BAL rating: determined by a site assessment carried out in accordance with AS 3959

MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. As it is a High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.</td></tr>
</table>

<table>
<tr><td colspan="3">NURIOOTPA</td></tr>
<tr><td>Location</td><td>Kalimna Road (Neighbourhood Zone) [Existing / GIIS Growth Area 2]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
</td><td> 
</td></tr>
<tr><td colspan="2"> 
</td><td>  </td></tr>
<tr><td colspan="2">Wholly within the Hazards (Bushfire - Medium Risk) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: 12.5

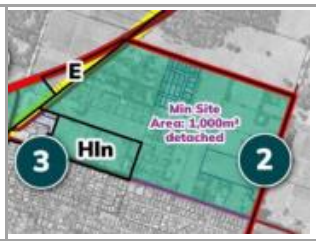
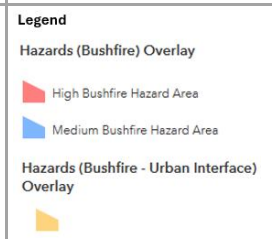
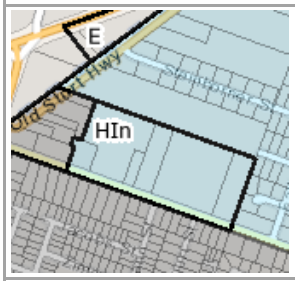
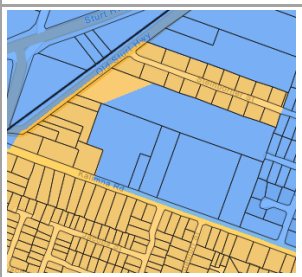
MBS 008: Is a designated bushfire prone area therefore water supply requirements apply</td><td>One developed street included within the Hazards (Bushfire - Urban Interface) Overlay, balance designated as a Medium Bushfire Hazard Area

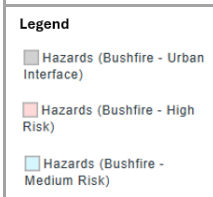
CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings within the portion designated as Medium Bushfire Hazard Area

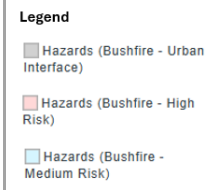
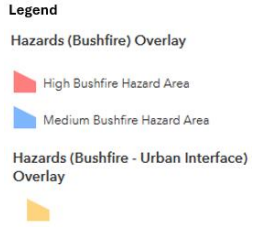
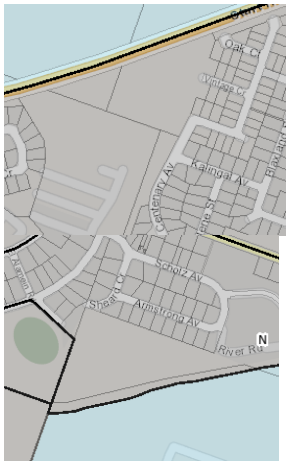
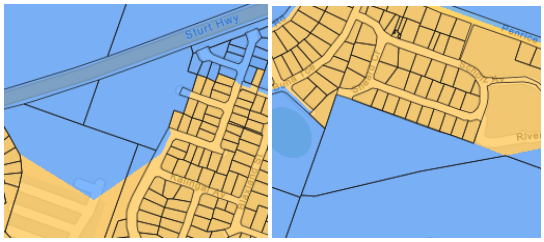
BAL rating: 12.5 for land in Medium Bushfire Hazard Area; assume Low for land within the Hazards (Bushfire - Urban Interface) Overlay

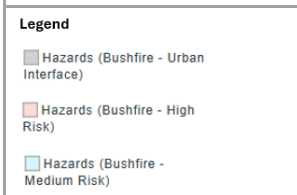
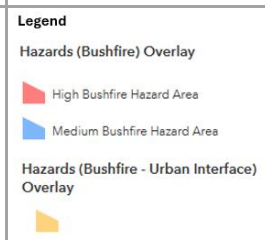
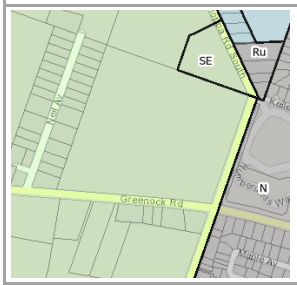
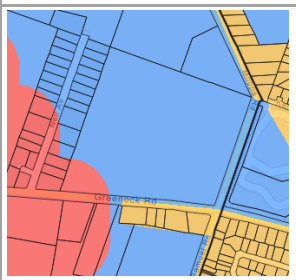
MBS 008: land within the Medium Bushfire Hazard Area will be a designated bushfire prone area therefore water supply requirements will apply

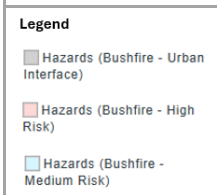
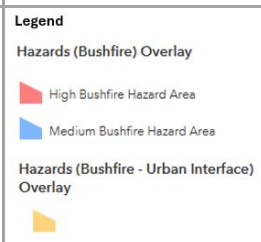
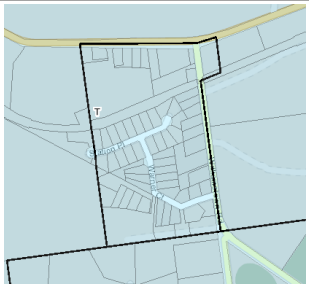
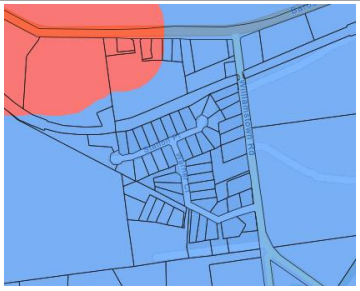
Asset protection zone:
For land within the Hazards (Bushfire - Urban Interface) Overlay: habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development.
For land within the Medium Bushfire Hazard Area: the asset protection zone is to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.</td></tr>
</table>

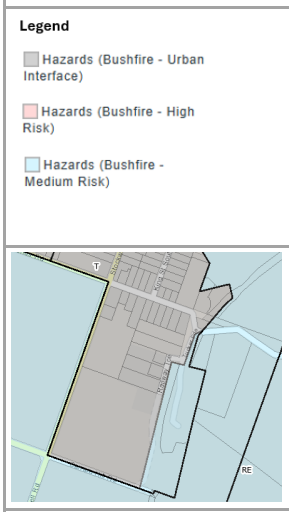
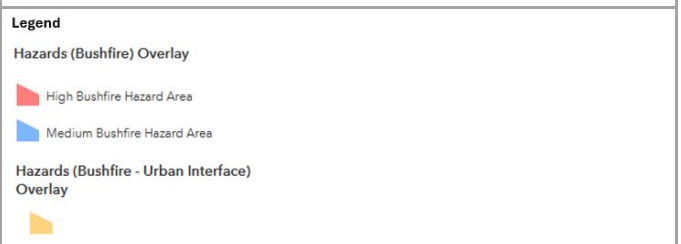
NURIOOTPA		
Location	Home Industry Zone land on Kalimna Road [GIIS Growth Area 3]	
Existing provisions		**Proposed provisions**
		
		
Wholly within the Hazards (Bushfire - Medium Risk) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: 12.5 MBS 008: Is a designated bushfire prone area therefore water supply requirements apply		All but one allotment is designated as a Medium Bushfire Hazard Area with that allotment within the Hazards (Bushfire – Urban Interface) Overlay CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings BAL rating: 12.5 MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: For land within the Hazards (Bushfire - Urban Interface) Overlay: habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development. For land within the Medium Bushfire Hazard Area: the asset protection zone is to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.

NURIOOTPA		
Location	Baird Street infill site [GIIS Growth Area 2]	
Existing provisions		**Proposed provisions**
		
		
Majority is within the Hazards (Bushfire - Urban Interface) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply		Wholly within the Hazards (Bushfire - Urban Interface) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply Asset protection zone: not required

NURIOOTPA			
Location	Infill sites off Vintage Crescent and Sheard Crescent [GIIS Growth Area 2]		
Existing provisions		**Proposed provisions**	
			
			
Wholly within the Hazards (Bushfire - Urban Interface) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply		Designated as a Medium Bushfire Hazard Area CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings BAL rating: 12.5 MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.	

NURIOOTPA		
Location	Light Regional Council area (Neill Ave) [GIIS Growth Area 5]	
Existing provisions		**Proposed provisions**
		
		
Wholly within the Hazards (Bushfire - General Risk) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: Low MBS 008: Is a designated bushfire prone area therefore water supply requirements apply		Majority is designated as a Medium Bushfire Hazard Area, partly High Bushfire Hazard Area CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings for land within the Medium Bushfire Hazard Area; Yes for land division and Yes for habitable buildings within the High Bushfire Hazard Area BAL rating: 12.5 for land within the Medium Bushfire Hazard Area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within the High Bushfire Hazard Area MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. Where located in the High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.

SANDY CREEK		
Location	Off Barossa Valley Way (Township Zone) [Existing]	
Existing provisions		**Proposed provisions**
		
		
Wholly within the Hazards (Bushfire - Medium Risk) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: 12.5 MBS 008: Is a designated bushfire prone area therefore water supply requirements apply		Approx half redesignated as a High Bushfire Hazard Area with balance designated as a Medium Bushfire Hazard Area CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings for land within the Medium Bushfire Hazard Area; Yes for land division and Yes for habitable buildings within the High Bushfire Hazard Area BAL rating: 12.5 for land within the Medium Bushfire Hazard Area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within the High Bushfire Hazard Area MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. Where located in the High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.

<table>
<tr><td colspan="3">STOCKWELL</td></tr>
<tr><td>Location</td><td>East of Stockwell Road /South of Duck Ponds Road [Existing / GIIS Growth Area 1]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
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<tr><td colspan="2"></td><td>  </td></tr>
<tr><td colspan="2">Wholly within the Hazards (Bushfire - Urban Interface) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: Assume Low

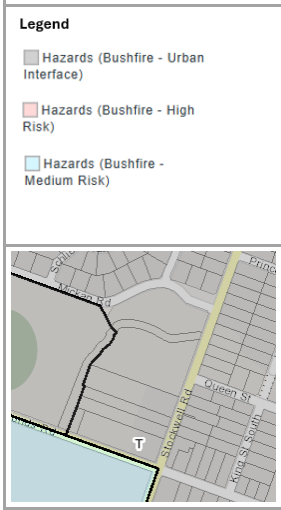
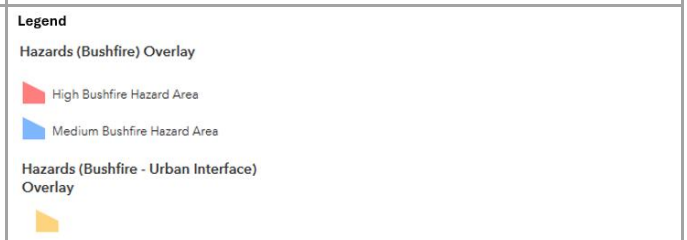
MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply</td><td>Approx half removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a Medium Bushfire Hazard Area.

CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings

BAL rating: 12.5 for land in Medium Bushfire Hazard Area; Low for land within the Hazards (Bushfire - Urban Interface) Overlay

MBS 008: will be a designated bushfire prone area therefore water supply requirements will

Asset protection zone:
For land within the Hazards (Bushfire - Urban Interface) Overlay: habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development.
For land within the Medium Bushfire Hazard Area: the asset protection zone is to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.</td></tr>
</table>

<table>
<tr><td colspan="3">STOCKWELL</td></tr>
<tr><td>Location</td><td>West of Stockwell Road [Existing / GIIS Growth Area 1]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
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</td></tr>
<tr><td colspan="2">
</td><td>  </td></tr>
<tr><td colspan="2">Wholly within the Hazards (Bushfire - Urban Interface) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: Assume Low

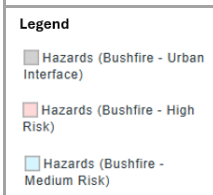
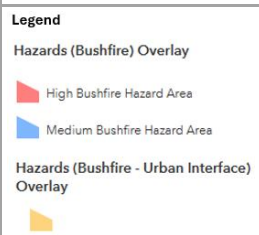
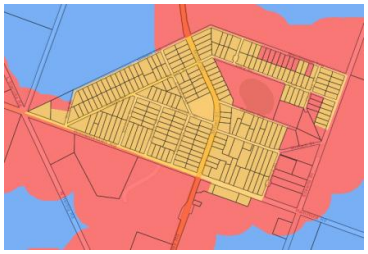
MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply</td><td>Majority removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a Medium Bushfire Hazard Area.

CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings

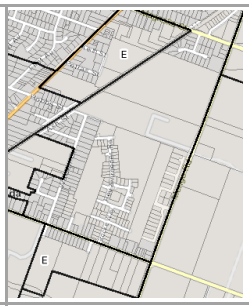
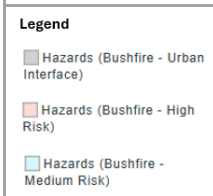
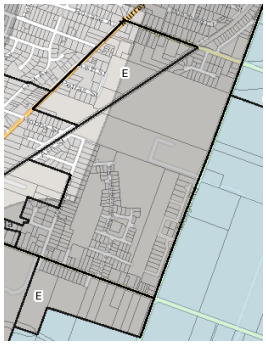
BAL rating: 12.5 for land in Medium Bushfire Hazard Area; Low for land within the Hazards (Bushfire - Urban Interface) Overlay

MBS 008: Land within the Medium Bushfire Hazard Area will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone:
For land within the Hazards (Bushfire - Urban Interface) Overlay: habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development.
For land within the Medium Bushfire Hazard Area: the asset protection zone is to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.</td></tr>
</table>

SPRINGTON		
Location	Various Township Zone area [Existing / GIIS Growth Area 1]	
Existing provisions		**Proposed provisions**
		
		
Wholly within the Hazards (Bushfire - Medium Risk) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: 12.5 MBS 008: Is a designated bushfire prone area therefore water supply requirements apply		Majority of township brought within the (Bushfire - Urban Interface) Overlay with balance redesignated as a High Bushfire Hazard Area. Wholly within 500 m of a High Bushfire Hazard Area. CFS referral or provision of a relevant certificate: Yes for land division and Yes for habitable buildings within the High Bushfire Hazard Area; Yes for land division within 100 metres of the High Bushfire Hazard Area BAL rating: 12.5 for land within the Medium Bushfire Hazard Area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within the High Bushfire Hazard Area BAL rating: Low for land between 100 - 500 m from the High Bushfire Hazard Area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within the High Bushfire Hazard Area and for land within 100 m of the High Bushfire Hazard Area MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: For land within the Hazards (Bushfire - Urban Interface) Overlay: habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development. For land within the Medium Bushfire Hazard Area: the asset protection zone is to be a minimum width of at least 50m to unmanaged

	grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.

<table>
<tr><td colspan="3">TANUNDA</td></tr>
<tr><td>Location</td><td>Tanunda East (Neighbourhood Zone) [Existing]</td><td>  </td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
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<tr><td colspan="2">  </td><td>  </td></tr>
<tr><td colspan="2">Wholly within the Hazards (Bushfire - Urban Interface) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: assume Low

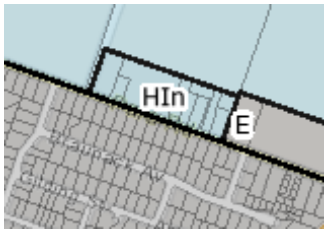
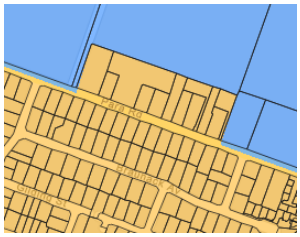
MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply</td><td>Designated as a Medium Bushfire Hazard Area

CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings

BAL rating: 12.5

MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.</td></tr>
</table>

<table>
<tr><td colspan="3">TANUNDA</td></tr>
<tr><td>Location</td><td>Para Road (Home Industry Zone)
[GIIS Growth Area 1]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
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<tr><td colspan="2"> 
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<tr><td colspan="2">Wholly within the Hazards (Bushfire - Medium Risk) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: Low

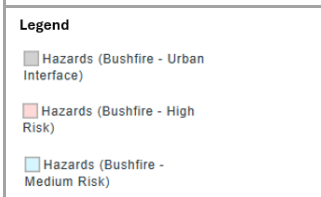
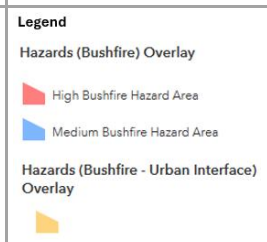
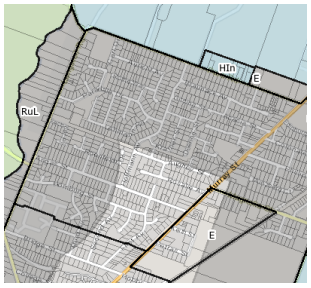
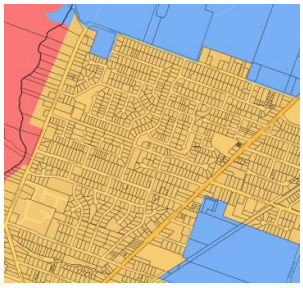
MBS 008: Is a designated bushfire prone area therefore water supply requirements apply</td><td>Moved wholly within the Hazards (Bushfire - Urban Interface) Overlay

CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings

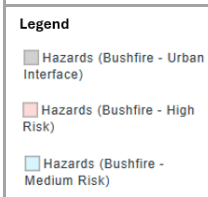
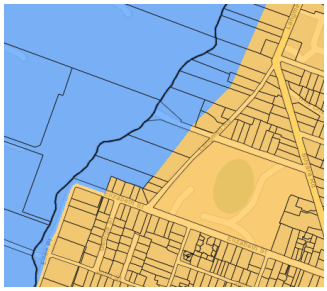
BAL rating: assume Low

MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply

Asset protection zone: Habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development.</td></tr>
</table>

TANUNDA		
Location	Tanunda 'North' (Neighbourhood Zone) [GIIS Growth Area 5]	
Existing provisions		**Proposed provisions**
		
		
Two thirds within the Hazards (Bushfire - Urban Interface) Overlay; balance not within the overlay CFS referral: No for land division; No for habitable buildings BAL rating: assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply		Majority within the Hazards (Bushfire - Urban Interface) Overlay with a small portion designated as a Medium Bushfire Hazard Area. Portions along Langmeil Road within 100 m of a (new) High Bushfire Hazard Area to the West CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings BAL rating: assume Low for majority; BAL determined by a site assessment carried out in accordance with AS 3959 for portions along Langmeil Road within 100 m of High Bushfire Hazard Area to the West MBS 008: Majority not a designated bushfire prone area therefore no water supply requirements apply, but portions along Langmeil Road within 100 m of the High Bushfire Hazard Area will be a designated bushfire prone area therefore water supply requirements apply to those areas. Asset protection zone: For land within the Hazards (Bushfire - Urban Interface) Overlay: habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development.

	For land within the Medium Bushfire Hazard Area: the asset protection zone is to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.

<table>
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<tr><td>Location</td><td>Langmeil Road (Rural Neighbourhood Zone [GIIS Growth Area 6]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
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<tr><td colspan="2"> 
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<tr><td colspan="2">Wholly within the Hazards (Bushfire - Urban Interface) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: assume Low

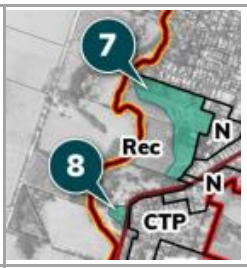
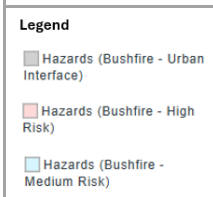
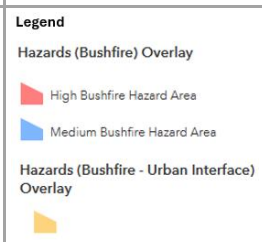
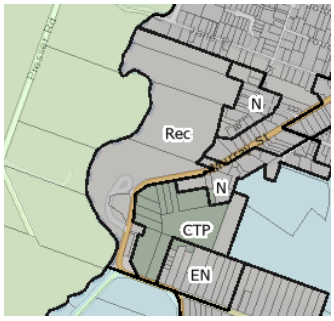
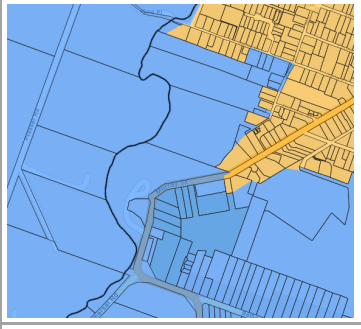
MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply</td><td>Part removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a Medium Bushfire Hazard Area

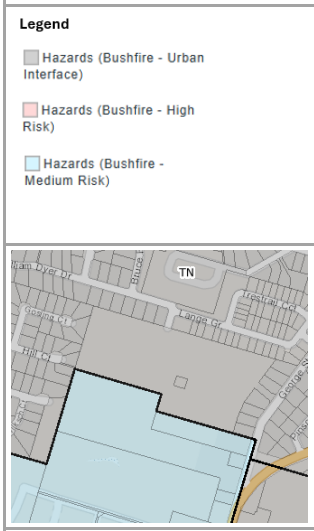
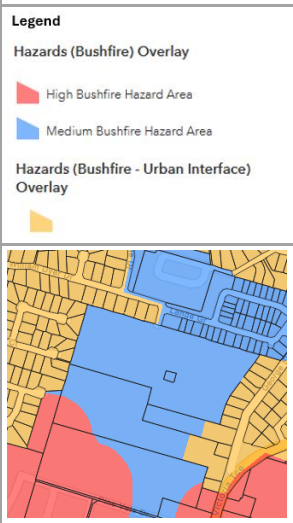
CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings

BAL rating: 12.5 for land in Medium Bushfire Hazard Area; Low for land within the Hazards (Bushfire - Urban Interface) Overlay

MBS 008: Land within the Medium Bushfire Hazard Area will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone:
For land within the Hazards (Bushfire - Urban Interface) Overlay: habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development.
For land within the Medium Bushfire Hazard Area: the asset protection zone is to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.</td></tr>
</table>

TANUNDA		
Location	Off Maria Street (Recreation Zone) [GIIS Growth Area 7] and Murray Street (Recreation Zone) [GIIS Growth Area 8]	
Existing provisions		**Proposed provisions**
		
		
Wholly within the Hazards (Bushfire - Urban Interface) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply		Removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a Medium Bushfire Hazard Area CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings BAL rating: 12.5 MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.

<table>
<tr><td colspan="3">WILLIAMSTOWN</td></tr>
<tr><td>Location</td><td>South of William Dyer Drive/Lange Grove (Township Neighbourhood Zone) [Existing]</td><td>  </td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
</td><td> 
</td></tr>
<tr><td colspan="2">Wholly within the Hazards (Bushfire - Urban Interface) Overlay. Largely within 500 m of land to the West in the Hazards (Bushfire - High Risk) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: Low for land between 100 - 500 m from the high bushfire risk area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within 100 m of the high bushfire risk area

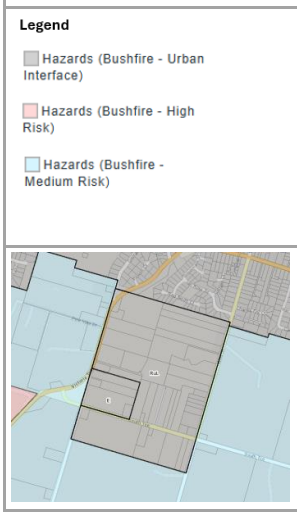
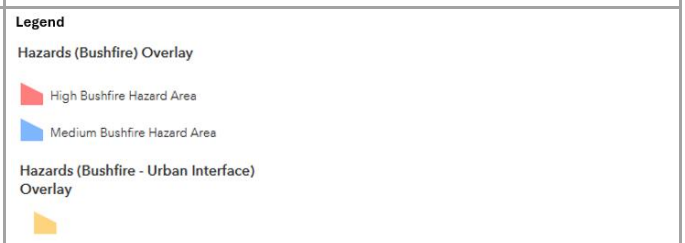
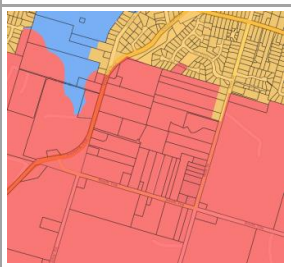
MBS 008: Largely is a designated bushfire prone area due to being within 500 m of a high bushfire risk area therefore water supply requirements apply</td><td>Removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a Medium Bushfire Hazard Area.

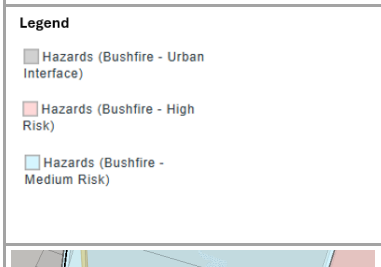
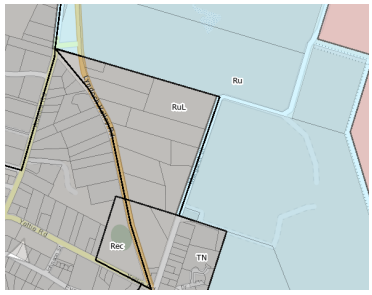
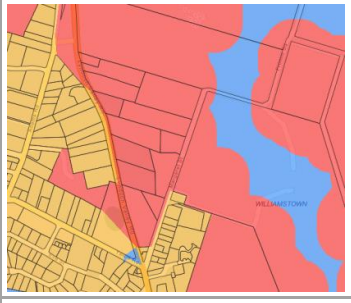
CFS referral or provision of a relevant certificate: No for land division and No for habitable buildings

BAL rating: 12.5

MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.</td></tr>
</table>

WILLIAMSTOWN		
Location	Williamstown "South" (Rural Living Zone) [GIIS Growth Area 1]	
Existing provisions		**Proposed provisions**
		
		
Wholly within the Hazards (Bushfire - Urban Interface) Overlay. Approx half within 500 m of land to the West in the Hazards (Bushfire - High Risk) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: Low for land between 100 - 500 m from the high bushfire risk area; BAL level determined by a site assessment carried out in accordance with AS 3959 for land within 100 m of the high bushfire risk area MBS 008: Is a designated bushfire prone area due to being within 500 m of a high bushfire risk area therefore water supply requirements apply		Majority removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a High Bushfire Hazard Area. Small portion retained in (Bushfire - Urban Interface) Overlay is within 500 m of a High Bushfire Hazard Area CFS referral or provision of a relevant certificate: Yes for land division and Yes for habitable buildings BAL rating: determined by a site assessment carried out in accordance with AS 3959 for land within the High Bushfire Hazard Area and for land within 100 m of the high bushfire risk area MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: For land within the Hazards (Bushfire - Urban Interface) Overlay: habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development. For land within the Medium Bushfire Hazard Area: the asset protection zone is to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width.

<table>
<tr><td colspan="3">WILLIAMSTOWN</td></tr>
<tr><td>Location</td><td>East of Lyndoch Valley Road (Rural Living Zone) [GIIS Growth Area 5]</td><td> 
</td></tr>
<tr><td colspan="2">Existing provisions</td><td>Proposed provisions</td></tr>
<tr><td colspan="2"> 
</td><td> 
</td></tr>
<tr><td colspan="2"> 
</td><td>  </td></tr>
<tr><td colspan="2">Wholly within the Hazards (Bushfire - Urban Interface) Overlay. Part within 500 m of Hazards (Bushfire – High Risk) Overlay

CFS referral: No for land division; No for habitable buildings

BAL rating: Assume Low

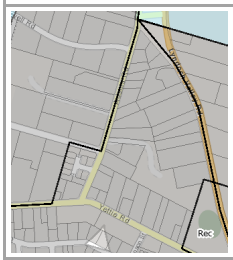
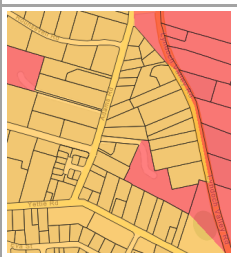
MBS 008: Majority is not a designated bushfire prone area therefore no water supply requirements apply. Requirements apply to the small part within 500 m of the high bushfire risk area</td><td>Removed from the Hazards (Bushfire - Urban Interface) Overlay, designated as a High Bushfire Hazard Area

CFS referral or provision of a relevant certificate: Yes for land division and Yes for habitable buildings

BAL rating: determined by a site assessment carried out in accordance with AS 3959

MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply

Asset protection zone: to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. As it is a High Bushfire Hazard Area, the asset protection zone is to be contained wholly within the allotment of the development.</td></tr>
</table>

WILLIAMSTOWN		
Location	West of Lyndoch Valley Road (Rural Living Zone) [GIIS Growth Area 5]	
Existing provisions		**Proposed provisions**
		
		
Wholly within the Hazards (Bushfire - Urban Interface) Overlay CFS referral: No for land division; No for habitable buildings BAL rating: Assume Low MBS 008: Not a designated bushfire prone area therefore no water supply requirements apply		Majority retained in the Hazards (Bushfire - Urban Interface) Overlay with portion of one allotment designated as a High Bushfire Hazard Area. Wholly within 500 m of a High Bushfire Hazard Area with majority within 100 m of a High Bushfire Hazard Area CFS referral or provision of a relevant certificate: Yes for land division within 100 m of the High Bushfire Hazard Area; Yes for habitable buildings within the land designated as a High Bushfire Hazard Area BAL rating: determined by a site assessment carried out in accordance with AS 3959 due to being within 100 m of a high bushfire risk area MBS 008: will be a designated bushfire prone area therefore water supply requirements will apply Asset protection zone: For land within the Hazards (Bushfire - Urban Interface) Overlay: habitable buildings, tourist accommodation and buildings for at risk communities, located within 100m of the Hazards (Bushfire) Overlay, to be provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development. For land within the High Bushfire Hazard Area: the asset protection zone is to be a minimum width of at least 50m to unmanaged grasslands and 100m to hazardous bushland vegetation. Alternatively the application could include a Certified BAL Declaration that supports a lesser width. The asset protection zone is to be contained wholly within the allotment of the development.

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
Desired Outcome				
		Refer to comment in submission relating to the term "Hazards (Bushfire) Overlay". **Suggested change:** Wherever highlighted "Hazards (Bushfire) Overlay" appears, review if it is intended to only apply to High Bushfire Hazard Area or all hazard areas in the Hazards (Bushfire) Overlay		
DO 1 Development, including land division is sited and designed that mitigates the threat and impact of bushfires on life and property and responds to the relevant level of bushfire risk taking into account the following risks: (a) potential for uncontrolled bushfire events and increased frequency and intensity of bushfires as a result of climate change (b) potential exposure and level of ember attack (c) impact from burning debris (d) radiant heat (e) potential exposure to flames from a fire front.		DO 1 Urban neighbourhoods that adjoin areas of General, Medium and High Bushfire Risk: (a) allow safer access through to bushfire risk areas (b) are designed to protect life and property from the threat of bushfire and the dangers posed by ember attack (c) facilitate evacuation to areas safe from bushfire danger.		The highlighted text refers to "risk" whereas the term "hazard" is the wording used in all overlays. **Suggested change**: • Replace "areas of General, Medium and High Bushfire Risk with "located within the Hazards (Bushfire) Overlay" (assuming the intent is for all or some policies in this overlay to apply to land within 100 m of all hazard areas)
DO 2 Activities that increase the number of people living and working in the area or where evacuation would be difficult is sited away from areas of unacceptable bushfire risk.				
DO 3 To facilitate access for emergency service vehicles to aid the protection of lives and assets from bushfire danger, including occupants and firefighters.				PO 6.2 and PO 4.2 in Hazards (Bushfire) Overlay and Hazards (Bushfire – Urban Interface) Overlay respectively include reference to "emergency personnel" – recommend these words be added to the DO **Suggested change:** • At end of DO 3 insert "and emergency personnel"
Performance Outcomes				
Land Use		**Land Use**		
PO 1.1 Development in a **High Bushfire Hazard Area** that significantly increases the potential for fire outbreak as a result of the spontaneous combustion of materials, spark generation or through the magnification and reflection of light is not located in areas of unacceptable bushfire risk.	DTS/DPF 1.1 The site of the development is not located in a **High Bushfire Hazard Area**.			It is a contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". **Suggested change:** • In DTS/DPF 1.1 replace "The site of the development is not located in a **High Bushfire Hazard Area**" with "None are applicable"
PO 1.2 Pre-schools, educational facilities, hospitals, retirement and supported accommodation are sited away from areas of unacceptable bushfire risk and locations that: (a) are remote from or require extended periods of travel to reach safer locations (b) don't have a safe path of travel to safer locations.	DTS/DPF 1.2 None are applicable.			

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
PO 1.3 Habitable buildings are designed and sited to minimise the threat, impact, and potential exposure to bushfires on life and property.	DTS/DPF 1.3 The site of the development is not located in a **High Bushfire Hazard Area**.			It is a contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". **Suggested change:** • In DTS/DPF 1.3 replace "The site of the development is not located in a **High Bushfire Hazard Area**" with "None are applicable"
Non-Habitable Buildings				
PO 2.1 Non habitable walled buildings and structures are sited and constructed of materials that minimise the threat of fire spread to habitable buildings, tourist accommodation and buildings for at risk communities in the event of bushfire.	DTS/DPF 2.1 Non-habitable walled buildings and structures are sited no closer than 6m to a habitable building.	PO 2.4 Non habitable walled buildings and structures located within 100m of the Hazards (Bushfire) Overlay are sited and constructed of materials that minimise the threat of fire spread to habitable buildings, tourist accommodation and buildings for at risk communities in the event of bushfire.	DTS/DPF 2.4 Non-habitable walled buildings and structures located within 100m of the Hazards (Bushfire) Overlay are sited no closer than 6m to a habitable building.	In the Hazards (Bushfire – Urban Interface) Overlay these are located under the Built Form heading. For consistency they should be under the same heading as in the Hazards (Bushfire) Overlay. **Suggested change:** • Relocate PO 2.4, DTS/DPF 2.4, PO 2.5 and DTS/DPF 2.5 from the under the Built Form heading to under the Non-Habitable Buildings heading
PO 2.2 Verandahs, carports and other open structures are sited and constructed of materials that minimise the threat of fire spread to habitable buildings, tourist accommodation and buildings for at risk communities in the event of bushfire.	DTS/DPF 2.2 Verandahs, carports and other open structures: (a) are sited no closer than 6m to a habitable building or (b) are sited within 6m of a habitable building and are: (i) set back at least 6m from any outbuilding, walled ancillary structure or non-habitable building (ii) designed to be constructed entirely of metal and include permanently fixed metal gutter guards over all gutters.	PO 2.5 Verandahs, carports and other open structures located within 100m of the Hazards (Bushfire) Overlay are sited and constructed of materials that minimise the threat of fire spread to habitable buildings, tourist accommodation and buildings for at risk communities in the event of bushfire.	DTS/DPF 2.5 Verandahs, carports and other open structures located within 100m of the Hazards (Bushfire) Overlay: (a) are sited no closer than 6m to a habitable building or (b) are sited within 6m of a habitable building and are: (i) set back at least 6m from any outbuilding, walled ancillary structure or non-habitable building (ii) designed to be constructed entirely of metal and include permanently fixed metal gutter guards over all gutters.	In the Hazards (Bushfire – Urban Interface) Overlay these are located under the Built Form heading. For consistency they should be under the same heading as in the Hazards (Bushfire) Overlay. **Suggested change:** • Relocate PO 2.4, DTS/DPF 2.4, PO 2.5 and DTS/DPF 2.5 from the under the Built Form heading to under the Non-Habitable Buildings heading
Habitable Buildings and Buildings for At Risk Communities		**Habitable Buildings, Tourist Accommodation and Buildings for At Risk Communities**		Why different headings? **Suggested change:** • Insert ", Tourist Accommodation" in heading in Hazards (Bushfire) Overlay
PO 3.1 To minimise the threat, impact and potential exposure to bushfires on life and property, habitable buildings, tourist accommodation and buildings for at risk communities are sited on the flatter portion of allotments away from steep slopes.	DTS/DPF 3.1 The site of a habitable building, tourist accommodation or buildings for at risk communities and all land within a radius equal to the distance of the asset protection zone required under DTS/DPF 3.2 (below) has an average slope of not more than 6 degrees (1-in-9.5) and a maximum slope of not more than 20 degrees(1-in-5). Or The application includes a Certified BAL Declaration that supports the proposed siting arrangement.	PO 1.1 To minimise the threat, impact and potential exposure to bushfires on life and property, habitable buildings, tourist accommodation and buildings for at risk communities, which are located within 100m of the Hazards (Bushfire) Overlay, are sited away from areas that pose an unacceptable bushfire risk as a result of vegetation cover and type, and terrain.	DTS/DPF 1.1 Habitable buildings, tourist accommodation and buildings for at risk communities, which are located within 100m of the Hazards (Bushfire) Overlay, are provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development.	The order of PO 3.1 wording is contrary to the 'outcome' approach. DTS/DPF 3.1 and 3.2 in the Hazards (Bushfire) Overlay provide the option for a Certified BAL Declaration that supports a lesser width asset protection zone. Logic suggests this option also be provided in Hazards (Bushfire – Urban Interface) Overlay DTS/DPF 1.1 **Suggested changes:** • Replace PO 3.1 with "PO 3.1 Habitable buildings, tourist accommodation and buildings for at risk communities are sited on the flatter portion of allotments away from steep slopes to minimise the threat, impact

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
				and potential exposure to bushfires on life and property." • Replace PO 1.1 with "PO 1.1 Habitable buildings, tourist accommodation and buildings for at risk communities, which are located within 100m of the Hazards (Bushfire) Overlay, are sited away from areas that pose an unacceptable bushfire risk as a result of vegetation cover and type, and terrain, to minimise the threat, impact and potential exposure to bushfires on life and property." • In DTS/DPF 1.1 insert at the end "Or The application includes a Certified BAL Declaration that supports the proposed siting arrangement."
PO 3.2 Habitable buildings, tourist accommodation and buildings for at risk communities are sited away from vegetated areas that pose an unacceptable bushfire risk.	DTS/DPF 3.2 Habitable buildings, tourist accommodation and buildings for at risk communities are located within an existing asset protection zone in accordance with (a) and (b): (a) the asset protection zone has a minimum width of at least: (i) 50m to unmanaged grasslands (ii) 100m to hazardous bushland vegetation or (iii) the application includes a Certified BAL Declaration that supports a lesser width (b) where located in a **High Bushfire Hazard Area**, the asset protection zone is contained wholly within the allotment of the development.	PO 1.3 Habitable buildings are designed and sited to minimise the threat, impact, and potential exposure to bushfires on life and property.	DTS/DPF 1.3 The site of the development is not located within 100m of the Hazards (Bushfire) Overlay.	It is a contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". PO 1.3 is inconsistent with PO 3.2 in the Hazards (Bushfire) Overlay as it omits "tourist accommodation and buildings for at risk communities". The same issue applies to PO 3.3, DTS/DPF 3.3, PO 1.2 and DTS/DPF 1.2 in the next row **Suggested changes:** • In DTS/DPF 1.3 replace "The site of the development is not located within 100 m of the Hazards (Bushfire) Overlay" with "None are applicable" • In PO 1.3 after "Habitable buildings" insert "tourist accommodation and buildings for at risk communities"
PO 3.3 Habitable buildings have access to an area capable of accommodating an on-site water supply that is available to the fire authority for fire-fighting purposes at all times, to minimise fire spreading to buildings during a bushfire, as appropriate to the: (a) potential source and intensity of a bushfire (b) size of the allotment on which the building is located (c) availability of mains water.	DTS/DPF 3.3 Sites for habitable buildings include a designated area capable of accommodating an on-site water supply in accordance with Table 1, below:	PO 1.2 Habitable buildings, which are located within 100m of the Hazards (Bushfire) Overlay, have access to an area capable of accommodating an on-site water supply that is available to the fire authority for fire-fighting purposes at all times, to minimise fire spreading to buildings during a bushfire, as appropriate to: (a) the potential source and intensity of a bushfire (b) the size of the allotment on which the building is located availability of mains water.	DTS/DPF 1.2 Sites for habitable buildings, which are located within 100m of the Hazards (Bushfire) Overlay, include a designated area capable of accommodating an on-site water supply in accordance with Table 1, below:	PO 1.2 and DTS/DPF 1.2 apply water supply requirements in locations that exceed the requirements of MBS 008 – refer to discussion in main submission **Suggested changes:** • In PO 3.3, DTS/DPF 3.3, PO 1.2 and DTS/DPF1.2 after "Habitable buildings" insert "tourist accommodation and buildings for at risk communities" • In PO 1.2 replace "availability of mains water with "(c) availability of mains water"
PO 3.4 Habitable buildings, tourist accommodation and buildings for at risk communities in **High Bushfire Hazard Areas** provide for the safe and efficient access of fire-fighting vehicles to dedicated fire-fighting water supplies.	DTS/DPF 3.4 The site of the development is not located in a **High Bushfire Hazard Area**. Or Where fire-fittings are required, development includes the provision of an all-weather hardstand area, capable of supporting a fire-fighting vehicle with a gross vehicle mass (GVM) of 21 tonnes in a location that:			It is contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". **Suggested change:** In DTS/DPF 3.4 delete "The site of the development is not located in a **High Bushfire Hazard Area**. Or"

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
	(a) allows the fire-fighting vehicle to safely access the dedicated water supply and exit the site in a forward direction (b) is no further than 6m from the dedicated water supply outlet(s) (c) is at ground level and equal to or below the base of the dedicated water supply.			
PO 3.5 Buildings for at risk communities incorporate clear pathways to facilitate safe pedestrian movements from the site in emergency situations.	DTS/DPF 3.5 Buildings for at risk communities incorporate a non-combustible pathway, with a minimum width of 1.5m, around the entire perimeter of the building.			
PO 3.6 Buildings for at risk communities are provided with at least two separate and safe exit points to enable multiple avenues of evacuation for residents, occupants and visitors in the event of a bushfire.	DTS/DPF 3.6 Buildings for at risk communities are provided with at least 2 entry/exit driveway access points.	PO 1.4 Buildings for at risk communities located within 100m of the Hazards (Bushfire) Overlay are provided with at least two separate and safe exit points to enable multiple avenues of evacuation for residents, occupants and visitors in the event of a bushfire.	DTS/DPF 1.4 Buildings for at risk communities located within 100m of the Hazards (Bushfire) Overlay are provided with at least 2 entry/exit driveway access points.	
Built Form		**Built Form**		
PO 4.1 Buildings and structures are enclosed between ground level and the building floor level to reduce the potential for burning debris to be trapped underneath the building or structure.	DTS/DPF 4.1 Buildings and structures (including extensions to buildings, buildings constructed on stilts, transportable buildings and decks) are enclosed between ground level and the building floor level above. Or The application includes a Certified BAL Declaration that supports the proposed design and construction method and confirms a BAL rating of BAL Low.	PO 2.1 Buildings and structures located within 100m of the Hazards (Bushfire) Overlay are enclosed between ground level and the building floor level to reduce the potential for burning debris to be trapped underneath the building or structure	DTS/DPF 2.1 Buildings and structures located within 100m of the Hazards (Bushfire) Overlay (including extensions to buildings, buildings constructed on stilts, transportable buildings and decks) are enclosed between ground level and the building floor level above.	
PO 4.2 Buildings and structures are designed and configured to reduce the potential for burning debris to be trapped in or on the roof, underneath the floor, against the walls or in the corners of the buildings or structures.	DTS/DPF 4.2 None are applicable.	PO 2.2 Buildings and structures located within 100m of the Hazards (Bushfire) Overlay are designed and configured to reduce the potential for burning debris to be trapped in or on the roof, underneath the floor, against the walls or in the corners of the buildings or structures.	DTS/DPF 2.2 Buildings and structures located within 100m of the Hazards (Bushfire) Overlay are designed and sited in accordance with (a) and (b): (a) have a footprint that is square or rectangular in shape (b) do not incorporate valleys in the roof design.	
		PO 2.3 Buildings, which are for at risk communities and located within 100m of the Hazards (Bushfire) Overlay, are provided with at least two separate and safe exit points to enable multiple avenues of evacuation for residents, occupants and visitors in the event of a bushfire.	DTS/DPF 2.3 Buildings for at risk communities are located more than 100m from the Hazards (Bushfire) Overlay	PO 2.3 seems to duplicate PO 1.4. It is a contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says “No”. **Suggested change:** • Consolidate PO 1.4 and PO 2.3
Land Division		**Land Division**		
PO 5.1 Land division for habitable buildings, tourist accommodation and buildings for at risk communities is limited to those zones that specifically envisage these land uses.	DTS/DPF 5.1 The site of the land division is not located within a High Bushfire Hazard Area.			

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
PO 5.2 Land division is designed and configured to minimise the danger of fire hazard on firefighters, residents and occupants of buildings, and to protect buildings and property from physical damage in the event of a bushfire.	DTS/DPF 5.2 None are applicable.			
PO 5.3 Land division is designed to provide a continuous street pattern (avoiding the use of dead end roads/cul-de-sac road design) to facilitate the safe movement and evacuation of emergency vehicles, residents, occupants and visitors.	DTS/DPF 5.3 None are applicable.	PO 3.2 Land division is designed to provide a continuous street pattern to facilitate the safe movement and evacuation of emergency vehicles, residents, occupants and visitors.	DTS/DPF 3.2 Land division does not involve the creation of public roads.	It is contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". DTS/DPF 3.1-3.6 are all at odds with PO 3.1-3.6 which specifically envisages public roads and/or more than 10 lots. **Suggested change:** In DTS/DPF 3.2 replace "Land division does not involve the creation of public roads" with "None are applicable."
		PO 3.1 Land division creating public roads or resulting in 10 or more new allotments is designed to make provision for emergency vehicle access through to the bushfire risk area.	DTS/DPF 3.1 Land division creates less than 10 allotments and/or does not involve the creation of public roads.	**Suggested change:** • In DTS/DPF 3.1 replace "Land division creates less than 10 allotments and/or does not involve the creation of public roads" with "None are applicable."
PO 5.4 Where 10 or more new allotments are proposed, land division includes more than one avenue of evacuation in the event of a bushfire.	DTS/DPF 5.4 Land division creates less than 10 allotments. Or Land division includes at least two separate and safe road exit points from the land division.	PO 3.3 Where 10 or more new allotments are proposed, land division includes at least two separate and safe exit points to enable multiple avenues of evacuation in the event of a bushfire.	DTS/DPF 3.3 Land division creates less than 10 allotments.	**Suggested change:** • In DTS/DPF 5.4 delete "Land division creates less than 10 allotments. Or" • In DTS/DPF 3.3 replace "Land division creates less than 10 allotments" with "None are applicable."
PO 5.5 Land division provides sufficient space for future asset protection zones and incorporates perimeter roads of adequate design in conjunction with bushfire buffer zones to achieve adequate separation between residential allotments and areas of unacceptable bushfire risk and to support safe access for the purposes of firefighting.	DTS/DPF 5.5 None are applicable.	PO 3.4 Land division creating public roads or resulting in 10 or more new allotments incorporates perimeter roads of adequate design in conjunction with bushfire buffer zones to achieve adequate separation between residential allotments and areas of unacceptable bushfire risk and to support safe access for the purposes of fire-fighting.	DTS/DPF 3.4 Land division creates less than 10 allotments and/or does not involve the creation of public roads.	**Suggested change:** • In DTS/DPF 3.4 replace "Land division creates less than 10 allotments and/or does not involve the creation of public roads" with "None are applicable."
		PO 3.5 Land division does not rely on fire tracks as means of evacuation or access for fire-fighting purposes unless there are no safe alternatives available.	DTS/DPF 3.5 Land division does not create or rely on fire tracks.	**Suggested change:** • In DTS/DPF 3.5 replace "Land division does not create or rely on fire tracks" with "None are applicable."
		PO 3.6 Land division resulting in 10 or more new allotments and located within 100m of the Hazards (Bushfire) Overlay is designed and incorporates measures to minimise the danger of fire hazard to firefighters, residents and occupants of buildings, and to protect buildings and property from physical damage in the event of a bushfire.	DTS/DPF 3.6 Land division is not located within 100m of the Hazards (Bushfire) Overlay or does not create 10 or more new allotments.	**Suggested change:** • In DTS/DPF 3.6 replace "Land division is not located within 100m of the Hazards (Bushfire) Overlay or does not create 10 or more new allotments" with "None are applicable."

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
Vehicle Access – Roads and Driveways		**Vehicle Access – Roads, Driveways and Fire Tracks**		
PO 6.1 Roads are designed and constructed to facilitate the safe and effective: (a) access, operation and evacuation of fire-fighting vehicles and emergency personnel (b) evacuation of residents, occupants and visitors.	DTS/DPF 6.1 Roads: (a) are constructed with a formed, all-weather surface (b) have a gradient of not more than 16 degrees (1-in-3.5) at any point along the road (c) have a cross fall of not more than 6 degrees (1-in-9.5) at any point along the road (d) have a minimum formed road width of 6m (e) provide overhead clearance of not less than 4m between the road surface and overhanging branches or other obstructions including buildings and/or structures (Figure 1) (f) allow fire-fighting services (personnel and vehicles) to travel in a continuous forward movement around road curves by constructing the curves with a minimum external radius of 12.5m (Figure 2) (g) incorporating cul-de-sac endings or dead end roads are provided with an alternative evacuation route and do not exceed 200m in length and the end of the road has either: (i) a turning area with a minimum formed surface radius of 12.5m (Figure 3) or (ii) a 'T' or 'Y' shaped turning area with a minimum formed surface length of 11m and minimum internal radii of 9.5m (Figure 4) (h) incorporate solid, all-weather crossings over any watercourse that support fire-fighting vehicles with a gross vehicle mass (GVM) of 21 tonnes.	PO 4.1 Roads that are located within 100m of the Hazards (Bushfire) Overlay are designed and constructed to facilitate the safe and effective: (a) access, operation and evacuation of fire-fighting vehicles and emergency personnel (b) evacuation of residents, occupants and visitors.	DTS/DPF 4.1 Roads are not located within 100m of the Hazards (Bushfire) Overlay Or Roads: (a) are constructed with a formed, all-weather surface (b) have a gradient of not more than 16 degrees (1-in-3.5) at any point along the road (c) have a cross fall of not more than 6 degrees (1-in-9.5) at any point along the road (d) have a minimum formed road width of 6m (e) provide overhead clearance of not less than 4m between the road surface and overhanging branches or other obstructions including buildings and/or structures (Figure 1) (f) allow fire-fighting services (personnel and vehicles) to travel in a continuous forward movement around road curves by constructing the curves with a minimum external radius of 12.5m (Figure 2) (g) incorporating cul-de-sac endings or dead end roads are provided with an alternative evacuation route and do not exceed 200m in length and the end of the road has either: (i) a turning area with a minimum formed surface radius of 12.5m (Figure 3) or (ii) a 'T' or 'Y' shaped turning area with a minimum formed surface length of 11m and minimum internal radii of 9.5m (Figure 4) (h) incorporate solid, all-weather crossings over any watercourse that support fire-fighting vehicles with a gross vehicle mass (GVM) of 21 tonnes.	In the Hazards (Bushfire) Overlay roads can be provided adjacent to a Hazards (Bushfire – Urban Interface) Overlay but not in a 100m strip within the adjacent interface area – why not? **Suggested change:** • In DTS/DPF 4.1 delete "Roads are not located within 100m of the Hazards (Bushfire) Overlay Or"
PO 6.2 Vehicle access to habitable buildings, tourist accommodation and buildings for at risk communities is designed and constructed to facilitate the safe and effective: (a) use, operation and evacuation of fire-fighting and emergency personnel (b) evacuation of residents, occupants and visitors.	DTS/DPF 6.2 Access is in accordance with (a) or (b): (a) a clear and unobstructed vehicle or pedestrian pathway of not greater than 60m in length is available between the most distant part of the habitable building, tourist accommodation or building for at risk communities and the nearest part of a formed public access road (b) driveways: (i) do not exceed 600m in length (ii) are constructed with a formed, all-weather surface (iii) are connected to a formed, all-weather public road with the transition area between the road and driveway having a gradient of not more than 7 degrees (1-in-8) (iv) have a gradient of not more than 16 degrees (1-in-3.5) at any point along the driveway	PO 4.2 Where vehicle access to habitable buildings, tourist accommodation and buildings for at risk communities is located within 100m of the Hazards (Bushfire) Overlay, it is designed and constructed to facilitate the safe and effective: (a) use, operation and evacuation of fire-fighting and emergency personnel (b) evacuation of residents, occupants and visitors.	DTS/DPF 4.2 Access is not located within 100m of the Hazards (Bushfire) Overlay Or Access is in accordance with (a) or (b): (a) a clear and unobstructed vehicle or pedestrian pathway of not greater than 60m in length is available between the most distant part of the habitable building, tourist accommodation or building for at risk communities and the nearest part of a formed public access road (b) driveways: (i) do not exceed 600m in length (ii) are constructed with a formed, all-weather surface (iii) are connected to a formed, all-weather public road with the transition area between the road and driveway having a gradient of not more than 7 degrees (1-in-8)	In the Hazards (Bushfire) Overlay roads can be provided adjacent to a Hazards (Bushfire – Urban Interface) Overlay but not in a 100m strip within the adjacent interface area – why not? **Suggested change:** • In DTS/DPF 4.2 delete "Access is not located within 100m of the Hazards (Bushfire) Overlay Or"

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
	(v) have a crossfall of not more than 6 degrees (1-in-9.5) at any point along the driveway (vi) have a minimum formed width of 3m (4m where the gradient of the driveway is steeper than 12 degrees (1- in-4.5)) plus 0.5m clearance either side of the driveway from overhanging branches or other obstructions, including buildings and/or structures (Figure 1) (vii) incorporate passing bays with a minimum width of 6m and length of 17m every 200m (Figure 5) (viii) provide overhead clearance of not less than 4.0m between the driveway surface and overhanging branches or other obstructions, including buildings and/or structures (Figure 1) (ix) allow fire-fighting services (personnel and vehicles) to travel in a continuous forward movement around driveway curves by constructing the curves with a minimum external radius of 12.5m (Figure 2) (x) allow fire-fighting vehicles to safely enter and exit an allotment in a forward direction by using a 'U' shaped drive through design or by incorporating at the end of the driveway either: A. a loop road around the building or B. a turning area with a minimum radius of 12.5m (Figure 3) or C. a 'T' or 'Y' shaped turning area with a minimum formed length of 11m and minimum internal radii of 9.5m (Figure 4) (xi) incorporate solid, all-weather crossings over any watercourse that support fire-fighting vehicles with a gross vehicle mass (GVM) of 21 tonnes.		(iv) have a gradient of not more than 16 degrees (1-in-3.5) at any point along the driveway (v) have a crossfall of not more than 6 degrees (1-in-9.5) at any point along the driveway (vi) have a minimum formed width of 3m (4m where the gradient of the driveway is steeper than 12 degrees (1-in-4.5)) plus 0.5m clearance either side of the driveway from overhanging branches or other obstructions, including buildings and/or structures (Figure 1) (vii) incorporate passing bays with a minimum width of 6m and length of 17m every 200m (Figure 5) (viii) provide overhead clearance of not less than 4.0m between the driveway surface and overhanging branches or other obstructions, including buildings and/or structures (Figure 1) (ix) allow fire-fighting services (personnel and vehicles) to travel in a continuous forward movement around driveway curves by constructing the curves with a minimum external radius of 12.5m (Figure 2) (x) allow fire-fighting vehicles to safely enter and exit an allotment in a forward direction by using a 'U' shaped drive through design or by incorporating at the end of the driveway either: A. a loop road around the building or B. a turning area with a minimum radius of 12.5m (Figure 3) or C. a 'T' or 'Y' shaped turning area with a minimum formed length of 11m and minimum internal radii of 9.5m (Figure 4) (xi) incorporate solid, all-weather crossings over any watercourse that support fire-fighting vehicles with a gross vehicle mass (GVM) of 21 tonnes.	
PO 6.3 Development does not rely on fire tracks as means of evacuation or access for fire-fighting purposes.	DTS/DPF 6.3 Development does not rely on the use of fire tracks for access and evacuation.	PO 4.3 Development located within 100m of the Hazards (Bushfire) Overlay does not rely on fire tracks as means of evacuation or access for fire-fighting purposes.	DTS/DPF 4.3 Development is located more than 100m from the Hazards (Bushfire) Overlay.	DTS/DPF 4.3. is at odds with the corresponding provision in the Hazards (Bushfire) Overlay. In any case, it is contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". **Suggested change:** • In DTS/DPF 6.3 delete "Development does not rely on the use of fire tracks for access and evacuation" with "None are applicable." • In DTS/DPF 4.3 replace "Development is located more than 100m from the Hazards (Bushfire) Overlay" with "None are applicable."
Procedural Matters (PM) – Referrals				

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
Except if a relevant certificate accompanies the application for planning consent in respect of the development, any of the following classes of development (including alterations and additions which increase the floor area of such buildings by 10% or more) within a **High Bushfire Risk Area**: (a) land division creating one or more additional allotments (b) dwelling (c) ancillary accommodation (d) residential flat building (e) tourist accommodation (f) boarding home (g) dormitory style accommodation (h) workers' accommodation (i) student accommodation (j) pre-school (k) educational establishment (l) retirement village (m) supported accommodation (n) residential park (o) hospital (p) campground.		Except if a relevant certificate accompanies the application for planning consent in respect of the development, land division creating one or more additional allotments within 100 metres of a High Bushfire Risk Area, as defined in the Hazards (Bushfire) Overlay.		**Suggested change:** • In the Hazards (Bushfire) Overlay replace "Risk" with "Hazard" • In the Hazards (Bushfire – Urban Interface) Overlay replace "High Bushfire Risk Area, as defined in the Hazards (Bushfire) Overlay" with "High Bushfire Hazard Area"

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
Desired Outcome				
		Refer to comment in submission relating to the term "Hazards (Bushfire) Overlay". **Suggested change:** Wherever highlighted "Hazards (Bushfire) Overlay" appears, review if it is intended to only apply to High Bushfire Hazard Area or all hazard areas in the Hazards (Bushfire) Overlay		
DO 1 Development, including land division is sited and designed that mitigates the threat and impact of bushfires on life and property and responds to the relevant level of bushfire risk taking into account the following risks: (a) potential for uncontrolled bushfire events and increased frequency and intensity of bushfires as a result of climate change (b) potential exposure and level of ember attack (c) impact from burning debris (d) radiant heat (e) potential exposure to flames from a fire front.		DO 1 Urban neighbourhoods that adjoin areas of General, Medium and High Bushfire Risk: (a) allow safer access through to bushfire risk areas (b) are designed to protect life and property from the threat of bushfire and the dangers posed by ember attack (c) facilitate evacuation to areas safe from bushfire danger.		The highlighted text refers to "risk" whereas the term "hazard" is the wording used in all overlays. **Suggested change**: • Replace "areas of General, Medium and High Bushfire Risk with "located within the Hazards (Bushfire) Overlay" (assuming the intent is for all or some policies in this overlay to apply to land within 100 m of all hazard areas)
DO 2 Activities that increase the number of people living and working in the area or where evacuation would be difficult is sited away from areas of unacceptable bushfire risk.				
DO 3 To facilitate access for emergency service vehicles to aid the protection of lives and assets from bushfire danger, including occupants and firefighters.				PO 6.2 and PO 4.2 in Hazards (Bushfire) Overlay and Hazards (Bushfire – Urban Interface) Overlay respectively include reference to "emergency personnel" – recommend these words be added to the DO **Suggested change:** • At end of DO 3 insert "and emergency personnel"
Performance Outcomes				
Land Use		**Land Use**		
PO 1.1 Development in a **High Bushfire Hazard Area** that significantly increases the potential for fire outbreak as a result of the spontaneous combustion of materials, spark generation or through the magnification and reflection of light is not located in areas of unacceptable bushfire risk.	DTS/DPF 1.1 The site of the development is not located in a **High Bushfire Hazard Area**.			It is a contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". **Suggested change:** • In DTS/DPF 1.1 replace "The site of the development is not located in a **High Bushfire Hazard Area**" with "None are applicable"
PO 1.2 Pre-schools, educational facilities, hospitals, retirement and supported accommodation are sited away from areas of unacceptable bushfire risk and locations that: (a) are remote from or require extended periods of travel to reach safer locations (b) don't have a safe path of travel to safer locations.	DTS/DPF 1.2 None are applicable.			
PO 1.3 Habitable buildings are designed and sited to minimise the threat, impact, and potential exposure to bushfires on life and property.	DTS/DPF 1.3 The site of the development is not located in a **High Bushfire Hazard Area**.			It is a contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". **Suggested change:**

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
				• In DTS/DPF 1.3 replace "The site of the development is not located in a **High Bushfire Hazard Area**" with "None are applicable"
Non-Habitable Buildings				
PO 2.1 Non habitable walled buildings and structures are sited and constructed of materials that minimise the threat of fire spread to habitable buildings, tourist accommodation and buildings for at risk communities in the event of bushfire.	DTS/DPF 2.1 Non-habitable walled buildings and structures are sited no closer than 6m to a habitable building.	PO 2.4 Non habitable walled buildings and structures located within 100m of the Hazards (Bushfire) Overlay are sited and constructed of materials that minimise the threat of fire spread to habitable buildings, tourist accommodation and buildings for at risk communities in the event of bushfire.	DTS/DPF 2.4 Non-habitable walled buildings and structures located within 100m of the Hazards (Bushfire) Overlay are sited no closer than 6m to a habitable building.	In the Hazards (Bushfire – Urban Interface) Overlay these are located under the Built Form heading. For consistency they should be under the same heading as in the Hazards (Bushfire) Overlay. **Suggested change:** • Relocate PO 2.4, DTS/DPF 2.4, PO 2.5 and DTS/DPF 2.5 from the under the Built Form heading to under the Non-Habitable Buildings heading
PO 2.2 Verandahs, carports and other open structures are sited and constructed of materials that minimise the threat of fire spread to habitable buildings, tourist accommodation and buildings for at risk communities in the event of bushfire.	DTS/DPF 2.2 Verandahs, carports and other open structures: (a) are sited no closer than 6m to a habitable building or (b) are sited within 6m of a habitable building and are: (i) set back at least 6m from any outbuilding, walled ancillary structure or non-habitable building (ii) designed to be constructed entirely of metal and include permanently fixed metal gutter guards over all gutters.	PO 2.5 Verandahs, carports and other open structures located within 100m of the Hazards (Bushfire) Overlay are sited and constructed of materials that minimise the threat of fire spread to habitable buildings, tourist accommodation and buildings for at risk communities in the event of bushfire.	DTS/DPF 2.5 Verandahs, carports and other open structures located within 100m of the Hazards (Bushfire) Overlay: (a) are sited no closer than 6m to a habitable building or (b) are sited within 6m of a habitable building and are: (i) set back at least 6m from any outbuilding, walled ancillary structure or non-habitable building (ii) designed to be constructed entirely of metal and include permanently fixed metal gutter guards over all gutters.	In the Hazards (Bushfire – Urban Interface) Overlay these are located under the Built Form heading. For consistency they should be under the same heading as in the Hazards (Bushfire) Overlay. **Suggested change:** • Relocate PO 2.4, DTS/DPF 2.4, PO 2.5 and DTS/DPF 2.5 from the under the Built Form heading to under the Non-Habitable Buildings heading
Habitable Buildings and Buildings for At Risk Communities		**Habitable Buildings, Tourist Accommodation and Buildings for At Risk Communities**		Why different headings? **Suggested change:** • Insert ", Tourist Accommodation" in heading in Hazards (Bushfire) Overlay
PO 3.1 To minimise the threat, impact and potential exposure to bushfires on life and property, habitable buildings, tourist accommodation and buildings for at risk communities are sited on the flatter portion of allotments away from steep slopes.	DTS/DPF 3.1 The site of a habitable building, tourist accommodation or buildings for at risk communities and all land within a radius equal to the distance of the asset protection zone required under DTS/DPF 3.2 (below) has an average slope of not more than 6 degrees (1-in-9.5) and a maximum slope of not more than 20 degrees(1-in-5). Or The application includes a Certified BAL Declaration that supports the proposed siting arrangement.	PO 1.1 To minimise the threat, impact and potential exposure to bushfires on life and property, habitable buildings, tourist accommodation and buildings for at risk communities, which are located within 100m of the Hazards (Bushfire) Overlay, are sited away from areas that pose an unacceptable bushfire risk as a result of vegetation cover and type, and terrain.	DTS/DPF 1.1 Habitable buildings, tourist accommodation and buildings for at risk communities, which are located within 100m of the Hazards (Bushfire) Overlay, are provided with an asset protection zone that has a minimum width of 50m and is contained wholly with the allotment of the development.	The order of PO 3.1 wording is contrary to the 'outcome' approach. DTS/DPF 3.1 and 3.2 in the Hazards (Bushfire) Overlay provide the option for a Certified BAL Declaration that supports a lesser width asset protection zone. Logic suggests this option also be provided in Hazards (Bushfire – Urban Interface) Overlay DTS/DPF 1.1 **Suggested changes:** • Replace PO 3.1 with "PO 3.1 Habitable buildings, tourist accommodation and buildings for at risk communities are sited on the flatter portion of allotments away from steep slopes to minimise the threat, impact and potential exposure to bushfires on life and property." • Replace PO 1.1 with "PO 1.1 Habitable buildings, tourist accommodation and buildings for at risk communities, which are located within 100m of the Hazards (Bushfire) Overlay, are sited away from areas that pose an unacceptable bushfire risk as a result of vegetation cover and type, and terrain, to minimise the threat, impact and potential exposure to bushfires on life and property."

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
				• In DTS/DPF 1.1 insert at the end "Or The application includes a Certified BAL Declaration that supports the proposed siting arrangement."
PO 3.2 Habitable buildings, tourist accommodation and buildings for at risk communities are sited away from vegetated areas that pose an unacceptable bushfire risk.	DTS/DPF 3.2 Habitable buildings, tourist accommodation and buildings for at risk communities are located within an existing asset protection zone in accordance with (a) and (b): (a) the asset protection zone has a minimum width of at least: (i) 50m to unmanaged grasslands (ii) 100m to hazardous bushland vegetation or (iii) the application includes a Certified BAL Declaration that supports a lesser width (b) where located in a **High Bushfire Hazard Area**, the asset protection zone is contained wholly within the allotment of the development.	PO 1.3 Habitable buildings are designed and sited to minimise the threat, impact, and potential exposure to bushfires on life and property.	DTS/DPF 1.3 The site of the development is not located within 100m of the Hazards (Bushfire) Overlay.	It is a contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". PO 1.3 is inconsistent with PO 3.2 in the Hazards (Bushfire) Overlay as it omits "tourist accommodation and buildings for at risk communities". The same issue applies to PO 3.3, DTS/DPF 3.3, PO 1.2 and DTS/DPF 1.2 in the next row **Suggested changes:** • In DTS/DPF 1.3 replace "The site of the development is not located within 100 m of the Hazards (Bushfire) Overlay" with "None are applicable" • In PO 1.3 after "Habitable buildings" insert "tourist accommodation and buildings for at risk communities"
PO 3.3 Habitable buildings have access to an area capable of accommodating an on-site water supply that is available to the fire authority for fire-fighting purposes at all times, to minimise fire spreading to buildings during a bushfire, as appropriate to the: (a) potential source and intensity of a bushfire (b) size of the allotment on which the building is located (c) availability of mains water.	DTS/DPF 3.3 Sites for habitable buildings include a designated area capable of accommodating an on-site water supply in accordance with Table 1, below: ….	PO 1.2 Habitable buildings, which are located within 100m of the Hazards (Bushfire) Overlay, have access to an area capable of accommodating an on-site water supply that is available to the fire authority for fire-fighting purposes at all times, to minimise fire spreading to buildings during a bushfire, as appropriate to: (a) the potential source and intensity of a bushfire (b) the size of the allotment on which the building is located availability of mains water.	DTS/DPF 1.2 Sites for habitable buildings, which are located within 100m of the Hazards (Bushfire) Overlay, include a designated area capable of accommodating an on-site water supply in accordance with Table 1, below: ….	PO 1.2 and DTS/DPF 1.2 apply water supply requirements in locations that exceed the requirements of MBS 008 – refer to discussion in main submission **Suggested changes:** • In PO 3.3, DTS/DPF 3.3, PO 1.2 and DTS/DPF1.2 after "Habitable buildings" insert "tourist accommodation and buildings for at risk communities" • In PO 1.2 replace "availability of mains water with "(c) availability of mains water"
PO 3.4 Habitable buildings, tourist accommodation and buildings for at risk communities in **High Bushfire Hazard Areas** provide for the safe and efficient access of fire-fighting vehicles to dedicated fire-fighting water supplies.	DTS/DPF 3.4 The site of the development is not located in a **High Bushfire Hazard Area**. Or Where fire-fittings are required, development includes the provision of an all-weather hardstand area, capable of supporting a fire-fighting vehicle with a gross vehicle mass (GVM) of 21 tonnes in a location that: (a) allows the fire-fighting vehicle to safely access the dedicated water supply and exit the site in a forward direction (b) is no further than 6m from the dedicated water supply outlet(s) (c) is at ground level and equal to or below the base of the dedicated water supply.			It is contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". **Suggested change:** In DTS/DPF 3.4 delete "The site of the development is not located in a **High Bushfire Hazard Area**. Or"
PO 3.5 Buildings for at risk communities incorporate clear pathways to facilitate safe pedestrian movements from the site in emergency situations.	DTS/DPF 3.5 Buildings for at risk communities incorporate a non-combustible pathway, with a minimum width of 1.5m, around the entire perimeter of the building.			

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
PO 3.6 Buildings for at risk communities are provided with at least two separate and safe exit points to enable multiple avenues of evacuation for residents, occupants and visitors in the event of a bushfire.	DTS/DPF 3.6 Buildings for at risk communities are provided with at least 2 entry/exit driveway access points.	PO 1.4 Buildings for at risk communities located within 100m of the Hazards (Bushfire) Overlay are provided with at least two separate and safe exit points to enable multiple avenues of evacuation for residents, occupants and visitors in the event of a bushfire.	DTS/DPF 1.4 Buildings for at risk communities located within 100m of the Hazards (Bushfire) Overlay are provided with at least 2 entry/exit driveway access points.	
Built Form		**Built Form**		
PO 4.1 Buildings and structures are enclosed between ground level and the building floor level to reduce the potential for burning debris to be trapped underneath the building or structure.	DTS/DPF 4.1 Buildings and structures (including extensions to buildings, buildings constructed on stilts, transportable buildings and decks) are enclosed between ground level and the building floor level above. Or The application includes a Certified BAL Declaration that supports the proposed design and construction method and confirms a BAL rating of BAL Low.	PO 2.1 Buildings and structures located within 100m of the Hazards (Bushfire) Overlay are enclosed between ground level and the building floor level to reduce the potential for burning debris to be trapped underneath the building or structure	DTS/DPF 2.1 Buildings and structures located within 100m of the Hazards (Bushfire) Overlay (including extensions to buildings, buildings constructed on stilts, transportable buildings and decks) are enclosed between ground level and the building floor level above.	
PO 4.2 Buildings and structures are designed and configured to reduce the potential for burning debris to be trapped in or on the roof, underneath the floor, against the walls or in the corners of the buildings or structures.	DTS/DPF 4.2 None are applicable.	PO 2.2 Buildings and structures located within 100m of the Hazards (Bushfire) Overlay are designed and configured to reduce the potential for burning debris to be trapped in or on the roof, underneath the floor, against the walls or in the corners of the buildings or structures.	DTS/DPF 2.2 Buildings and structures located within 100m of the Hazards (Bushfire) Overlay are designed and sited in accordance with (a) and (b): (a) have a footprint that is square or rectangular in shape (b) do not incorporate valleys in the roof design.	
		PO 2.3 Buildings, which are for at risk communities and located within 100m of the Hazards (Bushfire) Overlay, are provided with at least two separate and safe exit points to enable multiple avenues of evacuation for residents, occupants and visitors in the event of a bushfire.	DTS/DPF 2.3 Buildings for at risk communities are located more than 100m from the Hazards (Bushfire) Overlay	PO 2.3 seems to duplicate PO 1.4. It is a contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". **Suggested change:** • Consolidate PO 1.4 and PO 2.3
Land Division		**Land Division**		
PO 5.1 Land division for habitable buildings, tourist accommodation and buildings for at risk communities is limited to those zones that specifically envisage these land uses.	DTS/DPF 5.1 The site of the land division is not located within a High Bushfire Hazard Area.			
PO 5.2 Land division is designed and configured to minimise the danger of fire hazard on firefighters, residents and occupants of buildings, and to protect buildings and property from physical damage in the event of a bushfire.	DTS/DPF 5.2 None are applicable.			
PO 5.3 Land division is designed to provide a continuous street pattern (avoiding the use of dead end roads/cul-de-sac road design) to facilitate the safe movement and evacuation of emergency vehicles, residents, occupants and visitors.	DTS/DPF 5.3 None are applicable.	PO 3.2 Land division is designed to provide a continuous street pattern to facilitate the safe movement and evacuation of emergency vehicles, residents, occupants and visitors.	DTS/DPF 3.2 Land division does not involve the creation of public roads.	It is contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". DTS/DPF 3.1-3.6 are all at odds with PO 3.1-3.6 which specifically envisages public roads and/or more than 10 lots. **Suggested change:** In DTS/DPF 3.2 replace "Land division does not involve the creation of public roads" with "None are applicable."

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
		PO 3.1 Land division creating public roads or resulting in 10 or more new allotments is designed to make provision for emergency vehicle access through to the bushfire risk area.	DTS/DPF 3.1 Land division creates less than 10 allotments and/or does not involve the creation of public roads.	**Suggested change:** • In DTS/DPF 3.1 replace "Land division creates less than 10 allotments and/or does not involve the creation of public roads" with "None are applicable."
PO 5.4 Where 10 or more new allotments are proposed, land division includes more than one avenue of evacuation in the event of a bushfire.	DTS/DPF 5.4 Land division creates less than 10 allotments. Or Land division includes at least two separate and safe road exit points from the land division.	PO 3.3 Where 10 or more new allotments are proposed, land division includes at least two separate and safe exit points to enable multiple avenues of evacuation in the event of a bushfire.	DTS/DPF 3.3 Land division creates less than 10 allotments.	**Suggested change:** • In DTS/DPF 5.4 delete "Land division creates less than 10 allotments. Or" • In DTS/DPF 3.3 replace "Land division creates less than 10 allotments" with "None are applicable."
PO 5.5 Land division provides sufficient space for future asset protection zones and incorporates perimeter roads of adequate design in conjunction with bushfire buffer zones to achieve adequate separation between residential allotments and areas of unacceptable bushfire risk and to support safe access for the purposes of firefighting.	DTS/DPF 5.5 None are applicable.	PO 3.4 Land division creating public roads or resulting in 10 or more new allotments incorporates perimeter roads of adequate design in conjunction with bushfire buffer zones to achieve adequate separation between residential allotments and areas of unacceptable bushfire risk and to support safe access for the purposes of fire-fighting.	DTS/DPF 3.4 Land division creates less than 10 allotments and/or does not involve the creation of public roads.	**Suggested change:** • In DTS/DPF 3.4 replace "Land division creates less than 10 allotments and/or does not involve the creation of public roads" with "None are applicable."
		PO 3.5 Land division does not rely on fire tracks as means of evacuation or access for fire-fighting purposes unless there are no safe alternatives available.	DTS/DPF 3.5 Land division does not create or rely on fire tracks.	**Suggested change:** • In DTS/DPF 3.5 replace "Land division does not create or rely on fire tracks" with "None are applicable."
		PO 3.6 Land division resulting in 10 or more new allotments and located within 100m of the Hazards (Bushfire) Overlay is designed and incorporates measures to minimise the danger of fire hazard to firefighters, residents and occupants of buildings, and to protect buildings and property from physical damage in the event of a bushfire.	DTS/DPF 3.6 Land division is not located within 100m of the Hazards (Bushfire) Overlay or does not create 10 or more new allotments.	**Suggested change:** • In DTS/DPF 3.6 replace "Land division is not located within 100m of the Hazards (Bushfire) Overlay or does not create 10 or more new allotments" with "None are applicable."
Vehicle Access – Roads and Driveways		**Vehicle Access – Roads, Driveways and Fire Tracks**		
PO 6.1 Roads are designed and constructed to facilitate the safe and effective: (a) access, operation and evacuation of fire-fighting vehicles and emergency personnel (b) evacuation of residents, occupants and visitors.	DTS/DPF 6.1 Roads: (a) are constructed with a formed, all-weather surface (b) have a gradient of not more than 16 degrees (1-in-3.5) at any point along the road (c) have a cross fall of not more than 6 degrees (1-in-9.5) at any point along the road (d) have a minimum formed road width of 6m (e) provide overhead clearance of not less than 4m between the road surface and overhanging branches or other obstructions including buildings and/or structures (Figure 1) (f) allow fire-fighting services (personnel and vehicles) to travel in a continuous forward movement around road curves by constructing the curves with a minimum external radius of 12.5m (Figure 2)	PO 4.1 Roads that are located within 100m of the Hazards (Bushfire) Overlay are designed and constructed to facilitate the safe and effective: (a) access, operation and evacuation of fire-fighting vehicles and emergency personnel (b) evacuation of residents, occupants and visitors.	DTS/DPF 4.1 Roads are not located within 100m of the Hazards (Bushfire) Overlay Or Roads: (a) are constructed with a formed, all-weather surface (b) have a gradient of not more than 16 degrees (1-in-3.5) at any point along the road (c) have a cross fall of not more than 6 degrees (1-in-9.5) at any point along the road (d) have a minimum formed road width of 6m (e) provide overhead clearance of not less than 4m between the road surface and overhanging branches or other obstructions including buildings and/or structures (Figure 1) (f) allow fire-fighting services (personnel and vehicles) to travel in a continuous forward movement around road curves by constructing the	In the Hazards (Bushfire) Overlay roads can be provided adjacent to a Hazards (Bushfire – Urban Interface) Overlay but not in a 100m strip within the adjacent interface area – why not? **Suggested change:** • In DTS/DPF 4.1 delete "Roads are not located within 100m of the Hazards (Bushfire) Overlay Or"

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
	(g) incorporating cul-de-sac endings or dead end roads are provided with an alternative evacuation route and do not exceed 200m in length and the end of the road has either: (i) a turning area with a minimum formed surface radius of 12.5m (Figure 3) or (ii) a 'T' or 'Y' shaped turning area with a minimum formed surface length of 11m and minimum internal radii of 9.5m (Figure 4) (h) incorporate solid, all-weather crossings over any watercourse that support fire-fighting vehicles with a gross vehicle mass (GVM) of 21 tonnes.		curves with a minimum external radius of 12.5m (Figure 2) (g) incorporating cul-de-sac endings or dead end roads are provided with an alternative evacuation route and do not exceed 200m in length and the end of the road has either: (i) a turning area with a minimum formed surface radius of 12.5m (Figure 3) or (ii) a 'T' or 'Y' shaped turning area with a minimum formed surface length of 11m and minimum internal radii of 9.5m (Figure 4) (h) incorporate solid, all-weather crossings over any watercourse that support fire-fighting vehicles with a gross vehicle mass (GVM) of 21 tonnes.	
PO 6.2 Vehicle access to habitable buildings, tourist accommodation and buildings for at risk communities is designed and constructed to facilitate the safe and effective: (a) use, operation and evacuation of fire-fighting and emergency personnel (b) evacuation of residents, occupants and visitors.	DTS/DPF 6.2 Access is in accordance with (a) or (b): (a) a clear and unobstructed vehicle or pedestrian pathway of not greater than 60m in length is available between the most distant part of the habitable building, tourist accommodation or building for at risk communities and the nearest part of a formed public access road (b) driveways: (i) do not exceed 600m in length (ii) are constructed with a formed, all-weather surface (iii) are connected to a formed, all-weather public road with the transition area between the road and driveway having a gradient of not more than 7 degrees (1-in-8) (iv) have a gradient of not more than 16 degrees (1-in-3.5) at any point along the driveway (v) have a crossfall of not more than 6 degrees (1-in-9.5) at any point along the driveway (vi) have a minimum formed width of 3m (4m where the gradient of the driveway is steeper than 12 degrees (1- in-4.5)) plus 0.5m clearance either side of the driveway from overhanging branches or other obstructions, including buildings and/or structures (Figure 1) (vii) incorporate passing bays with a minimum width of 6m and length of 17m every 200m (Figure 5) (viii) provide overhead clearance of not less than 4.0m between the driveway surface and overhanging branches or other obstructions, including buildings and/or structures (Figure 1) (ix) allow fire-fighting services (personnel and vehicles) to travel in a continuous forward movement around driveway curves by constructing the curves with a minimum external radius of 12.5m (Figure 2) (x) allow fire-fighting vehicles to safely enter and exit an allotment in a forward direction by using a 'U' shaped drive through design or by incorporating at the end of the driveway either: A. a loop road around the building or B. a turning area with a minimum radius of 12.5m (Figure 3) or	PO 4.2 Where vehicle access to habitable buildings, tourist accommodation and buildings for at risk communities is located within 100m of the Hazards (Bushfire) Overlay, it is designed and constructed to facilitate the safe and effective: (a) use, operation and evacuation of fire-fighting and emergency personnel (b) evacuation of residents, occupants and visitors.	DTS/DPF 4.2 Access is not located within 100m of the Hazards (Bushfire) Overlay Or Access is in accordance with (a) or (b): (a) a clear and unobstructed vehicle or pedestrian pathway of not greater than 60m in length is available between the most distant part of the habitable building, tourist accommodation or building for at risk communities and the nearest part of a formed public access road (b) driveways: (i) do not exceed 600m in length (ii) are constructed with a formed, all-weather surface (iii) are connected to a formed, all-weather public road with the transition area between the road and driveway having a gradient of not more than 7 degrees (1-in-8) (iv) have a gradient of not more than 16 degrees (1-in-3.5) at any point along the driveway (v) have a crossfall of not more than 6 degrees (1-in-9.5) at any point along the driveway (vi) have a minimum formed width of 3m (4m where the gradient of the driveway is steeper than 12 degrees (1-in-4.5)) plus 0.5m clearance either side of the driveway from overhanging branches or other obstructions, including buildings and/or structures (Figure 1) (vii) incorporate passing bays with a minimum width of 6m and length of 17m every 200m (Figure 5) (viii) provide overhead clearance of not less than 4.0m between the driveway surface and overhanging branches or other obstructions, including buildings and/or structures (Figure 1) (ix) allow fire-fighting services (personnel and vehicles) to travel in a continuous forward movement around driveway curves by constructing the curves with a minimum external radius of 12.5m (Figure 2) (x) allow fire-fighting vehicles to safely enter and exit an allotment in a forward direction by using a 'U' shaped drive through design or by incorporating at the end of the driveway either: A. a loop road around the building or	In the Hazards (Bushfire) Overlay roads can be provided adjacent to a Hazards (Bushfire – Urban Interface) Overlay but not in a 100m strip within the adjacent interface area – why not? **Suggested change:** • In DTS/DPF 4.2 delete "Access is not located within 100m of the Hazards (Bushfire) Overlay Or"

Hazards (Bushfire) Overlay		Hazards (Bushfire – Urban Interface) Overlay		Comments
	C. a 'T' or 'Y' shaped turning area with a minimum formed length of 11m and minimum internal radii of 9.5m (Figure 4) (xi) incorporate solid, all-weather crossings over any watercourse that support fire-fighting vehicles with a gross vehicle mass (GVM) of 21 tonnes.		B. a turning area with a minimum radius of 12.5m (Figure 3) or C. a 'T' or 'Y' shaped turning area with a minimum formed length of 11m and minimum internal radii of 9.5m (Figure 4) (xi) incorporate solid, all-weather crossings over any watercourse that support fire-fighting vehicles with a gross vehicle mass (GVM) of 21 tonnes.	
PO 6.3 Development does not rely on fire tracks as means of evacuation or access for fire-fighting purposes.	DTS/DPF 6.3 Development does not rely on the use of fire tracks for access and evacuation.	PO 4.3 Development located within 100m of the Hazards (Bushfire) Overlay does not rely on fire tracks as means of evacuation or access for fire-fighting purposes.	DTS/DPF 4.3 Development is located more than 100m from the Hazards (Bushfire) Overlay.	DTS/DPF 4.3. is at odds with the corresponding provision in the Hazards (Bushfire) Overlay. In any case, it is contradiction for the PO to envisage a particular outcome, but to then include a DTS/DPF which effectively says "No". **Suggested change:** • In DTS/DPF 6.3 delete "Development does not rely on the use of fire tracks for access and evacuation" with "None are applicable." • In DTS/DPF 4.3 replace "Development is located more than 100m from the Hazards (Bushfire) Overlay" with "None are applicable."
Procedural Matters (PM) – Referrals				
Except if a relevant certificate accompanies the application for planning consent in respect of the development, any of the following classes of development (including alterations and additions which increase the floor area of such buildings by 10% or more) within a **High Bushfire Risk Area**: (a) land division creating one or more additional allotments (b) dwelling (c) ancillary accommodation (d) residential flat building (e) tourist accommodation (f) boarding home (g) dormitory style accommodation (h) workers' accommodation (i) student accommodation (j) pre-school (k) educational establishment (l) retirement village (m) supported accommodation (n) residential park (o) hospital (p) campground.		Except if a relevant certificate accompanies the application for planning consent in respect of the development, land division creating one or more additional allotments within 100 metres of a High Bushfire Risk Area, as defined in the Hazards (Bushfire) Overlay.		**Suggested change:** • In the Hazards (Bushfire) Overlay replace "Risk" with "Hazard" • In the Hazards (Bushfire – Urban Interface) Overlay replace "High Bushfire Risk Area, as defined in the Hazards (Bushfire) Overlay" with "High Bushfire Hazard Area"

Updating South Australia's Bushfire Hazard Mapping and Planning Rules



PlanSA

Government of South Australia
Department for Trade and Investment

Updating South Australia's Bushfire Hazard Mapping and Planning Rules

The State Planning Commission is seeking your feedback on proposed changes to bushfire hazard mapping and planning rules in the Planning and Design Code.

Why the mapping and planning rules are being updated

In May 2022, the South Australian Government declared a climate emergency. Climate change is expected to result in more frequent and intense extreme weather events. Severe bushfires will occur more often and, without action, will have devastating impacts on our communities.

Advances in our ability to monitor fire fuel loads in the environment and our understanding of bushfire behaviour enable new methods to be used to update mapping, providing a more contemporary and accurate reflection of bushfire hazard.

The proposed changes to the Planning and Design Code aim to better reflect bushfire risk across the state and introduce new rules to help save lives and build more climate-resilient communities.

Draft Code Amendment overview

Bushfire hazard overlays define the level of bushfire risk that applies to an area and the Code applies specific planning rules to development types based on the risk level.

The draft State-wide Bushfire Hazards Overlay Code Amendment proposes to:

- review and update the mapping of the current six bushfire hazard overlays
- improve the planning rules applying in each of these overlays
- ensure the right measures are in place to keep our state's people, property, infrastructure, economy and environments as safe as possible.

The draft Code Amendment also proposes to enable future updates to bushfire hazard mapping without undertaking a Code Amendment, to make the mapping update process more efficient.

Developing updated mapping

The Department for Trade and Investment's Planning and Land Use Services division worked with the Department of Environment and Water, Country Fire Service, other state emergency service organisations and councils to review the existing bushfire hazard overlays and prepare new bushfire hazard mapping for the state, including for previously unmapped areas.

The new mapping incorporates more recent vegetation extent data and grassfire fuel modelling, including farm cropping and grazing vegetation, and amended forest modelling to identify and incorporate small-scale patches of forest.

Reducing the number of overlays

The draft Code Amendment seeks to introduce one Hazards (Bushfire) Overlay, which will define 'high', 'medium' and 'general' bushfire risk areas.

This new overlay would replace the three existing Hazards (Bushfire – High), Hazards (Bushfire – Medium) and Hazards (Bushfire – General) overlays.

The Hazards (Bushfire – Regional) Overlay would be removed because bushfire hazard mapping has now been undertaken for these areas.

Impacts for new development

A development application proposing development of land in the Hazards (Bushfire) Overlay would be assessed against the planning rules that apply to that land, which may vary based on whether the land's bushfire risk level is high, medium or general.

These rules can also affect the assessment pathway for specific development types and be used to determine if a development requires a formal referral to the Country Fire Service and a Bushfire Attack Level assessment.

The level of bushfire risk applied to your property may increase or decrease from the current level, based on the updated mapping data and new bushfire hazard mapping method.

A more streamlined 'deemed-to-satisfy' assessment pathway for particular types of development is also proposed, including for habitable buildings and minor structures like carports and verandahs outside the high bushfire risk area, where the proposed development meets minimum standards.

Changes to building standards

Draft amendments to the state's Ministerial Building Standard are also being prepared to align with the proposed Code Amendment and recent updates to the National Construction Code. The state's Ministerial Building Standard sets out additional fire safety provisions to those required by the National Construction Code for bushfire resistance of new housing.

Community will be invited to provide their feedback on these proposed changes in early 2024.

Have your say

Provide your feedback by 5 pm on Friday, 8 March 2024 by:

- visiting the YourSAy website and taking our survey
- attending an online or in-person information session
- emailing plansasubmissions@sa.gov.au with the subject: Submission – State-wide Bushfire Hazards Overlay Code Amendment
- posting your submission to:

  Submission – State-wide Bushfire Hazards Overlay Code Amendment
  State Planning Commission
  Department for Trade and Investment
  GPO Box 1815, ADELAIDE SA 5001.

Next steps

All feedback will be considered in finalising the draft Code Amendment and in preparing an engagement report for the Minister's decision.

The updated bushfire hazard mapping will then be incorporated into the bushfire hazard overlays of the South Australian Property and Planning Atlas (SAPPA).

Find out more

To view the proposed bushfire hazard mapping and find out more about all of the changes proposed in the draft Code Amendment, community information sessions and submitting your feedback, visit the YourSAy website: yoursay.sa.gov.au/state-wide-bushfire-hazards-code-amendment.

Hard copies of the draft Code Amendment are available for viewing during standard business hours at Level 9, 83 Pirie Street, ADELAIDE SA 5000.

COVER SHEET

CONFIDENTIAL REPORT

19 March 2024

Council Meeting

8.1 Office of the Mayor and CEO

8.1.1 LEGAL ADVICE - 18A ELIZABETH STREET TANUNDA DRAINAGE MATTERS

There is strong public interest in enabling members of the public to observe Council's transparent and informed decision-making. This helps to ensure accountability, maintain transparency of public expenditure, facilitate public participation, assist public awareness and allow for the scrutiny of information. Attendance at a Council meeting is one means of satisfying this interest. The public will only be excluded from a Council meeting when the need for confidentiality pursuant to Section 90(2) of the Act outweighs the public interest of open decision-making.

In this matter, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest are that legal advice in relation to action litigation whichis occuring in the Magistrates Court action of which Council is a part, pertaining to the Council service easement.

On balance, the above reason which supports the need for confidentiality pursuant to Section 90(2) of the Act outweighs the factors in favour of the public interest of open decision-making.

RECOMMENDATION
That Council:

(1) Under the provisions of Section 90(2) of the *Local Government Act 1999*, make an order that the public be excluded from the meeting with the exception of the Chief Executive Officer, Director Corporate Services and Business Innovation, Director Development and Community Services, Director Infrastructure and

Environmental Service and the Minute Secretary, in order to consider in confidence a report relating to being information that must be considered in confidence pursuant to:

Section 90(3)(h) of the *Local Government Act 1999:*

legal advice; and

Section 90(3)(i) of the *Local Government Act 1999:*

information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;

(2) Accordingly, on this basis, Council is satisfied that public interest in conducting meetings in a place open to the public has been outweighed by the need to keep the information and discussion confidential in order that legal advice in relation to action litigation whichis occuring in the Magistrates Court action of which Council is a part, pertaining to the Council service easement.

COVER SHEET

CONFIDENTIAL REPORT

19 March 2024

Council Meeting

8.1 Office of the Mayor and CEO

8.1.2 ELECTOR REPRESENTATION REVIEW 2024-25

There is strong public interest in enabling members of the public to observe Council's transparent and informed decision-making. This helps to ensure accountability, maintain transparency of public expenditure, facilitate public participation, assist public awareness and allow for the scrutiny of information. Attendance at a Council meeting is one means of satisfying this interest. The public will only be excluded from a Council meeting when the need for confidentiality pursuant to Section 90(2) of the Act outweighs the public interest of open decision-making.

In this matter, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest so as to appoint a qualified consultant to undertake the Represention Review 2024-25 on behalf of Council and that it assess and appoint the consultant who will be appointed under the quotation processes issued to the market requiring maintenance of confidential tender pricing information.

On balance, the above reason which supports the need for confidentiality pursuant to Section 90(2) of the Act outweighs the factors in favour of the public interest of open decision-making.

RECOMMENDATION
That Council:

(1) Under the provisions of Section 90(2) of the *Local Government Act 1999*, make an order that the public be excluded from the meeting with the exception of

the Chief Executive Officer, Director Corporate Services and Business Innovation, Director Development and Community Services, Director Infrastructure and Environmental Services and the Minute Secretary, in order to consider in confidence a report relating to being information that must be considered in confidence pursuant to:

Section 90(3)(k) of the *Local Government Act 1999:*

- tenders for the supply of goods, the provision of services or the carrying out of works;

(2) Accordingly, on this basis, Council is satisfied that public interest in conducting meetings in a place open to the public has been outweighed by the need to keep the information and discussion confidential in order to appoint a qualified consultant to undertake the Represention Review 2024-25 on behalf of Council and that it assess and appoint the consultant who will be appointed under the quotation processes issued to the market requiring maintenance of confidential tender pricing information.

COVER SHEET

CONFIDENTIAL REPORT

19 March 2024

Council Meeting

8.2 Infrastructure and Environment Services

8.2.1 NURIOOTPA CWMS TREATMENT PLANT UPGRADE - TENDER

There is strong public interest in enabling members of the public to observe Council's transparent and informed decision-making. This helps to ensure accountability, maintain transparency of public expenditure, facilitate public participation, assist public awareness and allow for the scrutiny of information. Attendance at a Council meeting is one means of satisfying this interest. The public will only be excluded from a Council meeting when the need for confidentiality pursuant to Section 90(2) of the Act outweighs the public interest of open decision-making.

In this matter, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest are that the disclosure would unreasonably expose commercial in confidence information provided by tenderers through the tender process for the Tender T0235/2023 - Nuriootpa CWMS Treatment Plant Upgrade-and the Council Report, attachments and associated documentation; and the disclosure would give an unfair advantage to a person with whom Council proposes to do business.

On balance, the above reason which supports the need for confidentiality pursuant to Section 90(2) of the Act outweighs the factors in favour of the public interest of open decision-making.

RECOMMENDATION
That Council:

(1) Under the provisions of Section 90(2) of the *Local Government Act 1999*, make an order that the public be excluded from the meeting with the exception of the Chief Executive Officer, Director Corporate Services and Business Innovation, Director Development and Community Services, Director Infrastructure and Environmental Services and the Minute Secretary, in order to consider in confidence a report relating to being information that must be considered in confidence pursuant to:

Section 90(3)(k) of the *Local Government Act 1999:*

- tenders for the supply of goods, the provision of services or the carrying out of works;

(2) Accordingly, on this basis, Council is satisfied that public interest in conducting meetings in a place open to the public has been outweighed by the need to keep the information and discussion confidential in order that the disclosure would unreasonably expose commercial in confidence information provided by tenderers through the tender process for the Tender T0235/2023 - Nuriootpa CWMS Treatment Plant Upgrade-and the Council Report, attachments and associated documentation; and the disclosure would give an unfair advantage to a person with whom Council proposes to do business.

COVER SHEET

CONFIDENTIAL REPORT

19 March 2024

Council Meeting

8.3 Development and Community Services

8.3.1 GAWLER RIVER FLOODPLAIN MANAGEMENT AUTHORITY (GRFMA) DRAFT ANNUAL BUSINESS PLAN AND 2024/2025 BUDGET AND TABLING OF CONFIDENTIAL MINUTES

There is strong public interest in enabling members of the public to observe Council's transparent and informed decision-making. This helps to ensure accountability, maintain transparency of public expenditure, facilitate public participation, assist public awareness and allow for the scrutiny of information. Attendance at a Council meeting is one means of satisfying this interest. The public will only be excluded from a Council meeting when the need for confidentiality pursuant to Section 90(2) of the Act outweighs the public interest of open decision-making.

In this matter, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest are that they are GRFMA Confidential documents.

On balance, the above reason which supports the need for confidentiality pursuant to Section 90(2) of the Act outweighs the factors in favour of the public interest of open decision-making.

RECOMMENDATION
That Council:

(1) Under the provisions of Section 90(2) of the *Local Government Act 1999*, make an order that the public be excluded from the meeting with the exception of the Chief Executive Officer, Director Corporate Services and Business Innovation,

Director Development and Community Services, Director Infrastructure and Environmental Service and the Minute Secretary, in order to consider in confidence a report relating to being information that must be considered in confidence pursuant to:

Section 90(3)(j) of the *Local Government Act 1999:*

information the disclosure of which-

(i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and

(ii) would, on balance, be contrary to the public interest;

(2) Accordingly, on this basis, Council is satisfied that public interest in conducting meetings in a place open to the public has been outweighed by the need to keep the information and discussion confidential in order that they are GRFMA Confidential documents.