

CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2011

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
23	16 Mar 09	Morphett St Stormwater Infrastructure Upgrade	Reason: S 90(3) (h) Legal advice (i) 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	Discussion, Agenda, Attachment & Minutes	No longer confidential	Extend Confidential Order to September 2017.  The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.	5 Sept 11	4 Sept 12	28/8/12

92. 6      **REPORT TITLE:    WARD DONATIONS**  
**DATE:                    16 MARCH 2009**  
**AUTHOR:                JENNY RICHTER**  
**AUTHOR'S TITLE:    EXECUTIVE ASSISTANT TO CEO & MAYOR**  
**FILE NUMBER:        30/030/002-04**  
**DEPARTMENT**  
**MANAGER:             CHIEF EXECUTIVE OFFICER**

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Moved Councillor Irvine that the following donations be made:

<b>Elected Member</b>	<b>Amount</b>	<b>Group/Individual</b>
Councillor Bails	\$200	Mount Barker RSL – Anzac Day
Mayor Ann Ferguson	\$50	Mount Barker Day Club
Councillor Campbell	\$50	Hahndorf Lions – Anzac Day
Councillor Campbell	\$50	Mount Barker Lions – Anzac Day
Councillor Campbell	\$50	Littlehampton Lions – Anzac Day
Councillor Bails	\$50	Mount Barker Day Club
Councillor Stokes	\$50	Littlehampton Community Association - Anzac Day

Seconded Councillor Zanker and CARRIED

#### **INFORMATION REPORTS**

Nil

#### **CORRESPONDENCE**

Nil

#### **QUESTIONS ARISING FROM COUNCIL MEETING (10 MINUTES)**

Nil

#### **93.      CONFIDENTIAL REPORTS**

93.1      **REPORT TITLE:    MORPHETT STREET STORMWATER  
                             INFRASTRUCTURE UPGRADE PROJECT**  
**DATE OF MEETING: 16 MARCH 2009**  
**AUTHOR:                VARIOUS**  
**AUTHOR'S TITLE:**  
**FILE NUMBER:        48/030/048**

**DEPARTMENT: INFRASTRUCTURE & PROJECTS**  
**DEPARTMENT: BRIAN CLANCEY**  
**MANAGER:**

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Moved Councillor Irvine

1. That pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 the District Council of Mount Barker orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:
  - (h) legal advice;
  - (i) 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. That the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, and the Minute Secretary be permitted to remain in the room.

Seconded Councillor Wilksch and CARRIED

Moved Councillor Gamble that Council

3. Notes this report.
4. Notes that the Morphett St Stormwater project is proceeding with completion of construction targeted for mid to late April 2009.
5. Notes that discussions are continuing to recover the increased project costs caused by contamination with one adjoining owner with the potential to approach a second owner subject to advice from Council's environmental consultant.
6. Notes that a response is still being sought from Tonkin Consulting regarding its unsatisfactory performance on the project design and service relocation cost estimates.
7. Notes that another report will be provided to Council on the cost recovery negotiations when further information is available.
8. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential until 16 March 2010.

Seconded Councillor Irvine and CARRIED

Moved Councillor Zanker

9. That subject to Section 90 of the Local Government Act 1999 as amended, the public be readmitted to the meeting at the conclusion of the item.

Seconded Councillor Irvine and CARRIED

MEETING DECLARED CLOSED AT 8.22 PM

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MAYOR

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DATE

**REPORT TITLE: MORPHETT STREET STORMWATER  
INFRASTRUCTURE UPGRADE PROJECT**

**DATE OF MEETING: 16 MARCH 2009**

**AUTHOR: VARIOUS**

**AUTHOR'S TITLE:**

**REPRESENTORS: NIL**

**FILE NUMBER: 48/030/048**

**ATTACHMENTS: ATTACHMENT 1 PLAN OF CURRENT  
PROJECT STATUS  
ATTACHMENT 2 LETTER TO TONKIN  
CONSULTING**

**DEPARTMENT: INFRASTRUCTURE & PROJECTS**

**DEPARTMENT: BRIAN CLANCEY  
MANAGER:**

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### **PURPOSE**

To report on the progress of the project including recent developments on the likely source of contamination. To advise Council on the status of negotiations with an adjoining property owner regarding the potential recovery of increased costs related to the presence of contamination. To advise on the status of negotiations to recover increased costs related to the design of the infrastructure and the location of services.

### **RECOMMENDATION**

That Council:

1. Pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 the District Council of Mount Barker orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:
  - (h) legal advice;
  - (i) 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. That the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, and the Minute Secretary be permitted to remain in the room.
3. Notes this report.
4. Notes that the Morphett St Stormwater project is proceeding with completion of construction targeted for mid to late April 2009.
5. Notes that discussions are continuing to recover the increased project costs caused by contamination with one adjoining owner with the potential to approach a second owner subject to advice from Council's environmental consultant.
6. Notes that a response is still being sought from Tonkin Consulting regarding its unsatisfactory performance on the project design and service relocation cost estimates.
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8. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential until 16 March 2010.
9. That subject to Section 90 of the Local Government Act 1999 as amended, the public be readmitted to the meeting at the conclusion of the item.

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## **BACKGROUND**

On 24 September 2008 Council approved the following recommendations regarding the Morphett Street Stormwater Infrastructure Upgrade Project:

*That Council:*

1. *Authorises the resumption and completion of the Morphett Street Stormwater Infrastructure Upgrade Project in accordance with the legal agreements entered into by Council with the private sector funding contributors, with the remaining work to be undertaken in two stages (stage 1 October/November 2008 subject to EPA satisfaction with the Waste Management Plan and stage 2 early 2009) including the estimated additional Council expenditure of around \$754,000 (excluding GST) including an allowance of \$51,000 for contingencies, with the major elements of the additional cost being:*

a) the management of soil contamination \$407,000 (undertaken to date and proposed); and  
b) the upgrading and relocation of services (water, electricity and telecommunications) comprising the main portion of the balance.

2. Authorises expenditure from the Community Wastewater Management System (CWMS) Capital Reserve of \$59,266 (as opposed to \$55,000 in the 2007/08 budget) for the upgrading of CWMS infrastructure along Morphett Street from Stephen Street to just west of Adelaide Road, which is to be reflected in a future report to Council when the first formal review of the 2008/09 budget is undertaken;

3. Notes the upgrading of the SA Water main in Morphett Street together with the construction of 3 "dog legs" which are required to accommodate the stormwater drainage works with SA Water contributing \$115,000 towards the work and the balance being contained within the estimated additional Council expenditure of around \$754,000.

4. Notes that Council is pursuing three strategies in relation to the funding of the additional Council expenditure of around \$754,000 (excluding GST) being:

a) the potential to recover any of the additional costs which have resulted from the impact of soil contamination on the project subject to satisfactorily indentifying the source or sources of the contamination and that a further report will be provided to Council as soon as practicable;  
b) seeking explanation from the engineering firm contracted by council to prepare the project design and cost estimates for the very significant understatement of the estimated cost of relocation of services with the intention of pursuing arrangements to compensate Council and that a further report will be provided to Council as soon as practicable;  
c) possible savings in other areas of the 2008/09 Council capital expenditure budget to partially offset this impact which will be reflected in a future report to Council when the first formal review of the 2008/09 budget is undertaken.

5. Notes the proposed continuation of the community information strategy, including the issuing of a further public statement and a media release.

#### Reason for Undertaking the Project

The Morphett Street Stormwater Infrastructure Upgrade Project is being undertaken by Council to achieve the following community benefits:

1. Upgrade the stormwater infrastructure in Morphett Street to substantially reduce the risk of flooding;
2. Relocate the stormwater infrastructure from private land to council road reserve to ensure access for future maintenance;
3. Facilitate the achievement of objectives in the Development Plan for active street frontages of retail premises and other development within the Town Centre zone.

#### Revised Development Program

The Program for completing the project was revised as follows:

By end of November 2008

- Completion of all service relocations, SA Water, ETSA Utilities and Telstra
- Completion of storm water works in the area of Morphett Street between Hutchinson Street and Stephen Street.

Commencing in February 2009:

- The balance of the storm water project from Walker St through to the other side of Adelaide Road

#### CURRENT STATUS OF PROJECT

##### Project Program

Stormwater works in the area of Morphett Street between Hutchinson Street and Stephen Street were completed before Christmas as per the revised program. Service relocations for SA Water, ETSA Utilities and Telstra were also completed by the end of November with the exception of the SA Water main upgrade between Walker St and Adelaide Road which was deferred till February 2009.

Work resumed in Early February 2009 for the remainder of the Project and is progressing with completion of all remaining construction targeted for mid to late April 2009.

##### Extent of Contamination

Further contamination of a similar nature to that already encountered in this part of Morphett St has recently been found in the relatively shallow SA Water main upgrade trench between Walker St and Adelaide Road as well as the Stormwater Infrastructure trench in Walker St south of Morphett St, refer Attachment 1. The widespread amount of contamination around the land bounded by Walker St, Morphett St and Adelaide Road has increased the amount of odorous material which will be taken to the Hartley Land Fill Facility



for testing and disposal as per the Waste Management Plan approved by the EPA.

Given the extent of contamination it also appears possible that land to the east of Walker St may be affected.

Some contaminated waste was also removed from the footpath adjoining the former Herriot Dry Cleaning premises and removed to Hartley for testing and disposal.

### **MEASURES TO RECOVER ADDITIONAL PROJECT COSTS RELATED TO CONTAMINATION**

#### **Site History**

Council undertook initial Site History research (for the purpose of seeking legal advice) on properties adjoining Morphett St to establish possible sources of the construction affecting Morphett St. The Site History identified three potential sources of contamination:

- The former Herriot Dry Cleaning premises.
- The land bounded by Walker St, Morphett St and Adelaide Road including the BP service station owned by Gilbert Motors.
- A former bus depot site currently owned by Kleemann Brothers.

Council contacted each of the above owners (or Mr Herriot's appointed Project Manager at that time, Mr Gary Minuzzo) with the following responses:

- The former Herriot Dry Cleaning premises. Mr Gary Minuzzo denied any liability for contamination on Council land on behalf of Mr Herriot.
- The land bounded by Walker St, Morphett St and Adelaide Road including the service station owned by Gilbert Motors. Mr Grant Gilbert and his legal advisor entered into informal discussions with Council staff about the potential source of contamination and provided some initial test information, see below for further details.
- A former bus depot site currently owned by Kleemann Brothers. Mr Andrew Kleemann met with Council staff and provided details of the former fuel tank which was removed over 20 years ago. It was concluded that it was unlikely that this property was the source of contamination encountered in Morphett St and Walker St.

### Legal Advice

Council engaged Mr Fraser Bell, Partner of Thomson Playford Cutlers in May 2008 to advise on measures to manage the contaminated waste and recover the additional costs which have impacted the project. Mr Bell's advice included information to the effect that new State legislation will strengthen Council's ability to recover costs when it is enacted (expected to be in May 2009).

### Discussions With Gilbert Motors

Senior Council staff have been in discussion with Mr Grant Gilbert of Gilbert Motors Pty Ltd for some months with the aim of seeking reimbursement of costs relating to contamination of Morphett St adjoining Mr Gilbert's land. Large amounts of information have been provided to Mr Gilbert's legal advisor (on a confidential basis) to aid consideration of Council's request.

While much more testing may be required to definitively establish the source of the contamination; it appears likely that it is in the near vicinity to the Gilbert Motors and may potentially be on the Gilbert Motors site. Mr Gilbert has assured Council staff that the current underground tanks and infrastructure do not leak so the contamination may be quite old. Gilbert Motors purchased the site in 1986 from Nullim Nominees Pty Ltd.

Council staff recently met with Mr Gilbert's solicitor and environmental consultant. The extent of recently discovered contamination (of a similar nature to that already found in this part of Morphett St) was highlighted by Council. Mr Gilbert's environmental consultant has conducted testing in Morphett St but this is insufficient to determine the full extent of contamination. Council requested that a full testing program be undertaken by Gilbert Motors to assess the potential risk to properties east of Walker St and ground water in the area.

Gilbert Motors has not accepted liability for the presence of contamination at this point. Thomson Playford Cutlers has written to Mr Gilbert's legal advisor on behalf of Council confirming Council's position. A response is yet to be received.

### Contamination of Council Land Adjoining the Former Herriot Dry Cleaning premises

Council has requested advice from Coffey Environments as to whether test results for the waste removed from that location provide adequate information to determine the likely source of contamination.

The potential to recover costs related to this location will be assessed on receipt of the Coffey report.

### Advice Provided to the EPA

Council has kept the EPA informed of the situation including a recent letter providing information about the extent of the contamination and advising of the Council's concerns regarding the potential affect on adjoining owners and groundwater.

### The Power Line Undergrounding Project in Walker St

The Power Line Environment Committee (PLEC) project in Walker St (between Gawler Street and Morphett Street) has been suspended due to the presence of contamination and the increased costs which would be incurred to dispose of and test the contaminated waste. Neither PLEC nor Council have budgeted for such extra costs, this information has also been provided to Mr Gilbert.

The Adelaide Road undergrounding project is still expected to proceed.

### Tonkin Consulting Performance

On 24 September 2008 Council noted that action was being pursued with Tonkin Consulting regarding their performance on this project (refer resolution 4b).

The project brief for Tonkin Consulting required that they design any necessary service alterations and provide design plans to the service authorities (SA Water, ETSA Utilities and Telstra) to obtain quotes for the required service alterations.

Tonkin Consulting provided a cost estimate for the service alterations of \$65,000. Subsequent quotes provided to Council by the service authorities for this work totalled \$320,874.

Council wrote to Tonkin Consulting on 14 November 2008 (refer attachment 2). In response to a follow up email to our letter, Mr Brian Clancey received an email from Mr Ken Schalk, Managing Director of Tonkin Consulting on 3 December 2008 which stated:

*Thank you for your email.*

*We have received your letter and its content was discussed at our last Board meeting.*

*You will receive a letter from us in the near future in which we will advise you of the course of action that our Board has proposed.*

*I am now back from leave and so I will be our primary point of contact in relation to this.*

In the absence of any reply, on 9 February 2009 a follow up letter was forwarded by Council to Mr Schalk again seeking a response.

No response has been received to this letter.

Council's Chief Executive Officer, Mr Andrew Stuart has recently sought to speak with Mr Schalk by telephone given the lack of response from Tonkin Consulting and the time that has elapsed. Mr Stuart has been advised that Mr Schalk is currently on sick leave but is expected to return to work very shortly.

An update can be provided at the Council meeting.

## **DISCUSSION**

In spite of these extra contamination impacts Council is progressing the Stormwater Infrastructure Project and expects to complete the work within a reasonable timeframe. Despite continuing discussions no commitment has been given for reimbursement of the extra costs incurred for contamination or consultant design performance.

With finalisation of contamination costs in the next few weeks, EPA involvement and the enactment of new legislation; Council's legal position will strengthen with regard to recovery of contamination related costs however considerable time and effort is likely to be required to achieve any tangible result.

The lack of response from Tonkin Consulting has been disappointing but will continue to be pursued actively. In the meantime Council is refraining from the engagement of Tonkin Consulting on other projects.

At this point Council is still 'building the case'. Hence there is the need for confidentiality and no further public statements are proposed at this time. It is important that the position of Council is not compromised particularly given it remains to be seen as to whether formal legal proceedings may be undertaken. Given the high cost of testing to determine the source of contamination the best outcome for Council would be for the owner or owners responsible to undertake such testing in accordance with EPA requirements.

## **POLICY IMPLICATIONS**

### **1. Financial/budget**

The Project is still within the revised budget approved by Council on 24 September 2008 however the contingency allowed in that budget is under pressure due to the increased extent of contamination which has been encountered to date.

**2. Legal**

See above.

**3. Staffing/Work Plans**

The project continues to consume very considerable Senior Staff resources.

**4. Environmental**

See above.

**5. Social**

Not applicable.

**6. Strategic Plans**

Not applicable.

**7. Risk Assessment**

A risk assessment has been carried out for the Project.

**8. Asset Management**

Upgrades existing stormwater infrastructure.

**COMMUNITY CONSULTATION**

**1. Customer Needs Analysis**

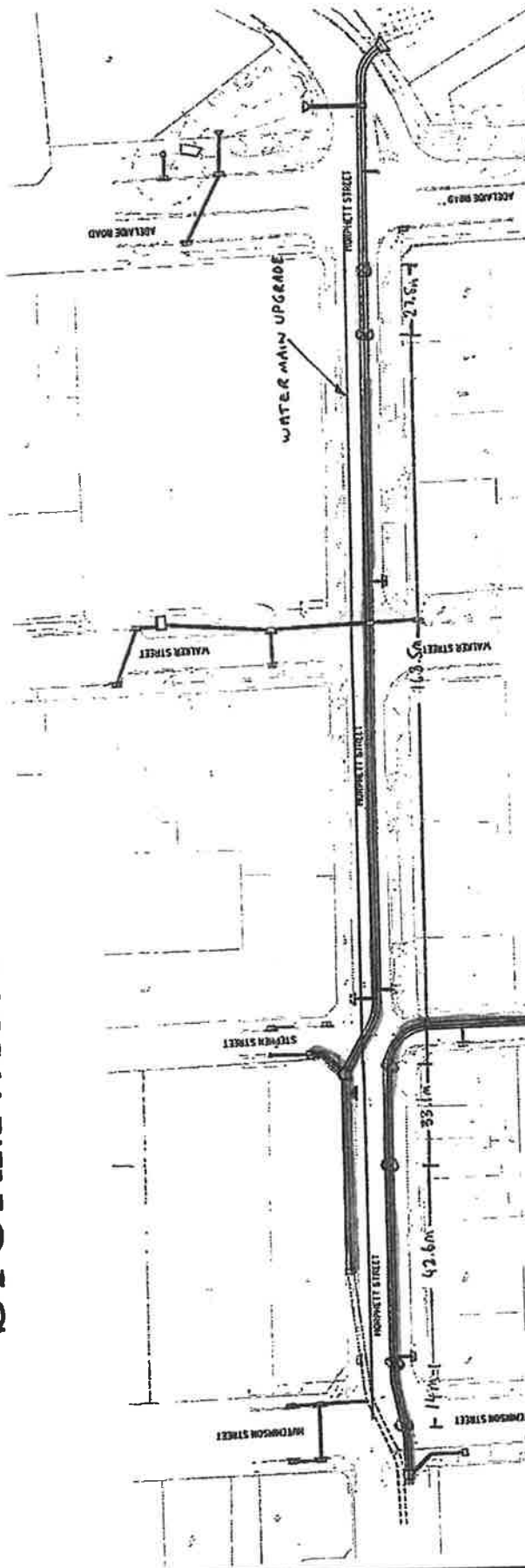
Public safety is being managed through an approved OH&S plan for the works.

**2. Promotion/Communications**

Not applicable at this point.



# DISTRICT COUNCIL OF MOUNT BARKER MORPHETT STREET, MOUNT BARKER STORMWATER DRAINAGE



## DRAWING SCHEDULE

- 1 - COVER SHEET
- 2 - PLAN - CHN 0.00 TO 90.00
- 3 - PLAN - CHN 90.00 TO 210.00
- 4 - PLAN - CHN 210.00 TO 304.80
- 5 - MORPHETT STREET - MC00 CHN 0.00 TO 280.00
- 6 - MORPHETT STREET - MC00 CHN 280.00 TO 304.80
- 7 - LONG SECTION - MC00 CHN 0.00 TO 157.80
- 8 - LONG SECTION - MC00 TO MC08
- 9 - LONG SECTION - MC08 TO MC30
- 10 - STEPS RELOCATION LONGSECTION AND DETAILS
- 11 - DETAILS - JUNCTION BOXES & CONCRETE WORKS
- 12 - DETAIL - STRUCTURAL

**COMPLETED**  
**TO BE CONSTRUCTED**



SHEET 1



Approved for Construction  
10/10/2017







# THE DISTRICT COUNCIL OF MOUNT BARKER

P.O. BOX 54, Mount Barker S.A., 5251 – Telephone: 8391-7200  
DX address: DX 51708, Mount Barker

Facsimile: (08) 8391-7299  
web site: [www.dcmtbarker.sa.gov.au](http://www.dcmtbarker.sa.gov.au)

Reference: 48/030/048

09/ 59723

14th November 2008

Mr Phil Crawley  
Acting Managing Director  
Tonkin Consulting  
5 Cooke Terrace  
Wayville SA 5034

Dear Mr Crawley

**Re: Stormwater Drainage Design Morphett Street Mount Barker**

I refer to our recent email and telephone communications regarding design of the Morphett Street drainage upgrade.

Council requested Tonkin Consulting to undertake a detailed design for stormwater drainage for Morphett Street Mount Barker due to the provision of previous stormwater drainage advice within the same catchment.

Tonkin Consulting by letter dated 31<sup>st</sup> January 2007 provided a fee offer to undertake a detailed design for the Morphett Street drain and this was later revised 14<sup>th</sup> February 2007 to include the interception of the drain from the Woolworth's site. The fee offer included a scope of works.

The scope of works submitted by Tonkin Consulting required Tonkin Consulting to undertake a number of tasks including:-

- *Prepare a hydraulic design of the drainage scheme and a vertical design of the drainage system to minimise service alterations / project costs*
- *Liaise with service authorities to obtain quotes for any identified service alterations necessary to suit the new works*
- *Issue construction drawings to all service authorities for their information / approval*

Allowance was made in the scope for Tonkin Consulting to assess the location and depth of all services and Council assisted in the service locations of Council infrastructure.



The design and documents were finalised during December 2007, specifications were received via email on the 3<sup>rd</sup> December and final drawings also received by email on the 7<sup>th</sup> December. In good faith Council paid Tonkin Consulting for the services provided.

Tenders were called during December and eventually the tender was awarded 7<sup>th</sup> February 2008.

An onsite meeting was convened between Council and ETSA Utilities on February 26<sup>th</sup> 2008 to discuss relocation costs of ETSA Utilities services. At this meeting Council, then became aware that ETSA Utilities had not been advised by Tonkin Consulting of the proposed drainage works, nor had they had been asked by Tonkin Consulting to provide any cost estimates.

A further on site meeting was held in the morning of 29<sup>th</sup> February 2008 with Council, the service authorities and the contractor (ADCIV) to discuss service relocations and also to provide the service authorities with a copy of the design plans. Council officers Ian Powell and Robert Strohmayer met with officers from Tonkin Consulting at your office in the afternoon of 29<sup>th</sup> February 2008 to notify Tonkin Consulting of the shortcomings of the level of service provided with the service alterations and to discuss possible realignments to the drain to minimise conflicts with services. The original design required significant input from Council staff members to amend the design to avoid some services and to minimise service alterations and project costs as required in the scope of works.

Once revised plans were available Ian Powell forwarded on the 11<sup>th</sup> March 2008 copies of these plans to ETSA and Telstra and SA Water for their input.

Telstra provided a cost estimate on the 28<sup>th</sup> March, ETSA provided a cost estimate on the 15<sup>th</sup> April 2008, SA Water provided a cost estimate on the 22<sup>nd</sup> April 2008.

Council has had follow up meetings with SA Water on the 25<sup>th</sup> August 2008 at which time SA Water Officers advised Council that Tonkin Consulting had not provided any design drawings or sought provision of any cost estimates.

Council is extremely disappointed with the level and quality of advice provided by Tonkin Consulting to council in regard to the service alterations.

The estimate provided to Council by Tonkin Consulting on the 1<sup>st</sup> May 2007 for service alterations for the two drains on Morphet Street totalled \$65,000. In the course of construction, costs have been provided by the relevant service providers, and to undertake the service alterations in accordance with the revised plans i.e. with less service alterations required than under the original design, the cost is currently \$320,874 (exclusive of GST).



On the basis of advice to Council from officers from ETSA Utilities, SA Water and Telstra, Tonkin Consulting did not liaise with the service authorities to obtain quotes, nor were construction drawings issued to the service authorities as required in the agreed scope of works. The original cost estimate provided by Tonkin Consulting was used as a basis for funding allocation, now Council is faced with a project budget shortfall of over \$250,000.

Before considering options for further action, Council is seeking an explanation regarding failure by Tonkin Consulting to meet the expectations of the agreed scope of works and the very poor cost estimate advice for service relocations provided to Council by Tonkin Consulting. The expectation of Council is that Tonkin Consulting will respond positively to this letter and that the response will acknowledge the negative impacts of the work shortcomings by Tonkin Consulting on Council. It would be beneficial in the first instance to convene a meeting between Tonkin Consulting and Council to discuss the issues raised.

Please find attached the Council meeting agenda item of the 24<sup>th</sup> September 2008 that raises the issues with the Elected Members. Please note that within the report recommendations, it was specific in only referring to work undertaken by a design consultant rather than highlighting any firm.

Yours sincerely

Andrew Stuart  
**CHIEF EXECUTIVE OFFICER**

Attachment – Council meeting agenda item

