

Moved Councillor Haines:

7. 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 the date that the PAR is placed on interim operation in the Government Gazette.

Seconded Councillor Bails and CARRIED

115.3

REPORT TITLE:	CONFIDENTIAL REPORT STORMWATER MANAGEMENT – POLICY FRAMEWORK AND UPDATE
DATE OF MEETING:	1 MAY 2006
AUTHOR:	BRIAN CLANCEY/ATIS BERZINS
AUTHOR'S TITLE:	GENERAL MANAGER, ASSETS & INFRASTRUCTURE MANAGER, ENGINEERING & TECHNICAL SERVICES
REPRESENTORS:	N/A
FILE NUMBER:	44/070/001 - 04
DEPARTMENT:	ASSETS & INFRASTRUCTURE
DEPARTMENT MANAGER:	BRIAN CLANCEY

Moved Councillor Zanker:

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 information the disclosure of which:
 - (i) 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 Council; and
 - (ii) would on balance be contrary to public interest
2. That the Chief Executive Officer, General Manager Assets & Infrastructure, General Manager Strategy and Development, General Manager Corporate and Community Services, Manager Engineering and Technical Services and the Minute Secretary be permitted to remain in the room.

Seconded Councillor Allen and CARRIED

Moved Councillor Gamble:

3. That Council:
- note the report; and
 - adopt the following policy framework for stormwater management:

Council acknowledges the legal advice that it is not under a duty to undertake the management of stormwater in its area.

Having regard to the expectations of the community and Council's leadership role, Council will seek to have adequate stormwater management provided in its area.

Council will pursue this objective through undertaking a coordination role that will vary depending on the circumstances and may include Council acting as:

- *A planning authority via policy in the Development Plan and the imposition of conditions on development approvals;*
- *A facilitator working in collaboration with others such as the private sector, Federal and State Governments and the Natural Resources Management Boards;*
- *An advocate to the State Government and others on behalf of the community; and*
- *A service provider (provision, maintenance and renewal of infrastructure).*

Seconded Councillor Haines and CARRIED

Moved Councillor Wright :

4. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports and minutes relating to this item be kept confidential until ~~1 May 2007~~ ~~6 Sept 2007~~ ~~(changed at Council Mtg 4 Sept 2006)~~ extended to 6 September 2008 at 3 September 2007 meeting.

Seconded Councillor Zanker and CARRIED

12.6 **REPORT TITLE:** **CONFIDENTIAL REPORT
STORMWATER MANAGEMENT – POLICY
FRAMEWORK AND UPDATE**

DATE OF MEETING: 1 MAY 2006

AUTHOR: **BRIAN CLANCEY/ATIS BERZINS**

AUTHOR'S TITLE: **GENERAL MANAGER, ASSETS &
INFRASTRUCTURE
MANAGER, ENGINEERING & TECHNICAL
SERVICES**

REPRESENTORS: **N/A**

FILE NUMBER: **44/070/001 - 04**

ATTACHMENTS: **N/A**

DEPARTMENT: **ASSETS & INFRASTRUCTURE**

**DEPARTMENT
MANAGER:** **BRIAN CLANCEY**

PURPOSE

To clarify and confirm the role of Council in relation to stormwater management, adopt a policy framework for stormwater management and provide an update on stormwater initiatives for the township of Mount Barker.

RECOMMENDATION

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 *(to be added from clauses under Section 90 of LG Act)*
2. That the Chief Executive Officer, General Manager Assets & Infrastructure, General Manager Strategy and Development, General Manager Corporate and Community Services, and the Minute Secretary be permitted to remain in the room.

3. That Council:

- note the report; and
- adopt the following policy framework for stormwater management:

Council acknowledges the legal advice that it is not under a duty to undertake the management of stormwater in its area.

Having regard to the expectations of the community and Council's leadership role, Council will seek to have adequate stormwater management provided in its area.

Council will pursue this objective through undertaking a coordination role that will vary depending on the circumstances and may include Council acting as:

- *A planning authority via policy in the Development Plan and the imposition of conditions on development approvals;*
- *A facilitator working in collaboration with others such as the private sector, Federal and State Governments and the Natural Resources Management Boards;*
- *An advocate to the State Government and others on behalf of the community; and*
- *A service provider (provision, maintenance and renewal of infrastructure).*

4. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports and minutes relating to this item be kept confidential until 1 May 2007

BACKGROUND

At its meeting on 6 March 2006 Council (in confidence) considered a report on stormwater management in relation to Morphett Street, Mount Barker and resolved to:

Authorise Council officers to enter in discussions to acquire land for the purpose of constructing a flood control basin and commission preliminary designs for the basin.

Legal advice has recently been obtained by Council from Norman Waterhouse on a range of issues relating to stormwater management.

Significant provision is proposed to be made in the 06/07 Council budget for expenditure on stormwater management.

Council has received some applications for commercial development in the vicinity of Morphett Street.

Given these circumstances, a clear Council policy framework for stormwater management is desired.

DISCUSSION

Policy Framework

Council has a number of stormwater plans addressing stormwater infrastructure requirements for the various townships and a Stormwater Quality Improvement Report for Mount Barker and Littlehampton.

Council does not have any formal policy framework on the control and management of stormwater infrastructure, particularly where the infrastructure is located on private land. In the past some creeks have been enclosed by the land owner providing a pipe drain system over which Council has no easement or agreement to protect or maintain the infrastructure.

Before committing to substantial investment in stormwater management it is appropriate that Council start from first principles.

The recent legal advice includes:

"The first thing to note is that Council is not under a duty to undertake the management of stormwater in its area, nor does it have any rights to do so on private land."

If Council is not legally obliged to manage stormwater, then the next question becomes does Council seek to undertake stormwater management for other reasons.

The answer to this is probably yes, with the grounds for this including:

1. There is a clear community expectation that Council will manage stormwater (probably viewed by many ratepayers as being historically core business of Council);
2. Council is seeking to encourage appropriate commercial development in the vicinity of Morphett Street and in promoting this objective, has a responsibility to ensure that

- adequate stormwater management is in place (but not necessarily to provide same);
3. Council is legally responsible for managing stormwater associated with Council (local) roads;
 4. Council is seen by the community to be a last resort i.e. if stormwater management is not undertaken by Council then who will do it?;
 5. The pursuit and promotion of broader environmental policy objectives by Council e.g. the current installation of the gross pollutant trap to improve the quality of stormwater being discharged to natural watercourses;
 6. As a leader in the community Council should set a good example for others i.e. if Council requires high standards of stormwater management from others (e.g. as a condition of development approval) then Council should also be providing leadership by it's own actions; and
 7. In the event of flooding, the community looks to Council to manage this situation and take the lead in terms of response, recovery and mitigation against any further occurrences.

On the assumption that Council does seek to undertake stormwater management, the next question is exactly what role should Council play.

Role options for Council include:

1. To be a provider only of stormwater infrastructure;
2. To be responsible only for the provision and maintenance of stormwater infrastructure;
3. To be responsible for the provision, maintenance and renewal of stormwater infrastructure;
4. To provide statutory land use planning policy (in the Development Plan) that places obligations for stormwater infrastructure on others;
5. To facilitate the provision, maintenance and renewal of stormwater infrastructure through the Development Plan and working collaboratively with the private sector and other organisations (e.g. the Federal and State Governments and the Natural Resources Management (NRM) Boards);
6. To ensure that others fulfil their stormwater infrastructure obligations e.g. enforcement of conditions attached to development approvals; and/or
7. To advocate to others (e.g. State Government) on behalf of the community for the provision, maintenance and renewal of stormwater infrastructure.

Council may of course undertake more than one of the above options. In reality this is likely to be the case.

A key consideration is the resource implications and future liability for Council.

A further consideration is that stormwater is in effect a network that includes creeks and water courses and as such there is a need for an over-arching coordination role to manage the stormwater system.

Council could determine that its role is:

To be responsible for coordinating the provision, maintenance and renewal of stormwater infrastructure, including having regard to the role of creeks and watercourses in stormwater management.

If this role is accepted then the next question is then how is this to be achieved? The answer probably includes all of points 4 – 7 (inclusive) in the above list.

On the basis of the legal advice and the above assumptions, it would be reasonable for Council to adopt the following policy framework for stormwater management.

Council acknowledges the legal advice that it is not under a duty to undertake the management of stormwater in its area.

Having regard to the expectations of the community and Council's leadership role, Council will seek to have adequate stormwater management provided in its area.

Council will pursue this objective through undertaking a coordination role that will vary depending on the circumstances and may include Council acting as:

- *A planning authority via policy in the Development Plan and the imposition of conditions on development approvals;*
- *A facilitator working in collaboration with others such as the private sector, Federal and State Governments and the Natural Resources Management Boards;*
- *An advocate to the State Government and others on behalf of the community; and*
- *A service provider (provision, maintenance and renewal of infrastructure).*

This would form the basis for Council's approach to stormwater management in the future.

On this basis immediate actions for Council would include:

1. Reviewing Council's Development Plan and the draft District Wide Residential Plan Amendment Report to ensure that the existing provisions for stormwater management are deemed to be adequate given the adoption of the new policy framework on stormwater management by Council – it is important to note that the legal advice indicates that the primary means by which Council can influence stormwater management on private land is through the imposition of conditions on development approvals;
2. Negotiating with applicants for commercial development to facilitate the best possible outcome from the community's perspective;
3. Preparing a strategy to publicly release the Council stormwater management policy (having regard to the timing of current development applications and the intended next forum for the developer's contribution project);
4. Reviewing options for stormwater infrastructure in the vicinity of Morphett Street having regard to the current situation and the recent legal advice and on completion of this review, presenting a further report to Council on options with an assessment of the associated costs and benefits;
5. Making significant 06/07 budget provision for stormwater management on the basis of the best information available but in the knowledge that this may require substantial variation at a later time with such adjustment to be subject to Council determination/s.

Update

Council officers have held preliminary discussions with the owners of land on Hawthorn Road regarding the possible acquisition of land for the purposes of a flood control basin. This was based on the identification of the preferred site from an engineering perspective.

Tonkin Engineering has been requested to provide advice on possible other locations for a flood control basin in close proximity to this area and the associated cost implications.

With the benefit of this additional information it is intended to provide a further report to Council on the relative costs and benefits of any site options identified. This would include assessment from an engineering, environmental, social and financial perspective.

Council officers have also reviewed a draft project brief for the preparation of a new Stormwater Management Master Plan for the township of Mount Barker. The objective is to finalise the project brief shortly and then conduct a public tender call. This work would not be completed for several months.

Council is in receipt of some applications for commercial development in the vicinity of Morphett Street. These applications present both challenges and opportunities for Council.

Negotiations will be held with the various proponents. This is somewhat of a 'mixed bag'. For example, some of the subject land already has stormwater infrastructure under it.

The recent legal advice is also very helpful in this respect. A key point is that Council has virtually no power to influence existing stormwater infrastructure on private land other than where Council has an easement for this purpose or when a development application is in progress. Additionally, the advice indicates that private land owners have no statutory obligation to maintain infrastructure on their land.

Council is currently involved in a legal challenge in relation to the Bi-Lo development application. Council is likely to lose this case on the basis of flooding if the 2006/07 Council budget does not contain provision to commence work on the Morphett Street stormwater drain.

POLICY IMPLICATIONS

1. Financial/budget

Council is continuing to seek external funding support for stormwater management. Possible external sources include the private sector, Federal Government, State Government and the NRM Boards.

Significant budget provision has been proposed in the 06/07 budget to cater for:

- Flood detention basin – land acquisition and construction;
- Morphett Street infrastructure works; and
- Preparation of a new Mount Barker Township Stormwater Management Plan.

2. Legal

Council has recently procured legal advice as indicated above.

3. Staffing/Work Plans

There will be significant workload implications in relation to stormwater management. It is anticipated that these will be met through existing staff and the use of consultants/contractors as required.

4. Environmental

Council will incorporate environmental objectives such as to reduce the likelihood of flooding and improve the quality of stormwater discharging to creeks and watercourses.

5. Social

Potential flooding risk has significant social implications for the community.

6. Strategic Plans

5 Community Assets

Objective 4 Investigate a range of opportunities for the generation of income from sources other than rates to improve Council's ability to provide resources for the community.

COMMUNITY CONSULTATION**1. Customer Needs Analysis**

In the above context, customers could include applicants for development approval.

2. Promotion/Communications

As flagged in the body of the report a strategy is proposed to be prepared to publicly release the Council stormwater management policy (having regard to the timing of current development applications and the intended next forum for the developer's contribution project).