

CONFIDENTIAL ITEMS 2003 – AUGUST 2024

#	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
173a #174	17 February 2022	Audit and Risk Committee – Nairne Township Wastewater Infrastructure Upgrade – Prudential Report	<u>Section 90 (3) (b) Order</u> <u>Pursuant to Section 90(3)(b)</u> 1. Pursuant to Section 90(2) of the Local Government Act 1999 the Audit and Risk Committee orders that all members of the public except the Chief Financial Officer; Deputy Chief Executive Officer/General Manager Governance and Wastewater/Recycled Water; Manager Financial Services, and Risk and Governance Officer, and Councillor David Leach be excluded from attendance at the meeting for Agenda Item 12.1 Nairne Township Wastewater Infrastructure Upgrade – Prudential Report. The Audit and Risk Committee is satisfied that pursuant to Section 90(3)(b) of the Act, some of the information to be received, discussed or considered in relation to this Agenda item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the position of the Council. In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Audit and Risk Committee is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may prejudice Council's ability to be able to negotiate a proposal for the benefit of the Council and the community in this matter.	Agenda item, attachment and all minutes	Pursuant to Section 90(2) of the Local Government Act 1999 the Audit and Risk Committee orders that all members of the public except the Chief Financial Officer; Deputy Chief Executive Officer/General Manager Governance and Wastewater/Recycled Water; Manager Financial Services, and Risk and Governance Officer, and Councillor David Leach be excluded from attendance at the meeting for Agenda Item 12.1 Nairne Township Wastewater Infrastructure Upgrade – Prudential Report. The Audit and Risk Committee is satisfied that pursuant to Section 90(3)(b) of the Act, some of the information to be received, discussed or considered in relation to this Agenda item is commercial information of a confidential nature (not being a trade	Retained in confidence until the council determines that this order should cease to apply.	3 Oct 23	Within 12 months	Attachment released on website 8 March 2022 Report and Minutes released on website 26 August 2024

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			<u>Section 91(7) Order Pursuant to Section 91(7)</u> 4. That having considered Agenda Item 12.1 Nairne Township Wastewater Infrastructure Upgrade – Prudential Report in confidence under 90(2) and 3(b) of the Local Government Act 1999, the Audit and Risk Committee pursuant to Section 91(7) of the Act orders that the agenda item, attachment and all minutes be retained in confidence until the council determines that this order should cease to apply. <u>Order History</u> 5 Sep 22 - 3 Oct 23 3 Oct 23 -		secret) the disclosure of which could reasonably be expected to prejudice the position of the Council. In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Audit and Risk Committee is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may prejudice Council's ability to be able to negotiate a proposal for the benefit of the Council and the				

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					community in this matter.				

RELEASED

12. CONFIDENTIAL REPORTS

**12.1 REPORT TITLE: NAIRNE TOWNSHIP WASTEWATER
INFRASTRUCTURE UPGRADE – PRUDENTIAL
REPORT**

DATE OF MEETING: 17 FEBRUARY 2022

FILE NUMBER: 21/211087

ATTACHMENTS: 1) PRUDENTIAL REPORT 21/155377

**Key Contact Brian Clancey, Deputy CEO, General Manager
Governance, Wastewater/Recycled Water**

Sponsor Andrew Stuart, Chief Executive Officer

Community Plan 2020-2035:

Community Wellbeing

Safety and Resilience - Objective 4.4

Provide wastewater treatment services to deliver public health, environmental and economic outcomes and climate change adaptation solutions.

Annual Business Plan:

Wastewater/Recycled Water

Continue with planning, design and construction of the capital works program for delivery of the required wastewater infrastructure to service growth.

Audit & Risk Committee Terms of Reference:

1.10 Prudential Reports

1.10.1 The Committee shall review the findings of any prudential reports prepared for Council and provide advice to Council. The amount that triggers a prudential report is as specified in the Local Government Act 1999 and reviewed with indexation and determined annually in January.

Purpose:

For the Audit and Risk Committee to consider the attached prudential report on the Nairne Township Wastewater Infrastructure Project and provide recommendations to council on same.

Summary – Key Issues:

- Dean Newbery Consulting has prepared a prudential report on the Nairne Township Wastewater Infrastructure Project (the Nairne Wastewater Project);

- The recommendations in the prudential report included that council seek confirmation from the Essential Services Commission of South Australia (ESCOSA) on two matters;
- Council has sought and received a response from ESCOSA and subsequently obtained legal and other professional advice in relation to issues and actions that are broader than the Nairne Wastewater Project; and
- The Prudential Report has 6 recommendations with commentary on the status of council actions in relation to each of those recommendations below.

Recommendation:

That the Audit and Risk Committee:

Section 90 (3) (b) Order

Pursuant to Section 90(3)(b)

1. Pursuant to Section 90(2) of the Local Government Act 1999 the Audit and Risk Committee orders that all members of the public except the Chief Financial Officer; Deputy Chief Executive Officer/General Manager Governance and Wastewater/Recycled Water; Risk and Governance Officer – Projects; and Risk and Governance Officer be excluded from attendance at the meeting for Agenda Item 12.1 Nairne Township Wastewater Infrastructure Upgrade – Prudential Report.

The Audit and Risk Committee is satisfied that pursuant to Section 90(3)(b) of the Act, some of the information to be received, discussed or considered in relation to this Agenda item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the position of the Council.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Audit and Risk Committee is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the

disclosure of Council's commercial position may prejudice Council's ability to be able to negotiate a proposal for the benefit of the Council and the community in this matter.

That the Audit and Risk Committee recommends to Council that:

2. Council note and consider the prudential report on the *Nairne Township Wastewater Infrastructure Project \$6.5m* prepared by Dean Newbery Consulting dated 15 September 2021 (attached); and
3. Council note the actions taken subsequent to the receipt of the prudential report (attached) and in response to the recommendations in the prudential report, as outlined below under point 14.

Section 91(7) Order

Pursuant to Section 91(7)

4. That having considered Agenda Item 12.1 Nairne Township Wastewater Infrastructure Upgrade – Prudential Report in confidence under 90(2) and 3(b) of the Local Government Act 1999, the Audit and Risk Committee pursuant to Section 91(7) of the Act orders that the agenda item, attachment and all minutes be retained in confidence until the council determines that this order should cease to apply.

Background:

1. Council owns and operates a wastewater service that is available to a number of townships in the District, including Nairne.
2. To cater for growth, a number of wastewater capital investment projects have been identified; some of which have been completed, some are in progress and some are yet to commence.
3. At the Audit and Risk Committee meeting held on 20 May 2021 in considering an item titled "Wastewater/Recycled Water – Revised Long Term Financial Modelling" it was resolved to recommend to Council that:

the timing of the annual review of this information by Council be completed in the second quarter of each financial year so as to inform decision making by Council on the wastewater infrastructure fee and wastewater annual service charges to be applicable for the following financial year and the review of the Long Term Financial Plan.

As the council wastewater service is in a rapid growth phase with significant capital investment and borrowing required to achieve ongoing service delivery and additional short and long term revenues; council decision making should be preceded by the consideration of business cases and prudential reports with subsequent regular reporting to council on the implementation of such investment decisions.

4. These recommendations were endorsed at the Council meeting held on 7 June 2021.
5. The Business Case for the Nairne Township Wastewater Infrastructure Project was endorsed (in confidence) at the council meeting held on 7 June 2021. This remains the subject of a council meeting confidentiality order.
6. The Audit and Risk Committee had input to the Wastewater Service Delivery Options Report that was prepared for council by Frontier Economics (30 June 2021). This Report was considered in confidence at the Audit and Risk Committee meeting held on 15 July 2021 which saw a series of recommendations made to Council. Those recommendations were endorsed at the council meeting held on 2 August 2021.
7. A Prudential Report for the Nairne Wastewater Project was prepared for council by Dean Newbery Consulting dated 15 September 2021 (attached).
8. The recommendations in the Prudential Report included (amongst other things) that Council should seek confirmation from the Essential Services Commission of South Australia (ESCOSA) on two matters which are outlined below under the heading of Discussion.
9. Council subsequently issued instructions to Thomson Geer Lawyers on 5 November 2021 and received advice in response on 6 December 2021.
10. Council received further advice on its approach to wastewater and recycled fees and charges on 12 December 2021 from Richard Cawley (ex SA Water with extensive knowledge of the regulatory framework and now of Inside Infrastructure) who worked with Thomson Geer Lawyers on this matter.
11. The subject matter of these advices is in relation to council's approach to wastewater fees and charges and hence is broader than the Nairne Wastewater Project.
12. Subsequent actions include the preparation of a revised Wastewater Infrastructure Fees and Augmentation Costs Policy which has been prepared with input from the above and also the Strategic Advisory Panel to the CEO which comprises Sean Keenihan, John Comrie and Mark Gobbie (see item 10.1 in this agenda).

Discussion:

13. The Prudential Report references the considerable due diligence undertaken by council staff for the Nairne Wastewater Project.
14. The Prudential Report has 6 recommendations. These are reproduced below in full in italics, together with commentary on the status of council actions in relation to each of those recommendations.

Prudential Report Recommendation 1

Given the limited information currently made public and at the appropriate time, Council needs to undertake further community consultation for the Project, including for the Master Plan/Business Case.

Council Response:

To date, council engagement has primarily been with the land owners/developers associated with the four greenfields development sites in Nairne.

Due to the commercial in confidence nature of some of the matters contained in the business case, there is limited information available on the council website at this time.

As recommended, further community engagement will occur at the appropriate time.

Prudential Report Recommendation 2

Council's Administration should now formally approach ESCOSA to seek early confirmation that its Wastewater Services model encompassing the one annual service charge across the entire Council area (applicable where there is access to a wastewater service) is appropriate – rather than separate annual service charges/separate wastewater service models for each township service. In making this recommendation, I would think it highly unlikely that ESCOSA would not accept Council's existing Wastewater Services model as being consistent with its 'Determination'. Notwithstanding, in my opinion it would be prudent for Council's Administration to now seek such confirmation, given that its wastewater operations are the second largest in South Australia outside of SA Water. I would not underestimate the possibility at some future time of some ratepayers not being supportive of Council for cross subsidisation of wastewater costs across all those townships in the district with access to a wastewater service.

Council Response:

Council wrote to ESCOSA on 12 October 2021 and received a response from ESCOSA on 21 October 2021. These letters can be made available to members of the Audit and Risk Committee on request.

In summary, the ESCOSA response highlighted that the charges should be based on cost.

This gives rise to the need to review the following issues:

- If the current charges for a sewer service v a Community Wastewater Management System (CWMS) are still reflective of the cost differences in these services - an example being that the CWMS service requires the pump out of individual septic tanks every 5 years;
- If vacant land should be charged a lower amount than land with development as vacant land is not placing demand on the council wastewater network; and
- If retention of the current reduction to residents of Brukunga (for a sewer service) can be justified and if not, transitional arrangements to progressively phase that out over a number of years.

A new council policy on wastewater annual services charges is being prepared and will be presented for formal consideration.

Prudential Report Recommendation 3

In addition to 10.2.2, Council's Administration should now also formally approach ESCOSA to seek early confirmation that its commercial basis for charging Land Developers and having the one wastewater infrastructure reserve across all of the townships are both appropriate and as such consistent with its 'Determination'. In making this recommendation, I would think it highly unlikely that ESCOSA would not accept Council's existing Wastewater Services model (pertaining to connection fees payable by land developers and the one wastewater infrastructure reserve for all townships) as being consistent with its 'Determination'. As in 10.2.2, in my opinion it would be prudent for Council's Administration to seek early confirmation.

Council Response:

The Council practice of a single reserve for wastewater infrastructure (new and upgrading to increase capacity) is not being questioned by ESCOSA.

Having a uniform fee per service (i.e. sewer v CWMS) is not preferred by ESCOSA. The approach to charging developers has recently been revised as reflected in item 10.1.

Prudential Report Recommendation 4

Council to periodically monitor the progress of addressing by the Administration all of the 8 recommendations by Frontier Economics (in this regard, I note that such resolutions of Council are already in place).

Council Response:

Implementation of the various recommendations made by Frontier Economics are at different states of progress, some of which remain confidential.

An agenda item to provide an update on progress with the implementation of all of the recommendations in the Frontier Economics Report is scheduled for the next meeting of the Audit and Risk Committee.

Prudential Report Recommendation 5

Council continue to be satisfied that revenues from its Wastewater Services not be applied to any other function/activity.

Council Response:

This is reflected in council policies and procedures/practices/systems and is subject to audit.

It is also reflected in the continued approach of council towards the full separation of wastewater/recycled water financial reporting from the balance of council's functions and activities.

Prudential Report Recommendation 6

Annually, Council formally commit to the NWI principles when adopting Service Charges (annual rates and charges declaration).

Council Response:

This is being implemented via the preparation of a new Council policy on wastewater annual service charges which is progressing well.

15. The conclusion in the Prudential Report is that subject to council addressing all of the above recommendations and associated actions, the required information on the prescribed matters (in the Local Government Act) has been appropriately addressed.
16. Revision of the long term financial modelling for wastewater/recycled is in progress and is to include the forecast revenues and expenditures associated with the Nairne Wastewater Project. This is consistent with a recommendation in the Wastewater Service Delivery Options Report prepared by Frontier Economics.

17. The revised financial modelling and assumptions will be the subject of formal consideration by the Audit and Risk Committee in the near future, once this work has been completed.
18. Following that, Council should then be in a position to make decisions in relation to the Nairne Wastewater Project.
19. In the interim, there is a need to maintain confidentiality to the extent that is necessary having regard to the circumstances. Whilst the Prudential Report references the Business Case which remains the subject of a council meeting confidentiality order, on balance it is considered reasonable that the Prudential Report can be made public by council but not other related information that is also the subject of a council meeting confidentiality order including the implementation of some of the recommendations from the Wastewater Service Delivery Options Report.

Community Engagement:

Informing only	The Prudential Report is proposed to be made publicly available by council whilst other related information is to remain confidential for the time being until further decision making has occurred at a council meeting.
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Policy:

Prudential Management Policy

Wastewater Infrastructure Fees and Augmentation Costs Policy – please refer to the separate item in this agenda regarding proposed amendments to this Policy.

Long Term Financial Plan:

The Nairne Wastewater Project is not yet featured in the adopted Council Long Term Financial Plan 2021-2031 for the reasons previously outlined.

The LTFP is informed by the long term financial modelling undertaken for wastewater/recycled water which is currently being reviewed and updated. This will see the inclusion of the Nairne Wastewater Project, both revenues and expenditures.

Budget:

The cost of the preparation of the Prudential Report has been met from within the wastewater budget for 2021/22.

Statutory/Legal:

The functions of all councils as specified in the Local Government Act include “to provide infrastructure for its community and for development within its area”.

A council Wastewater Commitment Deed would be required to be executed by developers of medium to large scale developments.

In applying the beneficiary pays principle, council would proceed to initiate wastewater augmentation separate rates over the land parcels within the area of the 2010 Ministerial DPA that are not yet the subject of development activity. This will enable the recovery by council of the applicable portion of the project cost when such land is developed.

The separate rate mechanism has been widely used by council pursuant to the Local Government Act. In this instance a Wastewater Infrastructure Augmentation Separate Rate would be used.

Staff Resource Requirements:

Council staff provided input to Dean Newbery Consulting as required and subsequently in relation to follow up actions arising as outlined above.

Environmental:

The Nairne Wastewater Project will deliver environmental benefit through the provision of a sewer service for new development sites and increased capacity for the entire township and hence a reduction in the likelihood of any overflows occurring.

Social:

The Nairne Wastewater Project will deliver social benefits to the community such as employment generation and the flow on impact of that both in the construction of the Nairne Wastewater Project and new residential development.

Risk Assessment:

Cost escalation may occur due to market conditions or other factors.

The proposed procurement strategy is to aggregate this project with other wastewater collection main upgrades to achieve cost efficiency.

Timing of some of the cost recovery is not yet known. There are two development sites within the area of the 2010 Ministerial DPA area which are not yet the subject of any development activity.

This will impact the length of time before revenue from these sites to council is available. That future revenue is to be secured via the use of the separate rate mechanism as referenced above.

Asset Management:

The upgraded and new assets in relation to the Nairne Wastewater Project would be the responsibility of council (via the council's wastewater business) to operate and maintain. That impact was included in the endorsed Business Case.

Conclusion:

The Audit and Risk Committee recommend to council that the Prudential Report (attached) be noted and considered along with the status of the implementation of the recommendations in the Prudential Report with final decision making on the Nairne Wastewater Project to occur once the long term financial modelling for wastewater/recycled water has been updated to include the forecast revenues and expenditures for this Project.

Previous Decisions By/Information Reports to the Audit and Risk Committee

Meeting Date	20 May 2021	CM Reference	DOC/21/68579
Title	WASTEWATER/RECYCLED WATER – REVISED LONG TERM FINANCIAL MODELLING		
Purpose	To present an overview of the revised long term financial modelling and the associated assumptions for wastewater/recycled water, for the Audit and Risk Committee to review and provide recommendations to council.		

Meeting Date	15 July 2021	CM Reference	DOC/21/108553
Title	CONFIDENTIAL: WASTEWATER SERVICE DELIVERY REPORT		
Purpose	For the Audit and Risk Committee to consider the Wastewater Service Delivery Report prepared by Frontier Economics (attached) and provide recommendations to the council.		

12. CONFIDENTIAL REPORTS

12.1	REPORT TITLE:	NAIRNE TOWNSHIP WASTEWATER INFRASTRUCTURE UPGRADE – PRUDENTIAL REPORT
	DATE OF MEETING:	17 FEBRUARY 2022
	FILE NUMBER:	21/211087
	ATTACHMENTS:	1) PRUDENTIAL REPORT 21/155377

Moved Councillor Hardingham that the Audit and Risk Committee:

Section 90 (3) (b) Order

Pursuant to Section 90(3)(b)

1. Pursuant to Section 90(2) of the Local Government Act 1999 the Audit and Risk Committee orders that all members of the public except the Chief Financial Officer; Deputy Chief Executive Officer/General Manager Governance and Wastewater/Recycled Water; Manager Financial Services, and Risk and Governance Officer, and Councillor David Leach be excluded from attendance at the meeting for Agenda Item 12.1 Nairne Township Wastewater Infrastructure Upgrade – Prudential Report.

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Seconded Pamela Lee

CARRIED
ARCM20220217.03

Moved Pamela Lee that the Audit and Risk Committee recommends to Council that:

2. Council note and consider the prudential report on the *Nairne Township Wastewater Infrastructure Project \$6.5m* prepared by Dean Newbery Consulting dated 15 September 2021 (attached); and
3. Council note the actions taken subsequent to the receipt of the prudential report (attached) and in response to the recommendations in the prudential report, as outlined in the Agenda under point 14.

6.43pm Pamela Lee left the meeting

6.43pm Pamela Lee returned to the meeting

Seconded Gary Hughes

CARRIED
ARCM20220217.04

Moved Councillor Hardingham

Section 91(7) Order
Pursuant to Section 91(7)

4. That having considered Agenda Item 12.1 Nairne Township Wastewater Infrastructure Upgrade – Prudential Report in confidence under 90(2) and 3(b) of the Local Government Act 1999, the Audit and Risk Committee pursuant to Section 91(7) of the Act orders that the agenda item, attachment and all minutes be retained in confidence until the council determines that this order should cease to apply.

Seconded Pamela Lee

CARRIED
ARCM20220217.05

MEETING DECLARED CLOSED AT 7.01pm

CHAIRPERSON

DATE