

IN CARETAKER MODE

NOTICE OF COUNCIL MEETING

Pursuant to the provisions of section 83 (2) of the
Local Government Act 1999

The Special Meeting of the



**Adelaide
Plains
Council**

will be held in

**Council Chambers
Redbanks Road
Mallala**

on

Wednesday 26 September 2018 at 6:00pm

per:

A handwritten signature in blue ink, appearing to read 'J Miller', is written over a dotted line.

James Miller

CHIEF EXECUTIVE OFFICER

AGENDA

Page
Number

1 ATTENDANCE RECORD

1.1 Present

1.2 Apologies

1.3 Not Present/Leave of Absence

2 ADJOURNED BUSINESS

Nil

3 DECLARATION OF MEMBERS' INTEREST (material, actual, perceived)

4 ITEMS

4.1 Gawler River Floodplain Management Authority Northern Floodway – Adelaide Plains Council Public Meeting Initiative 3

4.2 Gawler River Floodplain Management Authority – Dispute Resolution 8

5 CLOSURE

 Adelaide Plains Council	4.1	Gawler River Floodplain Management Authority Northern Floodway - Adelaide Plains Council Public Meeting Initiative
	Department:	Executive Office
	Report Author:	Chief Executive Officer
Date: 26 September 2018	Document Ref:	D18/45182

OVERVIEW

Council, at its Ordinary Meeting held on Monday 17 September 2018, adopted the following resolution:-

- 15.2 Moved Councillor Daniele Seconded Councillor Keen 2018/ 438*
“that the Chief Executive Officer bring a report back to Council at the earliest opportunity regarding Council’s initiative to call an open public meeting at the Two Wells Community Centre regarding the Gawler River Floodplain Management Authority Proposed Northern Floodway and associated matters.”

CARRIED

As Council Members would be aware, Adelaide Plains Council (**APC**) is currently in Caretaker Mode and during this time Council must have regard for its recently adopted *Caretaker Policy*.

Facilitating public meetings during Caretaker Period can expose APC and its current Council Members to unnecessary risk by virtue of the fact the very nature of the subject matter (Gawler River Floodplain Management Authority (**GRFMA**) and associated background knowledge / information - some of which is only accessible to current Members) of such a public meeting would mean that candidates that are not current Council Members are already disadvantaged. An argument could therefore be mounted, that current APC Council Members may be advantaged (or could be perceived to be) if such a public meeting was held.

Council, at its Ordinary Meeting held on 17 September 2018 considered a similar public meeting initiative, proposed by the Adelaide Plains Ratepayers and Residents Association. Following a recommendation from Council’s Governance Advisory Panel, Council resolved

not to partake in such a forum during Caretaker Period for the very same concerns noted herein.

In consideration of the aforementioned concerns, advice was sought from Kelledy Jones Lawyers in relation to whether or not such a meeting should be entertained during the Caretaker Period. A copy of this advice, provided by Cimon Burke and dated 24 September 2018 (**the Advice**) is provided as **Attachment 1** to this Report.

Ms Burke confirms the position that *“the holding of such a meeting during the caretaker period is **not appropriate**. The meeting would be contrary to the Council’s Caretaker Policy... we advise against the Proposal being progressed at this time...”* and in doing so, sets out detailed rationale to support this position.

Ms Burke concludes the Advice by stating that *“...in all of the circumstances, there are no compelling reasons to justify a departure from the Policy to progress the Proposal during the caretaker period.”*

It is Management’s recommendation to Council, that Council not facilitate or partake in any public meeting regarding the proposed Northern Floodway, or indeed any other matter relating to the Gawler River Floodplain Management Authority, during the Caretaker Period.

Should a public meeting be an initiative that Council Members wish to pursue, it is further recommended that APC, via resolution, place a Notice of Motion to the next meeting of the GRFMA requesting the GRFMA consider facilitating such a forum as part of its communication implementation strategy.

RECOMMENDATION

“that Council having considered Item 4.1 – *Gawler River Floodplain Management Authority Northern Floodway - Adelaide Plains Council Public Meeting Initiative*, dated 26 September 2018, receives and notes the report and in doing so resolves not to facilitate or partake in any public meeting regarding the proposed Northern Floodway or any other matter related to the Gawler River Floodplain Management Authority, during the Caretaker Period, and acknowledges that to do so would be at odds with Council’s *Caretaker Policy*.”

Attachments

1. Copy of Advice from Kelledy Jones Lawyers dated 25 September 2018.

References

Legislation

Local Government Act 1999 (SA)

Local Government (Elections) Act 1999 (SA)

Council Policies/Plans

Caretaker Policy

From: Cimon Burke [mailto:cburke@kelledyjones.com.au]
Sent: Tuesday, 25 September 2018 10:18 AM
To: James Miller
Cc: Michael Kelledy; Alyssa Denicola
Subject: FW: Advice regarding Northern Floodway public meeting proposal (KJ 180239)

Dear James

I refer to our telephone conversation on Friday regarding the proposal that the Council call, at the earliest opportunity, an open public meeting at the Two Wells Community Centre (“the **Proposal**”) regarding the GRFMA proposed Northern Floodway (“the **Project**”). The intended purpose of the meeting being to inform the public of the Project, to facilitate discussion and to receive community feedback.

You have requested advice regarding the appropriateness of this proposed meeting being convened during the caretaker period. It is noted that the subject matter is (or has the potential to become), a significant election issue for the community. It is also noted that the GRFMA is progressing its own community consultation and engagement strategy in relation to the Project on behalf of all of its Constituent Councils.

I confirm the verbal advice to you that the holding of such a meeting during the caretaker period is **not appropriate**. The meeting would be contrary to the Council’s Caretaker Policy (“the **Policy**”) and we **advise** against the Proposal being progressed at this time for the following reasons:

- any decision to proceed with the Proposal is a ‘major policy’ decision under clause 6.3 of the Policy. That is, it is categorised as a ‘*significant decision*’ for the purposes of the Policy because:
 - the Proposal, having been spontaneously ‘mooted’ at the last Council meeting, constitutes a proposal to conduct unplanned public consultation in relation to the Project; and
 - the Project is a contentious matter and is (or will likely become as a result of the Proposal) a ‘live’ election issue. If the Proposal is progressed, this will cause the matter to be further agitated in the public domain, will amount to the Council progressing an election issue during the caretaker period and, at least by perception, may be considered to be an advantageous strategy to the current elected body (or, at least, those members of the current body who are candidates in the November elections);
- given the caretaker period has commenced, the Policy operates to require *significant decisions* to be scheduled for consideration by the incoming Council (i.e. after the conclusion of the election – refer clause 6.1 of the Policy);
- in addition, holding a public meeting regarding the Project during the caretaker period raises the following risk considerations:

- candidates who attend may capitalise on the opportunity to utilise the forum to advance their personal election agendas; and
- since public consultation is being separately undertaken by the GRFMA, to progressing with a further, separate, consultation processes has the potential to confuse (particularly if inconsistent messages are being communicated) and to be contrary to the public interest; and
- in all of the circumstances, there are no compelling reasons to justify a departure from the Policy to progress the Proposal during the caretaker period.

Let me know if we can assist further.

Kind regards

Cimon Burke
Lawyer



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 Adelaide Plains Council	4.2	Gawler River Floodplain Management Authority - Dispute Resolution
	Department:	Executive Office
	Report Author:	Chief Executive Officer
Date: 26 September 2018	Document Ref:	D18/45186

OVERVIEW

Council, at its Ordinary Meeting held on Monday 17 September 2018, adopted the following resolution:-

15.2 Moved Councillor Strudwicke Seconded Councillor Keen 2018/ 437

“that the Chief Executive Officer bring a report back to Council at the earliest opportunity in relation to enacting clause 20 under the Gawler River Floodplain Management Authority Charter, namely the Dispute Resolution clause, insofar as the various concerns relate to Adelaide Plains Council.”

CARRIED

The Council resolution provides little guidance or direction to the Chief Executive Officer (CEO) on what this report should entail. Therefore, with the benefit of legal advice, the CEO has elected to provide members with an overview of how dispute resolution is dealt with at subsidiary level as a necessary ‘first step’ in a responsible and informed decision-making process as per the requirement under the *Local Government Act 1999*.

The Gawler River Floodplain Management Authority (GRFMA) Charter, at Clause 20, sets out a two-part process for dispute resolution. The first part of the process is in respect of a dispute or a difference between the Constituent Councils and the GRFMA concerning the operations or affairs of the GRFMA. In this scenario, the dispute process is initiated by a Constituent Council serving a notice of dispute on all other Constituent Councils and a contemporaneous copy being served on the GRFMA. However, as the type of dispute that the Council *may be* considering in the current circumstances *may be* a dispute between only this Council and the GRFMA, it is appropriate to address only the second part of the dispute process.

The second part of the dispute process, deals with an event of dispute or difference between one or more Constituent Councils and the GRFMA concerning the operation or affairs of the

GRFMA. In these circumstances, the dispute process is initiated by a Constituent Council, or the GRFMA, serving a notice of dispute on the Constituent Council or the GRFMA, as the case may be and a contemporaneous copy being served on all other Constituent Councils.

The process is, that the parties:-

- will attempt to settle the dispute or difference by negotiating in good faith;
- if good faith negotiations do not settle the dispute or difference within one month of the dispute arising then, the dispute shall be referred to an expert for determination. The expert shall be a person with the skills and expertise necessary to examine the issues and shall be nominated by the President of the Local Government Association of South Australia. The expert is an expert and not an arbitrator. The expert's determination shall be final and binding on the Constituent Council and the GRFMA. The costs of the expert will be apportioned and payable in accordance with the expert's determination; and
- notwithstanding the existence of a dispute or difference, the Constituent Councils and the GRFMA will continue to meet their obligations to each other.

For the purposes of Clause 20.2 of the Charter, 'dispute' includes where a Constituent Council has failed or refuses to approve the draft budget advised by the GRFMA under Clauses 11.2.3 or 11.5.

As matters presently stand, there is no identified 'dispute' between the Council and the GRFMA. For there to be a dispute that is sufficient to support action under Clause 20.2 of the Charter, it is necessary that the Council instruct the CEO to consider matters of concern to the Council, to investigate those matters and, if appropriate, to articulate them with sufficient clarity that they are capable of reasonably and objectively being considered in the context of the dispute process at Clause 20 of the Charter and, with the benefit of legal input, for the Council to then resolve that an articulated dispute exists, sufficient to invoke the provisions at Clause 20.2 of the Charter.

This report is provided for members' interest and as a means of clarifying the processes that must be followed should the Council wish to pursue the identification of a dispute and, consequently, the dispute resolution process under the Charter.

RECOMMENDATION

“that Council, having considered Item 4.2 – Gawler River Floodplain Management Authority - Dispute Resolution, dated 26 September 2018, receives and notes the report.”

Attachments

Nil

References

Legislation

Local Government Act 1999 (SA)

Council Policies/Plans

Nil