



## STRATHBOGIE SHIRE COUNCIL

### MINUTES OF A SPECIAL MEETING OF THE STRATHBOGIE SHIRE COUNCIL HELD ON MONDAY 19 SEPTEMBER 2016 AT THE EUROA COMMUNITY CONFERENCE CENTRE COMMENCING AT 5.00 P.M.

<b>Councillors:</b>	Colleen Furlanetto (Chair)	(Seven Creeks Ward)
	Malcolm Little	(Hughes Creek Ward)
	Alister Purbrick	(Lake Nagambie Ward)
	Patrick Storer	(Honeysuckle Creek Ward)
	Debra Swan	(Lake Nagambie Ward)
	Robin Weatherald	(Mount Wombat Ward)
	Graeme (Mick) Williams	(Seven Creeks Ward)

<b>Officers:</b>	Steve Crawcour - Chief Executive Officer
	Phil Howard - Director, Sustainable Development
	Roy Hetherington - Director, Asset Services
	David Woodhams - Director, Corporate and Community
	David Roff - Acting Director, Corporate and Community

### **BUSINESS**

1. Welcome
2. Acknowledgement of Traditional Land Owners  
*'I acknowledge the Traditional Owners of the land on which we are meeting.  
I pay my respects to their Elders, past and present, and the more recent  
custodians of the land'*
3. Apologies  

Nil.
4. Disclosure of Interests  

Nil.
5. Reports of Council Officers
  - 5.1 Climate Change
  - 5.2 Infrastructure
  - 5.3 Private Enterprise
  - 5.4 Public Institutions
  - 5.5 Housing and Recreation
  - 5.6 Tourism
  - 5.7 Organisation
6. Urgent Business

A handwritten signature in black ink, located in the bottom right corner of the page.

7. Closure of Meeting to the Public to consider matters listed for consideration in accordance with Section 89(2) of the Local Government Act 1989
8. Confirmation of 'Closed Portion' Decision/s

An audio recording of this meeting is being made for the purpose of verifying the accuracy of the minutes of the meeting, as per Local Law No. 1 - Meeting Procedure (2014) or as updated from time to time through Council Resolution

**REPORTS INDEX**

<b>5.</b>	<b>REPORTS</b>	
<b>6.</b>	<b>URGENT BUSINESS</b>	
<b>7.</b>	<b>CLOSURE OF MEETING TO THE PUBLIC</b>	1
	To consider matters in accordance with Section 89(2) of the Local Government Act 1989 – (f) Legal Advice	1
	C.P. 1   Violet Town Flood Mitigation Project	1
<b>8.</b>	<b>CONFIRMATION OF 'CLOSED PORTION' DECISION/S</b>	2

5. **REPORTS**
6. **URGENT BUSINESS**
7. **CLOSURE OF MEETING TO THE PUBLIC TO CONSIDER MATTERS LISTED FOR CONSIDERATION IN ACCORDANCE WITH SECTION 89(2) OF THE LOCAL GOVERNMENT ACT 1989**

**5.02 p.m.**

**CRS SWAN/PURBRICK –**

**That Council, in conformance with Section 89(2) of the Local Government Act 1989, resolve to close the meeting to members of the public for the purpose of considering items relating to:-**

- **Ground(s) under section 89(2):**
  - 89(2)(f) - *Legal Advice*

C.P. 1 Violet Town Flood Mitigation Project

37/16

**ON BEING PUT, THE MOTION WAS CARRIED**

**Cr Weatherald called for a division**

For the Motion

Cr Swan  
Cr Purbrick  
Cr Little  
Cr Williams  
Cr Storer  
Cr Furlanetto

Against the Motion

Cr Weatherald

**5.22 p.m.**

**CRS STORER/LITTLE -**

**That Council open the meeting to members of the public and resume normal business.**

41/16

**ON BEING PUT, THE MOTION WAS CARRIED**

8. CONFIRMATION OF 'CLOSED PORTION' DECISION/S

*Closed Portion Decision/s -*

C.P. 1 Violet Town Flood Mitigation Project

**RECOMMENDATION**

That -

1. Based on **privileged** legal advice received, Council not proceed **at this stage** with the process of development of a Water Scheme and Special Charge Scheme for Violet Town; and
2. As an alternative, utilising the available flood data and information received from the Community -
  - a. Undertake a review of Council's strategic planning controls to ensure that an appropriate zoning or overlay is placed on flood prone land, and
  - b. Investigate the upgrade of the township drainage system to achieve improved flood resilience where possible; and
3. **Council lobby the State Government in relation to legal issues faced by local government in developing a water scheme; and**
4. **Council submit a motion to the Municipal Association of Victoria State Council in May 2017 seeking support to cover Councils legally for water schemes.**

**CRS STORER/SWAN -**

That the Amendments, shown highlighted, become the Motion.

39/16

**ON BEING PUT, THE AMENDMENT WAS CARRIED**

40/16

**ON BEING PUT, THE MOTION WAS CARRIED**

**RECOMMENDATION**

**CRS WILLIAMS/SWAN -**

That the decision/s of Council's 'Closed Portion' considerations be confirmed.

42/16

**ON BEING PUT, THE MOTION WAS CARRIED**

***THERE BEING NO FURTHER BUSINESS, THE MEETING CLOSED AT 5.24 P.M.***

Confirmed as being a true and accurate record of the meeting

.....  
Chair

.....  
Date



**STRATHBOGIE SHIRE COUNCIL**

**MINUTES – CLOSED PORTION**

**SPECIAL COUNCIL MEETING**

**MONDAY 19 SEPTEMBER 2016**

**EUROA COMMUNITY CONFERENCE CENTRE**

***MATTERS LISTED FOR CONSIDERATION  
IN ACCORDANCE WITH SECTION 89(2)  
OF THE LOCAL GOVERNMENT ACT***

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

**REPORTS INDEX**

<b><i>LEGAL ADVICE</i></b>		
C.P. 1	Violet Town Flood Mitigation Project	1



**5.12 p.m.**

***The Chair requested that, due to her wishing to vote on the matter to be considered, that a Temporary Chair be appointed for this component of the meeting.***

**Motion:**

**Cr Storer -**

***That the Deputy Mayor assume the role of Temporary Chair for this component of the meeting.***

38/16

**ON BEING PUT, THE MOTION WAS CARRIED**

**The Deputy Mayor assumed the role of Chair.**

**LEGAL ADVICE**

**C.P. 1 Violet Town Flood Mitigation Project**

**Author & Department**

Director, Asset Services / Asset Services Directorate

**Disclosure of Conflicts of Interest in relation to advice provided in this report**

The author of this report does not have a direct or indirect interest in any of the matters referred to in this report.

**Summary**

Council has undertaken a process of Community Consultation to gauge the level of support for the Violet Town Flood Mitigation Project, proposed to comprise a Water Scheme under the Water Act 1989 and a Special Charge Scheme under the Local Government Act 1989.

The process has identified that a very low level of landowner support exists for the project. Those identified to receive additional floodwater are also not supportive. Legal advice has been obtained in relation to the community response. Council can now consider the response, and the advice, and resolve whether to proceed to further develop the scheme or to take alternative action to assist the Community.

**RECOMMENDATION**

**That -**

- 1. Based on legal advice received, Council not proceed with the process of development of a Water Scheme and Special Charge Scheme for Violet Town; and**
- 2. As an alternative, utilising the available flood data and information received from the Community -**
  - a. Undertake a review of Council's strategic planning controls to ensure that an appropriate zoning or overlay is placed on flood prone land, and**
  - b. Investigate the upgrade of the township drainage system to achieve improved flood resilience where possible.**

C.P. 1 Violet Town Flood Mitigation Project (cont.)

**CRS STORER/SWAN -**

**Amendment:**

**RECOMMENDATION**

That -

1. Based on **privileged** legal advice received, Council not proceed **at this stage** with the process of development of a Water Scheme and Special Charge Scheme for Violet Town; and
2. As an alternative, utilising the available flood data and information received from the Community -
  - a. Undertake a review of Council's strategic planning controls to ensure that an appropriate zoning or overlay is placed on flood prone land, and
  - b. Investigate the upgrade of the township drainage system to achieve improved flood resilience where possible; and
3. **Council lobby the State Government in relation to legal issues faced by local government in developing a water scheme; and**
4. **Council submit a motion to the Municipal Association of Victoria State Council in May 2017 seeking support to cover Councils legally for water schemes.**

**CRS STORER/SWAN -**

**That the Amendments, shown highlighted, become the Motion.**

39/16

**ON BEING PUT, THE AMENDMENT WAS CARRIED**

40/16

**ON BEING PUT, THE MOTION WAS CARRIED**

**Background**

**Community Update Meeting - 6<sup>th</sup> July 2016**

Glen Ryan, (GMR Engineering), presented a detailed summary of past and present flood mitigation design for Violet Town.

Steve Muncaster, (Manager, Floodplain Management, DELWP), presented the funding opportunity provided by the new Victorian Floodplain Management Strategy. He indicated strong support for this project.

C.P. 1 Violet Town Flood Mitigation Project (cont.)

DAS, presented the process of landowner consultation for the Water Management Scheme as well as the proposed Special Charge Scheme.

**Letter** mailed to 235 landowners, 11<sup>th</sup> July 2016. All of the materials included at the meeting were enclosed. Confidential questionnaires, prepared to gauge the level of support from landowners in categories

- Those receiving a Special Benefit to be included in the Special Charge Scheme (136)
- Those receiving no Special Benefit, not included in the Special Charge Scheme (30)
- Those receiving an adverse effect, not included in the Special Charge Scheme (4)
- Those not specifically affected, not included in the Special Charge Scheme (65)

were included, returnable by 29<sup>th</sup> July 2016. In response to a letter from Violet Town Action Group (VTAG), the date was extended to 3<sup>rd</sup> August 2016.

**Summary of Support (At 7<sup>th</sup> September 2016)**

	Support	Not Support	Undecided	Nil Response
Special Benefit	9	31	18	78
No Change	2	5	2	21
Adverse	1	1	0	2
Not Specifically Affected	0	5	2	58
Overall	5%	18%	9%	68%

The level of support from landowners to receive Special Benefit was 9 out of 136 or 6.6%.

**Legal Advice**

The key matters for Council's consideration are as follows: -

- Council has no statutory duty to prevent flooding
- It is strongly arguable that Council has no common law duty of care to impose the Flood Mitigation Scheme
- It is strongly arguable that Council is not exposed to any substantial risk of liability under Section 16 (1) of the *Water Act* if it does not adopt the Flood Mitigation Scheme
- Council has an obligation to compensate any party for adverse effects. Council is exposed to the cost of defending itself generally in relation to the project into the future.
- Lack of support has no legal significance at this stage, however Council cannot make any Special Charge declaration where objections comprise a majority.

## C.P. 1 Violet Town Flood Mitigation Project (cont.)

- Grounds of appeal to the Victorian Civil Administrative Tribunal (VCAT) include: -
  - “if the works and projects proposed for the construction of flood mitigation infrastructure are unnecessary, unreasonable, excessive, insufficient, unsuitable or costly...”

### **Alternative options**

Council has the options of proceeding to develop a Water Scheme, (and the Special Charge Scheme), or not proceeding. Either way, the flood data obtained in preparing the proposal can be utilized to strengthen statutory planning controls for the benefit of the community.

Some of the responses received from the community indicate that investigation into drainage improvements may also be worthwhile.

### **Risk Management**

Proceeding with scheme development will expose Council to risks: -

#### 1. Wasted resource through scheme failure

The current level of support from landowners who might be involved in the Special Charge Scheme (6.6%) appears problematic.

Ultimately, the Local Government Act 1989 specifically prohibits a Council from making any Special Charge declaration where objections comprise a majority.

With such a low level of support, Council could, if it proceeds further, expect to face VCAT challenges to any scheme.

The legal opinion identified a new obligation, not included in current scheme development, to compensate any party for adverse effects. This will significantly increase scheme development costs and also scheme costs by way of monetary compensation or additional works to address the adverse effects.

The additional costs will reduce the likelihood of any water scheme and special charge scheme ultimately being approved.

In addition to staff resources the additional financial resources previously identified to further deliver the scheme comprise \$160,000, requested from the Minister for Water, plus approx. \$40,000 from Council, being part of the 16/17 budget allocation of \$100,000.

The cost of VCAT challenges will be in addition to this \$200,000.

#### 2. Legal costs into the future

If the water scheme proceeds, modified or not, it is possible that Council will need to respond to legal challenge from landowners, based on: -

- Floodwaters exceeding that modelled
- Compensation not received or not adequate
- Works not adequate
- Failure of works

C.P. 1 Violet Town Flood Mitigation Project (cont.)

Council had such an experience with Castle Creek landowners during 2013, where approx. \$100,000 was expended by council on legal advice and representation. This risk is rated as "High", i.e., future costs could amount to several \$100,000's, with the likelihood rated as "Possible" (See attached Risk Assessment Matrix)

**Strategic links - policy implications and relevance to Council Plan**

The author of this report considers that it is consistent with Council policies, key strategic documents and the Council Plan.

**Best Value/National Competition Policy (NCP) / Competition and Consumer Act 2010 (CCA) implications**

The author of this report considers that it is consistent with Best Value, National Competition Policy and Competition and Consumer Act requirements.

**Financial/Budgetary Implications**

Description	Cost	Funding
Construction – based on existing work	\$1,260,000	Proposed to be shared as per the Victorian Floodplain Management Strategy
		Federal - \$420,000
		State - \$420,000
		Local - \$100,000** (Council)
		- \$320,000 (Landowners – Special Charge Scheme)
		Total - \$1,260,000
Project development (existing & proposed)	\$ 285,600	
Total Project Cost	\$1,545,600	

\*\*Councils allocation of \$100,000 was intended to be utilized for

1. "Special Benefit" contributions for Council managed land, e.g., Public Roads
2. Any contribution identified for "Community Benefit", e.g. tangible benefits to people in the broader community
3. "Special Charge Scheme" development costs.

Approximately \$65,000 remains unspent and could be utilized as follows: -

- \$5,000 on drainage investigation
- \$60,000 available for reallocation at ½ year budget review.

**Economic implications**

The author of this report considers that the recommendation has no significant economic implications for Council or the broader community.

**Environmental/Amenity implications**

The author of this report considers that the recommendation has no significant environmental or amenity implications for Council or the broader community.

C.P. 1 Violet Town Flood Mitigation Project (cont.)

**Community implications**

Council has an ability to assist a community in the development of a Water Scheme and can develop a Special Charge Scheme to fund a Water Scheme, but in this case it is apparent the broad support for Council's involvement does not exist.

**Victorian Charter of Human Rights and Responsibilities Act 2006**

The author of this report considers that the recommendation does not limit any human rights under the Victorian Charter of Human Rights and Responsibilities Act 2006.

**Legal/Statutory implications**

The author of this report considers that the recommendation has no legal or statutory implications which require the consideration of Council other than those disclosed in the report.

Council has no statutory duty to prevent flooding.

**Consultation comprised**

- Community Update Meeting
- Questionnaire and Response
- Individual landowner meetings on request


**Attachments**

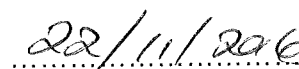
Risk Assessment Matrix

**5.21 p.m.**

***The Mayor resumed the role of Chair.***

Confirmed as being a true and accurate record of the Meeting

  
.....  
Chair

  
.....  
Date



Integrated Management System  
Rev No: 001

## RISK ASSESSMENT FORM

The only controlled copy of this document is that found on the Shire Network.  
Printed copies of this document are current as at the print date shown on the bottom of the page.

### Risk Assessment Matrix

Consequence	Likelihood				
	(1) Almost Certain	(2) Likely	(3) Possible	(4) Unlikely	(5) Rare
(A) Catastrophic	E	E	E	H	H
(B) Major	E	H	H	H	M
(C) Moderate	H	M	M	M	L
(D) Minor	M	M	L	L	L
(E) Insignificant	L	L	L	L	L

E = extreme risk; immediate action required. If personal injury is imminent, do not proceed.  
H = high risk; senior management attention needed  
M = medium risk; management responsibility must be specified  
L = low risk; manage by routine procedures

### Qualitative measures of Consequence (refer Risk Management Strategy for full description)

Level	Descriptor	Example detail description
A	Catastrophic	Death; >\$500K loss; toxic release off-site with huge detrimental effect; widespread irreparable loss of habitat; serious national media outcry.
B	Major	Extensive injuries; \$50K - \$500K loss; loss of production capability; off-site toxic release with significant detrimental effects; significant irreparable loss of habitat; serious public or local media outcry.
C	Moderate	Medical treatment required; \$10K - \$50K loss; on-site toxic release contained with outside assistance; considerable irreparable loss of habitat; high financial loss; significant adverse media.
D	Minor	First aid treatment; \$1K - \$10K loss; on-site toxic release immediately contained; minor loss of habitat; attention from media; concern by community.
E	Insignificant	No injuries; low financial loss; no community concern.

### Qualitative measures of Likelihood (refer Risk Management Strategy for full description)

Level	Descriptor	Description
1	Almost certain	<ul style="list-style-type: none"> <li>Is expected to occur in most circumstances, or</li> <li>Risk is occurring now, or</li> <li>Could occur within "days to weeks"</li> </ul>
2	Likely	<ul style="list-style-type: none"> <li>Will probably occur in most circumstances, or</li> <li>Could occur within "weeks to months"</li> </ul>
3	Possible	<ul style="list-style-type: none"> <li>Might occur at some time, or</li> <li>Could occur within "months to years"</li> </ul>
4	Unlikely	<ul style="list-style-type: none"> <li>Could occur at some time, or</li> <li>May occur but not anticipated, or</li> <li>Could occur in "years to decades"</li> </ul>
5	Rare	<ul style="list-style-type: none"> <li>May only occur in exceptional circumstances, or</li> <li>Only occur as a "100 year event"</li> </ul>

