

CITY OF PALMERSTON

**Minutes of Council Meeting
held in Council Chambers, Civic Plaza, Palmerston
on Tuesday, 21 October 2014 at 6.30pm**

Audio Disclaimer

An audio recording of this meeting is being made for minute taking purposes as authorised by City of Palmerston Policy MEE3 Recording of Meetings, available on Council's Website.

1. PRESENT

Elected Members: His Worship the Mayor Ian Abbott (Chair)
Deputy Mayor Heather Malone
Alderman Sue McKinnon
Alderman Paul Bunker
Alderman Andrew Byrne
Alderman Geoff Carter
Alderman Seranna Shutt

Staff: Ricki Bruhn, Chief Executive Officer
Ben Dornier, Director of Corporate and Community Services
Mark Spangler, Director of Technical Services
Caroline Hocking, Minute Secretary

Gallery: Gary Boyle, Major Projects Officer
Brett Jacobs, Director Boab Design
Mike Frier, Creative Director Boab Design
Elena Leslie, Michels Warren Munday
Dani MacDonald, Journalist NT News

2. APOLOGIES

Nil

3. CONFIRMATION OF MINUTES

Moved: Alderman Carter
Seconded: Deputy Mayor Malone

1. THAT the minutes of the Council Meeting held Tuesday, 7 October 2014 pages 7635 to 7648, be confirmed.
2. THAT the Confidential minutes of the Council Meeting held Tuesday, 7 October 2014 pages 158 to 159, be confirmed.

CARRIED 8/1271-21/10/2014

4. MAYOR'S REPORT

M8-02

The Mayor advised that he recently attended the 69th Anniversary of Independence Day – Republic of Indonesia and gave a presentation at the 2014 Children's Week.

Moved: Alderman McKinnon
Seconded: Deputy Mayor Malone

THAT Council receives Report Number M8-02.

CARRIED 8/1272–21/10/2014

5. REPORT OF DELEGATES

Nil

6. QUESTIONS (WITHOUT DEBATE) FOR WHICH NOTICE HAS BEEN GIVEN

Nil

7. QUESTIONS (WITHOUT DEBATE) FOR WHICH NOTICE HAS NOT BEEN GIVEN

7.1 Development of Durack Heights

Moved: Alderman Carter
Seconded: Alderman McKinnon

THAT the question *“When can we expect a proposal from CIC with regards to the management of Public Land at The Heights Durack?”* and response provided by the Director of Technical services be recorded in the minutes.

CARRIED 8/1273–21/10/2014

In response to the question raised by Alderman Carter at the Council Meeting held on 7 October 2014 *“When can we expect a proposal from CIC with regards to the management of Public Land at The Heights Durack?”* The Director of Technical Services provided the following response:-

“Currently Council has approved two public parks and two native bush buffer zones in The Heights, Durack subdivision. These areas are shown in Green on the attached plan.

As stages roll out at The Heights, Durack additional open space areas will be considered.”

8. PETITIONS

Nil

9. DEPUTATIONS / PRESENTATIONS

9.1 City Centre Development Identity

Presentation by Brett Jacobs, Director and Mike Frier, Creative Director Boab Design

10. CONSIDERATION OF MOTIONS FOR WHICH NOTICE HAS BEEN GIVEN

Nil

11. COMMITTEE RECOMMENDATIONS

11.1 Governance and Organisation

The Chair invited Alderman Byrne, Chair of the Governance and Organisation Committee to provide a report to the meeting.

A verbal report on the Committee Meeting held on 9 October 2014 was presented by Alderman Byrne.

Moved: Alderman Byrne
Seconded: Alderman Bunker

THAT the minutes from the Governance and Organisation Committee meeting held on 9 October 2014 be received and noted and that Council adopts the recommendations made by the Committee and accordingly resolves as follows:

11.1.1 Tree Risk Assessment Manual GOC/0141

THAT Council approves the production of a Tree Risk Assessment Manual and that costs are assessed at the first budget review.

11.1.2 City Car Parking Advisory Group – Terms of Reference GOC/0143

1. THAT Council adopt the Terms of Reference in Attachment B to Report Number GOC/0069.
2. THAT the Chief Executive Officer recruits for membership of the City Centre Car Parking Advisory Group.

CARRIED 8/1274–21/10/2014

11.2 Economic Development and Infrastructure

The Chair invited Alderman Bunker, Chair of the Economic Development and Infrastructure Committee to provide a report to the meeting.

A verbal report on the Committee Meeting held on 9 October 2014 was presented by Alderman Bunker.

Moved: Alderman Bunker
Seconded: Alderman McKinnon

THAT the minutes from the Economic Development and Infrastructure Committee meeting held on 9 October 2014 be received and noted and that Council adopts the recommendations made by the Committee and accordingly resolves as follows:

11.2.1 Contract TS2014/05 Lakeview Boulevard Reconstruction EDI/0221

1. THAT Council award Contract TS 2014/05, Lakeview Boulevard Reconstruction to JLM Civil Works Pty Ltd for \$181,463.75 ex GST.
2. THAT Council approves an additional \$38,382 for the Lakeview Boulevard reconstruction project.
3. THAT the Mayor and Chief Executive Officer sign and seal all contract documentation for Contract TS2014/05, Lakeview Boulevard Reconstruction.

11.2.2 Street naming Zuccoli Stage 2 (Mitchell Creek Green) EDI/0223

THAT Council supports the Place Naming theme of Native Flora for Zuccoli Stage 2 and in particular the following names:

1. Feathertop
2. Bluegrass
3. Blackspear
4. Rivergrass
5. Canegrass
6. Limestone
7. Haresfoot
8. Tassel
9. Comet
10. Myrtlewood
11. Sandstone
12. Sandpaper
13. Paperbark
14. Corkwood
15. Lilypily
16. Gooseberry
17. Leadwort
18. Turkeybush
19. Lasiandra

11.3 Community Culture and Environment

Nil

11.4 Internal Audit Committee

Moved: Alderman Carter

Seconded: Alderman Byrne

THAT the minutes from the Internal Audit Committee meeting held on 6 October 2014 be received and noted.

CARRIED 8/1276–21/10/2014

12. INFORMATION AGENDA

12.1 Items for Exclusion

Nil

12.2 Receipt of Information Reports

Moved: Alderman Bunker

Seconded: Alderman McKinnon

THAT the information items contained within the Information Agenda, be received.

CARRIED 8/1277–21/10/2014

13. DEBATE AGENDA

13.1 Officer Reports

13.1.1 Financial Report for the month of September 2014

8/0565

Moved: Alderman Shutt

Seconded: Alderman Bunker

THAT Council receives Report Number 8/0565.

CARRIED 8/1278–21/10/2014

13.1.2 Street Naming – The Heights Durack, Stages 5-9 **8/0566**

Moved: Alderman Carter
Seconded: Deputy Mayor Malone

1. THAT Council receives Report Number 8/0566.
2. THAT Council endorses the following street names for The Heights, Durack Stages 5 to 9.
 - King Street
 - O'Loughlin Street
 - Tambling Street
 - Teece Street
 - Thomson Street

CARRIED 8/1279–21/10/2014

13.1.3 Internal Audit Committee – Independent Representative Sitting Fee **8/0567**

Moved: Alderman Bunker
Seconded: Alderman Carter

1. THAT Council receives Report Number 8/0567.

CARRIED 8/1280–21/10/2014

Moved: Alderman McKinnon
Seconded: Alderman Carter

2. THAT a sitting fee be set of \$1,250 per quarter for the services of the Independent Representative to the Internal Audit Committee for a maximum term of two years.

CARRIED 8/1281–21/10/2014

13.1.4 Proposed Traffic Signals at the Intersection of Roystonea Avenue and The Boulevard **8/0568**

Moved: Alderman Carter
Seconded: Alderman Shutt

1. THAT Council receives Report Number 8/0568.

CARRIED 8/1282–21/10/2014

13.1.4 Proposed Traffic Signals at the Intersection of Roystonea Avenue and The Boulevard (continued) 8/0568

Moved: Alderman Carter
Seconded: Alderman McKinnon

2. THAT Council supports the Northern Territory Government's safety initiative to install traffic signals at the intersection of Roystonea Ave and The Boulevard with a pedestrian phase and cycle path connection.

CARRIED 8/1283–21/10/2014

13.1.5 City Centre Public Open Space – Consultation Proposal 8/0571

Moved: Alderman McKinnon
Seconded: Alderman Shutt

1. THAT Council receives Report Number 8/0571.

CARRIED 8/1284–21/10/2014

Moved: Alderman Carter
Seconded: Alderman Byrne

2. THAT a workshop be held to discuss the city centre project brand and message.
3. THAT Council approves the proposed consultation program for the city centre open space design concept.
4. THAT Council approves commencing level 3 city wide public consultation on the city centre open space design concept for Goyder Square and the link to the water tower park.
5. THAT Council note further public consultation for the city centre open space including Frances Mall and Woolnough Place car park may be required at a later date.

CARRIED 8/1285–21/10/2014

14. CORRESPONDENCE

Nil

15. PUBLIC QUESTION TIME
At the invitation of the Chair

Nil

16. OTHER BUSINESS - ALDERMAN REPORTS

16.1 Alderman Carter

Advised he attended a meeting with the Ranger Services Manager to discuss the Animal Management Plan and indicated that he may be an apology for the scheduled 5 November 2014 Council meeting due to accepting a conflicting invitation to the Australian of the Year Awards, unless a quorum is needed.

16.2 Alderman McKinnon

Advised that she also had accepted the Australian of the Year Awards which conflicts with the Council Meeting scheduled 5 November 2014. Alderman McKinnon gave a verbal update on the NT Settlement Planning Committee meeting and the Master Class in Social Infrastructure held by Elton Consulting.

16.3 Alderman Bunker

Thanked Alderman McKinnon on her presentation and spoke on The Boulevard Development and using Social Media to provide information to the Palmerston Residents.

16.4 Alderman Byrne

Advised that he had received a number of complaints in relation to the rate rise on Commercial Properties.

16.5 Deputy Mayor Malone

Expressed that she feels Social Media is a great way to inform the residents of Palmerston on the Council's developments. The Deputy Mayor advised she gave a presentation at the 2014 Children's Week, attended the Over 50's Club and will be giving a speech with Alderman Shutt to the final FlicNics evening.

17. CONFIDENTIAL REPORTS

Nil

18. CLOSURE

Meeting closed at 8.02pm

(Chair)

CITY OF PALMERSTON

**Minutes of Council Meeting
held in Council Chambers, Civic Plaza, Palmerston
on Tuesday, 15 October 2013 at 7:20pm**

RELEASED TO THE PUBLIC RECORD

1. PRESENT

Elected Members: His Worship the Mayor Ian Abbott (Chair)
Deputy Mayor Andrew Byrne
Alderman Sue McKinnon
Alderman Paul Bunker
Alderman Heather Malone

Staff: Ricki Bruhn, Chief Executive Officer
Ben Dornier, Director of Corporate Community Services
Mark Spangler, Director of Technical Services
Caroline Hocking, Minute Secretary

2. APOLOGIES

Alderman Carter – On Council Business

3. DEPUTATIONS / PRESENTATIONS

3.1 Superblock Development

Presentation by Carlo Randazzo and Peter La Pira

Moved: Alderman Bunker
Seconded: Alderman McKinnon

THAT a workshop be organised for all Elected Members prior to the issue of the next council agenda being 31st October 2013.

CARRIED 8/0816– 15/10/2013

4. OFFICER REPORTS

4.1 Baban Place Pinelands, Stormwater

EDI/0076

Moved: Alderman Bunker
Seconded: Alderman McKinnon

1. THAT \$12,000 be considered at the first quarter budget review 2013/14 for consultation and easement establishment on affected properties.

CARRIED 8/0817– 15/10/2013

4.1 Baban Place Pinelands, Stormwater (continued)

EDI/0076

Moved: Alderman Bunker
Seconded: Alderman Malone

2. THAT the resolution only come back into the Open Session.

CARRIED 8/0818– 15/10/2013

5. MOVE TO OPEN

Moved: Alderman Malone
Seconded: Alderman McKinnon

THAT the Council move into the open session.

CARRIED 8/0819– 15/10/2013

The meeting moved to the Open session at 7:57pm.

CONFIRMED AT MEETING TO BE HELD 5 NOVEMBER 2013

(Chair)

ITEM NO. 12.1 Baban Place Pinelands, Stormwater

FROM: Director of Technical Services

REPORT NUMBER: EDI/031

MEETING DATE: 10 October 2013

Municipal Plan:

3. Environment & Infrastructure

3.2 Assets and Infrastructure

3.2 We are committed to maintaining and developing community assets and infrastructure which meet the needs of our community

Summary:

Legal advice has been received on Council's liability and responsibility in regard to the drainage network at Baban Place, Pinelands.

Based on the advice received it is recommended that Council consider a variation of \$12,000 at the 1st quarter budget review for consultation with affected owners.

General:

Baban Place drainage has been problematic for many years. Council received a report at its ordinary meeting on 19th March 2013 on the issue and resolved as follows:

12.1.12. Baban Place Pinelands, Stormwater - 8/0270

Moved: Deputy Mayor Bunker

Seconded: Alderman Forrest

1. *THAT Council receives Report Number 8/0270.*

CARRIED 8/0548–19/03/2013

Moved: Alderman Byrne

Seconded: Deputy Mayor Bunker

2. *THAT Council seeks legal advice on liability and responsibility for stormwater issues in Baban Place, Pinelands.*

CARRIED 8/0549–19/03/2013

A copy of the report is contained in **Attachment 1**.

In accordance with Council's resolution legal advice was sought and received from Cridlands Lawyers, **Attachment 2**. In light of the legal advice it is recommended that

Council now proceed to consultation with affected neighbouring properties and establish stormwater drainage easements to provide for future upgrades.

Financial Implications:

An estimated \$12,000 is required to undertake immediate consultation and easement establishment.

A further amount of \$1,870,000 is estimated at this time for stages 1, 2 & 3 constructions.

Legislation / Policy:

Nil

RECOMMENDATION

- 1 THAT the Committee receives Report Number EDI/031.
- 2 THAT \$12,000 be considered at the first quarter budget review 2013/14 for consultation and easement establishment on affected properties.

Recommending Officer: Mark Spangler, Director of Technical Services

Any queries on this report may be directed to Mark Spangler, Director of Technical Services on telephone (08) 8935 9958 or email mark.spangler@palmerston.nt.gov.au.

Schedule of Attachments:

Attachment 1: Baban Place Pinelands, Stormwater Report

Attachment 2: Baban Place Stormwater Investigation - Cridlands Lawyers

ITEM NO. 12.1.12 **Baban Place Pinelands, Stormwater**

FROM: Director of Technical Services

REPORT NUMBER: 8/0270

MEETING DATE: 19 March 2013

Municipal Plan:

3. Environment & Infrastructure

3.2 Assets and Infrastructure

We are committed to maintaining and developing community assets and infrastructure which meet the needs of our community

Summary:

Baban Place is located in Pinelands industrial area and for some time now has experienced major drainage issues. This report examines the issues and recommends solutions. It also costs the proposed works and recommends staging the works for budget purposes over the next four years.

Background and General:

The Baban Place development was gifted to council by government in the 1990s and it almost immediately became apparent that it suffered from major drainage issues. The development was located in a large depression and the constructed outfall drainage was significantly under capacity.

Business owners have consistently complained of flooding in and through their properties over the past 10 -12 years.

Government has consistently denied any responsibility in the matter of drainage and also refused funding for remedial works.

The outfall drain is a gifted council asset and the responsibility for any upgrade works sits squarely with council.

Consultants were engaged in 2004 by City of Palmerston to undertake an investigation on the stormwater drainage in Baban Place due to the frequent flooding experienced. It immediately became apparent that there was to be no quick and economical fix to the drainage problems.

In 2008 PCC requested that SKM review and update the initial report and provide an estimated cost of works broken into stages suitable for construction over subsequent budgeting periods. The estimated cost in 2008 of \$1.19M plus GST includes a 25% contingency item and equates to approximately \$1.81M plus GST in 2013. A copy of the report is attached.

In this forthcoming financial year it is recommended that a sum of \$12,000 be allocated to engage suitable consultants to consult with owners regarding proposed works and the necessary creation of easements.

Financial Implications:

Budget Year	Item	Est Cost incl GST
2013/2014	Owner consultation	\$ 12,000
2014/2015	Stage 1 construction	\$ 810,000
2015/2016	Stage 1 construction	\$ 700,000
2016/2017	Stage 1 construction	\$ 360,000
	TOTAL	\$1,882,000

RECOMMENDATION

1. THAT Council receives Report Number 8/0270.
2. THAT \$12,000 be included in the forthcoming 2013/2014 budget for Council consideration.

Recommending Officer: Mark Spangler, Director of Technical Services

Any queries on this report may be directed to Mark Spangler, Director of Technical Services on telephone (08) 8935 9958 or email mark.spangler@palmerston.nt.gov.au.

Schedule of Attachments:

Attachment A: Copy of consultant's report - Baban Place Stormwater Investigation - 1/10/2008



Palmerston City Council

Baban Place Stormwater Investigation

- Revision B
- Draft
- 01/10/2008



Palmerston City Council

Baban Place Stormwater Investigation

- Draft
- 01/10/2008

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ATTACHMENT A**Document history and status**

Revision	Date issued	Reviewed by	Approved by	Date approved	Revision type
A	30/01/04	J Mulkearns	J Mulkearns	06/02/2004	Draft
B	01/10/08	J Mulkearns	J Mulkearns	01/10/2008	Draft

Distribution of copies

Revision	Copy no	Quantity	Issued to
A	1	1	Palmerston City Council
B	1	1	Palmerston City Council

Printed:	2 October 2008
Last saved:	2 October 2008 02:17 PM
File name:	I:\DRWN\Projects\DR04716\25\Technical\Reports\ReportA.doc
Author:	Glenn Coffey
Project manager:	John Mulkearns
Name of organisation:	Palmerston City Council
Name of project:	Baban Place Stormwater Investigation
Name of document:	
Document version:	B
Project number:	DB05380



1. Introduction

Sinclair Knight Merz were engaged in 2004 by Palmerston City Council (PCC) to undertake an investigation on the stormwater drainage in Baban Place, Pinelands, due to the frequent flooding experienced at this location.

The brief required the investigation of the existing system and establish the reasons for the regular flooding and provide a solution to provide the existing buildings with protection from the major flood event, the 1:100 AEP flood.

In 2008 PCC requested that SKM review and update the initial report and provide a current cost estimate for the recommended upgrades. PCC also requested that the works be broken into packages (stages) suitable for letting over subsequent budgeting periods.

ATTACHMENT A

2. Existing Stormwater System

Baban Place is located in a large depression and was developed when an existing large allotment was re-subdivided.

The stormwater system for the Baban Place subdivision was simply connected to the only underground pipe available, which was a 375mm pipe located in the Northeast corner of the subdivision. From this point the existing pipe system increases in size (up to 750mm) as it traverses several allotments and connects to the piped system in the Stuart Highway service road.

The capacity of the system built for this subdivision was therefore dependent on the capacity of the single 375mm pipe in the Northeast corner of the subdivision, to which all stormwater pipework from Baban Place is connected. No provision for overflow in a major storm is provided, so stormwater flows in excess of the capacity of the pipe system simply builds up in the cul-de-sac, like a retention basin, and gradually dissipates through the pipe system over a period of time.

The estimated capacity of the pipe in the Northeast corner is approximately 200 l/s. The 1:100 AEP flow is estimated as 1980 l/s (1.98 cumec). The 1:2 AEP flow was estimated at 880l/s (0.88 cumec).



3. Rectification Works

3.1 Design

PCC requested that the stormwater drainage Baban Place be designed for the major storm (1:100AEP storm) and to utilise, where possible, existing easements. The only option available was considered to provide a piped underground system with the capacity to cater for the major storm. Catering for the stormwater on the surface was considered to be impractical, as Baban Place is depressed relative to the surrounding areas and significant land acquisition would be required to provide reserves through existing properties.

The hydrology for the proposed system was undertaken in accordance with the requirements of Australian Rainfall and Runoff and hydraulics analysed utilising the hydraulic gradeline method. In summary the recommended system provides for the following flow regime

- The stormwater is collected at the 2 low points in Baban Place in new suitably sized collection pits. The maximum level of flooding in the 1:100 AEP storm is calculated to be RL 32.66 AHD, which is 220mm below the level of the lowest floor level in Baban Place (Section 4531)
- The stormwater for this major storm is piped to the Stuart Highway service road along the same route as the existing pipework (existing pipework is replaced) to a large outlet pit in the service road.
- The new underground system will cater for the 1:100 AEP flow from each lot along the alignment served by this pipe.

The recommended system is shown in Appendix A.

3.2 Staging

PCC requested that the recommended works be broken into stages suitable for construction over several budgeting periods. The total works was split into three packages (Appendix A). As the existing infrastructure is undersized it is recommended that upgrades begin at the downstream end of the system and progress to Baban Place.

3.3 Cost

The cost of the upgrade works was estimated using current market rates, exclusive of GST. 25% contingency has been included to reflect the variability in the current construction market. The estimated cost of the system if constructed in a single stage is \$1,190,000 and is detailed in Appendix B.

ATTACHMENT A

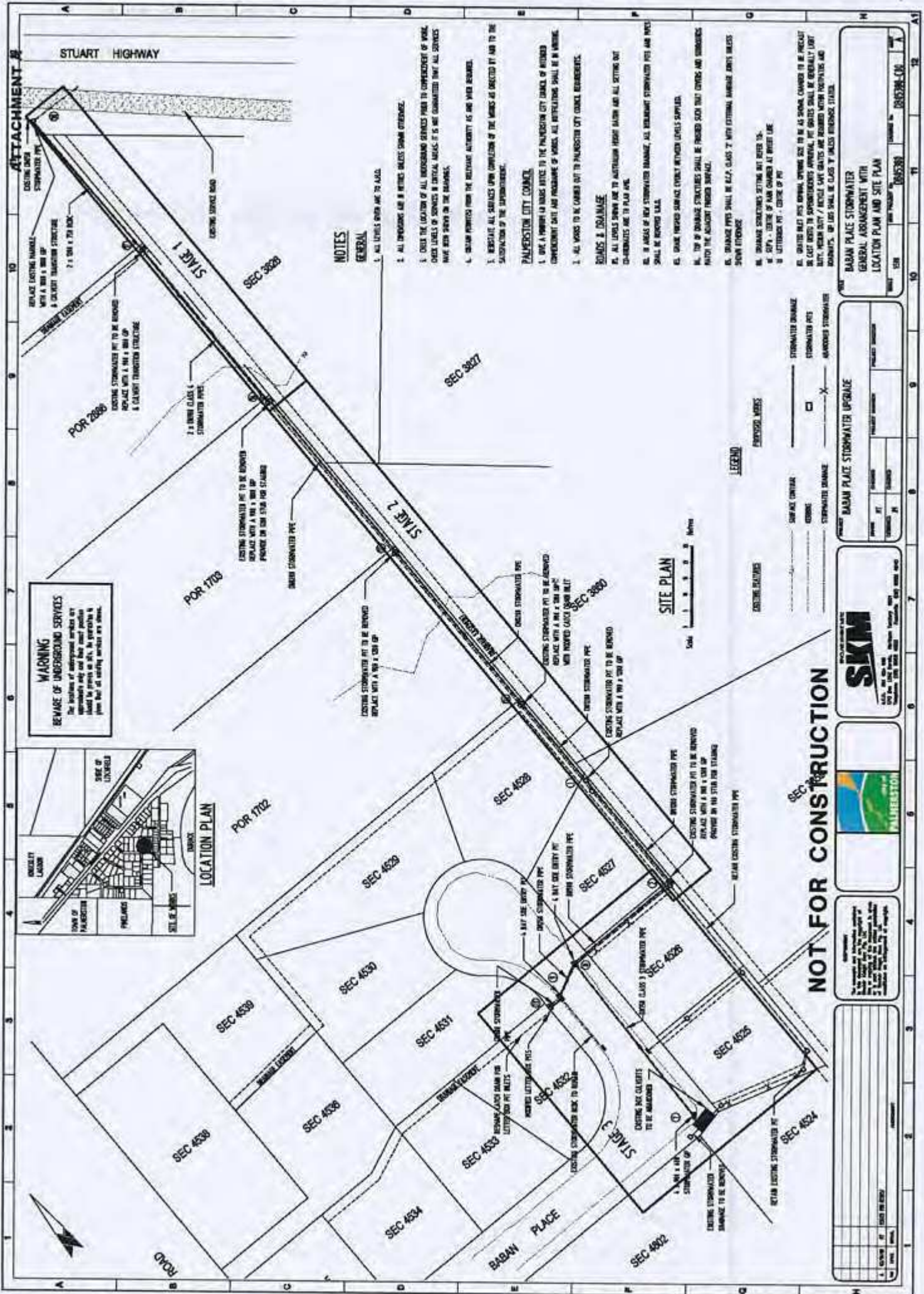
The estimated costs of individual stages are;

- Stage 1 - \$533,000
- Stage 2 - \$458,000
- Stage 3 - \$237,000

Cost estimates for stages are in today's currency and no escalation has been included to account for construction taking place sometime in the future. Estimates are detailed in Appendix B.



Appendix A Recommended Upgrades and Staging



WARNING
BEWARE OF UNDERGROUND SERVICES
 The location of any underground services is shown on this plan. It is the responsibility of the contractor to verify the location of all existing services and to ensure that all existing services are protected.

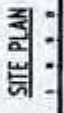


NOTES
GENERAL

1. ALL LEVELS GIVEN ARE TO A.S.L.
2. ALL IMPROVING AND REPAIRS EXCESS SHOWN OTHERWISE.
3. CHECK THE LOCATION OF ALL UNDERGROUND SERVICES PRIOR TO COMMENCEMENT OF WORK. CHECK LEVELS OF SERVICES IN CRITICAL AREAS. IT IS NOT GUARANTEED THAT ALL SERVICES HAVE BEEN SHOWN ON THE DRAWINGS.
4. DESIGN PROVIDED FROM THE RESERVE AUTHORITY AS AND WHEN REQUIRED.
5. RELOCATE ALL SERVICES UPON COMPLETION OF THE WORKS AS DIRECTED BY AFB TO THE SATISFACTION OF THE SUPERINTENDENT.

PALMERSTON CITY COUNCIL

1. WORK A FURTHER 10 METRES BEYOND THE PALMERSTON CITY COUNCIL OF WITHDRAWN COMPENSATION DATE AND PROVISION OF WORKS. ALL INFILTRATIONS SHALL BE IN WORKING.
 1. ALL WORKS TO BE CARRIED OUT TO PALMERSTON CITY COUNCIL REQUIREMENTS.
- ROADS & DRAINAGE**
1. ALL LEVELS SHOWN ARE TO AUSTRALIAN HEIGHT DATUM AND ALL SETTING OUT CO-ORDINATES ARE TO PLAN AFB.
 1. IN AREAS OF NEW STORMWATER DRAINAGE, ALL RELEVANT STORMWATER PITS AND INPITS SHALL BE REPEATED AS SHOWN.
 1. GRADE IMPROVED SURFACE EVENTUALLY BETWEEN LEVELS SUPPLIED.
 1. TOP OF DRAINAGE STRUCTURES SHALL BE FINISHED SUCH THAT CROWN AND SURROUNDINGS MATCHES THE ADJACENT FINISHED SURFACE.
 1. DRAINAGE PITS SHALL BE R.C.P. CLASS 7 WITH EXTERNAL RAINWATER DRAINAGE POINTS EXCESS DOWN STRENGTH.
 1. DRAINAGE STRUCTURES SETTING NOT EXCEED 15%.
 1. C.P.P. - CENTER OF MAIN CHANNEL AT BRIDGE LIKE.
 1. LUTTERING PIT - CENTER OF PIT.
 1. QUOTE BUILT PITS EXTERNAL SURFACE SIZE TO BE AS SHOWN CHANNEL TO BE FINISHED IN LEVEL WITH TO SURROUNDINGS APPROXIMATE. PITS SHALL BE GENERALLY 1.0M DEPTH. PITS SHALL BE REPEATED WITH INTERPOLATION AND EXCESS. PITS SHALL BE CLASS 7 IN EXCESS EXCESSIVE STRENGTH.



LEGEND

- EXISTING SERVICES
- PROPOSED WORKS
- SURFACE DRAINAGE
- STORMWATER DRAINAGE
- STORMWATER PITS
- MANHOLES
- STORMWATER DRAINAGE
- STORMWATER PITS
- MANHOLES

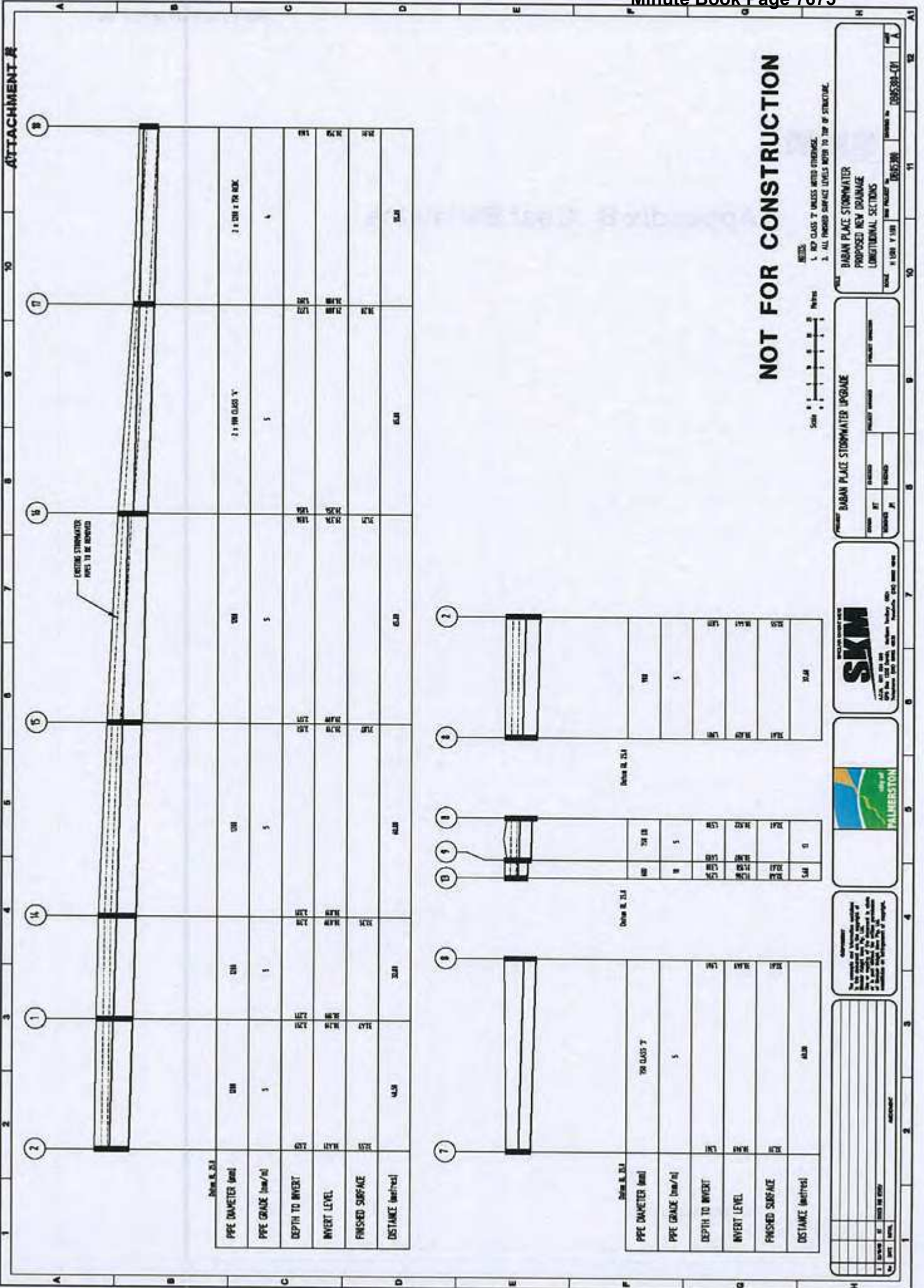
NOT FOR CONSTRUCTION

BABIAN PLACE STORMWATER GENERAL ARRANGEMENT WITH LOCATION PLAN AND SITE PLAN

DATE: 15/08/2018
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT NO: [Number]
 SHEET NO: [Number] OF [Total Sheets]

SKM
 SURVEYING & ENGINEERING
 10/11-13/15 WILSON ROAD, WILSON, AUCKLAND, NEW ZEALAND
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ATTACHMENT B



NOT FOR CONSTRUCTION

NOTES:
 1. ALL PROPOSED SURFACE LEVELS REFER TO THE B.F. STRUCTURE.
 2. ALL PROPOSED SURFACE LEVELS REFER TO THE B.F. STRUCTURE.

Scale: 1" = 10'-0"

PIPE DIAMETER (mm)	100	100	100	100	100	100	100
PIPE GRADE (mm/m)	5	5	5	5	5	5	5
DEPTH TO INVERT	1275	1275	1275	1275	1275	1275	1275
INVERT LEVEL	1148	1148	1148	1148	1148	1148	1148
FINISHED SURFACE	1275	1275	1275	1275	1275	1275	1275
DISTANCE (metres)	0.00	3.00	6.00	9.00	12.00	15.00	18.00

PIPE DIAMETER (mm)	100 CLASS 7	100	100	100	100	100
PIPE GRADE (mm/m)	5	5	5	5	5	5
DEPTH TO INVERT	1275	1275	1275	1275	1275	1275
INVERT LEVEL	1148	1148	1148	1148	1148	1148
FINISHED SURFACE	1275	1275	1275	1275	1275	1275
DISTANCE (metres)	0.00	3.00	6.00	9.00	12.00	15.00

PROPOSED BABAN PLACE STORMWATER UPGRADE

PROPOSED NEW DRAINAGE LONGITUDINAL SECTIONS

DATE: 10/01/19 10:00 AM DRAWN BY: [Name] CHECKED BY: [Name] PROJECT NUMBER: [Number] SHEET NO.: 0095388-CV1

DATE: 10/01/19 10:00 AM DRAWN BY: [Name] CHECKED BY: [Name] PROJECT NUMBER: [Number] SHEET NO.: 0095388-CV1



Appendix B Cost Estimates

Palmerston City Council

DB05380

BABAN PLACE STORMWATER UPGRADE

1-Oct-08

TOTAL COST ESTIMATE - EXCLUDING GST

ITEM NO.	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
1	MISCELLANEOUS PROVISIONS				
	a) Establishment		Item	\$	100,000.00
	b) As Constructed Drawings		Item	\$	10,000.00
2	PROVISION FOR TRAFFIC / ACCESS				
	a) Provision for Traffic and Easement Access; including detours, temporary connections, access to adjacent properties, traffic guidance, traffic control devices, temporary bridging, warning devices, maintenance and restoration		Item	\$	20,000.00
4	DRAINAGE WORKS				
	Including removal of existing drainage infrastructure, supply and install including bedding and backfill and reinstatement of existing surfaces				
	a) Drainage Structures				
	i) 4 Bay SEP (Type B)	1	No.	4000 \$	4,000.00
	ii) 4 Bay SEP (Type C)	1	No.	4300 \$	4,300.00
	iii) 900 x 600 GIP		No.	4000 \$	-
	iv) 900 x 1200 GIP	4	No.	7000 \$	28,000.00
	v) 900 x 1800 GIP	2	No.	9000 \$	18,000.00
	vi) 4 x 900 x 600 GIP	1	No.	10000 \$	10,000.00
	vii) 1800 x 1800 GIP	1	No.	12000 \$	12,000.00
	viii) Modified Letterbox Pit	1	No.	4000 \$	4,000.00
	ix) Transition to RCBC	2	No.	3000 \$	6,000.00
	b) Reinforced Concrete Pipe				
	i) DN 600 Class 3	6	m	640 \$	3,840.00
	ii) DN 750 Class 3	73	m	800 \$	58,400.00
	iii) DN 900 Class 2	38	m	1100 \$	41,800.00
	iv) 2 x DN 900 Class 2	65	m	1900 \$	123,500.00
	v) DN 1200 Class 2	198	m	1430 \$	283,140.00
	c) Reinforced Concrete Box Culvert				
	i) 2 x 1200 x 750	55	m	3850 \$	211,750.00
	d) Open Unlined Drain				
	i) Reshape existing OUD for Letterbox Pit	20	m	500 \$	10,000.00
	Subtotal			\$	948,730.00
	Contingency 25%			\$	237,182.50
	Total			\$	1,190,000.00

ATTACHMENT A

Baban PI SW Stage 1 Cost

Palmerston City Council

DB05380

BABAN PLACE STORMWATER UPGRADE STAGE 1

1-Oct-08

STAGE 1 COST ESTIMATE - EXCLUDING GST

ITEM NO.	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
1	MISCELLANEOUS PROVISIONS				
	a) Establishment		Item	\$	40,000.00
	b) As Constructed Drawings		Item	\$	5,000.00
2	PROVISION FOR TRAFFIC / ACCESS				
	a) Provision for Traffic and Easement Access; including detours, temporary connections, access to adjacent properties, traffic guidance, traffic control devices, temporary bridging, warning devices, maintenance and restoration		Item	\$	10,000.00
4	DRAINAGE WORKS				
	Including removal of existing drainage infrastructure, supply and install including bedding and backfill and reinstatement of existing surfaces				
	a) Drainage Structures				
	i) 4 Bay SEP (Type B)		No.	4000 \$	-
	ii) 4 Bay SEP (Type C)		No.	4300 \$	-
	iii) 900 x 600 GIP		No.	4000 \$	-
	iv) 900 x 1200 GIP		No.	7000 \$	-
	v) 900 x 1800 GIP	2	No.	9000 \$	18,000.00
	vi) 4 x 900 x 600 GIP		No.	10000 \$	-
	vii) 1800 x 1800 GIP	1	No.	12000 \$	12,000.00
	viii) Modified Letterbox Pit		No.	4000 \$	-
	ix) Transition to RCBC	2	No.	3000 \$	6,000.00
	b) Reinforced Concrete Pipe				
	i) DN 600 Class 3		m	640 \$	-
	ii) DN 750 Class 3		m	800 \$	-
	iii) DN 900 Class 2		m	1100 \$	-
	iv) 2 x DN 900 Class 2	65	m	1900 \$	123,500.00
	v) DN 1200 Class 2		m	1430 \$	-
	c) Reinforced Concrete Box Culvert				
	i) 2 x 1200 x 750	55	m	3850 \$	211,750.00
	d) Open Unlined Drain				
	i) Reshape existing OUD for Letterbox Pit		m	500 \$	-
	Subtotal			\$	426,250.00
	Contingency 25%			\$	106,562.50
	Total			\$	533,000.00

Baban PI SW Stage 2 Cost

Palmerston City Council

DB05380

BABAN PLACE STORMWATER UPGRADE STAGE 2

1-Oct-08

STAGE 2 COST ESTIMATE - EXCLUDING GST

ITEM NO.	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
1	MISCELLANEOUS PROVISIONS				
	a) Establishment		Item	\$	40,000.00
	b) As Constructed Drawings		Item	\$	5,000.00
2	PROVISION FOR TRAFFIC / ACCESS				
	a) Provision for Traffic and Easement Access; including detours, temporary connections, access to adjacent properties, traffic guidance, traffic control devices, temporary bridging, warning devices, maintenance and restoration		Item	\$	10,000.00
4	DRAINAGE WORKS				
	Including removal of existing drainage infrastructure, supply and install including bedding and backfill and reinstatement of existing surfaces				
	a) Drainage Structures				
	i) 4 Bay SEP (Type B)		No.	4000 \$	-
	ii) 4 Bay SEP (Type C)		No.	4300 \$	-
	iii) 900 x 600 GIP		No.	4000 \$	-
	iv) 900 x 1200 GIP	4	No.	7000 \$	28,000.00
	v) 900 x 1800 GIP		No.	9000 \$	-
	vi) 4 x 900 x 600 GIP		No.	10000 \$	-
	vii) 1800 x 1800 GIP		No.	12000 \$	-
	viii) Modified Letterbox Pit		No.	4000 \$	-
	ix) Transition to RCBC		No.	3000 \$	-
	b) Reinforced Concrete Pipe				
	i) DN 600 Class 3		m	640 \$	-
	ii) DN 750 Class 3		m	800 \$	-
	iii) DN 900 Class 2		m	1100 \$	-
	iv) 2 x DN 900 Class 2		m	1900 \$	-
	v) DN 1200 Class 2	198	m	1430 \$	283,140.00
	c) Reinforced Concrete Box Culvert				
	i) 2 x 1200 x 750		m	3850 \$	-
	d) Open Unlined Drain				
	i) Reshape existing OUD for Letterbox Pit		m	500 \$	-
	Subtotal			\$	366,140.00
	Contingency 25%			\$	91,535.00
	Total			\$	458,000.00

ATTACHMENT A

Baban Pl SW Stage 3 Cost

Palmerston City Council

DB05380

BABAN PLACE STORMWATER UPGRADE STAGE 3

1-Oct-08

STAGE 3 COST ESTIMATE - EXCLUDING GST

ITEM NO.	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
1	MISCELLANEOUS PROVISIONS				
	a) Establishment		Item	\$	20,000.00
	b) As Constructed Drawings		Item	\$	5,000.00
2	PROVISION FOR TRAFFIC / ACCESS				
	a) Provision for Traffic and Easement Access; including detours, temporary connections, access to adjacent properties, traffic guidance, traffic control devices, temporary bridging, warning devices, maintenance and restoration		Item	\$	10,000.00
4	DRAINAGE WORKS				
	Including removal of existing drainage infrastructure, supply and install including bedding and backfill and reinstatement of existing surfaces				
	a) Drainage Structures				
	i) 4 Bay SEP (Type B)	1	No.	4000 \$	4,000.00
	ii) 4 Bay SEP (Type C)	1	No.	4300 \$	4,300.00
	iii) 900 x 600 GIP		No.	4000 \$	-
	iv) 900 x 1200 GIP		No.	7000 \$	-
	v) 900 x 1800 GIP		No.	9000 \$	-
	vi) 4 x 900 x 600 GIP	1	No.	10000 \$	10,000.00
	vii) 1800 x 1800 GIP	1	No.	12000 \$	12,000.00
	viii) Modified Letterbox Pit	1	No.	4000 \$	4,000.00
	ix) Transition to RCBC	2	No.	3000 \$	6,000.00
	b) Reinforced Concrete Pipe				
	i) DN 600 Class 3	6	m	640 \$	3,840.00
	ii) DN 750 Class 3	73	m	800 \$	58,400.00
	iii) DN 900 Class 2	38	m	1100 \$	41,800.00
	iv) 2 x DN 900 Class 2		m	1900 \$	-
	v) DN 1200 Class 2		m	1430 \$	-
	c) Reinforced Concrete Box Culvert				
	i) 2 x 1200 x 750		m	3850 \$	-
	d) Open Unlined Drain				
	i) Reshape existing OUD for Letterbox Pit	20	m	500 \$	10,000.00
	Subtotal			\$	189,340.00
	Contingency 25%			\$	47,335.00
	Total			\$	237,000.00

Our Ref: RGG:JM:20130943

3 September 2013

By Email: mark.spangler@palmerston.nt.gov.au

Attention: Mr Mark Spangler

Director Technical Services
City of Palmerston Council
PO Box 1
Palmerston NT 0831

Dear Mr Spangler

Baban Place Stormwater Investigation

A. Instructions

Palmerston City Council (the “**Council**”) seeks advice as to whether it can recover from any party, for flooding that occurs periodically to Baban Place, Pinelands, NT, which is under the purview of the Council (the “**Land**”).

B. Background

Part of the Land is subject to periodic flooding. In 2008, we note that the Council commissioned a (draft) report from Sinclair Knight Merz (“**SKM**”). At page 2 of that report it states:

“No provision for overflow in a major storm is provided, so stormwater flows in excess of the capacity of the pipe system simply builds up in the cul-de-sac, like a retention basin, and gradually dissipates through the pipe system over a period of time”.

For a full chronological background, kindly review the Chronology attached to this Advice. However, in sum, in 1994 the Northern Territory Planning Authority (“**NTPA**”) granted approval for Mr G.P. Moretti (the “**Developer**”) to develop the Land.

In January 1995, the Land was handed over from the Department of Transport and Works (“**Works**”) to the NTPA. Later that month the Land was approved by the Surveyor-General and a Letter of Compliance was provided by Mr J. de Vries, Consulting Civil Engineer (“**Mr de Vries**”). On 14 October 1998, The Land was handed over to the Council. The Council has been aware of the drainage caused issues since 1998.

C. Can the Council seek Compensation?

In the ordinary course of events, public bodies such as the NTPA, will be potentially liable in nuisance and negligence in the same way that private individuals are. The latter also applies to professional persons such as Mr de Vries and the Developer.

In order to establish a cause of action against, NTPA, NT Government or the Developer (the “**Potential Defendant**”), the Palmerston City Council (the “**Council**”) would have to prove the following:

- the Potential Defendant owed a duty of care to the Council;
- that duty was breached; and
- damage occurred as a result of that breach.

Prima facie, there is a cause of action against:

- Mr de Vries who signed the plans certifying the drainage detailed was sufficient. Any claim against Mr de Vries would be based on professional negligence, that is, he fell short of the professional standards reasonably expected of a competent civil engineer.

However, all claims are subject to strict limitation periods.

1. What is the applicable limitation period to a claim instigated by the Council? Can it be extended?

The primary statute which imposes limitations in the Northern Territory is the Limitation Act 1981 (NT) (the “**Law**”). An action founded on tort must be instigated within a period of 3 years from the date the cause of action is complete (section 12 of the Law). In the case of a negligence claim, a cause of action is complete when the damage has occurred.

Generally, limitations will not run while a person is under a disability or is an infant, or where there has been fraud or a mistake. Neither can be suggested in the present circumstances.

Limitation periods may be extended in limited circumstances, however, any power the Court does have to extend limitation is conditional on the plaintiff’s prompt action to prosecute a claim within 12 months of knowledge of the cause of action coming to light. This is the crux of the Council’s problem.

From the papers provided, it is not clear, precisely when the development was completed, however, we understand the land was transferred to the Council on 14 October 1998. In addition, we are instructed that the Council were aware of the flooding issue during late 1998.

If the date at which the Council became aware of the property was, say, 1 December 1998, limitation would start to run from that time. In this example, proceedings would need to be issued on or before 30 November 2001.

We have been instructed that the Council’s engineer, as well as in the draft report from SKM, both have considered the issue and formed an opinion that the flooding is as a result of inadequate drains being installed. If this is the case, a number of questions will follow, such as:

- When did the Council become aware it was the drainage (or lack of it) causing the flooding?

- Have investigations/inspections been conducted to establish (Whilst noted that the SKM report is only a draft, the following would need to be included in a final report) :
 - the drains are in the locations identified on the plans?
 - the drains are in accordance with the specifications detailed on the plans?

The answers to these questions may have a bearing on the accrual of limitation, for example, if the Council can establish the drains have not been constructed in accordance with the specifications and it is that “defect” which is causing the drains to flood, that information may be considered a “material fact” for the purposes of section 44 of the Law extending the limitation. However, before any such accrual could be confirmed it would be necessary to obtain an updated and more in depth expert report from SKM as to the specification of the drains as detailed in the plans, the specification of the drains in situ, an opinion as to whether the difference, if any, had a material affect on the flooding, and a detailed account of the rectification works and associated costs.

Notwithstanding the above, on the face of it, any claim against the NTPA, NT Government or the Developer will be time barred.

2. Can any other person/body bring a claim?

There may be causes of action available to the property owners, however, all causes of action will be subject to a limitation period of three years.

2.1 Claim by purchaser against Vendor

If a purchaser buys a premises which is prone to flooding, the doctrine of “buyer beware” or “*caveat emptor*” applies. It will, generally, be difficult to sue a vendor for claims in respect of flooding unless the vendor is guilty of misrepresentation. It is therefore important to ask the right questions before contracts are exchanged. If an individual is purchasing a property they should make enquiries as to whether the property has flooded and details of each occasion, and whether any insurance claims have been made in respect of flooding etc.

If the vendor responds to such enquiries untruthfully and it can be shown that the misrepresentation induced the purchaser to enter in to the contract, the purchaser would have the right to rescind the contract and/or seek damages for misrepresentation.

2.2 Claim by purchaser against Conveyancer

If a purchaser, informs his/her lawyer/conveyancer they are concerned above the risk of flooding and the lawyer/conveyance failed to make the necessary pre-contract searches, or if the lawyer/conveyance has local knowledge of flooding in a particular area and fails to make sufficient enquiries there could be a cause of action in negligence against the lawyer/conveyance.

In order to give rise to such a claim, the purchaser must prove on the balance of probabilities that had those searches been undertaken the results would have alerted the purchaser to the problem and that they would not have bought the property as a result.

If the flooding which is suffered by the purchaser occurred for the first time after purchase, it will be difficult for blame to rest with the vendor or the conveyance.

2.3 Claim by purchaser against Surveyor

Prior to purchasing a property most buyers (and mortgagees) commission a survey. The scope of the surveyor's duties will depend on the type of survey requested.

If a reasonably competent surveyor should have appreciated that the property was at risk from flooding or finds signs of flooding, a duty to warn will arise. A failure to do so would probably be negligent.

2.4 Claim by purchaser against Architects/Engineers

From the information provided we understand an engineer has investigated the site and formed the opinion the drainage specified in the Plans was not sufficient. If the engineer is correct, it may be possible to bring a claim against the architect, engineer or the builder who is at fault. However, such a claim can be problematic as it may not establish a sufficient link between the architect/engineer/builder and any subsequent purchaser.

We have obtained titled searches of the properties known as 8 and 9 Baban Place, Pinelands. As indicated in the above chronology, 8 Baban Place is owned by JMK Investments (NT) Pty Ltd as Trustee for The Koukouvas Family Trust. The property was transferred on or around 1 October 2009. The predecessors in title are Gerasimos Koukouvas (who is likely to be a beneficiary of the Koukouvas Family Trust) and Giovanni Moretti.

In respect of 9 Baban Place, the current owner of the property is Elena Moretti who may or may not be related to the developer. The property was transferred on or around 6 June 2000. 13 years have passed since the transfer and as such, it is likely any claim Elena may have had will be time barred.

2.5 Claim by purchaser against the Council

Owners may have claims against the Council, however, such a claim would be difficult to establish, and again, in respect of the owners of 8 and 9 Baban Place, limitation has expired. If, however, the owners could argue they did not have knowledge of a material fact, a court may be persuaded to extend limitation. That said, we understand the properties have flooded on a number of occasions and as such any owners would need to advance a compelling argument as to why there has been such a significant delay.

3. Practical Steps forward

As highlighted above, the Council has had knowledge of the drainage issue for a substantial period of time. In the circumstances it appears any claim the Council may have had has become time

barred.

We are instructed that the Council has approached the NT Government which dismissed the claim. We are not aware that the Council has approached any other parties.

There are some steps which can be taken in an attempt to ascertain whether or not a contribution towards the rectification works can be obtained:

Prepare a letter in accordance with Practice Direction 6 of 2009 – Trial Civil Procedure Reforms (“**PD6**”). PD6 encourages parties to resolve disputes without recourse to formal proceedings. We would suggest that in the letter we invite the NT Government and Mr de Vries to attend mediation.

Regardless of the limitation issue, we would recommend we request Mr de Vries notify his insurers of the potential claim and confirm the details of the insurance policy in place at the time. Any claim against Mr de Vries would be based on professional negligence and would be subject to the same time limits, i.e. 3 years. With this in mind it is highly likely Mr de Vries and his insurer refuse to provide any meaningful response and simply say the claim is time barred.

There is no guarantee that the NT Government or Mr de Vries will be prepared to attend mediation and we must make it clear that in the event the parties are not prepared to entertain mediation we are not able to compel them to.

If, however, the parties are prepared to attend mediation we would propose one of three mediators from William Forster Chambers. We have made some initial enquiries and can advise the costs of the mediation would be in the region \$3,000 to \$5,000 plus GST depending on the length of the mediation.

If the parties are not prepared to mediate before taking any proceedings it would be necessary to obtain an expert report. Again, we have made some initial enquiries and we are currently awaiting confirmation as to costs, however, as a ball park figure we would expect the experts’ fee to be the region of \$5,000 to \$10,000 plus GST.

D. Conclusions

As set out above, any claim is likely to be time barred and as such the prospect of recovering any of the cost of the rectification costs is minimal. Further, the prospect of recovering a contribution from the NT Government or Mr de Vries insurer is also likely to be minimal. However, if the parties are prepared to mediate they may be prepared to make a small contribution on a commercial basis so as to avoid incurring legal costs defending formal proceedings. That said, the parties may simply refuse to engage on the basis the claim is time barred and there is no expert report.

It is of the utmost importance that the Council is clear as to when it became aware that the drainage (or lack of it) was the cause of the problem, as this may have a material effect on the applicable limitation period. With this in mind, the Council should check precisely when its in-house engineer investigated the problem and collate any notes, reports recorded at that time. If it can be established that the engineer’s investigations were the first time the Council became aware that the drainage, particularly with reference to the plans, was the cause, proceedings must be issued within

12 months of that date. That said, if further action was taken it is likely that the proposed defendants could rely on the equitable defence of laches which essentially means the defendants could argue the delay in bringing proceedings is inequitable and that in itself a bar to the claim.

If the Council is to consider progressing this matter it is important to adopt a proactive approach, and as such, pending further instructions, it may be appropriate to file a claim with a general endorsement simply to preserve the Council's position.

Should the Council require assistance in relation to the suggested practical steps, we will be happy to assist.

Council should be aware that if proceedings are issued and the claim is lost, the Council will be liable to pay the other parties costs.

Yours faithfully
CRIDLANDS MB

A handwritten signature in blue ink, appearing to read 'CM', with a long horizontal flourish extending to the right.

Chris McDuff
Partner

Contact: 08 8943 0439
Facsimile: 08 8943 0499
Email: chris.mcduff@cridlandsmb.com.au

Chronology

Date	Description of document/event	Parties involved
21.3.1994	Application to NTPA for consent to subdivision	GP Moretti (Developer) NTPA
11.5.1994	Proposed Subdivision plan 255/TP produced	J.J. de Vries
7.6.1994	Meeting of NTPA – approved application for 20 lots	NTPA
24.6.1994	Proposed Subdivision Plan issued by NTPA	JM Robertson, Chairman on NTPA
28.6.1994	Proposed Subdivision Plan issued by NTPA	J.A Howell, Deputy Chairman, NTPA
28.6.1994	Instrument of Determination S2638 – NTPA consent to subdivision creating 20 lots	J.A Howell
16.9.1994	Master Services Plan 255/1	J.J de Vries
16.9.1994	Road works Plan and Longitudinal Section Plan 255/2	J.J de Vries Approved NTPA (McKewer) 23.9.94
16.9.1994	Intersection Detail Bend Detail Plan 255/3	J.J de Vries Approved NTPA (McKewer) 23.9.94
16.9.1994	Cul-De-Sac Detail Kerb Inlet Detail Plan 255/4	J.J de Vries Approved NTPA (McKewer) 23.9.94
16.9.1994	Typical Cross Section, Cross Sections Plan 255/5	J.J de Vries Approved NTPA (McKewer) 23.9.94
16.9.1994	Cross Sections Plan 255/6	J.J de Vries Approved NTPA (McKewer) 23.9.94
16.9.1994	Cross Sections Plan 255/7	J.J de Vries

		Approved NTPA (McKewer) 23.9.94
16.9.1994	Stormwater Drainage Plan and Longitudinal Sections Plan 255/8	J.J de Vries Approved NTPA (McKewer) 23.9.94
16.9.1994	Stormwater Drainage Longitudinal Sections Plan 255/9	J.J de Vries Approved NTPA (McKewer) 23.9.94
16.9.1994	Allotment Regrading Plan 255/10	J.J de Vries Approved NTPA (McKewer) 23.9.94
22.12.1994	Survey carried out by or under the supervisions of Licensed Surveyor	John Yow Kiew Liew
2.1.1995	Minute – Acceptance and Handover of New Asset	From Ken Hornsby, Assistance Secretary, Dept of Transport and Works To Ken Grattan, Planning Manager cc. Je.de Vries, NT Constructions Agency
3.1.1995	New Title issued in accordance with subdivisions	Gioanni Moretti (Vol 365/Folio 26) (vol 88/Folio 129)
16.1.1995	Letter confirming Developer has complied with conditions of Instrument of Determination	Ken Hornsby to NTPA
31.1.1995	Survey Approval by Surveyor General	J. Mazi
Undated	Certificate of Compliance	J.J de Vries to Dept of Transport and Works
14.10.1998	Land incorporated in to Council Area	
Late 1998	Council aware of drainage issues	
6.6.2000	9 Barban Place, Pinelands, purchased by Elena Moretti.	

Unknown	Council obtains advice - drainage detailed on plans was not sufficient. The rectification costs will exceed \$1 million.	
Unknown	Council approaches NT Government and requests a contribution towards costs.	

CITY OF PALMERSTON

**Minutes of Council Meeting
held in Council Chambers, Civic Plaza, Palmerston
on Tuesday, 5 November 2013 at 7:10pm**

RELEASED TO THE PUBLIC RECORD

1. PRESENT

Elected Members: His Worship the Mayor Ian Abbott (Chair)
Deputy Mayor Andrew Byrne
Alderman Sue McKinnon
Alderman Paul Bunker
Alderman Geoff Carter
Alderman Seranna Shutt

Staff: Ricki Bruhn, Chief Executive Officer
Ben Dornier, Director of Corporate Community Services
Mark Spangler, Director of Technical Services
Caroline Hocking, Minute Secretary

2. APOLOGIES

Alderman Malone – Apology

3. DEPUTATIONS / PRESENTATIONS

Nil

4. OFFICER REPORTS

4.1 Review of Municipality Boundaries – City of Palmerston 8/0399

Moved: Alderman Bunker
Seconded: Alderman Carter

1. THAT Council receives Report Number 8/0399.
2. THAT the Chief Executive Officer forward a submission to the Minister for Local Government and Regions seeking to have the land adjacent to the Municipality of Palmerston (shaded in red on the attached map) annexed / incorporated within the City of Palmerston.
3. THAT the Chief Executive Officer advise the Minister for Local Government and Regions of the City of Palmerston's interest in having the area north-west of Pinelands and the area north of Wallaby Holtz Road (both highlighted in green on the attached map) annexed / incorporated within the City of Palmerston.

4.1 Review of Municipality Boundaries – City of Palmerston (continued) 8/0399

4. THAT the Chief Executive Officer advise the Minister for Local Government and Regions of Council's interest in having the area within the Darwin Rates Act Area, adjacent to the City of Palmerston, being incorporated within the Municipality of Palmerston.

CARRIED 8/0834–05/11/2013

4.2 Discharge Statutory Charge on Lot 2827 and Lot 5439 Town of Palmerston 8/0395

Moved: Deputy Mayor Byrne
Seconded: Alderman Shutt

1. THAT Council receives Report Number 8/0395.
2. THAT the Mayor and Chief Executive Officer be authorised to sign and seal the application to discharge statutory charges on Lot 2827 and Lot 5439 Town of Palmerston.

CARRIED 8/0835–05/11/2013

4.3 Request for Review of Unit Rate – Contract TS2013/04 – Grounds Maintenance West

TO REMAIN IN CONFIDENTIAL AS PER COUNCIL DECISION NUMBER 8/0833-05/11/2013

4.4 City of Palmerston Civic Centre

TO REMAIN IN CONFIDENTIAL AS PER COUNCIL DECISION NUMBER 8/0833-05/11/2013

5. MOVE TO OPEN

Moved: Alderman McKinnon
Seconded: Alderman Carter

THAT the Council move into the open session.

CARRIED 8/0840-05/11/2013

The meeting moved to the Open session at 7:28pm.

CONFIRMED AT MEETING TO BE HELD 19 NOVEMBER 2013

(Chair)

ITEM NO. 16.1 **Review of Municipality Boundaries – City of Palmerston**

FROM: Chief Executive Officer

REPORT NUMBER: 8/0399

MEETING DATE: 5 November 2013

Municipal Plan:

4. Governance & Organisation

4.1 Responsibility

We are committed to corporate and social responsibility, the sustainability of Council assets and services, and the effective planning and reporting of Council performance to the community

Summary:

To seek Council support for a submission to be lodged with the Minister for Local Government and Regions to vary the current boundaries of the Municipality of the City of Palmerston to cater for the future growth of the City.

Background:

Following a recent workshop held with Elected Members on 16th October 2013 to review the existing council boundaries, this report formalises a submission to be forwarded to the Minister to expand the current Municipal boundaries.

General:

The recent announcement of a new location for the Palmerston Hospital (within the Municipality of Litchfield Council), provides an opportunity to seek a boundary review. It is anticipated that the new Hospital will be within 3km from the Palmerston CBD and will be closely affiliated with the Palmerston GP Super Clinic and other Health / Community Care providers.

With all remaining residential land in Palmerston currently under development (The Heights Durack, Johnston, Zuccoli and Bellamack), it is also an opportune time to plan for the future in terms of the expansion of Palmerston. The land to the east of the proposed Hospital site represents an opportunity for the future residential expansion of the City.

This area is indicated on the attached map and includes Sections 273, 4229, 4231, 5623 and POR 2820 and is marked in red. It also includes properties fronting on to Wallaby Holtze Road, but at this stage, does not include Wallaby Holtze Road itself.

Any future residential growth in this area will be heavily reliant on the retail, commercial, recreational and service provision facilities which are currently available within Palmerston.

A second area (shaded in red) which has also been considered for incorporation within the Municipality of Palmerston is the industrial area opposite Pinelands which is currently in the Litchfield Council. The majority of this land is currently zoned Light Industry which is largely complimentary to the land across the Stuart Highway in Pinelands which is currently zoned General Industry.

Council staff has been approached by officers from Litchfield Council to discuss the possibility of this particular area being transferred from Litchfield Council to the City of Palmerston. It should be noted that it was the intention of Litchfield Council for the existing 'Darwin Free Spirit Resort' to remain within the Litchfield area.

A third area which is considered appropriate for incorporation into the Municipality of Palmerston is the Unincorporated Elrundie Area on the fringe of Palmerston which includes the recently developed Wishart Business Precinct.

These three areas are highlighted in red on the attached map and represent the immediate areas which council is seeking to have annexed / incorporated into the Municipality of Palmerston.

It was also outlined at the workshop that there is other developable areas of land within close proximity to Palmerston that should be considered for inclusion within the Municipality should the opportunity be presented in the future.

These areas include the land adjoining Pinelands (shaded in green) to the north-west which covers the Berrimah Prison and Berrimah Farm precincts with a view to the future boundary between the City of Darwin and the City of Palmerston being Berrimah Road.

It is also considered that the land to the north of Wallaby Holtze Road (shaded in green) adjacent to Robertson Barracks, may also be considered for inclusion within the Municipality of Palmerston in the future.

With the NT Government currently considering boundary reviews for the Shire Councils as part of the Regional Governance and Structural Reform process, it appears to be an appropriate time to forward a submission to review the boundaries of the City of Palmerston.

Financial Implications:

Nil

Legislation / Policy:

Section 9 (1) (e) of the Local Government Act.

- *"The Administrator may, by Gazette notice, exercise any one or more of the following powers (e) define or change the boundaries of a local government area".*

Section 9 (2) of the Local Government Act

- *“The Minister may also, by Gazette notice, exercise any of the powers conferred by subsection (1) except the power to constitute or abolish a local government area”.*

RECOMMENDATION

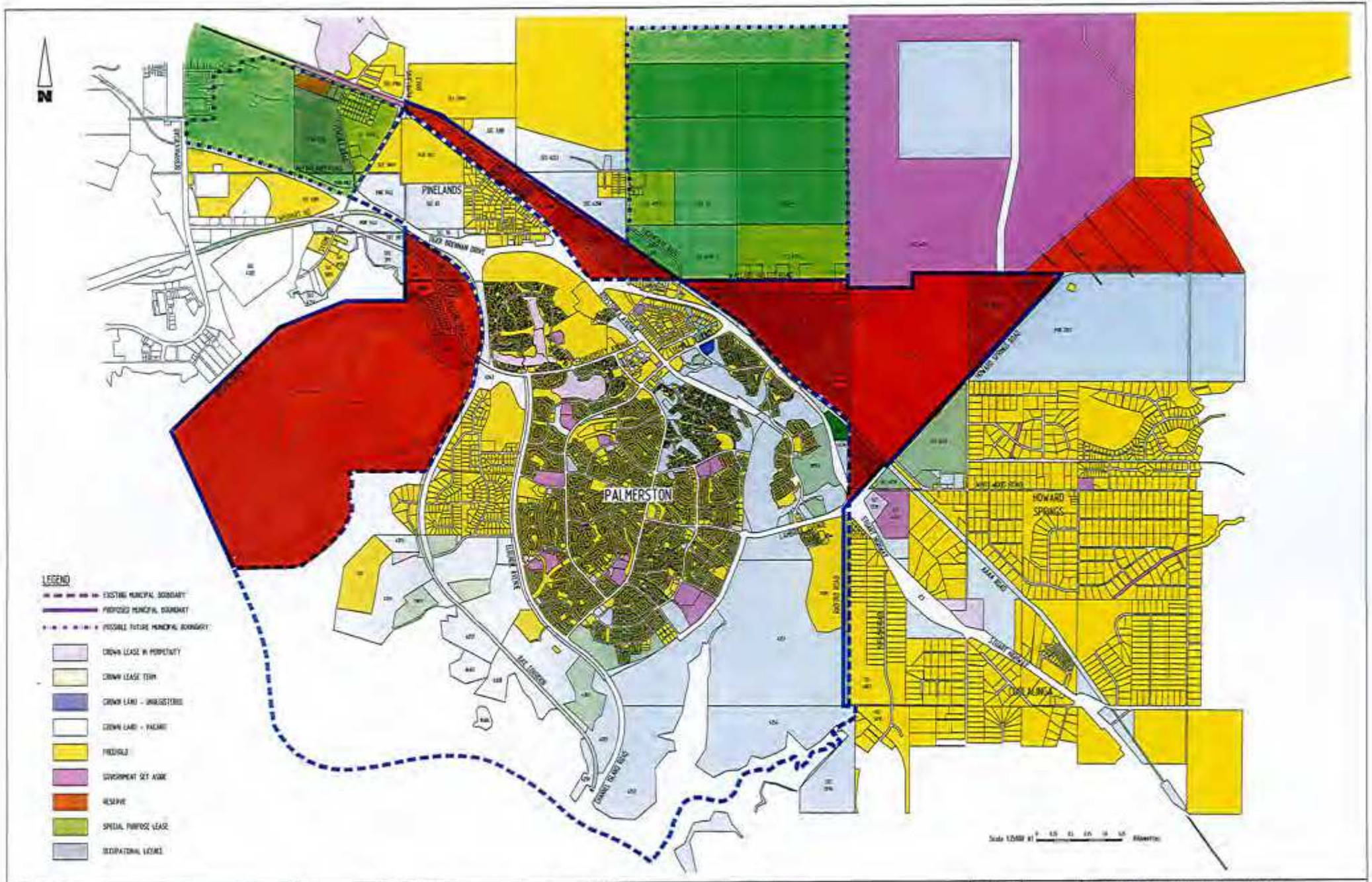
1. THAT Council receives Report Number 8/0399.
2. THAT the Chief Executive Officer forward a submission to the Minister for Local Government and Regions seeking to have the land adjacent to the Municipality of Palmerston (shaded in red on the attached map) annexed / incorporated within the City of Palmerston.
3. THAT the Chief Executive Officer advise the Minister for Local Government and Regions of the City of Palmerston’s interest in having the area north-west of Pinelands and the area north of Wallaby Holtze Road (both highlighted in green on the attached map) annexed / incorporated within the City of Palmerston.
4. THAT the Chief Executive Officer advise the Minister for Local Government and Regions of Council’s interest in having the area within the Darwin Rates Act Area, adjacent to the City of Palmerston, being incorporated within the Municipality of Palmerston.

Recommending Officer: Ricki Bruhn, Chief Executive Officer

Any queries on this report may be directed to Ricki Bruhn, Chief Executive Officer on telephone (08) 8935 9902 or email ricki.bruhn@palmerston.nt.gov.au.

Schedule of Attachments:

Attachment A - Map of Palmerston and associated areas



- LEGEND**
- EXISTING MUNICIPAL BOUNDARY
 - PROPOSED MUNICIPAL BOUNDARY
 - - - - - POSSIBLE FUTURE MUNICIPAL BOUNDARY
 - CROWN LAND - IN POSSESSION
 - CROWN LAND TERM
 - CROWN LAND - UNREGISTERED
 - CROWN LAND - VACANT
 - FIELD
 - GOVERNMENT SET ASIDE
 - RESERVE
 - SPECIAL PURPOSE LEASE
 - OCCUPATIONAL LEASE

Scale 1:5000 at 1 10 20 30 40 Meters

NO.	DATE	BY	DESCRIPTION
1	15/01/2014
2
3
4
5

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City of Palmerston

byrne
 design

400 7th St, 3rd Fl
 P.O. Box 43420, Canberra ACT 2611
 Ph: 02 61420222 Fax: 02 61420221

PROJECT NUMBER	1330
TITLE	PROPOSED PALMERSTON MUNICIPAL BOUNDARY LAYOUT PLAN
DATE	13/01/2014
SCALE	AS SHOWN
PROJECT NO.	1330
ISSUE NO.	1330-001
SHEET	8

PROJECT NUMBER	1330
TITLE	PROPOSED PALMERSTON MUNICIPAL BOUNDARY LAYOUT PLAN
DATE	13/01/2014
SCALE	AS SHOWN
PROJECT NO.	1330
ISSUE NO.	1330-001
SHEET	8

ITEM NO. 16.2 Discharge Statutory Charge on Lot 2827 and Lot 5439 Town of Palmerston

FROM: Chief Executive Officer

REPORT NUMBER: 8/0395

MEETING DATE: 5 November 2013

Municipal Plan:

4. Governance & Organisation

4.1 Responsibility

We are committed to corporate and social responsibility, the sustainability of Council assets and services, and the effective planning and reporting of Council performance to the community

Summary:

At its meeting held on 21st May 2013, Council approved to send Lot 2827 and Lot 5439 into the process of power of sale of land for non-payment of rates under Northern Territory Local Government Act. The owner has satisfied the liability, to which the charge relates in full and Council must apply to cancel the registration of statutory charge on the title under Section 171 (5) Local Government Act.

Background:

Division 3 Overriding statutory charge

171 Registration of charge

(1) After rates have been in arrears for at least 6 months, the council may apply to the appropriate registration authority for registration of the charge over the land to which the charge relates.

(2) The registration authority must, on payment of the appropriate fee by the council:

- (a) register the charge as an overriding statutory charge; and
- (b) notify all persons with a registered interest in or over the land of the registration of the charge.

(3) Failure to give notice of the registration of the charge under subsection

(2) (b) does not invalidate the registration of the charge.

(4) A registration authority must cancel registration of a charge if the council applies for the cancellation.

(5) The council must apply for cancellation if the liability to which the charge relates is fully satisfied, and may apply for cancellation for any other reason.

General:

The Residential property on Lot 2827 Woodroffe has had a registered statutory charge on the title since June 2013. Since then the owner has paid the account in full. Legal fees will be charged to the account after the discharge of statutory charge has occurred.

The Residential property on Lot 5439 Bakewell has had a registered statutory charge on the title since June 2013. Since then the owner has paid all arrears. Legal fees will be charged to the account after the discharge of statutory charge has occurred.

Under Section 171 (5) Local Government Act Council must apply for cancellation if the liability to which the charge relates is fully satisfied.

Financial Implications:

Legal fees from our lawyers for discharging the statutory charge on the title will be charged onto the rates account and will not be at any cost to council.

Policy / Legislation:

Pursuant to Section 171 (5) Local Government Act.

RECOMMENDATION

1. THAT Council receives Report Number 8/0395.
2. THAT the Mayor and Chief Executive Officer be authorised to sign and seal the application to discharge statutory charges on Lot 2827 and Lot 5439 Town of Palmerston.

Recommending Officer: Ricki Bruhn, Chief Executive Officer

Any queries on this report may be directed to Ricki Bruhn, Chief Executive Officer on telephone (08) 8935 9902 or email ricki.bruhn@palmerston.nt.gov.au.

Schedule of Attachments:

Attachment A: Application Form to discharge registration of statutory charge Lot 2827

Attachment B: Application Form to discharge registration of statutory charge Lot 5439

Land Title Act
REGISTRAR-GENERAL'S DIRECTIONS



NORTHERN TERRITORY OF AUSTRALIA

W	C	No:
----------	----------	------------

IMPORTANT NOTICE

Please Note Privacy Statement Overleaf

**DISCHARGE OF
STATUTORY CHARGE**

The applicant, a person registered as being entitled to the benefit of a statutory charge on the land described below (NOTES 1 - 2) and which charge has been spent, applies to the Registrar-General to discharge the charge.

Register	Volume	Folio	Location	Lot Description	Plan	Unit
CUFT	688	339	Town of Palmerston	Lot 2827	S84/279 E	-

(NOTE 3)

Applicant:

City Of Palmerston, PO Box 1, Palmerston, NT, 0831

(NOTE 4)

Details of statutory Charge:

Overriding Statutory Charge by City of Palmerston, pursuant to section 171 o the Local Government Act (NT). LTO Instrument No: 798615

(NOTE 5)

The **Common Seal of City of Palmerston** was duly affixed hereunto in the pursuance of a resolution of the Council:

.....
Signature of Mayor – **Ian Abbot**

.....
Signature of Chief Executive Officer – **Ricki Bruhn**

On (Date)

(NOTES 2 & 6)

SCHEDULE OF NOTES

1. This application shall be lodged as an original only and must be typed or completed in ink or biro. Alterations to information entered on the form should be crossed out (not erased or obliterated by painting over) and initialled by the parties.
2. This application can be made by a lawyer or agent if the Registrar-General is satisfied that the lawyer or agent is acting under authority.
3. Insert Volume and Folio references and complete parcel description.
4. Insert Applicant's name.
5. Insert details of Statutory Charge (ie. overriding Statutory Charge by Power and Water Corporation LTO Instrument No:
6. Persons who may witness this document are a Commissioner for Oaths, a member of the Legislative Assembly, a legal practitioner within the meaning of the *Legal Profession Act*, a person holding office under the *Supreme Court Act*, the *Justices Act*, the *Local Court Act* or the *Registration Act*, a member of the Police Force, a person licensed as a conveyancing agent or real estate agent under the *Agents Licensing Act*, a Notary Public and any other person approved by the Registrar-General.

A witness to an instrument executed by an individual must first:

- take reasonable steps to ensure that the individual is the person entitled to sign the instrument;
- have the individual execute the document in the presence of the witness;
- not be a party to the instrument; and
- if witnessing more than one signature, clearly state that he/she has witnessed more than one signature. (ie I have witnessed the two signatures appearing above).

After signing, witnesses must legibly write, type or stamp their names and contact address or telephone number below their signature.

For a corporation, an instrument must be executed in a way permitted by law or sealed with the corporation's seal in accordance with the *Law of Property Act*, Section 48.

For witnessing of instruments executed outside the Northern Territory refer to Schedule 1 of the *Land Title Act* and the Registrar-General's Direction.

PRIVACY STATEMENT – LAND REGISTER FORMS

The Registrar-General's Office is authorised by the Land Title Act to collect the information on this form for the establishment and maintenance of the Land Register, which is made available for search by any person, anywhere, including through the Internet, upon payment of a fee. The information is regularly provided to other NT Government agencies, the Australian Valuation Office, local governments, the Australian Bureau of Statistics, the Australian Taxation Office or other Commonwealth Agencies as required or authorised by law, and some private sector organisations for conveyancing, local government, valuation, statistical, administrative and other purposes. The Department of Lands, Planning and the Environment also uses the information to prepare and sell or licence property sales reports to commercial organisations concerned with the development, sale or marketing of property.

Failure to provide the information in full or in part may prevent your application or transaction being completed.

Your personal information provided on this form can be subsequently accessed by you on request. If you have any queries please contact the Deputy Registrar-General on 8999 5318.20130087_20131004_122129_01012_3016.doc; CW:2558091

Land Title Act
REGISTRAR-GENERAL'S DIRECTIONS



NORTHERN TERRITORY OF AUSTRALIA

W	C	No:
----------	----------	------------

IMPORTANT NOTICE

Please Note Privacy Statement Overleaf

**DISCHARGE OF
STATUTORY CHARGE**

The applicant, a person registered as being entitled to the benefit of a statutory charge on the land described below (NOTES 1 - 2) and which charge has been spent, applies to the Registrar-General to discharge the charge.

Register	Volume	Folio	Location	Lot Description	Plan	Unit
CUFT	685	602	Town of Palmerston	Lot 5439	U2005/0 24	-

(NOTE 3)

Applicant:

City Of Palmerston, PO Box 1, Palmerston, NT, 0831

(NOTE 4)

Details of statutory Charge:

Overriding Statutory Charge by City of Palmerston, pursuant to section 171 of the Local Government Act (NT). LTO Instrument No: 798609

(NOTE 5)

The **Common Seal of City of Palmerston** was duly affixed hereunto in the pursuance of a resolution of the Council:

.....
Signature of Mayor – **Ian Abbot**

.....
Signature of Chief Executive Officer – **Ricki Bruhn**

On (Date)

(NOTES 2 & 6)

SCHEDULE OF NOTES

1. This application shall be lodged as an original only and must be typed or completed in ink or biro. Alterations to information entered on the form should be crossed out (not erased or obliterated by painting over) and initialled by the parties.
2. This application can be made by a lawyer or agent if the Registrar-General is satisfied that the lawyer or agent is acting under authority.
3. Insert Volume and Folio references and complete parcel description.
4. Insert Applicant's name.
5. Insert details of Statutory Charge (ie. overriding Statutory Charge by Power and Water Corporation LTO Instrument No:
6. Persons who may witness this document are a Commissioner for Oaths, a member of the Legislative Assembly, a legal practitioner within the meaning of the *Legal Profession Act*, a person holding office under the *Supreme Court Act*, the *Justices Act*, the *Local Court Act* or the *Registration Act*, a member of the Police Force, a person licensed as a conveyancing agent or real estate agent under the *Agents Licensing Act*, a Notary Public and any other person approved by the Registrar-General.

A witness to an instrument executed by an individual must first:

- take reasonable steps to ensure that the individual is the person entitled to sign the instrument;
- have the individual execute the document in the presence of the witness;
- not be a party to the instrument; and
- if witnessing more than one signature, clearly state that he/she has witnessed more than one signature. (ie I have witnessed the two signatures appearing above).

After signing, witnesses must legibly write, type or stamp their names and contact address or telephone number below their signature.

For a corporation, an instrument must be executed in a way permitted by law or sealed with the corporation's seal in accordance with the *Law of Property Act*, Section 48.

For witnessing of instruments executed outside the Northern Territory refer to Schedule 1 of the *Land Title Act* and the Registrar-General's Direction.

CITY OF PALMERSTON

**Minutes of Council Meeting
held in Council Chambers, Civic Plaza, Palmerston
on Tuesday, 19 November 2013 at 7:50pm**

RELEASED TO THE PUBLIC RECORD

1. PRESENT

Elected Members: His Worship the Mayor Ian Abbott (Chair)
Deputy Mayor Andrew Byrne
Alderman Sue McKinnon
Alderman Paul Bunker
Alderman Geoff Carter
Alderman Seranna Shutt

Staff: Ricki Bruhn, Chief Executive Officer
Ben Dornier, Director of Corporate Community Services
Mark Spangler, Director of Technical Services
Caroline Hocking, Minute Secretary

2. APOLOGIES

Nil

3. DEPUTATIONS / PRESENTATIONS

Nil

4. OFFICER REPORTS

4.1 Lease Arrangements for Lot 9542

8/0405

Moved: Deputy Mayor Byrne
Seconded: Alderman McKinnon

1. THAT Council receives Report Number 8/0405.
2. THAT in accordance with Section 26(2)(b) of the Local Government Act the Mayor and Chief Executive Officer be granted consent to sign and seal the documents Lessor's Consent to Mortgage of Lease and Right of Entry over Lot 9542 Town of Palmerston.

CARRIED 8/0856– 19/11/2013

5. MOVE TO OPEN

Moved: Alderman McKinnon
Seconded: Alderman Bunker

THAT the Council move into the open session.

The meeting moved to the Open session at 7:51pm.

CONFIRMED AT MEETING TO BE HELD 11 DECEMBER 2013

(Chair)

ITEM NO. 16.1 **Lease Arrangements for Lot 9542**

FROM: **Director of Corporate and Community Services**

REPORT NUMBER: **8/0405**

MEETING DATE: **19 November 2013**

Municipal Plan:

3. Environment & Infrastructure

3.2 Assets and Infrastructure

We are committed to maintaining and developing community assets and infrastructure which meet the needs of our community

General:

The Lessee of Lot 9542 seeks to refinance their investment, which requires Council to consent to A) mortgage of lease; B) right of entry to financial institution to the land.

The Lessee therefore seeks Council to affix its Common Seal and the signatures of the Mayor and CEO to legal documents prepared by their proposed financial institution, the ANZ Bank.

Financial Implications:

The ANZ Bank assumes the financial liabilities of the current Lessee. Other implications include allowing the financial institution access to the site.

Legislation / Policy:

Nil

RECOMMENDATION

1. THAT Council receives Report Number 8/0405.
2. THAT in accordance with clause Section 26(2)(b) of the Local Government Act the Mayor and Chief Executive Officer be granted consent to sign and seal the documents Lessor's Consent to Mortgage of Lease and Right of Entry over Lot 9542 Town of Palmerston.

Recommending Officer: Ben Dornier, Director of Corporate and Community Services

Any queries on this report may be directed to Ricki Bruhn, Chief Executive Officer on telephone (08) 8935 9902 or email ricki.bruhn@palmerston.nt.gov.au.

Schedule of Attachments:

- Attachment A: Lessor's Consent to Mortgage of Lease for Lot 9542 Town of Palmerston
- Attachment B: Right of Entry for Lot 9542 Town of Palmerston

LESSOR'S CONSENT TO MORTGAGE OF LEASE – Northern Territory

BY THIS CONSENT TO MORTGAGE OF LEASE given to **AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED ABN 11 005 357 522** of Level 6, 100 Queen Street, Melbourne in the State of Victoria ("**ANZ**")

BY: CITY OF PALMERSTON of PO Box 1, Palmerston, NT, 0831

being the registered proprietor of Lot 9542 Town of Palmerston from Plan L2004/095 as contained in Certificate of Title Volume 703 Folio 339 (the "**Lessor**")

THE LESSOR CONSENTS to the Lessee of premises at Lot 9542 Town of Palmerston:

giving a Mortgage of the Lease (including any further term validly resulting from the exercise of any option to renew the Lease) to ANZ.

The Lessor will:

- give ANZ 14 days' notice of an intention to exercise rights under the Lease;
- not take action to end the Lease unless either the Lessee or ANZ fails to remedy defaults within that time;
- give to ANZ, at the same time as it is given to the Lessee, a copy of each notice specifying a breach of the Lease;
- consider any breach remedied by ANZ to have been remedied by the Lessee;
- permit ANZ at any time after default by the Lessee under the Mortgage to assign or sub-lease the Lessee's interest in the Lease to a respectable, responsible and solvent person, if ANZ complies with the provisions of the Lease relating to any assignment or sub-lease of the Lessee's interest in the Lease;
- use reasonable endeavours to get for ANZ an acknowledgement of these terms from any purchaser of the land where the leased premises are situated;
- permit ANZ to enter into possession of the leased premises for the purpose of exercising its rights under its Mortgage; and
- not treat the appointment of a receiver by ANZ as a default under the lease.

ANZ agrees:

- While the Lessee is not in default under the Mortgage it will not interfere with the Lessee's use or occupation of those leased premises; and
- ANZ will notify the Lessor of its intention to enforce its Mortgage against the Lessee and provide the Lessor with a copy of any notice of default which it serves on the Lessee.

ANZ will after entering into possession of the leased premises or the receipt of its rents and profits and during that possession or receipt and to the extent of any benefit, rents and profits which it receives, be subject to and liable for the payment of the rent reserved and observance of the covenants contained or implied in the Lease on the part of the Lessee.

EXECUTED as a Deed this.....day of 2013

EXECUTED by CITY OF PALMERSTON
by hereby duly affixing its Common Seal
in the presence of:

.....
Mayor (sign and print name)

.....
Chief Executive Officer (sign and print name)

Signed for and on behalf of)
AUSTRALIA AND NEW ZEALAND)
BANKING GROUP LIMITED by its Attorney:)
.....)
Signature of Attorney)

.....
Name of Attorney
as Partner of Ward Keller pursuant to
Power of Attorney No. 343376

on (Date).....
in the presence of:

.....
Witness

Name:
Address:
Qualification:

RIGHT OF ENTRY

THIS AGREEMENT is made on the date stated in Schedule 1

BETWEEN: The person named in Schedule 2 ("Landlord")

AND: **AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED**
A.C.N. 005 357 522 ("ANZ")

INTRODUCTION

- A. The Landlord presently leases to the person named in Schedule 3 ("Tenant") the premises described in Schedule 4 ("Leased Premises") pursuant to the lease described in Schedule 5 ("Lease").
- B. The Tenant gave the security described in Schedule 6 ("Security") to ANZ assigning or charging to ANZ certain items of property located at the Leased Premises ("Secured Property").
- C. ANZ requested the Landlord to consent to the Security and to the severance and removal of the Secured Property from the Leased Premises at any time after default by the Tenant under the Security.

NOW IT IS AGREED:

- 1. The Landlord consents to the Tenant giving the Security subject to ANZ's covenants in this Agreement.
- 2. The Landlord permits ANZ, its employees and agents, and any receiver appointed pursuant to the Security to enter upon the Leased Premises from time to time and at any time (whether or not the Landlord is in possession of the Leased Premises):
 - (a) to manage or inspect the Leased Premises or any improvements, fixtures, fittings and chattels there;
 - (b) to remove the Secured Property (or that part of the Secured Property able to be removed) from the Leased Premises; and
 - (c) to do everything necessary at the Leased Premises for ANZ to exercise all or any of its rights, powers and remedies conferred on it by the Security.
- 3. ANZ covenants with the Landlord:
 - (a) to comply with all reasonable requirements and directions of the Landlord or the Landlord's agent concerning the removal of the Secured Property;
 - (b) not to remove any of the Secured Property from the Leased Premises if the removal may cause substantial damage to the Leased Premises;
 - (c) at its own expense to make good all damage caused to the Leased Premises by or in connection with the removal of the Secured Property; and
 - (d) if any item of the Secured Property is a fixture, not to remove it unless it is the Tenant's fixture.
- 4. (a) Despite anything to the contrary in the Lease, as between the ANZ and the Landlord, the Tenant's fixtures, chattels, plant or machinery will not vest in the Landlord, even if they are not removed from the Leased Premises after the expiration or determination of the Lease.
 - (b) If the Landlord asks ANZ to remove any of the Tenant's fixtures, chattels, plant or machinery which remain on the Leased Premises for more than fourteen (14) days from the expiration or determination of the Lease, ANZ must comply with all reasonable requirements and directions of the Landlord or the Landlord's agent in doing so.

- (c) If ANZ does not comply with that request within thirty (30) days of the date of such request being made to ANZ then ANZ forfeits any further interest in those fixtures, chattels, plant and machinery as between the ANZ and the Landlord, but nothing in this sub-clause affects ANZ's rights against the Tenant.

5. The Landlord covenants with ANZ:

- (a) to give to ANZ at the same time as it is given to the Tenant, a copy of each notice specifying a breach of the Lease given by the Landlord to the Tenant for any reason;
- (b) that ANZ may (without being obliged to do so) within fourteen (14) days of receiving any notice referred to in sub-clause 5(a), remedy any breach of the Lease by the Tenant specified in that notice in any manner in which the Tenant could remedy;
- (c) to deem any breach of the Lease remedied by the ANZ to be remedied by the Tenant;
- (d) not to exercise its power of re-entry, forfeiture or determination pursuant to the Lease or otherwise for fourteen (14) days after ANZ receives the notice referred to in sub-clause 5(a);
- (e) that the ANZ may at any time after default by the Tenant under the Security assign or sub-lease the Tenant's interest in the Lease and the Secured Property to any person or corporation if ANZ complies with the provisions of the Lease relating to any assignment or sub-lease of the Tenant's interest in the Lease;
- (f) not unreasonably or arbitrarily to withhold consent to any assignment or sub-lease of the Tenant's interest in the Lease by ANZ;
- (g) not to sell, assign or otherwise dispose of the fee simple in the land where the Leased Premises are without first obtaining from the proposed transferee an agreement with ANZ on similar terms; and
- (h) that, if ANZ or a receiver appointed by the ANZ at any time after default by the Tenant under the Security enters into and remains in possession of the Leased Premises, the Landlord will not (despite the provisions of the Lease) treat that entry into possession as a breach of the Lease while the ANZ or the receiver, as the case may be, pays the rent and other moneys reserved by the Lease and otherwise observes and performs the obligations of the Tenant under the Lease and in particular, causes the business permitted by the Lease to be carried on in the Leased Premises in a business like manner during the hours and days required by the Lease.

6. (a) Each party may give a notice under this Agreement by delivering it to an address of another party by hand, post, or facsimile transmission.

- (b) If, before 4.00 pm local time on a business day in the place of delivery, a party delivers a notice:
- (i) by hand; or
- (ii) by facsimile and the sending party completes the transmission;

the notice will be taken as given on the day of delivery or transmission, and in all other cases, on the next business day.

- (c) If a party gives notice by post the notice will be taken as given on the next business day in the place of delivery after the notice is posted.
- (d) If a party gives notice by facsimile transmission and the transmission is not fully intelligible or if the sending party at the time of transmission has reason to believe that the transmission is not fully intelligible, the party may not rely on this clause to prove the giving of notice.
- (e) The receiving party cannot object to a telex or facsimile transmission as not being fully intelligible unless the receiving party requests retransmission within two (2) hours.

- (f) If the facsimile transmission is completed within two (2) hours of 5.00 pm on a business day and is unintelligible, the receiving party has until 10.00 am on the next business day to request retransmission.
- (g) The address and facsimile number of the parties for the purpose of this clause are set out in Schedule 7.
- (h) Any party may give notice of another address, telex or facsimile number (within Australia) to the other party and the new address or facsimile number will be the address or facsimile number of the party for the purpose of this clause.

7. In this Agreement unless the context otherwise requires:

"ANZ" includes the successors and assigns of ANZ;

"Landlord" includes the assigns and the executors, administrators or successors of each person named in this Agreement as the Landlord;

"Lease" shall where the context requires include a sub-lease or any other leasehold estate, whether of freehold or Crown leasehold land;

"receiver" includes a receiver and manager and an agent of a mortgagee in possession;

"Tenant" includes the executors, administrators or successors, and the permitted assigns of each person named in this Agreement as the Tenant;

words importing the singular number include the plural and vice versa;

words importing any gender include the other genders

"person" includes corporations and vice versa; and

a reference to any other document in this Agreement includes a reference to that document as varied, supplemented or replaced from time to time.

Where in this Agreement a party covenants not to do something, that party will not attempt to do that thing nor permit or procure that thing to be done.

Where any party consists of more than one person, the covenants of that party bind each two or more of those persons jointly and each one of them severally and a reference in this Agreement to that party in this Agreement is a reference to each of those persons severally as well as to any two or more of them jointly.

SCHEDULES

Date of this Agreement:

The day of 2013

2. Name and description of Landlord: **CITY OF PALMERSTON**

of PO Box 1, Palmerston, NT, 0831

3. Name and description of Tenant: **PETER KEVIN McGRATH**

of 49A Freshwater Road, Jingili, NT, 0810

4. Description of Leased Premises:

Lot 9542 Town of Palmerston from Plan L2004/095 as contained in Certificate of Title Volume 703 Folio 339

5. Description of Lease:

Lease dated 25 May 2006 which commenced on 1 June 2006 for a term of 10 years and 2 option periods of 10 years each between the Landlord and the Tenant.

6. Security:

Mortgage of Lease dated

7. Address telex and facsimile number for service:

ANZ -

Address: Cnr Albatross & Catterthun Streets, Winnellie, NT, 0820
Facsimile: 1800 673 602

Landlord -

Address: 49A Freshwater Road, Jingili, NT, 0810
Facsimile:

...ED as an Agreement on the date stated in Schedule 1.

EXECUTED by CITY OF PALMERSTON
by hereby duly affixing its Common Seal
in the presence of:

.....
Mayor (sign and print name)

.....
Chief Executive Officer (sign and print name)

The tenant acknowledges that the within Agreement has been entered into at its request and consents to the terms contained in the Agreement.

Signed by
PETER KEVIN McGRATH
in the presence of:


.....
Signature



.....
Witness

.....
Name of Witness

The Freehold Mortgagee being **Australia and New Zealand Banking Group Limited** acknowledges that this Agreement has been entered into and consents to its terms.

EXECUTED for and on behalf of
AUSTRALIA AND NEW ZEALAND
BANKING GROUP LIMITED by being
signed by its Attorney

.....
under Power of Attorney No. 343376
in the Presence of:

.....
Name:
Qualification:
Address:

