

Risk Management

The risks in adopting the Goolwa Sport Precinct Master Plan are considered low for the Master Plan has been well considered by a renowned consultant as well as being widely consulted with the users of the oval and the general community.

The management of the facility beyond the redevelopment is rated as a medium risk in terms of financial and service delivery. Operating models for the facility will be investigated and refined prior to commencement of the project to ensure all roles and responsibilities are clear and agreed.

Further project risks will be identified and managed in line with Council's Project Management policies and principals.

8.3 Clayton Bay Public Lighting

File Ref: 9.24.003

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Community Strategic Plan Impact:

ACTIVATE Livability of Townships and Rural Areas - Visible and connected rural areas.

PARTICIPATE Self Sustaining Communities - Encourage community participation across all age groups, including sharing of intellectual assets.

THRIVE Progressive Approaches to Climate Change - Reduce vulnerability through preparing climate-suitable community buildings and assets.

INNOVATE Productive Community Assets – Expand and renew community infrastructure for economic, community and environmental benefit.

Report Objective

To inform Council of the risks, status and perceived community sentiment associated with the current public lighting infrastructure in Clayton Bay in order to seek consent to undertake formal community consultation.

Executive Summary

Following several complaints pertaining to the provision of street lighting associated with land development in Clayton Bay, this report provides background to Council's involvement as it relates to decisions made to operate the street lights to a reduced level to what was installed at the time of development. These decisions are noted in a number of Council reports written shortly after Council inherited infrastructure associated with the Pelican Waters land division. The matter of operating street lights in the broader Clayton Bay area is addressed.

REFER ATTACHMENT Item 8.3(a) (page 85) - 18 December 2006 Council Report
REFER ATTACHMENT Item 8.3(b) (page 87) - 5 March 2007 Council Report
REFER ATTACHMENT Item 8.3(c) (page 88) - 18 June 2007 Council Report
REFER ATTACHMENT Item 8.3(d) (page 90) - 3 December 2007 Council Report
REFER ATTACHMENT Item 8.3(e) (page 93) - Mid Murray Council Dark Sky Policy

Recommendation

1. **That Council grants the Administration consent to undertake consultation with the Clayton Bay community to ascertain the level of community sentiment for public lighting, and determine the anecdotal reasoning behind the community concerns.**

AND

2. **(a) Council instruct SA Power Networks to activate the existing public street lighting in Clayton Bay, while Council Staff continue to investigate technical solutions that embrace the low light ambitions of the community, where practical.**

OR

2. **(b) Council instruct SA Power Networks to retain the current level of lighting with the knowledge that it does not meet Australian Standard AS1158, while Council Staff continue to investigate technical solutions that embrace the low light ambitions of the community, where practical.**

Context

The administration has enacted the resolution of the 3 December 2007 Council resolution which states:

ACF07617 Moved Cr Potter seconded Cr Featherston that Council:

1. *Generally support a 'no street lights' policy in Clayton for the time being*
2. *Confirm that the three (3) existing street lights in the area of the township south of and on Alexandrina Drive shall remain activated.*

3. *Confirm that new lights within the new 'Pelican Waters' development remain unactivated while no or few dwellings exist here.*
4. *Request ETSA to switch off five (5) lights in Alexandrina Drive that were activated as part of the new 'Pelican Waters' development.*
5. *Review street lighting in Clayton in twelve (12) months time (or earlier if called on by the Community or members of the Community) to assess the level of new building activity and the demand or requirement for street lighting.*

CARRIED

During 2006 and 2007, four (4) reports were presented to Council that addressed concerns from residents regarding the activation of all new street lights associated with the Pelican Waters land division (455/D004/05). The Administration's interaction with Elected Members, the Clayton Bay Community Association (CABA), SA Power Networks (SAPN), and Local Government Association Mutual Liability Scheme (LGAMLS) is provided in the Council reports and minutes on the following dates:

- 18 December 2006 – attachment 14.4(a);
- 5 March 2007 – attachment 14.4(b);
- 18 June 2007- attachment 14.4(c); and
- 3 December 2007 – attachment 14.4(d).

Discussions led by the former Director of Engineering (Dennis Zanker) with key stakeholders attempted to find a compromise to avoid 'lighting up' the entire land development while there were no built dwellings. Statements in the reports reveal that the intention not to 'energise' the street lighting was not meant to be indefinite and to keep future options open for having street lights activated as new building activity and the demand necessitated.

Legal advice from LGAMLS in 2007 did not support switching off street lighting that was installed as a requirement of land development. Legal advice was provided by the former Senior Risk Manager – LGAMLS on 21 February 2007.

As a consequence of Council's decision to "*Generally support a 'no street lights' policy in Clayton Bay for the time being*", Pelican Waters estate has remained generally without lights for the past 12 years. During this time, rumors and speculation amongst the community has led to confusion regarding Council's position on street lighting.

During early 2019, numerous complaints were received from residents of Clayton Bay due to reports of lighting activations occurring in Pelican Waters. Over the coming months lights have been activated and subsequently deactivated by SAPN upon requests from the public via SA Power Networks Street Light Out webpage.

Reports of persons tampering and causing damage (including fuse removal and wire cutting) to SAPN assets have been made to SA Police by SAPN. There is

also a long history of anecdotal evidence of street lights being shot at by small caliber fire arm arms.

Over a three week period in August 2019, SAPN confirmed that a resident of Clayton Bay had requested the activation of 23 lights (possibly more). A Council Road Inspector undertook a night audit on 28 August 2019 and confirmed that 28 street lights were currently operating in Clayton Bay, where previously only about 10 lights were operating. Exact numbers of active lights are unclear due to anecdotal evidence of regular tampering and damage to light infrastructure from residents. Council's Infrastructure Project Officer directly liaised with SAPN to request all but 10 lights to remain deactivated in support of the 2007 resolution of Council.

A community information session was held at the Clayton Bay Community Hall on Saturday 7 September 2019 with Cr Karyn Bradford, Asset Manager Morgan Ellingham and Infrastructure Project Officer, James Horwood representing Council. In attendance were members of the Clayton Bay Community Association and local residents.

Addressed at the community meeting were a number of very passionate views for and against lighting from local residents. As a consideration following the community meeting, the Administration recommends undertaking formal Community Consultation in the near future to ascertain the level of public lighting sentiment and collect data on the anecdotal issues the community faces with said lighting.

Updated legal advice was received on Friday 6 September 2019 from LGAMLS that is consistent with legal advice received in 2007. Subsequent legal advice received on 16 September 2019 from Wallmans Lawyers has addressed insurance implications as it relates to LGAMLS and Council's obligations with regard to exposure to risk.

The next step in progressing considerations surrounding the use of public lighting in Clayton Bay will be see Council administration seeking support from the elected body to undertake public consultation with the residents of Clayton Bay. The outcome of public consultation will provide the administration with the specific aesthetic and desirable elements that the Clayton Bay community is wishing to address in their town with regard to lighting infrastructure.

It is envisaged that public consultation will involve a mail out, with additional flyers at key locations in Clayton Bay. Notice of public consultation is proposed to be included in The Times and on Council's website. A survey seeking a response will determine a level of lighting on a sliding scale with minimal to none on one end, and all lighting columns energized on the other, and represented as a percentage from the community. We will be seeking general anecdotal information on the reasons for selecting a lighting level and general community feedback on resident's needs, wants and their grievances with regard to their perception of public lighting. The culmination of this information will be used to create a Public Lighting Plan for Clayton Bay. The Public Lighting Plan will be designed with engineering input and technical considerations to meet the needs of the community while addressing risk

and liability, maintenance and management of the lighting assets, and compliance to the relevant Australian Standards, legislation and LGAMLS standards.

The recent establishment of the River Murray Dark Sky Reserve situated within the Mid Murray Council will be used as a case in point and another reference of information with regard to considerations made in their Lighting Policy. This example offers the ability of maintaining a level of lighting compliance while satisfying the criteria set by the International Dark Sky Association.

The following is a brief summary of legislative requirements, industry standards or agreements that affect the provision of public lighting and public lighting services in the local government context:

Local Government Act 1999

A Council's functions under the Act include providing:

- (a) Services and facilities that benefit its area, its ratepayers and residents and visitors to its area; and
- (b) Infrastructure for its community and for development within its area (including infrastructure that helps to protect any part of the local or broader community from and hazard, or that assists in the management of any area).

Development Act 1993

The Development Act is the instrument that manages the form, structure and arrangement of new development. The Act also addresses non-compliance with conditions of development, issued at the time of development.

Australian Standard 1158 Road Lighting

AS1158 is the lighting standard for roads and public spaces and provides guidance on the design, manufacture and installation of road lighting for the safe use of roads by pedestrians, cyclists and vehicles.

Public lighting luminaires are categorized by the level of lighting intended to be provided in accordance with AS1158:2005 *Lighting for roads and public spaces* as follows:

- V category: relate to arterial roads to address vehicle area lighting (1158.1.1 and 1158.1.3); and
- P category: relate to minor roads to address pedestrian area lighting (1158.3.1).

Australian Standard 4282-1997 Control of the obtrusive effects of outdoor lighting

This Standard addresses outdoor lighting within the boundaries of the property on which the lighting system is installed. Local government plays a role in controlling the obtrusive effects of outdoor lighting through the development approvals process. The Standard provides a basis for assessment of the likely effects of developments that involve the provision of outdoor lighting.

SA Power Networks Tariff Agreement

This agreement sets out the terms and conditions of the services that are provided to Council from SAPN relating to public lighting services. Tariffs are applied to every light in the district that SAPN has a contract with. Different luminaires attract different tariff costs.

Essential Services Commission of South Australia (ESCOSA)

Public lighting service level standards regulation is approved by ESCOSA. Service standards framework provides, for example, SAPN attending faults in regional areas within 10 business days.

General Analysis

SA Power Networks and Local Government

The majority of public lighting services in South Australia are provided by SAPN as the primary distribution network services provider (DNSP). Some services are provided directly by public lighting customers, however this is generally the exception. The provision of public lighting services and associated maintenance and replacement responsibility is determined in accordance with asset ownership and arrangements in place with public lighting customers (Councils and DPTI).

Councils are responsible for the provision of street lighting on roads under their care and management. Council is responsible for specifying the lighting category to be installed on new roads and public places. Council provides direction on lighting infrastructure that will ultimately be constructed on new or existing roads from a range of standard and decorative “off the shelf” assets that SAPN will ultimately manage.

85% of public lighting assets in South Australia have been funded, installed and fully maintained by SAPN. While councils and DPTI do not provide the capital upfront in 85% of the public lighting, costs are built into maintenance and services tariffs charged to road managers including the replacement of the luminaire at the end of their life cycle over 20 year contract periods. Most new lighting installations are installed by land developers where new roads are ultimately handed over to Council. Council is responsible for reviewing lighting plans and determining lighting category with respect to the *Australian Standards* prior to the installation of these assets.

Land division and the provision of infrastructure

Associated with residential land division is a suite of road-related public infrastructure that is required to be provided by the developer. The impact of additional dwellings, new car movements and pedestrian movements are taken into consideration when determining the provision of new lighting. Overall planning considerations are undertaken by Council planners pursuant to the *Development Act 1993* however lighting and electrical reticulation plans are reviewed by Council Engineers and Technical Officers to ensure that the impact and risks are considered and managed appropriately.

Public infrastructure such as street lighting serves the whole community. Public infrastructure, by its design and definition, is required to be standardised in its form and arrangement and installed consistently Australia wide. Documents such as the *Austroads Guides* and *Australian Standards* provide guidance and direction for consistent decision making with the provision of infrastructure.

Infrastructure Design Guidelines is a Council publication that provides detail on the infrastructure considerations that developers are required to consider with the planning of development. Street lighting is one such component for consideration and is outlined on page 9. From the *Infrastructure Design Guidelines*, street lighting shall be installed in accordance with *Australian/New Zealand Standard AS/NZS 1158.3.1:2005 Lighting for Roads and Public Spaces*.

AS/NZS 1158 prescribes the performance requirements, design, manufacture and installation of lighting for roads and public spaces by pedestrians and vehicles. Lighting engineers engaged by developers may seek lighting category advice from Council with regard to specific road hierarchy though a default minimum standard for urban lighting on new roads being lighting category P4. Lighting category P3 is a much higher level of lighting that may be found where there is a high level of pedestrian traffic and associated pedestrian infrastructure. Generally, subcategory P5 shall only be applied to the replacement of existing luminaires or installation of luminaires on existing above ground electrical reticulation infrastructure (stobie poles) where the cost to reconfigure the poles precludes compliance with category P4. The use of P5 lighting can be seen along Alexandrina Drive with regard to the Pelican Waters development.

As technology has progressed there is mounting evidence that current LED technology offers a range of options to minimize the negative impact on the night sky. These options are more ecologically and community sensitive. The 17 watt *Sylvania StreetLED* with the 'cut off lens' in a 3000K option is a potential replacement option for pedestrian road applications. The *StreetLED* is compatible with Central Management System (CMS) adaptive controls used to tailor lighting levels and hours of operation. The *StreetLED* is an alternative to the existing *Sylvania Urban Maxi* 80 watt mercury vapour street light currently installed in Clayton Bay. Mercury vapour street lights are being phased out by 2024 and SAPN will likely replace redundant mercury vapour lights with the standard 'off the shelf' LED should Council fail to determine the specific luminaire prior to that deadline.

Comparative Analysis

Via recent communication with current SAPN staff it has been noted that the issue of 'switching off' lighting assets that SAPN are responsible for is not occurring anywhere else in South Australia. This has caused a very problematic situation for their field services crews.

A sweeping trend across local governments in South Australia is the adoption of LED lights in replacement of older inefficient lighting technologies. Current LED technology provides for more human and ecologically friendly lighting options. An LED replacement business case is already being considered by the Administration of Alexandrina Council in a preliminary planning stage.

Mid Murray Council has recently implemented a policy for their "River Murray Dark Sky Reserve", which is attached as item 14.4(g). Of note is aim #6 which states:

- 6) This Policy and associated Light Management Plan should in no way endanger human safety, road traffic or farm livestock by restrictive lighting practices.

Mid Murray Council recognises its statutory role relating to development and that the associated design elements must align with Council's Development Plan, the Building Code of Australia and relevant Australian Standards.

Council administration has had discussions with staff from the Mid Murray Council and were informed that the dark sky reserve is lit to Australian Standard and has successfully mitigated many of the community concerns, whilst also attaining International Dark Sky Association accreditation.

Financial and Economic Implications

Excluding the energy cost of operating the lights associated with Pelican Waters, it appears that Council has been paying SAPN ongoing tariffs for maintenance, cleaning and replacement costs.

The 36 mercury vapour lights directly associated with Pelican Waters land division attract an annual combined cost of \$2,543.40 inc GST (or \$70.65 inc GST each under the SA Power Networks tariff arrangement). This tariff charge covers the public lighting services associated with managing call-outs for faults and ultimately the replacement at the end of their useful life. Since Pelican Waters land division was handed over to Council (circa 2007), the cost to Council has been approximately \$30,520.80.

In the future there may be considerations to consider future stages of development associated with Pelican Waters as allotments become fully developed.

Risk Management

Legal advice provided in 2007 by LGAMLS is consistent with legal advice provided on 6 September 2019 by LGAMLS.

In summary:

1. Councils exercise statutory functions under the Local Government Act 1999 which include providing:
 - Services and facilities to benefit its area, ratepayers, residents and visitors; and
 - Infrastructure for its community, including to help protect any part of the local or broader community from any hazard or event or to assist the management of the area.
2. Councils also have the care, control and management of public roads which includes performing roadwork and the installation of street lighting.

3. Council may also have been the approving authority under the Development Act 1993 in relation to the original land division and would, at least, be the regulator with powers to enforce any non-compliance with conditions of development approval issued at the time.
4. It was likely a condition of the development approval (for the land division) that the public infrastructure associated with the roads to be vested in Council upon completion of the land division meet the relevant Australian Standard (AS).
5. To the extent that the subsequent use of the infrastructure does not meet the AS, it is potentially in breach of the development approval and therefore the Development Act.
6. The distribution network service provider, SA Power Networks, will not accept vesting of lighting infrastructure unless it meets the relevant requirements of the AS. I understand that the Council has also received express advice from SA Power Networks that the Council (presumably as owner) should operate the lighting to the level required to meet the AS. Even so, the Council has in the past directed SA Power Networks (presumably as contracted service provider) to only switch on a reduced proportion of the available lights.
7. Without reference to the AS, street lighting provides many important benefits in a developed urban community, including:
 - Security of property and persons;
 - Promotion of outdoor activity outside daylight hours; and
 - Most importantly, night time visibility of and safety for motorists, cyclists and pedestrians.

The AS is the guiding framework for public authorities to best achieve those outcomes.

8. A decision by the Council to not comply with AS levels of street lighting does increase the risk of exposure of claims by any person who suffers personal injury or property damage arguably attributable to a deficiency in lighting of a public place, particularly a public road.
9. The policy reasons the Council may have given significant weight to in 2007 when there was little or no residential or traffic activity in the area may be less relevant some 12 years later where there has been more actual development and increased activity as envisaged by the original land division.
10. If Council does opt not to comply with the AS it is exposed to claims of negligence insofar as any departure from the standard causes or contributes to loss or damage to any third party”.

Insurance Implications

1. The LGAMLS is a local government indemnity scheme established by the Local Government Act for the benefit of its local government members and does not respond like a commercial policy of insurance. Its recommendation is that the Council must consider its duty of care owed to the public and adopt a course of action which complies with the relevant Australian Standards and any other pertinent legislation. In the event of a civil liability claim resulting from the alleged lack of public and/or safe lighting (based on Council's resolution), indemnity will be considered in accordance with the LGAMLS Rules. If the claim is accepted by the LGAMLS and litigation ensues, the costs related to that claim will potentially impact on Council's future membership contribution. The cost of a significant claim or claims resulting from the Council's failure to discharge its duty will also impact on any financial incentives (Bonus, Special Distributions, Risk Incentive account) available to be earned by Council in the future – based on its risk and claim performance.

However, it should be noted that the LGAMLS cannot protect the Council against other non-commercial risks or those outside the scope of a civil liability (see below).

2. The risk of not taking action to address a current non-compliance with the relevant Australian Standard, where the infrastructure is in place, especially where that infrastructure was a term of approval in the original development, is potentially:
 - a. Civil liability – an ongoing failure to comply, with actual knowledge, is far more likely to lead to finding of negligence in the event of any trauma / loss caused by insufficient lighting. Such loss can range from minor property damage (eg damage to vehicles colliding with debris / overturned rubbish bins etc on the roadway) to more catastrophic results (personal injury from falls on footpaths or collisions between cyclists, children, other pedestrians and motor vehicles). The LGAMLS has managed many claims against SA councils where allegations are made that deficient street lighting caused or contributed to accidents;
 - b. Compliance cost with any statutory investigations – coronial inquest, SafeWorkSA investigation (which if prosecuted can attach significant and even criminal penalties which are not insured liabilities) etc;
 - c. Reputational damage to council (not readily quantifiable) arising from community or public criticism in event of significant incident or incidences attributable to deficient lighting, the risk of adverse attention is low, but once trauma or damage occurs, the impacts can be serious. On a worst case scenario – a road fatality, with likely investigation by the Coroner and/or SafeWorkSA, with the relevant staff and Elected Members facing possible examination in Court as to why the Council decided to maintain a non-compliant lighting regime.