



KEMPSEY
Shire Council

GENERAL MANAGER'S REPORT

10th July 2007

GM5

CONTRIBUTION TO LEGAL COSTS

FILE: 114

AVB

{ Folio No. * }

SUMMARY:

Reporting to Council on a request to contribute to legal costs incurred by Bankstown City Council.

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DESCRIPTION:

Bankstown City Council has sought the Association's assistance in relation to a court case in which it has been involved and which culminated in action in the High Court.

The facts of the matter were:

1. Alamdo Holdings are the owners of land within the Bankstown City Council area.
2. Alamdo's property was flooded as a result of water overflowing from an unlined stormwater channel belonging to the council.
3. The Supreme Court granted a prohibitory injunction that required the council not to continue nuisance and to abate the flooding.
4. The Supreme Court also granted a mandatory injunction ordering that remediation work commence on the stormwater channel.
5. The matter was appealed to the Court of Appeal which held that even though the council had acted in good faith, it could not rely on the protection of Section 733 of the Local Government Act 1993, "Exemption from liability-flood liable land and land in coastal zone" as an exemption to liability by Section 733 relates to "anything done or omitted to be done" and does not literally extend to something "intended to be done".
6. Bankstown Council sought leave to appeal to the High Court. The High Court asked the council to give an undertaking to agree to bear the costs of the appeal as council were attempting to obtain a proper interpretation of Section 733 of the Local Government Act and therefore set a precedent not only for Bankstown Council but all councils and that Alamdo should not be liable for such costs.

7. Bankstown Council agreed to this request from the High Court and leave to appeal was granted.
8. Bankstown City Council were successful in overturning the decision of the Court of Appeal and the protection afforded by Section 733 of the Local Government Act for "anything done or omitted to be done" has been affirmed by the High Court.

The Associations agreed that the matter was of great importance to all councils and should be appealed because if the decision was allowed to stand it would allow other land owners in similar circumstances to make claims against councils for alleged damage to property where the council in question would otherwise be protected by Section 733 of the Local Government Act.

The council incurred the sum of \$1,534,242 in pursuing the appeal. The Joint Executive of the two Associations has given approval for these costs to be sought. In accordance with the usual formula, council's proportion of this amount is \$9,936.20.

I am advised by the Director Shire Services that this type of flooding would be more likely in a metropolitan area rather than a rural area. Council has not made provision in its budget for the contribution.

REPORT IMPLICATIONS:

- ***Environmental***

Nil

- ***Social***

Nil

- ***Economic (Financial)***

Nil

- ***Policy or Statutory***

Nil

- ***General Manager's Review***

Nil

RECOMMENDATION:

That the Associations be advised that Council is not prepared to make a contribution to Bankstown City Council's legal costs.

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A V Burgess
GENERAL MANAGER