

# CONFIDENTIAL ITEMS 2003 – AUGUST 2022

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
168	5 October 2021	Wastewater Service Delivery: Engagement Framework	<p>1. Pursuant to Section 90(3)(b) Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer; Deputy Chief Executive Officer/General Manager Governance, Strategic Projects and Wastewater/Recycled Water; Manager Infrastructure Maintenance &amp; Operations; General Manager, Planning and Development; General Manager, Community Services; Commercial Manager, Wastewater; Risk and Governance Officer and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 18.1 Wastewater Service Delivery: Engagement Framework.</p> <p>The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which could reasonably be expected to prejudice the commercial position of the Council.</p> <p>In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter.</p>	Council report, related documents and all minutes	<p>The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which could reasonably be expected to prejudice the commercial position of the Council.</p> <p>In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances</p>	Retained in confidence until the outcome of the proposed engagement process with SA Water has been considered by council and SA Water and agreement reached on the timing of information that can be made publicly available and that this order be reviewed within 12 months by the Chief Executive Officer		Within 12 months	<i>Report, Attachment and Minutes released on website 31 August 2022</i>

**CONFIDENTIAL ITEMS 2003 – AUGUST 2022**

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
			<p>Pursuant to Section 90 (3) (b)</p> <p>5. That having considered Agenda Item 18.1 Wastewater Service Delivery: Engagement Framework in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until the outcome of the proposed engagement process with SA Water has been considered by council and SA Water and agreement reached on the timing of information that can be made publicly available and that this order be reviewed within 12 months by the Chief Executive Officer.</p>		<p>because the disclosure of Council's commercial position may prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter.</p>				

**18. CONFIDENTIAL REPORTS****18.1 REPORT TITLE: CONFIDENTIAL ITEM – WASTEWATER SERVICE  
DELIVERY: ENGAGEMENT FRAMEWORK****DATE OF MEETING: 5 OCTOBER 2021****FILE NUMBER: 21/156146****ATTACHMENTS: 21/156036 1) Draft Engagement Framework  
with SA Water****Key Contact Brian Clancey, Deputy CEO/General Manager,  
Governance and Wastewater/Recycled Water****Sponsor Andrew Stuart, Chief Executive Officer****Community Plan 2020-2035:**

Ecological Sustainability

ES Objective 5.1 Continue to build on Council's reputation as a leader in  
wastewater management and promote water recycling and reuse.**Annual Business Plan:**

Not applicable

**Purpose:**To seek endorsement of the attached draft framework for an engagement process  
with SA Water and the resourcing of that process by council.**Summary – Key Issues:**

- A proposed process engagement framework has been prepared and is attached.
- As previously indicated, it is anticipated that additional resources will be required for this process.
- Community implications and expectations will be an important consideration as part of this engagement process.

**Recommendation:**

That Council:

1. Pursuant to Section 90(3)(b)

Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer; Deputy Chief Executive Officer/General Manager Governance, Strategic Projects and Wastewater/Recycled Water; Manager Infrastructure Maintenance & Operations; General Manager, Planning and Development; General Manager, Community Services; Commercial Manager, Wastewater; Risk and Governance Officer and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 18.1 Wastewater Service Delivery: Engagement Framework.

The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which could reasonably be expected to prejudice the commercial position of the Council.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter.

2. Endorse the draft engagement process framework (attachment 1) and authorise the council Chief Executive Officer to forward this to the Chief Executive of SA Water on a confidential basis as a draft.
3. Authorise the council Chief Executive Officer to engage with SA Water to finalise and formalise arrangements for the engagement process framework, on the understanding that any arrangements proposed by SA Water are deemed to be reasonable and are generally consistent with the draft engagement process framework contained in attachment 1 and without limiting the content of the final framework to the points contained in attachment 1.
4. Note that as previously indicated, additional resources are anticipated to be required for this engagement process to supplement existing council resource capacity and capability, and that this will be the subject of further information

that is intended to be available for the November council meeting as part of the 2021/22 budget review 1.

Pursuant to Section 90 (3) (b)

5. That having considered Agenda Item 18.1 Wastewater Service Delivery: Engagement Framework in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until the outcome of the proposed engagement process with SA Water has been considered by council and SA Water and agreement reached on the timing of information that can be made publicly available and that this order be reviewed within 12 months by the Chief Executive Officer.

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**Background:**

1. The recommendations of the Frontier Economics Report were endorsed at the council meeting held on 2 August 2021.
2. The recommendations included council engaging further with SA Water.
3. Subsequently, a council letter was forwarded to Mr David Ryan, Chief Executive of SA Water.
4. In turn, a meeting was held with Mr Ryan and Matt Minagall from SA Water as referenced in the confidential agenda item that was considered at the council meeting held on 6 September 2021.
5. The Strategic Advisory Panel (SAP) to the CEO met on 15 September 2021 and provided initial input and subsequently reviewed and provided feedback on the attached draft framework. {Note: Please also see the separate item in this agenda regarding proposed amendments to the terms of reference for the SAP to the CEO which specifically relate to wastewater/recycled water.}

**Discussion:**

6. Key considerations for SA Water are expected to be:
  - a) the capacity and condition of council's wastewater asset base;
  - b) future revenues, both from developers and ratepayers;
  - c) assessment from a purely commercial basis like risk v reward.
7. Key considerations for the community are likely to include:
  - a) Cost to ratepayers, given that under the current SA Water charging arrangements (determined according to the capital value of the

- property) some ratepayers would face an increase in the annual service cost;
- b) Service standards, particularly for CWMS ratepayers who may be expecting conversion to sewer which will raise a funding issue and that in the interim, they may expect to pay less than a sewer customer;
  - c) Environmental implications including for the management of the Laratinga Wetlands;
  - d) Productive use of recycled water.
8. Key considerations for council are likely to include:
- a) How will council value and measure anticipated costs and benefits;
  - b) How will council assess trade-offs like some ratepayers paying less but others paying more;
  - c) Financial implications arising for council operations such as the contribution that the wastewater service currently makes via full cost attribution being applied internally, and the benefits enjoyed through the use of wastewater reserves to cash flow other council needs rather than borrow funds (as per council's treasury management policy).
  - d) Implications for council wastewater staff.
9. It is clear that there will be a lot to consider.
10. The attached draft process engagement framework includes a proposed period of exclusivity with SA Water but with no obligation on council at the conclusion of that.
11. The key deliverable from the process being a report that is jointly prepared by council and SA Water that draws on the information that is to be assembled and presents key findings for consideration by council (in confidence at a council meeting) and SA Water.
12. At that time council will be able to consider if it seeks to put an opportunity to the private sector as well.
13. As indicated, it is anticipated that council will not have the required resources (both capacity and capability) to meet the demands of the process. Consideration is being given to how this need can best be addressed.
14. As has been the case thus far, the SAP to the CEO can continue to contribute.
15. Similarly the council Audit and Risk Committee can also make an assessment of the deliverables from the engagement process and offer recommendations for consideration in confidence at a council meeting.

**Community Engagement:**

Informing only	To be confidential as per the above recommendation until determined otherwise.
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**Policy:**

- Commercial Policy
- Strategic Partnerships Policy
- Unsolicited Proposals Policy

**Long Term Financial Plan:**

The current assumption underpinning forecast revenues and expenditures is that council will continue to own and operate the wastewater/recycled water service for the duration of the Long Term Financial Plan.

**Budget:**

As per the above recommendation, it is envisaged that the resourcing of the engagement process will have a budget impact to secure external resource capability and capacity and this is intended to be the subject of further information at the November council meeting as part of the 2021/22 budget review 1.

**Statutory/Legal:**

The proposed process engagement framework would not have any legal standing.

The existing wastewater commitment deeds with developers do allow council to assign the deeds to SA Water providing that the terms and conditions to the developers are not negatively impacted.

**Staff Resource Requirements:**

The engagement process will require staff input, the challenge being to ensure that this does not delay the timing of required wastewater infrastructure upgrading.

**Environmental:**

Possible implications for the management of the Laratinga Wetlands would need to be identified and considered.

**Social:**

A key consideration is the continued provision of a quality, reliable and affordable wastewater service to ratepayers.

**Risk Assessment:**

Some key risks are:

- that the required resource implications exceed what is anticipated and that in turn, this impacts the target timeframe for completion;

- that the process may not deliver the basis for a definite/clear outcome to be determined by one party, or both parties; and
- that the process distracts council effort away from the immediate wastewater infrastructure upgrading projects.

**Asset Management:**

As indicated above, this will be a key area to be investigated.

**Conclusion:**

Having a clear and sound process engagement framework is important as a foundation stone for the further work to subsequently be undertaken by council and SA Water.

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**Previous Decisions By/Information Reports to Council**

Meeting Date	6 September 2021	CM Reference	DOC/21/135220
Title	CONFIDENTIAL ITEM – WASTEWATER SERVICE DELIVERY IMPLEMENTATION PROGRAM		
Purpose	To seek endorsement of the prioritised program (inclusive of responsibility, timing and resources) with proposed actions (see attachment 1) to implement the recommendations from the Wastewater Service Delivery Options Report prepared by Frontier Economics.		

Meeting Date	2 August 2021	CM Reference	DOC/21/112698
Title	CONFIDENTIAL REPORT: WASTEWATER SERVICE DELIVERY REPORT		
Purpose	For council to consider the Wastewater Service Delivery Report prepared by Frontier Economics (attached) and the associated recommendations to council from the Audit and Risk Committee.		



Attachment 1 to Item 18.1

Attachment 1

**Mount Barker District Council**  
**Confidential Draft Framework for Council to Engage with SA Water**

{28 September 2021 - Reference: HP 21/156036}

PURPOSE

To set out the basis upon which council seeks to engage with SA Water in order for both parties to assemble information to enable decision making on whether there is or isn't the likelihood of the parties wanting to undertake more detailed investigations into the possibility of council and SA Water ultimately entering in to an arrangement regarding the role to be played by SA Water in the delivery of the wastewater/recycled water service that is currently being delivered by council (the Purpose).

COUNCIL CONDITIONS

1. Council enters into the engagement process with SA Water for the above Purpose on the clear understanding that in doing so, council is not obligated in any way to any further actions.
2. Any information that is made available by council to SA Water for this Purpose is to be done so on the basis that it is commercial in confidence and will be treated as such by SA Water.
3. Neither council nor SA Water is to publicly make known that a process for the above Purpose is being undertaken.
4. Council and SA Water commit to a target timeframe of 3 months for completion of the assembly of the required information and that within one further month, each party is to inform the other party of their position.
5. Council and SA Water shall each be responsible for the provision of the resources reasonably required to enable the required information to be assembled.
6. Council and SA Water shall jointly establish the scope of the information to be assembled, relative to the Purpose;
7. Given the timing target and to ensure the efficient use of resources, council and SA Water shall jointly establish a hierarchy of issues (within the agreed scope) requiring consideration;

8. Council and SA Water shall jointly establish high level principles to be applicable to guiding the assembly of the required information e.g. communication protocols, work in collaboration, act in good faith, the nature of the deliverables etc;
9. Council and SA Water will engage exclusively with one another during the time required to enable the required information to be assembled up to a maximum of period of 5 months.
10. Council and SA Water shall jointly own all of the deliverables and intellectual property resulting from this engagement process.
11. This is not a procurement process – the key deliverable being a report that is jointly prepared by council and SA Water that draws on the information that is to be assembled and presents key findings for consideration by council and SA Water. It is acknowledged that each party will likely supplement the content of the report with further information that is specific to their respective considerations.
12. The arrangements for the above Purpose are to be formalised by council and SA Water (e.g. via an exchange of letters) at which time the above target timeline of 3 months (as referenced in point 4 above) shall commence.
13. Should either council or SA Water seek to terminate the process prior to the completion of the report that is to be jointly prepared (as per point 11 above), then notice of termination including the reason/s for this is to be formally communicated to the other party.

## **18. CONFIDENTIAL REPORTS**

<b>18.1</b>	<b>REPORT TITLE:</b>	<b>CONFIDENTIAL ITEM – WASTEWATER SERVICE DELIVERY: ENGAGEMENT FRAMEWORK</b>
	<b>DATE OF MEETING:</b>	<b>5 OCTOBER 2021</b>
	<b>FILE NUMBER:</b>	<b>21/156146</b>
	<b>ATTACHMENTS:</b>	<b>21/156036 1) Draft Engagement Framework with SA Water</b>

Moved Councillor Seager that Council:

1. Pursuant to Section 90(3)(b)

Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer; Deputy Chief Executive Officer/General Manager Governance, Strategic Projects and Wastewater/Recycled Water; Chief Financial Officer, Manager Infrastructure Maintenance & Operations; General Manager, Planning and Development; General Manager, Community Services; Risk and Governance Officer and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 18.1 Wastewater Service Delivery: Engagement Framework.

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Seconded Councillor Bailey

CARRIED  
OM20211005.11

Moved Councillor Morrison that Council

2. Endorse the draft engagement process framework (attachment 1) and authorise the council Chief Executive Officer to forward this to the Chief Executive of SA Water on a confidential basis as a draft.

3. Authorise the council Chief Executive Officer to engage with SA Water to finalise and formalise arrangements for the engagement process framework, on the understanding that any arrangements proposed by SA Water are deemed to be reasonable and are generally consistent with the draft engagement process framework contained in attachment 1 and without limiting the content of the final framework to the points contained in attachment 1.
4. Note that as previously indicated, additional resources are anticipated to be required for this engagement process to supplement existing council resource capacity and capability, and that this will be the subject of further information that is intended to be available for the November council meeting as part of the 2021/22 budget review 1.

Seconded Councillor Minett

CARRIED  
OM20211005.12

Moved Councillor Westwood

Pursuant to Section 90 (3) (b)

5. That having considered Agenda Item 18.1 Wastewater Service Delivery: Engagement Framework in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until the outcome of the proposed engagement process with SA Water has been considered by council and SA Water and agreement reached on the timing of information that can be made publicly available and that this order be reviewed within 12 months by the Chief Executive Officer.

Seconded Councillor Morrison

CARRIED  
OM20211005.13