

CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2016

#	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
100	21 Dec 2015	Recycled Water Supply Agreement	<p>Section 90 (3) (h) Order</p> <p>Pursuant to Section 90(3)(h)</p> <p>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, the four General Managers, manager wastewater operations and strategy and the Minute Secretary be excluded from attendance at the meeting for Agenda Item Recycled Water Supply Agreement.</p> <p>The Council is satisfied that pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to legal advice, which will be discussed in detail with council members.</p> <p>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 a Council decision has not yet been made in relation to the advice.</p> <p>Section 91(7) Order</p> <p>Pursuant to Section 91(7)</p> <p>That having considered Agenda Item Recycled Water Supply Agreement in confidence under 90(2) and 3(h) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the discussion, report, attachments and all minutes be retained in confidence until the above amendments to the Water Supply Agreement have been formalized by the execution of same by both parties or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.</p>	discussion, report, attachments and all minutes	The information to be received, discussed or considered in relation to this Agenda item is information relating to legal advice, which will be discussed in detail with council members.	Until the above amendments to the Water Supply Agreement have been formalized by the execution of same by both parties or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.			11 Aug 16

17.2 **REPORT TITLE: CONFIDENTIAL ITEM – RECYCLED WATER
SUPPLY AGREEMENT**

DATE OF MEETING: 21 DECEMBER 2015

FILE NUMBER: FOL/15/7019

Strategic Plan 2012-2017 Ref:

Outcome 3: The Mount Barker District is a leader in growth area water management.

Purpose:

To provide an update on the recycled water supply arrangements with Hillgrove Resources and seek authority to amend the existing Water Supply Agreement between the two parties.

Summary – Key Issues:

- Hillgrove has disputed the amount owed to Council for the supply of recycled water in 2014/15; and
- It is recommended that variations to the existing Water Supply Agreement for the supply of recycled water between Council and Hillgrove be implemented.

Please note:

At the time of this item being finalised, communications were continuing between Council and Hillgrove. A verbal update can be provided at the Council meeting.

Recommendation:

That Council:

Section 90 (3) (h) Order

1. Pursuant to Section 90(3)(h)
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, the four General Managers and the Minute Secretary be excluded from attendance at the meeting for Agenda Item Recycled Water Supply Agreement.

The Council is satisfied that pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to legal advice, which will be discussed in detail with council members.

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 a Council decision has not yet been made in relation to the advice.

2. Note the legal advice from Cowell Clarke (attachment 1);
3. Amend the existing Water Supply Agreement with Hillgrove Resources as follows:
 - The period is for a further 5 years commencing 1 January 2016 - subject to Hillgrove's licence being extended beyond the current expiry in 2018.
 - The Minimum Annual Quantity is to be changed from 400 mega litres to 750 mega litres;
 - The rebated price will apply to all recycled water sales irrespective of the volume supplied in any financial year;
 - For the period 1 January 2016 to 30 June 2017 (inclusive) payment terms shall be varied from 30 business days to 90 calendar days;
 - Make clear a point of interpretation to ensure that there is no restraint of trade for Council's recycled water disposal path;
 - Add the three new provisions which are outlined in attachment 2; and
 - Authorise the Mayor and Chief Executive Officer to finalise and execute the above variations to the Agreement and any other matters arising from the current Agreement requiring a tidy up/clarification.
4. Approve the impairment and write off of \$313,000 raised over the remainder of the contract period with \$230,000 of this amount being attributable to the provision by Council of 97.1 mega litres of recycled water to Hillgrove that was outside of the quality specified in the Agreement.

Section 91(7) Order5. Pursuant to Section 91(7)

That having considered Agenda Item Recycled Water Supply Agreement in confidence under 90(2) and 3(h) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the discussion, report, attachments and all minutes be retained in confidence until the above amendments to the Water Supply Agreement have been formalized by the execution of same by both parties or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

Background:

1. An informal gathering for Council Members on recycled water including Hillgrove was held on 2 November 2015.
2. A confidential Memo was issued to Council Members on Hillgrove on 23 November 2015 and is attached (attachment 2).

Discussion:What Has Changed

3. A lot has changed since the current Water Supply Agreement between Council and Hillgrove was executed in May 2010.
4. Two major changes are that Hillgrove now requires around three times more water per annum than was the case in the early years of the mine operation and will very soon have an alternate water supply being raw water from the River Murray. Hillgrove has received authorization from Council under the Local Government Act (to place infrastructure within road reserve) and it is understood that the new pipeline is likely to be completed in January 2016.
5. Council benefitted considerably from Hillgrove requiring more water given the provisions of the Agreement (in particular the non rebate price applying above the annual threshold volume) and the resultant quantum of sales revenue that was generated.
6. The alternate water supply that Hillgrove is expected to soon have access to means that Council is then going to be disadvantaged under the current Agreement given the minimum annual quantity of 400 mega litres i.e. a swing of the pendulum.

Why Re-Negotiate

7. It is in Council's best interests to negotiate and formalize variations to the current Agreement for the following reasons:
- Commencement of the current five year Agreement is not clear as it is tied to the satisfaction of specified pre conditions (i.e. certification of practical completion of the pipeline). Hillgrove has advised that it considers commencement to be in February 2014. It is advantageous to secure an additional 5 years from 1 January 2016.
 - Council requires a disposal path for treated wastewater (recycled water) and Hillgrove provides this for the majority of the Council supply;
 - Under the current Agreement the minimum annual quantity that Council must supply and Hillgrove must take and pay for is only 400 mega litres;
 - If Hillgrove was to advise Council that it only required the current minimum amount of 400 mega litres it would require Council to find an alternate disposal path for a large volume of recycled water (refer below) and see the loss of considerable revenue from recycled water sales;
 - It would be difficult for Council to put in place arrangements for an alternate disposal path without incurring capital cost for new infrastructure which could be significant;
 - A key objective is employment within the region and it needs to be remembered that Hillgrove is both a major employer and a significant purchaser/consumer of goods and services with implications for many contractors and other businesses.
8. A packaged arrangement has been negotiated at officer level with Hillgrove and is reflected in the above recommendations. In addition an amount of security from Hillgrove was sought but that proposition has not been supported by Hillgrove (refer below).
9. The main benefit to Council is securing a disposal path for recycled water and gaining revenue for a minimum of 750 mega litres per annum compared to the current minimum of 400 mega litres.

Current Position

10. As at 17 December the total amount owed by Hillgrove to Council for recycled water was \$673,581 taking into account an agreed payment plan that has been negotiated. The most recent payment received from Hillgrove was \$60,000 on 16 December 2015.

Disputed Amount

11. Part of the package includes Hillgrove requesting that the total amount currently owed (as per tax invoices issued by Council) be reduced by \$313,000 as Hillgrove disputes that this amount should have been invoiced.
12. The amount is derived from Council charging Hillgrove for water at the non rebated base price for all water supplied over and above the annual threshold of 787.5 mega litres as per the Agreement.
13. Despite numerous requests/opportunities being provided by Council, Hillgrove has not to this point provided a basis for the dispute other than to cite *quantum meruit*. This is dismissed in the legal advice obtained by Council from Cowell Clarke (attachment 1).
14. Whether or not Hillgrove has any further information to support the claim that Council has made an error is not known; although it is considered unlikely, this possibility can't be dismissed.

Non-Specification Water

15. During April/early May of 2015 a total of 97.1 mega litres of recycled water was supplied by Council to Hillgrove that was outside of the quality specified in the Agreement.
16. This arose during the period when Council experienced some operational difficulties with our lagoon based wastewater treatment process.
17. As the water did not meet specifications, Council informed Hillgrove that it was ceasing supply. Even though the recycled water was outside specification it was still sought by Hillgrove in order to utilise it in their mineral recovery process.
18. Council charged Hillgrove for this water at the applicable rate under the Agreement which was the non rebated base price of \$2.37 per kilolitre = a total cost to Hillgrove of approximately \$230,000 (being 97,100 kilolitres at \$2.37).
19. Whilst Council acted within the provisions of the Agreement to charge Hillgrove for this water at that price, the following points need to be considered:
 - The non specification water meant additional cost to Hillgrove to use the water and less flexibility as to what purpose the water could be used for;

- If Hillgrove didn't take this water it would not have been able to be discharged by Council to the Laratinga Wetlands or the creek in large volumes due to it being toxic to aquatic life;
 - Hence the disposal to Hillgrove saved Council additional cost; and
 - Hillgrove could have said "no thanks Council" pursuant to the Agreement.
20. In view of the circumstances and the relationship between Hillgrove and Council, it can be reasonably argued that Council should not have billed Hillgrove the \$230,000 for the non-specification water.
21. If this was now applied then the disputed amount would be reduced from \$313,000 to \$83,000.

Trade Off

22. To secure a revised arrangement with Hillgrove, the \$83,000 can be 'traded off' against the gain of increased future revenue from Hillgrove by virtue of the change in the minimum amount from 400 to 750 mega litres per annum for five years.
23. The additional revenue at 750 mega litres would see the trade off amount of \$83,000 made up by Council in just under 4 months and thereafter Council would be 'in front'.
24. The rebated price will apply to all recycled water sales to Hillgrove, there will no longer be an annual threshold above which the non-rebated price has until now applied.

Security

25. Council put to Hillgrove that security be provided for the next 18 months to an amount of at least \$313,000. The security would only be utilised by Council in the event that Hillgrove did not meet its obligations under the Agreement (as revised).
26. Hillgrove advised that the request for security was "without foundation".

Payment Terms

27. For the period from 1 January 2016 to 30 June 2017 payment terms shall be varied from the current 30 business days to 90 calendar days. In effect this change would represent what has been the practice of Hillgrove notwithstanding the provisions of the Agreement. Council has not invoked the provision of interest for late payment as provided for in the Agreement.

28. This is in recognition that Hillgrove is mining a high production/low yield section and that places additional demands on cash flow.

New Provisions in Agreement

29. New provisions for the amendments to the Agreement are proposed as outlined in attachment 2.

30. These are seen as furthering the relationship between Council and Hillgrove beyond that of simply recycled water supply and use.

Options

31. There are various other options over and above the recommendations.

32. One is to simply issue credit for \$230,000 (being for the non specification water that was billed) not the amount disputed by Hillgrove of \$313,000.

33. It is not known whether that would be acceptable to Hillgrove (it would be communicated as the Council meeting resolution). This approach would require some modification to the above recommendations.

34. If that is put to but not accepted by Hillgrove then the fall back position of the amount of \$313k as per the above recommendations can then be utilized.

Community Engagement:

Informing only	Not applicable
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Policy:

Council policy is that the write off of debts over the value of \$5,000 requires approval by Council.

Budget:

Extinguishing the non-rebated price per annum (for water that was supplied over the annual threshold) will reduce the amount of sales revenue.

Conversely, increasing the minimum annual quantity to 750 mega litres will ensure a higher level of sales revenue than would apply if Hillgrove determined to only purchase the current annual minimum of 400 mega litres.

Alterations of conditions of this Agreement together with the write down of the \$313k will result in a forecast net deficit position to Council of \$80K over five years in total or \$16K average per year (i.e. costs to supply exceeding revenue from Hillgrove).

This will be considerably less than the additional costs that Council would have to incur in paying environmental levies (estimated at \$22K per annum) to discharge effluent to Mt. Barker Creek or to develop alternative water disposal strategies such as supplying the golf course and other sites with recycled water.

Subject to various assumptions, the recommended variations to this Agreement will likely result in future rate increases of approximately 0.33% to offset the operational costs for disposal of water in excess of 750ML. The alternative (if Hillgrove purchased the current minimum amount) would have a more significant impact.

Statutory/Legal:

Refer attachment 1.

Staff Resource Requirements:

Staff time has been required to negotiate with Hillgrove.

Environmental:

Refer attachment 2.

Social:

Refer above to Hillgrove's role in the economy as an employer and consumer.

Risk Assessment:

Major risks are that Council requires a suitable disposal path for large volumes of treated wastewater and if Hillgrove was to unexpectedly default on its performance obligations with Council (refer above).

Asset Management:

Not applicable.

Conclusion:

The relationship between Council and Hillgrove has delivered significant community benefits (environmental, social and economic) with the objective of that continuing into the future and being underpinned by the recommended changes to the current Agreement.

Key Contact

Brian Clancey
General Manager, Infrastructure & Projects

Sponsor of Project

Andrew Stuart

Attachments

1. Legal advice from Cowell Clarke
2. New provisions for the amendments to the Agreement
3. Confidential Memo to Council Members dated 23 November 2015

Confidential

Attachment 1

Our Ref: JAW/01512758

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30 November 2015



Mr Brian Clancey
Mount Barker District Council
PO Box 54
MOUNT BARKER SA 5251

By email: balancey@dmrbarker.sa.gov.au

Dear Mr Clancey

**MOUNT BARKER DISTRICT COUNCIL ("COUNCIL") & HILLGROVE COPPER PTY LTD
("HILLGROVE") — DISPUTE RE CHARGES UNDER WATER SUPPLY AGREEMENT**

I refer to your emails of 17 and 18 November 2015 and our meeting on 24 November 2015 in relation to the above matter.

Following receipt of your emails we have reviewed the Water Supply Agreement between Council and Hillgrove dated 31 May 2010 ("Agreement").

You have instructed us to provide preliminary advice as to the likely strength of Hillgrove's claim that certain charges raised by Council pursuant to the Agreement for the supply of recycled water earlier this year are incorrect.

Your emails set out some of the recent background and context of the parties' agreement to vary the Maximum Annual Quantity under the Agreement, from 750 megalitres to approximately 1,000 megalitres. A key issue arising in the dispute is the question of whether any agreed increase in Maximum Annual Quantity also resulted in an increase in the Rebate Quantity, which would have had the effect of reducing certain rates of charge applicable to the water supplied to Hillgrove in FY 2014-15.

I note that Council wishes to pursue a negotiated agreement with Hillgrove on a range of matters, rather than simply contesting the rate of charge dispute in isolation. As discussed, this advice is based on Council's preferred approach of reaching agreement with Hillgrove promptly, rather than having a lengthy dispute process and thereby jeopardising the existing commercial relationship and possible future revenues.

In short, this advice confirms that, in our view, Council's position as determinable on the face of the Agreement is relatively strong. However, there are therefore certain strategic advantages which may be obtained for Council in the pursuit of a negotiated resolution of the dispute.

Contract analysis

I confirm that the concepts of Maximum Annual Quantity and Rebate Quantity are expressed separately and distinctly in the Agreement, such that there is no obvious basis upon which Hillgrove

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- 2 -

Mr Brian Clancey
Mount Barker District Council

30 November 2015

could assert the Agreement should be interpreted as somehow requiring the two definitions to be linked.

In addition, the Agreement is explicit in setting out the way in which the Maximum Annual Quantity may be varied (per clause 5.4 'Variations'). However, clause 5.4 does not deal with the effect of any variation on the pricing prescribed by clause 9.

However, the Agreement provides in clause 9.2 that the Rebate Charge Rate will be substituted for the Base Charge Rate in respect of "Water taken ... during the Rebate Period up to the Rebate Quantity for the Contract Year in which that Water is taken".

I note that the Maximum Annual Quantity and Rebate Quantity were both specified as 750 megalitres in the executed version of the Agreement. In my view this is to be considered merely coincidental. The setting of the Rebate Quantity at the same volume as the Maximum Annual Quantity, without more, does nothing to require those volumes always to be equal.

There is therefore nothing in the Agreement which would require a change in the Maximum Annual Quantity to cause a commensurate change to be made to the Rebate Quantity. That is, because the two concepts are not expressly interrelated, a variation to the former has no automatic contractual effect on the latter.

Mr McClure has referred in his email of 30 October 2015 to the concept of quantum meruit, which I understand from your instructions appears to have been done in aid of his assertion that the Agreement had been superseded by subsequent discussion and events, notwithstanding the lack of any documentation in this regard.

Quantum meruit is a principle of law by which a contractor may be entitled to payment of a fair and reasonable sum for work performed and materials supplied where, relevantly, there is no contractual provision specifying the price of that work or those materials.

However, in this instance, the Agreement includes express terms as to pricing, which (as set out above) can apply as written notwithstanding the change in Maximum Annual Quantity. The High Court has stated that where a contract is in place, there can be no claim for quantum meruit: *Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221.

If the only change made to the Agreement as executed on or about 31 May 2010 was the increase of the Maximum Annual Quantity to some 1,000 megalitres, I would consider Council to be in a relatively strong position to assert that the rates chargeable for water supply under the Agreement are as calculated by Council (and not as asserted by Hillgrove), namely no rebate being applied to the supply of water exceeding 757.5 megalitres per annum.

However, given that the parties did not simply agree the variation of the Maximum Annual Quantity in isolation, it has been necessary to consider the circumstances of the variation as apparent from the emailed background materials you have provided.

Review of correspondence

It would of course be to Hillgrove's great advantage if it could have identified some assurance given or representation made by Council personnel that the entirety of the increased Maximum Annual Quantity would be supplied at the Rebate Rate.

However, Hillgrove's communications on the charge rate issue do not contain any such assertion.

- 3 -

Mr Brian Clancey
Mount Barker District Council

30 November 2015

In particular, the email from Hillgrove's Steve McClare to you sent on 11 September 2015 at 4.49pm summarises Hillgrove's view of the relevant negotiations concerning the increase in volume of water to be supplied, but does not assert that any of the negotiations specifically addressed the question of pricing. If Hillgrove had evidence of some representation concerning the Rebate Rate, one would have expected that basis to have been referred to in Mr McClare's email.

On your instructions, I understand that the dispute over the relevant charge rate arose following Hillgrove's consumption of water between April and July 2015. Since this dispute has been agitated relatively soon after the disagreement first came to light, I am of the view that there is little ground for Hillgrove to assert that Council should be prevented from relying on the Agreement because it induced Hillgrove to assume it would continue to be charged at all times at the Rebate Rate.

Taken together with the foregoing contractual analysis, our review of the materials as provided in your emails indicates that Council's position is reasonably strong.

However, that is not to say Hillgrove will be incapable of asserting facts to the contrary. Hillgrove may allege a different interpretation of the Agreement or may in due course allege some representation was made by Council about pricing. If Council intended to seek recovery of the full amount charged, this would have the potential to subject Council to the expense and inconvenience of pursuing its debt claim through the Courts.

Advice re next steps

You have informed us that, on the assumption the Council's position is strong, Council might seek to use pursuing payment of the amount disputed by Hillgrove as a bargaining chip, and possibly compromise on the recovery of that amount in exchange for obtaining from Hillgrove some security for future revenues or other commercial benefit to Council.

The context of this intention is that it would be to Council's disadvantage if Hillgrove ceased taking water from Council altogether (albeit that Hillgrove would then be in breach of the Agreement), or alternatively, if even if determined to reduce its consumption to the Minimum Annual Quantity of 400 megalitres per annum.

To guard against this eventuality, Council may wish to consider seeking to negotiate with Hillgrove to enter into a side agreement (likely by way of deed) whereby variations to the Maximum Annual Quantity, Minimum Annual Quantity and Rebate Rate could be confirmed, and other terms expressly agreed to preserve Council's interests.

Any such deed could include a requirement that Hillgrove provide some security for its future performance of the Agreement.

You may wish to take advantage of the dispute resolution provisions of the Agreement, as set out in clause 20. The contractual requirement for the parties to attempt to resolve the dispute by negotiation (and, if negotiation is unsuccessful, mediation) may provide a convenient procedure for opening commercial discussions at short notice. Using the dispute resolution procedure could theoretically see the matter referred to mediation within about a two-week period. This may well align with Council's goal of seeking the resolution of the matter within the next four weeks.

Alternatively, the commercial negotiations can always be pursued informally. I understand Council has had an effective commercial relationship with Hillgrove in the past and this might be the preferred initial step.

- 4 -

Mr Brian Clancey
Mount Barker District Council

30 November 2015

Please contact me if you require any more detail or wish to discuss further.

Yours faithfully
COWELL CLARKE

Per: 

JAMIE WATTS
Partner
JWatts@cowellclarke.com.au

Confidential

Attachment 2**New Provisions to be added to the Agreement between Council and Hillgrove i.e. provisions to be inserted that do not currently exist in the Agreement as distinct from variations to existing provisions**

1. Revenue from any sales over 750 mega litres per annum would be recorded by Council. 25% of this amount will be tallied for subsequent expenditure by Council in the townships of Callington and Kanmantoo and when that does occur there will be public recognition of the contribution to that project from Hillgrove via this sales revenue. Timing of the expenditure in these townships will be at the discretion of Council and may see funds accumulate over more than one financial year in order to ensure that a strategic use of the revenue from Hillgrove over 750 mega litres occurs which may be in concert with other Council funds. The project need not be recycled water related, it could be for example towards a new building or redevelopment of an existing building at the Callington Oval. This is to provide some incentive for Hillgrove to purchase a higher volume of water from Council than the minimum amount.
2. Specialist expertise availability by Hillgrove – a current example being the Emerald Quarry rehabilitation project. This be documented at a very high level only and the parties would acknowledge such opportunities and that if Council seeks to utilise Hillgrove expertise/resources then that would occur on no more than a cost recovery basis to Hillgrove, again with formal recognition by Council of the Hillgrove contribution to the Council project.
3. Post mine closure plan – Hillgrove and Council acknowledge the importance of this process and the timely delivery of the plan to (amongst other things) seek to ensure that productive use is put to the infrastructure and other assets on site. Council will liaise with Hillgrove and provide reasonable input to the preparation of this plan at no cost to Hillgrove.



STATUS: Confidential

TO: Council Members

CC: Corporate Governance Group; Anu Atukorala; Greg Sarre and Bridget Ransome

FROM: Brian Clancey, General Manager Infrastructure & Projects

SUBJECT: Hillgrove Resources: Council Relationship & Arrangements

DATE: 23 November 2015

REFERENCE: FOL/15/7019

PURPOSE:

To update Council Members on the relationship and arrangements between Hillgrove Resources and Council.

BACKGROUND/HISTORY:

An informal briefing was provided to Council Members on Monday 2 November 2015 and a high level overview was provided by Council officers including the Hillgrove view that it disputes by \$313,000 the total amount outstanding to Council for the payment of recycled water supplied to the mine (see below).

Several years ago Hillgrove funded and procured a recycled water pipeline that runs from the Council storage dam on Little Dublin Road to the mine.

With the benefit of grant funding obtained by Council, the size and capacity of the pipeline was expanded beyond that required by Hillgrove and the length was extended on to the town of Callington and is used to irrigate open space at the Primary School and the oval complex.

A contract was executed between Council and Hillgrove regarding the design and construction of the pipeline and the supply by Council to Hillgrove of recycled water for use at the mine.

That pipeline subsequently vested in Council's ownership and is also used by Council to supply other recycled water customers.

Council now supplies Hillgrove with around 1,000 mega litres of recycled water per annum. This is used in both processing and for dust suppression.

The contract (executed in May 2010) specifies a minimum quantity of 400 mega litres per annum and a maximum of 750 mega litres per annum.

Under the contract any volume of water more than 5% above the maximum quantity (787.5 mega litres) does not get a price rebate i.e. this water is charged at

the council base price (currently \$2.44 per kilolitre v the rebate price to Hillgrove of \$0.81 per kilolitre).

The rebate price to Hillgrove was determined by Council resolution having regard to the various criteria that apply as contained in the Council's Recycled Water Pricing Policy.

A simple example:

If Hillgrove purchases 950 mega litres of recycled water from Council within a financial year. The price will be:

787.5 mega litres @ \$0.81 per kilolitre (rebate price) = \$637,875

162.5 mega litres @ \$2.44 per kilolitre (base price) = \$396,500

Total amount payable by Hillgrove to Council is \$1,034,375

Hence in recent years the contract has delivered very significant revenue for Council as Hillgrove's demand has exceeded the volume to which the price rebate is applicable.

The amount of water required by Hillgrove has risen dramatically. In 2015/16 Hillgrove is seeking between 1,400 – 1,500 mega litres.

Council does not have the capacity to supply this quantity of recycled water.

Hillgrove is preparing to construct a new pipeline to bring raw River Murray water from the SA Water Murray Bridge to Onkaparinga pipeline to the mine.

Council investigated whether it would be possible for such a new pipeline to be built at a different location and have it connect to the existing Council recycled water pipeline. For engineering and other reasons this was not feasible.

Hillgrove will not purchase water from SA Water, they will simply use water that will be supplied via the SA Water pipeline for which they pay at a rate that is to be prescribed. The use of SA Water infrastructure by other parties is recent, having been made possible by the Water Industry Act via State Parliament in 2012.

Hillgrove will require a licence to extract water from the River Murray – these licences are traded on a regular basis with an associated water allocation.

Once this new pipeline is operational Hillgrove will have an alternative water supply. Current indications from Hillgrove are that the new pipeline is expected to be operational in late December 2015 or January 2016.

Hillgrove has indicated that this alternative water supply will deliver water to the mine at a significantly lower cost than Hillgrove currently pays to Council. Notwithstanding that, Hillgrove has verbally indicated that it will still seek to purchase as much recycled water from Council as we can supply.

Hillgrove has advised that for the next 12 months or so it is mining an area that sees higher production cost and lower yield and that this is placing pressure on

cash flow. Hillgrove has in recent times undertaken some significant restructuring of their business.

Hillgrove now employs around 200 people with the majority of these living in our district. In addition to this is the significant economic impact of the mine on its many suppliers and contractors (over 100) and the ripple effect of this.

Hillgrove also supports the local community in a variety of ways including assisting various sporting and community groups.

DISCUSSION:

The CEO of Hillgrove Steve McClare recently met with Andrew Stuart, David Peters and Brian Clancey. He made clear various matters including that Hillgrove disputes the total amount outstanding to Council (on 16/11 this was \$680,000) by \$313,000 on the basis that all recycled water supplied should now be at the rebate not base price.

Steve McClare put forward a proposition as to revised arrangements for Hillgrove to continue to purchase recycled water from Council. There are several elements to this proposition.

Further communication with Steve McClare is occurring in that regard including an opportunity to expand the relationship between Hillgrove and Council beyond simply that of recycled water supply and purchase.

Once there is clarity as to the proposed revised arrangements an agenda item will be presented for consideration at a Council meeting.

That will include an assessment of the community benefits, risks and implications (social, financial and environmental) associated with proposed revised arrangements with Hillgrove v the alternative and the associated implications.

The objective is to have that considered prior to Christmas 2015. It is likely that this will be preceded by a briefing at an Informal Gathering for Council Members.

Concurrently a Council project brief titled *Employment Generation Through Recycled Water Strategy* has been drafted.

The project goal is the preparation and implementation of a strategy to deliver employment generation and economic development within the region that is facilitated by the supply of recycled water from the Mount Barker District Council.

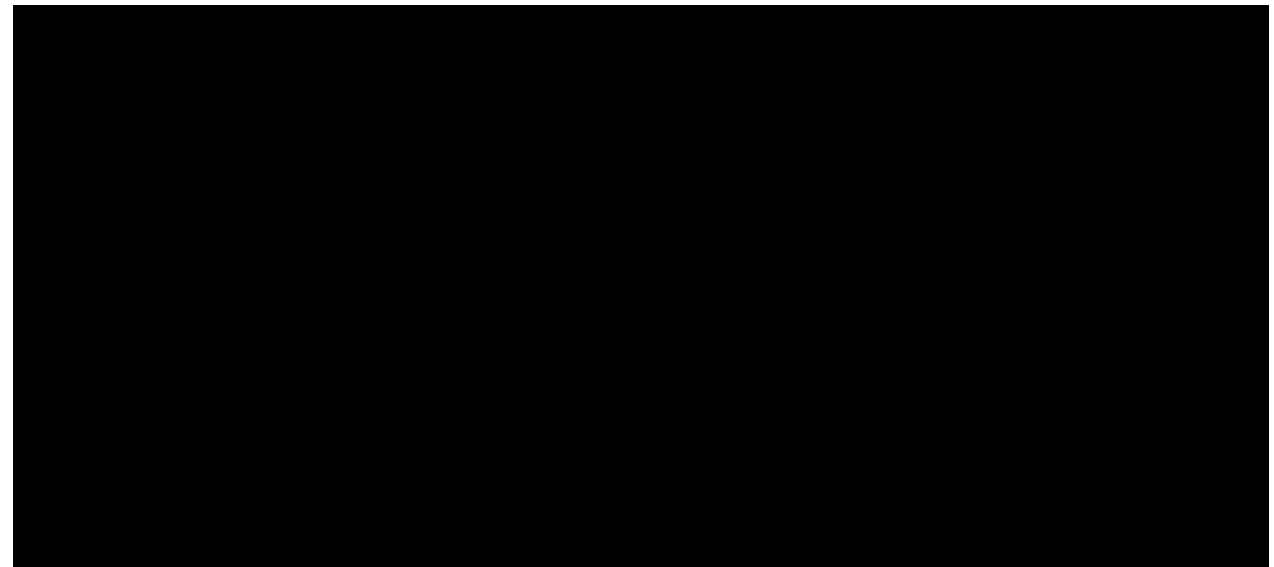
This is in recognition that the Hillgrove mine has a limited life and alternative markets for Council's recycled water need to be identified/developed so that Council continues to have a suitable disposal path for recycled water i.e. external to Hillgrove by adding new customers to our other existing customers.

The project would be undertaken in consultation with key stakeholders.

For further information please contact Brian Clancey on 8391 7218 or
bclancey@dcmtbarker.sa.gov.au

Brian Clancey
General Manager, Infrastructure & Projects

Confidential



17.2 **REPORT TITLE: CONFIDENTIAL ITEM – RECYCLED WATER
 SUPPLY AGREEMENT**
DATE OF MEETING: 21 DECEMBER 2015
FILE NUMBER: FOL/15/7019

Moved Councillor Morrison that Council:

Section 90 (3) (h) Order

1. Pursuant to Section 90(3)(h)
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, the four General Managers, Manager Waste Water and the Minute Secretary be excluded from attendance at the meeting for Agenda Item Recycled Water Supply Agreement.

The Council is satisfied that pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to legal advice, which will be discussed in detail with council members.

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 a Council decision has not yet been made in relation to the advice.

Seconded Councillor Irvine

CARRIED
OM20151221.16

Moved Councillor Hamilton that Council:

2. Note the legal advice from Cowell Clarke (attachment 1);

Seconded Councillor Irvine

CARRIED
OM20151221.17

Moved Councillor Campbell

3. Amend the existing Water Supply Agreement with Hillgrove Resources as follows:
 - a. The period is for a further 5 years commencing 1 January 2016 - subject to Hillgrove's licence being extended beyond the current expiry in 2018.
 - b. The Minimum Annual Quantity is to be changed from 400 megalitres to 750 megalitres;
 - c. The rebated price will apply to all recycled water sales irrespective of the volume supplied in any financial year;
 - d. For the period 1 January 2016 to 30 June 2017 (inclusive) payment terms shall be varied from 30 business days to 90 calendar days;
 - e. Make clear a point of interpretation to ensure that there is no restraint of trade for Council's recycled water disposal path;
 - f. Add the three new provisions which are outlined in attachment 2; and
 - g. Authorise the Mayor and Chief Executive Officer to finalise and execute the above variations to the Agreement and any other matters arising from the current Agreement requiring a tidy up/clarification.

Seconded Councillor Irvine

CARRIED
OM20151221.18

Moved Councillor Seager that Council

- 4(a) Approve the impairment and write off of \$230,000 raised over the remainder of the contract period with this amount being fully attributable to the provision by Council of 97.1 mega litres of recycled water to Hillgrove that was outside of the quality specified in the Agreement.
- 4(b) In the event that Hillgrove is not prepared to accept the write off of \$230,000 authorise the Chief Executive Officer to increase the amount of the write off to \$313,000 to achieve the above amendments (contained in recommendation 3) to the existing Water Supply Agreement.

9.26pm Councillor Hamilton left the chamber

9.30pm Councillor Hamilton entered the chamber and took her chair

Seconded Councillor Irvine

CARRIED
OM20151221.19

Moved Councillor Campbell that Council:

Section 91(7) Order

5. Pursuant to Section 91(7)

That having considered Agenda Item Recycled Water Supply Agreement in confidence under 90(2) and 3(h) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the discussion, report, attachments and all minutes be retained in confidence until the above amendments to the Water Supply Agreement have been formalized by the execution of same by both parties or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

Seconded Councillor Bailey

CARRIED
OM20151221.20

MEETING DECLARED CLOSED AT 9.37PM

MAYOR

DATE