

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
131	7 May 2018 RO Brian C #124 #129	Recycled Water Initiatives	<p><u>Section 90 (3) (b) Order</u></p> <p>1. <u>Pursuant to Section 90(3)(b)</u> 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 Infrastructure & Projects, General Manager Planning and Development, General Manager Council Services and the Minutes Secretary be excluded from attendance at the meeting for Agenda Item Recycled Water Initiatives.</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 and would see Council breach a legal obligation.</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 Council has a legal obligation and the disclosure of Council's commercial position may prejudice Council's ability to be able to negotiate a cost-effective outcome for the benefit of the Council and the community in this matter.</p>	Council report, related documents and all minutes be retained in confidence	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 Council has a legal obligation and the disclosure of Council's commercial position may prejudice Council's ability to be able to negotiate a cost-effective outcome for the benefit of the Council and the community in this matter.	Retained in confidence until: or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.	6 Sep 21	Within 12 months	<i>Report, attachments and Minutes released on website 25 August 2022</i>

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#	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><u>Section 91(7) Order</u></p> <p>2. <u>Pursuant to Section 90 (3) (b) & (d)</u></p> <p>That having considered Agenda Item Recycled Water Initiatives, 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:</p> <p>.....</p> <p>or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.</p> <p><u>Order History</u></p> <p>2 Oct 2018 -8 Oct 2019 8 Oct 19- 7 Sep 20 7 Sep 20 – 6 Sep 21</p>						

18. CONFIDENTIAL REPORTS**18.1 REPORT TITLE: CONFIDENTIAL ITEM: RECYCLED WATER INITIATIVES****DATE OF MEETING: 7 MAY 2018****FILE NUMBER: 18/41247****ATTACHMENTS:**
1. Council letter to Hillgrove re Debt 18/11750
2. Council letter to Hillgrove re PHES 18/32850
3. Draft MOU Council and SA Water 18/34731
4. Existing Infrastructure Plan 18/43945**Key Contact** **Brian Clancey, Deputy Chief Executive Officer/General Manager, Infrastructure & Projects****Manager/Sponsor** **Andrew Stuart, Chief Executive Officer****Mount Barker 2035 – District Strategic Plan:**

Natural Environment & Sustainable Living
Objective 2.4 Maximise recycled water use.

Economic Prosperity

Objective 2.1 Strengthen and promote the water recycling and reuse business of Council.

Annual Business Plan 2017/2018:

3.3.4 Wastewater

Develop and implement a strategy for recycled water and sell recycled water to suitable customers

Finalise the long-term wastewater and recycled water strategy

Purpose:

To provide an update on the debt of Hillgrove Resources and seek authority to execute a MOU with SA Water.

Summary – Key Issues:

- There has been little change in the debt of Hillgrove Resources to Council for the supply of recycled water and as of 1 March 2018 Council has applied interest on the debt as per the Water Supply Agreement between Council and Hillgrove Resources.
- Council has written to Hillgrove Resources to register interest in being a potential supplier of recycled water for the Pumped Hydro Energy Storage proposal.
- An MOU between Council and SA Water has been prepared proposing collaboration with a first priority being to pursue an integrated recycled water scheme.

Recommendation:

That Council:

Section 90 (3) (b) Order

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 Infrastructure & Projects, General Manager Planning and Development, General Manager Council Services and the Minutes Secretary be excluded from attendance at the meeting for Agenda Item Recycled Water Initiatives.

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 and would see Council breach a legal obligation.

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 Council has a legal obligation and the disclosure of Council's commercial position may prejudice Council's ability to be able to negotiate a cost-effective outcome for the benefit of the Council and the community in this matter.

2. Note the letters from Council to Hillgrove Resources dated 9 February 2018 (attachment 1) and 4 April 2018 (attachment 2);
3. Continue to regularly monitor the performance of Hillgrove Resources in relation to the amount of the debt owed to Council for the supply of recycled water to the mine and have a further status update prepared for the Council meeting scheduled to be held on 5 November 2018 or earlier if warranted due to a change in circumstances; and
4. Authorise the Chief Executive Officer to finalise and execute the Memorandum of Understanding between Council and SA Water (draft attached); and

Section 91(7) Order5. Pursuant to Section 90 (3) (b) & (d)

That having considered Agenda Item Recycled Water Initiatives, 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:

- Hillgrove Resources

the Hillgrove Resources debt is reduced to only the amount that is current;

- SA Water MOU

The MOU has been finalised and executed and arrangements agreed with SA Water for this to be made known publicly with the intent being to do so as soon as practicable;

or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

Background:

1. The Hillgrove resources debt has been the subject of previous confidential agenda items, the most recent being considered at the Council meeting held on 5 February 2018 and the resolutions remain the subject of confidentiality orders. It was resolved at that meeting that interest be applied as per the Water Supply Agreement between Council and Hillgrove Resources. This was subsequently communicated to Hillgrove Resources (refer attachment 1).
2. Notwithstanding undertakings to Council from Hillgrove Resources over a period of time, there has been little change in the Hillgrove Resources debt as reflected in the table below.

HILLGROVE RECEIVABLE

Balance 1 July 17	451,658	
Billed this year	585,103	
Received since 30 June	(666,334)	
Closing Balance	370,427	
Current	62,324	17%
30	57,758	16%
60	49,200	13%
90+	201,145	54%
Total	370,427	100%

3. The most concerning figure above is the \$201,145 that is over 90 days and represents 54% of the total debt of \$370,427.

4. Two positives are that the total amount outstanding has reduced (by \$81,231 from 1 July 2017 being 18%) and the total revenue received for this period being \$666,334.

Discussion:

Hillgrove Resources

5. Pursuant to the Water Supply Agreement, Council could pursue the matter formally through the issue to Hillgrove Resources of a Default Notice.
6. Hillgrove Resources would then be required to remedy the default within 10 business days and if that did not occur, Council could reduce or cease supply and upon giving 30 business days notice could ultimately terminate the Agreement.
7. The supply of recycled water to Hillgrove Resources continues to present the best outcome from a Council perspective, delivering a range of benefits. To give notice to reduce or cease supply could see Hillgrove Resources obtain all of their required water from the current SA Water connection to the mine.
8. Important implications for Council under this scenario are the loss of substantial revenue and Council does not as yet have a suitable alternative disposal path for such a large quantity of recycled water. This would present regulatory problems and result in additional infrastructure costs to Council.
9. In addition, Council has recently expressed interest to Hillgrove Resources as a potential supplier of recycled water for the Pumped Hydro Energy Storage (PHES) proposal.
10. Preliminary information available indicates that Hillgrove Resources is seeking a partner or purchaser for the proposal.
11. The Hillgrove Resources proposal is that PHES could be operational by late 2021 and that the upper pond (dam) would require 3 Gigalitres (GL) of water.
12. Given these circumstances it is not recommended that Council issue a Default Notice on Hillgrove Resources at this time. This course of action remains an option for future use.

SA Water

13. A draft memorandum of Understanding (MOU) between Council and SA Water has been prepared (attachment 3).
14. Existing infrastructure is shown in attachment 4 and illustrates that SA Water and Council already have a customer in common being the Hillgrove Resources mine (as referenced above).

15. By combining the Council recycled water supply with surplus capacity in the SA Water Murray Bridge – Onkaparinga (MBO) pipeline (raw water) there is a total supply capacity of around 5 GL per annum.
16. This presents a unique opportunity to investigate a potential partnering arrangement with SA Water. As the Council supply capacity (of recycled water) will steadily increase with growth the capacity of the MBO pipeline will steadily reduce as the population serviced by this steadily increases.
17. Council and SA Water have jointly appointed consultants to engage with prospective customers and report on demand and related matters including location, water quality needs, willingness to pay and projected economic outcomes e.g. investment, and employment. That study is about to commence and the findings will be made known to Council Members (there is likely to be commercial in confidence information).
18. This work will inform options and the preparation of a business case.
19. The project has been referenced in the Council's application to the Regional Growth Fund with a letter of support from SA Water (refer separate agenda item).
20. The MOU includes performance objectives and the term is 6 months.
21. In seeking to strengthen the relationship with Council, SA Water has also been contributing (at no cost to council) to the planning and preparation for the upgrading of the Wastewater Treatment Plant on Springs Road.
22. The MOU also acknowledges the possibility of further integration between Council and SA Water subject to the success of the integrated irrigation scheme.
23. The MOU contains a confidentiality clause as reflected above in recommendation 5.

Community Engagement:

Informing only	Refer recommendation 5.
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Policy:

Not applicable.

Budget:

The 2017/18 Council budget includes revenue from recycled water sales of \$637,635. Approximately 97% of the recycled water is forecast to be sold to Hillgrove Resources.

The budget amount is deliberately conservative and does not reflect the anticipated volume of recycled water to be supplied by Council but the likelihood of payments being received.

The Council contribution of \$60,000 to the joint study with SA Water is being funded from within the existing wastewater operating budget.

Statutory/Legal:

Water Supply Agreement between Council and Hillgrove Copper Pty Ltd.

Refer clause 3 of the attached draft MOU.

The EPA licenses Council for the operation of the wastewater treatment plant on Springs Road and a disposal path for treated wastewater. Health SA is the regulatory body in respect of the use of recycled water.

Staff Resource Requirements:

The recommendations can be implemented within existing staff resource capacity.

Environmental:

An objective is to maximise the use of recycled water. Usage by Hillgrove Resources (and other recycled water customers) enables a productive disposal path for treated effluent.

Social:

Hillgrove Resources continues to be both a major employer and a significant purchaser/consumer of goods and services with implications for many contractors and other businesses.

Risk Assessment:

The major risks to Council are that:

- a. Hillgrove Resources defaults on the payment of the debt and being unsecured, Council has no avenue for recourse and the debt will have to be written off; and/or
- b. Hillgrove Resources ceases taking recycled water from Council earlier than the current forecast of the mine operation ceasing and Council then needs to action an alternative disposal pathway and manage the associated implications.

Asset Management:

Council owns and is responsible for the pipeline that supplies recycled water to the Hillgrove Resources mine and extends to the town of Callington.

Conclusion:

Council needs to continue to regularly monitor payments from Hillgrove Resources for recycled water and the associated amount of the debt.

The MOU with SA Water presents a unique opportunity and it is recommended that this be pursued.

Previous Decisions By/Information Reports to Council

Meeting Date	5 February 2018	HPRM Reference	DOC/18/4274
Title	Hillgrove Resources Debt to Council – Further Update		
Purpose	To provide a further update on the status of the Hillgrove Resources debt to Council		

Meeting Date	6 November 2017	HPRM Reference	DOC/17/106383
Title	Hillgrove Resources Debt to Council Update		
Purpose	To provide an update on the status of the Hillgrove resources debt to Council		

Meeting Date	7 August 2017	HPRM Reference	DOC/17/70262
Title	Hillgrove Resources Debt		
Purpose	To provide an update on the performance of Hillgrove Resources regarding the Deed of Variation executed with Council for the supply of recycled water and to recommend further actions		

RELEASED

Attachment 1 to Item 18.1

Reference: 18/11750

9 February 2018

Mr Steve McClare
Managing Director & Chief Executive Officer
Hillgrove Resources
5-7 King William Road
UNLEY SA 5061

Dear Steve

RE: Hillgrove Resources Debt to Council

This was considered in confidence at the Council meeting held on 5 February 2018.

The recent improvement in payment by Hillgrove Resources was noted as was text from the December 2017 Hillgrove Resources Quarterly Report, in particular that “.... cashflows are expected to increase considerably, allowing the Company to improve its balance sheet through a reduction in amounts owing to creditors,...”.

The meeting resolved to invoke clause 10.3 of the Water Supply Agreement (31 May 2010) between Council and Hillgrove Resources to charge default interest on amounts owing and not paid to Council within the payment terms (30 business days of receiving the tax invoice). Council reserves its rights to further actions and will from the 1st March 2018 charge interest on the balance owing of any invoices which are outside of the payment terms.

Regular monitoring of the performance of Hillgrove Resources in relation to the amount of the debt owed to Council for the supply of recycled water to the mine is to continue, with a further update to be presented to the Council meeting to be held on 7 May 2018.

In recognition of the value of the relationship, Council is continuing to be very supportive of Hillgrove Resources whilst enduring the associated risks.

Council is still awaiting information from Hillgrove Resources in relation to demand forecast for recycled water. The provision of this as soon as possible would be appreciated as per the letter exchanges in late 2017.

Yours sincerely

Andrew Stuart
Chief Executive Officer

Reference: 18/32850

Attachment 2 to Item 18.1

4 April 2018

Mr Steve McClare
Chief Executive Officer and Managing Director
Hillgrove Resources
PO Box 372
Unley SA 5061

Dear Steve

RE: Recycled Water Supply and Other Infrastructure

I am writing to register Council's interest in your presentation on Pumped Hydro Energy Storage (PHES) to the recent conference in Sydney.

I note that Hillgrove is seeking a partner or a purchaser or other suitable business model.

Council is interested as a potential supplier of recycled water for the project.

In that respect any information that you can provide in relation to forecast water demand for the PHES and timing of same would be very much appreciated.

Likewise, Council still awaits information from Hillgrove in relation to forecast demand for recycled water for the next 12 – 24 months.

Council would also welcome an opportunity for discussion with you regarding future infrastructure use options (e.g. roads) to explore whether a business case may exist that provides benefits for both Hillgrove and the community.

I suggest that an in person discussion would be timely and look forward to hearing from you (my mobile number is 0419 817 799).

Yours sincerely

Andrew Stuart
Chief Executive Officer



Attachment 3 to Item 18.1

**Mount Barker District Council Irrigation
Scheme & Feasibility of Integration of Water &
Wastewater Businesses with SA Water**

Memorandum of Understanding

Between

South Australian Water Corporation

And

Mount Barker District Council

Version: 4

Date: 6/4/2018

Status: Draft

Document ID: TBD

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**Government of
South Australia**

Document Controls

Version History

Version	Date	Author	Comments
0.1	21/11/2017	Mark Wilson	First draft.
0.2	11/01/18	Brian Clancey	Second draft
0.3	19/01/18	Julie Arbon/Michael Edgecombe	Third draft
0.4	6/4/18	Brian Clancey	Fourth draft

RELEASED

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1 The Parties

South Australian Water Corporation ("SA Water") ABN 69 336 525 019 of 250 Victoria Square, Adelaide 5000 is a statutory authority wholly owned by the South Australian Government. It provides essential services to support growth and economic development throughout South Australia. It does this by delivering water, wastewater, and recycled water services in efficient, responsive, sustainable and accountable ways.

Mount Barker District Council ("Council") ABN 54 250 395 713 of Local Government Centre, Mount Barker Homemaker Centre, 6 Dutton Road, Mount Barker SA 5251 is one of the fastest growing councils in Australia offering outstanding lifestyle and business opportunities within a diverse and progressive community. The vision of Council is *"The Mount Barker district will be recognised as being highly liveable, prosperous and safe, built from a foundation of community spirit and energy, quality of lifestyle and unique heritage, environment and landscape."*

RELEASED

2 Intent

The intent of this Memorandum of Understanding ("MOU") is to provide a cooperative foundation in which SA Water and Council can work collaboratively to establish an integrated irrigation precinct that leverages off the existing and proposed infrastructure of both Council and SA Water.

It is intended that the Mount Barker Irrigation Scheme will enable maximisation of economic value (including economic development, employment generation and green industry) from (1) recycled water (wastewater and stormwater) from the wastewater management scheme currently operated by Council, and (2) spare raw water capacity in SA Water's Murray Bridge to Onkaparinga Pipeline (MBOP).

It is intended that this new irrigation area be established prior to the imminent downturn in recycled water use by Hillgrove Resources at Kanmantoo, which currently takes approximately 90% of Council's recycled water.

Indicatively, the new scheme is intended to have an annual capacity of around 5GL per annum, with initial volumes being majority from the MBOP, but over time and as recycled water volumes increase the balance would shift to Council's recycled water.

This approach will enable SA Water to recover spare capacity in the MBOP over time for Adelaide's drinking water requirements, while addressing Council's water sales objectives. It also impacts the current design considerations for expansion of the capacity of the Council's wastewater treatment plant on Springs Road, Mount Barker to cater for rapid customer growth.

It is intended that the parties will agree the apportionment of costs, risks and revenue/benefits for the integrated irrigation scheme.

Subject to the assessment by both parties of the successful delivery of an integrated irrigation scheme, it is also intended that Council and SA Water explore the feasibility of further integration of their respective water and wastewater businesses to seek long term mutual benefit.

This could include models such as establishing a Joint Venture Company initially for the irrigation scheme, but with the ability to expand its scope into other services and infrastructure. It could also include SA Water's preferred outcome of the full acquisition by SA Water of Council's wastewater and recycled water business. Either model could include joint investment in the proposed new/upgraded WWTP and distribution infrastructure for Council's wastewater business.

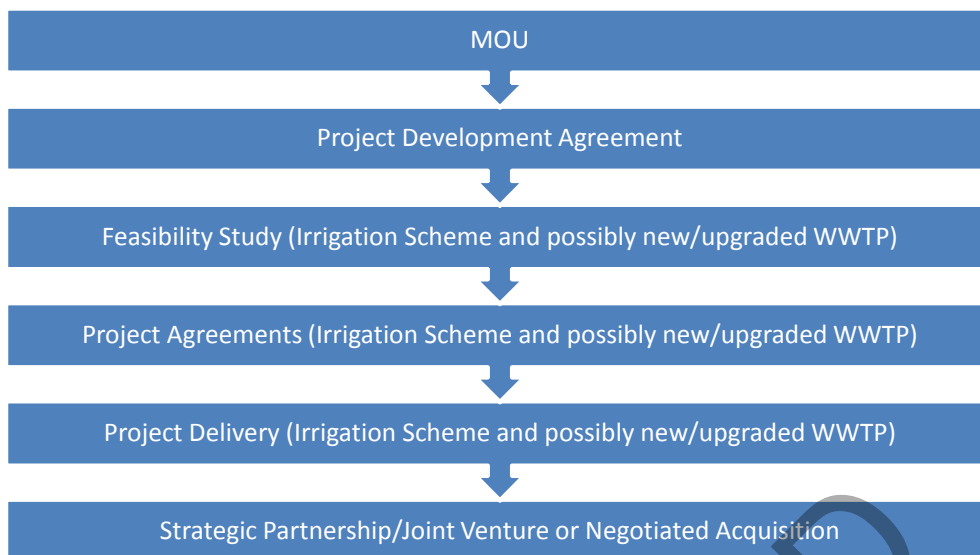
An indicative flow chart below indicates the steps that would be required to move from the MOU through various stages towards SA Water's ultimate goal of a negotiated acquisition of Council's wastewater and recycled water business or some other form of strategic partnership/joint venture arrangement with Council. Prior to committing to each step, both parties have the ability to consider if continuing towards the final goal is supported.

The parties will use their best endeavours to meet the timetable for achieving the Performance Objectives set out in Schedule [].

The Performance Objectives and Target Timing date range can be amended by mutual agreement.

Mt Barker District Council – Irrigation Scheme

SA Water



RELEASED

3 Legal Enforceability

Clauses 4, 6, 7, 8 and 10 of this MOU are intended to be legally enforceable. In other respects this document is a statement of intention between SA Water and Council and is not intended to create legally enforceable obligations.

RELEASED

4 Term

4.1 This MOU commences on the date of this MOU and expires on the earlier of:

(a) 180 days from the date of this MOU, plus such period for which the parties may agree to extend that period; or

(b) the execution of an unconditional written Contract or a conditional Contract becoming unconditional.

4.2 "The date of this MOU" means the date on which the last signing party signed the MOU.

4.3 If either CEO believes that following more than one default as described in clause 10.5, the MOU is not progressing at a satisfactory rate, the CEO with that view shall notify the other CEO of their concern about progress and the CEOs shall meet in person as soon as practical after that notice and following that meeting the MOU can be terminated within 7 business days by written notice given by either party.

RELEASED

5 Functions of the Parties

5.1 SA Water will, at its own expense:

- (a) work collaboratively with Council to verify the technical requirements of the Council for the long-term recycled water and wastewater opportunities
- (b) work collaboratively with Council to identify potential new customers for an integrated irrigation scheme
- (c) provide information relating to MBOP spare capacity and how to integrate it effectively into an integrated irrigation scheme
- (d) provide access to SA Water's infrastructure information for the purpose of developing an integrated irrigation scheme
- (e) work with relevant third parties, including any contractors, to discuss the design, construction, installation and commissioning process for any necessary connections and integration works
- (f) negotiate in good faith the joint venture or other similar strategic partnering agreement associated with jointly investing in, owning and operating the proposed integrated irrigation scheme and possibly the new/upgraded WWTP
- (g) make available specialist expertise to provide input to the Council's process for the current design and procurement considerations for expansion of the capacity of the Council's wastewater treatment plant
- (h) If future opportunities arise, conduct detailed due diligence and collaborate on a process for further integration of the wastewater businesses

5.2 Council will, at its own expense:

- (a) work collaboratively with SA Water to verify the technical requirements of the Council for the long-term recycled water and wastewater opportunities
- (b) work collaboratively with SA Water to identify potential new customers for an integrated irrigation scheme
- (c) provide access to Council's infrastructure information for the purpose of developing an integrated irrigation scheme
- (d) work with relevant third parties, including any contractors, to discuss the design, construction, installation and commissioning process for any necessary connections and integration works
- (e) negotiate in good faith the joint venture or other similar strategic partnering agreement associated with jointly investing in, owning and operating the proposed integrated irrigation scheme and possibly the new/upgraded WWTP
- (f) provide information to SA Water in relation to the current design and procurement considerations for expansion of the capacity of the Council's wastewater treatment plant
- (g) If future opportunities arise and subject to meeting necessary probity requirements, conduct detailed due diligence and collaborate on a process for further integration of the wastewater businesses

6 Intellectual Property Obligations

- 6.1 SA Water owns all Intellectual Property Rights in anything that is not created during the Term but is produced by SA Water or delivered by SA Water to Council for the purposes of this MOU.
- 6.2 SA Water grants to Council during the Term an irrevocable, royalty free, fee free licence to use for the purposes of this MOU, copy, modify and adapt the Intellectual Property Rights in anything that is described in clause 6.1.
- 6.3 Council owns all Intellectual Property Rights in anything that is not created during the Term but is produced by Council or delivered by Council to SA Water for the purposes of this MOU.
- 6.4 Council grants to SA Water during the Term an irrevocable, royalty free, fee free licence to use for the purposes of this MOU, copy, modify and adapt the Intellectual Property Rights in anything that is described in clause 6.3.
- 6.5 The parties jointly own any Intellectual Property which is created or developed during the Term.
- 6.6 Any modifications or adaptations to any Intellectual Property referred to in clause 6.1 and 6.3 that are made during the Term are jointly owned by the parties.
- 6.7 After the end of the Term each Party shall promptly upon a request being made in writing by the other Party from time to time, return all or part of the information which has been provided by the Party making the request whether that information is in a physical form or recorded or stored by any electronic means or otherwise including copies thereof to the Party making the request and shall at the same time certify in writing to the Party making the request that it has returned all the information including copies thereof and that it no longer has any part of the information in its possession, custody or control.
- 6.8 In this Clause 6,
- "Intellectual Property" means:
- (a) copyright, design, patent, trademark, plant breeder rights, electronic layout rights and any other intellectual or industrial property rights, including know how, whether registered or not;
 - (b) invention, discovery, secret process, novel design, improvement or modification of any nature; and
 - (c) computer program material (including computer software, object code, source code, tables, charts, flowcharts, algorithms, diagrams, plans, techniques, data, structures, logical ideas, and concepts and processes).

7 Confidentiality Obligations

- 7.1 Subject to clauses 7.2, 7.3 and 7.4, SA Water and Council each agree that:
- a. they will keep confidential and not allow, make or cause any public announcement or other disclosure to a third party of or in relation to the terms of this MOU (including any written or oral communications, negotiations or information in relation to this MOU) or information relating to or produced in the course of carrying out the MOU (the Confidential Information) without the prior written consent of the other party.
 - b. the Confidential Information is only to be used for the purposes of the MOU; and
 - c. that the Confidential Information is only disclosed to each party's personnel who need to know that information and only to the extent that they need to know that information.
- 7.2 The obligations to keep confidential and not to make any public announcement or disclosure to a third party do not apply to disclosures or announcements to the extent that the disclosure or announcement:
- a. is required by law;
 - b. is required for the relevant party to perform its undertakings and obligations under this MOU;
 - c. is required to inform the relevant party's technical, financial or legal advisers; or
 - d. relates directly to information which is already in the public domain other than through a breach of this clause 7;
- provided that the disclosing party ensures any person to whom disclosure is made is aware of the confidential nature of the information and agrees to keep that information confidential under the same conditions imposed on the parties by this clause 7.
- 7.3 SA Water may disclose the Confidential Information that is subject to the obligations set out in this clause 7 to:
- a. Parliament, the Governor, Cabinet, any Minister of the Crown or Parliamentary or Cabinet committee or sub-committee;
 - b. to any agency, authority or instrumentality of the South Australian Government to whom it is customary for SA Water to disclose the Confidential Information (whether or not SA Water is legally obliged to do so) provided they agree to keep the information confidential; and
 - c. to the Government as a consequence of constitutional convention.
- 7.4 Council may disclose the Confidential Information that is subject to the obligations set out in this clause 7 to:
- a. the parties referred to in clause 5.1 (e) provided that they agree to keep that information confidential; or
 - b. as required in order to meet legislative obligations pursuant to either the Local Government Act 1999 or the Freedom of Information Act 1991.

8 Provisions Relevant to Enforceable Obligations

- 8.1 The Parties submit themselves to the exclusive jurisdiction of the Courts having jurisdiction in South Australia.
- 8.2 Any proceedings brought in a Federal Court must be instituted in the Adelaide registry of that court, and the parties undertake not to apply to transfer any proceedings to a registry of the Federal Court located in another State or Territory, or to the courts of another State or Territory.

RELEASED

9 Non-Exclusive Arrangements

- 9.1 The parties acknowledge that nothing in this MOU gives Council any form of exclusive arrangement with SA Water to access the MBOP and similarly nothing in this MOU gives SA Water any form of exclusive arrangement with Council to access Council-owned wastewater infrastructure.
- 9.2 The Parties further acknowledge that there is no obligation on SA Water to enter into a written contract with Council upon Council proposing any commercial transaction to SA Water under this MOU, and similarly there is no obligation on Council to enter into a written contract with SA Water upon SA Water proposing any commercial transaction to Council under this MOU notwithstanding the intention of both parties to negotiate in good faith for a potential joint venture or other similar arrangement.

RELEASED

10 Progress For Performance Objectives (See Schedule 1)

- 10.1 The parties agree that the Performance Objectives, the Target Timing and the schedule for the Progress Review CEO Meetings are realistic and achievable and the relevant resources will be committed by both parties to achieve the nominated outcome.
- 10.2 The parties will use their best endeavours to meet the Performance Objectives within the Target Timing date range set out in Schedule 1 (as amended from time to time).
- 10.3 The parties agree that time is of the essence in respect of the timetable set out in Schedule 1.
- 10.4 In the event that one or more Performance Objectives is not met within the Target Timing date range, or the parties do not participate in the Progress Review CEO Meetings set out in Schedule [] (as amended from time to time) the parties agree that the following steps will be taken.
- (a) if a Target Timing date is missed, the respective nominated officers at SA Water and Council will notify their respective CEO's of the default and the associated implications within 5 business days;
- (b) in that event, the CEO's will, unless they agree otherwise, meet within 15 business days of the notice in 10.4(a) to discuss the default and the associated implications and, if necessary, the steps required to ensure the relevant Performance Objective is met by a revised agreed target date;
- (c) if a Progress Review CEO meeting does not occur as scheduled, the parties agree that the meeting that has been missed will be held within a further 5 business days unless otherwise agreed by the CEOs;
- 10.5 In this clause, the 'nominated officer' for SA Water is [] and for the Council is [Mr Brian Clancey].

11 Signatures

Signed for and on behalf of SOUTH AUSTRALIAN WATER CORPORATION by a person duly authorised to do so in the presence of:	
..... Authorised Signatory Signature of Witness
..... Print name of Authorised Signatory Print name of Witness
..... Print position/title of Authorised Signatory Print position/title of Witness
	Dated:.....

Signed for and on behalf of Mount Barker District Council by a person duly authorised to do so in the presence of:	
..... Authorised Signatory Signature of Witness
..... Print name of Authorised Signatory Print name of Witness
..... Print position/title of Authorised Signatory Print position/title of Witness
	Dated:.....

Mount Barker District Council –& SA Water MOU

Schedule 1: Program for Performance Objectives

Key assumptions:

1. The MOU is finalised and executed by both parties around mid May 2018.
2. Both SA Water and Council can provide the required resources for the functions shown below under Performance Objective.
3. The program of the appointed consultant is similar to the timing shown below.

Performance Objective Number	Performance Objective	Target Timing (Relative to the MOU being executed)	Progress Review CEOs Meetings (Relative to the MOU)	Comment
1.	Award of Project Brief for the Demand/Market Study	Completed		
2.	Input to the Demand/Market Study	Weeks 4 - 11	Week 10	Information provision to the appointed consultant
3.	Assessment and Implications of the completed Demand/Market Study	Weeks 12 - 14		Identification of Business Case inputs
4.	Preparation of Business Case and Proposed Strategy	Weeks 15 - 22	Week 18	This assumes that the outcome of the Demand Study warrants this next step versus an early "no" do not proceed
5.	Preparation of Implementation Plan	Week 22 -26	Week 27	<p>To identify and provide preliminary advice on needs:</p> <ul style="list-style-type: none"> • Financial Plan & Business Model; • Grant funding; • Roles and Structure; • Procurement Strategy; • Resources; • Risk Management Plan etc. <p>To enable subsequent decision making by Council and SA Water</p>

Attachment 4 to Item 18.1



18. CONFIDENTIAL REPORTS

- 18.1**
- | | |
|-------------------------|--|
| REPORT TITLE: | CONFIDENTIAL ITEM: RECYCLED WATER INITIATIVES |
| DATE OF MEETING: | 7 MAY 2018 |
| FILE NUMBER: | 18/41247 |
| ATTACHMENTS: | 1. Council letter to Hillgrove re Debt 18/11750
2. Council letter to Hillgrove re PHES 18/32850
3. Draft MOU Council and SA Water 18/34731
4. Existing Infrastructure Plan 18/43945 |

Moved Councillor Irvine that Council:

Section 90 (3) (b) Order

- 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 Infrastructure & Projects, General Manager Planning and Development, General Manager Council Services, Group Manager Infrastructure and the Minutes Secretary be excluded from attendance at the meeting for Agenda Item Recycled Water Initiatives.

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 and would see Council breach a legal obligation.

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 Council has a legal obligation and the disclosure of Council's commercial position may prejudice Council's ability to be able to negotiate a cost-effective outcome for the benefit of the Council and the community in this matter.

Seconded Councillor Campbell

CARRIED
OM20180507.18

Moved Councillor Morrison that Council:

2. note the letters from Council to Hillgrove Resources dated 9 February 2018 (attachment 1) and 4 April 2018 (attachment 2);
3. continue to regularly monitor the performance of Hillgrove Resources in relation to the amount of the debt owed to Council for the supply of recycled water to the mine and have a further status update prepared for the Council meeting scheduled to be held on 5 November 2018 or earlier if warranted due to a change in circumstances; and
4. authorise the Chief Executive Officer to finalise and execute the Memorandum of Understanding between Council and SA Water (draft attached); and

Seconded Councillor Buchmann

CARRIED
OM20180507.19

Moved Councillor Buchmann that council:

Section 91(7) Order

5. Pursuant to Section 90 (3) (b) & (d)

That having considered Agenda Item Recycled Water Initiatives, 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:

Hillgrove Resources

- the Hillgrove Resources debt is reduced to only the amount that is current; and

SA Water MOU

- The MOU has been finalised and executed and arrangements agreed with SA Water for this to be made known publicly with the intent being to do so as soon as practicable;

or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

Seconded Councillor Campbell

CARRIED
OM20180507.20

MEETING DECLARED CLOSED AT 9.17PM

MAYOR

DATE