

**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
175	2 May 2022	Wastewater Service Delivery – Developer wastewater Infrastructure Fees	<p>Section 90 (3) (b) Order</p> <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 and Wastewater/Recycled Water; General Manager, Infrastructure; General Manager, Planning and Community; General Manager, Corporate Services; Acting General Manager Community Services, Risk and Governance Officer / EA to the Mayor, and Executive Assistant to the Chief Executive Officer be excluded from attendance at the meeting for Agenda Item 3.1 Wastewater Service Delivery – Developer Wastewater Infrastructure Fees.</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 would 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 and in relation to other contract negotiations.</p>	Council report, related documents and all minutes except Attachments 4 and 5 be retained in confidence	<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 would 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</p>	Retained in confidence, with the exception that this information be made available to all members of the council's Audit and Risk Committee given the addition to the terms of reference of that Committee, until 2 May 2025 or such lesser period for some of the information as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.		Within 12 months	<i>Attachments 4 and 5 released on website 31 August 2022</i>

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			<p>Section 91(7) Order</p> <p>9. Pursuant to Section 90 (3) (b)</p> <p>That having considered Agenda Item 3.1 Wastewater Service Delivery – Developer Wastewater Infrastructure Fees 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 except Attachments 4 and 5 be retained in confidence, with the exception that this information be made available to all members of the council's Audit and Risk Committee given the addition to the terms of reference of that Committee, until 2 May 2025 or such lesser period for some of the information as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.</p>		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 and in relation to other contract negotiations.				
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## Attachment 4

**Audit and Risk Committee Terms of Reference Extract**

Recommended additional text is shown below in red font.

Ref: 22/47013

**1.11 Wastewater and Recycled Water Strategy**

- 1.11.1 The Committee shall provide advice on the management of strategic risk and the implications to Council associated with the provision of wastewater and recycled water services including governance and stand-alone financial reporting needs and arrangements.
- 1.11.2 The Committee shall review annually the long term financial modelling and associated assumptions prepared for wastewater and recycled water services.
- 1..11.3 The Committee shall monitor the application of the Wastewater Infrastructure Fees and Augmentation Charges Policy and report annually to council regarding this, inclusive of any recommended actions and/or amendments to the Policy.

## Mount Barker District Council

### Wastewater/Recycled Water

#### Activities Authorised by State Legislation

22/37581 - 24 March 2022

Extracts from various State legislation are below together with yellow highlighting where it is considered to be applicable to the matter at hand, and to assist with understanding that, an example or comment has been inserted in red text.

#### Local Government Act 1999

##### 6—Principal role of a council

A council is, under the system of local government established by this Act, established to provide for the government and management of its area at the local level and, in particular— (a) to act as a representative, informed and responsible decision-maker in the interests of its community; and (b) to provide and co-ordinate various public services e.g. wastewater service and facilities and to develop its community and resources in a socially just and ecologically sustainable manner; and (c) to encourage and develop initiatives within its community for improving the quality of life of the community e.g. productive use of recycled water; and (d) to represent the interests of its community to the wider community; and (e) to exercise, perform and discharge the powers, functions and duties of local government under this and other Acts in relation to the area for which it is constituted e.g. operation of wastewater treatment plants as authorised by licence to council via the EPA pursuant to the Environment Protection Act.

##### 7—Functions of council

The functions of a council include— (a) to plan at the local and regional level for the development and future requirements of its area; (b) to provide services and facilities that benefit its area, its ratepayers and residents, and visitors to its area e.g. wastewater service and recycled water; (ba) to determine the appropriate financial contribution to be made by ratepayers to the resources of the council e.g. annual service charges for sewer and CWMS; (c) to provide for the welfare, well-being and interests of individuals and groups within its community; (d) to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards; (e) to manage, develop, protect, restore, enhance and conserve the environment in an ecologically sustainable manner, and to improve amenity; (f) to provide infrastructure for its community and for development within its area (including infrastructure that helps to protect any part of the local or broader community from any hazard or other event, or that assists in the management of any area) e.g.

wastewater infrastructure for collection, treatment and disposal; (g) to promote its area and to provide an attractive climate and locations for the development of business, commerce, industry and tourism; (h) to establish or support organisations or programs that benefit people in its area or local government generally; (i) to manage and, if appropriate, develop, public areas vested in, or occupied by, the council; (j) to manage, improve and develop resources available to the council; (k) to undertake other functions and activities conferred by or under an Act, e.g. operation of wastewater treatment plants/facilities as authorised by licence to council via the EPA pursuant to the Environment Protection Act.

#### 8—Principles to be observed by council

A council must act to uphold and promote observance of the following principles in the performance of its roles and functions— (a) provide open, responsive and accountable government; (b) be responsive to the needs, interests and aspirations of individuals and groups within its community e.g. provision of a council sewer service to the growth area rezoned by the State Government in 2010 as requested by developers; (c) participate with other councils, and with State and national governments, in setting public policy and achieving regional, State and national objectives; (d) give due weight, in all its plans, policies and activities, to regional, State and national objectives and strategies concerning the economic, social, physical and environmental development and management of the community; (e) seek to co-ordinate with State and national government in the planning and delivery of services in which those governments have an interest; (ea) seek to collaborate, form partnerships and share resources with other councils and regional bodies for the purposes of delivering cost-effective services (while avoiding cost-shifting among councils), integrated planning, maintaining local representation of communities and facilitating community benefit; (f) seek to facilitate sustainable development and the protection of the environment and to ensure a proper balance within its community between economic, social, environmental and cultural considerations; (g) manage its operations and affairs in a manner that emphasises the importance of service to the community; (h) seek to ensure that council resources are used fairly, effectively and efficiently and council services, facilities and programs are provided effectively and efficiently; (i) seek to provide services, facilities and programs that are adequate and appropriate and seek to ensure equitable access to its services, facilities and programs; (ia) seek to balance the provision of services, facilities and programs with the financial impact of the provision of those services, facilities and programs on ratepayers; (j) achieve and maintain standards of good public administration; (k) ensure the sustainability of the council's long-term financial performance and position.

#### 155—Service rates and service charges

- (1) In this section— prescribed service means any of the following services: (a) the treatment or provision of water e.g. wastewater service; (b) the collection, treatment or disposal (including by recycling) of waste; (ba) a television transmission (or retransmission) service; (c) any other service prescribed by the

regulations for the purposes of this definition. (2) A council may impose— (a) a service rate, an annual service charge, or a combination of a service rate and an annual service charge, on rateable land within its area to which it provides, or makes available, a prescribed service e.g. council imposes annual service charges for wastewater ; (b) an annual service charge on non-rateable land to which it provides, or makes available, a prescribed service. (2a) Subsection (2) does not apply in prescribed circumstances. (3) A service rate, or annual service charge, may vary— (a) according to whether the land to which it applies is vacant or occupied; or (b) according to any other factor prescribed by the regulations and applied by the council. (4) If a council provides more than one prescribed service of a particular kind in its area, a different service rate or annual service charge may be imposed in respect of each service e.g. council has an annual service charge for sewer and an annual service charge for CWMS. (5) A council must not seek to recover in relation to a prescribed service an amount by way of service rate, annual service charge, or a combination of both exceeding the cost to the council of establishing, operating, maintaining, improving and replacing (including by future capital works and including so as to take into account the depreciation of any assets) the service in its area (being a cost determined taking into account or applying any principle or requirement prescribed by the regulations). (5a) Subsection (5) is subject to the qualification that if the Essential Services Commission (ESCOSA) makes a determination under another Act regulating prices, conditions relating to prices, and price-fixing factors for the provision of a prescribed service that is inconsistent with that subsection, the determination made by ESCOSA will prevail to the extent of the inconsistency (and ESCOSA may, in acting under another Act in a case that is relevant to the operation of this section, apply or take into account a factor or principle that is in addition to a matter referred to in subsection (5)). (6) Subject to subsection (7), any amounts held in a reserve established in connection with the operation of subsection (5) must be applied for purposes associated with improving or replacing council assets for the purposes of the relevant prescribed service. Local Government Act 1999— (7) If a prescribed service under subsection (6), is, or is to be, discontinued, any excess of funds held by the council for the purposes of the service (after taking into account any expenses incurred or to be incurred in connection with the prescribed service) may be applied for another purpose specifically identified in the council's annual business plan as being the purpose for which the funds will now be applied. (8) An annual service charge may be based on— (a) the nature of the service; or (b) the level of usage of the service; or (c) any factor that applies under subsection (3); or (d) a combination of 2 or more factors under the preceding paragraphs. (9) A service charge imposed by a council under this section is recoverable as if it were a rate (even as against non-rateable land). (10) A council may declare a service rate or an annual service charge in respect of a particular prescribed service despite the fact that the service is provided on behalf of the council by a third party. (11) If a prescribed service, in relation to a particular piece of land, is not provided at the land and cannot be accessed at the land, a council may not impose in respect of the prescribed service a service rate or annual service charge (or a combination of both) in

relation to the land unless the imposition of the rate or charge (or combination of both)— (a) is authorised by the regulations; and (b) complies with any scheme prescribed by the regulations (including regulations that limit the amount that may be imposed or that require the adoption of a sliding or other scale established according to any factor, prescribed by the regulations, for rates or charges (or a combination of both) imposed under this section).

### **Water Industry Act 2012**

#### **22—Authority conferred by licence**

(1) A licence authorises the person named in the licence to provide services or to carry on operations or activities in accordance with the terms and conditions of the licence. (2) Any services, operations or activities authorised by a licence need not be all of the same character or undertaken at the same location but may consist of a combination of different services, operations or activities provided or carried on at 1 or more locations.

Council was issued a Water Industry Retail Licence (Class - Intermediate 2) by ESCOSA on 4 January 2013 enabling the provision of retail services to customers. Amongst other things, this obliges council to make an offer to provide a service at the request of a customer who owns or occupies land within the area.

### **Environment Protection Act 1993**

#### **Part 6—Environmental authorisations and development authorisations**

Council holds a number of licences issued by the EPA in relation to wastewater. These include:  
Mount Barker wastewater treatment plant;  
Meadows wastewater treatment plant;  
Nairne – emergency storage lagoons;  
Echunga – treatment via storage lagoons; and  
Macclesfield – treatment via storage lagoons.