

**CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2019**

#	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
117	7 August 2017	Confidential Item – Hillgrove Resources Debt	<p><u>Section 90 (3) (b) Order</u></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 Infrastructure &amp; Projects, General Manager Planning and Development, General Manager Corporate Services, General Manager Council Services, the Minute Secretary and Risk and Governance Officer, be excluded from attendance at the meeting for Agenda Item Hillgrove Resources Debt.</p> <p>The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this agenda item is information the disclosure of which could reasonably be expected to prejudice the commercial position of the Council.</p> <p>In addition the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances</p>	That the council report, related documents and all minutes be retained in confidence until the debt is reduced to only the amount that is current, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.	<p>The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this agenda item is information the disclosure of which could reasonably be expected to prejudice the commercial position of the Council.</p> <p>In addition the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The</p>	<p>Until the debt is reduced to only the amount that is current, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.</p> <p>Refer #124</p>	2 Oct 18	Within 12 months	<i>Report attachments and minutes on website 5 September 2019</i>

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			<p>because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter.</p> <p><u>Section 91(7) Order</u></p> <p>3. Pursuant to Section 90 (3) (b) &amp; (d) That having considered Agenda Item Hillgrove Resources Debt, in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until the debt is reduced to only the amount that is current, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.</p>		<p>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 severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter.</p>				
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**18. CONFIDENTIAL REPORTS**

**18.1 REPORT TITLE: CONFIDENTIAL ITEM – HILLGROVE RESOURCES DEBT**

**DATE OF MEETING: 7 AUGUST 2017**

**FILE NUMBER: 17/70262**

**ATTACHMENTS:**

- 1. LETTER TO HILLGROVE RESOURCES 16/31114**
- 2. LETTER TO HILLGROVE RESOURCES 16/54219**
- 3. GRAPH OF RECYCLED WATER SUPPLIED**

**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.

Governance and Leadership

Strategy 4.4 Identify strategic and operational risk issues and manage accordingly

**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.

**Summary – Key Issues:**

1. The amount of the Hillgrove Resources debt (unsecured) to Council for the supply of recycled water for use at the mine has increased significantly over the previous financial year (2016/17).
2. It is recommended that Council write to the new Chairman of Hillgrove to advise of the expectations of Council being that Hillgrove will adhere to the recent commitment given by their Chief Executive Officer to gradually reduce the debt over the coming months.

**Recommendation:****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 Corporate Services, General Manager Council Services and the Minutes Secretary be excluded from attendance at the meeting for Agenda Item Hillgrove Resources Debt.

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

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

**2. That Council write to the Chairman of Hillgrove Resources to advise that:**

- 2.1 The clear expectation of Council is that Hillgrove will adhere to the recent commitment from the Chief Executive Officer of Hillgrove to pay to Council the amount of approximately \$130,000 per month to reduce the total debt to only the amount that is current i.e. not overdue for payment being within the contract specified 30 business days payment terms;
- 2.2 Council will review the actual payment performance of Hillgrove at the end of September 2017 and reserves its rights to then consider further action such as to pursue security for the debt;
- 2.3 He is invited to meet with the Mayor and Chief Executive Officer; and

- 2.4 Council is undertaking the replacement of a section of the pipeline in 2017/18 to reduce disruption to Hillgrove and other customers.

**Section 91(7) Order**

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

That having considered Agenda Item Hillgrove Resources Debt, in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until the debt is reduced to only the amount that is current, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

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**Background:**

1. A long and productive relationship has existed between Council and Hillgrove Resources. A contract regarding the supply by Council to the Hillgrove mine of recycled water was entered into in May 2010.
2. Central to this has been the arrangements entered into for the construction of the pipeline from Mount Barker to Callington and the supply by Council of recycled water for use at the Hillgrove mine.
3. At the Council meeting held on 21 December 2015 a confidential agenda item was considered and it was resolved to amend the existing Water Supply Agreement between Council and Hillgrove Copper and write off an amount associated with recycled water supplied by Council that was outside of the water quality specification.
4. The current status of that report is that it is no longer confidential, that order ceased to apply as of 11 August 2016 which was shortly after a Deed of Variation was executed (see below).
5. To progress the Council meeting resolutions, negotiations occurred with Hillgrove and on 5 April 2016 a letter was forwarded by the Council's Chief Executive Officer to the then Chairman of Hillgrove Resources Dr Dean Brown AO (attachment 1).
6. In the absence of satisfactory progress, on 7 June 2016 the Mayor wrote to the then Chairman of Hillgrove Resources Dr Dean Brown AO (attachment 2).
7. Ultimately a Deed of Variation between Council and Hillgrove Copper Pty Ltd was executed on 30 June 2016.

8. Amongst other points, this included that for tax invoices issued to Hillgrove by Council from 1 January 2016 to 30 June 2017 (inclusive) the payment terms would change from 30 business days to 90 calendar days.
9. On 5 July 2016 a confidential email was sent by the General Manager, Infrastructure & Projects (Brian Clancey) to all Council Members to provide an update, inclusive that the Deed of Variation had been executed and that this was in accordance with the Council meeting resolutions of 21 December 2015.
10. Since that time there has not been an agenda item specific to this matter (Hillgrove debt) but there have been some references in the regular update agenda items on wastewater to the quantity of recycled water supplied by Council to the Hillgrove mine.
11. Recent changes have occurred with the board of Hillgrove Resources Limited. The Honourable Dean Brown AO retired from the role of Chairman as of 31 May 2017. The new Board Chairman is Mr John Gooding and the new Board member is Mr Antony (Tony) Breuer.

#### **Discussion:**

12. Given a full financial year has now elapsed since the Deed of Variation was executed, it is timely to review the respective performances of both Council and Hillgrove.

#### **Council Performance**

13. A graph showing the total annual volumes of recycled water supplied by Council to the Hillgrove mine in recent years is included as attachment 3.
14. During 2016/17 all of the recycled water supplied by Council has been of a quality that is within the contract specification.

#### **Hillgrove Performance**

15. During 2016/17 Hillgrove has taken a total of approximately 818 mega litres being above the required annual minimum amount of 750 mega litres, however, less than the 950 mega litres maximum annual quantity specified in the Deed of Variation.
16. Unfortunately Hillgrove has failed to meet the payment terms requirement, even with Council (via the Deed of Variation) providing 90 calendar days in lieu of the previous 30 business days.

17. The movement in balances for Hillgrove in the last financial year is summarised as follows:

Balance 1 July 2016	\$295,385
Add Sales (818ML)	\$676,819
Less Payments made	\$520,547
Balance 30 June 2017	\$451,658

18. For the period 2016/17 the increase in the total debt to Council is \$156,272 or 53% higher than the beginning of the year.
19. As at 30 June 2017 Hillgrove owed Council a total of \$451,658 with 59% of this (\$265,655) being 90 plus days since being billed.
20. Some undertakings regarding payment have been provided by the Chief Executive Officer of Hillgrove to Council, although unfortunately Hillgrove have consistently fallen short and not met such undertakings on a number of occasions.
21. The most recent undertaking from the Chief Executive Officer of Hillgrove was provided via email to the General Manager, Corporate Services on 11 July 2017 being in summary:
- "With regards to the amount outstanding we intend to continue paying down the amount of approximately \$130,000 per month. .... we will be at or near current in the fourth quarter."*
22. If the latest payment plan is complied with all outstanding debt will be retired by the end of the year which is when the Chief Executive Officer of Hillgrove believes improved cash flow will occur.
23. For the month of June 2017 the total amount received from Hillgrove was \$111,392 and the average per month since January 2017 is \$37,523.

#### Operational Matters

24. The EPA licence requires Council to minimise discharges to the creek by maximising reuse. As such, continuing to supply water to Hillgrove forms an important part of meeting the licence requirement.
25. Demand forecasts for each month for 2017/18 have been prepared in consultation with Hillgrove to ensure the contractual minimum 750 Mega litres/year quantity is achieved.

Proposed Action

26. It is recommended that a further letter be forwarded to Hillgrove, directed to the new Chairman to advise that:

- a. The clear expectation of Council is that Hillgrove will adhere to the recent commitment from the Chief Executive Officer of Hillgrove to pay to Council the amount of approximately \$130,000 per month to reduce the total debt to only the amount that is current;
- b. Council will review the actual payment performance of Hillgrove at the end of September 2017 and reserves its rights to then consider further action such as to pursue security for the debt;
- c. He is invited to meet with the Mayor and Chief Executive Officer.
- d. Council is undertaking the replacement of a section of the pipeline in 2017/18 to reduce disruption to Hillgrove and other customers.

27. The consideration by Council of possible further actions could include a number of options such as:

- a. Securing the debt – a possibility to achieve that could be via a separate rate although that process requires community consultation and Hillgrove and possibly some of its financiers may object. Hillgrove has previously not supported the notion of the debt to Council being secured when that proposition was put forward by Council in late 2015. It is also not known what arrangements Hillgrove already has with other financiers and what impact those arrangements may have – for example, where would a separate rate sit in a hierarchal sense in the event that Council and others did seek to convert security for non-payment.
- b. Reducing the volume of recycled water supplied to the mine – as outlined above, this option has operational implications.
- c. In the context of planning for post closure of the mine, the possibility of some trade-off (e.g. Hillgrove infrastructure vesting in Council) to provide community benefit.

28. Such options are yet to be raised with Hillgrove.

**Community Engagement:**

Informing only	Not applicable
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**Policy:**

N/A

**Budget:**

29. Total recycled water sales of \$712,123 was achieved in 2016/17 compared to the original budget of \$432,000 which is \$280,123 or 65% higher than budget. However, as the Hillgrove debt has increased by \$156,272 for the corresponding period this increase in additional income has not yet been realised. The budget allowed for 621ML of sales to Hillgrove, this amount was exceeded by 197ML or 31% compared to budget, with total sales of 818 ML recorded for the financial year ending 30 June 2017.

30. The 2017/18 Council budget includes revenue from recycled water sales of \$637,635 of which approximately 97% is forecast to be received from Hillgrove.

**Statutory/Legal:**

31. EPA licence for the wastewater treatment plant on Springs Road and disposal path for treated wastewater.

32. Health SA in respect of the use of recycled water.

**Staff Resource Requirements:**

33. The recommendations can be implemented within existing staff resource capacity.

**Environmental:**

34. The preferred approach remains to seek to maximise use of recycled water.

**Social:**

35. Hillgrove 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:**

36. The major risks to Council are that:

- a. Hillgrove 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
- b. Hillgrove ceases taking recycled water from Council earlier than the current forecast of the mine operation ceasing in mid 2019 and Council then needs to action an alternative disposal pathway and manage the associated implications.

**Asset Management:**

37. Council owns and is responsible for the pipeline that supplies recycled water to the Hillgrove mine and extends to the town of Callington.
38. The 2017/18 Council capital budget includes provision to replace a section of this pipeline of approximately 1 km to address the cost to Council of repairing consistent blow outs in a section of this pipeline and to minimise disruption to customers (Hillgrove and others).
39. The business case supports the net benefit to council of undertaking this work.

**Conclusion:**

40. Hillgrove Resources has consistently not met performance commitments/undertakings in relation to payments to Council for recycled water and it is now recommended that further action be taken by Council in seeking to address this.

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**Key Contacts**

Brian Clancey  
Deputy Chief Executive Officer  
General Manager, Infrastructure & Projects

David Peters  
General Manager, Corporate Services

**Sponsor of Project**

Andrew Stuart  
Chief Executive Officer

Attachment 1 to Item 18.1



Fol 15/7019

5 April 2016

Dr Dean Brown AO  
Chairman  
Hillgrove Resources  
Ground Floor  
5 - 7 King William Road  
Unley SA 5061

Dear Dean

**Re: Confirmation of Actions**

Thank you for attending the recent meeting held at the Council offices.

I found the discussion with you and Steve McClare to be informative.

Below is my understanding of the agreed actions arising from our meeting together with the associated responsibility as shown in brackets.

1. Response to the draft Deed of Variation (Hillgrove)
2. Briefing for Council Members (Hillgrove)
3. Regular communication on outstanding payments (Hillgrove)
4. Post Closure Plan Preparation including investigation of the opportunity for continuing use of major on site infrastructure (Hillgrove and Council).

I am aware that Steve has communicated with David Peters post the meeting regarding the payment of outstanding tax invoices.

In advance of arrangements being made to satisfy point 2 above, a communication has been issued to Council Members to advise of our meeting, the recent Hillgrove ASX Releases and receipt of a recent payment of \$144,000.

Advice is now awaited from Hillgrove in respect of point 1 above.

I would ask that you please ensure that Council is kept informed of any changes in circumstances that may arise.

Yours sincerely



Andrew Stuart  
**CHIEF EXECUTIVE OFFICER**

Copy to:  
Mr Steve McClare, Chief Executive Officer and Managing Director, Hillgrove Resources

RELEASED



Attachment 2 to Item 18.1

Reference: 16/51827

7 June 2016

## OFFICE OF THE MAYOR

Dr Dean Brown AO  
Chairman  
Hillgrove Resources  
5 – 7 King William Road  
Unley SA 5061

Dear Dean

**RE: Relationship of Council and Hillgrove Resources**

I am writing to invite you to have a discussion with Andrew Stuart and me over coffee in my office at the Council Chambers.

There is growing concern about the implications for the community when the operation of the mine ceases and when that might be.

I am aware that you and Steve McClare met with Andrew Stuart and other senior officers here in March but the undertakings given at that meeting by Hillgrove have not been actioned (Deed of Variation, regular communication, payments).

Council remains very concerned at the lack of effective communication from Hillgrove with Council. To illustrate this trend over a period of time, I have attached a list of communications.

The total debt owed by Hillgrove to Council remains very substantial.

I want the relationship to work and that is why I am proposing that we have such a discussion soon to enable clarity to be achieved for the needs of both parties.

Can you please contact Maree Barns on 8391 7254 or [mbarns@mountbarker.sa.gov.au](mailto:mbarns@mountbarker.sa.gov.au) to arrange a suitable time for this important discussion.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ann Ferguson'.

Ann Ferguson OAM JP  
**MAYOR**

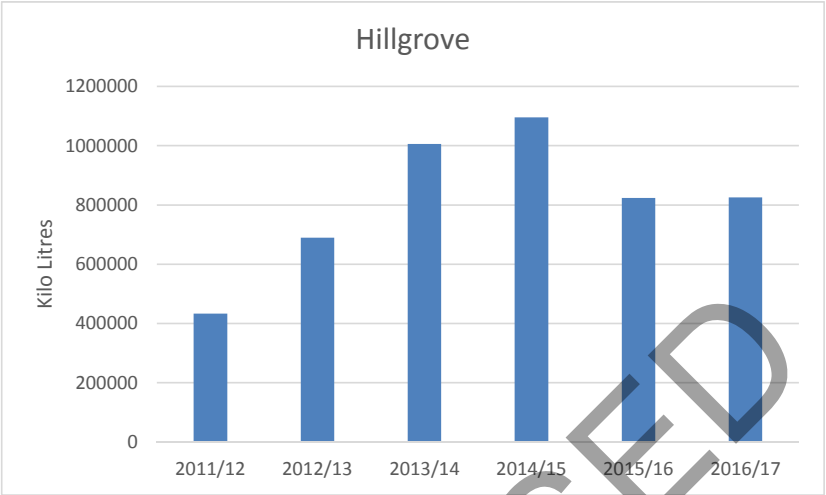
**Attachment****Attachment****Schedule of Recent Communications – Council and Hillgrove Resources**

<b>Date</b>	<b>Subject</b>	<b>Response</b>
23/12/15	Letter to Steve McClare from Andrew Stuart – Confidential Council offer	Yes
	Email response from Steve McClare to Brian Clancey On 8/1/16 advising "... the Board has confirmed that we accept the offer in principle and look forward to formalising it."	
14/1/16	Letter to Steve McClare from Brian Clancey – Seeking payment	No
21/1/16	Email to Steve McClare from Brian Clancey - Forwarding draft Deed of Variation	No
10/2/16	Letter to Steve McClare from Brian Clancey – Seeking payment	Yes
	Email response from Steve McClare to Brian Clancey on 18/2/16	
25/2/16	Email to Steve McClare from Brian Clancey – Re sending the draft Deed of Variation	Yes
	Email response from Steve McClare to Brian Clancey on 25/2/16 confirming receipt	
5/4/16	Letter to Dean Brown from Andrew Stuart – Confirmation of Meeting Actions	No
19/4/16	Email to Steve McClare from David Peters – March invoice with a request to discuss future debt Payment and status of variation deed.	Yes
	Email response from Steve McClare seeking two weeks Extension as working on large pieces as a priority.	

- 10/5/16      Email to Steve McClare from David Peters –      No  
April invoice and follow up query that we are beyond the  
two weeks extension that was requested.
- 18/5/16      Telephone conversation to Steve McClare from David Peters –  
  
Confirmed that the amended deed has not been taken to the  
Board and is seeking a reduction of 10% on current terms and  
conditions.
- 20/5/16      Email to Steve McClare from David Peters –      No  
Water modelling to highlight that Council has already  
Provided for a 17% discount in the amended draft contract
- 3/6/16      Email to Steve McClare from David Peters –      No  
May invoice and follow up query for a response to the  
20 May email advising Council already provides a 17%  
Discount on previous terms and conditions.

RELEASED

Attachment 3 to Item 18.1





**18. CONFIDENTIAL REPORTS**

<b>18.1</b>	<b>REPORT TITLE:</b>	<b>CONFIDENTIAL ITEM – HILLGROVE RESOURCES DEBT</b>
	<b>DATE OF MEETING:</b>	<b>7 AUGUST 2017</b>
	<b>FILE NUMBER:</b>	<b>17/70262</b>
	<b>ATTACHMENTS:</b>	<b>1. LETTER TO HILLGROVE RESOURCES 16/31114 2. LETTER TO HILLGROVE RESOURCES 16/54219 3. GRAPH OF RECYCLED WATER SUPPLIED</b>

Moved Councillor Bailey that:

**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 Corporate Services, General Manager Council Services, the Minute Secretary and Risk and Governance Officer, be excluded from attendance at the meeting for Agenda Item Hillgrove Resources Debt.

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

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

Seconded Councillor Buchmann

CARRIED  
OM20170807.14

Moved Councillor Morrison:

2. That Council write to the Chairman of Hillgrove Resources to advise that:
  - 2.1 The clear expectation of Council is that Hillgrove will adhere to the recent commitment from the Chief Executive Officer of Hillgrove to pay to Council the amount of approximately \$130,000 per month to reduce the total debt to only the amount that is current i.e. not overdue for payment being within the contract specified 30 business days payment terms;
  - 2.2 Council will review the actual payment performance of Hillgrove at the end of September 2017 and reserves its rights to then consider further action such as to pursue security for the debt;
  - 2.3 He is invited to meet with the Mayor and Chief Executive Officer; and
  - 2.4 Council is undertaking the replacement of a section of the pipeline in 2017/18 to reduce disruption to Hillgrove and other customers.

Seconded Councillor Bailey

CARRIED  
OM20170807.15

Moved Councillor Bailey:

**Section 91(7) Order**

3. Pursuant to Section 90 (3) (b) & (d)  
That having considered Agenda Item Hillgrove Resources Debt, in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until the debt is reduced to only the amount that is current, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

Seconded Councillor Seager

CARRIED  
OM20170807.16