

**ADELAIDE HILLS COUNCIL MEETING**  
**22 January 2013**  
**CONFIDENTIAL AGENDA BUSINESS ITEM**

**Item:** 15.1

**Originating Officer:** Chris Button

**Responsible Director:** Tim Hancock

**Subject:** Water Reuse – Birdwood CWMS

**File No:** 05.64.9

**SMP Goal:** 4 Well Managed and Maintained Community Infrastructure

**SMP Key Issue:** 4.3 Community Wastewater Management

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**1. Water Reuse – Birdwood CWMS – Exclusion of the Public**

**Moved Cr**  
**S/- Cr**

Pursuant to Section 90(2) and (3)(d) of the Local Government Act 1999, an order be made that the public, with the exception of appropriate Council staff – CEO, Andrew Aitken, Director Engineering, Tim Hancock, Director Planning & Development Services, Marc Salver, Director Finance, Tim Piper, Manager Health & Regulatory Services, Chris Button, and Minute Secretary, Pam Williams, be excluded from attendance at the meeting in order to receive, discuss or consider in confidence any information or matter relating to Section 90(3):

- (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which –
  - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
  - (ii) would, on balance, be contrary to the public interest;

## 2. Water Reuse – Birdwood CWMS – Confidential Item

### 2.1 SUMMARY

This report seeks Council endorsement to establish an agreement between Council and Paul & Michelle Edwards of Birdwood for the disposal of treated effluent from the Birdwood/Mount Torrens Community Wastewater Management Scheme (CWMS) effluent treatment Plant on Muellers Road at Birdwood.

This agreement involves the establishment of a rising main to the Edwards' property, the establishment of an easement over portions of the Edwards' land and a financial contribution to the Edwards for lining of an existing dam to create a storage facility on the Edwards' property for this water.

### 2.2 GOVERNANCE

#### ➤ Strategic Management Plan

**Goal 4** Well Managed and Maintained Community Infrastructure,  
**Key Issue 4.3** Community Wastewater Management  
**Strategy a)** Reflect long term sustainability principles, maximise water reuse and minimise the risk of environmental harm

#### ➤ Legislation

Council holds a licence under the Environment Protection Act to operate the Birdwood/Mount Torrens CWMS. This licence states that Council will contain and dispose of the treated effluent without discharge to the adjacent creek. Failure to comply with this requirement could lead to prosecution by the Environment Protection Authority.

#### ➤ Sustainability

- Economic
- Social
- Environmental
- Governance

#### ➤ Budget

Council has allocated \$150,000 in the current budget for water reuse from Birdwood CWMS. This proposal to dispose of excess effluent could cost up to \$170,000 being approximately \$70,000 for a rising main to the property and a capital contribution of up to \$100,000 to assist with the lining of an existing dam.

Accordingly Council approval is being sought for an additional \$20,000 in Budget Review 2 should the costs exceed the budgeted figure.

If Council chose not to proceed with this proposal but rather create additional storage and disposal within the current facility, the cost could be in excess of \$1.5million to purchase sufficient land and construct the required infrastructure.

➤ **Consultation**

In December 2011 Council sought registrations of interest from persons or organisations who were interested in using water for the Birdwood CWMS. Four parties registered interest in that process but only the proposal put forward by Mr & Mrs Edwards was practical and acceptable to the relevant authorities.

The other proposals were not suitable because;

- one involved pumping the water several kilometres
- one involved the use of water that did not meet health guidelines
- one was of too small a scale to merit consideration.

**2.3 BACKGROUND**

Council has for several years invested capital funds to upgrade the Birdwood/Mount Torrens CWMS treatment plant. These initiatives have been successful in improving the quality of the treated effluent and create systems that allow disposal to third party users.

These works however have not fully addressed the issue of lack of holding capacity at this site. The move to seek third party users to take some of the treated effluent will allow Council to comply with its licence conditions.

In recent time there has been a halt on the creation of new allotments in Birdwood and Mount Torrens as the CWMS is over capacity and cannot take additional flows. Endorsement of this proposal will mean there will be unused capacity in the system and will allow for future development.

**2.4 DISCUSSION**

The Birdwood/Mount Torrens CWMS facility currently is under capacity by approximately 10 Megalitres (ML) per year. This storage problem is exacerbated when the high winter flows are received. To overcome this problem Council has undertaken an expression of interest process to secure third party storage and use of the CWMS water. It is envisaged that such an agreement will create capacity for future development and extension of the CWMS system.

The result of the expression of interest process was that only one proposal was deemed practical and met with legislation requirements. This proposal was lodged by Paul and Michelle Edwards whose property is within one kilometre of the treatment plant.

It is proposed that Council enter into an agreement with Paul and Michelle Edwards to create an easement over an existing dam on their property to allow storage and use of treated effluent on their property. This agreement would see Council deliver a minimum of 20ML and a maximum of 50 ML of water per year.

To document the intent of both parties a terms of agreement (Appendix 1) has been drafted to obtain formal agreement from the parties to enter into the easement. The conditions in this document have been drafted to replicate the terms that will apply in the easement agreement.

Key points of the agreement are:

- Council will construct a rising main to and over the Edwards property to the dam
- The Edwards will line the subject dam with an impermeable membrane and accept up to 50 MI of effluent water per year
- Council will contribute up to \$100,000 to the cost of lining the subject dam with an impermeable membrane
- Council will provide a minimum of 20MI and a maximum 50MI of water per year.

It should be noted that we are still in discussion with Council's insurers to specify what indemnity, if any, we would provide to the Edwards.

Should Council provide endorsement of the terms of agreement staff will seek the formal agreement of Mr & Mrs Edwards and proceed to create the easement.

This report seeks endorsement of the terms of agreement and endorsement of a contribution of up to \$100,000 toward the cost of lining the dam on the Edwards' property.

#### **2.4A OPTIONS**

- Endorse the agreement as proposed and resolve the storage issues at Birwood/Mount Torrens CWMS for a cost of approximately \$170,000
- Seek other options such as purchase land to construct further storage and disposal facilities at a possible cost of \$1.5 million.

#### **2.5 RECOMMENDATION**

**That Council:**

- 1. Endorses the Agreement for Water Supply Easement Terms Sheet and delegate to the Chief Executive Office the ability to negotiate and sign an agreement of easement in those terms.**
- 2. Endorses a capital contribution of up to \$100,000 toward the cost of lining the existing dam on their property on Muellers Road Birdwood with an impermeable membrane to allow the storage of treated effluent water in that dam**
- 3. Endorses the expenditure up to a further \$20,000 for this project as part of the Budget Review 2 process.**

#### **2.6 APPENDIX**

- (1) Agreement for Water Supply Easement Terms Sheet

**3. Water Reuse – Birdwood CWMS – Period of Confidentiality**

**Moved Cr  
S/- Cr**

**That having considered this matter in confidence under section 90(2) and 90 (3) d of the Local Government Act 1999, the Council, pursuant to section 91(7) of the Local Government Act 1999, orders that the documents, reports and minutes pertaining to this matter, including discussions and considerations, be retained in confidence until the contracts are signed, but not longer than 12 months, pursuant to section 91(9).**

**That, pursuant to section 91(9)(c) of the Local Government Act 1999, the Chief Executive Officer be authorised to release documents at the conclusion of the period of confidentiality.**

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**Appendix 1**  
***Agreement for Water Supply Easement Terms Sheet***

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## Agreement for Water Supply Easement Terms Sheet Adelaide Hills Council and Paul Edwards

- A.** This Terms Sheet sets out the principles upon which the parties will proceed for the purpose of entering into an Easement for the delivery of water by the Council to the Landowner's Dam. Subject to paragraph C below, this Terms Sheet does not give rise to enforceable rights or obligations for either party.
- B.** The terms set out below constitute the conditions of an Easement to be executed by the parties in favour of the Council over the Landowner's land.
- C.** The parties will only be bound when a formal Easement is executed by both parties.
- D.** A copy of this Terms Sheet signed by the parties is authority for the Council to have its solicitors prepare the Easement for execution by the parties.

<b>1. Council</b>	<b>Adelaide Hills Council</b> (ABN 239 550 71 393) of 28 Onkaparinga Valley Road, WOODSIDE SA,
<b>2. Landowner</b>	<b>Paul John Edwards &amp; Michele Gail Edwards -/C</b> PO Box 6193, Halifax Street, Adelaide, SA.  The Landowners are jointly and severally bound by the conditions of the Easement.
<b>3. The Land subject of the Easement</b>	The Land situated on the corner of Mueller's Road and Torrens Valley Road, BIRDWOOD, SA comprised in Certificate of Title Volume 6020 Folio 401, Assessment 17600, being the area outlined in red on the Plan that is marked <b>Schedule A</b> to this Terms Sheet.
<b>4. Nature of Easement</b>	The Easement authorises the Council to construct and maintain pipes and any associated infrastructure, including but not limited to a water meter over the Land for the purposes of delivering water from the Council's Community Wastewater Management Scheme to the Landowner's Dam situated on the Land and to deposit the said water into the Dam.
<b>5. Landowner Works</b>	The Landowner will, before the commencement of the Easement, undertake the following works to receive the water on the Land: <ul style="list-style-type: none"> <li>i. undertake all necessary works to the Dam located on the Land to the satisfaction of the Council, including lining the dam so it is suitable to hold treated wastewater in accordance with all statutory requirements.</li> </ul>

	<p>The Council will reimburse the Landowner for the expenses incurred in undertaking the Landowner Works described above up to an amount of \$100,000.00. Expenses will be reimbursed following completion of the following:</p> <ul style="list-style-type: none"> <li>i. provision of receipts to the Council by the Landowner which constitute proof of those expenses having been incurred by the Landowner;</li> <li>ii. an inspection and agreement by the Council and that the Landowner Works have been completed satisfactorily; and</li> <li>iii. written approval received from the Environment Protection Authority and the Department of Health that the Landowner Works meet applicable requirements.</li> </ul>
<b>6. Council Works</b>	<p>The Council will, at its cost and following the commencement of the Easement, undertake the following works :</p> <ul style="list-style-type: none"> <li>i. construct pipelines and associated infrastructure from the water source, across the Land to connect to the Dam; and</li> <li>ii. install a meter at the supply point; and</li> <li>iii. install telemetry equipment in the dam to monitor capacity and water flow.</li> </ul>
<b>7. Operating Procedure</b>	<p>The Council will prepare and implement an Operating Procedure within 6 months of the commencement of the Easement. The Operating Procedure will require the Council to notify the Landowner in writing at least 7 days before water in excess of an amount Specified in the Procedure is to be placed into the Dam. The Operating Procedure may address any other matters that the Council sees fit and may be amended by the Council from time to time as necessary.</p>
<b>8. No fee</b>	<ul style="list-style-type: none"> <li>i. No fee is payable by the Landowner for the provision of the water up to the Maximum Annual Quantity.</li> <li>ii. The Landowner may, outside of the operation of the Easement, negotiate with the Council to purchase water that is in excess of the Maximum Annual Quantity.</li> </ul>
<b>9. The Water</b>	<p>The water is:</p> <ul style="list-style-type: none"> <li>i. treated and sourced from the Birdwood Community Wastewater Management Scheme operated by the Council;</li> </ul>

	<ul style="list-style-type: none"> <li>ii. classified as <i>'Municipal use with restricted access and application'</i> for the purposes of the South Australian Recycled Water Guidelines.</li> </ul>
<b>10. Supply Point</b>	Water is supplied at the Dam after travelling through the Council's meter on the Land.
<b>11. Minimum Annual Quantity</b>	The Minimum Annual Quantity of Water to be supplied pursuant to the Easement is twenty (20) Mega Litres, which will be supplied during the period commencing 1 April and ending 30 September in each calendar year.
<b>12. The Meter</b>	<ul style="list-style-type: none"> <li>i. The meter is and remains the Council's property.</li> <li>ii. The quantity of water delivered into the Dam is as measured by the meter.</li> <li>iii. The Council, at its cost, is responsible to supply, install, test, take readings from, inspect, maintain, repair and, at the end of its effective life replace, the meter and the Landowner grants a licence to the Council to access the Land for these purposes upon reasonable notice during business hours or without notice in an emergency.</li> <li>iv. The Landowner must not open, alter, repair, remove, tamper or interfere with the meter.</li> <li>v. If the Landowner has knowledge of a blockage, vandalism or apparent malfunction of the meter, the Landowner must immediately notify the Council.</li> </ul>
<b>13. Maximum Annual Quantity</b>	<ul style="list-style-type: none"> <li>i. The Maximum Annual Quantity of water that may be supplied by the Council to the Landowner in any one calendar year is Fifty (50) Mega Litres.</li> <li>ii. The Council's infrastructure monitors the quantity of water supplied. The infrastructure comprises alarms that will sound in case of failure. The Landowner is required to notify the Council of the activation of any such alarms.</li> </ul>
<b>14. No Guarantee of Water Supply in Excess of the Minimum Annual Amount</b>	<ul style="list-style-type: none"> <li>i. The Council does not guarantee that any amount of water, in excess of the Minimum Annual Quantity set out in clause 11 above will be supplied to the Landowner in any one calendar year.</li> <li>ii. The Landowner accepts that the supply of any water in excess of the Minimum Annual Quantity is at the absolute discretion of the Council.</li> <li>iii. The Council reserves its right and the Landowner expressly acknowledges the right of the Council to supply any water</li> </ul>

	surplus to its needs to a third party in the event that party is willing to purchase the surplus water.
<b>15. Guarantee of Dam Capacity</b>	The Landowner warrants that the Dam has capacity: <ul style="list-style-type: none"> <li>i. to receive the Minimum Annual Quantity as defined under clause 11 above during the period commencing 1 April and ending 30 September in each calendar year; and</li> <li>ii. to receive up to an additional thirty (30) Mega Litres of water during the period commencing 1 October and ending 31 March in each calendar year.</li> </ul>
<b>16. Repair and Maintenance</b>	<ul style="list-style-type: none"> <li>i. The Landowner shall be liable and responsible for the repair, maintenance and upkeep of the Dam in compliance with this agreement and with all relevant requirements of the Statutory Authorities. The Landowner warrants that the Dam is fit for purpose.</li> <li>ii. The Council shall be liable and responsible for the repair, maintenance and upkeep of the pipes, associated infrastructure and the meter.</li> <li>iii. The Council warrants the pipes, associated infrastructure and the meter are fit for purpose.</li> </ul>
<b>17. Use of Water</b>	<ul style="list-style-type: none"> <li>i. The water delivered into the Dam will be used by the Landowner for irrigation purposes.</li> <li>ii. The Landowner must use the water supplied by the Council: <ul style="list-style-type: none"> <li>a) upon the Land only; and</li> <li>b) in conformity with applicable law and any applicable codes of practice or policies.</li> </ul> </li> <li>iii. The Council does not warrant the fitness of the water for irrigation or any other purposes.</li> </ul>
<b>18. Ownership of Water</b>	Ownership of water delivered into the Dam passes to the Landowner at the supply point.
<b>19. No Liability</b>	The Council is not liable for any loss or damage arising from the supply and/or the Landowners use of the water and releases the Council from any legal liability that might otherwise be asserted to arise from the Landowner's use of the water.
<b>20. Indemnity</b>	<ul style="list-style-type: none"> <li>i. The Landowner indemnifies the Council for any loss or damages arising from a failure of the Dam that is suffered by the Council.</li> </ul>

	<p>ii. Without limiting any Law, common law or rule of equity, the parties must act in good faith to mitigate any liability.</p> <p><b>Council indemnity subject to approval by LGAMLS</b></p>
<b>21. Dispute Resolution</b>	<p>i. The parties must seek to settle any dispute that arises in connection with the Agreement in good faith.</p> <p>ii. Where the parties are unable to settle a dispute within 10 Business Days of one party giving notice to the other that a dispute exists, the parties (or their representative) may:</p> <p>a) agree to refer the dispute for mediation or arbitration in which case the associated costs are to be borne by both parties in equal shares; or</p> <p>b) refer the dispute to the appropriate Court.</p>
<b>22. Notice</b>	<p>Any notice to be given under the Agreement:</p> <p>I. must be given in writing; and</p> <p>II. will be considered sufficiently given if served by post or by personal delivery to the address of the party as set out in the Agreement.</p>
<b>23. Costs</b>	<p>Each party is to bear their own legal costs for the preparation, negotiation and completion of the Agreement.</p>
<b>24. Severance</b>	<p>If any provision of the Agreement is unlawful, invalid or unenforceable, it may be severed from the Agreement.</p>
<b>25. Binding Agreement</b>	<p>i. The parties recognise and agree that the contents of this Term Sheet, once agreed in principle, will constitute the conditions of a formal Easement.</p> <p>ii. The parties acknowledge and agree that upon the execution of the formal Easement, it shall be legally binding upon the parties and shall be enforceable by each of them in accordance with its terms .</p>

*NB – Easement to reflect unilateral right to surrender on the part of the Council or otherwise by consent of the parties.*

**Dated**

2012

**Signed by Adelaide Hills Council**

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Position (as delegate of the Council)

.....

Name (please print)

**Signed by the Landowner**

.....

Sign

.....

Name (please print)



ADELAIDE HILLS  
— COUNCIL —