

**ADELAIDE HILLS COUNCIL
SPECIAL COUNCIL MEETING
Tuesday 19 June 2018
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item No: 6.1

Originating Officer: Karen Bennink, Community Wastewater Management Systems Technical Officer

Responsible Director: Marc Salver, Director Strategy and Development

Subject: Community Wastewater Management Systems Expression of Interest Outcomes

For: Decision

1. Community Wastewater Management Systems Expression of Interest Outcomes – Exclusion of the Public

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except:

- CEO, Andrew Aitken
- Director Engineering & Assets, Peter Bice
- Director Strategy & Development, Marc Salver
- Director Corporate Services, Terry Crackett
- Director Community & Customer Service, David Waters
- Executive Manager Governance & Performance, Lachlan Miller
- Manager Waste, Health and Regulatory Services, John McArthur
- CWMS Technical Officer, Karen Bennink
- Minute Secretary, Pam Williams

be excluded from attendance at the meeting for Agenda Item 6.1: (Community Wastewater Management Systems Expression of Interest Outcomes) in confidence.

The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified above, be excluded to enable Council to consider the report at the meeting on the following grounds:

Section 90(3)(b) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which –

- (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
- (ii) would, on balance, be contrary to the public interest;

Accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information and discussion confidential.

2. **Community Wastewater Management Systems Expression of Interest Outcomes – Confidential Item**

SUMMARY

At its meeting held on 26 September 2017, Council resolved that the CEO identify and seek the interest of other councils in undertaking an open market joint expression of interest (EOI) process for the divestment of Council's CWMS assets.

Following the September resolution, the CEO sought interest from neighbouring councils and subsequently a Joint Working Group was formed between Adelaide Hills Council, the City of Onkaparinga and the Rural City of Murray Bridge under an agreed Terms of Reference.

A joint open market EOI process was undertaken through April – June 2018, in collaboration with the City of Onkaparinga and the Rural City of Murray Bridge.

The responses were received from the CWMS Divestment EOI and subsequently an evaluation was undertaken by the Evaluation Panel for each council, followed by a joint council workshop facilitated by specialist consultants, BRS (Business and Risk Solutions). The recommendation of the AHC Evaluation Panel is to progress the respondents to a second stage request for tender (RFT).

This report presents an overview of the EOI and evaluation process and recommends Council resolves to conduct community consultation and undertake a prudential review, with outcomes informing a potential future recommendation to Council to progress to a second stage RFT. This report also recommends Council continues working in collaboration with the City of Onkaparinga (CoO) and the Rural City of Murray Bridge (RCMB) in regard to exploring the divestment of Council's CWMS assets.

RECOMMENDATION

ITEM 4 - RELEASED 05 JULY 2018

Council resolves:

1. **That the report be received and noted.**
2. **The Administration is to continue to work collaboratively with the City of Onkaparinga and Rural City of Murray Bridge for the potential divestment of Council's CWMS.**
3. **To inform future decision making in relation to divestment of Council's CWMS or otherwise an independent Prudential Review is to be conducted in accordance with Section 48 of the *Local Government Act 1999*.**
4. **Community consultation is to be undertaken as outlined in this report to inform future decision making in relation to divestment of Council's CWMS or otherwise.**
5. **That probity advice services are maintained throughout the CWMS review process.**
6. **A further report be provided to Council outlining the outcome of community consultation and prudential review to inform its consideration of progressing to a second stage request for tender for the divestment of Council's CMWS.**

1. GOVERNANCE

➤ Strategic Management Plan/Council Policy

Goal 3 Places for people and nature.

Strategy 3.5 We will take a proactive approach, and a long term view, to infrastructure maintenance and renewal.

To continue with the CWMS review process, including potential divestment, as recommended by this report ensures all options for the efficient and effective management and operations of Council's CWMS networks are explored.

➤ Legal Implications

Section 48 of the Act refers to prudential requirements for certain projects of significance. Furthermore, the Act also stipulates where a council considers that it is necessary or appropriate, a report that addresses the prudential issues set out in Section 48(2) can be obtained (refer **Appendix 1**) before the council engages in that project. The exploration of divestment of Council's CWMS assets is considered to be a project of significant community importance and therefore it is recommended that a prudential review is prepared pursuant to Section 48 of the *Local Government Act 1999*.

As previously reported to Council Members, owners and operators of CWMS are licenced entities and must comply with extensive legislative and regulatory obligations. Applicable legislation includes the *Environment Protection Act 1993*, *Water Industry Act 2012*, *South Australian Public Health Act 2011* and the *Local Government Act 1999*. Regulatory agencies that apply and enforce legislation relating to the operation of CWMS in South Australia include:

- The Essential Services Commission of South Australia
- The Environment Protection Authority
- Department of Health and Ageing
- The Office of the Technical Regulator
- Natural Resources and Management Board.

Non-compliance with legislative and regulatory obligations places Council at risk of causing; public and environmental harm, receiving significant monetary penalties, failure to provide a reliable CWMS sewage service, impact on customers that result in a lack of community confidence. Divestment of Council's CWMS transfers the legislative and regulatory obligations and subsequent risks, from Council's continued ownership of CWMS and provision of community sewerage services to another provider. Notwithstanding the desirability to transfer these risks, Council also needs to consider the impact of divestment of its CWMS has on system users and the broader community.

➤ Risk Management Implications

Continuing to work in collaboration with the CoO and the RCMB and to undertake community consultation and a prudential review for the divestment of Council's CWMS, will assist in mitigating the risk of:

Failure to undertake a prudential review during the divestment process leading to decision making that is not fully informed and considered.

Inherent Risk	Residual Risk	Target Risk
High (3B)	Low (3E)	Low (3E)

Failure to conduct community consultation prior to progressing to a second stage request for tender leading to adverse media attention, non-consideration of community views and lack of community confidence.

Inherent Risk	Residual Risk	Target Risk
Medium (3C)	Medium (3C)	Low (3E)

Failure to continue working in collaboration with the City of Onkaparinga and the Rural City of Murray Bridge leading to a loss of economies of scale with the potential to reduce the market value of Council’s CWMS and to forego the benefits of working collaboratively.

Inherent Risk	Residual Risk	Target Risk
Extreme	Medium (4D)	Low (3E)

Adoption of the report recommendations will result in the creation of mitigation actions to undertake community consultation and conduct a prudential review into the divestment of Council’s CWMS assets and to continue to work in collaboration with CoO and RCMB.

➤ **Financial and Resource Implications**

Adopting the recommendations in this report will result in the engagement of a specialist consultant to conduct an independent prudential review and for Council to conduct community consultation. Costs associated with these activities have been accounted for in the draft 2018/19 budget and are forecasted at \$30,000.

Working in collaboration with CoO and RCMB has resulted in an agreement for some associated costs and resources to be shared between the three councils, noting this resource sharing reduces Council’s costs as compared to undertaking the process alone.

Cost sharing amounts are allocated using a proportionate approach (i.e. percentage costs for each council determined by the size and value of their CWMS). Shared resources thus far have included probity advice and engagement of specialist consultants as required. Whilst all endeavours will be used to minimise expenditure there is potential for further costs to be incurred over and above those forecast given the fluid and unpredictable nature of the second stage request for tender process (subject to the future deliberation of Council).

The EOI documentation released to the market sought indicative values from respondents for the purchase of Council’s CWMS assets. Responses to this requirement varied from not providing an indicative value to providing a value, but over a range. This outcome was expected given the EOI was a high level ‘first step’ to determine the appetite from the open market to purchase Council’s CWMS assets.

Financial modelling will be undertaken to ascertain the value of CWMS assets to Council under a business as usual scenario. This modelling will provide Council with a baseline of what the CWMS assets are worth to Council and the future costs of holding, operating and maintaining these assets. The baseline value of Council's CWMS will assist in evaluating future bids and decision making, subject to Council resolving to progress to a second stage request for tender for divestment of the CWMS assets.

The EOI responses received from the EOI have provided indicative pricing for customers connected to Council's CWMS. The proposed customer pricing provided in the EOI responses is non-binding and is based on a number of assumptions which require further investigation and clarification and provision of additional information to Tenderers to submit binding offers. This further analysis would be undertaken during a request for tender stage, if this occurs. Early indications obtained from the EOI process demonstrates that customer annual service charges may be equal to or less than Council's current and projected charges, for the majority of CWMS customers, under alternative ownership. This will be further clarified as part of the RFT process should it proceed.

➤ **Customer Service and Community/Cultural Implications**

Adopting the recommendations in the report will ensure the community has the opportunity to provide Council with their feedback and concerns relating to the divestment of Council's CWMS. It also provides them with the opportunity to communicate what is important to them in terms of service levels, customer price, etc. The results from the proposed community consultation (and proposed prudential review) will inform a further report to Council for consideration to progress to a second stage of the divestment process.

➤ **Environmental Implications**

As previously reported to Council Members, continued ownership and operation of CWMS networks holds risks of causing environmental harm if not well resourced and managed. Environmental incidents can occur due to various factors such as system malfunction, operational error, lack of maintenance and renewal programs, inadequate capital investment, and severe weather events. Noting the small number of CWMS connections in comparative terms with other councils a dedicated and larger wastewater service operator will likely be better resourced and equipped to manage the public and environmental risks associated with the operation and management of wastewater infrastructure.

➤ **Engagement/Consultation conducted with Council Committee, Regional Subsidiary, Advisory Group, the Administration and Community**

<i>Council Committees:</i>	Not Applicable
<i>Advisory Groups:</i>	Not Applicable
<i>Administration:</i>	Director Strategy and Development Director Corporate Services Director Engineering and Assets Director Community and Customer Service Executive Manager Governance and Performance Manager Waste Health and Regulatory Services Manager Financial Services Manager Property Services Communications Coordinator
<i>Community:</i>	Not Applicable

2. BACKGROUND

Council operates and maintains five CWMS networks in seven townships and is licensed as a Water Industry Entity under the *Water Industry Act 2012*. As an operator of wastewater infrastructure Council has regulatory obligations and responsibilities under various pieces of legislation including the prevention of environmental harm (*Environmental Protection Act 1993*) and the protection of public health (*SA Public Health Act 2012*).

There are currently 1790 customers connected to Councils CWMS, which is relatively small scale in comparison to neighbouring councils (i.e. City of Onkaparinga 4,500 connections, Mt Barker District Council 9,000 connections). The small scale of Council's CWMS network results in deficient economies of scale to provide the most cost effective, efficient service to customers.

A confidential report presented to Council at its meeting held on 26 September 2017 provided details of an unsolicited bid received from a wastewater service provider for the purchase of Council's CWMS assets. This unsolicited bid was received shortly after an EOI process was undertaken by Council in 2016 to establish market interest in either operating and maintaining Council's CWMS or purchase of the assets.

Council resolved to not pursue the unsolicited bid further but to undertake a divestment specific open market EOI to gauge interest from the market. To ensure a competitive process, and to generate economies of scale to return maximum benefit to the community, Council also resolved to seek the interest of other councils for a combined approach to market. In consideration of the confidential report to Council on 26 September 2017, Council members resolved the following:

19.2.1 Community Wastewater Management Systems Review Update – Confidential Item

Moved Cr Andrew Stratford
S/- Cr Jan Loveday

233/17

PARTIALLY RELEASED 13 FEBRUARY 2018 (RESOLUTION 3)

Council resolves that:

1. The report be received and noted
2. The CEO write to Water Utilities Australia advising that Council does not want to further consider their unsolicited offer for the acquisition of Council's CWMS assets
3. The CEO identify and seek the interest of other council's in undertaking an open market joint expression of interest process for the divestment of CMWS assets
4. The CEO undertake an open market expression of interest process for the divestment of Council's CWMS assets and if relevant incorporating other councils
5. Probity advice services are maintained throughout the open market expression of interest process
6. A further report be provided to Council outlining the outcome of the open market process undertaken.

Carried Unanimously

3. ANALYSIS

In response to the Council resolution above, the CEO wrote to a number of councils seeking their interest in undertaking a joint EOI for the divestment of CWMS assets. As a result, the CoO and the RMCB indicated a desire to undertake an EOI process in collaboration with Adelaide Hills Council. A Joint Working Group (JWG) was formed by the three councils to undertake this process along with the engagement of a probity advisor.

Subsequently, a joint open market EOI for the divestment of the Council's CWMS assets was conducted from April – June 2018.

Joint Working Group (JWG)/collaborative approach

The JWG was formed in February 2018 under an agreed Terms of Reference and consists of a number of representatives from each council. The CoO represents the largest asset value of the three councils and has subsequently played a lead role in the JWG. Each council maintains the right to sell their CWMS assets separately, in conjunction with one or more other councils, or to withdraw from the sale process at any time.

As mentioned previously in this report, working in collaboration with CoO and RCMB has resulted in an agreement for some associated costs and resources to be shared between the three councils. This resource sharing and collaborative approach reduces Council's costs as compared to undertaking the process alone and has expedited the process to stages that Adelaide Hills Council could not achieve if undertaking the process by itself.

Noting the benefits outlined above of a collaborative approach, it is recommended that Council continues to work with the CoO and the RCMB if Council Members resolve, consistent with the recommendation in this report and if it subsequently resolves to progress to a second stage request for tender as part of Council's ongoing CWMS review.

Probity

In accord with Council resolution (4) from the 26 September 2017 meeting probity services have been maintained throughout the EOI process. A common Probity Plan was developed in consultation with the Probity Advisor and was agreed upon between the JWG to ensure a consistent approach across the councils involved. The Probity Advisor has been present at JWG meetings and Adelaide Hills Council Evaluation Panel meetings and consulted when required. The role of the Probity Advisor is to provide reasonable assurance that the process has been fair and equitable for all interested parties, and that the councils act with integrity, fairness and transparency throughout the CWMS review process.

EOI evaluation responses and outcomes

In collaboration with the CoO and RCMB a joint CWMS divestment EOI was released on the Tenders SA website on 10 April, closing on 29 May 2018. Noting the resolution of Council from 26 September 2017 was to undertake an open market process, all EOI documentation was publically available. The JWG were not aware of any media interest in the open market process undertaken by the three councils.

An Evaluation Panel was formed to formally evaluate the EOI responses, the panel comprised the:

- Director Engineering and Assets
- Executive Manager Governance and Performance
- Manager Waste, Health and Regulatory Services
- Manager Financial Services
- CWMS Technical Officer

The Council's Probity Advisor oversaw the scoring process and decision making aspects of the evaluation undertaken.

An Evaluation Plan was developed prior to the release of the EOI with assessment criteria focusing on community, social, economic and environmental benefits, as well as financial implications for the community and Council.

As a result of the EOI process undertaken several responses were received.

Due to the nature of the divestment process being undertaken and probity advice received, the responses must be treated as commercial in confidence across the collaborative councils and to ensure the maintenance of a competitive process going forward. Therefore, this report does not provide specifics of the responses received. Furthermore, whilst confidential information can be protected whilst the report is in confidence, ultimately the information provided by respondents will be in the public domain when the report is released from confidentiality. We are seeking the details of the non-binding indicative offers from the EOI process be kept confidential so as to maximise the competitive tension and subsequent offers in an RFT process.

Noting the above, Council can be assured that through the evaluation and assessment process all respondents were identified as having the financial capacity to fund the sale and to provide ongoing reliable services. Additionally, the respondents were all reputable and had extensive experience in the wastewater and recycled water industry, with proven capability and capacity to operate wastewater networks.

Council Members also need to consider that the recommendations made by this report in no way bind Council to the divestment of CWMS assets. Subject to progressing to a request for tender for the sale of Council's CWMS assets, more detailed information will be provided to Council Members after the RFT responses are received, to allow them to fully consider all aspects of any recommendation to divest of the CWMS.

Subject to the timing of the proposed further report to Council in relation to undertaking a second stage CWMS divestment request for tender this matter may be considered by the new Council following the 2018 Local Government Elections.

The EOI process was undertaken to gauge market interest or otherwise in the potential divestment of Council's CWMS. From the responses received it is considered progressing to a second stage request for tender is worth pursuing. However, noting the significance of this process it is recommended that community consultation and a prudential review be undertaken for Council consideration prior to resolving, or otherwise, to progress to a request for tender process.

Community Consultation - Released 05 July 2018

Community consultation

To ensure Council considers the impact and interests of the community regarding the divestment of Council's CWMS, it is recommended that community consultation be undertaken with outcomes of the process informing future decision making relating to the divestment of Council's CWMS or otherwise. It may also inform elements of any subsequent request for tender process.

Broad consultation will be undertaken in accordance with Council's Community Consultation Policy. The consultation process will ensure all members of the community and other stakeholders are sufficiently informed and consulted on the process being undertaken. It will also provide the opportunity to engage on matters including Council's role in providing this service, the risk profile associated with providing this service, and the potential for future expansion of CWMS infrastructure to areas currently not serviced.

The following will be undertaken as part of the community engagement process:

- Drop in information session to be held at the Stirling and Woodside libraries
- Have your say – Portal for residents and ratepayers to provide feedback on Engagement HQ
- Public Notice advertisement

Considering the collaboration with other councils it is important that the timing of the community consultation process and the content of information provided to the community is consistent across the councils. To realise the potential benefits from economies of scale achieved through a collaborative approach it is important for Adelaide Hills Council to align its processes, including consultation, with the CoO as a lead participant this process.

At the time of preparing this report the CoO had not confirmed their final consultation timelines however their initial project plan had earmarked community engagement to occur late June 2017. Noting this potential, it is preferable for Adelaide Hills Council to be in a position to align with the CoO consultation. Through the JWG the councils are working together to ensure this occurs. Consultation would be undertaken prior to making a resolution to progress to a second stage request for tender or otherwise. Council Members would be informed of the consultation date, once known, prior to it occurring.

Prudential Review

As mentioned previously in this report the exploration of divestment of Council's CWMS assets is considered to be a project of significant community importance and therefore it is recommended that a prudential review is prepared pursuant with Section 48 of the *Local Government Act 1999*.

The prudential review would consider the matters outlined in Appendix 1. It is anticipated that the prudential review, if endorsed by Council, will be undertaken by an independent consultant with experience in local government projects and prudential reviews.

Summary

Since the last confidential Council report and resolution in September 2017, a joint EOI for CWMS divestment has been undertaken in collaboration with CoO and RCMB. Responses were received and have been evaluated and the Evaluation Panel recommends progressing to a second more detailed stage request for tender is worth pursuing. It is also recommended to continue the collaborative approach with the other councils.

However, noting the significance of this process it is recommended that community consultation and a prudential review be undertaken for Council consideration prior to resolving, or otherwise, to progress to a second stage request for tender process for the possible divestment of Council's CWMS assets.

4. OPTIONS

Council has the following options:

- I. Undertake community consultation and a prudential review with the outcomes of these to inform decision making and recommendations for Council consideration prior to resolving to, or otherwise, progressing to a second stage request for tender for the divestment of Council's CWMS assets (Recommended)
- II. Not undertaking community consultation and a prudential review prior to Council resolving to, or otherwise, progress to a second stage request for tender for the divestment of Council's CWMS assets. This option is not recommended as it may lead to a poorly informed decision-making process and potential lack of community confidence.
- III. Not continue with the Joint Working Group and collective approach to market with CoO and RCMB progressing to a second stage request for tender alone. This option is not recommended as Council will forego the benefits from partnering with other councils including cost sharing and the potential to maximise bids through economies of scale.
- IV. Continued Council ownership and operation of the CWMS and conduct business as usual without seeking a second stage request for tender. This option is not recommended as Council would not be fully exploring all potential options for the future operation and management of the CWMS networks.

5. APPENDIX

- (1) *Local Government Act 1999* Section 48(2) Prudential Requirements

Appendix 1

*Local Government Act 1999 Section 48(2) Prudential
Requirements*

Local Government Act 1999, Section 48(2) Prudential Issues

The following are prudential issues for the purposes of subsection (1):

- (a) the relationship between the project and relevant strategic management plans;
- (b) the objectives of the Development Plan in the area where the project is to occur;
- (c) the expected contribution of the project to the economic development of the local area, the impact that the project may have on businesses carried on in the proximity and, if appropriate, how the project should be established in a way that ensures fair competition in the market place;
- (d) the level of consultation with the local community, including contact with persons who may be affected by the project and the representations that have been made by them, and the means by which the community can influence or contribute to the project or its outcomes;
- (e) if the project is intended to produce revenue, revenue projections and potential financial risks;
- (f) the recurrent and whole-of-life costs associated with the project including any costs arising out of proposed financial arrangements;
- (g) the financial viability of the project, and the short and longer term estimated net effect of the project on the financial position of the council;
- (h) any risks associated with the project, and the steps that can be taken to manage, reduce or eliminate those risks (including by the provision of periodic reports to the chief executive officer and to the council);
- (i) the most appropriate mechanisms or arrangements for carrying out the project;
- (j) if the project involves the sale or disposition of land, the valuation of the land by a qualified value under the *Land Valuers Act 1999*

3. Community Wastewater Management Systems Expression of Interest Outcomes – Period of Confidentiality

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing Council's decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 6.1 in confidence under sections 90(2) and 90(3)(b) of the *Local Government Act 1999*, resolves that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* that the report, related attachments and the minutes of Council and the discussion and considerations of the subject matter be retained in confidence until 31 December 2019.

Pursuant to section 91(9)(c) of the *Local Government Act 1999*, Council delegates the power to revoke the confidentiality order either partially or in full to the Chief Executive Officer.