



# **SOUTHERN DOWNS REGIONAL COUNCIL ORDINARY COUNCIL MEETING**

## **LATE AGENDA ITEMS**

**Wednesday, 17 July 2024**



ORDER OF BUSINESS:

12. INFRASTRUCTURE SERVICES REPORTS ..... 1


12.1 Stanthorpe Irrigators Recycled Water Agreement 2024 Amended June  
2024 ..... 1



## 12. INFRASTRUCTURE SERVICES REPORTS

### 12.1 Stanthorpe Irrigators Recycled Water Agreement 2024 Amended June 2024

#### Document Information

	<b>Report To: Ordinary Council Meeting</b>	
	<b>Reporting Officer:</b>	<b>Meeting Date:</b> 17 July 2024
	Chief Executive Officer Manager Water	<b>ECM Function No/s:</b>

#### Recommendation

THAT Council:-

1. Resolve that under S235(b) of the Local Government Regulation, because of the specialised nature of the services that are sought, it would be impractical or disadvantageous for the local government to invite quotes or tenders, and that this contract will only be offered to the current irrigators as listed in the attached Recycled Water Agreement for the following reason:
  - The very significant risk for Council in not being able to successfully dispose of the treated effluent.
2. Enter into Recycled Water Agreements in accordance with the draft agreement provided as Attachment 1 with the irrigators as listed in the attached agreement; and
3. Delegate the Chief Executive Officer to finalise and execute the Stanthorpe Irrigators Recycled Water Agreements 2024.

## REPORT

### Background

Southern Downs Regional Council (SDRC) owns and operates the Stanthorpe Wastewater Treatment Plant (WWTP) at New England Highway in Stanthorpe, Queensland. The Stanthorpe WWTP produces only Class A recycled water wherein the major portion is supplied to rural irrigators and a minor portion is supplied to urban community groups.

For Stanthorpe irrigators, the current Agreement expired on 31 March 2024. There have been ongoing negotiations with irrigators and an amended copy of the Model Recycled Water User Agreement, developed by the Queensland Government, was provided as the industry standard for Queensland.

After several iterations Council produced a document acceptable to the irrigators and was presented at the May 2024 Council meeting for approval. Council requested officers undertake some additional consultation with the parties.

The matter was further considered at the June 2024 Council meeting and staff were again tasked to try and refine the agreement.

## Report

Council used the Model Recycled Water User Agreement provided by the State Government to produce a draft Agreement, that was sent to the Stanthorpe irrigators for comment. In late December 2023, correspondence was received from Catanzaro Solicitors on behalf of Stanthorpe irrigators advising that the terms of the proposed draft Agreement were not suitable to their clients. The correspondence sought opportunity to negotiate with SDRC.

A meeting was held with the irrigators and the points of difference were discussed and outcomes agreed. The irrigator's solicitor then provided an update to the contract reflecting their position.

Council updated the draft contract incorporating the irrigator's solicitor's comments and provided the updated draft to them for further review. We received four points of concern and these were addressed in the final draft of the agreement, attached to this report.

It is essential to note that Council are extremely dependent on these irrigators taking the recycled water. If they did not accept the recycled water we would be forced to discharge this to the creek in contravention of the Environmental Authority for this treatment plant.

Under s235(b) of the Local Government Regulation, it is recommended that this contract should only be offered to the current irrigators due to the very significant risk for Council in not being able to successfully dispose of the treated effluent if contract negotiations are unsuccessful.

The Agreement was presented to Council at the 15 May 2024 meeting for approval. Officers Councillors indicated that the report did not allow Council any flexibility in the future if they wanted to use the recycled water to benefit the urban customers.

An amended agreement was presented to Council at the 19 June 2024 meeting for approval whereby officers were again tasked to try and refine the agreement in line with the resolution of Council as follows:

### **12.4.1 Stanthorpe Irrigators Recycled Water Agreement 2024 June 2024 - Amendment Resolution**

**Moved Mayor M Hamilton Seconded Cr C Pidgeon**

2. Delegate the Chief Executive Officer to finalise the Stanthorpe Irrigators Recycled Water Agreements 2024, subject to the following additions:

Clause 2.1(l)(i) – Add at the beginning “Subject to the following being permissible under the Local Government Act and Regulations at the relevant time”, and renumber clause 2.1(l) as required.

Clause 20.2(c) - Add at the beginning “Subject to the following being permissible under the Local Government Act and Regulations at the relevant time”.

**Carried**

The final version proposed for approval by Council is provided as **Attachment 1** with the changes in section 2.1 (l) and section 20.2 (c) highlighted.

## **Conclusion/Summary**

SDRC needs to ensure it has the capacity to meet its license conditions for the Stanthorpe WWTP discharge parameters and thus needs supply agreements that facilitate the management of recycled water and discharge. This contract is suitable for Council to discharge its obligations.

## FINANCIAL IMPLICATIONS

The irrigators will be charged and managed in accordance with the conditions set out in the Agreement.

## RISK AND OPPORTUNITY

### Risk

The existing Agreement expired at the end of March 2024. Should Council not approve this new Agreement we could end up in disputes with the current irrigators.

### Opportunity

This report and final Agreement allow the relationship of the Stanthorpe irrigators and SDRC to continue in a more equitable manner, allowing SDRC more control over this collaboration than was allowed under the previous agreement.

## COMMUNITY ENGAGEMENT

### Internal Consultation

Water & Wastewater Treatment Coordinator  
Finance Business Improvement Officer  
Council Information Session 15 November 2023  
Council meeting 15 May 2024

### External Consultation

The Agreement was sent to each of the irrigators for feedback.  
The Agreement was reviewed by SDRC's solicitors.

## LEGAL / POLICY

### Legislation / Local Law

Recycled water is managed under *Chapter 3 of the Water Supply (Safety & Reliability) Act 2008*.

### Corporate Plan

Goal:	3	Our Prosperity
Outcome:	3.2	Businesses thrive and grow
Objective:	3.2.3	Advocate for improved water availability and security for the agricultural industry.
Performance Indicator:		Improved water security

### Policy / Strategy

Nil

## ATTACHMENTS

1. Revised Agreement[↓](#)



## Recycled Water Agreement

**Southern Downs Regional Council (Council)**

\_\_\_\_\_ (Irrigator)

**[To be inserted, if necessary]** (Owners)



## Recycled Water Agreement

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**Annexure C Farm Management Plan** .....Error! Bookmark not defined.

Recycled Water Agreement

Details

Date

Parties

Name	<b>Southern Downs Regional Council</b>	
ABN	<b>59 786 792 651</b>	
Description	<b>Council</b>	
Notice Details	Address	64 Fitzroy Street, Warwick 4380
	Postal address	PO Box 26
		WARWICK QLD 4370
	Email	mail@sdrc.qld.gov.au
	Attention	

Name	<hr/>	
Description	<b>Irrigator</b>	
Notice Details	Address	<hr/>
		<hr/>
	Postal address	<hr/>
		<hr/>
	Email	<hr/>
Attention	<hr/>	

## Recycled Water Agreement

# Background

- A. The Council holds the EA for the operation of the environmentally relevant activity of sewage treatment pursuant to the EP Act. The Council's recycled water scheme is contained in its Recycled Water Management Plan, approved by the Department of Regional Development, Manufacturing and Water.
- B. The Council owns and operates the Treatment Plant, which is part of the Recycled Water Scheme.
- C. The Irrigator occupies, or is entitled to occupy, the Land.
- D. The Irrigator has requested that the Council supply Recycled Water for the Irrigator's use on the Land for the Permitted Use.
- E. The Council has agreed to supply, and the Irrigator has agreed to take, Recycled Water for the Irrigator's use on the Land for the Permitted Use in accordance with this Agreement.
- F. The Owner owns the Land and consents to the supply and use of the Recycled Water in accordance with the Agreement.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this document the following words and expressions have the meaning shown unless the context requires otherwise:

<b>Agreement</b>	This document and all Schedules and Annexures to it.
<b>Annualised Capital Cost</b>	The Book Value of the scheme assets less original government grant allowance of 50% x Weighted Average Cost of Capital to Council / Average Useful Life of the scheme assets.
<b>Annual Renewals Annuity</b>	Annual depreciation of the scheme assets at 30 June for the financial year immediately before the review date which forms part of Southern Downs Regional Councils audited financial statements less original government grant allowance of 50%
<b>Authorised Representatives</b>	Each of the parties appointed by the Current Irrigators to represent each of Current Irrigators at meetings held between the Council and the Current Irrigators and are as at the Commencement Date the parties whose details appear at Item 17 of the Schedule.
<b>Authority</b>	Any federal, state, local government, semi-government, statutory or legislative authority, court, instrumentality or body with jurisdiction over any part of the Land.

## Recycled Water Agreement

<b>Average Useful Life</b>	Average estimated number of years the scheme assets will continue to contribute positive economic value in their current state at 30 June for the financial year immediately before the review date which forms part of Southern Downs Regional Councils audited financial statements.
<b>Bank Bill Yield Rate, for a day</b>	The monthly average yield of 90-day (three month) Bank Accepted Bills/Negotiable Certificates of Deposit for the month of March immediately before the review date as published by the Reserve Bank of Australia accessed on the Reserve Bank of Australia's website.
<b>Book Value</b>	Replacement value of the scheme assets less accumulated depreciation at 30 June for the financial year immediately before the review date which forms part of Southern Downs Regional Councils audited financial statements.
<b>Business Day</b>	Any day other than a Saturday, Sunday, or a bank holiday or a public holiday in Queensland and a reference to a date which does not fall on a Business Day is to be construed as a reference to the next Business Day.
<b>Business Hours</b>	9 am to 5 pm inclusive on any Business Day.
<b>Commencement Date</b>	The date upon the last party to sign this Agreement signs this Agreement.
<b>Discount Rate</b>	the sum of— (a) the bank bill yield rate for the day, rounded to 2 decimal places; and (b) 3%.
<b>Council's Infrastructure</b>	All of the plant, equipment and meters necessary to supply Recycled Water to the Supply Point.
<b>Current Irrigators</b>	Those parties whose details appear at Item 18 of the Schedule.
<b>CPI</b>	The Brisbane Consumer Price Index (All Groups) published by the Commonwealth Statistician, or any similar index which replaces it.
<b>DES</b>	Department of Environment and Science.
<b>EA</b>	Environmental Authority EPR00558813 held by the Council.
<b>EP Act</b>	<i>Environmental Protection Act 1994</i> (Qld).
<b>Expiry Date</b>	The date specified in Item 6 of the Schedule.

## Recycled Water Agreement

<b>Farm Management Plan</b>	Means the Irrigation Farm Management Plan, Occupation Health & Safety Plan and a description of the Irrigator's Property contained in Annexure D.
<b>Fee</b>	The fee specified in Item 10 of the Schedule.
<b>Force Majeure</b>	<p>Any event or circumstance not within the control of the party claiming Force Majeure, and which, by exercise of reasonable diligence, that party was and is not reasonably able to prevent or overcome, including:</p> <ul style="list-style-type: none"><li>(a) war, whether declared or undeclared, revolution or act of public enemies;</li><li>(b) riot or civil commotion;</li><li>(c) strike, stoppage, ban, limitation on work or restraint of labour;</li><li>(d) act of God;</li><li>(e) fire, flood, storm, tempest or washaway;</li><li>(f) act or restraint of any Authority;</li><li>(g) failure of the electricity supply caused by events beyond the control of the Council or the Irrigator; or</li><li>(h) a change in any law or requirement of any Authority which makes it unlawful to supply or use the Recycled Water in accordance with this Agreement.</li></ul>
<b>Guidelines</b>	The Environmental Protection Agency (Qld) <i>Queensland Water Recycling Guidelines</i> , December 2005.
<b>Irrigator's Allocation</b>	The Allocation identified in Item 8 of the Schedule, as determined by reference to Items 8(A), 8(B) and 8(C).
<b>Irrigator's Infrastructure</b>	The infrastructure identified in Item 3 of the Schedule.
<b>Irrigation Rotation</b>	The rotation identified in Item 11 of the Schedule.
<b>Land</b>	The land identified in Item 1 of the Schedule.
<b>Levels of Service</b>	The delivery pressure, rate of delivery, or restrictions on service availability for the supply of Recycled Water specified in Item 9 of the Schedule.
<b>Nominal Annual Allocation</b>	The allocation identified in Item 8(B) of the Schedule.

## Recycled Water Agreement

<b>Owner</b>	The owner of the Land identified in Item 1 of the Schedule.
<b>Potable</b>	Suitable for drinking.
<b>Permitted Use</b>	The use specified in Item 7 of the Schedule.
<b>Proportion</b>	The proportion identified in Item 8(A) of the Schedule.
<b>Public Liability Insurance Amount</b>	The amount specified in Item 12 of the Schedule.
<b>Recycled Water</b>	The treated effluent produced by the Treatment Plant and supplied to the Irrigator pursuant to this Agreement.
<b>Recycled Water Scheme</b>	The recycled water scheme operated by the Council, having Scheme Reference Number SRN004.
<b>Recycled water management plan</b>	The plan for the safe generation and supply of Recycled water.
<b>Supply Point</b>	The point identified at Item 2 of the Schedule.
<b>Term</b>	The term of this Agreement in accordance with clause 2.1, including any Holdover Period under clause 2.2.
<b>Treatment Plant</b>	The Council's effluent treatment plant identified at Item 4 of the Schedule.
<b>Water Quality Specification</b>	The table contained in Annexure B.
<b>Weighted Average Cost of Capital</b>	Discount rate x (Useful Life – 1)

## 1.2 Interpretation

In the interpretation and application of this document, unless the context otherwise requires:

- (a) any reference to the background, or any schedule, attachment or exhibit, is a reference to that thing which is part of this document;
- (b) in calculating any period of time commencing from a particular day, the period commences on the following day and the following day counts as part of that period;
- (c) where an expression, word or phrase is given a particular meaning, then other parts of speech based on that expression, word or phrase and other grammatical forms of that expression, word or phrase, have corresponding meanings;



## Recycled Water Agreement

- (d) the rule of interpretation which sometimes requires that a document be interpreted to the disadvantage of the party which put the document forward, does not apply;
- (e) a reference to this document or any other agreement, arrangement or document, includes any variation, novation, supplementation or replacement of them;
- (f) where an expression is defined anywhere in this document, it has the same meaning throughout;
- (g) a reference to any gender includes all genders;
- (h) headings are for convenience of reference only and do not affect interpretation;
- (i) a mention of anything after include, includes or including, does not limit what else might be included;
- (j) if an example is given of anything, including an example of a right, obligation or concept, the example does not limit the scope of that thing;
- (k) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and also any subordinate legislation issued under, that legislation or legislative provision;
- (l) a reference to dollars or \$ is to an amount in Australian currency;
- (m) the singular includes the plural and vice versa;
- (n) a reference to any party to this document or to any other document or arrangement, includes that party's legal personal representatives, substitutes (including, without limitation, any person taking by novation), successors and permitted assigns;
- (o) a reference to a person includes a body corporate, partnership, joint venture, incorporated or unincorporated association, authority, state, government, or government or quasi-government body; and
- (p) an agreement, undertaking, representation or warranty by or in favour of two or more persons, binds or is for the benefit of all of them jointly and each of them individually.

## 2. Term

### 2.1 Term

- a) This Agreement commences on the Commencement Date and expires on the Expiry Date (or the sooner determination of this Agreement in accordance with clause 16), subject to any extension of this Agreement under clause 2.1(b).
- b) The Irrigator shall have the right to exercise a first option of renewal of this Agreement for a 5-year period commencing from the expiry of the first Term (being

## Recycled Water Agreement

the period from the Commencement Date to the Expiry Date of the first five year period) herein referred to as the "First Additional Term".

- c) The Irrigator shall have a further right to exercise a Second Option of Renewal of this Agreement for a further 5-year period commencing from the expiry of the First Additional Term. The additional term of five years that would be created upon exercise of this renewal is referred to as the Second Additional Term. However, as part of the exercise of the Second Option of Renewal, the parties agree to the following:-
- i. The Council must otherwise comply with the obligations set out in this clause 2.1 in relation to the giving of notice and requirements to meet.
  - ii. However, and in addition, the Council must in the notice to be given for the Second Option of Renewal, provide advice as to whether it believes that there is a genuine urban need which will arise or has arisen in relation to the Recycled Water the subject of this Agreement and in particular whether there will be the ability to allow the exercise of the Third Option of Renewal set out in clause 2.1 d). The notice must contain the particulars of the genuine urban need, and where the urban need relates to the development of an industry, must be able to show that the impact on the local community will outweigh the detriment created to the Current Irrigators, it being acknowledged that the use by the Current Irrigators of the Recycled Water is in fact an industry in itself which creates commercial benefits to the local community.
  - iii. Where there is a genuine urban need, the parties agree that the Irrigator shall no longer have the Third Option of Renewal available to it, it being agreed by the Irrigator that the Second Additional Term will constitute sufficient notice to the Irrigator regarding the ending of the right to exercise the Third Option of Renewal under this Agreement.
- d) Where the Second Option of Renewal has been exercised, and no genuine urban need has been established, then the Irrigator shall have the right to exercise a Third Option of Renewal for a further 5-year period commencing from the expiry of the Second Additional Term. The additional term of five years that would be created upon exercise of this renewal is referred to as the Third Additional Term. However, as part of the exercise of the Third Option of Renewal, the parties agree to the following:-
- i. The Council must otherwise comply with the obligations set out in this clause 2.1 in relation to the giving of notice and requirements to meet.
  - ii. However, and in addition, the Council must in the notice to be given for the Third Option of Renewal, provide advice as to whether it believes that there is a genuine urban need which will arise or has arisen in relation to the Recycled Water the subject of this Agreement and in particular whether there will be the ability to allow the First Right of Refusal to continue to be available as set out in clause 2.1 I). The notice must contain the particulars of the genuine urban need, and where the urban need relates to the development of an industry, must be able to show that the impact on the local community will outweigh the detriment created to the Current Irrigators, it being acknowledged that the use by the Current Irrigators of the Recycled Water is

## Recycled Water Agreement

- in fact an industry in itself which creates commercial benefits to the local community.
- iii. Where there is a genuine urban need, the parties agree that the Irrigator shall no longer have the First Right of Refusal available to it, it being agreed by the Irrigator that the Third Additional Term will constitute sufficient notice to the Irrigator regarding the ending of the right to the First Right of Refusal under this Agreement.
- e) The Council must give the Irrigator notice at least eight (8) calendar months and not more than ten (10) calendar months prior to the expiry date of the then current Agreement that the Irrigator is entitled to exercise the option to renew the Agreement for the option period. When the Council provides this notice, it must at the same time:
- (i) advise whether or not it believes there is to be a change to the fee structure as set out in clause 5.1 and if a change is proposed, the nature of those changes and the proposed new fee structure;
  - (i) advise whether as a result of any upgrades to the Treatment Plant from where the Recycled Water is sourced, this will require changes to any processes including Farm Management Plans and advise the nature of such changes;
  - (ii) advise whether there is a requirement due to a legislative obligation imposed on the Council which requires it to make changes to either the amount of water which it is able to supply or the quality of water which it is able to supply and advise the nature of such changes.
- f) Upon receipt of the Notice from the Council, the Irrigator may exercise the option to renew the Agreement for the option period by giving to the Council within three (3) calendar months that the Irrigator is desirous of renewing the Agreement for the option period whereupon the Agreement will be renewed for the option period on the same terms and conditions as this Agreement subject to the terms of clause 2.1(c). Should the Council fail to give Notice within the time frame referred to in Clause 2.1(c) hereof, then the Irrigator has until the expiry of three (3) calendar months on and from the receipt of such Notice from the Council within which to exercise the option to renew the Agreement. It is agreed that in the event that the Council fails to give Notice referred to in Clause 2.1(c) hereof prior to the expiry of the Agreement, then the Irrigator shall be deemed to be holding over under the terms of the current Agreement until such Notice is given by the Council whereupon the Irrigator shall have until the expiry of three (3) calendar months on and from the receipt of such Notice from the Council within which to exercise the option to renew the Agreement.
- g) Should at the time for the Council to give notice to the Irrigator pursuant to clause 2.1(c) hereof, the Irrigator has failed within a reasonable time to remedy a breach of the then current Agreement, notice of which has been given by the Council, or should during the term of the current Agreement, the Irrigator has consistently breached the Agreement and failed to satisfactorily remedy such breaches, then the Council must during the time stipulated in sub-clause 2.1(c) in lieu of the Notice stated in that sub-clause, give the Irrigator notice that it does not consider the Irrigator is entitled to exercise the option to renew the then current Agreement and that the Agreement will determine on the expiry date thereof.

Recycled Water Agreement

- h) The parties acknowledge that the intent of this clause is that upon the exercise of all three successive options of renewal, the total term of this Agreement will be twenty (20) years ("the total term").
- i)
  - (i) When the Council provides the notice set out in clause 2.1(c) and in the notice there are no changes as set out in clauses 2.1(c)(i), 2.1(c)(ii) and 2.1(c)(iii), and the Irrigator exercises the option, then the Agreement will be renewed on the same terms as conditions as are set out herein.
  - (ii) When the Council provides the notice set out in clause 2.1(c) and included in the notice are any changes as set out in clauses 2.1(c)(i), 2.1(c)(ii) and 2.1(c)(iii),
    - (A) the Council and the Irrigator shall meet within the timeframes set out in clause 17.1 and negotiate in good faith to reach agreement on the proposed changes. The parties may by agreement extend the time for negotiation.
    - (B) If the parties are unable to reach agreement, then the parties agree to refer the proposed changes for determination to an independent person appointed by agreement between the parties, or in the absence of agreement, at the instance of either party by the president for the time being of the Queensland Law Society Incorporated. Where an independent person is appointed, the time for exercising the option shall be extended until twenty-one (21) days after the handing down of a determination by the independent person. In the meantime, the Agreement shall continue to apply.
    - (C) The costs of such appointment of an independent person are to be borne by the parties equally.
    - (D) If the Council and the Irrigator reach agreement, and the Irrigator exercises the option, then the Irrigator is deemed to have agreed to the changes as agreed or as determined and the terms of the new Agreement will be changed to reflect the changes as agreed or as determined.
- j) Any notice given by the Council to the Irrigator must be the same as and consistent in its terms with (save and except for quantities and any obvious differences required pursuant to this Agreement) any notices given to the remaining Current Irrigators.
- k) The Irrigator acknowledges and agrees with the Council that:-
  - (i) One or more of the Current Irrigators may choose to agree with the Council without the need to proceed to a determination by an independent person and may agree with the Council even though there are one or more of the Current Irrigators who do not agree with the Council.

## Recycled Water Agreement

Any of the Current Irrigators, including the Irrigator, are at liberty to proceed to a determination by an independent person and where any such determination results in an outcome different from that set out in the notice, there is no obligation on the part of the Council to amend any agreements already in place with any of the Current Irrigators, including the Irrigator.

- I) Subject to the following being permissible under the Local Government Act and any associated regulations at the relevant time; then upon expiry of the total term (inclusive of options), the Council must not enter into a new Agreement with another person or entity for the supply of Recycled Water to replace this Agreement without first offering to enter into a new Agreement with the Irrigator on terms no less favourable than those upon which the Council is prepared to enter into with that person or entity, which offer shall remain open for acceptance by the Irrigator in writing within 28 days of the Irrigator having received the same.

For the avoidance of any doubt, the Council acknowledges and agrees that it cannot enter into any agreement with any other party on terms which are more favourable than that which was the subject of the offer to the Irrigator hereunder.

### 2.2 Holdover

- (a) If, after the Expiry Date, the Council continues to supply Recycled Water to the Irrigator, this Agreement will continue in force until the date which is two months after the Expiry Date (**Holdover Period**). The Holdover Period will be extended in circumstances to which the provisions of clause 2.1 might apply.
- (b) During the Holdover Period, provided that:
- (i) the Irrigator wishes to continue to receive Recycled Water from the Council; and
  - (ii) the Council wishes to continue to supply Recycled Water to the Irrigator,
- the parties agree to attempt to negotiate a new Agreement in good faith before the expiry of the Holdover Period.

## 3. Infrastructure

### 3.1 Council's Infrastructure

- (a) The Council agrees to:
- (i) install the Council Infrastructure (where it has not already done so pursuant to the provisions of a prior agreement between the Irrigator and the Council) by the Commencement Date; and
  - (ii) maintain the Council Infrastructure in good repair and condition during the Term (fair wear and tear and damage due to circumstances beyond the control of the Council excepted).
- (b) The Irrigator:

## Recycled Water Agreement

- (i) acknowledges that, as at the Commencement Date, the Council infrastructure had been installed;
- (ii) acknowledges that it has no claim against the Council in relation to the supply, maintenance and construction of the Council Infrastructure.

### 3.2 Irrigator's Infrastructure

- (a) The Irrigator must, at the Irrigator's cost:
  - (i) install the Irrigator's Infrastructure (where it has not already done so pursuant to the provisions of a prior agreement between the Irrigator and the Council) by the Commencement Date;
  - (ii) maintain the Irrigator's Infrastructure in good repair and condition, to the Council's satisfaction acting reasonably; and
  - (iii) obtain and keep current any approvals, authorisations or permits required to operate the Irrigator's Infrastructure.
- (b) The Council acknowledges that, at the Commencement Date, the Irrigator's Infrastructure had been installed.

## 4. Supply

### 4.1 Supply to Supply Point

- (a) In consideration for payment of the Fee by the Irrigator and subject to the availability of Recycled Water, the Council will act reasonably to supply Recycled Water to the Supply Point from the Commencement Date for the Term of this Agreement on the basis that:
  - (i) the Recycled Water supplied to the Irrigator in each Irrigation Rotation is to be equal to the Irrigator's Proportion of the total Recycled Water available for supply during that Irrigation Rotation.
  - (ii) the Council may, at its sole discretion, and provided that notice in writing is given to the Irrigator as soon as reasonably practicable:
    - (A) increase the Irrigator's Nominal Annual Allocation in accordance with the Irrigator's Proportion and the availability of Recycled Water (depending on sewage inflow) and subject to the availability of capacity on the Irrigator's property, it being acknowledged that the capacity of the Irrigator's Infrastructure is as at the Commencement Date, sufficient to receive the Irrigator's Nominal Annual Allocation); and
    - (B) decrease the Irrigator's Nominal Annual Allocation in accordance with the Irrigator's Proportion and the availability of Recycled Water (depending only on sewage inflow).

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- (b) The Irrigator must:
  - (i) maximise the quantity of Recycled Water stored in the Irrigator's Infrastructure; and
  - (ii) only close the manually operated valve at the Supply Point in the case of an emergency and notify the Council of the emergency and the Irrigator's intention to close the manually operated valve at the Supply Point as soon as reasonably practicable.
- (c) The Council will use its best endeavours to notify the Irrigator where there will be extra Recycled Water to be supplied during wet periods which is additional to the Irrigator's Nominal Annual Allocation so as to enable the Irrigator to plan its use of Recycled Water more effectively so as to maximise the quantity of Recycled Water that can be received into the Irrigator's Infrastructure during such wet periods.

### 4.2 Levels of Service

- (a) The Council must take reasonable steps to ensure the supply of Recycled Water in accordance with the Levels of Service:
- (b) The Council may vary or amend the Levels of Service in its discretion acting reasonably and with notice to the Irrigator.
- (c) The Irrigator acknowledges that:
  - (i) the Council provides no warranty that the Recycled Water in accordance with the Levels of Service is suitable for use for the Permitted Use (or for any other purpose) on the Land;
  - (ii) it has made its own investigations about the suitability of the supply of Recycled Water in accordance with the Levels of Service for the Permitted Use on the Land;
  - (iii) whilst the Council will take reasonable steps to provide the Recycled Water in the Irrigator's Annual Allocation and otherwise in accordance with the Levels of Service, the Council makes no warranty about the supply of Recycled Water in the Irrigator's Annual Allocation or otherwise in accordance with the Levels of Service;
  - (iv) it will have no claim against the Council in respect of any failure to provide the Recycled Water in the Irrigator's Annual Allocation or otherwise in accordance with the Levels of Service;
  - (v) the Council may vary or amend the Levels of Service in its sole discretion (acting reasonably) and that the Irrigator may make no claim against the Council in respect of any action taken by the Council pursuant to clause 4.2(b); and
  - (vi) it will have no claim against the Council in respect of any damage, injury or loss to any person, property or stock arising from the supply by the



## Recycled Water Agreement

Council of the Recycled Water in accordance with the Levels of Service.  
Or use of the Recycled Water by the Irrigator (or any person to whom the Irrigator provides the Recycled Water).

### 4.3 Passing of property

Subject to the provisions of this Agreement, ownership of, and risk associated with, Recycled Water supplied pursuant to this Agreement passes to the Irrigator at the Supply Point.

### 4.4 Meetings

The parties agree to meet on a regular basis to discuss the operation of the Scheme and the supply of Recycled Water to the Irrigator (**Meetings**). The Council will organise the Meetings, and may invite such other persons as it considers necessary (including but not limited to other persons to whom the Council supplies Recycled Water in accordance with the Scheme).

## 5. Fee

### 5.1 Fee structure

- (a) The Irrigator acknowledges and agrees that:
  - (i) the Fee comprises:
    - (A) the Fixed Yearly Charge; and
    - (B) the Consumption Charge;
  - (ii) the Fixed Yearly Charge has been set by the Council to be sufficient to cover:
    - (A) 40% of the Annualised Capital Cost to Council of the Scheme; and
    - (B) the Annual Renewals Annuity of the Scheme.
- (b) The parties acknowledge and agree that:
  - (i) the capital cost of the Scheme may vary, including but not limited to, the acquisition of new assets for the delivery of the Scheme, upgrades to existing scheme assets or changes to construction costs; and
  - (ii) in the event that capital costs of the scheme vary after construction or an asset revaluation process, then the Fixed Yearly Charge may be varied at the Council's discretion (acting reasonably) as required to ensure that the Fixed Charge remains 40% of the Annualised Capital Cost to Council of the Scheme, provided that:
    - (A) the Council gives written notice to the Irrigator of the variation to the Fixed Yearly Charge;
    - (B) any increase to the Fixed Yearly Charge due to a change in Annualised Capital Costs, does not exceed an increase of 15% of the Fixed Yearly Charge payable during the immediately



## Recycled Water Agreement

preceding year accounting for any change to the Irrigators allocated proportion;

- (iii) If the Irrigators allocated proportion changes, the Fixed Yearly Charge will adjust from 1 April following the change.
- (c) The Council agrees that prior to making any changes to the Fixed Yearly Charge it will meet with the Irrigator (and the Current Irrigators) and provide full disclosure of the basis on which it has varied the capital costs which results in a change to the Fixed Yearly Charge in order to enable the Irrigator (and the Current Irrigators) to accept that in making changes the Council is acting reasonably and in accordance with the normal methodology used for schemes of this nature.

### 5.2 Payment of Fee

- (a) The Irrigator must pay the Fee to the Council within 30 days of the Council giving the Irrigator an invoice for the Fee.
- (b) The Council may invoice the Irrigator in arrears for Recycled Water supplied to the Supply Point in any manner the Council wishes, provided that the invoice issued by the Council specifies:
  - (i) the period to which the invoice applies;
  - (ii) the quantity of Recycled Water supplied to the Supply Point during the period; and
  - (iii) the Fee payable by the Irrigator.
- (c) The Irrigator must pay the Fee to the Council in the way prescribed by the invoice promptly and without delay.

## 6. Meter

### 6.1 Reading

The Council is responsible for reading the meter on a quarterly basis.

### 6.2 Maintenance of the meter

The parties acknowledge and agree that the meter forms part of Council's Infrastructure and is to be maintained by the Council.

### 6.3 Testing

- (a) Not more than once per calendar year, the Irrigator may request in writing to the Council that the Council test the meter for accuracy.
- (b) The Council must test the meter for accuracy within 20 Business Days of the date upon which the Council receives a request from the Irrigator in accordance with clause 6.3(a).

## Recycled Water Agreement

- (c) The Council must give the results of the test to the Irrigator within a reasonable time.
- (d) If the test indicates that the meter is measuring a volume accurately, then the Irrigator must pay the Council's reasonable expenses of conducting the test to the Council within 10 Business Days of the date upon which the Council gives the Irrigator the results of the test.
- (e) If the test indicates that the meter is not measuring volume accurately or if at any time the meter fails to record the Irrigator's use of Recycled Water then the Council, acting reasonably, must estimate the Irrigator's usage of Recycled Water from the Supply Point. The Irrigator must provide any information regarding the Irrigator's use of Recycled Water to the Council which is reasonably required by the Council to make an estimate of the Irrigator's usage.

### **7. Recycled water quality**

#### **7.1 Water quality specification**

The Council must take reasonable steps to supply the Recycled Water in accordance with the Water Quality Specification.

#### **7.2 Supply management plan**

The Council must take reasonable steps to comply with the Recycled water supply management plan.

#### **7.3 Monitoring**

The Council may monitor water quality in any manner, location and at any time it considers reasonably necessary to ensure that the Recycled Water is consistent with the requirements of the Recycled Water Scheme or the Water Quality Specification.

#### **7.4 Acknowledgement**

The Irrigator acknowledges and agrees that:

- (a) it has made its own investigations into whether or not Recycled Water supplied pursuant to the Recycled Water Scheme that meets the Water Quality Specification is suitable for use for the Permitted Use on the Land.
- (b) the Recycled Water is not Potable and is not fit for general human contact, including contact by swimming, immersion or washing.
- (c) the Council may not vary, amend or revoke, without the consent of the Irrigator in a manner which is inconsistent with this Agreement unless during the term of this Agreement there is legislative change which prescribes the making of such variation, amendment or revocation of this Agreement:
  - (i) the Recycled Water Scheme (including the class of water supplied pursuant to the Recycled Water Scheme)
  - (ii) the Recycled water supply management plan; or

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- (iii) the Water Quality Specification to:
  - (A) address any amendments to the EP Act or any other relevant legislation which specifically prescribes the requirement for any variation or amendment to this Agreement; or
  - (B) address any changes to the Council's EA in circumstances where such changes have not been at the instance of the Council.
  - (C) address any public health concern that can be reasonably addressed by the variation or amendment of the Water Quality Specification.
  - (D) However, where the amendment to the Water Quality Specification results in a Water Quality Specification which is better than the Water Quality Specification set out in Annexure B then the Council may vary or amend the Water Quality Specification but must provide notice of the amendment to the Irrigator as soon as reasonably practicable.
- (d) The Council acknowledges that the Irrigator has agreed to enter into this Agreement on the basis of the Water Quality Specification being of a standard that is at least equal to that set out in Annexure B and that it is an essential element of the agreement between the Irrigator and the Council. On that basis, it is an essential element of the agreement and the Council agrees that it must take all reasonable steps to provide the Recycled Water in accordance with the Scheme and the Water Quality Specification.
- (e) it will have no claim against the Council in respect of any failure to provide the Recycled Water in accordance with the Scheme and the Water Quality Specification except to the extent that such actions, claims, suits, losses, damages or expenses arise from the wilful unlawful act or omission or negligence of the Council or the Council's employees, contractors, agents or invitees.
- (f) it will have no claim against the Council in respect of any damage, injury or loss to any person, property or stock arising from the supply by the Council of the Recycled Water or use of the Recycled Water by the Irrigator (or any person to whom the Irrigator provides the Recycled Water).
- (g) Where the Council becomes aware that the Recycled Water to be supplied in accordance with the Scheme does not meet the Water Quality Specification, it must take all reasonable steps to stop supply or alternatively ensure that the Irrigator is notified as soon as practicable so as to prevent contamination of the Irrigator's Property.

## 8. Use of Recycled Water

### 8.1 Use

- (a) The Irrigator must only use Recycled Water supplied to the Supply Point:
  - (i) on the Land; and

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- (ii) for the Permitted Use,  
unless the Council approves otherwise in writing. The Council may withhold its approval or impose conditions on its approval but must act reasonably.
- (b) The Irrigator must take the quantity of Recycled Water supplied to the Supply Point in accordance with the terms of this Agreement.
- (c) The Irrigator must notify the Council immediately if any Recycled Water leaves the boundaries of the Land, or enters a waterway, drainage channel, roadside gutter or stormwater drainage.

### 8.2 Farm Management Plan

- (a) The Irrigator must:
  - (i) develop a Farm Management Plan in respect of the Land;
  - (ii) provide a copy of the Farm Management Plan to the Council (where it has not already done so) prior to the Commencement Date for the Council's approval (not to be unreasonably withheld);
  - (iii) comply with the Farm Management Plan (as approved by the Council) at all times; and
  - (iv) review the Farm Management Plan (at the Irrigator's sole cost and with the assistance of an appropriately qualified consultant, if required, to be paid for by the Irrigator at its sole cost):
    - (A) at least every two years;
    - (B) if the Irrigator proposes to use Recycled Water pursuant to this Agreement on land which does not already form part of the Land; and
    - (C) if the Irrigator intends to change the operations carried out on the Land (to the extent that Recycled Water is used for the purpose of those operations),  
  
and provide a copy of the reviewed Farm Management Plan to the Council for the Council's approval (not to be unreasonably withheld);
  - (v) provide a copy of the Farm Management Plan to the Council on an annual basis for the purpose of an inspection by the Council of the Land to confirm the Irrigator's compliance with the Farm Management Plan;
  - (vi) the Irrigator consents to the Council entering the Land annually for the purposes of clause 8.2(a)(v), provided that the Council gives notice in writing to the Irrigator of the proposed date and time of the inspection not less than three Business Days prior to the inspection.
- (b) The Farm Management Plan must set out:

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- (i) a wet weather storage plan specifying the operational methods and practices the Irrigator will adopt to effectively manage the Irrigator's Infrastructure during periods of wet weather;
- (ii) the environmental protection methods to be adopted by the Irrigator to protect the local catchment; and
- (iii) a maintenance programme for tail drains to ensure that there is no direct discharge of Recycled Water into the local catchment.

### 8.3 Resale

The Irrigator must not sell, donate, assign or provide the Recycled water to any other person without the consent in writing of the Council. However, the Irrigator may sell, donate, assign or provide the Recycled Water to one of the Current Irrigators utilising existing Council Infrastructure provided that reasonable notice is given to the Council by the Irrigator and that Council infrastructure has the capacity to allow this. Irrespective of whether or not the Irrigator does sell, donate, assign or provide the Recycled Water to one of the Current Irrigators, the Irrigator remains liable for all payments for all Recycled Water which would have been supplied to the Irrigator pursuant to this Agreement unless the Council otherwise agrees.

### 8.4 Access

- (a) The Council or its agents may enter the Land with necessary materials to:
  - (i) take soil or water samples and undertake environmental monitoring at the Land in accordance with the Farm Management Plan or the Recycled water supply management plan;
  - (ii) read, inspect and test the meter; and
  - (iii) inspect and test the Irrigator's Infrastructure.
- (b) The Council will take reasonable steps to arrange times to access the Land under this clause which are convenient to the Irrigator within 5 days unless in the event of a non-compliance or emergency.

## 9. Reduction, interruption or discontinuance of supply

### 9.1 Reduction, interruption or discontinuance

- (a) The Council may, only reduce, interrupt or discontinue the supply of Recycled Water, including but not limited to circumstances where:
  - (i) the Recycled Water fails to meet any water quality requirements or guidelines prescribed by any relevant Authority;
  - (ii) any component of the Treatment Plant or the Council's Infrastructure is damaged or breaks down;
  - (iii) the Council is required to carry out maintenance or repairs to any component of the Treatment Plant or the Council's Infrastructure;

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- (iv) the Council, the Irrigator or the Owner receive a direction under the EP Act that the Recycled Water not be supplied to the Land;
  - (v) the Council, the Irrigator or the Owner cease to hold any approval, authorisation, consent, licence, permit or permission necessary for the lawful operation of the Treatment Plant, Council's Infrastructure, Irrigator's Infrastructure or the use of the Recycled Water by the Irrigator;
  - (vi) the Irrigator's use of the Recycled Water is inconsistent with the requirements of any Authority (including but not limited to the Farm Management Plan or the Recycled water management plan); or
  - (vii) there is insufficient sewage inflow; or
  - (viii) Force Majeure.
- (b) Where the supply of Recycled Water has been suspended pursuant to this clause for a period of more than six (6) months, then the Irrigator's obligation to make payment of the Fixed Yearly Charge shall be suspended proportionally for a similar period of time.
- (c) The Irrigator acknowledges and agrees that it will have no claim against the Council for any reduction, interruption or discontinuance to the supply of Recycled Water, except to the extent that such reduction, interruption or discontinuance arises from a wilful or negligent act or omission of the Council.

### 9.2 Notice

Other than in an emergency, the Council will give the Irrigator 24 hours notice of any intended reduction, interruption or cessation of the supply of Recycled Water, where it is reasonably practicable for it to do so.

### 9.3 Timing

Where it is reasonably practicable for it to do so, the Council will take reasonable steps to ensure that any reduction, interruption or cessation of the supply of Recycled Water for the purposes of carrying out maintenance or repairs to the Treatment Plant or the Council's Infrastructure, takes place at a time that causes minimal disturbance to the Irrigator and other irrigators who receive Recycled Water from the Council.

## 10. Owner's consent

### 10.1 Warranty

The Owner warrants that it has satisfied itself that the Recycled Water which is in accordance with the Water Quality Specification is suitable for the Permitted Use on the Land.

### 10.2 Consent Owner

The Owner consents to the supply to, and use of, the Recycled Water which is in accordance with the Water Quality Specification on the Land and the placement of Council equipment on the Land in accordance with this Agreement.

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### 10.3 Future Land

Where, during the term of this Agreement, additional Land is acquired for use by the Irrigator and such Land is owned by an entity or person who is not a party to this Agreement and has not otherwise previously provided consent, then before the Irrigator shall use the Recycled Water on such Land, the Irrigator will provide the consent of the owner of such Land in terms similar to the provisions of clause 10.1 and 10.2 in favour of the Council. In addition, the Irrigator must ensure that any such additional Land is incorporated into its Farm Management Plan.

### 11. Compliance with laws

The Irrigator and the Council must comply with:

- (a) any law applicable to any matter or thing the subject of or pertaining to this Agreement including section 319 (general environmental duty) and section 320 (duty to notify environmental harm) of the *Environmental Protection Act 1994*; and
- (b) the Guidelines.

Save and except where to do so would be in breach of the terms of this Agreement and such law or Guideline permits such a provision which is inconsistent to remain.

### 12. Insurance

#### 12.1 Irrigator's insurances

The Irrigator must:

- (a) obtain and maintain during the term of this Agreement public liability insurance for the Public Liability Insurance Amount for each accident, claim or event arising from the use of the Recycled Water;
- (b) give the Council evidence of currency and details of its insurance:
  - (i) before drawing Recycled Water for the first time under this Agreement; and
  - (ii) upon reasonable request by the Council, provided that such request is made not more than once per calendar year.

#### 12.2 Council's insurances

The Council must obtain and maintain during the term of this Agreement public liability insurance for the Public Liability Insurance Amount for each accident, claim or event arising from the supply of the Recycled water.



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### **13. Assignment**

#### **13.1 Assignment by Irrigator prohibited**

The parties acknowledge and agree that the Irrigator may not deal with its rights under this Agreement (whether by assignment or otherwise) other than by transferring its rights under this Agreement to any transferee of the Land, provided that the Irrigator complies with 13.2.

#### **13.2 Application for consent**

Before any transfer of the Land, the Irrigator must:

- (a) give written notice to the Council of its intention to transfer the Land and seek the Council's consent to the assignment of this Agreement. The Irrigator must give the Council whatever information the Council reasonably requires concerning the identity, experience and financial standing of the proposed transferee for the Council to consider the provision of credit terms to such proposed transferee under this Agreement on the same basis as any other party would require to provide to obtain credit terms from the Council in the same manner envisaged under this Agreement; and
- (b) procure from the proposed transferee of the Land a signed deed of covenant (in a form supplied by the Council under) which the proposed transferee agrees to comply with the Irrigator's obligations under this Agreement arising on and from the date of the transfer of the Land to the proposed transferee.

#### **13.3 Withholding consent**

The Council must consent to an assignment of this Agreement to a proposed transferee who will own or occupy the Land from the date of assignment unless:

- (a) the proposed transferee proposes to change the use of the Land to a use which is not able to make use of the Recycled Water; or
- (b) the Irrigator is in default of this Agreement; or
- (c) the proposed transferee has inadequate experience or financial standing.

#### **13.4 Conditions on consent**

The Council may impose conditions on its consent including requirements that:

- (a) the Farm Management Plan be amended;
- (b) the proposed transferee provides reasonable security for the performance of the proposed transferee's obligations under this Agreement which is satisfactory to the Council in its discretion; and
- (c) the Irrigator pay the Council's reasonable costs in relation to giving its consent.



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### 13.5 Assignment by Council

The Council may assign all or any of its rights and obligations under this Agreement only if the Council obtains from the assignee a deed in favour of the Irrigator to be bound by the rights and obligations assigned as if the assignee were an original party in place of the Council.

### 14. Indemnity

The Irrigator indemnifies the Council from and against all actions, claims, suits, losses, damages and expenses arising from or relating to:

- (a) the Supply of Recycled Water by the Council to the Irrigator and the storage and use of Recycled Water by the Irrigator;
- (b) failure by the Irrigator to observe, fulfil and comply with the requirements of this Agreement; and
- (c) a negligent act or default on the part of the Irrigator,

except to the extent that such actions, claims, suits, losses, damages or expenses arise from the wilful unlawful act or omission or negligence of the Council or the Council's employees, contractors, agents or invitees.

### 15. Force Majeure

- (a) Where either the Council or the Irrigator is unable, by reason of Force Majeure, to carry out wholly or in part their obligations under this Agreement (other than an obligation to make any payment), they must immediately give to the other party notice setting out the details of such Force Majeure. The obligations of that party, so far as they are affected by the Force Majeure, will be suspended during, but not longer than the continuance of, the Force Majeure.
- (b) The party giving the notice must take all steps and use all reasonable diligence to remove the Force Majeure as quickly as practicable but this does not require the party to settle any strike, or other labour difficulty on terms not reasonably acceptable to them.

### 16. Termination

#### 16.1 Irrigator's breach

- (a) If the Irrigator:
  - (i) breaches any clause of this Agreement and fails to remedy the breach within a reasonable time (which shall not be less than 20 Business Days) after being given notice of the breach by the Council;
  - (ii) refuses or fails to take the Recycled Water supplied to the Supply Point, without reasonable cause;
  - (iii) uses the Recycled Water for purposes other than the Permitted Use without the Council's prior written consent;

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- (iv) diverts the Recycled Water to land other than the Land, or as otherwise permitted hereunder this Agreement, without the Council's prior written consent;
- (v) uses the Recycled Water in a way which is inconsistent with the requirements of any Authority (including but not limited to the Farm Management Plan or the Recycled water management plan);
- (vi) enters into an arrangement or compromise with its creditors;
- (vii) has a receiver appointed for all or any part of its assets;
- (viii) has an application made or order filed for the Irrigator's administration, voluntary or compulsory liquidation, winding up, dissolution or bankruptcy; or
- (ix) fails to meet or comply with any court order or any law in a material respect,

the Irrigator will be in breach of this Agreement.

- (b) Where the Irrigator is in breach of this Agreement the Council may:
  - (i) exercise any right it has at law;
  - (ii) take action to remedy the default and recover the cost from the Irrigator as a civil debt; and
  - (iii) terminate this Agreement by notice in writing to the Irrigator, with immediate effect.

### 16.2 Council's breach

If the Council breaches any clause of this Agreement and fails to remedy the breach within a reasonable time (which shall not be less than 20 business days) after written notice from the Irrigator, the Council will be in breach of this Agreement and the Irrigator may exercise any right it has at law.

### 16.3 Termination for extreme hardship

- (a) In this clause 16.3, "extreme hardship" means:
  - (i) the death or total and permanent incapacity (due to illness or injury) of the Irrigator (or where the Irrigator is not a natural person, any director of the Irrigator); or
  - (ii) any change to the requirements of any Authority that would require the Irrigator to spend an amount on the Irrigator's Infrastructure that would render the Irrigator's continued use of the Recycled Water for the Permitted Use not commercially viable.

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- (b) The Irrigator may, in the event of extreme hardship, terminate this Agreement upon the giving of three months written notice to the Council.
- (c) If this Agreement is terminated in accordance with clause 16.3(b):
  - (i) the Irrigator must pay the Consumption Charge up to the termination date; and
  - (ii) the Council may retain the full amount of the Fixed Yearly Charge at its sole discretion.

## 17. Disputes

### 17.1 Negotiation

If a dispute arises between the parties arising out of or in connection with this Agreement then within 10 Business Days (or such other period as the parties may agree) after a party provides written notices describing the nature of the dispute to the other party, the parties must meet and attempt to resolve the dispute.

### 17.2 Mediation

- (a) Any dispute arising out of or in connection with this Agreement, which cannot be settled by negotiation may be referred to a mediator agreed upon by the parties.
- (b) If the parties cannot agree upon the mediator within 10 Business Days (or such other period as the parties may agree) after the date of written notice from one party to the other requiring the appointment of a mediator, then the dispute must be referred to a single mediator appointed by the President of the Institute of Arbitrators and Mediators Australia.
- (c) The mediation will be in accordance with Mediation and Conciliation Rules of the Institute of Arbitrators and Mediators Australia.

## 18. Trustee warranties

### 18.1 Trustee

Each of the parties represents and warrants to the others that if it is a trustee:

- (a) it has the power and lawful authority to enter into and perform this document as trustee of the relevant trust and this document constitutes a valid, legal and binding agreement on the trustee and the trust enforceable in accordance with its terms;
- (b) it enters into this document as part of the proper administration of the trust and for the benefit of the beneficiaries of the trust;
- (c) it is the sole trustee of the trust referred to in this document; and
- (d) entering into this document does not constitute a conflict of interest or duty on the part of the trustee nor a breach of trust.

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### 19. GST

#### 19.1 Definitions

In this document, in addition to other defined terms:

- (a) Amount of the Consideration means
  - (i) the amount of any payment in connection with a supply, and
  - (ii) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier;
- (b) **GST** means any goods and services tax payable under the GST Law.
- (c) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* and any associated Commonwealth legislation, regulations and publicly available rulings; and
- (d) words or expressions used in this document which are defined in the GST Law have the same meaning in this document.

#### 19.2 Consideration does not Include GST

The consideration specified in this document does not include any amount for GST.

#### 19.3 Recovery of GST

If a supply under this document is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

#### 19.4 Time of Payment

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a tax invoice.

#### 19.5 Adjustment of Additional Amount

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

#### 19.6 Reimbursement

If a party is entitled to be reimbursed or indemnified under this document, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an input tax credit.

## Recycled Water Agreement

### 20. General

#### 20.1 No right in land or allocation

This Agreement is a personal agreement between the Council and the Irrigator and does not create:

- (a) a water entitlement or any other right or interest under the *Water Act 2000*; or
- (b) any right or interest which attaches to the Land.

#### 20.2 Exclusivity

- (a) The Parties acknowledge that as at the Commencement Date, the Council supplies Recycled Water to a number of not-for-profit organisations which have generally been referred to as “Town Users” and the balance of Recycled Water is supplied to the Current Irrigators.
- (b) The right to supply Recycled Water over and above that supplied to the Town Users is exclusive to the Current Irrigators.
- (c) Where the Council forms the opinion that there is additional capacity of Recycled Water able to be supplied, it must first offer that Recycled Water to the Current Irrigators. Where there is more than one Current Irrigator who wishes to take the additional Recycled Water, it must be offered in the same proportion as each Current Irrigators current Nominal Annual Allocation bears to the total Nominal Annual Allocation of the Current Irrigators who elect to take additional Recycled Water.

The exclusive right to the additional Recycled Water contained herein shall be subject to and conditional upon there not being in existence at that time any Local Government Act or Regulation requirement which precludes the granting of this exclusive right.

- (d) Such offer must be on the same terms as is set out in this Agreement. Further, such offer must be in writing and must allow the Irrigator a total of twenty (20) business days to either accept or reject the offer.
- (e) Where the Current Irrigators do not accept all of the available additional supply of Recycled Water from the Treatment Plant, then the Council shall be at liberty to enter into agreements with other parties for the supply of such of the additional supply of Recycled Water that has not been taken up by the Current Irrigators. However, any such agreements may not be on terms that were better than offered to the Irrigator (and the Current Irrigators).

#### 20.3 Attorneys

Where this document is signed on behalf of a party by an attorney, the attorney by signing declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney signs this document on behalf of that party.

## Recycled Water Agreement

### 20.4 Blanks and Errors

The Council may complete any blanks, and correct any obvious errors, in this document or any counterpart of this document that remain after signing by the Irrigator, including dating all counterparts with a date not earlier than the date on which a signed counterpart from the Irrigator is delivered to the Council.

### 20.5 Consents

A party may give, delay or withhold any consent or approval requested from that party for the purposes of this document, or may give any such consent or approval subject to conditions to be met or observed by the requesting party if the consent or approval is acted or relied upon by the requesting party, as the party whose consent or approval is sought sees fit in its discretion acting reasonably, notwithstanding any provision to the contrary herein.

### 20.6 Costs and Stamp Duty

- (a) Each party must bear its own costs including legal costs in connection with the preparation and signing of this document.
- (b) The Irrigator must pay any stamp duty in respect of this document.

### 20.7 Counterparts

This document may be signed in any number of counterparts and each of those counterparts taken together constitute one and the same document. A party may rely on an electronically produced copy of this document or a counterpart, and the signatures and other marks in it, as though it is an original. This document is binding on each signatory despite any other signatory not having signed it.

### 20.8 Entire Agreement

This document contains the entire agreement between the parties about its subject matter and supersedes all prior discussions, representations, agreements and understandings between the parties in connection with the subject matter. However, the Council neither waives nor releases any accrued rights in respect of periods up to the date of the signing of this document.

### 20.9 Exercise of a Right

If a party has a right stated to be exercisable at its absolute discretion (or stated with words to that effect) then that party may exercise that right:

- (a) as it sees fit in its sole and absolute discretion acting solely in its own interests and for any reason or purpose,
- (b) without and irrespective of, any assessment, investigation, consultation, process, consideration or other step; and
- (c) without giving any reason.

Its decision to exercise that right:

- (a) is final and conclusive (although it does not fetter the party itself);

## Recycled Water Agreement

- (b) must not be regarded as a representation by the party, of anything else apart from the fact that the right has been exercised.

There is no basis on which its decision to exercise that right, or the manner in which it has arrived at that decision, can be questioned or challenged.

The exercise of the right is not a waiver or admission and the other rights of the party do not merge in the exercise of the right.

Rights to which this applies include but are not limited to any right that is in substance or form - a right of termination, a right of variation, a right to exercise an option, a right of expulsion, a right to make a determination, or a right (whether or not stated as a right) to give or withhold any consent or approval.

This does not limit any:

- (c) express requirement or restriction that is stated in this document in relation to the exercise of that right, such as a requirement regarding the manner in which notice of the exercise of the right must be given (but there is no such other requirement or restriction except as may be stated), or
- (d) statutory obligation or requirement in relation to or limiting the exercise of that right, to the extent that it is not permissible or possible to exclude or limit the statutory obligation or requirement.

### 20.10 Further Steps

Each party agrees to do all things and sign all agreements, instruments, transfers and other documents necessary or desirable to give full effect to the provisions of this document and any transactions contemplated by it.

### 20.11 Governing Law

This document is governed by and is to be interpreted according to the laws in force in Queensland. The parties submit to the non-exclusive jurisdiction of the courts operating in Queensland.

### 20.12 Negative Promises

Where a party has promised in this document that it will not do a particular thing, then that party also promises that neither it nor any of its officers or employees will procure or assist in the doing of that thing by anyone else nor have any direct or indirect interest in any other business which involves doing that thing.

### 20.13 Notices

Any notice given under this document:

- (a) must be in writing, addressed to the intended recipient at the address shown in this document, or if the intended recipient has previously given the sender notice of a change of address for the purpose of notices then the notice must be addressed to the intended recipient at the address last duly notified by the intended recipient to the sender;

## Recycled Water Agreement

- (b) must be signed by a person duly authorised by the sender (or in the case of a body corporate, by any of its directors or solicitors); and
- (c) is taken to be received:
  - (i) in the case of a delivery in person, when delivered; and
  - (ii) in the case of a posted letter, on the third Business Day after posting (if posted to an address in the same country) or seventh Business Day (if posted to an address in another country).

### 20.14 Notices by email

- (a) Despite any other provision of this document, any notice under this document may also be given by email subject to the following provisions.
- (b) A notice by email to be effective must:
  - (i) be sent to the intended recipient at the email address shown in this document, or if the intended recipient has previously given the sender notice of a change of email address for the purpose of notices under this document, then to the address last duly notified by the intended recipient to the sender.
- (c) Subject to clause 20.14(d), any notice otherwise duly given by email under this document is taken to be received and becomes effective four hours after sending (as reported by the sender's email server).
- (d) A notice by email:
  - (i) is not effective if the sender receives an automated notice to the effect that the email could not be or has not been delivered; and
  - (ii) if otherwise taken to be received outside Business Hours, is only effective from 9am on the next Business Day after the day of sending.

### 20.15 Operation of Indemnities

- (a) References to **indemnify** and **indemnifying any person against any circumstance**, include indemnifying from all actions and claims from time to time made against or concerning that person, and all liabilities, loss, damage and all payments, costs and expenses made or incurred by that person, as a consequence of or which would not have arisen but for that circumstance.
- (b) Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties under this document and continues after the expiry or termination of this document.
- (c) It is not necessary for a party to incur an expense or make a payment before enforcing a right of indemnity conferred by this document.



## Recycled Water Agreement

- (d) Nothing in this document restricts a party from claiming against another party for breach of warranty or breach of contract and under any indemnity, or concurrently for both breach of warranty or breach of contract and for indemnity.
- (e) A party may exercise and exhaust all remedies against another party for breach of warranty or breach of contract and for indemnity, without being required to elect between rights and remedies.

### **20.16 Other Rights**

The rights, powers, remedies and privileges provided in this document are cumulative, and are not exclusive of any other rights, powers, remedies and privileges provided by law, except as may be expressly stated otherwise in this document.

### **20.17 Payments**

Except where expressly provided otherwise, all payments under this document must be made by delivering an unendorsed bank cheque, or by direct transfer of immediately available funds and without set off, counterclaim or withholding.

### **20.18 Prior Investigations**

No provision of this document is in any way modified, discharged or prejudiced by reason of any investigation made, or information acquired, by or on behalf of the Council, whether prior to or after the date of this document.

### **20.19 Waiver**

No failure, delay, relaxation or indulgence on the part of a party in exercising any right, power, privilege or remedy in connection with this document, operates as a waiver of that right, power, privilege or remedy nor does any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of that or any other right, power, privilege or remedy. A waiver is not valid or binding on the party granting that waiver unless in writing and duly signed on behalf of that party.

### **20.20 Warranty of authority**

Each person signing this document on behalf of a party, warrants to the other parties that on the date of signing, that person has full authority to sign this document on behalf of that party.

Recycled Water Agreement

Signing page

Signed by each party as a deed

Signed on behalf of  
**Southern Downs  
Regional Council**

_____	_____
sign (authorised person)	sign (witness)
the signatory represents that they are duly authorised	the witness states that he or she is not a party and was present when the authorised person signed
_____	_____
title (authorised person)	full name (witness)
_____	_____
full name (authorised person)	address (witness)

Recycled Water Agreement

Irrigator

Signed by

\_\_\_\_\_

In the presence of

_____	_____
sign	sign (witness)
_____	_____
full name	full name (witness)

Schedule

Item		
1.	Land	<p>The land(s) specified in the Farm Management Plan.</p> <p>Any other land in which the Irrigator, an entity controlled by the Irrigator or the Irrigator's spouse acquires an interest during the Term of this Agreement which included in the Farm Management Plan approved by the Council.</p>
2.	Supply Point	<p>The area on the boundary of the Land shown on Annexure A, having co-ordinates [to be included].</p>
3.	Irrigator's Infrastructure	<p>Any infrastructure constructed or installed by the Irrigator on the Land for the purpose of:</p> <ul style="list-style-type: none"><li>(a) conveying Recycled Water from the Supply Point for use on the Land shown in in Annexure A; and</li><li>(b) storing Recycled Water supplied to the Supply Point,</li></ul> <p>which must include (but is not limited to);</p> <ul style="list-style-type: none"><li>(c) a dedicated storage pond having a capacity of not less than [ ] ML (<b>Storage Pond</b>), which the Irrigator must ensure is isolated from local catchment inflows;</li><li>(d) additional storage pond(s) having a capacity of not less than the Storage Pond for the purposes of storing any additional Recycled Water supplied to the Irrigator on the terms of the Agreement</li></ul>

## Recycled Water Agreement

(Additional Storage Pond), which the Irrigator must ensure is isolated from local catchment inflows; and

- (e) a pipeline to convey the Recycled Water from the Supply Point to the Storage Pond and Additional Storage Pond.

4. **Treatment Plant** Stanthorpe Waste Water Treatment Plant, located at the New England Highway (adjacent to Quart Pot Creek) and more particularly described as Lot 1 on SP16085.

5. **Commencement Date** April 2024

6. **Expiry Date** March 2029

7. **Permitted Use** Irrigation

8. **Irrigator's Allocation** (A) Proportion (%) (B) Nominal Annual Allocation (ML)

39.73 – Eastern Colours	119.6 – Eastern Colours
3.65 - DAF	11.0 - DAF
17.81 - Sunrise	53.6 - Sunrise
15.15 - Pinata	45.6 - Pinata
14.82 - Taylor	44.6 - Taylor
8.84 - Wallaroo	26.6 - Wallaroo

9. **Levels of Service** Supply flow rate Supply pressure  
6.0L/s 100kPa

10. **Fee (excluding GST)** Fixed Yearly Charge (\$) Consumption Charge (\$/ML)  
\$80,920.25 x Proportion (as at the Commencement Date), to be reviewed and adjusted if required on 1 April each year during the Term rounded to the nearest \$.  
The Fixed Yearly Charge is calculated as follows:  
 $40\% \times (\text{Annualised Capital Cost} + \text{Annual Renewals Annuity}) \times \text{Allocation Proportion}$   
 $40\% \times (143,697.65 + 58,602.98) \times \text{Proportion}$   
 $\$80,920.25 \times \text{Proportion}$   
Where:  
\$215.90/ML (as at the Commencement Date), to be adjusted by the March Quarter Brisbane CPI index number on 1 April each year during the Term rounded to the nearest \$.

## Recycled Water Agreement

*Discount rate = 3.64% + 3% = 6.64%*

*Weighted average cost of capital =  
6.64% x (50-1) = 3.2536*

*Annualised capital cost = \$4,416,574 x  
50% x 3.2536 / 50 = \$143,697.65*

*Annual Renewal Annuity =  
\$117,205.95 x 50% = \$58,602.98*

- |     |   |  |
|-----|---|--|
| 11. | <b>Book Value</b>   | \$4,416,574 (as per Councils asset register as at 30 June 2023)  |
| 12. | <b>Bank Bill Yield Rate</b>   | 3.64% (as per Reserve Bank website as at 31 March 2023)  |
| 13. | <b>Annual Depreciation</b>  | 117,205.95 (as per Councils asset register as at 30 June 2023)   |
| 14. | <b>Average Useful Life</b>  | 50 years (as per Councils asset register as at 30 June 2023)   |
| 15. | <b>Irrigation Rotation</b>  | 7 days   |
| 16. | <b>Public Liability Insurance Amount</b>                                      | \$20,000,000   |
| 17. | <b>Authorised Representatives</b>   | <p>Nathan John Baronio on behalf of Antonio Giovanni Baronio</p> <p>Rick Hendriksen on behalf of Pieter Wilhelm Hendriksen and Laura Adele Hendriksen</p> <p>Raymond John Taylor on behalf of William John Taylor</p> <p>Gavin Scurr</p> <p>John Michael Patane</p> <p>The person or persons appointed by the Department of Agriculture and Fisheries from time to time.</p> |
| 18. | <b>Current Irrigators</b><br><br>(for the purpose of offering Recycled Water) | <p>Antonio Giovanni Baronio</p> <p>Pieter Wilhelm Hendriksen and Laura Adele Hendriksen</p> <p>Raymond John Taylor on behalf of William John Taylor</p> <p>Scurr Investments Pty Ltd CAN 096 422 794</p> <p>John Michael Patane</p> <p>Department of Agriculture and Fisheries</p>   |

Recycled Water Agreement

## Annexure A Maps

*Map A - Council's Infrastructure*

*Map B - Supply Point*

## Recycled Water Agreement

# Annexure B Water Quality Specification

### Class of recycled water ('Class')

Class A

Class B

### Water quality characteristics table ('Table')

Parameter	Units	Range	Limit type
<i>Escherichia coli</i> ( <i>E. coli</i> )	MPN/100ml	<10 (for Class A uses as approved in FMP) org/100mL. org = CFU or MPN	At least 95% of samples in the last 12 months
<i>Escherichia coli</i> ( <i>E. coli</i> )	MPN/100ml	<100 (for Class B uses as approved in FMP) org/100mL. org = CFU or MPN	At least 95% of samples in the last 12 months
Total Dissolved Solids (TDS)	mg/L	<1200	80 <sup>th</sup> Percentile
Total Suspended Solids (TSS)	mg/L	<100	Maximum
BOD	mg/L	30	Maximum
Acidity	pH units	6.5 to 8.5	Range
Total Nitrogen	mg/L	<125	Maximum
Total Phosphorus	mg/L	<20	Maximum
Sodium Adsorption Ratio	-	<10	Maximum
Boron	mg/L	<2	Maximum
Chloride	mg/L	<250	Maximum

If there is any inconsistency between the criteria for the Class and the criteria in the Table, the criteria in the Table prevail to the extent of any inconsistency.

Recycled Water Agreement

## **Annexure C Farm Management Plan**

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