

## 19.2 REQUEST TO WAIVE WATER CHARGES

### Objective Reference:

**Authorising Officer:** Deborah Corbett-Hall, Chief Financial Officer

**Responsible Officer:** Deborah Corbett-Hall, Chief Financial Officer

**Report Author:** Thomas Turner, Team Leader Accounts Receivable and Payments

**Attachments:**

1. [REDACTED] Request to Waive Water ChargesV2 Map
2. 20181107 General Meeting Resolution Advice Item 14.2 Service [REDACTED]

The Council is satisfied that, pursuant to Section 275(1) of the *Local Government Regulation 2012*, the information to be received, discussed or considered in relation to this agenda item is:

- (h) *other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.*

### PURPOSE

The purpose of this report is to request Council to

1. waive \$3,812.82 in water consumption charges plus interest accrued on the rate account of [REDACTED] as payment of these charges will cause hardship to the land owner; and
2. note the associated costs of creating the easement and completing the works were approximately \$12,401.

### BACKGROUND

[REDACTED] s land locked and accessed via High Street and then driving through the middle of two neighbouring properties [REDACTED]. The road access is protected by an easement and is part of a subdivision completed in 1972 when the Islands were under the jurisdiction of the State. When water was supplied to the Islands, a decision was made to locate the water meter on [REDACTED] some 54 meters from the boundary line of the property. The infrastructure was run through two neighbouring properties to the house, however an access easement for the infrastructure was not made.

### ISSUES

The current owner purchased the property in February 2007 as a rental property. The owner received a high water use notice in October 2016, February 2017 and May 2017. In June 2017 the owner's wife contacted Council regarding the water consumption and notified that a concealed leak existed between the boundary line and the meter on neighbouring land, however with no access easement they were unable to locate and repair the infrastructure. The owner claimed that Council had created the problem by not making an access easement to cover the infrastructure. Along with this, the owner claimed that the property was unable to be tenanted due to the water leak.

Discussions were held with the Group Manager Water and Waste Operations and resulted in the decision that Council had provided the property owner with challenges by locating the meter on [REDACTED] d by not providing an access easement. It was agreed with the owner that the

water meter would be moved to a point that was approximately 21 meters from their boundary line and the infrastructure would run across one neighbouring property covered by an access easement.

The owner was frustrated with the length of time that it was taking and refused to pay the rates and charges on the property until such time as the matter was resolved. Due to the complexities of the issue, which had involvement from Legal Services, external solicitors, Water and Waste Group, Environment and Regulation Group and the neighbouring property owners (who had to agree to the easement), the water service issue was not resolved until November 2018. A report was submitted to Council to undertake proceedings to resume an easement on [REDACTED]

Attached is item 14.2 resolved by Council 7 November 2018 to resume an easement in accordance with the Acquisition of Land Act 1967. Also attached is a map showing the location of the easement and completed works that transverse [REDACTED]

The circumstances surrounding this matter are unique:

- Had Council had responsibility for the Islands at the time of the subdivision it is unlikely the subdivision would have been approved to create a land locked land parcel.
- It was not a sound decision to locate the water service on [REDACTED] and run the infrastructure through two neighbouring properties without an access easement.

The owner claims that they were financially disadvantaged by the time it took to resolve the matter, both from a rental perspective (the property was untenanted between March 2017 and August 2018) and money spent on plumbers trying to locate and repair the water leak on neighbouring land in order to re-tenant the premises.

The property owners had a perfect payment history up until the end of June 2017. From July 2017 to 2 January 2018 the owner paid weekly instalments of \$70 per week, however these payments ceased with the owner becoming more frustrated that the matter had not been resolved. It is concluded that the owner was financially disadvantaged by the circumstances surrounding this matter and that payment of the full water charges and interest will cause hardship to the land owner.

Section 122(1)(a) of the Local Government Regulation 2012 provides that a concession to rates and charges can only be granted by as a resolution by a local government to a stated ratepayer. The local government cannot delegate this responsibility to the Chief Executive Officer under this part of the regulation.

A total of \$3,812.82 levied in water consumption charges are in dispute, of this \$2,523.65 was levied during the period the property sat vacant.

## STRATEGIC IMPLICATIONS

### Legislative Requirements

Chapter 4, Part 10, sections 119 to 122 of the *Local Government Regulation 2012* (Regulation) details the legislative requirements of granting a concession of rates or charges.

- Section 119 of the Regulation states that, "A local government may grant a ratepayer a concession for rates or charges for land only under this part."
- Section 120(1)(c) of the Regulation sets out the criteria for granting a concession, "The local government may grant the concession only if it is satisfied the payment of the rates or charges will cause hardship to the land owner."

- Section 122 sets out the required content of the resolution for granting a concession.
  - (1) *“The local government may grant the concession only by
 
    - a) a resolution granting the concession to a stated ratepayer.*
  - (2) *The local government may make the resolution before the local government levies the rates or charges.*
  - (3) *The local government may make a resolution under subsection (1)(a) only if the ratepayer has applied for the concession in a way accepted by the local government.*
  - (5) *The resolution may include conditions for granting the concession to the ratepayer.*
  - (6) *Without limiting subsection (5), the conditions may include the following—
 
    - a) a condition requiring the ratepayer to show the local government particular information or documents or follow a procedure to be eligible for the concession.
    - b) a condition limiting the period for which the ratepayer is granted the concession.”*

### **Risk Management**

Council meets the requirements under current legislation to resolve to waive \$3,812.82 for the stated property owner.

### **Financial**

The financial implication to waive the outstanding water consumption charges is \$3,812.82 plus accrued interest, which at the time of writing is approximately \$730. The owner has stated they will pay the balance of the rates and charges outstanding to bring this matter to a conclusion.

The table below shows the costs incurred by Council to establish the required easement and complete works to relocate services.

<b>Activity</b>	<b>Cost</b>
Legal Fees	\$2,014
Survey Plans	\$3,317
Relocation of Services	\$7,070
<b>Total Cost</b>	<b>\$12,401</b>

### **People**

The purpose of this report is to request Council waive the water consumption and accrued interest charges for this property. The owner will pay the balance of the rates and charges outstanding to bring this matter to a conclusion.

### **Environmental**

Nil impact as the purpose of this report is to request Council waive the water consumption and accrued interest charges for this property.

### **Social**

Nil impact as the purpose of this report is to request Council waive the water consumption and accrued interest charges for this property.

### **Alignment with Council's Policy and Plans**

This report has a relationship with the following items of the 2018-2023 Corporate Plan:

8. Inclusive and ethical governance

- 8.2 Council produces and delivers against sustainable financial forecasts as a result of best practice Capital and Asset Management Plans that guide project planning and service delivery across the city.
- 8.3 Implementation of the Corporate Plan is well coordinated across Council and through a delivery mechanism that provides clear line of sight, accountability and performance measurement for all employees

## CONSULTATION

Consulted	Consultation Date	Comments/Actions
Group Manager Water and Waste Operations	August 2018 February 2018	Completion of works required
Legal Services	October 2018 January 2018	Information reviewed
Environment and Regulation Group	May 2018	Consultation with Group Manager
Chief Financial Officer	March 2019	Briefing Note provided for review and approval
Service Manager, Financial Operations	March 2019	Reviewed and agreed with recommendation
Team Leader, Accounts Receivable and Payments	March 2019	Reviewed and agreed with recommendation
Supervisor Billing Services	March 2019	Investigated and made recommendation

## OPTIONS

### Option One

That Council resolves as follows:

1. pursuant to Section 120(1)(c) of the *Local Government Regulation 2012*, to grant a concession of \$3,812.82 to the stated ratepayer, to waive the disputed water consumption charges;
2. to note the associated costs of creating the easement and completing the works was approximately \$12,401; and
3. the report is treated confidential in accordance with sections 171(3) and 200(5) of the *Local Government Act 2009* and remain confidential unless Council decides otherwise by resolution, subject to maintaining the confidentiality of legally privileged, private and commercial in confidence information.

### Option Two

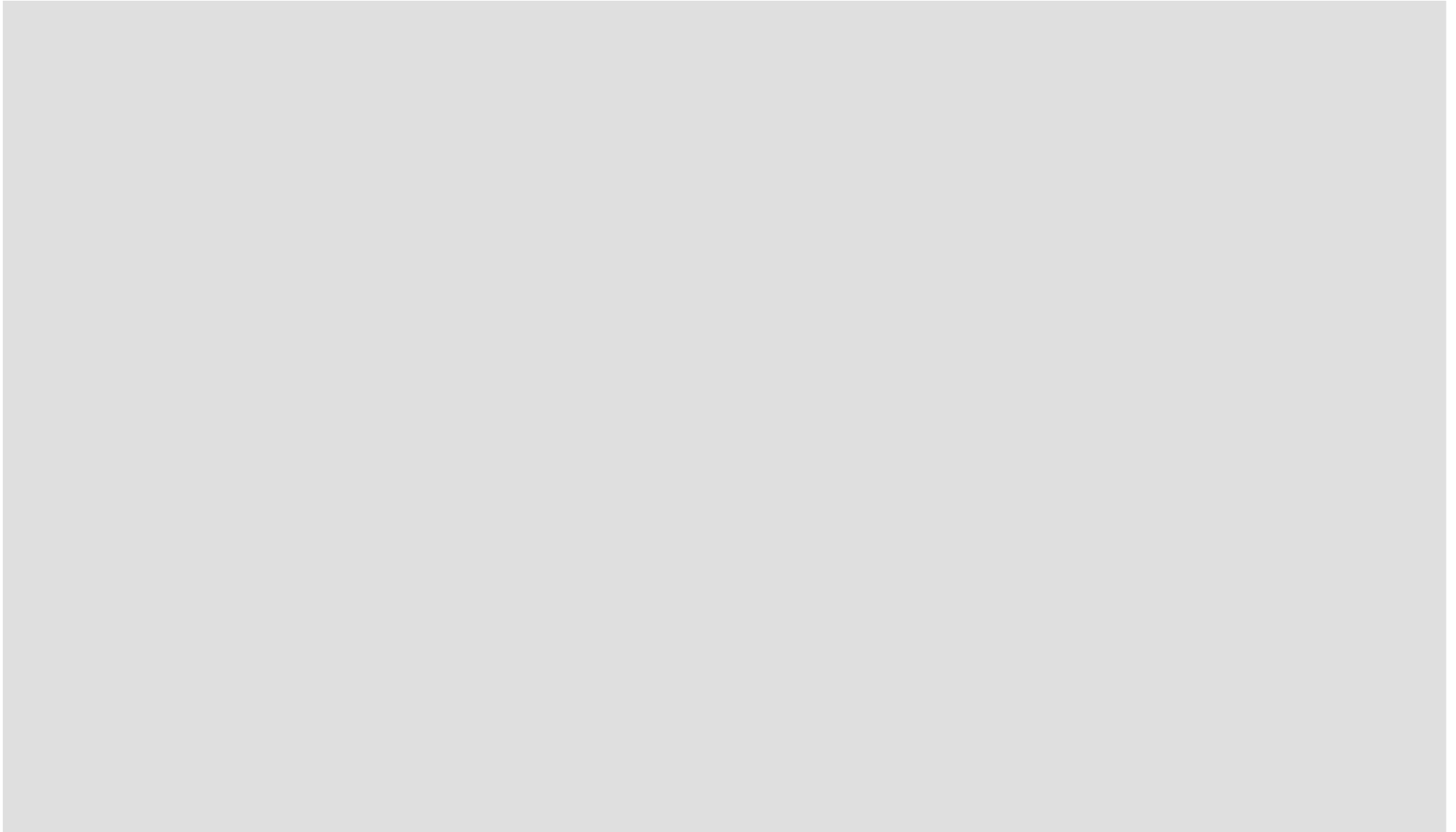
Note the content of this report and continue with recovery action on the outstanding rate balance.

**OFFICER'S RECOMMENDATION**

That Council resolves as follows:

1. pursuant to Section 120(1)(c) of the *Local Government Regulation 2012*, to grant a concession of \$3,812.82 to the stated ratepayer, to waive the disputed water consumption charges;
2. to note the associated costs of creating the easement and completing the works was approximately \$12,401; and
3. the report is treated confidential in accordance with sections 171(3) and 200(5) of the *Local Government Act 2009* and remain confidential unless Council decides otherwise by resolution, subject to maintaining the confidentiality of legally privileged, private and commercial in confidence information.

**Nearmap Image of [REDACTED] Including Easements**



**14.2 SERVICE EASEMENT****Objective Reference:** A3436498**Authorising Officer:** Peter Best, General Manager Infrastructure & Operations**Responsible Officer:** Peter Best, General Manager Infrastructure & Operations**Report Author:** Kevin McGuire, Group Manager Water & Waste Operations**Attachments:**

1. Easement C [↓](#)
2. Easement A [↓](#)

**PURPOSE**

The purpose of this report is to recommend that Council undertake proceedings to resume an easement on [REDACTED] for installation and future maintenance of water service infrastructure (water meters and water service) to [REDACTED] Island.

**BACKGROUND**

Properties [REDACTED] are land locked with street access provided through an easement crossing several neighbouring properties.

The water meters and water supply pipes servicing the land locked properties [REDACTED] are located within the property of [REDACTED]. The original services were not installed within an access easement.

The service to [REDACTED] has had repeated leaks over a number of years resulting in high water consumption. The property owner is disputing the ownership of the service and hence denies responsibility for the water consumption.

It is considered that Council may have responsibility to provide a standardised installation within a service easement given that the original water meters and lines were installed on a separate property without obtaining easements.

Agreement has been reached with the affected property owners to establish the easement.

**ISSUES**

To resolve the issue of the existing leak and to remove any future issues, the current water meters and lines will be located within an easement that will traverse [REDACTED]. The water meters servicing [REDACTED] will be located within the easement on [REDACTED].

**STRATEGIC IMPLICATIONS****Risk Management**

Risk associated with continued dispute from current property owner relating to outstanding debt

**Financial****People**

This solution is aimed to remove a contentious customer issue and provide security of future customer service.

**Environmental**

There are no known impacts associated with this report.

**Social**

There are no known impacts associated with this report.

**Alignment with Council's Policy and Plans**

Wise Planning and Design

**CONSULTATION**

Consultation has occurred at various times in preparation of easement and report with the following:

- General Counsel
- Group Manager Environment & Regulation
- Senior Property Officer
- Manager Survey Services
- Service Manager Financial Operations
- Team Leader Accounts Receivable

**OPTIONS****Option One**

That Council resolves to delegate to the Chief Executive Officer under s.257(1 )(b) of *Local Government Act 2009*, the power to negotiate, make, vary and discharge all documents relevant to effecting this decision

**Option Two**

That Council resolves to commence proceedings to resume an easement in accordance with the *Acquisition of Land Act 1967*, in the event that Council is unable to negotiate acquisition of the easement on [REDACTED]

**COUNCIL RESOLUTION 2018/213**

**Moved by: Cr Mark Edwards**

**Seconded by: Cr Murray Elliott**

**That Council resolves to delegate to the Chief Executive Officer under s.257(1 )(b) of *Local Government Act 2009*, the power to negotiate, make, vary and discharge all documents relevant to effecting this decision.**

**CARRIED 10/0**

Crs Karen Williams, Wendy Boglary, Peter Mitchell, Paul Gollè, Lance Hewlett, Mark Edwards, Julie Talty, Murray Elliott, Tracey Huges and Paul Bishop voted FOR the motion.

Cr Paul Gleeson was absent from the meeting.



Pages 9 through 12 redacted for the following reasons:

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