

## 11.2 Confidential Compulsory Acquisition of Easement

*Seek Council approval to compulsory acquire an easement over Allotment 50 in Filed Plan 36479 to protect existing Septic Tank Effluent Disposal System (STEDS) infrastructure*

*This is a new proposal, concept or issue.*

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Contact Number: 8384 0016  
Attachments: 1. Aerial (1 page)  
2. Filed Plan 36479 (1 page)  
3. Letter from Metjac dated 1 November 2007 (2 pages)  
4. Letter from Metjac dated 5 March 2008 (1 page)

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## 1 Executive Summary

### 1.1 Topic

Seek Council approval to compulsory acquire an easement over Allotment 50 in Filed Plan 36479 to protect existing Septic Tank Effluent Disposal System (STEDS) infrastructure (Attachment 1).

### 1.2 Context

We have Septic Tank Effluent Disposal System (STEDS) infrastructure on private land identified as Allotment 50 in Filed Plan 36479, Certificate of Title Volume 5286 Folio 101. Although an easement (E) appears on the Filed Plan (Attachment 2) it was not registered.

Negotiations with the owner reached a stalemate and Council fears for the safety of the infrastructure, danger to public safety and environmental damage a discharge of waste will cause should the owner of the land interfere with the STEDS pipe or attempt to remove it.

### 1.3 Suggested Outcome

That Council approves the compulsory acquisition of an easement over Allotment 50 in Filed Plan 36479 to protect an existing STEDS infrastructure.

It is suggested that Council consider this report in confidence.

Section 90(3)(i) is suggested as the most appropriate confidentiality clause to use for this purpose. The matter is likely to be subject to legal dispute over valuation.

**2 Recommendation(s)**

1. (a) That under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.
  - (b) That the Council is satisfied that it is necessary that the public be excluded to enable the Council to consider the report at the meeting on the following grounds:
    - Section 90(3)(i) information relating to actual litigation, or litigation that the Council or Council committee believes on reasonable grounds will take place, involving the Council or an employee of the Council.
  - (c) That accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.
2. That Council receive this report.
  3. Pursuant to Section 190 and 191 of the Local Government Act 1999, Council hereby resolves to acquire a three (3) metre wide easement across a portion of the land located at Allotment 50 in Filed Plan 36479 in the area of McLaren Vale Hundred of Willunga which is comprised and described in Certificate of Title Register Book Volume 5286 Folio 101 ('the Land') being that portion depicted in the Filed Plan 36479 marked E attached to the report as Attachment 2.
  4. The Chief Executive Officer is hereby authorised to undertake negotiations for the purchase of the said interest in the land by agreement or if he considers it necessary to implement all necessary procedures for the acquisition of the interest in the land by compulsory acquisition, including, if necessary, obtaining the consent of the Minister as required by the Local Government Act 1999.
  5. To protect Council's interest in the said land, the Chief Executive Officer is hereby authorised to prepare and serve a Notice of Intention to Acquire Land on the owner and interest holders of the said land pursuant to Section 10 of the Land Acquisition Act 1969.
  6. Council hereby authorises the Chief Executive Officer to arrange for a survey plan in a form acceptable for deposit in the Land Titles Office to be prepared for an easement and to take all necessary steps to have the grant of easement lodged with the Land Titles Office.
  7. Council hereby accepts the valuation report prepared by Southwick Goodyear Pty Ltd February 2008 as a fair and reasonable valuation for the easement over the said land and adopts their valuation of

**\$11,500.00 (exclusive of GST) as an appropriate amount to offer to the landowner for the acquisition of the easement over the said land.**

- 8. That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that this document (or part of such document) including the minutes of the Council/Committee relating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in Section 90(3)(i), until conclusion of litigation.**

## **Key Factors**

### **3 Engagement**

#### **3.1 Elected Members**

Discussions with the Wine Coast Ward Councillors (Cr George Apap, Cr Richard Peat, Cr Yvonne Wenham and Cr David Arbon) will take place before the Council meeting.

#### **3.2 Staff**

Not applicable.

#### **3.3 Others**

- Norman Waterhouse Lawyers provided advice on this matter.
- Southwick Goodyear Valuers and Property consultants did an extensive valuation and met with the owner on site.

### **4 Discussion**

#### **4.1 Site**

The land is Allotment 50 in Filed Plan 36479, Certificate of Title Volume 5286 Folio 101. The land size is 14.14 ha zoned Metropolitan Open Space System (Environment) (MOSS). The development potential of the land is limited by the MOSS zoning and the Pedler Creek Policy which provides linear and regional open space and focus on conservation and protection.

In 2003 Metjac Holdings Pty Ltd (Metjac) bought the property from JRD Wright for \$515,000. There are no buildings on the land and limited agricultural activity (small non-commercial vegetable garden). Since the purchase, the current owners have constructed a 20 mega-litre dam and associated infrastructure and applied for Development Approval for a vineyard. The Development Application (DA) was approved by the Development Application Panel on 12 April 2007 subject to 21 conditions including two that specifically affect this area, namely:

- A vegetation buffer for the control of spray drift.
- Vines not to be planted closer than 30 metres to the southern boundary of the land to provide adequate separation between vineyard activities and adjacent residential land.

A STEDS pipe that forms part of the McLaren Vale STEDS system is located close to the Southern boundary of the property within the three metre proposed easement on FP 36479 marked E. Although the easement is indicated on the plan together with the statement “portion of lots 49 to 52 inclusive marked E hereon are to be subject to an easement to the Council for the area for drainage purposes” the easement was never registered (discussion at 4.2). The proposed development of the vineyard as discussed above will not be detrimentally affected by the easement.

Metjac contacted us in 2006 and again in 2007 requesting us to acquire an easement over the land or alternatively remove the pipeline. In a letter dated 1 November 2006 they were prepared to grant an easement to us for a fee of \$575,000 and transfer of two allotments owned by us adjoining the property or a fee of \$775,000. A copy of the letter is attached as Attachment 3.

To assist us with the negotiations we obtained a valuation of the land and easement. The easement area is 1436m<sup>2</sup> with a value of \$7,000 and the land value was determined at \$11,500. A copy of the valuation report of Southwick Goodyear is on file.

In the interests of protecting Council’s assets, Metjac have been formerly advised not to undertake activity impacting to the pipe that may result in emission or discharge of waste which is an offence under the Public and Environmental Health Act 1987 and the Environmental Protection Act 1993. Without a registered easement these Acts provide the only protection for this Council infrastructure.

#### **4.2 Background on Easement**

The District Council of Willunga (DCW) approved funds in their 1994/1995 budget to extend the existing STEDS Scheme in McLaren Vale. On 8 November 1994 they engaged John Morgan Consulting to undertake the acquisition of easements for drainage purposes, on behalf of Council over 14 properties. The easements were to enable DCW to construct and maintain STEDS infrastructure on private land and provide legal protection for the infrastructure.

DCW served formal letters of notice on a list of property owners to be included within the extension of the Scheme. The notice informed them of the proposed scheme, the need for an easement and gave them an opportunity to object to the scheme. The previous owner of the land (JRD Wright’s name and address), was on the mailing list. JRD Wright granted easements for drainage purposes in favour of Council over various allotments in the development set out DP 44393, which was originally part of the STEDS extension.

On 13 February 1995, DCW sent a letter to John Morgan Consulting confirming that notice pursuant to Sec 530c of the Local Government Act, 1934 has been served on all properties and requested them to arrange for the necessary easements.

Compulsory acquisition of an easement over IJ and VD Steer's property was done by Council with their consent. Their property is held as a Limited Title preventing them from granting an easement. A letter dated 22 February 1996 from John Morgan Consulting to the Minister of Housing, Urban Development and Local Government Relations requesting approval for the Compulsory acquisition of the Steer property states that access for construction and easement arrangements have been put in place for ALL properties except the Steer's property.

Investigations show that there are approved plans for all the easements but seven easements were not registered. The reasons for this are not evident on the documents held on file relating to this matter.

It is noted however that the Certificate of Title for the land has a Registrar – General's note that indicates the intention to register an easement. This information was available to Metjac and their conveyancer at the time of purchase.

#### **4.3 Negotiations**

Council officers met with the current owner to discuss the acquisition of the easement and the offer of \$11,500 as determined by the valuation. The size of the easement is approximately 1,436m<sup>2</sup> which is only a small portion of the 14.14 hectares. The land was bought in 2003 for \$515,000 which gives a rate of \$36.42 per hectare or \$3.64 per m<sup>2</sup>. At that rate the purchase price of the easement area is \$5,227. We are offering more than double that amount as per the valuation.

There is a considerable difference between the compensation the owner seeks and the value that we believe the easement is worth. Council's offer was rejected (Attachment 4) and the owner again requested that Council vacate the land. Further they have reiterated that their offer set out in their letter of 1 November 2007 stands until 17 March 2008 unless Council negotiate a yearly lease from 1 July 2007. Metjac have been informed that the matter is to be presented to Council for its consideration.

#### **4.4 Other Options**

The other alternatives available to Council include relocation of the pipe onto adjacent properties or along Main Road. In considering relocation of the pipe to adjacent properties south of the land, eight properties will be affected by the pipe and easement. Some of these properties have infrastructure very close to the boundary and may also require compulsory acquisition of easements. Twelve properties are serviced by the pipe. Relocation to Main Road is not

feasible because this is a gravity fed system and will require pumping every individual household's effluent up to the pipe in Main Road.

Relocation of the pipe to adjoining properties is likely to cost in excess of \$250,000 plus the cost of the easements. Relocation to Main Road and associated pumping infrastructure would be more cost prohibitive.

Given that the land in question is zoned Metropolitan Open Space, there is little scope for subdivision of the land. The approved use of the land will not be compromised by the establishment of this easement. It is therefore recommended that compulsory acquisition occur with compensation at the rate recommended by Southwick Goodyear.

Given the above the only viable cost-effective solution to this impasse is the compulsory acquisition of the easement. Section 191 of the Local Government Act, 1999 provides Council with the power to acquire land. This report seeks Council approval to commence the compulsory acquisition process. The initial step in this process is ministerial approval of the acquisition. Once achieved we would then follow the processes set out in the Land Acquisition Act, 1969.

While this is an onerous and time consuming process it appears to be the only way to protect our infrastructure and provide the STEDS service to this area of McLaren Vale.

