

## **15.2 Consent to register a caveat on a title of private land at Aldinga Beach**

*This report seeks Council approval to lodge and register a caveat over the title of Allotment 51 in Deposited Plan 56987 being the whole of the land comprised in Certificate of Title Volume 5849 Folio 771 currently owned by Winwest Pty Ltd at Aldinga Beach and delegate authority to the Mayor and Chief Executive Officer to sign and seal all relevant documents.*

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

Directors:	Bruce Williams, Director City Operations Steve Mathewson, Director Finance, Assets & Commercial Viability
Report Author:	Benjamin Hall, Team Leader, Water Business Corna Kotze, Asset Planner (Acquisitions and Disposals)
Contact Number:	8384 0595
Attachments:	1. Aerial photograph (1 page) 2. Certificate of Title Volume 5849 Folio 771 (2 pages)

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## **1 Executive Summary**

### **1.1 Topic**

This report seeks Council approval to lodge and register a caveat over the title of Allotment 51 in Deposited Plan 56987 being the whole of the land comprised in Certificate of Title Volume 5849 Folio 771 currently owned by Winwest Pty Ltd at Aldinga Beach and delegate authority to the Mayor and Chief Executive Officer to sign and seal all relevant documents.

### **1.2 Context**

It is requested that Council consider this item in confidence. Section 90(3)(d) of the *Local Government Act 1999* is suggested as the most appropriate to use for this purpose as this item presents the outcomes of commercial negotiations.

At its 6 December 2011 meeting, Council confidentially considered and approved the award of contract for the delivery of the Water Proofing the South Stage 2 (WPS2) scheme. This approval also considered a number of strategies to provide a project contingency.

It was proposed within the 6 December 2011 report, that one of the items of contingency be that contributions be sought from the developers of land (Winwest Pty. Ltd.) comprised in Certificate of Title Volume 5849 Folio 771 (see attachment 1 and 2) for Council to take on its responsibilities with regard to stormwater management and therefore consolidate its water infrastructure.

Council staff have since negotiated with Winwest Pty Ltd for the payment of a developer contribution in lieu of their stormwater detention and quality obligations. A Stormwater Management Contribution Agreement (agreement) has been developed to formalise the arrangements.

In order to protect our interests via the agreement, Norman Waterhouse Lawyers has advised Council to lodge and register a caveat on Allotment 51 to prevent the developer from undertaking any transactions on the land until the contribution is paid.

The power to register a caveat upon a title exists under the *Real Property Act 1886*. There are no current delegations to the Chief Executive Officer under the *Real Property Act 1886* for the administration to enter into a caveat document, hence the purpose of this report.

It is requested that Council:

- approve the lodgement and registration of the caveat over the land to allow for the protection of the agreement for stormwater management contribution
- delegate authority to the Mayor and CEO to sign and seal all relevant documents to ensure the caveat can be withdrawn on payment of the contribution in keeping with the terms of the agreement
- consider this item in confidence. Section 90(3)(d) of the *Local Government Act 1999* is suggested as the most appropriate to use for this purpose as this item presents the outcomes of commercial negotiations

### 1.3 Financial Implications

The costs associated with the management of the caveat are in the order of \$500 for the initial lodgement (\$144 registration fee with the Lands Title Office plus associated legal fees) with similar costs required for its staged and progressive removal. These costs are to be borne by the recently formed Water Business Unit.

### 1.4 Suggested Outcome

That Council grant consent for the lodgement and registration of a caveat over Allotment 51 owned by Winvest Pty Ltd at Aldinga Beach for the protection of an agreement for stormwater management contribution and delegate authority to the Mayor and Chief Executive Officer to sign and seal all relevant documents.

## 2 Recommendations

### 1. That:

- a. 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. the Council is satisfied that it is necessary that the public be excluded to enable the Council to consider this report, its attachments and related tender information at the meeting and relies on the following provisions:

***Section 90(3)(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which -***

- (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and*
- (ii) would, on balance, be contrary to the public interest;*

The Council is satisfied that it is reasonably foreseeable that the public disclosure or discussion of information concerning the discussions of lease negotiations could provide a commercial advantage to another party.

The Council is also satisfied in considering the 'public interest' that whilst disclosure would enhance:

- the accountability of Council or Council staff in the performance of their official powers, duties and responsibilities;
  - the community's ability to inform their own decisions; and
  - informed debate about issues and public participation in democracy
- the public interest is outweighed by the following factor, that:

- disclosure may have a detrimental effect on the efficient and effective conduct of government functions.

c. 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 for the land described as Lot 51 in Deposited Plan 56987 being the whole of the land comprised in Certificate of Title Volume 5849 Folio 771 Council:
  - a. approve the lodgement and registration of a caveat over the land to allow for the protection of the agreement for stormwater management contribution;
  - b. delegate to the Mayor and Chief Executive Officer the authority to sign and seal all relevant documentation required to give effect to the above transactions including the authority to remove the caveat when the relevant developer contribution for avoided stormwater management is paid.
3. That the matter of the Consent to register a caveat on a title of private land at Aldinga Beach having been considered in confidence under Section 90(3)(d) of the *Local Government Act 1999* an order be made under the provisions of Section 91(7) and (9) of the *Local Government Act 1999* that the Consent to register a caveat on a title of private land at Aldinga Beach report including the minutes of the Council relating to discussion of the subject matter of the document be kept confidential until the clearance by Council under Section 51 of the *Development Act 1993* for the final stage of the land division development by Winwest Pty Ltd at Aldinga Beach.
4. That, pursuant to section 91(9)(a) of the *Local Government Act 1999*, Council delegates the duty to conduct an annual review of the confidentiality order to the Chief Executive Officer, or their sub-delegate.
5. That, pursuant to section 91(9)(c) of the *Local Government Act 1999*, Council delegates the power to revoke the confidentiality order to the Chief Executive Officer, or their sub-delegate.

## **Key factors**

### **3 Engagement**

#### **3.1 Staff**

The following staff were consulted in the development of this report:

- Bruce Williams, Director City Operations
- Steve Mathewson, Director Finance, Assets and Commercial Viability
- Kirk Richardson, Manager Projects and Infrastructure
- Alison Hancock, Manager Commercial Property and Open Space
- Julian James, Commercial Operations Officer, Water Business

The following staff were involved in the development and delivery of negotiations with Winwest Pty Ltd to secure the stormwater management contribution:

- Bruce Williams, Director City Operations
- Kirk Richardson, Manager Projects and Infrastructure
- Chris Haskas, Team Leader Design
- Andrew Thomas, Work Group Coordinator Water Resources
- Eva Haisova, Development Engineer
- Ivan Ho Ion-Kei, City of Onkaparinga Estimator

#### **3.2 Legal advice**

Norman Waterhouse Lawyers prepared the stormwater management contribution agreement and has recommended the registration of a caveat to protect Council's interests.

### **4 Discussion**

#### **4.1 Site and ownership details**

The title of Allotment 51 in Deposited Plan 56987 being the whole of the land comprised in Certificate of Title Volume 5849 Folio 771 will be the subject of the registered caveat. The land is currently owned by Winwest Pty. Ltd. (see attachments 1 and 2).

#### **4.2 Managing stormwater management obligations**

In order to maintain the City of Onkaparinga's stormwater service standards, a developer is typically required by way of Land Division Condition to meet particular standards within the development site boundary regarding to stormwater detention and water quality (stormwater management obligations). In particular, it is required that:

- post development flows generated as a result of the impervious area within the development area are managed within the site boundary – this usually results in stormwater detention ponds (or similar)
- a minimum standard of water treatment is achieved – typically managed with gross pollutant traps, sediment ponds and/or potentially wetlands subject to scale.

The responsibility for the resulting assets generally transfers to council after a 3 year period of maintenance and establishment and is added to our asset base.

Commissioned modelling has determined that with the increased size of Hart Road wetland modification undertaken as a part of our WPS2 investigations, it could accommodate the developer's stormwater management obligations that would otherwise be managed within the site through some of the traditional solutions mentioned above. This principle formed the basis of the stormwater management contribution negotiations with the developer of the Winwest site. The contribution is for council taking on the developers obligations within the Hart Road wetland site which is situated immediately downstream.

In addition to the financial contribution received from the developer, the added benefit to the Council is the avoidance of the ongoing management, depreciation costs and maintenance associated with the inherited assets resulting from the development.

#### **4.3 Agreements between the developer and the City of Onkaparinga**

The Stormwater Management Contribution Agreement that has been reached between Winwest Pty Ltd (the developer) and the City of Onkaparinga formalises the conditions that must be met in transferring the developer's stormwater management obligations to council and that will be applied to protect Council's interests in the transaction. In particular:

- the developer must pay the contribution amount of \$328,376 to Council prior to the issuing by the Development Assessment Commission of a certificate under Section 52 of the *Development Act 1999* for the division of the Land
- the contribution may be paid proportionally and in stages that correspond to a staged division of the land
- the developer may not transfer or dispose of the land without first paying the contribution to Council or securing Council's financial interests
- Council is entitled to lodge a caveat over the land provided it is withdrawn when the contribution has been paid (the subject of this report)
- the developer may not vary the proposed development without approval and acknowledges that this may result in an increase in the payment due or the developers stormwater management obligations. The agreement protects the value of the contribution ie. it cannot be reduced irrespective of changes within the development area.

## **5 Resource Implications**

### **5.1 Financial**

The WPS2 6 December 2011 report to Council presented a possible contribution of \$50,000 from the developer for council to take on its stormwater management obligations.

Council staff have successfully negotiated an increased total contribution of \$328,376. This value results from a 100% transfer of the costs otherwise avoided by the developer as a result of not having to construct the required infrastructure.

The timing and receipt of payment will be subject to the developer applying for a certificate under Section 51 of the *Development Act 1999* for the division of that land. At this stage, award of Development Approval is imminent with discussions with the developer's representatives indicating that they would like to see the development commenced within the next 2 years.

#### **5.1.1 Summary of WPS2 project financial position**

At the 6 December 2011 meeting of Council, the WPS2 project was presented as being in a deficit of \$986K and that the shortfall and project contingency was to be addressed through early operation of the scheme utilising revenues received, and opportunities to be realised through supporting elements of other Council initiatives benefited through the project e.g.: Emerald Boulevard Reserve upgrade, Kangarilla landfill.

At the time of this report, the projected surplus of the WPS2 project is \$228K with consideration of:

- the outcomes of this agreement with Winwest Pty. Ltd
- the successful execution of a water supply agreement with the Baulderstone Abigroup Joint Venture to supply water for construction works associated with the duplication of the Southern Expressway
- actual savings realised on committed elements of the project, and potential savings on elements that are not yet complete
- committed and potential variations associated with Council's inherent risk in the contract eg: changes in scope and the costs associated with rock and shale encountered through the installation of the distribution network.

## **6 Next steps**

Subject to Council approval of this report, the caveat will be lodged and registered with the Lands Title Office and administered in the context of the development.

Further updates will be provided to Council with regard to the WPS2 project as the construction draws to its conclusion by the end of June 2013.

**Attachment 15.2**

**Consent to register a caveat on a title of private land at Aldinga Beach**

**3 pages**

RELEASED









# Title Register Search

## LANDS TITLES OFFICE, ADELAIDE

For a Certificate of Title issued pursuant to the Real Property Act 1886

Attachment 2

REGISTER SEARCH OF CERTIFICATE OF TITLE \* VOLUME 5849 FOLIO 771 \*

COST : \$25.00 (GST exempt )	PARENT TITLE : CT 5824/269 & OTHERS
REGION : EMAIL	AUTHORITY : RTC 9086876
AGENT : ONK1P BOX NO : 000	DATE OF ISSUE : 25/06/2001
SEARCHED ON : 24/07/2012 AT : 14:13:30	EDITION : 6

### REGISTERED PROPRIETOR IN FEE SIMPLE

WINWEST PTY. LTD. OF 11 TORRENS STREET MITCHAM SA 5062

### DESCRIPTION OF LAND

ALLOTMENT 51 DEPOSITED PLAN 56987  
IN THE AREA NAMED ALDINGA BEACH  
HUNDRED OF WILLUNGA

### EASEMENTS

SUBJECT TO THE EASEMENT FOR DRAINAGE PURPOSES AS PROVIDED FOR BY SECTION  
223 1g (2) OF THE REAL PROPERTY ACT 1886 OVER THE LAND MARKED A

### SCHEDULE OF ENDORSEMENTS

11426846 MORTGAGE TO COMMONWEALTH BANK OF AUSTRALIA  
11728423 AGREEMENT UNDER DEVELOPMENT ACT, 1993 PURSUANT TO SECTION 57(1)

### NOTATIONS

DOCUMENTS AFFECTING THIS TITLE

NIL

REGISTRAR-GENERAL'S NOTES

NIL

END OF TEXT.



LANDS TITLES OFFICE ADELAIDE SOUTH AUSTRALIA  
DIAGRAM FOR CERTIFICATE OF TITLE VOLUME 5849 FOLIO 771  
SEARCH DATE : 24/07/2012 TIME: 14:13:30

