

CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2011

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
34	21 Dec 09	Land Acquisition Surrounding the Proposed Roundabout @ Bald Hills / Springs Road	Reason: (b) information the disclosure of which: (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and (ii) would, on balance be contrary to the public interest.	Reports, Attachments Minutes	Revoked under delegation.	Extend Confidential Order to September 2017. The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.	5 Sept 11	4 Sept 12	28/8/12

66.6 **REPORT TITLE:** **STRATEGY, DEVELOPMENT & COMMUNITIES QUARTERLY REPORT 2009**
DATE OF MEETING: **21 DECEMBER 2009**
AUTHOR: **BILL CHANDLER**
AUTHOR'S TITLE: **GENERAL MANAGER**
FILE NUMBER: **64/010/009**
DEPARTMENT: **STRATEGY, DEVELOPMENT & COMMUNITIES**
DEPARTMENT MANAGER: **BILL CHANDLER**

Seconded Councillor Irvine and CARRIED

CORRESPONDENCE

Nil

QUESTIONS ARISING FROM COUNCIL MEETING (10 MINUTES)

Mr Laurie Gellon

Are Council meeting still going to be held every first and third Monday of the month?

Mayor Ferguson responded that meeting will be held on the first and third Monday of the month, except for January, when there is only one meeting on the third Monday. If the Monday is a Public Holiday the meeting will be held on the Tuesday.

67. CONFIDENTIAL REPORTS

67.1 **REPORT TITLE:** **LAND ACQUISITION SURROUNDING THE PROPOSED ROUNDABOUT AT BALD HILLS ROAD/SPRINGS ROAD**
DATE OF MEETING: **21 DECEMBER, 2009**
AUTHOR: **MATTHEW DAWKINS**
AUTHOR'S TITLE: **SENIOR PROJECT MANAGER - INFRASTRUCTURE**
FILE NUMBER: **46/050/009**
DEPARTMENT: **INFRASTRUCTURE AND PROJECTS**
DEPARTMENT MANAGER: **BRIAN CLANCEY**

Moved Councillor Zanker that Council:

1. Pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:
(b) information the disclosure of which:

- (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - (ii) would, on balance be contrary to the public interest.
- 2. Determine that the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, Senior Project Manager – Infrastructure, Senior Projects Officer Manager of Field Services, Horticultural Officer and the Minute Secretary be permitted to remain in the room.

Seconded Councillor Irvine and CARRIED

Moved Councillor Kuchel that Council;

- 3. Note that a contractual agreement for the sum of \$18,700 (ex GST) has been reached between Council and Mr Kevin Stephenson (Stephenson) for the purchase by Council of proposed Allotment 108 Bald Hills Road, Mount Barker, shown on Attachment 1.
- 4. Accepts the counter-offer of \$50,750 (ex GST) from Andrew James McDonald and Heather Kay McDonald (McDonalds) to sell to Council proposed Allotment 105 Bald Hills Road, Mount Barker, shown on Attachment 1 and; authorises the Mayor and Chief Executive Officer to execute, sign and seal all of the documentation required to finalise the transaction in accordance with the Essential Conditions of Offer contained in Attachment 2a.
- 5. Notes the current status of the Project and negotiations between Council and:
 - a) Mrs Margaret Brockhoff (Brockhoff) regarding the purchase by Council of proposed Allotment 104 located at the intersection of Bald Hills Road and Springs Road, Mount Barker, shown on Attachment 1.
 - b) Loreto Antonio Di Nardo (Di Nardo) regarding the purchase by Council of proposed Allotments 106 and 107, Bald Hills Road, Mount Barker, shown on Attachment 1.
- 6. Resolves to seek the approval of the Minister for State/Local Government Relations under Section 191 of the Local Government Act 1999 to the compulsory acquisition of the following land at Bald Hills Road and Springs Road, Mount Barker ("the Land") for the purposes of roadwork:-
 - (i) an estate in fee simple in that piece of land situated at the junction of Springs Road and Bald Hills Road, Mount Barker, being portion of the land comprised in Allotment 501 in Certificate of Title Volume 5626 Folio 623 and being the whole of the land numbered 104 in the Plan prepared by Veska & Lohmeyer Pty Ltd dated 22nd September 2009 – an area of approximately 489 square metres (Brockhoff land); and

- (ii) an estate in fee simple in that piece of land situated at the junction of Springs Road and Bald Hills Road, Mount Barker being portion of the land comprised in Allotment 90 in Certificate of Title Volume 5794 Folio 432 and being the whole of the land numbered 106 and 107 in the Plan prepared by Veska & Lohmeyer Pty Ltd dated 22nd September 2009 – an area of approximately 267 square metres and 470 square metres, respectively (Di Nardo land).
7. Defer any decision to proceed with the compulsory acquisition other than seeking approval as outlined in recommendation 6. until an opportunity has been provided at the earliest practical Council meeting for the Brockhoffs and Di Nardos to make a confidential deputation.
8. Authorises the Chief Executive Officer or his delegate to continue to negotiate with the various persons with interests in the Land described in recommendation 6 with a view to reaching an amicable settlement for the acquisition of those interests, if practicable, so that the proposed compulsory acquisition can be discontinued.
9. Notes the significant implications of the land acquisition process on the project budget as outlined in the body of the report under the heading of Financial/Budget.
10. Orders that pursuant to Section 91(7),(8) and (9) of the LG Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential and that the revocation of confidentiality be delegated to the CEO to determine when there is no legal or commercial need for continued confidentiality, and that this order be reviewed every 12 months.

Seconded Councillor Hamilton and CARRIED

67.2

REPORT TITLE:	TENDER 2009.002 – RESERVES MOWING & SLASHING - CONFIDENTIAL ITEM
DATE OF MEETING:	21 DECEMBER 2009
AUTHOR:	DAVID COONEY
AUTHOR'S TITLE:	HORTICULTURAL POLICY OFFICER
FILE NUMBER:	70/030/210
DEPARTMENT:	INFRASTRUCTURE & PROJECTS
DEPARTMENT MANAGER:	BRIAN CLANCEY

Moved Councillor Irvine that Council:

1. Pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding (k)

15. CORRESPONDENCE

Nil

16. QUESTIONS ARISING FROM COUNCIL MEETING (10 MINUTES)**17. CONFIDENTIAL REPORTS**

17.1 REPORT TITLE: LAND ACQUISITION SURROUNDING THE PROPOSED ROUNDABOUT AT BALD HILLS ROAD/SPRINGS ROAD

DATE OF MEETING: 21 DECEMBER, 2009

AUTHOR: MATTHEW DAWKINS

AUTHOR'S TITLE: SENIOR PROJECT MANAGER - INFRASTRUCTURE

REPRESENTORS: N/A

FILE NUMBER: 46/050/009

**ATTACHMENTS: 1 LOT PLANS
2A AND 2B – MCDONALD ESSENTIAL CONDITIONS AND EMAIL OFFER
3A AND 3B – BROCKHOFF CORRESPONDENCE
3C LAND SOUGHT BY BROCKHOFF
3D LEGAL RESPONSE REGARDING BROCKHOFF ENCROACHMENTS & PLAN
4A AND 4B – DI NARDO CORRESPONDENCE
4C COUNCIL OFFER TO DI NARDO & PROPOSED ACCESS**

DEPARTMENT: INFRASTRUCTURE AND PROJECTS

**DEPARTMENT
MANAGER: BRIAN CLANCEY**

PURPOSE

The purpose of this report is to :

1. Update Council on the current status of the Springs Road / Bald Hills Road roundabout project (the Project) and the negotiations with the four property owners regarding the

- acquisition of the parcels of land required by Council to enable the Project to proceed to construction, and
2. Seek authority to request approval from the Minister for State/Local Government Relations under Section 191 of the Local Government Act 1999 to the compulsory acquisition of land at Bald Hills Road / Springs Road intersection.

RECOMMENDATION

That Council:

1. Pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:
 - (b) information the disclosure of which:
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - (ii) would, on balance be contrary to the public interest.
2. Determine that the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, Senior Project Manager – Infrastructure, Senior Projects Officer and the Minute Secretary be permitted to remain in the room.
3. Note that a contractual agreement for the sum of \$18,700 (ex GST) has been reached between Council and Mr Kevin Stephenson (Stephenson) for the purchase by Council of proposed Allotment 108 Bald Hills Road, Mount Barker, shown on Attachment 1.
4. Accepts the counter-offer of \$50,750 (ex GST) from Andrew James McDonald and Heather Kay McDonald (McDonalds) to sell to Council proposed Allotment 105 Bald Hills Road, Mount Barker, shown on Attachment 1 and; authorises the Mayor and Chief Executive Officer to execute, sign and seal all of the documentation required to finalise the transaction in accordance with the Essential Conditions of Offer contained in Attachment 2a.
5. Notes the current status of the Project and negotiations between Council and:
 - a) Mrs Margaret Brockhoff (Brockhoff) regarding the purchase by Council of proposed Allotment 104 located at the intersection of Bald Hills Road and Springs Road, Mount Barker, shown on Attachment 1.
 - b) Loreto Antonio Di Nardo (Di Nardo) regarding the purchase by Council of proposed Allotments 106 and 107, Bald Hills Road, Mount Barker, shown on Attachment 1.

6. Resolves to seek the approval of the Minister for State/Local Government Relations under Section 191 of the Local Government Act 1999 to the compulsory acquisition of the following land at Bald Hills Road and Springs Road, Mount Barker ("the Land") for the purposes of roadwork:-
 - (i) an estate in fee simple in that piece of land situated at the junction of Springs Road and Bald Hills Road, Mount Barker, being portion of the land comprised in Allotment 501 in Certificate of Title Volume 5626 Folio 623 and being the whole of the land numbered 104 in the Plan prepared by Veska & Lohmeyer Pty Ltd dated 22nd September 2009 – an area of approximately 489 square metres (Brockhoff land); and
 - (ii) an estate in fee simple in that piece of land situated at the junction of Springs Road and Bald Hills Road, Mount Barker being portion of the land comprised in Allotment 90 in Certificate of Title Volume 5794 Folio 432 and being the whole of the land numbered 106 and 107 in the Plan prepared by Veska & Lohmeyer Pty Ltd dated 22nd September 2009 – an area of approximately 267 square metres and 470 square metres, respectively (Di Nardo land).
7. Following receipt of approval from the Minister for State/Local Government Relations, Authorises the Chief Executive Officer or his delegate to give all persons with an interest in the Land described in recommendation 6 a Notice of Intention under Section 10 of the Land Acquisition Act 1969 to acquire those interests in order to carry out the roadwork at Bald Hills Road and Springs Road, Mount Barker.
8. Authorises the Chief Executive Officer or his delegate to provide an explanation of the reasons for the proposed acquisition of the land described in recommendation 6 under Section 11 of the Land Acquisition Act 1969, if requested to do so by any of those persons with an interest in the Land.
9. Authorises the Chief Executive Officer or his delegate to respond to any request made under Section 12 of the Land Acquisition Act 1969 not to proceed with the acquisition, for any alteration to the boundaries of the proposal or to acquire less or more land from any person served with notice of intention in relation to the proposed acquisition and to deal with any review of the Council's decision that may be requested under the Act.
10. Authorises the Chief Executive Officer or his delegate to continue to negotiate with the various persons with interests in the Land described in recommendation 6 with a view to reaching an amicable settlement for the acquisition of those interests, if practicable, so that the proposed compulsory acquisition can be discontinued.

11. Notes the significant implications of the land acquisition process on the project budget as outlined in the body of the report under the heading of Financial/Budget.
12. Orders that pursuant to Section 91(7),(8) and (9) of the LG Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential and that the revocation of confidentiality be delegated to the CEO to determine when there is no legal or commercial need for continued confidentiality, and that this order be reviewed every 12 months.

BACKGROUND

The Council has considered this project on a number of occasions. Initially as part of considerations for the upgrade of Bald Hills Road, Council expressed particular preference for a roundabout treatment at this location as it delivers a longer term solution to the traffic control issues associated with the current traffic volumes and the predicted traffic volumes through this intersection in the future. Further, there has been strong community support for a roundabout also.

Council has made provision in the 2009/10 Council budget within the "Traffic Control and Other Road Services" account for the implementation of a roundabout at the Bald Hills and Springs Road Intersection as part of the overall Bald Hills Road Upgrade project. Expenditure of \$1,706,700 has been allocated with a corresponding income through the Federal Governments "Nation Building" stimulus program of \$1,302,000. The Federal Government funding must be expended by 30 June 2010.

The Council most recently considered this project at the Council meeting of 3 August 2009. At that meeting Council approved the preliminary roundabout design which identified the areas where the acquisition of land would be required and, further, gave authority to staff to undertake negotiations with the four (4) adjoining owners for the acquisition of the required land to enable the Project to proceed to construction.

DISCUSSION

As described later under "Policy Implications - Financial", there are tight grant fund spending deadlines that are now appearing to be unachievable due to the delays in acquiring the required parcels of land. Accordingly, a large portion of the grant funds will likely be lost. Further and over and above the loss of grant funding, the escalating costs associated with the ongoing negotiation and/or potentially compulsory land acquisition process remains uncertain albeit these costs could be as much as 2 to 3 times that originally estimated for land acquisitions (original estimate of \$300,000).

The roundabout option is currently at a stage where the final roundabout design is practically complete with only minor construction details to be finalised. The project is ready to be tendered for construction early in the new calendar year. However, in order to progress to a tender call, the acquisition of the four privately owned parcels of land shown in Attachment 1 is required. The current status of negotiations on the individual parcels is as follows:

Stephenson:

Proposed Allotment 108 Bald Hills Road, Mount Barker, shown on Attachment 1.

A contract for the sum of \$18,700 between Council and Mr Kevin Stephenson to purchase the subject land has been finalised.

McDonald:

Proposed Allotment 105 Bald Hills Road, Mount Barker, shown on Attachment 1.

An offer of \$18,000, inclusive of disturbance and injurious affection, as recommended by Council's valuer, Egan National Valuers, was submitted to the McDonalds.

The McDonalds retained the services of Lindsay Wapper & Associates, Valuers, who assessed the compensation payable to the McDonalds at \$64,500 (a difference of \$46,500). As a result of further negotiations with the McDonalds they agreed to submit a counter offer to Council of \$50,750. (Refer Attachment 2b)

Council is requested to consider acceptance of this counter offer on the basis that:

- a) The unique circumstances impacting on the amenity of the McDonald property and their lifestyle due to the proximity of the proposed works.
- b) The compensation assessment carried out by Lindsay Wapper & Associates is higher than the counter offer submitted by the McDonald's.
- c) the McDonalds have reduced their claim by 25% from their original claim for injurious affection and disturbance.
- d) from a commercial perspective the difference of \$32,750 between the Council's offer and the McDonalds counter offer should be considered in the context of the potential significant legal costs that Council would incur should Council pursue the compulsory acquisition of their land.
- e) Regardless of the form of traffic treatment implemented at the intersection, this land would be required.

Should the recommendation to accept the McDonald's Counter Offer not be supported by Council, it is proposed that Council consider including the McDonald acquisition as part of an overall compulsory land acquisition as described for the Brockhoff and Di Nardo land below.

Brockhoff:**Proposed Allotment 104, Bald Hills Road, Mount Barker, shown on Attachment 1.**

An offer to purchase the Brockhoff land for the sum of \$28,000 was submitted to the Brockhoff's on 25 September 2009. The offer was in accordance with the assessment of the market value provided by Council's valuer, Egan National Valuers.

At the request of the Brockhoff family negotiations have been undertaken by Nicholas Brockhoff on behalf of Mrs Brockhoff, who is the owner of the land.

At a site meeting attended by Nicholas Brockhoff, Nigel Brockhoff, the Project Manager and the Special Projects Officer, Nicholas Brockhoff indicated his willingness to negotiate for the sale of the proposed land provided that the land abutting the Brockhoff property shown on Attachment 3c was sold back to the family at the original purchase price, plus CPI. Nicholas Brockhoff also commented that:

- when the land was originally acquired by Council, Council indicated that it would be used as a car park, which is currently not the case.
- there was an agreement between Council and the Brockhoff's to the effect that the land would be sold back to the Brockhoff's at the original purchase price plus CPI, if the subject land was not needed by Council. In his view the land is not used for any purpose by Council. An internal file search has not revealed any such agreement. An approach was also made to two previous senior officers of Council who indicated that they had no recollection of a separate Agreement between the Brockhoffs and Council. Norman Waterhouse who was acting on behalf of Council during the compulsory acquisition process indicated that their records were not kept after a certain period and therefore that they could not confirm or otherwise if an agreement existed.
- The Brockhoffs were asked to provide a copy of their agreement with Council. No such agreement has however been produced to date.
- The Brockhoff's have acknowledged that they seek to regain this area of land as it would increase the size of their parcel such that it could be sub-divided into 3 x 20,000 m² lots

Following preliminary investigations the Special Projects Officer advised Nick Brockhoff that:

- a) under the Environment Protection (Water Quality) Policy, the Council land located adjacent to the Brockhoff property needed to be retained by Council as a buffer for the adjacent treated wastewater lagoon.
- b) the land was classified as community land and could not be sold to the Brockhoff's without undertaking the process of community consultation and revocation, after obtaining the Minister's consent. In any event, and in view of a) above it is unlikely that Council would be able to contemplate such disposal.

Council has now received the enclosed correspondence from Nicholas Brockhoff (Attachment 3a and 3b). It should be noted from the correspondence that the Brockhoff's attitude to Council is very negative, following the previous compulsory acquisition of their land by Council and their belief that Council has not carried out its earlier undertakings to them. As a precondition to any further negotiation with Council the Brockhoff's request that the previously acquired land be sold back to them for the original purchase price plus CPI. Based on the EPA buffer requirement described above, fulfilment of this condition will likely not be possible.

Given the Brockhoff's negative perception of their previous dealings with Council; and that they previously employed the services of Stephen Walsh QC during the previous compulsory acquisition by Council, it is most important that the issues raised by the Brockhoff's are fully investigated. Legal advice indicates that their request to buy back approximately 8700 square metres of Council land may be feasible subject to the revocation of the land from its community land classification and a determination from the Environment Protection Authority as to whether the land can be sold or not potentially achieving the required buffer via a Land Management Agreement. A letter has recently been forwarded to the EPA to seek this advice.

Encroachments

Legal advice was sought as to whether the road reserve encroachments on the Brockhoff land should be raised should the compulsory land acquisition process proceed. The advice received is that the encroachments (refer to attachment 3d) should not be raised as part of the Compulsory Land Acquisition Process but that the encroachments could be raised in Court as an issue by the solicitor acting on behalf of the Brockhoff's

Di Nardo

Proposed Allotments 106 and 107 Bald Hills Road, Mount Barker shown on Attachment 1

An offer of \$33,000 (valuation carried out by Egan National Valuers) by Council to purchase the Di Nardo land was forwarded to Mr Di Nardo on 25 September 2009. Mr Di Nardo has maintained from the outset that Council needs to relocate his existing shed as a consequence of the proposed land acquisition in order that adequate access to the shed can be provided for semi-trailers. The cost of this request has been estimated by Council at approximately \$150,000 plus site works associated with the currently unspecified new location for the shed. A number of access options have been offered to Mr Di Nardo all of which have been rejected.

A counter offer from Mr Di Nardo has been received requesting \$102,631 (attachment 4B) plus the relocation of his shed at his estimated cost \$320,360. This counter-offer is considered by officers to be excessive and well in excess of Council's valuer advice received.

As a follow up to the concerns raised by Mr Di Nardo, the services of consulting structural and civil engineers, Wallbridge and Gilbert, were retained by Council with a brief to prepare a workable solution to the provide safe and "like-for-like" access to Mr Di Nardo's shed. The proposal prepared by Wallbridge and Gilbert identifying the proposed accommodation works to be undertaken by Council has been sent by registered letter to Mr Di Nardo (refer to Attachment 4).

The Council's offer to Mr Di Nardo indicates that:

- a) Council remains prepared to consider a reasonable counter offer for the acquisition of his land;
- b) the proposal prepared by Wallbridge and Gilbert offers a solution to his access concerns, which will in effect rectify what is currently an unsafe truck access manoeuvre to his property and provide as good or better semi-trailer truck access to his packing shed.

Mr Di Nardo has replied by email to the Council's Offer (Attachment 4C) indicating that his compensation figure remains as previously mentioned to Council and that his shed has to be relocated as part of the compensation package. A request for a copy of the valuation carried out on Mr Di Nardo's behalf by Lindsay Wapper and Associates has been received by Council. The valuation indicates a total fair consideration to Di Nardo of \$170,800 based on five year production loss or \$204,924 based on a fifteen year production loss. In addition Council to be responsible for the cost of establishing the new improved area estimated at \$320,000.

Issues

Council officers consider that it is unlikely that a negotiated agreement will be reached in a timely manner with the Brockhoff's or Mr Di Nardo.

In order to meet the requirements of the Commonwealth's Nation Building Black Spot Program, funding needs to be spent before 30 June 2010. Council has corresponded and met with DTEI and is exploring any possible means of overcoming this time constraint. The property owners have previously been made aware that the report to the Council meeting on 21 December 2009 will include consideration of the option of compulsory acquisition in those situations where Council will be aware that the compulsory acquisition process is subject to Ministerial approval and provides the opportunity for objection and review of the Council's proposal. The process will involve both time and substantive legal costs if the land owners resist the proposed acquisition. The acquisitions could incur a total cost of between \$450,000 and \$650,000.

In view of the failure to agree terms with the Brockhoff's and Mr Di Nardo for the acquisition of the parcels of land required for the Project, Council needs to consider whether it is appropriate in the public interest to seek to acquire those parcels of land compulsorily.

Statutory powers are available to Council in Section 191 of the Local Government Act and the Land Acquisition Act 1969. Whilst it is infrequent for such powers to be used by Councils Parliament has provided these powers to ensure that public proposals required in the wider community interest cannot be frustrated by private landowners.

In recognition of the impact of the compulsory acquisition provision is made in the legislation for statutory compensation to be paid for the loss suffered by reason of the acquisition based on the actual value of the land acquired, as well as additional compensation for depreciation and disturbance, together with the payment of reasonable legal and valuation costs. The compensation can be solely monetary compensation or a mixture of monetary and non-monetary compensation, such as physical accommodation works in the form of fencing, landscaping, noise barriers etc dependant on the nature of the proposal and the affected land. Council would rely on independent professional valuation advice to ensure that the offers of compensation meet the statutory requirements, in the event that the offered compensation is disputed and needs to be determined by the Land and Valuation Court.

Inevitably the time scale required to follow the statutory process takes some time and significant costs can be incurred if the landowners exercise their rights to the fullest extent.

In view of this it is recommended that Council considers providing appropriate delegation to the Chief Executive Officer and his approved delegate to deal with certain specific stages in the statutory process to minimise delays in progressing the Project, once Council has taken the preliminary decision to initiate the compulsory acquisition by resolving to seek the Minister's approval, a decision which cannot be delegated.

Next Steps:

1. Brockhoff, Di Nardo and Mc Donald to be informed of the Council resolution
2. Negotiations between Council Officers and Brockhoff and Di Nardo to continue in an endeavour to reach agreement (note that the compulsory land acquisition process can be stopped at any time by Council)
3. The Compulsory Land Acquisition process is initiated in accordance to the recommendations contained in this report.

With the potential for there to be significant escalation in the net project cost to the Council, the alternate options to a roundabout solution are outlined below:

- Delay the roundabout project (do nothing) and upon application by the land owner to develop the land where cut-offs are required, Council opportunistically secures the required land through the provisions of the Development Act. This option has the advantage that the negotiation of land price and details of the acquisition are dealt with as part of the

associated development application and can consider any effect that the land cut-offs have on the associated site development and is hence a negotiation process in which both parties are focussed on an outcome. The disadvantage of this option is that Council has no control over timing and in reality this could take many years or may never happen.

- Consider a short-term intersection improvement that addresses the immediate safety improvements required. In this case the conflict between through traffic on Bald Hills Road and traffic moving into and out of the western approach of Springs Road is considered to be of most concern. This option is not a long term solution but is also not as costly. It has the advantage that it could resolve some immediate sight line and intersection layout issues and give time to continue to negotiate with the adjacent land holders.
- A Staggered T intersection has been considered where the Springs Road approaches are split so that the eastern approach is realigned to traverse the Stephenson land and form a T junction closer to Laratinga Wetlands. At the present time the volumes on the Springs Road eastern approach does not warrant separation yet and as such, the first step in the implementation of a future staggered T could be to improve the current intersection for the traffic movements into and out of western approach of Springs Road as outlined in the second dot – point above.
- A signalised intersection has previously been considered and viewed as undesirable in this semi-rural environment. Further, it is likely that there would potentially be some degree of corner cut-off land acquisitions required in any event and hence does not present much if any advantage over a roundabout.

POLICY IMPLICATIONS

1. Financial/budget

The current Budget for the Project is \$1,706,700 which included an allowance of \$300,000 for negotiated land acquisitions.

It is difficult to estimate the legal cost should the compulsory land acquisition process be adopted. The Courts would normally rule that the all legal costs borne by the owners of the land are paid by the acquiring authority. A best estimate of legal costs for the Brockhoff and Di Nardo land acquisitions is somewhere in the order of \$200,000 (\$100,000 each).

An indicative estimate for all of the land acquisitions if the compulsory land acquisition process is adopted for the Di Nardo and

Brockhoff parcels of land is between \$450,000 and \$650,000 (depending on timeframes, legal costs & resources required) as against a budget of \$300,000 (for the negotiated acquisition process). In addition to a shortfall of \$300,000+, there is the very strong probability that a compulsory process will incur timeframes that prevent the completion of construction of the roundabout in FY 09/10. As such, a large proportion of the \$1,302,000 in Nation Building funding (estimated at \$550,000) will in all probability be lost. This has the immediate implications that the project can not progress in a later financial year (2010/11 most likely) without an additional allocation of funds from the Council of the order of \$850,000 plus any escalation in construction costs associated with the delay. It should be noted that staff have corresponded and met with DTEI regarding the possibility of securing alternate grant funds beyond the 2009/2010 financial year however initial indication provide no certainty beyond FY09/10. This will be further pursued.

2. Legal

Legal advice has been sought if Council determines to exercise the Compulsory Land Acquisition Process. Regarding the option of adopting the compulsory acquisition process our Solicitor has indicated that "Whilst this is a matter for Council officers the timing of getting the land by compulsory acquisition by end of June 2010 is now getting critical".

3. Staffing/Work Plans

A compulsory acquisition process will necessitate the engagement of legal counsel to progress the process. Internally, the existing project manager and project officer will remain able to service this project as required.

4. Environmental

The implication of the recommendations in this report will have no environmental implications.

5. Social

The implication of the recommendations in this report will have no social implications since the acquisitions that are proposed to be advanced at this stage have been arrived at via mutual agreement and consultation with those land holders.

6. Strategic Plans

Transport Planning

The roundabout will cater for expected growth and is consistent with the objectives outlined in Council's recently adopted Transport Master Plan and will provide a safer intersection for road users.

7. Risk Assessment

The recommendations of this report aim to mitigate the project risk that if the project is not completed by the end of FY09/10, some or all of the substantial value of Nation Building grant funding will be lost.

8. Asset Management

The land acquisitions described by this report have no significant asset management implications.

COMMUNITY CONSULTATION

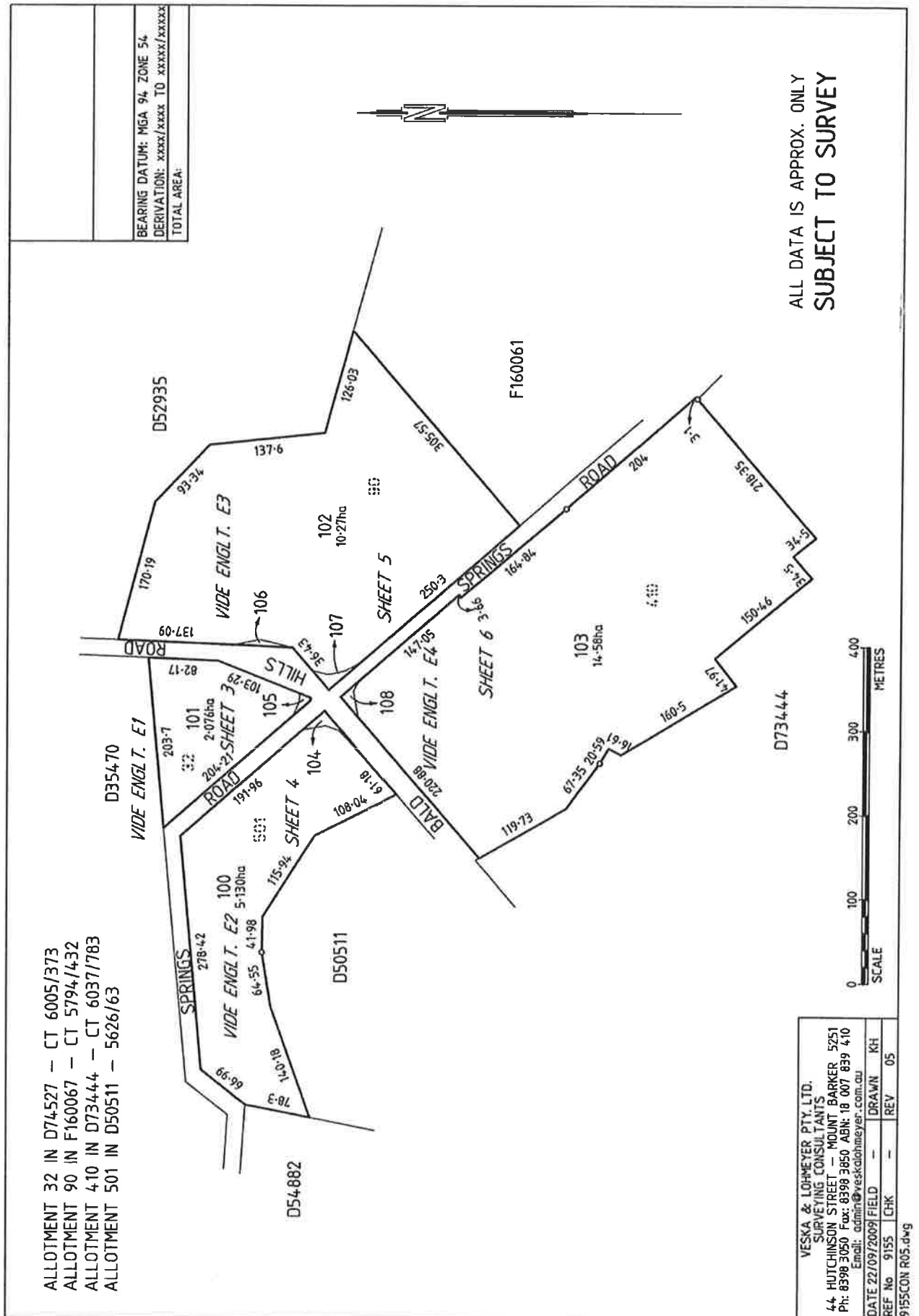
1. Customer Needs Analysis

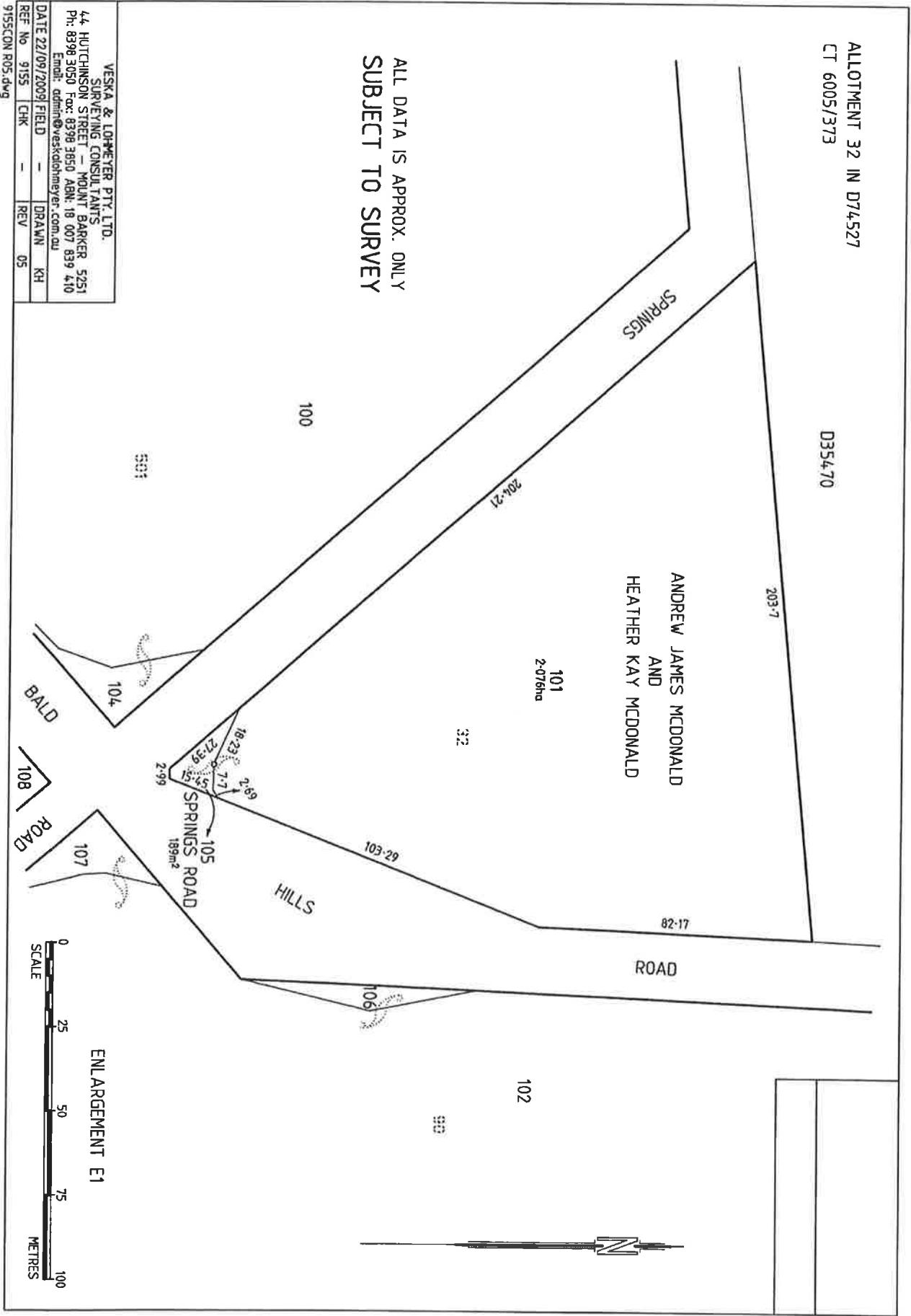
This Project positively impacts upon users of this intersection. Considerable community consultation has been carried out as part of the over-arching Bald Hills Road Upgrade project.

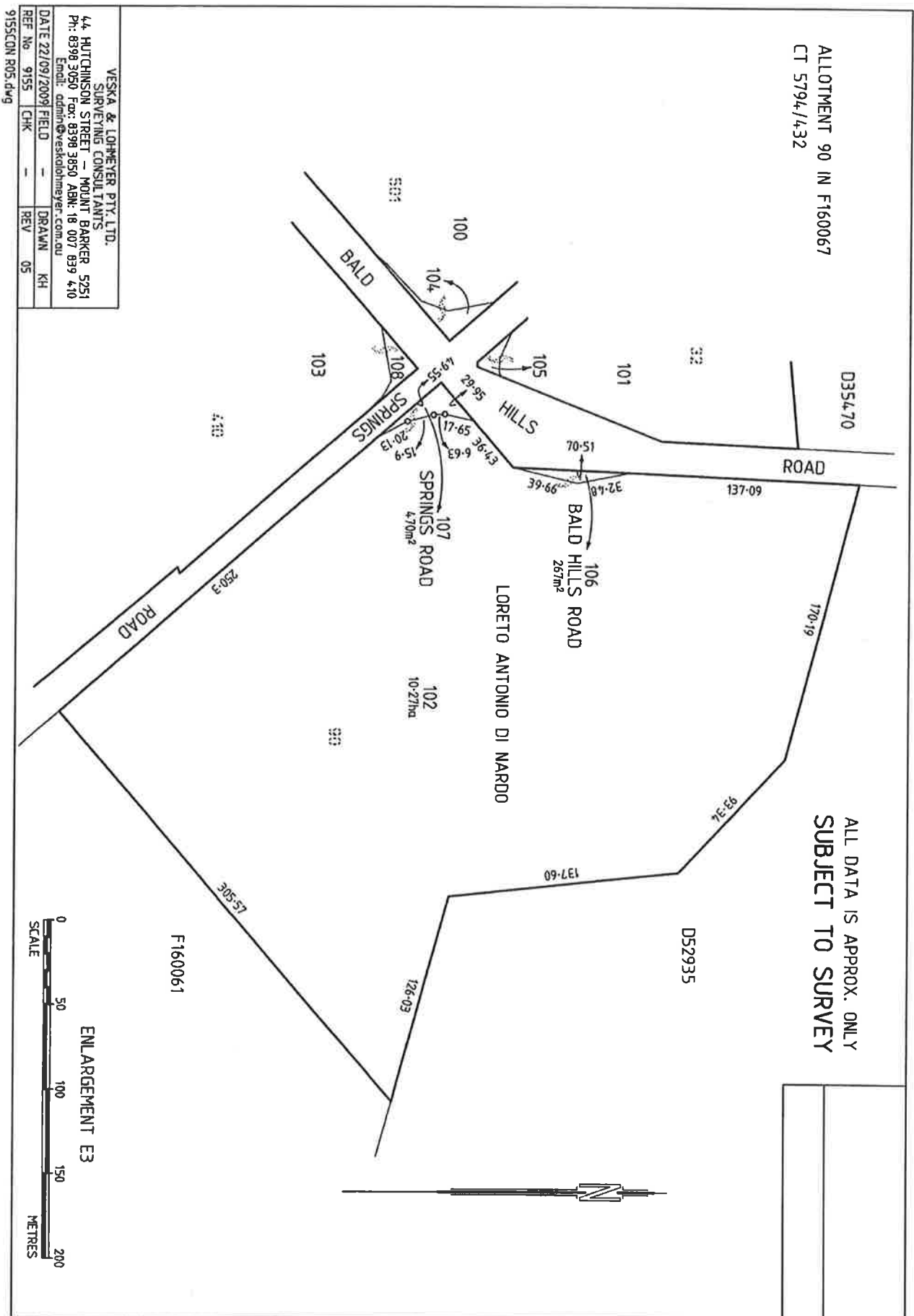
2. Promotion/Communications

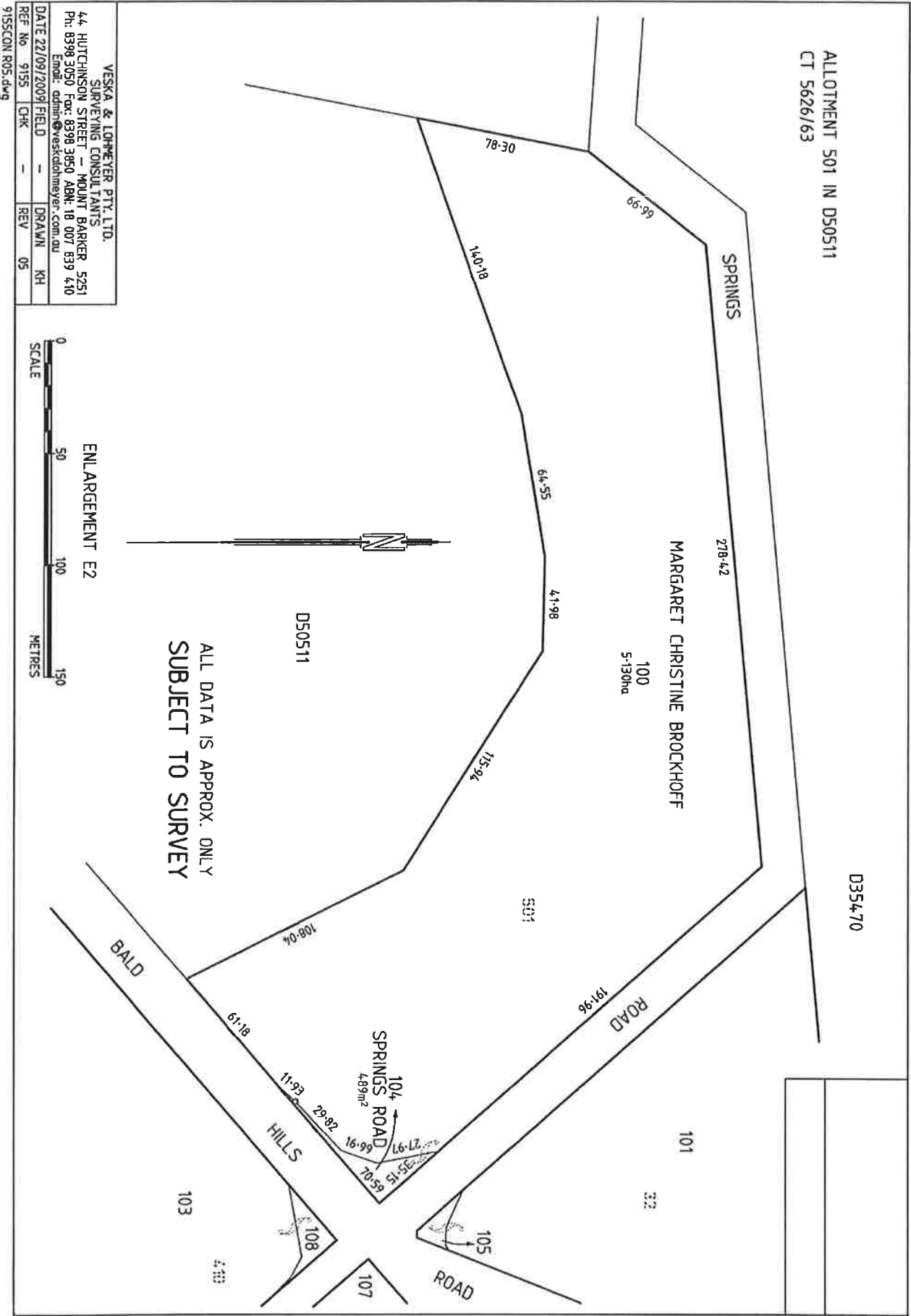
As part of the Bald Hills Road Upgrade project, there is periodic communications with adjacent properties and the general community on progress of the works.

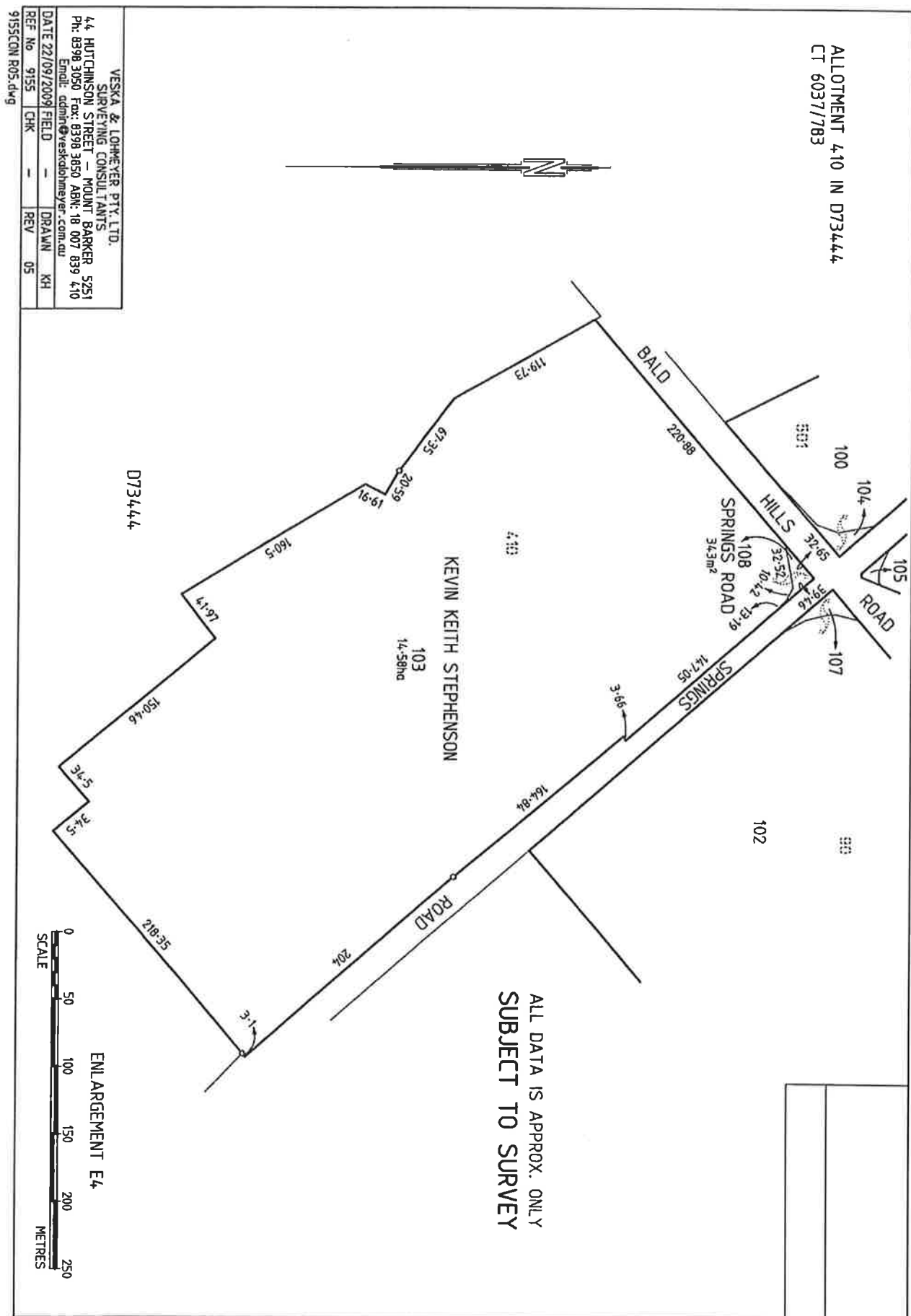
ITEM 17.1 ATTACHMENT 1











ITEM 17.1 ATTACHMENT 2A

Marked up

10-11-09

afm

Essential Conditions of Offer**Proposed Land Acquisition****Proposed Allotment as shown on the Attached Plan****Certificate of Title Volume 6005 Folio 373****Located at Allotment 32 Bald Hills Road Mount Barker**

1. **Purchaser:** District Council of Mount Barker
2. **Vendor:** Andrew James McDonald and Heather Kay McDonald
3. **Description of Proposed Land Acquisition:**

Proposed allotment 105 Bald Hills Road Mount Barker contained in Certificate of Title Volume 6005 Folio 373 as shown on the attached plan.

4. **Purchase Price:**

Value of the land	\$9,500.00	
Injurious affection	\$5,500.00	\$33,750
General Disturbance	\$3,000.00	\$7,500
Total Purchase Price	\$18,000.00 plus GST (if applicable)	\$50,750.00

75% of valuation by Wapper

5. **Accommodation Works:**

Council will bear the cost of Accommodation works which shall be to relocate fences to a comparable standard (maintaining security to the property at all times) and relocation of all services, if applicable.

6. **Method of Payment:** Cash at Settlement.7. **Settlement Date:** 7 days from date of deposit and approval of the plan of land division vesting the land as a road reserve.8. **Costs:** All costs associated with the purchase of the land are to be paid by Council e.g. surveying, conveyancing legal, stamp duty, registration fees etc.9. **Choice of Conveyancer:** You will have the choice of selecting your own conveyancer to act on your behalf. Their charges as mentioned above will be met by Council.10. **Condition Precedent to the Contract:** The contract will be subject to the deposit and approval of the plan of land division vesting the land as a road reserve.

-2-

11. License to Occupy the Land:

- a) The License to occupy the land is for the purpose of Council undertaking the necessary road works.
- b) The License is granted to the Council, its Agent or Contractors.
- c) The Licensee will give 24 hours notice to the Licensor before entering the land.
- d) The License shall commence for the period starting from the date of signing of the Contract and License and continue until the settlement date of the contract.
- e) The license fee shall be 6% per annum of the purchase price adjusted daily for the duration of the license period to be paid at settlement by Licensee to the Licensor.

12. Dispute Resolution: The Contract shall contain the Purchaser's standard dispute resolution procedures.

ITEM 17.1 ATTACHMENT 2B

From: Andrew McDonald [mailto:Andrew.McDonald@sitzler.com.au]

Sent: Tuesday, 10 November 2009 5:00 PM

To: David Ninio

Subject: Proposed Land Acquisition McDonald 9-11-09

David

Following our meeting last week I have also quizzed our Valuer and he asserts he is happy with his methodology and valuation.

I have discussed your suggestion of going 50/50 with my wife and we agree that this is still considerably below expectations.

In the spirit of co-operation with the Council we advise that we would be prepared to accept 75% of Wapper's Evaluation dated 13th October for Injurious Affection & Disturbance side of things and we seek your support in conveying this suggestion favourably to Council (This is some \$ 9,500 more than your suggestion at our meeting last week).

We believe this is a fair sum to cover our sufferance as a result of the proposed acquisition.

As discussed previously we are happy with your valuation of the land at a sum of \$ 9,450.00 and the other conditions as set out in your "essential conditions of offer" for clarity I have marked up same to reflect our position – copy attached, and we look forward to your endorsement of these conditions.

On the issue of the previously discussed proposed road closure (Portion of land previously acquired from us for line of sight now no longer required as a result of the proposed road re-alignment and new roundabout) we would like to commence negotiations in relation to establishing quantum and price and we will speak with you in the next few weeks following our independent valuation of this area.

Andrew McDonald

ITEM 17.1 ATTACHMENT 3A

From: Brockhoff, Nicholas (Health) [mailto:Nicholas.Brockhoff@health.sa.gov.au]
Sent: Wednesday, 2 December 2009 1:54 AM
To: David Ninio
Cc: brockhofffamily@gmail.com; Brockhoff, Nicholas (Health)
Subject: Our Response to the Council's Offer

Dear David,

Please find attached, our formal response to Council's offer to purchase our land at the corner of Springs and Bald Hills Roads, Mt Barker.

I do apologise for the delay in forwarding you our response, but as I'm sure you can appreciate, our family's position on this matter is being formulated under duress, upon Council instigation and insistence, under Council-imposed deadlines and all being done in our own time (not with the luxury of salaried hours to address this very important issue for our family). Also, having to communicate among all family members and seek professional advice, while overseas on annual leave and concurrent with several significant family stresses (not least of which, a family member currently in hospital post heart attack) has proven very difficult indeed.

And further frustrations, for your understanding:

Over the weekend just past, we were again reminded of the broken promises that have surfaced over the nine and a half years since transferring the wetlands area to council. A tree limb broke the fence in the storm on Friday afternoon and our 15 head of cattle escaped into the wetlands and on to Bald Hills Road. Council staff kindly notified us of reports that our cattle were out. They were herded into Stephensons' paddocks on the Bald Hills Road. It took Mum and Dad ten hours on Sunday to effect a temporary repair to the fence and to yard, sort and deliver the cattle back to the original and alternative paddocks. They have reduced the stock on the property because once again the bore pump (now, our only source of water) is malfunctioning and they have to rely on the little waterhole (20cm deep at best) which is where Council had promised, in the original negotiations, a small dam would be installed. We will have to get the electrician in yet again to repair the bore switch, which keeps failing due to poor water quality (as did the brand new submersible pump, after only 7 years); all this in face of the assurance that council would continue to maintain the fence (because it was they caused it to be sited where it is under the gum trees), and that we would get an adequate water supply to compensate for the loss of the three very good water supplies which had existed on the original land taken over by Council.

Thank you for your understanding of this very complex and delicate issue, re-surfacing for our family yet again. I trust that you are able to put forward our position to Council, with some support, and we look forward to receiving a response from Council in due course.

If and as may be required, we are of course, willing to further explain our position to elected members and/or Council staff, as appropriate. As indicated in our attached response, we may be unavailable to respond from hereon in until I return from annual leave in early January. I understand that, by that time, you will be on leave yourself, and we wish you all the best during that period.

Kind Regards,

Nick Brockhoff

- for and on behalf of Margaret Christine Brockhoff and Nigel David Brockhoff.

From: David Ninio [dninio@dcmtbarker.sa.gov.au]
Sent: Friday, 27 November 2009 2:14 PM

To: Brockhoff, Nicholas (Health)

Cc: 'Nigel Brockhoff'; Brian Clancey; Andrew Whitehead; Matthew Dawkins; David Morton

Subject: Your Response to the Council's Offer

Dear Nick

I spoke to your Father on two occasions this week and stressed the importance of receiving your reply to the Council's offer as I require some lead time for an Agendas Item which is expected to be presented to Council on 21 Dec 2009.

I indicated to your Father that I was expecting your response this week.

He said that I should receive it on Monday.

I look forward to receiving your response on Monday.

I trust that you are enjoying your stay in Borneo.

Best Regards.

ITEM 17.1 ATTACHMENT 3B

30th November 2009

To the District Council of Mount Barker

Re: Land purchase Springs Road / Bald Hills Road, Mt Barker for the purpose of constructing a new roundabout.

Following discussions with David Ninio, representing Mt Barker District Council, we understand that Council are seeking to acquire 489 square metres of our land for purposes of constructing a roundabout, in part, on our land, Lot 501, (CT 5626/63 in the name of Margaret Christine Brockhoff) at the intersection of Bald Hills and Springs Roads, Mt Barker.

We respond as follows:

Whilst understanding that there is some pressure applied to, and subsequently by, Council - in terms of funding-based timing for their proposed roundabout project - the fact remains that we do not wish to part with another square metre of our land.

My family was previously forced to sacrifice (for a pittance) over 101,100sqm of our land for 'public purposes' in the construction of the Laratinga wetlands, adjacent to our remaining small parcel of land. We do not wish to lose any more of our valuable land area. As owners of the land Council wishes to acquire, we formally request Council to seriously consider the following solution to the problem.

Whereas Council has failed to utilise (for the stated purpose of acquisition) a considerable strip of our land taken in the previous acquisition (August 1998, finalised March 2000), under the terms of that agreement we demand the return of that portion of land (from Lot 500) to our ownership and title (and again, under the conditions of previous agreement) prior to any discussion on land acquisitions with Council. This strip is far in excess of what was required, the boundary of which was described at the time as being up to and including the small access road surrounding the wetland ponds.

The proposal we submit follows upon considerable consultation with legal advisers, valuers, surveyors and other professionals and, in their and our view, it is the basis on which a suitable and just outcome for all parties can be reached.

We are confident that once this correction is made to our title, we will be able to agree to a fair-priced sale for the parcel of land required at the roundabout. If Council however does not follow this course, we are quite prepared to take the matter to court for resolution. Please bear in mind that when the previous acquisition went to the Supreme Court in South Australia, the process took nearly seven years and cost Council more than \$100,000 in joint costs awarded against it in the judgement. In the interests of all involved, we seek to avoid this course of action, and to continue amicable negotiations with regards to a fair price for the land Council are seeking - complicit with agreement regarding return of the previously-acquired excess portion of land.

During detailed discussions and correspondence regarding the compulsory acquisition of our family's land for Laratinga wetlands, through the mid to late 1990s, the agreed position of Council was that any land not used for the purposes of the actual wetland itself or the (later-requested) small access road around it, would be reinstated to the Brockhoff family. Accordingly we seek to purchase back from council that land from our current lower boundary to a line adjacent to the current service road that abuts the ponds (an area of approximately 15,370sqm, as is currently being drafted by surveyors), which is currently attached to Council's present title at Lot 500, as per the terms of agreement.

Please note that recent casual mention by Council officers of any buffer zones and EPA policy potentially restricting their ability to consider this proposal, appears nothing other than a rather specious, opportunistic and informal response from Council, in an attempt to retain the land rather than honouring previous agreement on this matter.

We view the return of the above described land (to be detailed in surveyor plans shortly, and forwarded to Council as an appendix to this response), with all transfer costs to be borne by Council, as Council fulfilling its legally binding undertakings and obligations under the agreement made by Council during the previous acquisition process.

OFFER TO COUNCIL:

That Council return the portion of land currently attached to Lot 500, as was previously acquired from the Brockhoff family, in excess of that required for the actual wetland ponds and surrounding access road, to the Brockhoff family at the rate agreed in March 2000 - being the previous acquisition price, pro-rata per square metre, plus CPI since that date. Upon receipt of Council's formal acceptance of this course of action, we will commence formal negotiation in respect of the sale to Council of the 489 square metres of land required for the roundabout at the intersection of Bald Hills and Springs Roads.

There has been no action by Council in the past ten years that indicates the land is either used or required as a buffer; and this usage has not been mentioned before. The buffer zone concept, which is contrary to the advice of local naturalists and water resource experts was certainly not present in the previous negotiations leading up to acquisition by Council, and appears both inaccurate and irrelevant. Neither do policy searches or discussions with local ecologists evidence that Council's claims are supported by the EPA or their policy or best practice wetland management.

Specifically, Council formally undertook and assured Margaret Brockhoff that on compulsorily acquiring the previous parcel of land (Lot 500) and Council's subsequent construction of wetlands thereon, there would be no adverse effect on the residual land (Lot 501), nor its future use or capital value increases, with zoning changes inevitably improving in our favour as Mt Barker continues expanding. This was the 'inducement' put forward by Council at the time of the previous compulsory acquisition. Our economic and land use planning intentions, since that time has been not to sell any of the remaining land until such time as zoning and land values (ie land demand) had improved, to suitably justify utilising our remaining land as my parents' main source of superannuation.

I do not need to remind Council that they spent more than \$100,000 of ratepayers' funds paid out in legal costs previously (let alone many tens of thousands more in Council staff remuneration/salaries in doing so), while engaged in needlessly fighting and harassing our family for seven long years, while we duly tried to protect our land and future from an unjust result.

The \$1.60/sqm we were eventually forced to accept after seven years of litigation was not a fair and just result for more than 100,000sqm of prime agricultural, and otherwise sensible industrial/residential, land within the town boundary and only 2000m from Mt Barker's CBD.

Words cannot express the frustration of watching Council mow the wasted land just over the fence (grass our cattle should have been eating), every year since they claimed it would be required "for a service road".

If Council was prepared to act in an appropriate and equitable manner, the above-described land could be returned to the Brockhoff family at the same time as the 489 square metres of our

roundabout is sold to Council.

We took the previous land acquisition which we felt was unfair to the Supreme Court, and if necessary, will again pursue this course vigorously.

It was not our intention to sell any of our land at this current time, at present zoning and market values. Council are asking us for a significant and hurried concession to suit their projects, deadlines, reports, annual leave dates and road-building programs. We are prepared to do this provided Council is prepared to act bona fide and return the land as promised by Council.

Be aware of the deep emotional attachment that our family has had to this land for many years, coupled with the fact that this land is the main form of superannuation held by my parents for their retirement years and the protection of their future generations.

Previous dealings with Council and their attitude towards compulsory acquisition have burdened our family with severe emotional stresses, the effects of which we still suffer today. I ask Council to behave in a much more conciliatory manner in this matter, with fairness at the forefront of their decisions.

In due course, we look forward to receiving written response, from Council, to our offer, and to subsequently continue negotiations towards satisfactory resolution for all concerned. Please be advised that (as explained previously) we may be unable to respond in the interim, until such time as I return from annual leave (currently overseas) on 5th January 2010.

Yours Sincerely,

Nick Brockhoff

- For and on behalf of my parents, Margaret Christine Brockhoff and Nigel David Brockhoff.



ITEM 17.1 ATTACHMENT 3D

David Ninio

From: David Parrish [dparrish@mellorolsson.com.au]
Sent: Monday, 14 December 2009 3:49 PM
To: David Ninio
Subject: RE: Encroacments Springs Road Detail

David.

This should not become an issue at the compulsory acquisition dispute but could certainly be raised by the Brockhoff's.

It is an historic anomaly that has probably occurred over many years as the road has been "metalled" or improved.

We must proceed on the basis that the CT is correct.

The only way around this is if Council's register of public roads under section 231 LGA 1999 and Reg 16 shows the width of the road at this point. Having said that there would need to be some record of a council resolution under section 303 of the LGA 1934 to have declared this area a public street because of uninterrupted user by the public for perhaps 10 years or more before the resolution. I presume council will not have such record.

Accordingly a plan of division under section 223LF of the RPA 1886 is required to vest the land as a public road in council. Unfortunately, the landowner will need to consent under section 223LH, which is the normal process. That consent may be at a price.

The R-G can dispense with consent, eg it's been a road since 1933?

Council cannot buy the land by agreement without a land division as it will be acquiring part of an allotment otherwise, which is not possible.

You could also do a further compulsory acquisition or road opening.

The land division is the most suitable means.

I'll now turn to the EPA issue.

Regards David

David Parrish
Consultant
Mellor Olsson Lawyers
Ph: 8414 3407
Fax: 8414 3444
dparrish@mellorolsson.com.au

-----Original Message-----

From: David Ninio [mailto:dninio@dcmtbarker.sa.gov.au]
Sent: Friday, 11 December 2009 10:57 AM
To: David Parrish
Subject: Encroacments Springs Road Detail

Encroachments and draft Council report for chAngeS

-----Original Message-----

From: Andrew Whitehead
Sent: Friday, 11 December 2009 10:01 AM
To: David Ninio
Cc: Brian Clancey; David Morton; Matthew Dawkins
Subject: FW: Springs Road Detail

Hello David

Herewith the road/boundary encroachment areas as queried by Brian in yesterday afternoons meeting.

These areas are provided to assist you in gaining a professional comment as to whether the land owners could use this encroachment as a reasonable argument.

For those copied in, please Greg's comment below?

Regards

Andrew Whitehead

Project Manager

District Council of Mt Barker

Ph 8393 6423

Fx 8391 7200

Be green - read on the screen.

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-----Original Message-----

From: Access SDM [mailto:surdev@bigpond.net.au]
Sent: Friday, 11 December 2009 9:37 AM
To: Andrew Whitehead
Subject: Springs Road Detail

Hi Andrew

I have added the areas on with a boundary line following the fence line.

Creating these two parcels as Road does not require a Development Application and a plan can be provided to the Land Titles Office with in a week or so.

Cheers
Greg

Access SDM
Surveyors and Development Managers
76 Hutchinson Street, Mt Barker, 5251
(08) 8391 3000

-----Original Message-----

From: Andrew Whitehead [mailto:awhitehead@dcmtbarker.sa.gov.au]
Sent: Thursday, 10 December 2009 6:31 PM
To: 'Access SDM'
Subject: RE: Springs Road Detail

Hi Greg/Thomas

By any chance do you have the areas of these 2 areas shown?

Regards

Andrew Whitehead

Project Manager

District Council of Mt Barker

Ph 8393 6423

Fx 8391 7200

Be green - read on the screen.

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-----Original Message-----

From: Access SDM [mailto:surdev@bigpond.net.au]
Sent: Tuesday, 8 December 2009 3:33 PM
To: Andrew Whitehead
Subject: Springs Road Detail

Andrew I have attached a .dwg file of the Springs Road encroachments.

The file shows the position of the edge of bitumen and fence on the southern side of the road and boundary line.

The eastern end encroaches across the boundary and the western end is very close to the boundary.

The survey is MGA and AMG. Please let us know if you would like a PDF file.

Thomas Filsell

ACCESS SDM PTY LTD
Surveyors and Development Managers
76 Hutchinson Street, Mt Barker 5251
(08) 8391 3000

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ITEM 17.1 ATTACHMENT 4A

From: Laurie DiNardo [mailto:lapa@bigpond.com]
Sent: Wednesday, 9 December 2009 8:57 PM
To: David Ninio
Cc: David Morton; Brian Clancey; Matthew Dawkins; Andrew Whitehead
Subject: Re:

Dr Mr Ninio

In response to your letter dated 2 Dec 09.

As stated in my email dated 25/10/09 the impact of the proposed acquisition on my business activities would be significant and detrimental to my daily activities. Although they may appear minor they will be multiplied many times per day over my and future generation working life. It is this accumulation of productive time that becomes a financial loss to my business.

Just as the proposed roundabout was designed to cater for the expected growth for the next 20 years, I also have consider future growth and direction and this acquisition would put a stop to my perceived intentions.

In relation to my valuation report in our discussions on site I indicated to you that the report had not covered certain issues that would arise from the shed relocation . However the compensation figures forwarded to you on the 28/10/09 were from the report. I will pass on this report on or before Fri 10/12/09.

It is therefore still my conclusion that the shed and attachments need to be relocated. As you have informed me the council believes that this is not an option, then I propose discussion of acquiring the whole property.

Regards

Laurie

----- Original Message -----

From: [David Ninio](#)
To: ['Laurie DiNardo'](#)
Cc: [David Morton](#) ; [Brian Clancey](#) ; [Matthew Dawkins](#) ; [Andrew Whitehead](#)
Sent: Wednesday, December 02, 2009 2:12 PM

Dear Mr Di Nardo

I enclose copy of correspondence together with the relevant attachments which will be posted to you by registered mail. I suggest that you print the plans in A3.

Please phone me (83917229) if you require any clarification or further information.

Best Regards

17.1 ATTACHMENT 4B

From: Laurie DiNardo [mailto:lapa59@bigpond.net.au]
Sent: Wednesday, 28 October 2009 6:55 AM
To: robin norris; David Ninio
Subject: Fw: land acquisition

----- Original Message -----

From: Laurie DiNardo
To: **Subject:** land acquisition

Dear Mr Ninio

In response to the councils proposed acquisition of a portion of my property and your essential conditions of offer.

After considerable consideration of the impact that the acquisition would have on my business activities and my livelihood both for myself and future generations, I fail to acknowledge that it would be possible for me to carry on my business activities to the same standard and efficiency, contrary to your report.

As this is a rural environment I find that the increased traffic is already a detriment to my farming practices and the encroachment of traffic lanes closer to my property will only multiply and create more problems. This is disregarding your three to four fold increase in volume expected by a future interchange.

Hence my preference would be that the proposed roundabout be re engineered so as not to encroach on to my property. If this cannot be satisfied my only other conclusion would be the relocation of my shed and facilities, which in its self would create other issue that would need to be addressed.

Regards

Laurie DiNardo

Mr David Ninio

As per phone call here are the compensation figures for the proposed land acquisition

Value of land	\$30,000.00
Injurious Affection	
Lot 106	\$47,131.00
Lot 107 (shed relocation)	\$320,360.00 (subject to all approvals and regulations)
Disturbance	\$25,500.00

All other aspects of the Essential Conditions of Offer seem to be reasonable.

Regards

Laurie

ITEM 17.1 ATTACHMENT 4C

**THE DISTRICT COUNCIL OF MOUNT BARKER**

P.O. BOX 54, Mount Barker S.A., 5251 – Telephone: 8391-7200

Facsimile: (08) 8391-7299

DX address: DX 51708, Mount Barker

web site: www.dcmtbarker.sa.gov.au**46/050/013**

Reference:

2 December 2009

Mr Loreto Di Nardo
79 Alexandrina Road
Mount Barker SA 5251

Dear Mr Di Nardo

**Re: Land Acquisition- Proposed Allotments 106 and 107
Bald Hills Road Mount Barker**

I refer to the Council's offer to purchase the above land forwarded to you by email on 25 September 2009 (refer to attachment) and your responses to this offer dated 25 and 28 October 2009.

In summary Council's conditional offer is a financial settlement of \$33,000.00, together with agreed accommodation works to be provided at Council's expense as well as payment of your associated fees. This offer is based on a professional valuation by an external licensed valuer.

From the Council's perspective our objective remains to reach a reasonable agreement with you in respect of the purchase of the above land. In that regard, Council offered to pay for your valuation advice in case there was a difference of opinion between your valuer and the Council's valuer. In your email to me dated 8 October 2009 you indicated that you would pass your valuation on to me when completed. In my later telephone discussion with you indicated that you did not wish to pass on your valuation. Your valuation may have assisted Council in determining an appropriate compensation figure.

Council remains prepared to consider a reasonable counter-offer, if it can be justified on the basis of expert valuation opinion and comparable sales evidence. Your current counter-offer contained in your email to me dated 28 October 2009, is far greater than can reasonably be justified and is not supported by any professional valuation made available to Council.

It is important to note that our negotiations commenced in August 2009 and that a firm offer from Council was forwarded to you on 25 September 2009. The issue that you raised regarding truck access to your shed has been considered and significant staff and consultant resources have been spent to address this matter in a manner which Council believes provides at least like for like if not somewhat improved.

As part of the proposed accommodation works, I enclose a proposal prepared by Wallbridge and Gilbert, Consulting Engineers which is a solution to your access concerns, and will in effect rectify what is currently an unsafe truck access

manoeuvre to your property. If this is acceptable to you, the compensation package will include the implementation of these works at Council's cost in accordance with the attached plans.

Council has estimated that the costs of the accommodation works package will be in the order of \$70,000.

I also understand from Council's Project Manager that the design of the project will address your concerns relating to stormwater run off from Bald Hills Road on to your property.

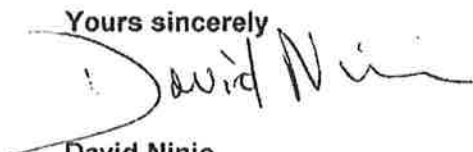
As mentioned to you a report is expected to be presented to the Council meeting on 21 December 2009. In order to meet the requirements of the Commonwealth's Nation Building Program, funding for the proposed land acquisition needs to be spent before the 30 June 2010. The report to Council will therefore include the option of compulsory acquisition if an agreement to purchase the subject land has not been reached or appears unlikely to be reached within a reasonable time frame to enable the construction of the round about. Given the commercial nature of our negotiations, it will be recommended to Council that the Agenda Item be treated as a Confidential Item. If Council adopts this recommendation, the Agenda Item will be treated "in camera" i.e. the public will not have access to the item and will be excluded from the Gallery. Following the Council Meeting I undertake that you will be informed of its resolution.

Initial community consultation on this proposal took place in late 2008 and Council's letter of 30 July 2009 enclosed the Council report which indicated that the possibility of compulsory acquisition would be contemplated if voluntary acquisition could not be achieved.

Given the timing imperative for Council to satisfy the Commonwealth Funding to fund the proposed land acquisition, your formal response to the enclosed offer to purchase the abovementioned land would be appreciated by no later than 14 December 2009. This would enable me to include your response in the Council meeting report.

If you require further clarification or information to this letter please do not hesitate to contact on Tel: 8391 7229. I can arrange a further site meeting with the Project Manager if required.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'David Ninio', written over a large, stylized circular flourish.

David Ninio
Special Projects Officer

Essential Conditions of Offer**Proposed Land Acquisition****Proposed Allotment as shown on the Attached Plan****Certificate of Title Volume 5794 Folio 432****Located at Allotment 90 Bald Hills Road Mount Barker**

1. **Purchaser:** District Council of Mount Barker
2. **Vendor:** Loreto Antonio Di Nardo
3. **Description of Proposed Land Acquisition:**

Proposed allotments 106 and 107 Bald Hills Road, Mount Barker, contained in Certificate of Title Volume 5794 Folio 432 as shown on the attached plan.

4. **Purchase Price:**

Value of the land	\$30,000.00
Injurious Affection and Severance	\$Nil
Consequential Losses	\$Nil
General Disturbance	<u>\$3,000.00</u>
Total Purchase Price	\$33,000.00 plus GST (If applicable)

5. **Accommodation Works:**

Council will bear the cost of Accommodation works which shall be restricted to the relocation of fences and gates to a comparable standard (maintaining security to the property at all times) plus the reinstatement of all affected services, if applicable.

Relocation of access gate and provide adequate access for semi trailers from the gate to the existing shed.

6. **Method of Payment:** Cash at Settlement.
7. **Settlement Date:** 7 days from date of deposit and approval of the plan of land division vesting the land as a road reserve.
8. **Costs:** All costs associated with the purchase of the land are to be paid by Council e.g. surveying, conveyancing legal, stamp duty, registration fees etc.
9. **Choice of Conveyancer:** You will have the choice of selecting your own conveyancer to act on your behalf. Their charges as mentioned above will be met by Council.

-2-

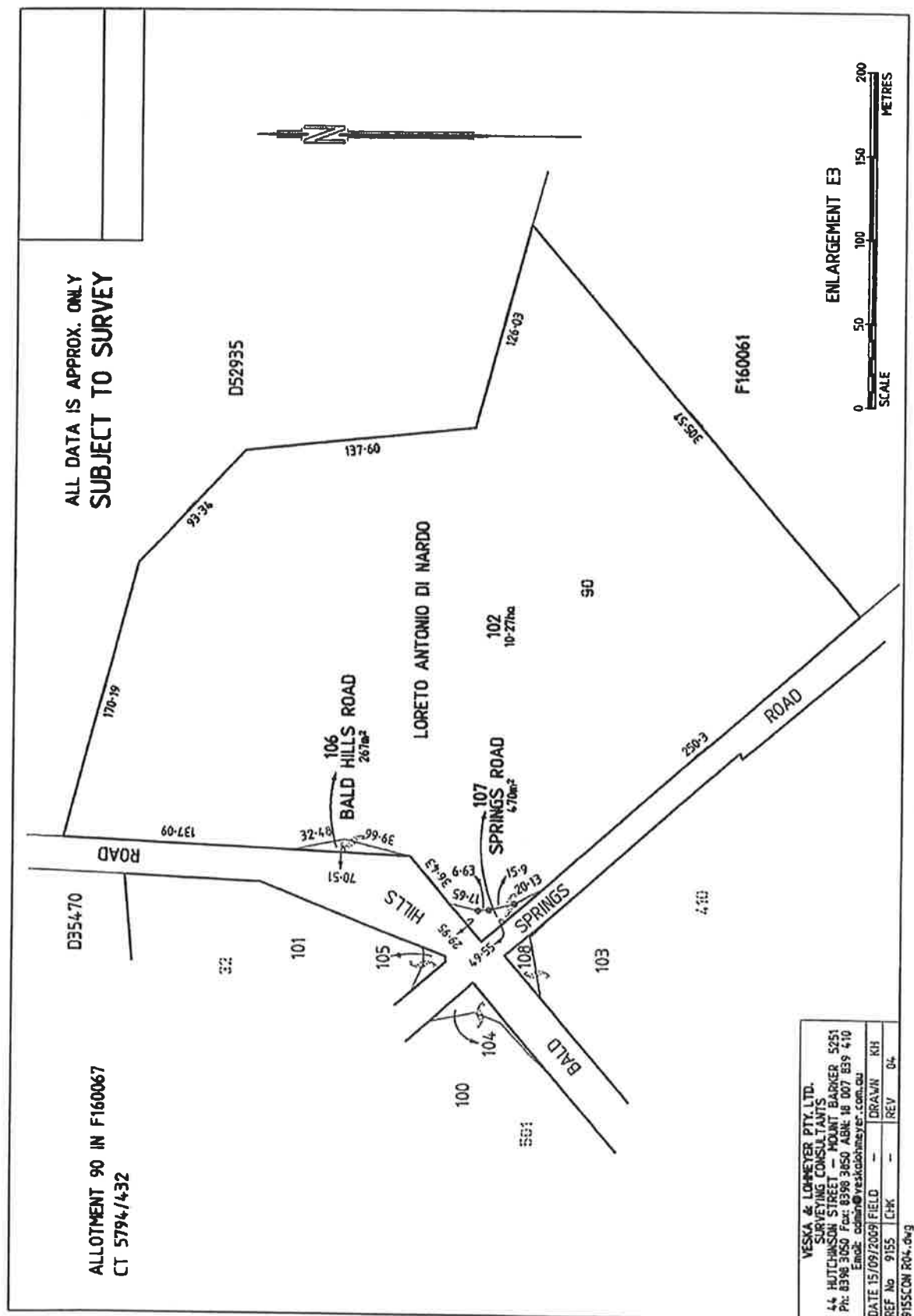
10. Condition Precedent to the Contract: The contract will be subject to the deposit and approval of the plan of land division vesting the land as a road reserve.

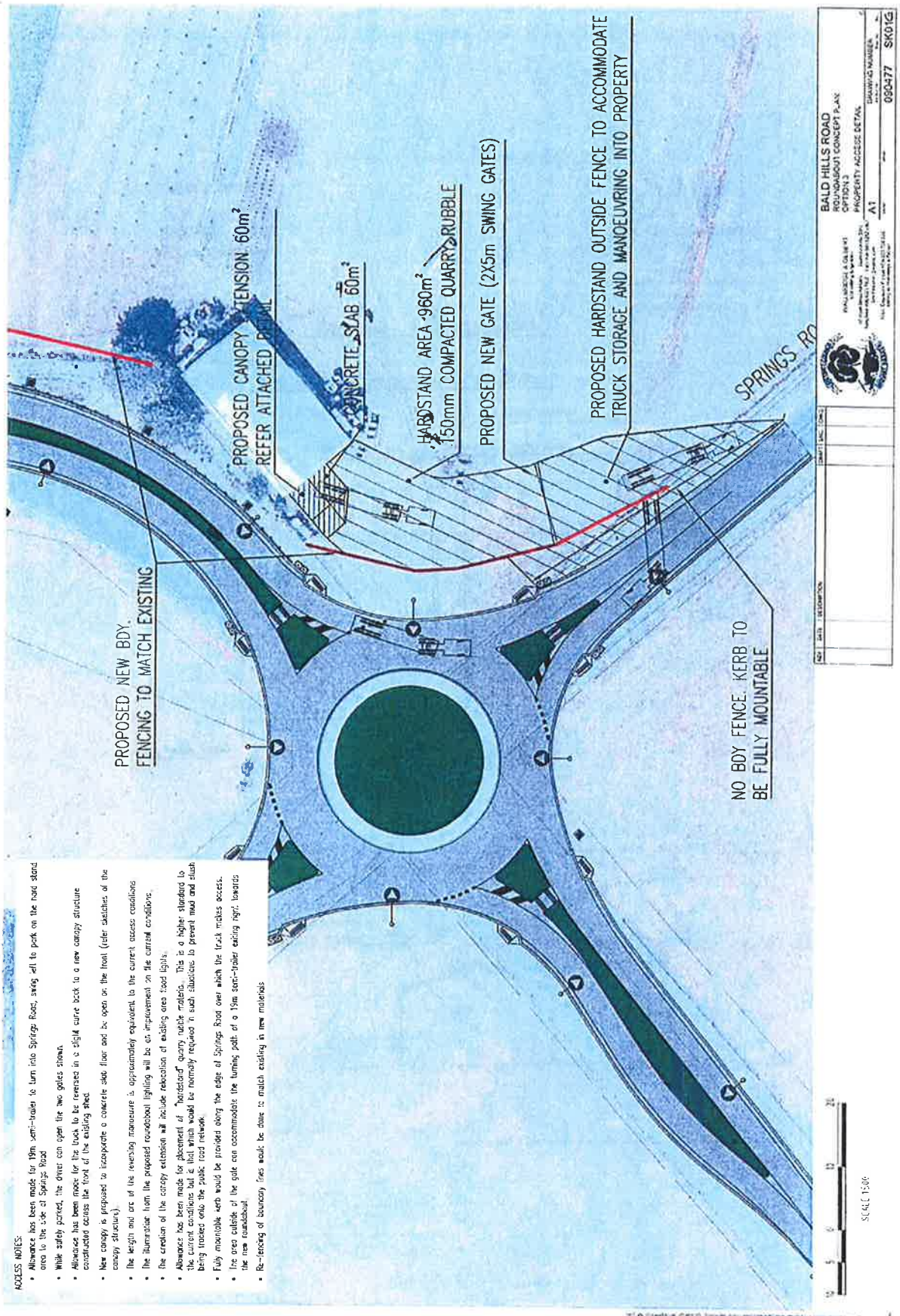
11. License to Occupy the Land:

- a) The License to occupy the land is for the purpose of Council undertaking the necessary road works.
- b) The License is granted to the Council, its Agent or Contractors.
- c) The Licensee will give 24 hours notice to the Licensor before entering the land.
- d) The License shall commence for the period starting from the date of signing of the Contract and License and continue until the settlement date of the contract.
- e) The license fee shall be 6% per annum of the purchase price adjusted daily for the duration of the license period to be paid at settlement by Licensee to the Licensor.

12. Dispute Resolution: The Contract shall contain the Purchaser's standard dispute resolution procedures.

D. N. 4320





W&G
WALLBRIDGE & GILBERT
 Consulting Engineers

40 Wyatt Street
 Adelaide, South Australia 5000
 Phone (08) 8223 7433
 Facsimile (08) 8233 0767

Job Number **C090477**

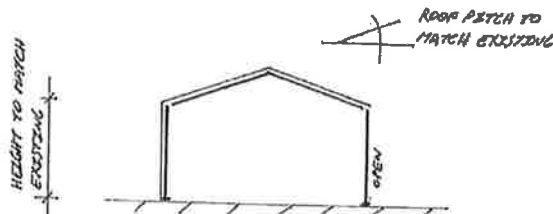
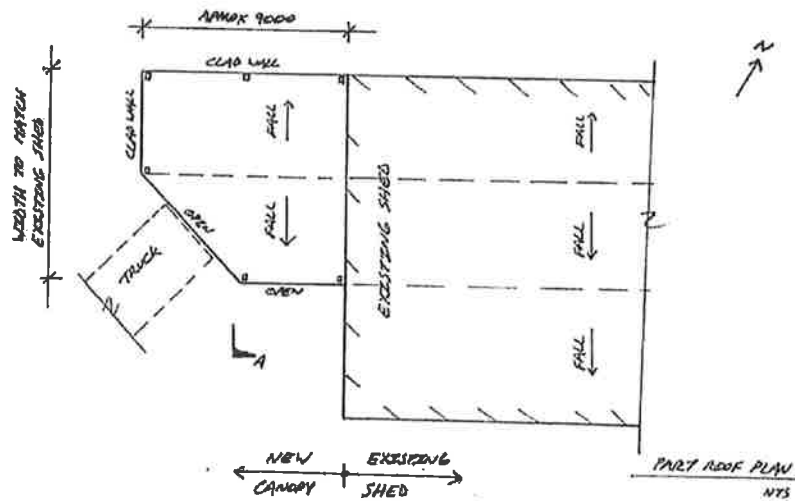
Designer

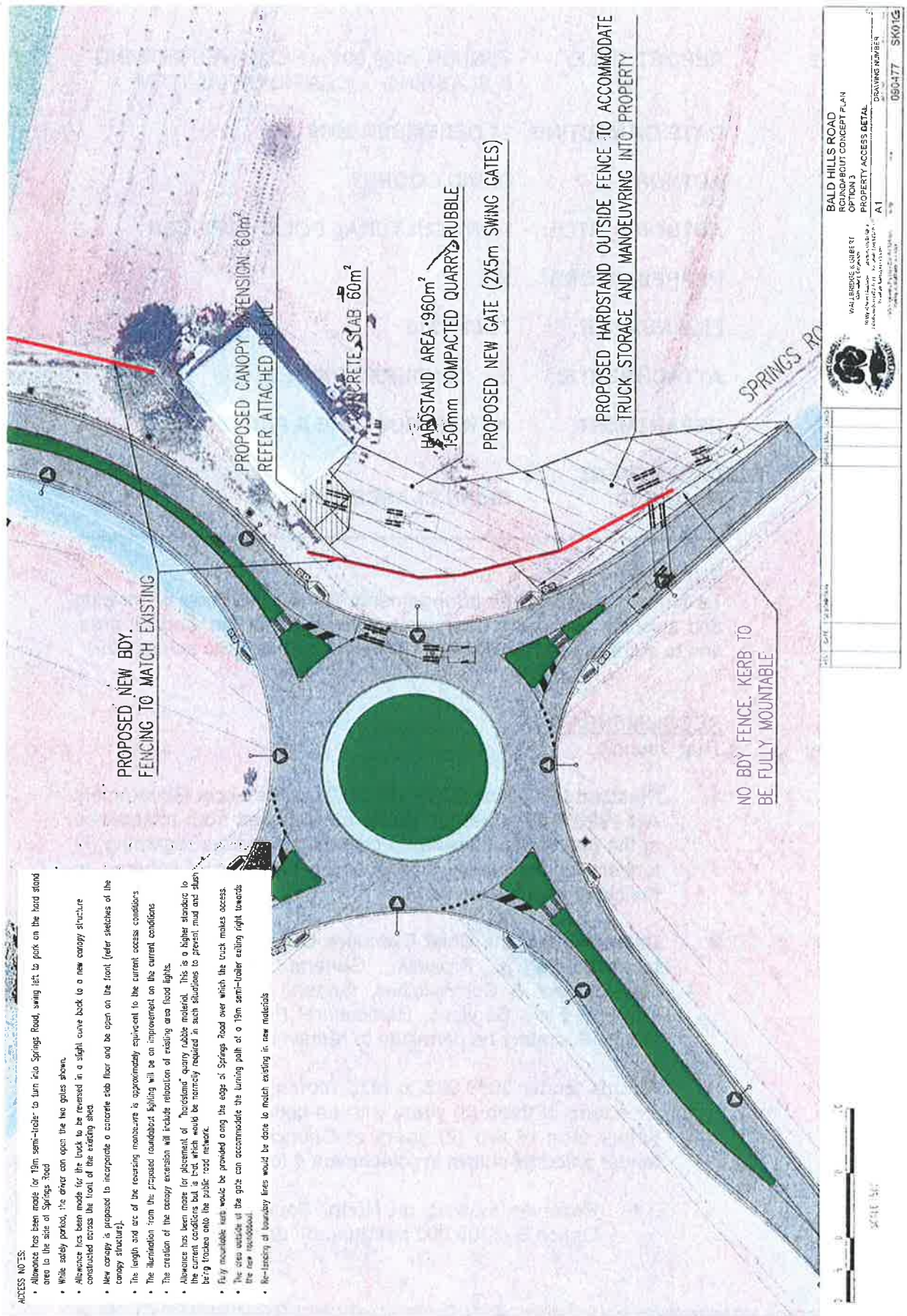
Date **19/11/09**

Page Number **541/A**

BARD HILLS ROAD - ROUNDABOUT

PROPOSED CANOPY EXTENSION TO SHED





17.2 REPORT TITLE: TENDER 2009.002 – RESERVES MOWING & SLASHING - CONFIDENTIAL ITEM

DATE OF MEETING: 21 DECEMBER 2009

AUTHOR: DAVID COONEY

AUTHOR'S TITLE: HORTICULTURAL POLICY OFFICER

REPRESENTORS: NIL

FILE NUMBER: 70/030/210

ATTACHMENTS: 1. TENDERED PRICES

DEPARTMENT: INFRASTRUCTURE & PROJECTS

**DEPARTMENT
MANAGER: BRIAN CLANCEY**

PURPOSE

To formalise contractual arrangements for the provision of mowing and slashing services for nominated works within the Council area, and to authorise the provision of additional resources to achieve this.

RECOMMENDATION

That Council:

1. Pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding (k) tenders for the supply of goods, the provision of services or the carrying out of works.
2. Determine that the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, Manager Field Services, Horticultural Policy Officer and the Minute Secretary be permitted to remain in the room.
3. Awards tender 2009.002 to MJS Mowing & Slashing Pty Ltd for a term of three (3) years with an option of a renewal for a further term of two (2) years at Council's discretion for the tender amounts shown in Attachment 1 for:
 - 3.1 Reserves mowing on North, South and Central Zone Option B (\$108,000 per annum); and