

CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2012

#	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
12	2007 15 Jan 07	YMCA	Reason: S 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 public interest	Discussion, Agenda and Attachment Released under delegated authority	Commercial in confidence information provided	Maintain Confidential Order until contract expiration (31 December 2011 – extended to 31 December 2012). 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revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.	3 Sept 12	2 Sept 13	Released 10/12/12

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17. CONFIDENTIAL REPORTS

**17.1 REPORT TITLE: CONFIDENTIAL REPORT
CLAIM FOR COMPENSATION - YMCA**

DATE OF MEETING: 19 JANUARY 2007

**AUTHOR: ANDREW STUART
BILL GRAHAM**

**AUTHOR'S TITLE: CHIEF EXECUTIVE OFFICER
CONTRACTS & PROPERTY CO-
ORDINATOR**

REPRESENTORS: NIL

**FILE NUMBER: 52/050/007
70/040/086**

ATTACHMENTS: NIL

DEPARTMENT: CHIEF EXECUTIVE OFFICER

**DEPARTMENT
MANAGER: ANDREW STUART**

PURPOSE

To inform Council of a claim for compensation from the YMCA for the loss of income for the fitness centre at the Adelaide Hills Recreation Centre.

RECOMMENDATION

1. That pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 the District Council of Mount Barker orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding
 - (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 public interest.
2. That the Chief Executive Officer, General Manager Strategy and Development, General Manager Corporate and Community Services, and the Minute Secretary be permitted to remain in the room.

3. That the report be noted.
4. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports and attachments relating to this item be kept confidential until 15 January 2008.
extended until 3 September 2008 at 3 September 2007 meeting

BACKGROUND

At its meeting on 16 October 2006, Council resolved to negotiate a new lease with Shape Up Pty Ltd for a portion of the Adelaide Hills Recreation Centre for the purposes of operation a fitness centre. If the terms of the lease were not agreed by 30 November 2006 a further report was to be presented to Council.

No agreement was reached with Shape Up Pty Ltd by 30 November 2006 and following consideration of a further report on 18 December 2006, Council resolved that:

1. The YMCA takes over the management of the space utilised as a fitness centre at the Adelaide Hills Recreation Centre, to operate a fitness centre in accordance with the Management Agreement for the Adelaide Hills Recreation Centre between the District Council of Mount Barker and the YMCA.
2. Council advise Shape Up Pty Ltd that they are required to vacate the premises at the Adelaide Hills Recreation Centre by Tuesday 16 January 2007.

DISCUSSION

Council has given notice to Shape Up Pty Ltd to vacate the premises by Tuesday 16 January 2007 leaving the premises available to the YMCA to operate its own fitness centre in the same location.

The report of 16 October 2006 notified that due to the delay in the YMCA being able to operate a fitness centre, they would seek compensation from Council for expenses incurred to date and loss of future net income.

At a meeting on 9 January 2007, The YMCA verbally advised Council staff (the Chief Executive Officer and Mr Bill Graham, Contracts and Property Officer) that it seeks compensation totalling \$88,223.77 which consists of:

- (a) Manager's salary for lost start up period and costs for printing brochures \$10,364.00
- (b) Budgeted cost of no fitness centre operations (Nov 06 – Mar 07) \$53,888.50
- (c) Re-forecasted budget start up profit & loss shortfall (Apr 07 – Jun 07) \$23,971.27

When inviting tenders for the management of the Recreation Centre in 2004, tenderers were advised that the fitness centre would be available on 1 November 2006.

It was on this basis that Council was able to secure such a significant and attractive reduction in its payment of management fees. The following are the agreed management fees payable to the YMCA for the management of the recreation centre:

Year 1	\$50,000
Year 2	\$25,000
Year 3	\$15,000
Year 4	\$10,000
Year 5	\$7,500

This calculates to \$107,500 over the five years, significantly less than the five previous years.

The fitness centre will be available to the YMCA on 22 January 2007, however the YMCA claims that it cannot commence operations until March or worst case scenario, April 2007 due to it being unable to secure delivery of equipment from suppliers.

This was not achieved due to Council's resolution to negotiate a lease with Shape Up Pty Ltd.

Council should be aware that this claim for compensation relates to the fitness centre only – not the operations of the recreation centre as a whole.

For the whole recreation centre the YMCA had originally budgeted for a \$1,488 surplus for 2006/07. The YMCA claim that this has now been re-forecasted to a loss of (\$56,887) should the fitness centre commence operations on 1 March 2007 or a loss of

(\$64,902) should the fitness centre commence operations on 1 April 2007.

The management agreement with the YMCA is for a period of one (1) year commencing on 31 December 2005 and expiring on 30 December 2006 with a further renewal period of four (4) years. Council cannot reasonably withhold the renewal unless the YMCA has not performed in accordance with the agreement.

Whilst the YMCA has quantified a compensation claim there was an indication that it was willing to negotiate and Council staff are in the process of determining an appropriate compensation "counter offer" and also exploring options for the payment of the offer, for example to be settled in stages s an additional management fee.

POLICY IMPLICATIONS

1. Financial/budget

Potential compensation payable to the YMCA of \$88,223.77.

2. Legal

Legal opinion from Norman Waterhouse Lawyers is that the tender documents made clear representation to the YMCA that they would be able to operate a fitness centre when the lease with the then current operator (Shape Up Pty Ltd) expired in October 2006. The YMCA has acted in reliance to that representation. The likely compensation is difficult to quantify but it would likely include their expenses to date. As to the question of future losses, it is possible that the YMCA would be successful in its claim but the quantum of any award in its favour is difficult to ascertain. However, the YMCA has asserted that it believes its reputation has also suffered through this process.

3. Staffing/Work Plans

The matter will be co-ordinated by existing staff.

4. Environmental

Not applicable.

5. Social

Not applicable.

6. Strategic Plans

The following provisions of the Community Strategic Plan (2004-2007) are considered relevant to this matter:

5. COMMUNITY ASSETS**Goal**

Provide a comprehensive range of accessible services and facilities in a financially, socially and environmentally responsible manner.

Objective

1. Fulfil Council's responsibility as custodian and provider of community assets.

COMMUNITY CONSULTATION**1. Customer Needs Analysis****2. Promotion/Communications**

17.2 **REPORT TITLE:** **CONFIDENTIAL ITEM - POTENTIAL ACQUISITION OF LAND**

DATE OF MEETING: 15 JANUARY 2007

AUTHOR: **DAVID NINIO**

AUTHOR'S TITLE: **SPECIAL PROJECTS OFFICER**

REPRESENTORS: **NIL**

FILE NUMBER: **42/020/037-02**

ATTACHMENTS: **1. LOCALITY PLAN
2. LAND AGENT INFORMATION
3. CALLINGTON MEMORIAL OVAL
COMMITTEE LETTER AND COUNCIL
RESPONSE**

DEPARTMENT: **ASSETS & INFRASTRUCTURE**

**DEPARTMENT
MANAGER:** **BRIAN CLANCEY**

PURPOSE

To inform Council of an assessment of the potential acquisition of land adjoining the Callington Oval

RECOMMENDATION

1. That pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 the District Council of Mount Barker 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. That the Chief Executive Officer, Acting General Manager Assets & Infrastructure, General Manager Strategy and Development, General Manager Corporate and Community Services, and the Minute Secretary be permitted to remain in the room.
3. That Council note this report; and