

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
30	21 Sept 09	Monarto Quarries Expression of Interest Process	Reason: 2. Pursuant to Section 91(7) That having considered Agenda Item 16.4, in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report and attachments of 21 September 2009 be retained in confidence until council publicly seeks expressions of interest in the future ownership and/or management of Monarto Quarries.	Discussion Reports & attachments	Revoked under delegation.	Be retained in confidence until council publicly seeks expressions of interest in the future ownership and/or management of Monarto Quarries. 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revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.	5 Sept 11	4 Sept 12	28/8/12

29. CONFIDENTIAL REPORTS

29.1 REPORT TITLE: CONFIDENTIAL ITEM - MONARTO QUARRIES PROPOSED EXPRESSION OF INTEREST PROCESS
DATE OF MEETING: 21 SEPTEMBER 2009
AUTHOR: BRIAN CLANCEY
AUTHOR'S TITLE: GENERAL MANAGER, INFRASTRUCTURE & PROJECTS
FILE NUMBER: 40/080/026
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:
(b) information the disclosure of which –
Council 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 council; and
Would, on balance, be contrary to the public interest.
2. That the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development and Communities, General Manager Corporate and the Minute Secretary be permitted to remain in the room;

Seconded Councillor Zanker and CARRIED

8.54 pm Councillor Stokes declared an interest as the Chair of the Adelaide Hills Regional Waste Management Board and left the meeting.

Moved Councillor Kuchel that Council

3. Receive the Monarto Quarries Future Operations Interim Report (attached);
4. Authorise Council Officers to facilitate the calling of Expressions of Interest in the management or purchase of Monarto Quarries;
5. Note that following the calling and evaluation of Expressions of Interest a further agenda item will be presented for consideration at a Council meeting;
6. Authorise the General Manager, Infrastructure and Projects to brief the staff of Monarto Quarries to ensure that they are kept informed of the process being undertaken by Council;
7. Note that given the likelihood of the Adelaide Hills Region Waste Management Authority submitting a proposal as part of the Expressions of Interest process and Council's direct involvement

in the Authority, considerable care will need to be taken to ensure that the fairness and integrity of the process is not compromised or perceived to be compromised, and the governance issues identified in this agenda item are carefully managed;

8. Orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential until 21 September 2010.
9. Readmit the public to the meeting at the conclusion of this item.

Seconded Councillor Campbell and CARRIED

MEETING DECLARED CLOSED AT 8.59 PM

MAYOR

DATE

17. CONFIDENTIAL REPORTS

17.1 REPORT TITLE: CONFIDENTIAL ITEM - MONARTO QUARRIES PROPOSED EXPRESSION OF INTEREST PROCESS

DATE OF MEETING: 21 SEPTEMBER 2009

AUTHOR: BRIAN CLANCEY

AUTHOR'S TITLE: GENERAL MANAGER, INFRASTRUCTURE & PROJECTS

REPRESENTORS: N/A

FILE NUMBER: 40/080/026

ATTACHMENTS: 1) FUTURE OPERATIONS INTERIM REPORT

DEPARTMENT: INFRASTRUCTURE & PROJECTS

DEPARTMENT MANAGER: BRIAN CLANCEY

PURPOSE

To seek Council authority to proceed to call for Expressions of Interest in the management and/or purchase of Monarto Quarries.

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 –

Council 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 council; and

Would, on balance, be contrary to the public interest.

2. That the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development and

Communities, General Manager Corporate and the Minute Secretary be permitted to remain in the room;

3. Receive the Monarto Quarries Future Operations Interim Report (attached);
4. Authorise Council Officers to facilitate the calling of Expressions of Interest in the management or purchase of Monarto Quarries;
5. Note that following the calling and evaluation of Expressions of Interest a further agenda item will be presented for consideration at a Council meeting;
6. Authorise the General Manager, Infrastructure and Projects to brief the staff of Monarto Quarries to ensure that they are kept informed of the process being undertaken by Council;
7. Note that given the likelihood of the Adelaide Hills Region Waste Management Authority submitting a proposal as part of the Expressions of Interest process and Council's direct involvement in the Authority, considerable care will need to be taken to ensure that the fairness and integrity of the process is not compromised or perceived to be compromised, and the governance issues identified in this agenda item are carefully managed;
8. Orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential until 21 September 2010.
9. Readmit the public to the meeting at the conclusion of this item.

BACKGROUND

At the Council meeting held on 6 July 2009 Council considered a confidential item titled "Monarto Quarries – Situation Overview and Future Operations". This included a presentation from Mr Ian Powell and Mr Brian Clancey.

Council resolved to note the report and presentation, and that a further report will be presented at a future Council meeting regarding options for the future operations of Monarto Quarries.

Council then retained the services of Mr Terry Bruun, Sustainable Outcomes and Mr Trevor Hockley, TJH Management Services Pty Ltd (the consultants) to undertake a comprehensive evaluation of options for the future of Monarto Quarries to enable Council to subsequently make informed decisions about the future of the quarry.

The consultants were selected given they had prepared the Monarto Quarries Business Plan 2005/06 – 2009/10 that was adopted and subsequently implemented by Council.

This exercise meant that the consultants were already in possession of considerable background information and had an excellent understanding of the business.

The Interim Report prepared by the consultants is attached.

DISCUSSION

Expression of Interest Process

Section 6 of the Interim report (page 7) discusses the merits of Council calling for Expressions of Interest (EOI) to purchase or manage Monarto Quarries.

Council's Senior Management Group supports the proposal to undertake an EOI process now rather than later.

The EOI process is expected to provide very valuable and objective information so that Council can take decisions from an informed base.

Attachment 2 of the Interim Report sets out the proposed sequence of actions and the associated timing. The consultants have proposed that the EOI period for submissions would be four weeks. The target timing would be to present a further report to Council (on the evaluation of the Expressions of Interest received) to the Council meeting to be held on 21 December 2009.

The consultants would manage the EOI process for Council with their evaluation and final report being presented as an attachment to a future Council meeting agenda item.

Governance Considerations

There are important governance matters to be considered given the following circumstances:

1. Council is a constituent council of the Adelaide Hills Region Waste Management Authority (AHRWMA);
2. The AHRWMA has an existing arrangement with council regarding access to and use of infrastructure (weighbridge, office, workshop, amenities, access road), and the shared cost of one staff member at Monarto Quarries;
3. Council owns land immediately adjacent to the Hartley Landfill that is of strategic importance to the AHRWMA (see the Map in the attachment);

4. The licence agreement that council has with the land owner (Harvey family) includes the 'footprint' of the AHRWMA licence for the landfill (see the Map in the attachment);
5. The AHRWMA Business Plan includes the need to review the AHRWMA arrangement with the land owner;
6. Council has Cr Lyn Stokes (Chairperson) and Mr Andrew Stuart as Board Members of the AHRWMA with Cr Margaret Wilksch as a Deputy Board Member; and
7. Council has Mr Brian Clancey as a member of the AHRWMA Management and Operations Committee (established by the Board to provide advice to and undertake functions as delegated by the Board).

Given the current circumstances it is anticipated that the AHRWMA would consider and in all probability submit some form of expression of interest to council. This however remains to be seen.

Very careful consideration will need to be given to processes to ensure that the fairness and integrity of the EOI process is not compromised or perceived to be compromised.

Given the review of Monarto Quarries by Council and the current land tenure review considerations of the AHRWMA, Mr Brian Clancey has determined that it would be preferable to both Council and the AHRWMA if he was to step down from the AHRWMA Management and Operations Committee and be replaced by another Council officer with suitable skills but who is not directly involved in Monarto Quarries.

Council's AHRWMA Board Members will individually need to determine if and when and to what extent they may wish to declare any conflict of interest in either a Council Meeting or AHRWMA Board meeting.

A possible risk to the EOI process may be a perception of some people that Council is simply going through a process for the sake of being seen to do so given the existing relationship between Monarto Quarries and the AHRWMA i.e. some may think that the outcome is a given and hence be less inclined to submit an expression of interest.

POLICY IMPLICATIONS

1. Financial/budget

The cost of the consultants' report (interim and final) is \$5,880 excluding GST.

The cost of the consultants to manage the EOI process including full evaluation of submissions received is \$5,000 -

\$6,000 excluding GST (subject to the magnitude of submissions received to be evaluated).

Council will incur some additional costs such as advertising the EOI process.

All of these costs will be met from existing Monarto Quarries budget lines.

2. Legal

The interim report highlights the provisions of the Local Government Act relating to the principal role and functions of councils and relates this to what is and isn't considered to be core business.

The agreement with the land owner (licence) contains provision for this to be transferred to another party.

Provision also exists for Extractive Mineral Leases to be assigned.

3. Staffing/Work Plans

Recommendation 6 seeks authority to continue to keep the staff of Monarto Quarries informed.

A separate Enterprise Bargaining Agreement is in place for the staff of Monarto Quarries.

Mr Brian Clancey is co-ordinating the work of the consultants.

Mr Ian Powell is assisting this process through the provision of information acquired when previously in the role of part time Manager, Monarto Quarries.

Council is in the process of securing the services of a suitable person to manage the daily operations of Monarto Quarries on a 0.2 FTE basis (equivalent of one day per week).

Council is also having further work undertaken by Olliver Geological Services to provide updated information on the quality, quantity, location and extraction of remaining stone, and the estimated cost of the remaining rehabilitation works.

As was the case leading up to and when the significant reforms to Monarto Quarries were undertaken in 2006, the current review and proposed next phase of calling for Expressions of Interest will require additional time from senior Council staff i.e. over and above the normal time demanded by Monarto Quarries.

This has implications for other Council initiatives but it is viewed as being far better to invest this time and effort now than run the risk of the 'do nothing' option (refer Risk Management heading below).

4. Environmental

Rehabilitation works have been undertaken and further obligations exist.

5. Social

Not applicable.

6. Strategic Plans

Monarto Quarries Business Plan 2005/06 – 2009/10.

Council Strategic Plan

6 Governance

Objectives

Place all Council enterprises on a sound business footing.

Identify and give priority to the core business of Council.

7. Risk Management

The operation of a quarry carries high operational and compliance risks e.g. OH & S for staff and in relation to contractors.

Not to review the future operations of Monarto Quarries now would also carry high risks including:

- Limited remaining product and likely diminishing quality;
- Significant and increasing rehabilitation obligations;
- Increasing competition and a volatile market; and
- Maintaining key customer relationships post Mr Ian Powell ceasing in the role of part time Quarry Manager and with a new crushing contractor.

8. Asset Management

A key consideration is the liability associated with site rehabilitation (refer above). Some of the remaining plant is also now very close to the end of its useful working life.

COMMUNITY CONSULTATION

1. Customer Needs Analysis

Communication will occur with key customers and stakeholders (e.g. the AHRWMA and the current crushing contractor ADCIV) as to Council's actions and the rationale for them. It will be made clear that it is 'business as usual'. This communication will be timed so that it does not provide any advance notice so as to avoid any potential contamination of the EOI process.

2. Promotion/Communications

The EOI process would be promoted by Council in a similar manner as an open tender call.

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ITEM 17.1 ATTACHMENT 1

District Council of Mount Barker

Monarto Quarries – Future Operations

Interim Report

Terry Bruun
Principal Consultant
Sustainable Outcomes

Trevor Hockley
Director
TJH Management Services Pty. Ltd.

27 August 2009

Commercial-in-Confidence**District Council of Mount Barker (DCMB)****Monarto Quarries – Future Operations****Interim Report****Contents**

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Appendices

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District Council of Mount Barker

Monarto Quarries – Future Operations

Interim Report

1. Introduction

The District Council of Mount Barker (DCMB) has engaged Terry Bruun, Principal Consultant, Sustainable Outcomes and Trevor Hockley, Director TJH Management Services Pty. Ltd. to undertake a comprehensive evaluation of options for the future of Monarto Quarries (MQ) to enable Council to make informed decision about the future of the quarry.

This Interim Report provides a general update on the evaluation project.

The map at Appendix 2 outlines the various facilities and features at MQ.

2. Recommendation

As a result of the initial work undertaken by the consultants, ***it is recommended that as an early step in the project Council seeks Expression of Interests (EOI) from the market place to purchase or manage MQ.***

The Interim Report explains the need to seek EOI at this stage of the evaluation and addresses the advantages, disadvantages, risks, and timeframe related to the recommendation.

3. Recent actions taken by DCMB

It is expected that it will be some months before the Council is in a position to make a decision on the future of MQ, and further, it is likely that up to 12 months may be required to introduce any new arrangement (depending on the option decided by Council).

The situation has been exacerbated with the redeployment of the former manager on 30 June 09 as a result of Council's management approval to the manager's request to scale back his working commitments.

The Council's Administration has taken recent action in response to the critical need to:

- maintain the present level of business activity (the quarry is "open for business");
- safeguard the reputation of the business, and protect the quarry's goodwill to ensure it is a 'marketable business'.

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Actions taken to date include:

- The quarry Foreman and Administration Officer, with the support of the General Manager Infrastructure & Projects, are temporarily sharing the operational responsibilities;
- A short term crushing contract has been arranged;
- A moderate price increase has been applied to the 2009/10 product price list recognising the current market conditions (50% of the increase in production costs have been absorbed).

In addition, the Council is seeking to engage a part time Quarry Manager for up to 6 months to:

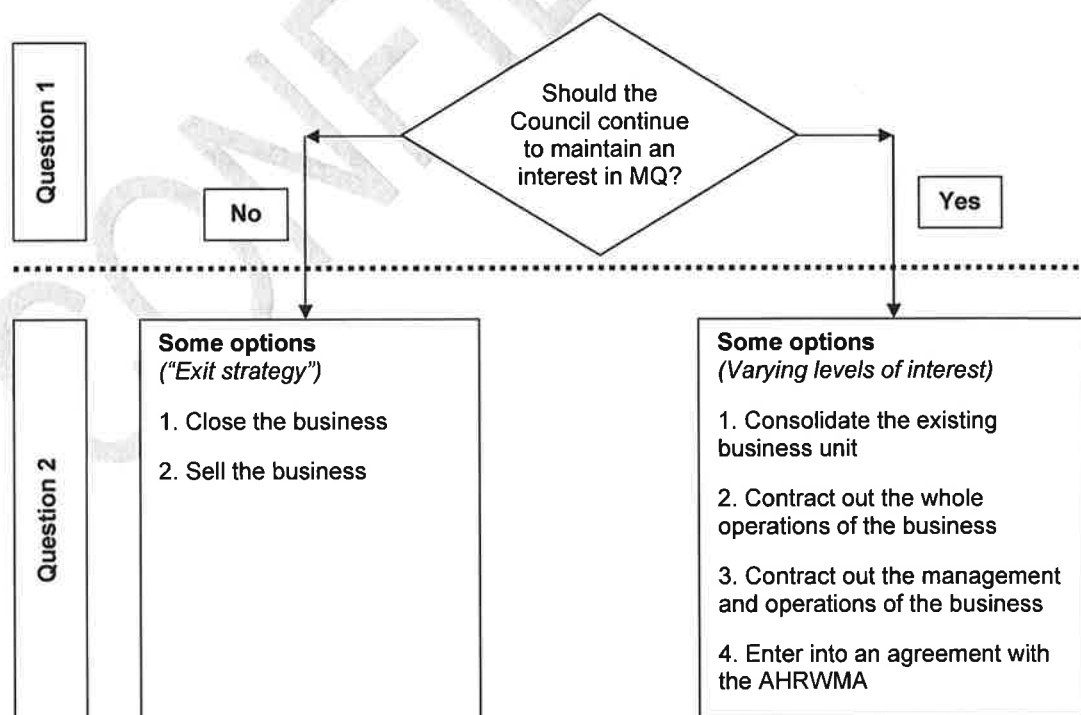
- ensure the daily operations and administrative functions of the quarry are conducted effectively;
- manage the onsite operations of the crushing contractor;
- manage the onsite relationship and landfill operations of the Adelaide Hills Region Waste Management Authority (as relevant to the quarry);
- continue the quarry's marketing initiatives;
- maintain the business relationships with the quarry's key customers.

4. What are the options for the future of MQ?

There are two questions the Council needs to consider in addressing its future interest in Monarto Quarries:

Question 1: Should the Council continue to maintain an interest in Monarto Quarries?

Question 2: Depending on the answer to question 1, what is the best option?



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Question 1: Should the Council continue to maintain an interest in Monarto Quarries?

In addressing this question, the consultants will consider the following four points:

(a) Is the management and operations of Monarto Quarries a core business of Council?

The Local Government Act 1999 Section 6: Principal role of a council and Section 7: Functions of a council set the legislative framework for the services and activities to be undertaken by a council. A judgement will be made about the Council's present involvement in MQ and the relationship to the legislative framework/context.

In considering this point, the evaluation will also assess the Council's two Strategic Plan objectives:

- "Give priority to the core business of Council" (6.6)
- "Place all Council enterprises on sound business footing" (6.1)

Preliminary evidence suggests that MQ is not a core business of Council but this matter requires further consideration. The consideration will also take into account the economic guiding principle that the public sector should only get involved in a commercial venture if there is or has been 'market failure'.

If it is concluded that MQ is a core business of Council, then attention will turn to what is required to ensure MQ is on a sound business footing (if it is not already)?

(b) What is the strategic advantage of maintaining an interest in MQ?

(c) What are advantages, disadvantages, and risks of the two alternatives – relinquish all interest in MQ or maintain an interest?

(d) Which of the various options will protect or enhance the Council's overall position (which is the focus of question 2)?

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Question 2: What is the best option?

A comprehensive assessment of all the **options** for both alternatives will be conducted.

Prior to assessing the options, it will be necessary to review:

- The opportunity cost of managing and operating the quarry (the resources committed limit the Council to address identified community needs);
- the market conditions in the medium and long term [market analysis of the supply (eg competitors) and demand (eg customer numbers and requirements) factors];
- the current activities of the quarry including:
 - financial
 - sales
 - current contracts
 - marketing efforts
 - rehabilitation commitments
 - arrangements with AHRWMA
 - future supply quality and quantity of raw material available from the quarry.

The assessment of the options will address the following factors:

- Level of risk
- legal issues
- Financial implications
- Opportunities
- Level of third party interest in the options
- Return on investment
- Community benefit
- Issues associated in sourcing alternative supply of road making material for Council
- Land tenure
- Implementation barriers
- Lead times to make the change
- Overall likelihood of success.

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5. The results of preliminary investigations

The consultants have conducted an initial assessment of the potential barriers to the external options. The potential barriers and the conclusions of the initial assessment are summarised below.

(1) The ability to assign Council's agreement to quarry the land to a third party (the "Harvey Agreement")

Clause 10 of the agreement states that "consent (to transfer the right to another party) shall not be unreasonably withheld"

(2) The ability to assign any current Extractive Mineral Leases (EML) to a third party.

Clause 6(11) of an EML states that "the Lessee (DCMB) will not assign without first obtaining the written consent of the Minister".

(3) Rehabilitation liability associated with exhausted EMLs

The nature of the rehabilitation liabilities is being assessed.

(4) MQ staff

Staff working at MQ have employment contracts with DCMB. The implications of these contracts are currently being assessed.

(5) Future supply (quantity and quality) of raw material

An independent assessment of the remaining raw material will be conducted over the next few weeks.

Work is continuing on assessing these and other matters that are not dependent on the outcomes of the EOI.

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6. Level of third party interest in the options

The level of third party interest in various relevant options represents a critical factor in comprehensively assessing the options.

The consultants consider that it will be difficult to realistically assess some of the options (for example, what is the market value and level of interest for the 'sell option'?) without objective information.

Consequently it is proposed that the Council test the market with Expressions of Interest (EOI) to purchase or manage MQ. The information gained from this exercise would provide real data and add significant value to the final report (and recommendations), and provide the Council with the necessary detail to make an informed position.

An indicative timeframe for conducting this step at this stage (rather than after the Council has made a decision on the future of MQ) is presented at Appendix 2. This recommended approach does add about 6 to 8 weeks to the work but this is offset by the extremely valuable information to be gained.

The EOI strategy presents no significant risk to DCMB as it would not diminish any likely market interest in MQ nor would it jeopardise the customer confidence in the future of MQ. However if the Council decides to proceed with the EOI at this stage, and recognising it would be a public process, it would be important to keep all customers informed of the Council's actions and the reason for these actions.

If the Council decided not to conduct an EOI at this stage, the evaluation of the options would be substantially restricted because of the limited (and to some extent the hypothetical). Council would be in a position of making a decision based a report which would contain a number of assumptions and qualifications. This approach would expose Council to an element of risk.

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Appendix 1

Likely timeframe if Council decided to seek EOI

[illegible]

Commercial-in-Confidence**Appendix 2****Monarto Quarries****Map**

Please note:

The following maps are still in draft form pending confirmation or otherwise of the accuracy of the content from the Adelaide Hills Region Waste Management Authority.

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