

RECOMMENDATION

- i. 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 information the disclosure of which 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.
- ii. That the Chief Executive Officer, General Manager Development and Technical Services, General Manager Strategy, General Manager Corporate Services and the Minute Secretary be permitted to remain in the room.
- iii. That the CEO and Mayor be given the delegated powers to pursue negotiations with Mr and Mrs Martin Liebelt regarding the preparation and signing of an Option to Purchase Lot 912 Sims Road Mount Barker contained in Certificate of Title Volume 5790 Folio 376.
- iv. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that information relating to this item be kept confidential until ~~1 March 2005. 1 July 2005 (refer to Item 100.1 18 May 2004).~~ (Council Meeting 13 September 2005 extended confidentiality until 5 September 2006) – released at 4 Sept 06 meeting
- v. That subject to Section 90 of the Local Government Act 1999 as amended, the public be readmitted to the meeting at the conclusion of the item.

BACKGROUND

Council has over recent months, following the finalisation of the Residential and Industrial Study, sought to further reaffirm the Paech Road site as a serious opportunity for the eventual development of an industrial estate. This site, coupled with other industrial sites considered throughout the District collectively provide the needed industrial development and employment generating opportunities for the District over the coming 10 – 20 years.

Council has progressed its investigations regarding the Paech Road site, and others, by recently lodging a Statement of the Intent for the

Industrial Plan Amendment Report (PAR) with the Minister for Planning and Urban Development.

As Council's investigations progress and intensify there is a serious concern, that as a consequence of land speculation occurring particularly about the edges of Mt Barker, the site could be purchased by a person not interested in seeing the land developed for industrial uses. This could very seriously undermine the work completed to date and the future work still required to be completed in realising the Paech Road industrial site.

The best means to overcome the uncertainty is for Council to have a material interest in the land.

DISCUSSION

Since Council had endorsed the Residential and Industrial Study 2020: Towards Sustainability ongoing discussions have been held with Mr and Mrs Liebelt who are the owners of the land. These discussions were held to keep the owner, of a potentially strategic site, informed of Council's deliberations and for staff to be kept informed as to whether they had been approached by others interested in purchasing the site.

Recently the discussions held with the Liebelts were focussed on their thoughts about their site being identified for future industrial development and whether they would be supportive of such development occurring **IF** Council's investigations, as per the PAR, concluded that the Paech Road site was a preferred site for industrial land.

The responses from the Liebelts from have been positive in that they feel the site is well located for industrial development. Furthermore, they would be supportive and would be interested in entering into discussions with Council regarding the potential sale of at least portion of the site. In these discussions an Option to Purchase one of the two titles that form the identified Paech Road site was raised.

The Liebelts have advised that one of the two allotments would not be subject to any option as they would be wanting to retain ownership. To the extent that they may in the future wish to be involved in and have a financial interest in the land if rezoned industrial.

The recommendation presented seeks direction to formalise the discussions held and negotiate an Option to Purchase lot 912 located direct adjacent and abutting both Paech and Simms Roads. Council would need to secure this site, having both primary road frontages to be confident about the future development.

A key basis of the negotiations will be that if Council cannot secure the corner site then it cannot be confident the land will be available and consequently may need to reconsider completely the whole Paech Road area and look elsewhere.

Valuation Advice

Maloney Field Services Pty Ltd have been engaged to undertake an independent valuation of the site based on both its current rural land use and zoning and potential value if the land is zoned Industrial.

The rural land value for lot 912 has been presented at \$ 640,000. Lot 913 valued at \$750,000.

The negotiations with the Liebelts will proceed, if endorsed, based on the rural value of lot 912 at \$640,000.

Legal Advice

Legal advice has been received from Norman Waterhouse regarding this matter. They have recommended that Council proceed to negotiate an Option to Purchase. The substance of the advice received is summarised below;

Option Fee – That a nominal option fee be negotiated in the order of \$1,000 and paid upon the execution of the Option Agreement. Should as a consequence of the negotiations it is agreed that other than a nominal fee is paid then that fee shall constitute portion of the purchase price.

Option term – the term to be as long as possible say 3-5 years to allow relevant Plan Amendment Report to be processed and subsequent development applications to be prepared and approved. A 5 year time period is to be pursued.

Purchase Price of Land – Based on the existing rural zoning and land use of the land and fixed at the time of the execution of the Option Agreement.

Conditions Attaching to sale – Straight settlement within 30 days of option wanting to actioned.

Costs- Cost of the Option Agreement covered by Council.

POLICY IMPLICATIONS

1. Financial/budget

Should the negotiations reach a point that, given the extent of time Council is wanting to secure the site, and or other reasons

presented, the Liebelts seek other than the nominal fee of \$1,000, but a percentage of the price of the land then that percentage figure needs to be considered.

It could eventuate that an option fee of between 5%-10% of the price could be sought. Consequently, based on a value of the land at \$640,000 the Option fee could be \$32,000 (based on 5%) or \$64,000 (based on 10%).

The allocation of up to \$64,000 will in the first instance need to be sourced from Council's existing budget. The mechanics of which will need to be deliberated at the soon to be convened March 2004 budget review.

This medium to longer term financial commitment to the purchase of the site, should it proceed, could either be refunded wholly or partly depending on the negotiations held with possible third party interests who would want to develop the site.

Alternatively, it could well eventuate that Council's initial investment to secure the site, acting as seed funding, results in a positive financial return corresponding to a percentage increase in the value of the land as a consequence of its rezoning.

2. Legal

Refer above comments

3. Staffing/Work Plans

All works undertaken to date regarding this matter and in the future will occur in accordance with set priorities established by Council.

4. Environmental

The eventual development of the Paech Road site, and any other sites identified will be in strict accordance with established environmental outcomes to be achieved.

5. Social

The need for Council to facilitate the creation of employment opportunities will be accepted. The involvement by Council in the manner detailed in this report is consistent with this social outcome.

6. Strategic Plans

Council's involvement in the facilitation of economic development opportunities is detail in the Community Strategic Plan.

COMMUNITY CONSULTATION

1. Customer Needs Analysis

The merits or otherwise of the Paech Road site proceeding through the rezoning process will involve giving every resident the opportunity to express their views.

2. Promotion/Communications

Not applicable.

CONFIDENTIAL ITEM

12.6 **REPORT TITLE: HAHNDORF RESORT**

**AUTHOR'S TITLE: GENERAL MANAGER CORPORATE AND
COMMUNITY SERVICES**

REPRESENTORS: NONE

FILE NUMBER: 210534

**ATTACHMENTS: 1 CONFIDENTIAL WORKSHOP NOTES OF
THE 6TH NOVEMBER 2002
2. CONFIDENTIAL WORKSHOP NOTES OF
THE 25TH NOVEMBER 2002
3. RATE ENQUIRY COPY**

DEPARTMENT: CORPORATE AND COMMUNITY SERVICES

**DEPARTMENT
MANAGER: MALCOLM CROUT**

PURPOSE

To update Council on the debt position of the Hahndorf Resort and establish direction from Council on the manner in which officers should proceed with this matter

RECOMMENDATION

1. That pursuant to Section 90(2) (i) 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 of litigation .that Council has reasonable grounds will take place.
2. That the Chief Executive Officer, General Manager Corporate and Community Services, General Manager Strategy and , General Manager Development and Technical Services and the Minute Secretary be permitted to remain in the room.
3. That Council notes the report.
4. That Council authorise the Chief Executive Officer, or his delegate, to take whatever actions are required in the circumstances and incur reasonable expenditure to pursue payment of the outstanding rates, interest and fines owed under assessment 17694, and
5. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that all documentation

information including this report and any attachments and the resultant minutes relating to this item be kept confidential until ~~1st March 2005; 1 July 2005 (refer to Item 100.1 – 18 May 2004) Council Meeting 13 September 2005 removed confidentiality provisions)~~

6. That subject to Section 90 of the Local Government Act 1999 as amended, the public be readmitted to the meeting at the conclusion of the item.

BACKGROUND

On the 6th November 2002, Council was informed in a workshop of matters pertaining to the outstanding rates on the property known as Hahndorf Resort. Various options available to Council with relation to the recovery of this debt were discussed including recovery through legal means.

On the 25th November a workshop was conducted to consider the legal advice given by Norman Waterhouse.

Attachments one and two form part of this report in that they fully describe the background to this matter.

DISCUSSION

The General Manager Corporate and Community Services and the Senior Rates and Property Officer have had several meetings with David White, the then General Manager of the resort in order to prove the debt.

Subsequently, David was directed by his management to hand the matter to Peter Yassa, who was to take responsibility for negotiating a payment plan. After three meetings over several months with Peter Yassa, it became clear that the matter was not proceeding. The key issue maintained by Peter was that in order to pay the debt, the resort needed to develop so as to create a cash flow. However, in mid 2003, the plans to develop the resort were abandoned. The General Manager Corporate and Community Services left several messages for Peter Yassa to make contact, and around October 2003, discovered that Peter Yassa had left the organization and that the matter was being handled by another person. That person never made contact, nor was the author able to establish who was responsible.

In January 2004, the resort was being examined by valuers as a means of providing security for raising capital by the parent company. We believe that the financial institution concerned is aware of our debt. In recent months, Ashworth Corporation, the holding company has been under the scrutiny of the Australian

Securities and Investments Commission (ASIC) and they continue to remain under review. This review has been reported in a financial magazine.

The outstanding rates, interest and fines total \$421088 as per **attachment 3 to Item 12.6**. The capital value of the land is \$3.5Million. It is important to understand that rates are a charge over the land and Council may seek to recover the debt under section 184 of the Local Government Act 1999. The property is unable to be sold without settlement of the rates and it is unlikely that any institution will loan funds against the security of the property while the rates remain unpaid. After several unsuccessful attempts to make payment arrangements, recovery may rely upon invoking section 184.

At the time of preparing this report, the third new General Manager of the resort has made contact with the Senior Rates and Property Officer with a view to entering into a payment plan. The author has attempted to make contact, and will continue to do so up to the time of the Council meeting for the purpose of keeping information current.