

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
27	6 July 09	Morphett Street Stormwater and Soil Contamination Update	Reason: S 90(3)(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 council; and (ii) would, on balance, be contrary to the public interest.; And (i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;	Discussion, Agenda, Attachment & Minutes	No longer confidential	Extend Confidentiality 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revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.	5 Sept 11	4 Sept 12	28/8/12

- (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - (ii) would, on balance, be contrary to the public interest;
2. That the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, Manager Strategic Planning, former Manager Monarto Quarries and the Minute Secretary be permitted to remain in the room.

Seconded Councillor Irvine and CARRIED

Moved Councillor Gamble that Council

- 3. Note the report.
- 4. That Council choose not to proceed with an art piece for 2008/09 and roll over the approved budget and combine with the draft 2009/10 budget for public art pieces. A revised process to select a preferred artist with an increased budget for 2009/10 of \$35,000 (\$15,000 + \$20,000) will be the subject of further reports to Council next year setting criteria.

Seconded Councillor Irvine and CARRIED

Moved Councillor Gamble

- 5. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments be kept confidential until 6 July 2010 and minutes relating to this item be available to the public.
- 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.

Seconded Councillor Irvine and CARRIED

5.3 **REPORT TITLE:** CONFIDENTIAL ITEM - MORPHETT STREET STORMWATER & SOIL CONTAMINATION UPDATE

DATE OF MEETING: 6 JULY 2009

AUTHOR: BRIAN CLANCEY

AUTHOR'S TITLE: GENERAL MANAGER, INFRASTRUCTURE & PROJECTS

FILE NUMBER: 44-070-011

DEPARTMENT: INFRASTRUCTURE & PROJECTS

DEPARTMENT MANAGER: BRIAN CLANCEY

Moved Councillor Zanker

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 –
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 council; and
would, on balance, be contrary to the public interest.
And
 - (i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;
2. That the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, Project Manager (Mr Ian Powell) and the Minute Secretary be permitted to remain in the room.

Seconded Councillor Irvine and CARRIED

Moved Councillor Gamble

3. That Council note the report.
4. That Council note that a further agenda item will be presented to a future Council meeting when additional information is available.

Seconded Councillor Brazher-Delaine and CARRIED

Moved Councillor Stokes

5. That Council 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 6 July 2010.
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.

Seconded Councillor Zanker and CARRIED

17.3 **REPORT TITLE:** **CONFIDENTIAL ITEM - MORPHETT STREET STORMWATER & SOIL CONTAMINATION UPDATE**

DATE OF MEETING: 6 JULY 2009

AUTHOR: **BRIAN CLANCEY**

AUTHOR'S TITLE: **GENERAL MANAGER, INFRASTRUCTURE & PROJECTS**

REPRESENTORS: **N/A**

FILE NUMBER: **44-070-011**

ATTACHMENTS: **NIL**

DEPARTMENT: **INFRASTRUCTURE & PROJECTS**

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

PURPOSE

To provide an update on the Morphett Street stormwater upgrade and soil contamination.

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 –
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 council; and
would, on balance, be contrary to the public interest.

And

- (i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;

2. That the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, Project Manager (Mr Ian Powell) and the Minute Secretary be permitted to remain in the room.
 3. That Council note the report.
 4. That Council note that a further agenda item will be presented to a future Council meeting when additional information is available.
 5. That Council 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 6 July 2010.
 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.
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BACKGROUND

Further to the information provided in the agenda item for the special meeting of Council held on 24 September 2008 and the most recent of several Memos to Council Members dated 2 February 2009, the following update is now provided.

DISCUSSION

Stormwater Works

The upgrading works have recently been completed and the new stormwater infrastructure is now functional. The works were completed within the revised budget approved by Council.

Importantly the capacity of the stormwater drainage has been significantly increased and all of the infrastructure is now located on council land ensuring accessibility as and when required.

Soil Contamination

Despite Council officer negotiations with representatives of Gilbert Motors, no admission of liability or other proposal has been forthcoming as yet from Gilbert Motors regarding the soil contamination encountered during the construction works.

Council has recently written to the Chief Executive Officer of the Environment Protection Authority (EPA) seeking a meeting to discuss what role the EPA would be prepared to play, particularly given new soil contamination legislation comes into effect on 1 July 2009 providing the EPA with greater powers in this area.

Council has communicated with the EPA previously. To this point the EPA has been helpful in terms of council resuming the infrastructure works but very passive regarding the contamination source itself.

Total costs to Council for the soil contamination are now exceeding \$0.4 million.

Tonkin Consulting Dispute

Tonkin Consulting undertook the design of the stormwater infrastructure upgrade.

Council wrote to Tonkin Consulting in late 2008 indicating that they had very significantly underestimated the cost of relocation of services and failed to fulfil some requirements of the project brief relating to this, resulting in a significant financial impact on Council.

This impact would have been much greater had Council officers not contributed to re-design work of the stormwater infrastructure to minimise conflicts with existing other services.

A response from the Chief Executive Officer (CEO) of Tonkin Consulting regarding the dispute as to the performance of Tonkin was recently received, almost six months since Council wrote.

Council has recently sent a further letter to the CEO of Tonkin Consulting to express extreme disappointment with both the delay and content of their response, and advise that we are now seeking legal advice.

Instructions have been issued by Council to Thomson Playford Cutlers (TPC) regarding possible legal avenues and the associated implications.

TPC has sought some further information from Council which is in the process of being provided. Following this it is anticipated that the TPC advice will be provided to Council without delay.

With the benefit of the TPC advice, Council can then determine what action it wishes to undertake regarding Tonkin Consulting.

Council has not awarded any further work to Tonkin Consulting in recent times.

Walker Street – Undergrounding of Power Lines

There are 3 stobie poles on Walker Street to be removed (between Morphett and Gawler Streets). Council has been successful in gaining Power Line Environment Committee (PLEC) funding for this project (PLEC 2/3 and Council 1/3).

PLEC does not accept any responsibility whatsoever for any costs associated with soil contamination. Council has been engaged in lengthy negotiations with representatives of Gilbert Motors to enable the project to proceed.

In short, Council indicated that the undergrounding project would not proceed unless Gilbert Motors fully indemnified Council for any project costs incurred as a result of soil contamination. Gilbert Motors has agreed to provide such indemnity and a formal Deed between Council and Gilbert Motors has recently been executed for this purpose.

Next Steps

The proposed next steps are:

1. Proceed with the Walker Street undergrounding of power lines as a PLEC project.
2. Meeting with the CEO of the EPA regarding the soil contamination.
3. Receive and consider legal advice from TPC on the dispute with Tonkin Consulting.
4. Preparation of a further Council meeting agenda item.

POLICY IMPLICATIONS

1. Financial/budget

Refer to agenda item of 24 September 2008 (attachment 3).

Council is still incurring some costs through the procurement of further legal advice from TPC.

Once these latest costs are known an overall financial impact can be prepared. This will be provided in the next Council meeting agenda item referred to above under Next Steps.

2. Legal

Thomson Playford Cutlers has provided legal advice to Council on the soil contamination and their advice is awaited on the dispute with Tonkin Consulting.

Council has liaised with the EPA regarding regulatory requirements for the storage, testing, transport and disposal of contaminated soil.

3. Staffing/Work Plans

As previously advised the above processes have been very resource intensive (Council staff plus legal and other professional advice).

This has come at a considerable opportunity cost in relation to delaying some other Council initiatives.

4. Environmental

Requirements of the EPA have been satisfied.

5. Social

Public health was not threatened through the establishment of an exclusion zone during the physical works.

6. Strategic Plans

Strategic Plan

Community Assets - Objective 1

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

7. Asset Management

Relocation of the stormwater infrastructure means that council now has guaranteed legal access to ensure the future management of this asset.

8. Risk Management

The risk of flooding has been significantly reduced through the upgrading and relocation of the stormwater infrastructure.

The soil contamination presents a risk, given the possibility of further migration.

COMMUNITY CONSULTATION

1. Customer Needs Analysis

Not applicable at this time.

2. Promotion/Communications

Not applicable at this time.

