

CONFIDENTIAL ITEMS 2003 – AUGUST 2011 – RELEASED ITEMS

#	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
5	16 Jan 06	Monarto Quarries	<p>Reason: S 90(3)(b) information the disclosure of which:</p> <p>(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</p> <p>(ii) would, on balance, be contrary to the public interest.</p>	Discussion, Agenda, Attachment & Minutes	Concluded	<p>Extend Confidential Order to September 2013</p> <p>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revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.</p>	5 Sept 11	NA	RELEASE 5 Sept 11

72.8 **REPORT TITLE:** **CONFIDENTIAL REPORT - MONARTO
QUARRIES SITE**
DATE OF MEETING: **16 JANUARY 2006**
AUTHOR: **BRIAN CLANCEY**
AUTHOR'S TITLE: **GENERAL MANAGER, ASSETS &
INFRASTRUCTURE**
REPRESENTORS: **NOT APPLICABLE**
FILE NUMBER: **40/080/026**
DEPARTMENT: **ASSETS & INFRASTRUCTURE**
DEPARTMENT
MANAGER: **BRIAN CLANCEY**

8.28pm Cr Rothe left the meeting.

Moved Cr Zanker that Council:

1. 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:
 - (i) information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom 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, General Manager Assets & Infrastructure, General Manager Strategy and Development, General Manager Corporate and Community Services, Manager Organisational Development and the Minute Secretary be permitted to remain in the room.

Seconded Cr Stokes and CARRIED.

8.30pm Cr Rothe Returned to the meeting.

Moved Cr Gamble:

3. Note the legal advice from Mellor Olsson in relation to Monarto Quarries.
4. Formally provide a copy of this legal advice to the Board of Monarto Quarries.
5. Authorise Council officers, in consultation with Monarto Quarries, to pursue a new agreement between Council and the land owners of the Monarto Quarries site, with the provisions of such an agreement to be subject to formal consideration by Council and the Board of Monarto Quarries prior to the agreement being entered into.

6. Advise Monarto Quarries of the process proposed by Council as contained in recommendation 5 above.
Seconded Cr Tsigros and CARRIED.

Moved Cr Allen:

7. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports and attachments, and minutes relating to this item be kept confidential until ~~11 January 2007~~ ~~extended at Council mtg 4 Sept 2006 to 6 Sept 2007.~~ ~~extended to 6 September 2008 at 3 September 2007 meeting.~~ ~~9 September 2009, 10 September 2010, 5 September 2011~~

6/9/10: 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.

8. 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 Cr Bails and CARRIED.

MEETING DECLARED CLOSED AT 8.35 PM

MAYOR

DATE

12.8 **REPORT TITLE:** **CONFIDENTIAL REPORT - MONARTO QUARRIES SITE**

DATE OF MEETING: 16 JANUARY 2006

AUTHOR: **BRIAN CLANCEY**

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

REPRESENTORS: **NOT APPLICABLE**

FILE NUMBER: **40/080/026**

ATTACHMENTS: **TO BE PROVIDED UNDER SEPARATE COVER**

DEPARTMENT: **ASSETS & INFRASTRUCTURE**

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

PURPOSE

To advise Council of the legal advice received in relation to a number of issues involving Monarto Quarries and proposed actions in relation to this.

RECOMMENDATION

That Council:

1. 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:
 - (i) information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom 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, General Manager Assets & Infrastructure, General Manager Strategy and Development, General Manager Corporate and Community Services, Manager Organisational Development and the Minute Secretary be permitted to remain in the room.

3. Note the legal advice from Mellor Olsson in relation to Monarto Quarries.
4. Formally provide a copy of this legal advice to the Board of Monarto Quarries.
5. Authorise Council officers, in consultation with Monarto Quarries, to pursue a new agreement between Council and the land owners of the Monarto Quarries site, with the provisions of such an agreement to be subject to formal consideration by Council and the Board of Monarto Quarries prior to the agreement being entered into.
6. Advise Monarto Quarries of the process proposed by Council as contained in recommendation 5 above.
7. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports and attachments, and minutes relating to this item be kept confidential until 11 January 2007 extended until 5 Sept 2011
8. 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.

Important Note: At the time of distributing the agenda, the legal advice from Mellor Olsson referred to above was in final draft form. It is expected that the advice will be received in final form on Thursday 12 January 2006 and will then be distributed to elected members under separate cover.

BACKGROUND

In accordance with previous information provided to Council and Monarto Quarries, Council sought legal advice from Mellor Olsson on the following:

1. The pros and cons of whether Council or Monarto Quarries or both should be party to a new agreement for the quarry site with the land owners.
2. The pros and cons of the Extractive Mineral Licences being held in the name of Council or Monarto Quarries.
3. The implications of not having an agreement with the land owners.
4. Some associated administrative arrangements involving payments to the land owners e.g. tax invoices, the GST etc.

At the most recent meeting of the Monarto Quarries Board, Mr Brian Clancey was in attendance and made the Board aware that Council had sought this advice and that he had just received a first draft.

The Monarto Quarries Board resolved to request that Council formally provide the Board with a copy of the Mellor Olsson advice once it was in final form.

DISCUSSION

The advice to Council from Mellor Olsson has been given having regard to the existing arrangements including the practical considerations confronting Council (e.g. Council is the holder of various mining leases).

In summary the legal advice is:

1. Council is best placed to be a party to a new agreement with the land owners;
2. Council is best placed to hold the Extractive Mineral Licences;
3. It is preferable to seek to negotiate a new agreement with the land owners rather than have a Court determine the compensation payable to the land owners pursuant to the Mining Act; and
4. Negotiations with the land owners in respect of a new agreement will need to address the issue of the GST.

Council is still communicating with Donaldson Walsh (the lawyers acting for the land owners) in respect of an under payment that has occurred, as reported to Council on 5 December 2005. Council has formally indicated that it seeks to progress a new agreement. Donaldson Walsh has sought information on what Council proposes would be included in a new agreement.

It is in Council's best interests to progress this promptly. With the benefit of further advice from Mellor Olsson, Council will be in a position to provide a proposed new agreement.

It is proposed that Council undertake these negotiations in consultation with Monarto Quarries and that Council be the party to a new agreement with the land owners (on the assumption that such an agreement can be successfully negotiated). Prior to a new agreement being entered into by Council, the provisions of the agreement would be subject to formal consideration by Monarto Quarries and Council.

On the basis of previous discussion by the Monarto Quarries Board it is likely that the Board would be comfortable with this approach. The

Board has its next meeting on 18 January 2006. The legal advice received by Council could be tabled at that meeting together with information as to the process now being proposed by Council.

POLICY IMPLICATIONS

1. Financial/budget

Whilst specific budget provision has not been made for the procurement of this legal advice, there is a budget line for legal advice for Contracts and Property Management that can be used.

2. Legal

Legal advice has been obtained as covered in the body of the report. Further legal advice is proposed as indicated.

3. Staffing/Work Plans

The proposed actions can be accommodated from within existing staffing arrangements.

4. Environmental

Not applicable.

5. Social

Not applicable.

6. Strategic Plans

6 Governance

Place all Council enterprises on a sound business footing.

COMMUNITY CONSULTATION

1. Customer Needs Analysis

Not applicable.

2. Promotion/Communications

Not applicable.