

CONFIDENTIAL ITEMS 2003 – 16 SEPTEMBER 2014

#	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
					this matter and in relation to other contract negotiations.				
87	26 May 2014	Land Acquisition Opportunity	<p>Section 90 (3) (b) Order</p> <p>1. Pursuant to Section 90(3)(b) Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, the four General Managers and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 3.1 Strategic Land Acquisition Opportunity.</p> <p>The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this agenda item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:</p> <ul style="list-style-type: none"> - conducting business; - proposing to conduct business; and - would prejudice the commercial position of the Council <p>in that the information to be considered includes information, the disclosure of which could prejudice the Council's</p>	<p>Extend the current confidentiality order for Agenda Item 17.1 Land Acquisition Opportunity considered at the Council meeting on 7 April 2014</p> <p>And 26 May 2014 council report inclusive of all attachments, related documents and all minutes</p>	<p>See order details in column 4.</p>	<p>A contract has been executed for the sale and purchase of some or all of the land that is the subject of the report and Council has resolved to proceed to settle the contract; or 26 February 2015 whichever is the sooner.</p>	1 Sept 14	26 Feb 15	

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			commercial position during negotiations. In addition the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations. 12. Extend the current confidentiality order for Agenda Item 17.1 Land Acquisition Opportunity considered at the Council meeting on 7 April 2014 until: 12.1 a contract has been executed for the sale and purchase of some or all of						

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			<p>the land that is the subject of the report and Council has resolved to proceed to settle the contract; or</p> <p>12.2 26 February 2015 whichever is the sooner.</p> <p>13. Pursuant to Section 90 (3) (b) That having considered Agenda Item 3.1 Strategic Land Acquisition Opportunity 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 inclusive of all attachments, related documents and all minutes be retained in confidence until:</p> <p>13.1 a contract has been executed for the sale and purchase of some or all of the land that is the subject of the report and Council has resolved to proceed to settle the contract; or</p> <p>13.2 26 February 2015 whichever is the sooner.</p>						

MINUTES OF THE SPECIAL MEETING of the District Council of Mount Barker held in the Council Chambers of the Local Government Centre, Mount Barker on Monday 26 May 2014 at 5.45pm.

PRESENT Mayor (A. Ferguson), Councillors Grosser, Irvine, Hamilton, Campbell, Heath, Corbell, Westwood, Bettcher and Stokes.

IN ATTENDANCE: Chief Executive Officer (A. Stuart), General Manager Infrastructure & Projects (B. Clancey), General Manager Council Services (G. Parker), General Manager Planning & Development Services (G. Waller), General Manager Corporate Services (D. Peters), and the Minute Secretary (S. Miller.)

The meeting opened with an **Expression of Faith and Welcome**.

1. APOLOGIES/LEAVE OF ABSENCE

Councillor Bailey

2. CONFLICT OF INTEREST DECLARATION

NIL

3. CONFIDENTIAL REPORTS

3.1 REPORT TITLE: CONFIDENTIAL ITEM: STRATEGIC LAND ACQUISITION OPPORTUNITY

DATE OF MEETING: 26 MAY 2014

FILE NUMBER: 64/005/306

Moved Councillor Irvine that Council:

Section 90 (3) (b) Order

1. Pursuant to Section 90(3)(b)
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, the four General Managers and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 3.1 Strategic Land Acquisition Opportunity.

The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this agenda item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:

- conducting business;
- proposing to conduct business; and
- would prejudice the commercial position of the Council

in that the information to be considered includes information, the disclosure of which could prejudice the Council's commercial position during negotiations.

In addition the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.

Seconded Councillor Bettcher

CARRIED
SM20140526.01

5.48pm Moved Councillor Westwood that Council:

2. Pursuant to regulation 21 of the Local Government (Procedures at Meetings) Regulations it is recommended that the Presiding Member implement a short term suspension of proceedings to enable informal discussions to occur given the nature of the matter being considered, during which time no motion can be moved other than a motion to end the period of suspension of normal proceedings, and that the motion has the support of at least two thirds of the Council members present at the meeting.

Seconded Councillor Corbell

CARRIED
SM20140526.02

6.42pm Moved Councillor Westwood that Council:

3. That the period of short term suspension of proceedings now end.

Seconded Councillor Stokes

CARRIED
SM20140526.03

Moved Councillor Campbell that Council:

4. Adopt the following recommendations of the Chief Executive Officer to amend and add to the previous Council resolutions relating to this matter (see attachment 1).
5. Note:
 - 5.1 the letter received from the Adelaide Polo Club dated 9 May 2014;
 - 5.2 the Council letter in response to the Adelaide Polo Club dated 19 May 2014;
 - 5.3 that a contract for the sale and purchase of the Adelaide Polo Club site (being lots 103 and 106 Fidler Lane) has not been executed by Council and the Adelaide Polo Club; and
 - 5.4 that SA Power Networks is yet to advise of the location for the required new 66kv power lines so it is not yet known if that infrastructure would have a direct impact on the Adelaide Polo Club site.
6. Confirm that the Council's objective remains to secure an area of the Adelaide Polo Club site of approximately 7.5 hectares for community open space whilst minimising the risk and financial exposure to Council to the extent that is reasonably achievable.

Seconded Councillor Stokes

CARRIED
SM20140526.04

Councillor Hamilton called for a DIVISION

The Mayor declared the vote set aside.

Councillors voting in the affirmative: Councillors Westwood, Stokes, Campbell, Heath, Corbell, Bettcher, Grosser and Irvine.

Councillors voting in the negative: Councillor Hamilton

The Mayor declared Motion SM20140526.04 CARRIED

Moved Councillor Westwood that Council:

7. Authorise the Chief Executive Officer to continue to pursue this objective, including via further negotiations with the Adelaide Polo Club with the preferred option being option 1 and if this option is not achievable to then pursue options 2-4 inclusive and in that order as set out in attachment 8.

Seconded Councillor Bettcher

CARRIED
SM20140526.05

Councillor Hamilton called for a DIVISION

The Mayor declared the vote set aside.

Councillors voting in the affirmative: Councillors Westwood, Stokes, Campbell, Heath, Corbell, Bettcher, Grosser and Irvine.

Councillors voting in the negative: Councillor Hamilton

The Mayor declared Motion SM20140526.05 CARRIED

Moved Councillor Westwood that Council:

8. Authorise the Chief Executive Officer and Mayor to execute a conditional contract and any associated documentation (noting that this authority is sufficient to support the application of the Council common seal) for the purchase of portion of the Adelaide Polo Club site for the purposes of community open space being approximately 7.5 hectares (approximately 25% of the total site) and for an amount that does not exceed the independent valuation advice (currently awaited) by more than 15% with the purchase price to be payable as a lump sum at settlement.

Seconded Councillor Campbell

CARRIED
SM20140526.06

Councillor Hamilton called for a DIVISION

The Mayor declared the vote set aside.

Councillors voting in the affirmative: Councillors Westwood, Stokes, Campbell, Heath, Corbell, Bettcher, Grosser and Irvine.

Councillors voting in the negative: Councillor Hamilton

The Mayor declared Motion SM20140526.06 CARRIED

Moved Councillor Heath that Council:

9. Acknowledge that the pursuit of the Council's objective may involve the Council ultimately determining to enter into a commercial arrangement with either the Adelaide Polo Club and/or a private sector developer.
10. Acknowledge that the Adelaide Polo Club is free to act as it sees fit in regards to the disposal of its site.

11. Receive a further report on the progress of the above as soon as practicable but in any event by no later than 26 July 2014 inclusive of a proposed process to pursue Council's objective that would satisfy all legislative and probity requirements.

Seconded Councillor Westwood

CARRIED
SM20140526.07

Councillor Hamilton called for a DIVISION

The Mayor declared the vote set aside.

Councillors voting in the affirmative: Councillors Westwood, Stokes, Campbell, Heath, Corbell, Bettcher, Grosser and Irvine.

Councillors voting in the negative: Councillor Hamilton

The Mayor declared Motion SM20140526.07 CARRIED

Section 91(7) Order

Moved Councillor Westwood that:

12. Extend the current confidentiality order for Agenda Item 17.1 Land Acquisition Opportunity considered at the Council meeting on 7 April 2014 until:

- 12.1 a contract has been executed by the Council and the Adelaide Polo Club for the sale and purchase of some or all of the Adelaide Polo Club land on Fidler Lane and Council has resolved to proceed to settle the contract; or

- 12.2 26 February 2015 whichever is the sooner.

13. Pursuant to Section 90 (3) (b)

That having considered Agenda Item 3.1 Strategic Land Acquisition Opportunity 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 inclusive of all attachments, related documents and all minutes be retained in confidence until:

- 13.1 a contract has been executed by the Council and the Adelaide Polo Club for the sale and purchase of some or all of the Adelaide Polo Club land on Fidler Lane and Council has resolved to proceed to settle the contract; or

- 13.2 26 February 2015 whichever is the sooner.

Seconded Councillor Heath

CARRIED
SM20140526.08

Councillor Hamilton called for a DIVISION

The Mayor declared the vote set aside.

Councillors voting in the affirmative: Councillors Westwood, Stokes, Campbell, Heath, Corbell, Bettcher, Grosser and Irvine.

Councillors voting in the negative: Councillor Hamilton

The Mayor declared Motion SM20140526.08 CARRIED

MEETING DECLARED CLOSED AT 7.11PM

MAYOR

DATE

CONFIDENTIAL

3. CONFIDENTIAL REPORT

3.1 REPORT TITLE: CONFIDENTIAL ITEM: STRATEGIC LAND ACQUISITION OPPORTUNITY

DATE OF MEETING: 26 MAY 2014

FILE NUMBER: 64/005/306

Strategic Plan 2012-2017 Ref:

Urban Growth and Social Infrastructure

Outcome 9 Sport and recreation facilities to meet community need

Purpose:

To provide an update on the negotiations with the Adelaide Polo Club and gain authority to further pursue Council's objective to secure an area of the Adelaide Polo Club site of approximately 7.5 hectares for community open space whilst minimising the risk and financial exposure to Council to the extent that is reasonably achievable.

Summary – Key Issues:

- In April 2013 Council resolved to provide delegated authority for the making of an offer and negotiation with the Adelaide Polo Club for the purchase of the Club's land on Fidler Lane.
- A contract has not yet been executed for the purchase of the Adelaide Polo Club site.
- Further action is required to pursue Council's objective to secure an area within the Adelaide Polo Club site for community open space.
- There are a number of possible options by which this objective could be achieved.

Recommendation:

That Council:

Section 90 (3) (b) Order

1. Pursuant to Section 90(3)(b)

Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, the four General Managers and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 3.1 Strategic Land Acquisition Opportunity.

The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this agenda item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:

- conducting business;
- proposing to conduct business; and
- would prejudice the commercial position of the Council

in that the information to be considered includes information, the disclosure of which could prejudice the Council's commercial position during negotiations.

In addition the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.

That Council:

2. Pursuant to regulation 21 of the Local Government (Procedures at Meetings) Regulations it is recommended that the Presiding Member implement a short term suspension of proceedings to enable informal discussions to occur given the nature of the matter being considered, during which time no motion can be moved other than a motion to end the period of suspension of normal proceedings.

{Note: A motion to suspend proceedings must have the support of at least two thirds of the Council members present at the meeting.}

3. That the period of short term suspension of proceedings now end.

As Project Sponsor, the Chief Executive Officer is recommending (pursuant to regulation 21 of the Local Government (Procedures at Meetings) Regulations that Council amend and add to the previous Council resolutions relating to this matter (see attachment 1) by resolving as follows:

That Council:

4. Adopt the following recommendations of the Chief Executive Officer.

5. Note:

- the letter received from the Adelaide Polo Club dated 9 May 2014.
 - the Council letter in response to the Adelaide Polo Club dated 19 May 2014.
 - that a contract for the sale and purchase of the Adelaide Polo Club site (being lots 103 and 106 Fidler Lane) has not been executed by Council and the Adelaide Polo Club.
 - that SA Power Networks is yet to advise of the location for the required new 66kv power lines so it is not yet known if that infrastructure would have a direct impact on the Adelaide Polo Club site.
6. Confirm that the Council's objective remains to secure an area of the Adelaide Polo Club site of approximately 7.5 hectares for community open space whilst minimising the risk and financial exposure to Council to the extent that is reasonably achievable.
7. Authorise the Chief Executive Officer to continue to pursue this objective, including via further negotiations with the Adelaide Polo Club with the preferred option being option 1 and if this option is not achievable to then pursue options 2-4 inclusive and in that order as set out in attachment 8.
8. Authorise the Chief Executive Officer and Mayor to execute a conditional contract and any associated documentation (noting that this authority is sufficient to support the application of the Council common seal) for the purchase of portion of the Adelaide Polo Club site for the purposes of community open space being approximately 7.5 hectares (25% of the total site) and for an amount that does not exceed the independent valuation advice (currently awaited) by more than 15% with the purchase price to be payable as a lump sum at settlement.
9. Acknowledge that the pursuit of the Council's objective may involve the Council ultimately determining to enter into a commercial arrangement with either the Adelaide Polo Club and/or a private sector developer.
10. Acknowledge that the Adelaide Polo Club is free to act as it sees fit in regards to the disposal of its site.

11. Receive a further report on the progress of the above as soon as practicable but in any event by no later than 26 July 2014 inclusive of a proposed process to pursue Council's objective that would satisfy all legislative and probity requirements.
12. Extend the current confidentiality order for Agenda Item 17.1 Land Acquisition Opportunity considered at the Council meeting on 7 April 2014 until:
 - a contract has been executed by the Council and the Adelaide Polo Club for the sale and purchase of some or all of the Adelaide Polo Club land on Fidler Lane and Council has resolved to proceed to settle the contract;
 - or 26 February 2015 whichever is the sooner.

{Note: Recommendation 12 relates to keeping confidential the information previously considered on 15 April 2013 as extended on 7 April 2014 so as to achieve consistency with recommendation 13 below which relates to the confidentiality of this agenda item plus attachments.}

Section 91(7) Order

13. Pursuant to Section 90 (3) (b) & (d.)
That having considered Agenda Item 3.1 Strategic Land Acquisition Opportunity 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 inclusive of all attachments, related documents and all minutes be retained in confidence until:
 - a contract has been executed by the Council and the Adelaide Polo Club for the sale and purchase of some or all of the Adelaide Polo Club land on Fidler Lane and Council has resolved to proceed to settle the contract;
 - or 26 February 2015 whichever is the sooner.

Background:

1. Council has investigated the supply and demand for sport and recreation facilities in the context of managing population growth arising from the Ministerial DPA. The following Council endorsed documents identify that additional areas for sport, recreation and community facilities will be required to serve the future population of the District:
 - *Recreation Needs Analysis for Growth Areas (2012);*

- *Community Facilities Needs Analysis for Mount Barker, Littlehampton and Nairne* (2012); and the
 - *Open Space, Recreation and Public Realm Strategy* (2014).
2. Council has previously considered the opportunity to purchase the Adelaide Polo Club (APC) land on Fidler Lane that comprises approximately 33 hectares which is zoned Residential Neighbourhood (see the location plan in attachment 2).
 3. Previous resolutions relating to this matter remain the subject of a Council confidentiality order are included as attachment 1.
 4. Council's objective has been to secure land for community open space (approximately 7.5 hectares – see attachment 3) as per the working draft Master Plan of the Ministerial DPA area previously adopted by Council (attachment 4).
 5. The APC was not prepared to sell a portion of its land, it was a case of "all or nothing".
 6. In accordance with the delegation of authority granted at the Council meeting on 15 April 2013 a formal offer was made to the APC.
 7. That offer was not accepted but following subsequent negotiations agreement in principle was reached being for Council to purchase the entire land for \$9.6 million (payable in a single lump sum) subject to:
 - the land not being impacted upon by the location of required new SA Power Networks (SAPN) infrastructure; and
 - other conditions including the prudential report and lease back to the APC of part of the site (see attachment 5).
 8. The agreement in principle was within the parameters of the delegated authority via the Council meeting resolution.
 9. Despite considerable effort, agreement has not been able to be reached on the SAPN issue which is important as independent valuation advice has indicated that if the infrastructure proceeded over the site in a 26 metre wide corridor adjacent to the ElectraNet corridor (one of four options) the value of the land would be reduced by \$950,000. The APC position is that Council can simply pursue compensation from SAPN.
 10. Accordingly a contract for the sale and purchase of the APC site has not been executed by Council and the APC.
 11. The Council received a letter from the APC on 9 May 2014 (attachment 6). This arrived 'cold' with no prior notice to Council that it was coming.

12. A Council response was subsequently sent dated 19 May 2014 (attachment 7). The Council letter was preceded by a courtesy phone call to the APC.
13. The APC has verbally indicated that it will advise of a suitable time to meet with Council officers post this special meeting of Council.
14. Following an application from Council to the State Government, a grant of \$1 million was received by Council in December 2013 to contribute to the cost of acquiring the 7.5 hectares of land for community open space. A condition of the grant is that Council purchases this land by 31 December 2014 unless an extension of time is approved by the Minister for Planning the Hon John Rau MP.
15. In addition to the agenda items considered at previous Council meetings (which include endorsement of the lease-back to the APC of part of the site and the most recent of these being a confidential item considered on 7 April 2014) Council Members have undertaken a site visit and participated in informal briefings, the most recent of these being on 17 March 2014.

Discussion:

Changes in Circumstances

16. Some circumstances have changed since the original Council determination in April 2013.
17. These include:
 - There is now a considerable supply of residential land on the market locally within the Ministerial DPA area as development approvals have been issued to Walker Corporation, Lanser Communities and the Steinert/Osborne Group. Others have lodged development applications and others are gearing up to lodge having had concept plans prepared.
 - There is no evidence to suggest that greenfields land values in Mount Barker have increased in the previous 12 months, it can be argued that they have remained stable and perhaps reduced a little.
 - Federal and State Government election results and subsequent policy and budget announcements are no doubt impacting on consumer demand and indirectly impact on decision making by banks and other financial institutions to finance developer activity.
 - The 2014 Local Government elections are now far closer and this has implications including the caretaker period arrangements that

commence in mid-September placing some restrictions on Council decision making after that time.

- Council is considering other possible initiatives to secure, facilitate and/or advance new recreation and sport facilities at other previously identified locations (i.e. Flaxley Road and Springs Road) as per the working draft Master Plan (attachment 4).

Process Options

18. Options to achieve Council's community open space objective on the Polo Grounds including risk minimisation and management are contained in attachment 8.
19. They are listed in order of preference (option 1 is the preferred option) with brief comment including risk. Options 5 and 6 are not supported.
20. Mr Michael Kelledy, Director at Kelledy Jones Lawyers has been briefed and is providing advice on a process pathway to ensure that legislative and probity requirements are met.
21. Further work will be needed once the most likely option or options have been determined, acknowledging that this could be significantly influenced by the APC.

Prospective Developers

22. Council officers have recently initiated meetings with a total of six prospective developers to ascertain on a preliminary, without prejudice basis if they have an interest in working with Council in relation to the APC land.
23. A total of eight developers were contacted and six subsequently attended the Council offices for a preliminary discussion (these are listed in attachment 9).
24. The eight developers were chosen based on criteria that included proven track record in large scale residential development and current or previous involvement in such development in Mount Barker.
25. Each of the six developers indicated that they did have interest in the APC land and the opportunity to work in concert with Council in some manner.
26. The involvement of a developer would significantly reduce the risk exposure to Council and opportunity cost.
27. As above a process pathway would need to be determined if Council is to ultimately select a developer. It may for example include an

Expression of Interest process or similar, pre decision making at a Council meeting.

Prudential and Valuation Reports

28. A prudential report has been commissioned pursuant to the Local Government Act. This is not yet completed as it is not yet known what transaction is proposed to be undertaken by Council.
29. When completed the prudential report is to be considered at a Council meeting and following that a Council resolution is required to have a contract for the purchase of the entire APC land proceed to settlement (should that be proposed).
30. Further valuation advice has just been sought specifically for the 7.5 hectare parcel sought for community open space. This advice is expected to be received in early June 2014.
31. The recommendation that authority to negotiate the purchase of this portion at up to 15% above valuation is based on the following circumstances.
 - the unique features of the land being that it:
 - is ideally located relative to the distribution of other recreation and sport sites (see attachment 10);
 - is flat and ready made for some immediate community use once the APC relocates; and
 - has good infrastructure access capability (wastewater main) and when constructed, via the connector road.
 - The cost to acquire and then develop an alternative site (likely to be difficult to find) would need to likely factor in significant establishment costs including earthmoving and infrastructure provision.
 - In addition the cost to the community can be partially offset by the \$1 million State Government grant already received by Council.
 - Revenue from the separate rate for Community, Recreation and Sport infrastructure can be used to contribute to the cost to acquire and subsequently upgrade the desired community open space.
32. Put another way, if Council was to pay somewhat of a premium price to secure the land sought for community open space (7.5 hectares), it would still represent a good outcome for the community.

Other Land Parcels

33. Council officers have continued to hold constructive discussions with the immediately adjacent land owner (to the east of the APC site). This land has restricted access and could potentially be developed in concert with the APC land.
34. The possibility of some Council land being sold to contribute to the funding and development of recreation and sport facilities is being examined.
35. Council officers have held preliminary discussions with Kevin and Yvonne Stephenson as to the possibility of portion of the Council owned land on Springs Road being sold to a school to enable the joint facilities use model to be implemented. This would see the school contribute to the establishment and maintenance of the regional recreation and sport facilities with the school having priority for use during school hours and the broader community using the facilities outside of these times.
36. This scenario has a number of issues that would need to be worked through including further discussion with the State Government as the purchase of this land included a grant of \$1 million with some conditions attached.

Community Engagement:

Informing only	Not applicable at this time.
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Policy:

There is no Council policy specifically for the acquisition of land.

Budget:

The draft 2014/15 Annual Business Plan includes provision for \$9.2 million for the purchase of the entire APC land, this assumed that the deposit for same would be paid pre 30 June 2014 which is no longer envisaged.

Statutory/Legal:

Refer above.

Staff Resource Requirements:

The recommendations can be implemented within existing staff resources. Specialist external advice is procured as required e.g. valuation and legal.

Environmental:

It is intended that irrigation of the proposed recreation and sport playing fields would be achieved via the use of Council's recycled water supply.

As previously advised there is a significant environmental benefit planting on the APC land which is located outside of the 7.5 hectares sought by Council for community open space.

Social:

The proposal to secure the 7.5 hectares for community open space will assist in meeting the identified social needs (for recreation, sport and community facilities) of the future population in Mount Barker, Littlehampton and Nairne, and the broader District.

Risk Assessment:

Refer attachment 8.

Asset Management:

Council would assume responsibility for the management of any land purchased except where there is a lease back to the APC or other arrangement entered into e.g. shared maintenance of facilities with a school.

Conclusion:

Further action is recommended to pursue Council's objective to secure an area of the Adelaide Polo Club site of approximately 7.5 hectares for community open space whilst minimising the risk and financial exposure to Council to the extent that is reasonably achievable.

Key Contact

Brian Clancey, General Manager, Infrastructure and Projects

Sponsor of Project

Andrew Stuart, Chief Executive Officer

Attachments

1. Previous Council resolutions
2. Location Plan
3. Plan showing 7.5 hectares sought for community open space
4. Working draft Master Plan of the Ministerial DPA area
5. Plan showing proposed lease back area
6. Adelaide Polo Club letter dated 9 May 2014
7. Council letter to Adelaide Polo Club dated 19 May 2014
8. Process Options
9. List of Prospective Developers
10. Location plan of recreation and sport sites

Moved Councillor Campbell that Council:

2. Authorise the making of a formal offer to the Adelaide Polo Club for the purchase of the land on Barker Road (as shown as Polo Grounds in attachment 1) on the basis set out in attachment 10.
3. In the event that the formal offer from Council is not accepted by the Adelaide Polo Club, authorise the Chief Executive Officer to negotiate with the Adelaide Polo Club to seek to secure the land shown as Polo Grounds in attachment 1 on terms and conditions as close a basis as possible to the content of the formal offer in attachment 10 but in any event for an amount that does not exceed \$10,080,000 being the total offer of \$9,600,000 plus 5%.
4. In the event that the Council offer is accepted or following negotiation under delegated authority by the Chief Executive Officer agreement is reached, authorise the Mayor and Chief Executive Officer to execute a conditional contract for the purchase and sale of the land shown as Polo Grounds in attachment 1 and associated documentation required including authority to apply the Council common seal.
5. Determine that in the event that Council is successful in purchasing the land shown as Polo Grounds in attachment 1 the land shown within the red border line in attachment 11 shall be classified as community land whereas the balance of the Polo Grounds land purchased will be excluded from classification as community land pursuant to the Local Government Act 1999.
6. Note that pursuant to the Local Government Act 1999 a prudential report is required to be prepared and considered at a Council meeting before a Council meeting resolution to proceed to settlement of the land shown as Polo Grounds in attachment 1 can occur.
7. Endorse the application to the State Government for grant funding to contribute to the purchase of portion of the polo grounds site and the development of open space facilities on same (attachment 8).

Seconded Councillor Grosser and CARRIED.

17. CONFIDENTIAL REPORTS

17.1 REPORT TITLE: CONFIDENTIAL ITEM: LAND ACQUISITION OPPORTUNITY
DATE OF MEETING: 7 APRIL 2014
FILE NUMBER: 64/005/306

Moved Councillor Heath that Council:

Section 90 (3) (b) Order

1. Pursuant to Section 90(3)(b)
Pursuant to Section 90(2) of the Local Government Act 1999 orders that all members of the public except for the Chief Executive Officer, the four General Managers and the Executive Assistant to the Mayor and CEO be excluded from attendance at the meeting for Agenda Item 17.1 Land Acquisition Opportunity.

The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this agenda item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:

- conducting business; and
- proposing to conduct business; and
- would prejudice the commercial position of the Council

in that the information to be considered includes detailed financial information, the disclosure of which could prejudice the Council's commercial position during negotiations.

In addition the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.

2. Retain the information presented on 15 April 2013 in confidence for a period as determined in (4) below.
3. Note that a decision to proceed to settlement with the purchase of the polo grounds is to be determined and is to occur at a future

DISTRICT COUNCIL OF MOUNT BARKER
MINUTES OF THE CONFIDENTIAL COUNCIL MEETING HELD ON MONDAY 7 APRIL 2014. 9

council meeting once all of the necessary information including an independent prudential report has been assembled and considered.

Seconded Councillor Irvine

CARRIED
OM20140407.12

8.54pm Councillor Hamilton entered the chamber and took her chair.

Moved Councillor Westwood

Section 91(7) Order

4. Pursuant to Section 90 (3) (b) & (d)
Having considered Agenda Item 17.1 Land Acquisition Opportunity 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 this council report, and that of 15 April 2013 and related documents and all minutes be retained in confidence until:

- (i) a contract has been executed by the Council and the Adelaide Polo Club for the sale and purchase of the Polo Grounds site on Barker Road and Council has resolved to proceed to settle the contract; or
- (ii) 15 August 2014 whichever is the sooner.

Seconded Councillor Heath

CARRIED
OM20140407.13

MEETING DECLARED CLOSED AT 8.56PM

MAYOR

DATE

**District Council of Mount Barker
Adelaide Polo Club Grounds**



Map Zoom: 1:284 km
Map Scale: 1:317
Created on: Monday, 24 March 2014 By: advanced

District Council of Mount Barker
Council House
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7.43 ha



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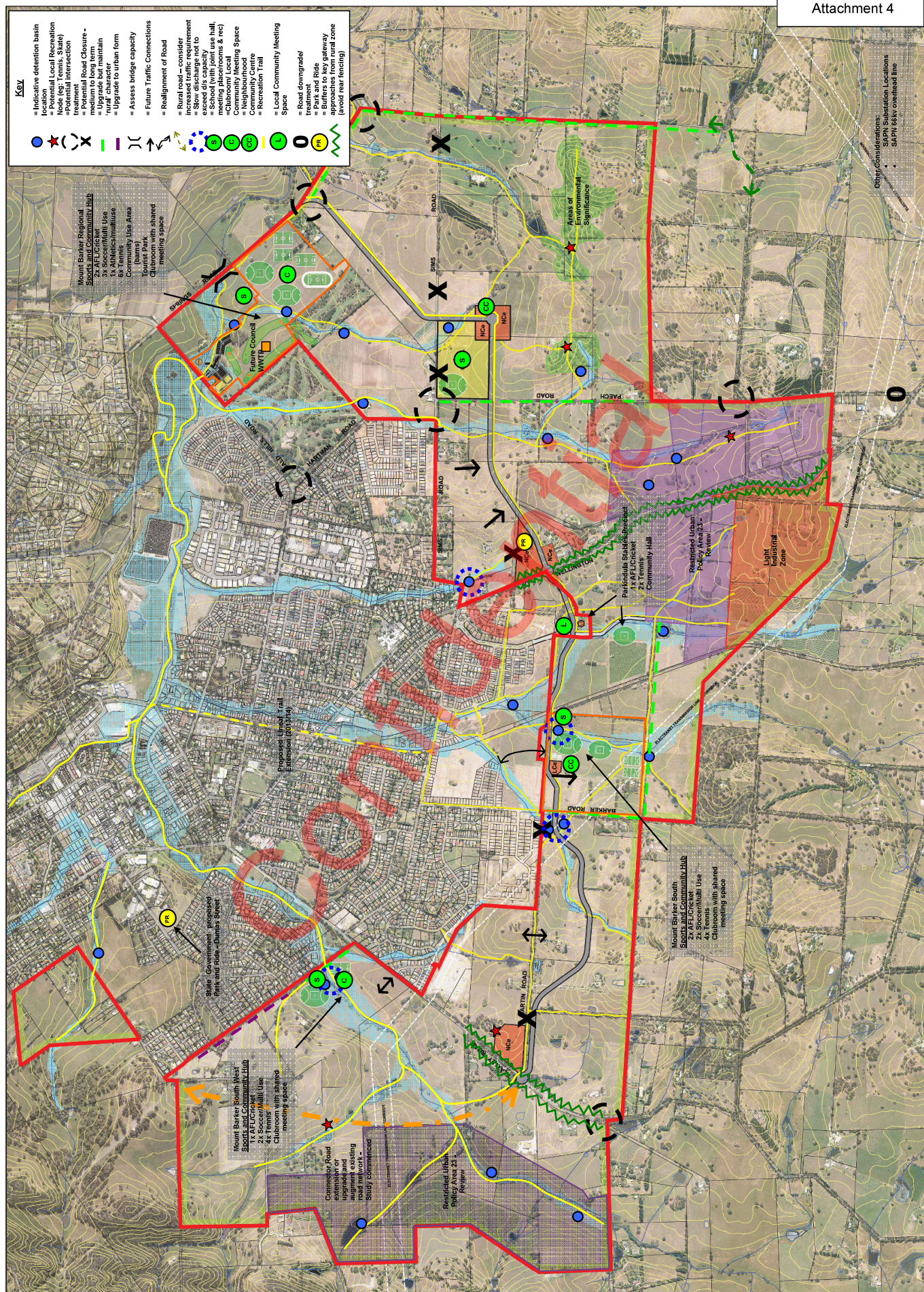
Date Compiled: 09/05/2014 Drawn by: Tony Jordan



District Council of Mount Barker

Land for Retention by Council for
Community Recreation

WORKING DRAFT District Council of Mount Barker MDPA Area MASTER PLAN – 16 July 2013





— Area to be Leased Back to Adelaide Polo Club
 — Right of Way to Adelaide Polo Club



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Map Zoom: 1218 m

Map Scale: 1:6,165

Created on: Tuesday, 10 December 2013 By: mtb

Adelaide Polo Club Inc.

9th May 2014

Andrew Stewart
CEO Mount Barker Council
6 Dutton Road
Mount Barker SA 5251

Dear Andrew,

For over a year now the Adelaide Polo Club has been in advanced negotiations for the sale of our property to the Mount Barker Council to facilitate the sport and recreational and open space requirements of the expanded and new residential areas of Mount Barker.

We have written a contract but we have failed to close that deal and lock it down on the back of what we feel is a nonsensical dilemma regarding SAPN easement and the position the council is taking on this issue.

It is beyond dispute that if or when the SAPN was to put an easement through that parcel of land compensation would follow. This is undisputed from a legal perspective.

The Adelaide Polo Club has at all times dealt with the Mount Barker Council in good faith and played a straight-forward and honest approach.

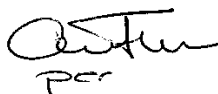
We have now lost faith and patience with the Mount Barker Council and will be resuming discussions with developers should the contract not be signed and deposit paid by Friday 30th May.

Please don't hesitate to call Angus or myself if this letter requires clarification.

Yours faithfully,



Callum MacLachlan
Captain


per

Angus McLachlan
President



THE DISTRICT COUNCIL OF MOUNT BARKER

P.O. BOX 54, Mount Barker S.A., 5251
DX address: DX 51708, Mount Barker

Telephone: (08) 8391 7200
web site: www.dcmtbarker.sa.gov.au

Facsimile: (08) 8391 7299
ABN: 54 250 395 713

Reference: 64/005/306

19 May 2014

Callum MacLachlan
Captain; and
Angus MacLachlan
President
Adelaide Polo Club Inc
PO Box 377
KENT TOWN SA 5071

Dear Callum and Angus

Re: Future of the Mount Barker Polo Grounds Land

I refer to your letter of 9 May 2014.

I agree that as representatives of the Adelaide Polo Club, you have both dealt with Council in good faith, and with honesty and integrity. It is my view that both Brian Clancey and I have done precisely the same in our dealings with both of you.

The Council's commercial in confidence offer to purchase the Barker Road/Fidler Lane land from the Club dated 23 April 2013 was subject to a condition that "the land is not impacted by the decision of where the required new SA Power Networks 66 kv distribution lines would be located." Council has not wavered from this position.

As you know, considerable resources have been invested in this project to date by the Council, including in an attempt to resolve the SAPN issue via the contract.

Mayor Ann Ferguson and I have delegated authority to execute a contract for the purchase and sale of the land. You will recall that just prior to Christmas a specific time was tentatively scheduled for this purpose with inclusion of a special condition in the contract regarding the SAPN infrastructure.

That didn't proceed as the Club indicated that it was not accepting of the independent valuation advice of the impact of SAPN location option 4 (adjacent the ElectraNet easement) on the value of the land of \$950,000 the advice by email being that the Club "will not accept the 950k or even close".

It has been put to me that some irony is that the Club's approach to this issue highlights exactly the risk that exists to the Council and community if a purchase proceeded before the SAPN location is known i.e. the Council has independent advice that the property value would be reduced by \$950,000 with location option 4

but Council does not get compensated to that amount i.e. it receives less, to the detriment of the community.

For Council to execute a contract as per your recent letter is not currently possible as I have been advised it is outside of the parameters of the Council's delegated authority to the Mayor and me by virtue of reference back to the original Council offer and the condition regarding SAPN not being satisfied as yet (one way or another).

I will be discussing your most recent letter internally, including with the Mayor. I anticipate that your letter will necessitate a further engagement with the Council Members collectively, possibly a special meeting of the Council (with in confidence discussion) pre the deadline in your letter of 30 May 2014.

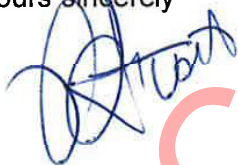
As you know, as a public body the Council has a prescriptive regulatory framework within which it must operate, one such example being the required prudential report (in progress) and others you have already witnessed like the need to consult the community on the proposed lease back to the Club (completed).

It is now over 12 months since the Council offer was made and subsequent negotiations occurred. In that time some circumstances have changed but Council's objective has been (and remains) to secure an area for community open space (approximately 7.5 hectares). The balance of the Club's land would be surplus to Council needs.

In the absence of any advice to the contrary, I assume that the Club's objectives remain the same, including relocation to an alternative site in the short term.

I will communicate with you again pre 30 May 2014 but please do not hesitate to contact me on 0419 817 799 if any of the above is not clear or you wish to have further discussion in the interim.

Yours sincerely



Andrew Stuart
CHIEF EXECUTIVE OFFICER

cc Mayor Ann Ferguson OAM

Attachment 8

Process Options – Overview

Listed in Order of Preference

No	Option	Risk	Comment	Recommendation
1	<p>Council could purchase from the APC the portion of the site required for community open space (approximately 7.5 hectares) and the balance of the site is sold by the APC to a developer</p> <p>the timing of the two sales could be staggered or concurrent (if the latter it would in effect be a three-way deal). In turn the developer who purchases the 25 or so hectares and Council can determine what opportunities for mutual benefit might be pursued.</p>	Very low risk	Based on the negotiations with the APC representatives to date this is unlikely as the APC has consistently stated a desire to sell to a single purchaser and a three party deal may see a longer lead time to settlement which the APC representatives have also indicated is an issue.	Preferred option Supported
2	<p>A developer could purchase all of the land (33 hectares) from the APC.</p> <p>In turn the developer could sell to Council the 7.5 hectares (approximately) sought by Council for community open space. This would likely involve a package regarding open space requirements of the developer (i.e. 12.5%) and potentially infrastructure provision by Council e.g. possibly stormwater or construction of a section of the connector road.</p>	There is a risk that a deal is not done by the purchaser (a developer) with Council, and the developer who purchases the APC land develops the site and most of the 7.5 hectares open space opportunity is lost to the detriment of the community.	There would be some incentive for the developer purchasing the land to seek to reach a deal with Council.	Second preference option Supported

No	Option	Risk	Comment	Recommendation
3	<p>Council could seek that the APC grant an option to Council to acquire the whole of the land for a specified amount.</p> <p>This would give Council time to enter into arrangements with a third party (i.e. a developer) for them to purchase the surplus land knowing that the APC could not withdraw whilst those negotiations between Council and a developer were taking place. The basis and terms of an option including the period of time for which it would apply would all need to be negotiated with the APC.</p>	Reduces risk to Council in that Council would not settle the contract unless it had secured a suitable deal with a developer	<p>Similar to option 4 but provides certainty of timing for Council within which to reach a deal with a developer.</p> <p>There is the opportunity cost of some other Council initiatives not being able to be progressed unless the developer purchases the surplus land from Council and promptly settles, preferably in an upfront single payment</p>	Third preference option Supported
4	<p>Council could purchase all of the land from the APC but only after formally reaching and executing an agreement to sell the surplus 25 or so hectares to a single developer.</p> <p>again potentially as part of a package e.g. Council is obligated to upgrade the 7.5 hectares for community open space within a specified time frame.</p>	<p>Reduces risk to Council significantly.</p> <p>Risk of APC selling the entire land to a developer before Council executes an agreement with a developer.</p>	<p>There is the opportunity cost of some other Council initiatives not being able to be progressed unless the developer purchases the surplus land from Council and promptly settles, preferably in an upfront single payment</p>	Fourth preference option Supported
5	<p>Council could purchase all of the land from the APC and in turn seek to subsequently sell the surplus 25 or so hectares to a single developer or developers.</p> <p>i.e. sell a number of so-called super lots over time.</p>	There is significant risk to Council of holding surplus land for an extended period of time, land values could fall, finance costs could increase and whilst Council retains the surplus land.	There is the opportunity cost of other Council initiatives not being able to be progressed until all of the revenue from super-lot sales is received by Council	Not supported

No	Option	Risk	Comment	Recommendation
6	<p>Council and a developer and/or the APC agree on a purchase package</p> <p>that involves some form of joint interest in the development of the 25 or so hectares which would likely see an initial payment to the APC (to enable the APC to progress with relocation to another site) and further revenue to the APC when allotment sales occur.</p>	<p>This carries high risk in respect of uncertain future revenue amounts and the timing of them (with implications for Council finance costs), would be subject to economic and market volatility, the attitude of the APC could change over time, participating in some form of joint venture development is not core business for Council.</p>	<p>There is the opportunity cost of some other Council initiatives not being able to be progressed until all of the revenue from the development is received by Council</p>	Not supported
7	<p>There are also variations to the above options.</p> <p>As examples:</p> <p>(a) Council could contemplate providing vendor finance (through a loan from the Local Government Finance Authority) for a purchaser and secure this finance against the land e.g. through a mortgage.</p> <p>(b) Alternatively a portion of the land could potentially be sold to a school to enable the joint facilities use model (school and broader community) to be implemented.</p>	<p>This carries some risk e.g. if the purchaser defaults and Council is left to then seek to dispose of the 25 or so hectares of land.</p>	<p>Opportunity cost is an issue if the purchaser (developer) defaults.</p> <p>Joint use model. The prospective school groups who have shown interest to date in Mount Barker have all preferred a Springs Road site. School groups have indicated long lead times (2 or so years) to gain formal funding support from Government. Raises again the opportunity cost issue in the interim.</p>	

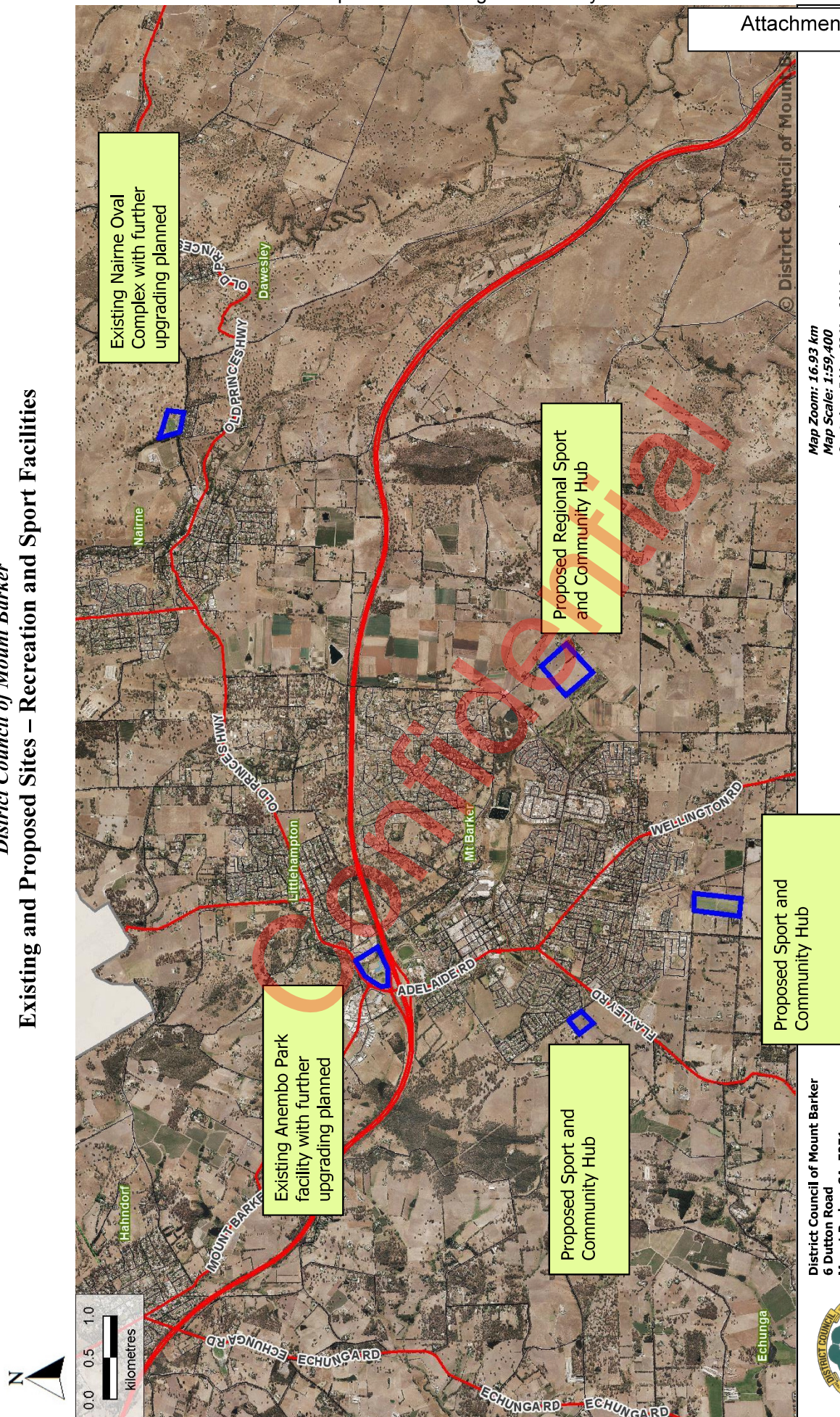
List of Prospective Developers with whom preliminary, without prejudice discussion has recently occurred.

In alphabetical order:

- AV Jennings
- Burke Urban
- CIC Australia
- Devine Homes
- Lanser Communities
- Steinert/Osborne Group

These developers were selected on criteria that included proven track record in large scale residential development and current or previous involvement in such development in Mount Barker.

District Council of Mount Barker Existing and Proposed Sites – Recreation and Sport Facilities



Map Zoom: 16.93 km
Map Scale: 1:59,400
Created on: Friday, 23 May 2014 By: advanced

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