

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
94	15 Sept 2014	Progress of Land Purchase	<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 17.1 Opportunity for Strategic Land Purchase.</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 conducting 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.</p> <p>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</p>	Agenda Attachments Minutes	<p>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 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.</p> <p>In addition the disclosure of this information would, on balance, be contrary to the</p>	Until a contract is executed by the parties or 26 February 2015 whichever is the sooner.		26 Feb 2014	

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			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 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. Section 91(7) Order 3.Pursuant to Section 90 (3) (b) & (d) That having considered the Agenda Item Opportunity for Strategic Land purchase 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, related documents and all minutes be retained in confidence until a contract is executed by the parties or 26 February 2015 whichever is the sooner.		public interest.				

Part Information released
Information remains Confidential

17. CONFIDENTIAL REPORTS

**17.1 REPORT TITLE: CONFIDENTIAL ITEM – OPPORTUNITY
FOR STRATEGIC LAND PURCHASE
DATE OF MEETING: 15 SEPTEMBER 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 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 17.1 Opportunity for Strategic Land Purchase.

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 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 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 Westwood

CARRIED
OM20140915.12

Mr Brian Clancey, General Manager Infrastructure & Projects, and Mr Andrew Stuart, Chief Executive Officer provided a verbal update of the strategic land purchase opportunity.

Moved Councillor Westwood that Council:

2. Pursuant to Regulation 21 of the Local Government (Procedures at Meetings) Regulations, the Chief Executive Officer recommends that Council amend a previous resolution and authorise:

2.1 That the lease back to the APC of the area shown in attachment 1 be as follows:

- a) from the settlement of the land until the APC relocates to new premises but in any event no later than two years following settlement of the 8.010 hectares;
- b) the APC would still be responsible for the maintenance of the lease back area until relocation occurs;
- c) during the lease back period but excluding the polo season of January - March inclusive, the site leased back will be made available to Council at no cost for the purposes of community events; and
- d) notwithstanding the reduction in the area of land from what was previously proposed and the community event access opportunity now included, the rental payable by the APC to the Council would remain as previously determined being \$100 per week from settlement for the first year and \$1,000 per month for the second year.

2.2 The APC having the ability to access all of the deposit funds for the purchase of the 8.010 hectares (being \$300,000) from when payment by Council occurs (being within seven days of both parties executing the conditional contract) with \$150,000 of this amount being non-refundable and the balance of \$150,000 would need to be repaid by the APC to Council if settlement (unexpectedly) does not occur within 12 months of the contract being executed.

Seconded Councillor Heath

CARRIED
OM20140915.13

Moved Councillor Heath that:

Section 91(7) Order

3. Pursuant to Section 90 (3) (b) & (d)
That having considered the Agenda Item Opportunity for Strategic Land purchase 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, related documents and all minutes

be retained in confidence until a contract is executed by the APC and Council or 26 February 2015 whichever is the sooner.

Seconded Councillor Bettcher

CARRIED
OM20140915.14

MEETING DECLARED CLOSED AT 9.35PM

MAYOR

DATE

CONFIDENTIAL

17. CONFIDENTIAL ITEMS

**17.1 REPORT TITLE: CONFIDENTIAL ITEM – OPPORTUNITY
FOR STRATEGIC LAND PURCHASE**

DATE OF MEETING: 15 SEPTEMBER 2014

FILE NUMBER: 64/005/306

Strategic Plan 2012-2017 Ref:

Social infrastructure

Outcome 9 Sport and recreation facilities to meet community need

Purpose:

To seek authority to enable the purchase of 8.010 hectares of land (for the purposes of community open space) from the Adelaide Polo Club to now proceed.

Summary – Key Issues:

1. Council now has the opportunity to secure 8.010 hectares of land from the Adelaide Polo Club for the sum of \$3 million for use as community open space with flexible recreation and sport facilities to be provided in due course;
2. A State Government grant of \$1 million was received by Council in December 2013 and is tied by a Deed to be used to contribute to the purchase of this land for community open space use; and
3. The Deed for the grant has a sunset requiring the land to be acquired by Council by 31 December 2014.

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 17.1 Opportunity for Strategic Land Purchase.

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 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 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. Pursuant to Regulation 21 of the Local Government (Procedures at Meetings) Regulations, the Chief Executive Officer recommends that Council amend a previous resolution and authorise:

- 2.1 That the lease back to the APC of the area shown in attachment 1 be as follows:

- from the settlement of the land until the APC relocates to new premises but in any event no later than two years following settlement of the 8.010 hectares;
- the APC would still be responsible for the maintenance of the lease back area until relocation occurs;
- during the lease back period but excluding the polo season of January - March inclusive, the site leased back will be made available to Council at no cost for the purposes of community events; and
- notwithstanding the reduction in the area of land from what was previously proposed and the community event access opportunity now included, the rental payable by the APC to the Council would remain as previously determined being \$100 per week from settlement for the first year and \$1,000 per month for the second year.

- 2.2 The APC having the ability to access all of the deposit funds for the purchase of the 8.010 hectares (being \$300,000) from when payment by Council occurs (being within seven days of both parties executing the conditional contract) with \$150,000 of this amount being non-refundable and the balance of

\$150,000 would need to be repaid by the APC to Council if settlement (unexpectedly) does not occur within 12 months of the contract being executed.

Section 91(7) Order

3. Pursuant to Section 90 (3) (b) & (d)
That having considered the Agenda Item Opportunity for Strategic Land purchase 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, related documents and all minutes be retained in confidence until a contract is executed by the APC and Council or 26 February 2015 whichever is the sooner.
-

Background:

1. Council's objective remains to secure suitable land for the purposes of required recreation and sport facilities.
2. A strategic site (given the location and that the land is flat) is portion of the Adelaide Polo Club land on Fidler Lane/Barker Road, as reflected in the recently adopted Council Master Plan for the Mount Barker Ministerial DPA area.
3. Council has previously considered numerous agenda items regarding the APC land, the most recent of these being at the Council meeting held on 18 August 2014 which remains the subject of a confidentiality order.
4. Since then progress has been achieved as follows.
5. Council has been successful in securing a site visit by the Hon John Rau MP, Deputy Premier and Minister for Planning.
6. This will occur as part of the Country Cabinet in the Adelaide Hills and subject to confirmation, will occur on Sunday 14 September.
7. This will enable the Deputy Premier to be briefed on the status of the Council negotiations to purchase the land from the APC and that some flexibility may be required if settlement does not occur by 31 December 2014 (a requirement of the Deed executed by Council and the State Government).
8. This will also include a site visit to the land on Bollen Road owned by the Herbig Family, refer to the separate item contained in this agenda.

9. Further negotiations have occurred with representatives of the Adelaide Polo Club (APC).
10. This culminated in a meeting held on 8 September 2014 which was attended by the Chief Executive Officer Andrew Stuart and General Manager Infrastructure & Projects Brian Clancey.

Discussion:

11. For the proposed Council purchase of 8.010 hectares (refer attachment 1) from the APC for \$3 million to now proceed, the following is proposed.

Lease Back of Land

12. Council previously undertook community consultation on the intention to lease back portion of the APC land (see attachment 2) as the intention at that time was for Council to purchase the entire APC land.
13. Only one submission was received and that was in support of the proposal.
14. The lease back area would now be reduced significantly to the 8.010 hectares proposed to be purchased by Council.
15. On 3 February 2014 Council resolved to:

Authorise the lease to the Adelaide Polo Club of the area of land shown in attachment 1 [Note: marked attachment 2 in this item] from settlement of the land until the Club relocates to new premises but in any event no later than 30 April 2016 with the Club to be responsible for the maintenance of the area leased and the rental to be \$100 per week until 30 April 2015 and then \$1,000 per month until 30 April 2016;
16. At that time it was anticipated that a contract would be executed in the near future which did not occur.
17. Given the passage of several months, it is now reasonable to adjust the timing associated with the lease back from settlement of the land until the APC relocates to new premises but in any event no later than two years following settlement of the 8.010 hectares, in lieu of the previous timing of 30 April 2016.
18. The APC would still be responsible for the maintenance of the lease back area until relocation occurs.

19. Notwithstanding the reduction in the lease back area the rental payable by the APC to the Council would remain as previously determined being \$100 per week from settlement for the first year and \$1,000 per month for the second year.
20. The APC has agreed that during the lease back period but excluding the polo season of January - March inclusive, the site leased back will be made available to Council at no cost for the purposes of community events. This would be a condition of the lease from Council to the APC.

Water for Irrigation

21. The APC is also offering Council the use of the existing APC on site bore at no cost to enable irrigation (on an interim basis) of the land proposed to be purchased by Council.
22. This arrangement would apply upon the APC relocating and would remain in place until such time as Council has provided an alternative water supply (intended to be recycled water via extension to the Council's purple pipe network).
23. Council access to the bore would be secured via an easement registered on the land title.

Deposit for Purchase

24. The deposit payable by Council is 10% of the purchase price of \$3 million = \$300,000.
25. This amount would be payable by Council within seven days of the contract being executed by both parties.
26. Settlement would not be possible within the normal commercial terms as there is no legal parcel of land as yet for the 8.010 hectares proposed to be purchased by Council.
27. Council would need to initiate a development application for land division to create the required new allotment of 8.010 hectares.
28. The contract would provide for settlement to occur seven days after the deposit of the plan of land division to create the new allotment.
29. If settlement has not occurred within 4 months of the contract being executed (this scenario is not anticipated) then settlement interest becomes payable by Council.
30. As previously, it is proposed that 50% of the deposit being \$150,000 would be non-refundable.

31. For the purposes of securing an alternative property for relocation the APC is seeking that it have the ability to access all of the deposit funds i.e. \$300,000 from when payment of the deposit by Council occurs with \$150,000 being non-refundable and the balance of \$150,000 would need to be repaid by the APC to Council if settlement (unexpectedly) does not occur within 12 months of the contract being executed.
32. Advice from Cowell Clark on this was sought in the context of the circumstances, in particular the delay for legal reasons until settlement can occur (attachment 3). The advice provides helpful clarification.

Development of Recreation and Sport Facilities

33. The development of recreation and sport facilities (with flexibility to enable varied activities) on the 8.010 hectares and the associated timing is to be subject to future decision making by Council. This is expected to include factors like the receipt of further external grant funding and priorities regarding the application of revenue from developers via the Recreation, Sport and Community Infrastructure (RSCI) separate rate.
34. Once the APC relocates there is no obligation on Council as to when the development of recreation and sport facilities on the land would occur. In the interim period Council would simply be obliged to maintain the land in reasonable condition.

Other Matters

35. There is a list of a number of other matters that have been agreed between Council officers and representatives of the APC. This list involves matters that would be included in a covering letter from Council to the APC to the conditional contract, not within the contract itself.
36. The list includes the following matters:
 - the management of stormwater;
 - Council maintaining the land to be purchased in reasonable condition post the relocation of the APC;
 - enabling the developer of the balance of the APC to have access to a discount for access to the Council sewer service on a similar basis as is being offered to other large scale developers;
 - clarification regarding the calculation of open space obligations when the balance of the APC land is proposed to be developed; and

- future transport infrastructure needs.

APC Position

37. The representatives of the APC have indicated that the APC is prepared to execute a conditional contract subject to the above recommendations regarding the lease back and deposit arrangements being adopted at the Council meeting.

Confidentiality

38. As per previous Council resolutions on this matter, the need for confidentiality would cease once a contract has been executed by the APC and Council.
39. Subject to any unforeseen matters arising it is likely that a contract would be executed around the end September/early October 2014.

Community Engagement:

Informing only	Not applicable.
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Policy:

Not applicable.

Budget:

Council's budget for 2014/15 includes \$3 million for the purchase of land for recreation and sport purposes.

In December 2013 a \$1 million grant was received from the State Government.

A Deed was executed by Council and the State Government restricting the grant funds to be used only for the purchase of this land for community open space use.

Statutory/Legal:

A conditional contract would need to be prepared.

The land proposed to be purchased would be classified as community land pursuant to the Local Government Act 1999. Council has previously resolved this way.

Staff Resource Requirements:

Implementation of the recommendations can occur within existing staff resources with the exception of the preparation of the conditional contract and conveyancing.

Environmental:

Irrigation of the community open space land is proposed to occur via recycled water once the existing Council purple pipe infrastructure is extended for this purpose.

Social:

The proposal to secure 8.010 hectares of land for community open space will assist in meeting the identified needs for recreation, sport and community facilities.

Risk Assessment:

If the proposed purchase is not proceeded with:

- under the terms of the Deed executed by Council with the State Government in 2013, the grant of \$1 million would need to be re-paid by Council to the State Government; and
- the size of the footprint sought to achieve the Council's recreation and sport objectives is uncertain to be achieved through reliance on the developer of the APC land, as is the availability of the existing flat land.

Council is still awaiting formal advice from SA Power Networks (SAPN) regarding a decision on the location for the 66KV route. Based on the latest information from SAPN it remains Council's understanding that the SAPN decision will be option 3 as recommended by the Project Steering Group and preferred by Council. This option would have no direct impact on the polo grounds site.

Asset Management:

Council would assume responsibility for the management of the land to be purchased post relocation from the site by the APC.

Conclusion:

It is recommended that Council now proceed to finalise the purchase of portion of the APC land (8.010 hectares) for the purposes of community open space (as per the adopted Council Master Plan for the Mt Barker Ministerial DPA area) and utilise the State Government grant of \$1 million already received.

Key Contact

Brian Clancey, General Manager Infrastructure & Projects

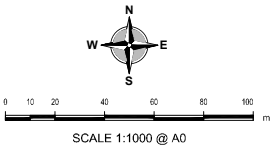
Sponsor of Project

Andrew Stuart, Chief Executive Officer

Attachments

1. Aerial photograph showing the footprint of land proposed to be purchased 14/085791
2. Previous area of land for lease back to the APC 13/114971
3. Advice from Cowell Clarke Commercial Lawyers 14/085793

OPTION 1



Dimensions and areas are subject to survey.

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LICENSED SURVEYOR	
REF A266512.0000	
DWGS No. POLO CLUB PURCHASE	
REVISION C	
REF 01.07.2014	

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District Council of Mount Barker
— Area to be Leased Back to Adelaide Polo Club
— Right of Way to Adelaide Polo Club



District Council of Mount Barker
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Map Zoom: 1218 m
Map Scale: 1:6,165
Created on: Tuesday, 10 December 2013 By: mth

Attachment 3 to Item 17.1

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Australia, 5000
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lawyer@cowellclarke.com.au
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Our Ref: RMN:MJP:131471

9 September 2014

Mr Brian Clancey
General Manager
Infrastructure and Projects
District Council of Mount Barker
6 Dutton Road
MOUNT BARKER SA 5251



By email: bclancey@dcmtbarker.sa.gov.au

Dear Brian

ADELAIDE POLO CLUB – PAYMENT OF DEPOSIT

I refer to your email of 8 September 2014.

I confirm that you have asked us to advise in relation to the proposal by Adelaide Polo Club that the deposit payable by the Council under any Contract which may be entered into between Adelaide Polo Club and Council for the purchase by Council of a portion of the Polo Club's land, be paid direct to the Club for use by it pending settlement.

As you are aware, it is usual, although as I comment below, not invariable, practice that a deposit which is paid under a commercial Contract be held in a trust account until such time as settlement is effected, at which time the deposit is released to the vendor.

Whilst that is the usual commercial practice, there is no legal requirement that a deposit must be held in a trust account pending settlement, and it is open to a vendor and a purchaser to agree that the deposit be otherwise dealt with.

Circumstances where a purchaser may agree to provide the deposit direct to a vendor for its use prior to settlement typically include those where the settlement date under the Contract is likely to be an extended period following the entering into of the Contract, including by reason of the need to satisfy a condition precedent to which the Contract will be subject. I understand that with respect to the proposed purchase of the Polo Club land that the Contract will be subject to the deposit of a Plan of Land Division creating a separate allotment for the land to be purchased by the Council, and that settlement is therefore unlikely to occur for three to four months, but possibly longer following the date of the Contract.

Coupled with a likely long settlement period, in our experience purchasers give consideration to allowing a release of the deposit to a vendor in circumstances where the vendor's funds are to a significant degree tied up in the land the subject of sale, and funds which may not otherwise be readily accessible are required by the vendor prior to settlement for a particular purpose, including as is the case here, to secure a replacement property. In those circumstances our experience has been that a purchaser's preparedness to allow the vendor to access the deposit can assist in ensuring that the overall transaction proceeds.

- 2 -

Mr Brian Clancey
District Council of Mount Barker


9 September 2014

I would point out that although the deposit may be paid direct to a vendor, and the vendor would be entitled to use the deposit from its receipt, the payment would nevertheless remain characterised as a deposit under the Contract and in the event that the vendor either failed to settle, or the deposit (or part thereof as is being proposed in this instance) is refundable in certain circumstances, then the vendor would be obliged to repay either the whole or part of the deposit to the purchaser in accordance with the contractual arrangements between the parties.

In those circumstances it is a matter for a purchaser to assess both the likelihood that repayment of the deposit will be required, and in circumstances where the requirement to repay the deposit or part thereof is likely (as opposed to merely possible), the purchaser would also need to assess the capacity of a vendor to make that repayment as part of its overall risk assessment of the transaction.

Whilst payment of a deposit direct to a vendor is the exception in commercial transactions, it is, in the circumstances referred to above, something that a purchaser will consider agreeing to as part of the overall package of commercial terms for the purchase of a property.

Yours sincerely



RICHARD MCNEIL
Partner

RMcNeil@cowellclarke.com.au

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