

INFORMATION REPORTS

Nil

CORRESPONDENCE

Nil

QUESTIONS ARISING FROM COUNCIL MEETING (10 MINUTES)

Laurie Gellon

In the interest of balance and fairness and full disclosure, if the Council does take up Councillor Kuchel's suggestion of putting signs up saying the good things that have come from the development. Will they also please put up signs that because of the development about ten significant trees that have been removed at the roundabout. If the good things are being signed I also think the public should know that those trees have gone.

84. CONFIDENTIAL REPORTS

84.1	REPORT TITLE:	STRATEGIC LAND PARCEL - STEPHENSON LAND PRUDENTIAL REPORT AND ACQUISITION
	DATE OF MEETING:	16 FEBRUARY 2009
	AUTHOR:	NARELLE JEFFERY
	AUTHOR'S TITLE:	GENERAL MANAGER CORPORATE
	FILE NUMBER:	64/050/008
	DEPARTMENT:	CORPORATE
	DEPARTMENT MANAGER:	NARELLE JEFFERY

Moved Councillor Irvine that the Council:

1. order 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:
 - (g) matters that must be considered in confidence in order to ensure that the Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty.
2. order that the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, Manager, Engineering & Technical Services and the Minute Secretary be permitted to remain in the room.

Seconded Councillor Wilksch and CARRIED

Moved Councillor Brazher-Delaine that Council

3. note and endorse the Prudential Report from Dean Newbery Consulting (Attachment 1).
4. note that the contract executed by Council for proposed allotment 412 contained in part Certificate of Title Volume 5454 Folio 304, part Certificate of Title Volume 5712 Folio 675 and part Certificate of Title Volume 5719 Folio 769 is subject to the approval of the deposit of plan for the proposed boundary realignment and Council providing to the Vendor by no later than 7 March 2009 notice in writing of its resolution to either proceed with or terminate the contract.
5. note that settlement for proposed allotment 412 shall take place six months from the date of the lodgement by the Vendor of the plan of boundary realignment with Council or the approval and deposit of the plan of the boundary realignment at the Land Titles Office whichever is the latter to occur (Council has granted consent to the boundary realignment and is awaiting the approval of the deposited plan from the Lands Titles Office; the expected settlement date is mid May 2009).
6. proceed with the purchase of proposed allotment 412 subject to the conditions in the executed contract.
7. authorise the Chief Executive Officer to formally give notice in writing to the Vendor (The Stephenson Family) informing them that Council has resolved to proceed with the purchase of proposed allotment 412 subject to the conditions in the executed contract.
8. authorise a loan of \$5,300,000 from the Local Government Finance Authority by way of a convertible cash advance debenture interest rate variable for a term of five years to enable funding of the purchase by Council from the Stephenson Family of:
 - (a) Proposed Allotment 412 for \$4,950,000 (plus GST) and associated costs (stamp duty, surveying and conveyancing); and
 - (b) Proposed Allotment 413 for \$50,000 (plus GST) and associated costs (stamp duty, surveying and conveyancing) being for road reserve;
9. authorise the Mayor and Chief Executive Officer to sign and affix Council's common seal to all appropriate debenture documents.
10. note that Council is pursuing grant funding from the State Government Planning and Development Fund to contribute to the purchase of proposed allotment 412 and that should this be successful, the amount of the required Council loan would be reduced.
11. authorise the Mayor and Chief Executive Officer to issue a Council Media Release regarding the receipt of the prudential

- report, the decision of Council to proceed with the purchase of proposed allotment 412 and the intended next steps regarding the proposed use of the land.
12. note that representatives of the Mount Barker Football Club have been advised on a confidential basis of this agenda item just prior to the Council Meeting.
 13. note that the immediately adjacent land owners will be formally advised of the decision of Council to proceed with the purchase of proposed allotment 412 .
 14. note that the adoption of the recommendation 6 above will trigger the immediate lifting of the confidentiality order resolved at the Council meeting on 7 October 2008.

Councillor Hamilton called for a division;

Votes for;

Councillor Kuchel, Councillor Brazher-Delaine, Councillor Gamble, Councillor Stokes, Councillor Campbell, Councillor Irvine, Councillor Zanker, Councillor Wilksch and Councillor Bails.

Votes against;

Councillor Hamilton

MOTION was PUT and CARRIED

Moved Councillor Zanker

15. 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 Bails and CARRIED

MEETING DECLARED CLOSED AT 8.56 PM

MAYOR

DATE

17. CONFIDENTIAL REPORTS

17.1 **REPORT TITLE:** **STRATEGIC LAND PARCEL –
STEPHENSON LAND PRUDENTIAL
REPORT AND ACQUISITION**

DATE OF MEETING: **16 FEBRUARY 2009**

AUTHOR: **NARELLE JEFFERY**

AUTHOR'S TITLE: **GENERAL MANAGER CORPORATE**

REPRESENTORS: **NIL**

FILE NUMBER: **64/050/008**

ATTACHMENTS: **1 – PRUDENTIAL REPORT**

DEPARTMENT: **CORPORATE**

**DEPARTMENT
MANAGER:** **NARELLE JEFFERY**

PURPOSE

To present to the Council the findings of the Prudential Report prepared by Dean Newbery Consulting relating to the purchase of the proposed Allotment 412 (36.73 hectares) of land from the Stephenson Family.

To gain Council endorsement to purchase the proposed Allotment 412 (36.73 hectares) of land from the Stephenson Family in accordance to the terms and conditions of the executed contract between the Stephenson Family and Council (contract is still subject to the approval of the deposit of plan for the proposed boundary realignment).

RECOMMENDATION

That the Council:

1. order 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:
 - (g) matters that must be considered in confidence in order to ensure that the Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty.

2. order that the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, and the Minute Secretary be permitted to remain in the room.
3. note and endorse the Prudential Report from Dean Newbery Consulting (Attachment 1).
4. note that the contract executed by Council for proposed allotment 412 contained in part Certificate of Title Volume 5454 Folio 304, part Certificate of Title Volume 5712 Folio 675 and part Certificate of Title Volume 5719 Folio 769 is subject to the approval of the deposit of plan for the proposed boundary realignment and Council providing to the Vendor by no later than 7 March 2009 notice in writing of its resolution to either proceed with or terminate the contract.
5. note that settlement for proposed allotment 412 shall take place six months from the date of the lodgement by the Vendor of the plan of boundary realignment with Council or the approval and deposit of the plan of the boundary realignment at the Land Titles Office whichever is the latter to occur (Council has granted consent to the boundary realignment and is awaiting the approval of the deposited plan from the Lands Titles Office; the expected settlement date is mid May 2009).
6. proceed with the purchase of proposed allotment 412 subject to the conditions in the executed contract.
7. authorise the Chief Executive Officer to formally give notice in writing to the Vendor (The Stephenson Family) informing them that Council has resolved to proceed with the purchase of proposed allotment 412 subject to the conditions in the executed contract.
8. authorise a loan of \$5,300,000 from the Local Government Finance Authority by way of a convertible cash advance debenture interest rate variable for a term of five years to enable funding of the purchase by Council from the Stephenson Family of:
 - (a) Proposed Allotment 412 for \$4,950,000 (plus GST) and associated costs (stamp duty, surveying and conveyancing); and
 - (b) Proposed Allotment 413 for \$50,000 (plus GST) and associated costs (stamp duty, surveying and conveyancing) being for road reserve;

9. authorise the Mayor and Chief Executive Officer to sign and affix Council's common seal to all appropriate debenture documents.
10. note that Council is pursuing grant funding from the State Government Planning and Development Fund to contribute to the purchase of proposed allotment 412 and that should this be successful, the amount of the required Council loan would be reduced.
11. authorise the Mayor and Chief Executive Officer to issue a Council Media Release regarding the receipt of the prudential report, the decision of Council to proceed with the purchase of proposed allotment 412 and the intended next steps regarding the proposed use of the land.
12. note that representatives of the Mount Barker Football Club have been advised on a confidential basis of this agenda item just prior to the Council Meeting.
13. note that the immediately adjacent land owners will be formally advised of the decision of Council to proceed with the purchase of proposed allotment 412 .
14. note that the adoption of the recommendation 6 above will trigger the immediate lifting of the confidentiality order resolved at the Council meeting on 7 October 2008.
15. that subject to Section 90 of the Local Government Act 1999 as amended, the public be readmitted to the meeting at the conclusion of the item.

BACKGROUND

At the Council meeting held on Monday 7 October 2008 it was resolved that Council:

"...

5. *authorises the Mayor and Chief Executive Officer to execute, sign and seal all the necessary documentation to accept the offer from the Stephenson Family in accordance to attachments 1 and 2 for the purchase by Council of proposed allotment 412 (36.73 hectares) for \$4,950,000 (plus GST if applicable) subject to:*
 - a. *the essential conditions of offer contained in attachments 1 and 2;*
 - b. *Council's consideration of a prudential report as required pursuant to Section 48 of the Local*

Government Act 1999 (attachment 6) by no later than 7 March 2009 and Council at its complete discretion having the right to proceed or terminate the contractual obligations with the Stephenson Family.

6. *determines that upon acquisition of proposed allotment 412 (if Council determines to proceed with the contractual obligations with the Stephenson Family following consideration of the prudential report) that this land be excluded from classification as community land under the Local Government Act 1999;*
7. *notes that a further Council meeting agenda item will be prepared following the completion of the Prudential Report for consideration of the Report and a recommendation for Council which will have the right at its complete discretion to proceed or terminate the contractual obligations with the Stephenson Family for the purchase of proposed allotment 412 (36.73 hectares).*

... ”

A Contract For the Sale and Purchase of Land (for proposed allotment 412) was executed between the Stephenson Family and Council on 3 November 2008. The conditions precedent to the contract are:

- a) approval of the deposit of plan for the proposed boundary realignment.
- b) Council consider as a meeting agenda item by no later than 7 March 2009 the Prudential Report as required by Section 48 of the Local Government Act and any recommendations at which time Council will have the right in its complete and absolute discretion to either proceed with or terminate the contract.
- c) Council to provide the vendor by no later than 7 March 2009 notice in writing of its resolution to either proceed with or terminate this contract.

A second separate contract was also executed between Kevin Stephenson and Council on 3 November 2008 for the sum of \$50,000 plus GST to vest proposed allotment 413 as a Road reserve. This contract is subject to the lodgement and approval of a plan of land division vesting the land as road reserve.

DISCUSSION

Section 48 of the Local Government Act 1999 provides for the requirement for a prudential for certain activities. In the case of the Stephenson Land (proposed allotment 412), Section 48(1)(A)(b) states that “...a Council must obtain and consider a report that addresses the prudential issues set out in subsection (2) before the

Council engages in any project(ii) where the expected capital cost of the project over the ensuing five years is likely to exceed \$4,000,000....".

As the purchase price of the Stephenson Land is over this amount a prudential review was required.

The Terms of Reference for the Prudential Review included the requirements of Section 48 (2) of the Act as follows:

- (a) *the relationship between the project and relevant strategic management plans*
- (b) *the objectives of the development Plan in the area where the project is to occur*
- (c) *the expected contribution of the project to the economic development of the local area, the impact that the project may have on businesses carried on in the proximity and, if appropriate, how the project should be established in a way that ensures fair competition in the market place*
- (d) *the level of consultation with the local community, including contact with persons who may be affected by the project and the representations that have been made by them, and the means by which the community can influence or contribute to the project or its outcomes*
- (e) *if the project is intended to produce revenue, revenue projections and potential financial risks*
- (f) *the recurrent and whole of life costs associated with the project including any costs arising out of proposed financial arrangements*
- (g) *the financial viability of the project, and the short and longer term estimated net effect of the project on the financial position of the council*
- (h) *any risks associated with the project, and the steps that can be taken to manage, reduce or eliminate those risks (including the provision of periodic reports to the chief executive officer and to the council)*
- (i) *the most appropriate mechanisms or arrangements for carrying out the project*

The findings of the Prudential Report are attached at Attachment 1.

The summary of the Prudential Report indicates that *"....Council has complied with the prudential requirements as set out in Subsection (2) of Section 48, Local Government Act 1999."*

Additionally, a due diligence report has been prepared by Council staff with input from specialist consultants including an initial environmental assessment. No issues of concern were identified in the report beyond normal development requirements for a site of this size.

As no concerns for Council were identified as part of the prudential report (or the due diligence report) Council is now in a position to determine to proceed with the purchase of proposed allotment 412 and give notice to the Vendor of this to meet a condition of the contract.

In terms of the planning process, Council Officers have advised the Development Assessment Commission and the Applicant's Surveyor that it has no issues in respect of Section 51 (Development Act) clearance being issued. This should provide for the opportunity for the lodging of the boundary alignment plan at the Lands Titles Office.

Expected Settlement Date

The Stephenson application to Council for a boundary realignment was dated 14 November 2008. The Contract for proposed allotment 412 stipulates that settlement is to take place 6 months from the date of lodgment to Council of the application or upon approval of the boundary realignment whichever is the latter. The expectation is that the plan for the boundary realignment will be approved before May 2009. It is therefore anticipated that settlement for the transaction (proposed allotment 412) will take place in mid May 2009.

For proposed allotment 413 to vest as road reserve, it is expected that settlement will also occur in May 2009.

Funding

The current 2008/2009 budget estimates as at 30 September 2008 project an overall funding deficit of \$6.2 million at 30 June 2009. The purchase of the Stephenson land would increase this deficit by \$5.3 million. It would therefore be necessary for Council to borrow funds for the purchase of proposed Allotment 412 and proposed Allotment 413. The current indicative fixed term loan rate for \$5.3 million (being the purchase price for proposed Allotment 412 of \$4,950,000 plus costs and also proposed Allotment 413 of \$50,000 plus costs) is between 4.75% and 5% dependent upon the terms of the loan. A fixed term loan over ten years would attract interest repayments of approximately \$1.5 million and an annual repayment of \$680,000 in principal and interest.

Council currently has Convertible Cash Advance Debenture facilities at the Local Government Finance Authority. Interest on these loans is charged quarterly at the cash rate, currently 4.25%, with principal payments able to be made at any time over five years with a corresponding decrease in interest charged. A Convertible Cash Advance Debenture of \$5.3 million with interest at 4.25% would cost \$225,000 in interest annually which could be reduced as principal is repaid.

Next Steps

Subject to Council approval to proceed with the purchase of proposed allotment 412 the next steps proposed for the land will include:

- Outline Concept Plan - Including Broad Use Options - by mid 2009
- Initial Community Consultation - mid year/Spring 2009
- Development and Funding Strategy - mid to late 2009
- Further Community Consultation - late 2009

An Elected Member briefing will be held shortly to discuss the proposed program and approach. This would be followed by a Council meeting agenda item prior to any initial community consultation.

POLICY IMPLICATIONS**1. Financial/budget**

Funding for the purchase of the two land parcels was considered in accordance with Council's long term financial model as part of the Prudential Report. A revised 2008-09 budget and long term financial plan including the acquisition and funding of the purchase of the Stephenson Land parcels will be submitted to Council's Audit Committee and subsequently Council in the near future.

Council is pursuing grant funding from the State Government Planning and Development Fund to contribute to the purchase of proposed allotment 412. Initial discussions have been held and a request will now be formalised.

2. Legal

Local Government Act 1999, Section 48 - Prudential Report. In accordance with the Act, the Prudential Report must be available for public inspection at the principal office of the Council once the Council has made a decision on the relevant project. The Council may however take steps to prevent the disclosure of specific information in order to protect the commercial value or to avoid disclosing the financial affairs of a person (other than the council).

3. Staffing/Work Plans

The prudential was undertaken by an independent consultant who specialises in this type of analysis.

4. Environmental

Environmental considerations were included as part of the due diligence report with no concerns raised.

5. Social

Considerations include various community objectives including:

- adequate open space to cater for recreation and sporting needs;
- adequate public purpose land;
- further extensions of the linear trail to provide safe off road routes for pedestrians and cyclists and promote exercise and healthy lifestyles.

6. Strategic Plans

Goal 6 – Governance.

7. Risk Assessment

The risk to Council of purchasing the proposed allotment 412 from the Stephenson Family was the basis of consideration of the prudential report and due diligence report. No concerns were raised in either reports regarding the purchase of the proposed allotment.

8. Asset Management

The purchase of the proposed allotment 412 will be included in Council's asset management plans and register to enable the ongoing sustainable management of the asset.

COMMUNITY CONSULTATION**1. Customer Needs Analysis**

The Stephenson Family have been advised of the outcome of the prudential report and the recommendations of this report to the Council.

2. Promotion/Communications

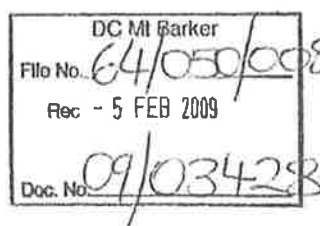
As per the recommendations a Council media release is proposed. In addition, as per the recommendations, formal advice will be provided to the immediately adjacent land owners and the Mount Barker Football Club.

ITEM 17.1 ATTACHMENT 1

DEAN NEWBERY CONSULTING
MANAGEMENT CONSULTANTS TO LOCAL GOVERNMENT

4 February 2009

Attention: Ms Narelle Jeffrey
General Manager Corporate
District Council of Mount Barker
PO Box 54
MOUNT BARKER SA 5251



Dear Narelle

Re: Section 48 Local Government Act 1999
– Prudential Requirements for Certain Activities
– Proposed Purchase of Land known as 'Stephenson Land'

Please find below my comments with regard to the various prudential issues set out in Subsection (2) of Section 48 of the Local Government Act 1999 for the proposed purchase by your Council of the Stephenson Land.

My understanding is that the proposal is for Council to purchase the land in question to form part of its strategic/regional open space network and which will be used for recreation, sport and other purposes. As such, the Stephenson Land is not being purchased by Council with a view to profit making by resale, either by a future rezoning, subdivision or the like.

The land in question is proposed Allotment 412 (when created, to be 36.73 hectares) as set out in the Survey Plan attached to a formal Valuation dated 1 July 2008 addressed to Council by Mr Lindsay Wapper, Licensed Valuer.

1. Subsection (2)(a)

The proposed purchase is included in Council's Strategic Management Plans, including its Long term Financial Plan and Draft Community Plan.

2. Subsection 2(b)

The current zoning of the land allows for the development of it as a "Recreation Area and associated uses" as a merit development.

3. Subsection 2(c)

Given that the land is to be acquired for future development as recreation, sport and other purposes, there should be no adverse impact on businesses located within its proximity. The proposal as it stands should itself have a positive impact on the future economic development of the local area, given that it is intended to enhance future community participation in sport and recreational pursuits.

4. Subsection 2(d)

Council's Administration advise that no community concerns have been raised to date with regard to the proposal, given that it has been publicly canvassed in the local newspaper ('The Courier', 12 November 2008) together with various communications with the Executive Committee of the Mount Barker Football Club.

5. Subsection 2(e)

At this stage of the proposal it is not intended to produce revenue(s).

6. Subsection 2(f)

At this stage the proposed purchase price of \$4,950,000 together with all finance costs have been factored in Council's Long term Financial Plan, but yet to be referred to Council (with the proposal included) – that should occur at the earliest opportunity. Any further costs (over and above the initial purchase cost) will only be known once future Concept Plans are prepared and put to community consultation.

7. Subsection 2(g)

The proposed purchase cost together with future finance costs have all been factored in Council's Long term Financial Plan (to be referred to Council) together with Budget Review 2 for 2008/09. The funding arrangements do not have an adverse impact on Council's existing or future financial position.

In the event that the land is purchased but subsequently not required, the Valuation dated 1 July 2008 by Mr Lindsay Wapper indicates "Current Fair Market Value – Proposed Allotment 412" to be \$3,899,000 (48.49 hectares), proportionately being \$2,953,398 for 36.73 hectares, against the proposed purchase price of \$4,950,000. Mr Wapper indicates in his Valuation that the "Potential Value" of the land in question, based on "Hypothetical 'in globo' subdivision calculations" is far in excess of its "Current Market Value". In view of the valuation research and comments by Mr Wapper in his report, there should be no outstanding concerns that Council is proposing to purchase the land for an amount in excess of what he considers is "Current Market Value".

8. Subsection 2(h)

Acquisition by the Council is conditional on approval for boundary adjustment, which Council's Planning Department advises has been granted consent.

Council's Administration has also conducted their own internal due diligence process, which covers all likely risks associated with the land purchase proposal.

9. Subsection 2(i)

The land is proposed to be owned directly by the Council and that is appropriate considering its intended use.

Summary

In my assessment, Council has complied with the prudential requirements as set out in Subsection (2) of Section 48, Local Government Act 1999.

Yours sincerely



Don Venn
Chartered Accountant
Principal
Dean Newbery Consulting