

CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2011

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
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56	2011 7 March 11	Crystal Lake Camp Site	<b>Reason:</b> 90(2) (3)(a) (3)(h) Information relating to legal advice, which will be discussed in detail with council members.	Report Attachments Minutes		Orders that the report, attachments and all minutes be retained in confidence until settlement of the matter and that this order be reviewed every 12 months.	3 Sep 12		Released 3 Sept 2012
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RELEASED

**74 CONFIDENTIAL REPORTS**

**REPORT TITLE: CRYSTAL LAKE CAMP SITE**  
**DATE OF MEETING: 7 MARCH 2011**  
**FILE NUMBER: 10/130/004-03**

Moved Councillor Irvine that Council:

**Section 90 (2) and 90(3) (h) Order**

**1. Pursuant to Section 90(3)(h)**

Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except:

- Chief Executive Officer
- General Manager, Infrastructure & Projects
- General Manager, Corporate Services
- General Manager, Council Services
- Contracts Co-ordinator
- Minute Secretary

be excluded from attendance at the meeting for Agenda Item 16.1 Crystal Lake Camp Site.

The Council is satisfied that pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to legal advice, which will be discussed in detail with council members.

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 this information may compromise the Council's position.

Seconded Councillor Gamble and CARRIED

9.30pm Councillor Stokes rose and left the Chamber.

Moved Councillor Gamble that Council:

**Section 91(7) Order**

2. Rejects the claim for settlement dated 24 January 2011 made by Camatta Lempens Pty Ltd Lawyers on behalf of Mr Carter.
3. Authorises the Assets & Contracts Manager to make Mr Carter a formal written, without prejudice offer, valid for thirty (30) days from the date of the offer to give up possession of the Site within two (2) months of the date of the offer and to leave all of the buildings and improvements on Site and to pay to Council all monies outstanding for unpaid rates, rental and Council's legal expenses so far incurred on this matter.

4. Should the formal offer in recommendation 3 not be formally accepted by Mr Carter within thirty (30) days of the date of the offer, that Council authorises the Assets & Contracts Manager to negotiate terms of settlement with Mr Carter for him to give up possession of the Site and for the Assets & Contracts Manager to report the outcomes of the negotiations for consideration by Council not later than six (6) weeks from the date of the offer in recommendation 3.
5. Authorises the Assets & Contracts Manager to extend the date for Mr Carter to give up possession of the Site from 13 December 2010 to thirty (30) days from the date of the offer by the Assets & Contracts Manager and in the meantime legal action to evict Mr Carter from the Site be deferred.
6. Pursuant to Section 91(7)  
Having considered Agenda Item 16.1 Crystal Lake Camp Site, in confidence under 90(2) and (3)(h) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the report, attachments and all minutes be retained in confidence until settlement of the matter and that this order be reviewed every 12 months.

Seconded Councillor Bettcher and CARRIED

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MEETING DECLARED CLOSED AT 9.50PM

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MAYOR

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DATE

**16. CONFIDENTIAL REPORTS**

**16.1 REPORT TITLE: CONFIDENTIAL ITEM: CRYSTAL LAKE CAMP SITE**

**DATE OF MEETING: 7 MARCH 2011**

**FILE NUMBER: 10/130/004-03**

**Strategic Plan Ref:**

Goal Area Number 4, Desired Outcome 4.7 Well Maintained and utilised community assets; Ongoing Initiative 4.17: Plan for and manage community assets in partnership with the community including the use of community buildings and sporting facilities.

**Purpose:**

For Council to consider options for Mr Carter to give up possession of the Crystal Lake Camp Site.

**Summary – Key Issues:**

- Council's risk exposure
- Eviction of Mr Carter
- Ownership of buildings
- Mr Carter's claim for "settlement"

**Recommendation:**

That Council:

**Section 90 (2) and 90(3) (h) Order**

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

Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except:

- Chief Executive Officer
- General Manager, Infrastructure & Projects
- General Manager, Corporate Services
- General Manager, Council Services
- Contracts Co-ordinator
- Assets & Contracts Manager
- Minute Secretary

be excluded from attendance at the meeting for Agenda Item 16.1 Crystal Lake Camp Site.

The Council is satisfied that pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to legal advice, which will be discussed in detail with council members.

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 this information may compromise the Council's position.

### **Section 91(7) Order**

2. **Pursuant to Section 91(7)**  
Having considered Agenda Item 16.1 Crystal Lake Camp Site, in confidence under 90(2) and (3)(h) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the report, attachments and all minutes be retained in confidence until settlement of the matter and that this order be reviewed every 12 months.
  3. Rejects the claim for settlement dated 24 January 2011 made by Camatta Lempens Pty Ltd Lawyers on behalf of Mr Carter.
  4. Authorises the Assets & Contracts Manager to make Mr Carter a formal written, without prejudice offer, valid for thirty (30) days from the date of the offer of \$10,000 exclusive of GST to give up possession of the Site within two (2) months of the date of the offer and to leave all of the buildings and improvements on Site and to pay to Council all monies outstanding for unpaid rates, rental and Council's legal expenses so far incurred on this matter.
  5. Should the formal offer in recommendation 4 not be formally accepted by Mr Carter within thirty (30) days of the date of the offer, that Council authorises the Assets & Contracts Manager to negotiate terms of settlement with Mr Carter for him to give up possession of the Site and for the Assets & Contracts Manager to report the outcomes of the negotiations for consideration by Council not later than six (6) weeks from the date of the offer in recommendation 4.
  6. Authorises the Assets & Contracts Manager to extend the date for Mr Carter to give up possession of the Site from 13 December 2010 to a date to be determined by the Assets & Contracts Manager and in the meantime legal action to evict Mr Carter from the Site be deferred.
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### **BACKGROUND**

1. The Crystal Lake Camp Site is situated on part of Lord Robinson Park, Macclesfield. The land is owned by the Crown and under the care and control of Council. The land is classified as community land and was dedicated for Parkland on 14 August 1980. An aerial photograph showing the boundaries of Lord Robinson Park, existing lease area and amended lease area is attached to this report (attachment 1).

2. The lease for the Site held by Mr RA Carter expired on 30 June 2007. The lease was for a period of ten (10) years commencing on 1 July 1997. At the end of the period Mr Carter occupied the Site as a monthly tenant until the notice to terminate became effective on 10 December 2010. He remains on the Site without any tenancy arrangement.
3. In reviewing the lease arrangements with Mr Carter, anomalies were identified with respect to the lease, such as clarity about the actual boundary of the leased area and the status and ownership of the buildings. Community members had also expressed concerns primarily about the community having restricted access to the watercourse running through the Site.
4. On 11 August 2010 a letter terminating the lease agreement and giving Mr Carter four (4) months notice for him to vacate the premises was sent to Mr Carter. The final date for Mr Carter to give up possession of the land was 12 December 2010 (refer attachment 2). Although this date was subsequently extended until 10 February 2011 to enable negotiations to take place between the parties.
5. A chronological summary of events and associated implications related to the Crystal Lake Camp Site is provided with this report (attachment 3).

## **DISCUSSION**

### **6. Current Status**

- 6.1 Mr Carter has not complied with any of Council's requirements as stated in the letter of termination of the lease dated 11 August 2010. Mr Carter continues to occupy the land.
- 6.2. Approximately one week before the date for Mr Carter to give up possession of the site (12 December 2010) his lawyer (Camatta Lempens Pty Ltd Lawyers) requested a meeting with Council. A meeting between Mr Carter, his lawyer, Council staff and Council's lawyer was held on 10 January 2011. At this meeting Mr Carter's lawyer declared that Mr Carter offered to vacate the premises and hand back the property to Council subject to a "settlement" with Council. It was agreed at this meeting that Mr Carter could remain on the property until 10 February 2011 to allow his lawyer to formalise in writing the claim for "settlement". A formal letter from Mr Carter's lawyer has been received by Council requesting Council to *"pay Mr Carter the sum of \$220,000 being compensation for the loss of his property, livelihood, home and financial losses"* (copy of letter is attachment 4). The date of extension for Mr Carter to give up possession of the Site of 10 February 2011 has passed, hence Council needs to extend this date pursuant to recommendation 6 of this report if negotiations are to continue.

## 7. Legal Opinion

- 7.1 Council has received legal opinion on various options available to Council in dealing with the continued occupation of the land by Mr Carter. The legal advice is attached to this report (attachment 6).

The following options are available to Council but are not exhaustive:

1. Notify Mr Carter's lawyer that Council will not consider offering any settlement to Mr Carter and instruct that he give up occupation of the Site within one (1) month. This option would leave the buildings on the Site.

*Legal opinion: There are no significant benefits to Council in adopting option 1 and to do so would prolong the current situation.*

2. Proceed with legal steps to evict Mr Carter from the Site and for him to remove his buildings and improvements from the Site.

*Legal opinion: Council has tried to negotiate a settlement with Mr Carter but his demands have been either excessive or unsubstantiated and Council has no alternative but to progress the matter through the Court. However, legal costs would be significant and the process prolonged.*

3. Make Mr Carter an offer of approximately \$20,000 based on the amount provided in the valuation as being a realistic market value of \$148,000 less the estimated cost of removal and remediation of all of the buildings being \$104,840 and any amounts owed to Council by Mr Carter ie outstanding rates, rental and Council's legal expenses incurred on the matter (currently approximately \$20,000 in total). This option would leave the buildings on the Site.

*Legal opinion: Council may need to offer a higher amount than \$20,000 before Mr Carter may become interested in a settlement. Whilst Council has incurred legal expenses and seeks to set these off, Mr Carter will no doubt reject this. The other issue that Mr Carter should be conscious of is that he will also be incurring legal costs, both in terms of negotiations and resisting any legal action by Council, costs that he may not be able to recover. He also has a potential exposure to Council's costs if he were to lose in Court.*

4. Pay Mr Carter the amount of \$220,000 as compensation in accordance with the claim submitted by his lawyer dated 24 January 2011. This option would leave the buildings on the Site.

*Legal opinion: This option would be unjustified in light of the position that Mr Carter finds himself in. His lease and monthly tenancy have expired and he owes Council money for outstanding rates and rent. He has no legitimate claim for loss of business income and has a contingent liability for asbestos removal.*



In summary, legal opinion considers that a combination of options 2 and 3, with perhaps an increased counter offer by Council are the most realistic at this time.

## **8 Offer**

Given the circumstances and Council's objective to achieve vacant possession of the Site, it is recommended that an offer be made to Mr Carter for an amount of \$10,000 excluding GST as a reasonable starting point.

The offer would be for Mr Carter to vacate the Site, leave all of the buildings on Site, pay all outstanding rent, rates and reimburse Council for legal expenses incurred on the matter.

### **Community Engagement:**

Informing only	Not applicable to this report. Community consultation has taken place on the matter. In relation to future site use options, the registration of interest process has been delayed pending resolution of the Site tenancy.
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### **Policy:**

No policy.

### **Budget:**

Council has approved a budget of \$15,000 in its 2010/11 budget to settle the matter. As of 7 February 2011 expenditure to date is \$5,773 on legal expenses.

Council will need to consider budgeting in the future for potentially removing and/or upgrading buildings and remediation of the Site. The extent of such expenditure is not known at present and will require specific expertise to determine.

### **Statutory/Legal:**

Council's lawyers will be consulted on the required processes to bring the matter to settlement.

Legal costs will also be incurred in the re-dedication of the land.

Council's Community Land Management Plan for Community, Recreation & Sporting facilities will need to be amended when the land is re-dedicated and the future use of the Site is determined.

### **Staff Resource Requirements:**

The matter will be co-ordinated by existing staff.

**Environmental:**

Future management of the site will need to consider environmental management issues. Any future tender call will request tenderers to demonstrate how they intend incorporating environmental management and sustainability in their proposals. A future management agreement will be considered with local community groups interested in landcare activities on Lord Robinson Park.

**Social:**

Any new lease area will be less than the current area giving the community improved access to the waterway.

**Risk Assessment:**

Council could be exposed to significant legal expenses and the costs of removal, remediation or upgrading of the Site.

**Asset Management:**

Until the matter of whether or not the buildings and improvements remain on the land or not any tender process for the future use and management of this Site should not be undertaken. It is unlikely that Mr Carter will remove the buildings from the Site.

Should the buildings remain on the Site and Council chooses to upgrade some or all of these to respectable standards, the cost of such upgrade is not known but would undoubtedly include the cost of asbestos removal and replacement with alternative materials. The cost of upgrading may be able to be negotiated with an interested party in retaining the Site for the purposes of a camp or similar recreational pursuits.

Alternatively, some of the buildings may be able to be sold and removed from the Site by a purchaser but at the present time a possible sale price cannot be determined.

The buildings on the Site are provisionally valued at \$148,000. Removal and remediation of all of the buildings is estimated to be \$104,840 and this does not take into account any latent conditions such as site contamination (except for asbestos in the majority of the buildings). In summary then, the least amount of expenditure Council can expect to settle with Mr Carter, remove the buildings and remediate the Site is around \$114,840 (\$104,840 plus \$10,000 as cash settlement to Mr Carter. In return Council could potentially sell some of the buildings and dispose or upgrade some.

However, without knowing the full extent of the costs of latent conditions a firm figure cannot be known. Due to this Council is exposed to significant risk which should be uppermost in any decision to be made to settle with Mr Carter.

**Conclusion:**

Mr Carter is the legal owner of the buildings and improvements on the Site. Under the lease he may remove these from the site but is not legally obliged to do so by the lease.

Mr Carter is seeking to extract \$220,000 "compensation" from Council and to leave his buildings on the Site.

Prolonging the current situation with Mr Carter remaining on Site will increase Council's legal expenses and hinder any tender process to determine the future use and management of the Site.

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**Key Contact**

Bill Graham – Contracts Co-ordinator, Infrastructure & Projects

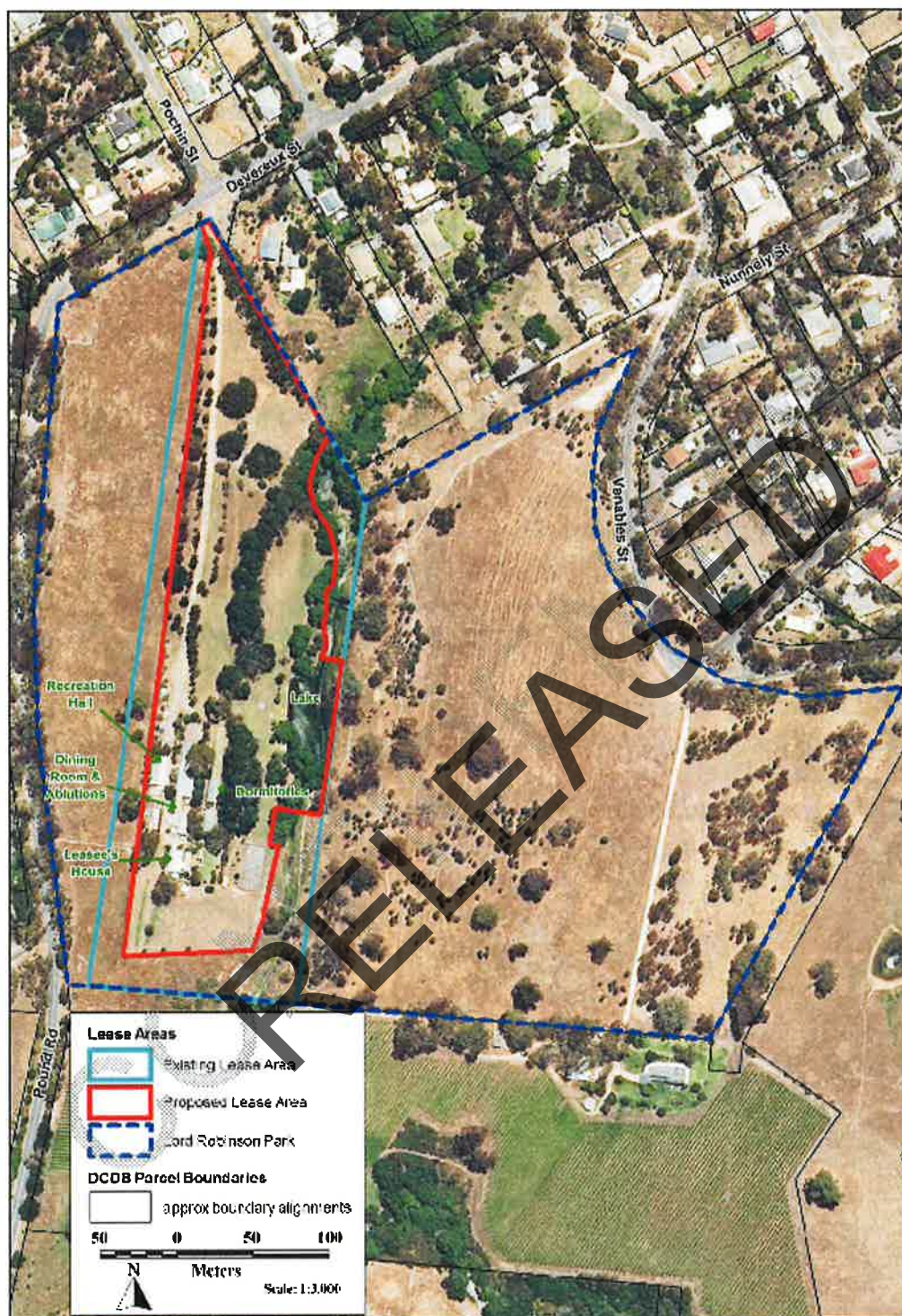
**Manager or Sponsor of Project**

Brian Clancey, General Manager, Infrastructure & Projects

**Attachments**

1. Site plan showing existing lease area, proposed lease area and boundary of Lord Robinson Park
2. Copy of termination letter sent to Mr Carter dated 11 August 2010
3. Chronological summary of events relating to the Crystal Lake Camp Site
4. Letter from Camatta Lempens Pty Ltd Lawyers (acting for Mr Carter) dated 24 January 2011
5. List and photographs of buildings
6. Legal advice from Mellor Olsson Lawyers (acting for Council) dated 16 February 2011
7. Copy of offer to Mr Carter dated 11 January 2010
8. Copy of email from Mr Carter dated 2 August 2010
9. Copy of email from Mr Carter dated 12 August 2010

## Attachment 1 to Item 16.1



The amended lease area follows the boundary fences on the western, southern and south east boundaries of the Camp Site and then includes the lake and the western half of the watercourse northwards from the lake. The eastern half of the watercourse is not included in the amended lease area and will be directly accessible from the eastern side of Lord Robinson Park. Also removed from the lease area on the eastern side are walking trails and areas that have been the subject of environmental rehabilitation efforts by the Macclesfield Bushfire Group.



10/39644



## THE DISTRICT COUNCIL OF MOUNT BARKER

P.O. BOX 54, Mount Barker S.A., 5251 – Telephone: 8391-7200  
DX address: DX 51708, Mount Barker

Facsimile: (08) 8391-7299  
web site: [www.dcmtbarker.sa.gov.au](http://www.dcmtbarker.sa.gov.au)

Reference: VR/23

10/130/004-03

11 August 2010

Mr RA Carter  
C/- Crystal Lake Camp  
Devereux Street  
MACCLESFIELD SA 5153

Dear Mr Carter

### RE: LEASE OF CRYSTAL LAKE CAMP

I refer to previous discussions and correspondence regarding the management of the Crystal Lake Camp ('the Camp').

After careful consideration of our recent discussions and correspondence regarding your lease of the Camp, Council decided at its meeting on 2 August 2010 that it no longer wishes to continue the current monthly tenancy with you.

Council has been more than reasonable in offering you interim arrangements for the use of the land and has given you ample opportunity to contact our staff to negotiate an arrangement that is beneficial to both parties.

Unfortunately, despite our many efforts to contact you, we have not received any response from you regarding our interim proposals. Council is also concerned that you are significantly in arrears in the payment of the rent and rates. Your failure to pay rent is clearly in breach of the terms of the Lease Agreement.

As a result, Council has no alternative but to terminate your existing monthly tenancy in order to resolve this situation and move forward.

Accordingly, Council hereby terminates the Lease Agreement with you. Although Council has the right to terminate upon one month's written notice, we have considered a longer period of notice being four (4) months to enable you to make the appropriate arrangements provided you agree to comply with your yielding up obligations in accordance with the Lease Agreement

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dated 27 April 1998. The final date for giving up occupation of the land would therefore be 12 December 2010.

On expiration of the Lease, Council will require the following:

1. payment of all outstanding monies owed to Council, presently in the sum of \$11,246.36 being:
  - (a) arrears of rent as at 31 July 2010 of \$9,190.45; and
  - (b) outstanding rates of \$2,055.91 for the period 1 July 2009 to 30 June 2010.

These amounts are calculated in accordance with the enclosed Statement and Rate Notice and will be amended accordingly during the period of notice.

2. payment of the Council's legal costs which I estimate will be in the vicinity of \$750.00 (excluding GST).
3. the removal of all of the buildings, fixtures, fittings, plant and equipment, including transportable buildings on the land and the making good of any damage to the land caused by such removal, in accordance with clause 3.2 of the Lease Agreement and having regard to clause 4.12 (Liability for Buildings) of the Lease Agreement.
4. the signing of the attached release of the Council from any liability for the removal of the buildings, fixtures, fittings, plant and equipment from the land.

If you fail to comply with the above demands, Council will have no alternative but to issue proceedings against you for the recovery of the outstanding monies due under the Lease Agreement. Obviously, should such action be necessary, then the legal costs payable by you will increase considerably.

I therefore suggest that you give this matter your urgent attention as no further correspondence will be entered into prior to the issue of proceedings if payment is not received.

I enclose a release form and request that you sign, date and return the form to me within thirty (30) days of the date of this letter.

Yours faithfully



**BILL GRAHAM**  
**Contracts Co-ordinator**  
**Governance & Projects**

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**CRYSTAL LAKE CAMP****MACCLESFIELD****RELEASE**

I, ROBERT ANDREW CARTER of Crystal Lake Camp, Devereux Street Macclesfield in the State of South Australia hereby release the District Council of Mount Barker of 6 Dutton Road Mount Barker in the State of South Australia from all actions, proceedings, claims, demands, costs and expenses whatsoever arising from the termination of the Lease Agreement dated 27 April 1998 between the parties and the removal of the buildings, fixtures, fittings, plant and equipment on the land the subject of the said Lease Agreement.

.....  
SIGNED: RA CARTER

Dated: / / 2010

## **CHRONOLOGICAL SUMMARY OF EVENTS & ASSOCIATED IMPLICATIONS RELATING TO THE CRYSTAL LAKE CAMP SITE**

### **JUNE 2007**

The lease for the Site held by Mr RA Carter expired on 30 June 2007. The lease was for a period of ten (10) years commencing on 1 July 1997.

### **JULY 2007**

In reviewing the lease arrangements with Mr Carter, anomalies were identified with respect to the lease, such as clarity about the actual boundary of the leased area and the status and ownership of the buildings. Community members had also expressed concerns about:

- alienation of public land (dedicated for parkland purposes as above) – part of the Site is fenced, excluding public access;
- restricted community access through the Camp to the watercourse;
- land management, environmental and conservation issues; and
- the presence of asbestos and contamination posing health and safety risks.

In view of these concerns, Council resolved to permit Mr Carter to continue to occupy the Site on a monthly basis and that Council would undertake community consultation regarding future use options for the Site.

### **APRIL 2008**

The community consultation process consisted of a community forum held in Macclesfield. A summary of concerns raised at the forum is:

- Restricted access to the water course and swimming hole.
- Restricted access to walking trails through the Camp Site.
- Degradation of the environment adjacent to the watercourse, impacting on conservation of native vegetation and habitats.
- Whether existing buildings comply with environmental health standards.

Council therefore resolved that further investigations should be carried out in the matter and that a further report to be presented to Council in the future.

An independent consultant was engaged by Council to undertake a review of options for the future management of Crystal Lake Camp Site. This engagement included a review of previous correspondence, legal advice and a report from the community forum previously held. The report was presented to Council in July 2009.



**JULY 2009**

After consideration of the consultant report on future use options of the site Council resolved to *"open call for tenders for commercial lease to operate campsite or similar facility on designated lease area"*.

**AUGUST 2010**

- The lease area has been amended (the original and amended lease area can be seen in attachment 1). The lake is still included in the lease area to minimise risk exposure to Council and an assessment that the current and/or future Mr Carter of the camp site is best placed to manage this area including the management of risk. Community access to the creek and permanent water has been considered and accommodated within the creek line immediately above the lake and the creek line area below the lake to the property boundary.
- Council's General Manager Vision & Compliance met with the Mr Carter to negotiate an interim arrangement whilst the process to prepare for tender was furthered. An outcome of this meeting was for Council to formally offer Mr Carter interim arrangements. A formal letter was subsequently sent by registered mail to the Mr Carter in January 2010 offering him a choice of two options. A copy of the offer to Mr Carter is attached to this report (attachment 8). Despite a follow up letter emails and phone calls to Mr Carter no response to the offer was received by Council until 2 August 2010 in which he claims that he has had no contact or negotiations with the Chief Executive Officer and he denies that a meeting with the General Manager, Vision & Compliance had taken place. His letter to Councillors is attached to this report (attachment 3).
- At the time (August 2010) Mr Carter had not paid rental to Council for 12 months and owed an amount of \$8,451.00. There was also an amount of \$2,040.65 outstanding for unpaid rates for the period 1 July 2009 to 30 June 2010.
- Given that Mr Carter had not responded to the interim lease or contractual management offer, it was considered necessary for action to be taken that resolves this impasse. It was therefore a recommendation of the report in August 2010 that Council terminates the current lease arrangement forthwith and gives Mr Carter notice of four (4) months to vacate the site.
- On 11 August 2010 a letter terminating the lease agreement and giving Mr Carter four (4) months notice for him to vacate the premises was sent to Mr Carter. On termination of the lease Mr Carter was required to pay all outstanding monies owed to Council, Council's legal fees and to remove all of his buildings, fixtures and fittings from the Site (refer attachment 2). Mr Carter responded via email on 12 August 2010 (attachment 9).
- The final date for Mr Carter to give up occupation of the land was 12 December 2010. The initial letter giving notice to Mr Carter was followed up

with another dated 26 November 2010 confirming Council's requirement for Mr Carter to give up occupation on 12 December 2010.

## **IMPLICATIONS**

### ***Buildings/Fixtures & Fittings***

Records show that Council sold all the buildings and improvements on the Site to the previous Lessee in 1993. Mr Carter purchased the buildings and improvements from the previously Lessee before he (Mr Carter) took lease of the Site in 1997. In 2003 Council approved Mr Carter to place a transportable building on the Site providing it was removed at the end of his tenure.

Legal advice confirms that Mr Carter is considered to be the legal owner of the buildings, plant and equipment on the camp and by entering into the lease and pursuant to Clause 4.12 of the lease (Liability for Buildings) Mr Carter has acknowledged that the buildings located on the land are his property.

The lease places no positive obligation on the requirement for Mr Carter to remove the buildings at the end of the lease period however legally he has the right to remove these buildings, plant and equipment at the end of the lease but appears reluctant to do so.

### ***Valuation***

In March 2010 Council commissioned a valuation of the Crystal Lake Camp Site. The valuation was based on the current market value of the buildings and site improvements on a depreciated replacement cost basis which was considered to be \$143,800, less the cost to remove asbestos in the buildings, demolition of the buildings and remediation of the site estimated to be \$104,840, resulting in an amount of approximately \$40,000 as a realistic market value of the leasehold improvements. The valuation has considered the age and estimated useful remaining life, condition, wear and tear and maintenance levels together with the anticipated residual or scrap value at the end of the buildings and associated site improvements life. The valuer confirms that this method is commonly applied in a valuation situation where there is no otherwise dependable market data to analyse and develop a market value estimate.

### ***Removal & Remediation***

The estimate of \$104,840 for removal and remediation is based on an industry rate per square metre. Subsequent verbal advice provided by a qualified asbestos management contractor estimates that removal of the asbestos could be around \$50,000. Records show that approximately a total of 1,180 square metres of material assumed to contain asbestos is present in the majority of the buildings.

It should be noted that the estimate of \$50,000 for the removal of the asbestos does not include replacement with new material.

A list and photographs of the buildings is attached to this report (attachment 5).

### ***Claim for Loss of Livelihood, Home and Financial Losses***

Mr Carter willingly entered into a lease with Council for a term of ten (10) years. Following the expiry of the lease Mr Carter has continued to occupy the site as a monthly tenant, allowed for in the lease. As a monthly tenant, Mr Carter is able to run his business at his discretion and Council has no role in such matters. Legal opinion confirms that Mr Carter could have chosen to mitigate any financial losses that he claims he has incurred by giving one month's notice to Council. He has chosen to remain on the premises.

In a report prepared for Council by URPS (Urban & Regional Planners) on "Future of Crystal Lake Camp Options Paper", the consultant providing the report included that *"It could be argued that the Mt Barker Council has a moral, if not legal obligation to compensate the existing Mr Carter for the impacts of Council's lengthy delay in addressing the lease arrangements for the Crystal Lake Campsite. It is almost 2 years since the 10 year lease period expired, and 3 years since Mr Carter first approached Council to confirm future lease arrangements"*.

It should be noted that URPS's comments are not legal opinion and were not requested by Council to address any compensation to Mr Carter within its report.

Mr Carter mistakenly is of the opinion that Council has endorsed this consultant's comments. Council has not considered the payment of any compensation to Mr Carter in any of its resolutions on the matter. Legal opinion received confirms that Mr Carter has no entitlement to compensation for a non-renewal of the lease.

### ***Dedication/Community Land Status of the Site***

As provided in the background of this report, the land on which the Site is located is Crown Land under the care and control of Council and dedicated for Parkland purposes. Parkland is defined as *"lands adjacent to a town and dedicated for the use, benefit or recreation of the inhabitants of that town"*. The land is classified as community land and is included in Council's Community Land Management Plan for Community, Sporting & Recreational Facilities. The objectives of the Management Plan are:

- Encourage, promote and facilitate recreational pursuits in the community involving organised and informal sporting activities and games;

- To improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management;
- Promote, encourage and provide for the use of the land and to provide facilities on the land to meet the current and future needs of the local community and the wider public;
- Provide for public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public;
- Ensure that such activities are managed having regard to any adverse impacts on nearby residents; and
- In relation to the purposes for which a lease or licence may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).

The Camp Site is fenced therefore inhibiting the community from the Site. Legal opinion confirms that exclusion of the community from the site is not consistent with the dedication of Parkland of the site. Council has requested the Crown to consider rededication of the land to allow camping on the Site. The Crown has confirmed by email that it has prepared a minute to the Minister recommending the re-dedication. Council is still awaiting formal confirmation from the Minister.

#### ***Outstanding Debts Owed by Mr Carter***

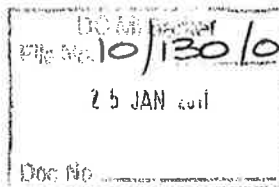
As at 7 February 2011 Mr Carter owes Council the amount of \$14,181.225 in outstanding lease payments and unpaid rates. Recovery of the outstanding debt was suspended whilst Council was attempting to negotiate interim arrangements with Mr Carter. Recovery of the outstanding debt has been resumed through a debt collection agency.

#### ***Request for Tender for the Future Use and Management of the Site***

The request for tender process has been deferred until the matter of whether or not the buildings will remain on the site is known. Not disclosing this in the tender documents would be unfair to tenderers in preparing their submissions.

Attachment 4 to Item 16.1

Our Ref: B100183/FC

**CAMATTA  
LEMPENS**  
PTY LTD LAWYERS

24 January 2011

**BY MAIL and FACSIMILE: (08) 8391 7299**

The District Council of Mount Barker  
PO Box 54  
MOUNT BARKER SA 5251

ABN 34 008 140 332

Level 1  
345 King William St  
Adelaide SA 5000  
T: 08 8410 0211  
F: 08 8410 0566  
DX: 54202 Adelaide

**Attention: Bill Graham****WITHOUT PREJUDICE**

Dear Sir

**CRYSTAL LAKE CAMP**

We refer to previous communications in relation to this matter and, in particular, our meeting on 10 January 2011.

We note that in clause 4.12 of the Agreement to Lease dated 27 April 1998 ("**the Lease Agreement**") the parties acknowledge that the buildings located on the Land (as defined in the Lease Agreement) are the property of the Lessee. However our client maintains that despite clause 4.12, clause 3.2 of the Lease Agreement does not impose any obligation on our client to remove those buildings upon the expiration of the term of the Lease Agreement. The Council as per the Agenda of 16 July 2007 acknowledges this view.

Our client would not have entered into the Lease Agreement had the removal of the buildings being part of the agreement which would require our client to forfeit over \$100,000.00 upon the expiration of the Lease Agreement.

When our client entered into the Lease Agreement he was aware that despite the limited term the lease had been renewed on an ongoing basis for the past 50 years. On that basis our client devoted substantially his life to Crystal Lake Camp, he invested substantial funds into the business and, in particular, for the improvement and maintenance of the buildings.

Our client is of the view that your valuation of \$148,000.00 is unreasonable taking into account all the buildings and site improvements on the Land which are in good order. Our client believes that the modest three bedroom dwelling house in which he and his 82 year old father reside in and the large sheds and infrastructure are substantial assets and are valuable to future tenders for a variety of uses.

**SCANNED****25 JAN 2011**

Further, as a result of the lengthy delay by the Council in coming to a decision as to our client's lease following its expiration in June 2007, our client has not been able to maintain a viable business.

As our client only occupied the Land as a monthly tenant from June 2007, he has not been able to secure bookings beyond one month. Since a significant portion of the clients wish to book several months in advance, our client has lost his income and in fact has been personally subsidising the business in recent years. This has been at a substantial cost to him.

We note that Angela Hazebroek in her paper 'Crystal Lake Camp Options Paper' appears to endorse the view that compensation should be considered due to the delay which has impacted the viability of our client's business.

As to non payment of rental and rates, our client had been of the belief that he was to be engaged as caretaker of the Land as per the Council decision made some 18 months ago.

Despite our client's investment in the Land and the extent of his losses, in the interest of resolving this matter expeditiously and without incurring further costs, we are instructed to put forward the following without prejudice offer to you:

1. The Council pay our client the sum of \$220,000.00 being compensation for the loss of our client's property, livelihood, home and financial losses ("the Settlement Sum").
2. The Council pay the Settlement Sum at settlement.
3. Our client to provide vacant possession of the Land on settlement.
4. Settlement is to occur say 60 days from agreement.
5. The Council file a Notice of Discontinuance with no orders as to costs in relation to the proceedings against our client in the Magistrates Court of South Australia (Action Number ECCL 10-14868) within 7 days of settlement and provide our client with a sealed copy of the Notice of Discontinuance.

We would be pleased if the Council would consider the above proposal and respond to us prior to 10 February 2011.

We look forward to hearing from you shortly. Otherwise, our client reserves his rights.

Yours faithfully

**CAMATTA LEMPENS PTY LTD**

Per:

**FRANCO CAMATTA**

Director

camatta@camattalempens.com.au



## District Council of Mount Barker

Crystal Lake Camp  
Devereux Street, Macclesfield

Building Name	Building Description	Market Value 2010					
		Gross Building Area	Replacement Value \$	Demolition Value \$	Approximate Year Built	Total Life	Added Value of Buildings \$
Recreation Shed	A high clearance steel and timber framed shed of approximately 185 square metres currently utilised as an indoor basketball court / recreation shed and store with a minor attached lean-to	185	111,000	7,400	1980	40	36,075
Gardeners Shed and Lean-to	Nissan hut style gardeners workshop of approximately 44 square metres with an attached lean to store of 26 square metres	44	22,000	1,760	1960	50	2,200
Caretaker's Residence	A fibre cement clad three bedroom residence of approximately 111 square metres with an extensive attached pergola	111	133,000	15,540	1960	50	13,300
Men's and Ladies Amenities block	A fibre cement clad men's and ladies amenities block of approximately 66 square metres comprising partitioned showers and toilets, general bathroom amenities and a rear store room	66	145,000	10,890	1960	50	14,500
Workshop Garage	A metal deck and corrugated iron clad garage of 26 square metres currently utilised as a workshop	26	10,000	1,040	1975	40	2,125
Kitchen and Dining Room	Camp kitchen and dining room of approximately 154 square metres comprising large central dining room/multi use area, attached minor wash-up area and kitchen/food preparation area	154	231,000	19,250	1960	50	23,100
Leaders Dormitory and First Aid Room	A relocatable style dormitory and store room of approximately 58 square metres currently utilised as a first aid room and pantry with an attached BBQ canopy and breezeway of approximately 34 square metres	58	53,000	8,120	1960	50	5,300
Nissan Hut Dormitories	A Nissan Hut construction dormitory building of approximately 144 square metres with an attached veranda and breezeway of approximately 17 square metres comprising accommodation for 30 people	144	122,000	20,160	1950	60	12,200





## District Council of Mount Barker

**Crystal Lake Camp**  
Devereux Street, Macclesfield

Building Name	Building Description	Market Value 2010						
		Gross Building Area	Replacement Value \$	Demolition Value \$	Approximate Year Built	Total Life	Residual Value	Added Value of Buildings \$
Transportable Dormitory #1	Relocatable style dormitory building of approximately 56 square metres with an attached entry canopy of six square metres comprising basic accommodation for 13 people	56	50,000	7,840	1960	50	10%	5,000
Transportable Dormitory #2	Relocatable style dormitory building of approximately 56 square metres with an attached entry canopy of six square metres comprising basic accommodation for 13 people	56	50,000	7,840	1960	50	10%	5,000
Site Improvements	Miscellaneous site improvements including basic reinforced concrete driveway and pathways, rainwater tanks, septic tank, various minor outbuildings, bird aviary, bitumen sealed tennis court with backstops, a mixture of timber balustrading and timber and steel post mesh and barb fencing	0	100,000	5,000	1985	30	10%	25,000
Total			1,027,000	104,840				143,800



## Photos

### Recreation Shed



### Garden Shed and Lean-to



**Mens and Ladies Amenities Block****Kitchen and Dining Room**

**Leaders Dormitory and First Aid Room****Nissan Hut Dormitories**



**Transportable Dormitory #1****Transportable Dormitory #2**

Attachment 6 to Item 16.1

*mellor*  
**OLSSON**  
*lawyers*

Our Ref: DP.JT.71673



Mr Bill Graham  
Contracts & Property Co-ordinator  
Governance & Projects  
District Council of Mount Barker  
PO Box 54  
MOUNT BARKER SA 5251

16 February 2011

Lawyers  
PHILIP PAGE  
CONTRAIANOS  
GREG ARTHUR  
PHIL MCGOVERN  
ANDREW GOODE  
JOHN DEMPSTER  
TIM MELLOR  
KAREN OLSSON, Notary Public  
PHIL DORMAN  
JENNIFER GOODALE  
WILL WEBSTER  
DARREN FOENG  
ANTHONY KELLY  
JOANNA ANDREW  
DAVID PARRISH  
LEONIE MILLARD  
GRAHAM WALMSLEY  
ELIZABETH OLSSON  
MARIE TAYLOR  
HELEN STRATFORD  
JENNY TUMMEL  
CARMEL HOMES  
IAIN FAIRHOLM  
SARAH VINALL  
HANNAH MILLARD  
ELI DAVIS-ROSS  
ZEENA ANTHONY-QURESHI  
ANNA FINIZIO  
JENNIFER FULLER

Registered Conveyancers  
JUDITH PHILLIPS  
MARY PARR  
MICHELLE COULTER

Dear Bill

**RE: CRYSTAL LAKE CAMP**

I refer to our discussions and your email of 8<sup>th</sup> February 2011 seeking our opinion on the various options that are available to Council in dealing with the continued occupation of the land by Mr Carter.

We have provided earlier advice on this matter, but will limit our comments as far as possible to the four options that you have canvassed.

**REVIEW OF OPTIONS**

1. **Notify Mr Carter's lawyer that Council will not consider offering any settlement to Mr Carter and instruct that he give up occupation of the site within one month. This would leave the buildings on site.**

In view of the stance taken by Mr Carter and his lawyer, both at the meeting on 10 January 2011 and in the letter dated 24<sup>th</sup> January 2011, it is not considered that this option will lead to a positive result. Council will not obtain possession of the land and the future leasing/development project will be delayed indefinitely. Mr Carter will presumably not pay any rent or rates, arguing that the caretaker arrangement has come into operation. Additionally, he will not abandon his buildings in view of the value that he attributes to them.

The holding over monthly tenancy will have been terminated by the previous notice to quit given to Mr Carter, but inaction by Council in seeking to enforce the notice to quit by failing to seek an order of possession could ultimately prejudice Council's ability to persuade a Court to grant such an order.

Mr Carter will not simply walk away without some form of monetary compensation for the value of the improvements, even if he is prepared

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16 February 2011

to forego his claim for business losses. There are no significant benefits to Council in adopting Option 1. It simply prolongs the stalemate. It does, however, show Council's determination not to be held to ransom, but other than that is not a viable option.

**2. Proceed with legal steps to evict Mr Carter from the site and remove his buildings and improvements from the site.**

This is a potential course of action for Council to take. However, any such steps may likely be met by way of injunctive proceedings. Whether such an application will succeed is a matter of opinion and no clear indication can be given. The matter has had a long history, which is somewhat clouded by the actions of both sides. The principal problem will be the fact that the lease expired so long ago, but with nothing specifically done to renew the lease, grant a new lease or take proper steps to retake possession of the land.

Mr Carter does not come to the table with clean hands on this aspect either, as he has apparently done nothing to finalise the matter. He has not negotiated in relation to the lease; he has accepted the month to month tenancy scenario and he does not appear to have forewarned Council that he was unable to run a viable business as a result of the month to month tenancy.

The latest claims by him, particularly in relation to the claim for business losses, appear to be an attempt to extract maximum compensation from Council.

In terms of the timescale, Court action will take several months, if as expected Mr Carter resists such action on the basis of the loss of his business and his house, occupied by himself and his elderly father. The fact that the house is owned by Mr Carter may affect the Court although we expect this problem would be mitigated by the fact that Mr Carter owns other properties.

The legal costs of seeking orders for eviction and clearance of the improvements or resisting injunctive relief could be significant and in the tens of thousands of dollars.

The benefit of selecting this option would be that Council has tried to negotiate a settlement with Mr Carter, but his demands had been either excessive or unsubstantiated and Council had no alternative but to progress the matter through the Court.

As we have advised previously, in our opinion, there is no sound legal basis for Mr Carter to claim compensation for loss of business income and, subject to a builder's expert opinion, it appears that the majority, if not all, of the improvements owned by Mr Carter are capable of removal, being either transportable or otherwise.

**3. Make Mr Carter an offer of an amount of approximately \$20,000.00 being the amount provided in the valuation as being a realistic market value (\$40,000.00) less any amounts outstanding owed by Mr Carter and Council's legal expenses on the matter (currently approximately \$20,000.00 in total).**

The suggested offer of \$20,000.00 by way of "compensation" is not seen as a viable option as it is too low and Council will need to reassess what it is worth to Council to have Mr Carter move from the land with or without his improvements.

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16 February 2011

Any sum that is offered to Mr Carter needs to be justified on the basis of an independent valuation and specific cost estimates to protect Council's position in risk management terms.

If the valuation of \$148,000.00 is seen as realistic (ignoring Mr Carter's unquantified loss of business claim), then it would be legitimate to exclude from that valuation amount any monies that Mr Carter owes Council in outstanding rent and rates.

We have not seen any firm written evidence of the offer, rejection or withdrawal of the caretaker offer. If Mr Carter is raising the argument that he has a caretaker arrangement with the Council, he should, at the very least, be required to provide evidence of such arrangement and to substantiate his claim.

Mr Carter must also be reminded of the mutual acknowledgment in the lease (clause 4.12) that Council has no responsibility or liability in respect of the ownership of buildings on the land and "shall incur no costs or liability regarding the replacement or treatment of asbestos in or forming part of the Buildings..." Council should clarify whether the valuation of \$148,000.00 takes into account the cost of removing the asbestos. If that is not the case, then the Council should consider obtaining a quote as to the anticipated cost of such removal and factor that in to the calculation of a counter offer to Mr Carter. The removal of asbestos is likely to be required whether the buildings are retained or not.

There is undoubtedly a problem here as Mr Carter will argue that until the improvements are removed, there is no liability for asbestos removal and the buildings and improvements can be used or refurbished by Council. However, the contingent liability for asbestos will remain on Mr Carter and Council can seek a suitable discount to recognise that potential liability.

Council may need to offer a higher amount than \$20,000.00 before Mr Carter may become interested in a settlement.

Whilst Council has incurred legal expenses and seeks to set these off, Mr Carter will no doubt reject this. The other issue that Mr Carter should be conscious of is that he will be incurring legal costs, both in terms of negotiations and resisting any legal action by Council, costs that he may not be able to recover. He also has a potential exposure to Council's costs if he loses in the Court.

**4. Pay Mr Carter the amount of \$220,000.00 as compensation in accordance with the claim submitted by his lawyer dated 24<sup>th</sup> January 2011.**

This is the option which would see an end to the matter. It is what the other side wants. It would, however, be our recommendation that Council consider putting forward a counteroffer, but which takes into account Council's costs to date and what funds it may need to expend to bring this matter to a close and what it may have to spend to put the site back into its original condition at the start of the lease.

In our view Option 4 would be unjustified in light of the position that Mr Carter finds himself in. His lease and monthly tenancy have expired and he owes Council money for outstanding rates and rent. He has no legitimate claim for loss of business income and has a contingent liability for asbestos removal. He has some additional potential

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16 February 2011

liability to Council under the expired lease if he fails to remove "fixtures and fittings" or "plant and equipment" brought onto the land, which Council removes in default if they are abandoned by him. He is to some extent the "author of his own misfortune" and Council should not be held to ransom in accepting this ambit claim.

## 5. Other Options

Other options that have been canvassed before and may not be realistic include:

- (1) employing Mr Carter as a caretaker on a longer term basis, but not under a lease.
- (2) Council has Mr Carter as the developer with a longer term lease.
- (3) Council invites quotations/expressions of interest for a developer to utilise the existing improvements and refurbish them or obtains a cost for removal of those improvements. Only with such an independent quote would Council be able to determine whether the improvements were an asset as Mr Carter claims or a liability.

## SUMMARY

In light of the above Options, our view is that Council needs to work up its best case on costs including the value of the improvements, transportability, the use of the improvements by a developer, the costs of removal and the realistic costs of the asbestos issue.

It is likely that a combination of Options 2 and 3, but with an increased counteroffer by Council are the most realistic at this time.

I appreciate that we are unable to reach a firm conclusion on this matter, but hope that the above comments will assist you in reporting to elected members.

If you have any queries or require any further advice, please do not hesitate to contact me again.

Yours sincerely  
MELLOR OLSSON

Per : 

DAVID PARRISH  
Direct e-mail: [dparrish@mellorolsson.com.au](mailto:dparrish@mellorolsson.com.au)





## THE DISTRICT COUNCIL OF MOUNT BARKER

P.O. BOX 54, Mount Barker S.A., 5251 – Telephone: 8391-7200  
DX address: DX 51708, Mount Barker

Facsimile: (08) 8391-7299  
web site: [www.dcmtbarker.sa.gov.au](http://www.dcmtbarker.sa.gov.au)

Reference:

10/130/004

11 January 2010

Mr Robert Carter  
Crystal Lake Camp  
Devereaux Street  
MACCLESFIELD SA 5153

Dear Mr Carter

**Re: Options for Continued Management of Crystal Lake Camp**

Council has considered the following two options which would permit you to continue to occupy the land and operate the Crystal Lake Camp for the next 3 – 5 years. Note that the lease area will be amended as shown in the enclosed plan. In summary, the options available to you are:

Option 1

You be granted a lease to occupy the amended site for a term of 3 – 5 years on generally the following terms:

- The rental payable for the term of the lease would be \$1.00 per annum;
- Council rates during the term of the lease would be remitted by Council;
- You would retain all income received from the operation of the camp;
- You would be responsible for all maintenance of the buildings and the lease area.

Option 2

You enter into a contractual arrangement with Council for a term of 3 – 5 years to manage the Crystal Lake Camp on generally the following terms:

- All income from the camp is retained by Council & an amount to be agreed would be paid to you;
- There would be no rental payable by you;
- There would be no Council rates payable by you.

Either option would be subject to the following:

- a) You providing detailed 3 – 5 year business plan for Crystal Lake Camp to be approved by Council;
- b) You formally acknowledging ownership of all the buildings on the lease area; and
- c) You agreeing to remove all of the buildings from the lease area at the end of the lease or management term.

Can you please respond by 31 January 2010 with your preferred option of one of the above or advise when you propose to give up occupancy of the land.

Should you wish to discuss either option please contact Council's Greg Sarre on 8391 7257 or myself after 4 January 2010.

Yours sincerely

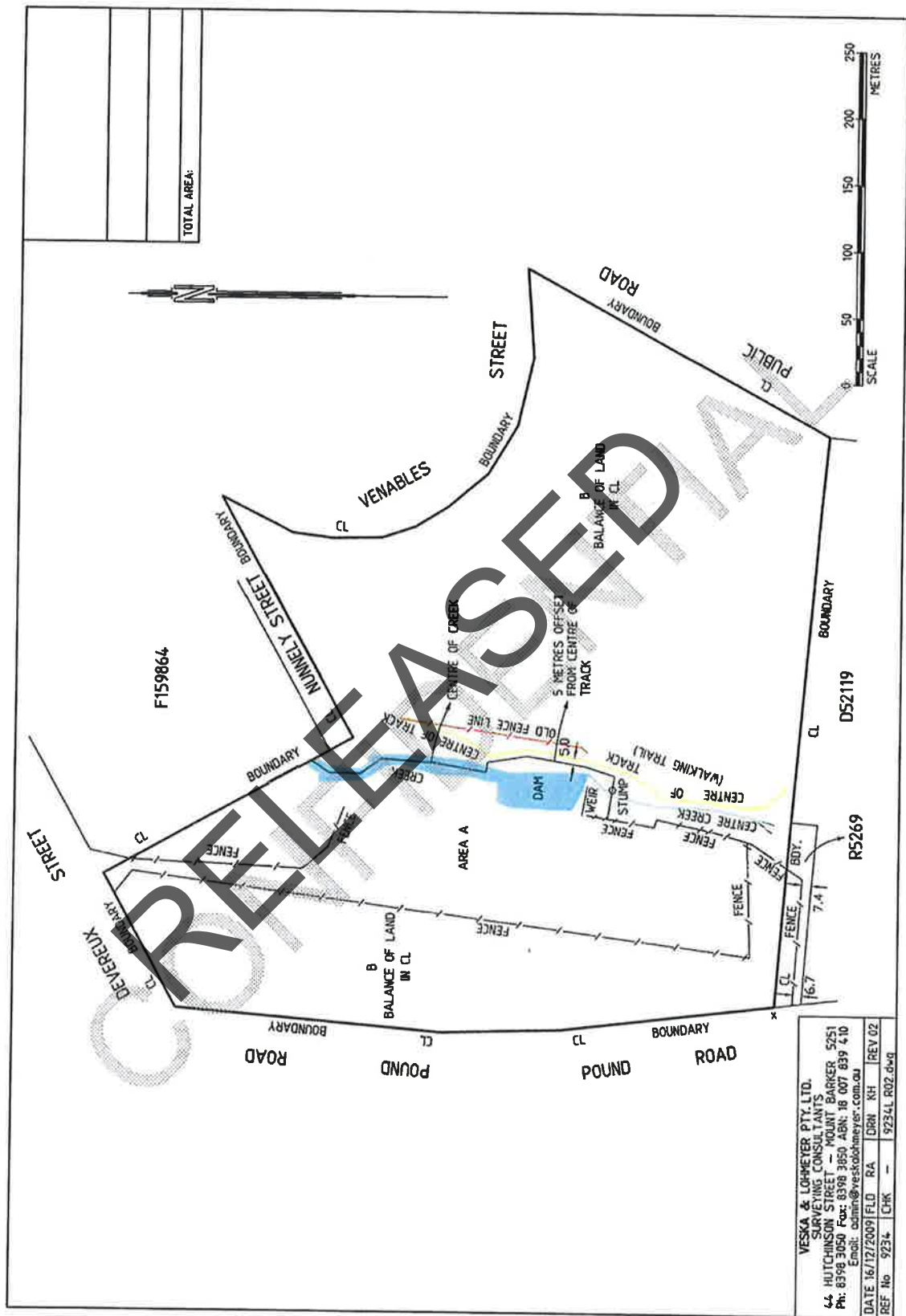


Bill Graham

**CONTRACTS AND PROPERTY COORDINATOR**

Direct line: 8391 7263

Email: [bgraham@dcmtbarker.sa.gov.au](mailto:bgraham@dcmtbarker.sa.gov.au)



PURPOSE: LEASE		AREA NAME: MACCLESFIELD		APPROVED:		SHEET 1 OF 2 21601_text_01_v01	
MAP REF: 682717K		COUNCIL: THE DISTRICT COUNCIL OF MOUNT BARKER		DEPOSITED/FILED:			
LAST PLAN:		DEVELOPMENT NO:					
AGENT DETAILS: VESKA & LOHMEYER PTY LTD 44 HUTCHINSON ST. MOUNT BARKER SA 5251 PH: 08 8398 3050 FAX: 08 8398 3850		SURVEYORS CERTIFICATION:					
AGENT CODE: LVS1		REFERENCE: 9234					
SUBJECT TITLE DETAILS: PREFIX VOLUME FOLIO OTHER PT CR 5929 608		PARCEL SECTION(S)		NUMBER PLAN		TOWN MACCLESFIELD	
OTHER TITLES AFFECTED:		REFERENCE NUMBER					
EASEMENT DETAILS: STATUS LAND BURDENED FORM CATEGORY		IDENTIFIER		PURPOSE		IN FAVOUR OF CREATION	
ANNOTATIONS:							

## Attachment 8 to Item 16.1

10 / 27743

Dear Councillors

Monday 2 August 2010

This morning I have received the Agenda report "Future Use and Management of Crystal Lake Camp Site" to be considered at tonight's Council meeting.

I am truly amazed by the statements and inferences contained in this report.

On 20 July 2009 Council resolved to "Endorse the Chief Executive Officer to negotiate with Mr Robert Carter as an interim caretaker" To this day I have had no meeting, correspondence, phone or email contact in fact absolutely NO contact or negotiations whatsoever with the CEO.

The report states that I have met with "Council's General Manager Vision & Compliance to negotiate an interim arrangement whilst the process to prepare for tender is furthered" ?

No such meeting with Council's General Manager Vision & Compliance or any Council staff has ever taken place to negotiate an interim arrangement with myself.

What the Agenda report fails to mention is that the Formal letter from Mr Bill Graham of January 2010 "offering a choice of two options for an interim lease for a term of 3-5 years" also contained the rather significant clause that "Either option would be subject to the following c) You agreeing to remove all the buildings from the lease area at the end of the lease or management term"

"The lessee has not responded to the interim lease or contractual management offer" because the lessee is still waiting to Negotiate with the CEO as an interim caretaker.

I, the lessee am not responding to ultimatums presented by Mr Bill Graham which are conditional the removal of all buildings.

1. Why does Mr Graham insist that I remove all the camp buildings when Council resolved to accept Option 1 of the "Future of Crystal Lake Camp Options Paper" which clearly states "Open call for tenders for commercial lease to operate Campsite or similar facility"
2. Why does Mr Graham recommend that "Council terminates the current lease arrangement forthwith and gives the Lessee notice of four (4) months to vacate the site.." Then suggest that "Council's Assets Team" may be required to manage the camp on an interim basis ??

I implore you to raise some of these issues/questions as I can assure you that the statements and inferences contained in the report are far from accurate.

Yours most sincerely

Robert A Carter, Manager, Crystal Lake Camp, Macclesfield SA 5153. Phone 83889343

## Attachment 9 to Item 16.1

2010 | 41707

10 | 130 | 004.03

Dear Mr Bill Graham

12 August 2010

Thank you for your rather amusing registered letter of "demands" of 11 August 2010

With reference to your "DEMANDS" (reference VR/23) ?? Who is VR ???

1. Why would I pay rent of \$9,190.45 (07/2009-06/2010) when on 20 July 2009 Council resolved to negotiate to appoint me as a caretaker?? (Still waiting !!)
2. Why would a caretaker pay rates of \$2,055.91 ??
3. Why would I be responsible to pay Council's unspecified "Legal costs" of \$750 ??
4. Why would I consent to the removal of all the buildings etc etc... in accordance with clause 3.2 of our lease when clause 3.2 clearly states that the lessee (i.e. me) "may remove all fixtures fittings plant equipment brought upon the land by the lessee" Almost all buildings were "brought upon the land by Council" prior to my occupancy.
5. Mr Graham I further refer you to your own report of 16 July 2007 which clearly states "**The existing lease places no positive obligation upon Mr Carter to remove these buildings at the expiry of the lease**"
6. Mr Graham I respectfully request that you refer this issue to a more senior person who has read and understood my lease agreement and the subsequent reports to Council and the recommendations by Councilors.

Your claims, statements and assumptions are undoubtedly fabricated to suit your needs and are far from factual or accurate. I implore you to refer this issue to a more qualified person.

Yours most sincerely

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CONFIDENTIAL