

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
40	15 Feb 10	Land Acquisition Surrounding the Proposed Roundabout at Bald Hills / Springs Road	Reason: (b) information the disclosure of which: (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and (ii) would, on balance be contrary to the public interest.	Discussion, reports, attachments and minutes	Revoked under delegation.	Extend Confidential Order to 31 August 2013 The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.	5 Sept 11	4 Sept 12	28/8/12

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CONFIDENTIAL REPORTS

85.1

REPORT TITLE: LAND ACQUISITION SURROUNDING THE
PROPOSED ROUNDABOUT AT BALD HILLS
ROAD/SPRINGS ROAD
DATE OF MEETING: 15 FEBRUARY 2010
AUTHOR: DAVID MORTON
AUTHOR'S TITLE: MANAGER PROJECTS
FILE NUMBER: 46/050/009
DEPARTMENT: GOVERNANCE AND PROJECTS
**DEPARTMENT
MANAGER:** BRIAN CLANCEY

Moved Councillor Irvine that Council:

1. Pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:

(b) information the disclosure of which:

- (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
- (ii) would, on balance be contrary to the public interest.

2. Determines that the Chief Executive Officer, General Manager Governance & Projects, General Manager Vision & Compliance, General Manager Services, Manager Projects, Manager Governance & Business Processes, Manager Field Services and the Minute Secretary be permitted to remain in the room.

Seconded Councillor Wilksch and CARRIED

Moved Councillor Gamble that Council:

3. Notes that approval of the Minister for State/Local Government Relations has been sought under Section 191 of the Local Government Act 1999 to the compulsory acquisition of an estate in fee simple in that piece of land situated at the junction of Springs Road and Bald Hills Road, Mount Barker being portion of the land comprised in Allotment 90 in Certificate of Title Volume 5794 Folio 432 and being the whole of the land numbered 106 and 107 in the Plan prepared by Veska & Lohmeyer Pty Ltd dated 22nd September 2009 – an area of approximately 267 square metres and 470 square metres, respectively ("the Land").

4. Subject to the approval of the Minister for State/Local Government Relations, authorises the Chief Executive Officer or his delegate to give all persons with an interest in the Land a Notice of Intention under Section 10 of the Land Acquisition Act 1969 ("the Act") to acquire those interests in order to carry out the roadwork (roundabout construction) at Bald Hills Road and Springs Road, Mount Barker.
5. Authorises the Chief Executive Officer or his delegate to provide an explanation of the reasons for the proposed acquisition of the Land under Section 11 of the Act, if requested to do so by any of those persons with an interest in the Land.
6. Authorises the Chief Executive Officer or his delegate to respond to any request made under Section 12 of the Act not to proceed with the acquisition, for any alteration to the boundaries of the proposal or to acquire less or more land from any person served with Notice of Intention in relation to the proposed acquisition and to deal with any review of the Council's decision that may be requested under the Act.
7. Authorises the Chief Executive Officer or his delegate to continue to negotiate with the various persons with interests in the Land with a view to reaching an amicable settlement for the acquisition of those interests, if practicable and subject to a future Council meeting decision, so that the proposed compulsory acquisition can be discontinued.
8. Orders that pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential and that the revocation of confidentiality be delegated to the CEO to determine when there is no legal or commercial need for continued confidentiality, and that this order be reviewed every 12 months.

Seconded Councillor Kuchel and CARRIED

MEETING DECLARED CLOSED AT 9.11 PM

MAYOR

DATE

17. CONFIDENTIAL REPORTS

17.1 REPORT TITLE: LAND ACQUISITION SURROUNDING THE PROPOSED ROUNDABOUT AT BALD HILLS ROAD/SPRINGS ROAD

DATE OF MEETING: 15 FEBRUARY 2010

AUTHOR: DAVID MORTON

AUTHOR'S TITLE: MANAGER PROJECTS

REPRESENTORS: N/A

FILE NUMBER: 46/050/009

ATTACHMENTS: 1. PLAN OF PROPOSED ALLOTMENTS TO BE ACQUIRED

DEPARTMENT: GOVERNANCE AND PROJECTS

**DEPARTMENT
MANAGER: BRIAN CLANCEY**

PURPOSE

The purpose of this report is to seek approval to undertake the compulsory acquisition of approx 737m2 of land at Bald Hills Road / Springs Road intersection owned by Mr L Di Nardo which is required for construction of a roundabout.

RECOMMENDATION

That Council:

1. Pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:

(b) information the disclosure of which:

(i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and

(ii) would, on balance be contrary to the public interest.

2. Determines that the Chief Executive Officer, General Manager Governance & Projects, General Manager Vision & Compliance, General Manager Services, Manager Projects and the Minute Secretary be permitted to remain in the room.

3. Notes that approval of the Minister for State/Local Government Relations has been sought under Section 191 of the Local Government Act 1999 to the compulsory acquisition of an estate in fee simple in that piece of land situated at the junction of Springs Road and Bald Hills Road, Mount Barker being portion of the land comprised in Allotment 90 in Certificate of Title Volume 5794 Folio 432 and being the whole of the land numbered 106 and 107 in the Plan prepared by Veska & Lohmeyer Pty Ltd dated 22nd September 2009 – an area of approximately 267 square metres and 470 square metres, respectively (“the Land”).
 4. Subject to the approval of the Minister for State/Local Government Relations, authorises the Chief Executive Officer or his delegate to give all persons with an interest in the Land a Notice of Intention under Section 10 of the Land Acquisition Act 1969 (“the Act”) to acquire those interests in order to carry out the roadwork (roundabout construction) at Bald Hills Road and Springs Road, Mount Barker.
 5. Authorises the Chief Executive Officer or his delegate to provide an explanation of the reasons for the proposed acquisition of the Land under Section 11 of the Act, if requested to do so by any of those persons with an interest in the Land.
 6. Authorises the Chief Executive Officer or his delegate to respond to any request made under Section 12 of the Act not to proceed with the acquisition, for any alteration to the boundaries of the proposal or to acquire less or more land from any person served with Notice of Intention in relation to the proposed acquisition and to deal with any review of the Council's decision that may be requested under the Act.
 7. Authorises the Chief Executive Officer or his delegate to continue to negotiate with the various persons with interests in the Land with a view to reaching an amicable settlement for the acquisition of those interests, if practicable and subject to a future Council meeting decision, so that the proposed compulsory acquisition can be discontinued.
 8. Orders that pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential and that the revocation of confidentiality be delegated to the CEO to determine when there is no legal or commercial need for continued confidentiality, and that this order be reviewed every 12 months.
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BACKGROUND

On 21 December 2009 Council resolved to

(Note Resolutions 1 and 2 were procedural relating to confidentiality)

3. Note that a contractual agreement for the sum of \$18,700 (ex GST) has been reached between Council and Mr Kevin Stephenson (Stephenson) for the purchase by Council of proposed Allotment 108 Bald Hills Road, Mount Barker, shown on Attachment 1.
4. Accept the counter-offer of \$50,750 (ex GST) from Andrew James McDonald and Heather Kay McDonald (McDonalds) to sell to Council proposed Allotment 105 Bald Hills Road, Mount Barker, shown on Attachment 1 and; authorises the Mayor and Chief Executive Officer to execute, sign and seal all of the documentation required to finalise the transaction in accordance with the Essential Conditions of Offer contained in Attachment 2a.
5. Note the current status of the Project and negotiations between Council and:
 - a) Mrs Margaret Brockhoff (Brockhoff) regarding the purchase by Council of proposed Allotment 104 located at the intersection of Bald Hills Road and Springs Road, Mount Barker, shown on Attachment 1
 - b) Loreto Antonio Di Nardo (Di Nardo) regarding the purchase by Council of proposed Allotments 106 and 107, Bald Hills Road, Mount Barker, shown on Attachment 1.
6. Seek the approval of the Minister for State/Local Government Relations under Section 191 of the Local Government Act 1999 to the compulsory acquisition of the following land at Bald Hills Road and Springs Road, Mount Barker ("the Land") for the purposes of roadwork:-
 - i. an estate in fee simple in that piece of land situated at the junction of Springs Road and Bald Hills Road, Mount Barker, being portion of the land comprised in Allotment 501 in Certificate of Title Volume 5626 Folio 623 and being the whole of the land numbered 104 in the Plan prepared by Veska & Lohmeyer Pty Ltd dated 22nd September 2009 – an area of approximately 489 square metres (Brockhoff land); and
 - ii. an estate in fee simple in that piece of land situated at the junction of Springs Road and Bald Hills Road, Mount Barker being portion of the land comprised in Allotment 90 in Certificate of Title Volume 5794 Folio 432 and being the whole of the land numbered 106 and 107 in the Plan prepared by Veska & Lohmeyer Pty Ltd dated 22nd September 2009 – an area of approximately 267 square metres and 470 square metres, respectively (Di Nardo land).

7. *Defer any decision to proceed with the compulsory acquisition other than seeking approval as outlined in recommendation 6 until an opportunity has been provided at the earliest practical Council meeting for the Brockhoffs and Di Nardos to make a confidential deputation.*
8. *Authorise the Chief Executive Officer or his delegate to continue to negotiate with the various persons with interests in the Land described in recommendation 6 with a view to reaching an amicable settlement for the acquisition of those interests, if practicable, so that the proposed compulsory acquisition can be discontinued.*
9. *Note the significant implications of the land acquisition process on the project budget as outlined in the body of the report under the heading of Financial/Budget.*

McDonald Land

Contracts have been executed in accordance with Council's resolution.

Brockhoff Land

Council wrote to the EPA on 21 December 2009 seeking clarification of the EPA's position on the requirements for a buffer between the Laratinga Wetlands and the Brockhoff Land to assist consideration of the request by the Brockhoff family to buy back the "buffer land". Council officers have followed up the EPA on a number of occasions at the time of writing the EPA has advised that it expects to respond shortly.

Di Nardo Land

Mr Di Nardo attended Council's meeting on 18 January 2010 to make a Confidential Deputation. The Deputation provided an opportunity for Mr Di Nardo to explain his position regarding the land acquisition but did not lead to a resolution of the matter.

Minister's Approval

A letter requesting the Minister's approval to proceed with a Compulsory Purchase of the Di Nardo and Brockhoff land was sent on 7 January 2010. Council officers have been advised that the Minister's Office has processed the request and forwarded it to the Minister for approval.

DISCUSSION

Brockhoff Land

The date of a Deputation to Council from the Brockhoff Family is yet to be determined pending a response from the EPA. It is expected that when a letter is received from the EPA that some time will be needed to digest the advice prior to a Deputation date being set. The Brockhoff Family has been advised that Council is still awaiting the EPA's advice.

Di Nardo Land**Proposed Allotments 106 and 107 Bald Hills Road, Mount Barker shown in Attachment 1**

An offer of \$33,000 (valuation carried out by Egan National Valuers) by Council to purchase the Di Nardo land was forwarded to Mr Di Nardo on 25 September 2009. Mr Di Nardo has maintained from the outset that Council needs to relocate his existing shed as a consequence of the proposed land acquisition in order that adequate access to the shed can be provided for semi-trailers. The cost of this request has been estimated on a very preliminary basis at approximately \$150,000 plus site works associated with the currently unspecified new location for the shed. A number of access options were offered to Mr Di Nardo for his current shed location, all these were rejected.

A counter offer from Mr Di Nardo dated 28 October 2009 was received requesting \$102,631 plus the relocation of his shed at his estimated cost \$320,360. This counter-offer is considered by officers to be excessive and well in excess of Council's valuation advice received.

Consulting engineers, Wallbridge and Gilbert, were retained by Council to prepare a proposal to provide safe and "like-for-like" access to Mr Di Nardo's shed. The proposal prepared by Wallbridge and Gilbert identifying the proposed accommodation works to be undertaken by Council was sent by registered letter to Mr Di Nardo.

The Council's offer to Mr Di Nardo indicated that:

- a) Council remains prepared to consider a reasonable counter offer for the acquisition of his land;
- b) the proposal prepared by Wallbridge and Gilbert offers a solution to his access concerns, which will in effect rectify what is currently an unsafe truck access manoeuvre to his property and provide as good or better semi-trailer truck access to his packing shed.

Mr Di Nardo replied by email dated 9 December 2009 to the Council's offer indicating that his compensation figure remains as previously mentioned to Council and that his shed has to be relocated as part of the compensation package. A valuation carried out for Mr Di Nardo by Lindsay Wapper and Associates indicates a total fair consideration to Di Nardo of \$170,800 based on five year production loss or \$204,924 based on a fifteen year production loss. In addition Council would be responsible for the cost of establishing the relocated shed, cost initially estimated by Mr Di Nardo at \$320,000.

Officers met Mr Di Nardo again on 5 February 2010 following his Deputation and further discussed access options for the current shed location. Mr Di Nardo was adamant that nothing would satisfy him for the shed in its current position and he would only accept relocation (plus compensation).

Officers agreed to prepare a concept plan and costing to relocate the shed further down Springs Road to a location of Mr Di Nardo's choosing but made it clear that this was to advise Council of the potential cost and did not indicate any commitment to move the shed.

It is still considered after these further discussions that there is no realistic prospect of a timely resolution of the matter at a sum which is reasonable. It is therefore recommended that subject to approval from the Minister, Council approves the use of Compulsory Purchase to acquire the approx 737m2 of land needed to construct the roundabout from Mr Di Nardo.

Commencement of the Compulsory Purchase process does not preclude a negotiated settlement and may possibly improve the prospects for a settlement.

The use of Compulsory Purchase only relates to the Di Nardo land with the Brockhoff land still to be the subject of a delegation to Council post receipt of the EPA advice.

POLICY IMPLICATIONS

1. Financial/budget

The current Budget for the Project is \$1,706,700 which included an allowance of \$300,000 for negotiated land acquisitions. It expected that land acquisition costs will now considerably exceed this allowance.

Due to the delays encountered with the land acquisitions it will not now be feasible to construct the roundabout in FY 09/10. A large proportion of the \$1,302,000 in Nation Building funding will be lost because of the requirement to spend funds by 30 June 2010. The project will therefore require new funding to be progressed in the 2010/2011 financial year. Staff are in discussion with DTEI regarding the possibility of securing alternate grant funds beyond the 2009/2010 financial year. This will be further pursued including any cost increases impacting the project.

2. Legal

Legal advice has been sought on the correct process to undertake a Compulsory Land Acquisition Process.

3. Staffing/Work Plans

A compulsory acquisition process will necessitate the engagement of legal counsel to progress the process. Internally, the existing project manager and project officer will remain able to service this project as required.

4. Environmental

The implication of the recommendations in this report will have no environmental implications.

5. Social

Strong community support for construction of a roundabout at this location.

6. Strategic Plans

Transport Planning

The roundabout will cater for expected growth and is consistent with the objectives outlined in Council's recently endorsed Transport Master Plan and will provide a safer intersection for road users.

7. Risk Assessment

A risk assessment has been undertaken for the project.

8. Asset Management

N/A.

COMMUNITY CONSULTATION

1. Customer Needs Analysis

This Project positively impacts upon users of this intersection. Considerable community consultation has been carried out as part of the over-arching Bald Hills Road Upgrade project.

2. Promotion/Communications

As part of the Bald Hills Road Upgrade project, there is periodic communications with adjacent properties and the general community on progress of the works.

Attachment to Item 17.1

