

50	21 June 10	Monarto Quarries Crushing Contract	<p>Reason: d) commercial information of a confidential nature (not being a trade secret) the disclosure of which –</p> <p>Could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and would, on balance, be contrary to the public interest; and</p>	Documents attachments, minutes	Process concluded.	Extend Confidential Order to September 2011 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revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.	5 Sept 11	NA	RELEASE 5 Sept 11
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2. Authorise a variation of the payment terms in the current Monarto Quarries Crushing Contract between Council and Adciv to become:
 - Effective from 1 June 2010 Monarto Quarries will pay Adciv \$4.00 per tonne for product crushed 30 days post testing after crushing, with the balance per tonne to be payable 30 days post sale by Monarto Quarries but in any event final payment for all product crushed that meets specification shall occur not later than 60 days post the end of the contract which is 18 August 2010.

Pursuant to Section 91(7)

3. That having considered the Monarto Quarries Crushing Contract Agenda Item in confidence under 90(2) and 3(d) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the Council report, attachment and all minutes (other than as detailed below) be retained in confidence until 6 April 2011.

Seconded Councillor Campbell and CARRIED

MEETING DECLARED CLOSED AT 9.22PM

MAYOR

DATE

17. CONFIDENTIAL REPORTS

**17.1 REPORT TITLE: CONFIDENTIAL ITEM - MONARTO
QUARRIES CRUSHING CONTRACT**

DATE OF MEETING: 24 JUNE 2010

AUTHOR: BRIAN CLANCEY

**AUTHOR'S TITLE: GENERAL MANAGER, GOVERNANCE &
PROJECTS**

REPRESENTORS: NOT APPLICABLE

FILE NUMBER: VR 233 & 60/120/003

**ATTACHMENTS: 1 COUNCIL MEETING RESOLUTIONS
2 COUNCIL LETTER TO ADCIV
3 LETTER FROM ADCIV TO COUNCIL**

DEPARTMENT: GOVERNANCE & PROJECTS

**DEPARTMENT
MANAGER: BRIAN CLANCEY**

PURPOSE

To seek authority to vary the payment terms of the current Monarto Quarries crushing contract between Council and ADCIV Pty Ltd.

RECOMMENDATION

That Council:

Pursuant to Section 90(3)(d)

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Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, General Manager General Manager General Manager and the Minute Secretary be excluded from attendance at the meeting for the Monarto Quarries Crushing Contract Agenda Item 17.1.

The Council is satisfied that pursuant to Section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected:

To prejudice the commercial position of the person who supplied the information in that the financial details of the crushing contract and contractor will be provided and discussed.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of this information may result in a competitor receiving the information to the detriment of the contractor who has requested that the information provided remain confidential.

2. Authorise a variation of the payment terms in the current Monarto Quarries Crushing Contract between Council and Adciv to become:
 - Effective from 1 June 2010 Monarto Quarries will pay Adciv \$4.00 per tonne for product crushed 30 days post testing after crushing, with the balance per tonne to be payable 30 days post sale by Monarto Quarries but in any event final payment for all product crushed that meets specification shall occur not later than 60 days post the end of the contract which is 18 August 2010.

Pursuant to Section 91(7)

3. That having considered the Monarto Quarries Crushing Contract Agenda Item in confidence under 90(2) and 3(d) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the Council report, attachment and all minutes (other than as detailed below) be retained in confidence until 6 April 2011.
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BACKGROUND

Under the contract Adciv is only paid when the product is sold by Monarto Quarries.

Adciv made a request to gain some relief from Council in relation to the current crushing contract that is in place for Monarto Quarries.

This matter was considered as a confidential item at the Council meeting held on 6 April 2010. The resolutions are included as attachment 1.

Since the Council meeting a letter has been forwarded by Council to Adciv (attachment 2) and a further letter has been received by Council from Adciv (attachment 3) following a meeting between Council and Adciv representatives held on 18 May 2010.

DISCUSSION

The recommendations would offer Adciv considerably less relief than Adciv originally sought and less than requested in the more recent Adciv letter (attachment 3).

On a without prejudice basis, Adciv has been made aware of the nature of the recommendations and indicated that it would support the recommended changes to the contract payment terms.

Two key strategic considerations for Council are:

1. Adciv being retained as a customer of Monarto Quarries

Adciv has been a customer of Monarto Quarries for some years and has used considerable product when undertaking construction contracts in the region such as the first stage of the Bluestone development (e.g. construction of new internal roads). It is considered important from a future sales perspective that Council demonstrates a degree of flexibility and some empathy and in turn provides some incentive to seek to retain Adciv as a customer of Monarto Quarries.

2. Next crushing contract for Monarto Quarries

Council is presently in the process of calling a new tender for the provision of crushing services for Monarto Quarries. Historically Council has only received a small number of submissions for such tenders. It is highly desirable to reduce the risk of prospective tenderers being deterred from tendering by what they have heard regarding the implications of the current payment basis between Council and Adciv.

These considerations present risks which can be reduced with very modest financial implications for Monarto Quarries. See below under the heading of Financial/Budget.

The new crushing tender specification proposes more favourable payment terms than those currently in place with Adciv. This is based on seeking to secure more favourable contract rates for Monarto Quarries. The tender assessment will be the subject of a future Council meeting agenda item.

POLICY IMPLICATIONS

1. Financial/budget

The anticipated impact on the Monarto Quarries operating budget for the 2010 - 2011 financial year as a result from the change in terms of payment recommended in this report is:

- The earlier than expected payment on transfer of the ownership of the product to inventories reducing the cash position of the Quarry.
- This will then reduce the interest received on money held by Monarto Quarries, an estimated amount of around \$1,500 (based on 3% bank interest)

This product produced by ADCIV would all be expected to be sold by November 2010 based on the current sales performance.

2. Legal

Council obtained legal advice from Mellor Olsson in respect of the current contract with Adciv as outlined in the previous Council Meeting agenda item dated 6 April 2010.

3. Staffing/Work Plans

The recommendations can be implemented within existing staffing/work plans.

4. Environmental

Not applicable.

5. Social

Not applicable.

6. Strategic Plans

Monarto Quarries' crushing requirements is outsourced as per the Monarto Quarries Business Plan 2005/06 – 2009/10 as endorsed by Council.

7. Risk Management

Delaying payment by Monarto Quarries until after testing of the product crushed by the contractor will eliminate the risk of the product being paid for but not meeting specification.

Also refer body of the item.

8. Asset Management

Not applicable.

COMMUNITY CONSULTATION

1. Customer Needs Analysis

Adciv has been consulted in respect of the recommendations.

2. Promotion/Communications

Not applicable.

DISTRICT COUNCIL OF MOUNT BARKER

Attachment 1 to Item 17.1

CONFIDENTIAL MINUTES OF THE COUNCIL MEETING HELD ON 6 APRIL 2010.

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105 CONFIDENTIAL REPORTS

105.1 REPORT TITLE: CONFIDENTIAL ITEM: MONARTO QUARRIES CRUSHING CONTRACT
DATE OF MEETING: 6 APRIL 2010
AUTHOR: VARIOUS STAFF
AUTHOR'S TITLE: VARIOUS
FILE NUMBER: VR 233
DEPARTMENT: GOVERNANCE & PROJECTS
DEPARTMENT MANAGER: BRIAN CLANCEY

Moved Councillor Campbell that Council:

1. orders pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 that the public be excluded from attendance at the meeting to consider in confidence matters regarding:
 - (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which –

Could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and would, on balance, be contrary to the public interest; and
 - (h) legal advice
2. Determine that the Chief Executive Officer, General Manager Governance & Projects, General Manager Vision & Compliance, General Manager Council Services, Manager Governance & Business Processes and the Minute Secretary be permitted to remain in the room.

Seconded Councillor Irvine and CARRIED

Moved Councillor Gamble that Council:

3. Note the attached letter from ADCIV received by Council on 11 March 2010;
4. Authorise the Chief Executive Officer or delegate to respond to the ADCIV letter advising ADCIV that Council:
 - a) has considered the ADCIV letter but is not supportive of any of the three scenarios contained therein;
 - b) expects ADCIV to fulfil the obligations of the contract;

DISTRICT COUNCIL OF MOUNT BARKER

CONFIDENTIAL MINUTES OF THE COUNCIL MEETING HELD ON 6 APRIL 2010.

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- c) would be prepared to consider possible other measures on a without prejudice basis that may be of some assistance to ADCIV in fulfilling the obligations of the contract; and
 - d) makes known that ADCIV can request a review of this decision of Council pursuant to Section 270 of the Local Government Act 1999;
5. Notes that should ADCIV enter into discussion with Council on possible other measures, then a further report will subsequently be prepared for consideration at a future Council meeting on the outcome of these discussions and prior to any decision making; and
6. Orders pursuant to Section 91(7) and (9) of the Local Government Act 1999 that the report, attachments and minutes remain confidential until ADCIV has completed its obligations under the contract with council or 6 April 2011 whichever is the earlier.

Seconded Councillor Wilksch and CARRIED

MEETING DECLARED CLOSED AT 9.10PM

MAYOR

DATE



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

Reference: VR 233

13 April 2010

Mr Grant Armstrong
Managing Director
Adciv Pty Ltd
Level 1
175 Fullarton Road
Dulwich SA 5065

CONFIDENTIAL

Dear Mr Armstrong

Re: Monarto Quarries Crushing Contract

Thank you for your confidential letter received by Council on 11 March 2010.

I confirm my email advice of 7 April 2010 to Rod Davidson and Tony Finnegan that at the Council meeting held on 6 April 2010 it was resolved as follows.

That Council:

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

(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which –

*Could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
Would, on balance, be contrary to the public interest; and*

(h) legal advice

2. *Determine that the Chief Executive Officer, General Manager Governance & Projects, General Manager Vision & Compliance, General Manager Council Services, Manager Governance & Business Processes and the Minute Secretary be permitted to remain in the room.*
3. *Note the attached letter from ADCIV received by Council on 11 March 2010;*

4. *Authorise the Chief Executive Officer or delegate to respond to the ADCIV letter advising ADCIV that Council:*
 - a) *has considered the ADCIV letter but is not supportive of any of the three scenarios contained therein;*
 - b) *expects ADCIV to fulfil the obligations of the contract;*
 - c) *would be prepared to consider possible other measures on a without prejudice basis that may be of some assistance to ADCIV in fulfilling the obligations of the contract; and*
 - d) *makes known that ADCIV can request a review of this decision of Council pursuant to Section 270 of the Local Government Act 1999;*
5. *Notes that should ADCIV enter into discussion with Council on possible other measures, then a further report will subsequently be prepared for consideration at a future Council meeting on the outcome of these discussions and prior to any decision making; and*
6. *Orders pursuant to Section 91(7) and (9) of the Local Government Act 1999 that the report, attachments and minutes remain confidential until ADCIV has completed its obligations under the contract with council or 6 April 2011 whichever is the earlier.*

This means that the Council meeting was supportive of your request for confidentiality but not the three scenarios contained in your letter.

In relation to point 4 c) above there are some possible options that could be discussed. For example and on a without prejudice basis, whether Council would be prepared to reduce the total quantity of material to be crushed by ADCIV, say by 10,000 tonnes. If you wish to pursue such possibilities I suggest this would best occur via a meeting.

Please note the related point 5 above which means that if ADCIV and Council officers did reach agreement in principle on a possible contract variation this would then need to be considered at a subsequent Council meeting. As previously advised there is no delegation in place to Council officers to vary the contract.

In relation to point 4 d) above, please find attached a copy of Council's policy titled "Grievances – Internal review of Council Decisions" should Adciv wish to consider pursuing such a process. If you have any queries in relation to this process please contact Ms Kate O'Neill, Manager, Governance and Business Processes, telephone 8393 6439 or email koneill@dcmtbarker.sa.gov.au.

I will await your further advice in relation to point 4 c) above.

Please contact me on 8391 7218 or via email bclancey@dcmtbarker.sa.gov.au if you have any queries or require further information.

Yours sincerely



Brian Clancey
General Manager
Governance & Projects

Attachment

Copy to:
Mr Robert Coleman, Manager, Monarto Quarries

CONFIDENTIAL

2.7 TITLE: Grievances – Internal Review of Council Decisions

RESPONSIBLE DEPARTMENT:	CEO
ASSOCIATED PROCEDURE(S):	Nil
ASSOCIATED DELEGATION(S):	Nil
DATE OF LAST REVIEW BY COUNCIL:	19/04/04

1. Background

The District Council of Mount Barker is committed to transparent decision-making processes, and providing access to a fair and objective procedure for the internal review of decisions.

Grievances may arise as a result of dissatisfaction with a decision about a policy, procedure, service or fee. All attempts will be made to resolve grievances quickly and efficiently, without the need for formal applications for review to be lodged. Sometimes this cannot be achieved. The procedure provides guidance for dealing with formal requests for review of decisions of Council, its employees, and other people acting on behalf of Council.

Dealing with grievances at the local level is the most effective way of resolving matters quickly. Applicants for review of decisions will be encouraged to participate in the review handling process cooperatively. However, this will not negate citizens' rights to seek external review through the State Ombudsman, other legal appeal processes, or the Courts at any time during the complaint handling process.

2. The Local Government Act 1999 ("the Act")

This Procedure for Review of Decisions has been adopted in accordance with Section 270 of the Local Government Act. The procedure is one aspect of Council's customer focussed approach to service delivery. It provides a further opportunity to review the way Council provides services to the community, and to identify areas for improvement.

3. Instances where the Procedure will apply

Issues arise about a range of matters during the course of Council's day to day activities. Most grievances are initially made verbally by telephone, face-to-face to a Council officer, or some may be made in writing in the first instance. Sometimes Elected Members also receive grievances. Grievances will be referred to the relevant Council staff

member in the first instance and prompt action generally results in the matter being resolved satisfactorily.

The Internal Review procedure will apply to matters that are not resolved satisfactorily. A formal application or request for review of a decision will therefore initiate the procedure process. The person who lodges a formal grievance is referred to as the "applicant".

The procedure will apply to all formal requests for review of decisions, except in instances where specific procedures are prescribed in relevant legislation (for example Development Act and Freedom of Information Act matters).

The procedure, for example, could apply to unresolved grievances about:

- fees and charges levied by Council
- parking infringement notices and fines
- dog control matters
- rubbish collection
- road and footpath conditions
- environmental nuisances.
- street trees

4. Persons eligible to lodge a Grievance

Any person who is affected by the decisions made by Council, may lodge a grievance. For example, residents, ratepayers, members of a community group, users of Council's facilities, and visitors to the area all have the right to lodge an application for review.

5. Lodgement of Grievances

Formal grievances are to be in writing to the Chief Executive Officer, providing full details about the grievance. Assistance will be provided to applicants where necessary, including the use of an interpreter, providing assistance for people with a disability, or referring applicants to an advocate to help prepare a written application.

The CEO and Managers of the Council will act as Contact Officers to provide advice to the public on the review process.

6. Process for Grievances

Principles of natural justice will be observed in dealing with grievances. All parties will have the opportunity to express their point of view, provide relevant information, and respond to issues raised.

The Chief Executive Officer to assess grievances, determine the appropriate action, and arrange for independent investigation if necessary.

The Council (or CEO acting on its behalf) may also decline to consider an application:

- which appears frivolous or vexatious;
- where the applicant is not seen as having a sufficient interest in the matter; or
- where alternative statutory review processes exist (in particular this applies to Development Act matters where well developed review mechanisms exist).

It is considered inappropriate to use this review procedure when alternative statutory processes exist. Examples are:

- Electoral issues – Local Government (Elections) Act
- Development Act matters (ERD Court)
- Freedom of Information requests
- Expiation of Offences – Dog and Parking Controls
- By-Laws and Orders
- Rates
- Valuation of property – Valuer General
- Declarations
- Invalid Rate
- Land Use
- Code of Conduct issues
- Employment related matters
- Conflict of Interest matters – Elected Members
- Electoral Sign issues – Commonwealth and State
- Decisions made through delegations under other Acts, such as
- Country Fire Services Act (S40 notices), and Metropolitan Fire Services Act
- Water Resources Act
- Health and Food Act
- Matters relating to HACC services, where specific complaint/review mechanisms are identified.

7. Administrative Decisions

Some matters will be referred directly to Council for consideration or re-consideration. The types of grievances that will be referred to Council are those regarding:

- Council endorsed objectives and policies.
- Resolutions of Council
- Budgetary matters or evaluation of service delivery matters

- Civic and ceremonial matters
- Any other matters at the discretion of the Chief Executive Officer.

Council requires the CEO to make a judgement about the severity of complaints regarding the above matters, so as not to hold up Council meeting time on matters which, whilst falling into the above categories, are of a relatively minor nature. However, where such a matter is likely to be of interest to the wider community the CEO shall consult with the Mayor or relevant Committee Chair.

8. Time Frame for the process

Grievances will be formally acknowledged within 5 days of receipt, including advice to applicants about the expected timeframe for dealing with the matter. In most cases applications for review will be considered within 21 days, although in some circumstances it may take longer. However, in all cases, applicants will be kept informed about the progress of the review, and advised in writing of the outcome of the review procedure and process.

If applications for review are not resolved satisfactorily, applicants will be advised of other options for review, such as the State Ombudsman, legal advice, and/or the courts.

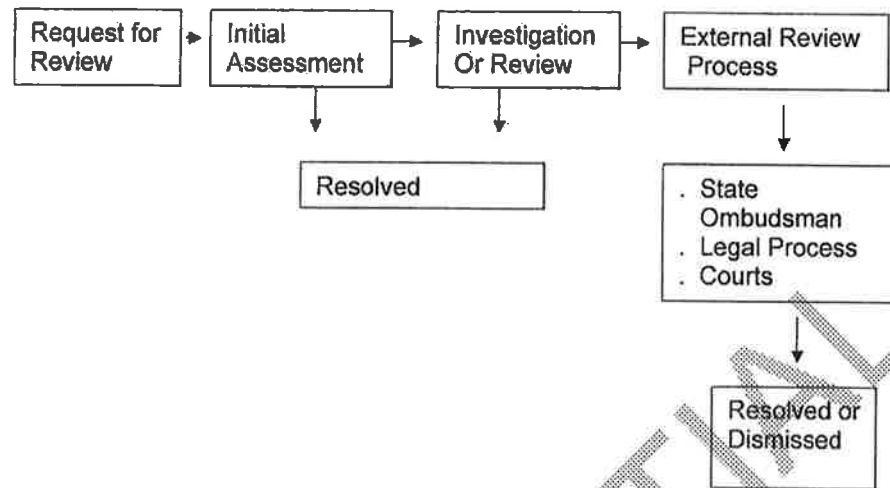
The following demonstrates the process to be adopted by Council for the review of decisions.

1. Request for Review
2. Initial Assessment
3. Investigation or Review
4. External Review Process (Ombudsman, Legal process, Courts)
5. Resolved or Dismissed

At any stage of the above process the issue may be resolved.

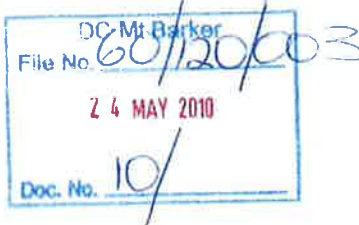
The Contact Officer for an Internal Review will be in the first instance the Chief Executive Officer. The Chief Executive Officer to ensure there is no personal relationship with the applicant, no personal interest in the outcome of the review and had not been involved in the decision being reviewed. An independent party may be asked to join a review panel established by the Contact Officer. Legal advice may be sought by Council during the procedure.

Attached is a flow-chart explaining this process.



(6 November 2000, Min Ref:127.7)

Attachment 3 to Item 17.1



20 May 2010

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

CONFIDENTIAL

Attention Mr Brian Clancey

RE: MONARTO QUARRY CRUSHING CONTRACT

We thank the Mount Barker Council for providing the time and meeting with ADCIV on Tuesday 18 May 2010 to further discuss our concerns with the above contract. At the meeting we consider that ADCIV made a commitment to fulfil its contractual obligations up to the contract completion date of 19 August 2010.

We note your request by email dated 20 May 2010 to crush a further 67,500 Tonnes of various product, which will bring to a total crushed by ADCIV of 152,878 Tonnes. With this addition it would appear requesting a reduction in the contract quantity to be pointless.

We also reiterated at the meeting the ongoing problems that ADCIV are experiencing with cash flow problems due mainly to the long delay between crushing material and receiving payment from the Council.

With this in mind we request that the Mount Barker Council reviews the contract payment conditions to allow for payment to be made to ADCIV per tonne of material crushed in lieu of payment for material over the Council's weighbridge. Or as an alternative allow the processing of payments for all material crushed by ADCIV to be no later than the contract end date of 19 August 2010 to allow payment to ADCIV 30 days after that date.

We again thank you for your willingness to allow ADCIV to explain the current situation and await your favourable consideration to the above.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Tony Finnegan".

Tony Finnegan
Contractors Representative

Adciv Pty Ltd
Level 1
175 Fullarton Road
Dulwich SA 5065
ACN 109 128 378

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