

#	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
45	6 April 2010	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> <p>(h) legal advice</p>	report, attachments and minutes	Release	Release and make public	N/A		6 Sept 10

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;
 - 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

17. CONFIDENTIAL REPORTS

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

DATE OF MEETING: 6 APRIL 2010

AUTHOR: VARIOUS STAFF

AUTHOR'S TITLE: VARIOUS

REPRESENTORS: N/A

FILE NUMBER: VR 233

**ATTACHMENTS: 1. LETTER FROM ADCIV
2. FINANCIALS**

DEPARTMENT: GOVERNANCE & PROJECTS

**DEPARTMENT
MANAGER: BRIAN CLANCEY**

PURPOSE

To consider and respond to a request from ADCIV regarding the current contract that ADCIV has with Council for the crushing of material at Monarto Quarries.

RECOMMENDATION

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.

BACKGROUND

Following an open tender call, at the Council meeting held on 3 August 2009, it was resolved to award the tender for the crushing of material at Monarto Quarries to ADCIV.

ADCIV was not the lowest price tender.

Subsequently a contract was entered into between Council and ADCIV on 19 August 2009.

ADCIV staff have subsequently met with Council officers on a couple of occasions to discuss concerns relating to the provision of crushing services.

In these meetings ADCIV representatives have acknowledged that they were not well prepared to undertake the contract.

As an example, when ADCIV advised of their financial position to date on this contract Council officers asked how that compared to their project budget. ADCIV replied that they didn't have a project budget.

Following the most recent meeting ADCIV forwarded a draft letter to Council on a confidential and without prejudice basis and the General Manager, Governance and Projects provided feedback to them on the same basis, inclusive of some constructive suggestions.

ADCIV has subsequently forwarded a confidential letter to Council seeking relief from the current contract (attachment 1). The signed letter largely did not take account of the feedback that was provided in response to the draft letter.

Council officers have made known to ADCIV that the letter would require consideration at a Council meeting as there was no delegation of authority to Council officers to vary the contract.

A requirement of the contract is that ADCIV shall not sub-contract any of the services without the prior approval of Council. In December 2009 Council was made aware that ADCIV was engaging sub-contractors without the prior approval of Council. Council staff wrote to ADCIV requesting details of the engagement of the sub-contractors, particularly induction and OHS&W monitoring records. No response to this request has been received from ADCIV despite a follow up request to them in early March 2010.

DISCUSSION

Crushing Contractor

To date ADCIV has produced 60,000 tonnes of its 150,000 tonnes contract.

The ADCIV letter makes various assertions and claims, many of which are not accurate from the perspective of various Council officers.

A requirement of the tender is to raise, crush and stock pile. The then Quarry Manager at a pre tender onsite meeting with ADCIV's representative discussed these issues as well as the need to cart some of the raised calcrete from EML 6118 (a distance of 3km) to blend with calcrete from the area adjacent to the crushing site.

ADCIV's representative was made aware that from Monarto Quarries' experience not all the calcrete could be raised with a dozer. ADCIV's representative's response was that ADCIV had access via their fleet of plant to a D9 dozer and excavators of sufficient size and mass that ripping, rather than blasting would be their preferred method of raising the in ground resource.

Earthmoving equipment subsequently used by ADCIV was unable to win enough good stone so ADCIV did end up employing a blasting sub-contractor.

During the assessment of tenders, there was correspondence between Monarto Quarries and ADCIV that the cost of any blasting, if the resource could not be ripped was included in ADCIV's tendered cost to raise the calcrete resource.

It was also clearly confirmed with ADCIV that payment was made only on the tonnage that went over the weigh bridge and out the gate and this was accepted via email by the then General Manager of ADCIV.

All prospective tenderers were made aware that the stock piles of crushed material onsite, needed to be sold prior to the sale of product from the next contract. Any assumptions that may have been made about the associated timing could only have been an educated guess.

Attachment 2 shows the actual timing of sales produced by the previous contractor (Smithy Crushing) and the current contractor (ADCIV).

ADCIV willingly and knowingly entered into the contract. The three scenarios in the ADCIV letter would all have negative financial implications for Monarto Quarries.

Monarto Quarries is not in a position to absorb negative financial impacts without impacting on the operating result which is already predicted to be a deficit in 2010/11 of around \$76,000.

If alternatively negative financial impacts were to be passed on to customers of Monarto Quarries there is a high risk of reduced demand and sales due to increased prices and given the highly competitive market place.

Possible alternatives to the ADCIV scenarios would be to explore on a without prejudice basis whether some modification to the contract could be entertained that would be very modest in terms of financial impact on Monarto Quarries i.e.:

- payment when the material crosses the weighbridge or a specified number of weeks after crushing whichever is the sooner – the risk would then be transferred to Council as to the timing of product sale and ensuring all product meets quality specification; or
- a reduction in the total quantum of product to be crushed by ADCIV (currently 150,000 tonnes perhaps reduce by say 10,000 tonnes) and Council would go to tender earlier. The risk here is that the subsequent crushing contractor price would be higher than the current ADCIV contract.

Such alternatives would require negotiation with ADCIV and would be subject to consideration at a future council meeting as per the recommendations.

Future Direction for Monarto Quarries

Further to previous resolutions of Council, this is to be the subject of a separate agenda item to a future Council meeting once the Expression of Interest (EOI) process is undertaken. The EOI has been delayed as a result of additional geological information being deemed necessary regarding remaining stocks of calcrete within land over which Monarto Quarries holds extractive mineral licences.

It is now anticipated that the geological information will be completed by late April 2010 and the EOI process can then proceed.

POLICY IMPLICATIONS

1. Financial/budget

Actual sales in 2009/10 compared to budget are shown in attachment 2.

Current stockpiles total approximately 13,400 tonnes. The estimated value to ADCIV when sold is \$100,000.

2. Legal

Council has obtained legal advice from Mellor Olsson regarding the crushing contract. The advice is very supportive of Council's position and concludes:

"More generally, we are of the opinion that ADCIV does not have a particularly strong case. In the circumstances, we do not think ADCIV would be successful if it were to now complain about the situation it finds itself in."

3. Staffing/Work Plans

The Manager, Monarto Quarries (Mr Robert Coleman) and General Manager, Governance and Projects have been dealing with ADCIV on this matter.

4. Environmental

Not applicable.

5. Social

Not applicable.

6. Strategic Plans

Crushing is outsourced pursuant to the Monarto Quarries Business Plan 2005/06 – 2009/10 as endorsed by Council.

7. Risk Management

There is a risk that ADCIV may simply walk away, notwithstanding their contractual obligations. Legal advice is: *"The Council is therefore in a strong position if ADCIV refuses to complete the contract."*

Practical implication would be that Council would need to source a suitable crushing contractor and pursuant to the contract with ADCIV seek to recover any additional costs from ADCIV.

8. Asset Management

Not applicable.

COMMUNITY CONSULTATION**1. Customer Needs Analysis**

Customers of Monarto Quarries would be disadvantaged if the cost of crushing was increased and some or all of such an increase was passed on to customers via a price increase.

2. Promotion/Communications

Not applicable.



**CONFIDENTIAL
WITHOUT PREJUDICE**

Attachment 1 to Item 17.1

DC Mt Barker
File No. <u>MT YET</u>
Rec 11 MAR 2010
Doc. No. <u>10/11809</u>
RELATED UR/233

The District Council of Mount Barker
6 Dutton Road
Mount Barker SA 5251

Attention Mr Brian Clancey *Received 9/3/10.*

RE: MONARTO QUARRY CRUSHING CONTRACT

We thank the Mount Barker Council for providing the time and meeting with ADCIV on Friday 5 February 2010 to allow us to discuss and explain the present problems being experienced with our operation of the above contract.

It is important to focus on the two main area's of concern that have resulted in major financial and practical problems to ADCIV.

Firstly, during the tender period ADCIV was provided with a copy of the 2008/2009 Monarto Quarry Financial Report. ADCIV used the historical annual sales information in the report as the basis of its tender offer with the expectation of a certain cash flow from the sale of product from the commencement of the contract in August 2009. This unfortunately has not come to fruition due to the ongoing sales of stockpiled material crushed by the previous contractor; this has resulted in major cash flow problems being experienced by ADCIV. This is also reflected in the problems we are experiencing with payment to our crushing subcontractor due to these cash flow problems. This is highlighted by the confidential cost report provided to Council by ADCIV that shows that the loss to date (end January) on the contract is \$274,000.00.

Secondly, we were provided with information, by Council, and had an expectation that the winning of sufficient crushable material to fill the contract requirements, would be both accessible and within a reasonable distance from the location of the crusher, the location of the crusher being specified by the Council.

This again has not been the case we have experienced long lead distances (up to 3km) and the necessity to drill and blast to enable us to win sufficient material to crush. Obviously this has resulted in major cost implications to ADCIV and results in a loss of some \$3.00 per tonne on the contract rates.

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Also as pointed out at the meeting, another area of concern is that the executed contract clearly states, that the contract sum (based on a minimum of 150,000 tonnes) shall be paid to the contractor in the term of the contract (being twelve months from the commencement date of 19 August 2009) Refer Clause 3.0 Page 3.

At the present rate of sales, 34,676.63 tonnes as of the end of February 2010, it is quite clear, based on the historical sales' figures, this will not be achieved in the defined contract period, it could be argued that this places the Council in breach of contract.

We would also like to draw attention to the fact that one of the major expected sources for the sale of material from the Monarto Quarry by both the Council and ADCIV, was the Stage 2 of the Bluestone Development, this has not been realised due in part, to the high cost of material from the Monarto Quarry and the supply of materials from the successful contractors own quarries at obviously cheaper rates. When you consider those quarries are located at a considerable distance in the South it is reflection of the high cost of Monarto Quarry material.

Since our meeting and the submission of our draft letter we have received more and certainly far more disturbing evidence of the very poor progress of the Monarto Quarry Crushing Contract and the resulting financial predicament it is placing ADCIV in, we therefore feel we must add the following.

Refer email Brian Clancey to Tony Finnegan dated 11 February 2010 titled "Quarry-Stockpiles and Forecasts".

This email provided information that stockpile quantities were 17,740 tonnes of material and forecast sales to the end of April (in addition to the stockpiled quantities) of 20,000 tonnes. This email also stated that the forecast sales figure excluded AHC requirements (quote "AHC are a significant customer").

In February 2010 ADCIV were instructed to crush 10,500 tonnes and rip/load/cart an additional 17,000 tonnes to cover the forecast sales. The cost to ADCIV to produce this material was \$115,750.00.

Total value of sales from the Monarto Quarry for February 2010 only achieved a mere \$31,500.00, or 4500 tonnes, this equates to a reduction of 50% on the 08/09 financial year.

This now places ADCIV in the unfavourable situation of having some 23,740 tonnes of crushed material stockpiled and a further stockpile of 17,000 tonnes of won material ready for crushing. The potential for sale of this material over the weighbridge in the short term appears very slim at the best based on recent sales and the lack of marketing the Monarto Quarries products.

The end result of this is that ADCIV now has an investment in the Monarto Quarry of approximately \$225,680.00 of stockpiled material with the chance of recovering these costs by the end of the contract term diminishing on a monthly basis and the loss sustained by ADCIV increasing on a monthly basis.

Obviously this disparity between crushing/stockpiling and sales of material cannot continue as the resulting financial loss situation for ADCIV has now become untenable.

We therefore require the Mount Barker Council to act on one of the three following scenarios that may resolve the problem, or at the very least alleviate in part the financial problems being experienced by ADCIV.

1. ADCIV are released by the Mount Barker Council of all responsibilities under the contract at the end of March 2010 (or as soon as practicable). (preferred)
2. Increase in the contract rates per tonne for material that reflect the increased costs being experienced by ADCIV due to additional expenditure and work required to win suitable material.
3. Change the contract payment terms so payment is made to ADCIV per tonne of material crushed in lieu of payment for material over the Council's weighbridge. This will improve our cash flow and may make payment of the contract sum to ADCIV possible in the specified contract term. But this of course will not alleviate the loss to ADCIV of \$3.00 per tonne on the contract rates.

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

Grant Armstrong
Managing Director

Attachment 2 to Item 17.1

CONFIDENTIAL ITEM: MONARTO QUARRIES CRUSHING CONTRACT**SALES IN TONNES BY PRODUCT (Produced by contractors).**

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Smithy								
Crushing								
20mm Class 2								
PM2/20Q	2,467	10,484						
30mm Quarry								
Rubble	4,731	6,240	10,690	4,399	1,750	1,929	3,411	1,931
Quarry Sand								
Types	132	573	128	51	70	114	189	416
20mm Crushed								
Rock	13	4,339	-	-	-	-	-	-
Total	7,344	21,637	10,817	4,450	1,819	2,043	3,600	2,347
ADCIV								
20mm Class 2								
PM2/20Q	-	-	2,512	2,511	7,698	7,516	3,808	1,038
20mm B Grade								
PM3/20Q	-	-	-	13	-	12	-	-
20mm Crushed								
Rock	-	-	-	3,539	-	2,288	279	2,907
Total	-	-	2,512	6,063	7,698	9,817	4,087	3,945
Total Tonnage	7,344	21,637	13,329	10,513	9,517	11,860	7,686	6,292

The 2009 -10 budgeted sales was estimated at 160,000 tons, this amount was based on a reduction of ten per cent of the 2008-09 sales. These sales average out over the last eight months' to around ninety percent of the sales budget. Extrapolating on these sales figures Council would anticipate annual sales of about 140,000 tons.

SALES BUDGET IN TONNES (JULY 2009 – FEBRUARY 2010)

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Budgeted Tonnes Per Month								
Actual	7,344	28,981	42,310	52,823	62,340	74,200	81,886	88,178
Budget	13,333	26,667	40,000	53,333	66,667	80,000	93,333	106,667
Budget Variance								
(%)	55%	109%	106%	99%	94%	93%	88%	83%

BUDGET 2010-11

The 2010-11 budgeted production has been based on the sales from July 2009 to February 2010, estimated at 140,000 tones of product. The budgeted production cost of the 2010-11 sales includes a contingency for price increase of new contractor.