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## **CONFIDENTIAL**

**REPORT TITLE:** FUTURE LANDFILL OPTIONS AND COUNCIL'S CONTINUING INVOLVEMENT WITH THE ADELAIDE HILLS WASTE MANAGEMENT AUTHORITY

**AUTHOR:** MALCOLM CROUT

**AUTHOR'S TITLE:** GENERAL MANAGER CORPORATE AND COMMUNITY SERVICES

**REPRESENTORS:** NONE

**FILE NUMBER:** CONFIDENTIAL

**ATTACHMENTS:**

- 1. INTERIM REPORT TO MONARTO QUARRIES" A REVIEW OF THE OPERATION OF MONARTO QUARRIES"
- 2. LETTER FROM CONSULTANT, DEAN NEWBERY AND PARTNERS
- 3. DRAFT LETTER TO THE ADELAIDE HILLS REGIONAL WASTE MANAGEMENT AUTHORITY
- 4. 2003/2004 FINANCIAL STATEMENTS ADELAIDE HILLS REGIONAL WASTE MANAGEMENT AUTHORITY
- 5. 2002/2003 FINANCIAL STATEMENTS ADELAIDE HILLS REGIONAL WASTE MANAGEMENT AUTHORITY
- 6. LETTER OF OFFER FOR DISPOSAL OF WASTE
- 7. OPERATORS AGREEMENT BETWEEN DCMB AND AHRWMA

**DEPARTMENT:** CORPORATE AND COMMUNITY SERVICES

**DEPARTMENT  
MANAGER:** MALCOLM CROUT

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### **PURPOSE**

To bring to the attention of Council a range of issues concerning the obligations, risks and possible options with respect to the operation of the Hartley Landfill and Council's future role as a Constituent Council with the Adelaide Hills Regional Waste Management Authority.

**RECOMMENDATION**

1. That pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 the District Council of Mount Barker orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom Council is conducting or proposing to conduct, business, or to prejudice the commercial position of Council.
2. That the Chief Executive Officer, General Manager Strategy, General Manager Corporate and Community Services, and the Minute Secretary be permitted to remain in the room.
3. That Council notes the report, and;
4. That Council authorise the General Manager Corporate and Community Services to request certain information via the draft letter (attachment 3) from the Adelaide Hills Regional Waste Management Authority for the purpose of forming an opinion on the financial accounts for 2003/2004, and
5. That the General Manager Corporate and Community Services report back to Council with the consequences of the response from the Adelaide Hills Regional Waste Management Authority.
6. That the Council orders 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 until 11 October 2005. (Council Meeting 13 September 2005 extended confidentiality until 5 September 2006) confidentiality provisions removed at mtg on 4 Sept 2006
7. That subject to Section 90 of the Local Government Act 1999 as amended, the public be readmitted to the meeting at the conclusion of the item.

## **BACKGROUND**

In June 2004, the Chief Executive Officer (CEO) and Mayor attended a Board meeting of Monarto Quarries. At that meeting the Board resolved that the CEO and the General Manager Corporate and Community Services (GMC&CS) be authorised to engage a consultant to carry out a review of the operation of Monarto Quarries with a view to determine the viability and options for the business. On the 9<sup>th</sup> September 2004, a report prepared (attachment 1) by the CEO and GMC&CS in conjunction with the consultant, Don Venn (DV) of Dean Newbery & Partners (attachment 2), was presented to the Board. From information contained in that report, the Board resolved for the report to go forward to Council and that those areas specifically concerning Council are outlined in greater detail for Council to consider.

In summary, subject to sound business decisions, Monarto Quarries was deemed to be a viable stand-alone business. The issues that the Board and consultant considered were of significant importance to Council were:

- The high business risk to Council as a consequence of the Operator's Agreement (this agreement is between the AHRWMA and DCMB. Monarto Quarries performs the activity on behalf of Council) is such so as to warrant immediate renegotiation of that agreement
- To reconsider Council's role in the Adelaide Hills Regional Waste Management Authority (AHRWMA) as a Constituent Member especially considering that Council is also the Contracted Operator
- Explore alternative long term waste disposal options

Since that meeting, further information has become available in terms of the presentation of financial information on the 2003/2004 audited Financial Statements of the AHRWMA (attachment 4). That information adds to further weight to the range of concerns for the District Council of Mount Barker.

The major concern is that the AHRWMA Financial Statements do not provide sufficient information for users to form an opinion as to the operations of the Authority and while it is a technical point, they do not comply with appropriate Australian Accounting Standards as required under section 8 of the Financial Regulations of the Local Government Act 1999, a consequence of this being non disclosure of material facts as outlined in the draft letter (attachment 3) and in particular:

- In 2003/2004 it would appear that assets are overstated, particularly cell 5 and roadwork not under the control of the AHRWMA. Overstatement of these assets means that the shares of equity of the constituent councils is incorrect

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- In 2002/2003 (attachment 5) cell 4 was written off, but that cell was utilised until January 2004, when cell 5A was commissioned. As a consequence, joint equity of the constituents is understated
- Loan liabilities are not separated into current and non current, which in the absence of a cash flow statement, does not provide users with an understanding as to the liquidity position
- Notes to the financial statements are either incomplete or non existent and do not assist in the readers' understanding of the statements
- EPA Waste Levies for all constituent Councils are paid out of operating expenditure. Part of the Adelaide Hills Council attract the metropolitan levies, which are \$5 per tonne higher than regional levies, so in effect the equity of other constituent Councils may be affected by the consolidated payment
- Although the Authority are now accumulating reserves, in all likelihood there are insufficient reserves to manage the long term expenditures required for ongoing post closure management

Other points of clarification required from the Authority relate to aspects of governance, in particular Part 2 of Schedule 2 of the Local Government Act 1999, which may well have been complied with, but in the absence of documentary evidence, Constituent Councils need to be assured that obligations have been met as all Councils are eventually liable for the actions of the Authority, with the DCMB more so under the current Operators Agreement.

The other matter of concern relates to confusion among members as to their personal roles and the relationship of Monarto Quarries and the DCMB with the Authority. These matters are detailed in the draft letter to the Authority. (attachment 1)

## DISCUSSION

In 1996 when the AHRWMA was established and the agreement with Council put in place (attachment 7) it seems likely that an entirely different set of circumstances existed in the waste industry and the environmental impacts were not as well understood as today. Today, the Environment Protection Authority has stringent rules for the construction, management, closure, rehabilitation and post closure of landfill sites, which carry significant upfront and ongoing costs beyond the useful life of the landfill cells.

According to the financial statements, cell 5 will cost around \$600,000 and judging by the rate of fill, there would be approximately 4 years of life remaining. The AHRWMA has borrowed \$600,000 to fund the cell over a term of eight years. The tonnage charge to users is based upon this cell life, and it appears likely that there will be a

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three-year shortfall on the expected life. The consequences of this are that the tonnage rates will need to be significantly adjusted upwards to match the life of the cell. Currently, the rate per tonne is marginally less than the cost of transporting and disposing at Pedler Creek, with the added benefit that disposal at Pedler Creek has no future implications for the DCMB with respect to post closure costs. This Council has an offer available for acceptance from the Southern Region Waste Regional Authority (attachment 6) and are able to lock in this rate for five years with CPI adjustments.

Pursuant to the Operator's Agreement (attachment 7), Council indemnifies other constituent Councils from any risk. There may have been an entirely different set of risks in 1996, but today would include economic and environmental risks, which have the potential to be substantial. The agreement provides for the AHRWMA to operate at arms length to the Operator (DCMB) and this has ongoing negative economic impacts due to difficulties experienced during the construction process. Council via Monarto Quarries did lose money in the construction of cell 5A and continues to make no profit in terms of operating the landfill. If the agreement is arms length for one party, then the other party should have the same benefit. In which case a profit could be generated from the operation rather than is the case at present, where there is little margin for error with costs.

Since this Council carries all the risks, while other Constituent Councils share no risk with equity based upon usage, the agreement has far reaching implications to the share of equity as determined in the Charter.

The relationship between the AHRWMA is convoluted in terms of the licenses and agreements. The DCMB holds the mining licence over the entire site and a licence with the landowners to operate the quarry business. The AHRWMA holds the EPA licence and the licence with landowners to operate the landfill. The landowners are paid compensation payments of several thousand dollars each year. The AHRWMA owns all the assets of the landfill and the constituent Councils are DCMB, Adelaide Hills Council, Alexandrina Council and the Rural City of Murray Bridge. Due to the distribution of equity, the Adelaide Hills Council and DCMB are almost equal in equity in 2003/2004 compared to 60% and 40% split in favour of DCMB for 2002/2003. This is because the Adelaide Hills Council has increased usage by 18% over 2003/2004 whereas DCMB's increase is only 8%.

The management of the landfill is the responsibility of the AHRWMA and the day-to-day management has been passed on to DCMB through the existing Operator's Agreement. A Land Environment Management Plan (LEMP) agreed by the EPA is in place for the management of the cell, but there has been recent conjecture over the compaction rates via the Adelaide Hills and Alexandrina Councils. As the DCMB carries the long term risk, non adherence to

the LEMP impacts only on the DCMB and this must be remedied with other constituent Councils understanding that the LEMP is the guiding document.

DCMB carries all risk and is treated at arm's length on the one hand, but as a Constituent Member on the other. This can never be a satisfactory arrangement and there are several options that may be considered. These include:

1. Cancel the Operators Agreement and renegotiate a commercial Operators Agreement
2. Cancel the Operators Agreement and advise the AHRWMA to put the activity out to tender
3. Opt out of the AHRWMA
4. Sell out of the AHRWMA
5. Determine potential alliances in the public or private sectors
6. Dispose elsewhere but stay in AHRWMA as a Constituent Council
7. Propose Adelaide Hills Council take over the landfill
8. DCMB takes over the landfill

Out of all the options, an over riding factor is that the DCMB has the risk accrued over the past eight years and it is unlikely that risk would be able to be mitigated by any of the available options. A combination of options 8 and 5 and contracting with Adelaide Hills Council to accept their tonnage at a fixed rate plus CPI over a withdrawal period to match the life of the cell, would provide the elements of control with the DCMB to make firm determinations for the future rather than being controlled by other constituent Councils. At any time DCMB may opt to dispose of tonnage elsewhere depending on circumstances.

Please note that these options will be considered in detail and presented to Council after a response from the draft letter (attachment 3) has been received and considered.

## **POLICY IMPLICATIONS**

### **1. Financial/budget**

There are financial implications, but these will be unknown until the discussions with the AHRWMA members are made and the various options costed as a consequence of those discussions.

If the DCMB gained control, then administration costs would be saved as the work of accounting and administration could be absorbed into Council's activities.

**2. Legal**

Nothing in this report changes the obligations of the DCMB with respect to the risk unless the Council opted out and in so doing would reduce future risk. What is likely to be achieved in a legal perspective is that the legal relationships would be clarified and the parties have clear understanding of their obligations.

**3. Staffing/Work Plans**

There would be little impact on staffing or work plans for the DCMB

**4. Environmental**

Environmental risk is present in any event, but the management of that risk needs to be identified and planned

**5. Social**

Not applicable to this report

**6. Strategic Plans**

The underlying element in this report related to good governance

**COMMUNITY CONSULTATION**

Not applicable to this report