

11.3 Motion to rescind a motion carried in confidence at the meeting of Council held on 15 February 2011

Cr Schulze has indicated his intention to move the following rescission motion, preceded by a motion to deal with the matter in confidence.

1. **That:**
 - a. **under the provisions of Section 90(2) of the *Local Government Act 1999* an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**
 - b. **The Council is satisfied that it is necessary that the public be excluded to enable the Council to consider the report at the meeting on the following grounds:**
 - **Section 90(3)(i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place involving the council or an employee of council**
 - c. **accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**
2. **That Council rescind the following decision of Council passed at the Ordinary Council Meeting held on 15 February 2011 regarding Item 11.1 Legal proceedings regarding unauthorised signage at 137 Commercial Road, Port Noarlunga South:**

'That Council authorise the Chief Executive Officer to explore an option for a settlement on the matter with Mr Becker and Ms Inglis or their representatives on the following potential option for settlement:

- *that Council will not pursue costs and/or contempt of court proceedings subject to an ongoing undertaking from Mr Becker and Ms Inglis that all unauthorised signs will be removed from the land and that the ERD Court order will be complied with, on the understanding that if Mr Becker and Ms Inglis breach this undertaking and the ERD Court order, Council may choose to pursue costs and/or contempt of court proceedings*

and report back to Council in April 2011 with respect to the option and the outcomes of settlement discussions with Mr Becker and Ms Inglis'

Should the rescission motion be carried, Cr Schulze has indicated his intention to subsequently move the following motion:

1. **That Council make application to the Environment Resources and Development Court (ERD Court), under Part 15 of that Court's Rules, that the Court's Registrar issue and serve a summons, as contemplated by those Rules, to Barry John Becker and Jeanette Patricia Inglis of 137 Commercial Road, Port Noarlunga South. The summons would state that those persons are alleged to have committed a contempt of court by**

contravening the orders of the ERD Court in action no. 311 of 2006 dated 2 February 2010 on such dates and by such conduct as the Council's solicitors in due course consider can be proved prepare such supporting documents, materials and evidence as are necessary to support such application and to prove such contempt of court if permitted by the ERD Court, to prosecute any action for contempt brought by the Registrar of the ERD Court against Mr Becker and Ms Inglis or otherwise to provide such assistance as desired by the Court in its proceedings for contempt of court against Mr Becker and Ms Inglis.

2. That Council authorises the Chief Executive Officer (and any person acting from time to time in that position) to, in the name of the Council, take all steps considered appropriate or necessary to give effect to Resolution 1, above, including:
 - obtaining legal representation for the Council; and
 - seeking from the ERD Court such remedies, penalties, punishments and orders against Mr Becker and Ms Inglis as the Chief Executive Officer considers appropriate, based on legal advice.

In relation to the matter of Mr Barry Becker and Ms Jeannette Inglis of 137 Commercial Road, Port Noarlunga South, having been considered in confidence under Section 90(3)(i) of the *Local Government Act 1999*, an order be made under the provisions of Section 91(7) and (9) of the *Local Government Act 1999* that the minutes, agenda report and attachments 6 and 7 relating to discussion of the subject matter, be kept confidential until conclusion of legal proceedings (including any appeal actions).