

11.1 Update on legal proceedings regarding unauthorised signage at 137 Commercial Road, Port Noarlunga South

This report provides an update on the current status of our legal proceedings against Mr Becker and Ms Inglis.

This is information for Council to note.

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Attachments: 1. Council meeting agenda reports and minutes from 15 February 2011 and 1 March 2011 (16 pages)

1 Executive summary

This report provides an update on the current status of our legal proceedings against Mr Becker and Ms Inglis.

1.1 Context

At its 1 March 2011 meeting, Council resolved to rescind its 15 February 2011 resolution, and to initiate contempt of court proceedings against Mr Barry Becker and Ms Jeanette Inglis, in relation to the continued display of unauthorised signage in breach of Court orders at 137 Commercial Road, Port Noarlunga South.

Copies of the agenda reports and minutes from those meetings are provided in attachment 1.

This report provides an update on the current status of those proceedings, as well as the costs claim against Mr Becker and Ms Inglis in relation to the judgement and order of the Environment Resources and Development Court on 2 February 2010 and the Supreme Court on 14 October 2010.

1.2 Financial implications

There are on-going legal costs in this matter, as well as staff resources. We have been seeking reimbursement of legal costs by Court orders although only partial reimbursement is likely.

1.3 Suggested outcome

It is suggested that Council consider this item in confidence. Section 90(3)(i) of the *Local Government Act 1999* is suggested as the most appropriate section to use for this purpose.

The possible implication of not considering this item in confidence is that it may prejudice any legal action undertaken by council.

2 Recommendation(s)

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 the 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 note this report.**
 3. **That in relation to the matter of Mr Barry Becker and Ms Jeannette Inglis formerly 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 attachment 1 relating to discussion of the subject matter, be kept confidential until conclusion of legal proceedings (including any appeal actions).**

Key factors

3 Discussion

Since Council's 1 March 2011 resolution, contempt of court proceedings were initiated against Mr Becker and Ms Inglis, with hearings continuing in the Environment, Resources and Development Court. Most recently on 6 September 2011, the matter was adjourned to 27 October 2011, with Mr Becker and Ms Inglis indicating they will plead guilty and then make sentencing submissions.

If Mr Becker and Ms Inglis do plead guilty, then on our current legal advice we will submit that it is appropriate for the Court to record a conviction in relation to Mr Becker's offending. Consistent with the usual approach of a prosecuting authority, we will not make submissions on penalty, with that being left to the Judge to determine, and we will not oppose a good behaviour bond being imposed upon both Mr Becker and Ms Inglis. We will also seek an award of costs in relation to these contempt of court proceedings.

Members will be advised of the final outcome of the contempt proceedings via Weekly News.

Mr Becker and Ms Inglis sold their Commercial Road property in August 2011 and have moved out of the house, bringing an end to the offending signage. Out of the proceeds of the sale, we received a cheque for an agreed amount of \$50,000. This

is a full and final settlement of our costs claim against them in relation to the judgement and order of the Environment Resources and Development Court on 2 February 2010 and the Supreme Court on 14 October 2010.

