

11.3 Legal advice regarding resolution of 1 March 2011

Legal advice has been received in relation to a Council resolution of 1 March 2011.

This is a regular or standard report.

General manager: Terry Sutcliffe, General Manager City Development
Report author: Renée Mitchell, Manager Development Services
Contact number: 8384 0584
File reference:
Attachments: 1. Legal advice dated 21 March 2011 (4 pages)

1 Executive summary

1.1 Topic

Legal advice has been received in relation to a Council resolution of 1 March 2011.

1.2 Context

At its meeting of 1 March 2011, Council resolved to pursue costs and contempt proceedings against Mr Becker and Ms Inglis, of 137 Commercial Road, Port Noarlunga South (confidential item 11.3 of the Council agenda of 1 March 2011).

Part 3 of Council's resolution stated the following:

3. *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 relating to discussion of the subject matter, be kept confidential until legal advice is received and a further report to Council.*

Legal advice has been sought on the implications of making the decision of 1 March 2011 public, which is contained in attachment 1.

1.3 Suggested outcome

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

This item is presented as a confidential item because of the receipt of legal advice.

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 report at the meeting on the following grounds:

Section 90(3)(h) - legal advice

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. The legal advice from Normal Waterhouse dated 21 March 2011 be received.
 3. In relation to the matter of Mr B Becker and Ms J Inglis of 137 Commercial Road, Port Noarlunga South discussed on 1 March 2011, having considered that matter in confidence under sections 90(3)(h) and 90(3)(i) of the *Local Government Act 1999*, an order now be made under the provisions of Section 91(7) and (9) of the *Local Government Act 1999* that the minutes and the report on the subject matter (including all attachments), and all discussion of the subject matter, and all resolutions concerning the subject matter, be kept confidential until the conclusion of all legal proceedings concerning Mr Becker and Ms Inglis (including any appeals or contempt actions).
 4. In relation to the matter of the legal advice regarding the resolution of 1 March 2011 having considered that matter in confidence under Section 90(3)(h), 90(3)(i) of the *Local Government Act 1999*, an order now be made under the provisions of Section 91(7) and (9) of the *Local Government Act 1999* that the legal advice regarding the resolution of 1 March 2011 and the minutes and the report on the subject matter, and discussion on the subject matter, be kept confidential until the conclusion of all legal proceedings concerning Mr B Becker and Ms J Inglis of 137 Commercial Road, Port Noarlunga South (including any appeals or contempt actions).

Key factors

3 Discussion

In accordance with Council's resolution of 1 March 2011, legal advice was sought as to the implications for Council were it to release from confidence its discussions and decisions regarding pursuit of costs and further legal action in relation to

unauthorised signs displayed at 137 Commercial Road, Port Noarlunga South. This legal advice is contained in attachment 1.

The legal advice concludes:

- there is a real risk that release of the minutes would constitute a waiver of some privileged communications or documents relating to the legal proceedings
- there is rarely anything to be gained and frequently much to be lost, by lifting confidence in respect of legal advice and materials connected to litigation

and advises against the lifting of confidentiality because it may prejudice the Council in its legal proceedings.

It is recommended that Council's decision of 1 March 2011 in relation to this matter remain and that confidentiality not be lifted.

