

2. Confidential Items

2.1 Notice of Rescission Motion (Cr M Bray)

Councillors Chapman and Olsen entered the meeting at 7.02pm.

Cr R Brown left his seat in the chamber at 7.02pm.

Cr Nash MOVED:

1. That:

- a. under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public with the exception of Andrew Nance of St Kitts Associates and Matthew Adcock of Leedwell Strategic 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 information at the meeting on the following grounds:*
- c. Section 90(3)(k) tenders for the supply of goods, the provision of services or the carrying out of works;*
- d. 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.*

Seconded by Cr Webster.

CARRIED

Cr S Brown entered the meeting at 7.03pm.

Cr R Brown resumed his seat in the chamber at 7.04pm.

Cr Richardson entered the meeting at 7.08pm.

2. MOVED Cr Bray that given that the Solar Shop Australia Group was placed in receivership on 7 September 2011 (publicly announced on 9 September 2011), the date for submitting applications for grants under the state government's Renewable Energy Fund has been extended to 31 March 2012 and the need to make a sound decision based on the best and latest information available that the motion of Council passed on 6 September 2011 at Item 11.1 of the agenda, entitled 'Confidential Futurtec Project – Negotiation Update';

That Council:

- a. approve the Futurtec project proceeding with Southern Adelaide Renewables Consortium, contract number 10070 based on the 1.4MW*
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solar plant and Meyer Road Precinct outcomes noting they presented a commercial proposal that addressed the key criteria of the project objectives, and

- b. delegate its authority to the Chief Executive Officer to finalise negotiations on a Heads of Agreement, acknowledging that the project will proceed and exiting will only be possible under certain requirements not being met, and*
- c. receive a further report that provides the outcome of SARC's Renewable Energy Fund grant application and ongoing negotiation outcomes for consideration to enter into a binding contract with SARC to implement the Futurtec project.*

be RESCINDED

Seconded by Cr Swann.

CARRIED

Cr Bray MOVED:

- 1. That further investigations be conducted into the current and alternative proposals for the future of the Meyer Road and Renewable Energy Precincts to optimise the Council's key strategic objectives in relation to:*
 - Economic development (attraction of Cleantech industries to the council area)*
 - Environment*
 - Finance*
 - Social*
 - Risk mitigation*
 - 2. That the investigations include:*
 - Comparison to a straight sale of the land.*
 - Implications of the carbon tax and its timing.*
 - Opportunities for increased grant funding.*
 - The costs and benefits for Council in relation to being a potentially a foundation customer.*
 - The Consortium's current position and future viability.*
 - Appropriate methodologies to achieve the Council's strategic objectives for the site.*
 - 3. That the SARC consortium be advised of the Council's decision and advised that there will be no further negotiations in relation to contract 10070 until the Council has determined its preferred direction.*
 - 4. That the following documents be included with the minutes of this meeting:*
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- *Letter from Frank Teofilo, General Manager of Commsolar dated 12 September 2011 about Solar Shop Australia Group being placed in receivership.*
- *Legal advice from Sean Keenihan of Norman Waterhouse Lawyers dated 13 September 2011 regarding Solar Shop Australia Group being placed in receivership.*
- *The handout presented at this meeting showing assumptions for the NPV analysis.*
- *Email from Kevin Heydt, Director of Moss Capital dated 13 September 2011.*
- *Letter from Simon Brown, Managing Director, Resourceco Pty Ltd dated 12 September 2011.*

5. *That Council write to Resource Co and Commsolar as the key proponents of the SARC and request clarification regarding:*

- *the current status of Commsolar's receivership; and*
- *the impact this has on the SARC proposal*

Reminding that all parties are still operating within the terms of the Request for Proposal process and that the Council expressly reserves its rights under the terms and conditions of applying to that process.

Seconded by Cr Swann.

CARRIED

Cr Nash MOVED that the meeting adjourn for the purpose of opening the Services and Facilities Committee meeting.

Seconded by Cr Swann.

CARRIED

The meeting adjourned at 7.30pm.

Cr Greaves MOVED that the Special Council meeting reconvene.

Seconded by Cr Merritt.

CARRIED

Mayor Rosenberg reconvened the meeting at 7.32pm with all members present that were present before the adjournment.

Cr Richardson MOVED:

3. *That the matter of the Notice of Rescission Motion having been considered in confidence under Section 90(3)(k) 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 agenda item 2.1 Notice of Rescission Motion and minutes of the Council, including any attached documents relating to*
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discussion of the subject matter be kept confidential for two years with an annual review.

Seconded by Cr Merritt.

CARRIED

RELEASED 15/7/20

Attachment 2.1

1. Letter from Frank Teofilo, General Manager of Commsolar
2. Legal advice from Sean Keenihan of Norman Waterhouse Lawyers
3. The slide and handout showing assumptions for the NPV analysis
4. Email from Kevin Heydt, Director of Moss Capital
5. Letter from Simon Brown, Managing Director, Resourceco Pty Ltd

12 September 2011

Mr Jeff Tate
Chief Executive Officer
City of Onkaparinga
Ramsay Place
Noarlunga Centre SA 5168

Dear Jeff,

I am writing this letter to provide yourself and the City of Onkaparinga further clarity on Solar Shop Australia Group and Commsolar financial position.

As we discussed on Friday, Westpac in their capacity as a secured creditor, appointed Ferrier Hodgson as the Receivers and Manager for the business on the evening of Wednesday the 7th of September with a subsequent public announcement on Friday the 9th of September. This was done without consultation and against the wishes of Solar Shop Australia Group and was, to say the least, a surprising decision by Westpac.

We understand this situation may give some cause for concern for the City of Onkaparinga and how it could potentially impact the Futurtec Project, an initiative we have all committed considerable time, energy and money in developing to the stage it is currently at. As such, I would like to outline below for you, the steps we are taking and to assure you and the Council that this will not have an impact.

At this moment, the Directors of Solar Shop Australia Group and our equity partners Harbert Australia, are actively engaged in negotiations with several external equity providers who have expressed considerable interest in taking equity and injecting capital into our business as a whole. This would include Commsolar. Negotiations are firmly underway and we would expect to have a resolution within the coming 2 weeks. Once this is resolved it will enable us to resolve our position with Westpac and have full control of the company handed back to our Board of Directors.

We have kept our SARC consortium members advised of this progress and they remain firmly behind us and the project. In fact, one of the interested parties mentioned above is indeed, part of the SARC consortium. We have also conveyed the information to Renewables SA, who assure us they do not see this as an encumbrance to applying for funding for the Futurtec Project.

Given the above information, we respectfully request the City of Onkaparinga and its elected members to provide us with requisite time, approximately 2 weeks, to resolve this issue and we are confident that we will be there on the other side and able to deliver the Futurtec Project as planned.

Please do not hesitate to contact me should you have any questions or need any of the above clarified.

Yours sincerely,


Frank Teofilo
General Manager, Commsolar

Norman Waterhouse LAWYERS

By Email: <bruwil@onkaparinga.sa.gov.au>
Ref: 275488\SDK01867300

13 September 2011

Mr B Williams
General Manager - Projects & Services
City of Onkaparinga
PO Box 1
NOARLUNGA CENTRE SA 5168

Dear Bruce

Futurtec and Commsolar

I refer to our telephone discussions late last week and today and your request for me to advise on a number of matters associated with the Futurtec project and Commsolar.

The questions you asked me to consider and my advice follows.

Financial status of Commsolar

A business name and company search reveals that "Commsolar" is a registered business name. The name is owned by a company called SSA Commercial Solar Pty Ltd. Solar Shop Australia is the sole shareholder of SSA Commercial solar.

SSA Commercial has also gone into receivership, at the same time as Solar Shop Australia.

The receivership process

When lending money to a company or group of companies, a bank such as Westpac will seek and obtain a number of forms of security. One such security is a mortgagee debenture, or charge. By such a security, the company charges all of its fixed and floating assets as security for repayment of the debt. In broad terms, a charge is a mortgage over those assets.

The charge document provides that in the event of default, the bank has the power to appoint a receiver and manager over the charged assets. This is what Westpac have done in this case, in respect of not only Solar Shop Australia, but also SSA Commercial, and probably any other companies in the group.

As the name suggests, a receiver and manager takes possession and control of all of the assets which are covered by the charge, and also has the power to "manage" those assets. In a case such as this, when the entire undertaking of the company has been charged, the receivers take possession of the entire business.

The receivers' job is a limited one. All a receiver is concerned with is selling sufficient assets to cover the bank's debt. That's their sole job, and they stay in control of the companies long

enough to do that. They do not represent the creditors as a whole, just the creditor who appointed them.

During a receivership such as this, the receivers take over the running of the company. They are, by definition, officers of the company, and everything they do they do on the company's behalf. The existing directors' powers and rights are suspended during a receivership. They cannot conduct the company's affairs.

Depending on the size of the debt, the receivers will consider a number of sale options. If the debt is not particularly large, there may be one significant asset, such as land, which they can sell to recoup the debt. In the normal course, the debt is larger than that, in which case the receivers will need to sell a number of assets. In the worst outcome, the receivers may need to essentially turn the company into a shell, by selling every asset of value.

One of the first possibilities that receivers will always consider is whether they can sell the entire business, or separate parts of the business, as going concerns. This generally realises a greater return, and preserves the company. The press releases and website for Ferrier Hodgson indicate that they are looking for potential purchasers of the entire business of Solar Shop.

In the case when they are looking to sell the business as a going concern, the receivers will operate the business during the receivership. They have the power to do so, and usually will conduct the business to preserve the value of the assets. They generally only operate on a limited basis, however, simply to maintain the status quo. It would be extremely unusual for a receiver to enter into a new venture or conduct any significant business during the receivership.

In a situation where the business cannot be sold as a going concern, and the receivers sell individual assets, depending on how many assets they need to sell, the companies involved rarely survive the process, and would usually then go into liquidation.

The Current Directors

As mentioned above, the existing directors of the companies have no ability to conduct the business of the companies during a receivership. To the extent you are in discussions with them, if they are telling you that they will do certain things, you need to take that with a grain of salt, since they may not have the ability to do anything. This includes making applications for grants/loan funding (e.g. from Renewables SA) on behalf of Commsolar.

Timing

It is certainly optimistic to suggest that all of this will be sorted out in a couple of weeks (as suggested by Commsolar). The process of selling the business, or its separate assets, can take a considerable period of time. Certainly, receivers are very good at putting deals in place quickly, but anyone seriously considering purchasing the business as a going concern would want to conduct a due diligence, after which the agreement would need to be documented and completed.

The only possibility which could lead to a fast process would be if people currently involved in the management of the business were behind any bid to purchase the business as a going concern. This happens from time to time. Balfours, for instance, was a management buyout. This is usually quicker, because there is no need for a detailed due diligence process.

If the receivers cannot sell as a going concern, the sale of individual assets can take some months. With the property market as it currently is, there is no guarantee that willing purchasers will be easily found.

The Status of Contracts

The directors of these companies cannot enter into contracts on the companies' behalf during a receivership. The receivers can, but usually only do so to conduct the core business, as is discussed above. As indicated, it would be very unusual for receivers to enter into a Heads of Agreement for a project such as the Futurtec project. Accordingly Council needs to further clarify Commsolar's continuing involvement in the project and consider the timing impact if they are to remain involved.

Does the Council have any specific exposure arising out of Commsolar's receivership? Is there anything the Council should consider to protect itself in the present circumstances?

Based on our understanding of discussions between the Council and ResourceCo/Commsolar we do not see how the Council could have any specific exposure arising out of Commsolar's receivership.

As we understand matters, the Council has had discussions with ResourceCo and Commsolar around negotiating a Heads of Agreement. These discussions are within the ambit of the Request for Proposal process initiated by the Council in October of 2010.

Leaving aside the terms of the RFP process (which permit the Council to withdraw/cancel/vary the process without liability), the Heads of Agreement (or HOA) is a preliminary document to provide a framework for substantive commercial discussions. In other words, a Heads of Agreement – by its very nature – generally does not impose any substantive legal obligations on either party (perhaps other than an obligation to negotiate in good faith, to respect confidential information etc).

The HOA is a pre-cursor to formal contract documentation that creates substantive rights and obligations of the parties around a transaction/project.

In the present circumstances, the Council hasn't even advanced to the point of entering a HOA.

For abundant clarity however, we recommend that the Council write to Resource Co and Commsolar as the key proponents of the Southern Adelaide Renewable Consortium and request clarification regarding:

- The current status of Commsolar's receivership; and
- The impact this has on the SARC proposal.

13 September 2011

At the same time, the Council should remind ResourceCo and Commsolar that all parties are still operating within the terms of the Request for Proposal process and that the Council expressly reserves its rights under the terms and conditions of applying to that process.

Should you require any further clarification or advice please contact me.

Yours faithfully
Norman Waterhouse



Sean Keenihan
Partner

Direct Line: (08) 8210 1293 or 0407 710 530
e-mail: skeenihan@normans.com.au

RELEASED 15/7/20

Net Present Value (NPV) Objectives

- Net Present Value (NPV) is a tool to assist with assessing capital investment decisions
- It measures the net benefit of a project in today's dollar terms:
 - the "net" is the difference between all costs and all benefits (savings and other gains)
 - the present value takes into account the time value of money; this adjusts expenditures and returns, as they occur over time, so they can be evaluated equally
- It does not take into account other project or business objectives that an organisation may take into consideration separate from the NPV

Overall Assumptions

- Workshops undertaken involving advisors (StKitts associates, Leedwell) , senior council staff, facilitated by Business and Risk Solutions to derive key assumptions and NPV for the negotiation process
- Excludes the MRP land sales and associated remediation of the MRP site as the land was considered saleable outside the project (Knight Frank valuation \$2.9M April 2011)
- Excludes escalation which is an unknown variable for the project
- Excludes network charges and green power/renewable energy credits as these are consistent with the purchase of electricity through current power contracts or the Power Purchase Agreement (PPA) proposed by the consortium
- Excludes the economic impacts of additional employment and additional industries located in the region
- 20 year contract term for the PPA
- Applied discount rate of 7%

Key Assumptions

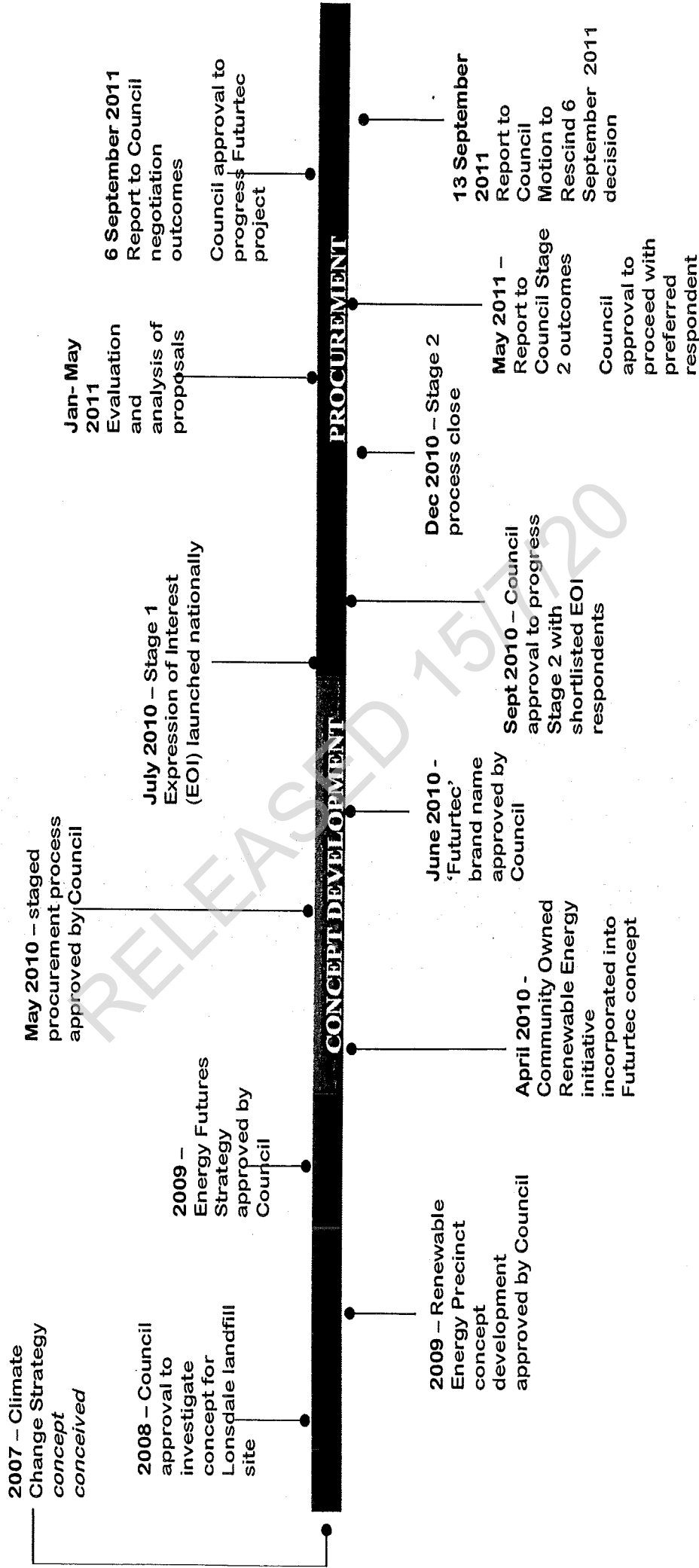
Key Assumption	Methodology
\$2M for sale of REP	<p>Information source – Knight Frank valuers</p> <ul style="list-style-type: none"> • Knight Frank land valuation April 2011 stated \$0 land value and that the land was considered a liability due to the ongoing management costs and restrictions on structural limitations of the site posing development difficulties ie engineering considerations and associated costs for building footings <p>Information source – SARC proposal</p> <ul style="list-style-type: none"> • \$2 mill offer for the land is an element of SARC's proposal and represents the value to the consortium in this particular proposal towards their overall business case and proposal to council. The value to the consortium or any other party outside of the current proposal is unknown however would be considered to be low based on the valuation undertaken in April 2011 <p>Considerations</p> <ul style="list-style-type: none"> • All other respondents to the EOI and RFP indicated a \$0 offer for the land or a long term peppercorn lease at \$1pa with council to hold the risk and liability of the former landfill site • The suggestion of purchase value of the REP site outside of the current project scope is unknown at this time and would require further negotiations and due diligence to verify all impacts associated prior to applying to an NPV calculation. • Options would need to be considered in context of the current Council approved scope as this may need to be altered which in affect may have impacts on Councils policy position with regard to its Climate Change and Energy Futures strategies
\$7,000 pa in rates revenue from REP	<p>Information source – Council rates section</p> <ul style="list-style-type: none"> • \$7,101 based on rate in dollar with a \$2M land sale. <p>Rates category 'other' selected for REP due to potential use for solar development.</p> <ul style="list-style-type: none"> • \$6,952 based on rate in dollar.

Key Assumption	Methodology
\$32,000 site monitoring costs	<p data-bbox="212 981 247 1668">Information source – Internal property section</p> <ul data-bbox="263 212 622 1668" style="list-style-type: none"> <li data-bbox="263 212 327 1668">• The site specific monitoring regime within the Landfill Environment Management Plan was used to model the anticipated annual costs <li data-bbox="343 1176 378 1668">• Site monitoring regime consists of: <ul data-bbox="394 1400 622 1624" style="list-style-type: none"> <li data-bbox="394 1400 429 1624">○ groundwater <li data-bbox="445 1400 480 1624">○ surface water <li data-bbox="496 1444 531 1624">○ landfill gas <li data-bbox="547 1444 582 1624">○ vegetation <li data-bbox="598 1478 622 1624">○ fire risk
\$50,000 site maintenance	<p data-bbox="695 913 730 1668">Information source – Internal Maintenance section</p> <ul data-bbox="746 369 1125 1668" style="list-style-type: none"> <li data-bbox="746 922 782 1668">• Costs are based on the following maintenance regime: <ul data-bbox="798 369 1125 1624" style="list-style-type: none"> <li data-bbox="798 1400 833 1624">○ grass cutting <li data-bbox="849 1400 884 1624">○ brush cutting <li data-bbox="900 1467 935 1624">○ weeding <li data-bbox="951 1176 986 1624">○ native vegetation maintenance <li data-bbox="1002 1265 1037 1624">○ weed spraying & control <li data-bbox="1053 369 1088 1624">○ maintenance of planted trees (include watering, formative pruning, stake/guard maintenance) <li data-bbox="1104 840 1125 1624">○ replacement on 90% survival rate and fertilising/remulch

Key Assumption	Methodology
\$500,000 site development as open space	<p>Information source – Internal Asset Management section</p> <ul style="list-style-type: none"> • Indicative cost is based on \$3.00 per sqm rate to develop 17 hectares (northern portion of REP site has approximately 3 hectares of land not requiring upgrade ie native veg area 2 ha, drainage lines) • Development may include grass, native plants, walking trail, minimal park furniture, signage, fencing. A car park may also require consideration but is excluded from estimates.
\$50,000 project initiation costs	<p>Information source</p> <ul style="list-style-type: none"> • Notional amount provided for project initiation costs such as contract formation, legal fees etc
Discount Rate 7%	<p>Information source – Business Risk Solutions, Peter Agars, Council Finance section</p> <ul style="list-style-type: none"> • Reflected as industry standard of discount rate and also reflects Councils cost of capital
Renewables SA Grant funding \$2.5M	<p>Information source – SARC</p> <ul style="list-style-type: none"> • Nominated by SARC as the highest likely grant funding to be achieved due to it being a state government initiative. (initial funding pool \$20M) • Noted that Council would seek to lobby for increased funding which would in turn improve the PPA and overall NPV
Carbon Price \$23 tonne	<p>Information source</p> <ul style="list-style-type: none"> • Federal government initial published price under the national government carbon pricing mechanism July 2011

Key Assumption	Methodology
CO2 per MWh = 0.7 tonnes	<p>Information source – Dept of Climate Change and Energy efficiencies</p> <ul style="list-style-type: none"> Indicative figure for the South Australian Grid published by the Department of Climate Change and Energy efficiencies
Council power usage	<p>Information source – St Kitts associates July 2011</p> <ul style="list-style-type: none"> Electricity baseline report developed to establish a baseline of electricity purchasing and consumption by the City of Onkaparinga for use within the NPV and negotiations with SARC
Power Purchase Agreement price per KWh	<p>Information source – SARC</p> <ul style="list-style-type: none"> Proposal from SARC following negotiation workshops

Key milestones



Bruce Williams - Futuretec

From: "Kevin Heydt" <kevin.heydt@mosscapital.com.au>
To: <bruwil@onkaparinga.sa.gov.au>, <jeff.tate@onkaparinga.sa.gov.au>
Date: 13/09/2011 2:36 PM
Subject: Futuretec
CC: "Martin Rushe" <martin.rushe@mosscapital.com.au>, "Teofilo, Frank" <Frank.Teofilo@commsolar.com.au>

Bruce

It was a pleasure to talk to you earlier today.

As discussed, Moss Capital remains firmly committed to the Futuretec project. If required we would be pleased to meet with you and provide the necessary reassurance that the project will be successfully implemented to the satisfaction of the Council.

As per current agreements, Moss Capital remains the financier and owner of the project and will be the counterparty to the off-take agreement with the Council. We will work with all relevant parties to ensure the successful installation of the solar facility as well as on going operations and maintenance of the facility.

We look forward to working with you on this important project.

Kind regards

Kevin Heydt
Director

MOSSCAPITAL

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12 September 2011

Mr Jeff Tate
Chief Executive Officer
City of Onkaparinga
Ramsay Place
Noarlunga Centre SA 5168

Dear Jeff,

RE: FUTURTEC – Renewable Energy Precinct

I write to you today in relation to the recent announcement with regards to Solar Shop Australia Group (SSA) entering into Receivership. As you are aware, ResourceCo and SSA are both part of the Southern Area Renewables Consortium that have been working in conjunction with the City of Onkaparinga on the Futurtec Renewable Energy Precinct and associated Meyer Road Precinct developments.

After discussions with SSA and Commsolar as well as our other consortium partners, I would like to state that ResourceCo have confidence in SAA and its subsidiary, Commsolar being able to work through this challenging period. ResourceCo and the SARC remain firmly committed to Futurtec and we look forward to working with City of Onkaparinga to bring this project to a successful conclusion.

Yours sincerely,



Simon Brown
Managing Director
Resourceco Pty Ltd