

**CITY OF MARION
GENERAL COUNCIL MEETING
26 APRIL 2005**

CONFIDENTIAL

**REPORT RELATING TO:
Delivery of Community Vision**

Originating Officer: Vincent Cammell, Asset Management Officer
Director: Jeff Rittberger, Director Finance
Subject: Marion South Plan – Craven & Etiria Deeds
Ref No: GC260405F01
File No: 4.65.1.6

If the Council so determines it to be necessary and appropriate, this matter may be considered in confidence under Section 90(2) and 3(d), and (g) of the Local Government Act on the grounds that :

- it would involve a disclosure of commercial information which is of a confidential nature (not being a trade secret) that could reasonably be expected to prejudice the commercial position of the Craven and Makris Groups which supplied the information, or to confer a commercial advantage on a third party, and in weighing up the factors for (transparency) and against (maintain confidentiality of commercially sensitive information at this point in time) disclosure, the public interest is best served by not considering or discussing the Report publicly at this point in time; and
- to maintain a duty of confidence that the Council has to the Craven and Makris Groups.



Mark Searle
Chief Executive Officer

1. Pursuant to Section 90(2) and (3)(d) and (g) of the Local Government Act 1999 the Council orders the public be excluded, with the exception of [*insert those Council staff remaining by their title or position, the names of any other people/privy to the item of business*] on the basis that it will receive and consider the Report from the Asset Management Officer titled "Marion South Plan – Craven and Etiria Deeds" and that

Council is satisfied that the principle that the meeting should be conducted in a place open to the public has been outweighed in relation to receiving, considering and discussing the Report and associated documentation in this matter because:

- it would involve a disclosure of the commercial information which is of a confidential nature (not being a trade secret) that could reasonably be expected to prejudice the commercial position of the Craven and Makris Groups which supplied the information, or to confer a commercial advantage on a third party, and in weighing up the factors for (transparency) and against (maintain confidentiality of commercially sensitive information at this point in time) disclosure, the public's interest is best served by not considering or discussing the Report publicly at this point in time; and
- the Council is subject to a duty of confidence to the Craven and Makris Groups.

CORPORATE OBJECTIVES:

1.2 Significantly enhance the quality of life in the City of Marion.

BACKGROUND:

The background details associated with the Craven and Makris Group (Etiria No 25 Pty Ltd) Deeds have been provided in the public report being considered by Council titled Marion South Plan – Craven and Etiria Deeds at its General Council meeting of 26 April 2005.

This report deals with the need to review the first approval dates as they relate to the conditions precedent contained in the Craven (contained in Appendix 2) and Makris Group (contained in Appendix 1) Deeds.

Both Deeds require the satisfactory transfer of the TransAdelaide land as required for the construction of the collector road to occur at the first approval day, which is 6 months from the signing date.

Negotiations with TransAdelaide are underway with both parties having received independent valuation, contamination and general property advice. At this time TransAdelaide are in the process of working through the issues raised as a result of our approaches to them. To this end TransAdelaide are utilising the services of the Crown Valuers Office.

Any proposed transfer of land is unlikely to meet the first approval date even if agreement is reached at this point. This is compounded by Council's need to undertake supplementary processes to achieve the required land division and land transfer requirements to meet its commitments to the Makris Group.

The transfer of land is also subject to ongoing negotiations with owners and occupiers of the units within Strata Plan 10132 who are required to allow Council usage of their principal carparking area in exchange for the grant of legal rights and access to carparks owned by the Makris Group in perpetuity.

The Craven Deed contains the additional condition precedent that Council achieve a suitable funding solution for the collector road by the first approval date. Although various actions have been undertaken it is not possible to state if this requirement will be achieved to Council's expectation by the approval date.

If the conditions precedent are not met by their respective approval dates either party may withdraw from the agreements on 7 days notice. Although it is unlikely that Craven or Makris would withdraw it is considered appropriate to negotiate a formal extension of the first approval date to minimise risk exposure to Council.

REPORT OBJECTIVE:

To alter the first approval dates contained in the existing Deeds negotiated with the Craven and Makris Groups to a common expiry date of 30 November 2005.

IMPLEMENTATION:

If Council adopts the resolution, an addendum will be prepared to the existing Deeds to extend the first approval date.

CONSULTATION:

Consultation has been undertaken with the Craven and Makris Groups.

BUDGET IMPLICATIONS:

The authorisation of the altered first approval dates will not impact on Council's budget.

ENVIRONMENT:

The recommendation will have no direct impact on the environment.

CONCLUSION:

The variation to the first approval date as contained in the respective Deeds as negotiated and accepted by the Craven and Makris Groups will minimise Council's risk exposure under the agreements.

The variation will ensure the commitment of the two parties to the mutual outcome of successfully constructing the Marion South Collector Road, while final negotiations occur on land ownership and funding arrangements upto the 30 November 2005.

RECOMMENDATION:

That Council:

1. **Authorises the Chief Executive Officer to negotiate extensions to the first approval date as contained with in the separate Deeds currently in place with the Craven and Makris Groups for a period ending no later than 30 November 2005.**
2. **Pursuant to Section 37(b) of the Local Government Act 1999, authorises the Chief Executive Officer to enter into and execute all documentation required to support the proposed alteration to the Deeds between the Council and Craven and Council and Makris respectively, on behalf of the Council.**
4. **Pursuant to Section 91(7) and (9) of the Act, Council orders that this Report, the minutes arising from this Report, the Deed at Appendix 1 and any other documentation associated with the Report having been considered in confidence under Section 90(2) and (3)(d), and (g) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council meeting in December 2005.**

Appendix 1: Conditions Precedent – Makris

Appendix 2: Conditions Precedent – Craven

APPENDIX 1: Conditions Precedent Makris

3. CONDITIONS PRECEDENT

3.1 Railway Land Division and Car Parking Rights

3.1.1 The rights and obligations of the parties under this Deed are subject to the Condition Precedent that the Council at its cost on or prior to 6 months from the date of this Deed ("First Approval Day"):

3.1.1.1 acquires the Railway Corridor from TransAdelaide on terms satisfactory to the Council;

3.1.1.2 divides the Railway Land broadly in accordance with the Railway Land Division: and

3.1.1.3 completes the transfer for sale of the new lot indicated approximately in red on the Railway Land Division to Etiria and/or its nominees or assigns at a purchase price not exceeding \$10 and on such other terms reasonably satisfactory to Etiria. PROVIDED THAT it must be a condition precedent to the settlement of the transfer that the car parking rights referred to in Clause 3.1.2 are lodged for registration contemporaneously with the Memorandum of Transfer effecting the transfer of the new lot to Etiria.

3.1.2 The rights and obligations of the parties under this Deed are subject to and conditional upon the parties together fulfilling the following obligations on or before the settlement of the transfer of land pursuant to Clause 3.1.1.3:

3.1.2.1 Etiria shall grant to the Council sufficient rights of way and any other interests relating to car parking over the Car Parks and must ensure that the Car Parks are constructed in accordance with all relevant laws, regulations, ordinances and standards applicable to the construction of car parks prior to Practical Completion.

3.1.2.2 Etiria agrees that the rights to be granted are to be in the form of Annexure 6 which would allow Council to use the Car Parks towards complying with a development approval for the Council Development or alternative development.

3.1.2.3 Etiria agrees that if the Council Development proceeds it will grant the same rights to the Car Parks to the Strata Corporation in the form of Annexure 6, which would enable the owners and occupiers of the units within Strata Plan 10132 to comply with the terms of their existing development approvals as if all the car parks within Strata Plan 10132 did not exist.

3.1.2.4 Upon the grant by Etiria of such rights to the Strata Corporation, the Council agrees at its own cost to transfer back to Etiria the rights granted by Etiria to the Council pursuant to Clause 3.1.2.1.

3.1.2.5 The Council shall at its own cost and expense pay all fees incurred in preparing the necessary survey plans, drafting the legal documentation, stamp duty and registration fees.

3.1.2.6 Etiria will procure at its own cost and expense on terms reasonably acceptable to Etiria, the relevant Certificates of Title to enable the rights to be registered.

3.1.2.7 Etiria agrees that in addition to granting to the Council or the Strata Corporation (as the case may be) sufficient rights of way and other interest as described in Annexure 6 that it will:

- (a) not, with the exception of the normal restriction and controls exercised by Etiria over the car park in the Hallett Cove District Shopping Centre from time to time, take any steps to prevent or restrict the Council or the Strata Corporation (as the case may be) or its servants agents contractors lessees licensees customers visitors and any other persons authorised by the Council or Strata Corporation (as the case may be) the right and privilege to cross and recross and park and leave motor vehicles in those car parking areas closest to the land comprised in Strata Plan No. 10132;
- (b) provide to the Council, 4 unrestricted permit parks near the Library situated in Strata Plan No. 10132 for use after 5:00pm and prior to 8:00am on each day of the year.
- (c) Etiria agrees that it must not transfer or mortgage its interest in the Hallett Cove District Shopping Centre or any part of it without causing (at its cost) the transferee or mortgagee to execute in favour of the Council a deed containing substantially the same terms and conditions as this Clause 3.1.2.
- (d) The parties acknowledge that the incorporation of the new lot into Etiria's Development will enable at least an additional eight-four (84) car parks to be provided within Etiria's Development.

3.1.3 The parties must use their best efforts to fulfil this Condition Precedent.

3.1.4 This Condition Precedent is for the benefit of all parties. At any time before the First Approval Day, the parties may waive this condition Precedent by written agreement.

3.1.5 Subject to clause 3.1.6, if this Condition Precedent is not fulfilled or waived before the First Approval Day, either party may end this Deed by 7 days written notice to the other (unless the Condition Precedent is fulfilled during the notice period).

3.1.6 If this Condition Precedent is not fulfilled for the sole reason that the encumbrancee or caveatee pursuant to Registered Encumbrance Number 6027343 or Caveats Numbered 6904539A or 8956807 respectively do not agree to take all necessary actions to enable the registration of the rights referred to in clause 3.1.2 despite Etiria having used its best efforts to procure such actions, then:

3.1.6.1 The Council agrees to meet with Etiria to discuss alternative arrangements in relation to car parking with a view to implementing an interim arrangement in writing and on terms satisfactory to the parties to enable the Council to enjoy the rights referred to in clause 3.1.2;

3.1.6.2 The parties agree not to terminate this Deed pursuant to clause 3.1.5 during the currency of those interim arrangements or in contravention of the terms of those interim arrangements and the Council agrees to transfer to Etiria and/or its nominees or assigns the new lot indicated approximately in red on the Railway Land Division as required by clause 3.1.1.3 once those interim arrangements are finalised to the satisfaction of both parties; and

3.1.6.3 Etiria's obligation to procure registration of those rights will continue and it must continue to use its best efforts to procure the registration of such rights.

APPENDIX 2: Conditions Precedent Craven

2. CONDITIONS PRECEDENT

2.1 Land Procurement

2.1.1 The rights and obligations of the parties under this Deed are subject to the condition precedent that the Council at its cost on or prior to 30 May 2005 ("First Approval Day"):

2.1.1.1 acquires the land required for the New Road from TransAdelaide which land will include but not be limited to the following land:

- (a) A portion of Certificate of Title Volume 5888 Folio 40 being that portion comprising the whole of pieces 72 & 73 and a portion of piece 71 in Filed Plan 218863;
- (b) A portion of Certificate of Title Volume 5855 Folio 552 being the closed road marked 'S' and 'T' in Road Plan 1188;
- (c) The whole of Certificate of Title Volume 5721 Folio 702 being the closed road marked 'D' in Road Plan 6360; and
- (d) A portion of Certificate of Title Volume 5470 Folio 667 being that portion comprising the whole of piece 1 and a portion of piece 2 in Filed Plan 148236;

(which land shall be referred to as the "TransAdelaide Land");
and

2.1.1.2 that the acquisition of the TransAdelaide Land is on terms and conditions to the sole satisfaction of Council.

2.1.2 If this condition precedent is not fulfilled before the First Approval Day, either party may terminate this Deed by 7 days' written notice to the other (unless this condition precedent is fulfilled during the notice period).

2.2 Funding

2.2.1 The rights and obligations of the parties under this Deed are subject to the condition precedent that the Council acquires the necessary funding to construct the new road by the First Approval Day.

2.2.2 The acquisition of necessary funding can be from sources both internal to and external from the Council. It is at the Council's sole discretion as to the suitability of the level of funding achieved to meet the required outcome.

2.2.3 If this condition precedent is not fulfilled before the First Approval Day, either party may end this Deed by 7 days written notice to the other (unless Condition Precedent is fulfilled during the notice period).

REF NO: GC260405

CONFIDENTIAL ITEMS

Marion South Plan – Craven & Etiria Deeds

Ref No: GC260405F01

File No: 4.65.1.6

Moved Councillor Brown, Seconded Councillor Connor that:

1. Authorises the Chief Executive Officer to negotiate extensions to the first approval date as contained within the separate Deeds currently in place with the Craven and Makris Groups for a period ending no later than 30 November 2005.
2. Pursuant to Section 37(b) of the Local Government Act 1999, authorises the Chief Executive Officer to enter into and execute all documentation required to support the proposed alteration to the Deeds between the Council and Craven and Council and Makris respectively, on behalf of the Council.
3. Pursuant to Section 91(7) and (9) of the Act, Council orders that this Report, the minutes arising from this Report, the Deed at Appendix 1 and any other documentation associated with the Report having been considered in confidence under Section 90(2) and (3)(d), and (g) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council meeting in December 2005.

Carried