

**CITY OF MARION
SPECIAL GENERAL MEETING
16 November 2004**

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

**Originating
Officer:** Vincent Cammell, Asset Management Officer

Director: Jeff Rittberger, Director Finance

Subject: Marion South Plan – Craven Deed

Ref No: SGC161104F01

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 Group 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 Group.



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 Deed" 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 Group 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 Group.

CORPORATE OBJECTIVES:

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

BACKGROUND:

The background details associated with the Craven agreement have been provided in the covering report that refers to all the reports being considered by Council at its Special General Council meeting of 16 November 2004. In addition the Deed details the need for Craven to;

- supply and place up to five thousand (5,000) cubic metres of fill along the road corridor,
- supply without charge all land necessary for the new road,
- pay two hundred thousand dollars (\$200,000.00, plus CPI) towards the cost of construction and design of the new road, and
- pay any additional costs for traffic control measures that may be needed as a result of Craven's road access.

At the continuation of the Special General Council meeting on 9 November, 2004 Council resolved that Craven consider a clause in the deed to include provision for cost escalation between the signing of the deed and the date of the construction of the road. This was put to Mr Craven who advised that he considered that the financial contribution of the Craven Group to the road and land which will be provided at no cost (which has the impact of reducing his development of the site and has delayed his planning for the site) is a reasonable contribution. The Craven Deed includes that they will pay CPI in relation to their contribution and they were not prepared to have an escalation clause included in the agreement.

Appendix 1 to this report contains a copy of the proposed Deed.

REPORT OBJECTIVE:

To formalise the arrangements with and commitments by Craven to enable the construction of the new collector road.

IMPLEMENTATION:

If Council adopts the resolution, a Deed will be entered into with Craven (including associated companies and entities) allowing a maximum of three access points to the new road for any approved development.

Due Diligence

During the development of the Deed, a legal due diligence examination has been undertaken on the Craven Group with the following representing a summary of findings.

A "Credit Wise Report" for each company that is a party to the Deed was obtained from Baycorp Advantage. Baycorp Advantage developed the report on the basis of information about a company's:

1. Shopping pattern	The type and frequency of credit applications made by a company.
2. Company information	The number and the age of director(s), industry characteristics, time since incorporation and security information
3. Age of file and pattern of enquiries	The spread of credit activity as it relates to the age of the company
4. Derogatory information recorded about a director	Information such as court judgements, bankruptcies and external administrations (i.e. liquidation, receivership)
5. Court writ information	Information on any court writs associated with the company

After an examination of the above factors, Baycorp Advantage have advised the following details for each company within the Craven Group:

6. Directors	Philip Charles Craven Elizabeth Keats Craven	
7. Shareholders	Isna Pty Ltd	Craven Securities Pty Ltd
	Nevarc Nominees Pty Ltd	Philip Charles Craven Elizabeth Keats Craven
	Craven Securities Pty Ltd	J Craven & Co Pty Ltd Nevarc Nominees Pty Ltd
	Craven Land Pty Ltd	Craven Securities Pty Ltd
8. Derogatory information	There is no derogatory information recorded on either of the directors or any of the companies.	
9. Credit enquiries	No credit enquiries have been made on the companies	
10. Court writs	No court writs have been reported	
11. Relative Risk*	Isna Pty Ltd	5.23 times better than average**
	Nevarc Nominees Pty Ltd	5.23 times better than average**
	Craven Securities Pty Ltd	5.23 times better than average**
	Craven Land Pty Ltd	1.58 times better than average**

* Relative risk is a rating determined by Baycorp on the basis of the above information when compared to other companies on the comprehensive Baycorp database.

** The scale of rating =
5 or more x worse
3 x worse
average
3 x better
5 or more x better
A better than average rating is positive

After considering the above information and the nature of the Deed being entered into with the Craven Group, there appears to be minimal risk in executing the Deed.

CONSULTATION:

A condition precedent of the proposed agreement is the completion of the revocation of the community land classification of the proposed road corridor. This process is subject to full consultation and allows Council to enter into any required agreements to progress the construction of the new road subject to the Roads (Opening & Closing) Act 1991.

BUDGET IMPLICATIONS:

Council will receive a contribution towards the new road of two hundred thousand dollars (\$200,000.00 +CPI) (excluding GST).

Council will also receive up to five thousand (5,000) cubic metres of fill and any land (at no cost) required for the road alignment.

ENVIRONMENT:

The development of the collector road will result in shorter vehicle journeys between the suburbs of Hallett Cove, Trott Park and Sheidow Park. It will allow bike and pedestrian access between the suburbs and the possibility of improved bus routes and patronage.

CONCLUSION:

The contribution of two hundred thousand dollars (\$200,000.00), up to five thousand (5,000) cubic metres of fill and the supply of land as required for the alignment of the roadway is a major contribution towards the construction and design costs of the portion of roadway required to allow access by Craven to Lonsdale Road.

Dependent on the required final alignment of the collector road, the agreement and contribution of land by Craven is required to enable the new road to proceed.

The agreement fully defines liability and responsibilities for each party to ensure the successful and timely completion of the collector road construction project.

RECOMMENDATION:

That Council:

1. **Receives the report of the Asset Management Officer titled "Marion South Plan – Craven Deed".**
1. **Resolves to enter into a Deed with Craven to facilitate the construction of the new collector road in the form set out at Appendix 1 – Craven Deed to this report.**
2. **Authorises the Chief Executive Officer to make such minor amendments to the Deed between Council and Craven as are required to give it business efficacy and to protect the Council's financial position and commercial interests, provided that such amendments do not affect the general purpose and intent of the proposed Deed or the amount of any consideration.**
3. **Pursuant to Section 37(b) of the Local Government Act 1999, authorises the Mayor and Chief Executive Officer to enter into and execute the proposed Deed between the Council and Craven, (as amended in accordance with 3 above), 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 2004.**

Appendix 1: Craven Deed – To be distributed on Monday 15 November 2004.

