



CONFIDENTIAL MINUTES OF THE MEETING OF THE BAROSSA COUNCIL
held pursuant to the provisions of Section 90(2) of the Local Government Act
1999 on Tuesday 20 February 2024 commencing at 6.54pm.

CONFIDENTIAL MINUTES

1. ATTENDANCE RECORD

1.1 Members Present

Mayor Bim Lange, Crs John Angas, David de Vries, Tony Hurn, Kathryn Schilling, Cathy Troup, Jane Evans, Bruce Preece, Jess Greatwich, Don Barrett, Rick Lane and Heidi Thompson

1.2 Officers Present

Martin McCarthy, Chief Executive Officer, Ben Clark, Director Infrastructure and Environmental Services, Jo Moen, Director Corporate Services and Business Innovation, Jake McVicar, Director Development and Community Services and the Minute Secretary.

8. CONFIDENTIAL REPORTS

8.1 Office of the Mayor and CEO

8.1.1 ANGAS RECREATION PARK - CANOPY COLLAPSE - LEGAL AND INSURANCE MATTERS **24/23795**

MOVED Cr Preece

- (1) That Council having reviewed the report and settlement Deed at Attachment 2 authorise the Mayor and Chief Executive Officer to execute the document under the common seal of Council.
- (2) Authorise the Chief Executive Officer to make any minor amendments prior to execution of the Deed on condition they are reviewed and supported by Councils' legal advisor in this matter.

- (3) Having considered this matter in confidence under Sections 90(2) and 90(3)(b) of the *Local Government Act 1999*, makes an order pursuant to Section 91(7), that the minutes, agenda report and attachments other than the minutes relating to this confidentiality order of the Confidential Council Meeting held on 20 February 2024 in relation to item 8.1.1 Angas Recreation Park - Canopy Collapse - Legal and Insurance Matters be kept confidential and not available for public inspection until not to be released and authorise the Chief Executive Officer to review and revoke the order.

SECONDED Cr de Vries

CARRIED CO 2022-26/373

PURPOSE

To provide Council the final proposed settlement for the Angas Recreation Park canopy collapse and seek approval to enter in the contract under seal.

REPORT

Council, at the 21 February 2023 meeting considered a report which is provided at Attachment 1 and details the matter and the relevant history. The resolution of Council at the meeting was:

MOVED Cr de Vries

That Council:

- (1) Having reviewed the report, information, and letters, agree with the continued strategy to negotiate a settlement as follows:
 - a. Provide a further counteroffer as drafted and presented at Appendix 4.
 - b. That if (1)(a) is not successful accept any alternative offers not being less than \$173,808.
- (2) Authorise the Chief Executive Officer to continue negotiating a settlement in accordance with resolution part (1).
- (3) If a settlement cannot be reached in accordance with resolution part (1) instruct the Chief Executive Officer to seek formal legal advice to bring a legal action to court to recover the amount incurred at its full value of \$242,477 for the further consideration and determination of Council.
- (4) Having considered this matter in confidence under Sections 90(2) and 90(3)(i) of the *Local Government Act 1999*, makes an order pursuant to Section 91(7), that the minutes, agenda report and attachments other than the minutes relating to this confidentiality order of the Confidential Council Meeting held on 21 February 2023 in relation to item 8.1.2 Angas Recreation Park - Canopy Collapse - Legal and Insurance Matters be kept confidential and not available for public inspection until not to be released and authorise the Chief Executive Officer to review and revoke the order.

SECONDED Cr Preece

CARRIED CO2022-26/112

The process of pursuing damages against the main engineering firm who provided service under a contract with Council for the design of the Canopy at the Angas Recreational Park has been lengthy. After over 18 months of engagement a settlement offer is now presented for information and approval.

The settlement offer is consistent with Councils resolution which was:

- (1) \$200,000; or if that was not accepted;
- (2) Anything no lower than \$173,808.

The settlement offer is \$180,000 which is slightly above the cash costs incurred to manage the clean-up, redesign and rebuild of the canopy, however, does exclude escalation costs between the time the costs to correct were incurred and the receipt of the funds this financial year.

Councils' legal advisor on this matter, James McEwen from Mellor Olsson has reviewed the final draft Deed presented at [Attachment 2](#) and attested that it places Council at no changed risk and therefore in my view is an appropriate document to proceed with. His correspondence is also provided at [Attachment 2](#).

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1	Confidential Report of 21 February 2023 
Attachment 2	Deed of Settlement and Release 
Attachment 3	Legal Comment 

Supporting references

Nil

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan



Infrastructure

Goal

7. Community infrastructure planning is aligned to both current and the future needs of the community

Strategies

- 7.1. Build on sound asset management practices to deliver sustainable services to ensure that infrastructure is adequate to support the community.

Corporate Plan

- BS7 Governance - Provision of governance advice and support in the discharge of legislative responsibilities for policy development, delegations and authorisations, internal review of Council decisions, delegations and authorisations, Native Title claims

Legislative Requirements

Nil

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Outlined in the past report as to the risk and financial management issues.

COMMUNITY ENGAGEMENT

Nil recommended or required.

Resumption of open council meeting at 6.55pm

Confirmed at Council Meeting on 19 March 2024

Date:.....

Mayor:.....