



CONFIDENTIAL

REPORT FOR:	Council		
MEETING DATE:	24 August 2015		
REPORT FROM:	Chief Executive Officer		
REPORT TITLE:	Central Oval Redevelopment - Update		
FILE NAME:	F15/500	RECORD NO:	AR15/32108

COMMUNITY VISION & STRATEGIC PLAN OUTCOMES

6 We Achieve

6.3 We aim to provide good governance practices and compliance with all legislative requirements in delivery of services.

PURPOSE

The purpose of this report is to advise Members of the Notice of Dispute between Badge Constructions (SA) Pty Ltd and the Port Augusta City Council.

RECOMMENDATION

Council:

1. Receives and notes the report (AR15/32108) dated 20/08/2015, submitted by the Chief Executive Officer concerning "Central Oval Redevelopment Update".

BACKGROUND

The construction of the Central Oval building is completed.

DISCUSSION

The defects period for the Central Oval Redevelopment relating to the construction of the new facility is current. There has been some concern raised by the Project Superintendent relating to a component of the finished product and this is in dispute between both parties.

Please find attached correspondence forwarded to Badge Constructions Pty Ltd (AR15/30899) outlining matters pertaining to the dispute.

CONFIDENTIALITY PROVISIONS

The necessary and appropriate need to receive, discuss and consider in confidence matters or information relating to reasonably anticipated litigation, involving the Council and a Contractor of the Council is a ground to exclude the public from a Council or Committee Meeting under Section 90(3)(i) of the Act. In relation to anticipated proceedings, the Council or Committee must have a reasonable belief that the litigation will in fact proceed, rather than the mere possibility of litigation occurring.

It is considered that in this instance there is a very high expectation that this issue will result in either mediation or litigation and therefore the information enclosed should not be released at this time to ensure the fairness of proceedings by preventing the disclosure of information which may hinder the administration of justice.

Legal Professional Privilege applies to the document attached as this has been prepared by Council's legal representative, on behalf of Council and takes into account the terms and condition applicable to the Contract between Port Augusta City Council and Badge Constructions (SA) Pty Ltd. The privilege allows Councils and Committees to obtain full and frank legal advice, and where necessary, prepare for proceedings.

It is recommended confidentiality provisions be retained in confidence until the matter is resolved.

RISK MANAGEMENT

1: Financial/Budget

If this matter proceeds to litigation, legal costs will be incurred.

2: Legal/Policy

Section 36 of the *Local Government Act 1999* provides that Council has the legal capacity of a natural person and may enter into any kind of contract or arrangement and may sue and be sued.

3: Environment/Planning

Not applicable.

4: Community

- 4.1 General
Not applicable.
- 4.2 Aboriginal Community Consultation
Not applicable.
- 4.3 OPAL – Healthy Lifestyle Program
Not applicable.

JOHN BANKS

20/08/2015

Civic Centre
4 Mackay Street
(PO Box 1704)
Port Augusta, South
Australia, 5700

Telephone (08) 8641 9100
Facsimile (08) 8641 0357

admin@portaugusta.sa.gov.au
www.portaugusta.sa.gov.au



FILE: F15/500
RECORD: AR15/30899

12th August 2015

Mr Patrick Murphy
Badge Constructions (SA) Pty Ltd
9 Anzac Highway
KESWICK SA 5035

CC: Nick Heron – Superintendent
Craig Dearlove – Manager Sporting & Recreational Facilities

Dear Patrick

RE: DISPUTE NOTICE – CENTRAL OVAL

I refer to your notice of dispute of 14 July 2015, the Superintendent's Direction (SD) numbered 25 (amended), SD 26, SD 27 and your letter of 7 August 2015.

Council agrees with the directions given by the Superintendent. Council does not believe that there has been any obvious change in position as alleged, nor does it believe that the interests of the Principal have been advanced to the detriment of Badge. You say also that you are concerned that the Superintendent is not acting reasonably and in good faith, and may be in breach of GC 20.

In Council's view, those allegations are baseless and without merit. It is disappointing that your company has resorted to adopting this position, having worked closely with Council to produce an otherwise magnificent structure for the benefit of the residents of Port Augusta and the region as a whole.

Your so called notice of dispute does no more than say that you are not happy with the direction to which it refers, despite months of effort on our part to have your company attend to the defects. The notice, in effect, says that you will do the work, but at Council's cost and where a jointly engaged expert determines an agreed approach. It is not a notice of dispute. In effect, it is a notice of claim. However, Council, at its cost, has engaged engineers to provide a report, which has been given to you, and which does not disclose any of the problems that you allege. Rather, the report evidences that the cause of the defects as being due to faulty workmanship, and requires that all external pavements be removed and replaced.

That report was provided to your company shortly after 20 January 2015. Some 8 months have past, and you have not obtained your own report, despite saying that you would do so on many occasions, and have done no more than blame others. It is noteworthy that despite your allegations, you have agreed that other sections of paving were defective and have organised and paid for the

replacement of those sections. I have attached photographs of removed sections. Those photographs speak for themselves as to the poor quality of the workmanship, which your company seeks to explain away as being caused by defective specifications and latent conditions.

It is also noteworthy that the contractors engaged by your company to carry out the work stated that they had been placed under extreme pressure by both your company and their company to complete the work in minimal time, with only two staff, one of which had questionable experience, and in a haphazard manner with little or no flow.

Further, given the allegations made by your company, Council has written to Studio Nine and its consultants, seeking confirmation that they stand by their design. Their response: "it is TMK Consulting Engineer's considered opinion that the concrete paving design as previously documented is structurally adequate for its intended use." Does your contractor stand behind their work?

In these circumstances, and especially where Badge has provided nothing in support of its claims, Council is understandably reluctant to meet with representatives of your company, as we see that as being a pointless exercise, without more. However, Council will agree to meet as requested if, and only if, Badge engages an expert, reputable, experienced entity to produce a report at its sole cost, as a pre-condition to a meeting.

To be clear, Council does not and will not accept any liability in this matter. It has contracted with professionals to provide it with a first class facility, and it expects that the facility will be fit for purpose and without defect. Indeed, Badge contracted with Council on this basis, and agreed to do so unconditionally. It did not seek to amend the contract, and accepted the design and specifications, which form a part of the contract.

Council notes also that there are a number of further defects, which have not been attended to by the Contractor. Could you please, as a matter of urgency, confirm whether these matters will be attended to by Badge, and when, or whether they are also to be the subject of a notice of dispute by Badge. Please let me know by COB Thursday, 13 August 2015, whether Badge accepts this compromise. If not, Council will proceed in accordance with SD 27.

Yours faithfully



JOHN BANKS
CHIEF EXECUTIVE OFFICER



