

Council Meeting Minutes

**28 August 2018 | 7.00 pm
Council Chamber
401 Greenhill Road, Tusmore**

Members Present: Mayor David Parkin
Councillors Wilkins, Lemon, Monceaux, Osterstock, Ford, Cornish,
Davey, Piggott

Absent: Councillor Davis

Staff Present: Paul Deb, Chief Executive Officer
Martin Cooper, General Manager, Corporate and Development
Barry Cant, General Manager, Urban and Community

The Mayor read the opening prayer.

The Mayor acknowledged those who gave their life for this Country and also acknowledged the Traditional Owners.

The Mayor advised of the relevant legislation and offences that address behaviour that disrupts a Council Meeting and informed all present that offences apply to both members of the gallery and Elected Members

Evacuation Procedure

The Mayor read the evacuation procedure.

Recording of Council Meetings

The Mayor advised that the Council Meeting is recorded and live streamed.

Apologies

Councillor Lord

Leave of Absence

Councillor Bills (until 28 August 2018)

Confirmation of Minutes**Recommendation**

C11781

That the Minutes of the meeting of Council held on 14 August 2018 be taken as read and confirmed.

Moved Councillor Piggott, Seconded Councillor Osterstock

CARRIED

Mayor's Report**Recommendation**

C11782 That the Mayor's report be received.

Moved Councillor Osterstock, Seconded Councillor Wilkins

CARRIED

Reports of Members, Delegates and Working Parties

Councillor Monceaux took part in activities relating to SA Health consultation on the Draft 'State Public Health Plan 2019-2024'.

Councillor Lemon attended a workshop on ERA Water on 14 August 2018; attended the citizenship ceremony at Burnside Ballroom on 22 August 2018; attended both the community engagement session on changes to NRM boards and the information session run by the LGA on the current progress of the new planning legislation on 23 August 2018.

Councillor Wilkins attended a Glenunga Junior under 10 football match at Victoria Park on 19 August 2018; attended the Citizenship Ceremony at Burnside Ballroom on 22 August 2018; attended Managing our Landscapes – Conversations for Change at Glenunga Hub on 23 August 2018 and on 28 August 2018 attended a Caretaker candidate briefing for the 2018 Local Government Election in November.

Councillor Piggott attended the East Waste Special Board Meeting via telephone on 17 August 2018; attended interviews for the Independent members of the Audit Committee on 20, 21 and 24 August 2018 with the Mayor, Councillor Davey and General Manager Corporate and Development and attended Penfold Park, Magill on 25 August 2018 to speak with park users in respect to the proposed demolition of the toilets.

Councillor Davey attended the ERA Water briefing by the Chair, Bryan Jenkins on 14 August 2018; participated in recruitment interviews as part of the Audit Committee Independent Member Recruitment Panel between 20 – 24 August 2018 and attended the Citizenship Ceremony for 83 new Australian citizens in the Burnside Ballroom on 22 August 2018.

Councillor Ford attended the Caretaker Workshop held 28 August 2018.

Deputations

Dr Kevin Murphy | Penfold Park Toilet Facilities

Gary Sjoberg | Animal Management and Dog By Law

Sue McGowan | Animal Management and Dog By Law

Sue Shearer | Penfold Park Toilet Facilities

Angela Ridge | Regulated trees and Koala Management.

Petitions

Royal Avenue, Burnside – Petition for New Footpath (9.1)

Motion

C11783

1. That the Petition be received.
2. That Council notes that in late 2016, consultation was undertaken with local residents in regards to these two potential segments of new footpath with the results of the consultation indicating that the first segment of footpath (between Queens Avenue to 19 Royal Avenue) was not supported by the majority of residents, but that the second segment was with subsequent construction of the second segment of footpath only.
3. That Council notes that a new consultation process has been initiated by the Administration, consistent with Council's Footpath Policy, to seek formal feedback from those in the affected segment of road, as to whether they now support installation of a new footpath in this location, which will serve to inform a final decision by Council Administration on this matter in due course.
4. That Council Administration corresponds with the head petitioner and signatories to advise of Council's consideration and this resolution.

Moved Councillor Cornish, Seconded Councillor Lemon

CARRIED

Questions on Notice

10.1 Drones

Councillor Davey asked the following Questions on Notice:

Drones are increasing in use for recreational, real estate, commercial aerial surveillance, development and remote sensing purposes.

1. Are such drones being used within and across public spaces and residences in City of Burnside? If so, is there a reporting mechanism to Council and what is the extent of their use?

There are no general reporting mechanisms specifically relating to drones and there is no evidence based information available in relation to their use on public or private land.

2. What federal, state and local government controls are in place to ensure the safety and privacy of residents, business owners and occupiers and wildlife from the intrusion of drones in COB council area?

The Council has no jurisdiction in relation to drones as they relate to private land. Drones are potentially subject to a licence from the Civil Aviation safety Authority (CASA) but only in certain circumstances.

The only requirement for a licence from the Civil Aviation Safety Authority (CASA) under the Civil Aviation Act 1988 is if a drone is being used for a commercial purpose. Hobby or recreational fliers require no licensing or authorisation from CASA or any other body to operate drones and will not breach this Act unless they enter flight paths (which a recreational drone is unlikely to be able to do) or are flown within a restricted area (for instance, close to an airport which this Council's area is not).

The use of a drone does not amount to a criminal trespass under section 17A of the Summary Offences Act 1953 (SA) as this offence can only be committed where a person is physically present on private land.

The use of a drone could amount to an actionable civil trespass if the drone were to frequently enter the air over private property. A civil action in trespass for a private land owner would be difficult to undertake as a person would be required to establish who the drone belongs to and on what dates/times the drone has entered their property, for how long on each occasion and be able to quantify loss or damage which has occurred because of the trespass.

3. Does COB need a By Law to manage the use of drones?

*A council may seek to control the use of Local Government land (parks and reserves), including the use of the reserves for the purpose of flying drones. The current Local Government Land By-law (By-law 3) provides that permission must be granted before a person can fly any model aircraft or operate any power model boat from or on any local government land. A drone has been taken to be a form of model aircraft. However, in order to avoid all doubt, By-law 3 is proposed to be enhanced (via a report in the Council agenda of 28 August 2018) to provide that permission must be granted before a person may (on Local Government land) fly any model aircraft, **drone** or operate any power model boat.*

10.2 Audit of Flammable Cladding (ACP) in City of Burnside Buildings

Councillor Davey asked the following Questions on Notice:

1. Have any private or public buildings, in particular of greater than 2 storeys in height, been identified as containing aluminium composite cladding (ACP) on their exterior in City of Burnside?

Five Buildings were identified within Phase 1 of an audit, initiated by the State Government, which required further investigation. All buildings were greater than two storeys.

Currently, the City of Burnside is in Phase 2 of the building audit where numerous further inspections have been undertaken for the purposes of further investigating ACP and the impact on fire and life safety.

2. If any have been identified, what action is being taking to manage the risks associated with such cladding to ensure the safety of residents and occupiers?'

The DPTI is leading a building audit in response to recent concerns regarding the use of Aluminium Composite Panels (ACP) on buildings.

The building audit will be delivered across three phases with phases one and two being delivered in collaboration with councils, the Metropolitan Fire Service (MFS) and the Country Fire Service (CFS).



Buildings that are being prioritised as part of phase one are residential buildings over two storeys including hotels, motels and apartments, aged care facilities, hospitals, schools, assembly buildings and buildings with occupants who may be unfamiliar with the means of escape or require assistance to escape.

The audit is aimed at identifying buildings that may be clad with ACP products of concern, determining the level of risk and delivering appropriate recommendations for implementation to ensure buildings with ACP's are safe.

The Building Fire Safety Committee intends to contact building owners within the next 4-6 weeks; essentially this is the commencement of phase three for Council. The DPTI has not provided timeframes for the commencement or completion of phase 3.

Council is unable to provide an exact timeframe for completion of phase three.

10.3 Road Deaths/ Injuries

Councillor Ford asked the following Question on Notice:

1. How many people have been killed or injured on roads in the City of Burnside in the past year, and are statistics available in respect to motor vehicle collisions?

The Administration is aware of four deaths on roads since June 2017. Three of those were in 2017 and one in 2018. The official DPTI statistics are not yet available for 2018, so it is possible that there may be more than the one death in 2018 (beyond the one that the Administration was aware of). The details of the known deaths are;

- *Female driver at the Cator Street/Portrush Road intersection (14/8/17)*
- *Male pedestrian at Greenhill Road/Portrush Road intersection (26/10/17)*
- *Male Pedestrian (driver of the truck/vehicle) in the Loading Dock of Foodland Kensington Gardens (9/6/17)*
- *Male cyclist struck by a truck on Portrush Road at the Woodcroft Avenue intersection, St Georges (29/3/18)*

The statistics for other injuries are not yet available for 2018. For the whole of 2017, beyond the deaths above, the following is recorded:

- *10 incidents resulting in serious injuries. Six of these were on roads managed by the DPTI and four on a Council managed road.*
- *138 crashes resulting in minor injuries. Of these, 100 were on roads managed by the DPTI and 38 on a Council managed road.*

Motions on Notice**Tree Corridors to support Koala habitat in City of Burnside –
Councillor Jane Davey (11.1)****Motion**

C11784

That a report be brought back to Council by the 2nd meeting in Sept 2018 which provides a high level overview of how Council can actively support safe koala movement and tree corridors through the revision of the Environment and Biodiversity Strategy.

Moved Councillor Davey, Seconded Councillor Wilkins

CARRIED UNANIMOUSLY

Questions without Notice

Nil

Motions without Notice

Mayor Parkin as Presiding Member accepted a Motion without Notice from Councillor Piggott.

Motion

C11785

1. That demolition of the Penfold Park toilets will not occur unless approved by Council.
2. That a report be provided to Council outlining the options for addressing the existing issues but maintaining a toilet facility at Penfold Park.

Moved Councillor Piggott, Seconded Councillor Osterstock

CARRIED UNANIMOUSLY

Reports of Officers**Procurement Policies – Review (Operational) (14.2)****Motion**

C11786

1. That the Report be received.
2. That the new Procurement Policy be adopted.
3. That the revised Unsolicited Proposal Treatment Policy be adopted.
4. That the existing Procurement Governance Framework and Tender and Contract Engagement Policy be rescinded in light of adopting the above revised documents.

Moved Councillor Piggott, Seconded Councillor Davey

CARRIED

Risk Management Policy – Review (Operational) (14.4)**Motion**

C11787

1. That the Report be received.
2. That Council adopt the updated Risk Management Policy.

Moved Councillor Cornish, Seconded Councillor Osterstock

CARRIED

Operational and Community Land Motion Register (Operational) (14.8)**Motion**

C11789

That the Report be received.

Moved Councillor Cornish, Seconded Councillor Osterstock

CARRIED

22 Travers Drive Beaumont – Request to Discharge a Land Management Agreement (Operational) (14.9)**Motion**

C11790

1. That the Report be received.
2. That Council resolve to consent to the discharge of Land Management Agreement No. 7436556 (CT 5145/176) between the City of Burnside and Arian Investments Pty Ltd, and (by default) the current owners of 22 Travers Drive, Beaumont.
3. That the Mayor and Chief Executive Officer be authorised to sign and affix the Common Seal of the City of Burnside to any document to give effect to the discharge of the Land Management Agreement

Moved Councillor Osterstock, Seconded Councillor Piggott

CARRIED

Glenside Precinct – Speed Limit Review (Operational) (14.11)

Motion

C11791

1. That the Report be received.
2. That the Administration be authorised to apply to the Commissioner of Highways to amend the speed limit in the Glenside development precinct to 30 km/h as detailed in Attachment A of this report.
3. That all respondents to the associated community engagement be advised of the outcome of the application to the Commissioner prior to the speed limit being formally changed.

Moved Councillor Osterstock, Seconded Councillor Wilkins

CARRIED

Community Garden Policy – Review (Operational) (14.14)

Motion

C11792

1. That the Report be received.
2. That Council adopt the revised Community Garden Policy.

Moved Councillor Osterstock, Seconded Councillor Lemon

CARRIED

City of Burnside Dog and Cat Management Plan 2018-2023 – Post Consultation (Operational) (14.12)

Motion

C11793

1. That the Report be received.
2. That Council adopt the revised *City of Burnside Dog and Cat Management Plan 2018-2023* and forward the document to the Dog and Cat Management Board for endorsement.
3. That no changes be made to the current off leash use of parks for dog exercise, without community consultation.

Moved Councillor Davey, Seconded Councillor Wilkins

CARRIED UNANIMOUSLY

Discretionary Rates Rebate Policy – Review (Operational) (14.3)**Motion**

C11794

1. That the Report be received.
2. That Council adopt the revised Discretionary Rebates of Rates Policy.

Moved Councillor Osterstock, Seconded Councillor Davey

CARRIED

Consent to Deposit of a Plan of Division – 17 and 18 Ifould Drive, Burnside (Operational) (14.10)**Motion**

C11795

1. That the Report be received.
2. That the Council resolves to consent to the Deposit of the Plan of Division in relation to a realignment of a boundary between 17 and 18 Ifould Drive, Burnside.
3. That the Mayor and the Chief Executive Officer be authorised to sign and affix the Common Seal of the Council to any document in order to give effect to the consent to the Deposit of the Plan of Division.

Moved Councillor Monceaux, Seconded Councillor Piggott

CARRIED

2018 Council By-Law Review (Strategic) (14.13)**Motion**

C11796

1. That the Report be received.
2. That pursuant to Section 246 of the *Local Government Act, 1999*:
 - 2.1 there being at least two thirds of the members of Council present; and
 - 2.2 having considered the:
 - 2.2.1 Permits and Penalties By-law 2018;
 - 2.2.2 Moveable Signs By-law 2018;
 - 2.2.3 Local Government Land By-law 2018;
 - 2.2.4 Roads By-law 2018;
 - 2.2.5 Dogs By-law 2018;
 - 2.2.6 Waste Management By-law 2018; and
 - 2.2.7 Lodging Houses By-law 2018

(together, the By-laws);

(reproduced at Attachments A to G to this item on the agenda for the meeting of Council held on 28 August 2018 considering the National Competition Policy and the Report prepared on the National Competition Policy with respect to the By-laws (reproduced at Attachments H to N to this item on the agenda for the meeting of Council held on 28 August 2018); and

2.3 having considered all submissions and recommendations made on the By-laws.

Council makes the By-laws in exercise of the powers contained in the *Acts Interpretation Act 1915*, *Dog and Cat Management Act 1995* and *Local Government Act 1999*.

3. The Chief Executive Officer be authorised to sign the By-laws as made by Council.
4. The Chief Executive Officer be authorised to publish notice of the making of the By-laws in the Messenger Eastern Courier.
5. The Chief Executive Officer be authorised to arrange for the By-laws to be published in the Government Gazette.
6. The report to the Legislative Review Committee on the By-laws (reproduced at Attachments O to U to this item on the agenda for the meeting of Council held on 28 August 2018) be adopted and signed by the Chief Executive Officer on Council's behalf.
7. The Chief Executive Officer be authorised to arrange for the By-laws and all other necessary documentation to be provided to the Legislative Review Committee.

Moved Councillor Monceaux, Seconded Councillor Lemon

CARRIED

Amendment to the Burnside War Memorial Hospital Constitution (Operational) (14.1)

Councillor Osterstock disclosed a material conflict of interest as set out within section 73 of the *Local Government Act 1999*. Councillor Osterstock explained that he is a board member, being a member of the governing body, of Burnside War Memorial Hospital, which is a body corporate (Section 73(1) (c) of the *Local Government Act 1999*).

Councillor Davey disclosed a material conflict of interest as set out within section 73 of the *Local Government Act 1999*. Councillor Davey explained that she is a board member, being a member of the governing body, of Burnside War Memorial Hospital, which is a body corporate (Section 73(1) (c) of the *Local Government Act 1999*).

Councillors Osterstock and Davey left the Chamber at 8.45pm.

Motion

1. That the Report be received.
2. That the Council approve the proposed amendments to the Burnside War Memorial Hospital Constitution, with the following amendment:
 - 2.1 That 7.2 (c) of the Constitution be removed entirely and that 7.2 (a) remove its reference to 7.2 (c).
3. That the Chief Executive Officer confirm to the Burnside War Memorial Hospital the Council's support for the proposed amendments to the Constitution.

Moved Councillor Cornish, Seconded Councillor Monceaux

Formal Motion

That the motion lie on the table.

Moved Councillor Monceaux

Due to a lack of seconded the motion LAPSED

Motion

1. That the Report be received.
2. That the Council approve the proposed amendments to the Burnside War Memorial Hospital Constitution, with the following amendment:
 - 2.1 That 7.2 (c) of the Constitution be removed entirely and that 7.2 (a) remove its reference to 7.2 (c).
3. That the Chief Executive Officer confirm to the Burnside War Memorial Hospital the Council's support for the proposed amendments to the Constitution.

Moved Councillor Cornish, Seconded Councillor Monceaux

LOST

Motion

C11797

1. That the Report be received.
2. That Council Administration conduct a workshop before the 11 September 2018 meeting and that this report returns to Council for consideration at the meeting to be held 11 September 2018.

Moved Councillor Lemon, Seconded Councillor Piggott

CARRIED UNANIMOUSLY

Adjournment of Meeting

C11798 That the Council Meeting be adjourned for a refreshment break of 10 minutes.

Moved Councillor Wilkins, Seconded Councillor Piggott

CARRIED

Resumption

C11799 That the meeting be resumed at 9.25pm.

Moved Councillor Monceaux, Seconded Councillor Lemon

CARRIED

Councillor Davey returned to the Chamber and resumed her seat following the adjournment.

Councillor Osterstock left during the break and did not return to the Chamber.

Remake of Confidential Orders – Six Monthly Review (Operational) (14.5)

Councillor Davey disclosed a material conflict of interest as set out within section 73 of the *Local Government Act 1999*. Councillor Davey explained that she is a board member, being a member of the governing body, of Burnside War Memorial Hospital, which is a body corporate (Section 73(1) (c) of the *Local Government Act 1999*).

Councillor Davey left the Chamber at 9.27pm.

Motion

1. That the Report be received.

Confidential Topic – 4.9 – Chief Executive Officer's Performance Review 2007/08

2. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C7325 and C7326 of 16 September 2008 concerning Chief Executive Officer's Performance Review 2007/08 (Topic 4.9) be remade on the Attachments A and B as this relates to:
 - 2.1 confidential personal information regarding the performance of the Chief Executive Officer; and
 - 2.2 the public interest in disclosing the information is outweighed by section 90(3) (a) of the *Local Government Act 1999* as the information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of the Chief Executive Officer.
 - 2.3 It is ordered that Topic 4.9 be retained in confidence for a further 10 years (until 30 September 2028) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic – 6.1 – Development Assessment Panel – Appointment of Independent Member

3. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C7138 and C7139 of 29 January 2008 concerning Development Assessment Panel – Appointment of Independent Member (Topic 6.1) be remade on the names of the candidates and their scores as this relates to:
 - 3.1 confidential personal information of the candidates who applied for the position of Independent Member of the Development Assessment Panel; and
 - 3.2 the public interest in disclosing the information is outweighed by section 90(3) (a) of the *Local Government Act 1999* as the information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs for the persons who nominated for the position.
 - 3.3 It is ordered that Topic 6.1 be retained in confidence for a further 2 years (until 31 January 2021) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic – 7.1 – Correspondence Received from Mr Geoff Knight, Chief Executive, Primary Industries and Resources SA

4. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C7281 and C7282 of 12 August 2008 concerning Correspondence Received from Mr Geoff Knight, Chief Executive, Primary Industries and Resources SA where the Minister requested advice on a

range of matters and the opportunity for Council to respond (Topic 7.1) be remade as this relates to:

- 4.1 the personal affairs of a resident who made a Whistleblower complaint, under the Whistleblower Act; and
- 4.2 the public interest in disclosing the information is outweighed by section 90(3) (a) of the *Local Government Act 1999* as the information the disclosure of which would involve the disclosure of the identity of the whistleblower.
- 4.3 It is ordered that Topic 7.1 be retained in confidence for a further 10 years (until 31 August 2028) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic 7.3 – Revocation of Confidential Documentation – Ministerial Investigation

5. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C8161 and C8162 of 22 March 2011 concerning Revocation of Confidential Documentation - Ministerial Investigation (Topic 7.3) be remade on the letter from Mr Geoff Knight as this relates to:
 - 5.1 the personal affairs of a resident who made a Whistleblower complaint, under the Whistleblower Act; and
 - 5.2 the public interest in disclosing the information is outweighed by section 90(3) (e) of the *Local Government Act 1999* as the information the disclosure of which would involve the security of the person who made the complaint.
 - 5.3 It is ordered that Topic 7.3 be retained in confidence for a further 10 years (until 31 August 2028) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic 14.43 – CEO Performance Review and Remuneration Review 2016/2017

6. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C11406, C11407, C11408 of 19 September 2017 concerning CEO Performance Review and Remuneration Review 2016/2017 (Topic 14.43) be remade on the Report for Item 18.1 and Documents as this relates to:
 - 6.1 confidential personal information regarding the performance of the Chief Executive Officer; and
 - 6.2 the public interest in disclosing the information is outweighed by section 90(3) (a) of the *Local Government Act 1999* as the information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of the Chief Executive Officer.
 - 6.3 It is ordered that Topic 14.43 be retained in confidence for a further two years (until 19 September 2020) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic 14.44 – CEO Performance Review and Remuneration Review 2016/2017

7. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of CP0345, CP0346, CP0347 and CP0348 of 28 August 2017 concerning Chief Executive Officer Remuneration Review

2017 (Topic 14.44) be remade on the Report, Attachments and Minutes as this relates to:

- 7.1 confidential personal information regarding the performance of the Chief Executive Officer; and
- 7.2 the public interest in disclosing the information is outweighed by section 90(3) (a) of the *Local Government Act 1999* as the information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of the Chief Executive Officer.
- 7.3 It is ordered that Topic 14.44 be retained in confidence for a further two years (until 28 August 2020) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic 41.1 – Performance of the Independent Auditor

8. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of A0357, A0358 and A0359 of 5 February 2014 concerning the Performance of Independent Auditor (Topic 41.1) be remade on the Report, Minutes and Attachments as this relates to:
 - 8.1 commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person which supplied the information; and
 - 8.2 the public interest in disclosing the information is outweighed by section 90(3)(d) of the *Local Government Act 1999* as the information the disclosure of which could reasonably be expected to prejudice the commercial position of the person which supplied the information and would, on balance, be contrary to the public interest.
 - 8.3 It is ordered that Topic 41.1 be retained in confidence for a further two years (until 5 February 2021) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic 70.1 – Burnside War Memorial Hospital – Constitution

9. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C11151, C11152 and C11153 of 27 April 2017 concerning Burnside War Memorial Hospital – Constitution (Topic 70.1) be remade on the Report and Attachment D as this relates to:
 - 9.1 legal advice obtained by the Council regarding the proposed changes to the Constitution; and
 - 9.2 the public interest in disclosing the information is outweighed by section 90(3) (h) of the *Local Government Act 1999* as the information the disclosure of which would involve the disclosure of the Council's legal advice.
 - 9.3 It is ordered that Topic 70.1 be retained in confidence for a further two years (until 27 April 2021) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Moved Councillor Cornish, Seconded Councillor Lemon

Amendment

C11800

1. That the Report be received.

Confidential Topic – 4.9 – Chief Executive Officer's Performance Review 2007/08

2. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C7325 and C7326 of 16 September 2008 concerning Chief Executive Officer's Performance Review 2007/08 (Topic 4.9) be remade on the Attachments A and B as this relates to:
 - 2.1 confidential personal information regarding the performance of the Chief Executive Officer; and
 - 2.2 the public interest in disclosing the information is outweighed by section 90(3) (a) of the *Local Government Act 1999* as the information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of the Chief Executive Officer.
 - 2.3 It is ordered that Topic 4.9 be retained in confidence for a further 10 years (until 30 September 2028) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic – 6.1 – Development Assessment Panel – Appointment of Independent Member

3. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C7138 and C7139 of 29 January 2008 concerning Development Assessment Panel – Appointment of Independent Member (Topic 6.1) be remade on the names of the candidates and their scores as this relates to:
 - 3.1 confidential personal information of the candidates who applied for the position of Independent Member of the Development Assessment Panel; and
 - 3.2 the public interest in disclosing the information is outweighed by section 90(3) (a) of the *Local Government Act 1999* as the information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs for the persons who nominated for the position.
 - 3.3 It is ordered that Topic 6.1 be retained in confidence for a further 2 years (until 31 January 2021) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic – 7.1 – Correspondence Received from Mr Geoff Knight, Chief Executive, Primary Industries and Resources SA

4. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C7281 and C7282 of 12 August 2008 concerning Correspondence Received from Mr Geoff Knight, Chief Executive, Primary Industries and Resources SA where the Minister requested advice on a range of matters and the opportunity for Council to respond (Topic 7.1) be remade as this relates to:
 - 4.1 the personal affairs of a resident who made a Whistleblower complaint, under the Whistleblower Act; and
 - 4.2 the public interest in disclosing the information is outweighed by section 90(3) (a) of the *Local Government Act 1999* as the information the disclosure of which would involve the disclosure of the identity of the whistleblower.

- 4.3 It is ordered that Topic 7.1 be retained in confidence for a further 10 years (until 31 August 2028) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic 7.3 – Revocation of Confidential Documentation – Ministerial Investigation

5. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C8161 and C8162 of 22 March 2011 concerning Revocation of Confidential Documentation - Ministerial Investigation (Topic 7.3) be remade on the letter from Mr Geoff Knight as this relates to:
 - 5.1 the personal affairs of a resident who made a Whistleblower complaint, under the Whistleblower Act; and
 - 5.2 the public interest in disclosing the information is outweighed by section 90(3) (e) of the *Local Government Act 1999* as the information the disclosure of which would involve the security of the person who made the complaint.
 - 5.3 It is ordered that Topic 7.3 be retained in confidence for a further 10 years (until 31 August 2028) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic 14.43 – CEO Performance Review and Remuneration Review 2016/2017

6. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C11406, C11407, C11408 of 19 September 2017 concerning CEO Performance Review and Remuneration Review 2016/2017 (Topic 14.43) be remade on the Report for Item 18.1 and Documents as this relates to:
 - 6.1 confidential personal information regarding the performance of the Chief Executive Officer; and
 - 6.2 the public interest in disclosing the information is outweighed by section 90(3) (a) of the *Local Government Act 1999* as the information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of the Chief Executive Officer.
 - 6.3 It is ordered that Topic 14.43 be retained in confidence for a further two years (until 19 September 2020) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic 14.44 – CEO Performance Review and Remuneration Review 2016/2017

7. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of CP0345, CP0346, CP0347 and CP0348 of 28 August 2017 concerning Chief Executive Officer Remuneration Review 2017 (Topic 14.44) be remade on the Report, Attachments and Minutes as this relates to:
 - 7.1 confidential personal information regarding the performance of the Chief Executive Officer; and
 - 7.2 the public interest in disclosing the information is outweighed by section 90(3) (a) of the *Local Government Act 1999* as the information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of the Chief Executive Officer.

- 7.3 It is ordered that Topic 14.44 be retained in confidence for a further two years (until 28 August 2020) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Confidential Topic 41.1 – Performance of the Independent Auditor

8. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of A0357, A0358 and A0359 of 5 February 2014 concerning the Performance of Independent Auditor (Topic 41.1) be remade on the Report, Minutes and Attachments as this relates to:
- 8.1 commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person which supplied the information; and
- 8.2 the public interest in disclosing the information is outweighed by section 90(3)(d) of the *Local Government Act 1999* as the information the disclosure of which could reasonably be expected to prejudice the commercial position of the person which supplied the information and would, on balance, be contrary to the public interest.
- 8.3 It is ordered that Topic 41.1 be retained in confidence for a further two years (until 5 February 2021) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.
- 8.4 That the Administration provide legal advice with respect to release of the document for this topic (41.1) at the next meeting of Council.

Confidential Topic 70.1 – Burnside War Memorial Hospital – Constitution

9. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the Confidentiality order the subject of C11151, C11152 and C11153 of 27 April 2017 concerning Burnside War Memorial Hospital – Constitution (Topic 70.1) be remade on the Report and Attachment D as this relates to:
- 9.1 legal advice obtained by the Council regarding the proposed changes to the Constitution; and
- 9.2 the public interest in disclosing the information is outweighed by section 90(3)(h) of the *Local Government Act 1999* as the information the disclosure of which would involve the disclosure of the Council's legal advice.
- 9.3 It is ordered that Topic 70.1 be retained in confidence for a further two years (until 27 April 2021) and that these orders may be revoked/reviewed by the Council / Chief Executive Officer with a review at least once every year.

Moved Councillor Ford, Seconded Councillor Piggott CARRIED

The amended motion became the motion and was CARRIED

Councillor Davey returned to the Chamber and resumed her seat at 9.43pm.

Confidential Items Annual Review (Operational) (14.7)

Cr Davey declared a conflict of interest and left the Chamber at 9.44pm.

Motion

C11801

1. That the Report be received.
2. That pursuant to Section 90(7) of the *Local Government Act 1999*, the documents in Attachment A to this report which have been identified to remain confidential are retained in confidence in accordance with the existing confidentiality orders on each of those documents, except where Council has separately resolved to release the documents by revoking the confidentiality orders.

Moved Councillor Lemon, Seconded Councillor Wilkins

CARRIED

The Mayor declared a conflict of interest with respect to Agenda Item 14.6 and left the Chamber at 9.50pm.

Councillor Davey returned to the Chamber at 9.51pm.

Acting Presiding Member

The Chief Executive Officer called for nominations for an Acting Presiding Member.

Councillor Cornish was nominated and accepted the nomination.

C11802 That Councillor Cornish be appointed as the Acting Presiding Member.

Moved Councillor Monceaux, Seconded Councillor Davey

CARRIED

Confidential Items – Annual Review and Remake – Topic 67 (Operational) (14.6)

Motion

C11803

1. That the Report be received.
2. That pursuant to Section 90(7) of the *Local Government Act 1999*, the documents in Attachment A to this report which have been identified to remain confidential are retained in confidence in accordance with the existing confidentiality orders on each of those documents except where Council has resolved to release the documents by revoking the confidentiality orders.
3. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that the confidential documents in Attachment B to this report representing:
 - 3.1 The Confidentiality order the subject of C11377, C11378, C11379, C11380, C11383, C11384 and C11385 of 12/09/2017 concerning Recorded telephone conversation between Cr Davis and Cr Bagster (Topic 67.23) be remade on the recording as this relates to:
 - 3.1.1 the release of personal affairs of an Elected Member and relates to the security of Elected Members of the Council; and
 - 3.1.2 the public interest in disclosing the information is outweighed by section 90(3) (a) and (e) of *the Local Government Act 1999* as the information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of an Elected Member and the security of Elected Members of the Council.

3.2 It is ordered that Topic 67.23 be retained in confidence for a further four years (until 14 August 2022) to coincide with the expiry date of the other related confidential documents on this topic and that these orders may be revoked / reviewed by the Council / Chief Executive Officer at least annually.

Moved Councillor Lemon, Seconded Councillor Wilkins

CARRIED

A Division was called by Councillor Monceaux.

IN FAVOUR

Councillor Lemon
Councillor Wilkins
Councillor Piggott
Councillor Davey

AGAINST

Councillor Monceaux
Councillor Ford

The Division resulted in the Motion being

CARRIED

The Mayor returned to the Chamber at the conclusion of discussions and following the vote for Agenda Item 14.6.

Subsidiaries, Regional Subsidiaries and other Organisations/Entities

Eastern Waste Management Authority (15.1)

East Waste Special Board Meeting – 17 August 2018 (15.1.1)

Recommendation

C11804

That the minutes of the East Waste Special Board Meeting held 17 August 2018 be received.

Moved Councillor Piggott, Seconded Councillor Cornish

CARRIED

Eastern Health Authority (15.2)

Nil

Highbury Landfill Authority (15.3)

Nil

ERA Water (15.4)

Nil

Eastern Region Alliance (15.5)

Nil

Council Correspondence

Nil

Other Business

Nil

Confidential Items**Investigation Pursuant To Referral Under Section 24 (2)(A) Of The Independent Commissioner Against Corruption Act 2012 – District Court Action DCCIV-18-498 – Settlement Proposal (Operational) (18.1)**

The Mayor declared a Conflict of Interest and left the Chamber at 10.01pm.

Acting Presiding Member

The Chief Executive Officer called for nominations for an Acting Presiding Member.

Councillor Davey nominated Councillor Monceaux who declined the nomination.

Councillor Cornish was nominated.

C11805 That Councillor Cornish be appointed as the Acting Presiding Member.

Moved Councillor Davey, Seconded Councillor Lemon CARRIED

The Chief Executive Officer declared a Conflict of Interest and left the Chamber at 10.03pm.

C11806

Pursuant to section 90(2) of the *Local Government Act 1999*, the Council orders that all members of the public, except the Elected Members of the City of Burnside; the Chief Executive Officer; the General Manager Corporate and Development; the General Manager Urban and Community; Ms Tracy Riddle of Kelledy Jones Lawyers; the Principal Executive Officer and the Group Manager People and Innovation, be excluded from attendance at the meeting for Agenda Item 18.1 '*Investigation Pursuant To Referral Under Section 24 (2)(A) Of The Independent Commissioner Against Corruption Act 2012 – District Court Action DCCIV-18-498 – Settlement Proposal (Operational)*'.

The Council is satisfied that, pursuant to section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda Item contains legal advice on the matter of a Section 263 proceeding under legislation and related court processes.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because Council needs to be able to maintain privilege in its legal advice.

Moved Councillor Monceaux, Seconded Councillor Davey CARRIED

Motion

1. That the Report be received.
2. That Council notes the comments from Ombudsman SA dated 21 August 2018 regarding Cr Bagster's apology.
3. That Council accepts the apology from Cr Bagster dated 15 August 2018.
4. That Cr Bagster's apology be entered into the publicly available Minutes of the Council meeting held on 28 August 2018.
5. That Council discontinue its proceedings in relation to District Court Action DCCIV-18-498.
6. That each party in relation to District Court Action DCCIV-18-498 bears its own costs.

Moved Councillor Piggott, Seconded Councillor Davey

Amendment

Councillor Lemon called a Point of Order pursuant to Regulation 28 (2) of the *Local Government (Procedures at Meetings) Regulations 2013* and sought the Acting Presiding Member to rule accordingly. Councillor Lemon called the point of order as stated that Councillor Ford was not speaking within the scope of the motion. The Acting Presiding Member acknowledged the Point of Order and advised Councillor Ford of the same.

C11807

1. That the Report be received.
2. That Council notes the comments from Ombudsman SA dated 21 August 2018 regarding Cr Bagster's apology.
3. That Council accepts the apology from Cr Bagster dated 15 August 2018.
4. That Cr Bagster's apology be entered into the publicly available Minutes of the Council meeting held on 28 August 2018.
5. That Council discontinue its proceedings in relation to District Court Action DCCIV-18-498.
6. That each party in relation to District Court Action DCCIV-18-498 bears its own costs.
7. That Council note that legal fees of \$24,601 have been spent on this matter since the 20 February 2018 deadline for an apology from Cr Bagster.

Moved Councillor Lemon, Seconded Wilkins

CARRIED

The amended motion became the motion and was

CARRIED UNANIMOUSLY

Confidentiality Recommendation

C11808

1. That, having considered the matter in confidence, pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that:
 - 1.1 the report, attachments F and H and audio recording relating to this Agenda item remain confidential on the basis that the disclosure of this information would involve the disclosure of legal advice pursuant to section 90(3)(h) of the *Local Government Act 1999*; and
 - 1.2 the report, attachments F and H and audio recording will not be available for public inspection for the period of five years at which time this order will be reviewed by the Council; and
 - 1.3 this confidentiality order will be reviewed by the Council at least once in every 12 month period.
2. That for the item named in clause 1 and associated sub clauses, unless:
 - 2.1 the period in respect of any order made under Section 91(7) of the *Local Government Act 1999* lapses; or
 - 2.2 Council resolves to revoke an order made under Section 91(7) of the *Local Government Act 1999*;

any discussions of Council on the matter and any recording of those discussions are also confidential.

Moved Councillor Davey, Seconded Councillor Lemon

CARRIED

Mayor Parkin and the Chief Executive Officer returned to the Chamber at 10.15pm.

Proposal for Ongoing Management of the Regal Theatre (Operational) (18.2)

C11809

Pursuant to section 90(2) of the *Local Government Act 1999*, the Council orders that all members of the public, except the Elected Members of the City of Burnside; the Chief Executive Officer; the General Manager Urban and Community; the General Manager Corporate and Development, the Principal Executive Officer and the Group Manager, People and Innovation, be excluded from attendance at the meeting for Item 18.2 '*Proposal for Ongoing Management of the Regal Theatre (Operational)*'.

The Council is satisfied that pursuant to section 90(3)(g) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this Agenda Item is information concerning matters that must be considered in confidence in order to ensure that the Council does not breach any legal obligation or duty in relation to a matter, subject of a confidential Council resolution.

The Council is also satisfied that pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item relates to commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person or corporation which supplied the information or confer a commercial advantage on a third party, and to do so would be contrary to the public interest. The information contains information submitted by Galpins which relates to proposals and feedback from external parties as part of conducted processes, the disclosure of which could prejudice their commercial position as this information is only known to the Council.

Further, the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because of both the legal responsibilities upon the Council and the public interest generally, in maintaining confidentiality in the Council resolutions to date.

Moved Councillor Wilkins, Seconded Councillor Davey

CARRIED

Extension of Time

C11810 That the meeting time is extended until 11.00pm if required in order to discuss remaining agenda items.

Moved Councillor Wilkins, Seconded Councillor Cornish

CARRIED

Motion

1. That the Report be received.
2. That the operational responsibility for the management of the Regal Theatre be assigned to the City of Burnside Administration.
3. That the existing Conservation Management Plan be revised and a Feasibility Study undertaken to consider the opportunities and investment required to ensure that the Regal Theatre is maintained and refurbished appropriately, with future upgrades considered holistically to meet set service objectives.

4. That the revised Conservation Management Plan and Feasibility Study be presented to Council with a proposed maintenance and upgrade program that will inform the Long-Term Financial Plan and future Capital Program.
5. That the Administration source suitable external funding opportunities to assist Council in refurbishing the State Heritage Listed facility and that these opportunities be reported back to Council.
6. That Council resolve to waive the requirement to comply with the Tender and Contract Engagement Policy to secure the tenants for the two Hula Hoop tenancies (Shops 1 and 2), situated at the Regal Theatre, Kensington Park.
7. That the Chief Executive Officer be authorised to negotiate new tenancy arrangements with the existing tenants of Shops 1 and 2, subject to the following conditions:
 - 7.1 An initial five-year lease with a five-year right of renewal period at Council's discretion;
 - 7.2 A starting gross rate for the two properties, including outgoings and access to toilets and storage at \$34,000 per year (GST exclusive), with CPI increases each year;
 - 7.3 Market review to be undertaken and agreed prior to entering into the second five-year lease period;
 - 7.4 Outgoings and electricity to be included in the gross rental fee;
 - 7.5 Initial lease period to commence once a decision is made by Council and agreement is reached between the parties in relation to the lease terms and conditions. At this point, any other short-term leases in place would need to be surrendered;
 - 7.6 Shared access to May Terrace and Regal Toilets to be granted for business purposes; and
 - 7.7 Commitment for both businesses to work together to cross-promote and provide services which are mutually beneficial.
8. That the Administration prepare and disseminate a suitable Media Release to reflect Council's position.

Moved Councillor Piggott, Seconded Councillor Monceaux

Amendment

1. That the Report be received.
2. That the operational responsibility for the management of the Regal Theatre be assigned to the City of Burnside Administration.
3. That the existing Conservation Management Plan be revised and a Feasibility Study undertaken to consider the opportunities and investment required to ensure that the Regal Theatre is maintained and refurbished appropriately, with future upgrades considered holistically to meet set service objectives.
4. That the revised Conservation Management Plan and Feasibility Study be presented to Council with a proposed maintenance and upgrade program that will inform the Long-Term Financial Plan and future Capital Program.

5. That the Administration source suitable external funding opportunities to assist Council in refurbishing the State Heritage Listed facility and that these opportunities be reported back to Council.
6. That Council resolve to waive the requirement to comply with the Tender and Contract Engagement Policy to secure the tenants for the two Hula Hoop tenancies (Shops 1 and 2), situated at the Regal Theatre, Kensington Park.
7. That the Chief Executive Officer be authorised to negotiate new tenancy arrangements with the existing tenants of Shops 1 and 2, subject to the following conditions:
 - 7.1 An initial five-year lease with a five-year right of renewal period at Council's discretion;
 - 7.2 A starting gross rate for the two properties, including outgoings and access to toilets and storage at \$30,000 per year (GST exclusive), with CPI increases each year;
 - 7.3 Market review to be undertaken and agreed prior to entering into the second five-year lease period;
 - 7.4 Outgoings and electricity to be included in the gross rental fee;
 - 7.5 Initial lease period to commence once a decision is made by Council and agreement is reached between the parties in relation to the lease terms and conditions. At this point, any other short-term leases in place would need to be surrendered;
 - 7.6 Shared access to May Terrace and Regal Toilets to be granted for business purposes; and
 - 7.7 Commitment for both businesses to work together to cross-promote and provide services which are mutually beneficial.
8. That the Administration prepare and disseminate a suitable Media Release to reflect Council's position.

Moved Councillor Davey

Due to a lack of seconder the motion

LAPSED

Motion

C11811

1. That the Report be received.
2. That the operational responsibility for the management of the Regal Theatre be assigned to the City of Burnside Administration.
3. That the existing Conservation Management Plan be revised and a Feasibility Study undertaken to consider the opportunities and investment required to ensure that the Regal Theatre is maintained and refurbished appropriately, with future upgrades considered holistically to meet set service objectives.
4. That the revised Conservation Management Plan and Feasibility Study be presented to Council with a proposed maintenance and upgrade program that will inform the Long-Term Financial Plan and future Capital Program.

5. That the Administration source suitable external funding opportunities to assist Council in refurbishing the State Heritage Listed facility and that these opportunities be reported back to Council.
6. That Council resolve to waive the requirement to comply with the Tender and Contract Engagement Policy to secure the tenants for the two Hula Hoop tenancies (Shops 1 and 2), situated at the Regal Theatre, Kensington Park.
7. That the Chief Executive Officer be authorised to negotiate new tenancy arrangements with the existing tenants of Shops 1 and 2, subject to the following conditions:
 - 7.1 An initial five-year lease with a five-year right of renewal period at Council's discretion;
 - 7.2 A starting gross rate for the two properties, including outgoings and access to toilets and storage at \$34,000 per year (GST exclusive), with CPI increases each year;
 - 7.3 Market review to be undertaken and agreed prior to entering into the second five-year lease period;
 - 7.4 Outgoings and electricity to be included in the gross rental fee;
 - 7.5 Initial lease period to commence once a decision is made by Council and agreement is reached between the parties in relation to the lease terms and conditions. At this point, any other short-term leases in place would need to be surrendered;
 - 7.6 Shared access to May Terrace and Regal Toilets to be granted for business purposes; and
 - 7.7 Commitment for both businesses to work together to cross-promote and provide services which are mutually beneficial.
8. That the Administration prepare and disseminate a suitable Media Release to reflect Council's position.

Moved Councillor Piggott, Seconded Councilor Monceaux

CARRIED UNANIMOUSLY

Confidentiality Recommendation

C11812

1. That pursuant to section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that:
 - 1.1 the report, attachment B, and audio recording remain confidential on the basis that:
 - 1.1.1 it contains commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person or corporation which supplied the information or confer a commercial advantage on a third party, and to do so would be contrary to the public interest, pursuant to section 90(3)(d) of the Act; and
 - 1.1.2 it contains information concerning matters that must be considered in confidence in order to ensure that the Council does not breach any legal

LJB 109-18

15 AUGUST 2018

Tracy Riddle

CC: Mr Jeff Powell.

Kelley Jones Lawyers

GPO Box 2024

Adelaide South Australia 5001

VIA EMAIL: triddle@kelleyjones.com.au,
 jpowell@wrightchambers.com.au

Dear Ms Tracy Riddle,

RE: DISTRICT COURT ACTION DCCIV-18-498

- WITHOUT PREJUDICE -

I acknowledge and refer to your letter dated 09 AUGUST 2018 and your email dated 13 AUGUST 2018 related to the above proceedings.

The complainant for the above district court action is, and was lodged by, the chief executive officer of the Burnside City Council, Mr Paul Deb per section 264(1)(b) of the *Local Government Act 1999*. In your letter to me you frequently refer to your client as being the 'Council'. I cannot find any evidence to suggest that the proposed settlement was considered by Council in a meeting. Please confirm whether your instructions are provided by the Burnside City Council or Mr Paul Deb only, and whether further settlement proposals are submitted to the Elected Members for consideration within a Council Meeting. Knowing with whom I am negotiating the settlement of the District Court issue will provide me important insight into how to formulate an appropriate settlement proposal.

I note that in your letter dated 09 AUGUST 18, you state that the Council intends to "proceed in accordance with its obligations under Section 264 of the *Local Government Act 1999*". I note that the Section only provides who lodges the complaint in the District Court and when. I therefore submit that the Council has met its obligations under Section 264 of the *Local Government Act 1999* and that the Council has no further obligations under this Section. Further, in your email dated 13 AUGUST 2018, you state that the council "will be required to continue to give effect to its obligations under section 263B of the LG Act, and this matter will proceed". I note that under Section 263B of the LG Act, the Council is only required to lodge action in the district court and has no obligations to proceed with such litigation.

Settlement Proposal – 15 AUGUST 2018

In your letter dated 9 AUG 2018, you state the apology offered was not an unqualified apology as recommended by the Ombudsman following his investigation and as required by Council Resolution C11565. In your further email on 13 AUG 2018, you note that I have apologised for two breaches of the code, and not the others. I submit that the following settlement proposal rectifies these issues and should be put to your client for consideration.

The terms of the settlement proposed are as follows:

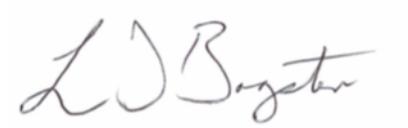
1. I will provide a new, unqualified apology with no caveats. I will ensure that this new apology shows my genuine remorse and acceptance of responsibility for the breaches found by the ombudsman (see attachment 1). This apology will address all the breaches of the Code of

Conduct for Elected Members as found by the Ombudsman. This apology is to be considered by the Burnside City Council during a council meeting.

2. The communications directed to the Ombudsman to advise receipt of such an apology, and his response will be provided to me.
3. The Burnside City Council desist in any further legal action relating to this matter.
4. Each party bears their own costs in relation to this matter.

This settlement is appropriate and prevents these issues from going to trial, saving all parties enormous time and expense.

Yours Sincerely,

A handwritten signature in black ink, reading "LJB Bagster". The signature is written in a cursive style with a large initial "LJB" followed by the surname "Bagster".

Cr Lance James Bagster JP

PO BOX 424

Kensington Park SA 5068

Email: lance.bagster@gmail.com

Phone: 0408 798 010

To the City of Burnside,

In the Ombudsman's report '*Full investigation pursuant to referral under section 24(2)(a) of the Independent Commissioner Against Corruption Act 2012*', (the "**Final Report**") dated 21 NOVEMBER 2017, the South Australian Ombudsman determined that I have made five separate breaches of the Code of Conduct for Elected Members which accordingly constitute misconduct in public office. The findings were as follows:

1. Cr Bagster committed misconduct in public administration by divulging confidential information to the public at a meeting of the City of Burnside on 9 May 2017.
2. Cr Bagster committed misconduct in public administration by failing to declare and appropriately deal with a material conflict of interest in Agenda Item 14.3 at a meeting of the City of Burnside on 9 May 2017.
3. Cr Bagster committed misconduct in public administration by failing to appropriately deal with an actual conflict of interest in Agenda item 18.1 at a meeting of the City of Burnside on 23 May 2017.
4. Cr Bagster committed misconduct in public administration by failing to declare and appropriately deal with a material conflict of interest in Agenda item 18.2 at a meeting of the City of Burnside on 23 May 2017.
5. Cr Bagster Committed misconduct in public administration by failing to declare and appropriately deal with a material conflict of interest in Agenda Item 18.5 at a meeting of the City of Burnside on 23 May 2017.

For each of the above contraventions of the Code of Conduct, I offer a sincere and unqualified apology. In each instance I believed I was acting in good faith, however I made a grievous error of judgement, for which I am sorry. I deeply regret these mistakes, I have learned from them, and in the future I will endeavour to serve the City of Burnside without such errors.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'LJB Bagster', written in a cursive style.

Cr Lance James Bagster JP