

# Council Meeting – Minutes

16 March 2021 | 6.00 pm

Council Chamber, Civic Centre, 401 Greenhill Road, Tasmore

**Members Present:** Mayor Anne Monceaux  
Councillors Cornish, Davey, Davis, Daws, Henschke, Hughes, Jones,  
Lemon, Piggott and Turnbull

**Staff Present:** Chris Cowley, Chief Executive Officer  
Martin Cooper, General Manager, Corporate and Development  
Barry Cant, General Manager Urban and Community

## 1. Opening

Her Worship the Mayor declared the meeting open at 6.00pm.

## 2. Acknowledgement of Traditional Owners

With the opening of the meeting Her Worship the Mayor stated:

*We acknowledge this land that we meet on today is the traditional land of the Kaurna People and that we respect their spiritual relationship with their country.*

*We also acknowledge the Kaurna people as the custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the Kaurna people today.*

*We pay respect to the cultural authority of Aboriginal people visiting or attending from other areas of South Australia and Australia.*

## 3. Memorial Silence

Her Worship the Mayor stated:

*On behalf of the City of Burnside I gratefully acknowledge and pay respect to those who gave their lives for this country and its people, and a moment of silence followed.*

## 4. Opening Statement

Her Worship the Mayor read the Opening Statement:

*We pray for understanding and guidance in our debate, as we make decisions that will impact on the lives of all those who reside, study, work in and visit the City of Burnside. Grant us wisdom as we serve our community.*

## 5. Announcements

Her Worship the Mayor made announcements to the chamber regarding Emergency Procedures, Live Streaming, Use of Microphones and Queuing System, Mobile Phones and Public Gallery.

## 6. Apologies and Leave of Absence

- 6.1 Apologies – Councillors Carbone and Huebl
- 6.2 Leave of Absence - Nil

## 7. Declaration of Interest Reminder

Members were reminded to declare their interest before each item.

## 8. Business of the Special Meeting

- 8.1 **Appeal Matter – OTR, 285-287 Kensington Road (Report No: 064-21)**

### Motion

C160321/12778

**Exclusion of the Public – Section 90(3) (h) and (i) Order**

**Moved Councillor Lemon, Seconded Councillor Cornish**

**That:**

1. **Under the provisions of Section 90(2) of the *Local Government Act 1999*, an order be made that the public with the exception of the Chief Executive Officer, General Manager Corporate and Development, General Manager Urban and Community, Group Manager City Development and Safety, Team Leader Planning, Council's Legal Advisors and Governance Officer be excluded from attendance at the meeting in order to receive, discuss and consider in confidence this item.**
2. **The Council is satisfied that it is necessary that the public be excluded to enable the Council to consider the report at the meeting on the following grounds:**
  - **Section 90(3)(h) of the *Local Government Act 1999*, legal advice; and**
  - **Section 90(3)(i) of the *Local Government Act 1999*, information relating to actual litigation involving the Council,**

**in that Council's legal advice and information relating to the litigation should not be publicly disclosed to preserve the Council's position in the litigation (and any possible future litigation) and to maintain the Council's legal professional privilege over the advice.**

3. **Accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**

**CARRIED**

**Short Term Suspension of the *Local Government (Procedures at Meetings) Regulations 2013***

Her Worship the Mayor with the approval of two-thirds of the members present suspended the meeting procedures pursuant to Regulation 20(1) of the *Local Government (Procedures at Meetings) Regulations 2013* for a period of time sufficient to facilitate informal discussion in relation to the Appeal Matter – OTR, 285-287 Kensington Road (Report No: 064-21) and will resume at the end of this time (or at the discretion of Her Worship the Mayor.)

The meeting procedures were suspended at 6.04pm.

Councillor Jones left the chamber at 6.22pm.  
Councillor Jones rejoined the chamber at 6.23pm.

Councillor Lemon left the chamber at 6.27pm.  
Councillor Lemon rejoined the chamber at 6.28pm.

Mayor Monceaux advised the chamber that she had to leave the meeting at this time due to a family commitment and left the meeting at 6.49pm.

The meeting resumed at 6.50pm.

**Appointment of Acting Presiding Member**

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

Councillor Daws nominated Councillor Cornish.

**Motion**

**C160321/12779**

**Moved Councillor Daws, Seconded Councillor Davey**

**That Councillor Cornish be appointed as the Acting Presiding Member for the remainder of the Special Council Meeting.**

**CARRIED**

**Short Term Suspension of the *Local Government (Procedures at Meetings) Regulations 2013***

The Acting Presiding Member, Councillor Cornish with the approval of two-thirds of the members present suspended the meeting procedures pursuant to Regulation 20(1) of the *Local Government (Procedures at Meetings) Regulations 2013* for a period of time sufficient to facilitate informal

discussion in relation to the Appeal Matter – OTR, 285-287 Kensington Road (Report No: 064-21) and will resume at the end of this time (or at the discretion of the Acting Presiding Member.)

The meeting procedures were suspended at 6.53pm.

The Acting Presiding Member, Councillor Cornish concluded the Short-Term Suspension of the *Local Government (Procedures at Meetings) Regulations 2013* and the meeting resumed at 7.04pm.

### **Motion**

**Moved Councillor Davey, Seconded Councillor Henschke**

**That Council:**

- 1. Receive the Report.**
- 2. Refuses the compromise proposal in the Appeal for Development by P C Infrastructure of 285 – 287 Kensington Road, Kensington Park, for the following reasons:**
  - 2.1 The site is over developed, with the proposed use not meeting requirements for small scale development;**
  - 2.2 The proposal is located in a densely populated residential area and will produce negative effects on local residential and business amenity in the adjacent area due to the significant increase in traffic volumes, particularly at peak times, it will generate on Kensington Road, and the single lane narrow residential street in May Terrace Kensington Park in particular;**
  - 2.3 The traffic generated will increase risks to the safety of mature age resident pedestrians and the range of school children who catch buses, cycle, walk and pass through en route to Pembroke school, Marryatville High and St Ignatius College and other schools;**
  - 2.4 The traffic generated will compromise access in particular to the Regal Theatre and Hula Hoop function centre;**
  - 2.5 Traffic flows travelling east on Kensington Road, after the intersection with Tusmore Avenue, converge at Uxbridge and May Terrace into one lane and the traffic impacts for back up at peak hour have not been resolved for vehicular egress to May Terrace, into a service station, and then back into the Kensington Road traffic flow;**
  - 2.6 There is intrusion from the built form and signage on site which is in conflict with the local character of houses in May Terrace and the adjacent Regal Theatre;**
  - 2.7 There is insufficient clearance for larger commercial vehicles e.g. petrol tankers, delivery trucks etc to enter and cross May Terrace without compromising traffic flows; and**

- 2.8 There is no value added for support for a business such as this to be located in the midst of existing professional practices, cafes, a supermarket, other small businesses and a service station less than 500 metres away.**

**LOST**

Councillor Jones left the chamber at 7.29pm.

Councillor Jones rejoined the chamber at 7.30pm.

**Motion**

**Moved Councillor Davis, Seconded Councillor Turnbull**

- 1. That the Council Accept the compromise proposal and settle the appeal in the matter of PC Infrastructure Pty Ltd v City of Burnside (ERD 19-189) on the basis of the amended scheme and conditions generally in accordance with the draft Minute of Order prepared by Norman Waterhouse Lawyers having consider the following:**
- 1.1 The high likelihood of defeat should the matter progress to a hearing based on the amended scheme;**
  - 1.2 The advice of independent traffic and town planning experts engaged by the Council;**
  - 1.3 The high likelihood of being unable to secure appropriate and credible expert witnesses that could support the refusal of the amended scheme;**
  - 1.4 The potential for the Council's experts being subpoenaed to give evidence in support of the appellant's case (in addition to the range of the appellant's own experts);**
  - 1.5 The potential for the appellant to pursue the previous development proposal refused by CAP on appeal and the Court approving that development;**
  - 1.6 The potential for the appellant to pursue an even lesser desired development, shaped by the policies of the incoming Planning and Design Code;**
  - 1.7 The cost of proceeding to a hearing may be as high as \$50,000;**
  - 1.8 The CAP has unanimously endorsed the compromise proposal; and**
  - 1.9 The significant changes that have occurred since the original proposal was refused,**
- 2. That Council**
- 2.1 Note that it is legally constrained from publicly releasing its decision in this matter until the matter is determined by the ERD Court**

- 2.2 Resolve to release the minutes of this meeting as soon as legally permitted to do so.**

### **Variation**

Councillor Piggott sought to vary the motion with the consent of Councillors Davis and Turnbull. The proposed variations were consented to by the mover Councillor Davis and the seconder Councillor Turnbull and were incorporated into the motion.

Debate continued on the varied motion.

### **Motion**

**C160321/12780**

#### **Moved Councillor Davis, Seconded Councillor Turnbull**

Councillor Hughes left the chamber at 7.37pm.  
Councillor Hughes rejoined the chamber at 7.38pm.

- 1. That the council accept the compromise proposal and settle the appeal in the matter of PC Infrastructure Pty Ltd v City of Burnside ( ERD 19- 189 ) on the basis of the amended scheme and conditions generally in accordance with the draft Minute of Order prepared by Norman Waterhouse Lawyers having considered the following:**
  - 1.1 The significant level of improvements to the proposal addressing in particular traffic, resident amenity, landscaping, bulk and scale that have occurred since the original 2017 proposal;**
  - 1.2 The high likelihood of defeat should the matter progress to a hearing based on the amended scheme;**
  - 1.3 The advice of independent traffic and town planning experts engaged by the Council;**
  - 1.4 The high likelihood of being unable to secure appropriate and credible expert witnesses that could support the refusal of the amended scheme;**
  - 1.5 The potential for the Council's experts being subpoenaed to give evidence in support of the appellant's case (in addition to the range of the appellant's own experts);**
  - 1.6 The potential for the appellant to pursue the previous development proposal refused by CAP on appeal and the Court approving that development;**
  - 1.7 The potential for the appellant to pursue an even lesser desired development, shaped by the policies of the incoming Planning and Design Code;**
  - 1.8 The cost of proceeding to a hearing may be as high as \$50,000;**
  - 1.9 The CAP has unanimously endorsed the compromise proposal; and**

**2. That Council:**

- 2.1 Notes that it is legally constrained from publicly releasing its decision in this matter until the matter is determined by the ERD Court.**
- 2.2 Resolves to release the minutes of this meeting as soon as legally permitted to do so.**

**CARRIED**

**Motion**

**C160321/12781**

**Retain in Confidence - Section 91(7) and (9) Order**

**Moved Councillor Davis, Seconded Councillor Daws**

**That Council:**

- 1. In accordance with Section 91(7) and Section 91(9) of the *Local Government Act 1999* and on the grounds that Item No. 8.1 Report No: 064-21, on the Agenda for the special meeting of the Council held on 16 March 2021 entitled Appeal Matter – OTR, 285-287 Kensington Road, was received, discussed and considered in confidence pursuant to:
  - **Section 90(3)(h) of the *Local Government Act 1999*, legal advice; and**
  - **Section 90(3)(i) of the *Local Government Act 1999*, information relating to actual litigation involving the Council,**this special meeting of the Council, does order that the Agenda, Report No: 064-21, Attachments A, B and C and information relating to this item and any other associated information submitted to this meeting in relation to the item and the Minutes of this meeting, excluding Part 2 of Resolution No: C160321/12780 in relation to the item remain confidential and not available for public inspection until further order of the Council in order to preserve the Council's position in the litigation (and any possible future litigation) and to maintain the Council's legal professional privilege over the advice; and**
- 2. The confidentiality of the matter be reviewed within a period of 12 months, and each 12 months thereafter; and**
- 3. The Chief Executive Officer (or anyone Acting in that position) be delegated the authority to review and revoke all or part of this order.**
- 4. In the event that a settlement is achieved the CEO is authorised to make such public statements as he feels appropriate regarding the settlement reached and the reasons for doing so.**

**CARRIED**

**9. Closure**

The meeting closed at 7.46pm.

Minutes confirmed this                      day of    2021

Mayor / Presiding Member

Released from Confidence  
by CEO 6-04-2021