



Council Meeting Minutes

**Tuesday, 12 July 2011 at 7.00 pm
Council Chamber, 401 Greenhill Road, Tusmore**

Present:

Members: Mayor, David Parkin
Councillors Capogreco, Cornish, Davey, Lemon, Monceaux, Osterstock, Palk,
Piggott and Pocock

Opening Prayer

The Mayor read the Opening Prayer and observed one minute silence.

Kaurna Acknowledgement

The Mayor acknowledged the Kaurna people.

Apologies

Councillors Wilkins and Hasenohr

Leave of Absence

Councillor Bills

Confirmation of Minutes

Councillor Lemon moved:

C8317 That the following Minutes of Council be taken as read and confirmed:

1. Council Meeting held on 28 June 2011
2. Special Meeting of Council held on 29 June 2011.

Seconded by Councillor Cornish

CARRIED

Mayor's Report

The Mayor provided the following Report.

On Wednesday 29 June, Councillors Wilkins, Monceaux and I attended an Eastern Regional Alliance training session on 'Regional Subsidiaries' presented by John Comrie. The session was also attended by my Mayoral Colleague, Simon Brewer from Campbelltown.

On Friday 1 July, the Acting CEO and I met with officials of the Kensington Baseball Club in the Mayor's Parlour.

The first meetings of the Audit Committee and the Development Assessment Panel with new independent members were held a week ago, on Tuesday 5 July. I attended the Audit meeting and was able to later sit as an observer at the DAP meeting and informally welcome the new members.

Next day, on 6 July the Acting CEO and I were invited to meet with new Local Government Minister, Hon Russell Wortley, prior to the announcement of his decision to abort further work on the MacPherson Report. Also attending the meeting were the new President of the LGA, Mayor Kym McHugh and CEO of LGA Wendy Campana. Elected Members were circulated the Statement made in the Legislative Assembly by the Minister on this matter and the subsequent press release from Burnside.

On 7 July, I attended as a private citizen with many other people, the funeral service of the late Tom Cruze, the Marree Mailman. I knew Tom well through a family connection – he is the grandfather of my daughter-in-law – and vividly remember being shown in 1954 as a six year old at Henley Beach Primary School, the film of his outback exploits *Back of Beyond*. It was the first movie of any kind I had ever seen and it left a lasting impression on me. To this day I can recall the storyline and many incidents in the film.

Tom was a wonderful man and a South Australian legend.

On Friday 8 and Saturday 9 July, the CEO Selection Panel interviewed the shortlisted candidates for the Burnside CEO position. I will address Elected Members on this matter under the appropriate agenda item later in this meeting.

I acknowledge a forthcoming farewell for Shirley Cooper, one of Burnside's special volunteers. For the past 25 years, Shirley has volunteered for Burnside in various roles. She ran the Burnside Singing Group from the early days until it finished up in 2006. Since then Shirley has filled a role in reception on Thursday afternoons. The Administration has organised a farewell afternoon tea on Friday 29 July. I will attend and represent the Elected Body and I encourage Elected Members to attend.

Councillor Davey moved:

C8318 That the Mayor's Report be received.

Seconded by Councillor Palk

CARRIED

Reports of Delegates/Working Parties

Councillor Monceaux, Councillor Wilkins and Mayor Parkin attended the 'Regional Subsidiaries' and 'Conflict of Interest and Register of Interests' ERA training sessions.

Councillor Pocock attended the Board meeting of the Burnside War Memorial Hospital and toured the Attunga Gardens.

Councillor Piggott attended the East Waste Board meeting.

Councillor Davey attended the Board meeting of the Burnside War Memorial Hospital.

Councillor Cornish attended the Board meeting of the Burnside War Memorial Hospital, toured the Attunga Gardens and attended the 'Conflict of Interest and Register of Interests' ERA Training.

Deputations

Nil

Petitions and Memorials

Nil

Questions (without debate) on notice

Nil

Consideration of Motions of which Notice has been Given

Nil

Questions (without debate) of which Notice has not been Given

Nil

Consideration of Motions of which Notice has not been Given**Ministerial Investigation - MacPherson Report**

Councillor Palk moved:

C8319 A. Council notes the following:

1. The Minister for State/Local Government Relations, the Hon Russell Wortley, stated (*Ministerial Statement 6.7.11*):

- 1.2 “The Full Court’s ruling is such that the draft Report would require extensive revision to excise those areas related to the Terms of Reference ruled invalid before a final Report could be published ... and there would be further delays and possibly further legal challenges if the inquiry was to proceed further.”
 - 1.3 that the election of an entirely new Council in 2010 “[remedied] the problems of friction between the previous Councillors that gave rise to complaints which led to the ... independent inquiry”.
 14. “... I do not believe the public interest can be further served in light of the Court’s ruling and the outcome of the November 2010 elections ...”
 - 1.5 “... the experience gained from this inquiry ... has ... focussed attention on the checks and balances required to ensure that local government, both elected members and Council officers, maintain the high standards of conduct expected of them by the South Australian community. These are issues that are currently being considered ... as part of the work being carried out to create a new Office of Public Integrity.”
2. The Advertiser editorial of 7.7.11 stated:
- “...[W]ithout the release of the Report, nobody knows what the lessons are from the inquiry apart from the conduct of Councillors. It is not good enough that people can be kept in the dark about issues which are obviously important to the people of Burnside and so potentially embarrassing that at least six Councillors took legal action to have the inquiry curtailed. ... Mr Wortley should be doing all he can to ensure the release of the complete Report.”

B. Council wishes to convey the following to the Minister:

1. Council endorses the remarks quoted at paragraph 2 above.
2. Council notes that no submissions were made by the Minister challenging the standing of the plaintiffs to bring the proceedings (and the plaintiffs’ position on that issue therefore was received uncontested); that had it been found that they did not have standing the case would not have proceeded; and that the judgment ([2011] SASFC 49, at para 61) in fact expressed doubt that they had standing.
3. Council is both concerned and disappointed that the Minister has decided not to continue the inquiry.
4. Council notes, however, that the Minister has not ruled out the completion by Mr MacPherson of a Report within the confines of the judgment of the Full Court.
5. As representative of its community, Council asks the Minister:
 - a. to reconsider his decision not to continue the inquiry
 - b. to, in any event, instruct Mr MacPherson to complete his Report within the limitations imposed by the Full Court judgement
 - c. to release, unedited, the Report so submitted by Mr MacPherson

- C. Council instructs the Acting Chief Executive Officer to write to the Minister enclosing this resolution and asking the Minister for his response, in particular to all elements of the matters set out in item B above.

Seconded by Councillor Monceaux

CARRIED UNANIMOUSLY

Consideration of the Process to be Undertaken for the Recruitment and Selection of the Chief Executive Officer (20.3)

Councillor Palk moved:

- C8320 That the following further item be added to the Agenda at Item 20.3 'Consideration of the Process to be Undertaken for the Recruitment and Selection of the Chief Executive Officer'.

Pursuant to Section 90(2) and (3)(a) and (b) of the Local Government Act 1999, the Council orders the public be excluded on the basis that it will receive and consider Item 20.3 'Consideration of the Process to be Undertaken for the Recruitment and Selection of the Chief Executive Officer' and that the 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 the matter as:

1. it would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead); and
2. it concerns information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the Council, and would, on balance, be contrary to the public interest.

Seconded by Councillor Osterstock

CARRIED

Reports of Officers

Highbury Landfill Authority – Extension of Appointment of Independent Board Member (14.1)

Councillor Palk moved:

- C8321
1. That the Report be received.
 2. That the term of appointment of Paul Lightbody as Independent Member of the Board of the Highbury Landfill Authority (HLA) be extended until 30 June 2012, pursuant to Clause 2.2.1.2 of the HLA Charter.

Seconded by Cornish

CARRIED UNANIMOUSLY

Public Minutes of CEO Recruitment, Performance Appraisal and Remuneration Review Committee Meeting – 27 June 2011 (14.2)

Councillor Lemon moved:

C8322 That the Minutes be received.

Seconded by Councillor Piggott

CARRIED UNANIMOUSLY

Elected Members Training Policy (14.3)

Councillor Davey moved:

C8323 1. That the Report be received.

2. That the Elected Members' Training and Development Policy, as amended, be adopted.

Seconded by Councillor Monceaux

CARRIED UNANIMOUSLY

Minutes of the Audit Committee Meeting – 5 July 2011 (14.5)

Councillor Osterstock moved:

C8324 That the Minutes be received.

Seconded by Councillor Davey

CARRIED UNANIMOUSLY

Road Closure for SA Water – Waterfall Gully Road (14.6)

Councillor Capogreco moved:

C8325 1. That the Report be received.

2. That the Mayor and Acting Chief Executive Officer be authorised to sign and affix the Council Seal to the necessary documents in relation to the closure of the portion of Road Reserve adjacent 60 Waterfall Gully Road (as shown on Alexander & Symons Surveying Consultants pegging plan No. A119008PEGGING (Attachment B)).

Seconded by Councillor Monceaux

CARRIED UNANIMOUSLY

Acting CEO Report – June 2011 (14.7)

Councillor Piggott moved:

C8326 That the Report be received.

Seconded by Councillor Palk

CARRIED UNANIMOUSLY

Drainage Easement Creation – 401 The Parade, Kensington Gardens (14.4)

Councillor Cornish moved:

- C8327
1. That the Report be received.
 2. That the Mayor and Acting Chief Executive Officer are authorised to sign and affix the Council Seal to the necessary documents to effect a right of way for drainage purposes over a portion of 401 The Parade, Kensington Gardens.

Seconded by Councillor Monceaux

CARRIED UNANIMOUSLY

Adjournment of Council for the Meeting of the Corporate & Community Services Standing Committee

Councillor Cornish moved:

- C8328
- That the Meeting be adjourned for the meeting of the Corporate & Community Services Standing Committee at 7.24 pm.

Seconded by Councillor Lemon

CARRIED UNANIMOUSLY

Resumption of Council

Councillor Cornish moved:

- C8329
- That the Meeting be resumed at 7.31 pm.

Seconded by Councillor Capogreco

CARRIED UNANIMOUSLY

Adoption of Committee Report

Corporate & Community Services Standing Committee

Councillor Palk moved:

- C8330
- That the Report of the Corporate & Community Services Standing Committee meeting held on 12 July 2011 be received and the recommendations contained therein be adopted.

Seconded by Councillor Monceaux

CARRIED

Other Business

Nil

Regional Subsidiaries – Eastern Waste Management Authority, Highbury Landfill Authority, Eastern Health Authority

Nil

Confidential Items**Chelsea Cinema EOI Update (20.1)**

Councillor Palk moved:

- C8331 Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public, except the Acting Chief Executive Officer, Acting General Manager Planning & Infrastructure, General Manager, Corporate & Community Services, Manager Facilities and Procurement, Communications Officer and the Executive Assistant be excluded from attendance at the meeting for Agenda Item 20.1, 'Chelsea Cinema EOI Update'.

The Council is satisfied that, pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting business, or proposing to conduct business, or would prejudice the commercial position of the Council.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. 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 disclosure of the information would disadvantage Council in its negotiations and the Expression of Interest process is being undertaken in confidence.

Seconded by Councillor Osterstock

CARRIED UNANIMOUSLY

Councillor Osterstock moved:

- C8332
1. That the Report be received.
 2. That Council endorses the Media Release (Attachment A as amended).
 3. That Council distributes the Media Release, via the following methods:
 1. To be sent to the media, namely the 'Messenger Newspapers', 'The Advertiser', 'Sunday Mail' and South Australian Radio Networks;
 2. To be uploaded to the Eastern Courier website under 'Your News'; and
 3. Uploaded onto the publications page and latest news page within the City of Burnside website.
 4. That the draft Responses to Potential Enquiries (FAQ's)(Attachment B), be used as a guide when responding to any media enquiries with regards to the Chelsea Cinema EOI process.
 5. That having considered Agenda item 20.1 "Chelsea Cinema EOI Update" in confidence under Section 90(2) and (3)(b) of the Local Government Act 1999, the Council, pursuant to Section 91(7) of that Act orders that the Agenda Item 20.1 (with the exception of Minute Items 1, 2 and 3 and Attachment A as amended), be retained in confidence for a period of two years and that this order be reviewed by the person occupying the office of Chief Executive Officer or their delegate every 12 months.

Seconded by Councillor Davey

CARRIED UNANIMOUSLY

Consideration by Council of Matters Concerning Eastern Waste Management Authority Inc. (20.2)

Councillor Piggott moved:

- C8333 That pursuant to Section 90(2) and (3)(b), (h) and (i) of the Local Government Act, 1999 the Council orders the public be excluded, with the exception of the Acting Chief Executive Officer; the General Manager, Corporate & Community Services; the Acting General Manager, Planning & Infrastructure Services; and the Executive Assistant.

Pursuant to Section 90(2) and (3)(d) of the Local Government Act 1999, the public are excluded on the basis that Council will receive and consider 'Consideration by Council of Matters Regarding Eastern Waste Management Authority Inc.' and that the Council is satisfied that the principles that the meeting should be conducted in a place open to the public has been outweighed in relation to the matter as it involves the consideration of:

1. Information the disclosure of which could prejudice the commercial position of the Council and would on balance be contrary to the public interest.
2. Information relating to litigation that the Council believes on reasonable grounds will take place, involving the Council.

Seconded by Councillor Cornish

CARRIED

Short Term Suspension

Councillor Osterstock moved:

- C8334 That there be a short term suspension of proceedings until 8.00 pm.

Seconded by Councillor Palk

CARRIED

Councillor Piggott moved:

- C8335 That there be a short term suspension of proceedings for a further 5 minutes until 8.05 pm.

Seconded by Councillor Cornish

CARRIED

Councillor Palk moved:

Councillor Cornish left the meeting at 8.05 pm and returned at 8.06 pm.

- C8336
1. That the Report be received.
 2. *Confidential Resolution.*
 3. *Confidential Resolution.*
 4. That pursuant to Section 91(7) and (9) of the Local Government Act, 1999, the Council orders that:
 - 4.1 the Report and minutes are to remain confidential on the basis that it contains information, the disclosure of which could prejudice the

commercial position of the Council and information relating to actual litigation or litigation that the Council believes on reasonable grounds will take place, involving the Council or an employee of the Council pursuant to Section 90(3)(i) of the Act; and

- 4.2 the Report and minutes will not be available for public inspection for the period of 12 months at which time this order will be revoked/reviewed by the Council / Chief Executive Officer.

Seconded by Councillor Davey

CARRIED UNANIMOUSLY

Consideration of the Process to be Undertaken for the Recruitment and Selection of the Chief Executive Officer (20.3)

Minutes released from
confidential orders
9/8/2011 C8372

Councillor Palk moved:

C8337 Pursuant to Section 90(2) and (3)(a) and (b) of the Local Government Act 1999, the Committee orders the public be excluded on the basis that it will receive and consider Item 4.1 'Consideration of the Process to be Undertaken for the Recruitment and Selection of the Chief Executive Officer' and that the Committee is satisfied that the principle that the meeting should be conducted in a place open to the public has been outweighed in relation to the matter as:

1. it would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead); and
2. it concerns information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the Council, and would, on balance, be contrary to the public interest.

Seconded by Councillor Cornish

CARRIED

Councillor Palk moved:

C8338 That Council suspend the meeting rules and move into informal discussion at 8.22pm for half an hour.

Seconded by Councillor Piggott

CARRIED

Councillor Palk moved:

C8339 That Council endorses the following approach for the proposed special meeting:

1. Council moves into informal session.
2. Candidates will make an uninterrupted 20 minute presentation to Council on the topic "The Challenges Ahead for the City of Burnside 2011-2021".
3. The elected body will have 10 minutes to ask questions at the conclusion of each presentation. Questions to be sent to the Mayor before the meeting. Supplementary questions may be asked at the discretion of the Chair.
4. At the conclusion of the presentations the elected body will vote to select the new CEO (but as this is in informal session, this is not a resolution of Council).

5. The voting procedure will be:
 - Secret ballot
 - 5.1. By elimination if more than two candidates
 - 5.2. Independently scrutinised
 - 5.3. The meeting will be advised of the preferred candidate, but not the numerical margin
 - 5.4. In the final round:
 - 5.4.1 if there is an odd number of elected members present (ie including the Mayor), the Mayor is to have a deliberative vote
 - 5.4.2 if there is an even number of elected members present, the Mayor will cast two deliberative votes
 - 5.4.3 to ensure that an odd number of votes is cast.
6. Council will move back into formal mode with the expectation that a motion for an appointment will be proposed and accepted.
7. The successful candidate to be notified as soon as possible.

Seconded by Councillor Davey

CARRIED UNANIMOUSLY

Councillor Palk moved:

- C8340 That the finalisation of the contract of employment be delegated to the CEO Recruitment, Performance Appraisal and Remuneration Review Committee.

Seconded Councillor Cornish

CARRIED

Councillor Palk moved:

- C8341 That having considered Agenda Item 20.3 'Consideration of the Process to be Undertaken for the Recruitment and Selection of the Chief Executive Officer' in confidence under Section 90(2) and (3)(a) and (b) of the Local Government Act 1999, Council, pursuant to Section 91(7) and (9) of that Act orders, subject to any resolution by Council to the contrary, that all documents and all minutes be retained in confidence for a period of 5 years. Council notes that this order will, pursuant to Section 91(9)(a) of the Act, be reviewed by it at least once in each year.

Seconded Councillor Pocock

CARRIED

Note: The procedure as set out in Resolution C8339 was not followed to the letter. Refer Resolution No. C8372 from Council meeting held 9/8/2011.

Closure

The meeting closed at 9.25 pm.