



Council Meeting Minutes

**Tuesday, 13 December 2011 at 7.00 pm
Council Chamber, 401 Greenhill Road, Tusmore**

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

Opening Prayer

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

Kaurna Acknowledgement

The Mayor acknowledged the Kaurna people.

Apologies

Nil

Leave of Absence

Nil

Confirmation of Minutes

Councillor Palk moved:

C8522 That the Minutes of the following Council meetings be taken as read and confirmed:

1. The General Meeting of Council held on 22 November 2011
2. The Special Meeting of Council held on 1 December 2011

Seconded by Councillor Cornish

CARRIED

Mayor's Report

The Mayor provided the following Report.

On Friday 25 November, I attended the annual Marryatville High School Art Exhibition on the school campus.

On Wednesday, 30 November, I attended the annual Volunteers' Dinner in the Burnside Ballroom. This was the first function I have addressed as Mayor for the second time. The attendance of several Elected Members at this and the following event was appreciated. In this instance I am not certain I can name them and I ask them to identify themselves when the opportunity arises later on the agenda.

On Friday, 2 December, the Administration arranged the annual HACC Christmas morning tea. Both these events were well organised and well attended by appreciative volunteers and senior citizens respectively.

I congratulate the Administration on the hard work put into these most successful events.

The same day my wife and I were invited guests at the annual Burnside Meals on Wheels Christmas lunch. This branch has over 400 volunteers on its books and is a splendid example of an independent charity working quietly and effectively in Burnside.

On Sunday, 4 December, I was a guest at the Rotary Club of Burnside Senior Citizens Christmas Lunch. Nearly 150 guests attended. That evening the Lions Club of Burnside was event manager for Carols in the Park in Hazelwood Park. Unlike last year, when the event was cancelled due to poor weather, this was a magnificent occasion on a lovely evening, strongly supported by many Burnside residents. Burnside Lions have organised this event for the past 20 years. I sincerely thank the Club for its loyal community service in association with Carols in the Park.

On Thursday, 8 December, Elected Members hosted a reception in the Mayor's Parlour for the Burnside Community Services Group of Burnside. This is an important opportunity to thank these clubs for the strong voluntary contribution they make over a wide spectrum of services to our community. Following the reception, Councillor Cornish and I caught the end of the Rose Park- Dulwich - Toorak Gardens Neighbourhood Watch annual Christmas Function in Ferguson Square.

In my final Report for 2011, I take the opportunity to wish my fellow Elected Members, the Administration and the citizens of Burnside a Merry Christmas and a Happy New Year.

Councillor Monceaux moved:

C8523 That the Mayor's Report be received.

Seconded by Councillor Lemon

CARRIED

Reports of Delegates/Working Parties

Councillor Monceaux attended the Linden Park Schools Amalgamation Committee, Lions' Carols in the Park and the Burnside Community Services Group Reception.

Councillor Bills attended the Burnside Community Services Group Reception.

Councillor Lemon attended the Burnside Volunteers Christmas Dinner and Burnside Community Services Group Reception.

Councillor Wilkins attended the presentation of the Pineview Retirement Services Annual Report to the Mayor, Pineview Residents' Christmas Dinner, Burnside Volunteers' Christmas Dinner and the Eastwood Community Centre Annual Report Annual Christmas Party.

Councillor Pocock attended the Burnside War Memorial Hospital Board meeting and the Lions' Carols in the Park.

Councillor Davey attended the Lions' Carols in the Park and Burnside Community Services Group Reception.

Councillor Hasenohr attended the Burnside Community Services Group Reception.

Councillor Cornish attended the Burnside Volunteers' Christmas Dinner and Burnside War Memorial Hospital Board meeting, Burnside Community Services Group Reception and the Rose Park- Dulwich - Toorak Gardens Neighbourhood Watch Annual Christmas function.

Deputations

Leonie Grace, Lease of Shops at 269, 275 and 277 Kensington Road, Kensington Park

Ron Moulton, Resident regarding Kensington Baseball Club

Councillor Capogreco left the meeting at 7.20 pm and returned at 7.21 pm.

Arthur McDonald, Kensington Baseball Club

Trevor March, Resident regarding Kensington Baseball Club

Councillor Osterstock moved:

- C8524 I move that Section 20 of the Agenda (Confidential Items), including items 20.1 and 20.2, be considered now and that Section 9 and all following Sections be renumbered accordingly.

Seconded by Councillor Pocock

CARRIED

A Division was called by Councillor Bills

In Favour

Councillor Osterstock
Councillor Capogreco
Councillor Lemon
Councillor Wilkins
Councillor Pocock
Councillor Piggott
Councillor Palk
Councillor Hasenohr
Councillor Cornish

Against

Councillor Monceaux
Councillor Bills
Councillor Davey

CARRIED

Confidential Items**Chelsea Cinema Expressions of Interest – Outcomes from Negotiations with Confirmed Applicants and Determination of the Next Steps in the Process (20.1) (9.1)**

Councillor Palk moved:

- C8525
1. That pursuant to Section 90(2) and (3) (a) and (b) of the Local Government Act, 1999, the Council orders that all members of the public, except the Chief Executive Officer, General Manager, Corporate & Community Services, Acting General Manager, Planning & Infrastructure, Manager Facilities and Procurement, the Executive Assistant, Mark Booth, EOI Negotiator James McEwen, Partner, Norman Waterhouse Lawyers and Lisa Hubbard, Associate, Norman Waterhouse Lawyers be excluded from attendance at the meeting for Agenda Item 9.1 – Chelsea Cinema Expression of Interest – Chelsea Cinema Expressions of Interest – Outcomes from Negotiations with Confirmed Applicants and Determination of the Next Steps in the Process.
 2. The Council is satisfied that:
 - 2.1 pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered will involve the unreasonable disclosure of information concerning the personal affairs of one or more of the Applicants; and
 - 2.2 pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered is information the disclosure of which could reasonably be expected to confer an advantage for a person or persons with whom the Council is proposing to conduct business and the disclosure of this information would, on balance, be contrary to the public interest.
 3. The Council is satisfied that in all of these circumstances the principle that the meeting be conducted in a place open to the public has been outweighed.

Seconded by Councillor Piggott

CARRIED

Formal Motion

Councillor Osterstock moved:

- C8526
- I move a Formal Motion pursuant to Regulation 13 (14) (e) of the Local Government (Procedures at Meetings) Regulations 2000, that the meeting be adjourned for five minutes and that it be resumed at 7.42 pm on 13 December 2011 in the Linden / Tusmore Rooms of the Civic Centre, on the corner of Greenhill/Portrush Roads, Tusmore, as the present conduct of the public constitutes disorderly behaviour which is hindering the proceedings of this Council meeting.

Seconded by Councillor Palk

CARRIED

The meeting resumed at 7.42 pm in the Linden/Tusmore Room.

Councillors Osterstock and Hasenohr were not present at the resumption of the meeting.

Mayor Parkin, with the approval of 2/3 of the Members present, suspended the operation of the meeting for 60 minutes until 8.45 pm, to move into informal session to discuss the Chelsea Cinema Expression of Interest - Outcomes from Negotiations with Confirmed Applicants and Determination of the Next Steps in the Process.

Councillors Osterstock and Hasenohr returned to the meeting at 7.50 pm.

Mayor Parkin, with the approval of 2/3 of the Members present, further suspended the operation of the meeting for 20 minutes until 9.05 pm, to continue the informal session to discuss the Chelsea Cinema Expression of Interest - Outcomes from Negotiations with Confirmed Applicants and Determination of the Next Steps in the Process.

The Mayor determined that the short term suspension of proceedings be brought to an end at 8.55 pm.

Councillor Piggott moved:

- C8527
1. That the Report be received.
 2. That the Chelsea Cinema Confirmed Applicants Summary prepared by the EOI negotiator be received.
 3. That Council authorises the Mayor and Chief Executive Officer to execute and affix the Council's Common Seal (where necessary) to:
 - 3.1 a lease of the portion of the land described as Certificate of Title Volume 5899 Folio 223, namely the rectangular portion occupied by the cinema building and its immediate surrounds, with the other remaining rectangular piece bounded by Kensington Road (south), May Terrace (east) and CT 5701/749 to be retained by Council; and that a plan for lease purposes conforming to the requirements of the Land Titles Office be prepared at Council's expense, to Republic Theatres Pty Ltd ACN 104 951 537 substantially in the form of the draft lease, as provided in the Draft Lease Agreement for Chelsea Cinema and including the following terms:
 - 3.1.1 a warranty by the Council to continue to maintain and make available to the public the public carpark at 35 May Terrace, Kensington Park, South Australia, being the whole of the land comprised and described in Certificate of Title Volume 5663 Folio 617, for a period of not less than 37 years
 - 3.1.2 a lease term of 7 years and 6 periods of rights of renewal each of 5 years
 - 3.1.3 an annual rental commencing at \$50,000 per annum (inclusive of GST) to be increased by CPI annually on the anniversary of commencement of the lease
 - 3.1.4 The lease shall be subject to market review at the expiration of each term
 - 3.1.5 security requirements in the form of a bank guarantee or personal guarantees or some other form of security to the satisfaction of the CEO

- 3.1.6 the permitted use of the site is as an operating cinema in conjunction with ancillary purposes including live entertainment, theatre performances, sale of food and beverages
- 3.1.7 the continued promotion and use of the premises by community and charity groups operating within the City of Burnside to the market value each year not less than \$150,000 (to be increased by CPI each year)
- 3.1.8 fit out works to the internal areas of the property consistent with the Chelsea Cinema Conservation Management Plan including:
 - 3.1.8.1 \$100,000 to be spent within 5 years
 - 3.1.8.2 Approximately \$150,000 for installation of a modern sound system prior to 31 December 2013
- 3.1.9 agreement by Lessee to maintain the Auditorium as a single theatre
- 3.1.10 agreement by Lessee to potential delays in occupation caused by the vacating Lessee and beyond control of Council
- 3.1.11 no gaming machines
- 3.1.12 default on one lease is a default on both leases
- 3.1.13 hours of operation – limitations to apply unless otherwise authorised by Council
- 3.1.14 in any other respect subject to such variations as the Chief Executive Officer determines to be appropriate and in the Council's interests
- 3.2 such other documents as may be necessary to give effect to the lease of the [land described in paragraph (3.1)] to Republic Theatres Pty Ltd ACN 104 951 537 or related entity acceptable to the CEO
- 4. That Council authorises the Mayor and Chief Executive Officer to execute and affix the Council's Common Seal (where necessary) to:
 - 4.1 A lease of the whole of the land comprised and described in Certificate of Title Volume 5701 Folio 749 to Republic Theatres Pty Ltd ACN 104 951 537 substantially in the form of the draft lease, as provided in the Draft Lease Agreement for 39 May Terrace and including the following terms:
 - 4.1.1 a lease term of 7 years. The applicant will be granted a further 6 periods of rights of renewal each of 5 years, provided Council has received an acceptable proposal for the development of the site within the initial term
 - 4.1.2 an annual rent amount of \$1.00 per annum inclusive of GST to be increased by CPI annually on the anniversary of the commencement of the lease
 - 4.1.3 security requirements are not applicable

- 4.1.4 the permitted use of the site is for ancillary use in support of the business operations of the Lessee conducted from CT Volume 5899 Folio 223
- 4.1.5 there are no fit out works required
- 4.1.6 default on one lease is a default on both leases
- 4.1.7 and in any other respect subject to such variations as the Chief Executive Officer determines to be appropriate and in the Council's interests
- 4.2 such other documents as may be necessary to give effect to the lease of the [land described in paragraph (4.1)] to Republic Theatres Pty Ltd ACN 104 951 537
- 5. That once the lease is signed and accepted by both parties, Council advises the remaining applicants that their Expressions of Interest for the lease of the Chelsea Cinema have been unsuccessful.
- 6. That Council advise the existing tenants of the Chelsea Cinema; Chelsea Fashions and 39 May Terrace that in accordance with previous notices provided, the respective agreements with Council will conclude on 31 December 2011, and that it is expected that all exit conditions are adhered to.
- 7. That Council issue a Media Release once the existing tenants have been advised of Council's decision.

Councillors Monceaux and Davey left the room at 9.03 pm and returned at 9.05 pm.

Seconded by Councillor Lemon

CARRIED UNANIMOUSLY

Councillor Palk moved:

- C8528
- 1. That the CEO provide a Report within 6 weeks of the execution of the lease with detailed recommendations as to the appropriate timing of release of the minutes, documents and papers in respect to this matter into the public domain.
 - 2. That pursuant to Sections 91(7) and (9) of the Local Government Act, 1999, the Council orders that the Report and minutes relating to Item (9.1) 20.1 'Chelsea Cinema Expressions of Interest - Outcomes From Negotiations with Confirmed Applicants and Determination of the Next Steps in the Process' with the exception of the Proposed Media Release, having been considered and dealt with by the Council on a confidential basis under Section 90(2) and (3) (a) and (b) of the Local Government Act, 1999, are to be kept confidential and not available to the public for a period of 12 months from the date of this confidentiality order.

Seconded by Councillor Cornish

CARRIED UNANIMOUSLY

Formal Motion

Councillor Lemon moved:

- C8529 I move a Formal Motion pursuant to Regulation 13 (14) (e) of the Local Government (Procedures at Meetings) Regulations 2000, that the meeting be adjourned for five minutes and that it be resumed at 9.42 pm on 13 December 2011 in the Council Chamber on the corner of Greenhill/Portrush Roads, Tusmore, as the confidential nature of Item (20.1) (9.1) 'Chelsea Cinema Expressions of Interest – Outcomes from Negotiations with Confirmed Applicants and Determination of the Next Steps in the Process' has been concluded.

Seconded by Councillor Pocock

CARRIED UNANIMOUSLY

Councillor Osterstock retired from the meeting at 9.43 pm due to illness.

The meeting resumed in the Council Chamber at 9.45 pm.

Consideration of Purchase of Land (20.2) (9.2)

Councillor Palk moved:

- C8530
1. That pursuant to Section 90(2) and (3) (a) and (b) of the Local Government Act, 1999, the Council orders that all members of the public, except the Chief Executive Officer, General Manager, Corporate & Community Services and Acting General Manager, Planning & Infrastructure be excluded from attendance at the meeting for Agenda Item (9.2) 20.2 – Consideration of Purchase of Land.
 2. The Council is satisfied that:
 - 2.1 pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered will involve the unreasonable disclosure of information concerning the personal affairs of one or more of the Applicants; and
 - 2.2 pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered is information the disclosure of which could reasonably be expected to confer an advantage for a person or persons with whom the Council is proposing to conduct business and the disclosure of this information would, on balance, be contrary to the public interest.
 3. The Council is satisfied that in all of these circumstances the principle that the meeting be conducted in a place open to the public has been outweighed.

Seconded by Councillor Bills

CARRIED

Councillor Capogreco advised a conflict of interest as he is a near neighbour to the property. He left the meeting at 9.53 pm.

Councillor Palk moved:

- C8531
1. *Confidential Resolution.*
 2. *Confidential Resolution.*
 3. *Confidential Resolution.*

Seconded by Councillor Davey

CARRIED

Councillor Bills moved:

Further, pursuant to Section 91(7) and (9) the Council orders that:

- C8532
1. the Minutes, Report and documentation remain confidential on the basis that they contain 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 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
 2. the Minutes, Report and documentation 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 Wilkins

CARRIED

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**Request for Department for Planning, Transport and Infrastructure to Review Traffic Light Phasing (13.1)**

Councillor Bills moved:

- C8533 In recognising that the amenity of neighbourhoods adjacent arterial roads suffer when arterial road traffic flows are inefficient, that Council write to the Department for Planning, Transport and Infrastructure requesting that traffic signal phasing and corresponding turn lane sizes within Burnside and adjacent Council areas be reviewed to ensure optimum flows and thus assist the traffic management throughout Burnside.

Councillor Cornish advised that pursuant to Section 73(3) of the Local Government Act he had a conflict of interest, he being an employee of the Department for Planning, Transport and Infrastructure and left the meeting at 10.18 pm.

Seconded by Councillor Wilkins

CARRIED UNANIMOUSLY

Councillor Cornish returned to the meeting at 10.20 pm.

Eastwood Community Centre Annual Report 2010/11

Councillor Wilkins moved:

- C8534 That the Eastwood Community Centre Annual Report 2010/11 be tabled.

Seconded by Councillor Lemon

CARRIED UNANIMOUSLY

Reports of Officers**Public Minutes of CEO Recruitment, Performance Appraisal and Remuneration Review Committee Meeting – 5 December 2011 (14.1)**

Councillor Davey moved:

- C8535 That the Minutes be received.

Seconded by Councillor Lemon

CARRIED UNANIMOUSLY

Audit Committee Minutes – 9 November 2011 (14.2)

Councillor Cornish moved:

- C8536 That the Minutes of the Audit Committee held on 9 November 2011 be received.

Seconded by Councillor Capogreco

CARRIED UNANIMOUSLY

CEO Report – November 2011 (14.3)

Councillor Piggott moved:

- C8537 That the Report be received.

Seconded by Councillor Lemon

CARRIED UNANIMOUSLY

Adjournment of Council for the Meeting of the Standing Committees

Councillor Palk moved:

C8538 That the Meeting be adjourned for the meetings of the Corporate & Community Services Standing Committee and Planning, Heritage & Infrastructure Standing Committee at 10.21 pm.

Seconded by Councillor Monceaux

CARRIED

Closure

In accordance with the Elected Members' Code of Practice - Meeting Procedures the meeting closed at 11.00 pm.