

Council Meeting Minutes

4 October 2022

Our Vision

*A City which values its heritage, cultural diversity,
sense of place and natural environment.*

*A progressive City which is prosperous, sustainable
and socially cohesive, with a strong community spirit.*

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City of
Norwood
Payneham
& St Peters

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VENUE Council Chambers, Norwood Town Hall

HOUR 7.00pm

PRESENT

Council Members Mayor Robert Bria
Cr Kester Moorhouse
Cr Evonne Moore
Cr Garry Knoblauch
Cr John Minney
Cr Carlo Dottore
Cr Kevin Duke
Cr Connie Granozio
Cr Mike Stock
Cr Scott Sims
Cr Fay Patterson (entered the meeting at 7.02pm)
Cr Sue Whittington
Cr John Callisto
Cr Christel Mex

Staff Lisa Mara (Acting Chief Executive Officer)
Peter Perilli (General Manager, Urban Services)
Carlos Buzzetti (General Manager, Urban Planning & Environment)
Sharon Perkins (General Manager, Corporate & Community Services)
Teri Hopkins (Manager, Governance & Legal)
Simonne Whitlock (Manager, Communications & Community Relations)
Marina Fischetti (Executive Assistant, Governance & Civic Affairs)

APOLOGIES Nil

ABSENT Nil

1. KAURNA ACKNOWLEDGEMENT

2. OPENING PRAYER

The Opening Prayer was read by Cr Sue Whittington.

3. CONFIRMATION OF THE MINUTES OF THE COUNCIL MEETING HELD ON 5 SEPTEMBER 2022

Cr Stock moved that the minutes of the Council meeting held on 5 September 2022 be taken as read and confirmed. Seconded by Cr Dottore and carried unanimously.

4. MAYOR'S COMMUNICATION

Monday, 5 September	<ul style="list-style-type: none">• Presided over a Council meeting, Council Chamber, Norwood Town Hall.
Friday, 9 September	<ul style="list-style-type: none">• Attended an Eastern Region Alliance (ERA) Mayor's Breakfast Meeting, Luigi Delicatessen, Adelaide.
Friday, 9 September	<ul style="list-style-type: none">• Attended the Loreto College Art Show, Loreto College, Marryatville.
Sunday, 11 September	<ul style="list-style-type: none">• Attended the State Ceremony: Proclamation of the accession of His Majesty The King Charles III, Parliament House, Adelaide.
Tuesday, 13 September	<ul style="list-style-type: none">• Attended a meeting with the Acting Chief Executive Officer and the Hon Tom Koutsantonis MP, Minister for Transport, Minister Koutsantonis' Ministerial Office, Adelaide.
Sunday, 18 September	<ul style="list-style-type: none">• Attended the pre-match function followed by the 2022 SANFL Grand Final, Adelaide Oval, Adelaide.
Wednesday, 21 September	<ul style="list-style-type: none">• Attended the Norwood Football Club's Michael Taylor Medal (Club Champion) Presentation, Adelaide Oval, Adelaide.
Sunday, 25 September	<ul style="list-style-type: none">• Attended the Maria SS di Montevergine Feast Day Mass followed by the Luncheon, St Francis of Assisi Church, Newton.
Tuesday, 27 September	<ul style="list-style-type: none">• Attended the 2022 Catholic Schools Music Festival, Festival Centre, Adelaide.

Cr Patterson entered the meeting at 7.02pm.

5. DELEGATES COMMUNICATION

- Cr Stock advised that on Tuesday, 13 September 2022 and Monday, 26 September 2022, he attended meetings, via electronic communication, of the East Waste Board of Management.
- Cr Knoblauch advised that on Wednesday, 28 September 2022, he attended the Marden Senior College Governing Council's monthly meeting.
- Cr Minney advised that on Thursday, 15 September 2022, he attended a meeting of ERA Water.

6. QUESTIONS WITHOUT NOTICE

Nil

7. QUESTIONS WITH NOTICE

Nil

8. DEPUTATIONS

Nil

9. PETITIONS

Nil

10. WRITTEN NOTICES OF MOTION

10.1 PROVISION OF COUNCIL-OBTAINED LEGAL ADVICE TO ELECTED MEMBERS – SUBMITTED BY CR FAY PATTERSON

NOTICE OF MOTION: Provision of Council-Obtained Legal Advice to Elected Members
SUBMITTED BY: Cr Fay Patterson
FILE REFERENCE: qA1039
ATTACHMENTS: Nil

Pursuant to Regulation 12(1) of the *Local Government (Procedures at Meetings) Regulations 2013*, the following Notice of Motion has been submitted by Cr Fay Patterson.

NOTICE OF MOTION

That:

1. the request for the legal advice and the advice advised verbally to Members on 2 December 2019, in relation to a matter raised under Agenda Item 15.1 Other Business; and
2. any other relevant legal advice obtained by Council during the current term,

be provided to Elected Members as per the *Elected Member Access to Legal Advice Policy*.

REASONS IN SUPPORT OF MOTION

On 2 December 2019, in regard to the matter mentioned, Mayor Robert Bria quoted part of legal advice obtained by Council in order to inform Elected Members about their obligations in respect of the matter. The advice was not quoted in its entirety and neither this nor the request for the legal advice – which would provide the basis on which the legal advice was made – were distributed to Elected Members.

The *Elected Member Access to Legal Advice Policy* (“the Policy”) was adopted soon after, on 6 July 2020. This includes:

“In those circumstances where legal advice is obtained on behalf of the Council to assist the Council in its decision-making processes, a copy of the request for the legal advice and the advice, including any attachments and appendices to the advice, will be provided to Elected Members in full written form.”

This provision is included in the Policy to assist Council to comply with its responsibility to act as a representative, informed and responsible decision-maker on behalf of its citizens. However, when the Policy came into effect, it was not applied retrospectively to Council legal advice obtained during the current term. If it had been, this provision would have clearly applied to the legal advice quoted by Mayor Bria on 2 December 2019.

The principles encapsulated in the Policy have been considered by this Council to be important enough to be applied retrospectively to legal advice obtained by Cr Sims on 2 August 2019. On the same basis, they should also be applied retrospectively to relevant Council-obtained legal advice that pre-dated the Policy, by distributing both the advice and request for advice in writing.

In particular, being able to refer back to legal advice obtained by Council in the past will assist Elected Members in understanding legal considerations going forwards – noting that the *Code of Conduct for Council members* includes the overarching principle that Council members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position.

Apart from this, Mayor Bria also referred to legal advice previously obtained by Council during Confidential Item 14.4 on 5 October 2021. The status of this, and hence whether it could be subject to the Policy, is unclear. The Policy is due for review within twelve months of the November 2022 local government elections.

**STAFF COMMENT
PREPARED BY GENERAL MANAGER, GOVERNANCE & CIVIC AFFAIRS**

The “matter raised under Agenda Item 15.1” referred to in the Notice of Motion relates to the Chief Executive Officer’s Performance Review Committee and more specifically, the removal of Cr Sims from his position as a Member of the Chief Executive Officer’s Performance Review Committee by the Council at its meeting held on 2 December 2019.

The Notice of Motion is seeking access to a copy of the legal advice and any other relevant legal advice obtained by the Council, which was obtained by the Mayor in his capacity as Presiding Member of the Chief Executive Officer’s Performance Review Committee.

The *Elected Member Access to Legal Advice Policy*, (whilst not in place when this matter was considered by the Council), states the following in respect to the provision of legal advice to Elected Members:

Obtaining Legal Advice – Elected Members

Any advice obtained by Elected Members that, in accordance with this Policy, is funded by the Council, is legal advice pertaining to the performance/discharge of functions of office of the Elected Member, it is legal advice to the Council and is subject to the official record requirements of the State Records Act 1987. Therefore, it is a condition of this Policy that, as public funds have been or are intended to be relied upon to fund the advice, that a copy of the legal advice must be provided to the General Manager, Governance & Community Affairs and registered to the Council’s Corporate Records Management system.

A copy of the advice may also be provided to the Chief Executive Officer, either by the Elected Member who has obtained the advice or by the General Manager, Governance & Community Affairs. Depending on the nature of the legal advice and if, in the opinion of the Chief Executive Officer and/or the General Manager, Governance & Community Affairs, it is relevant to the operations of the Council, a copy may also be provided (on a confidential basis) to other Elected Members.

Obtaining Legal Advice - Mayor

In addition to the matters where Elected Members may wish to seek legal advice; circumstances may also arise whereby the Mayor requires legal advice to ensure compliance with the provisions of Section 58 of the Act. These circumstances may include the following, by way of example only:

- *clarification regarding the provisions of the Local Government (Procedures at Meetings) Regulations 2013;*
- *the legality of a Council decision and/or legal ramifications of a Council decision;*
- *the employment arrangements between the Council and the Chief Executive Officer.*

Having regard to the express functions of the Mayor as set out in Section 58 of the Act, this Policy recognises that it is appropriate for only the Mayor to seek advice in relation to these matters.

All requests by the Mayor for legal advice pertaining to functions as set out in Section 58 of the Act will be directed to and co-ordinated by either the Chief Executive Officer (where appropriate), or the General Manager, Governance & Community Affairs.

Legal advice obtained by the Mayor regarding specific roles of the Mayor, is deemed to be legal advice to the Council and a copy will be provided to the Chief Executive Officer (where appropriate), and/or the General Manager, Governance & Community Affairs and the Council.

A copy of the legal advice may also be provided to the Council at the next scheduled Council Meeting or via the Council’s Elected Member Communique, depending on the nature of the legal advice. This will be at the discretion of the Chief Executive Officer and/or the General Manager, Governance & Community Affairs (as relevant).

As set out above, the legal advice referred to in the Notice of Motion was obtained by the Mayor in respect to the legal ramifications of a Council decision, that decision being the Council's appointment of Cr Sims to the Chief Executive Officer's Performance Review Committee at its meeting held on 8 October 2019, and the legal ramifications of the decision on the basis of previous matters pertaining to Cr Sims.

At the first meeting of the Chief Executive Officer's Performance Review Committee, the Mayor briefed the Committee on these matters and the legal advice which he had obtained.

At its meeting held on 2 December 2019, the Mayor made a Statement to the Council in respect to these matters and provided a summary of the legal advice which he had received.

On the basis that the Mayor had provided both the Chief Executive Officer's Performance Review Committee and the Council with the advice verbally, the matter related to ensuring the Mayor complied with Section 58 of the *Local Government Act 1999* and that the advice related to matters pertaining to Cr Sims, a copy of the legal advice was not provided to Elected Members.

At the time of the meeting, Cr Patterson withdrew the Notice of Motion.

11. STAFF REPORTS

Section 1 – Strategy & Policy

Reports

11.1 REVIEW OF POLICIES

REPORT AUTHOR: General Manager, Governance & Community Affairs
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA61370
ATTACHMENTS: A - J

PURPOSE OF REPORT

The purpose of the report is to present a number of policies which have been reviewed to the Council for adoption.

BACKGROUND

Policies, Codes of Practice and Codes of Conduct are important components of a Council's governance framework. Policies set directions, guide decision making and inform the community about how the Council will normally respond and act to various issues.

When a decision is made in accordance with a Council policy or code, both the decision-maker and the community can be assured that the decision reflects the Council's overall aims and principles of action.

Accordingly, policies and codes can be used in many contexts to:

- reflect the key issues and responsibilities facing a Council;
- provide a policy context and framework for developing more detailed objectives and management systems;
- guide staff and ensure consistency in delegated and day-to-day decision-making; and
- clearly inform the community of a Council's response to various issues.

It is therefore important that policies remain up to date and consistent with any position adopted by the Council.

A review of all Council Policies commenced in 2018 and as a result all Policies have been reviewed, a number of new Policies have been adopted and a number of Policies have been revoked.

A list of all Council Policies is contained within **Attachment A**.

The following Policies are now scheduled to be reviewed:

1. Civic Recognition (**Attachment B**);
2. Community Gardens Policy (**Attachment C**);
3. Naming of Roads and Public Places (**Attachment D**);
4. Order Making (**Attachment E**);
5. Plaques, Monuments & Memorials (**Attachment F**);
6. Public Interest Disclosure (**Attachment G**);
7. Removal and Impounding of Vehicles (**Attachment H**);
8. Temporary Road Closures for Non-Council Initiated Road Events; (**Attachment I**); and
9. Tennis Facilities (**Attachment J**).

Where required, the Policies have been amended to ensure that the Policies meet current standards and reflect the Council's position on the respective matters.

RELEVANT STRATEGIC DIRECTIONS & POLICIES

Not Applicable.

DISCUSSION

Civic Recognition Policy

The *Civic Recognition Policy* is an existing policy.

The Council recognises outstanding achievements, voluntary contributions and significant milestones of members of the community, local groups and/or organisations and businesses in a variety of ways, including the Honorary Freedom of the City Award, Australia Day Awards, civic receptions, etc.

The draft *Civic Recognition Policy* has been prepared to formally identify and consolidate the various forms of Civic Recognition which are provided by the Council.

The existing Policy is proposed to be retained and as such it has been reviewed. A minor amendment has been made to the Policy to update the title of the contact officer for the Policy.

A copy of the draft *Civic Recognition Policy* is contained within **Attachment B**.

Community Gardens Policy

The *Community Gardens Policy* is an existing Policy.

The draft *Community Gardens Policy* recognises the benefits of community gardens and sets out the requirements for the establishment of a community garden on Council owned land.

Since the adoption of the Policy in 2008, the Council has supported the establishment of the Linde Community Garden at Linde Reserve, Stepney.

The existing Policy is proposed to be retained and as such it has been reviewed. A minor amendment has been made to the Policy to update the title of the contact officer for the Policy.

A copy of the draft *Community Gardens Policy* is contained within **Attachment C**.

Naming of Roads and Public Places Policy & Procedure

The *Naming of Roads and Public Places Policy & Procedure* is an existing policy.

Section 219(5) of the *Local Government Act 1999* (the Act), requires the Council to adopt a policy relating to the assignment of names to roads and public places within the City. This includes public roads which are vested in the Council, private roads and any place to which the public has access (for instance, reserves, parks, Council-owned facilities and buildings and other community land).

The *Naming of Roads and Public Places Policy & Procedure* outlines when and how the Council will assign or change the name of a road or public place in the City (as required by the Act, or otherwise), and provides guidelines to assist the Council in the name selection process.

The draft Policy has been prepared on the basis of the Local Government Association of South Australia's Road and Public Place Names Model Policy, which is broadly utilised across Local Government.

Whilst the Act does not require a Council to undertake community consultation regarding the *Naming of Roads and Public Places Policy*, Section 219 (7) of the Act sets out the following process following the adoption the Policy:

- (7) *Notice of the adopting or altering of a policy under this section must be published—*
 - (a) *in the Gazette; and*
 - (b) *in a newspaper circulating within the area of the council; and*
 - (c) *on a website determined by the chief executive officer.*

The existing Policy is proposed to be retained and as such it has been reviewed. Minor amendments have been made to the Policy (to reflect changes in legislation, the change in the relevant State Government department following the recent State Government election and to update the title of the contact officer for the Policy).

As the amendments to the Policy are minor and do not change the intent or the process associated with Naming of Roads and Public places, the provisions under Section 219 (7) of the Act do not apply in these circumstances.

A copy of the new *Naming of Roads and Public Places Policy & Procedure* is contained within **Attachment F**.

Order Making Policy

The *Order Making Policy* is an existing policy.

Section 254 of the *Local Government Act 1999* (the Act), provides that the Council may order specified persons to do or refrain from doing, a thing under certain circumstances, which includes matters associated with the following:

- unsightly land;
- hazards on land adjoining a public place;
- inappropriate use of a vehicle;
- certain roadworks and/or maintenance; etc

The *Order Making Policy* sets out the guiding principles, process and procedure that the Council will follow in the making of orders in accordance with Section 259 of the Act.

The existing Policy is proposed to be retained and as such it has been reviewed. A minor amendment has been made to the Policy to update the title of the contact officer for the Policy.

A copy of the draft *Order Making Policy* is contained within **Attachment E**.

Plaques, Monuments & Memorials Policy

The *Plaques, Monuments & Memorials Policy* is an existing policy.

The *Plaques, Monuments & Memorials Policy* provides a clear and transparent framework to deal with the approval, placement, installation, alteration, maintenance and removal of a range of plaques, monuments and memorials that commemorate an event, organisation, group or person in the City of Norwood Payneham & St Peters.

The Policy applies to all new plaques, monuments and memorials which are proposed to be placed on land which is owned or managed by the Council.

The Policy sets out the principles which will apply when considering applications for the installation of plaques from citizens and specifies that applications will only be considered for the placement of plaques on new infrastructure (ie seating/benches and/or picnic tables), which is paid for by the applicant.

The Policy therefore does not permit the placement of plaques on existing infrastructure. This position has been taken on the basis that existing Council owned assets have been “paid for” by all ratepayers of the City and therefore the asset should not be dedicated to one person/group only.

Whilst an applicant could pay for the existing asset, this is not practical in terms of managing this process on the basis of applying a realistic dollar value to an asset that has been in situ for some time, (ie at what point does the asset have a 50% dollar value and what point does the asset have no dollar value?). The practical application of this approach would be very difficult to manage in terms of the operation of the Policy.

Therefore, as stated above and in the interests of equity, plaques will only be approved to be placed on infrastructure which the applicant agrees to fund.

For the purposes of the Policy, monuments are subject to the same principles and criteria as memorials and requires applicants to work collaboratively with the Council on development of their concept, including the design, durability, environmental sustainability, risk mitigation and maintenance plans.

The Policy also ensures that the Council has absolute discretion in terms of any requests which it receives to assist with funding any applications for monuments and memorials.

The existing Policy is proposed to be retained and as such it has been reviewed. A minor amendment has been made to the Policy to update the title of the contact officer for the Policy.

A copy of the draft *Plaques, Monuments & Memorials Policy* is contained within **Attachment F**.

Public Interest Disclosure Policy & Procedure

The *Public Interest Disclosure Policy & Procedure* is an existing policy.

The *Public Interest Disclosure Policy & Procedure* outlines the processes and procedures for the making of 'appropriate disclosures' of 'public interest information' by informants under the *Public Interest Disclosure Act 2018* (the Act), and the obligations on the Council (and Elected Members, Council staff, Volunteers and contractors engaged by the Council), as 'relevant authorities' when receiving this information. The *Public Interest Disclosure Policy & Procedure*, also outlines the protections available to informants, including the provisions relating to confidentiality and protection against victimisation.

The existing Policy is proposed to be retained and as such it has been reviewed. Minor amendments have been made to the Policy to update the title and contact details of the contact officer for the Policy.

A copy of the draft *Public Interest Disclosure Policy & Procedure* is contained within **Attachment G**.

Removal and Impounding of Vehicles Policy

The *Removal and Impounding of Vehicles Policy* is an existing policy.

The requirement for this Policy was due to investigations undertaken in 2010, by the Acting Ombudsman into regulatory issues associated with abandoned vehicles.

As a result of the investigation and the recommendations which were made by the Acting Ombudsman, Councils and the Local Government Association of SA, prepared draft policy templates and procedural templates dealing with Section 237 of the *Local Government Act 1999* and the *Unclaimed Goods Act 1987*.

In response, the Council approved a number of specific delegations relating to Section 237 of the *Local Government Act 1999* and the *Unclaimed Goods Act 1987*. These delegations related to specifically addressing the recommendations which were made by the Acting Ombudsman.

In addition, a policy and procedure relating to Section 237 and the *Unclaimed Goods Act 1987*, was prepared and adopted by the Council.

Whilst on the surface, the "step-by-step" process outlined in Section 237 appears straight forward, there are a number of details (ie policy and administrative practice and procedures) which need to be factored into the process. Whilst one could assume that the application of the provisions of Section 237, together with the application of common sense and good administrative principles, should be fairly straight forward, this is not the case.

As such, the *Removal and Impounding of Vehicles Policy*, the *Unclaimed Goods Procedure* and the *Procedure for the Removal of Vehicles on a Public Road, Public Place or Local Government Land*, were formalised. The Procedures are essentially administrative processes and practice, however, the Policy document must be approved by the Council, as it provides the over-arching framework for the administration of Section 237 of the *Local Government Act 1999*.

The Policy is self-explanatory and sets out the Council's position in respect to how it will deal with vehicles which are reported as being left for more than 24 hours on a public road, public place or Local Government land.

The principle threshold issue, however, which the Council must note is that simply because a vehicle has been left for more than 24 hours on a public road, public place or Local Government land, does not mean that the vehicle is "abandoned". As such, the Council must enact a process as set out in the Policy to determine whether the vehicle is in fact "abandoned". In short, it is simply not a matter of towing a vehicle following the receipt of a complaint. All attempts must be made to identify and contact the owner of a vehicle, determine the status of why the vehicle has been left in a particular location and then seek to have the vehicle moved by the owner.

The Policy seeks to take a common sense approach to what is a fairly complex and time consuming process.

At the same time, it must be remembered that on most occasions, both the owner of the vehicle and the complainant are citizens of this City and the Council must therefore act with proportionality, transparency and consistency.

The existing Policy is proposed to be retained and as such it has been reviewed. Minor amendments have been made to the Policy to update the relevant staff members responsible for various elements of the Policy.

A copy of the *Removal and Impounding of Vehicles Policy* is contained within **Attachment H**.

Temporary Road Closures for Non-Council Initiated Road Events Policy

The *Temporary Road Closures for Non-Council Initiated Events Policy* is an existing policy.

Whilst most non-Council initiated events are reasonably self-sufficient, the Council does receive requests from time to time from external event organisers, to assist with road closures both in the form of an approving authority and as a facilitator.

The Policy provides clarity, consistency and transparency in respect to responsibilities associated with temporary road closures associated with non-Council initiated events.

The existing Policy is proposed to be retained and as such it has been reviewed. Only minor amendments have been made to the draft Policy.

A copy of the draft *Temporary Road Closures for Non-Council Initiated Road Events Policy* is contained within **Attachment I**.

Tennis Facilities Policy

The *Tennis Facilities Policy* is an existing Policy.

The *Tennis Facilities Policy* was originally developed to consolidate the different approaches which were used by the former Councils (Kensington & Norwood, Payneham and St Peters), and to formalise this Council's approach regarding a range of issues relating to the provision of tennis facilities, in particular the construction and/or reconstruction of tennis facilities.

The *Tennis Facilities Policy* was subsequently adopted in 2005 and has formed the basis for the upgrade of tennis courts at the Holmesdale, Cruikshank, Trinity Gardens, Norwood and East Adelaide/Payneham tennis clubs.

The *Tennis Facilities Policy* provides clear direction in respect to the provision, maintenance, management and community access to tennis facilities within the City and clarifies the contribution by tennis clubs to the management of these facilities.

The existing Policy is proposed to be retained and as such it has been reviewed. A minor amendment has been made to the Policy to update the title of the contact officer for the Policy.

A copy of the draft *Tennis Facilities Policy* is contained in **Attachment J**.

OPTIONS

As the draft Policies contained within Attachments B - J have been in place for some time and have not been the subject of major change and/or are required by legislation without a requirement for consultation, it is recommended that the Council adopts the Policies.

CONCLUSION

Pursuant to the principles of administrative law, a Council should not deviate from an adopted policy without a clear, substantiated reason for doing so.

COMMENTS

As the changes to the policies reflect minor amendments and those changes have not altered the intent or key requirements of the policies and there is no legislative requirement to consult in respect to the attached draft policies, it is recommended that the Council adopts the draft Policies.

RECOMMENDATION

That having conducted a review of the following policies, the identified (minor) amendments set out in the policies be adopted and included therein:

1. Civic Recognition Policy (**Attachment B**);
 2. Community Gardens Policy (**Attachment C**);
 3. Naming of Roads and Public Places Policy (**Attachment D**);
 4. Order Making Policy (**Attachment E**);
 5. Plaques, Monuments & Memorials Policy (**Attachment F**);
 6. Public Interest Disclosure Policy (**Attachment G**);
 7. Removal and Impounding of Vehicles Policy (**Attachment H**);
 8. Temporary Road Closures for Non-Council Initiated Road Events Policy; (**Attachment I**); and
 9. Tennis Facilities Policy (**Attachment J**).
-

Cr Minney moved:

That having conducted a review of the following policies, the identified (minor) amendments set out in the policies be adopted and included therein:

1. Civic Recognition Policy (**Attachment B**);
2. Community Gardens Policy (**Attachment C**);
3. Naming of Roads and Public Places Policy (**Attachment D**);
4. Order Making Policy (**Attachment E**);
5. Plaques, Monuments & Memorials Policy (**Attachment F**);
6. Public Interest Disclosure Policy (**Attachment G**);
7. Removal and Impounding of Vehicles Policy (**Attachment H**);
8. Temporary Road Closures for Non-Council Initiated Road Events Policy; (**Attachment I**); and
9. Tennis Facilities Policy (**Attachment J**).

Seconded by Cr Moorhouse and carried unanimously.

Section 2 – Corporate & Finance
Reports

11.2 MONTHLY FINANCIAL REPORT – AUGUST 2022

REPORT AUTHOR: Financial Services Manager
GENERAL MANAGER: General Manager, Corporate & Community Services
CONTACT NUMBER: 8366 4585
FILE REFERENCE: qA487800
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of this report is to provide the Council with information regarding its financial performance for the year ended August 2022.

BACKGROUND

Section 59 of the *Local Government Act 1999* (the Act), requires the Council to keep its resource allocation, expenditure and activities and the efficiency and effectiveness of its service delivery, under review. To assist the Council in complying with these legislative requirements and the principles of good corporate financial governance, the Council is provided with monthly financial reports detailing its financial performance compared to its Budget.

RELEVANT STRATEGIC DIRECTIONS AND POLICIES

Not Applicable.

FINANCIAL AND BUDGET IMPLICATIONS

Financial sustainability is as an ongoing high priority for the Council. The Council adopted a Budget which forecasts an Operating Surplus of \$861,695 for the 2022-2023 Financial Year.

For the period ended August 2022, the Council's Operating Surplus is \$2,055,000 against a budgeted Operating Surplus of \$1,905,000, resulting in a favourable variance of \$150,000.

EXTERNAL ECONOMIC IMPLICATIONS

Not Applicable.

SOCIAL ISSUES

Not Applicable.

CULTURAL ISSUES

Not Applicable.

ENVIRONMENTAL ISSUES

Not Applicable.

RESOURCE ISSUES

Not Applicable.

RISK MANAGEMENT

Not Applicable.

CONSULTATION

- **Elected Members**
Not Applicable.
- **Community**
Not Applicable.
- **Staff**
Responsible Officers and General Managers.
- **Other Agencies**
Not Applicable.

DISCUSSION

For the period ended August 2022, the Council's Operating Surplus is \$2,055,000 against a budgeted Operating Surplus of \$1,905,000, resulting in a favourable variance of \$150,000.

Employee expenses are \$403,000 favourable to the adopted Budget. The driving factors behind this variance are as follows:

- budgeted staff positions that were vacant at the commencement of the financial year (\$150,000). Some of these positions are now filled and others are currently undergoing recruitment. Where required, activities and functions have been back filled by utilisation of temporary staff or consultants;
- timing variance is related to Annual Leave being taken as compared to the Budget expectations; and
- additional staffing hours worked to backfill staff who have taken Sick Leave due to illness.

There are no individually significant variances to the Budget. The variances are primarily due to expenditure timings compared to actual expenditure which is not uncommon for the beginning of the Financial Year. The Monthly Financial report is contained in **Attachment A**.

OPTIONS

Not Applicable.

CONCLUSION

Not Applicable.

COMMENTS

Not Applicable.

RECOMMENDATION

That the August 2022 Monthly Financial Report be received and noted.

Cr Moore moved:

That the August 2022 Monthly Financial Report be received and noted.

Seconded by Cr Whittington and carried unanimously.

**Section 3 – Governance & General
Reports**

11.3 CHIEF EXECUTIVE OFFICER'S REPORT - AMENDMENT OF COUNCIL DECISION - PROVISION OF LEGAL ADVICE - CR SCOTT SIMS

REPORT AUTHOR: Acting Chief Executive Officer
GENERAL MANAGER: Not Applicable
CONTACT NUMBER: 8366 4539
FILE REFERENCE: qA1055
ATTACHMENTS: Nil

PURPOSE

Regulation 21(1) of the *Local Government (Procedures at Meetings) Regulations 2013* (the Regulations), provides for the Chief Executive Officer to submit a report to the Council recommending the revocation or amendment of a resolution passed since the last General Election of the Council. This is a procedural provision of an administrative nature which operates in the same manner as the Rescission Motion provisions of Regulation 12 of the Regulations, but without the requirement for a Notice of Motion 7 clear days' notice before the meeting at which it is to be considered.

Accordingly, the Chief Executive Officer, by virtue of this report, may recommend to the Council a revocation or amendment of a previous Council decision.

BACKGROUND

At its meeting held on 5 September 2022, the Council considered a report regarding the legal advice which was obtained by Cr Sims from KelledyJones Lawyers in August 2019. The legal advice related to the following:

- Terms of Reference for the Chief Executive Officer's Performance Review Committee;
- the process associated with the Chief Executive Officer's Performance Review; and
- conducting an Organisation Review.

Following consideration of the matter, the Council resolved the following:

1. *That the Council acknowledges the legal advice which has been provided by KelledyJones Lawyers at the request of the General Manager, Governance & Civic Affairs, on behalf of the Council.*
2. *That having considered the legal advice provided to Cr Scott Sims on 2 August 2019, and his actions associated with that advice, the Council censures Cr Sims on the basis that, without Council endorsement, he:*
 - a) *made an unauthorised approach to the Local Government Association of South Australia HR Consulting Services (LG Commercial) in 2019 seeking proposals for both a Chief Executive Officer Performance Review and an Organisational Review; and*
 - b) *sought the proposals for a Chief Executive Officer Performance Review and an Organisational Review from LG Commercial as referred to in Part 1 and in doing so, falsely claimed that he was acting on behalf of and at the request of the Mayor; and*
 - c) *sought to pre-determine the composition of the Chief Executive Officer's Performance Review Committee prior to the matter being formally considered by the Council; and*
 - d) *has made unauthorised approaches to KelledyJones Lawyers between 22 and 30 August 2022 in respect to the Council resolution of 22 August 2022 which required a copy of the legal advice provided to Cr Sims on 2 August 2019 to be provided to the Council; and*
 - e) *has threatened to report Ms Tracey Riddle, of KelledyJones Lawyers, to the Legal Profession Conduct Commission; and*
 - f) *as a consequence of the above actions has brought the Council into disrepute.*

3. *That Cr Sims reimburse the Council all legal costs associated with his unauthorised approaches to KelledyJones Lawyers (between 22 and 30 August 2022), in relation to the Council resolution made on 22 August 2022, with regard to the provision of legal advice obtained by Cr Sims on 2 August 2019.*

In respect to the approach made to LGA Commercial, the Council was advised that “*the Executive Director, LGA Commercial stated that Cr Sims had advised that he was ‘acting on behalf of the Mayor and that the Mayor required the proposal’*”.

Whilst this statement was made by the Executive Director, LGA Commercial, the LGA Commercial staff member who discussed the proposal with Cr Sims advised that Cr Sims stated that “*he was acting on behalf of 8 or 9 Elected Members, that he had been elected as spokesperson for the group and would be meeting with the Mayor to present the proposal*”.

The proposed amendment to the resolution as set out above is therefore to correct the public record in respect to this matter.

The Acting Chief Executive Officer’s Recommendation below, seeks to amend part 2(b) of the resolution which was made by the Council at its meeting held on 5 September 2022, as follows:

- a) *sought the proposals for a Chief Executive Officer Performance Review and an Organisational Review from LGA Commercial as referred to in Part 1 and in doing so, falsely claimed that he was acting on behalf of a group of Elected Members who had elected him as spokesperson for the group; and*

The Recommendation may be resolved by the Council by way of a motion being moved, seconded and passed by a simple majority vote at the meeting.

RECOMMENDATION

That the Council resolution made at its meeting held on 5 September 2022, in respect to the provision of legal advice obtained by Cr Sims be amended as follows:

1. *That the Council acknowledges the legal advice which has been provided by Kelledy Jones Lawyers at the request of the General Manager, Governance & Civic Affairs, on behalf of the Council.*
2. *That having considered the legal advice provided to Cr Scott Sims on 2 August 2019, and his actions associated with that advice, the Council censures Cr Sims on the basis that, without Council endorsement, he:*
 - a) *made an unauthorised approach to the Local Government Association of South Australia HR Consulting Services (LGA Commercial) in 2019 seeking proposals for both a Chief Executive Officer Performance Review and an Organisational Review; and*
 - b) *sought the proposals for a Chief Executive Officer Performance Review and an Organisational Review from LGA Commercial as referred to in Part 1 and in doing so, falsely claimed that he was acting on behalf of a group of Elected Members who had elected him as spokesperson for the group; and*
 - c) *sought to pre-determine the composition of the Chief Executive Officer’s Performance Review Committee prior to the matter being formally considered by the Council; and*
 - d) *has made unauthorised approaches to KelledyJones Lawyers between 22 and 30 August 2022 in respect to the Council resolution of 22 August 2022 which required a copy of the legal advice provided to Cr Sims on 2 August 2019 to be provided to the Council; and*
 - e) *has threatened to report Ms Tracey Riddle, of KelledyJones Lawyers, to the Legal Profession Conduct Commission; and*
 - f) *as a consequence of the above actions has brought the Council into disrepute.*

3. *That Cr Sims reimburse the Council all legal costs associated with his unauthorised approaches to KelledyJones Lawyers (between 22 and 30 August 2022), in relation to the Council resolution made on 22 August 2022, with regard to the provision of legal advice obtained by Cr Sims on 2 August 2019.*
-

Cr Sims declared a conflict of interest in this Item, as he is the subject of the matter being discussed and left the meeting at 7.17pm.

Cr Duke moved:

That the Council resolution made at its meeting held on 5 September 2022, in respect to the provision of legal advice obtained by Cr Sims be amended as follows:

1. *That the Council acknowledges the legal advice which has been provided by KelledyJones Lawyers at the request of the General Manager, Governance & Civic Affairs, on behalf of the Council.*
2. *That having considered the legal advice provided to Cr Scott Sims on 2 August 2019, and his actions associated with that advice, the Council censures Cr Sims on the basis that, without Council endorsement, he:*
 - a) *made an unauthorised approach to the Local Government Association of South Australia HR Consulting Services (LGA Commercial) in 2019 seeking proposals for both a Chief Executive Officer Performance Review and an Organisational Review; and*
 - b) *sought the proposals for a Chief Executive Officer Performance Review and an Organisational Review from LGA Commercial as referred to in Part 1 and in doing so, falsely claimed that he was acting on behalf of a group of Elected Members who had elected him as spokesperson for the group; and*
 - c) *sought to pre-determine the composition of the Chief Executive Officer's Performance Review Committee prior to the matter being formally considered by the Council; and*
 - d) *has made unauthorised approaches to KelledyJones Lawyers between 22 and 30 August 2022 in respect to the Council resolution of 22 August 2022 which required a copy of the legal advice provided to Cr Sims on 2 August 2019 to be provided to the Council; and*
 - e) *has threatened to report Ms Tracey Riddle, of KelledyJones Lawyers, to the Legal Profession Conduct Commission; and*
 - f) *as a consequence of the above actions has brought the Council into disrepute.*
3. *That Cr Sims reimburse the Council all legal costs associated with his unauthorised approaches to KelledyJones Lawyers (between 22 and 30 August 2022), in relation to the Council resolution made on 22 August 2022, with regard to the provision of legal advice obtained by Cr Sims on 2 August 2019.*

Seconded by Cr Minney and carried unanimously.

Cr Sims returned to the meeting at 7.19pm.

11.4 ELECTION FOR THE POSITION OF PRESIDENT OF THE LOCAL GOVERNMENT ASSOCIATION OF SOUTH AUSTRALIA

REPORT AUTHOR: General Manager, Governance & Civic Affairs
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA2219
ATTACHMENTS: A - B

PURPOSE OF REPORT

The purpose of this report is to advise the Council of the postal ballot required to be undertaken for the position of President of the Local Government Association of South Australia (LGA) and determine the Council's preferred candidate for the position.

BACKGROUND

In July 2022, the LGA called for nominations for the position of President of the LGA. The LGA has now forwarded correspondence to the Council advising that the LGA has received five (5) nominations for the position of President of the LGA.

In accordance with the LGA Constitution, the LGA is required to conduct a postal ballot to determine the successful candidate for the position.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

DISCUSSION

The role of the President of the LGA is to:

- provide leadership to the LGA Board of Directors;
- chair meetings of the LGA Board of Directors;
- preside at meetings of the LGA (ie Ordinary Meetings, Annual General Meetings; etc);
- to act as the principal spokesperson of the LGA; and
- represent the LGA externally to government, stakeholders, etc.

The term of office for the new President is a two (2) year term, commencing from the 2022 LGA Annual General Meeting (ie 28 October 2022), and concluding at the 2024 LGA Annual General Meeting.

The LGA *Constitution and Rules* stipulate a long-standing protocol that the position of President alternates between metropolitan councils (now referred to as GAROC), and rural councils (now referred to as SAROC), every two (2) years.

As the current President, Mayor Angela Evans is from a metropolitan council (ie, the City of Charles Sturt), nominees were invited from eligible rural councils, (ie members of SAROC).

The five (5) nominees for the Position, in the order as set out on the Ballot Paper, are:

- Mayor Keith Parkes, Alexandrina Council;
- Mayor Caroline Phillips, District Council of Karoonda East Murray;
- Mayor Brett Benbow, Port Augusta City Council;
- Mayor Bill O'Brien, Light Regional Council; and
- Mayor Erika Vickery, Naracoorte Lucindale Council.

A copy of the Ballot Paper and Candidate Information for each Candidate is contained within **Attachment A**.

In accordance with the LGA Constitution, the Council must determine its preferred Candidate by marking the Ballot Paper with a cross, ie "X", in the square opposite the name of the Candidate the Council wishes to elect.

Two (2) of the five (5) Candidates have written to the Council seeking the Council's support of their nomination for the position of President of the LGA:

- Mayor Erika Vickery OAM, Naracoorte Lucindale Council; and
- Mayor Bill O'Brien, Light Regional Council.

A copy of the correspondence received, as listed above, is contained within **Attachment B**.

The Ballot Paper must be forwarded to the Local Government Association to be received by the Returning Officer no later than 5.00pm on Monday, 17 October 2022.

RECOMMENDATION

The Council determines the following candidate for the position of President of the Local Government Association of South Australia:

- -----
-

Cr Sims moved:

The Council determines the following candidate for the position of President of the Local Government Association of South Australia:

- *Mayor Erika Vickery OAM, Naracoorte Lucindale Council.*

Seconded by Cr Granozio and carried unanimously.

11.5 ELECTION OF MEMBERS OF THE LOCAL GOVERNMENT ASSOCIATION OF SOUTH AUSTRALIA GREATER ADELAIDE REGIONAL ORGANISATION OF COUNCILS (GAROC)

REPORT AUTHOR: General Manager, Governance & Civic Affairs
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA59226
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of the report is to advise the Council of the postal ballot required to be undertaken in order to determine the membership of the Local Government Association of South Australia Greater Adelaide Regional Organisation of Councils (the GAROC).

BACKGROUND

In July 2022, the Local Government Association of South Australia (LGA), forwarded correspondence to the Council inviting nominations for appointment of Members to the Greater Adelaide Regional Organisation of Councils (GAROC), which is represented by the following councils:

- Adelaide Hills Council;
- City of Burnside;
- Campbelltown City Council;
- City of Charles Sturt;
- Town of Gawler;
- City of Holdfast Bay;
- City of Marion;
- City of Mitcham;
- City of Norwood Payneham & St Peters;
- City of Onkaparinga;
- City of Playford;
- City of Port Adelaide Enfield;
- City of Prospect;
- City of Salisbury;
- City of Tea Tree Gully;
- City of Unley;
- Town of Walkerville; and
- City of West Torrens.

Following consideration of the matter, the Council declined the opportunity to forward a nomination to the LGA for appointment to the GAROC.

Notwithstanding this, the LGA has received four (4) nominations for the two (2) positions allocated to the East Regional Grouping of Councils for appointment to the GAROC.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

DISCUSSION

The role of the GAROC is to provide regional advocacy, policy initiation and review, leadership, engagement and capacity building in the region(s).

At the close of nominations the LGA received a total of four (4) nominations from councils within the East Regional Grouping of Councils for the two (2) positions. In accordance with the Terms of Reference for the GAROC an election now needs to be conducted to determine the successful candidates to be appointed to the GAROC. The two (2) candidates with the highest number of votes will be appointed to the GAROC.

The term of the GAROC members will commence at the conclusion of the 2022 LGA Annual General Meeting which will be held on 28 October 2022.

The Council must determine by resolution which two (2) candidates it wishes to elect and the voting must be recorded on the Ballot Paper. The Ballot Paper must be returned to the LGA by 17 October 2022.

The nominees, as they appear on the Ballot Paper are as follows:

- Mayor Elizabeth Fricker, Town of Walkerville;
- Mayor Jan-Claire Wisdom, Adelaide Hills Council;
- Cr Anna Leombruno, Campbelltown City Council; and
- Cr Don Palmer, City of Unley.

A copy of the Ballot Paper and the Candidate Information for each Candidate is contained within **Attachment A**.

RECOMMENDATION

The Council determines the following candidates in order of preference for appointment to the Greater Adelaide Regional Organisation of Councils:

1. -----
 2. -----
-

Call for Nominations

The Mayor called for nominations for appointment to the Greater Adelaide Regional Organisation of Councils (GAROC).

The following nominations were received:

- Cr Anna Leombruno, Campbelltown City Council;
- Cr Don Palmer, City of Unley; and
- Mayor Jan-Claire Wisdom, Adelaide Hills Council.

Voting by Secret Ballot

A secret ballot was conducted. The General Manager, Governance & Civic Affairs was appointed as Returning Officer for the counting of votes.

Completion of Counting of Votes by Secret Ballot

The votes were counted and the results were declared to the Council as follows:

- Cr Anna Leombruno, Campbelltown City Council (11 votes);
- Mayor Jan-Claire Wisdom, Adelaide Hills Council (8 votes); and
- Cr Don Palmer, City of Unley (7 votes).

Cr Sims moved:

The Council determines the following candidates in order of preference for appointment to the Greater Adelaide Regional Organisation of Councils (GAROC):

- 1. Mayor Jan-Claire Wisdom, Adelaide Hills Council; and*
- 2. Cr Anna Leombruno, Campbelltown City Council.*

Seconded by Cr Moorhouse and lost.

Cr Granozio moved:

- 1. Cr Anna Leombruno, Campbelltown City Council; and*
- 2. Mayor Jan-Claire Wisdom, Adelaide Hills Council.*

Seconded by Cr Stock and carried unanimously.

11.6 LOCAL GOVERNMENT FINANCE AUTHORITY (LGFA) - ELECTION FOR THE POSITIONS OF REPRESENTATIVE MEMBERS OF THE BOARD OF TRUSTEES

REPORT AUTHOR: General Manager, Governance & Community Affairs
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA2181
ATTACHMENTS: A - B

PURPOSE OF REPORT

The purpose of the report is to advise the Council of the election process and candidates, who have nominated for election to the positions of Representative Members of the Board of Trustees of the Local Government Finance Authority.

Local Government Finance Authority Board

As Elected Members will recall, in July 2022, the Local Government Finance Authority (LGFA) called for nominations from Councils to fill the two (2) Representative Member positions of the Board of Trustees of the Local Government Finance Authority Board.

The LGFA has received six (6) nominations for the two (2) Representative Member positions on the Board. An election therefore will now be conducted, by postal ballot, to determine the positions.

The six (6) nominees for the two (2) positions, in the order as set out on the Ballot Paper, are:

- Mr Nathan Cunningham, Chief Executive Officer, District Council of Yankalilla;
- Dr Nigel Graves, Manager, Finance, Light Regional Council;
- Mr Mark Gray, Manager, Finance, City of Port Adelaide Enfield;
- Ms Annette Martin, Manager, Financial Services, City of Charles Sturt;
- Mr Michael Sedgman, Chief Executive Officer, Rural City of Murray Bridge; and
- Cr John Smedley, City of Holdfast Bay.

A copy of the Ballot Paper and Candidate information is contained within **Attachment A**.

Mr Michael Sedgman, Chief Executive Officer, Rural City of Murray Bridge (one (1) of the six (6) Candidates), has written to the Council seeking the Council's support of his nomination for appointment to the LGFA Board.

A copy of the correspondence received, as listed above, is contained within **Attachment B**.

In order to comply with the Rules of the Authority, the casting vote of the Council must be conducted as follows:

1. The voting must be on the official ballot paper; and
2. The Council, must by resolution, determine which candidates (being not more than two (2)) they wish to vote for.

All votes are to be forwarded to the Returning Officer by Friday, 14 October 2022.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

RECOMMENDATION

That the Council determines:

1. _____; and
2. _____

as its preferred candidates for the Representative Members for the Board of Trustees of the Local Government Finance Authority.

Cr Minney moved:

That the Council determines:

1. *Mr Michael Sedgman; and*
2. *Mr John Smedley*

as its preferred candidates for the Representative Members for the Board of Trustees of the Local Government Finance Authority.

Seconded by Cr Dottore and carried unanimously.

11.7 REVIEW OF CONFIDENTIAL ITEMS

REPORT AUTHOR: General Manager, Governance & Civic Affairs
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA65013
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of the report is to present information to the Council regarding the review of the Confidential Items.

BACKGROUND

In accordance with the *Local Government Act 1999* (the Act), Council (and Committee) meetings are open to the public and attendance is encouraged and welcomed.

There are, however, times where the Council (or the Committee), believes it is necessary in the broader community interest to exclude the public from the discussion of a particular matter in accordance with Section 90(3) of the Act.

The public will only be excluded when the need for confidentiality outweighs the principle of open decision making.

In addition to the above, the Act requires the Council to specify the duration of the order (ie determine a suitable period for which the item will remain confidential), and either impose a “release” date or event which will trigger the release of the item or a period after which the Council will review the order and determine if in fact the item should remain confidential.

In accordance with the Act, a review of the Council’s Confidential Items as at 30 June 2022, has been undertaken. A summary of all Confidential Items is set out in the Register of Confidential Items which details the date of the order, the grounds upon which the order was made and whether or not the document has become public by virtue of the resolution.

A copy of the Register of Confidential Items is contained within **Attachment A**.

RELEVANT STRATEGIC DIRECTIONS & POLICIES

Not Applicable.

DISCUSSION

A review of the Confidential Items as at 30 June 2022 has been undertaken.

The Council’s last review of the Confidential Items was conducted in February 2022 for the period ending 31 December 2021. A total of 23 items have been considered by the Council in “camera” since that time and therefore, these items have been included in the Register of Confidential Items.

22 items are no longer confidential by virtue of the Council’s original resolution which specified a time and/or an event to trigger the release of the item. The details of these items are contained in Attachment A.

There are no items which require the Council’s consideration at this time in terms of whether the Council wishes to release the item or determine that the item should remain confidential, in accordance with the Act, on the basis that the Council has determined that the confidential items as set out in Attachment A are confidential and the Council has determined by virtue of the Council’s original resolution either a specified a time and/or an event to trigger the release of the items.

OPTIONS

The annual review in accordance with Section 91(9) of the Act is simply an administrative review. This does not mean that every confidentiality order needs to be remade. The only orders that need to be remade are those where the existing order is due to expire and the documents have been assessed against the relevant ground contained in Section 90(3) and determined to be required to remain confidential.

This report, therefore, is presented to the Council for information purposes only.

CONCLUSION

The review of the Council's confidentiality orders ensures compliance with the legislative requirements as set out in Sections 90 and 91 of the *Local Government Act 1999*.

COMMENTS

Nil.

RECOMMENDATION

That the report be received and noted.

Cr Sims moved:

That the report be received and noted.

Seconded by Cr Duke and carried unanimously.

11.8 CODE OF CONDUCT MATTER

REPORT AUTHOR: Manager, Governance & Legal
GENERAL MANAGER: General Manager, Governance & Civic Affairs
CONTACT NUMBER: 8366 4626
FILE REFERENCE: qA99339
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of this report is to inform the Council of the outcome of the investigation into the conduct of Councillor Fay Patterson for alleged breaches of Part 2 of the *Code of Conduct for Council Members*.

BACKGROUND

This report contains information regarding the complaints against Councillor Fay Patterson (Cr Patterson) under the *Code of Conduct for Council Members* (the Code). In accordance with the Council's *Code of Conduct for Council Members – Complaint Handling Procedure* (the Procedure), the complaints were referred to an external investigator for an investigation into the alleged breaches of the Code.

Clause 2.24 of the Code requires a breach of the Behavioural Code to be subject of a report to a public meeting of the Council.

DISCUSSION

On 15 July 2022, Mayor Robert Bria (the complainant) lodged a complaint against Cr Patterson alleging a number of breaches against Part 2 of the Code against Cr Patterson. There was an additional information provided by complainant on 17 July 2022 regarding the alleged breaches by Cr Patterson.

The complaint raised three (3) allegations against Cr Patterson, namely that Cr Patterson:

1. posted information on the *City of Norwood Payneham & St Peters Residents Group Facebook page* (Residents Page) which were discriminatory and harassing towards the complainant. It was further alleged that these Facebook posts had the effect of reviving certain, false allegations of bullying against the complainant, giving the public the impression that the matter had not been addressed.
2. posted two (2) posts on Facebook, one on 9 July 2022 on the Residents Page, and the other on 10 July 2022 on Cr Patterson's Elected Member Facebook page, regarding a Personal Explanation made by Cr Patterson at the Council meeting held on 4 July 2022.
3. made comments at the Council Meeting held on 4 July 2022, during Agenda item 10.2, where she inappropriately criticised certain actions of Council staff, specifically the General Manager, Governance & Civic Affairs.

The complainant alleged that the conduct as set out above, by Cr Patterson breached the following provisions of Part 2 of the Code:

General behaviour

- 2.2 *Act in a way that generates community trust and confidence in the Council.*
- 2.4 *Show respect for others if making comments publicly.*

Relationships with fellow Council Members

- 2.9 *Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.*
- 2.10 *Not bully or harass other Council members.*

Relationship with Council staff

- 2.14 *Refrain from directly or influencing Council staff with respect to the way in which these employees perform their duties.*

An initial assessment of the complaints was undertaken in accordance with the Procedure. It was determined that the complaints raised allegations which *prima facie* related to behaviour that fell under Part 2 of the Code.

The Procedure provides that alleged breaches of Part 2 can be retained by the Council. However, if the assessment of Part 2 breaches cannot be resolved internally, or are not deemed minor in nature, the complaint can be referred for external investigation. As a consequence, the complaints were referred to Mr Michael Kelledy of KelledyJones Lawyers to ensure the investigation was independent and free of bias.

The complainant and Cr Patterson were invited to comment on the allegations and provide further submissions on the draft findings as part of the investigation. This included the opportunity to consider the findings in a draft investigation report before the Final Investigation Report was finalised.

The Final Investigation Report

The Final Investigation Report into the Code of Conduct Complaint against Cr Patterson is contained within **Attachment A**.

The findings of the investigation are that Cr Patterson's conduct breached a number of provisions of Part 2 of the Code and the Council's *Social Media Policy*.

Facebook posts

The investigation found that Cr Patterson's conduct of posting comments on the Residents Page and her Elected Member Facebook page in regards to the complainant, as well as contributing to threads related to her Personal Explanation made at the Council meeting held on 4 July 2022, breached Part 2 of the Code.

The investigation also found that the conduct also breached the Council's *Social Media Policy*, which provides that Council staff and Elected Members must not engage with, share or upload content on social media that is malicious, defamatory or may negatively impact the reputation of another person or organisation, including Council staff and Elected Members.

The findings reiterate that Facebook is **not the forum** to raise and address issues, especially in light of denying recipients procedural fairness. Furthermore, it is not for the public to adjudicate on these matters.

Comments made at the 4 July 2022 Ordinary Council Meeting

The investigation found that the comments made by Cr Patterson at the 4 July 2022 Ordinary Council Meeting breached Part 2 of the Code. The finding was reached on the basis that the criticisms towards staff, particularly the General Manager, Governance & Civic Affairs were entirely unwarranted, unfair and incorrect.

Next Steps

Where a breach of the Code is substantiated, the Council's Procedure provides that a report must be presented to a public meeting of the Council. It is for the Council to determine the appropriate action to take in relation to the matter, including the imposition of any of the sanctions available to the Council.

In accordance with Clause 2.25 of the Code, the Council may, by resolution, take any of the following actions upon a finding that an Elected Member has breached Part 2 of the Code:

- *take no action;*
- *pass a censure motion in respect of the Elected Member;*
- *request a public apology, whether written or verbal;*
- *request the Elected Member to attend training on the specific topic found to have been breached;*
- *resolve to remove or suspend the Elected Member from a position within the Council (not including the Elected Member's elected position on Council); and/or*
- *request the Elected Member to repay monies to the Council (ie legal fees).*

Based on the findings made, the recommendation by KelledyJones Lawyers is for the Council to note that Cr Patterson's conduct breached Part 2 of the Code by:

- posting certain information on the Resident Page in relation to a previous Code of Conduct investigation regarding another Elected Member, that was false, as well as offensive and harassing with respect to the complainant; and
- in making further posts on Facebook and contributing to the thread, on both the Residents Page and Cr Patterson's Elected Member page regarding her Personal Explanation of 4 July 2022, that contained untested, offensive and harassing criticism, directed at the Mayor; and
- making incorrect, unwarranted and unfair criticisms towards Council staff, namely towards the General Manager, Governance & Civic Affairs during a debate on Agenda item 10.2 of the Council Meeting of 4 July 2022.

The specific provisions of the Code breached by Cr Patterson were:

- 2.2 Act in a way that generates community trust and confidence in the Council.*
- 2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.*
- 2.4 Show respect for others if making comments publicly.*
- 2.6 Comply with all Council policies, codes and resolutions.*
- 2.8 Endeavour to provide accurate information to the Council and to the public at all times.*
- 2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.*
- 2.10 Not bully or harass other Council members.*
- 2.11 Not bully or harass Council staff.*

KelledyJones Lawyers recommended that:

- the Council notes the Final Investigation Report;
- Cr Patterson issues the complainant and the General Manager, Governance & Civic Affairs a private written apology within two (2) months of the Council meeting; and
- the Facebook posts subject of the investigation are removed by Cr Patterson or the administrator of the Facebook pages because of the damage to the complainant's election campaign.

Given the significance of the Facebook posts on the reputation of the complainant during the 2022 Local Government Election campaign, the Council may determine to require Cr Patterson to make a verbal public apology to both the complainant and the General Manager, Governance & Civic Affairs at the next Council meeting to be held on 7 November 2022.

OPTIONS

Essentially the Council has three (3) options in respect to this matter.

Option One

The Council can resolve to accept the recommendations by KelledyJones Lawyers.

Option Two

The Council can resolve to accept the recommendation by Council staff for a verbal public apology by Cr Patterson to the complainant and the General Manager, Governance & Civic Affairs by Cr Patterson at the next Council meeting on 7 November 2022.

Option Three

The Council can determine alternative sanctions if the Council determines that this is warranted.

CONCLUSION

In accordance with the Council's *Code of Conduct for Council Members – Complaint Handling Procedure*, the Complainant and Cr Patterson will be formally notified in writing of the outcome of this matter. The Complainant is entitled to refer this matter to the South Australian Ombudsman if they are unsatisfied with the outcome.

COMMENTS

Nil

RECOMMENDATION

1. That the Council notes the Final Investigation Report by KelledyJones Lawyers in respect to the Code of Conduct investigation into Councillor Fay Patterson.
 2. That the Council notes that Councillor Fay Patterson's conduct breached the following provisions of Part 2 of the Code of Conduct for Council Members:
 - 2.2 *Act in a way that generates community trust and confidence in the Council.*
 - 2.3 *Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.*
 - 2.4 *Show respect for others if making comments publicly.*
 - 2.6 *Comply with all Council policies, codes and resolutions.*
 - 2.8 *Endeavour to provide accurate information to the Council and to the public at all times.*
 - 2.9 *Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.*
 - 2.10 *Not bully or harass other Council members.*
 - 2.11 *Not bully or harass Council staff.*
 3. That the Council requires Councillor Fay Patterson to publicly apologise verbally to the Mayor Robert Bria and the General Manager, Governance & Civic Affairs at the Council meeting to be held on 7 November 2022.
 4. That the Council requires Councillor Fay Patterson to remove the Facebook posts and accompanying threads pertaining to a previous Code of Conduct investigation regarding another Elected Member from the *City of Norwood Payneham & St Peters Residents Group Facebook page*.
 5. That the Council requires Councillor Fay Patterson to remove the Facebook posts and subsequent threads pertaining to her Personal Explanation on 4 July 2022 from the *City of Norwood Payneham & St Peters Residents Group Facebook page* and Fay Patterson's Elected Member Facebook page.
-

Cr Sims declared a perceived conflict of interest in this matter on the basis that he is referred to in this matter. Cr Sims advised that he would remain in the meeting and take part in the discussion regarding this matter.

Mayor Bria declared an actual conflict of interest in this matter as he is the complainant in this matter and left the meeting at 7.36pm.

Appointment of Acting Mayor

Cr Sims moved:

That Cr John Minney be appointed Acting Mayor.

Seconded by Cr Granozio and carried unanimously.

Cr Minney assumed the Chair.

Cr Patterson sought leave of the meeting to make a Personal Explanation in regard to Item 11.8. The Acting Mayor declined Cr Patterson's request to make a Personal Explanation.

Cr Patterson declared an actual conflict of interest in this Item, as she is the subject of the matter being discussed and left the meeting at 7.40pm.

The General Manager, Governance & Civic Affairs made a Statement in relation to this matter.

Statement made by Lisa Mara, General Manager, Governance & Civic Affairs

In my capacity as Acting Chief Executive Officer, it is necessary for me to make this statement to you for the purposes of determining whether you wish for me to remain in the Chamber for this Item.

The matter concerns comments which have been made against me specifically and staff generally. Therefore, to avoid even the perception of a conflict and/or any suggestion of bias in this matter, particularly in the preliminary step of undertaking the initial assessment, I delegated responsibility for dealing with the matter to the Council's Manager, Governance & Legal.

This complaint was directed to be dealt with in accordance with the Council's Code of Conduct for Council Members - Complaint Handling Procedure.

Following the initial assessment of the matter, I would then have been able to handle the matter on the basis of simply overseeing the administrative process in accordance with the Council Procedure. However, for the avoidance of any doubts or concerns which could have been raised by the affected parties, I determined to delegate this matter in its entirety.

Whilst I do not have an employee Conflict of Interest (as prescribed by section 120 of the Local Government Act 1999) in this matter, that is, I am not the complainant or the subject of the complaint, I am nevertheless aware of the risk and I am sure that you can appreciate that there is a potential risk that some persons may perceive that I do have a Conflict of Interest, even though an informed, impartial and reasonable person would not.

Therefore, in the interests of maintaining the high standards of governance that I both advocate and operate in accordance with, I propose to leave the meeting whilst the Council considers this Item.

If, however, the Council would prefer that I remain in the meeting, on the basis that I do not have a Conflict of Interest in the matter, I am happy to do so.

At the conclusion of her Statement, the Acting Chief Executive Officer left the meeting at 7.44pm.

Cr Callisto moved:

1. *That the Council notes the Final Investigation Report by KelledyJones Lawyers in respect to the Code of Conduct investigation into Councillor Fay Patterson.*
2. *That the Council notes that Councillor Fay Patterson's conduct breached the following provisions of Part 2 of the Code of Conduct for Council Members:*
 - 2.2 *Act in a way that generates community trust and confidence in the Council.*
 - 2.3 *Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.*
 - 2.4 *Show respect for others if making comments publicly.*
 - 2.6 *Comply with all Council policies, codes and resolutions.*
 - 2.8 *Endeavour to provide accurate information to the Council and to the public at all times.*
 - 2.9 *Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.*
 - 2.10 *Not bully or harass other Council members.*
 - 2.11 *Not bully or harass Council staff.*
3. *That the Council requires Councillor Fay Patterson to publicly apologise verbally to the Mayor Robert Bria and the General Manager, Governance & Civic Affairs at the Council meeting to be held on 7 November 2022.*
4. *That the Council requires Councillor Fay Patterson to remove the Facebook posts and accompanying threads pertaining to a previous Code of Conduct investigation regarding another Elected Member from the City of Norwood Payneham & St Peters Residents Group Facebook page within 7 days from the day of this meeting.*
5. *That the Council requires Councillor Fay Patterson to remove the Facebook posts and subsequent threads pertaining to her Personal Explanation on 4 July 2022 from the City of Norwood Payneham & St Peters Residents Group Facebook page and Fay Patterson's Elected Member Facebook page within 7 days from the day of this meeting.*

The motion lapsed for want of seconder.

Cr Moore moved:

1. *That the Council notes the Final Investigation Report by KelledyJones Lawyers in respect to the Code of Conduct investigation into Councillor Fay Patterson.*
2. *That the Council notes that Councillor Fay Patterson's conduct breached the following provisions of Part 2 of the Code of Conduct for Council Members:*
 - 2.2 *Act in a way that generates community trust and confidence in the Council.*
 - 2.3 *Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.*
 - 2.4 *Show respect for others if making comments publicly.*
 - 2.6 *Comply with all Council policies, codes and resolutions.*
 - 2.8 *Endeavour to provide accurate information to the Council and to the public at all times.*
 - 2.9 *Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.*
 - 2.10 *Not bully or harass other Council members.*
 - 2.11 *Not bully or harass Council staff.*
3. *That the Council requires Councillor Fay Patterson to formally apologise in writing to the Mayor Robert Bria and the General Manager, Governance & Civic Affairs prior to the next Council Meeting on 7 November 2022.*

4. *That the Council requires Councillor Fay Patterson to remove the Facebook posts and accompanying threads pertaining to a previous Code of Conduct investigation regarding another Elected Member from the City of Norwood Payneham & St Peters Residents Group Facebook page within 7 days from the date of this meeting.*
5. *That the Council requires Councillor Fay Patterson to remove the Facebook posts and subsequent threads pertaining to her Personal Explanation on 4 July 2022 from the City of Norwood Payneham & St Peters Residents Group Facebook page and Fay Patterson's Elected Member Facebook page within 7 days from the date of this meeting.*

Seconded by Cr Whittington and carried.

Division

Cr Sims called for a division and the decision was set aside.

Those in favour:

Cr Whittington, Cr Knoblauch, Cr Duke, Cr Dottore, Cr Stock, Cr Granozio, Cr Callisto, Cr Mex and Cr Moore.

Those against:

Cr Sims and Cr Moorhouse.

The Acting Mayor declared the motion carried.

Resumption of Chair

Mayor Bria returned to the meeting at 8.14pm and resumed the Chair.

Cr Patterson returned to the meeting at 8.14pm.

Cr Sims left the meeting at 8.14pm.

The Acting Chief Executive Officer returned to the meeting at 8.15pm.

12. **ADOPTION OF COMMITTEE MINUTES**
Nil

13. **OTHER BUSINESS**
Nil

14. **CONFIDENTIAL REPORTS**

14.1 APPOINTMENT OF INDEPENDENT MEMBERS TO THE EASTERN REGION ALLIANCE (ERA) WATER AUDIT COMMITTEE

RECOMMENDATION 1

That pursuant to Section 90(2) and (3) of the *Local Government Act 1999* the Council orders that the public, with the exception of the Council staff present, be excluded from the meeting on the basis that the Council will receive, discuss and consider:

- (a) information, the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

and the Council is satisfied that, the principle that the meeting should be conducted in a place open to the public, has been outweighed by the need to keep the receipt/discussion/consideration of the information confidential.

RECOMMENDATION 2

Under Section 91(7) and (9) of the *Local Government Act 1999* the Council orders that the report, discussion and minutes be kept confidential until the appointment to the Board has been made.

Cr Moore left the meeting at 8.16pm

Cr Minney moved:

That pursuant to Section 90(2) and (3) of the Local Government Act 1999 the Council orders that the public, with the exception of the Council staff present [Acting Chief Executive Officer, General Manager, Corporate & Community Services, General Manager, Urban Planning & Environment, General Manager, Urban Services, Manager, Governance & Legal, Manager, Communications & Community Relations and Executive Assistant Governance & Civic Affairs], be excluded from the meeting on the basis that the Council will receive, discuss and consider:

- (a) information, the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);*

and the Council is satisfied that, the principle that the meeting should be conducted in a place open to the public, has been outweighed by the need to keep the receipt/discussion/consideration of the information confidential.

Seconded by Cr Knoblauch and carried unanimously.

Cr Sims returned to the meeting at 8.17pm.
Cr Moore returned to the meeting at 8.17pm.
Cr Callisto left the meeting at 8.19pm.

Cr Stock moved:

Under Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the report, discussion and minutes be kept confidential until the appointment to the Board has been made.

Seconded by Cr Patterson and carried unanimously.

14.2 COUNCIL RELATED MATTER

RECOMMENDATION 1

That pursuant to Section 90(2) and (3) of the *Local Government Act 1999*, the Council orders that the public, with the exception of staff present, be excluded from the meeting on the basis that the Council will receive, discuss and consider:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
- (h) legal advice;

and the Council is satisfied that, the principle that the meeting should be conducted in a place open to the public, has been outweighed by the need to keep the receipt/discussion/consideration of the information confidential.

RECOMMENDATION 2

Under Section 91(7) and (9) of the *Local Government Act 1999* the Council orders that the report, discussion and minutes be kept confidential for a period not exceeding five (5) years, after which time the order will be reviewed.

Mayor Bria declared an actual conflict of interest in this matter and left the meeting at 8.21pm.

Appointment of Acting Mayor

Cr Duke moved:

That Cr John Minney be appointed Acting Mayor.

Seconded by Cr Sims and carried unanimously.

Cr Minney assumed the Chair.

Cr Callisto returned to the meeting at 8.22pm.

Cr Patterson declared an actual conflict of interest in this Item and left the meeting at 8.22pm and did not return.

Cr Duke moved:

That pursuant to Section 90(2) and (3) of the Local Government Act 1999, the Council orders that the public, with the exception of staff present [Acting Chief Executive Officer, General Manager, Corporate & Community Services, General Manager, Urban Planning & Environment, General Manager, Urban Services, Manager, Governance & Legal, Manager, Communications & Community Relations and Executive Assistant Governance & Civic Affairs], be excluded from the meeting on the basis that the Council will receive, discuss and consider:

(b) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

(h) legal advice;

and the Council is satisfied that, the principle that the meeting should be conducted in a place open to the public, has been outweighed by the need to keep the receipt/discussion/consideration of the information confidential.

Seconded by Cr Dottore and carried.

Cr Knoblauch moved:

Under Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the report, discussion and minutes be kept confidential for a period not exceeding five (5) years, after which time the order will be reviewed.

Seconded by Cr Dottore and carried unanimously.

Resumption of Chair

Mayor Bria returned to the meeting at 8.25pm and resumed the Chair.

15. CLOSURE

There being no further business, the Mayor declared the meeting closed at 8.25pm.

Mayor Robert Bria

Minutes Confirmed on _____
(date)