

REF NO: GC100712F02

MINUTES OF

CONFIDENTIAL ITEMS

8.19pm the meeting went into confidence

Legal Advice

Ref No: GC100712F02

Moved Councillor Habib, Seconded Councillor Bouwens that Council:

Moved Councillor Connor, Seconded Councillor Speirs that the motion be put.

Carried

- 1) Receive and note the legal advice provided by EMA Legal.
- 2) That Council, after reviewing the advice, acknowledges the investigations and determinations of the Ombudsman, the LGA Mutual Liability Scheme and the Anti-Corruption Branch of SAPOL. Such determinations indicated that no maladministration, malfeasance, breach of the Local Government Act (SA) 1999, or breach of the Criminal Law Consolidation Act has occurred in this matter.
- 3) Further to the above, after reviewing the advice, Council resolves there is no basis for an assertion of a Code of Conduct breach, policy breach or other alleged negligent conduct by the CEO or any other employee of Council in this matter, and on this basis, resolves that no further action be taken to initiate an investigation (by private investigator or otherwise) into allegations raised by Mr and Mrs Lindner against the Chief Executive Officer, or any other employee of Council, as detailed in the two letters from Mr and Mrs Lindner of 24 April 2012.
- 4) In resolving the above, the Council concurs with the Ombudsman's view that sufficient of the public resources have been expended in conflict resolution for this matter.
- 5) That Council communicate its decision to the Chief Executive Officer (and other staff impacted by Mr and Mrs Lindner's complaints) and provide the Chief Executive with such resources as he may require to minimize any or any further risks to the health or safety of any employee of Council who may receive, or be likely to receive, further correspondence or contact from Mr and/or Mrs Lindner.
- 6) The Council take such reasonable measures as it may be advised to take from time to time, to minimize any or any further risks to the health or safety of the

Chief Executive Officer to the extent he may receive, or be likely to receive, further correspondence or contact from Mr and/or Mrs Lindner.

- 7) Should the CEO wish to take advice and or action in the form of a written response to Mr & Mrs Lindner Council will support this act by making a contribution to the CEO's legal costs for a maximum period of 1.5 hours together with such other support as Council may be advised as appropriate.
- 8) Prior to any written response to Mr & Mrs Lindner (if any) the Mayor and Deputy Mayor will review such correspondence to ensure the appropriate balance is achieved between support for the CEO and the legitimate care for the wellbeing of Council's residents.
- 9) That the Mayor write to Mr and Mrs Lindner advising:
 - a. that the matters the subject of their complaint, as concerns everything aside from the Code of Conduct issues have been the subject of complete and independent investigation by the Ombudsman, the LGA Mutual Liability Scheme and the Anti-Corruption Branch of SAPOL. Each of these investigations have determined no further action would be taken.
 - b. Following a further review of their complaint, and relevant documents and circumstances to which they have referred, there is no reasonable basis to assert a Code of Conduct breach, policy breach or other alleged negligent conduct by the CEO or any other employee of Council.
 - c. On this basis, no further public resources will be expended in investigating this matter by private investigator or otherwise.
 - d. That Mr and Mrs Lindner exercise caution and restraint in the tone of their correspondence with any employee of Council, including the Chief Executive Officer which on any reading, is inflammatory Marking the letters 'without prejudice' and premising assertions with the word 'alleged' does not of itself overcome the defamatory imputations of their correspondence.
 - e. That Council is unable to engage with Mr and Mrs Lindner any further regarding the development at 21-23 Whiteleaf Crescent Glengowrie and that if any further correspondence of this nature is received, it will be acknowledged and filed.
- 10) That Council write to the Hon Russell Wortley MLC (Minister for State and Local Government Relations); the Hon John Darley MLC and Dr Duncan McFetridge being persons who were copied into Mr & Mrs Lindner's letter dated 24 April 2012 to the Chief Executive Officer advising of the following resolutions passed by Council at its meeting 10 July 2012:
 - 10.1 Council acknowledges the investigations and determinations of the Ombudsman, the LGA Mutual Liability Scheme and the Anti Corruption Branch of SAPOL. Such determinations indicated that no maladministration, malfeasance, breach of the *Local Government Act (SA) 1999*, or breach of the *Criminal Law Consolidation Act* has occurred in this matter.

- 10.2 Council resolves there is no basis for an assertion of a Code of Conduct breach, policy breach or other alleged negligent conduct by the CEO or any other employee of Council in this matter, and further resolves that no further action be taken to initiate an investigation (by private investigator or otherwise) into allegations raised by Mr and Mrs Lindner against the Chief Executive Officer, or any other employee of Council, as detailed in the two letters from Mr and Mrs Lindner of 24 April 2012.
- 10.3 Council concurs with the Ombudsman's view that sufficient of the public resources have been expended in conflict resolution for this matter.
- 10.4 The Chief Executive Officer (and other staff impacted by Mr and Mrs Lindner's complaints) be advised of Council's resolution
- 10.5 The Chief Executive be provided with such resources as he may reasonably require to minimize any or any further risks to the health or safety of any employee of Council (including the CEO himself) who may receive, or be likely to receive, further correspondence or contact from Mr and/or Mrs Lindner.
- 10.6 The Council take such reasonable measures as it may be advised to take from time to time, to minimize any or any further risks to the health or safety of the Chief Executive Officer to the extent he may receive, or be likely to receive, further correspondence or contact from Mr and/or Mrs Lindner.
- 10.7 That the Mayor write to Mr and Mrs Lindner advising:
 - a. Of this resolution;
 - b. that the matters the subject of their complaint, as concerns everything aside from the Code of Conduct issues have been the subject of complete and independent investigation by the Ombudsman, the LGA Mutual Liability Scheme and the Anti Corruption Branch of SAPOL. Each of these investigations have determined no further action would be taken.
 - c. Following a further review of their complaint, and relevant documents and circumstances to which they have referred, there is no reasonable basis to assert a Code of Conduct breach, policy breach or other alleged negligent conduct by the CEO or any other employee of Council.
 - d. that no further public resources will be expended in investigating this matter by private investigator or otherwise.
 - e. That Mr and Mrs Lindner exercise caution and restraint in the tone of their correspondence with any employee of Council, including the Chief Executive Officer which on any reading, is inflammatory.
 - f. That Council is unable to engage with Mr and Mrs Lindner any further regarding the development at 21-23 Whiteleaf Crescent Glengowrie and that if any further correspondence of this nature is received, it will be acknowledged and filed.

- 11) In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(h) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2012.
- 12) Notwithstanding the confidentiality order of the Council as resolved at 9 above, the Council authorises the Mayor to provide information and/or to make statements in the public realm in reliance upon the content of the confidential documentation where she considers it necessary to implement or respond to any aspects of this matter including those that are made public including by media reporting.

Carried

8.56pm the meeting came out of confidence