NOTICE OF AND AGENDA FOR A SPECIAL MEETING OF THE COUNCIL, CALLED BY HIS WORSHIP THE MAYOR, TO BE HELD IN THE COUNCIL CHAMBERS, 1 CASHEL STREET, PASADENA ON TUESDAY, 3 OCTOBER 2000 AT 5.30 PM.

MEMBERSHIP: 
His Worship the Mayor (I Brooks) (Chair)

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RON MALCOLM
CHIEF EXECUTIVE OFFICER
SPECIAL COUNCIL

AGENDA

3 OCTOBER 2000

SPECIAL MEETING OF THE COUNCIL TO BE HELD IN THE COUNCIL CHAMBERS, 1 CASHEL STREET, PASADENA ON TUESDAY, 3 OCTOBER 2000 AT 5.30 PM.

MEMBERSHIP:
His Worship the Mayor (I Brooks) (Chair)

PRESENT:

APOLOGIES:

LEAVE:

STAFF IN ATTENDANCE:

BUSINESS

1. RATIFYING THE DECISIONS OF THE PLANNING AND DEVELOPMENT COMMITTEE OF 1 AUGUST 2000
(Ref: 150.4.50) Ron Malcolm / Richard Bowey (Prepared: 28.9.00)

PROPOSAL

To ratify the decisions of the Planning and Development meeting of 1 August, 2000 made under delegated authority.

BACKGROUND

As members are aware, due to an error by Administration ten out of thirteen members were “out of office” from 1 August of this year until 26 September when they were restored by the District Court.

Section 40 of the Local Government Act provides that:-

“No act or proceeding of a Council is invalid by reason of –

(a) a vacancy or vacancies in the membership of the Council; or
(b) a defect in the election or appointment of a member or members of the Council; or
(c) the fact that the election of a member or members of the Council is subsequently declared void by a Court of competent jurisdiction.”

While our solicitors have advised us that Section 40 would ensure that the decisions made by Council during this period when members were out of office are valid, they have also advised us to be absolutely certain by ratifying any decision made by Council or its committees since that time.

DISCUSSION

The Planning Committee makes some decisions itself and in other cases makes recommendations to Council. The decisions made by the Planning Committee on 1 August 2000 under delegated authority are detailed in attached Schedule 1 (pp 1-10). The effect of the resolution below is to ratify these decisions.

RECOMMENDATION

That pursuant to Section 36 of the Local Government Act 1999 and all other enabling powers, it is resolved that all decisions and/or actions or purported decisions and/or actions of the Planning and Development Committee as set out in Minute Nos 4.1 to 7.1 of the meeting of the Planning and Development Committee held on 1 August, 2000 and set out in the Schedule 1 are hereby ratified and confirmed as if each resolution/action was set out seriatim and included in this resolution.

2. RATIFYING THE DECISIONS OF THE SPECIAL COUNCIL MEETING OF 3 AUGUST, 2000 COMMENCING AT 7.07 PM
(Ref: 150.4.50) Ron Malcolm / Richard Bowey (Prepared: 28.9.00)

PROPOSAL

To ratify the decisions made by Council at its Special Council meeting of 3 August, 2000 commencing at 7.07 pm.

BACKGROUND

For reasons explained in the previous item, it would be prudent for Council to ratify the decision it made at its Special Meeting of 3 August commencing at 7.07 pm.

DISCUSSION

The recommendation below will have the effect of ratifying the decision taken by Council at that meeting.

Pursuant to Section 74 of the Local Government Act 1999, at this meeting three members of Council, Crs Marshall, Gellie and Rowe, declared an interest but not a conflict of interest by virtue of them being Council’s representatives on the Board of Centennial Park. Before Council votes on the recommendation below, they need to again declare their interest.
RECOMMENDATION

(1) That Council thanks the Board and management of Centennial Park for their proposal but Council declines the proposal by Centennial Park to purchase the subject land.

(2) That pursuant to Section 90(2), 90(3)(k), 90(3)(d) and Section 91(7) of the Local Government Act 1999, the Council orders that the report and attachment and minutes relating to Agenda Item No. 1.1 be kept confidential on the basis that it deals with information relating to commercial information of a confidential nature. This resolution will be made public after the matter has been resolved.

(3) That the City of Mitcham endorse “in principle” the key findings contained within the document “Strategic Business Review – Centennial park Cemetery Authority” and thank the authors for their report.

(4) That the City of Mitcham invites the City of Unley to participate in a workshop to include all members and Chief Executive Officers of both Councils, Norm Orchard and Jane Creighton.

(5) That the workshop be held at the City of Mitcham and be facilitated by Ms Natalie Fuller.

(6) That papers for the workshop be prepared jointly by the Chief Executives Officers of both Councils and Norm Orchard of Centennial Park.

(7) That pursuant to Section 90(2) and (3) (c)(d) and (h) and Section 91(7) of the Local Government Act 1999, the Council orders that the report/attachment/statement but not the minutes be kept confidential while Centennial Park is operating, on the basis that it deals with information relating to specialist professional advice or information that could prejudice the commercial position of Council or another party.

3. RATIFYING THE DECISION OF THE SPECIAL COUNCIL MEETING OF 3 AUGUST, 2000 COMMENCING AT 9.30 PM
(Ref: 150.4.50) Ron Malcolm / Richard Bowey (Prepared: 28.9.00)

PROPOSAL

To ratify the decision made by Council at its Special Council meeting of 3 August, 2000 commencing at 9.30 pm.

BACKGROUND

For reasons explained in the previous item, it would be prudent for Council to ratify the decision it made at its Special Meeting of 3 August commencing at 9.30 pm.
DISCUSSION

The recommendation below will have the effect of ratifying the decision taken by Council at that meeting.

RECOMMENDATION

That Council adopts Item 6.1 of the Planning & Development Committee Minutes held 1 August 2000, with necessary amendments being made by the Director Planning and Development should there be a positive decision of the Full Court on the Fusco case, and as the PAR’s prepared by the Council and Minister should be withdrawn except for olives remaining non-complying and part 5.2 of the submission remaining.

(Ref: 150.4.50) Ron Malcolm / Richard Bowey (Prepared: 28.9.00)

PROPOSAL

To ratify decisions of Council made at its meeting of 22 August, 2000.

BACKGROUND

For reasons explained in the previous item, it would be prudent for Council to ratify the decision it made at its meeting of 22 August, 2000.

DISCUSSION

In line with our legal advice, all recommendations to the effect that “the report be received” or that “for information only” have been omitted. The recommendation below will have the effect of ratifying all third party decisions taken by Council at that meeting. These are detailed in attached Schedule 2 (pp 11-17).

Pursuant to Section 74 of the Local Government Act 1999, Cr Chennell declared an interest in Item 12.6 but not a conflict of interest by virtue of her being a Council representative on the Blackwood Business Network. She should again declare that interest before voting on recommendation 1.

Pursuant to Section 74 of the Local Government Act 1999, Crs Chennell and Grimm declared an interest in Item 12.10 but not a conflict of interest by virtue of their being Council representatives on the Management Committee of the Blackwood Community Recreation Centre. They should again declare that interest before voting on recommendation 1.

Pursuant to Section 73 of the Local Government Act 1999, Cr Chennell declared a conflict of interest in respect of Item 10.3 of Item 9.1 because of her having an insurable interest in land within Craigburn Farm. She should again declare that interest and absent herself from any discussion or voting before Council votes on recommendation 2.
RECOMMENDATION

(1) That pursuant to Section 36 of the Local Government Act 1999 and all other enabling powers, it is resolved that all decisions and/or actions or purported decisions and/or actions of Council as set out in Minute Nos 1.1 to 15.3 of the meeting of the Council held on 22 August, 2000 and set out in the attached Schedule 2 are hereby ratified and confirmed as if each resolution/action was set out seriatim and included in this resolution.

(2) That:

2.1 The Committee recommends to Council that the variations sought for Stage 9 of Craigburn Farm land division be accepted as a minor variation to the existing Approval vide 080/D018/93 and a Certificate of Approval under Section 223(l)(f) of the Real Property Act be issued, subject to completion of the infrastructure works and compliance with relevant conditions set by Council’s Horticultural Consultant and Manager Technical Services, including the realignment of the boundary of Lot 155 to protect 3 substantial trees, and protection of the tree on Lot 161.

2.2 The Committee recommends to Council that the parameters outlined in the letter from Jensen Planning & Design dated 19 July 2000, be adopted as parameters for the Administration to determine whether amendments to future stages of the Craigburn Farm land division proposal can be accepted as minor variations pursuant to the existing consent vide 080/D018/93 or not, except that in (c) the figure 20% be amended to 15%.

2.3 Hills Councillors be informed, within layout plans, of changes to roads or allotment boundaries.

5. RATIFYING THE DECISIONS OF THE PLANNING AND DEVELOPMENT COMMITTEE OF 5 SEPTEMBER, 2000
(Ref: 150.4.50) Ron Malcolm / Richard Bowey (Prepared: 28.9.00)

PROPOSAL

To ratify decisions of the Planning and Development Committee held on 5 September, 2000 made under delegated authority.

BACKGROUND

For reasons explained in the previous item, it would be prudent for Council to ratify the decisions made at its Planning and Development Committee of 5 September, 2000 under delegated authority.
DISCUSSION

The decisions made by the Planning Committee on 5 September 2000 under delegated authority are detailed in attached Schedule 3 (pp 18 -25).

The recommendation below will have the effect of ratifying these decisions.

Pursuant to Section 73 of the Local Government Act 1999, Cr Gellie declared a conflict of interest market in Item 10.3 of Item 9.1 because of his involvement in the Art and . Before Council votes on recommendation 2, he should again declare that interest and absent himself from any discussion or voting.

RECOMMENDATION

(1) That pursuant to Section 36 of the Local Government Act 1999 and all other enabling powers it is resolved that all decisions and/or actions or purported decisions and/or actions of the Planning and Development Committee as set out in Minute Nos. 3.2 to 7.1 of the meeting of the Planning and Development held on 1 August, 2000 and set out in the attached Schedule 3 are hereby ratified and confirmed as if each resolution/action was set out seriatim and included in this resolution.

(2) That the application by Bedford Industries to establish a monthly art and craft market at 615 Goodwood Road, Panorama as detailed in Development Application No: 080/458/00 be GRANTED Provisional Development Plan Consent subject to the concurrence of the Development Assessment Commission and the following conditions of consent:-

1. The proposal shall be developed in accordance with the details and plans, relating to Development Application Number 080/458/00 except where varied by the following conditions.

   Reason: To ensure the proposal is established in accordance with the plans submitted.

2. All materials stored in the open within the site marked as the area for the display and sale shall be kept in a tidy manner at all times.

   Reason: To maintain and enhance the amenity of the locality.

3. The use shall not involve exposure of goods or equipment from any adjacent properties or from a public place of any unsightly matter.

   Reason: To limit the effect of the proposal to a level which does not detrimentally affect the amenity or character of the locality.
4. No amplified music shall be played on the site.

NOTE: Advertising displays do not form part of this application and a separate approval is required, should proposed signage constitute development.

NOTE: Temporary food stalls trading within the market shall be constructed and comply with the requirements of the Food Act 1985, Food Hygiene Regulations 1990 and Australian Institute of Environmental Health National Code For Food Vending Vehicles and Temporary Food Premises.

6. TO CONFER IMMUNITY UPON RESTORED MEMBERS OF COUNCIL
(Ref: 150.4.50) Richard Bowey (Prepared: 28.9.00)

PROPOSAL
To confer immunity upon those persons who were not elected members during the period 1 August to 26 December, 2000 whilst they were out of office.

BACKGROUND
As a result of the recent discovery that some elected members were out of office during the period 1 August to 27 September 2000, and as a result of the order brought down by His Honour Judge Bowering, there is a possibility that the immunity provided by Section 39 of the Local Government Act normally confers is not applicable for the period these persons were out of office.

DISCUSSION
Accordingly, our legal advice suggests that the councils affected, should press the Minister through the medium of the Local Government Association for legislative amendment which makes it absolutely clear that the restoration of elected members to office is to take effect as if there had never been any vacancy.

As a short term measure, it is suggested that Council pass an appropriate resolution which confirms that in the absence of the statutory immunity conferred by Section 39, the council, as a body corporate, confers the same level of protection on those persons who were members of the council and who had not realised that their offices had become vacant. This is sustainable because the affected members continued to act in good faith in what they believed to be the exercise, performance and discharge of their functions and duties.

RECOMMENDATION
That pursuant to Section 36 of the Local Government Act 1999 and consequent upon the order of His Honour Judge Bowering, made on 27 September 2000 restoring the following members to their respective offices:-
- Ivan Murray Brooks, Mayor
- Cathryn Ann Hart, Councillor
• Stephen Edward Fisher, Councillor
• John Liddell Sanderson, Councillor
• Nanette Valmai Lawson, Councillor
• Christopher Gellie, Councillor
• Richard Frederick Ostcliffe Warren, Councillor
• Heather Rose Chennell
• Elaine Grimm
• Robert Kennion Marshall

to the extent that the protection conferred upon those members by Section 39 of the Act does not apply, the Council indemnifies each and every one of the said members in respect of any civil liability that attaches to them for an honest act or omission in the purported exercise, performance of discharge of the duties of an elected member of the Council's powers, functions or duties under the Local Government Act 1999 to any other Act for the period 1 August 2000 up to and including 26 September 2000.

CLOSE: