

CONFIDENTIAL ITEMS 2003 – MAY 2018

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
130	26 March 2018	City Centre Strategic Partnering Initiative	<p>1. <u>Pursuant to Section 90(3)(b)</u></p> <p>Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, Deputy Chief Executive Officer / General Manager Infrastructure and Projects, General Manager Planning and Development, General Manager Corporate Services, General Manager Council Services, General Manager Planning &amp; Development, and Strategic Projects Manager be excluded from attendance at the meeting for Agenda Item 3.1 City Centre Strategic Partnering Initiative.</p> <p>The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to prejudice the commercial position of the Council.</p> <p>In addition the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to conclude and formalise the necessary arrangements for the benefit of the Council and the community in this matter.</p>	Council report, related documents and all minutes be retained in confidence	The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to conclude and formalise the necessary arrangements for the benefit of the Council and the community in this matter.	Retained in confidence until Council has concluded all commercial negotiations and either settled the purchase of the subject land or such lesser period as may be determined by the Chief Executive Officer, and that this order be reviewed every 12 months.		3 Sep 18	<i>Report, attachments and Minutes released on website 9 May 2018</i>

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			<p>2. <u>Pursuant to Section 90 (3) (b)</u></p> <p>That having considered Agenda Item 3.1 City Centre Strategic Partnering Initiative in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until Council has concluded all commercial negotiations and either settled the purchase of the subject land or such lesser period as may be determined by the Chief Executive Officer, and that this order be reviewed every 12 months.</p>						
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	All Information released
	Part Information released
	Information remains Confidential

<b>3.1</b>	<b>REPORT TITLE:</b>	<b>CONFIDENTIAL ITEM: City Centre Strategic Partnering Initiative</b>
	<b>DATE OF MEETING:</b>	<b>26 MARCH 2018</b>
	<b>FILE NUMBER:</b>	<b>18/29018</b>
	<b>ATTACHMENTS:</b>	<b>ATTACHMENT 1. DOC/18/30015 LOCATION AND OWNERSHIP PLAN</b>
	<b><u>Key Contact</u></b>	Brian Clancey, Deputy Chief Executive Officer/General Manager, Infrastructure & Projects
	<b><u>Sponsor</u></b>	Andrew Stuart, Chief Executive Officer

**Mount Barker 2035 – District Strategic Plan:**

- The Urban Environment
- Development of the Mount Barker Regional Town Centre.

**Annual Business Plan 2017/18:**

At the time of the adoption of the ABP for 2017/18 confidential negotiations were still in progress and the final outcome was not known until many months later.

**Purpose:**

To gain delegation of authority to the Mayor and Chief Executive Officer to execute all of the required documentation to enable existing Council meeting resolutions regarding the purchase of portion of the Woolworths owned site in Mount Barker to be fully actioned.

**Summary – Key Issues:**

- Preparation of the required documentation in relation to the purchase by Council of portion of the Woolworths owned site in the Mount Barker City Centre is now very close to finalisation in accordance with existing Council meeting resolutions
- Delegation of authority to execute all of the required documentation is now being sought
- A pro-active communication strategy regarding the purchase of the Woolworths site is being progressed in conjunction with Burke Urban.

**Recommendation:**

That Council:

1. Pursuant to Section 90(3)(b)  
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, Deputy Chief Executive Officer / General Manager Infrastructure and Projects, General Manager Planning and Development, General Manager Corporate Services, General

Manager Council Services, Strategic Projects Manager and Minute Secretary, be excluded from attendance at the meeting for Agenda Item 3.1 City Centre Strategic Partnering Initiative.

The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to prejudice the commercial position of the Council.

In addition the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to conclude and formalise the necessary arrangements for the benefit of the Council and the community in this matter.

2. Authorise the Mayor and Chief Executive Officer to apply the Council common seal to, and execute all of the required documentation to enable the existing Council resolutions in relation to the purchase by Council of portion of the Woolworths site in Mount Barker and the associated arrangements to be fully actioned.
3. Pursuant to Section 90 (3) (b)  
That having considered Agenda Item 3.1 City Centre Strategic Partnering Initiative in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until Council has concluded all commercial negotiations and either settled the purchase of the subject land or such lesser period as may be determined by the Chief Executive Officer, and that this order be reviewed every 12 months.

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**Background:**

1. The parcel of land owned by Woolworths/Fabcot Pty Ltd and bounded by Morphett Street, Druids Avenue, Hutchinson Street and Stephens Street (as outlined in green in attachment 1) has been considered at several Council meetings, most recently on 15 January 2018 to note the Prudential Report.
2. Confidentiality orders remain in place for these agenda items including the resolutions.
3. To fully action the existing Council meeting resolutions, delegation of authority to the Mayor and Chief Executive Officer to execute all of the required documentation is now necessary.

**Discussion:****Documentation**

1. The Burke Urban legal entity is Burke Urban Investments Pty Ltd (BUI). The Directors are Mr Kym Burke and Mr Con Tragakis.
2. Mr Burke is well known to successful development in Mount Barker with his current project being the Newenham estate on Flaxley Road.
3. Mr Tragakis has recently stepped down from the role as Chairman of Partners for KPMG (SA) and continues to sit on many Boards and is described as a highly accomplished, successful and prominent South Australian business leader.
4. To fully action the existing Council meeting resolutions, the following documentation has been prepared for execution by Council and BUI:
  - Deed (Hutchinson Street, Mount Barker) – setting out the arrangements between and respective obligations of Council and BUI; and
  - Put and Call Option Deed – setting out the arrangements and obligations of BUI and Council for the land shaded red in attachment 1.
5. Authority is now required for the Mayor and Chief Executive to apply the Council common seal and execute all of the above documentation.
6. The need for a Special Meeting of Council is driven by the timing obligations on BUI in relation to Woolworths/Fabcot.

**Communication Strategy**

7. Council officers and representatives of Burke Urban have been progressing a proactive communication strategy to seek to ensure that there is clarity of the process undertaken by Council, and the arrangements entered into by Council and the rationale for this.
8. The communication strategy is to include separate media releases by both Council and Burke Urban with consistent and clear key messages.
9. The strategy includes the proposed briefing on a confidential basis of key stakeholders such as the owner of the land on the corner of Morphett and Hutchinson Streets as this land (outlined in pink in attachment 1) is to be included in the Master Plan as per the existing Council meeting resolution.

**Community Engagement:**

Informing only	Refer above under Communication Strategy
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**Policy:**

Progression of the Burke Urban proposal is consistent with Council's Strategic Partnering Policy as endorsed at the Council meeting held on 4 October 2016.

**Budget:**

1. Settlement for the land being purchased by Council (shaded red and blue in attachment 1) is anticipated in late April 2018. A deposit of 5% being \$237,500 is payable by Council.
2. As previously advised the total cost to Council will be around \$5.03 million comprising:
  - Purchase \$4,750,000
  - Stamp Duty \$255,080
  - Conveyancing, registration and legal – actual amounts to be confirmed.
3. As noted at the Council meeting on 15 January 2018 this will necessitate an adjustment to the 2017/18 budget and in turn the Council's Long Term Financial Plan.
4. This is capital expenditure that will be funded using Council's cash advance debenture facilities with the Local Government Finance Authority and in accordance with Council's Treasury and Funding policies.
5. The security deposit of \$350,000 that must be paid by BUI to Council (see below) can be used by Council as a cash flow mechanism towards the cost of settlement.

**Statutory/Legal:**

Prudential report was noted at the Council meeting on 15 January 2018.

Exclusion from classification as community land occurred at the Council meeting on 6 November 2017.

Minter Ellison Lawyers has provided services to Council in relation to the review and amendment of the required documentation.

**Staff Resource Requirements:**

The recommendation can be implemented without impacting on existing staff resource requirements.

**Environmental:**

Not applicable to the recommendation.

**Social:**

Not applicable to the recommendation.

**Risk Assessment:**

1. To minimise the risk of an error in the documentation, all of the documentation has been vetted for Council by Minter Ellison Lawyers and various elements have been reviewed by senior Council officers.
2. To minimise the risk to Council in the highly unlikely event that BUI defaults on the purchase from Council of the land shaded in red in attachment 1, BUI is obliged to provide Council with a security deposit of \$350,000. At the time of the default by BUI, if the value of the land has decreased from the amount paid by Council to purchase the land, then Council can retain the difference up to a maximum of \$350,000

representing security for Council from BUI in the event that the value declines by up to approximately 16% from the purchase price paid by Council. Should BUI default then as of right Council retains \$50,000 even if there is no reduction or an increase in the value of the land. Effectively a penalty fee on BUI.

**Asset Management:**

1. Upon settlement of the land, Council would become responsible for site management.
2. BUI is obliged to reimburse Council costs for the management of the land parcel shown in red in attachment 1 until the land is purchased from Council by BUI.

**Conclusion:**

Adoption of the recommendation is necessary procedurally to enable the completion of actions arising from existing Council meeting resolutions.

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Previous Decisions by Council

Meeting Date	15 January 2018	HPRM Reference	DOC/18/1011
Title	CONFIDENTIAL REPORT: PRUDENTIAL AND OTHER REPORTS – LAND ACQUISITION		
Purpose	To provide further (externally sourced) information, including a Prudential Report in relation to the purchase by Council of portion of the Woolworths site.		

Meeting Date	6 November 2017	HPRM Reference	DOC/17/109171
Title	CONFIDENTIAL ITEM: CITY CENTRE STRATEGIC PARTNERING OPPORTUNITY		
Purpose	To provide the attached strategic partnering opportunity from Burke Urban and seek authority for the Chief Executive Officer to accept the proposal subject to consideration of a Prudential audit report, and progress required actions.		

Meeting Date	3 October 2017	HPRM Reference	DOC/17/97172
Title	CONFIDENTIAL ITEM: STRATEGIC LAND PARCEL		
Purpose	To seek authority for the Chief Executive Officer and the Mayor to negotiate the purchase of a portion of the Woolworths site.		

Meeting Date	7 August 2017	HPRM Reference	DOC/17/74891
Title	CONFIDENTIAL ITEM: STRATEGIC LAND PARCEL		
Purpose	To seek authority for the Chief Executive Officer (in liaison with the Mayor) to further pursue purchase of portion of the Woolworths site.		

Meeting Date	5 June 2017	HPRM Reference	DOC/17/52747
Title	CONFIDENTIAL ITEM: STRATEGIC LAND PARCEL		
Purpose	To provide an update on the status of the Woolworths land; and seek updated authority for a pro-active approach to seek to purchase portion of the site.		

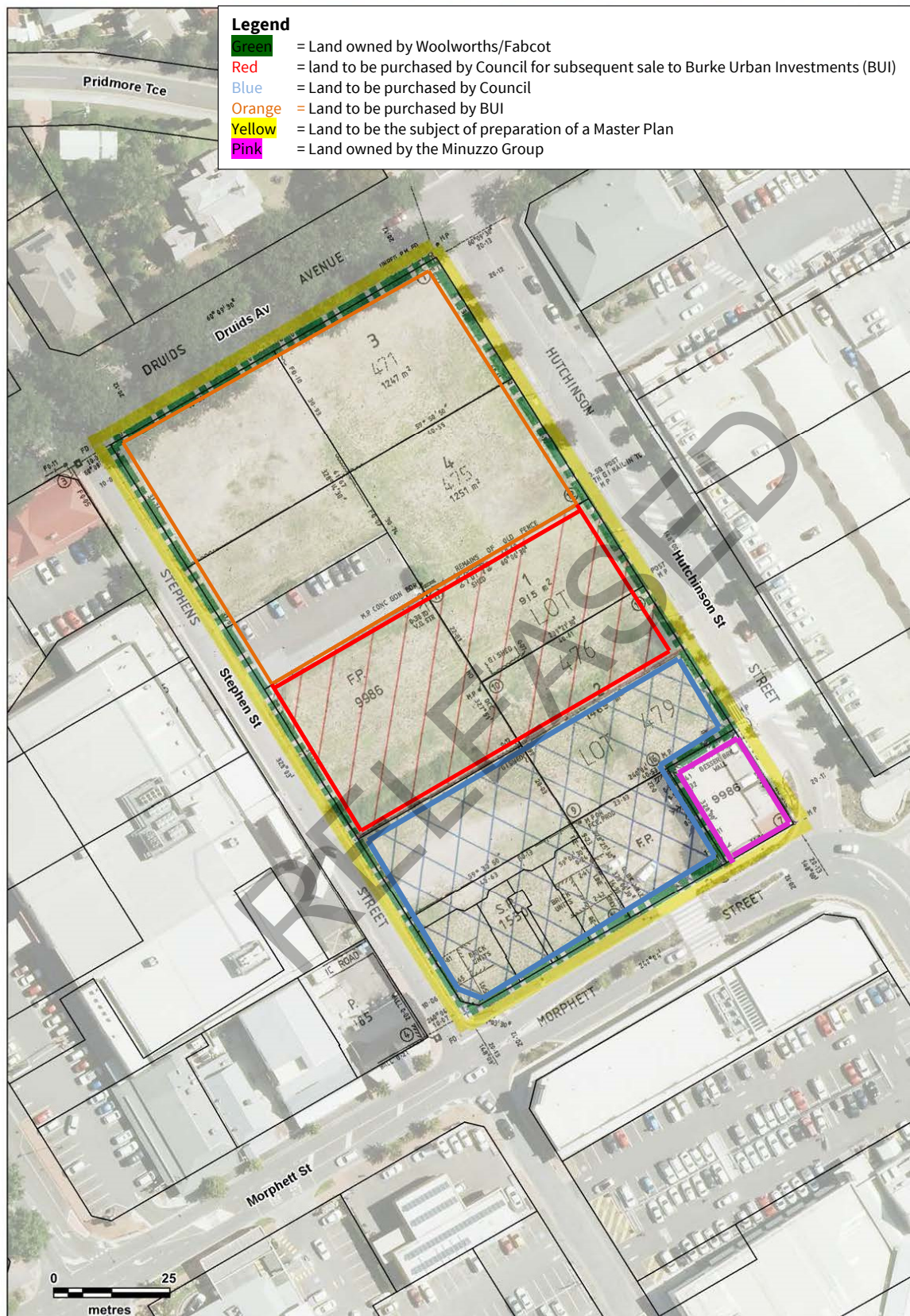
Meeting Date	17 October 2016	HPRM Reference	DOC/16/102882
Title	CONFIDENTIAL ITEM: STRATEGIC LAND PARCELS – MOUNT BARKER CITY CENTRE		
Purpose	To provide an update on the status of some strategic land parcels located within the Mount Barker City Centre and seek authority to prepare and lodge a Council expression of interest with CBRE for the land owned by Woolworths on Hutchinson Street.		

Meeting Date	21 December 2015	HPRM Reference	DOC/
Title	CONFIDENTIAL ITEM – MOUNT BARKER TOWN CENTRE LAND STRATEGY UPDATE		
Purpose	To provide an update on the status of confidential negotiations with Woolworths Limited regarding the revised offer made to purchase portion of the Woolworths site in the Mount Barker Town Centre.		

Meeting Date	19 October 2015	HPRM Reference	DOC/15/101856
Title	CONFIDENTIAL ITEM – MOUNT BARKER TOWN CENTRE LAND STRATEGY		
Purpose	To seek authority to enable the Chief Executive Officer to make an alternative offer to, and undertake commercial negotiations with, Woolworths Limited for the purchase of approximately 3,000m <sup>2</sup> of land being portion of the land bounded by Morphett Street, Hutchinson Street, Druids Avenue and Stephen Street, Mount Barker.		

Meeting Date	7 September 2015	HPRM Reference	DOC/15/89804
Title	CONFIDENTIAL ITEM – MOUNT BARKER TOWN CENTRE COMMERCIAL STRATEGIES UPDATE		
Purpose	To seek confirmation of the council's strategic objective to secure land within the Mount Barker Town Centre for the purposes of a Town Square, and authority for the Chief Executive Officer to pursue the acquisition of portion of the land known as the Woolworths site within the Mount Barker Town Centre as a strategic land purchase to ultimately achieve a Mount Barker Town Square either on this land or an alternative parcel of land.		





CONFIDENTIAL MINUTES OF THE  
SPECIAL MEETING

of the Mount Barker District Council held in the Council Chambers of the Local Government Centre, Mount Barker on Monday 26 March 2018 at 4.31pm.

PRESENT

Mayor (A. Ferguson), Councillors Bailey (from 4.36pm), Buchmann, Bettcher, Campbell, Seager, Irvine, Grosser and Hamilton.

IN ATTENDANCE:

Chief Executive Officer (A. Stuart), Deputy Chief Executive Officer and General Manager Infrastructure & Projects (B. Clancey) General Manager Council Services (G. Parker), General Manager Corporate Services (D. Peters), and General Manager Planning & Development (G. Waller) and Strategic Projects Manager (D. Morton.)

The meeting opened with an **Expression of Faith** and **Acknowledgement of Land**.

**1. APOLOGIES**

Councillor Keen Councillor Morrison

**2. CONFLICT OF INTEREST DECLARATION**

NIL

4.36pm Councillor Bailey entered the chamber and took her chair

**3. CONFIDENTIAL REPORTS**

<b>3.1</b>	<b>REPORT TITLE:</b>	<b>CONFIDENTIAL ITEM: CITY CENTRE STRATEGIC PARTNERING INITIATIVE</b>
	<b>DATE OF MEETING:</b>	<b>26 MARCH 2018</b>
	<b>FILE NUMBER:</b>	<b>DOC/18/29018</b>
	<b>ATTACHMENTS:</b>	<b>ATTACHMENT 1. DOC/18/30015 LOCATION AND OWNERSHIP PLAN</b>

Moved Councillor Irvine that Council:

- Pursuant to Section 90(3)(b)  
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, Deputy Chief Executive Officer / General Manager Infrastructure and Projects, General Manager Planning and Development, General Manager Corporate Services, General

Manager Council Services, General Manager Planning & Development, and Strategic Projects Manager be excluded from attendance at the meeting for Agenda Item 3.1 City Centre Strategic Partnering Initiative.

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Seconded Councillor Buchmann

CARRIED  
SCM20180326.01

Moved Councillor Buchmann that Council authorise the Mayor and Chief Executive Officer to apply the Council common seal to, and execute all of the required documentation to enable the existing Council resolutions in relation to the purchase by Council of portion of the Woolworths site in Mount Barker and the associated arrangements to be fully actioned.

Seconded Councillor Irvine

CARRIED  
SCM20180326.02

Moved Councillor Bailey:

2. Pursuant to Section 90 (3) (b)

That having considered Agenda Item 3.1 City Centre Strategic Partnering Initiative in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until Council has concluded all commercial negotiations and either settled the purchase of the subject land or such lesser period as may be determined by the Chief Executive Officer, and that this order be reviewed every 12 months.

Seconded Councillor Seager

CARRIED  
SCM201800326.03

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MEETING DECLARED CLOSED AT 5.25PM

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MAYOR

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DATE