

South African (Boer) War Memorial

Strategic Alignment - Dynamic City Culture

Public

Tuesday, 6 June 2023

**City Planning, Development
and Business Affairs
Committee**

Program Contact:

Jennifer Kalionis, Associate
Director City Culture

Approving Officer:

Ilia Houridis - Director City
Shaping

EXECUTIVE SUMMARY

The South African War Memorial (the Memorial), located on North Terrace, Adelaide, was unveiled in 1904 in memory of South Australians who fell during the Second Boer War (11 October 1899 to 31 May 1902). It is listed as a State Heritage Place.

Since the Memorial's initiation, there has been debate about the matter of the addition of names to the Memorial. The proposed addition of Lt Harry 'The Breaker' Harbord Morant's (Lt. Morant) name to the Memorial has been addressed by Council across the twentieth and twenty-first centuries. Requests have been made in relation to the addition of Mr Morant's name in 1993 and by Ms Cathie Morant in 2021, and through Mr Pearce's deputation to Council in at its meeting on 28 March 2023.

At that meeting, Deputy Lord Mayor, Councillor Phillip Martin moved a motion without notice requesting Administration provide a report to Council Committee on the alterations requested in association with the deputation, (given at the same meeting by Mr Adam Pearce), including any issues that may arise from acceding to the proposal. Council resolved on the terms of the Deputy Lord Mayor's motion.

Mr Pearce's deputation, in speaking to the inclusion of Lt. Morant on the Memorial also spoke to some 23 other individuals who served and who might be included on the Memorial. Council has only received a formal request for the inclusion of Lt Morant's name on the Memorial.

The purpose of this report is to provide Council background information and a recommendation on the matter of Mr Pearce's deputation and Ms Cathie Morant's 2021 request to have the Lt. Morant's name included on the Memorial.

In September 2021, Council denied Ms Morant's request to have Lt. Morant's name added to the Memorial. A review of this decision occurred from October to December 2021, following which, Council committed to an independent assessment of the request.

In 2023, MinterEllison Lawyers re-assessed the request, including reviewing all relevant material provided, against the Memorials Operating Guidelines for the purpose of providing independent advice as to Council's decision making and decision-making process.

The assessment found that the Memorials Operating Guidelines are not applicable to this request, as the Memorial is not within the Park Lands (as defined by the *Park Lands Act 2005*). Further, as the Memorial is a State Heritage Place, and the works required to facilitate the request would likely constitute development under the *Planning, Development and Infrastructure Act 2016*. Council's involvement, consideration and any decision-making in relation to the proposal therefore must have regard to the requirements and processes under that Act.

The following recommendation will be presented to Council on 13 June 2023 for consideration

THAT THE PLANNING, DEVELOPMENT AND BUSINESS AFFAIRS COMMITTEE RECOMMENDS TO COUNCIL

That Council:

1. Endorses advising Ms Morant (or any other person requesting alterations to the Memorial) to lodge a Development Application under the *Planning, Development and Infrastructure Act 2016 (PDI Act)* for the proposed works to South African (Boer) War Memorial.
 2. Notes that Administration will provide reasonable levels of assistance, guidance, and customer service to the Ms Morant or other applicant, if they decide to lodge a Development Application.
 3. Notes that if the relevant authority (as determined through *PDI Act*) approves works to the Memorial as part of a Development Application, Council would then decide whether to implement the works through a report at a later date.
 4. Notes that the Memorials Operating Guidelines will be reviewed and updated in 2023.
-

IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Dynamic City Culture This report outlines the City of Adelaide's commitment to the ongoing protection, preservation, and promotion of our unique built, natural and cultural heritage.
Policy	The City of Adelaide Memorials Operating Guidelines sets out the administrative processes and responsibilities for the development, delivery, maintenance, management, and de-accessioning of memorials enabled by the City of Adelaide in the Park Lands.
Consultation	Administration has sought independent external legal advice on the Council's decision making and decision-making process in consultation with Heritage SA.
Resource	This report has involved resourcing from Creative City, Governance, and City Development.
Risk / Legal / Legislative	There is risk if a decision is made by Council outside of the recommendations as the Memorials Operating Guidelines are inapplicable to any decision-making regarding this Memorial. Pursuant to the <i>Planning, Development and Infrastructure Act 2016</i> , alterations/additions to a State Heritage Place will constitute development where it could materially affect the heritage value of the place. Therefore, Council's involvement, consideration, and any decision-making in relation to the proposal must have regard to the requirements and processes within <i>Planning, Development and Infrastructure Act 2016</i> to ensure integrity and defensibility.
Opportunities	The Memorials Operating Guidelines will be reviewed and updated in the development of the next Public Art Action Plan, to be in alignment with existing frameworks, best practice, and the feedback from key stakeholders.
22/23 Budget Allocation	Not as a result of this report
Proposed 23/24 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	The South African War Memorial is a State Heritage Place under the custodianship of the City of Adelaide since 1904. The City of Adelaide holds a significant collection of donated memorials that are of financial, civic, social, and cultural value to the City. The maintenance and management of these assets is crucial to maintain their financial, and community value.
22/23 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (e.g. maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

1. The South African War Memorial (the Memorial), located on North Terrace, Adelaide, was unveiled in 1904 in memory of South Australians who fell during the Second Boer War.
 - 1.1. It is located at the intersection between North Terrace and King William Street, in the north-eastern corner of that intersection (forming part of the road reserve) near Government House.
 - 1.2. At its unveiling on 6 June 1904, the Memorial was gifted to the City of Adelaide.
 - 1.3. The Memorial is under the custodianship of Council.
 - 1.4. There are four plaques on the Memorial which document:
 - 1.4.1. The despatch on 7 March 1900 of the 'South Australian Bushmen's Corps', consisting of '100 officers and men' which was the 'third of nine contingents numbering in all 1531 men sent from South Australia'.
 - 1.4.2. The names and rank of 21 men, under the title 'In Memory of Those Who Fell', under a wreath with the words inscribed 'Who dies for his country, dies nobly'.
 - 1.4.3. The names of 39 Troopers, under the title 'In Memory of Those Who Fell', under a wreath with the words inscribed 'Who dies for his country, dies nobly'.
 - 1.4.4. The commemoration of the Memorial by the 'People of South Australia to the Citizen Soldiers of the State who Fought in the South African War (1899-1902)'.
 - 1.5. In total the Memorial lists the names of 60 South Australians that died in the conflict.
 - 1.6. 1531 South Australians served in the Second Boer War.
 - 1.7. In 1987, the Memorial was confirmed as a State Heritage Place (State Heritage ID 13349).
2. The City of Adelaide Memorials Operating Guidelines sets out the administrative processes and responsibilities for the development, delivery, maintenance, management, and decommissioning of memorials enabled by the City of Adelaide in the Park Lands.
 - 2.1. The Memorials Operating Guidelines were endorsed by Council in August 2019.
 - 2.2. The Memorials Operating Guidelines are due for review in 2023 and amendments will be made to reflect the unique requirements of memorials and will be made and confirmed by September 2023.
3. In July 2021, Ms Cathie Morant made a request to the State Government seeking to alter or amend the Memorial to only acknowledge Lt. Harry 'Breaker' Morant.
 - 3.1. The State Government forwarded the applicant's request to Council for consideration, noting that the Memorial is a State Heritage listed asset owned and managed by the City of Adelaide.
 - 3.2. The extent of the request is that Lt. Morant's name 'be added' to a plaque on the Memorial.
 - 3.3. The complexity of this request has required advice from key stakeholders and legal expertise on two occasions.
4. In September 2021, Administration declined Ms Morant's request, citing the City of Adelaide Memorials Operating Guidelines, alongside advice from the Australian War Memorial (and other relevant veterans' associations), and a precedent decision of the Council in 1993.
 - 4.1. In September 2021, Ms Morant sought a review of Council's decision under Section 270 of the *Local Government Act 1999 (SA)*.
 - 4.2. In October 2021, the Council engaged an external legal consultant, Kelledy Jones Lawyers, to undertake an independent, 'arms-length', review of the decision, and to prepare a Report for the consideration of the CEO.
 - 4.3. Following this review, Ms Morant was advised that request and the decision-making would be exercised afresh.
5. In February 2023, external legal consultant MinterEllison was engaged by the Council to consider this matter afresh and provide independent advice as to Council's decision making and decision-making process. MinterEllison advised as follows:
 - 5.1. Council should treat the Memorials Operating Guidelines as inapplicable to any decision-making regarding the Memorial because it is not located in the Park Lands (the Memorials Operating Guidelines is expressed to apply only to memorials in the Park Lands).

- 5.2. Implementation of the Ms Morant's request to alter the Memorial requires compliance with legislative requirements and standards, including the requirement for a Development Application to be lodged under the *Planning, Development, and Infrastructure Act 2016 (PDI Act)*.
 - 5.3. Although Council owns the Memorial, any party may lodge a Development Application over the Memorial.
 - 5.4. Section 101 of the *PDI Act* provides that: 'Subject to this Act, no development may be undertaken unless the development is approved development'.
 - 5.5. Relevantly, 'development' is defined in Section 3(1) of the *PDI Act* as including alterations or additions to a State Heritage Place (or any other work that could materially affect the heritage value of the place).
 6. Regardless of the applicability of the Memorials Operating Guidelines against this request, for Ms Morant's request to be carried out, a development approval under the *PDI Act* will need to be in place authorising the works to the Memorial.
 - 6.1. Administration will provide reasonable levels of assistance, guidance, and customer service to Ms Morant, if she (or any other applicant) decides to lodge a development application under the *PDI Act*. This may include providing the applicant with access to available documentation of the Memorial that the City of Adelaide may have.
 - 6.2. The development assessment process under the *PDI Act* may require referrals to relevant agencies such as Heritage SA.
 - 6.3. The application would be made within established framework of the *PDI Act* and would be assessed independently (including any referrals and public notifications)
 7. The review noted that the delay in processing the request was due in combination to staff changes and vacancies. In response to this, it is noted to ensure that where responsibilities lie across multiple parts of Administration that they are documented and form part of onboarding new staff, this includes existing Council decisions to form part of that process for continuity of delivery.
 8. In assessing a Development Application, the relevant authority would likely seek the Council's input, as the landlord and owner of the Memorial. Council could then consider whether to provide its support for the development.
 - 8.1. To inform a decision on whether to provide support, Council would have the benefit of any documents submitted by Ms Morant in support of the application, which would likely include a planner's report, heritage expert report, and detailed plans/drawings depicting the extent of the proposal.
 - 8.2. Council may review these documents at the appropriate time and consider whether it will provide support for the application, with the benefit of a planning and heritage assessment having been conducted.
 - 8.3. If the relevant authority approves the development application, then Council would decide whether to implement the works through a report.
 9. Additionally, Administration will be reviewing and updating the Memorials Operating Guidelines as part of the development of the next Public Art Action Plan.
 - 9.1. Administration will be consulting with experts, Council Members and key stakeholders in the community to inform and develop the Memorials Operating Guidelines and associated processes governing Memorials.
 - 9.2. Future requests that seek to alter or amend existing memorials or monuments within the City of Adelaide will be processed in accordance with the requirements of *PDI Act* requiring Development Application assessment.
 - 9.3. MinterEllison Lawyers have undertaken an initial review the Memorials Operating Guidelines as part of this request, and their advice can be incorporated into the guidelines under delegation.
 - 9.4. Administration is reviewing internal processes associated with Memorials requests to ensure expeditious assessment and decision making strengthened through clearer alignment with *PDI Act* requirements.
-

DATA AND SUPPORTING INFORMATION

Link 1 - [South African Boer War Memorial Additional Information](#)

ATTACHMENTS

Nil

- END OF REPORT -