

Section 270 - Review of Council Decision

Tuesday, 28 October 2025
Council

Strategic Alignment - Our Corporation

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Public

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EXECUTIVE SUMMARY

The purpose of this report is to provide Council with a section 270 Internal Review Report, completed by an independent external consultant, in response to a complaint received from Mr James Unkles (Mr Unkles) on 19 August 2024, regarding a Council decision on 13 August 2024.

The decision of Council was in regard to an application (the Application) from Mr Unkles, on behalf of Ms Cathie Morant, seeking, in effect, for an alteration or amendment to the South African War Memorial (the Memorial), situated at the north-eastern corner of North Terrace and King William Street in Adelaide, to have the name of Sergeant Harry 'Breaker' Morant included on the Memorial.

The decision of Council on 13 August 2024 states:

THAT COUNCIL:

1. *Notes the cultural significance of the South Australian (Boer) War Memorial on North Terrace and its heritage listing.*
2. *Endorses and reaffirms the decision of past Councils, that the South Australian (Boer) War Memorial is a closed historical site of cultural significance and does not provide consent as the owner of the Memorial and owner of the land for the proposal to amend or alter the South Australian (Boer) War Memorial on North Terrace to include 'Sergeant, HH. 'Breaker' Morant' or any other names.*

The complaint was handled as a section 270 application under the *Local Government Act 1999*, and pursuant to Council's Corporate Complaint Handling Operating Guideline (the Complaint Handling Guideline).

In this case, the 'Reviewer' for the purposes of the Complaint Handling Guideline is the elected Council. The Reviewer is the person who will ultimately reconsider the decision under review in this case.

The Complaint Handling Guideline provides that where the elected Council is the Reviewer:

A report will be developed by the administration, or an independent external consultant. Council will consider the outcome of the review and determine whether to affirm, vary or revoke the original decision.

Administration engaged a legal provider as an independent external consultant to prepare an internal review report for the consideration of the elected Council. In summary, the view of the legal provider is that the decision of 13 August 2024 was lawful and it is open to the Council that the decision be affirmed.

RECOMMENDATION

THAT COUNCIL

1. Receives the independent external consultant report titled “Regarding a complaint concerning the decision in 2024 to decline to provide in-principle support for the inclusion of the name of Harry ‘Breaker’ Morant on or near the South African (Boer) War Memorial, Adelaide” as contained in Attachment A to Item 14.3 on the Agenda for the meeting of the Council held on 28 October 2025.
 2. Endorses and reaffirms the decision of the current and past Councils, including the decision of Council on 13 August 2024 that the South Australian (Boer) War Memorial is a closed historical site of cultural significance and does not provide consent as the owner of the Memorial and owner of the land for the proposal to amend or alter the South Australian (Boer) War Memorial on North Terrace to include ‘Sergeant, HH. ‘Breaker’ Morant’ or any other names.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2024-2028 Strategic Plan	Strategic Alignment – Our Corporation Enable effective governance, risk management, accountability and transparency at all times in decision making.
Policy	The City of Adelaide's Built Heritage Policy, Heritage Strategy and Action Plan guide the long-term heritage management for the City.
Consultation	Mr Unkles met with the legal provider representatives on 5 December 2024 to gain further information about the basis of his complaint. Mr Unkles was also provided the opportunity to provide a submission on the draft report before it was finalised.
Resource	Since 2021, this proposal and associated processes have cost the City of Adelaide \$35,510 in external legal advice fees and have utilised extensive staff time and resourcing from across the City of Adelaide portfolio areas. Council has since paid a further \$24,598 for the legal provider to review the complaint received from Mr Unkles.
Risk / Legal / Legislative	Council's Corporate Complaint Handling Operating Guideline (the Complaint Handling Guideline) and section 270 of the <i>Local Government Act 1999</i> (SA). A Section 270 review is an internal process under the Local Government Act 1999 (SA) that allows a person to request the review of a council decision or action made by the council, its employees, or someone acting on its behalf. It provides a fair and transparent way to reconsider decisions that may have adversely affected an individual, with the aim of ensuring accountability, consistency, and continuous improvement in council operations.
Opportunities	Not as a result of this report
25/26 Budget Allocation	Not as a result of this report
Proposed 26/27 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
25/26 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

Background – regarding section 270 application

1. On 13 August 2024, Council resolved:

THAT COUNCIL:

1. *Notes the cultural significance of the South Australian (Boer) War Memorial on North Terrace and its heritage listing.*
2. *Endorses and reaffirms the decision of past Councils, that the South Australian (Boer) War Memorial is a closed historical site of cultural significance and does not provide consent as the owner of the Memorial and owner of the land for the proposal to amend or alter the South Australian (Boer) War Memorial on North Terrace to include 'Sergeant, HH. 'Breaker' Morant' or any other names.*
2. On 19 August 2024, the Council received a complaint from Mr Unkles in which Mr Unkles sought a review of the manner in which the Council and the Committee handled the Application.
3. The email correspondence from Mr Unkles has been determined to constitute a request for internal review under the Council's Corporate Complaint Handling Operating Guideline (the Complaint Handling Guideline) [Link 1](#).
4. In this case, the 'Reviewer' for the purposes of the Complaint Handling Guideline is the elected Council. The Reviewer is the person who will ultimately reconsider the decision under review in this case.
5. The Complaint Handling Guideline provides that where the elected Council is the Reviewer: *a report will be developed by the administration, or an independent external consultant. Council will consider the outcome of the review and determine whether to affirm, vary or revoke the original decision.*
6. Administration engaged a legal provider as an independent external consultant ("legal provider") to prepare an internal review report for the consideration of the elected Council.
7. The legal provider has divided the final internal review report (**Attachment A**) into four parts:
 - 7.1. Firstly, relevant background information with respect to the decision under review;
 - 7.2. Secondly identified the decision which is now under review;
 - 7.3. Thirdly, the legal provider provided their views with respect to what is the correct or preferable decision in the circumstances; and
 - 7.4. Fourthly, recommendations were provided for the Council arising from the review.

Background – regarding Council's decision 13 August 2024

8. At the Council meeting on 13 August 2024, Council was provided with a recommendation from the City Community Services and Culture Committee from its meeting of 6 August 2024. A link to the committee report can be found at [Link 2](#).
9. The purpose of the South African Boer War Memorial (the Memorial) is to honour the memory and valour of the citizen soldiers of South Australia who fell in the Second Boer War (1899-1902) in service to Australia.
10. The Memorial has been treated as a closed historical monument, reflecting previous Council decisions regarding similar proposals for the Memorial in 1988 and 1993.
11. The City of Adelaide recognises that all forms of memorials to those who have given their lives in the service of their country, are to be held in the deepest respect and be honoured by all people as sacrosanct. Any interference with such memorials is regarded with the same degree of seriousness as dishonouring a grave. Alteration to any memorial must be considered with this reverence at front of mind.
12. In this matter, Council is acting in its capacity as owner of the Memorial and owner of the land. Council is not compelled or required to give consent to amend or alter the Memorial, regardless of advice through the planning process.
13. It should also be noted that this is not a legislative matter; this is a decision of Council applied at its discretion. In the application of its discretion to provide or deny consent as the owner of the Memorial and owner of the land, Council must form its view through observance of the purpose of the Memorial, policy, budget considerations and public interest.
14. Mr James Unkles lodged a Development Application under the *Planning, Development and Infrastructure Act 2016* (PDI Act) on 4 July 2023 on behalf of Ms Cathie Morant for works that proposed an additional plaque

fixed to the northwest-facing base step of the Memorial or ground adjacent to the Memorial and associated interpretive material.

15. The initial proposal to amend the plaques to include the name of 'Sergeant, HH. 'Breaker' Morant' on the Memorial were not supported by either Heritage South Australia or Administration.
16. Subsequently, Mr Unkles progressed a series of alternative options with Heritage South Australia as the referral body on the heritage component of this proposal. Mr Unkles requested for the early consideration of this matter, prior to investing further into this process.
17. Heritage South Australia determined under the PDI Act, conditional support for the final formal proposal put forward by the applicant for works that would add a new plaque to acknowledge 'Sergeant, HH. 'Breaker' Morant' (HH Morant) to the steps of the Memorial, as part of a Development Application (ID 23018759).
18. The Development Approval was issued with a condition directed by the Minister responsible for the administration of the *Heritage Places Act 1993* under section 122 of the PDI Act on 24 April 2024. That condition requires:
 - 18.1. "Final details of the location and details of the plaque itself, and associated interpretive material are to be confirmed by the Department for Environment and Water, Heritage South Australia, in consultation with, and subject to the approval of the City of Adelaide, as owner and custodian of the memorial, prior to manufacture and installation"
19. Key stakeholders associated with the Memorial, including the South Australian Boer War Association, and the South Australian Returned Service Leagues, have previously indicated that they do not support the proposal.
20. It was recommended that the Memorial continue to be treated as a closed historical monument, and that no further proposals to alter or amend the Memorial be considered. This recommendation reaffirms previous Council decisions regarding similar proposals for the Memorial in 1988 and 1993.
21. Following consideration at the Council meeting on 13 August 2024, Council resolved to reaffirm previous council decisions.

Purpose of the Memorial

22. Council's decision on whether to grant consent as the owner of the memorial and owner of the land for the proposal to add the name 'Sergeant, HH. 'Breaker' Morant' (HH Morant) to the Memorial, should be informed by the purpose of the Memorial and the intentions of the Boer War Memorial Committee (the Memorial Committee) that commissioned it.
23. The purpose of the Memorial is to honour the memory and valour of the citizen soldiers of South Australia who fell in the Second Boer War (1899-1902) in service to Australia.
24. In 1901, the Memorial was commissioned by the Memorial Committee, overseen by Sir George Brookman MLC.
25. Located on North Terrace, Adelaide, the Memorial was constructed with a budget of £2,500 raised through public donations received from the people of South Australia.
26. The Memorial was designed and sculpted by Captain Adrian Jones MVO. The Memorial comprises a cast bronze equestrian statue set on a red Murray Bridge granite pedestal and base, with gunmetal bronze plaques set into each face of the pedestal. In total, the Memorial lists the names of 60 South Australians, as approved by the Memorial Committee, who died while serving in the South Australian contingents during the conflict. The four plaques on the Memorial commemorate:
 - 26.1. 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'.
 - 26.2. 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'.
 - 26.3. 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'.
 - 26.4. 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)'.
27. The Memorial Committee specifically chose those named on the Memorial according to their eligibility criteria. Service alone was not the sole eligibility criteria for inclusion of a named serviceman on the Memorial. The only individuals that are specifically named on the Memorial plaques are those South

Australians who died or were killed in connection with the Boer War. If all servicemen who served as part of South Australian contingents were named, there would be 1531 names on the Memorial.

28. The Memorial has been considered by all subsequent Councils as a closed historical site.

The applicant's request for review

29. On 19 August 2024, Mr Unkles submitted his complaint about the manner in which the Council refused the Application.
30. The legal provider met with Mr Unkles on 5 December 2024 to gain further information about the basis of his complaint.
31. From the written complaint, the matters discussed on 5 December 2024, and correspondence received from Mr Unkles after his meeting with the legal provider, Mr Unkles complaint has been summarised as follows:
- 31.1. the manner in which the Council selected the deputations at the Council meeting on 13 August 2024 was unfair as Mr Unkles was not afforded the opportunity to speak (**Ground 1**);
 - 31.2. the Committee did not accommodate Ms Morant and her disability while she was reading her statement at the meeting on 6 August 2024, causing her to feel ignored and disappointed (**Ground 2**);
 - 31.3. the Council's decision was inconsistent with the view of Mr Queale (Principal Heritage Architect, Heritage SA), who appeared to support the inclusion of a small plaque at the foot of the Memorial and the inclusion of interpretive material. Mr Queale also appeared to indicate that this could be achieved without impacting upon the heritage of the Memorial. In the Response, Mr Unkles submitted that Mr Queale's support raised a 'presumption' that the Council should approve the Application as heritage considerations were the most important considerations in assessing the Application (**Ground 3**);
 - 31.4. the Council failed to objectively evaluate the public interest in approving the Application, as evidenced by opinion polls conducted by The Advertiser newspaper suggesting that a majority of people wanted to recognise Sergeant Morant on the Memorial (**Ground 4**);
 - 31.5. the Council failed to adequately consider written references from various politicians and community leaders, and failed to explain what weighting was attributed to each one in making the Decision (**Ground 5**);
 - 31.6. the Council placed too much weight on the views of Dr Stimson and the South Australian Returned and Services League (the RSL), who were against the Application and whose submissions consisted of the following matters with which Mr Unkles disagreed:
 - a) conjecture that deceased veterans of the Boer War were not in favour of Sergeant Morant's inclusion on the Memorial;
 - b) commentary about other war memorials which was incorrect; and
 - c) the suggestion that Sergeant Morant's conviction was a reason to not include him on the Memorial (**Ground 6**).
 - 31.7. there was no evidence that Sergeant Morant was intentionally excluded from the Memorial's honour roll and therefore nothing preventing him from now being included in the Memorial. If other persons who served in the Boer War were also missing from the Memorial, their relatives could similarly apply for inclusion on the Memorial (**Ground 7**); and
 - 31.8. the summary of the matter as provided to the Council lacked sufficient detail and failed to explain the merits of the Application against the reasons to reject the Application. Further, the Council has failed to provide adequate reasons for accepting the Recommendation (**Ground 8**).
32. Contained within **Attachment A** (pages 19 through to 29) is an explanation from the legal provider in response to the above Grounds (1 through to 8).
33. In response to correspondence from Mr Unkles on the Provisional Report shared with him by the legal provider, some clarifying edits were made by the legal provider to reinforce with further evidence the position originally stated in that Provisional Report. No substantive changes were made to the technical response in the "Correct or Preferable Decision" section of the legal provider's report (in response to Mr Unkles reiterated assertions in the correspondence).

Conclusion

34. The conclusion of the internal review report from the legal provider can be found on page 29 of **Attachment A**.

35. In summary, taking into account all the information as set out in Attachment A, the view of the legal provider is that:
- 35.1. the Decision is lawful;
 - 35.2. it is open to the Council to conclude the Decision be affirmed as the best possible decision in the circumstances.
36. It is the recommendation of the legal provider that:
- 36.1. That the Council consider all the information available at the time the Decision was made, and all new information including this report and make a determination on the Application.
 - 36.2. The legal provider consider it would be open to the Council to affirm the Decision.

DATA AND SUPPORTING INFORMATION

Link 1 - Corporate Complaint Handling Operating Guideline

Link 2 – City Community Services and Culture – 6 August 2024, Item 7.1.

ATTACHMENTS

Attachment A – Legal Provider – Final Internal Review Report – September 2025

- END OF REPORT -