

**Report prepared for
The Corporation of the City of Adelaide**

**Pursuant to the *Corporate Complaint Handling Operating
Guideline***

**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**

September 2025

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1. PURPOSE OF THIS REPORT

The Role of Norman Waterhouse

- 1.1 The Corporation of the City of Adelaide (**the Council**) received an application (**the Application**) from Mr James 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 Lt Harry 'Breaker' Morant (**Lt Morant**) included on the Memorial.
- 1.2 The circumstances in which the Application was made, the status of the Application, and the changes that have been made to the Application throughout this process, are set out in further detail later in this report.
- 1.3 At the Council meeting held on 13 August 2024, the Council endorsed the recommendation (**the Recommendation**) of the City Community Services and Culture Committee (**the Committee**), made at its meeting on 6 August 2024, not to grant consent to the Application.
- 1.4 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.
- 1.5 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**).
- 1.6 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.
- 1.7 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.
- 1.8 Accordingly, we have been engaged as an independent external consultant to prepare a report for the consideration of the elected Council.
- 1.9 We provide this report in discharge of the above role. This report is divided into the following parts:

- 1.9.1 First, we provide relevant background information with respect to the decision under review.
- 1.9.2 Second, we identify the decision which is now under review.
- 1.9.3 Third, we provide our views with respect to what is the correct or preferable decision in the circumstances.
- 1.9.4 Fourth, we provide recommendations for the Council arising from our review.
- 1.10 It is important to recognise that, in accordance with the Complaint Handling Guideline, any decision on review will ultimately be made by the Reviewer, not Norman Waterhouse. This report is prepared to assist the Reviewer.

Consideration of Mr Unkles' response

- 1.11 The Complaint Handling Guideline sets out the following requirements in respect of procedural fairness:
- The principles of procedural fairness (also called 'natural justice') will be observed when exercising statutory powers which could affect the rights and interests of individuals.
- Procedural fairness involves:
- Giving an applicant a right to put their case forward. This will generally involve giving an applicant the opportunity to provide all relevant documentary evidence, rather than an oral hearing;
 - Ensuring the Reviewer does not have personal interest in the outcome (is not biased); and
 - Acting only on proper evidence that is capable of proving the case.
- 1.12 In order to satisfy the above first dot point, a provisional version of this report was provided to Mr Unkles. Mr Unkles was invited to provide any submissions or views in response to the provisional report, and/or to supply any additional relevant information in relation to the matters out lined in the provisional report.
- 1.13 Mr Unkles provided a written response to the provisional report (**the Response**). The Response is included in **Appendix B**. It consists largely of 'comment' boxes inserted into the text of the provisional report.
- 1.14 The entirety of the Response has been taken into account in the preparation of this final report.

- 1.15 Certain information provided by Mr Unkles has resulted in revisions to this final report when compared with the provisional report. However, the final recommendations in this report are the same as those which were put to Mr Unkles on a provisional basis. Mr Unkles' Response has not persuaded us to change those recommendations.

2. **BACKGROUND**

Lt Morant

- 2.1 Lt Morant departed South Australia as a member of the Second South Australian Mounted Rifles in January 1900 and served in the Second Boer War (**the Boer War**) with that regiment until July 1900. His service with the Mounted Rifles was loyal and unblemished.
- 2.2 Lt Morant then travelled to England where he joined the Bushveldt Carbineers, an irregular British Army regiment, and returned to the Boer War.
- 2.3 In 1901, while part of the Bushveldt Carbineers, Lt Morant (as well as Lt Peter Handcock and Lt George Witton) were arrested and court-martialled, charged with murder. All three men were convicted. Lt Morant and Lt Handcock were executed in February 1902.
- 2.4 There has been subsequent controversy surrounding the legality of Lt Morant's courts-martial.
- 2.5 Lt Morant has also become something of a folk hero amongst some Australians, who consider Lt Morant to be a scapegoat and/or wrongfully convicted, believing that in undertaking the killings Lt Morant, Lt Handcock and Lt Witton were simply following orders from the British.
- 2.6 Lt Morant's life story formed the basis of the popular, multi-award winning, 1980 film '*Breaker Morant*' which, in addition to the other documentaries, books and other media published about Lt Morant, has considerably added to the notoriety surrounding his life.

The Memorial

- 2.7 The Memorial was commissioned by the Memorial Committee in 1901.
- 2.8 The Memorial lists the names of 60 South Australians, approved by the Memorial Committee, who died serving in South Australian contingents during the Boer War.

- 2.9 Two of the four plaques on the memorial list the names of 21 men and 39 troopers under the inscriptions '*Who dies for his country, dies nobly*' and '*In Memory of Those Who Fell*'. We are informed that other men may have died in the service of South Australia during the Boer War and not been named on either plaque. We requested further information from the Council about this possibility, however, we were advised that no evidence was in the Council's possession, except for an 'understanding' that there is an 'honour roll' listing the names and numbers of those who fought for the British Empire in South Africa held in the base of the Memorial. This 'understanding' appears to be supported by the minutes meeting of the Memorial Sub-Committee of 1 July 1904 viewed by us in the preparation of this Report, which record the Sub-Committee resolved at that meeting to suggest that a '*parchment/roll containing all the names of the members of South Australian Contingents to S. Africa be placed in a cavity in the pedestal*'.
- 2.10 A third plaque commemorates 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.*' The fourth plaque commemorates the erection of the Memorial by the people of South Australia '*To commemorate the valour of the Citizen Soldiers of the State who fought in the South African War (1899-1902)*'.
- 2.11 The Memorial was gifted to the citizens of Adelaide and the Council has been the owner and custodian of the Memorial, and the land upon which it sits, since the Memorial was unveiled in 1904.
- 2.12 Minutes of the Memorial Working Committee viewed by us in the preparation of this Report record that at a meeting held on 5 July 1904, the Memorial Working Committee adopted a motion (consistent with a recommendation from the Memorial Sub-Committee of 30 June 1904) to the effect that '*no further names be added*' to the memorial and that '*no alterations be made to the tablets*'.
- 2.13 Mr Uncles has stated in his response to our preliminary report that the name of Lt LWJ Gordon was added to the memorial in 1921, in contrast to the decision of the Memorial Working Committee. Lt Gordon died in Glen Osmond South Australia on 16 April 1904, aged 24 years after a long and serious illness, caused by exposure while on active service. However, photographs taken during the formal opening of the Memorial in June 1904, and viewed by us in the finalisation of this report, clearly show Lt Gordon's name is present under

the heading 'Lieutenants' on the day the memorial was opened in 1904. 'Lieut. L. Gordon' also appears in an article published in *The Register* newspaper on 6 June 1904 which lists the names inscribed on the pedestal of the Memorial.

- 2.14 The Memorial was confirmed as a State Heritage Place in 1987.

Previous Requests for Lt Morant's Inclusion on the Memorial

- 2.15 There have been numerous previous requests made of the Council to have Lt Morant's name listed on the Memorial, including in 1988 and 1993.
- 2.16 The substance of those requests is not relevant to the present matter, except to note that a 1988 report recommended that the Council deal with the Memorial as a 'historical document.' The report indicated that the Council should decline to add further names to the Memorial, consistent with the Committee's views as to the names on the plaques in 1904, notwithstanding the possibility of other persons being identified as eligible for inclusion on the Memorial.
- 2.17 Following these requests, the Memorial has been treated by the Council as a 'closed historical monument'.

The Present Request

- 2.18 In August 2021, Mr Unkles (on behalf of Ms Morant) issued a request for Lt Morant's name to be included on the Memorial (**the 2021 Request**).
- 2.19 On 15 September 2021, the Council advised it did not support the 2021 Request.
- 2.20 Mr Unkles subsequently made a complaint about this decision. Council engaged Kelledy Jones Lawyers to undertake a review of the decision pursuant to section 270 of the *Local Government Act 1999* (SA) (**the LG Act**) and in accordance with the Complaint Handling Guideline. Through that review, errors about the process in which the 2021 Request was considered were identified and the Council determined that the 2021 Request would be considered afresh.
- 2.21 On 13 June 2023, the Council adopted a recommendation of the Committee and resolved to endorse advising Ms Morant to lodge a development application under the *Planning, Development and Infrastructure Act 2016* (SA) (**the PDI Act**) for the proposed works to the Memorial. The resolution also noted that Council administration would provide assistance to Ms Morant if a development application was lodged, and noted that even if the works were

approved as part of a development application, the Council could reserve the right to potentially refuse *implementation* of the works, as owner and custodian of the Memorial.

- 2.22 On 4 July 2023, Mr Unkles lodged a development application (**the Development Application**) behalf of Ms Morant to seek development approval for works to the Memorial that would see Lt Morant recognised on the Memorial. The proposed development was for the leftmost panel of the plaque bearing the names of the 21 men who fell under the heading '*In Memory of Those Who Fell*' to be updated to list the name 'H. H. Morant' under the heading 'Lieutenants'.
- 2.23 That Development Application was assessed by the Council. This process involved seeking the assistance of Heritage SA in respect of heritage-related matters, in light of the Memorial's status as a State Heritage Place.
- 2.24 By email dated 10 January 2024, Mr Michael Queale, the Principal Heritage Architect at Heritage SA, indicated Heritage SA was not supportive of any proposal to have the Memorial amended to include Lt Morant's name on the main plaque of the Memorial.
- 2.25 We understand that Mr Unkles and Mr Queale engaged in communications regarding the matter. During this process, it appears Mr Unkles revised the Development Application such that the plaque of the Memorial would not be amended, and instead Lt Morant's name would be inscribed on a separate small name plate at the foot of the Memorial.
- 2.26 By correspondence dated 5 April 2024, Heritage SA advised that, from a heritage perspective, Heritage SA supported the inclusion of a separate plaque to be either fixed to the ground near the Memorial, or on the footpath step below the Memorial, noting Lt Morant's name. Heritage SA further supported the display of interpretive material, explaining why the name plaque had been installed and providing information about the Memorial and the '*mix of views associated with South Australia's involvement in the [Boer] War.*'
- 2.27 The Council issued approval for the Development Application on 24 April 2024. The nature of the proposed development is described in the Decision Notification Form as an:

Additional plaque fixed to north west facing base step of the South African War Memorial or ground adjacent the Memorial and associated interpretive material.

- 2.28 The Development Application is subject to a number of conditions. Relevantly, the condition directed by the Minister responsible for the administration of the *Heritage Places Act 1993* (**the Condition**) required:

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.

- 2.29 Before proceeding with the works required to meet the conditions of the Development Application, Ms Morant sought the in-principle approval of the Council for the proposed development. This is the 'Application' for the purposes of this report.
- 2.30 While the Council had already assessed the Development Application in terms of compliance with the PDI Act, the Committee and the Council (as an elected body) assessed the application in their role as the owner and custodian of the Memorial.
- 2.31 As part of this process, the Council considered a report to the Committee dated 6 August 2024 which included (but was not limited to) an analysis of matters within the following key topic areas:
- 2.31.1 the purpose of the Memorial;
 - 2.31.2 policy considerations;
 - 2.31.3 budget considerations; and
 - 2.31.4 the public interest.
- 2.32 With reference to these criteria, the Committee recommended at its meeting on 6 August 2024 that the Council not consent to the proposed works.
- 2.33 It is noted in the report to the Committee that:

29. If Council decides to provide in principle support for the proposal, this will trigger the requirement for the applicant to meet the requirements of the Development Approval process and conditions. It should be noted that at this point in time the applicant has not progressed the work relating to Conditions 1 and 2 of the Development approval, as they have decided to seek Council's position before expending more time and cost on the proposal.

31. Should the conditions of the Development Application be subsequently met by the applicant, including addressing Heritage South Australia conditions, a further Council report will need to be presented seeking Council's approval as the owner of the Memorial and owner of the land to implement the proposal.
31. At that point, Council may still choose to not support, or to support this revised proposal.
- 2.34 Ms Morant and Mr Unkles were in attendance at the meeting and spoke to the Committee.
- 2.35 At the meeting on 13 August 2024, the Council was addressed by Dr Anthony Stimson (President of the SA Boer War Association Inc), who was against the Application, and Mr Adam Pearce, who was in favour of considering options to include Lt Morant's name on or near the Memorial.
- 2.36 Council also received a petition containing 23 signatures of persons who supported the inclusion of Lt Morant's name to the Memorial.
- 2.37 The Council ultimately adopted the Recommendation.

The Applicant's Request for Review (see Appendix A)

- 2.38 On 19 August 2024, Mr Unkles submitted his complaint about the manner in which the Council refused the Application (a copy of which is attached as **Appendix A**).
- 2.39 We also met with Mr Unkles on 5 December 2024 to gain further information about the basis of his complaint.
- 2.40 From the written complaint, the matters discussed on 5 December 2024, and correspondence received from Mr Unkles after our meeting, we summarise the grounds on which Mr Unkles has complained about the Council's conduct in assessing the Application as follows:
- 2.40.1 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**);
- 2.40.2 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**);

- 2.40.3 the Council's decision was inconsistent with the view of Mr Queale, 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**);
- 2.40.4 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 Lt Morant on the Memorial (**Ground 4**);
- 2.40.5 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**);
- 2.40.6 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 Lt Morant's inclusion on the Memorial;
 - (b) commentary about other war memorials which was incorrect; and
 - (c) the suggestion that Lt Morant's conviction was a reason to not include him on the Memorial (**Ground 6**);
- 2.40.7 there was no evidence that Lt 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
- 2.40.8 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)**.

3. THE DECISION UNDER REVIEW

- 3.1 Section 270(1) of the LG Act, and the Complaint Handling Guideline, are concerned with review of decisions.
- 3.2 In the correspondence dated 19 August 2024 (contained in Appendix A), Mr Unkles states that he wishes
- to lodge a complaint about the manner in which the Lord Mayor and Councillors conducted their review of an application I lodged.
- 3.3 He also states:
- Ms Morant is aggrieved by the Council's decision of 13 August to refuse her application and endorse a Recommendation made by [the Committee] on 6 August not to approve the application.
- 3.4 Accordingly, the decision under review (**the Decision**) is the decision of the Council at its meeting on 13 August 2024 to endorse the recommendation of the Committee which was passed in the following terms:
- 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.
- 3.5 This is not a review of any of the decisions or recommendations made which may have led to the Decision (for example, the resolution in June 2023, or the decision to grant the Development Approval). Those decisions are nevertheless relevant, both in terms of providing context and in informing the next steps. In particular, the decision to grant the Development Approval will be of importance if the Council decides to vary the Decision so as to grant in-principle support of the Application, following this review.
- 3.6 Before examining the Decision, it is necessary to make certain general comments about the nature of this review.

4. THE CORRECT OR PREFERABLE DECISION

The Need for 'Merits Review'

4.1 The Complaint Handling Guideline provides as follows:

The role of a review is to review the decision in question to ensure that the decision-maker complied with the following procedural requirements and made the best possible decision in the circumstances:

- The decision-maker was appropriately authorised to make the decision;
- The decision-maker considered all matters which were relevant to the making of the decision, and did not take into account matters which were not relevant to the decision;
- The decision-maker did not make a decision or exercise a power or discretion in bad faith or for an improper purpose;
- The decision-maker ensured that findings of fact were based on evidence;
- The decision was reasonable (a review will include an assessment of the merits of the decision);
- Those affected by the decision were accorded procedural fairness, which includes the principles of natural justice;
- The decision-maker properly considered the application of existing policies and legislation, as they existed at the time of the decision;
- The decision-maker did not exercise a discretionary power at the direction of another person.

4.2 The requirement for merits review in the Complaint's Handling Guideline is consistent with the view taken by former South Australian Ombudsmen, that procedures adopted for the purposes of section 270(1) of the LG Act must provide for merits review.¹

4.3 In defining what constitutes merits review, the then Ombudsman cited with approval the following guidance of the Commonwealth Administrative Review Council:²

Merits review is the process by which a person or body, other than the primary decision maker, reconsiders the facts, law and policy aspects of the original

¹ Ombudsman SA, *Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures* (November 2016) [145], [153]; Ombudsman SA *Valuing Complaints – An audit of complaint handling in South Australian councils* (November 2011) 65.

² See Ombudsman SA (2016), [142].

decision and determines the 'correct or preferable decision'. In a merits review, the whole decision is made again on the facts. This is different to judicial review, where only the legality of the decision making process is considered. Judicial review usually consists only of a review of the procedures followed in making the decision.

The objective of merits review is to ensure administrative decisions are correct or preferable – that is, they are made according to law, or if there is a range of decisions that are correct in law, the best on the relevant facts. It is directed to ensuring fair treatment of all persons affected by a decision, and improving the quality and consistency of primary decision making.

4.4 In accordance with the above, the Reviewer must consider both:

4.4.1 the lawfulness of the Decision; and

4.4.2 the merits of the Decision.

4.5 Thus, to assist the Reviewer:

4.5.1 First, we examine the lawfulness of the Decision.

4.5.2 Subsequently, we examine whether the Decision was the preferable decision or best possible decision in the circumstances.

Lawfulness of Decision

4.6 It is not controversial that the Memorial is owned by the Council. The Council has described its relationship to the Memorial as that of owner and custodian.

4.7 The Memorial is located on land comprising Public Road at the intersection of King William Street and North Terrace, Adelaide. The Council is the owner of public roads in its area by virtue of section 208(1) of the LG Act.

4.8 It is plainly lawful for the Council to make decisions about the Memorial as its asset. This is consistent with the functions of the Council as set out in section 7 of the LG Act which relevantly include '*[managing] and, if appropriate, [developing], public areas vested in, or occupied by*' the Council.

4.9 The principles of section 8 of the LG Act, which the Council must act to uphold and promote the observance of, are also relevant including, but not necessarily limited to:

(a) provide open, responsive and accountable government;\

(b) be responsive to the needs, interests and aspirations of individuals and groups within its community;

and

- (f) seek to facilitate sustainable development and the protection of the environment and to ensure a proper balance within its community between economic, social, environmental and cultural considerations;
- (g) manage its operations and affairs in a manner that emphasises the importance of service to the community.

- 4.10 The Decision is clearly a preliminary step in the formal decision making process, and should be contrasted with formal approval under section 221 of the LG Act to alter the Memorial, as a structure on a public road.
- 4.11 There being no legislative basis for the Decision, in our view, the Council may exercise its discretion in making the Decision. There are no mandatory applicable considerations to such a decision.
- 4.12 There is no basis on any of the material we have reviewed to find that the Council committed any legal error in exercising its discretion.
- 4.13 We are satisfied that the Council (to the extent it was required to):
 - 4.13.1 took into account all relevant matters;
 - 4.13.2 did not take into account any irrelevant matters;
 - 4.13.3 did not make the decision in bad faith or for an improper purpose;
 - 4.13.4 made a decision which was not unreasonable in a legal sense (though the non-legal 'merits' of the decision are discussed later);
 - 4.13.5 afforded sufficient procedural fairness to the Applicant; and
 - 4.13.6 did not exercise a discretionary power at the direction of another person.
- 4.14 To this end we note the Committee had before it and considered a report from officers when making the Recommendation (which was ultimately adopted by Council). We agree the matters set out in the report are relevant matters.
- 4.15 While Mr Unkles may consider that the weighting placed on particular considerations was not appropriate, in our view, it is open for the Council, as a body politic seized with the responsibility for managing a significant public asset, to assign weightings to the competing considerations in any way it sees fit.

- 4.16 We do not consider that any of the considerations taken into account were *irrelevant* or that any relevant matters were overlooked. We discuss Mr Unkles' more specific concerns about particular considerations further below.
- 4.17 Accordingly the Decision was in our view a legally valid decision.
- 4.18 Whether the Decision was the preferable or best possible decision in the circumstances is discussed below.

Merits of the Decision

- 4.19 We now turn to whether the Decision was the preferable or best possible decision in the circumstances.
- 4.20 Because this is a case where there are multiple lawful alternatives — to grant the Application, or to deny it — the task of the Reviewer is to identify the 'preferable' decision. What is 'preferable' should be determined by reference to community standards or community values, not the Reviewer's own personal standards or philosophy.³
- 4.21 In our view, the Council was correct to place weighting on the following factors against the Application:
- 4.21.1 the historical significance and purpose of the Memorial, including the policy position to treat the Memorial as a 'historical document' with no further names to be added;
- 4.21.2 the relevance of the Burra Charter which provides that places of cultural significance should be preserved and defines 'places' broadly. To this end, to take the view the 'place' in question which ought to be protected is not necessarily the Memorial itself, but also the area surrounding it. We do not agree with the submission in the Response that 'places' should have a strict interpretation (and in this case refer only to the pedestal, plaques and horse and rider figure). Even were that the case, the Burra Charter further notes that conservation requires the retention of an appropriate 'setting', and it is our view that the area surrounding the Memorial is at least the 'setting' if not also the 'place' in question;

³ See *Visa Cancellation Applicant and Minister for Immigration and Citizenship* [2011] AATA 69, [62] et seq.

- 4.21.3 the views of various stakeholders who were against the Application, notably including the RSL and the SA Boer War Association Inc, as key bodies associated with the veteran community; and
 - 4.21.4 the responsibility of the Council to ensure appropriate technical expertise to implement the proposed works due to the Memorial's status as a State Heritage Place and the impact this would have on Council's budget. This was particularly difficult for the Council to ensure given the lack of detail provided with the Application. We discuss this further below in response to Ground 8.
- 4.22 As submitted by Mr Unkles, there are also factors in favour of the Application, including:
- 4.22.1 the proposed amendments to the Memorial (and the interpretative material) providing an opportunity for a well-known historical figure from the region to be recognised, including potentially offering tourist opportunities;
 - 4.22.2 the possibility that other South Australians who served in the Boer War but are not currently expressly named on the Memorial could be similarly recognised for their service; and
 - 4.22.3 the views of Ms Morant and various stakeholders who were in favour of the Application.
- 4.23 Weighing the factors in favour of the Application and those against the Application, in our view, it is open to the Council to determine it reached the correct and preferable decision with reference to the standards and values of the community.
- 4.24 In reaching this view we acknowledge the significant community sentiment both in support and against the proposal, and acknowledge that, from a heritage perspective, the proposal appears able to be accommodated. However, we note the Council is not compelled to agree to a proposal just because it is able to be accommodated.
- 4.25 We elaborate on these matters further in our analysis of the grounds on which Mr Unkles made his complaint to explain why they do not displace our view.

Ground 1

- 4.26 Mr Unkles indicated that *'the Lord Mayor refused [his] request to address Councillors'* at the meeting on 13 August 2024 and that this was 'unfair' and 'unethical.'
- 4.27 We note the Council's Code of Practice for Meeting Procedures (which applies to both Council and committee meetings) provides that *'a request for deputation is accepted is determined on a case-by-case basis and is dependent on the subject of the request'* and that generally a maximum of three speaking opportunities will be provided, unless the meeting determines otherwise. The Presiding Member of the meeting determines if the deputation will be heard.
- 4.28 The Code of Practice for Meeting Procedures also provides that when deciding whether to allow a deputation, the Presiding Member will take into account a number of considerations which relevantly include the following:
- 4.28.1 the subject matter of the proposed deputation;
 - 4.28.2 whether the subject matter has previously been the basis of a deputation at another meeting;
 - 4.28.3 the benefit of the Council of receiving the deputation; and
 - 4.28.4 the history of deputations from the person.
- 4.29 The Presiding Member of the Committee meeting (Cr Giles) determined that one party 'in favour' of the Application and one party 'against' the Application would be permitted to give a deputation. Mr Unkles and Ms Morant submitted a Deputation Request for the Committee meeting which was accepted. The RSL's Deputation Request was also accepted as a party which was not in favour of the Application.
- 4.30 Mr Unkles submitted his Deputation Request for the Council meeting on 8 August 2024. His request was the fourth request to be received.
- 4.31 At the Council meeting, the Lord Mayor chose to approve one deputation in favour of the Application and one deputation against the Application before putting the rest of the deputation requests to the meeting. The two deputations were delivered by different people from those who spoke at the Committee meeting.
- 4.32 The Lord Mayor put to the meeting that there were three other persons who had requested a deputation. The meeting did not disturb the Lord Mayor's

determination in this regard. This is consistent with the Code of Practice for Meeting Procedures and the *Local Government (Procedures at Meetings) Regulations 2013*.

- 4.33 In our view, if the Lord Mayor's view was that one person should speak in favour of the Application and one should speak against the Application (which we agree is sensible), Mr Unkles as the representative of the Applicant was likely the most appropriate person to speak in relation to the Application.
- 4.34 However, we do not consider that the decision not to accept Mr Unkles' request for a deputation at the Council meeting should weigh against a finding that the correct and preferable decision was made.
- 4.35 We are of the view that this decision was not inconsistent with any entitlement to procedural fairness, or the powers of the Lord Mayor to exercise her discretion in determining who may make a deputation. This is because:
- 4.35.1 the merits of the Application were still put forward in a clear and persuasive manner by Mr Pearce;
- 4.35.2 Mr Unkles (and Ms Morant) had previously had a deputation at the Committee meeting at which the Recommendation was approved;
- 4.35.3 Mr Unkles had ample opportunities previously to liaise with Council administration in relation to his Application. He had many opportunities to raise his point of view throughout the process and indeed he did so. It is evident those views were taken into account in the preparation of the Recommendation before it went to the Committee; and
- 4.35.4 The Council had the opportunity to allow Mr Unkles to present a deputation, notwithstanding the Lord Mayor's decision to refuse his request – but it choose not to.

Ground 2

- 4.36 Mr Unkles has identified that Ms Morant experienced difficulties delivering her statement at the Committee meeting and felt '*very disappointed as to how she was treated.*'
- 4.37 We have spoken to several members of the Council's administration who have expressed their surprise that this was Ms Morant's experience, as they believed the Council had accommodated Ms Morant appropriately.

- 4.38 We do not propose to address this ground in detail because, although we appreciate the sensitivity of this issue, we do not consider it particularly relevant to the Decision which is the subject of this review.
- 4.39 It may nevertheless be appropriate for the Council to determine whether it could do anything to make it easier for elderly people and people with disabilities to attend and speak at Council meetings, and to accommodate any difficulties which may arise.

Ground 3

- 4.40 Mr Unkles places significant weight on Mr Queale's position that the addition of a plaque at the base of the Memorial would not have a 'significant adverse impact' upon the heritage significance of the Memorial. In his Response, Mr Unkles has indicated that Mr Queale's position creates a 'presumption' that the Application should be approved as, in Mr Unkles' submission, heritage compliance is the 'most significant consideration' in assessing the Application.
- 4.41 By letter to the Council dated 5 April 2024, Mr Queale provided the following assessment in support of his position:
- The Memorial will be physically unaffected, as the proposed plaque/ or similar interpretation is to be fixed on the base step, or on paving nearby, not on the pedestal of the Memorial.
 - The addition of 'Morant' as a name will be on a separately located plaque, with suitable interpretation material, to ensure there is no confusion/ misinterpretation of the historic value of the Memorial as an illustration of the values of the community and commemorative committee of 1904. This solution will ensure that it is clear that Morant was not one of 'those who fell' when on services, as commemorated on the bronze plaques of the Memorial.
 - Note: this advice focuses on the consideration of the potential heritage impact of a proposed plaque on/ or near the South African War Memorial. It does not consider the appropriateness of the content of the plaque, as this is a matter separate to the identified State Heritage value of the memorial.
 - Further, it is suggested that consideration of all those involved in the War be interpreted in some manner at the memorial, to be fully inclusive of the contribution they made as a part of the conflict.
- 4.42 In our view, and as Mr Queale himself acknowledged in the letter of 5 April 2024 and in earlier communications with Mr Unkles, Mr Queale's role was in providing advice on the heritage impact of the proposed development during

the Development Application process. This process is quite separate from the Council's consideration of the Application.

- 4.43 While the views of Heritage SA are relevant in the Development Application process, and could be given some weight by the Council in assessing the Application, we do not consider that those views are necessarily determinative in considering the Application or agree that any presumption that the Application will be approved in line with the views of Heritage SA exists. The considerations in each process are different and the Council is quite within its rights to refuse alterations to its asset, even if development approval is granted for that purpose.
- 4.44 Just because a proposal is consistent with heritage advice does not mean that, on balance, it must be approved.
- 4.45 In particular, we consider it would be open to the Council to have formed the view that having a separate, standalone plaque bearing Lt Morant's name at the foot of the Memorial would draw particular attention to Lt Morant, given its unique positioning, such that the Council did not wish to proceed with the proposal.

Ground 4

- 4.46 While we agree that the views of the community are relevant in assessing the Application, we do not consider that opinion polls from *The Advertiser* needs to be afforded particularly significant weighting in considering the Application, or that such polls are particularly relevant in determining the public interest.
- 4.47 We do not know who voted on the poll, where they are from, or whether they have the full understanding of the Application and the historical background to the Application and the Memorial. In our view, the polls accordingly have limited probative value.

Ground 5

- 4.48 We note that the Council has received an assortment of *ad-hoc* pieces of correspondence from various members in the community, including former and current politicians and representatives of veterans' organisations across the country, some in favour of the proposal to recognise Lt Morant on the Memorial and others against.

- 4.49 Much of this correspondence was dated some time before the Development Application was granted and therefore was made without the knowledge of the specific details of the Application.
- 4.50 In general, the correspondence dated before the Development Application which is in favour of Lt Morant's inclusion indicates a desire for Lt Morant's unblemished service with the South Australian Mounted Rifles and/or his status as a folk hero for some Australians to be 'recognised.' This correspondence does not address why the Memorial is the appropriate location for this recognition. The writers have not been able to respond to the suggestion that Lt Morant's service could be recognised elsewhere, on a new memorial or installation, for example.
- 4.51 The correspondence against Lt Morant's inclusion appears to oppose his inclusion on the grounds that Lt Morant was executed as a war criminal but again largely lacks substantive analysis.
- 4.52 The correspondence predating the Development Application is therefore, broadly speaking, more commentary about the value (or otherwise) of recognising Lt Morant's service, rather than commentary about the specific Application. Our view is that such correspondence is of limited use to the Council in making its decision.
- 4.53 There is also some correspondence dated after the Development Application. This correspondence is of somewhat higher use to the Council. Generally, such correspondence relies heavily upon Mr Queale's statement from his letter of 5 April 2024 that the proposed development '*will not have a significant adverse impact*' upon the Memorial to justify the writer's support for the Application.
- 4.54 Mr Unkles has correctly identified that some of the correspondence in support of the Application in his possession, which was apparently issued to the Council in support of Lt Morant's inclusion on the Memorial, was not provided by Council administration to the Committee (and subsequently, the Council). This appears to have occurred for the following reasons:
- 4.54.1 some correspondence was submitted to the Council after 25 July 2024. The Council had advised Mr Unkles that submissions received

after that date could not be considered or accepted, in line with Council reporting and publication deadlines;

4.54.2 some pieces of correspondence were withdrawn by the senders, after receipt by the Council. That correspondence was therefore not included in the information considered by the Committee (and subsequently, the Council);

4.54.3 correspondence received from persons who did not grant permission for its publication or reproduction (even after Council contacted those persons to obtain their permission) was not included; and

4.54.4 one letter does not appear to have been received by the Council at all.

4.55 The non-inclusion of this correspondence in the materials provided to the Committee does not cause us to change our conclusion as to the merits of the Decision because:

4.55.1 it was open to Mr Unkles to table the documents that were not included in the Committee agenda at the Committee meeting. We understand Mr Unkles was advised of this by Council administration, but he does not appear to have sought to have the documents tabled;

4.55.2 Mr Unkles contacted Council members by email on 5 August 2024 to provide them with copies of 'documents relevant to the application', including copies of correspondence in support of the Application;

4.55.3 the contents of the correspondence which was not included in the materials provided to Committee is very similar to the contents of other correspondence provided to the Committee, which in our view suggests that their inclusion would have been unlikely to have changed the decision of the Committee or Council; and

4.55.4 there are no legislated mandatory requirements for the Council to consider in making the Decision.

Ground 6

4.56 In our view, it is appropriate for the Council to place weight on the views of Dr Stimson and the RSL given their status within the community and their roles working within reputable organisations, even if their views may be based on a

level of conjecture. We consider this is consistent with objective community standards.

- 4.57 We do not agree with the notion put forward in the Response that the Council is being 'selective' or 'favoured' the views of these organisations above the 'public interest.' In our view, the material before the Council makes it clear the Council was able to have and had regard to responses both in favour and against the Application in its decision making process.
- 4.58 With respect to the controversy surrounding the conviction of Lt Morant, it is well beyond the scope of our enquiry to express a view on those matters. However, we acknowledge the substantial number of eminent persons within the military, legal and political community who have expressed grave concerns regarding the processes adopted during the courts-martial.
- 4.59 It is apparent from the Response that Mr Unkles considers that the Application was rejected in large part because, as set out in the RSL and Dr Stimson's submissions, Lt Morant was convicted, and Mr Unkles considers this to be an irrelevant consideration. Mr Unkles wishes to know whether this was a reason used to decline the Application.
- 4.60 We are unable to know whether this was a reason upon which the Application was declined, or to assess how much weighting the Council may have placed on this consideration, or any other consideration. However, we disagree with Mr Unkles' submission that Lt Morant's convictions are not relevant to the decision to deny the Application. In our view, this is a relevant (although not necessarily determinative) factor. Further, we consider that the exclusion of persons convicted of crimes (while acknowledging that those convictions are disputed by some) is not inconsistent with objective community standards.
- 4.61 We consider it of some import that the consideration of the adding of further names to the memorial was specifically considered, and decided in the negative, by the Memorial Working Committee in 1904 at a time when the court-martial and death of Lt Morant in 1902 could, no doubt, have been within the consciousness of the Committee.

Ground 7

- 4.62 Mr Unkles has put forward the view that Lt Morant (and other persons who were missing from the Memorial) could be added at a later date, if they were

not intentionally excluded from the Memorial's honour roll by way of similar additional plaques.

- 4.63 We note that a plain reading of the text on the honour roll on the Memorial indicates that it commemorates men who died for their country. The plaques are in memory of those who fell and headed by the inscription '*who dies for his country dies nobly*'. From that context it is evidence the Memorial commemorates those who died in the service of South Australia, rather than all people who fell in the Boer War, or all people who served South Australia. We believe it likely that this is the reason for Lt Morant's initial omission, as he died in different circumstances.
- 4.64 Even were this not the case, however, we consider there are numerous other considerations which could prevent the inclusion of Lt Morant and other persons who were omitted from the Memorial, such as the desire to treat the Memorial as a 'closed site' and the practical infeasibility of including the name of every soldier who served South Australia in the Boer War.
- 4.65 As noted by Dr Stimson in his correspondence to the former Premier dated 30 July 2021:

First, the memorial was erected to 'commemorate the valour of the citizen soldiers of the State' and the 'memory of those who fell', largely to disease and enemy action. Morant did serve briefly in a South Australian unit. His courage and swagger are not in question. Yet the circumstances of his death – shot by a firing squad after a court martial found him guilty of cold-blooded killings – are vastly different. It is difficult to see how it can be argued that he fell in the service of his sovereign and the Empire.

Second, comparison with other memorials is difficult. For example, Morant is listed on the Renmark and District Honour Roll because it is explicitly a service record. That is, it lists 19 men with ties to that district who enlisted. The State memorial did not purport to be a service record naming every man who served. How could it, when perhaps 2,000 South Australians served in this war, 1,531 in contingents raised here and many more who made their own way to South Africa and enlisted there? It makes no sense to argue that because Morant is named on this or that memorial he should therefore be named on the North Terrace memorial. I could equally point out that his name is conspicuously absent on the plaque commemorating the South Australian dead at the Australian War Memorial (AWM). The National Boer War Memorial does not name individuals.

Third, to reopen the question of who should and should not be named in 2021 is to open a Pandora's box. In researching *Citizen Soldiers: South Australians at the*

Anglo-Boer War 1899-1902, which Wakefield Press will publish shortly, Jennifer Humphries and I identified another 25 men with South Australian ties who died as a result of their war service and are *not* named on the memorial. There may be more. Lt. Walter Arnot shot himself dead. He was not considered, presumably due to contemporary attitudes to 'self-murder'. Tpr. John Payne was invalided home and died a few months later, doctors at Kalyra sanatorium convinced his consumption was due to the rigours of war service. Tpr. Oliver Fry was a Mintaro lad serving in a Western Australian unit when he died. Tpr. Robert Tuckwell, Sgt. Alfred Balwin and others died while serving in irregular units raised in South Africa. If Morant's name is to be considered, why not these humbler men?

- 4.66 It is also of no small moment to observe that Lt Morant's service to South Australia is directly acknowledged on the Memorial's western face, in the same way all other Citizen Soldiers of the State are commemorated.
- 4.67 The addition of the names of persons to the Memorial, or its surrounds, in a piecemeal way would not, in our view, respect the cautious approach to conservation of heritage places advocated by the Burra Charter.

Ground 8

- 4.68 We understand Mr Unkles is concerned that the basis on which the Recommendation was made was based more on the Council's history of rejecting applications concerning the addition of Lt Morant to the Memorial, rather than by analysis of the present Application.
- 4.69 We agree with Mr Unkles that the materials provided to Council were somewhat unclear, in some respects.
- 4.70 For example, the material provided to the Committee states that:

The current proposal... seeks the addition of a new plaque with the name 'Sergeant, HH. Breaker Morant' (HH Morant) and his South Australian regiment to the granite steps of the Memorial.

...

 - 17.2 The proposal seeks to embed the plaque either on the vertical or horizontal faces of the granite steps of the Memorial.
 - 17.3 It is proposed that the text would replicate the style of font on the existing Memorial plaques, and while exact dimensions are to be confirmed, it is proposed that it is approximately 230mm x 100mm.
 - 17.4 Development Approval is required as the Memorial is State Heritage listed.

- 4.71 The approved Development Application is also attached to the report to the Committee.
- 4.72 In our view, uncertainty in the materials provided in the report to the Committee arises because the scope of the proposed works within the Development Application is also uncertain and, in some instances, appears inconsistent with the summary set out above.
- 4.73 From our review of the stamped development approval documents, all that can be said with certainty is that there is to be a 'name plate' affixed at the foot of the Memorial with 'options' for the location of the name plate. The size of the plaque is not clear from the stamped documents, as well as the design, size and content of the interpretative material/interactive display. The wording on the plaque also varies across the mock ups provided in support of the Development Application. We assume that these are the matters which are to be resolved as part of the Condition. Mr Unkles has indicated that he was to obtain costings and final designs from contractors once the Council's in principle support was provided.
- 4.74 However, we consider it quite difficult for the reports provided to the Committee and Council to contain more substantive detail about the nature of the Application, or to provide commentary on the merits of that Application itself, when the Application itself is lacking in particulars.
- 4.75 This issue could, at least in part, be attributed to the Council for not requiring further particulars before approving the Development Application.
- 4.76 We are advised that the Council did not seek further particulars because development approval was only required due to the Memorial's status as a State Heritage Place. In those circumstances the Council accepted Heritage SA's view that there was sufficient information to complete the heritage assessment and did not consider it appropriate to seek further information.
- 4.77 The issue can also, at least in part, be attributed to the Applicant for seeking the approval of an Application which lacks substantive detail.
- 4.78 Notwithstanding our concerns about the lack of detail within the Development Application, we consider that the report does set out, to the extent possible, the nature of the Application so that Council members could form their views on the merits of the Application.

- 4.79 Further, in response to Mr Unkles' views more generally that the report contains 'insufficient detail', we consider that the report does set out clearly the reasons why the Recommendation was for the Application to not be approved, namely that its approval is inconsistent with the purpose of the Memorial, policy matters, budgetary considerations and the public interest.
- 4.80 Lastly, we do not consider that there is any issue in the Council reaffirming its previous views that the Memorial is a 'closed site.' Even though the nature of the Application was slightly different to previous requests for Lt Morant to be recognised on the Memorial (in that his name was to be included on a separate plaque), in our view, the proposal still consists of a variation to the Memorial and its surrounds, as contemplated by the Burra Charter. Accordingly, we consider it was reasonable for the Council to consider the Application to be inconsistent with the 'closed site' approach to the Memorial.

Conclusion

- 4.81 There are weighty factors both in favour and against the Application. We acknowledge the difficulty faced by councils in balancing the needs and interests of various sectors of its community. Councils are also challenged when balancing the principle of being responsive to the needs, interests and aspirations of individuals and groups within its community against their long-term obligations to manage their assets in the public interest.
- 4.82 As we have indicated, we consider that in reviewing the Decision and determining the best decision, the Council ought to have regard to community standards or community values. That is, the Council ought to consider what is the preferable decision in accordance with community standards or values. The elected membership of the Council, as local representatives of the Council's community, would be aware of and appreciate such standards and values and be well placed to make an assessment that contemplates such standards and values.
- 4.83 We consider that the Decision has an evident and intelligible justification. It is, in our view, within the range of permissible decisions available to the Council to be made taking into account the information before it.
- 4.84 In our view, it is therefore open to the Council to determine the factors in favour of granting the Application are outweighed by the factors against granting the Application.

- 4.85 It would be open to the Council to conclude that community standards and values recognise, above all, the sanctity of the Memorial as a place commemorating, by specific name, those who fell in the service of South Australia. This conclusion does not diminish the service of all the other men of valour who served South Australia and who are rightly acknowledged and commemorated on the Memorial's western plate.
- 4.86 We accordingly conclude that it is open to the Council to conclude the decision made by the Council was the best possible decision in the circumstances.
- 4.87 Noting that the decision made by the Council is only a preliminary step in the decision-making process, there is nothing preventing Mr Unkles or Ms Morant from undertaking the further work to refine the proposal within the scope of the Development Application and lodging a formal application for approval under section 221 of the LG Act.
- 4.88 Of course, any such application would need to contain specific detail regarding the actual proposed alteration to the Memorial and surrounds. Such an application would need to contain the final design for the plaque and its location, and a final design and location for the interpretative material.
- 4.89 The Council would then be in the position of considering an actual proposal to alter the Memorial and other parts of the road and would be required to consider the application on its own merits.
- 4.90 Equally, there is nothing to prevent Mr Unkles or Ms Morant from pursuing alternative avenues to recognise to the service of Lt Morant, and any of the other men who fell during the Boer War, at an alternative location within the City of Adelaide. We note that before Heritage SA granted its approval of the Application from a heritage perspective, the option of a 'separate installation' of this nature was also supported by Mr Queale and Heritage SA as a way of *'adding to the commemorative story without loss of the original meaning of the place.'*
- 4.91 The cultural significance of the story of Lt Morant and the success of the film bearing his name cannot be overlooked. While entirely a matter of public policy for the Council, it may be that this important contribution to Australian culture and society by a prominent South Australian identity can be recognised by the Council in another way.

5. **CONCLUSION**

5.1 Taking into account all the information as set out in this report, our view is that:

5.1.1 the Decision is lawful;

5.1.2 it is open to the Council to conclude the Decision be affirmed as the best possible decision in the circumstances.

6. **RECOMMENDATIONS**

6.1 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.

6.2 We consider it would be open to the Council to affirm the Decision.

NORMAN WATERHOUSE



Dale Mazzachi
Principal



Annabelle Narayan
Senior Associate

APPENDICES

Appendix A: Email correspondence between Applicant and Council

Complaint concerning Council's decision to decline the inclusion of Harry 'Breaker' Morant on the Adelaide Boer War Memorial

Mr Michael Sedgman
Chief Executive Officer
Adelaide City Council
GPO Box 2252
Adelaide, SA, 5001

19. 08.24

Dear Mr Sedgman

Reference:

1. https://customer.cityofadelaide.com.au/__home__/feedback-and-complaints/

I wish to lodge a complaint about the manner in which the Lord Mayor and Councillors conducted their review of an application I lodged on behalf of Ms Cathie Morant to have the name of Harry 'Breaker' Morant included on the Memorial and the inclusion of an interpretative display at a space on the paving near the Memorial.

Ms Morant is aggrieved by the Council's decision of 13 August to refuse her application and endorse a Recommendation made by the Community Services and Culture Committee on 6 August not to approve the application.

Particulars of the Complaint

1. At the Council meeting on 13 August the Lord Mayor refused my request to address Councillors minutes about the written submission I had lodged with Council. Council's refusal was unfair, unethical and denied me an opportunity summarise the application and address comments made by Mr Stimson who opposed the application, but was permitted to address Council. Ms Morant's application had been with Council for three years.
2. The Lord Mayor's decision to only permit Mr Stimson to address Council was harsh. Allowing me to have 5 minutes to address Council would not have prejudiced Council's opportunity to make a final determination. I appreciate the Council heard from Mr Pearce, but as I was representing Ms Morant, allowing me an opportunity to speak was appropriate.
3. The denial of the application contrary to the review and decision of Heritage South Australia, Environment, Heritage and Sustainability Division (Mr Michael Queale Senior Architect of the Department for Environment and Water) was unfair. Mr Queale's professional review concluded:
'a plaque or similar commemorative treatment, fixed to the ground near the Memorial, or on the footpath step below the memorial statue, noting Morant's name along with specific interpretation to explain why the name plaque has been installed.
*'Interpretive material will be added, on the base of paving, or on a free-standing panel nearby, providing explanatory material relating to the Boer War Memorial and associated conflict, along with a discussion regarding the mix of views associated with South Australia's involvement in the War'.
Council should have adopted the recommendation of Mr Queale who concluded the Memorial's*

heritage significance would not be adversely affected by the inclusion of a plaque and interpretive display. Frankly, Council's decision was disrespectful of the heritage significance of the Memorial and Mr Queale's assessment.

4. Council's decision failed to objectively evaluate and place weight to the public interest in approving the application. Two opinion polls conducted by the Adelaide Advertiser produced a majority vote to recognise Morant on the Memorial.
5. Twenty four written references provided by State and Federal politicians, community leaders, RSL presidents, presidents of the WA Boer War Society and others were not given sufficient weight to approve the application. Council remained silent about this aspect of the application. I am unaware if the references were considered or ignored.
6. Mr Anthony Stimson President of the SA Boer War Association and Mr Ian Smith, SA RSL in their opposition to the application claimed that deceased South Australian veterans of the Boer war had opposed the inclusion of Morant on the Memorial. No evidence to support this hearsay claim was produced to Council and this prejudiced the merits of the application. Council failed to state whether it accepted or rejected the claim and this was a glaring omission. If Council accepted this claim on what evidence, rather than self-serving opinion?
7. Mr Stimson also argued reputational damage would be done to Adelaide and the Memorial if Morant was included. This claim was contradicted by Mr Queale's assessment that the Memorial's heritage status would not be adversely affected. Positive public opinion and those who provided written references cast doubt on this claim. Council's decision placed undue weight on Mr Stimson's opinion that was not based on verifiable evidence. Mr Queale's opinion about heritage also contradicted Mr Stimson's claim. Council failed to state whether it accepted or rejected Mr Stimson's assertion.
8. There is no evidence presented by Mr. Stimson that Morant was not included on the Memorial's honour roll when it was constructed and dedicated in 1904 because of his convictions during his service with a British Contingent. Mr Stimson has access to the records of National Memorial Committee that was responsible for funding the Memorial, commissioning, selecting a design, and determining whose names should appear on it. The fact that Morant was not included does not mean he was expressly excluded, yet Mr Stimson insisted Council conclude that Morant was not included, but failed to produce evidence to sustain his claim. In the circumstances, Council should have rejected this assertion but failed to do this or explain why it was accepted.
9. The Recommendation of the Committee dated 6 August 24 concluded the name of Sergeant H.H.'Breaker' Morant could not be included on the Boer war memorial. The Executive Summary and Recommendation were accepted by the Council on 13 June. However, the Committee's Recommendation was deficient and misleading as it failed to identify Mr Queale's assessment that an interpretative panel could be erected on the pavement near the Memorial as the pavement is not heritage listed. He confirmed this in an email of 8 August and I provided a copy of his advice to the Council. Ultimately, Council's decision to accept the Recommendation that the name plaque be not included failed [to address the application](#) to include the interpretative material, a draft of which was provided to Council for consideration.
10. I further complain that in submissions by Mr Stimson and Mr Smith, they argued my reference to the National Boer War Memorial recognized the service of Harry Morant was erroneous and a Memorial exists. Despite my production of evidence that the Memorial does exist and includes the name of Morant, (<https://www.bwm.org.au/>), the

Memorial having been endorsed by Sir Peter Cosgrove AK MC, former Governor-General of the Commonwealth of Australia and Sir David Hurley, former Chief of Army and former Governor General, Council failed to conclude the Memorial exists, including the name of Morant and the assertions of Messrs Stimson and Smith were false and irrelevant to the assessment of the application. This is another example of the Council remaining silent about an important aspect of my submission in support of the application.

11. Mr Stimson and Mr Smith argued that Morant's subsequent convictions and sentence while serving with a British Contingent was a reason to decline the application. My submission in support of the application argued there is no binding statutory provision that precludes the Council from recognizing Morant's service for SA as he is recognized on other Memorials, including the National Boer War Memorial. There is no legal requirement for Morant's convictions for murder to be overturned before he could be added to the Adelaide Memorial. Undue weight appears to have been placed by Council to opinions declining the application because of Morant's convictions. Council remained silent about whether Morant's convictions were a reason to deny the application.
12. Ms Morant travelled from Canberra to read a statement about her application at the Committee meeting on 6 August. Ms Morant is elderly and vision impaired, which was apparent to the Councillors as she had to be assisted at the table and used a cane. She struggled to read her statement and had to use an illuminated device. The Committee's chair person, Councillor Giles should have ensured Ms Morant's disability was a reason to allow sufficient time for Ms Morant to complete her address. I think her presence was ignored and she was left very disappointed as to how she was treated. At the time, I was concerned, but did not feel comfortable to raise my concerns with Councillor Giles.
13. Finally, the Executive Summary was little more than a chronology of about the application and its journey. It provided some detail of Mr Queale's assessment, but insufficient detail to justify the recommendation and largely based on the rejection of similar applications in the past. The current application lodged was more detailed, involving a descendant of Morant and included public comment about the merits of the application. The summary lacked sufficient detail for rejecting the application and lacked balance in explaining the merits of the application against the decision to reject.

Conclusion

I am not satisfied that Ms Morant's application was assessed in a competent manner and ignored or failed to appreciate the submissions in support of the application and the significance of Mr Queale's assessment.

The lack of transparency of Council's decision to refuse the application is a concern and the failure of the Committee and Council to refer to the interpretive display and its location on the pavement near the Memorial suggests the matter was not considered.

The refusal to deny me 5 minutes to address Council is concerning. If Council claims it acted in a fair and professional manner, how could 5 minutes after 3 years damage the integrity and due process of Council?

I don't think the Council acted in the public interest, but only in the interests of the RSL and the Boer War Association. I believe a political decision was taken to appease the RSL and Association rather than a consideration of the merits of the application and the public interest.

In 2021, Clare Mockler conducted a review of the original application that had been denied. She was satisfied that due process had not been followed directed a new review be conducted. Denial of process again remains a concern given my complaint about the present decision.

I believe the Committee meeting on 6 August and Council's meeting on 13 August failed the test for due process. The review of the application lacked transparency. On behalf of Ms Morant I am not satisfied Council approached the application with an open mind to the strengths of the application, failed to consider my submission, discussed the matters I had raised, explain the reasons for accepting the Recommendation, and failing to address Mr Queale's approval for an interpretive display, and if rejected, the reason.

Resolution

I urge you to appoint an independent external review of this complaint about the decisions of the Committee and Council, the process used to decline the application, including the treatment of Ms Morant on 6 August and my treatment on 13 August.

I also request that a decision about the inclusion of interpretive material be settled as the Committee's recommendation failed to address this aspect, noting the decision of Mr Queale that it would not detract from the Memorial's heritage. Council also failed to raise the matter on 13 August even though it was mentioned by Mr Pearce on 13 August and in my written submission to Council.

Cathie Morant's application has not been afforded transparent, fair and due process and must be addressed.

Thank you for your consideration.

Yours Sincerely

James Unkles

Appendix B: Response from the Applicant to the Provisional Report

Dale Mazzachi

From: james unkles
Sent: Sunday, 6 July 2025 3:15 PM
To: Dale Mazzachi
Cc: Sophia Pishas
Subject: report
Attachments: Draft - Provisional Report Comments July 2025.pdf

Hi Dale, my comments are included in the report.

I understand your conclusion about the legality, but believe the Council made a grievous error in declining the application and the manner in which the Council meetings were conducted.

Noting your paragraphs 4.85 - 4.89, it would be appreciated if during your final discussion with Council you could emphasise the merit of *'pursuing alternative avenues to recognise to the service of Lt Morant, and any of the other men who fell during the Boer War, at an alternative location within the City of Adelaide'*.

I expect a further application will be lodged to achieve this would be in the public interest.

A final comment about the original application that was amended following Mr Queal's assessment, Tony Stimson sent me an email dated 15 March 2024 in which he stated:

'I've told Queale that I think the interpretive display is a terrific idea. I've also said I would like to work on the text but only with his and ACC's imprimatur and only once other matters are settled. To that end, I've suggested he keep the interpretive display and the proposed Morant plate separate in his recommendations rather than bundling them together'.

He supported the addition to the Memorial's step and pavement, the very proposal that was rejected by Council!

I hope he will support a fresh application.

Thank you for review.

James Unkles

Author of:

Ready, Aim, Fire - Major James Francis Thomas - The Fourth Victim in the Execution of Harry 'Breaker' Morant"

Professional member of Resolution Institute



PROVISIONAL REPORT

Provisional report prepared for
The Corporation of the City of Adelaide

Pursuant to the *Corporate Complaint Handling Operating
Guideline*

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

May 2025

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1. PURPOSE OF THIS REPORT

The Role of Norman Waterhouse

- 1.1 The Corporation of the City of Adelaide (**the Council**) received an application (**the Application**) from Mr James 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 Lt Harry 'Breaker' Morant (**Lt Morant**) included on the Memorial.
- 1.2 The circumstances in which the Application was made, the status of the Application, and the changes that have been made to the Application throughout this process, are set out in further detail later in this report.
- 1.3 At the Council meeting held on 13 August 2024, the Council endorsed the recommendation (**the Recommendation**) of the City Community Services and Culture Committee (**the Committee**), made at its meeting on 6 August 2024, not to grant consent to the Application.
- 1.4 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.
- 1.5 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**).
- 1.6 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.
- 1.7 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.
- 1.8 Accordingly, we have been engaged as an independent external consultant to prepare a report for the consideration of the elected Council.
- 1.9 We provide this report in discharge of the above role. This report is divided into the following parts:

- 1.9.1 First, we provide relevant background information with respect to the decision under review.
 - 1.9.2 Second, we identify the decision which is now under review.
 - 1.9.3 Third, we provide our views with respect to what is the correct or preferable decision in the circumstances.
 - 1.9.4 Fourth, we provide recommendations for the Council arising from our review.
- 1.10 It is important to recognise that, in accordance with the Complaint Handling Guideline, any decision on review will ultimately be made by the Reviewer, not Norman Waterhouse. This report is prepared to assist the Reviewer.

Provisional Nature of this Report

- 1.11 The Complaint Handling Guideline sets out the following requirements in respect of procedural fairness:
- The principles of procedural fairness (also called 'natural justice') will be observed when exercising statutory powers which could affect the rights and interests of individuals.
- Procedural fairness involves:
- Giving an applicant a right to put their case forward. This will generally involve giving an applicant the opportunity to provide all relevant documentary evidence, rather than an oral hearing;
 - Ensuring the Reviewer does not have personal interest in the outcome (is not biased); and
 - Acting only on proper evidence that is capable of proving the case.
- 1.12 All findings and analysis in this report are provisional.
- 1.13 The provisional version of this report is now provided to the Applicant and the Applicant is provided with an opportunity to respond to this provisional report for the purposes of the Complaint Handling Guideline.
- 1.14 Any views which the Applicant may choose to express in response to this provisional report will be taken into account in the preparation of the final report and will be supplied to the Reviewer.

2. BACKGROUND

Lt Morant

- 2.1 Lt Morant departed South Australia as a member of the Second South Australian Mounted Rifles in January 1900 and served in the Second Boer War (**the Boer War**) with that regiment until July 1900. His service with the Mounted Rifles was loyal and unblemished.
- 2.2 Lt Morant then travelled to England where he joined the Bushveldt Carbineers, an irregular British Army regiment, and returned to the Boer War.
- 2.3 In 1901, while part of the Bushveldt Carbineers, Lt Morant (as well as Lt Peter Handcock and Lt George Witton) were arrested and court-martialled, charged with the murder of prisoners of war and civilians. All three men were convicted. Lt Morant and Lt Handcock were executed in February 1902.
- 2.4 There has been subsequent controversy surrounding the legality of Lt Morant's courts-martial.
- 2.5 Lt Morant has also become something of a folk hero amongst some Australians, who consider Lt Morant to be a scapegoat and/or wrongfully convicted, believing that in undertaking the killings Lt Morant, Lt Handcock and Lt Witton were simply following orders from the British.
- 2.6 Lt Morant's life story formed the basis of the popular, multi-award winning, 1989 film '*Breaker Morant*' which, in addition to the other documentaries, books and other media published about Lt Morant, has considerably added to the notoriety surrounding his life.

The Memorial

- 2.7 The Memorial was commissioned by the Memorial Committee in 1901.
- 2.8 The Memorial lists the names of 60 South Australians, approved by the Memorial Committee, who died serving in South Australian contingents during the Boer War.
- 2.9 Two of the four plaques on the memorial list the names of 21 men and 39 troopers under the inscriptions '*Who dies for his country, dies nobly*' and '*In Memory of Those Who Fell*'. We are informed that other men may have died in the service of South Australia during the Boer War and not been named on either plaque. We requested further information from the Council about this understanding, however, we were advised that no evidence was in the

Commented [JU1]: Reference to civilians is not exacting as those executed were identified as combatants but not in the strict sense as Boer members were both active in combat, but also fulfilled other combat related roles such as collecting data on Commonwealth forces and spying for Boer fighters. There was no charge or conviction of these men for executing civilians. Speculation is not evidence.

Council's possession, except for the understanding that there is an 'honour roll' listing the names and numbers of those who fought for the British Empire in South Africa held in the base of the Memorial.

Commented [JU2]: The term 'understanding' is not evidence and should not be included in this report. Speculation is not relevant. There is no verifiable evidence that an honour roll exists. I raised this with Dr Stimson and he agreed, no evidence exists. Reference to an 'understanding' is inaccurate and carries no weight.

- 2.10 A third plaque commemorates 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.'* The fourth plaque commemorates the erection of the Memorial by the people of South Australia *'To commemorate the valour of the Citizen Soldiers of the State who fought in the South African War (1899-1902).'*
- 2.11 The Memorial was gifted to the citizens of Adelaide and the Council has been the owner and custodian of the Memorial, and the land upon which it sits, since the Memorial was unveiled in 1904.
- 2.12 In 1904, the Memorial Committee adopted a motion to the effect that *'no further names be added to the memorial.'*

Commented [JU3]: There is no evidence that this assertion is correct. Indeed, an Australian volunteer, Lt Gordon who served in the Boer war but who died in 1904 after returning to SA had his name added to the Memorial in 1921 after a submission was made by his father, the then Attorney General. This is historical record and noted by Dr Stimson. His inclusion disputes the claim that a Memorial's motion existed.

- 2.13 The Memorial was confirmed as a State Heritage Place in 1987.

Previous Requests for Lt Morant's Inclusion on the Memorial

- 2.14 There have been numerous previous requests made of the Council to have Lt Morant's name listed on the Memorial, including in 1988 and 1993.
- 2.15 The substance of those requests is not relevant to the present matter, except to note that a 1988 report recommended that the Council deal with the Memorial as a 'historical document.' The report indicated that the Council should decline to add further names to the Memorial, consistent with the Committee's views as to the names on the plaques in 1904, notwithstanding the possibility of other persons being identified as eligible for inclusion on the Memorial.
- 2.16 Following these requests, the Memorial has been treated by the Council as a 'closed historical monument'.

The Present Request

- 2.17 In August 2021, Mr Unkles (on behalf of Ms Morant) issued a request for Lt Morant's name to be included on the Memorial (**the 2021 Request**).
- 2.18 On 15 September 2021, the Council advised it did not support the 2021 Request.
- 2.19 Mr Unkles subsequently made a complaint about this decision. Council engaged Kelledy Jones Lawyers to undertake a review of the decision pursuant

to section 270 of the *Local Government Act 1999* (SA) (**the LG Act**) and in accordance with the Complaint Handling Guideline. Through that review, errors about the process in which the 2021 Request was considered were identified and the Council determined that the 2021 Request would be considered afresh.

- 2.20 On 13 June 2023, the Council adopted a recommendation of the Committee and resolved to endorse advising Ms Morant to lodge a development application under the *Planning, Development and Infrastructure Act 2016* (SA) (**the PDI Act**) for the proposed works to the Memorial. The resolution also noted that Council administration would provide assistance to Ms Morant if a development application was lodged, and noted that even if the works were approved as part of a development application, the Council could reserve the right to potentially refuse *implementation* of the works, as owner and custodian of the Memorial.
- 2.21 On 4 July 2023, Mr Unkles lodged a development application (**the Development Application**) behalf of Ms Morant to seek development approval for works to the Memorial that would see Lt Morant recognised on the Memorial. The proposed development was for the leftmost panel of the plaque bearing the names of the 21 men who fell under the heading '*In Memory of Those Who Fell*' to be updated to list the name 'H. H. Morant' under the heading 'Lieutenants'.
- 2.22 That Development Application was assessed by the Council. This process involved seeking the assistance of Heritage SA in respect of heritage-related matters, in light of the Memorial's status as a State Heritage Place.
- 2.23 By email dated 10 January 2024, Mr Michael Queale, the Principal Heritage Architect at Heritage SA, indicated Heritage SA was not supportive of any proposal to have the Memorial amended to include Lt Morant's name on the main plaque of the Memorial.
- 2.24 We understand that Mr Unkles and Mr Queale engaged in communications regarding the matter. During this process, it appears Mr Unkles revised the Development Application such that the plaque of the Memorial would not be amended, and instead Lt Morant's name would be inscribed on a separate small name plate at the foot of the Memorial.
- 2.25 By correspondence dated 5 April 2024, Heritage SA advised that, from a heritage perspective, Heritage SA supported the inclusion of a separate plaque

to be either fixed to the ground near the Memorial, or on the footpath step below the Memorial, noting Lt Morant's name. Heritage SA further supported the display of interpretive material, explaining why the name plaque had been installed and providing information about the Memorial and the '*mix of views associated with South Australia's involvement in the [Boer] War*.'

- 2.26 The Council issued approval for the Development Application on 24 April 2024. The nature of the proposed development is described in the Decision Notification Form as an:

Additional plaque fixed to north west facing base step of the South African War Memorial or ground adjacent the Memorial and associated interpretive material.

- 2.27 The Development Application is subject to a number of conditions. Relevantly, the condition directed by the Minister responsible for the administration of the *Heritage Places Act 1993 (the Condition)* required:

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.

- 2.28 Before proceeding with the works required to meet the conditions of the Development Application, Ms Morant sought the in-principle approval of the Council for the proposed development. This is the 'Application' for the purposes of this report.
- 2.29 While the Council had already assessed the Development Application in terms of compliance with the PDI Act, the Committee and the Council (as an elected body) assessed the application in their role as the owner and custodian of the Memorial.
- 2.30 As part of this process, the Council considered a report to the Committee dated 6 August 2024 which included (but was not limited to) an analysis of matters within the following key topic areas:
- 2.30.1 the purpose of the Memorial;
 - 2.30.2 policy considerations;
 - 2.30.3 budget considerations; and
 - 2.30.4 the public interest.

Commented [JU4]: This raised a presumption that the support of Heritage SA should be implemented notwithstanding opposition. If the support had not been forthcoming from Heritage SA, then Council's decision would not be challenged, however the support raises a presumption that it should have been affirmed.

2.31 With reference to these criteria, the Committee recommended at its meeting on 6 August 2024 that the Council not consent to the proposed works.

2.32 It is noted in the report to the Committee that:

29. If Council decides to provide in principle support for the proposal, this will trigger the requirement for the applicant to meet the requirements of the Development Approval process and conditions. It should be noted that at this point in time the applicant has not progressed the work relating to Conditions 1 and 2 of the Development approval, as they have decided to seek Council's position before expending more time and cost on the proposal.
31. Should the conditions of the Development Application be subsequently met by the applicant, including addressing Heritage South Australia conditions, a further Council report will need to be presented seeking Council's approval as the owner of the Memorial and owner of the land to implement the proposal.
31. At that point, Council may still choose to not support, or to support this revised proposal.

2.33 Ms Morant and Mr Unkles were in attendance at the meeting and spoke to the Committee.

2.34 At the meeting on 13 August 2024, the Council was addressed by Dr Anthony Stimson (President of the SA Boer War Association Inc), who was against the Application, and Mr Adam Pearce, who was in favour of considering options to include Lt Morant's name on or near the Memorial.

2.35 Council also received a petition containing 23 signatures of persons who supported the inclusion of Lt Morant's name to the Memorial.

2.36 The Council ultimately adopted the Recommendation.

The Applicant's Request for Review (see Appendix A)

2.37 On 19 August 2024, Mr Unkles submitted his complaint about the manner in which the Council refused the Application (a copy of which is attached as **Appendix A**).

2.38 Norman Waterhouse also met with Mr Unkles on 5 December 2024 to gain further information about the basis of his complaint.

2.39 From the written complaint, the matters discussed on 5 December 2024, and correspondence received from Mr Unkles after our meeting, we summarise the

grounds on which Mr Unkles has complained about the Council's conduct in assessing the Application as follows:

- 2.39.1 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**);
- 2.39.2 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**);
- 2.39.3 the Council's decision was inconsistent with the view of Mr Queale, 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 (**Ground 3**);
- 2.39.4 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 Lt Morant on the Memorial (**Ground 4**);
- 2.39.5 the Council failed to adequately consider written references from various politicians and community leaders (**Ground 5**);
- 2.39.6 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 Lt Morant's inclusion on the Memorial;
 - (b) commentary about other war memorials which was incorrect; and
 - (c) the suggestion that Lt Morant's conviction was a reason to not include him on the Memorial (**Ground 6**);
- 2.39.7 there was no evidence that Lt 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

Commented [JU5]: Mr Queale's support was unequivocal. I dispute the use of the work 'appeared'. His exacting examination of the proposal was thorough, unambiguous and should not be diluted by using the term 'appeared'.

Commented [JU6]: The testimonials were very persuasive and Council failed to explain why each and every reference was considered, what weight was attributed to each one and why were some or none excluded or some included.

Commented [JU7]: Those who opposed the application stressed that now deceased Boer war veterans also opposed Morant on the Memorial. This was a most aggravating feature of the opposition and one that could have unduly influenced the Committee's decision. For Dr Stimson, who claims to be an expert historian on the Boer War and the Memorial, his baseless claims about deceased veterans, (unnamed) was misinformation that lacked any credibility.

the Boer War were also missing from the Memorial, their relatives could similarly apply for inclusion on the Memorial (**Ground 7**); and

- 2.39.8 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**).

3. THE DECISION UNDER REVIEW

- 3.1 Section 270(1) of the LG Act, and the Complaint Handling Guideline, are concerned with review of decisions.

- 3.2 In the correspondence dated 19 August 2024 (contained in Appendix A), Mr Unkles states that he wishes

to lodge a complaint about the manner in which the Lord Mayor and Councillors conducted their review of an application I lodged.

- 3.3 He also states:

Ms Morant is aggrieved by the Council's decision of 13 August to refuse her application and endorse a Recommendation made by [the Committee] on 6 August not to approve the application.

- 3.4 Accordingly, the decision under review (**the Decision**) is the decision of the Council at its meeting on 13 August 2024 to endorse the recommendation of the Committee which was passed in the following terms:

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.
- 3.5 This is not a review of any of the decisions or recommendations made which may have led to the Decision (for example, the resolution in June 2023, or the decision to grant the Development Approval). Those decisions are nevertheless relevant, both in terms of providing context and in informing the

next steps. In particular, the decision to grant the Development Approval will be of importance if the Council decides to vary the Decision so as to grant in-principle support of the Application, following this review.

- 3.6 Before examining the Decision, it is necessary to make certain general comments about the nature of this review.

4. THE CORRECT OR PREFERABLE DECISION

The Need for 'Merits Review'

- 4.1 The Complaint Handling Guideline provides as follows:

The role of a review is to review the decision in question to ensure that the decision-maker complied with the following procedural requirements and made the best possible decision in the circumstances:

- The decision-maker was appropriately authorised to make the decision;
- The decision-maker considered all matters which were relevant to the making of the decision, and did not take into account matters which were not relevant to the decision;
- The decision-maker did not make a decision or exercise a power or discretion in bad faith or for an improper purpose;
- The decision-maker ensured that findings of fact were based on evidence;
- The decision was reasonable (a review will include an assessment of the merits of the decision);
- Those affected by the decision were accorded procedural fairness, which includes the principles of natural justice;
- The decision-maker properly considered the application of existing policies and legislation, as they existed at the time of the decision;
- The decision-maker did not exercise a discretionary power at the direction of another person.

- 4.2 The requirement for merits review in the Complaint's Handling Guideline is consistent with the view taken by former South Australian Ombudsmen, that procedures adopted for the purposes of section 270(1) of the LG Act must provide for merits review.¹

¹ Ombudsman SA, *Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures* (November 2016) [145], [153]; Ombudsman SA *Valuing Complaints – An audit of complaint handling in South Australian councils* (November 2011) 65.

- 4.3 In defining what constitutes merits review, the then Ombudsman cited with approval the following guidance of the Commonwealth Administrative Review Council:²

Merits review is the process by which a person or body, other than the primary decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the 'correct or preferable decision'. In a merits review, the whole decision is made again on the facts. This is different to judicial review, where only the legality of the decision making process is considered. Judicial review usually consists only of a review of the procedures followed in making the decision.

The objective of merits review is to ensure administrative decisions are correct or preferable – that is, they are made according to law, or if there is a range of decisions that are correct in law, the best on the relevant facts. It is directed to ensuring fair treatment of all persons affected by a decision, and improving the quality and consistency of primary decision making.

- 4.4 In accordance with the above, the Reviewer must consider both:

- 4.4.1 the lawfulness of the Decision; and
- 4.4.2 the merits of the Decision.

- 4.5 Thus, to assist the Reviewer:

- 4.5.1 First, we examine the lawfulness of the Decision.
- 4.5.2 Subsequently, we examine whether the Decision was the preferable decision or best possible decision in the circumstances.

Lawfulness of Decision

- 4.6 It is not controversial that the Memorial is owned by the Council. The Council has described its relationship to the Memorial as that of owner and custodian.
- 4.7 The Memorial is located on land comprising Public Road at the intersection of King William Street and North Terrace, Adelaide. The Council is the owner of public roads in its area by virtue of section 208(1) of the LG Act.
- 4.8 It is plainly lawful for the Council to make decisions about the Memorial as its asset. This is consistent with the functions of the Council as set out in section 7 of the LG Act which relevantly include '*[managing] and, if appropriate, [developing], public areas vested in, or occupied by*' the Council.

² See Ombudsman SA (2016), [142].

4.9 The principles of section 8 of the LG Act, which the Council must act to uphold and promote the observance of, are also relevant including, but not necessarily limited to:

- (a) provide open, responsive and accountable government;\
- (b) be responsive to the needs, interests and aspirations of individuals and groups within its community;

and

- (f) seek to facilitate sustainable development and the protection of the environment and to ensure a proper balance within its community between economic, social, environmental and cultural considerations;
- (g) manage its operations and affairs in a manner that emphasises the importance of service to the community.

4.10 The Decision is clearly a preliminary step in the formal decision making process, and should be contrasted with formal approval under section 221 of the LG Act to alter the Memorial, as a structure on a public road.

4.11 There being no legislative basis for the Decision, in our view, the Council may exercise its discretion in making the Decision. There are no mandatory applicable considerations to such a **decision**.

4.12 There is no basis on any of the material we have reviewed to find that the Council committed any legal error in exercising its discretion.

4.13 We are satisfied that the Council (to the extent it was required to):

- 4.13.1 took into account all relevant matters;
- 4.13.2 did not take into account any irrelevant matters;
- 4.13.3 did not make the decision in bad faith or for an improper purpose;
- 4.13.4 made a decision which was not unreasonable in a legal sense (though the non-legal 'merits' of the decision are discussed later);
- 4.13.5 afforded sufficient procedural fairness to the Applicant; **and**
- 4.13.6 did not exercise a discretionary power at the direction of another person.

4.14 To this end we note the Committee had before it and considered a report from officers when making the Recommendation (which was ultimately adopted by Council). We agree the matters set out in the report are relevant matters.

Commented [JU8]: Ms Morant is convinced the Council's decision lacked a professional assessment of the case in favour and was unduly influenced by political considerations driven by the SA Boer war association and the SA RSL. Council clearly placed little or no weight on SA Heritage exacting assessment and Council paid 'lip' service to Mr Queale's decision and recommendation.

Commented [JU9]: I dispute the fairness was demonstrated. Since the inception of the original application, Council may have gone through the process, but it weighed heavily from the beginning in favour of the detractors to ensure the application would not be approved.

- 4.15 While Mr Unkles may consider that the weighting placed on particular considerations was not appropriate, in our view, it is open for the Council, as a body politic seized with the responsibility for managing a significant public asset, to weigh up the competing considerations in any way it sees fit.
- 4.16 We do not consider that any of the considerations taken into account were *irrelevant* or that any relevant matters were overlooked. We discuss Mr Unkles' more specific concerns about particular considerations further below.
- 4.17 Accordingly the Decision was in our view a legally valid decision.
- 4.18 Whether the Decision was the preferable or best possible decision in the circumstances is discussed below.

Merits of the Decision

- 4.19 We now turn to whether the Decision was the preferable or best possible decision in the circumstances.
- 4.20 Because this is a case where there are multiple lawful alternatives — to grant the Application, or to deny it — the task of the Reviewer is to identify the 'preferable' decision. What is 'preferable' should be determined by reference to community standards or community values, not the Reviewer's own personal standards or philosophy.³
- 4.21 In our view, the Council was correct to place weighting on the following factors against the Application:
- 4.21.1 the historical significance and purpose of the Memorial, including the policy position to treat the Memorial as a 'historical document' with no further names to be added;
- 4.21.2 the relevance of the Burra Charter which provides that places of cultural significance should be preserved and defines 'places' broadly. To this end, to take the view the 'place' in question which ought to be protected is not necessarily the Memorial itself, but also the area surrounding it;
- 4.21.3 the views of various stakeholders who were against the Application, notably including the RSL and the SA Boer War Association Inc, as key bodies associated with the veteran community; and

Commented [ju10]: The history of the memorial is not conclusive, that no further names could be added.

However, if it concluded that no further could be included, it does not negate the compromise noted by Mr Queale that an interpretative panel and name plate could be included at the memorial site but not in the main pedestal and this would not interfere with the cultural significance of the memorial.

Ms Morant disputes the assertion that the Burra charter necessarily applies to the step of the memorial and the surrounding pavement.

Her view is the term 'places' should have a strict interpretation, being the pedestal, the plaques and the horse and rider figure.

Clearly, from Mr Queale's exacting review, he was acutely aware of the Burra Charter and the cultural overlay and so his opinion should be implemented by Council.

Wondering if you contacted Mr Queale and discussed his assessment? I did and I was impressed by his professionalism.

Commented [ju11]: It is concerning that the RSL and Boer War Association appear to have been given status as stakeholders over the interests of the community. I suggest the community is a key body of opinion and I don't believe sufficient weight has been given to the community's vested interest rather than deferring to the RSL and Boer War Association.

³ See *Visa Cancellation Applicant and Minister for Immigration and Citizenship* [2011] AATA 69, [62] et seq.

- 4.21.4 the responsibility of the Council to ensure appropriate technical expertise to implement the proposed works due to the Memorial's status as a State Heritage Place and the impact this would have on Council's budget. This was particularly difficult for the Council to ensure given the lack of detail provided with the Application. We discuss this further below in response to Ground 8.
- 4.22 As submitted by Mr Unkles, there are also factors in favour of the Application, including:
- 4.22.1 the proposed amendments to the Memorial (and the interpretative material) providing an opportunity for a well-known historical figure from the region to be recognised, including potentially offering tourist opportunities;
- 4.22.2 the possibility that other South Australians who served in the Boer War but are not currently expressly named on the Memorial could be similarly recognised for their service; and
- 4.22.3 the views of Ms Morant and various stakeholders who were in favour of the Application.
- 4.23 Weighing the factors in favour of the Application and those against the Application, in our view, it is open to the Council to determine it reached the correct and preferable decision with reference to the standards and values of the community.
- 4.24 In reaching this view we acknowledge the significant community sentiment both in support and against the proposal, and acknowledge that, from a heritage perspective, the proposal appears able to be accommodated. However, we note the Council is not compelled to agree to a proposal just because it is able to be accommodated.
- 4.25 We elaborate on these matters further in our analysis of the grounds on which Mr Unkles made his complaint to explain why they do not displace our view.
- Ground 1
- 4.26 Mr Unkles indicated that *'the Lord Mayor refused [his] request to address Councillors'* at the meeting on 13 August 2024 and that this was 'unfair' and 'unethical.'

Commented [ju12]: With respect, I am not sure you appreciate the Council could have approved the application with a condition that technical detail and costings be provided following the approval. In the time available, I sourced contractors for the name plate and interpretive panel. I was assured by the contractors that costings would be provided once they knew the project had been approved, subject to conditions.

The application and in my discussions with Council representatives the technical aspects had to be exacting and would be provided before the works could proceed.

I don't accept the lack of technical detail at the time of the application was fatal to the approval process.

Commented [ju13]: Repeating the assertion that Council was selective in favoring two stakeholders over the public interest.

Commented [ju14]: I agree with the view expressed except the Council failed to adequately communicate the decision to refuse the application when SA Heritage had clearly stated that the proposal would not detract from the heritage consideration.

4.27 We note the Council's Code of Practice for Meeting Procedures (which applies to both Council and committee meetings) provides that '*a request for deputation is accepted is determined on a case-by-case basis and is dependent on the subject of the request*' and that generally a maximum of three speaking opportunities will be provided, unless the meeting determines otherwise. The Presiding Member of the meeting determines if the deputation will be heard.

Commented [ju15]: Council had broad discretion in implementing the code of practice and Ms Morant is convinced Council was selective in favouring the RSL and Boer War Association. We were not afforded a professional level of representation to Council.

4.28 The Code of Practice for Meeting Procedures also provides that when deciding whether to allow a deputation, the Presiding Member will take into account a number of considerations which relevantly include the following:

4.28.1 the subject matter of the proposed deputation;

4.28.2 whether the subject matter has previously been the basis of a deputation at another meeting;

4.28.3 the benefit of the Council of receiving the deputation; and

4.28.4 the history of deputations from the person.

4.29 The Presiding Member of the Committee meeting (Cr Giles) determined that one party 'in favour' of the Application and one party 'against' the Application would be permitted to give a deputation. Mr Unkles and Ms Morant submitted a Deputation Request for the Committee meeting which was accepted. The RSL's Deputation Request was also accepted as a party which was not in favour of the Application.

4.30 Mr Unkles submitted his Deputation Request for the Council meeting on 8 August 2024. His request was the fourth request to be received.

4.31 At the Council meeting, the Lord Mayor chose to approve one deputation in favour of the Application and one deputation against the Application before putting the rest of the deputation requests to the meeting. The two deputations were delivered by different people from those who spoke at the Committee meeting.

4.32 The Lord Mayor put to the meeting that there were three other persons who had requested a deputation. The meeting did not disturb the Lord Mayor's determination in this regard. This is consistent with the Code of Practice for Meeting Procedures and the *Local Government (Procedures at Meetings) Regulations 2013*.

- 4.33 In our view, if the Lord Mayor's view was that one person should speak in favour of the Application and one should speak against the Application (which we agree is sensible), Mr Unkles as the representative of the Applicant was likely the most appropriate person to speak in relation to the Application.
- 4.34 However, we do not consider that the decision not to accept Mr Unkles' request for a deputation at the Council meeting should weigh against a finding that the correct and preferable decision was made.
- 4.35 We are of the view that this decision was not inconsistent with any entitlement to procedural fairness, or the powers of the Lord Mayor to exercise her discretion in determining who may make a deputation. This is because:
- 4.35.1 the merits of the Application were still put forward in a clear and persuasive manner by Mr Pearce;
- 4.35.2 Mr Unkles (and Ms Morant) had previously had a deputation at the Committee meeting at which the Recommendation was approved;
- 4.35.3 Mr Unkles had ample opportunities previously to liaise with Council administration in relation to his Application. He had many opportunities to raise his point of view throughout the process and indeed he did so. It is evident those views were taken into account in the preparation of the Recommendation before it went to the Committee; and
- 4.35.4 The Council had the opportunity to allow Mr Unkles to present a deputation, notwithstanding the Lord Mayor's decision to refuse his request – but it choose not to.

Ground 2

- 4.36 Mr Unkles has identified that Ms Morant experienced difficulties delivering her statement at the Committee meeting and felt '*very disappointed as to how she was treated.*'
- 4.37 We have spoken to several members of the Council's administration who have expressed their surprise that this was Ms Morant's experience, as they believed the Council had accommodated Ms Morant appropriately.
- 4.38 We do not propose to address this ground in detail because, although we appreciate the sensitivity of this issue, we do not consider it particularly relevant to the Decision which is the subject of this review.

Commented [ju16]: Ms Morant remains dissatisfied with the manner in which she was treated and this goes to the issue of due process.

- 4.39 It may nevertheless be appropriate for the Council to determine whether it could do anything to make it easier for elderly people and people with disabilities to attend and speak at Council meetings, and to accommodate any difficulties which may arise.

Ground 3

- 4.40 Mr Unkles places significant weight on Mr Queale's position that the addition of a plaque at the base of the Memorial would not have a 'significant adverse impact' upon the heritage significance of the Memorial.

- 4.41 By letter to the Council dated 5 April 2024, Mr Queale provided the following assessment in support of his position:

- The Memorial will be physically unaffected, as the proposed plaque/ or similar interpretation is to be fixed on the base step, or on paving nearby, not on the pedestal of the Memorial.
- The addition of 'Morant' as a name will be on a separately located plaque, with suitable interpretation material, to ensure there is no confusion/ misinterpretation of the historic value of the Memorial as an illustration of the values of the community and commemorative committee of 1904. This solution will ensure that it is clear that Morant was not one of 'those who fell' when on services, as commemorated on the bronze plaques of the Memorial.
- Note: this advice focuses on the consideration of the potential heritage impact of a proposed plaque on/ or near the South African War Memorial. It does not consider the appropriateness of the content of the plaque, as this is a matter separate to the identified State Heritage value of the memorial.
- Further, it is suggested that consideration of all those involved in the War be interpreted in some manner at the memorial, to be fully inclusive of the contribution they made as a part of the conflict.

- 4.42 In our view, and as Mr Queale himself acknowledged in the letter of 5 April 2024 and in earlier communications with Mr Unkles, Mr Queale's role was in providing advice on the heritage impact of the proposed development during the Development Application process. This process is quite separate from the Council's consideration of the Application.

- 4.43 While the views of Heritage SA are relevant in the Development Application process, and could be given some weight by the Council in assessing the Application, we do not consider that those views are necessarily determinative in considering the Application. The considerations in each process are different

Commented [ju17]: Ms Morant's view is Mr Queale's opinion about the application including its amendment raised a presumption that it should be implemented as it addressed the most significant consideration, heritage compliance.

and the Council is quite within its rights to refuse alterations to its asset, even if development approval is granted for that purpose.

- 4.44 Just because a proposal is consistent with heritage advice does not mean that, on balance, it must be approved.

- 4.45 In particular, we consider it would be open to the Council to have formed the view that having a separate, standalone plaque bearing Lt Morant's name at the foot of the Memorial would draw particular attention to Lt Morant, given its unique positioning, such that the Council did not wish to proceed with the proposal.

Ground 4

- 4.46 We do not consider that opinion polls from *The Advertiser* needs to be afforded particularly significant weighting in considering the Application, or that such polls are particularly relevant in determining the public interest.

- 4.47 We do not know who voted on the poll, where they are from, or whether they have the full understanding of the Application and the historical background to the Application and the Memorial. In our view, the polls accordingly have limited probative value.

Ground 5

- 4.48 We note that the Council has received an assortment of *ad-hoc* pieces of correspondence from various members in the community, including former and current politicians and representatives of veterans' organisations across the country, some in favour of the proposal to recognise Lt Morant on the Memorial and others against.

- 4.49 Much of this correspondence was dated some time before the Development Application was granted and therefore was made without the knowledge of the specific details of the Application.

- 4.50 In general, the correspondence dated before the Development Application which is in favour of Lt Morant's inclusion indicates a desire for Lt Morant's unblemished service with the South Australian Mounted Rifles and/or his status as a folk hero for some Australians to be 'recognised.' This correspondence does not address why the Memorial is the appropriate location for this recognition. The writers have not been able to respond to the suggestion that Lt Morant's service could be recognised elsewhere, on a new memorial or installation, for example.

Commented [ju18]: With respect, the Council failed to adequately explain why in the light of Mr Queale's determination the application be declined.

Commented [ju19]: The polls were highly relevant and very probative of citing the public interest. The lack of who exactly voted (names) in favour of the recognising Morant was fatal to illustrating community interest. The opinion polls gave an accurate snapshot of broad public sentiment on the issue of Morant and the Memorial. Ms Morant's opinion remains that the polls were probative and their dismissal was another example of the Council's insistent that the application be dismissed regardless of the expression of the community's opinion. We remain ignorant of the Councils' view of the polls. Given the Council's declared value about being cognizant of the community's, opinion, this case is an example of indifference about the polls while remaining silent about their probative value.

Commented [ju20]: The comments between 4.48 to 4.56 conclude the commentary in the references were of no value to the merit of the application. To be clear, those approached were asked about Morant being added to the Memorial. Alternative suggestions were not discussed nor sought.

The bottom line is references were sent to Council and some provided directly. Various community leaders indicated their support and it was not necessary they be provided with a copy of the application. They were however briefed by email. I dispute the conclusion about their relevance lacking probative value.

Again, this is an example of Council focusing on the negative to the application rather than objectively assessing the merit of the references.

I spoke to each referee and they understood exactly what was proposed in the application.

Some references were provided to Council by me, others sent directly to the Lord Mayor and I also emailed a collection to Council members. Regardless, the references were provided.

In my view, Council has been derelict in dismissing the references which if considered as a whole supported recognition of Morant on the Memorial.

- 4.51 The correspondence against Lt Morant's inclusion appears to oppose his inclusion on the grounds that Lt Morant was executed as a war criminal but again largely lacks substantive analysis.
- 4.52 The correspondence predating the Development Application is therefore, broadly speaking, more commentary about the value (or otherwise) of recognising Lt Morant's service, rather than commentary about the specific Application. Our view is that such correspondence is of limited use to the Council in making its decision.
- 4.53 There is also some correspondence dated after the Development Application. This correspondence is of somewhat higher use to the Council. Generally, such correspondence relies heavily upon Mr Queale's statement from his letter of 5 April 2024 that the proposed development '*will not have a significant adverse impact*' upon the Memorial to justify the writer's support for the Application.
- 4.54 Mr Unkles has correctly identified that some of the correspondence in support of the Application in his possession, which was apparently issued to the Council in support of Lt Morant's inclusion on the Memorial, was not provided by Council administration to the Committee (and subsequently, the Council). This appears to have occurred for the following reasons:
- 4.54.1 some correspondence was submitted to the Council after 25 July 2024. The Council had advised Mr Unkles that submissions received after that date could not be considered or accepted, in line with Council reporting and publication deadlines;
 - 4.54.2 some pieces of correspondence were withdrawn by the senders, after receipt by the Council. That correspondence was therefore not included in the information considered by the Committee (and subsequently, the Council);
 - 4.54.3 correspondence received from persons who did not grant permission for its publication or reproduction (even after Council contacted those persons to obtain their permission) was not included; and
 - 4.54.4 one letter does not appear to have been received by the Council at all.
- 4.55 The non-inclusion of this correspondence in the materials provided to the Committee does not cause us to change our conclusion as to the merits of the Decision because:

Commented [ju21]: This application was never relevant to Morant's service with a British Contingent. His record for SA was unblemished and the push was to acknowledge his service to SA by inclusion in some form on the Memorial.

Morant's record of war crimes was stressed by the opponents to the application and this may have unduly influenced Council. Regrettably, the Council has not explained if the convictions were used as a reason to decline the application.

Your statement at 4.58 is disputed. On one hand you say the convictions are relevant, but not determinative. As stated, the difficulty I have in understanding your statement is whether the convictions were used as a reason to decline the application. Council has remained silent on this and I suggest you raise this in your report.

Mr Queale had an opportunity to address convictions as being a factor adversely affecting the merit of the application and the effects on heritage value of the Memorial. He did not discuss this and it is reasonable to conclude he dismissed the convictions as an aspect that could adversely affect the heritage value of the Memorial.

I remain concerned that the convictions were used as underhanded tactic to urge Council to reject the application.

- 4.55.1 it was open to Mr Unkles to table the documents that were not included in the Committee agenda at the Committee meeting. We understand Mr Unkles was advised of this by Council administration, but he does not appear to have sought to have the documents tabled;
- 4.55.2 Mr Unkles contacted Council members by email on 5 August 2024 to provide them with copies of 'documents relevant to the application', including copies of correspondence in support of the Application;
- 4.55.3 the contents of the correspondence which was not included in the materials provided to Committee is very similar to the contents of other correspondence provided to the Committee, which in our view suggests that their inclusion would have been unlikely to have changed the decision of the Committee or Council; and
- 4.55.4 there are no legislated mandatory requirements for the Council to consider in making the Decision.

Ground 6

- 4.56 In our view, it is appropriate for the Council to place weight on the views of Dr Stimson and the RSL given their status within the community and their roles **working** within reputable organisations, even if their views may be based on a level of conjecture. We consider this is consistent with objective community standards.
- 4.57 With respect to the controversy surrounding the conviction of Lt Morant, it is well beyond the scope of our enquiry to express a view on those matters. However, we acknowledge the substantial number of eminent persons within the military, legal and political community who have expressed grave concerns regarding the processes adopted during the courts-martial.
- 4.58 We disagree with Mr Unkles' submission that Lt Morant's convictions are not relevant to the decision to deny the Application. In our view, this is a relevant (although not necessarily determinative) factor. Further, we consider that the exclusion of persons convicted of crimes (while acknowledging that those convictions are disputed by some) is not inconsistent with objective community standards.
- 4.59 We consider it of some import that the consideration of the adding of further **names** to the memorial was specifically considered, and decided in the negative, by the Memorial Committee in 1904 at a time when the court-martial

Commented [ju22]: Yes, agree their opinions are relevant, but so are many others, including Ms Morant as a living descendant. Ms Morant's concern is that Council has attributed too much weight to Stimson and the RSL.

Commented [ju23]: There is no evidence that the Memorial Committee in 1904 directed that no further names were to be added to the Memorial. As previously, one SA volunteer was added to the Memorial at the application of his father who son died in about 1921. Times change and there is no evidence that dictated adding other names would be prohibited.

and death of Lt Morant in 1902 could, no doubt, have been within the consciousness of the Committee.

Ground 7

- 4.60 Mr Unkles has put forward the view that Lt Morant (and other persons who were missing from the Memorial) could be added at a later date, if they were not intentionally excluded from the Memorial's honour roll by way of similar additional plaques.
- 4.61 We note that the honour roll on the Memorial indicates that it commemorates **men** who died for their country. The plaques are in memory of those who fell and headed by the inscription '*who dies for his country dies nobly*'. From that context it is evidence the Memorial commemorates those who died in the service of South Australia. We believe it likely that this is the reason for Lt Morant's initial omission, as he died in different circumstances.
- 4.62 Even were this not the case, however, we consider there are numerous other considerations which could prevent the inclusion of Lt Morant and other persons who were omitted from the Memorial, such as the desire to treat the Memorial as a 'closed site' and the practical infeasibility of including the name of every soldier who served South Australia in the Boer War.
- 4.63 As noted by Dr Stimson in his correspondence to the former Premier dated 30 July 2021:

First, the memorial was erected to 'commemorate the valour of the citizen soldiers of the State' and the 'memory of those who fell', largely to disease and enemy action. Morant did serve briefly in a South Australian unit. His courage and swagger are not in question. Yet the circumstances of his death – shot by a firing squad after a court martial found him guilty of cold-blooded killings – are vastly different. It is difficult to see how it can be argued that he fell in the service of his sovereign and the Empire.

Second, comparison with other memorials is difficult. For example, Morant is listed on the Renmark and District Honour Roll because it is explicitly a service record. That is, it lists 19 men with ties to that district who enlisted. The State memorial did not purport to be a service record naming every man who served. How could it, when perhaps 2,000 South Australians served in this war, 1,531 in contingents raised here and many more who made their own way to South Africa and enlisted there? It makes no sense to argue that because Morant is named on this or that memorial he should therefore be named on the North Terrace memorial. I could equally point out that his name is conspicuously absent on the plaque

Commented [ju24]: Speculative, there is no evidence that can be verified that Morant was omitted from the Memorial because he served in a British contingent. The argument in support of his inclusion is clear, he served SA honourably and should be included. His subsequent service is not relevant to the application.

commemorating the South Australian dead at the Australian War Memorial (AWM). The National Boer War Memorial does not name individuals.

Third, to reopen the question of who should and should not be named in 2021 is to open a Pandora's box. In researching *Citizen Soldiers: South Australians at the Anglo-Boer War 1899-1902*, which Wakefield Press will publish shortly, Jennifer Humphries and I identified another 25 men with South Australian ties who died as a result of their war service and are *not* named on the memorial. There may be more. Lt. Walter Arnot shot himself dead. He was not considered, presumably due to contemporary attitudes to 'self-murder'. Tpr. John Payne was invalided home and died a few months later, doctors at Kalyra sanatorium convinced his consumption was due to the rigours of war service. Tpr. Oliver Fry was a Mintaro lad serving in a Western Australian unit when he died. Tpr. Robert Tuckwell, Sgt. Alfred Balwin and others died while serving in irregular units raised in South Africa. If Morant's name is to be considered, why not these humbler men?

- 4.64 It is also of no small moment to observe that Lt Morant's service to South Australia is directly acknowledged on the Memorial's western face, in the same way all other Citizen Soldiers of the State are commemorated.
- 4.65 The addition of the names of persons to the Memorial, or its surrounds, in a piecemeal way would not, in our view, respect the cautious approach to conservation of heritage places advocated by the Burra Charter.

Ground 8

- 4.66 We understand Mr Unkles is concerned that the basis on which the Recommendation was made was based more on the Council's history of rejecting applications concerning the addition of Lt Morant to the Memorial, rather than by analysis of the present Application.
- 4.67 We agree with Mr Unkles that the materials provided to Council were somewhat unclear, in some respects.
- 4.68 For example, the material provided to the Committee states that:
- The current proposal... seeks the addition of a new plaque with the name 'Sergeant, HH. Breaker Morant' (HH Morant) and his South Australian regiment to the granite steps of the Memorial.
- ...
- 17.2 The proposal seeks to embed the plaque either on the vertical or horizontal faces of the granite steps of the Memorial.

- 17.3 It is proposed that the text would replicate the style of font on the existing Memorial plaques, and while exact dimensions are to be confirmed, it is proposed that it is approximately 230mm x 100mm.
- 17.4 Development Approval is required as the Memorial is State Heritage listed.
- 4.69 The approved Development Application is also attached to the report to the Committee.
- 4.70 In our view, uncertainty in the materials provided in the report to the Committee arises because the scope of the proposed works within the Development Application is also uncertain and, in some instances, appears inconsistent with the summary set out above.
- 4.71 From our review of the stamped development approval documents, all that can be said with certainty is that there is to be a 'name plate' affixed at the foot of the Memorial with 'options' for the location of the name plate. The size of the plaque is not clear from the stamped documents, as well as the design, size and content of the interpretative material/interactive display. The wording on the plaque also varies across the mock ups provided in support of the Development Application. We assume that these are the matters which are to be resolved as part of the Condition and were to be attended to by Mr Unkles if the Council's in principle support were provided.
- 4.72 However, we consider it quite difficult for the reports provided to the Committee and Council to contain more substantive detail about the nature of the Application, or to provide commentary on the merits of that Application itself, when the Application itself is lacking in particulars.
- 4.73 This issue could, at least in part, be attributed to the Council for not requiring further particulars before approving the Development Application.
- 4.74 We are advised that the Council did not seek further particulars because development approval was only required due to the Memorial's status as a State Heritage Place. In those circumstances the Council accepted Heritage SA's view that there was sufficient information to complete the heritage assessment and did not consider it appropriate to seek further information.
- 4.75 The issue can also, at least in part, be attributed to the Applicant for seeking the approval of an Application which lacks substantive detail.
- 4.76 Notwithstanding our concerns about the lack of detail within the Development Application, we consider that the report does set out, to the extent possible, the

Commented [ju25]: Highlighting uncertainty is not an impediment to approving the application. The initial work I did in seeking input from two contractors was entirely appropriate, given I had been advised by Council staff that if the application was approved, I would then need to provide more detail as to the design and content of the name plaque and interpretive display.

What was provided to Council was consistent with Mr Queale's decision. More substantive detail would have been provided and this would have to be approved by Council.

I think it is regrettable that the merit of the application is now been criticised because final detail of design etc did not accompany the application. I provided photos and a design for aspects so Council could get an idea of what was being proposed if the application was successful.

nature of the Application so that Council members could form their views on the merits of the Application.

- 4.77 Further, in response to Mr Unkles' views more generally that the report contains 'insufficient detail', we consider that the report does set out clearly the reasons why the Recommendation was for the Application to not be approved, namely that its approval is inconsistent with the purpose of the Memorial, policy matters, budgetary considerations and the public interest.
- 4.78 Lastly, we do not consider that there is any issue in the Council reaffirming its previous views that the Memorial is a 'closed site.' Even though the nature of the Application was slightly different to previous requests for Lt Morant to be recognised on the Memorial (in that his name was to be included on a separate plaque), in our view, the proposal still consists of a variation to the Memorial and its surrounds, as contemplated by the Burra Charter. Accordingly, we consider it was reasonable for the Council to consider the Application to be inconsistent with the 'closed site' approach to the Memorial.

Conclusion

- 4.79 There are weighty factors both in favour and against the Application. We acknowledge the difficulty faced by councils in balancing the needs and interests of various sectors of its community. Councils are also challenged when balancing the principle of being responsive to the needs, interests and aspirations of individuals and groups within its community against their long-term obligations to manage their assets in the public interest.
- 4.80 As we have indicated, we consider that in reviewing the Decision and determining the best decision, the Council ought to have regard to community standards or community values. That is, the Council ought to consider what is the preferable decision in accordance with community standards or values. The elected membership of the Council, as local representatives of the Council's community, would be aware of and appreciate such standards and values and be well placed to make an assessment that contemplates such standards and values.
- 4.81 We consider that the Decision has an evident and intelligible justification. It is, in our view, within the range of permissible decisions available to the Council to be made taking into account the information before it.

Commented [ju26]: I defer to my earlier comments about the Burra Charter and Mr Queale's decision.

Commented [ju27]: Ms Morant says the Council acted in a deficient manner in placing great emphasis on the RSL and Dr Stimson and failed to articulate, and discuss the interests of the community. A criticism that is often levelled at Councils as they pay favour to one lobbyists over the public interest. This is such an example.

- 4.82 In our view, it is therefore open to the Council to determine the factors in favour of granting the Application are outweighed by the factors against granting the Application.
- 4.83 It would be open to the Council to conclude that community standards and values recognise, above all, the sanctity of the Memorial as a place commemorating, by specific name, those who fell in the service of South Australia. This conclusion does not diminish the service of all the other men of valour who served South Australia and who are rightly acknowledged and commemorated on the Memorial's western plate.
- 4.84 We accordingly conclude that it is open to the Council to conclude the decision made by the Council was the best possible decision in the circumstances.
- 4.85 Noting that the decision made by the Council is only a preliminary step in the decision-making process, there is nothing preventing Mr Unkles or Ms Morant from undertaking the further work to refine the proposal within the scope of the Development Application and lodging a formal application for approval under section 221 of the LG Act.
- 4.86 Of course, any such application would need to contain specific detail regarding the actual proposed alteration to the Memorial and surrounds. Such an application would need to contain the final design for the plaque and its location, and a final design and location for the interpretative material.
- 4.87 The Council would then be in the position of considering an actual proposal to alter the Memorial and other parts of the road and would be required to consider the application on its own merits.
- 4.88 Equally, there is nothing to prevent Mr Unkles or Ms Morant from pursuing alternative avenues to recognise to the service of Lt Morant, and any of the other men who fell during the Boer War, at an alternative location within the City of Adelaide. We note that before Heritage SA granted its approval of the Application from a heritage perspective, the option of a 'separate installation' of this nature was also supported by Mr Queale and Heritage SA as a way of *'adding to the commemorative story without loss of the original meaning of the place.'*
- 4.89 The cultural significance of the story of Lt Morant and the success of the film bearing his name cannot be overlooked. While entirely a matter of public policy for the Council, it may be that this important contribution to Australian culture

Commented [ju28]: Your comment is noted and appreciated. Ms Morant will be consulted.

Commented [ju29]: Thank you for this comment. In earlier discussions with Council staff it was canvassed that alternative sites could be identified to include the names of the 25 SA men, including Morant who died, but not yet recognised.

and society by a prominent South Australian identity can be recognised by the Council in another way.

Commented [ju30]: Morant made a significant contribution to SA prior to his service with the British Contingent. I agree his contribution should be recognised, Ms Morant would support this and it would be in the public interest.

5. **PROVISIONAL CONCLUSION**

5.1 Taking into account all the information as set out in this report, our view is that:

5.1.1 the Decision is lawful;

5.1.2 it is open to the Council to conclude the Decision be affirmed as the best possible decision in the circumstances.

6. **PROVISIONAL RECOMMENDATIONS**

6.1 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.

6.2 We consider it would be open to the Council to affirm the Decision.

NORMAN WATERHOUSE



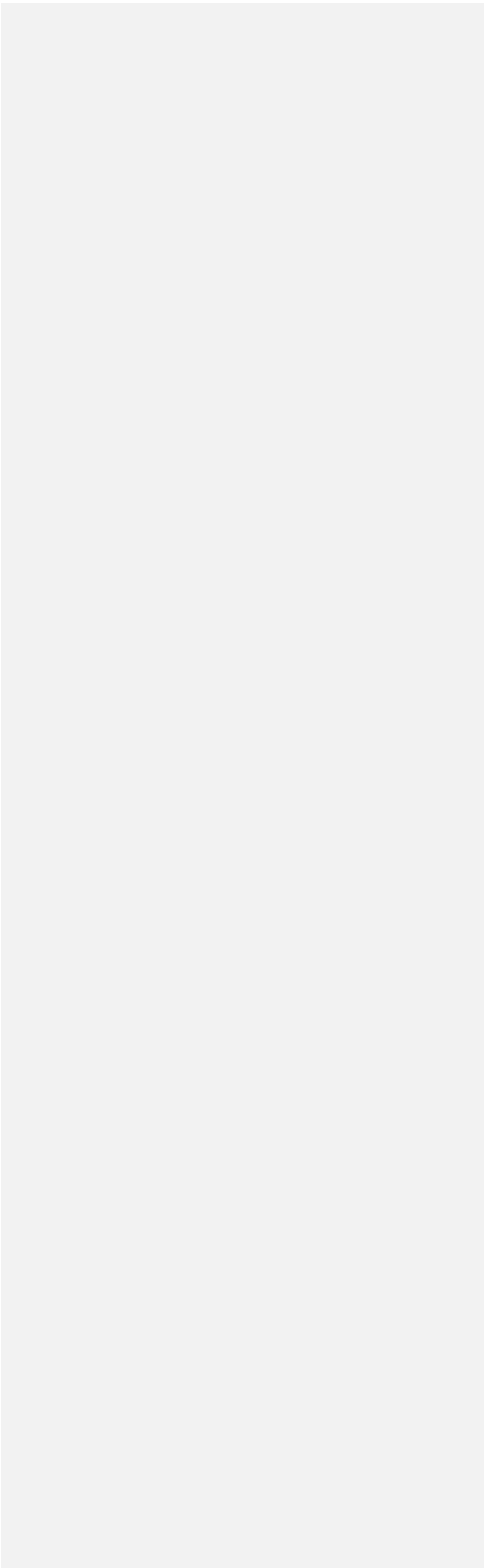
Dale Mazzachi
Principal



Annabelle Narayan
Associate

APPENDICES

Appendix A: Email correspondence between Applicant and Council



Complaint concerning Council's decision to decline the inclusion of Harry 'Breaker' Morant on the Adelaide Boer War Memorial

Mr Michael Sedgman
Chief Executive Officer
Adelaide City Council
GPO Box 2252
Adelaide, SA, 5001

19. 08.24

Dear Mr Sedgman

Reference:

1. https://customer.cityofadelaide.com.au/__home__/feedback-and-complaints/

I wish to lodge a complaint about the manner in which the Lord Mayor and Councillors conducted their review of an application I lodged on behalf of Ms Cathie Morant to have the name of Harry 'Breaker' Morant included on the Memorial and the inclusion of an interpretative display at a space on the paving near the Memorial.

Ms Morant is aggrieved by the Council's decision of 13 August to refuse her application and endorse a Recommendation made by the Community Services and Culture Committee on 6 August not to approve the application.

Particulars of the Complaint

1. At the Council meeting on 13 August the Lord Mayor refused my request to address Councillors minutes about the written submission I had lodged with Council. Council's refusal was unfair, unethical and denied me an opportunity summarise the application and address comments made by Mr Stimson who opposed the application, but was permitted to address Council. Ms Morant's application had been with Council for three years.
2. The Lord Mayor's decision to only permit Mr Stimson to address Council was harsh. Allowing me to have 5 minutes to address Council would not have prejudiced Council's opportunity to make a final determination. I appreciate the Council heard from Mr Pearce, but as I was representing Ms Morant, allowing me an opportunity to speak was appropriate.
3. The denial of the application contrary to the review and decision of Heritage South Australia, Environment, Heritage and Sustainability Division (Mr Michael Queale Senior Architect of the Department for Environment and Water) was unfair. Mr Queale's professional review concluded:
*'a plaque or similar commemorative treatment, fixed to the ground near the Memorial, or on the footpath step below the memorial statue, noting Morant's name along with specific interpretation to explain why the name plaque has been installed.
'Interpretive material will be added, on the base of paving, or on a free-standing panel nearby, providing explanatory material relating to the Boer War Memorial and associated conflict, along with a discussion regarding the mix of views associated with South Australia's involvement in the War'.*
Council should have adopted the recommendation of Mr Queale who concluded the Memorial's

heritage significance would not be adversely affected by the inclusion of a plaque and interpretive display. Frankly, Council's decision was disrespectful of the heritage significance of the Memorial and Mr Queale's assessment.

4. Council's decision failed to objectively evaluate and place weight to the public interest in approving the application. Two opinion polls conducted by the Adelaide Advertiser produced a majority vote to recognise Morant on the Memorial.
5. Twenty four written references provided by State and Federal politicians, community leaders, RSL presidents, presidents of the WA Boer War Society and others were not given sufficient weight to approve the application. Council remained silent about this aspect of the application. I am unaware if the references were considered or ignored.
6. Mr Anthony Stimson President of the SA Boer War Association and Mr Ian Smith, SA RSL in their opposition to the application claimed that deceased South Australian veterans of the Boer war had opposed the inclusion of Morant on the Memorial. No evidence to support this hearsay claim was produced to Council and this prejudiced the merits of the application. Council failed to state whether it accepted or rejected the claim and this was a glaring omission. If Council accepted this claim on what evidence, rather than self-serving opinion?
7. Mr Stimson also argued reputational damage would be done to Adelaide and the Memorial if Morant was included. This claim was contradicted by Mr Queale's assessment that the Memorial's heritage status would not be adversely affected. Positive public opinion and those who provided written references cast doubt on this claim. Council's decision placed undue weight on Mr Stimson's opinion that was not based on verifiable evidence. Mr Queale's opinion about heritage also contradicted Mr Stimson's claim. Council failed to state whether it accepted or rejected Mr Stimson's assertion.
8. There is no evidence presented by Mr. Stimson that Morant was not included on the Memorial's honour roll when it was constructed and dedicated in 1904 because of his convictions during his service with a British Contingent. Mr Stimson has access to the records of National Memorial Committee that was responsible for funding the Memorial, commissioning, selecting a design, and determining whose names should appear on it. The fact that Morant was not included does not mean he was expressly excluded, yet Mr Stimson insisted Council conclude that Morant was not included, but failed to produce evidence to sustain his claim. In the circumstances, Council should have rejected this assertion but failed to do this or explain why it was accepted.
9. The Recommendation of the Committee dated 6 August 24 concluded the name of Sergeant H.H.'Breaker' Morant could not be included on the Boer war memorial. The Executive Summary and Recommendation were accepted by the Council on 13 June. However, the Committee's Recommendation was deficient and misleading as it failed to identify Mr Queale's assessment that an interpretative panel could be erected on the pavement near the Memorial as the pavement is not heritage listed. He confirmed this in an email of 8 August and I provided a copy of his advice to the Council. Ultimately, Council's decision to accept the Recommendation that the name plaque be not included failed [to address the application](#) to include the interpretative material, a draft of which was provided to Council for consideration.
10. I further complain that in submissions by Mr Stimson and Mr Smith, they argued my reference to the National Boer War Memorial recognized the service of Harry Morant was erroneous and a Memorial exists. Despite my production of evidence that the Memorial does exist and includes the name of Morant, (<https://www.bwm.org.au/>), the

Memorial having been endorsed by Sir Peter Cosgrove AK MC, former Governor-General of the Commonwealth of Australia and Sir David Hurley, former Chief of Army and former Governor General, Council failed to conclude the Memorial exists, including the name of Morant and the assertions of Messrs Stimson and Smith were false and irrelevant to the assessment of the application. This is another example of the Council remaining silent about an important aspect of my submission in support of the application.

11. Mr Stimson and Mr Smith argued that Morant's subsequent convictions and sentence while serving with a British Contingent was a reason to decline the application. My submission in support of the application argued there is no binding statutory provision that precludes the Council from recognizing Morant's service for SA as he is recognized on other Memorials, including the National Boer War Memorial. There is no legal requirement for Morant's convictions for murder to be overturned before he could be added to the Adelaide Memorial. Undue weight appears to have been placed by Council to opinions declining the application because of Morant's convictions. Council remained silent about whether Morant's convictions were a reason to deny the application.
12. Ms Morant travelled from Canberra to read a statement about her application at the Committee meeting on 6 August. Ms Morant is elderly and vision impaired, which was apparent to the Councillors as she had to be assisted at the table and used a cane. She struggled to read her statement and had to use an illuminated device. The Committee's chair person, Councillor Giles should have ensured Ms Morant's disability was a reason to allow sufficient time for Ms Morant to complete her address. I think her presence was ignored and she was left very disappointed as to how she was treated. At the time, I was concerned but did not feel comfortable to raise my concerns with Councillor Giles.
13. Finally, the Executive Summary was little more than a chronology of about the application and its journey. It provided some detail of Mr Queale's assessment, but insufficient detail to justify the recommendation and largely based on the rejection of similar applications in the past. The current application lodged was more detailed, involving a descendant of Morant and included public comment about the merits of the application. The summary lacked sufficient detail for rejecting the application and lacked balance in explaining the merits of the application against the decision to reject.

Conclusion

I am not satisfied that Ms Morant's application was assessed in a competent manner and ignored or failed to appreciate the submissions in support of the application and the significance of Mr Queale's assessment.

The lack of transparency of Council's decision to refuse the application is a concern and the failure of the Committee and Council to refer to the interpretive display and its location on the pavement near the Memorial suggests the matter was not considered.

The refusal to deny me 5 minutes to address Council is concerning. If Council claims it acted in a fair and professional manner, how could 5 minutes after 3 years damage the integrity and due process of Council?

I don't think the Council acted in the public interest, but only in the interests of the RSL and the Boer War Association. I believe a political decision was taken to appease the RSL and Association rather than a consideration of the merits of the application and the public interest.

In 2021, Clare Mockler conducted a review of the original application that had been denied. She was satisfied that due process had not been followed directed a new review be conducted. Denial of process again remains a concern given my complaint about the present decision.

I believe the Committee meeting on 6 August and Council's meeting on 13 August failed the test for due process. The review of the application lacked transparency. On behalf of Ms Morant I am not satisfied Council approached the application with an open mind to the strengths of the application, failed to consider my submission, discussed the matters I had raised, explain the reasons for accepting the Recommendation, and failing to address Mr Queale's approval for an interpretive display, and if rejected, the reason.

Resolution

I urge you to appoint an independent external review of this complaint about the decisions of the Committee and Council, the process used to decline the application, including the treatment of Ms Morant on 6 August and my treatment on 13 August.

I also request that a decision about the inclusion of interpretive material be settled as the Committee's recommendation failed to address this aspect, noting the decision of Mr Queale that it would not detract from the Memorial's heritage. Council also failed to raise the matter on 13 August even though it was mentioned by Mr Pearce on 13 August and in my written submission to Council.

Cathie Morant's application has not been afforded transparent, fair and due process and must be addressed.

Thank you for your consideration.

Yours Sincerely

James Unkles