

## 11. Confidential items

### Legal action regarding 226-230 O'Sullivan Beach Road, Morphett Vale

*Cr Greaves MOVED:*

1. *That:*
  - a. *Under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.*
  - b. *The Council is satisfied that it is necessary that the public be excluded to enable the Council to consider the report at the meeting on the following grounds:*

*Section 90(3)(i) - information relating to actual litigation, or litigation that the Council or Council Committee believes on reasonable grounds will take place, involving the Council or an employee of the council.*
  - c. *Accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.*

*Seconded by Cr de Jonge.*

*CARRIED*

*Cr Bray MOVED:*

*That Council resolves:*

2. *To not make an application at this time to the Environment, Resources and Development Court under Part 15 of the Court's Rules requesting the Court's Registrar to issue and serve a Summons to Mr and Mrs O'Neil alleging a contempt of Court.*
3. *That in the event the unauthorised partially constructed shed has not been removed from the land within three months in accordance with the ERD Court order dated 30 November 2010, the Chief Executive Officer (and any persons acting from time to time in that position) is authorised to cause the said shed to be removed from the land in the name of the Council and to commence any legal proceedings that may be necessary to enable the removal of the said shed to occur, and to recover the costs of that work, as a debt from Mr and Mrs O'Neil pursuant to Section 85(12) of the Development Act 1993.*
4. *That, in the event the unauthorised partially constructed shed has been removed from the land within three months, but, where Mr and Mrs O'Neill have not completed the construction of a shed on the land in accordance with DA 145/2244/2010, a further report be provided to Council canvassing options available to Council for ensuring completion of the shed in accordance with the approval and ERD Court order dated 30 November 2010, and consideration of any further appropriate action available to Council, including contempt of court proceedings.*

5. *That Mr and Mrs O'Neil be advised of Council's resolutions authorising the Chief Executive Officer (and any person acting from time to time in that position) to undertake the actions contemplated in resolution 2 herein.*

Seconded by Cr de Jonge.

Cr de Jonge withdrew his second.

The MOTION lapsed for want of a seconder.

Cr Hammond left his seat in the chamber at 11.04pm.

Cr Hammond resumed his seat in the chamber at 11.06pm.

*Cr Nash MOVED:*

2. *That the Council:*
- a. *Make application to the Environment, Resources and Development Court (ERD Court) under Part 15 of that Court's Rules that the Court's Registrar issue and serve a summons, as contemplated by those Rules, to Eric O'Neil and Lilly O'Neil of 226-230 O'Sullivan Beach Road, Morphett Vale, which summons states that those persons are alleged to have committed a contempt of court by contravening the orders of the ERD Court in action no. 292 of 2009 dated 30 November 2010 on such dates and by such conduct as the Council's solicitors in due course consider can be proved.*
  - b. *Prepare such supporting documents, materials and evidence as are necessary to support such application and to prove such contempt of court.*
  - c. *If permitted by the ERD Court, to prosecute for any action for contempt brought by the Registrar of the ERD Court against Mr and Mrs O'Neil or otherwise to provide such assistance as desired by the Court in its proceedings for contempt of court against Mr and Mrs O'Neil.*
3. *That Council authorise the Chief Executive Officer (and any persons acting from time to time in that position) to, in the name of Council:*
- a. *Take all steps considered appropriate or necessary to give effect to the resolution 2 above, including obtaining legal representation for the Council.*
  - b. *Seek from the ERD Court such remedies, penalties, punishments and orders against Mr and Mrs O'Neil as the Chief Executive Officer considers appropriate based on legal advice.*
4. *That Council authorise the Chief Executive Officer (and any persons acting from time to time in that position) to, in the name of the Council:*
- a. *Cause the removal of the partially completed shed structure from the land known as 226-230 O'Sullivan Beach Road, Morphett Vale, as contemplated by the order of the ERD Court in action no. 292 of 2009 dated 30 November to be carried out.*

- b. Recover the costs of that work, as a debt from Eric and Lilly O'Neil.*
- 5. That Council authorise the Chief Executive Officer (and any persons acting from time to time in that position) to, in the name of the Council:*
- a. Take all steps considered appropriate or necessary to give effect to resolution 4, including obtaining legal advice or representation as required.*

*Seconded by Cr Greaves.*

*Cr Webster MOVED that the MOTION be PUT.*

*Seconded by Cr Jamieson.*

*CARRIED*

*The MOTION was PUT and CARRIED.*

*Cr de Jonge MOVED:*

- 6. That in relation to the matter of Mr Eric O'Neil and Mrs Lilly O'Neil of 226-230 O'Sullivan Beach Road, Morphett Vale, having been considered in confidence under Section 90(3)(i) of the Local Government Act 1999, an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the minutes, agenda report and attachments relating to discussion of the subject matter, be kept confidential until conclusion of legal proceedings (including any appeal actions).*

*Seconded by Cr Kilby.*

*CARRIED*