

CITY OF HOLDFAST BAY

Minutes of the Ordinary Meeting of Council of the City of Holdfast Bay held in the Kingston Room, Civic Centre, 24 Jetty Road, Brighton, on Wednesday 26 April 2006 at 7:03pm.

PRESENT

His Worship the Mayor
Deputy Mayor
Councillors

A K Rollond
R D C Edwards
R M Bouchée
P N Crutchett
J L Deakin
P W Dixon
J Donaldson
P L Holt
C J Lush
P L Macaskill
A C Norton
D J Swiderczuk
S K Tilley
R T Donaldson
D G Chamberlain
C A Sheffield
C E Umapathysivam
S L Ditter

Chief Executive Officer
General Manager Economic and Corporate
General Manager Environment and Engineering
General Manager Social and Organisation
Executive Manager Strategy and Development

1. OPENING

His Worship the Mayor, declared the meeting open with prayer at 7:03pm.

2. PRESENTATION

Rob Tucker from the Coastal Protection Branch gave a ten minute presentation on current initiatives.

The Mayor advised that he had attended the Karidis Corporation opening of their new Aged Care Facility named "Bay Waters", where he was given a model of a sailing ship "In commemoration of the launch of Bay Waters 26 April 2006", which he presented to Council.

3. APOLOGIES

- 3.1 For Absence Nil
- 3.2 Leave of Absence Nil

4. CONFIRMATION OF MINUTES

Councillor Macaskill moved and Councillor Tilley seconded that the minutes of the Ordinary Meeting of Council held on Tuesday 11 April 2006 be taken as read and confirmed.

CARRIED

5. MAYORAL REPORT

From 22 March 2006 to 18 April 2006.

Councillor Holt moved and Councillor Edwards seconded that the report be received and noted with the addition of the Mayor's attendance at the 40th Anniversary of the Lions Club of Brighton on Sunday 23 April 2006 where he was presented with the Melvin Jones Fellowship Award for service to medicine.

CARRIED

Councillor Crutchett left the meeting at 7:32pm.

6. QUESTIONS BY MEMBERS

6.1 Without Notice Nil

6.2 With Notice

6.2.1 Elected Member – Communication with Council Employees

At the meeting of Council held on Wednesday 26 April 2006 Councillor Crutchett asked the following questions.

1. Have all council staff been given a copy of and brief on their obligations under the "Elected Member - Communication with council employees" policy endorsed by council on the 11th April 2006.
2. What forms or management systems have been introduced to ensure compliance by staff is made easy and time efficient in relation to the following section of the policy?

"When staff respond to a members question or request, all elected members will receive a copy of the response so that all members are equally informed about the issue/s."
3. Please outline the budget implications on staff fully complying with the requirements: "When staff respond to a members question or request, all elected members will receive a copy of the response so that all members are equally informed about the issue/s." given that the policy covers questions and requests by telephone, email, facsimile, letters, memos, reports, personal contact.
4. Have administration identified any vagueness in this policy that will allow them to selectively choose members questions or responses they do not forward to the whole elected member body? What are they?

General Manager Social and Organisation response:

1. **Staff have not yet received training on implementation of the new policies although they have been briefed regarding the provisions of the formerly endorsed "questions" policy which carries with it a responsibility to provide information relating to agenda items and Elected Member questions uniformly to all members so that the information is shared to facilitate decision making.**

2. This depends on the form in which the question is asked. The majority of the questions asked by email are responded to in the same fashion with copies to other Elected Members using the email group established to facilitate this. Questions asked via a telephone call are, depending on their complexity, responded to verbally. Verbal responses, relating to agenda items or matters of common interest will usually be the subject of a follow up email to the Elected Member email group.
3. Staff continue to apply the guidelines from Council that if the response that is being sought will take longer than 2 hours of staff time or requires external advice, then the expenditure of resources to provide the answer should be supported by a Council resolution.
4. It is noted that casual personal exchanges between Members and staff; either over the phone or in person, may sometimes not be considered by either party as being significant enough to justify a formal email to remaining Elected Members. Incidental information sought during meetings established to deal with another matter, may also not be recognised as significant by members of staff.

Restricting communication between Elected Members and staff to Senior Management only has been considered by the Management Team, in order to keep control over the information flowing between Administration and the Elected Members. However, it was decided that, balanced against the opportunity to make the Administration generally more accessible to Elected Members, that with reasonable instruction to staff generally, the provisions of the policy could broadly be met albeit that this does carry with it the risk that information is occasionally, inadvertently not circulated to other Elected Members.

6.2.2 DAP Panel

At the meeting of Council held on Wednesday 26 April 2006 Councillor Crutchett asked the following questions.

1. What site inspection have been carried out by DAP panel member in the proceeding 3 months?
2. What DAP panel members attended these site inspections and who from administration attended these site visits?
3. Where both the development applicant or representative and the representors or representative present during these visits?
4. Have the site visits been conducted on a vote of the DAP and the Vote recorded in the minutes.
5. Would administration recommend any changes to the DAP code of conduct to ensure that Council is not at any significant risk of breaching natural justice principles?
6. Could a development application approval/refusal be overturned in a court based on a significant breach of the principle of natural justice?
7. What principles from the below panel members guide should be included in the DAP code of conduct?

Executive Manager Strategy and Development response:

- 1. Site inspections that have been carried out by DAP panel members together with Administration in the preceding 3 months is two. Administration is not able to advise on whether and how often site inspections have been undertaken by individual DAP members**
- 2. All DAP panel members attended one site inspection accompanied by the Manager Development Assessment and the Executive Manager Strategy and Development. One other site inspection was attended by Councillors Lush and Deakin together with the Manager Development Assessment.**
- 3. Neither the development applicant or representative nor any representor/s or representative were present during these visits.**
- 4. The site visits were not based on a vote of the DAP and therefore were not recorded in the minutes.**
- 5. Administration does not recommend any changes to the DAP code of conduct on the basis that it is not considered that such site visits would breach natural justice principles.**
- 6. It is conceivable that a development application approval/refusal could be overturned in a court if a breach of the principle of natural justice can be demonstrated.**
- 7. Any or all of the principles from the following panel members guide could be included in the DAP code of conduct.**

3.5.3 For Panel Members when Inspecting Sites

The role of a Panel would normally include a site inspection at some time to ensure that any decisions have regard to the site and locality in which it is proposed.

It is important to note that generally an inspection undertaken by the Panel as a group is not likely to generate any significant risks provided these inspections follow natural justice principles.

Generally Panel members should avoid entering development sites, even if invited by the land owner or a neighbouring property owner that may be a representor. Entering buildings should also be discouraged due to personal risks or the perception that a Panel member may have breached natural justice principles by "coming too close to the action".

Consequently, site inspections should be limited where possible to an investigation from the street or road frontage rather than on the site directly.

As a matter of good practice the following principles should be followed:

- During site inspections members should carry a form of photographic identification (a badge or a card would suffice) which includes a statement of authority.
- The badge or card should identify the role and responsibilities of Panel members under the Development Act, not the Local Government Act.

All members of Panels are covered by Council's Personal Accident Insurance Policy official during site inspections of the Panel (this excludes Regional Development Assessment Panels as they are dealt with separately). There are however some risks associated with site inspections if they are undertaken individually. Unless specifically authorised by the Panel, a member is strongly discouraged from undertaking a site inspection individually. In the absence of Panel authorisation, an individual member is likely to be exposed and not covered by Council's insurance.

Consequently, all site inspections should be official and approved by the Panel as "official" site inspections and consideration should be given to:

- Safety and security of Panel members - including personal protective equipment requirements.
- Purpose of the inspection - investigatory in nature.
- Procedures that should be followed - including method of travel, activities and restrictions on site, timing.

Councillor Crutchett returned to the meeting at 7:33pm.

7. REPORTS BY DELEGATES OR REPRESENTATIVES

Councillor Crutchett reported having attended the Meeting of the Murray Darling Association held in the City of Holdfast Bay on April 5 2006. A commendable presentation was given by Sybille Hafliger titled "What is happening and what is intended to happen with stormwater".

Councillor Crutchett felt the members of the Murray Darling Association enjoyed the hospitality of the City of Holdfast Bay.

8. PETITIONS AND DEPUTATIONS

Mr Jerome Van der Linden made a presentation on behalf of the Liberty Towers unit owners.

9. NOTICES OF MOTION Nil

10. ADJOURNMENT (TO ENABLE PERMANENT COMMITTEES TO MEET) (7:44PM)

Councillor Lush moved and Councillor Donaldson seconded that Council stand adjourned to enable the permanent Economic and Corporate and Environment and Engineering Committees to meet.

CARRIED

11. RESUMPTION

Councillor Bouchée moved and Councillor Lush seconded that Council resume at 9:01pm.

CARRIED

12. COMMITTEE RECOMMENDATIONS FOR CONSIDERATION**12.1 Economic and Corporate Committee**

The Chairperson, Councillor Holt reported that the Economic and Corporate Committee had met this evening and had processed the business contained in the agenda documents.

Councillor Holt moved and Councillor Deakin seconded that the report of the Economic and Corporate Committee, the agenda documents and approved recommendations, together with the additional recommendations from the meeting be adopted.

CARRIED

12.2 Environment and Engineering Committee

The Chairperson, Councillor Dixon reported that the Environment and Engineering Committee had met this evening and had processed the business contained in the agenda documents.

Councillor Dixon moved and Councillor Tilley seconded that the report of the Environment and Engineering Committee, the agenda documents and approved recommendations, together with the additional recommendations from the meeting be adopted.

CARRIED

13. DEVELOPMENT ASSESSMENT PANEL

Councillor Swiderczuk moved and Councillor Holt seconded that the minutes of the Development Assessment Panel held Wednesday 12 April 2006, circulated to Elected Members under separate cover on 13 April 2006, be received.

CARRIED

The Presiding Member, Councillor Macaskill reported that the Development Assessment Panel had processed the business contained in the agenda documents on Wednesday 12 April 2006 and had made certain recommendations to Council in relation to the following DAP Item.

Item 7.2 APPEAL – 4 BONYTHON AVENUE, GLENELG NORTH

Following the lodgement of an appeal against the Panel's refusal of an application to construct two, two storey detached dwellings and associated garages at 4 Bonython Avenue, Glenelg North, the appellant has submitted amended plans for further consideration. The revised plans incorporate alterations to the design, form and siting of the dwellings. Although the site area per dwellings remain unaltered, the design alterations have satisfactorily addressed the issues associated with set backs and dwelling form. It is considered the compromise proposal has merit for the Panel's support

The Development Assessment Panel recommends to Council that the Environment Resources and Development Court be advised that Council supports the amended proposal for DA 110/609/05 subject to the following conditions:

1. That the design and siting of all buildings and structures and site works shall be as shown on the plans numbered sk/0209 "A" dated 14/03/06 hereby approved unless varied by any subsequent conditions imposed herein.
2. That the premises shall be maintained, kept tidy, free of graffiti and in good repair and condition to the reasonable satisfaction of Council at all times.
3. That the premises shall not be used, directly or indirectly, for the purpose now approved until all work has been completed in accordance with the plan approved and the conditions of consent have been complied with, except those conditions that continue to apply.
4. That upstairs windows on the rear elevation shall have minimum window sill heights of 1.7 metres above finished floor level, or any glass below 1.7 metres shall be manufactured obscure glass (chosen from the list of glass types in the relevant Council policy or equivalent to one of those glass types), fixed shut other than by a wind out mechanism (to no greater than 200mm) and hinged at the top of the window panel, or as otherwise approved by Council. Further details of this requirement shall be provided at Building Rules Assessment stage.
5. That the applicants or other persons, for the time being, making use of the development now approved, shall cultivate, tend and nurture the trees or, shrubs or lawns intended to be established upon the subject land, replacing from time to time, any trees, shrubs or lawns which shall die or become diseased with others of the same respective varieties or of such varieties as the Council shall approve in writing.
6. That the landscaping shall comprise semi mature trees and shrubs. The trees shall have a minimum height of 1500mm and the shrubs a minimum height and breadth of 300mm when planted. Any such vegetation shall be replaced if and when it dies or becomes seriously diseased.
7. That any front fencing shall either be a low front fence, or if higher than 1.2 metres, a grill type fence be provided along the front property boundary other than for driveway. Where the subject land is located on a corner allotment, fencing shall not exceed one metre in height within six (6) metres of the intersection of two boundaries of land where those boundaries both face a road.
8. All new residential dwellings shall comply with Council's Policy on stormwater retention (refer attached).
9. That the provision for vehicle crossovers and inverts, and reinstatements of existing crossovers not required by the development, be constructed at the owner's expense.
10. Any change in levels along external site boundaries of 200mm or more shall be retained to suitable engineering standards and any fencing shall be erected on top of such retaining walls. Construction of all retaining walls shall be undertaken and completed prior to the commencement of construction of the dwelling(s) herein approved.

11. **That construction shall take place between 7am and 7pm Monday to Saturday and not on Sundays or public holidays. All such work shall be undertaken in such a manner so as not to, in the reasonable opinion of Council, cause any nuisance or annoyance to any of the occupiers of buildings within the locality. Any work outside of these hours requires the written approval of Council.**
12. **That dust emissions from the site shall be controlled by a dust suppressant or by watering regularly to the reasonable satisfaction of Council.**
13. **That the builder shall at all times provide and maintain a waste receptacle to the reasonable satisfaction of Council on the site in which and at all times all builder's waste shall be contained for the duration of the construction period and the receptacle shall be emptied as required.**
14. **That all hard building materials, waste and litter on site be stored in a manner that secures it on site during the construction works.**
15. **That no solid or liquid trade wastes be discharged to the stormwater system.**

Item 7.3 APPEAL – 6 ALFREDA STREET, BRIGHTON

Following the lodgement of an appeal against the Panel's refusal of an application for a verandah attached to the rear of dwelling and adjoining rear boundary; and 2.44 metre rendered blue board fence attached to existing north and west boundary fences, the appellant has submitted an amended proposal for further consideration. The amendments include the removal of the 2.44 metre high screen wall and the removal of a section of impervious roof covering and replacement with shadecloth. It is considered that the amendments made adequately address the visual impacts and site coverage issues with the previous proposal and that the compromise proposal has merit for the Panel's support

The Development Assessment Panel recommends to Council that the Environment Resources and Development Court be advised that Council supports the amended proposal for Development Application 110/01076/05 subject to the following conditions:

1. **That the design and siting of all buildings and structures and site works shall be as shown on the plans submitted to and approved by Council unless varied by any subsequent conditions imposed herein.**
2. **That the premises shall be maintained, kept tidy, free of graffiti and in good repair and condition to the reasonable satisfaction of Council at all times.**
3. **That the verandah herein approved shall not be enclosed without the prior consent of Council.**
4. **That shade cloth shall be erected within one month of the granting of Development Approval.**
5. **That the fence shall be removed within one month of the granting of Development Approval and the existing fence shall be repaired to its former condition before the fence addition was erected.**

6. **All stormwater from the verandah structure shall be collected and disposed of so as to not adversely affect any properties adjoining the site or the stability of any building on the site. To satisfactorily achieve the above mentioned requirement, alterations to the existing downpipe may be required to direct the stormwater from the structure to the street water table. Final details of the stormwater disposal arrangements shall be submitted to Council within one month of the granting of Development Approval and shall be subject to approved by Council.**

Councillor Lush moved and Councillor Donaldson seconded that the recommendations of the Development Assessment Panel held on Wednesday 12 April 2006 for Item No: 7.2 and 7.3 be adopted.

A Division was called.

Voted For

Councillor Deakin
Councillor Dixon
Councillor Donaldson
Councillor Edwards
Councillor Holt
Councillor Lush
Councillor Macaskill
Councillor Norton
Councillor Swiderczuk

Voted Against

Councillor Bouchée
Councillor Crutchett
Councillor Tilley

THE MAYOR DECLARED THE MOTION CARRIED

14. **REPORTS OF ADVISORY COMMITTEES AND/OR SUB-COMMITTEES Nil**

15. **REPORTS OF REGIONAL SUBSIDIARIES**

Southern Region Waste Resource Authority Meetings held Monday 3 April 2006 and Monday 10 April 2006.

Councillor Deakin moved and Councillor Bouchée seconded that the minutes of this committee be received.

CARRIED

16. **REPORTS BY OFFICERS**

- 16.1 **Items in Brief (Report No: 201/06)**

Report No: 201/06 was presented detailing items which were presented for the information of Members and did not require a separate resolution.

- C260406/091 Councillor Dixon moved and Councillor Edwards seconded that the report be noted and items of interest be discussed.**

CARRIED

16.2 Organisational Issues – Update (Report No: 203/05)

Report No: 203/06 was presented advising that as part of the budget preparation cycle, since 2004, the Chief Executive Officer has reported on the organisation's 'hot spot' staffing needs and related issues. This forms part of the background information for consideration when setting the forthcoming budget. Should additional funds be allocated for staff salary costs, the Chief Executive Officer will apply the funds according to organisational priority needs and opportunities.

The status of current and emerging hot spots is updated in this report, and related considerations discussed. No recommendation for change is presented at this time, pending Members' feedback.

Councillor Lush left the meeting at 9:10pm and returned at 9:12pm

C260406/092 Councillor Macaskill moved and Councillor Bouchée seconded that Elected Members provide the Chief Executive Officer with feedback in relation to the content of Report Number 203/06 and a further report be presented as part of Council's 2006/2007 budget deliberations.

CARRIED

17. URGENT BUSINESS Nil

Councillor Donaldson left the meeting at 9:12pm.

18. ITEMS IN CONFIDENCE**18.1 COLLEY RESERVE SOUTH – FERRIS WHEEL (REPORT NO: 202/06)**

C260406/093 Councillor Lush moved and Councillor Edwards seconded that, pursuant to Section 90(2) and 90(3)(b) of the Local Government Act 1999 the Council order that the public be excluded from attendance at the meeting, with the exception of Council officers and any other visitors permitted to remain, after taking into account the relevant considerations under Section 90(3)(b), on the basis that it will receive, discuss or consider the following:

- information or matter the disclosure of which –

(i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and

(ii) would, on balance, be contrary to the public interest.

CARRIED

Colley Reserve South - Ferris Wheel (Report No: 202/06)

**Council Officers remaining: Mr Donaldson, Mrs Umaphysivam,
Mr Sheffield, Mrs Ditter and Mr Chamberlain**

C260406/094 Councillor Lush moved and Councillor Holt seconded that the late item (plan) be received.

CARRIED

Councillor Donaldson returned to the meeting at 9:13pm.

Report No: 202/06 was presented advising that at its meeting on 25 October 2005 Council resolved to give its in principle support to the lease of a portion of Colley Reserve South for the purposes of a single arm ferris wheel subject to conditions. The purpose of this report is to update Council on the final location of the proposed single arm ferris wheel and to authorise Administration to proceed with finalising and effecting the necessary lease arrangements.

C260406/095 Councillor Macaskill moved and Councillor Dixon seconded that Council recommends:

- 1. That Report No: 202/06 be received;**
- 2. That Council authorise Administration to proceed with the preparation of necessary lease documentation to facilitate use of Colley Reserve South as delineated in Attachment 1 to Report No: 202/06 for the purposes of a single arm ferris wheel by the Rimington Group in accordance with Council Resolution No. C251005/295; and**
- 3. That the Chief Executive Officer and the Mayor be authorised to sign and seal all necessary documentation to effect the lease arrangements.**

**Councillor Lush moved and Councillor Deakin seconded that the motion be put.
CARRIED**

A Division was called.

Voted For

Voted Against

Councillor Deakin
Councillor Dixon
Councillor Donaldson
Councillor Edwards
Councillor Holt
Councillor Lush
Councillor Macaskill
Councillor Norton
Councillor Swiderczuk

Councillor Bouchée
Councillor Crutchett
Councillor Tilley

THE MAYOR DECLARED THE SUBSTANTIVE MOTION CARRIED

ORDER NOT TO RETAIN DOCUMENTS IN CONFIDENCE

C260406/096 Councillor Tilley moved and Councillor Holt seconded that pursuant to Section 90(2), 90(3)(b) and 91(7) of the Local Government Act 1999, the Council orders that the documents and minutes relating to Report No: 202/06 not be kept confidential and be made available for public inspection.

CARRIED

18.2 LIBERTY TOWERS ENCROACHMENT FEE – UPDATE (REPORT NO: 204/06)

C260406/097 Councillor Deakin moved and Councillor Macaskill seconded that, pursuant to Section 90(2) and 90(3)(h) of the Local Government Act 1999 the Council order that the public be excluded from attendance at the meeting, with the exception of Council officers and any other visitors permitted to remain, after taking into account the relevant considerations under Section 90(3), on the basis that it will receive, discuss or consider the following:

- legal advice.

CARRIED

Liberty Towers Encroachment Fee - Update (Report No: 204/06)

ORDER TO RETAIN DOCUMENTS IN CONFIDENCE

C260406/100 Councillor Lush moved and Councillor Holt seconded that pursuant to Section 90(2), 90(3)(h) and 91(7) of the Local Government Act 1999:

1. The Council orders that the documents and minutes relating to Report No: 204/06 with the exception of Resolution No:C260406/087 for going into confidence be kept confidential and not available for public inspection on the basis that they deal with legal advice, under Section 90 (2) and 90(3)(h) of the Act.
2. This resolution will be reviewed on or before 30 June 2007 by the Council.

CARRIED**LATE ITEM**

Councillor Dixon left the meeting at 9:55pm and returned at 9:56pm.

18.3 ASSIGNMENT/NOVATION OF LEASE – THAI JASMINE RESTAURANT (REPORT NO: 205/06)

C260406/101 Councillor Lush moved and Councillor Holt seconded that, pursuant to Section 90(2) and 90(3)(d) of the Local Government Act 1999 the Council order that the public with the exception of Council officers and any other visitors permitted to remain, be excluded from attendance at the meeting, after taking into account the relevant considerations under Section 90(3), on the basis that it will receive, discuss or consider the following:

- commercial information of a confidential nature (not being a trade secret) the disclosure of which:
 - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party, and
 - (ii) would, on balance, be contrary to the public interest.

CARRIED

C260406/102 Councillor Lush moved and Councillor Holt seconded that the late item be received.

CARRIED

Assignment/Novation of Lease – Thai Jasmine Restaurant (Report No: 205/06)**ORDER TO RETAIN DOCUMENTS IN CONFIDENCE**

C260406/106 Councillor Lush moved and Councillor Holt seconded that pursuant to Section 90(2), 90(3)(d) and 91(7) of the Local Government Act 1999:

1. The Council orders that the documents and minutes relating to Report No: 205/06 with the exception of Resolution No: C260406/100 for going into confidence be kept confidential and not available for public inspection on the basis that they deal with information the disclosure of which:
 - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party, and
 - (ii) would, on balance, be contrary to the public interestunder Section 90(2) and 90(3)(d) of the Act.
2. This resolution will be reviewed on or before 30 June 2007 by the Council.
CARRIED

18.4 ORGANISATIONAL CHANGES – VERBAL REPORT

C260406/107 Councillor Lush moved and Councillor Macaskill seconded that, pursuant to Section 90(2) and 90(3)(a) of the Local Government Act 1999 the Council order that the public be excluded from attendance at the meeting, with the exception of Council officers and any other visitors permitted to remain, after taking into account the relevant considerations under Section 90(3), on the basis that it will receive, discuss or consider the following:

- information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person or persons (living or dead).

CARRIED

Organisational Changes – Verbal Report**ORDER TO RETAIN DOCUMENTS IN CONFIDENCE**

C260406/108 Councillor Macaskill moved and Councillor Lush seconded that pursuant to Section 90(2), 90(3)(a) and 91(7) of the Local Government Act 1999:

1. The Council orders that the documents and minutes relating to the Organisational changes and possible redundancy matter with the exception of Resolution No: C260406/102 for going into confidence be kept confidential and not available for public inspection on the basis that they deal with information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person or persons (living or dead) under Section 90 (2) and 90(3)(a) of the Act.
2. This resolution will be reviewed on or before 30 June 2007 by the Council.
CARRIED

19. RESUMPTION

Councillor Lush moved and Councillor Holt seconded that Council resume as an open meeting of Council at 10:17pm.

20. CLOSURE

The Meeting closed at 10:17pm

CONFIRMED

Tuesday 9 May 2006

MAYOR