

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 Tuesday 22 August 2006 at 7:00pm.

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
P L Holt
C J Lush
P L Macaskill
A C Norton
D J Swiderczuk
R T Donaldson
C A Sheffield
C E Umapathysivam
R A Thomas
I S Walker

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

1. OPENING

His Worship the Mayor, declared the meeting open with prayer at 7:00pm.

2. PRESENTATION

3. APOLOGIES

- 3.1 **For Absence** Councillor J Donaldson
3.2 **Leave of Absence** Councillor S K Tilley

4. CONFIRMATION OF MINUTES

Councillor Deakin moved and Councillor Edwards seconded that the minutes of the Ordinary Meeting of Council held on 8 August 2006 be taken as read and confirmed.

CARRIED

5. MAYORAL REPORT

From 15 July 2006 to 13 August 2006

Councillor Dixon moved and Councillor Edwards seconded that the report be received and noted.

CARRIED

6. QUESTIONS BY MEMBERS**6.1 Without Notice** Nil**6.2 With Notice****6.2.1 Community Consultation – Jimmy Melrose Park and Jetty Forecourt**

In accordance with this notice Councillor Crutchett asked the following question:

Has and how did Council meet its statutory obligation for consultation under the Community Land Management Plan for Jimmy Melrose Park & Jetty forecourt in changing from a Council owned and leased building to the proposed 21 year ground lease only?

Executive Manager Finance and Corporate response

The relevant Community Land Management Plan contains the following:

“ **Jimmy Melrose Park & Jetty Forecourt**

Glenelg foreshore is a popular area that is used for passive and active recreation and special events. It includes the linear park known as Jimmy Melrose Park along the foreshore and the forecourt area in front of the Glenelg Jetty. It includes shared walkway/cycling and walking only paths, large grassed areas, large pine trees, landscaping, a wall separating the beach from the reserve, park furniture, public art, monument, toilets and the Broadway Kiosk.

Identification and Ownership Details

Street Address	Foreshore
Suburb	Glenelg
Area	52,709m2 (approx.)
Certificate of Title	CT 5797/594, CT 5397/508
Owner	City of Holdfast Bay
Lease/licence details	Beach Hire Scampis Sandbank Coffee Shop Broadway Kiosk
Master Plan	-

Given that the proposed lease is for a period of greater than 5 years, that the lease initiative is consistent with the objectives specified in the Community Land Management Plan, and in accordance with Council's Public Consultation policy, the proposed lease was advertised in the Messenger Guardian on 8 February 2006.

(Elected Members were advised of the proposal to seek public comment regarding the proposed lease in an EM Bulletin which was issued on 2 February 2006.)

The public was provided with the opportunity to make comment on the proposed lease (comments to be received by no later than 1 March 2006). Whilst a number of copies of the draft were distributed to interested parties (upon request) no comment was received by Council Administration during the relevant period. This was advised to Council on 28 March 2006 (refer report 158/06 which went to Council).

6.2.2 Confidentiality of Council discussions

In accordance with this notice Councillor Crutchett asked the following questions:

1. Council's policy C04 Access to Meetings and Documents says "There are very strict circumstances in which a discussion or document considered in a Council or Council Committee meeting can be kept confidential. These provisions are outlined in sections 90 and 91 of the Local Government Act 1999".
2. Do the provisions of confidentiality extend to the discussion (debate) whilst in confidence?
3. Are Elected Members or staff present entitled to frame questions from confidential discussions and forward these to organisations/persons who may be subject to the confidential discussions?
4. Following the release of confidential reports or minutes are Elected Members or staff present during the confidential meeting entitled to convey the discussion (debate) of what other fellow Elected Members said whilst in confidence to third parties?
5. Is it appropriate for an Elected Member to discuss a complaint for breach of code of conduct with third parties when Council's Executive has considered the matter and the executive resolved and declared the matter confidential on the basis "*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?*"

General Manager Social and Organisation response

All of the questions listed above, require further legal advice in drafting a comprehensive response. As it is proposed in this agenda (item 16.2) to invite our legal advisor to attend an informal gathering of Elected Members on 12 September 2006, with Council's support, it is suggested that these questions form part of that discussion. These questions, with a formal response, will then be listed in the following Council agenda.

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| 7. | REPORTS BY DELEGATES OR REPRESENTATIVES | Nil |
| 8. | PETITIONS AND DEPUTATIONS | Nil |

9. NOTICES OF MOTION**9.1 Rescission Motion and Notice of Motion - Meeting Location**

In accordance with his notice

Councillor Crutchett moved and Councillor Bouchèe seconded that Council rescind the motion no: C04/0367 "Councillor Macaskill moved and Councillor Norton seconded that:

- 1. Council meets in the Kingston Room at Brighton until normal access to the Town Hall at Glenelg is restored in January 2006".**

A division was called.

Voted For
Councillor Holt
Councillor Crutchett
Councillor Bouchèe

Voted Against
Councillor Dixon
Councillor Norton
Councillor Macaskill
Councillor Swiderczuk
Councillor Deakin
Councillor Lush
Councillor Edwards

HIS WORSHIP THE MAYOR DECLARED THE MOTION LOST

9.2 Rescission Motion – Meeting recording

In accordance with his notice

Councillor Crutchett moved and Councillor Bouchèe seconded that Council rescind motion number C05/0054 "Councillor Lush moved and Councillor Swiderczuk seconded that Council not approve the distribution of copies of the CD (audio and video) recording of Council and Committee meetings of 8 February 2005 to all Elected Members and to members of the Management Team and Administration arrange a time for all Elected Members and Management Team to view the CD recording".

A division was called.

Voted For
Councillor Crutchett
Councillor Bouchèe

Voted Against
Councillor Dixon
Councillor Norton
Councillor Macaskill
Councillor Swiderczuk
Councillor Deakin
Councillor Lush
Councillor Holt
Councillor Edwards

HIS WORSHIP THE MAYOR DECLARED THE MOTION LOST

9.3 Rescission Motion and Notice of Motion – Proclamation Day Invitations

C220806/221 Councillor Crutchett moved and Councillor Bouchée seconded that Council receive the tabled copies of invitations to the last five Proclamation Day events.
CARRIED

C220806/222 In accordance with her notice

Councillor Macaskill moved and Councillor Deakin seconded that Council rescind the motion numbered SO080806/0038 “Councillor Dixon moved and Councillor Norton seconded that the Committee recommends:

- 2. That the invitations for Proclamation Day 2006 be issued in the name of Mayor Ken Rollond.”**

A division was called.

Voted For	Voted Against
Councillor Dixon	Councillor Crutchett
Councillor Norton	Councillor Bouchée
Councillor Macaskill	
Councillor Swiderczuk	
Councillor Deakin	
Councillor Lush	
Councillor Holt	
Councillor Edwards	

HIS WORSHIP THE MAYOR DECLARED THE MOTION CARRIED

C220806/223 In accordance with her motion

Councillor Macaskill moved and Councillor Deakin seconded that the invitation for the 2006 Proclamation Day invitation be worded “The Mayor and Councillors of the City of Holdfast Bay.”

A division was called.

Voted For	Voted Against
Councillor Dixon	Councillor Crutchett
Councillor Norton	Councillor Bouchée
Councillor Macaskill	
Councillor Swiderczuk	
Councillor Deakin	
Councillor Lush	
Councillor Holt	
Councillor Edwards	

HIS WORSHIP THE MAYOR DECLARED THE MOTION CARRIED

10. ADJOURNMENT (TO ENABLE PERMANENT COMMITTEES TO MEET) (7:16PM)

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

CARRIED

11. RESUMPTION

Councillor Holt moved and Councillor Macaskill seconded that Council resume at 8:06pm.

CARRIED

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

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

Councillor Deakin moved and Councillor Holt 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 Holt 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

C220806/224 Councillor Holt moved and Councillor Deakin seconded that the minutes of the Development Assessment Panel held on Wednesday 9 August 2006 be received.
CARRIED

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

15. REPORTS OF REGIONAL SUBSIDIARIES Nil

16. REPORTS BY OFFICERS**16.1 Items in Brief (Report No: 414/06)**

Report No: 414/06 was presented detailing items which were presented for the information of Members and did not require a separate resolution.

C220806/225 Councillor Dixon moved and Councillor Swiderczuk seconded that the report be noted and items of interest be discussed.

CARRIED

16.2 Confidentiality Provisions (Report No: 417/06)

A number of Elected Members have sought clarification about the application of the confidentiality provisions of the Local Government Act 1999. Councillor Crutchett has also asked a number of Questions on Notice on this topic. A response to these questions requires further legal advice and, in accordance with the Council's Policy on Questions from Elected Members, a formal Council resolution is required before proceeding to seek this advice.

In order to allow an informal opportunity for Members to pose their questions directly and seek further clarification, it is proposed that a legal advisor be invited to attend an informal gathering of the Council to be held immediately prior to the Council meeting of 12 September 2006.

C220806/226 Councillor Dixon moved and Councillor Macaskill seconded:

- 1. That an informal gathering of Council be held on 12 September 2006 at 5:30pm to enable Members to ask and seek clarification of their questions regarding the application of the confidentiality provisions of the Local Government Act 1999.**

That a legal advisor be invited to attend to provide advice clarifying the confidentiality provisions of the Local Government Act 1999.

CARRIED

16.3 Southern Waste Resource Authority – 2006 – 2009 Business Plan for Council Comment (Report No: 419/06)

The Southern Region Waste Resource Authority, of which the City of Holdfast Bay is a member, has sought comments on its draft 2006-2009 Business Plan. Relevant considerations include the respective roles of the Board of the Authority and the respective constituent Councils, the strategic alignment of the draft document with other relevant strategic directions and the detailed content of the draft document.

C220806/227 Councillor Holt moved and Councillor Deakin seconded that the Chief Executive Officer provide comments to the Southern Region Waste Resource Authority Board on its draft Business Plan for 2006-2009, based on the content of Report Number 419/06.

CARRIED

17. URGENT BUSINESS**17.1 Implications of the affect of the Supreme Court Ruling on Precedent Affects**

Councillor Macaskill left the meeting at 8:10pm

Councillor Macaskill rejoined the meeting at 8:13pm

Councillor Swiderczuk left the meeting at 8:14pm

Councillor Swiderczuk rejoined the meeting at 8:16pm

C220806/228 Councillor Bouch e moved and Councillor Deakin seconded that administration prepare a report to advise the implications of the affect of the Supreme Court ruling of "relevance of the precedent affects" on not only on the decisions of the Development Assessment Panel but also on the strategy of Council and the preparation of the planning application reports prepared by administration.

A division was called.

Voted For

Councillor Dixon
Councillor Norton
Councillor Macaskill
Councillor Swiderczuk
Councillor Deakin
Councillor Lush
Councillor Holt
Councillor Edwards
Councillor Crutchett
Councillor Bouch e

Voted Against

HIS WORSHIP THE MAYOR DECLARED THE MOTION CARRIED

18. ITEMS IN CONFIDENCE**18.1 BRIGHTON PRECINCT COMMITTEE – FUTURE DIRECTIONS FOR THE BRIGHTON CIVIC PRECINCT (REPORT NO: 401/06)**

Council officers remaining: Mr Donaldson, Mrs Umaphysivam, Mr Sheffield, Ms Thomas and Mr Walker

C220806/229 Councillor Swiderczuk moved and Councillor Macaskill seconded that, pursuant to Section 90(2), 90(3)(b) and 90(3)(d) 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) and (d), 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.

and

- 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

Brighton Precinct Committee – Future Directions for the Brighton Civic Precinct (Report No: 401/06)

ORDER TO RETAIN DOCUMENTS IN CONFIDENCE

C220806/233 Councillor Dixon moved and Councillor Norton seconded that pursuant to Section 90(2), 90(3)(b), 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: 401/06 with the exception of Resolution No: C220806/228 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 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

and

- 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.

under Section 90(2), 90(3)(b) and 90(3)(d) of the Act

2. This resolution will be reviewed on or before 31 July 2007 by the Council.
CARRIED

18.2 RELEASE OF CONFIDENTIAL MINUTES (REPORT NO: 418/06)

Council officers remaining: Mr Donaldson, Mrs Umapathysivam, Mr Sheffield, Ms Thomas and Mr Walker

C220806/234 Councillor Deakin moved and Councillor Lush 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

Release of Confidential Minutes (Report No: 418/06)

ORDER TO RETAIN DOCUMENTS IN CONFIDENCE

C220806/237 Councillor Dixon moved and Councillor Lush 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: 418/06 with the exception of Resolution No:C220806/233. 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 31 July 2007 by the Council.
CARRIED

19. RESUMPTION

Councillor Lush moved and Councillor Holt seconded that Council resume as an open meeting of Council at 8:52pm.

CARRIED**20. CLOSURE**

The Meeting closed at 8:52pm.

CONFIRMED**Tuesday 12 September 2006****MAYOR**