

CITY OF HOLDFAST BAY

Minutes of the Resumed Meeting of Council of the City of Holdfast Bay held in the Kingston Room, Civic Centre, 24 Jetty Road, Brighton, on Wednesday 13 September 2006 at 7:30pm.

PRESENT

His Worship the Mayor
Deputy Mayor
Councillors

A K Rollond
R D C Edwards
R M Bouchée
P N Crutchett
J L Deakin
J Donaldson
P L Holt
C J Lush
P L Macaskill
A C Norton
D J Swiderczuk
S K Tilley
R T Donaldson
S G Hodge
C E Umaphysivam
R A Thomas
I S Walker

Chief Executive Officer
Acting 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 7:30pm.

2. APOLOGIES

- 2.1 **For Absence** Councillor P W Dixon
- 2.2 **Leave of Absence** Nil

3. RESUMPTION OF BUSINESS OF 12 SEPTEMBER 2006 AGENDA PAPERS

8. NOTICES OF MOTION

8.2 Official Spokesperson for Council during 2006 Local Government Elections

Councillor Macaskill had given notice that she would move

- 2. That the CEO be elected as Council's official spokesperson during that period.**

Background

I move this motion in the interests of providing a level playing field for all candidates. The ability to address the community at public functions during the election campaign provides sitting members with an unfair advantage over all members of the community who are intending to nominate and are denied this type of opportunity to present themselves to the community.

Councillor Macaskill withdrew her notice of motion.

**9. ADJOURNMENT (TO ENABLE PERMANENT COMMITTEES TO MEET)
(7:33PM)**

Councillor Holt moved and Councillor Donaldson seconded that Council stand adjourned to enable the permanent Social and Organisation and Strategy and Development Committees to meet.

CARRIED

Councillor Swiderczuk left the meeting at 8:45pm during the Strategy and Development Committee Meeting.

10. RESUMPTION

Councillor Deakin moved and Councillor Lush seconded that Council resume at 8:46pm.

CARRIED

11. COMMITTEE RECOMMENDATIONS FOR CONSIDERATION

11.1 Social and Organisation Committee

The Chairperson, Councillor Lush reported that the Social and Organisation Committee had met this evening and had processed the business contained in the agenda documents.

Councillor Lush moved and Councillor Macaskill seconded that the report of the Social and Organisation Committee be received, and the agenda documents and approved recommendations be received and tabled, together with the additional recommendations from the meeting, and the recommendations be adopted.

CARRIED

11.2 Strategy and Development Committee

The Chairperson, Councillor Edwards reported that the Strategy and Development Committee had met this evening and had processed the business contained in the agenda documents.

Councillor Edwards moved and Councillor Tilley seconded that the report of the Strategy and Development Committee be received, and the agenda documents and approved recommendations be received and tabled, together with the additional recommendations from the meeting, and the recommendations be adopted.

CARRIED

12. DEVELOPMENT ASSESSMENT PANEL

C130906/239 Councillor Holt moved and Councillor Deakin seconded that the minutes of the Development Assessment Panel held on 23 August 2006 be received.

CARRIED

13. REPORTS OF ADVISORY COMMITTEES AND/OR SUB-COMMITTEES Nil**14. REPORTS OF REGIONAL SUBSIDIARIES Nil****15. REPORTS BY OFFICERS****15.1 Items in Brief (Report No: 446/06)**

Report No: 442/06 was presented detailing items which were presented for the information of Members and did not require a separate resolution.

C130906/240 Councillor Lush moved and Councillor Holt seconded that the report be noted and items of interest be discussed.

CARRIED

16. URGENT BUSINESS**16.1 Leave of Absence**

Councillor Bouch e moved and Councillor Holt seconded that Council grants Councillor Crutchett leave of absence for the meeting to be held on 26 September 2006.

CARRIED

16.2 Confidential Item

Councillor Bouch e moved and Councillor Holt seconded that the confidential matter referred to in Item 17.1, Broadway Kiosk Update be adjourned until the Council Election has been completed, with respect to the "Westminster principle" of not making decision while in "caretaker mode".

A division was called.

Voted For
Councillor Holt
Councillor Crutchett
Councillor Tilley
Councillor Bouch e

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

HIS WORSHIP THE MAYOR DECLARED THE MOTION LOST

Councillor Crutchett left the meeting at 9:09pm.

16.3 Internal Memorandum to Elected Members regarding Legal Advice

Councillor Deakin moved and Councillor Bouch e seconded that Council receive the tabled copy of the Internal Memorandum from the Chief Executive Officer regarding Legal Advice dated 13 September 2006.

CARRIED

Councillor Crutchett returned to the meeting at 9:11pm.

At the Council Meeting held on Tuesday 26 September 2006, Council decided to include the Internal Memorandum from the Chief Executive Officer regarding Legal Advice dated 13 September 2006 in the minutes of the meeting.

INTERNAL MEMO

To: Elected Members and Management Team
From: **Chief Executive Officer**
Date: **13 September 2006**
Re: **Legal Advice**

Following the events of the Council meeting held on 12 September 2006, I have sought legal advice concerning resolution number C120906/238, and to identify the best way forward.

There are a number of issues that require clarification;

The substance of the motion

It is our advice that any resolution which seeks to limit the role of the Principal Member, as prescribed in Section 58 of the Local Government Act, is beyond the power of the Council (*ultra vires*) to the extent that the limitation is not permitted by Section 58 or otherwise by the Act. Included in the roles set out in Section 58 is the carrying out of civic and ceremonial duties by the Principal Member. This provision is not one which is capable of being limited or constrained by a Council resolution. The types of activities that the resolution in question seeks to limit fits in this category ie speaking at "official Council functions." The resolution to this extent, therefore, is of no effect.

It should also be recognised that this is different from the power of the Council to resolve to appoint a Member, other than the Mayor, as the principal Council spokesperson. Members may recall that in accordance with the powers available to the Council under section 58 (2), Council resolved that Deputy Mayor Councillor Edwards is the Council's principal spokesperson. This resolution stands and is unchanged by the resolution carried last night.

Local Government Elections

There is no suggestion in the legislation that the role of the Principal Member as set out in Section 58 (and this includes carrying out civic and ceremonial duties), is limited during the election period, whether or not the Principal Member has nominated for election. Any action by the Council which seeks to interfere with this position to impose such a requirement is *ultra vires* as it seeks to disturb the roles provided for in the legislation. Clearly if the Principal Member, in relation to civic and ceremonial duties, and the Deputy Mayor, with respect to the principal spokesperson role, were to agree to reasonably limit their roles during the election period (as it appears has occurred at the City of Prospect), then the intent of the motion could be achieved – subject to the understanding that an "official Council function" does not include a formal Council meeting.

"An official Council function"

It is also our advice that an "Official Council Function" cannot be interpreted to include a formally constituted meeting of the Council, particularly in the circumstances of the resolution carried last night. The framework for such meetings, along with the obligations of the Principal Member of Council, is established by the Local Government Act and Meeting Regulations. Naturally, a Council resolution cannot override the legislative provisions. It follows therefore that the resolution does not apply to Council meetings and cannot operate to limit the functions and responsibilities of the Mayor as the Presiding Member at such meetings.

If, in reliance upon the resolution, the Principal Member refuses to fulfil the official duties of office as the Presiding Member at Council meetings, he or she will in effect be absenting him/herself from office for the purpose of these duties. The effect of such action gives rise to the ability of the Council to appoint the Deputy Mayor to take on the role of Presiding Member. In the absence of the Deputy Mayor, another Member should be selected, by the Council members present, to fulfil this role.

16.4 Leave of Absence

Councillor Macaskill moved and Councillor Lush seconded that Council grants Councillor Swiderczuk leave of absence for the meeting to be held on 26 September 2006.

CARRIED**17. ITEMS IN CONFIDENCE****17.1 BROADWAY KIOSK UPDATE (REPORT NO:452/06)**

C130906/241 Councillor Lush moved and Councillor Norton 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 –

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

Councillor Bouchée left the meeting at 9:14pm.

His Worship the Mayor left the meeting at 9:18pm having declared a conflict of interest in Item 17.1 because he campaigned for the Broadway Kiosk to remain in Council's ownership, as with Holdfast Shores, also instrumental in the management of the petition against Council's management approach. .

Deputy Mayor Councillor Edwards assumed the chair at 9:18pm.

Councillor Bouchée returned to the meeting at 9:18pm.

Broadway Kiosk Update (Report No: 452/06)

ORDER TO RETAIN DOCUMENTS IN CONFIDENCE

C130906/243 Councillor Donaldson moved and Councillor Macaskill seconded that pursuant to Section 90(2), 90(3)(b) and 91(7) of the Local Government Act 1999:

1. The Council orders that the documents and minutes relating to Report No: 375/06 with the exception of Resolution No:C130906/241 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

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

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

CARRIED

18. RESUMPTION

Councillor Lush moved and Councillor Macaskill seconded that Council resume as an open meeting of Council at 9:44pm.

CARRIED

His Worship the Mayor returned to the meeting and resumed the chair at 9:45pm.

19. CLOSURE

The Meeting closed at 9:46pm.

CONFIRMED

Tuesday 26 September 2006

MAYOR