

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 7 November 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 J Donaldson P L Holt C J Lush P L Macaskill A C Norton D J Swiderczuk S K Tilley - 7:04pm. R T Donaldson
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	S Hodge C E Umapathysivam R A Thomas I S Walker

1. OPENING

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

2. APOLOGIES

- | | | |
|-----|-------------------------|-----|
| 2.1 | For Absence | Nil |
| 2.2 | Leave of Absence | Nil |

3. PRESENTATION

Councillor Tilley joined the meeting at 7:04m.

His Worship the Mayor presented gifts received from a visiting delegation of Chinese Mayors and Deputy Mayors who represent a total of 80 million people.

His Worship the Mayor made presentations to Councillor Holt, Councillor Macaskill and Councillor Tilley, acknowledging their contribution to the City of Holdfast Bay.

4. CONFIRMATION OF MINUTES

Councillor Donaldson moved and Councillor Holt seconded that the minutes of the Ordinary Meeting of Council held on 24 October 2006 be taken as read and confirmed.

CARRIED

5. MAYORAL REPORT

From 16 October 2006 to 7 November 2006

Councillor Bouchée moved and Councillor Tilley seconded that the report be received and noted.

CARRIED

6. QUESTIONS BY MEMBERS**6.1 Without Notice****6.1.1 Cleanliness of paving outside of the Pier Hotel, Glenelg**

Councillor Tilley asked if it was appropriate for Council write to the body corporate responsible for the maintenance of the area in front (eastern side) of the Pier Hotel where guests, visitors and tourists arrive and suggest a more rigorous cleaning schedule .

The Chief Executive Officer provided a response.

6.1.2 Replacement of Jetty Road, Brighton banners and Brighton Jetty Sails

Councillor Swiderczuk asked what had been done about the replacement of the Brighton Jetty sails and repairs to the banners on Jetty Road, Brighton.

Acting General Manager Environment and Engineering provided a response.

6.1.3 Glenelg Town Hall Repair Works

Councillor Bouchée asked when a report will be provided on the Glenelg Town Hall repair works.

Acting General Manager Strategy and Development response.

6.1.4 Media Release from the Honourable Jennifer Rankine MP, Minister for State/Local Government Relations regarding Caretaker mode for Councils

Councillor Crutchett asked His Worship the Mayor whether he had read the Minister for State/Local Government Relations' Media Release, regarding councils not making decisions or signing contracts of a significant/long term nature, and whether the Mayor had been asked to sign any documents of this nature.

His Worship the Mayor provided a response by reading from the Minister's Media Release and stating that he has contacted the Minister for State/Local Government Relations but had not yet received a reply.

His Worship the Mayor also confirmed that he had been asked to sign documents relating to the Broadway Kiosk Agreement to lease.

Councillor Crutchett moved and Councillor Bouchée seconded that the question and answer be recorded in the minutes.

CARRIED

6.1.5 Contact from the Minister for State/Local Government Relations regarding wage increase decisions.

Councillor Bouchée asked His Worship the Mayor if the Minister or Liaison Officer had spoken to the Mayor about disappointment about the pushing through of wage increases just prior to the Council Elections, while in caretaker mode.

His Worship the Mayor provided a response.

6.1.6 Broadway Kiosk

Councillor Lush asked when the decision was made to have the Broadway Kiosk documents signed and sealed.

The Chief Executive Officer provided a response.

Councillor Lush asked if 13 September 2006 was within the Local Government election's timeframe.

General Manager Social and Organisation provided a response.

Councillor Bouchée left the meeting at 7:21pm.

Councillor Lush asked for confirmation that decisions regarding the Broadway Kiosk have not been made in the last hours of Council, but the process has been ongoing since 13 September 2006.

The Chief Executive Officer provided a response.

Councillor Lush asked how long has the process for the replacement Broadway Kiosk taken.

The Chief Executive Officer provided a response.

Councillor Bouchée rejoined the meeting at 7:23pm.

Councillor Tilley asked how much time has passed since the demolition of the original kiosk and asked if the time taken was because of a series of problems during the process.

The Chief Executive Officer provided a response.

Councillor Tilley asked if it was unusual for Council to demolish a building without first checking the details of the ownership of land.

The Chief Executive Officer provided a response.

Councillor Tilley asked if Council had built its own building on the Broadway Kiosk site, would the process have been quicker.

The Chief Executive Officer provided a response.

6.1.7 Media Release from the Minister for State/Local Government Relations

Councillor Macaskill asked whether the media release only referred to 11th hour decisions.

His Worship the Mayor provided a response.

6.2 With Notice**6.2.1 Council Meeting Venue**

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

How has administration interpreted the motion below?

“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.*

CARRIED”

General Manager Social and Organisation response.

With respect to the venue for Council meetings and the timing of the availability of the Glenelg Town Hall, the Administration has not been in a position where interpretation was necessary. Council reconsidered this matter on 24 January 2006 and resolved as follows;

“C240106/033 Councillor Swiderczuk moved and Councillor Lush seconded:-

- 1. That Council continue to meet in the Kingston Room, Brighton Civic Centre until Council resolves that normal access to the Chamber at Glenelg is restored;*
- 2. That the decision about a venue for future Council meetings be publicised using Council’s public noticeboards and its regular column in the Messenger Press.*

CARRIED”

6.2.2 Holdfast Shores Stage 2B Infrastructure Agreement

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

Has Council now received all moneys due and payable under the Holdfast Shores 2B Infrastructure Agreement negotiated by this Council to allow construction Holdfast Shores 2B to proceed?

Acting General Manager Strategy and Development response.

No.

What is the total amount of money received by Council under the Holdfast Shores 2B Infrastructure Agreement from the development consortium?

Acting General Manager Strategy and Development response.

Total moneys received by Council under the Holdfast Shores Infrastructure Agreement Implementation Agreement – Stage 2B as at 1 November 2006 is \$564,691.78.

The payments are broken down as follows:

- **Clause 8.2 - Disruption to Council's Tenants - \$50,000 paid 1 Dec 04 & \$50,000 paid 1 Dec 05**
- **Clause 10.5 - Magic Mountain - \$409,691.78 paid 17/10/06**
- **Clause 13.2 - Colley Terrace Transport Interchange Zone - \$55,000 paid 17/10/06**

Payments still outstanding as at 1 November 2006 are as follows:

- **Clause 14.1 - Moseley Square Balconies & Outdoor Dining - Valuation of retail building balconies still pending from Council Valuator – invoices for annual encroachments fees to be sent once valuation advice relieved. Expect resolution of this issue by end of November 2006.**
- **Clause 9.3 - Moseley Square - \$550,000 Payment due 27 October 2006.**

6.2.3 Holdfast Shores Stage 2B Confidential Documents

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

Are there any minutes, reports, documents relating to the any stages of the Holdfast Shores development that still remain in confidence?

Acting General Manager Strategy and Development response.

Yes – see table below.

CONFIDENTIAL REPORTS AND MINUTES REGISTER HOLDFAST SHORES					
PAGE NO.	SUBJECT	REPORT NO	RESOLUTION NO	DATE	EXPIRY DATE
309	HOLDFAST SHORES STAGE 2B ACCESS ROAD (EASEMENT OVER COLLEY RESERVE)	460/05	C130905/246	13/09/05	31/12/06
310	HOLDFAST SHORES STAGE 2B ACCESS ROAD (EASEMENT OVER COLLEY RESERVE)	503/05	C270905 263 and 264	27/09/05	31/12/06
313	HOLDFAST SHORES STAGE 2B ACCESS ROAD (EASEMENT OVER COLLEY RESERVE)	537/05	C251005/292	25/10/05	31/12/06
321	HOLDFAST SHORES STAGE 2B – EXCAVATIONS ADJACENT TO GLENELG TOWN HALL	598/05	C221105/322, 323 and 324	22/11/05	31/12/06
329	HOLDFAST SHORES STAGE 2B LAND DIVISION APPLICATION	57/06	C180106/026 and 027	18/01/06	31/12/06
331	HOLDFAST SHORES STAGE 2B UPDATE – VERBAL REPORT	-	C140206/048	14/02/06	31/12/06
338/339	HOLDFAST SHORES STAGE 2B – DEVELOPMENT BONDING AGREEMENT	228/06	C090506/115 C090506/116 C090506/117	09/05/06	30/06/07
341	HOLDFAST SHORES STAGE 2B – DAMAGE TO TOWN HALL	238/06	C230506/139	23/05/06	30/06/07
343	HOLDFAST SHORES STAGE 2B – COSTS TO COUNCIL	281/06	C130606/166	13/06/06	30/06/07
360	HOLDAFAST SHORES STAGE 2B - UPDATE	465/06	C260906/249	26/09/06	30/06/07

CONFIDENTIAL REPORTS AND MINUTES REGISTER**HOLDFAST SHORES**

COMMITTEE	SUBJECT	REPORT / ITEM No.	RESOLUTION No.	DATE OF MEETING	EXPIRY DATE
HFS OISC	Correspondence received from the developer	Item 4.1 (not a Report)	Not issued	05/05/06	31 December 2006
HFS OISC	Council's legal advice	Item 4.2 (not a Report)	Not issued	05/05/06	31 December 2006
HFS OISC	Correspondence received from the developer	Item 4.1 (not a Report)	Not issued	09/03/06	31 December 2006
HFS OISC	Discussion with developer regarding land division and land transfer arrangements	Item 4.2 (not a Report)	Not issued	09/03/06	31 December 2006
HFS OISC	Negotiation progress on nine (9) outstanding issues	Item 5.1 (Report)	Not issued	21/02/06	30 December 2006

None of the above listed Sub Committee Items had Report Numbers.

[HFS OISC = Holdfast Shores Stage 2B Outstanding Issues Sub-Committee]

6.2.4 Glenelg North Flood Affected Area

In accordance with her notice Councillor Bouchée asked the following questions:

Can Administration please advise what has been done so far in the Glenelg North flood affected area?

Acting General Manager Environment and Engineering response.

Since the flooding event of June 2003, Council has raised areas of the eastern Patawalonga bank either side of the King Street Bridge by approximately 300mm.

In conjunction with the City of West Torrens, the Patawalonga Catchment Water Management Board and the Department of Water, Land and Biodiversity Conservation a pumping station has been installed at Shannon Avenue. This then allows the Weir 2 gates to operate at the design level of two metres.

An Emergency Management Plan has been developed and adopted for the Patawalonga Lake operation.

Council in conjunction with the Department of Water, Land and Biodiversity Conservation has initiated the Patwatch group to monitor the operations of the lake.

Have the issues in relation to the drains in the area been solved i.e. water backing up and flooding streets /water backing up into drains from the high level of the Pat?

Acting General Manager Environment and Engineering response.

Because of the invert of the pipes at the entrance to the Patawalonga Lake being submerged, the drainage system will always consist of 'wet pipes'. The 2003 flooding event was caused by water breaching the banks either side of the King Street Bridge rather than water backing up in the system.

Following the flood a great deal of debris caused a blockage in the drain at West Lane which was exacerbated by rocks placed close to the outfall in the lake during the redevelopment of the Patawalonga. Since this time the rocks have been removed from around the outfall. As well as this an opening with a grate has been cut into the pipe half way down the bank of the Patawalonga Lake to allow any water to flow out of the pipe in the event of a blockage.

What are the plans in relation to this area?

Acting General Manager Environment and Engineering response.

This area forms part of the of a Flood Plain Mapping area, for which work is being undertaken currently and from which critical analysis will highlight the risk and subsequent further works requirements to alleviate flooding issues in this low lying area.

6.2.5 Confidential Verbal Report on Broadway Kiosk

In accordance with her notice Councillor Bouchée asked the following questions:

When will the verbal report which was done "In Confidence " in relation to the Broadway Kiosk be provided to Members of Council in writing. I ask this as there was Legal Advice obtained which has a significant bearing on the Lease discussions.

Executive Manager Finance and Corporate response.**The verbal report will not be provided in writing.**

When will Council receive in writing:

1. The Financial details in the Lease agreement being negotiated;
2. The buy back financial details;
3. How will we account for this buy back amount in the budget; and
4. When will Council see the final Agreement (Lease or any supportive documentation from all parties) which I would presume must be prior to the sign off, as all final financial details being negotiated have not been made available to Council

Executive Manager Finance and Corporate response.

1. **Please refer to separate Confidential Report 548/06.**
2. **Please refer to separate Confidential Report 548/06.**
3. **Please refer to separate Confidential Report 548/06.**
4. **Pursuant to Council's (confidential) resolution of 13 September 2006, the final agreement will be presented to Council for information when it has been signed and sealed by all parties.**

6.2.6 Cleanliness of Pavements in front of the Pier Hotel and the Grand Hotel

In accordance with her notice Councillor Tilley asked the following question:

Who is responsible for the cleaning of the pavements in front of the Pier Hotel, and Hotel Grand?

The pavements I am referring to, are in front of the eastern entrance of the Hotel Pier, which is the main entrance for guests to enter, and on the northern side of the Hotel Grand where people line up to enter the Hotel.

Background

The pavement in front of the Pier Hotel (which is supposed to be one of our many Tourist Hotels), are filthy, have grease all over them including dried up "vomit". I approached the cleaner who was cleaning the tiles immediately in front of the hotel on their "veranda" type area. He stated they only cleaned to that edge. The pavers were not their responsibility.

The Grand "clean up" is mainly stacks of paper cups etc. which are thrown on the ground from "takeaway coffee" whilst waiting to enter the Hotel.

These two areas in particular need to be addressed as soon as possible as it does not give a good image to our City. Should the owners of these properties be responsible as similarly we expect restaurateurs to be?

Acting General Manager Engineering and Environment response.

The area to the east of the Oaks Pier Hotel entrance is under the care and control of the Community Corporation that manages the hotel, which includes the passenger drop off area and car park.

The area north of the Grand Hotel entrance is Council owned footpath. This area is subject to the general cleaning regime of Moseley Square maintenance.

Typically these areas are cleared of litter and debris on a daily basis, with a steam cleaning operation programmed three times per year. This area has not been steam cleaned this year because of the Moseley Square construction works, however, the cleaning contractor commenced cleaning the Jetty Road precinct (eastern end) on the evening of 29 October and will complete the cleaning in Moseley Square early in the week commencing 6 November 2006. The cleaning which will include the entire area west of Colley Terrace, in readiness for the opening of the Moseley Square Redevelopment.

7. REPORTS BY DELEGATES OR REPRESENTATIVES

Councillor Bouchée spoke regarding the interest of PatWatch Committee, in de-silting of the Barcoo Inlet. There has been a large amount of work completed behind the scenes, Councillor Bouchée will present the Minutes of the group when they are available.

8. PETITIONS AND DEPUTATIONS Nil

9. NOTICES OF MOTION

9.1 Statutory Meeting Venue

Councillor Crutchett withdrew his notice of motion.

Councillor Macaskill left the meeting at 7:33pm.

Councillor Macaskill rejoined the meeting at 7:35pm.

9.2 Operation Holdfast

In accordance with her notice:

- C071106/279** Councillor Lush moved and Councillor Macaskill seconded that the Chief Executive Officer write to the Minister for Police Paul Holloway, Police Commissioner Mal Hyde and Chief Inspector Grant Moyle, Sturt Local Service Area on behalf of Council thanking them for the implementation of Operation Holdfast, to request that it be continued over the summer months and to advise that Council would prefer resources to be spent on officers on the beat in Holdfast Bay than a shopfront in Moseley Square.

A division was called.

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

HIS WORSHIP THE MAYOR DECLARED THE MOTION CARRIED

10. DEVELOPMENT ASSESSMENT PANEL

- C071106/280** Councillor Deakin moved and Councillor Lush seconded that the minutes of the Development Assessment Panel meeting held on Wednesday 25 October 2006 be received.

CARRIED

11. REPORTS OF ADVISORY COMMITTEES AND/OR SUB-COMMITTEES Nil**12. REPORTS OF REGIONAL SUBSIDIARIES**

Western Region Waste Management Authority held Thursday 19 October 2006.

- C071106/281** Councillor Bouchée moved and Councillor Tilley seconded that the Minutes of this committee be received.

CARRIED

13. REPORTS BY OFFICERS**13.1 Items in Brief (Report No: 536/06)**

Report No: 506/06 was presented detailing items which were presented for the information of Members and did not require a separate resolution.

- C071106/282** Councillor Deakin moved and Councillor Donaldson seconded that the report be noted and items of interest be discussed.

CARRIED

13.2 Application to the Liquor and Gambling Commissioner for a Restaurant Licence by the Oyster Shop at 40 Jetty Road, Glenelg (Report No: 535/06)

An application has been made to the Liquor and Gambling Commissioner for a restaurant licence by the Oyster Shop at 40 Jetty Road, Glenelg.

The purpose of this report is to seek Council's comments to the Office of the Liquor and Gambling Commissioner before a decision is made on the application.

C071106/283 Councillor Lush moved and Councillor Deakin seconded that Council advise the Office of the Liquor and Gambling Commissioner that it does not object to the application by the Oyster Shop for a restaurant license at 40 Jetty Road, Glenelg subject to the following conditions:

1. That the hours of the restaurant license be in accordance with the hours proposed in the application for a restaurant license, including the deletion of Sunday trading from 8:00am to 11:00am.
2. That any proposed changes to the trading hours in the future will require further consideration and comments by Council before a decision is made by the Office of the Liquor and Gambling Commissioner.
3. That any future proposal for outdoor dining will require an approved outdoor dining permit to be issued by Council prior to commencement. An approved outdoor dining permit will also require amendments to the restaurant license to reflect the boundaries of the outdoor dining area.
4. That, although entertainment does not form part of this application, any future proposal for entertainment will require careful consideration by Council with regard to potential impacts to neighbouring properties before providing comments to the Commission.

CARRIED

13.3 Role of Elected Member's Spouse (Report No: 537/06)

Council sought guidance from the Minister of State/Local Government Relations regarding the role that the spouse of an Elected Member could/should play in the discharge of official duties.

The Minister has now advised the following;

- Just as suggestions regarding policy matters or comments regarding matters being considered by Council can come from other members of the community, so can they come from the suggestions of an Elected Member's spouse;
- Whilst it is acknowledged that an Elected Member's spouse may act as an appointment secretary to an Elected Member, it is of concern (to the Minister) if the Elected Member's spouse has access to material that has been or may be ordered to be kept confidential under section 91 of the Local Government Act 1999;
- In summary, subject to the earlier qualifications, the role of an Elected Member's spouse is optional and flexible and that the management of interaction between an Elected Member's spouse and the Council administration is at the sole discretion of the Chief Executive Officer.

C071106/284 Councillor Macaskill moved and Councillor Lush seconded that the information contained in Report Number 537/06 be received.

CARRIED

13.4 Annual Report 2005 – 2006 (Report No: 538/06)

This report presents the draft City of Holdfast Bay Annual Report for the year ending 30 June 2006, and seeks Council's endorsement before presentation to Parliament.

C071106/285 Councillor Holt moved and Councillor Deakin seconded:

1. **That the content of the City of Holdfast Bay Annual Report 2005-2006, as circulated separately to Elected Members, be adopted and a copy of the final document forwarded to the Presiding Members of both Houses of Parliament, and to the SA Local Government Grants Commission by 31 December 2006.**
2. **That a community version of the City of Holdfast Bay Annual Report be presented in the December edition of the Holdfast Bay Views.**

CARRIED**13.5 King Street Bridge Update (Report No: 549/06)**

The King Street Bridge has been subject to ongoing review since 1996, due to deterioration of the structure.

Council commissioned a study of the origin/destination of traffic using the bridge in late 2005. The results of this study were provided for Members' reference.

It is estimated that 70% of the traffic using the bridge would be considered as "through" traffic.

The Transport Planning Division of Transport SA advised Council that it would prepare its own report of the likely traffic scenario if the King Street Bridge was removed from the traffic network. It is understood that this survey has now been completed, and a report is being prepared for consideration by the Minister for Transport, Energy and Infrastructure. The Transport Planning Division report is not available to Council at this time.

C071106/286 Councillor Macaskill moved and Councillor Edwards seconded:

1. **That Report No: 549/06 be received.**
2. **That Council notes that based on the December 2005 traffic study undertaken by Tonkin Consulting, approximately 70% of traffic using the King Street Bridge at Glenelg North is "through" traffic.**
3. **That Administration report further on the confirmation of a funding partnership and community consultation strategy with respect to the repair, replacement or removal of the King Street Bridge at Glenelg North.**

CARRIED

**13.6 Brighton Fitness Centre – Land Management Agreement
(Report No: 550/06) - LATE ITEM**

On 10 May 2006 Council's Development Assessment Panel ('Panel') considered application 110/785/04 relating to an internal expansion of the Brighton Fitness Centre located at 528-530 Brighton Road, Brighton and creation of a carpark for the Fitness Centre patrons on a site just north of the Centre, 522 Brighton Road, Brighton. The Panel granted planning consent for the application subject to a number of conditions, most notably, that a Land Management Agreement ('LMA') be registered on the relevant Certificates of Title ensuring that the proposed carpark land is used at all times as a carpark in conjunction with the operations of the Fitness Centre.

The applicant has recently submitted the final LMA document to Council for signing and sealing prior to its register on the relevant Certificates of Title for the two properties. This report seeks Council's endorsement to sign and seal the LMA.

C071106/287 Councillor Bouchée moved and Councillor Deakin seconded that the Mayor and Chief Executive Officer be authorised to sign and seal the 'Land Management Agreement' documentation located at Attachment 2 to Report Number 550/06 to enable Council to enter into a Land Management Agreement with Lepart Nominees Pty Ltd in relation to development application 110/785/04 for the internal expansion of the Brighton Fitness Centre located at 528-530 Brighton Road, Brighton and construction of the associated carpark at 522 Brighton Road, Brighton.

CARRIED

14. URGENT BUSINESS

14.1 Carpark for Brighton Fitness Centre

C071106/288 Councillor Edwards moved and Councillor Lush seconded that a report be prepared in relation to safety on Brighton Road as a result of traffic flows from the Carpark of the Brighton Fitness Centre.

CARRIED

14.2 Letter from Minister Paul Holloway regarding the design of the Somerton Coast Park

C071106/289 Councillor Crutchett moved and Councillor Deakin seconded that the letter from Minister Paul Holloway regarding the design of the Somerton Coast Park be received.

CARRIED

Councillor Crutchett asked why the Minister's letter says 3.0 to 2.0m.

The Chief Executive Officer advised that the question would be taken on notice.

Councillor Crutchett asked, if fences are encroaching, can we take back that land.

The Chief Executive Officer advised that the question would be taken on notice.

14.3 Acknowledgement from Chief Executive Officer

The Chief Executive Officer thanked Elected Members for their work during the past three and a half years.

Councillor Bouchée left the meeting at 7:55pm.

Councillor Bouchée rejoined the meeting at 7:57pm.

14.4 Thank you to Staff

C071106/290 Councillor Macaskill moved and Councillor Holt seconded that the Council record its thanks to Administration staff for their work and assistance over the past three and a half years.

CARRIED

15. ITEMS IN CONFIDENCE**15.1 Annual Performance Review for the Chief Executive Officer (Report No:547/06)**

The Chief Executive Officer declared a conflict of interest due to this matter involving his employment, and left the meeting at 8:00pm.

Acting General Manager Strategy and Development and Acting General Manager Environment and Engineering left the meeting at 8:00pm.

Council officers remaining: Mrs Umapathysivam and Mr Walker

C071106/291 Councillor Macaskill moved and Councillor Deakin 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

Councillor Macaskill left the meeting at 8:13pm.

Councillor Macaskill rejoined the meeting at 8:16pm.

Councillor Swiderczuk left the meeting at 8:34pm.

Annual Performance Review for the Chief Executive Officer (Report No:547/06)

ORDER TO RETAIN DOCUMENTS IN CONFIDENCE

C071106/293 Councillor Lush moved and Councillor Macaskill 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 Report No: 547/06 with the exception of Resolution No:C071106/291 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. Confidentiality of this document will remain until such time as the Mayor meets with the Chief Executive Officer to inform him of the outcome of his Annual Performance Review.

CARRIED

The Chief Executive Officer, Acting General Manager Strategy and Development and Acting General Manager Environment and Engineering rejoined the meeting at 8:30pm.

Councillor Swiderczuk rejoined the meeting at 8:36pm

**15.2 Broadway Kiosk – Update and Confidential Status of Documents
(Report No: 548/06)**

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

C071106/294 Councillor Lush moved and Councillor Macaskill 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

**Broadway Kiosk – Update and Confidential Status of Documents
(Report No: 548/06)**

Councillor Lush left the meeting at 8:31pm.

Councillor Tilley left the meeting at 8:32pm.

Executive Manager Finance and Corporate circulated documents to Elected Members as requested by Councillor Bouchée.

Councillor Crutchett moved and Councillor Holt seconded that the additional documents distributed be received.

CARRIED

Councillor Tilley rejoined the meeting at 8:33pm.

Councillor Lush rejoined the meeting at 8:34pm.

Councillor Crutchett moved and Councillor Bouchée seconded that proceedings be suspended for thirty minutes so that Members have time to read the additional documents.

A division was called.

Voted For
Councillor Holt
Councillor Edwards
Councillor Crutchett
Councillor Tilley
Councillor Bouchée

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

HIS WORSHIP THE MAYOR DECLARED THE MOTION LOST

Councillor Dixon left the meeting at 8:35pm.

Councillor Macaskill left the meeting at 8:35pm.

Councillor Dixon rejoined the meeting at 8:36pm.

Councillor Macaskill rejoined the meeting at 8:38pm.

Councillor Holt moved and Councillor Bouchée seconded that in view of the Minister for State/Local Government Relations Media Release on councils making major decisions close to the Local Government Elections, Council should not proceed to sign and seal the Broadway Kiosk lease documents until the matter is considered by the new Council.

Councillor Tilley left the meeting at 8:40pm.

Councillor Tilley rejoined the meeting at 8:42pm.

A division was called.

Voted For
Councillor Holt
Councillor Crutchett
Councillor Tilley
Councillor Bouchée

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

HIS WORSHIP THE MAYOR DECLARED THE MOTION LOST

**15.2 Broadway Kiosk – Update and Confidential Status of Documents
(Report No: 548/06)**

This report provides Elected Members with an update regarding ongoing negotiations in relation to the Broadway Kiosk replacement since Council's meeting of 13 September 2006. By an exchange of letters with Ergon Holdings Pty Ltd and CNS Investments Pty Ltd, Council has reached agreement in principle on all key commercial issues and is in a position to enter into a binding Agreement to Lease.

The report also recommends, upon execution of an Agreement to Lease, the release of earlier confidential reports and minutes relating to this matter that do not disclose commercial financial details.

C071106/295 Councillor Lush moved and Councillor Macaskill seconded that following execution of an Agreement to Lease with Ergon Holdings Pty Ltd and CNS Investments Pty Ltd, in relation to the Broadway Kiosk lease and redevelopment, Administration report further to Council for consideration of the following:

1. The release of confidential reports and minutes as follows;

Minute	C270606/184	27 June 2006
Report	375/06	25 July 2006
Minute	C250706/208	25 July 2006
Minute	C130906/242	13 September 2006.

2. A statement for the public record on the current status of the Broadway Kiosk lease and redevelopment project, which confirms that Council has executed an Agreement to Lease with Ergon Holdings Pty Ltd and CNS Investments Pty Ltd (together the Lessee) on the following terms:

- The Lessee will enter into a ground lease for a term of 21 years from completion of construction;
- The Lessee will pay a nominal rental, which will be indexed annually by an amount in excess of CPI;
- The financial terms of the ground Lease remain “commercial in confidence”;
- The Lessee will build a kiosk on the site in accordance with Council’s design and approved modifications;
- The Lessee intends to sub-lease the kiosk to an experienced operator;
- On expiry of the ground lease, Council has an obligation to make a termination payment to the Lessee.

AMENDMENT

Councillor Crutchett moved and Councillor Bouchée seconded that following execution of an Agreement to Lease with Ergon Holdings Pty Ltd and CNS Investments Pty Ltd, in relation to the Broadway Kiosk lease and redevelopment, Administration report further to Council for consideration of the following:

1. **The release of confidential reports and minutes as follows;**

Minute C270606/184	27 June 2006
Report 375/06	25 July 2006
Minute C250706/208	25 July 2006
Minute C130906/242	13 September 2006.

2. **A statement for the public record on the current status of the Broadway Kiosk lease and redevelopment project, which confirms that Council has executed an Agreement to Lease with Ergon Holdings Pty Ltd and CNS Investments Pty Ltd (together the Lessee) on the following terms:**
 - **The Lessee will enter into a ground lease for a term of 21 years from completion of construction;**
 - **The Lessee will pay a nominal rental, which will be indexed annually by an amount in excess of CPI;**
 - **The Lessee will build a kiosk on the site in accordance with Council's design and approved modifications;**
 - **The Lessee intends to sub-lease the kiosk to an experienced operator;**
 - **On expiry of the ground lease, Council has an obligation to make a termination payment to the Lessee; and**
 - **The kiosk is to be tenanted by an experienced operator subject to Council's approval.**

3. **Administration obtain legal advice as to the legal and any other considerations arising from the possible full disclosure of commercial details associated with the Broadway Kiosk Agreement to Lease and Lease, having regard to relevant legislative and legal considerations, including a recommendation from Council's legal advisers as to the extent of disclosure of details that is, a) required, and b) advisable or appropriate, in this case.**

**THE AMENDMENT WAS LOST
THE MOTION WAS THEN PUT**

A division was called.

<p>Voted For</p> <p>Councillor Dixon</p> <p>Councillor Norton</p> <p>Councillor Macaskill</p> <p>Councillor Swiderczuk</p> <p>Councillor Deakin</p> <p>Councillor Donaldson</p> <p>Councillor Lush</p> <p>Councillor Edwards</p>	<p>Voted Against</p> <p>Councillor Holt</p> <p>Councillor Crutchett</p> <p>Councillor Tilley</p> <p>Councillor Bouchée</p>
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HIS WORSHIP THE MAYOR DECLARED THE MOTION CARRIED

Councillor Bouchée asked that it be noted that if re-elected it is her intention to move that Council not continue with the lease arrangements as resolved on 13 September 2006 and earlier.

ORDER NOT TO RETAIN DOCUMENTS IN CONFIDENCE

C071106/296 Councillor Lush moved and Councillor Macaskill 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 not be retained in confidence with the exception of Report Number 548/06, and associated documents which shall remain in confidence until review prior to 30 June 2007.

CARRIED

16. RESUMPTION

Councillor Lush moved and Councillor Macaskill seconded that Council resume as an open meeting of Council at 9:03pm.

The Meeting closed at 9:03pm.

CONFIRMED

Tuesday 28 November 2006

MAYOR