

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 28 August 2007 at 7:00pm.

PRESENT

His Worship the Mayor
Deputy Mayor
Councillors

A K Rollond
R A Clancy
R D Beh
R M Bouchée
P N Crutchett
J L Deakin
L R Fisk
J D Huckstepp
T D Looker
A C Norton
L van Camp
R T Donaldson
S Hodge
C E Umapathysivam
R A Thomas
I S Walker

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

1. OPENING

His Worship the Mayor, declared the meeting open with prayer and acknowledgement of Kaurna Traditional Owners at 7:00pm.

2. APOLOGIES

2.1 **For Absence** Councillor S C Lonie

2.2 **Leave of Absence** Councillor P D H Heysen

3. PRESENTATION

Ms Olivia O'Neill, Principal of Brighton Secondary School made a presentation to Council relating to item 15.1 Redevelopment Plans – Brighton Secondary School.

4. CONFIRMATION OF MINUTES

Councillor Bouchée moved and Councillor Fisk seconded that the minutes of the Ordinary Meeting of Council held on 14 August 2007 be taken as read and confirmed.

CARRIED

5. MAYORAL REPORT

From 1 July 2007 to 31 July 2007

Councillor Clancy moved and Councillor Crutchett seconded that the report be received and noted.

CARRIED

6. QUESTIONS BY MEMBERS

- 6.1 Without Notice** Nil
- 6.2 With Notice** Nil

7. REPORTS BY DELEGATES OR REPRESENTATIVES

Councillor Clancy reported that she attended the Lord Mayor's Welcome Reception for the new Governor of South Australia, His Excellency Rear Admiral Kevin Scarce AO, CSC, RANR.

Councillor Huckstepp reported that he and Councillor Lonie attended the August meeting of the Holdfast Bay History Centre Advisory Committee.

Councillor Crutchett reported that he attended a Murray Darling Association meeting in August.

Councillor Bouchée reported that she attended a Southern Region Waste Resource Authority meeting and informed members that the Chief Executive Officer of Southern Region Waste Resource Authority, Mr Perry has retired, and a new Chief Executive Officer has been appointed.

8. PETITIONS AND DEPUTATIONS Nil**9. NOTICES OF MOTION****9.1 Notice of Motion – Local Government Association Annual General Meeting**

In accordance with his notice:

C280807/266 Councillor Crutchett moved and Councillor Bouchée seconded that the Council support the notice of motion below to be put forward at the next Annual General Meeting of the Local Government Association and Administration take action to lodge the motion by the due date COB Friday 7 September 2007.

“Notice of motion – Local Government Association Annual General Meeting

Local government Association: negotiate on the behalf of all local councils, with the State government a funding package, so that one of law faculties at either Adelaide, Flinders or the University of South Australia, can update and continue to update the South Australian Annotated Development Act and the South Australian Annotated Development Regulations, previously published by Adelaide University.”

CARRIED

Background

Both the Annotated Development Act and the Annotated Development Regulations were previously published in written format, and on the Web, by Adelaide University. The Web link which is not working can still be found on the Local Government Association website.

With planning decisions being removed from the sole domain of local councils. It is increasingly important that a layman type document exists to enable an ordinary person to understand their rights and obligations under planning law.

We believe that the annotated development act and the annotated development regulations provided this opportunity without residents and ratepayers having to resort to the expense of lawyers to decide whether a development application has merit or may be subject to a challenge.

We believe these documents have not been updated for about five years, and the law being dynamic, as each decision is handed down this document needs to be updated regularly.

From elected members who have not seen this document, which showed below some examples:

Example one

A neighbour who opposed a development in the in the ERD court engages a surveyor and finds the development is being built between 200mm to 300mm higher than that approved by the court.

Refer the Annotated Development Act.

In respect of an application for provisional Building Rules consent and for provisional Development Plan consent an order of the ERDC provided for such consents to issue so that the works would be undertaken strictly in accordance with particular plans. In the plans finished surface levels were determined, in some instances, down to the last millimetre. Subsequently, after construction, the relevant authority issued an enforcement notice under s84 based upon allegations of serious departures from the finished levels shown in the plans. Commonsense dictates that some tolerance must be allowed when determining whether the finished levels depart from the levels specified in the plans to such an extent as to require the offending work to be re-done. The extent of tolerance will depend upon the nature and extent of the works to be re-done and the consequences and impacts of such departures. In some cases the question of whether or not such departures have arisen as a consequence of a deliberate act of the person having the benefit of the consent may also be relevant. It was held that the evidence of a building designer to the effect that, on a building site such as that in question, tolerances of up to 200 mm must be accepted as reasonable, flew in the face of the exactitude envisaged in the plans: *Rabbah v Mitcham CC* (1999) 6 SAPED 105; Judgment [1999] SAERDC 98 delivered 23 December 1999 ERDC

In dealing with a matter involving the likelihood of directions being given, pursuant to s84, to a person having the benefit of a consent, where it is alleged that construction of a building has not been carried out in accordance with approved plans and it appears that those plans do not speak clearly, the interpretation most favourable to the person having the benefit of the consent prevails: *Rabbah v Mitcham CC* (1999) 6 SAPED 105; Judgment [1999] SAERDC 98 delivered 23 December 1999 ERDC.

Example two:

A resident lives in an area where the building height is defined as "not greater than 12 storeys" and finds the development application is for 12 floors of living area, a raise under-croft car park 1.5 metre above ground level plus a 1 storey open plant room on top, thus making the total building height 13.5 storeys.

Refer the Annotated Development Act.

"building height" means the maximum vertical distance between the natural or finished ground level at any point of any part of a building and the finished roof height at its highest point, ignoring any antenna, aerial, chimney, flagpole or the like;

The control of building height by way of storeys can be an imprecise and problematic method in many situations. There can be wide variations in floor to ceiling height particularly in central areas in the mix of business, community and civic activities, some with prestige foyers and the like. In residential localities there is likely to be

more conformity in floor to ceiling heights, at least to the tops of external walls although roof forms may vary widely: *Dantal's Properties Pty Ltd v Holdfast Bay CC* (1998) 5 SAPED 50; Judgment OE486 delivered 3 June 1998 ERDC.

The difficulties which may arise when a Development Plan attempts to set a maximum building height by using words such as "greater than two storeys in height" have been revealed in a case involving a single storey building some 11 metres high. A proposed development would result in it having three storeys although its height would remain the same. Having regard to the wide variations which occur in floor to ceiling heights even in residential buildings such an expression as "two storeys in height" is, at best, a rough guide to an actual height above ground. The ERDC concluded that a proposal covered by such a provision would be found to offend such a direction as to height only if its implementation would result in a building which clearly went beyond the upper end of the height range normally associated with two storey development: *Palombi v Norwood, Payneham & St Peters CC* [1998] EDLR 255; (1998) 5 SAPED 55; Judgment OE491 delivered 26 June 1998 ERDC..

Recent dynamic changes from a City of Holdfast Bay prospective.

Example One: Protection half of this building



Application to demolish one of a pair of semi detached dwellings - refusal by Council confirmed by ERD Court - Residential (Foreshore) Zone - total demolition of a building complying development in the zone - whether demolition of one dwelling total demolition and therefore complying - nature and impact of proposed development on amenity considered - objectives for policy areas within zone - no evidence as to proposed replacement of building in the event of demolition - appeal dismissed - held application was for partial demolition of building and therefore non-complying. **URBAN CONSTRUCT PTY LTD v CITY OF HOLDFAST BAY [2006] SASC 201**

Example Two: Protection of Sea Views

Application for development consent – construction of 3 storey building on Esplanade – building to obstruct coastal views enjoyed by appellants to rear of subject land – whether appellants entitled to preserve views of coast – appeal allowed.

Hutchens & Anor v City of Holdfast bay & Anor [2007] SASC 238

It is important that we make this information readily available to all stakeholders in the development industry.

9.2 Community Involvement in Tour Down Under

In accordance with his notice:

C280807/267 Councillor Crutchett moved and Councillor Fisk seconded that Administration contact City of Holdfast Bay Local Service Clubs, Local bands (musical groups), Local Schools and Youth Clubs (Scouts, Guides etc) to see how they might be able to assist on a volunteer basis to enhance the experience of visitors to the Tour Down Under to be held in Glenelg in 2008.

CARRIED

Background

Visiting Mannum last year for the Tour Down Under, I was impressed how the whole town appeared to get behind and support the event.

The schools children helped decorate the local street and shops, service clubs provided some security and BBQs etc. The local band provided music.

I would like to think we could encourage people to come early and make a day the event. Spend some money in the shops

A local club could provide a bicycle minding area (thus earning some income).

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

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

CARRIED**11. RESUMPTION**

Councillor Clancy moved and Councillor Fisk seconded that Council resume at 9:15pm.

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

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

Councillor Beh moved and Councillor Looker seconded:

- 1. That the report of the Chairman of the Economic and Corporate Committee and the Committee agenda documents together with Administration recommendations be received.**
- 2. That the recommendations of the Economic and Corporate Committee be adopted.**

CARRIED**12.2 Environment and Engineering Committee**

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

Councillor Bouchée moved and Councillor Crutchett seconded:

- 1. That the report of the Chairman of the Environment and Engineering Committee, and the Committee agenda documents together with Administration recommendations be received.**
- 2. That the recommendations of the Environment and Engineering Committee be adopted.**

CARRIED

13. REPORTS OF ADVISORY COMMITTEES AND/OR SUB-COMMITTEES

Jetty Road Mainstreet Board Meeting held 8 August 2007.

C280807/268 Councillor Crutchett moved and Councillor Beh seconded that the minutes of these committees be received.

CARRIED

14. REPORTS OF REGIONAL SUBSIDIARIES

Nil

15. REPORTS BY OFFICERS**15.1 Redevelopment Plans – Brighton Secondary School (Report No: 389/07)**

As part of ongoing development of its facilities, the Brighton Secondary School has developed a vision for the redevelopment of its performing arts centre as well as a new library /resource centre. It is also proposed that these facilities have joint community /school use.

An application for funding support from the Federal Government was prepared by Brighton Secondary School Principal, Ms Olivia O'Neill and submitted to Dr Andrew Southcott, MP, Member for Boothby.

The Brighton Secondary School site redevelopment proposal has been the subject of very preliminary discussions involving Mayor Rollond and the Manager Community Development, and more recently the Chief Executive Officer. The Brighton Secondary School is seeking in principle, and ideally financial, support from the City of Holdfast Bay and has indicated this in its funding submission.

Stage 1 of the project, being the performing arts facility replacement, is estimated to cost \$5.4million. The school's submission proposes that this be jointly funded by the federal government, the school itself, the general community and the City of Holdfast Bay. In light of previous financial commitments by this City to significant infrastructure projects on the school campus, Brighton Secondary School indicated for the purposes of its funding submission, a Council contribution of \$100,000 to the project.

It is proposed that this be a facility for joint community and school use after school hours and during school holiday periods.

The purpose of this report is to bring the preliminary details of the broad vision and the current project submission to the Council's attention and seek guidance from Council regarding its preparedness to offer "in principle" support for the project together with any financial contribution.

C280807/269 Councillor Clancy moved and Councillor Deakin seconded:

- 1. That Council provide 'in principle' support for the Brighton Secondary School's application for Federal Government funding to replace its performing arts facilities.**
- 2. That consideration be given, during the 2008/2009 budget deliberations, to Council project funding to undertake a feasibility study of the community benefits that might flow from a joint school and community library development at Brighton Secondary School as a potential stage 2 of the development vision, following or together with the School's performing arts centre replacement project.**
- 3. That during the 2008/2009 budget discussions, consideration be given to Council's capacity to make a financial contribution to support the construction of the Brighton Secondary School's proposal for its performing arts facility replacement.**

- 4. That the Brighton Secondary School be advised that whilst the Council is not in a position to make a financial commitment to either proposals consideration will be given to this during future budget deliberations once it is in a position to assess the community benefits.**

A division was called.

| | |
|----------------------|----------------------|
| Voted For | Voted Against |
| Councillor Beh | Councillor Crutchett |
| Councillor Bouchée | |
| Councillor Clancy | |
| Councillor Deakin | |
| Councillor Fisk | |
| Councillor Huckstepp | |
| Councillor Locker | |
| Councillor Norton | |
| Councillor van Camp | |

HIS WORSHIP THE MAYOR DECLARED THE MOTION CARRIED

Councillor Crutchett left the meeting at 9:38pm.

Councillor Crutchett rejoined the meeting at 9:40pm.

Councillor van Camp left the meeting at 9:40pm.

Councillor van Camp rejoined the meeting at 9:42pm.

15.2 Rating Review Committee Recommendation (Report No: 400/07)

The Rating Review Committee met on 21 August 2007 and has made a recommendation for new applications for Rate Rebates. This report lists this recommendation for Council consideration.

C280807/270 Councillor Crutchett moved and Councillor Bouchée seconded:

- 1. That the minutes of the Rating Review Committee held on 21 August 2007 be received and noted.**
- 2. That the new applications for mandatory and discretionary rebates granted under Sections 160-166 of the Local Government Act be adopted.**

CARRIED

15.3 Western Adelaide Consultative Group (WACG) Recommendations (Report No: 405/07)

The Western Adelaide Consultative Group (WACG), an informal forum in which representatives of the western Adelaide Councils meet, together with relevant non-local government stakeholders, meets bi-monthly with the objectives of regional information exchange and providing a forum for collaboration on issues of significance to the western region of Adelaide.

WACG has considered a report and recommendations from the CEOs of the member Councils on improved approaches to regional cooperation on strategic planning and initiatives, and has agreed that the joint report and its recommendations should be considered by the respective Councils.

C280807/271 Councillor Crutchett moved and Councillor Bouchée seconded that the late item 15.3 Western Adelaide Consultative Group (WACG) Recommendations (Report No: 405/07) be received.

CARRIED

C280807/272 Councillor Crutchett moved and Councillor Beh seconded that Council notes the agreement of the Western Adelaide Consultative Group representatives to present certain recommendations to the respective member Councils, and resolves:-

1. That Council will use its best endeavours and will work in good faith with the Cities of Marion, West Torrens, Charles Sturt and Port Adelaide Enfield –
 - a. To cooperate on planning for regional strategic issues;
 - b. To pursue shared services arrangements as and when needs dictate and opportunities enable, but without adopting a specific pre-determined 'model' or 'grouping';
2. That the activity areas for regional strategic cooperation be –
 - a. The 2008 review of Council's Strategic Management Plans;
 - b. The next Metropolitan Planning Strategy Review;
 - c. The delivery of South Australian Strategic Plan targets via local government actions;
 - d. The reporting of local government outputs / outcomes, within the State Government regional framework definition;
 - e. The LGA Adelaide Futures and Governance projects;
 - f. Improved cost and/or effectiveness of service delivery through practical alliances on shared services.
3. That the topic areas for regional strategic cooperation be –
 - a. Strategic land use planning;
 - b. Transport planning;
 - c. Stormwater management;
 - d. Economic development;
 - e. Infrastructure investment.
4. That Administration report further on-
 - a. The regional boundary definition issues relevant to the City of Holdfast Bay, with a view to formally confirming the geographic forms of Council's commitments to regional cooperation, whilst acknowledging that 'beyond the region' relationships and dialogue will also be necessary;
 - b. The necessary and appropriate 'governance' arrangements, within Council and between Councils, to support regional cooperation discussions, flowing into decisions and then into actions.
5. That the intent of the Western Adelaide Consultative Group to review its role/s as an informal group in December 2007 be noted.

CARRIED

16. RESOLUTIONS SUBJECT TO FORMAL MOTIONS

A listing of resolutions subject to formal resolutions to adjourn or lay on the table items of Council business, for the current term of Council were presented in the Agenda.

C280807/273 Councillor Clancy moved and Councillor Bouchée seconded that Administration list adjourned Report No:252/07 Irrigated Public Open Space Management on the next available Council agenda.

CARRIED

17. URGENT BUSINESS**17.1 Southern Region Waste Resource Authority Chief Executive Officer Retirement**

C280807/274 Councillor Bouchée moved and Councillor Fisk seconded that Council write to Mr Les Perry, retiring Chief Executive Officer of the Southern Region Waste Resource Authority, to thank him for his contribution to Southern Region Waste Resource Authority, the City of Brighton, the City of Holdfast Bay and the Holdfast Bay community and send an appropriate floral arrangement to Mr Perry.
CARRIED

17.2 Passing of former Mayor of Brighton

The Chief Executive Officer informed Members that former Mayor of Brighton, Mr Lionel Byers-Thomas had passed away.

17.3 Hosting meeting of Murray Darling Association

C280807/275 Councillor Crutchett moved and Councillor Beh seconded that the Murray Darling Association be advised that the Council is unable to host a meeting in December 2007 and Council will endeavour to host a meeting of the Association during 2008 subject to a suitable topic being determined.
CARRIED

17.4 Leave of Absence – Councillor van Camp

C280807/276 Councillor Deakin moved and Councillor Clancy seconded that Councillor van Camp be granted a leave of absence for the next Council Meeting to be held on 11 September 2007.
CARRIED

17.5 Leave of Absence – Councillor Beh

C280807/277 Councillor Clancy moved and Councillor Fisk seconded that Councillor Beh be granted a leave of absence for the next two Council Meetings to be held on 11 September and 25 September 2007.
CARRIED

17.6 Invitation to attend Adelaide and Mount Lofty Ranges Natural Resources Management Board – Invitation to attend Future Communications Breakfast

His Worship the Mayor advised Members that he will be unable to attend the Future Communications breakfast on 20 September 2007. Councillors Bouchée and van Camp will attend.

17.7 Moseley Square Water Feature Operation

C280807/278 Councillor Crutchett moved and Councillor Bouchée seconded that Administration monitor water usage once per week and report further on water usage, height of water jets and paving rectification in Moseley Square.
CARRIED

18. ITEMS IN CONFIDENCE**18.1 Southern Region Waste Resource Authority (Report No: 384/07)**

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

C280807/279 Councillor Bouchée moved and Councillor Crutchett 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:

- (ii) 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

Councillor Beh left the meeting at 10:08pm.

Southern Region Waste Resource Authority (Report No: 384/07)

ORDER TO RETAIN DOCUMENTS IN CONFIDENCE

C280807/281 Councillor Crutchett moved and Councillor Fisk 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: 384/07 with the exception of Resolution No:C280807/279 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 interest****under Section 90(2) and 90(3)(d) of the Act.**

- 2. This resolution will be reviewed on or before 30 June 2008 by the Council.**

CARRIED

**18.2 Keelara Reserve Clubrooms – Strategic Community Asset
(Report No: 401/07)**

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

C280807/282 Councillor Crutchett moved and Councillor Bouchée 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

Keelara Reserve Clubrooms – Strategic Community Asset (Report No: 401/07)

ORDER TO RETAIN DOCUMENTS IN CONFIDENCE

C280807/284 Councillor Crutchett moved and Councillor Huckstepp 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: 401/07 with the exception of Resolution No: C280807/282 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 30 June 2008 by the Council.**

CARRIED

18.3 Development Assessment Issue

Councillor Beh rejoined the meeting at 10:12pm.

Councillor van Camp and Councillor Clancy declared an interest in the matter, as they are members of the Development Assessment Panel and left the meeting at 10:25pm

C280807/285 Councillor Crutchett moved and Councillor Bouchée seconded that, pursuant to Section 90(2), 90(3)(a) 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:

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

CARRIED

Development Assessment Issue

ORDER TO RETAIN DOCUMENTS IN CONFIDENCE

C280807/286 Councillor Bouchée moved and Councillor Beh seconded that pursuant to Section 90(2), 90(3)(a) and 90(3)(h) and 91(7) of the Local Government Act 1999:

1. The Council orders that the documents and minutes relating to Development Assessment Issue with the exception of Resolution No: C280807/285 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) and that they deal with legal advice under Section 90 (2). 90(3)(a) and 90(3)(h) of the Act.
2. This resolution will be reviewed on or before 30 June 2008 by the Council.

CARRIED

19. RESUMPTION

Councillor Crutchett moved and Councillor Bouchée seconded that Council resume as an open meeting of Council at 10:35pm.

CARRIED

20. CLOSURE

The Meeting closed at 10:35pm.

CONFIRMED

Tuesday 11 September 2007

MAYOR