

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 26 August 2008 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
P D H Heysen
J D Huckstepp
S C Lonie – 7:44pm.
T D Looker
L van Camp
R T Donaldson
I S Walker
J Hensgen
S G Hodge

Chief Executive Officer
General Manager Corporate Services
Acting General Manager City Services
General Manager City Assets

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** Nil
- 2.2 Leave of Absence** Councillor A C Norton

3. PRESENTATION**3.1 Gifts from the Town of Hayama**

His Worship the Mayor presented gifts from the Town of Hayama at the welcome reception for the exchange program held on 20 August 2008.

4. CONFIRMATION OF MINUTES

C260808/352 Councillor Looker moved and Councillor Beh seconded that the minutes of the Ordinary Meeting of Council held on 12 August 2008 be taken as read and confirmed.

CARRIED

5. MAYORAL REPORT

From 1 July 2008 to 31 July 2008

C260808/353 Councillor Huckstepp moved and Councillor Clancy 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 Development Assessment Panel

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

- 1. Have the City of Holdfast Bay Development Assessment Panel members been briefed on the concept know as "Natural Justice: The right to be given a fair hearing and the opportunity to present ones case; the right to have a decision made by an unbiased or disinterested decision maker.**
- 2. Does Administration have a recommendation on how situations where council needs to discuss a development prior to it going to the panel can be handled?**

Background

I am concerned that matters relating to development that may impact of council land are brought to the council prior to being heard by the City Of Holdfast Bay Development Panel. This may expose council to a Judicial review of any Development panel approval/refusal if council panel members are seen to have a publicly declared position prior to the DAP hearing.

The Planning SA code of conduct development panel guidelines <http://www.planning.sa.gov.au/download.cfm?DownloadFile=FBB902A4-F203-0D46-A95B2680AB3A8BC5> also appear to suggest council panel members could be placed in a difficult situation:

2.10 You must not:

- (a) Engage in consultation outside of the panel process with any party on a proposed development application that is likely to be heard by the panel;
- (b) Give advice to an applicant or other third party on a development application after it has been lodged outside of a panel meeting;
- (c) Speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application unless required by the Act;
- (d) Express an opinion on a development application or a proposed development outside of a panel meeting; and
- (e) Engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.

General Manager City Services answer

- 1. Members of the City of Holdfast Bay Development Assessment Panel have undertaken training provided through the Local Government Association, which covered Panel Members' obligations with respect to the hearing of representations.**

Panel Members are also bound by the procedures set out in the Terms of Reference for the City of Holdfast Bay Development Assessment Panel, which includes the following clause:

"25. The Panel will ensure that procedures:

- are fair and contribute to open, transparent and informed decision-making;**
- reflect the levels of formality appropriate to the nature and scope of responsibilities exercised at the meeting; and**
- are sufficiently certain to give the community and decision makers confidence in the deliberations undertaken at the meeting."**

The Terms of Reference deal with the precise parameters for hearing a personal representation and giving an individual the opportunity to present his or her case at the Panel meeting. It should be noted that the Development Act, 1993 establishes who is entitled to be heard by the Panel, and such a decision is therefore not generally a discretionary one. These specific legislative parameters for the DAP's procedures take precedence over the more general concept of 'natural justice', which will apply in situations where there is procedural discretion available or where direction is otherwise absent.

Panel Members are also bound by a Code of Conduct requiring that conflicts of interest be disclosed. It is the responsibility of individual Panel Members to declare a conflict of interest.

An Elected Member's involvement in a matter at full Council level does not necessarily preclude him or her from considering a related matter before the Development Assessment Panel. Provided that an Elected Member's position in full Council was impartial and in accordance with the requirements of the Local Government Act, 1999 then this does not affect that person's ability to fulfil his or her duties as a member of the Panel, particularly if there is no personal or financial interest.

- 2. Council is required to delegate all of its decision making powers with respect to the assessment of Development Applications to its administration staff and the Development Assessment Panel. Although full Council does not have the authority to make a determination on a Development Application, it may choose to provide comments either as a third party representor or as an owner of the development site (partial or whole). Any other interest in a Development Application would be deemed informal and not require Council's prior consideration. The Development Act allows a planning authority to process an application independent of landowner consent, leaving the execution of the approved development for the applicant and affected landowner to resolve.**

Strengthened internal procedures are now in place at Holdfast Bay, intended to ensure that Council approval as "landlord" is obtained (whether by decision of Council or by decision of staff under delegated powers), prior to the matter being determined or presented to the Development Assessment Panel for decision.

7. REPORTS BY DELEGATES OR REPRESENTATIVES**7.1 Western Region Waste Management Authority**

Councillor Bouchée reported to Council on her representation on the Western Region Waste Management Authority, informing Members of a recent actuarial review indicating an increase in the estimated cost of remediation of Garden Island and, accordingly, likely impact on each member Council's liability.

8. PETITIONS AND DEPUTATIONS

Nil

9. NOTICES OF MOTION**9.1 Establishment of Independent Commission against Corruption**

In accordance with his notice:

Councillor Looker moved and Councillor Bouchée seconded that the Council adopt as a matter of principle and policy its support for the establishment in South Australia of an Independent Commission against Corruption.

C260808/354 Councillor Deakin moved and Councillor Clancy seconded that this question be adjourned until Item 15.4 - Strengthening Public Confidence in Local Government - Survey (Report No: 398/08) is reached.

CARRIED**Background**

Much discussion has been had in the community about this matter however the Government have persistently declined to act. Local Government over the years has seen its fair share of corrupt practices from inappropriate associations, low level kickbacks, freebies and favours through to conflicts of interest and even serious criminal activity. It is unlikely South Australia is exempt from those wishing to try it on to gain favour or benefit and an appropriate legal mechanism needs to be available to investigate and possibly prosecute those who behave in a doubtful or illegal manner. In the debate it is reasonable that Holdfast Bay have a formal position that will guide all responses to questions and investigations about an Independent Commission against Corruption.

9.2 Caretaker Policy

In accordance with his notice:

C260808/355 Councillor Fisk moved and Councillor Deakin seconded that the Administration prepares a Caretaker Period Policy for further consideration and endorsement by Council, based on the following key principles:-

- **No decisions about the employment of a permanent Chief Executive Officer are to be made.**
- **Council is not to enter into a contract or entrepreneurial venture that exceeds the value of \$100 000.**
- **Council resources must not be used for the advantage of any candidate.**
- **Council must not publish any electoral matter (unless it contains only information about the election process).**

CARRIED

9.3 Commercial return on Partridge Street Properties through long term rental

In accordance with his notice:

C260808/356 Councillor Looker moved and Councillor Heysen seconded that Council agree to take steps towards initiating the long term rental of the Partridge Street Properties so as to generate a commercial return. The continued operation of the youth services is desirable and will form part of the considerations.

AMENDMENT

Councillor Crutchett moved that Administration enter into discussions with current occupants and report on their preferred future location.

THE AMENDMENT WAS WITHDRAWN

A division was called.

Voted For

R D Beh
R M Bouchée
P N Crutchett
L R Fisk
P D H Heysen
T D Looker
L van Camp

Voted Against

R A Clancy
J L Deakin
J D Huckstepp

HIS WORSHIP THE MAYOR DECLARED THE MOTION CARRIED

Background

This motion is intended to provoke discussion as to the next step regarding these properties. It is plain that sale at this time is not an economic proposition but continued ownership demands a better strategy than is currently in place. This current council has no plans for these expensive properties and it is unlikely the next council will have plans for at least its first two years. That means nothing will happen for probably 5 to 7 years, if then. Responsible management demands that a better return be gained and a long term commercial lease is the next best option to sale. A direction on this is urgently needed and if Council decides that leasing is an option then I foreshadow a motion to bring that into effect. The continued operation of the youth services is desirable and will form part of the considerations.

9.4 Licensed premises adjacent to residential properties operating hours

C260808/357 Councillor Deakin and Councillor Fisk seconded that the correspondence from the Australian Hotels Association (SA) dated 25 August 2008 regarding Councillor Bouchée's Notice of Motion be received.

CARRIED

In accordance with her notice:

C260808/358 Councillor Bouchée moved and Councillor Heysen seconded that the City of Holdfast Bay adopt a policy of actively supporting licensed premises, particularly hotels and bars, that are located within 100 metres of the boundary of any property used for residential purposes being only allowed to open from 8:00 am till no later than 12:00 midnight from Sunday night through to Thursday night and from 8:00 am through to 1:00 am on Friday and Saturday nights. This active policy is to include submissions to the Licensing Board opposing any opening outside of these proscribed times.

A division was called.

| | |
|---------------|---------------|
| Voted For | Voted Against |
| R D Beh | R A Clancy |
| R M Bouchée | J L Deakin |
| P N Crutchett | J D Huckstepp |
| L R Fisk | L van Camp |
| P D H Heysen | |
| T D Looker | |

HIS WORSHIP THE MAYOR DECLARED THE MOTION CARRIED**Background**

The residents of Holdfast Bay are being increasingly subjected to the effects of binge drinking and drunken behaviour in all areas around licensed premises. Unfortunately, this behaviour frequently also includes vandalism of residential premises and unacceptable behaviour such as urinating over residential fences, throwing beer bottles, loud and noisy behaviour in the early hours of the morning and threats and actual violence against residents who seek to protect their property and their loved ones. Most of the anti social behaviour appears to be committed by persons who are not resident in the Council area and action needs to be taken to discourage their actions in the area for which they are responsible.

Clearly the licensed premises are taking minimal action to ensure that their patrons do not disrupt surrounding residential areas despite repeated calls for such action. This unwillingness to be responsible citizens and to socially responsibly supply intoxicating drinks means that Council must step in to ensure socially acceptable behaviour by all licensed premises in our Council area.

This is not unique and it is noted that in the CBD of Newcastle hotel operating hours have been curtailed at weekends and more similarly to Holdfast Bay the NSW Police and hotels have decided to close hotels on the Corso at Manly at 12.00 midnight to reduce antisocial behaviour and alcohol fuelled violence. Within the last two weeks the Parramatta City Council has declared its CBD to be alcohol free.

10. ADJOURNMENT (TO ENABLE PERMANENT COMMITTEES TO MEET) (7:40PM)

C260808/359 Councillor Fisk moved and Councillor Beh seconded that Council stand adjourned to enable the permanent Economic and Corporate and Environment and Engineering Committees to meet.

CARRIED

Councillor Lonie joined the meeting at 7:44pm.

Councillor Fisk left the meeting at 9:11pm.

Councillor Looker left the meeting at 9:11pm.

11. RESUMPTION

C260808/360 Councillor Clancy moved and Councillor Beh seconded that Council resume at 9:12pm.

CARRIED

Councillor Looker rejoined the meeting at 9:12pm.

12. COMMITTEE RECOMMENDATIONS FOR CONSIDERATION

12.1 Economic and Corporate Committee

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

C260808/361 Councillor Beh moved and Councillor Heysen 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 Huckstepp reported that the Environment and Engineering Committee had met this evening and had processed the business contained in the agenda documents.

C260808/362 Councillor Huckstepp moved and Councillor Deakin 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 Nil

Councillor Huckstepp left the meeting at 9:13pm.

14. REPORTS OF REGIONAL SUBSIDIARIES

Nil

15. REPORTS BY OFFICERS**15.1 Request for Internal Review of Council Decision (Report No: 397/08)**

A request has been received from Mr Andy Lush of Moseley Street, Glenelg for an internal review of Council's decision to purchase Trinity Church, Moseley Street, Glenelg. Pursuant to the Local Government Act 1999, section 270 (4), the Chief Executive Officer has reviewed the request and believes that the applicant does not have sufficient interest in the issue to warrant a review.

Councillor Fisk rejoined the meeting at 9:14pm.

C260808/363 Councillor Crutchett moved and Councillor Looker seconded that pursuant to S270(4) (c) of the Local Government Act 1999 Council declines Mr Andy Lush's request for an internal review of Council's decision C170608/232, to purchase the former Trinity Church at 25 Moseley Street, Glenelg.

CARRIED

A division was called.

Voted For
R D Beh
R M Bouchée
R A Clancy
P N Crutchett
L R Fisk
P D H Heysen
S C Lonie
T D Looker
L van Camp

Voted Against
J L Deakin

HIS WORSHIP THE MAYOR DECLARED THE MOTION CARRIED

Councillor Huckstepp rejoined the meeting at 9:15pm.

15.2 Renewal of City of Holdfast Bay Dry Areas (Report No: 395/08)

The City of Holdfast Bay currently has three (3) long-term regulated Dry Areas in operation which were established pursuant to Section 131 of the Liquor Licensing Act 1997. Though designated as long-term, the current Dry Areas are approved by the Office of the Liquor and Gambling Commissioner (OLGC) subject to a renewal period and Council has periodically applied to the Commissioner to extend the application of these Areas. The last extension was granted on 7 December 2006 for a further two (2) years until 8 December 2008.

In May 2008, Administration engaged the services of Tony Lawson Consulting to commence a Dry Areas Evaluation Report in order to seek approval from the OLGC for a further renewal of the City's Dry Areas for a further three (3) years.

The purpose of this report is to seek Council's endorsement of the final draft Dry Areas Evaluation Report and its recommendations prior to formally submitting an application for renewal to the OLGC.

C260808/364 Councillor Bouchée moved and Councillor Heysen seconded:

1. That Council endorses the Evaluation of Dry Areas for City of Holdfast Bay Report, located at Attachment 1 to Report Number 395/08 and prepared by Tony Lawson Consulting on Council's behalf.
2. That Administration submit an application to the Office of the Liquor and Gambling Commissioner to renew the City of Holdfast Bay's regulated Dry Areas for a further three (3) years in accordance with the recommendations of the Evaluation of Dry Areas for City of Holdfast Bay Report prepared by Tony Lawson Consulting.

CARRIED**15.3 25 Moseley Street Glenelg Community Engagement Process
(Report No: 396/08)**

Council has recently purchased the former Trinity Church building located at 25 Moseley Street, Glenelg. The purchase of this unique, centrally located asset provides a range of opportunities for Council in the future planning and provision of community services and facilities. However, to date there has been no decision made regarding the use of this building and site.

In conjunction with future Council and Committee considerations of this matter, and to progress the Mayor's commitment made to the media in relation to public consultation on the future use of the building, it is suggested that Council undertake a community engagement process and seek feedback from local residents, property owners and other stakeholders on what the former church building should be used for.

It is suggested that the community engagement process follows the recently adopted IAP2 model, outlined in the LGA Community Engagement Handbook, and that it occur in October 2008, once day light saving has begun and after a risk analysis of the building has undertaken. Public comment should be sought regarding the possible use(s) of the building and through media such as Council's website, print media and public open days/evenings.

Councillor Deakin moved and Councillor Clancy seconded that Council conducts a process of community engagement to gain public feedback on the future use/s of the recently acquired 25 Moseley Street, Glenelg property as outlined in Report No. 396/08 incorporating City wide consultation and local involvement as defined in the IAP2 framework.

AMENDMENT**C260808/365 Councillor Crutchett moved and Councillor Heysen seconded:**

1. That Council conducts a process of community engagement to gain public feedback on the future use/s of the recently acquired 25 Moseley Street, Glenelg property as outlined in Report No. 396/08 incorporating City wide consultation and local involvement as defined in the IAP2 framework.
2. That the engagement program include an open day to be held on a Saturday in October with invitations to local service clubs to provide catering (as no cost to Council).

THE AMENDMENT WAS CARRIED**THE AMENDMENT BECAME THE MOTION AND WAS CARRIED**

Adjourned Item 9.1 Establishment of Independent Commission against Corruption

In accordance with his notice:

C260808/366 Councillor Looker moved and Councillor Bouchée seconded that the Council adopt as a matter of principle and policy its support for the establishment in South Australia of an Independent Commission against Corruption.

CARRIED

Background

Much discussion has been had in the community about this matter however the Government have persistently declined to act. Local Government over the years has seen its fair share of corrupt practices from inappropriate associations, low level kickbacks, freebies and favours through to conflicts of interest and even serious criminal activity. It is unlikely South Australia is exempt from those wishing to try it on to gain favour or benefit and an appropriate legal mechanism needs to be available to investigate and possibly prosecute those who behave in a doubtful or illegal manner. In the debate it is reasonable that Holdfast Bay have a formal position that will guide all responses to questions and investigations about an Independent Commission against Corruption.

15.4 Strengthening Public Confidence in Local Government - Survey (Report No: 398/08)

The Local Government Association of SA (LGA) is seeking feedback from councils on the establishment of a Local Government Governance Council (LGGC) to act as a resource for councils in relation to complaints about the conduct of elected members.

C260808/367 Councillor Crutchett moved and Councillor Deakin seconded that in response to the Local Government Association's *Strengthening Public Confidence in Local Government – Survey*, Council advises that the City of Holdfast Bay supports the establishment of an Independent Commission Against Corruption.

CARRIED

15.5 Barwell Avenue, Seacliff - Pedestrian Access Link (Report No: 411/08)

The closure of a public walkway approximately eighteen (18) months ago has limited the functionality of Council's Lipson Street car park for Seacliff Primary School student drop off and pick up. The land formerly used as the walkway is now private property, but was previously Crown land owned by the Department of Education and Children's Services. Following sale of the land, the current owner fenced off and subsequently dismantled the walkway to facilitate a residential redevelopment of the land. The Seacliff Primary School has raised concern with the loss of the walkway on a number of occasions and while some attempts to negotiate a re-opening of the walkway have informally occurred in the past, little progress has been made and it appears the State Department has no further interest in working towards a solution to this issue. This report outlines the history to this issue and presents the matter to Council for consideration on what, if any, action should be taken to assist in a resolution to this locally contentious issue.

C260808/368 Councillor Deakin moved and Councillor Crutchett seconded that the report be noted and no further action be taken at this time.

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.

17. URGENT BUSINESS**17.1 Foreshadowed Notice of Motion**

Councillor Clancy foreshadowed a Notice of Motion for the next agenda for Administration to investigate the use of the Community Bus to provide a service to pick up patrons at the Broadway Hotel and Holdfast Hotel to take patrons to Glenelg and avoid local neighbourhood disturbance.

Councillor Lonie left the meeting at 9:43pm.

Councillor Lonie rejoined the meeting at 9:45pm.

17.2 Personal Explanation by Councillor Bouchée

Councillor Bouchée provided a personal explanation in relation to her preamble to her notice of motion listed on the Council Agenda for 12 August 2008, as follows:

“It has come to my notice that there may be some people mis-reading the intent of the preamble of “The Notice of Motion” dated 12/08/08. To clarify, I was party to the decision making and negotiations to amalgamate but was not a Council Member when the document was signed.”

17.3 Procedural approach regarding Mayor and Presiding Member comments

The Chief Executive Officer provided Members with clarification on the procedural approach regarding Mayoral and Presiding Member comments on motions.

17.4 Notice of Motion – Land Acquisition (Report No: 412/08)

Councillor Deakin moved and Councillor Fisk seconded that Item 18.2 Notice of Motion – Land Acquisition (Report No: 412/08) not be considered in confidence.

LOST

18. ITEMS IN CONFIDENCE**18.1 Council’s Buckle Street, Glenelg North Site (Report No: 399/08)**

Council officers remaining: Mr Donaldson, Mr Walker and Mr Hodge

C260808/369 Councillor Heysen moved and Councillor Huckstepp 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

ORDER TO RETAIN DOCUMENTS IN CONFIDENCE

C260808/372 Councillor Clancy moved and Councillor Heysen 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: 399/08 with the exception of Resolution No: C260808/369 for going into confidence be kept confidential and not available for public inspection until the conclusion of contractual matters 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 2009 by the Council.
CARRIED

18.2 Notice of Motion – Land Acquisition (Report No: 412/08)

Council officers remaining: Mr Donaldson, Mr Walker and Mr Hodge

C260808/373 Councillor Heysen moved and Councillor Clancy 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

ORDER TO RETAIN DOCUMENTS IN CONFIDENCE

C260808/375 Councillor Crutchett moved and Councillor Clancy 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: 412/08 with the exception of Resolution No: C260808/373 for going into confidence be kept confidential until Council has received a response from the Minister 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 2009 by the Council.
CARRIED

19. RESUMPTION

C260808/376 Councillor Clancy moved and Councillor Heysen seconded that Council resume as an open meeting of Council at 10:10pm.

CARRIED

20. CLOSURE

The Meeting closed at 10:10pm.

CONFIRMED

Tuesday 9 September 2008

MAYOR