

Confidential Minutes of the Ordinary Meeting of Council of the City of Holdfast Bay held in the Council Chamber, Glenelg Town Hall, Moseley Square, Glenelg, on Tuesday 9 October 2018.

16. URGENT BUSINESS

16.1 Deed of Agreement – Olli Bus Trail

Motion

Exclusion of the Public – Section 90(3)(h) Order

C091018/1301

- 1. That pursuant to Section 90(2) of the Local Government Act 1999 Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider in confidence a Deed of Arrangement related to the Olli Bus Trial.**
- 2. That in accordance with Section 90(3) of the Local Government Act 1999 Council is satisfied that it is necessary that the public be excluded to consider the information on a Deed of Arrangement related to the Olli Bus Trial on the following grounds:**
 - h. pursuant to section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Item includes legal advice from the Crown Solicitor.**
- 3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.**

Moved Councillor Smedley, Seconded Councillor Yates

Carried

As part of the proposed Olli Bus trial, Council determined that a Licence would need to be signed between City of Holdfast Bay and the proponents of the Olli Bus Trial – Local Motors and Sage Automation. The Licence provided a clear legal and risk framework for the Olli Bus trial which was to be conducted on community land rather than public roadway.

The Licence was drafted by Council's lawyers in consultation with the LGMLS and subsequently approved at the full Council meeting on 14 August 2018.

A key feature of the Licence was Council's power to suspend or terminate the Licence for certain events or situations (including community complaints) at our discretion, including where the project loses its "social licence" from the wider community. This unilateral power (ie for council to act independent of DPTI and/or the Minister) was considered unacceptable by DPTI.

To avoid an impasse, Administration negotiated with DPTI to establish a side letter (or Deed) which would define a process for Council to follow before exercising its powers under the Licence. The process would ensure all parties attempted to resolve any issue before Council needed to exercise its powers.

Crown Law has prepared a draft Deed which is submitted for consideration of Council.

The Deed needs to be executed under seal and as such this report seeks Council authorisation for the Acting Mayor and Chief Executive Officer to sign the Deed on behalf of Council.

Motion

C091018/1302

1. That Council authorise the Acting Mayor and Chief Executive to sign the attached Deed on behalf of Council and to affix the Common Seal subject to any minor amendments as necessary.
2. That Council endorse the allocation of up to \$50,000 in new operating budget to fund any contribution towards any necessary infrastructure required to enable the Olli Bus Trial to proceed, noting that DPTI and Local Motors will contribute \$15,000 each towards the works and Sage \$10,000 towards the works.
3. That administration advise the Elected Members by email that clause 9.5 does not override the insurance liability in the original licence.

Moved Councillor Lonie, Seconded Cr Yates

Carried

Motion

C091018/1303

RETAIN IN CONFIDENCE - Section 91(7) Order

1. That having considered attached report and Deed in confidence under section 90(2) and (3)(h) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments and minutes be retained in confidence for a period of up to 18 months and the Chief Executive Officer be authorised to release:

- Part 1 of motion once the documents are signed and
- All the Documents when the trial has been completed

and that this order be reviewed every 12 months.

Moved Councillor Lonie, Seconded Councillor Aust

Carried

17. ITEMS IN CONFIDENCE**17.1 Buffalo Site Development (Report No: 339/18)****Motion****Exclusion of the Public – Section 90(3)(b, d & h) Order****C091018/1304**

1 That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 339/18 Buffalo Site Development in confidence.

2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 339/18 Buffalo Site Development on the following grounds:

b. pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting business.;

d. pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which 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.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

h. pursuant to section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is legal advice which has been provided by Mellor Olsson on instructions from the Council.

- 3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.**

Moved Councillor Aust, Seconded Councillor Lonie

Carried

Buffalo Site Development

The Licence Agreement (*"Agreement"*) held between Council and DeYoungs Jamestown Pty Ltd (*"Licensee"*) commenced 14 April 2014 for an initial period of five (5) years. The purpose of the Agreement was so that the Licensee could develop the vessel and adjacent land as a commercial venture.

The Licensee submitted Development Application 110/00146/15 to Administration on 20 February 2015, which proposed to construct a *kiosk, alfresco bar and dining area, toilet facilities, outdoor dining timber deck, boat platform, gangway and undertake landscaping*. The application was referred to the State Commission Assessment Panel (SCAP) for assessment on 4 March 2015, and Planning Consent was granted on 10 August 2017.

On 9 July 2018, Administration was advised by SCAP that they had received an application from the Licensee seeking a further 12 months in which to obtain Building Rules Consent (BRC). However, following the advice of Administration, SCAP approved an extension until the end of the Licence term (13 April 2019).

Following this, due to ongoing community complaint about the general condition of the site and the deteriorating state of the vessel, as well as Council's increasing frustration with the Licensee's protracted approach toward the redevelopment, on 24 July 2018 Council resolved to serve a 'Notice of Breach' on the Licensee for failure to comply with repair and maintenance obligations pursuant to the Licence Agreement.

While, to date, Administration has not received a response from the Licensee regarding to Notice of Breach, and no action has been undertaken on site to remedy the respective breaches, on 25 September 2018, Administration received the required BRC documents to complete Development Application 110/00146/15. As such, final Development Approval for the redevelopment of the site was granted on 26 September 2018.

Though section 48 of the *Development Regulations 2008* allows the applicant 12 months in which to substantially commence the redevelopment, and thereafter allows a subsequent three (3) years in which to substantially complete the project, Clause 14.7 of the Agreement requires the Licensee to complete the entirety of *"all approved renovations and refurbishment works within 12 months of the date final development approval is granted"*.

This in mind, in order for the redevelopment to finally proceed, Council will be required to renew the Licence Agreement. Administration has now obtained further legal advice pertaining to this matter and Council's options moving forward.

Motion

C091018/1305

- 1. That Council notes the attached Legal Advice;**
- 2. That Administration writes to the Licensee:**
 - a. noting that to date no action has been taken to remedy the breaches outlined in the Notice of Breach sent to the Licensee 8 August 2018;**
 - b. further noting that the Notice of Breach deadline was 8 October 2018;**
 - c. acknowledging that Development Approval was granted 26 September 2018;**
 - d. outlining the obligation pursuant to Licence Clause 14.7 which requires all approved renovations and refurbishment works are to be completed within 12 months of the date final development approval;**
 - e. requesting that a project plan and redevelopment works schedule be submitted to Administration within 14 days from the date of the letter and to confirm the Licensee's commitment to undertake all approved renovations and refurbishment works within the 12 month timeframe as specified in the Licence Agreement; and**
 - f. advising that if no action is taken to remedy the breaches and/or reasonable redevelopment works have not commenced within 30 days, Council will take action to terminate the Licence Agreement.**

Moved Councillor Aust, Seconded Councillor Lonie

Carried

Division called:

A division was called and the previous decision was set aside:

Those voting for: Councillors Snewin, Aust, Lonie, Bouchee, Patton, Yates, Charlick, Smedley, Clancy, Donaldson and Bradshaw (11)

Those voting against: (0).

Her Worship the Acting Mayor declared the motion

Carried

Motion - RETAIN IN CONFIDENCE - Section 91(7) Order

C091018/1306

1. **That having considered Agenda Item: 17.1 Report No: 339/18 Buffalo Site Development in confidence under section 90(2) and (3)(b, d & h) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that Report No: 339/18 Buffalo Site Development attachments and minutes be retained in confidence for a period of 12 months or earlier if possible.**

Councillor Donaldson left the Chamber at 8.37pm
Councillor Donaldson re-entered the Chamber at 8.39pm
Councillor Patton left the chamber at 8.47pm
Councillor Patton re-entered the chamber at 8.49pm

Moved Councillor Lonie, Seconded Councillor Clancy

Carried

CONFIRMED Tuesday 23 October 2018

ACTING MAYOR

CONFIDENTIAL