

18.2 **Seawall Apartments Redevelopment (Report No: 110/22)****Motion - Exclusion of the Public – Section 90(3)(h & i) Order****C120422/2567**

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: 110/22 Seawall Apartments Redevelopment 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: 110/22 Seawall Apartments Redevelopment in confidence 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 Agenda Item constitutes legal advice the disclosure of which would prejudice the legal position of the Council.
 - i. pursuant to section 90(3)(i) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council.

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.
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 Lonie, Seconded Councillor Patton

Carried Unanimously

Following the decision of the Environment, Resources and Development Court to allow parties to be joined to an appeal against the State Commission Assessment Panel (SCAP) decision to refuse consent to a multi-storey redevelopment of the Seawall Apartments at 21-25 South Esplanade, Glenelg, the developer has in turn appealed that decision to the Supreme Court. As a result, Council must now decide whether it wishes to actively participate in the defence of that appeal. Based on legal advice around the costings and likelihood of success, and in light of the changed position of the SCAP since its initial decision, this report recommends that Council withdraw its continued participation in the appeal. The developer has also requested a meeting with the

Mayor and Chief Executive Officer to discuss a possible out-of-court resolution, which is recommended as a means to reach an agreement on the pursuit of costs, and to commence some positive dialogue on the design of the public-private interface between the development and the foreshore.

Motion

C120422/2568

That, in relation to the active appeal relating to the development application for the redevelopment of the Seawall Apartments located at 21-25 South Esplanade, Glenelg, Council:

- 1. discontinue the City of Holdfast Bay's active participation in the appeal to the Supreme Court in response to the appeal by the developer against the decision of the Environment, Resources and Development Court to allow the City of Holdfast Bay to be joined to that appeal;**
- 2. authorise the Mayor and Chief Executive Officer to meet with the developers and their counsel to discuss a cost effective resolution to the matter that is in the best interest of the broader community.**
- 3. is informed via a report of any in-principle agreement reached at the aforementioned meeting in Part 3 of the recommendation, with any formal decision regarding a resolution to be made by Council.**

RETAIN IN CONFIDENCE - Section 91(7) Order

- 4. having considered Agenda Item 18.2 Seawall Apartments Redevelopment (Report No: 110/22) in confidence under Section 90(2), 90(3)(h) and 90(3)(i) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report and attachment be retained in confidence for a period of 24 months with the Chief Executive Officer authorised to release the documents following conclusion of the court proceedings or the expiry of the 24 month confidentiality period, with the minutes to be released after the court is notified of the Council decision.**

Moved Councillor Miller, Seconded Councillor Snewin

Carried Unanimously