

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 14 May 2019.

17. ITEMS IN CONFIDENCE

17.1 Buffalo Update (Report No: 185/19)

Motion – Exclusion of the Public – Section 90(3)(b, d & h) Order C140519/1482

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: 185/19 Buffalo - Update 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: 185/19 Buffalo - Update 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; or
would prejudice the commercial position of the Council.**

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 Clancy, Seconded Councillor Lonie

Carried

On 11 December 2018 Council resolved to enter into a mutual Deed of Release and Termination ("*Deed*") with DeYoungs Jamestown Pty Ltd ("*Licensee*"). This Deed was executed Tuesday 29 January 2019 and released both Council and the Licensee from their respective obligations under the Agreement; subject to the Licensee removing the vessel from the site, and remediating the land by 14 April 2019.

On 9 April 2019, following a request from the Licensee Council resolved to enter into a Deed of Extension ("*Deed*") with the Licensee in order for them to complete the necessary demolition and remediation works.

To date, since the execution of the Deed (Monday 15 April 2019), the Licensee has undertaken little of the prescribed works required under the Deed, until Friday 10 May 2019 where an internal strip out of the vessel commenced and Asbestos was identified on site. It should be noted that further works have been scheduled to occur Monday 13 May and Tuesday 14 May 2019. The Acting CEO has approved temporary access to the site so that works can progress.

On Thursday 9 May 2019, the Licensee approached Administration seeking an additional eight (8) week extension in order to complete the works, including general salvage, asbestos removal process and final mechanical demolition.

It is recommended that the (8) week extension be granted by Council. However, should Council resolve terminate the Deed and consider stepping in to demolish and remove the Buffalo, then Council will need to separately approve the expenditure not to support an extension, the costs of demolition, transport and remediating of the land estimated at around \$203,500 (excl GST). Administration would then seek legally to recover these costs from the Licensee.

Motion

C140519/1483

- 1. That Council grants an additional eight (8) week extension in order to allow the Licensee to undertake the necessary asbestos removal (subject to Safework SA approval), demolition, and remediation works subject to the Licensee:**
 - a. Providing a full and complete works schedule and timeline;**

- b. **Providing names of the contractors to be used for the demolition;**
- 2. **That the Mayor and Chief Executive Officer be authorised to execute and seal any such documents required to give effect to the extension;**
- 3. **That should the works required under the Deed not be completed by the expiry of the extended term, Council's Lawyer's serve notice on the Licensee stating:**
 - a. **that the Licensee is deemed to be in breach of the Deed of Release and Termination;**
 - b. **that the Licensee has seven (7) days in which to undertake the works outlined in the Deed of Release and Termination;**
 - c. **that if the Licensee fails to undertake the works in the associated timeframe, Council proposes to:**
 - i. **arrange for the demolition and removal of the vessel and any remaining facilities on-site;**
 - ii. **dispose of the vessel and any other goods in accordance with the prescribed process; and**
 - iii. **seek to recover any/all costs associated with the demolition and removal, as well as any resulting from the Licensee's breach of Licence Agreement and/or the Deed of Release and Termination.**
- 4. **That a report be brought back to Council following completion of steps as outlined in items 1, 2 and 3 above for further consideration.**
- 5. **That the Mayor be authorised to issue a media release to update the community regarding the reason for the further delay to demolition.**

Moved Councillor Chabrel, Seconded Councillor Smedley

Carried Unanimously

RETAIN IN CONFIDENCE - Section 91(7) Order

C140519/1484

That having considered Agenda Item: 17.1 Report No: 185/19 Buffalo – Update 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 any details outlined in Report No: 185/19 Buffalo – Update and associated minutes that pertain to the Licensee, Licence Agreement and/or Commercial Operations be retained in confidence for a period of 12 months.

Moved Councillor Lonie, Seconded Councillor Snewin

Carried

CONFIRMED

Tuesday 28 May 2019

MAYOR

CONFIDENTIAL