

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 23 May 2023 at 7:00pm.

MEMBERS PRESENT

Mayor A Wilson
Councillor R Abley
Councillor A Bradshaw
Councillor J Fleming
Councillor A Kane
Councillor S Lonie
Councillor W Miller
Councillor M O'Donohue
Councillor R Patton
Councillor J Smedley
Councillor R Snewin

STAFF IN ATTENDANCE

Chief Executive Officer – R Bria
General Manager Community and Business – M Lock
General Manager Strategy and Corporate – P Jackson
General Manager Alwyndor – B Davidson-Park

1. OPENING

Her Worship the Mayor declared the meeting open at 7.00pm.

2. KAURNA ACKNOWLEDGEMENT

With the opening of the meeting Her Worship the Mayor stated:

We acknowledge Kurna people as the traditional owners and custodians of this land.

We respect their spiritual relationship with country that has developed over thousands of years, and the cultural heritage and beliefs that remain important to Kurna People today.

3. SERVICE TO COUNTRY ACKNOWLEDGEMENT

The City of Holdfast Bay would like to acknowledge all personnel who have served in the Australian forces and services, including volunteers, for our country.

4. PRAYER

Her Worship the Mayor requested all present to pray and read the following Prayer:

Heavenly Father, we pray for your presence and guidance at our Council Meeting.

Grant us your wisdom and protect our integrity as we carry out the powers and responsibilities entrusted to us on behalf of the community that we serve.

5. APOLOGIES

5.1 Apologies Received - Councillor A Venning, Councillor C Lindop

5.2 Absent - Nil

6. ANNUAL BUSINESS PLAN CONSULTATION

Under Section 123(4)(a)(i)(B) of the *Local Government Act 1999*, Council provided a period of at least one hour for members of the public to ask questions and make submissions in relation to the draft 2023/24 Annual Business Plan and Budget.

Mayor Amanda Wilson asked if anyone in the gallery would like to make a submission on the draft 2023/24 Annual Business Plan and Budget. There were no members of the public that wanted to make a submission.

Leave of the Meeting

Mayor Wilson with two-thirds of the members present sought leave of the meeting at 7.05pm to suspend this item for an hour to allow for any members of the public that may arrive who may wish to make a submission.

Leave of the meeting was granted.

7. ITEMS PRESENTED TO COUNCIL - Nil**8. DECLARATION OF INTEREST**

Members were reminded to declare their interest before each item.

9. CONFIRMATION OF MINUTES**Motion****C230523/7440**

That the minutes of the Ordinary Meeting of Council held on 9 May 2023 be taken as read and confirmed.

Moved Councillor Miller, Seconded Councillor Lonie

Carried Unanimously**10. PUBLIC PRESENTATIONS**

10.1 **Petitions** - Nil

10.2 **Presentations** - Nil

10.3 **Deputations** - Nil

11. QUESTIONS BY MEMBERS**11.1 Without Notice****11.1.1 Replacing portrait of Her Majesty the Queen**

Councillor Smedley asked a question in relation to when the portrait of the Queen will be replaced by the King.

The Chief Executive Officer provided a response.

11.1.2 Vandalism in Wigley Reserve

Councillor Smedley asked a question in relation to the vandalism of plants and lighting in Wigley Reserve.

The Chief Executive Officer provided a response.

11.2 On Notice**11.2.1 Landlord Requirements to Maintain Properties on Jetty Road, Glenelg – Mayor Wilson (Report No: 167/23)**

Mayor Wilson asked the following questions:

1. “What Bylaws or regulatory power does Council have to compel owners of commercial buildings to maintain the facade? How is a property owner compelled to maintain a derelict site?”
2. Many of the verandahs encroaching over the footpath on Jetty Road are in need of repair. Can repair work be compelled under the encroachment bylaws on encroachment agreements? If not can the bylaws be change to incorporate this power?
3. Many pillars, columns and posts which encroach on council footpaths are rotted and chipped. Can landowners be compelled to fix and maintain?”

ANSWER – Manager Development Services

1. There are no specific By-laws or clauses contained within existing Council By-laws that would assist to compel property owners to maintain buildings to a prescribed standard, mainly because By-laws, in particular, have no effect on private land. Whilst Council By-laws No.3 and No.4 contain clauses regulating the amenity of Council open space and the prevention of damage to buildings and structures on roads, these clauses do not extend to facades of buildings that abut Council roads. The only other mechanism available to Council

would be to exercise the 'unsightly conditions' provision under the Local Nuisance and Litter Control Act 2016 (LNLCA). The test for what constitutes 'unsightly conditions' is onerous, with Council having to prove that the premises, by virtue of their appearance, are causing an actual nuisance or harm, as distinct from simply being visually offensive.

2. There are no specific By-laws available to Council that can assist in this regard. Many of the verandahs that are displaying excessive wear and tear along Jetty Road at Glenelg have been in situ for quite some time, prior to any encroachment agreement requiring a minimum standard of upkeep. Whilst Council can compel a landowner to make a structurally unsound verandah safe (pursuant to the Planning, Development and Infrastructure Act 2016), it cannot require a landowner to restore a verandah to a prescribed standard where there is no prior agreement in place. The Council could seek to enter into retrospective encroachment agreements with individual landowners, although this would require an amendment to the Encroachment Policy, which will be informed by prior public consultation. The Council does provide incentives to improve the amenity of a private structure over public land, in the form of heritage and shopfront grants. In this regard, the opportunity exists to better target these grants for the specific purpose of supporting the restoration of private structures over public land, and shopfront façade repair.
3. Only if the damage is determined by Council's Consulting Engineer to be dangerous or structurally unsound, in which case an order can be issued under the Planning, Development and Infrastructure Act 2016 to undertake prescribed remedial works. However, being on Council land, the Council is jointly responsible for any repairs as the 'landowner' if not the owner of the structure. In other circumstances, and in the absence of any prior agreement between Council and the landowner, the Council is limited to requesting that the damage is repaired rather than enforcing the matter.

11.2.2 Remediation of Broadway/Moseley Roundabout – Councillor Miller
(Report No: 171/23)

Councillor Miller asked the following question:

“Can Administration provide an update on the remediation of the Broadway/Moseley St roundabout by SA Water and the scope of the remediation?”

Background

Following SA Water works months ago, a Norfolk Island Pine was removed and the roundabout still has not been remediated at what is a popular and public locale.

ANSWER – Traffic and Transport Lead

The roundabout at the intersection of Moseley Street and Broadway, Glenelg South was recently impacted by emergency sewer repair works undertaken by SA Water, including removal of a Norfolk Island Pine tree. Reinstatement of the infrastructure affected (road surface, concrete kerbing and brick paving) was undertaken by contractors on behalf of SA Water.

The City of Holdfast Bay commenced discussions with SA Water regarding the Norfolk Island Pine previously located within the roundabout, as there were concerns raised regarding its proximity, and risk of future damage, to SA Water assets.

The City of Holdfast Bay is currently negotiating a payment in lieu of reinstatement, which will allow the City to arrange for the installation of alternative plants and landscaping, to remediate the roundabout.

An agreement has not been reached as yet with SA Water on quantum of the payment. Once agreement has been reached, we will plan the remediation of the roundabout.

11.2.3 Somerton Surf Life Saving Club Restaurant and Function Centre Sub-Lease – Councillor Bradshaw (Report No: 169/23)

Councillor Bradshaw asked the following questions:

1. “What date was the Sublease Executed?”
2. Did Gambell & Sutton P/L appeal the CAP regarding trading hours and if so when and what was the outcome?
3. Has a second valuation been conducted, if so by whom and when will Elected Members be made aware of that outcome?”

Background

Whilst trading hours were set down by the CAP on 27 April 2022, it is my understanding the Sub-Lessee (Gambell & Sutton P/L) appealed to the ERD Court regarding those restricted hours.

Council approved the sub-lease on the term that a review of the rent be conducted prior to one year after the execution date of the sub-lease, with the rent to be informed by the new Independent Valuation. The Confidential Minutes of 9 August 2022 are available on the Hub for reference.

ANSWER – Manager Development Services

1. The sub-lease was executed on 25 October 2022 for commencement on 27 October 2022.
2. The Somerton Surf Life Saving Club (the Club) appealed the prior decision of the Council Assessment Panel (CAP) to the Environment, Resources and Development (ERD) Court, seeking to challenge the limitations to the hours of operation imposed as part of the conditions of the planning approval. Specifically, the Club sought to activate trade on Mondays and Tuesdays, being days on which the bistro and function centre were to remain closed. The appeal was put to the Council meeting 9 August 2022, where Council resolved not to accede to the request for longer trading hours. The matter was then returned to the CAP meeting held on 26 October 2022, where Council's decision for the venue to remain closed on Mondays and Tuesdays was upheld. The ERD Court was advised of the decision by both Council and the CAP, where the matter did not proceed further.
3. One of the conditions for Council's approval of the sub-lease was that the rent is reviewed prior to one year after the execution date of the sub-lease, with the rent to be informed by a new independent valuation. Council Administration commissioned the new valuation on 13 April 2023, so this is progressing on schedule for a report to come back to Council in late July 2023. The valuation is being undertaken by McGees, with the previous valuation undertaken by M3 Property. McGees previously undertook the rent valuations for both the Broadway Kiosk and the new Kingston Park Kiosk, so we will have a very good understanding of where the rent should sit for the Somerton SLSC.

12. MEMBER'S ACTIVITY REPORTS - Nil**13. MOTIONS ON NOTICE****13.1 Motion on Notice – Leave of Absence - Councillor Miller (Report No: 165/23)****Motion****C230523/7441****That Council grant Councillor Miller a leave of absence for the meeting of 13 June 2023.**

Moved Councillor Shewin, Seconded Councillor Smedley

Carried

13.2 **Motion on Notice – Raising Elected Member Awareness to Development Applications - Councillor Fleming (Report No: 166/23)**

Motion

C230523/7442

That Ward Councillors are informed of development applications that are out for public notification, which come before the Council Assessment Panel for a decision, so that they are made aware of any impending proposals of note and what involvement, if any, they wish to have in the process. Alerts to Ward Councillors can be provided by way of an email containing a link to the relevant plans and documentation on the SA Planning Portal.

Moved Councillor Fleming, Seconded Councillor Miller **Carried Unanimously**

14. **ADJOURNED MATTERS - Nil**

15. **REPORTS OF MANAGEMENT COMMITTEES AND SUBSIDIARIES**

15.1 **Minutes – Jetty Road Mainstreet Committee – 3 May 2023 (Report No: 159/23)**

Motion

C230523/7443

That Council notes the minutes of the Jetty Road Mainstreet Committee of 3 May 2023.

Moved Councillor Kane, Seconded Councillor Abley **Carried Unanimously**

16. **REPORTS BY OFFICERS**

16.1 **Items in Brief (Report No: 164/23)**

These items were presented for the information of Members.

After noting the report any items of interest were discussed and, if required, further motions proposed.

Motion

C230523/7444

That the following items be noted and items of interest discussed:

1. **Glenelg North Seawall Design**
2. **Local Government Association - Dog and Cat Management Board Nomination Update**
3. **Local Government Association - Public Health Council Nomination Update**
4. **Correspondence from Minister Szakacs MP**
5. **ANZAC Day Events**
6. **Libraries Board Innovation Grant – ‘Lit For Life’**
7. **Mini ‘Meet the Machines’ Event**

Moved Councillor Lonie, Seconded Councillor Fleming **Carried Unanimously**

16.2 Monthly Financial Report – 30 April 2023 (Report No: 174/23)

Attached were the financial reports as at 30 April 2023. They comprised a Funds Statement and a Capital Expenditure Report for Council's Municipal activities and Alwyndor Aged Care. The adjusted forecast budget included the carried forward amount as approved by Council on 23 August 2022 and the three quarterly budget updates approved by Council on 25 October 2022, 14 February 2023 and 26 April 2023.

No changes to Alwyndor and Municipal budgets were recommended at this time but the report highlights items that show a material variance from the YTD budget.

Motion**C230523/7445**

That Council receives the financial reports and budget update for the 10 months to 30 April 2023 and notes:

- **no change to the Municipal activities 2022/23 revised budget forecast; and**
- **no change to the Alwyndor Aged Care 2022/23 revised budget forecast.**

Moved Councillor Smedley, Seconded Councillor Snewin **Carried Unanimously**

16.3 Personal Mobility Device Use in South Australia (Report No: 170/23)

The Department for Infrastructure and Transport was seeking feedback from the community on whether people want the South Australian Government to enable ongoing use of electric scooters (e-scooters), electric skateboards (e-skateboards) and other personal mobility devices (PMDs) on the road network in South Australia.

The aim is to ensure that any future framework for the use of PMDs, including for private purposes, on public roads and paths is safe for all road users. The engagement period was 11 April 2023 to 21 May 2023.

On 26 April 2023, Council was advised of the engagement via Items in Brief (Council Report No: 132/23). Council requested that a formal response from Council be prepared for submission to the engagement. A proposed response was prepared and provided as Attachment 1. An extension was arranged in order for the response to be submitted after the consultation officially closes.

Motion**C230523/7446**

That Council endorses the suggested response provided as Attachment 1.

Moved Councillor Abley, Seconded Councillor Kane

Carried Unanimously

16.4 Adelaide Beach Management Review (Report No: 172/23)

The Adelaide Beach Management Review is a 12-month project, facilitated by the Department for Environment and Water (DEW). The project is currently in the consultation period, where the community has an opportunity to provide feedback from 28 April to 9 June 2023. This report is detailing a submission from the City of Holdfast Bay in response to this consultation.

Motion**C230523/7447**

That Council approves the tabled updated submission in response to the Adelaide Beach Management Review consultation, subject to minor amendments.

Moved Councillor Lonie, Seconded Councillor Smedley **Carried Unanimously**

16.5 Developing a Poultry Policy (Report No: 161/23)

A motion was raised at the Council meeting held 13 December 2022 to introduce a poultry policy to provide clarity for residents wanting to introduce poultry onto their property. Administration examined and reviewed the poultry regulations across eight metropolitan councils. As a result, a guideline was determined to be the most effective tool to provide clarity for residents, with the *Local Nuisance and Litter Control Act 2016* utilised to deal with the most common complaints for residents who do not observe guidelines and wish to keep poultry within the residential areas of the City of Holdfast Bay.

Motion**C230523/7448****That Council:**

- 1. endorses the 'Guideline For Keeping Poultry' with the amended wording to reflect 'The keeping of roosters or peacocks in residential areas is prohibited' and;**
- 2. develops a draft By-law for consideration to cover poultry, including prohibiting the keeping of roosters as part of the By-law review process in 2025.**

Moved Councillor Miller, Seconded Councillor Fleming **Carried Unanimously**

17. ITEMS IN CONFIDENCE**17.1 Event Activation** (Report No: 162/23)**Motion – Exclusion of the Public – Section 90(3)(g) Order****C230523/7449**

- 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: 162/23 Event Activation 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: 162/23 Event Activation on the following grounds:
 - g. pursuant to section 90(3)(g) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information concerning matters that must be considered in confidence in order to ensure that the Council does not breach any duty of confidence, or breach any other legal obligation or duty because Council has signed a Non-Disclosure Agreement with the South Australian Tourism Commission.
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 Abley **Carried Unanimously**

RETAIN IN CONFIDENCE - Section 91(7) Order

C230523/7450

That having considered Agenda Item 17.1 162/23 Event Activation in confidence under section 90(2) and (3)(g) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report and minutes be retained in confidence until the event organisers make their public announcement and/or the Chief Executive Officer is authorised to release the documents when the official announcement is made and that this order be reviewed every 12 months.

Moved Councillor Kane, Seconded Councillor Abley

Carried Unanimously

17.2 **Event Activation (Report No: 163/23)**

Motion – Exclusion of the Public – Section 90(3)(d) Order

C230523/7451

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: 163/23 Event Activation 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: 163/23 Event Activation on the following grounds:
 - 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.

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 Bradshaw, Seconded Councillor Lonie **Carried Unanimously**

Loritz Circus Pty Ltd, a Gold Coast based company, submitted an event application to host the Great Moscow Circus utilising Wigley Reserve from Monday 30 October 2023 – Monday 13 November 2023.

Given the inherent high-risk nature of the event it was put to Council for consideration.

Motion

That Council:

1. approves granting Loritz Circus Pty Ltd a licence to operate the Great Moscow Circus on Wigley Reserve in accordance with the City of Holdfast Bay's event terms and conditions; and
2. that a licence fee of \$15,000 (ex GST) be charged, plus a refundable bond of \$20,000 to be paid before bump in commences.

RETAIN IN CONFIDENCE - Section 91(7) Order

3. That having considered Agenda Item 17.2 163/23 Event Activation in confidence under section 90(2) and (3)(d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments and minutes relevant to this item be retained in confidence for a period of 12 months and/or the Chief Executive Officer is authorised to release the documents when an event is publicly announced and that this order be reviewed every 12 months.

Moved Councillor Patton, Seconded Councillor Lonie

Lost

Division Called

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

Those voting for: Councillors Patton, Snewin, Lonie, Smedley (4)

Those voting against: Councillors Kane, Abley, Fleming, Bradshaw, Miller, O'Donohue (6)

Mayor Wilson declared the motion

Lost

17.3 **Tramside Kiosk Lease (Report No: 173/23)**

Motion – Exclusion of the Public – Section 90(3)(b)&(d) Order C230523/7452

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: 173/23 Tramside Kiosk Lease 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: 173/23 Tramside Kiosk Lease 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 would prejudice the commercial position of the Council; and
 - 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.

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 Miller, Seconded Councillor Bradshaw **Carried Unanimously**

Councillor Snewin left the meeting at 8.06pm

Adjournment**C230523/7453**

1. That the report be adjourned until the next Council meeting on the basis that further information relating to the rationale for the calculation of the lease fee is required.

RETAIN IN CONFIDENCE - Section 91(7) Order

2. That having considered Agenda Item 17.3 Report No: 173/23 Tramside Kiosk Lease in confidence under section 90(2) and (3)(b)&(d) 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 for the duration of the approved lease period (provided always that the release of the report and minutes is subject to the redaction of any financial information contained therein).

Moved Councillor Fleming, Seconded Councillor Miller

Carried Unanimously

Councillors Abley, Bradshaw and Fleming spoke to the motion. Councillor Smedley, as the mover, has the right of reply.

Conflict of Interest

Councillor Fleming declared a general conflict of interest for Item 17.4 **Jetty Road Masterplan Investment and Design Parameters** (Report No: 168/23). The nature of the general conflict of interest (pursuant to Section 74 and 75A of the *Local Government Act 1999*) was that the project may need to be considered by the Council Assessment Panel in the future.

Councillor Fleming dealt with the general conflict of interest by making it known and leaving the meeting at 8.10 pm.

17.4 **Jetty Road Masterplan Investment and Design Parameters** (Report No: 168/23)**Motion – Exclusion of the Public – Section 90(3)(b) Order****C230523/7454**

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: 168/23 Jetty Road Glenelg Masterplan Investment and Design Parameters 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: 168/23 Jetty Road Glenelg Masterplan Investment and Design Parameters 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 proposing to conduct business; and the information would prejudice the commercial position 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 Abley

Carried Unanimously

RETAIN IN CONFIDENCE - Section 91(7) Order

C230523/7455

That having considered Agenda Item 17.4 168/23 Jetty Road Glenelg Masterplan Investment and Design Parameters in confidence under section 90(2) and (3)(b) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report and minutes be retained in confidence for a period of six months and/or the Chief Executive Officer is authorised to release the documents when a public announcement is made and that this order be reviewed every 12 months.

Moved Councillor Smedley, Seconded Councillor Abley

Carried Unanimously

18. RESOLUTIONS SUBJECT TO FORMAL MOTIONS - Nil

19. URGENT BUSINESS – SUBJECT TO THE LEAVE OF THE MEETING - Nil

Councillor Fleming re-joined the meeting at 8.23pm

The Mayor noted that no members of the public had attended the meeting to make a submission to Council and the one hour period had concluded.

20. CLOSURE

The Meeting closed at 8.23pm.

CONFIRMED 13 June 2023

MAYOR