



Brighton Council

**MINUTES OF THE ORDINARY COUNCIL MEETING
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.35 P.M. ON TUESDAY,
17th FEBRUARY 2015**

PRESENT: Cr Foster (Mayor); Cr Curran (Deputy Mayor); Cr Garlick;
Cr Geard; Cr Gray; Cr Jeffries; Cr Owen; Cr Taylor and Cr
Williams

IN ATTENDANCE: Mr R Sanderson (General Manager); Mr G Davoren
(Deputy General Manager); Mrs J Banks (Governance
Manager); Mr H Macpherson (Manager Asset Services)
and Mr J Dryburgh (Manager Development Services)

1. CONFIRMATION OF MINUTES:

1.1 CONFIRMATION OF MINUTES OF THE PLANNING AUTHORITY
MEETING OF 20th JANUARY 2015.

*Cr Gray moved, Cr Curran seconded that the Minutes of the Planning Authority
Meeting of the 20th January 2015, be confirmed.*

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Owen	
Cr Taylor	
Cr Williams	

1.2 CONFIRMATION OF MINUTES OF THE ORDINARY COUNCIL MEETING OF 20th JANUARY 2015.

Cr Curran moved, Cr Owen seconded that the Minutes of the Ordinary Council Meeting of the 20th January 2015, be confirmed.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Owen	
Cr Taylor	
Cr Williams	

2. APPLICATIONS FOR LEAVE OF ABSENCE:

All members were present.

3. PUBLIC QUESTION TIME AND DEPUTATIONS:

There was no requirement for public question time.

4. DECLARATION OF INTEREST:

In accordance with Part 5, Section 48 of the *Local Government Act 1993*, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have an interest in any item on the agenda; and

Part 2 Regulation 8 (7) of the *Local Government (Meeting Procedures) Regulations 2005*, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have, a pecuniary interest in any item on the agenda.

Accordingly, Councillors are requested to advise of any interest they may have in respect to any matter appearing on the agenda, or any supplementary item to the agenda, which the Council has resolved to deal with, in accordance with Part 2 Regulation 8 (6) of the *Local Government (Meeting Procedures) Regulations 2005*.

There were no declarations of interest.

5. REPORTS FROM COUNCILLORS:

5.1 MAYOR’S COMMUNICATIONS:

FILE REFERENCE: 0205-6

AUTHOR: Mayor
(Cr T Foster)

The Mayor’s communications were as follows:

- Jan 22 Australia Day Reception at the Civic Centre.
- Feb 03 Ron Sanderson, James Dryburgh and I met with Nic Hansen at his Harvest Lane Property then toured the land he recently acquired from the Barwick Estate.
- Feb 05 Ron Sanderson, Greg Davoren and I met with Tony and Ingrid Harrison. Main discussion centred around the upcoming meeting with Minister Peter Gutwein.
- Feb 11 Ron Sanderson, Deputy Mayor Barbara Curran and I attended the meeting at Hadleys Hotel called by Minister Peter Gutwein to discuss Council mergers.
- Feb 11 Taswater Owner Reps Quarterly Briefing by Chairman and CEO.
- Feb 11 Meeting of the Anzac day 2015 committee.
- Feb 12 Attended Derwent Valley Council workshop.
- Feb 13 LGAT General Meeting at the Brighton Civic Centre.
- Feb 16 Meeting with CMCA Representatives.
- Feb 17 Meeting with Nic Hansen.
- Feb 17 Ordinary Council Meeting.

RECOMMENDATION:

That the Mayor’s communications be received.

DECISION:

Cr Owen moved, Cr Garlick seconded that the report be received.

CARRIED

VOTING RECORD

- | In favour | Against |
|------------------|----------------|
| Cr Curran | |
| Cr Foster | |
| Cr Garlick | |
| Cr Geard | |
| Cr Gray | |
| Cr Jeffries | |
| Cr Owen | |
| Cr Taylor | |
| Cr Williams | |

5.2 REPORTS FROM COUNCIL REPRESENTATIVES WITH OTHER ORGANISATIONS:

FILE REFERENCE: 0205-6

Southern Waste Strategy Board Joint Authority – Cr Gray representative.

Cr Curran advised that she attended the STCA meeting on behalf of the Mayor and also attended (along with the Mayor and General Manger) the voluntary amalgamation discussions with the Local Government Minister Mr Gutwein.

Cr Gray gave an update on the Southern Waste Strategy Board Joint Authority. Cr Taylor advised he attended the funeral of Mark Jones (Southern Midlands Councillor)

Cr Geard attended a meeting of Hobart Dogs Club at Pontville Park to discuss proposed relocation.

Cr Jeffries moved, Cr Garlick seconded that the reports be received.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Owen	
Cr Taylor	
Cr Williams	

5.3 CORRESPONDENCE FROM SOUTHERN TASMANIAN COUNCILS ASSOCIATION (STCA), LGAT, TASWATER AND JOINT AUTHORITIES:

Correspondence and reports from the STCA, LGAT. Taswater and Joint Authorities e.g. Southern Waste Authority are received periodically by Council.

If any Councillor wishes to view documents received contact should either be made with the Governance Manager or General Manager.

6. NOTIFICATION OF COUNCIL WORKSHOPS:

In accordance with the requirements of the Local Government (Meeting Procedures) Regulations 2005, it was reported that there were no workshops held since the last Council meeting.

(This includes workshop, seminar or meeting, other than a meeting that is conducted by or on behalf of the council for the councillors.)

7. NOTICE OF MOTION:

There were no notices of motion.

8. CONSIDERATION OF SUPPLEMENTARY ITEMS TO THE AGENDA:

In accordance with the requirements of Part 2 Regulation 8(6) of the Local Government (Meeting Procedures) Regulations 2005, the Council, by absolute majority may approve the consideration of a matter not appearing on the agenda, where the General Manager has reported:

- (a) the reason it was not possible to include the matter on the agenda, and
- (b) that the matter is urgent, and
- (c) that advice has been provided under Section 65 of the *Local Government Act 1993*.

RECOMMENDATION:

That the Council resolve by absolute majority to deal with any supplementary items not appearing on the agenda, as reported by the General Manager in accordance with the provisions of the Local Government (Meeting Procedures) Regulations 2005.

DECISION:

The General Manager advised that legal advice had been received after the Agenda had closed that a few of Council's delegations were not up-to-date and required Council approval due to an impending prosecution. Supplementary Item 11.3 - Delegations - Amendments was tabled for Council consideration.

Cr Owen moved, Cr Geard seconded that the supplementary item be received.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	

Cr Gray
Cr Jeffries
Cr Owen
Cr Taylor
Cr Williams

9. REPORTS FROM COMMITTEES:

There were no Committee meetings held in February

10. COUNCIL ACTING AS PLANNING AUTHORITY:

In accordance with the provisions of Part 2 Regulation 25 of the Local Government (Meeting Procedures) Regulations 2005, the intention of the Council to act as a planning authority pursuant to the *Land Use Planning and Approvals Act 1993* is to be noted. In accordance with Regulation 25, the Council will act as a planning authority in respect to those matters appearing under Item 10. on this agenda, inclusive of any supplementary items.

10.1 PETITION TO AMEND SEALED PLAN – 2, 4 & 5 TIVOLI ROAD, OLD BEACH:

FILE REFERENCE: SUB 2007/54
AUTHOR: Senior Planner (S Wells)
Applicant: Nil
Owner: Various
Location: 2, 4 & 5 Tivoli Road, Old Beach
Application no.: Nil
Zoning: Residential & Recreation
Use Status: Not applicable
Relaxation to standards: Not applicable
Date accepted: Not applicable
Date advertised: Not applicable
Decision required: Not applicable

Background:

At the December 2014 Planning Authority meeting it was resolved to proceed with the serving of a petition to amend sealed plan 165009. The petition seeks to restore a restrictive covenant to the sealed plan and achieve compliance with conditions associated with the subdivision of the land.

Permit SUB 2007/54 provided for the residential subdivision of land located between the East Derwent Highway, Tivoli Road and Gage Road, Old Beach.

Permit SUB 2007/54 includes the following condition:

The Developer is to enter into a restrictive covenant to be registered on the title of Lots 50, 51 and 52 as shown on the Plan accompanying the Permit and shown as Attachment "A" to the effect that no more than one residential dwelling is to be constructed on those lots. The covenant is to be registered for the benefit of the title of Gage House located immediately adjacent to the western boundary of the site. In the event that the owner/s of Gage House do not agree to the registration of the covenant for the benefit of their title then the covenant must be registered for the benefit of lots 45, 46, 47, 48, 49, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62.

A covenant, in the latter form, consistent with this condition was registered on Lot 50 (2 Tivoli), Lot 51 (4 Tivoli) and Lot 52 (5 Tivoli) but was subsequently removed.

The petition has been served on all relevant owners consistent with the requirements of the *Local Government (Building and Miscellaneous Provisions) Act 1994* (LGBMP). No objections have been received. Correspondence from C & G Edwards, S Young and P & P Hall supports the petition but suggests minor modification.

Consultation:

Council's Legal Advisor; Manager Development Services

Risk Implications:

Section 63A of the Act provides that a planning authority that fails to take all reasonable steps to ensure that its planning scheme is complied with may be liable to a fine of up to \$50,000.

Financial Implications:

The recommendation would incur some minor administration costs.

Judicial Review:

This report details the reasons for the recommendation. Any alternative decision requires a full statement of reasons in order to maintain the integrity of the planning process and to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2005*.

Report

Section 104 of the LGBMP allows Council to cause an amendment to a sealed plan to be made if, after 28 days, no person has asked to be heard in opposition to the petition.

The sole correspondence received on this matter suggests a minor modification to the covenant, namely that the following words “for the benefit of the title of Gage House” replace the words “with the owners for the time being of gage House”. The suggestion has been discussed with staff of Abetz Curtis, who consider it unnecessary and advise as follows:

Restrictive covenants run with the title to property. They do not disappear or lapse when the current owners of the land that benefits, cease to be the owners.

You can re-assure the Edwards’s that the restrictive covenant which is proposed for the lots adjoining Gage House is a covenant to the benefit of the title of the Gage House property as the Tribunal’s decision required.

As no objection has been raised to the substantive matter, there is no obstacle to Council causing the amendment to be made. If Council resolves to do this, the necessary documents will be lodged with the Land Titles Office who will in turn make the necessary amendments.

The petition will resolve the restrictive covenant to the form required by the subdivision permit and therefore ensure ongoing compliance with the *Land Use Planning and Approvals Act 1993*.

It should be noted that Council is not a party to the covenant and has no legal ability to enforce the covenant. Enforcement, if ever necessary, will be a civil matter between relevant parties. Further, the covenant does not preclude applications being made for planning or building approval and any such application would need to be considered against the relevant planning provisions and building legislation.

Options:

1. As per the recommendation; or
2. Not seek to amend the sealed plan.

RECOMMENDATION:

That Council authorise the General Manager to cause the amendment to be made to sealed plan 165009 to include the following covenant consistent with the terms of Condition 70 of Permit SUB 2007/54:

“The owner or owners of Lots 50, 51, and 52 on the Plan covenant with the owners for the time being of Gage House, which is situated at 239 Old Beach Road, Old Beach in Tasmania, and comprised in Certificate of Title Volume 130209/1 to the intent that the burden of this covenant may run with and bind the covenantor’s lot and every part thereof and that the benefit thereof may be annexed to and devolve with each and every part of the land comprised in Certificate of Title Volume 130209 Folio 1 to observe the following stipulation:

Not to erect or cause to be erected or to maintain any more than one (1) dwelling on each of the said burdened lots.”

DECISION:

Cr Taylor moved, Cr Curran seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Owen	
Cr Taylor	
Cr Williams	

11. REPORTS FROM OFFICERS:

11.1 MONTHLY FINANCE REPORT AS AT 31 JANUARY 2015:

FILE REFERENCE: 0103
AUTHOR: Deputy General Manager
(Mr G Davoren)

Background:

The finance reports were submitted for consideration.

They comprised the summarised financial position and revenue and expenses of the Council for the first seven months of the 2014/15 financial year.

Consultation:

Nil

Risk Implications:

Nil

Financial Implications:

Not Applicable

Other Issues:

Nil

Assessment:

Nil

Options:

1. As per the recommendation.
2. Not receive the reports.

RECOMMENDATION:

That the reports be received.

DECISION:

Cr Garlick moved, Cr Curran that the report be received.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Owen	
Cr Taylor	
Cr Williams	

11.3 DELEGATIONS – AMENDMENTS:

FILE REFERENCE: 0056

AUTHOR: Governance Manager
(Mrs J Banks)

Background:

Legislation enables Council to delegate some of its functions to assist in the smooth and efficient running of Council affairs.

In order for Council to make a valid delegation, legislation requires:

- a. Council must have authority from legislation to delegate the Function
- b. The legislation must allow Council to delegate the Function to the Delegate
- c. Council must resolve to make the delegation
- d. Council must resolve to seal an Instrument of Delegation

In addition, Council may resolve to allow the delegate to sub-delegate the Function.

There have been changes to different legislation and e.g the new Plumbing Regulations (2014) have retained many of the old provisions but under different numbering.

Consultation:

Abetz Curtis

Risk Implications:

Council may incur legal costs if demonstrated that Council's delegation/s are invalid.

Financial Implications:

None unless delegations are deemed invalid and action is taken against Council.

Other Issues:

None identified.

Options:

1. As per the recommendation.
2. Do nothing.

RECOMMENDATION:

That Council resolve to delegate the following functions and powers to the General Manager in accordance with Section 22 of the *Local Government Act 1993*; and that the General Manager sub-delegate functions and powers in accordance with Section 64 of the *Local Government Act 1993*, and if at any time the General Manager is unable to act, Council delegates the Function to the person acting as the General Manager at the time.

Plumbing Regulations 2014

1.	R.49 – Maintenance and management of on-site waste water management systems.	Sub-delegation required to the Brighton Council Permit Authority
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▪ **Building Act 2000**

1.	S.84 – Conditions of plumbing permit binding.	Sub-delegation required to the Brighton Council Permit Authority
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▪ **Justices Act 1959**

1.	S.27 – Proceedings may be commenced by complaint.	Sub-delegation required to the Brighton Council Permit Authority
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The Delegations are made on the following conditions:

1. The Delegation is subject to the conditions or restrictions (if any) outlined in the table above.
2. The Delegation is subject to such policies, policy guidelines and directions as the authority may from time to time approve.
3. The Delegation is subject to the Council’s by-laws or the provisions of any Act.
4. That the general Instruments of Delegation in relation to the Act listed above be signed and sealed by the authority.

DECISION:

Cr Owen moved, Cr Geard seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	

Cr Owen
Cr Taylor
Cr Williams

12. QUESTION ON NOTICE:

There were no questions on notice.

The meeting closed at 6.15 pm.

Confirmed:

(Mayor)

Date:

17th March 2015