



Brighton Council

**MINUTES OF THE ORDINARY COUNCIL MEETING
OF THE BRIGHTON COUNCIL, HELD IN THE COUNCIL CHAMBERS,
COUNCIL OFFICES, 1 TIVOLI ROAD, OLD BEACH
AT 5.30 P.M. ON TUESDAY, 19 MARCH 2024**

PRESENT: Cr Curran (Acting Mayor); Cr De La Torre; Cr Irons; Cr McMaster; Cr Murtagh; Cr Owen and Cr Whelan

IN ATTENDANCE: Ms J Banks (Director Governance & Regulatory Services); Mr D Allingham (Director Development Services), Ms G Browne (Director Corporate Services) and Mr L Wighton (Acting Director Asset Services).

1. Acknowledgement of Country

2. Apologies / Applications for leave of absence

Cr Owen moved, Cr Murtagh seconded that Cr Gray and Cr Geard (in transit) be granted leave of absence.

Cr De La Torre has requested leave of absence for the April Ordinary Council Meeting.

CARRIED

VOTING RECORD

In favour

Cr Curran
Cr De La Torre
Cr Irons
Cr McMaster
Cr Murtagh
Cr Owen
Cr Whelan

3. Confirmation of Minutes

3.1 Ordinary Council Meeting

The Minutes of the previous Ordinary Council Meeting held on the 20th February 2024 are submitted for confirmation.

RECOMMENDATION:

That the Minutes of the previous Ordinary Council Meeting held on 20th February 2024, be confirmed.

DECISION:

Cr De La Torre moved, Cr Owen seconded that the Minutes of the Ordinary Council Meeting held on the 20th February 2024, be confirmed.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr De La Torre	
Cr Irons	
Cr McMaster	
Cr Murtagh	
Cr Owen	
Cr Whelan	

4. Declaration of Interest

In accordance with the requirements of Part 2 Regulation 8 of the *Local Government (Meeting Procedures) Regulations 2015*, the chairperson of a meeting is to request Councillors to indicate whether they have, or are likely to have, a pecuniary interest or conflict of interest in any item on the Agenda.

In accordance with Section 48(4) of the *Local Government Act 1993*, it is the responsibility of councillors to then notify the general manager, in writing, the details of any interest(s) that the councillor has declared within 7 days of the declaration.

There were no declarations of interest.

5. Public Question Time and Deputations

In accordance with the requirements of Part 2 Regulation 8 of the *Local Government (Meeting Procedures) Regulations 2015*, the agenda is to make provision for public question time.

There was no requirement for public question time.

6. Reports from Council**6.1 Mayor's Communications**

The Mayor's communications were as follows:

21/2 Meeting with TCF Chairperson (+ General Manager in attendance)

22/2 STRWA Local Government Forum

26/2 Jobs Hub Business Networking Event

- 27/2 Meeting with Peter Moate
- 29/2 Meeting with Bill Gentile and Brian Mitchell’s Advisor
- 5/3 Meeting with Julie Collins MP (+ General Manager in attendance)
- 5/3 Council Workshop
- 6/3 Meeting with John Tucker MP
- 7/3 ALGA & Minister Bowen Teams update
- 13/3 LGAT Mayors Workshop
- 14/3 LGAT General Meeting
- 14/3 GMC Meeting

RECOMMENDATION:

That the Mayor’s communications be received.

DECISION:

Cr Murtagh moved, Cr Irons seconded that the Mayor’s communications be received.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr De La Torre	
Cr Irons	
Cr McMaster	
Cr Murtagh	
Cr Owen	
Cr Whelan	

6.2 Reports from Council Representatives

- Cr Curran mentioned Leon Compton’s radio broadcast from Brighton on the 22nd February 2024. Cr Owen and Mayor Gray also spoke on radio. Cr Curran also thanked and commended the BYAG and Brighton Primary School students who also spoke on radio
- Cr Curran attend LGAT’s Deputy Mayor workshop and General Management meeting on 13th and 14th March.

RECOMMENDATION:

That the verbal reports from Council representatives be received.

DECISION:

Cr Owen moved, Cr Irons seconded that the verbal reports from Council representatives be received.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr De La Torre	
Cr Irons	
Cr McMaster	
Cr Murtagh	
Cr Owen	
Cr Whelan	

7. Miscellaneous Correspondence

- Letter from Secretary, Department of State Growth dated 3rd March 2024 regarding the draft River Derwent Ferry Service Masterplan.
- Letter from Craig Farrell MLC dated 27th February 2024 regarding Brighton Youth Action Group.

8. Notification of Council Workshops

In accordance with the requirements of Section 8(2)(c) of the Local Government (Meeting Procedures) Regulations 2015.

One (1) Council workshop has been held since the previous Ordinary Council meeting.

A workshop was held on the 5th March 2024 at 4.45 pm to provide an update on various Parks and Recreation items.

Attendance: Cr Curran, Cr Irons, Cr McMaster, Cr De La Torre, Cr Owen and Cr Gray.

Apologies: Cr Geard, Cr Murtagh and Cr Whelan

9. Notices of Motion

There were no Notices of Motion.

10. 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 2015*, 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*.

The General Manager advised that there were no supplementary agenda items.

11. Reports from Committees

There were no Committee Meetings held in March 2024.

12. Council Acting as a Planning Authority

Under the provisions of the *Land Use Planning and Approvals Act 1993* and in accordance with Regulation 25 of the *Local Government (Meeting Procedures) Regulations 2015*, the Council will act as a planning authority in respect to those matters appearing under Item 12 on this agenda, inclusive of any supplementary items.

There were no Planning Authority items in March 2024.

13. Officers Reports

13.1 Delegations - *Land Use Planning & Approvals Act 1993*

Author: Director, Governance & Regulatory Services (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.

The Local Government Association of Tasmania in conjunction with Simmons Wolfhagen Lawyers receive an update 6 monthly on Council's Delegations. Changes or amendments were received on 1 February 2024 via LGAT. There are a number of changes to the *Land Use Planning & Approvals Act 1993*.

Consultation

Director Development Services, Senior Planner and Director Governance & Regulatory Services

Risk Implications

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

Financial Implications

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

Strategic Plan

S4.2: Be well-governed.

Social Implications

None identified.

Environmental or Climate Change Implications

None identified.

Economic Implications

None identified.

Other Issues

Nil

Assessment

Additional Sections to be included in the LUPA Instrument of Delegation. These Delegations are to the General Manager who will sub-delegate the relevant sections to appropriate employees.

Below is a summary of additional delegations with Officer comments.

Section	Details	Officer Comment
<u>35F(1)</u> and <u>40K</u>	Provide Commission with report in relation to draft LPS following public exhibition only where: <ul style="list-style-type: none"> No representations have been received with the exception of TasWater stating they have no interest. No issues have arisen since the initiation or certification of the draft amendment which indicates that there is any need to modify the amendment prior to its final approval except for minor corrections. 	This delegation only relates to those times when no representations have been received and TasWater have advised that they do not have an interest in the proposal and do not wish to be involved in any future hearings.
<u>35H</u> and <u>40L</u>	Attendance at hearings at Tasmanian Planning Commission	
<u>35M(2)</u>	Give notice of approval of Local Provisions Schedule	This delegation relates to notification by the Planning Authority after the Commission has granted approval – ie advertising, etc
<u>40W(2)</u>	Give notice in relation to a request to consider a permit in combination with a request to initiate draft amendment to LPS	Officers to advise applicant whether an application for a concurrent permit application is agreed to
<u>S40A</u> , <u>40B</u> and <u>40V</u>	Provide material requested by TPC	These sections require the planning authority to respond to the TPC directions within 7 days, Penalties apply for non-compliance with time frames.

<u>40(1) and 40U</u>	Additional Information requests	Relates to provisions in the Act which allow for further information requests to be made prior to request being submitted to Planning Authority for consideration.
<u>40D(c)</u>	Direction from Commission to prepare a draft amendment of LPS	
<u>40E(1)(a)</u>	Withdrawal of draft amendments: (a) with the agreement of the person who made the request under s37(1)	Delegation is limited only to where a person who has made a section 37 request seeks to withdraw that request
<u>40O</u>	Modifications of draft amendments where notice given under 40N1(a)	40O requires the planning authority to comply with a direction of the TPC to provide a modified draft amendment under 40N1(a).
<u>40S</u>	Give notice of draft amendment	The planning authority is required to give notice of the approval of an amendment via public notice
<u>42C</u>	Grant extension of time	
<u>42D</u>	Correct a mistake in a permit	
<u>43</u>	Make minor amendments to permits	
<u>48A</u>	Notice to remove signs	
<u>48AA</u>	Enforcement of major projects permits	A planning authority must, within the ambit of its power, enforce the observance of any condition or restriction to which a major project permit is subject (Per LGAT deles)
<u>59(2)</u>	Service Notice on applicant and representors where Council have failed to determine an application for permit	This relates to failure to make a decision within statutory time frames.
<u>60S(5)</u>	Refund of ordinary permit fees where declaration of major project is amended, and includes additional area of land	
<u>61</u>	Appeals against planning decisions	In addition, Planning Appeal Policy 7.5 addresses the process should planning authority vote against officer's recommendation

A council, in writing, may delegate with or without conditions to the General Manager, any of its functions or powers under any Act: s.22 *Local Government Act 1993* (subject to restrictions).

The General Manager, in writing, may delegate to an employee of the council (a) any functions or powers under any Act, other than this power of delegation; and (b) any functions or powers delegated by the council which the council authorised the general manager to delegate: s.64 *Local Government Act 1993*.

If an Act confers a power on a person to delegate a function or power, the person may, in accordance with the Act, delegate the function or power to (a) a person by name; or (b) the holder of a particular office or position by reference to the title of the office or position concerned, whether or not the office or position is vacant at the time of the delegation: s.23AA(1) of the *Acts Interpretation Act 1931*.

If a function or power is delegated to a particular officer or the holder of a particular office or position (a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office or position when the function or power was delegated ceases to be that officer or the holder of that office or position; and (b) the function or power may be performed or exercised by the person for the time being occupying or acting in the office or position concerned: s.23AA(5) of the *Acts Interpretation Act 1931*.

A function or power that has been delegated may, notwithstanding the delegation, be exercised by the delegator: s.23AA(6) of the *Acts Interpretation Act 1931*.

Options

1. As per the recommendation.
 2. Change the recommendation.
 3. 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.

Section 6 of the *Land Use Planning & Approvals Act 1993* gives a planning authority/Council, authority to delegate the Function to a person employed by the authority/Council.

The Delegations are made on the following conditions:

1. The Delegation is subject to the conditions or restrictions (if any) outlined in the table below.
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.

Land Use Planning & Approvals Act 1993

1.	S.35F(1) - Report by planning authority to Commission about exhibition; and S.40K - Report to Commission about draft amendments
2.	S.35H - Hearings; and S.40L - Hearings
3.	S.35M(2) - Notice of approval of Local Provisions Schedules
4.	S.40(1) - Additional information may be requested S.40U - Additional information
5.	S.40A - Review of requirement for additional information S.40B - Review of refusal of request to amend LPS S.40V - Review of requirement for additional information
6.	S.40D(c) - Preparation of draft amendments
7.	S.40E(1)(a) - Withdrawal of draft amendments
8.	S.40O - Modifications of draft amendments
9.	S.40S - When amendments of LPS come into effect
10.	S.40W(2) - Determination of amendment where concurrent permit application sought
11.	S.42C - When permit that relates to LPS amendment takes effect
12.	S.42D - Correction of mistakes in permit
13.	S.43 - Minor amendment of permit
14.	S.48A - Notice to remove signs
15.	S.48AA - Enforcement of major project permits
16.	S.53(5A) - Extension to s.57 & s.58 permit
17.	S.54 - Additional information
18.	S.55 - Correction of mistakes
19.	S.56 - Minor amendments to permits
20.	S.57(2) - Application for discretionary permit - to refuse to grant a permit within 7 days
21.	S. 57(3) - Applications for Discretionary Permits
22.	S.57(5) - To extend the 14 day representation period

23.	S.57(6) - To grant a permit: <ul style="list-style-type: none"> - where no more than one objection is received for a residential use; - where no objections were received for a non-residential use; and to refuse to grant a permit for which an extension of time has not been granted by the applicant
24.	S.57(6) and 6A) - To extend the 42 day time period
25.	S.57A - Mediation
26.	S.58 - Approval of permitted applications
27.	S.59(2) - Failure to determine an application for a permit
28.	S. 60 – Council responding and issuing notices relating to compliance with certain permit conditions
29.	S. 60H(3) – Minister may request information from Council or relevant State Authority
30.	S. 60S(4)(b) – Refund of ordinary permit where declaration of Major Project is made
31.	S.60S(5) - Effect on planning matters of declaration of major project
32.	S.60ZX(1) – Provision to Panel of Further Information
33.	S.61 - Appeals against planning decisions
34.	S.63B - Notice of suspected contravention etc may be given
35.	S.64 – Civil Enforcement proceedings
36.	S.65A - Issue and serve an infringement notice
37.	S.65B - Issue a notice of intention to issue enforcement notice
38.	S.65C - Enforcement Notice
39.	S.65D - Requirements of Enforcement Notice
40.	S.65F - Notice of intention to cancel a permit to be issued before permit cancelled
41.	S.71 - Planning authority may enter into agreements
42.	S.73 - Bonds and guarantees
43.	S.73A - Payments and contributions for infrastructure
44.	S.74(3) - Duration of agreement
45.	S.75 - Amendment of agreements
46.	S.78 - Registration of agreements

DECISION:

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

CARRIED

VOTING RECORD

<u>In favour</u>	<u>Against</u>
Cr Curran	
Cr De La Torre	
Cr Irons	
Cr McMaster	
Cr Murtagh	
Cr Owen	
Cr Whelan	

14. Questions on Notice

There were no Questions on Notice for the March meeting.

Meeting closed: 5.40pm

Confirmed: _____
(Mayor)

Date: _____
16 April 2024