

Council Meeting

Council Chamber
Civic Centre
Boxshall Street Brighton

Tuesday
18 October 2022
at 6.30pm



Minutes

PRESENT:

Chairperson: Cr Alex del Porto (Mayor)

Councillors: Cr Hanna El Moullem (Deputy Mayor)
Cr Laurence Evans OAM
Cr Clarke Martin
Cr Jo Samuel-King MBBS
Cr Fiona Stitfold

Officers: Mick Cummins – Chief Executive Officer
Tilla Buden – Director Community and Customer Experience
Jill Colson – Director Corporate Services
Matthew Cripps – Director City Planning and Amenity
Mark Varmalis – Director Environment, Recreation and Infrastructure
Terry Callant – Manager Governance
Keryn Fisher – Manager Communication and Engagement
Bill Shanahan – Manager Finance
Jason Stubbs – Manager Commercial Services
Tom Vercoe – Manager Open Space, Recreation and Wellbeing
Robert Lamb – Governance Officer

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The Mayor declared the Council Meeting open at 6.30pm and advised members of the public gallery that the meeting is being recorded and streamed live on the internet to enhance the accessibility of Council meetings to the broader Bayside community.

The Mayor invited Cr Stitfold to read the prayer.

1. Prayer

Cr Stitfold read the prayer at the commencement of the meeting.

O God
Bless this City, Bayside,
Give us courage, strength and wisdom,
So that our deliberations,
May be for the good of all,
Amen

2. Acknowledgement of Country

Cr Martin read the acknowledgement of the original inhabitants of this land.

- ◆ Bayside City Council proudly acknowledges the Bunurong People of the Kulin Nation as the Traditional Owners and Custodians of this land, and we pay our respects to their Elders, past, present and emerging as well as any Aboriginal or Torres Strait Islander community members with us today.
- ◆ Council acknowledges the Bunurong's continuing relationship to the land and waterways and respects that their connection and spiritual identity is maintained through ancient ceremonies, songlines, dance, art and living culture.
- ◆ Council pays tribute to the invaluable contributions of the Bunurong and other Aboriginal and Torres Strait Island Elders who have guided and continue to guide the work we do.

3. Apologies

It is recorded that an apology was received from Cr Castelli.

Moved: Cr Evans OAM

Seconded: Cr El Moullem (Deputy Mayor)

That the apology from Cr Castelli be received and leave of absence granted for the 18 October 2022 Council Meeting.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Clarke Martin, Jo Samuel-King MBBS,
 Fiona Stitfold, Laurence Evans OAM and Hanna El Moullem
 (Deputy Mayor) (6)
AGAINST: Nil (0)

CARRIED

4. Disclosure of Conflict of Interest of any Councillor

Cr Martin declared a general conflict of interest in Item 10.2 – Dendy Street Beach Erosion Control – Long Term Options Update October 2022, given conflicting duties in his role of Councillor and as a proposed candidate in the State election.

5. Adoption and Confirmation of the minutes of previous meeting

September 2022.

Moved: Cr El Moullem (Deputy Mayor) Seconded: Cr Evans OAM

That the minutes of the Bayside City Council Meeting held on 20 September 2022, as previously circulated, be confirmed as an accurate record of proceedings.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Clarke Martin, Jo Samuel-King MBBS,
Fiona Stiffold, Laurence Evans OAM and Hanna El Moullem
(Deputy Mayor) (6)
AGAINST: Nil (0)

CARRIED

6. Public Question Time

1. Ms Helen Tachos

Ms Helen Tachos submitted a question regarding footpaths and the community access facilities in Bayside, and Ms Tachos asked:

Question

- a) With our rates increasing by the maximum allowable amount each year, when will residents located in East Brighton (Alex Del Porto's Bleazby ward which borders Nepean Hwy- North Rd- Union Street- Centre Rd and Hawthorn Rd) start seeing some investment in our area on footpaths and a dedicated council facility for the community to use and for council office?
- b) The last time we met with the council they advised the Anglers club was available in 3 years as kindergartens are utilising this whilst upgrades are occurring to existing kindergartens. Is it reasonable to wait for 3 years for a community space and fair when you compare masses of expenditure in building/sporting works, in Hampton, Brighton, Sandringham and Beaumaris?

Response from the CEO

- a) *Council's investment in footpaths is guided by its Road Management Plan which was adopted by Council on 15 June 2021. This public document is a requirement under the Road Management Act 2004 and it outlines the decision making framework on which footpaths are inspected, maintained and selected for renewal across Bayside. In 2023, \$2.5 million is being spent on renewal and upgrade of footpaths across Bayside, including renewal in Stone Street, Brighton East.*
- a) *North Brighton Occasional Care is currently located at the building formerly occupied by the Anglers Club, while the North Brighton Children's Centre is undergoing building works. The works are anticipated to be completed in the first quarter of 2023. The building will be vacant from this time, and Council will work with the community to identify the need and best use of the site. Council is currently progressing on the future of Billilla as a community venue in Bleazby Ward. Council has also recently introduced an approach to make Pavilions more accessible when not required for sporting purposes. This will add further capacity for community groups to find venues in future.*

2. Mr Michael Heffernan

Mr Michael Heffernan submitted a question regarding a Supreme Court matter between Brighton Foreshore Association and Council, and Mr Heffernan asked:

Question

As it is now just over a year since the Appeal Court of the Victorian Supreme Court ordered the Brighton Foreshore Association to pay the legal costs of \$278000 incurred by Bayside Council in defending the Brighton Foreshore Association's appeal against the building of the Dendy Street Life Saving Club, my question is

- (a) Has the Brighton Foreshore Association actually acknowledged that they owe the Bayside Council and its residents the sum of \$278000– which are the legal costs incurred by the Bayside Council in defending the Victorian Supreme Court Appeal action brought by the losing party in the matter the Brighton Foreshore Association
- (b) If the answer to the above question is yes when can Council expect to receive the funds, or if the answer is No can Bayside Council now commence legal proceedings against the Brighton Foreshore Association to recover the legally sanctioned amount that it owes to Bayside Council and its residents.

Response from the CEO

Consent Orders are currently being sought through the Courts to confirm the quantum that would be payable to Bayside City Council in relation to the Supreme Court and Appeals Court hearings.

Council is not in a position to seek the payment of any costs until the Courts have issued the above sought orders.

3. Mr George Reynolds

Mr George Reynolds submitted a question regarding Council's audited accounts for 2021–22, and Mr Reynolds asked:

Question

In Note 9.2 to the audited accounts for 2021-22, Council reported a combined surplus of income, which was greater than its expenses, of \$43.047million.

- (a) How much of this surplus was attributed to income from the General Rate, and
- (b) How much of the surplus was attributable to Own-source Revenue?

Response from the CEO

Mr Reynolds is referring to the reconciliation of the statement of cash flows which shows a cash surplus from operations of \$51.089 million which is used to fund Council's capital and financing expenditure of \$55.718 million. The statement of cash flows on page 124 of the report confirms this resulted in a cash deficit of \$4.629 million for the year. Council does not separate its cash surplus from operations between general rates and own source revenue.

4. Mr George Reynolds

Mr George Reynolds submitted a further question regarding Council's audited accounts for 2021-22, and Mr Reynolds asked:

In Note 5.2(b) to the 2022 accounts, Council reported that a sum of \$18.05 million had been paid to Sandringham College to purchase Right of Use Assets. and These assets are to be amortised over the 21 years of the leasing contract. This will set the minimum rental to be recovered by Council, from its sub-tenants, of more than \$1million per year,

- (a) Has Council managed to find a tenant or tenants who have agreed to pay a sufficient rental for Council to be compliant with s 111 1(a) of the Local Government Act 2020
- (b) Has Sandringham College been advised of the provisions of the accounting standards AASB 15 and AASB 16 that require the undepreciated value of the Right of Use Assets to be returned to the lessee if and when the lease is surrendered for any reason?

Response from the CEO

- (a) *Council has not entered into a beneficial enterprise pursuant to section 110 of the Local Government Act 2020 that would give rise to a requirement to comply with section 111 1(a).*
- (b) *There is no requirement for VSBA to return the undepreciated value of the right of use asset if the 21-year community use agreement was to terminate early.*

5. Mr Sam Seoud

Mr Sam Seoud submitted a question regarding disabled parking in Bayside, and Mr Seoud asked:

Question

I believe there are a total of 3 'disabled parking spots' on the Church St Shopping Strip in Bayside. Could the Bayside City Council or the Councillors Of Bayside please explain to me in what way these spots are considered accessible or disability friendly?? This needs to be addressed as a matter of urgency.

Response from the CEO

The Church Street Activity Centre contains a total of 12 disabled parking spaces. This consists of eight spaces located in off-street parking areas and four spaces located in on-street parking areas on Church Street. Council acknowledges that improvements need to be made to these spaces and plans to undertake works to ensure that all on-street disabled parking spaces within Church Street are brought up to specification with the current Australian Standard for accessible and disabled parking in early 2023.

7. Petitions to Council

There were no petitions submitted to the meeting.

10.1 PROPOSED LEASE TO SAME PTY LTD FOR A NEW LEASE AT DENDY STREET BEACH CAFE, BRIGHTON

Corporate Services - Commercial Services
File No: PSF/22/34 – Doc No: DOC/22/307439

Moved: Cr El Mouallem (Deputy Mayor)

Seconded: Cr Stitfold

That Council:

1. commences the statutory procedures under Section 115 of the Local Government Act 2020 (the Act), to enter into a new Lease with Same Pty Ltd, on the following terms: 15 year initial term and option for a further 6 year term, commencing annual rent \$80,000 plus GST, turnover rent of 7.5% per annum in excess of \$1,000,000 gross sales and base rent escalation of 5% fixed per annum, for the occupation of part of the Dendy Street Beach Pavilion, Brighton
2. works with the tenant to explore further sustainability options as part of their Environmental Management Plan
3. authorises the Director Corporate Services to undertake the administrative procedures necessary to enable Council to carry out its functions under section 115 of the Act in relation to the Lease proposed and in accordance with Council’s Community and Stakeholder Engagement Policy 2021
4. gives Public Notice on Council’s website outlining the proposal in accordance with Section 115 of the Act
5. commences a community engagement process in accordance with Section 115(4) of the Act
6. following the consideration of any submissions, receives a further report at a future Council meeting.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Clarke Martin, Jo Samuel-King MBBS, Fiona Stitfold, Laurence Evans OAM and Hanna El Mouallem (Deputy Mayor) (6)
AGAINST: Nil (0)

CARRIED

10.2 DENDY STREET BEACH EROSION CONTROL – LONG TERM OPTIONS UPDATE OCTOBER 2022

Environment, Recreation and Infrastructure - Open Space, Recreation and Wellbeing
File No: PSF/22/27 – Doc No: DOC/22/302246

It is recorded that Cr Martin declared a general conflict of interest in this item given conflicting duties in his role of Councillor and as a proposed candidate in the State election. Cr Martin left the meeting at 6.53 pm.

Moved: Cr El Moullem (Deputy Mayor) Seconded: Cr Evans OAM

That Council receives a report on or before the 20 December 2022 Council Meeting outlining the outcomes and findings of the investigation works and stakeholder consultation regarding long term erosion control options at Dendy Street Beach.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Jo Samuel-King MBBS, Fiona Stitfold, Laurence Evans OAM and Hanna El Moullem (Deputy Mayor) (5)
AGAINST: Nil (0)

CARRIED

It is recorded that Cr Martin was not present in the meeting during debate on this item or when the vote was taken on this item.

It is recorded that Cr Martin returned to the meeting at 6.59 pm.

10.3 HERITAGE PROTECTION FOR 31-33 ELIZA STREET, BLACK ROCK

City Planning and Amenity - Urban Strategy
File No: PSF/22/35 – Doc No: DOC/22/307777

Moved: Cr Evans OAM

Seconded: Cr Martin

That Council:

1. notes the report
2. supports the preparation of a Planning Scheme Amendment to apply the Heritage Overlay onto 31-33 Eliza Street, Black Rock on a permanent basis
3. seeks authorisation from the Minister for Planning to prepare and exhibit a Planning Scheme Amendment.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Clarke Martin, Jo Samuel-King
MBBS, Fiona Stiffold, Laurence Evans OAM and Hanna El
Mouallem (Deputy Mayor) (6)
AGAINST: Nil (0)

CARRIED

10.4 IRONMAN 2022 AND 2023

Environment, Recreation and Infrastructure - Open Space, Recreation and Wellbeing
File No: PSF/22/27 – Doc No: DOC/22/308609

Moved: Cr Martin

Seconded: Cr Evans OAM

That Council approves the extended road closure end time endorsed in the Events in Public Places Policy from 11.30am to 1.00pm on 13 November 2022 and 12 November 2023 to conduct the Ironman Melbourne event.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Clarke Martin, Jo Samuel-King
MBBS, Fiona Stitfold, Laurence Evans OAM and Hanna El
Mouallem (Deputy Mayor) (6)
AGAINST: Nil (0)

CARRIED

10.5 ANNUAL REPORT 2021–22

Corporate Services - Governance
File No: PSF/22/31 – Doc No: DOC/22/266380

Moved: Cr Martin

Seconded: Cr Samuel-King MBBS

That Council resolves that this report fulfils Council's requirements to consider the Annual Report for the period 2021–22 in accordance with the *Local Government Act 2020* and the *Local Government (Planning and Reporting) Regulations 2020*.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Clarke Martin, Jo Samuel-King MBBS, Fiona Stitfold, Laurence Evans OAM and Hanna El Muallem (Deputy Mayor) (6)

AGAINST: Nil (0)

CARRIED

10.7 INSTRUMENTS OF DELEGATION FROM COUNCIL TO CHIEF EXECUTIVE OFFICER AND MEMBERS OF COUNCIL STAFF

Corporate Services - Governance
File No: PSF/21/23 – Doc No: DOC/22/287629

Moved: Cr Martin**Seconded: Cr Samuel-King MBBS**

That Council:

1. notes the exercise of powers conferred by the legislation referred to in the attached Instruments of Delegation
2. adopts the Instrument of Delegation from Council to the Chief Executive Officer (Schedule 5, as outlined in Attachment 1) dated 19 October 2022
3. adopts the Instrument of Delegation from Council to members of Council staff (Schedule 6, as outlined in Attachment 2) dated 19 October 2022
4. signs and affixes the common seal to the Instruments of Delegation
5. notes that upon fixing the common seal, the Instruments of Delegation come into force immediately
6. notes that on the coming into force of the Instruments of Delegation, all previous Instruments of Delegation from Council to the Chief Executive Officer and Members of Council Staff are revoked.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Clarke Martin, Jo Samuel-King MBBS, Fiona Stiffold, Laurence Evans OAM and Hanna El Muallem (Deputy Mayor) (6)
AGAINST: Nil (0)

CARRIED**NOTE:** Item 10.7 was **CARRIED** as part of a block motion.

10.8 COUNCIL ACTION AWAITING REPORT

Corporate Services - Governance
File No: PSF/22/31 – Doc No: DOC/22/301778

Moved: Cr Evans OAM

Seconded: Cr Stitfold

That Council notes the Council Action Awaiting Report.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Clarke Martin, Jo Samuel-King
MBBS, Fiona Stitfold, Laurence Evans OAM and Hanna El
Mouallem (Deputy Mayor) (6)
AGAINST: Nil (0)

CARRIED

12. Urgent Business

There were no items of urgent business submitted to the meeting.

13. Notices of Motion

13.1 NOTICE OF MOTION - 323 - FORMATION OF A SOUTH EASTERN COUNCILS BIODIVERSITY NETWORK

Environment, Recreation and Infrastructure - Open Space, Recreation and Wellbeing
File No: PSF/21/23 – Doc No: DOC/22/238349

It is recorded that Cr Samuel-King sought leave to amend Notice of Motion 323 – Formation of South Eastern Councils Biodiversity Network.

Procedural Motion

Moved: Cr Evans OAM

Seconded: Cr El Muallem (Deputy Mayor)

That Cr Samuel King be granted leave to amend Notice of Motion 323 – Formation of South Eastern Councils Biodiversity Network.

CARRIED

Moved: Cr Samuel-King MBBS

Seconded: Cr Evans OAM

That Council receives a report at its 20 December 2022 Council Meeting exploring the establishment of a South Eastern Councils Biodiversity Network (consisting of the cities of Hobsons Bay, Melbourne, Port Phillip, Kingston, Frankston, Mornington Shire and Bayside). The network to comprise Councillors and Council officers from the network councils in the South Eastern metropolitan region, with the purpose of:

1. information sharing
2. collaboration in relation to joint projects
3. advocacy in relation to common objectives
4. working with State and Federal Governments on environment initiatives
5. exploring wildlife corridors across the region
6. engaging with traditional owners across the region
7. protecting endangered species.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Clarke Martin, Jo Samuel-King MBBS, Fiona Stitfold, Laurence Evans OAM and Hanna El Muallem (Deputy Mayor) (6)

AGAINST: Nil (0)

CARRIED

13.2 NOTICE OF MOTION - 324 - IMPLEMENTATION OF FORESHORE MASTERPLANS

Environment, Recreation and Infrastructure - Open Space, Recreation and Wellbeing
File No: PSF/22/27 – Doc No: DOC/22/296986

It is recorded that Cr Samuel-King sought leave to amend Notice of Motion 324 – Implementation of Foreshore Masterplans.

Procedural Motion

Moved: Cr Evans OAM

Seconded: Cr El Moullem (Deputy Mayor)

That Cr Samuel King be granted leave to amend Notice of Motion 324 – Implementation of Foreshore Masterplans.

CARRIED

Moved: Cr Samuel-King MBBS

Seconded: Cr Evans OAM

That Council considers as part of the 2023–24 Budget process, a review of Bayside’s Foreshore Masterplans to:

- a. reconsider the need for any outstanding capital projects to be delivered; with a focus on implementing capital works that are essential for safety, and potentially shelving or modifying, other, less vital capital works
- b. consider the implications of proposed projects to make sure there is:
 - i. a net sum gain from a vegetation and habitat perspective
 - ii. maintenance of all permeable surfaces and the creation of rain gardens and water for wildlife opportunities, to minimise coastal erosion and protect biodiversity.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Clarke Martin, Jo Samuel-King MBBS, Fiona Stiffold, Laurence Evans OAM and Hanna El Moullem (Deputy Mayor) (6)
AGAINST: Nil (0)

CARRIED

13.3 NOTICE OF MOTION - 325 - BAYSIDE CHRISTMAS CAROLS IN THE PARK - MASS CHOIR

Corporate Services - Governance
File No: PSF/21/23 – Doc No: DOC/22/313778

Moved: Cr Samuel-King MBBS Seconded: Cr El Moullem (Deputy Mayor)

That Bayside City Council finds a way if at all possible to fully support a full, mass choir at this year's Christmas Carols in the Park. This includes the full complement of singers and instrumentalists (around 100 singers and 50 instrumentalists) and facilitates full rehearsals at the Brighton Town Hall.

The Motion was PUT and a **DIVISION** was called:

DIVISION: **FOR:** Crs Alex del Porto (Mayor), Clarke Martin, Jo Samuel-King MBBS, Fiona Stiffold, Laurence Evans OAM and Hanna El Moullem (Deputy Mayor) (6)
AGAINST: Nil (0)

CARRIED

The Chairperson declared the meeting closed at 7.51pm.