



Ordinary Meeting of Council Minutes

Monday 25 June 2012

The meeting commenced at 7.00pm

in the

Council Chamber

1230 Nepean Highway, Cheltenham

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Present: Cr John Ronke (Mayor)
Cr Arthur Athanasopoulos
Cr Ron Brownlees OAM
Cr Lewis Dundas
Cr Dan Moloney
Cr Paul Peulich
Cr Trevor Shewan
Cr Steve Staikos
Cr Rosemary West OAM

In Attendance: John Nevins - Chief Executive Officer
Paul Franklin – General Manager Corporate Services
Mauro Bolin – General Manager Community Sustainability
Rachel Hornsby – General Manager Environmental Sustainability
Elaine Sowerby – General Manager Organisational Development and Governance
Phil DeLosa – Program Leader Governance
Stephanie O’Gorman – Governance Officer
Kirsten Leiminger – Media Officer Communications & Public Affairs

1. Apologies:

There were no apologies submitted to the meeting.

2. Confirmation of the Minutes of Previous Meeting

Moved: Cr Peulich

Seconded: Cr Cr Moloney

That the Minutes of the Ordinary Meeting of Council held on 28 May 2012 and the Special Meetings of Council held on 18 June 2012 and 20 June 2012 be confirmed.

CARRIED

3. Foreshadowed Disclosure/s by Councillors, Officers or Contractors of any Conflict of Interest:

There were no foreshadowed disclosures.

4. Petitions

Moved: Cr Staikos

Seconded: Cr Peulich

That the petition relating to Planning Application KP-528/11 be referred to the Chief Executive Officer for response.

CARRIED

5. Presentation of Awards

The Mayor presented the Kingston Koorie Mob with the City of Kingston NAIDOC Award 2012 for excellence in advancement of Aboriginal People and Culture.

6. Reports from Village Committees

Clarinda/Clayton South/Oakleigh South

Village Committee Motion

The Village Committee recommends that Council consider options for finding a place for the Men's Shed in the local area and recommends that Keeley Park be looked at as a favourable option.

Moved: Cr Staikos

Seconded: Cr Athanasopoulos

That the Village Committee be advised that work is currently being undertaken to finalise a memorandum of understanding to locate a Men's Shed at the Old Scout Hall at Keeley Park in Clayton South.

CARRIED

7. Reports from Delegates Appointed by Council to various Organisations

Cr Staikos reported having attended the National General Assembly of the Australian Local Governance Association.

Cr West reported having attended the Municipal Association of Victoria Planning Advisory Committee Meeting.

Cr Peulich reported having attended the Audit Committee Meeting.

Moved: Cr Staikos

Seconded: Cr Moloney

That the delegates' reports be received and Councillors thanked for their reports.

CARRIED

8. Question Time

Jenny McGrath of Dingley Village asked,

"I understand that Councillors have had the Kingston Green Wedge Plan for about 8 weeks now,

(a) Why has it not yet been considered by Council?

(b) When will Council be considering and deciding on the plan?"

Response:

The CEO provided the following response'

"This is a significant issue for Council and Council is committed to this report being considered as soon as possible. The schedule of this report to Council will be discussed with Councillors in July."

9. Environmental Sustainability Reports

O 93 Climate Change and Biodiversity Reference Group Updated Terms of Reference

Moved: Cr West

Seconded: Cr Shewan

That Council resolves

1. to adopt an updated Terms of Reference for the Climate Change and Biodiversity Reference Group with the following changes:

- 1.1 Amend Part 4 Role of the Reference Group to:
 - Replace the word twice with *four times; and*
 - Delete the words: *two of;*
 - Restore the points from the initial terms of reference: *The Group would provide Council with specific feedback on the Greenhouse and Energy Management Strategy and the Biodiversity Strategy and on the implementation of these strategies.*
 - Add the words: The group will be able to make recommendations to Council.
- 1.2 Amend Part 5 Membership and Chairperson to add the words:
 - *Members may appoint alternates to attend when members are unavailable. The alternates will be able to attend all meetings as observers.*
- 1.3 Amend Part 6 Role of Council Staff to
 - Replace the words two months and one month with *two weeks and one week.*
- 1.4 Amend Part 7 Meeting Frequency and Duration to:
 - replace the words: Two meetings and two community forums with *Four meetings including where appropriate wider community forums;*
 - Add the words *where relevant* following the sentence The Reference Group meetings will be two hours long;
 - Add the words: *And they will include a reference group discussion at the end of the event.*
- 1.5 Restore Points 10 and 11 from the initial Terms of Reference:

Any Other Relevant Information

- This is an advisory group and will not be making decisions.
- If a Group member is unable to attend a meeting they can only send their nominated proxy who will be a member of the same group they represent.
- The meetings will take place at the Council Offices at 1230 Nepean Highway, Cheltenham commencing.
- Meeting dates will be set at the first meeting of the Group.

References

Councils draft Greenhouse and Energy Management Strategy

Biodiversity Strategy 2007-2012

2. That Councillor West be nominated chair of the Climate Change and Biodiversity Reference Group.

Note: Cr Peulich foreshadowed moving the officer recommendation with an amendment to Part 5 that the point 'two representatives per ward from environment groups' be removed if the motion is lost.

Cr Peulich requested that Points 1.1, 1.3, 1.4, 1.5 and Point 2 be put to the vote separately to Point 1.2.

1. to adopt an updated Terms of Reference for the Climate Change and Biodiversity Reference Group with the following changes:

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- Add the words: The group will be able to make recommendations to Council.

- 1.3 Amend Part 6 Role of Council Staff to

- Replace the words two months and one month with *two weeks and one week.*

- 1.4 Amend Part 7 Meeting Frequency and Duration to:

- replace the words: Two meetings and two community forums with *Four meetings including where appropriate wider community forums;*
- Add the words *where relevant* following the sentence The Reference Group meetings will be two hours long;
- Add the words: *And they will include a reference group discussion at the end of the event.*

- 1.5 Restore Points 10 and 11 from the initial Terms of Reference:

Any Other Relevant Information

- This is an advisory group and will not be making decisions.
- If a Group member is unable to attend a meeting they can only send their nominated proxy who will be a member of the same group they represent.
- The meetings will take place at the Council Offices at 1230 Nepean Highway, Cheltenham commencing.
- Meeting dates will be set at the first meeting of the Group.

References

Councils draft Greenhouse and Energy Management Strategy
Biodiversity Strategy 2007-2012

2. That Councillor West be nominated chair of the Climate Change and Biodiversity Reference Group.

CARRIED

A Division was called

DIVISION:

FOR: Crs Staikos, Athanasopoulos, Dundas, Brownlees, West, Shewan and Ronke (7)

AGAINST: Crs Peulich and Moloney (2)

CARRIED

- 1.2 Amend Part 5 Membership and Chairperson to add the words:
- *Members may appoint alternates to attend when members are unavailable. The alternates will be able to attend all meetings as observers.*

LOST

The resolution now reads as follows:

Moved: Cr West

Seconded: Cr Shewan

That Council resolves

1. to adopt an updated Terms of Reference for the Climate Change and Biodiversity Reference Group with the following changes:

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- 1.4 Restore Points 10 and 11 from the initial Terms of Reference:

Any Other Relevant Information

- This is an advisory group and will not be making decisions.
- If a Group member is unable to attend a meeting they can only send their nominated proxy who will be a member of the same group they represent.
- The meetings will take place at the Council Offices at 1230 Nepean Highway, Cheltenham commencing.
- Meeting dates will be set at the first meeting of the Group.

References

Councils draft Greenhouse and Energy Management Strategy
Biodiversity Strategy 2007-2012

2. That Councillor West be nominated chair of the Climate Change and Biodiversity Reference Group.

CARRIED

Procedural Motion

Moved: Cr Staikos

Seconded: Cr Brownlees

That the meeting be adjourned to later in the evening following the Special Meeting of Council.

CARRIED

The meeting was adjourned at 8.15pm.

Procedural Motion

Moved: Cr Brownlees

Seconded: Cr Staikos

That the meeting be resumed.

CARRIED

The meeting resumed at 9.01pm.

Procedural Motion

Moved: Cr West

Seconded: Cr Shewan

That the order of business be altered to consider Item O111 and that it be brought out of camera to be considered in the open part of the meeting.

Cr Moloney left the Council Chamber at 9.05pm.

Cr Peulich left the Council Chamber at 9.05pm.

Cr Peulich returned to the Council Chamber at 9.06pm.

Cr Moloney returned to the Council Chamber at 9.10pm.

CARRIED

A Division was called

DIVISION

FOR: Crs Staikos, Athanasopoulos, Dundas, Shewan, West and Ronke (6)

AGAINST: Crs Moloney and Brownlees (2)

Note: Cr Peulich left the Council Chamber before the vote on the Division at 9.12pm.

Note: Cr Peulich returned to the Council Chamber at 9.13pm.

O111 Notice of Motion No. 20/2012 – Cr West

Preamble:

Considering that:

1. At the City of Kingston, our Council deliberations and proper functioning are under attack verging on a witch hunt by Cr Paul Peulich; There is evidence that this witch hunt is orchestrated and coordinated by persons outside Council.
2. This is part of a pattern of intimidation by Cr Peulich and persons with whom he is associated outside Council, that began last year with pieces of ostensibly helpful advice over cups of coffee and that has now continued with character assassinations via notices of motion.
For instance:
 - Last year over coffee, Cr Peulich warned me that there was a dossier on me. He would not tell me who was the person who had the dossier. When I said I wasn't worried as I was confident I was complying with relevant local government laws, he said: "Rosemary, there is a message in this."

I asked what message? And he said "Back off." When I asked "Back off what," he said: "Back off on the Green Wedge."

- Cr Peulich moved three motions at the 27/2 ordinary meeting of Council and a further motion on 23/4 which falsely accused me (and in the 27/2 motions another councillor) of breaches of Council and State Government policy, with no evidence or grounds provided. One motion (on 23/4) called for Council to undertake investigations that are beyond the proper role and function of Council. References in Cr Peulich's 23/4 motion to my attendance at a Global Greenbelts Conference in Canada last year and the text of a confidential motion moved by Cr Peulich and adopted by Council on 27/2 indicate that the purpose of this campaign of intimidation and personal attack is to undermine Councillors who support the community's interests in and desire to protect Kingston's Green Wedge from urban or industrial development.
3. Councillor Peulich, announced at our 2 April Councillor briefing that he would not be supporting the Green Wedge Plan. At a Green Wedge Plan meeting last year, Cr Peulich used his influence to weaken the strong support for agriculture in the original draft Green Wedge Plan. This would contravene the best interests of the community, as expressed by overwhelming majorities of submitters and of the 800 participants in a representative survey, who said they wanted the Green wedge protected for parkland, environmental conservation, agriculture, recreation and open space. It would advance the interests of many of the 90 signatories to a petition presented by Cr Peulich on 26 March asking Council to remove the Urban Growth Boundary from around Kingston's Green Wedge.
 4. I am fairly sure that all councillors are aware that Cr Peulich is subject to influence from individuals from outside the council who hold no elected local government office. And most, I believe, can see that this influence is detrimental to Council's proper functioning and to our ability to make decisions in the best interests of our community. We are all aware that Cr Peulich had a poor understanding of the business of Council to begin with and that even now, he frequently asks for reports to be deferred "for more information" when it seems more likely that he either hasn't read or doesn't understand the material.

Yet, from his early months on Council, Cr Peulich would move elaborate notices of motion on matters of State policy, with sometimes a contrived Council angle by way of justification. In this he often went against the express wish of councillors to ask for officer reports and discussion time in councillor information sessions in order to provide better background for council decisions. For instance, a local drowning provoked a Peulich motion to require lifeguards on every beach and waterway, the Black Saturday fires provoked a motion asserting that Dingley Village residents were at risk from bushfires emanating from Braeside Park and calling for the park to be burnt off. Another motion required a Council submission to a Legislative Council inquiry into public transport. Sometimes, these would be followed by statements in Parliament quoting the Council

resolutions moved by Cr Peulich. In the latter case, the notice of motion lodged with Council was sent from the office of an MP.

Cr Peulich sometimes takes or makes mobile phone calls very late at night during meetings, on one recent occasion leaving a councilor information session to do so and returning with a typed and signed notice of motion.

5. The Ombudsman's *Investigation into the alleged improper conduct of councilors at Brimbank City Council (May 2009)...."identified the operation and governance of the council was influenced by individuals from outside the council who hold no elected local government office".* Council dysfunction and factionalism were also significant matters of concern for Mr George Brouwer's Brimbank report.

Moved: Cr West

Seconded: Cr Shewan

I move that:

- Council asks the Minister for Local Government to have the Ombudsman or the Municipal Inspectorate investigate whether persons outside Council are exercising an improper influence on Kingston Council through Cr Paul Peulich;
- Whether this influence is intended to improperly influence Council's upcoming decisions in relation to Kingston's Green Wedge Plan in order to benefit the green wedge landholders who signed a petition presented last month by Cr Peulich which asked Council to remove the Urban Growth Boundary from the Green Wedge, along with the various property consultants helping them to make their case.
- And whether such influence might provide a conflict of interest for Cr Peulich on matters including the Kingston Green Wedge;
- Council investigates whether Cr Peulich, by announcing on 2 April that he would not support the Green Wedge Plan, has demonstrated apprehended bias and should refrain from voting on this matter.

Cr Dundas left the Council Chamber at 9.33pm.

Cr Dundas returned to the Council Chamber at 9.38pm.

The Motion was **LOST**

A Division was called

DIVISION

FOR: Crs West and Shewan (2)

AGAINST: Crs Staikos, Peulich, Athanasopoulos, Dundas, Brownlees, Moloney and Ronke, (7)

Procedural Motion

Moved: Cr Shewan

Seconded: Cr Staikos

That the order of business be altered to consider Item 0100.

CARRIED

Procedural Motion

Moved: Cr Staikos

Seconded: Cr West

That the meeting be extended for one hour to 11.00pm.

CARRIED

O100 Ward Meeting Policy

Moved: Cr Staikos

Seconded: Cr Dundas

That the matter be deferred. Further, that Council notes that the previously adopted Ward Meeting Policy does not allow for any ward meetings within 6 months of a municipal election and therefore is inconsequential at this time. Council will consider the future of the ward meetings policy at its earliest convenience.

CARRIED

Note: Cr Shewan departed from the meeting at 10.21pm.

O 94 Review of Foreshore Subcommittee Terms of Reference

Moved: Cr Dundas

Seconded: Cr Peulich

That Council endorses the current existing terms of reference pending a review by the incoming council at a time that the incoming council deems appropriate.

CARRIED

O 95 - Contract 12/10 Tree Planting and Tree Establishment Services**Moved: Cr Staikos****Seconded: Cr Brownlees**

That Council resolves:

1. To award Contract 12/10, Tree Planting and Establishment Services, to Sevron Environmental Contractors Pty Ltd, as a lump sum contract for a four (4) year period, commencing on 1 October 2012 for an initial price of \$409,975.00p.a.; and
2. That the CEO or his delegated staff have authority to exercise the option to extend Contract 12/10 by two (2) years, subject to satisfactory performance of the contract.

CARRIED**A Division was called****DIVISION****FOR:** Crs Staikos, Athanasopoulos, Brownlees, Moloney, West, Peulich and Ronke (7)**AGAINST:** Cr Dundas (1)**O 96 Expenditure of the Foreshore Reserve Fund – June 2012****Moved: Cr Brownlees****Seconded: Cr Athanasopoulos**

That Council resolves to approve up to \$160,000 from the Foreshore Reserve Fund to be spent on the two projects listed in this report.

CARRIED

10. Community Sustainability Reports**O 97 Requests for Supplementary Grants****Moved: Cr Athanasopoulos****Seconded: Cr Staikos**

That Council resolves to:

1. Commit to provide \$20,000 of funding towards the purchase of a second marine rescue vessel for the Australian Volunteer Coastguard based at Carrum contingent upon the Coastguard securing funds other sources to facilitate the purchase of the vessel;
2. Fund the Chelsea Information and Support Service for an additional 'one off' payment for salary and workcover expenses of \$9,500 and undertake consultation with other Citizen's Advice Bureaus/Information and Support Services to understand the impact of industry salary increases and financial constraints and demand for service.

CARRIED**11. Organisational Development and Governance Reports****O 98 Caretaker Policy****Moved: Cr Brownlees****Seconded: Cr West**

That Council resolves:

1. To not allow the expenditure of Ward Funds during the election period;
and
2. To adopt the attached Caretaker Policy contained in Appendix 1.

CARRIED

O 99 Revised Instruments of Delegation**Moved: Cr Brownlees****Seconded: Cr Athanasopoulos**

That Council:

1. Resolve in the exercise of powers conferred by section 98(1) of the Local Government Act 1989 (the Act) and the other legislation referred to in the Instrument of Delegation to the Chief Executive Officer (as annexed), that:
 1. There be delegated to the person holding, acting in or performing duties of the Chief Executive Officer the powers, duties and functions set out in the Instrument of Delegation to the Chief Executive Officer, subject to the conditions and limitations specified that Instrument;
 2. The Instrument be sealed;
 3. The Instrument comes into force immediately the common seal of the Council is affixed to the Instrument;
 4. On coming into effect the previous version of the Instrument of Delegation to the Chief Executive Officer executed on 23 November 2009 is revoked; and
 5. The duties and functions set out in the Instrument must be performed, and the powers set out in the Instrument must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt.
 6. It is noted that Instrument includes a power of delegation to members of Council staff in accordance with section 98(3) of the Act.
2. Resolve in the exercise of powers conferred by section 98(1) of the Local Government Act 1989 (the Act) and the other legislation referred to in the Instrument of Delegation to the Members of staff (as annexed), that:
 1. There be delegated to the members of Council staff holding, acting in or performing duties of the offices or positions referred to in the attached Instrument of Delegation to Members of Council Staff, the powers duties and functions set out in that Instrument;
 2. The Instrument be sealed;

CARRIED

O 101 Assembly of Councillors

Moved: Cr Athanasopoulos

Seconded: Cr Staikos

That Council note the contents of this report for the public record.

CARRIED

O 102 Expenditure of Ward Funds Schedule

Moved: Cr Brownlees

Seconded: Cr Athanasopoulos

That Council approve the expenditure of ward funds in accordance with the table of Councillor requests.

CARRIED

O 103 Public Art Advisory Panel

Moved: Cr Staikos

Seconded: Cr Brownlees

That Council appoint Rochina Iannella and Tiziana Borghese as the two artistic advisors to the Public Art Advisory Panel for a two year tenure.

CARRIED

O 104 Adoption of 2012 Update to Council Plan and Strategic Resource Plan

Moved: Cr Staikos

Seconded: Cr Brownlees

That Council adopts the 2012 update to the Council Plan and the revised Strategic Resource Plan in accordance with the requirements of the Local Government Act 1989 sections 125 & 126.

CARRIED

12. Corporate Services Reports**O 105 Draft Domestic Animal Management Plan 2012-2016****Moved: Cr Athanasopoulos****Seconded: Cr Moloney**

That Council receive the information and commence the final round of public consultation.

CARRIED**O 106 Briefing on the Proposed Reg Marlow Reserve Dog Off Leash Area****Moved: Cr Brownlees****Seconded: Cr West**

That Council declares the proposed dog off leash area the area pursuant to S26 of the Domestic Animals Act 1994 and publishes the required notices in the Government Gazette and a local newspaper as follows – the southern boundary by the eastern fence line to the first eastern entry gate, bordering the footpath across to the western fence line located south of the covered seating area, then returning to the southern most boundary of the reserve. Further that the designation of the area be reviewed by June 2014 and the results of the review be reported to Council.

CARRIED**O 107 Procurement Policy Update – Financial Year 2011/12****Moved: Cr Staikos****Seconded: Cr Athanasopoulos**

That Council resolve to adopt the updated Procurement Policy and Procedures pursuant to the requirements of Section 186A of the Local Government Act.

CARRIED

O 108 Contract No. 12/66 Australia Post – Post Bill Pay Agreement**Moved: Cr Brownlees****Seconded: Cr Athanasopoulos**

That Council accept the contract renewal from Australia Post for Contract No. 12/66 – MAV Umbrella agreement with Australia Post for Post billpay services for a period of three years from 1 June 2012 to 31 May 2015 at the rates set out in Schedule 3 with an estimated annual cost of \$300,000 per annum, total contract cost being approximately \$900,000.

CARRIED**O 109 81 Albert Street, Mordialloc Consultation Plan****Moved: Cr Staikos****Seconded: Cr Brownlees**

That Council note the contents of the report and endorse the consultation plan.

CARRIED**O 110 Section 223 Committee Report on Optus Lease Proposal Shirley Burke Theatre****Moved: Cr West****Seconded: Cr Brownlees**

That following receipt of correspondence to Council from Optus' representatives, Council terminates the consideration of a request to lease and any further request from a telco provider to utilise the roof area of the Shirley Burke Theatre will be treated as a new application.

CARRIED

13. Notices of Motion

The Notice of Motion was dealt with immediately following consideration of agenda item O93 (refer to page 10).

Procedural Motion

Moved: Cr Staikos

Seconded: Cr Moloney

That the meeting be extended for 15 minutes to 11.15pm.

CARRIED

14. Urgent Business

Moved: Cr Staikos

Seconded: Cr Athanasopoulos

That Council consider an item of Urgent Business to declare a document confidential.

CARRIED

Moved: Cr Staikos

Seconded: Cr Athanasopoulos

1. That Council declares the document/report presented to a Councillor Information Session on 13 March 2012 titled "Analysis of Recent Ward Councillor Meetings, Review of Ward Councillor Meetings Policy and Expenditure of Ward Fund Policy" as confidential pursuant to section 89(2) of the Local Government Act on the ground that it may prejudice the Council. Further that Council considers the future status of the document at a subsequent CIS meeting.

CARRIED

A Division was called:

DIVISION

FOR: Crs Staikos, Athanasopoulos, Brownlees, West and Ronke (5)

AGAINST: Crs Dundas, Peulich and Moloney (3)

2. That all confidential items for which confidential status is due to expire are brought to the attention of the Mayor and Councillors prior to their expiry and with adequate opportunity for Council to consider them at a Council meeting.

CARRIED

Note: Cr Peulich requested that Part 1 be put to the vote separately to Part 2.

15. Items In Camera

There were no Items in Camera.

The meeting closed at 11.05pm.

Confirmed.....

His Worship, The Mayor, 23 July 2012