



**ORDINARY  
MEETING OF  
COUNCIL**

**MINUTES**

**27 JULY 2009**

# MINUTES OF THE ORDINARY MEETING OF THE PORT PHILLIP CITY COUNCIL HELD ON 27 JULY, 2009 IN THE COUNCIL CHAMBER, ST KILDA TOWN HALL

The meeting opened at 6.02pm.

## **PRESENT**

Cr. O'Connor (Chairperson), Cr. Bolitho, Cr. Klepner, Cr. Middleton, Cr. Powning, Cr Thomann, Cr. Touzeau.

## **IN ATTENDANCE**

Kay Rundle Chief Executive Officer, Greg Wood Acting Executive Director Community Development & Planning, Cathy Henderson Acting Executive Director Organisation Systems and Support, David Filmler Chief Financial Officer, Sam Hewett Acting Executive Director Community Assets & Services, Damien Burgess Manager, Infrastructure Services, Fiona Blair Manager Parks and Open Spaces, Darko Popovski Acting Coordinator Economic Development, Norm McClelland Governance Advisor, Raoul Wainwright Sustainable Transport Planner.

*In the spirit of Reconciliation, the Chairperson acknowledged the people and elders of the Eastern Kulin Nation, who have traditional connections and responsibilities of the land on which Council meets.*

## **1. APOLOGIES**

Nil.

## **2. CONFIRMATION OF MINUTES**

**MOVED** Crs Middleton/Touzeau

That the Minutes of the Ordinary Meeting of the Port Phillip City Council held on 13 July 2009 be confirmed.

**A vote was taken and the MOTION was CARRIED.**

## **3. DECLARATIONS OF CONFLICTS OF INTEREST**

Nil.

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## 4. PETITIONS AND JOINT LETTERS

### Item 1

A Petition was received from 273 people regarding DJ's Diner at 70 White Street, South Melbourne.

The Petition states the following:

*'We the undersigned, strongly petition the City of Port Phillip to show support for DJ's Diner and abort its attempt to evict DJ's Diner from the current premises and allow DJ's Diner to continue trading at its current location'.*

### **Officer's Comment**

- The background to this commercial tenancy is that a Planning Permit for the vacant caretaker's residence to be used as a takeaway shop was issued in 1990. The original lease commenced in 1991 for 6 years with a further term of 6 years. The current lease commenced in 2003 for 3 years with a further three year option, expiring on 30 April 2009. Mr Xiao Hua Wu has been operating DJ's Diner at 70 White Street, South Melbourne for the past 6 years. The site is on crown land.
- The lease agreement for the property expired on 30 April 2009. The Tenant is now occupying the property on a month by month basis.
- On 18 June 2009, Council officers served a Notice to Quit, in order to obtain vacant possession of the site on 24 July 2009. This was due to:
  - Significant termite damage to the structure of the building;
  - The building is at the end of its useful life; and
  - In its current state it does not meet Health / Food Service standards.
- It is expected that the property will most likely be demolished although this has not received formal DSE approval as yet. Fencing will be erected around the building in the week commencing 27 July.
- Council officers had previously issued two Notices to Quit to the tenant, following a structural engineer report which found that the building represented a safety risk and either required demolition or the replacement of all stud walls. The tenant obtained their own consultants' reports which suggested that the extent of works required was much less than the council's report. The tenant's reports and correspondence were considered by council officers and in the end the tenant did see out the term of their lease.

**MOVED Crs Klepner/Touzeau**

That Council:

1. Notes the concerns set out in the petition about DJ's Diner at 70 White St South Melbourne, a property on Crown Land;
2. Notes that lease ended on 30 April 2009 and the property is now vacated; and
3. Notes that officers will liaise with the Department of Sustainability and Environment regarding the Department's intentions for the future of the property, with officers to provide further information to councillors following the discussions with DSE.

**A vote was taken and the MOTION was CARRIED.**

## 5. SEALING SCHEDULE

Nil.

**6. PUBLIC QUESTION TIME**

Nil.

**7. COUNCILLOR QUESTION TIME**

Nil.

## **8. PRESENTATION OF REPORTS**

The order of business was as follows:

1. UPDATE ON ST KILDA TRIANGLE
2. MANAGEMENT OF CATANI GARDENS
3. AUDIT COMMITTEE ACTIVITIES UPDATE
4. DECLARATION OF SPECIAL RATE FOR MARKETING, MANAGEMENT AND BUSINESS DEVELOPMENT OF ST KILDA VILLAGE ACTIVITY STATEMENT
5. CITY OF PORT PHILLIP TRANSPORT ADVOCACY STATEMENT
6. PROPOSED LEASE TO WEST BEACH DEVELOPMENT CONSORTIUM PTY LTD – WEST BEACH PAVILION
7. CONTRACT NO. 0977 – HARD AND GREEN WASTE BOOKED COLLECTION AND DUMPED RUBBISH COLLECTION – OPTION TO EXERCISE YEAR 3 (FINAL YEAR)

## 1. UPDATE ON ST KILDA TRIANGLE

### Purpose

This report provides an update to Councillors on the main topics relating to the St Kilda Triangle Site following the last update on 23 February 2009.

### MOVED Crs Powning/Middleton

1. That Council receives the St Kilda Triangle Site Project Update and the progress to date.
2. That Council note that a copy of the letter from Council dated 19 June 2009 to BBC Triangle Pty Ltd be included in the Minutes of the Council Meeting.

### A vote was taken and the MOTION was CARRIED.

*(Text of the letter is included below):*

19 June 2009

The Directors  
BBC Triangle Investments Pty Ltd  
Level 13, 179 Elizabeth Street  
SYDNEY NSW 2000

Dear Directors

### Development Agreement in relation to the St Kilda Triangle Project

*As you would be aware I have just been appointed as the Chief Executive Officer to the City of Port Phillip. I advise that under clause 3 of the Development Agreement the Council has recently appointed me as the Project Administrator for the St Kilda Triangle Project.*

*In my role as the Project Administrator and following my recent meeting with Stephen McMillan, I have now had an opportunity to review this matter. Accordingly, having regard to the recent VCAT decision and media reports regarding Babcock & Brown, I request clarification of a number of matters regarding the Development.*

*The purpose of this letter is to obtain clarification from you in relation to the following matters.*

#### 1 Works Program

*In accordance with clause 10 of the Development Agreement a Works Program was lodged with Council setting out timetables for the completion of the Development.*

*I request you to provide to me, in accordance with clause 18.4 of the Development Agreement, a written report containing the following information:*

- (a) the status of all activities on which work is being undertaken in connection with the Works Program;*
- (b) details of any activities which are behind the anticipated progress of the Works Program;*
- (c) any foreseen delays to future activities on the Works Program;*

- (d) *the likely effect on the Works Program of any actual or foreseen delays;*
- (e) *any claim (or anticipated claim) for extensions of time, including details of dates submitted, dates approved and any other relevant details;*
- (f) *the status of disputes (if any) that have arisen in connection with the Works Program; and*
- (g) *any other matter or issue which may effect the Works Program.*

**2 Additional Milestones**

*Clause 4.3A of the Development Agreement provides that the Developer must use reasonable endeavours to ensure the completion of events collectively referred to in the Development Agreement as "Additional Milestones".*

*As a result of the VCAT decision, the latest date for completion of the Additional Milestones is 19 May 2010.*

*Accordingly, I request you to provide to me, in accordance with clause 18.4 of the Development Agreement, a written report containing the following information:*

- (a) *the status of all activities on which work is being undertaken in connection with the satisfaction of the Additional Milestones;*
- (b) *details of any activities which are behind the anticipated progress of satisfying the Additional Milestones;*
- (c) *any foreseen delays to the satisfaction of the Additional Milestones;*
- (d) *the likely effect of any actual or foreseen delays in satisfying the Additional Milestones;*
- (e) *any claim (or anticipated claim) for extensions of time, including details of dates submitted, dates approved and any other relevant details;*
- (f) *the status of disputes (if any) that have arisen in connection with the Additional Milestones; and*
- (g) *any matter or issue which may effect the satisfaction of the Additional Milestones.*

**3 Change of Control of Developer**

*I have recently received informal advice that directors of Babcock & Brown Real Estate Pty Ltd (BBRE) have sought to sell BBRE's interest in BBC Triangle Investments Pty Ltd.*

*As you are aware clause 32.4 of the Development Agreement prohibits a change of control of BBC Triangle Investments Pty Ltd without the written consent of Council.*

*Accordingly, I request you to inform me and keep me informed of any proposal by BBRE and/ or Citta Holdings Pty Ltd to sell one or both of their interests in the Development.*

**4 Compliance Schedule**

*I have been advised that at the Project Co-ordination Group meeting held on 25 March 2009, the current Compliance Schedule was discussed and it was agreed that an updated Schedule would be provided at the following PCG meeting on 6 May 2009. Unfortunately I have no record of the updated Schedule being provided. Accordingly, please provide me with a copy of the updated Compliance Schedule as soon as possible.*

*I look forward to receiving your response to the matters referred to above as soon as possible.*

*Yours sincerely*

A handwritten signature in black ink that reads "Kay Rundle". The signature is written in a cursive style with a large initial 'K'.

***Kay Rundle***

***Project Administrator***

***Chief Executive Officer, City of Port Philip***

## **2. MANAGEMENT OF CATANI GARDENS**

### **Purpose**

To inform Council on the process implemented for possum management in Catani Gardens.

The following speaker made a verbal submission in regards to this item:

- Julianne Bell –
  - Expressed concerns regarding the process and equipment used for the trapping and killing of possums in Catani Gardens.
  - Stated that evidence from scientific sources indicate that possums do not chew palms (either the trunks or the fronds) and that this type of vegetation is not one of a possum's food source.
  - Claimed that there is no scientific evidence stating that possums are vectors of Fusarium Palm Wilt.
  - Claimed Council's argument at VCAT Directions Hearing on 12 March 2009 was flawed in that it was based on the fact that possums have to be trapped and killed because they carry Fusarium Palm Wilt.
  - Claimed that Council has targeted the Catani Gardens for the installation of possum exclusion bands and have not placed bands on other palm trees in other areas.
  - Stated that there is no need for further possum management in the Catani Gardens given that possum numbers have been reduced.
  - Claimed a lack of contractual documentation held by council in relation to tree banding and possum trapping activities.
  - Suggested that a wildlife officer be appointed and study tours be taken of the possums and penguins under St Kilda Pier.
  - Read out a letter from an overseas visitor in regards to that person's disappointment in the use of tree banding and the corresponding effect on possums in Melbourne.

### **MOVED Crs Klepner/Middleton**

That Council:

1. Endorses the process and context for possum management in Catani Gardens from 2006-2009, which used the Department of Sustainability and Environment Guidelines for the Management of Brushtail Possums in Municipal Parks.
2. Endorses the continued use of the Department of Sustainability and Environment Guidelines, for the management of Brushtail possums in Municipal Parks in the City of Port Phillip, consistent with State Government Guidelines.
3. Maintains the current tree bands in Catani Gardens and continues to monitor the plant health, together with the possum population of the park.
4. Note the outcomes of VCAT hearing which have found no grounds to conclude that Council has either breached the Port Phillip Planning Scheme nor that it had acted other than in accordance with the Wildlife Act 1975.

**A vote was taken and the MOTION was CARRIED.**

### **3. AUDIT COMMITTEE ACTIVITIES UPDATE**

#### **Purpose**

To present to Council for endorsement/approval the 2009-2011 Internal Audit Program.

#### **MOVED Crs Klepner/Middleton**

That Council:

1. Receive and note the report outlining the matters dealt with at the June 2009 meeting of the City of Port Phillip Audit Committee, including review by the Committee of its annual work plan and internal audit program, examination of excessive staff leave accruals, the progress made by Council to implement high and significant risk rated audit recommendations from previous audits, review of the quarterly management report to Council for the period ended 31 March 2009, review of the Council and staff Codes of Conduct, and Audit Committee reporting to Council; and
2. Endorse the interim Internal Audit Program for 2009-2011, pending:
  - a) Completion of the risk assessment by the Internal Auditor;
  - b) Receipt of the Ombudsman's report into contracting and tendering;
  - c) The CEO's review of the proposed and previous Internal Audit Programs; and
  - d) The outcome of the continuous audit function.

**A vote was taken and the MOTION was CARRIED.**

**4. DECLARATION OF SPECIAL RATE FOR MARKETING, MANAGEMENT AND BUSINESS DEVELOPMENT OF ST KILDA VILLAGE ACTIVITY STATEMENT**

**Purpose**

Council is requested to make a decision on whether to declare the Special Rate for a further five year period.

**MOVED Crs Thomann/Bolitho**

That Council:

1. Receive the report regarding the St Kilda Village special rate and having heard and considered all the submissions received, declare a special rate for the St Kilda Village Activity Centre in accordance with the declaration outlined below:
  - a) The special rate is for the purpose of defraying marketing, management, business development and other incidental expenses associated with the encouragement and development of commerce, trade and associated employment in the St Kilda Village Activity Centre. In proposing the declaration of the special rate, Council is performing functions and exercising powers relating to the peace, order and good government of the municipal district of the City of Port Phillip, in particular, the encouragement of employment opportunities and commerce.
  - b) The maximum annual cost of the performance of the functions is \$200,000 per annum. The maximum amount of the special rate to be levied is \$900,000 over a period of 5 years. This equates to a maximum of \$180,000 per annum.
  - c) The proposed special rate will commence 1 July 2009 and conclude on 30 June 2014.
  - d) The following land is specified as the land to be covered by the special rate:
    - 46-170 (inclusive) and 65-193 (inclusive) Acland Street
    - 167-231A (inclusive) and 136-218 (inclusive) Barkly Street
    - 1-9 (inclusive) and 2-26 (inclusive) Belford Street
    - 1-21 (inclusive) and 2-10 (inclusive) Irwell Street
    - 7-31 (inclusive) and 2-32 (inclusive) Carlisle Street
    - 22 and 25-49 (inclusive) Blessington Street
    - 1-7 (inclusive) Shakespeare Grove
    - 30-40 (inclusive) Jacka Boulevard
    - 24-32 (inclusive) The Esplanade

- 14-18 (inclusive) Lower Esplanade
- e) The criteria which forms the basis of the proposed special rate is the ownership of rateable land used for retail, commercial, or entertainment purposes within the geographic area in which the properties described above are included. Properties which not subject to Council's general rates are exempt from the special rate. The proposed special rate is assessed and levied on the basis of the rate in the dollar, as specified below for each of the four benefit areas, applied to the Net Annual Value (NAV) of each property as indicated:

Primary Benefit – A ground level property that fronts Acland Street and is used for retail, commercial, or entertainment purposes and which in the opinion of Council receives a Primary Benefit will be subject to a rate of 0.00677 multiplied by the property's NAV. A minimum contribution of \$630 will apply.

Secondary Benefit – A ground level property with an Acland Street address that does not front Acland Street and is used for retail, commercial or entertainment purposes, an above ground property in Acland Street that is used for retail, commercial or entertainment purposes, and a ground level property at the following addresses that is used for retail, commercial or entertainment purposes and which in the opinion of Council receives a Secondary Benefit will be subject to a rate of 0.00406 multiplied by the property's NAV:

- 167-227A (inclusive) Barkly Street
- 1-9 (inclusive) and 2-26 (inclusive) Belford Street
- 1-21 (inclusive) and 2-10 (inclusive) Irwell Street
- 7-31 (inclusive) Carlisle Street
- 22 Blessington Street
- 1-7 (inclusive) Shakespeare Grove
- 30-40 (inclusive) Jacka Boulevard
- 24-32 (inclusive) The Esplanade
- 14-18 (inclusive) Lower Esplanade

A minimum contribution of \$470 will apply.

Tertiary Benefit – An above ground level property that is used for retail, commercial or entertainment purposes at 181-189 Barkly Street and a ground level property used for retail, commercial or entertainment purposes at the following addresses and which in the opinion of Council receives a Tertiary Benefit will be subject to a rate of 0.00299 multiplied by the property's NAV:

- 136-218 (inclusive) and 229-231A (inclusive) Barkly Street
- 2-32 (inclusive) Carlisle Street
- 25-49 (inclusive) Blessington Street

A minimum contribution of \$345 will apply.

Quaternary Benefit – An above ground property in the Tertiary Benefit Area that is used for retail, commercial or entertainment purposes or a property in the St Kilda Village Special Rate Area that is used for an above ground sign or automatic telling machine (ATM) and which in the opinion of Council receives a Quaternary Benefit will be subject to a rate of 0.00032 multiplied by the property's NAV. A minimum contribution of \$280 will apply.

- f) There will be a special benefit to persons liable or required to pay the proposed special rate because the viability of the St Kilda Village Activity Centre will be improved as a commercial area through increased economic activity and the value of the properties and the businesses included in the scheme will be maintained or enhanced.
- g) The special rate will be levied by sending notices to the persons liable to pay the special rate. Payments are to be made according to the dates fixed by the Minister of Local Government under Section 167 of the Act as being the date for payment of general rates, either by four instalments or a lump sum.
- h) The properties included in the special rate scheme will be subject to general re-valuations and supplementary valuations on the same cycle as the City of Port Phillip general rates and charges.
- i) Require the St Kilda Village Traders Group to enter into a formal agreement with Council prior to the special rate or any part of it being paid to the Traders Group.
- j) Determine that the role of the St Kilda Village Traders Group in expending the monies raised by the Special Rate on behalf of Council is of an administrative nature only and at all times under the direction of and for Council.
- k) Reserve to itself all discretions relevant to the application of the proceeds of the special rate.

**A vote was taken and the MOTION was CARRIED.**

## **5. CITY OF PORT PHILLIP TRANSPORT ADVOCACY STATEMENT**

### **Purpose**

To provide Council with an update on progress of the preparation of the City of Port Phillip Transport Advocacy Statement.

### **MOVED Crs Bolitho/Klepner**

That in support of its objective of changing transport priorities (Council Plan 2.2), Council endorses the recommendations of the 'City of *Port Phillip Public Transport Advocacy Statement*' as follows:

1. The City of Port Phillip will advocate for the following public transport measures:-

#### **BUS**

- a) Urgent action to improve the 606 bus route timetable to increase frequency and achieve 7 day availability.
- b) An effective bus link from Elwood to Port Melbourne and other improvements to cross city services.
- c) Delivery of improved bus priority at more locations.
- d) Delivery of the promised Blue Orbital SmartBus route.

#### **TRAM**

- e) Acceleration of the purchase of new trams.
- f) No reduction in service or capacity on Route 96 through measures such as the retention of the Bumblebee Trams through a lease extension or the outright purchase of the trams.
- g) Delivery of improved tram priority at more locations.
- h) Building the Park Street, South Melbourne Tram Link to increase flexibility and connectivity across the tram network as a matter of urgency.
- i) Improvements to the accessibility of the tram network by upgrading tram stops and deploying more modern low floor trams.
- j) Introduction of a St Kilda Rd Tram Shuttle service.
- k) Encouragement for commuters to shift to off peak or shoulder peak services.
- l) Work with the new tram providers to build an accessible platform stop at Stop 125, the point at which the 109 and 96 trams meet at the Port Junction in SouthBank.

**TRAIN**

- m) Improvements to safety by staffing Balaclava and Ripponlea train stations from the first train to the last train.
- n) Conversion of the 4.57pm ghost train from Sandringham to a passenger service.
- o) Delivery of the Victorian Transport Plan commitment to construct the Melbourne Metro Train Tunnel Stage 1 by securing Commonwealth funding.
- p) Delivery of additional peak train services on the Sandringham line – one extra train in the morning and afternoon peaks.
- q) Improvements to the accessibility of the train network by making Balaclava Station Disability Discrimination Act compliant.

**BICYCLES AND PUBLIC TRANSPORT**

- r) Support measures that encourage the incorporation of bicycle parking near tram, train and bus stops.
- s) Support measures that enable cyclists to take bicycles on trains and buses in such a way that passenger comfort is not compromised.

**A vote was taken and the MOTION was CARRIED.**

**6. PROPOSED LEASE TO WEST BEACH DEVELOPMENT CONSORTIUM PTY LTD – WEST BEACH PAVILION**

**Purpose**

This report proposes that the community submissions received to date by Council on this matter, and the proposed lease with West Beach Development Consortium Pty Ltd and any other necessary supporting documentation be forwarded to the Minister for Environment and Climate Change for approval in accordance with section 17(d) of the Crown Land (Reserves) Act 1978.

**MOVED Crs Bolitho/Powning**

That Council:

1. Submits the proposed lease with West Beach Development Consortium Pty Ltd in respect of the West Beach Pavilion, 330A Beaconsfield Parade, St Kilda West to the Minister for Environment and Climate Change for approval in accordance with section 17D of the Crown Land (Reserves) Act 1978; and
2. Upon Council being informed by the Minister for Environment and Climate Change of his approval of the lease in accordance with section 17D of the said Act, executes the lease.
3. Includes the community submissions received to date by Council on this matter with the letter to the Minister.

**A vote was taken and the MOTION was CARRIED.**

**7. CONTRACT NO. 0977 – HARD AND GREEN WASTE BOOKED COLLECTION AND DUMPED RUBBISH COLLECTION – OPTION TO EXERCISE YEAR 3 (FINAL YEAR)**

**Purpose**

Council to award Contract No 0977 “Hard and Green Waste Booked Collection Service & Dumped Rubbish Collection” to Four Seasons Pty Ltd on 03 September 2007 at an annual cost of \$497,639 (plus CPI) for a period of 3 years (1+1+1).

**MOVED Crs Powning/Klepner**

That Council:

1. Acknowledges the value that the community places on the Hard and Green Waste Booking Service and the Dumped Rubbish Collection Service, and the important role both services play in maintaining local neighborhood amenity and civic pride.
2. Exercises the third (final) one-year option of Contract Number 0977 “Hard and Green Waste Booked Collection Service & Dumped Rubbish Collection”.

**A vote was taken and the MOTION was CARRIED.**

**9. NOTICE OF MOTION**

Nil.

## 10. REPORTS BY COUNCILLOR DELEGATES

### Item 1

Cr Bolitho advised that Mr Anthony Scrinis, candidate in the Sandridge Ward election, made application to the Municipal Electoral Tribunal for the review of the outcome of the 2008 election for the Sandridge Ward. A decision was handed down last week and the case was dismissed.

## 11. URGENT BUSINESS

### UB1 CHANNEL 31 DIGITAL LICENCE

#### **MOVED Crs Powning/Thomann**

That this item be considered as part of the agenda.

**A vote was taken and the MOTION was CARRIED.**

#### **MOVED Crs O'Connor/Thomann**

That Council write to the Prime Minister, Mr Kevin Rudd, and the Federal Minister for Communication, Senator Stephen Conroy, urging them to immediately grant one of the unused digital spectrum channels in Melbourne to Channel 31 to ensure that:

1. This successful community television station can remain on air and generate appropriate revenue;
2. Marginalised and under-represented sections of the community can continue to have a communication platform;
3. The largest broadcaster of local content in Australia is able to continue to air over 95 locally produced shows each week; and
4. A vital training ground for the entire television sector is maintained.

**A vote was taken and the MOTION was CARRIED.**

As there was no further business the meeting closed at 7.00pm.

Confirmed: 10 August 2009

Chairperson: \_\_\_\_\_