

TOWN OF COTTESLOE



FULL COUNCIL MEETING MINUTES

**SPECIAL MEETING OF COUNCIL
HELD IN THE
Council Chambers, Cottesloe Civic Centre
109 Broome Street, Cottesloe
7.00 PM, Tuesday 05 April 2016**

**Purpose of Meeting:
For Council to consider the Business Plan and Heads of Agreement for the
redevelopment of Indiana Tea House.**

**MAT HUMFREY
Chief Executive Officer**

08 April 2016

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member announced the meeting opened at 7.00 PM.

2 DISCLAIMER

The Presiding Member drew attention to the Town's disclaimer.

3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

The Mayor advised Councillors that if they want to raise any legal issues the meeting will need to go in camera.

4 PUBLIC QUESTION TIME**4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

4.2 PUBLIC QUESTIONS

Chris Wiggins, 20 John Street, Cottesloe – Re. 9.1.1 Indiana Tea House – Business Plan – Final Consideration

Q1: Has invasive testing recommended in the Cardno report been completed?

Q2: Has the cost of bringing the building up to current Building Code of Australia standards, as recommended by the Cardno report, been completed?

Q3: The Cardno report covered only the next 15 years. Have costs covering the full 25 years of the lease been estimated?

Q4: Has the Council addressed the potential liability to Indiana if the Building becomes un-occupiable?

Q5: Have cash flow projections and internal rate of return calculations for the life of the lease been prepared and submitted to Councillors?

Q6: Has a risk assessment by a competent and professional commercial risk assessor been prepared?

A: The Mayor took the questions on notice.

Roger Weston, 3 De Bernales Walk, Cottesloe - Cottesloe – Re. 9.1.1 Indiana Tea House – Business Plan – Final Consideration

Q1: Given the nature of the deal that is likely to be stuck with Indianas, has Council drawn upon professional expertise in

terms of drafting a lease that would represent the best interests of the Town.

A1: Yes.

Yvonne Hart, 26 Mann Street, Cottesloe - Cottesloe – Re. 9.1.1 Indiana Tea House – Business Plan – Final Consideration

Q1: The staff comment states that “*At the time the Business Plan was developed, a number of assumptions needed to be made*”. Did Council officers assume that the three way funding position would continue with the State Government providing 38% of the cost?

Q2: Is the State Government still involved in discussion?

Q3: Did Council Officers assume that the public toilets could not be upgraded within the footprint of the building and therefore provide a real alternative to development?

Q4: Did Council Officers assume that the existing lease agreement was not open to challenge?

Q5: Did Council Officers assume that there was no Notice of Default that could be served on Indiana for failing to maintain the building?

Q6: Was a Notice of Default ever issued? If so, when and for what reason?

Q7: The staff comment states that “*officers became aware of events that materially changed one of the assumptions*”. What was the event?

Q8: Was the event the Cardno report that indicated that \$2,000,000 of maintenance is required over 15 years and urgent work is needed?

Q9: In the staff comment it states that “*in order for any redevelopment to proceed, the Town needs to resolve one key issue with the current Lessee*”. What is this one key issue and when will we be told?

Q10: Will the Mayor issue a public statement outlining advice the lawyers have provided to Council?

Q11: It appears Council intends to continue with the redevelopment. Why spend ratepayers’ money when the cost of effective alternatives are yet to be explored?

Q12: How much money has been spent so far?

Q13: What was the cost of the Business Plan, including printing?

Q14: What was the cost of the Heads of Agreement, including legal advice?

Q15: What was the cost of the first concept plan drawn by consultants?

Q16: What is the ongoing cost of legal fees surrounding Indiana?

A: The Mayor took the questions on notice.

Patricia Carmichael, 14/116 Marine Parade, Cottesloe – Re. 9.1.1 Indiana Tea House – Business Plan – Final Consideration

Q1: What is Council's next move?

Q2: Will Council be advertising another business plan for public feedback?

Q3: Will Council be seeking more legal advice?

Q4: If the building is redeveloped, where will the surf club's equipment be stored?

A: The Mayor took the questions on notice.

5 PUBLIC STATEMENT TIME

Rosalin Sadler, 2/134 Marine Parade, Cottesloe – Re. 9.1.1 Indiana Tea House – Business Plan – Final Consideration

- Indiana Tea House is a tourism icon, owned by Cottesloe ratepayers.
- The building is situated west of Marine Parade, no further development is allowed in this area.
- The current situation has been created by the long-term Leaseholders.
- There is evidence of decay and neglect of the building.
- The entire building is an embarrassment to Cottesloe ratepayers.
- Council should not reward the current Leaseholders as they have neglected the terms of their Lease.
- The Leaseholders are not present and accountable.

Laurie Scanlan, 20 Warnham Road, Cottesloe– Re. 9.1.1 Indiana Tea House – Business Plan – Final Consideration

- South Beach in Miami, Florida, extends 5km, is visited by many of Miami's 36 million visitors per year and has three public toilet facilities. One of the facilities has three urinals, two male toilets and three female toilets.
- The plan presented by Council has too many toilets.

6 ATTENDANCE

Present

Mayor Jo Dawkins
Cr Philip Angers
Cr Sandra Boulter
Cr Rob Thomas
Cr Helen Burke
Cr Mark Rodda
Cr Jay Birnbrauer
Cr Katrina Downes
Cr Sally Pyvis

Officers Present

Mr Mat Humfrey
Mr Garry Bird
Mrs Siobhan French

Chief Executive Officer
Manager Corporate & Community Services
Administration & Governance Officer

6.1 APOLOGIES

Nil

Officer Apologies

Mr Doug Elkins
Mr Andrew Jackson

Manager Engineering Services
Manager Development Services

7 DECLARATION OF INTERESTS

Nil

8 PRESENTATIONS

8.1 PETITIONS

Nil

8.2 PRESENTATIONS

Nil

8.3 DEPUTATIONS

Nil

9 REPORTS OF OFFICERS**9.1.1 INDIANA TEA HOUSE – BUSINESS PLAN – FINAL CONSIDERATION**

File Ref: SUB/2057
Responsible Officer: Mat Humfrey
Chief Executive Officer
Author: Mat Humfrey
Chief Executive Officer
Proposed Meeting Date: 5 April 2015
Author Disclosure of Interest: Nil

SUMMARY

Council is being asked to consider the Business Plan and the Heads of Agreement for the Indiana Tea House redevelopment as advertised in September 2015.

BACKGROUND

In September 2015, Council endorsed the Business Plan for the Redevelopment of the Indiana Tea House for advertising. At the same time, the Chief Executive Officer and Mayor were authorised to sign the Heads of Agreement for the redevelopment.

The Business Plan was then advertised in accordance with the Local Government Act and the Town's Consultation Policy. Submissions were called and received. The submissions received during the submission period were mostly positive, with Council receiving encouragement to proceed. Following the close of the submission period, an alternate proposal was presented to Council as it was considering the final adoption.

When the Business Plan and Heads of Agreement were developed, there were several key assumptions that had to be made in order to assess the proposed development. The two documents were written such that if any of these assumptions were altered in any material way, then the process would end and any development would then require a new Business Plan to be developed and advertised.

As Business Plans assess future implications of proposals, there is a need to use assumptions when undertaking calculations. Extreme care is needed in the use of any assumptions. Further, if any of the underlying facts on which an assumption is based changes, it is important that the whole process is reassessed prior to final adoption.

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

Local Government Act 1995 – s3.59

FINANCIAL IMPLICATIONS

The redevelopment of the Indiana Tea House would represent a major financial cost to the Town, if it were to proceed.

STAFFING IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

The Business Plan process outlined in section 3.59 of the Act requires consultation to be undertaken. This requirement has been met.

STAFF COMMENT

At the time the Business Plan was developed, a number of assumptions needed to be made, which are outlined in the document itself. It is stated in the document that if these assumptions were to change, the Business Plan would need to be re-written and re-advertised.

Following the close of the submission period, a report was written to adopt the Business Plan that was then forwarded to Council for consideration, via the Works and Corporate Services Committee. Between the publishing of that report and the meeting itself, officers became aware of events that materially changed one of the assumptions that underpinned the Business Plan. As such, officers advised the Committee and then Council, that the appropriate course of action was to defer the entire process to allow for further investigation.

Since this time, the Town has been working with its legal advisers to ascertain the exact effect of the events that occurred. The research has been thorough and considerable and it is only now that we can proceed on the next course of action.

In order for any redevelopment to proceed, the Town needs to resolve one key issue with the current Lessee. The issue does effect the long term nature of the lease itself and must be resolved prior to any further business plans being considered.

This being the case, officers are now recommending that the Business Plan as presented to the September 2015 meeting be set aside and that that Heads of Agreement entered into, be terminated.

VOTING

Simple Majority

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Mayor Dawkins, seconded Cr Downes

THAT Council:

- 1. Reject the Business Plan as presented to the September 2015 Ordinary Council Meeting; and**
- 2. Authorise the Chief Executive Officer to serve notices to the effect of terminating the Heads of Agreement entered into with the Lessee.**

Carried 9/0

10 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

11 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:

11.1 ELECTED MEMBERS

Nil

11.2 OFFICERS

Nil

12 MEETING CLOSED TO PUBLIC

12.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil

12.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC

Nil

13 MEETING CLOSURE

The Mayor announced the closure of the meeting at 7.27 PM

CONFIRMED MINUTES OF 05 APRIL 2016 PAGES 1 – 9 INCLUSIVE.

PRESIDING MEMBER:

POSITION:

.....

DATE: / /