



# Town of Cottesloe

I hereby certify that the minutes of the Special Council meeting held  
on

**Tuesday, 18 July 2023**

were confirmed as a true and accurate record by Council resolution.

Signed:

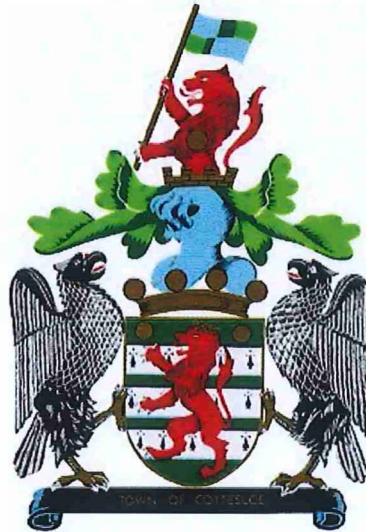
Presiding Member

Date:

*[Handwritten signature]*

*25/7/23*

# TOWN OF COTTESLOE



## SPECIAL COUNCIL MEETING CONFIRMED MINUTES

**SPECIAL COUNCIL MEETING  
HELD IN THE  
Council Chambers, Cottesloe Civic Centre  
109 Broome Street, Cottesloe  
6:00 pm Tuesday, 18 July 2023**

A handwritten signature in black ink, appearing to read 'William Matthew Scott'.

**WILLIAM MATTHEW SCOTT**  
Chief Executive Officer

19 July 2023

## DISCLAIMER

No responsibility whatsoever is implied or accepted by the Town for any act, omission, statement or intimation occurring during council meetings.

The Town of Cottesloe disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission, statement or intimation occurring during council meetings.

Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a council meeting does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by any member or officer of the Town of Cottesloe during the course of any meeting is not intended to be and is not taken as notice of approval from the Town.

The Town of Cottesloe wishes to advise that any plans or documents contained within the agenda or minutes may be subject to copyright law provisions (*Copyright Act 1968*, as amended) and that the express permission of the copyright owner(s) should be sought prior to their reproduction.

Members of the public should note that no action should be taken on any application or item discussed at a council meeting prior to written advice on the resolution of Council being received.

Agenda and minutes are available on the Town's website [www.cottesloe.wa.gov.au](http://www.cottesloe.wa.gov.au)

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
1	DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS .....	2
2	DISCLAIMER .....	2
3	ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION .....	2
4	PUBLIC QUESTION TIME .....	2
	4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE .....	2
	4.2 PUBLIC QUESTIONS .....	2
5	PUBLIC STATEMENT TIME.....	2
6	ATTENDANCE .....	2
	6.1 APOLOGIES .....	3
	6.2 APPROVED LEAVE OF ABSENCE.....	3
	6.3 APPLICATIONS FOR LEAVE OF ABSENCE .....	3
7	DECLARATION OF INTERESTS.....	3
8	PRESENTATIONS .....	3
	8.1 PETITIONS.....	3
	8.2 PRESENTATIONS.....	3
	8.3 DEPUTATIONS .....	3
9	REPORTS.....	3
	9.1 REPORTS OF OFFICERS.....	3
10	ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN .....	3
11	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:.....	3
	11.1 ELECTED MEMBERS .....	3
	11.2 OFFICERS.....	4
12	MEETING CLOSED TO PUBLIC.....	4
	12.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED.....	4
	12.1.1 LEGAL ADVICE ON OPTIONS AVAILABLE TO SEEK A JUDICIAL REVIEW OF THE RECENT WAPC DECISION IN RELATION TO THE OCEAN BEACH HOTEL REDEVELOPMENT.	4
	12.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC.....	8
13	MEETING CLOSURE .....	8

**1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS**

The Presiding Member announced the meeting opened at 6:05 pm.

I would like to begin by acknowledging the Whadjuk Nyoongar people, Traditional Custodians of the land on which we meet today, and pay my respects to their Elders past and present. I extend that respect to Aboriginal and Torres Strait Islander peoples here today.

**2 DISCLAIMER**

The Presiding Member drew attention to the Town’s Disclaimer.

**3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

The Presiding Member announced that the meeting is being recorded, solely for the purpose of confirming the correctness of the Minutes.

**4 PUBLIC QUESTION TIME**

**4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

**4.2 PUBLIC QUESTIONS**

Nil

**5 PUBLIC STATEMENT TIME**

Nil

**6 ATTENDANCE**

**Elected Members**

- Deputy Mayor Helen Sadler
- Cr Melissa Harkins
- Cr Paul MacFarlane
- Cr Chilla Bulbeck
- Cr Brad Wylynko
- Cr Richard Atkins

**Officers**

- |                          |   |
|--------------------------|---|
| Mr William Matthew Scott | Chief Executive Officer                   |
| Mr Shaun Kan             | Director Engineering Services             |
| Ms Jacquelyne Pilkington | Governance & Executive Office Coordinator |

**6.1 APOLOGIES**

Mayor Lorraine Young  
Cr Craig Masarei

**Officers Apologies**

Mr Shane Collie	Director Corporate and Community Services
Ms Freya Ayliffe	Director Development and Regulatory Services
Mr Wayne Zimmermann	Manager of Planning
Mr Ed Drewett	Coordinator Statutory Planning

**6.2 APPROVED LEAVE OF ABSENCE**

Cr Kirsty Barrett

**6.3 APPLICATIONS FOR LEAVE OF ABSENCE****7 DECLARATION OF INTERESTS**

Nil

**8 PRESENTATIONS****8.1 PETITIONS**

Nil

**8.2 PRESENTATIONS**

Nil

**8.3 DEPUTATIONS**

Nil

**9 REPORTS****9.1 REPORTS OF OFFICERS****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**

**11.2 OFFICERS****12 MEETING CLOSED TO PUBLIC****12.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED**

SCM122/2023

**MOTION FOR BEHIND CLOSED DOORS****Moved Cr Wylynko****Seconded Cr MacFarlane**

**That, in accordance with Section 5.23(2)(d), Council discuss the confidential reports behind closed doors.**

**Carried 6/0****For: Crs Sadler, Harkins, MacFarlane, Bulbeck, Wylynko and Atkins****Against: Nil**

*The public and members of the media were requested to leave the meeting at 6:08 pm*

**12.1.1 LEGAL ADVICE ON OPTIONS AVAILABLE TO SEEK A JUDICIAL REVIEW OF THE RECENT WAPC DECISION IN RELATION TO THE OCEAN BEACH HOTEL REDEVELOPMENT.**

This item is considered confidential in accordance with the *Local Government Act 1995* section 5.23(2) (d) as it contains information relating to legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.

**OFFICER RECOMMENDATION****Moved Cr MacFarlane****Seconded Cr Wylynko**

THAT Council:

1. NOT pursue a judicial review of the West Australian Planning Commission (WAPC) Development Approval decision relating to the Ocean Beach Hotel (OBH) redevelopment, for the following reasons:
  - a. The limited legal grounds to seek a judicial review;
  - b. The unlikelihood of success given the broad application of Part 17 of the Planning and Development Act 2005 available to the WAPC in determining development applications
  - c. The estimated significant cost to the Town of a challenge via the Supreme Court; and
  - d. Irrespective of a judicial review being successful and the decision set aside, the WAPC is unlikely to make a significantly different decision to address the Town's concerns, given the broad application of Part 17 of the Planning and

Development Act 2005;

2. **AUTHORISES** the Mayor and Chief Executive Officer to continue to work with the West Australian Local Government Association (WALGA), other Local Governments, and Members of Parliament to lobby the State Government, including the Premier and relevant State Ministers, to:
  - a. Make meaningful changes to the current SDAU processes with regard to future applications to protect local community Town planning interests;
  - b. Influence the operational framework of the proposed successor of the SDAU to ensure local community Town Planning interests are protected; and
  - c. Provide Local Governments and their associated communities greater timeframes to:
    - i. Review WAPC agenda items related to similar applications;
    - ii. Prepare submissions in response to WAPC agenda items;
    - iii. Present submissions at WAPC Meetings.

**SCM123/2023**

**COUNCILLOR AMENDMENT**

**Moved Cr Bulbeck**

**Seconded Cr Wylynko**

**THAT Council approves the following additional clauses at 2 (b)**

**2 (b) Influence the operational framework of the proposed successor of the SDAU to ensure local community Town Planning interests are protected with**

- i. **More robust and extensive appeal rights vested in local governments**
- ii. **The inclusion of third party rights of appeal in planning decisions as per the current WALGA position**

**Carried 6/0**

**For: Crs Sadler, Harkins, MacFarlane, Bulbeck, Wylynko and Atkins**

**Against: Nil**

**SCM124/2023**

**SUBSTANTIVE MOTION**

**Moved Cr Bulbeck**

**Seconded Cr Wylynko**

**THAT Council:**

1. **NOT pursue a judicial review of the West Australian Planning Commission (WAPC) Development Approval decision relating to the Ocean Beach Hotel (OBH) redevelopment, for the following reasons:**



- a. The limited legal grounds to seek a judicial review;
  - b. The unlikelihood of success given the broad application of Part 17 of the Planning and Development Act 2005 available to the WAPC in determining development applications
  - c. The estimated significant cost to the Town of a challenge via the Supreme Court; and
  - d. Irrespective of a judicial review being successful and the decision set aside, the WAPC is unlikely to make a significantly different decision to address the Town's concerns, given the broad application of Part 17 of the Planning and Development Act 2005;
2. **AUTHORISES** the Mayor and Chief Executive Officer to continue to work with the West Australian Local Government Association (WALGA), other Local Governments, and Members of Parliament to lobby the State Government, including the Premier and relevant State Ministers, to:
- a. Make meaningful changes to the current SDAU processes with regard to future applications to protect local community Town planning interests;
  - b. Influence the operational framework of the proposed successor of the SDAU to ensure local community Town Planning interests are protected with:
    - i. More robust and extensive appeal rights vested in local governments
    - ii. The inclusion of third party rights of appeal in planning decisions as per the current WALGA position.
  - c. Provide Local Governments and their associated communities greater timeframes to:
    - i. Review WAPC agenda items related to similar applications;
    - ii. Prepare submissions in response to WAPC agenda items;
    - iii. Present submissions at WAPC Meetings.

Carried 6/0

For: Crs Sadler, Harkins, MacFarlane, Bulbeck, Wylynko and Atkins

Against: Nil

### **Rationale**

Local governments should be afforded more time to respond to complex large-scale developments completely transforming our human-scale environment and destroying our green infrastructure. In addition, local governments and affected third parties need much more robust rights to appeal decisions which have such profound affects on community well-being.

The WA government claims third party appeal rights will open the floodgates to vexatious and groundless appeals. All other Australian jurisdictions offer at least limited third party appeal rights (or did so in 2017), generally limited in scope to larger developments and third

parties who made submissions<sup>1</sup>.

Victoria had the broadest appeal rights, covering most developments in Victoria. To appeal the third party must have lodged an objection to an application within the advertising period (although some exemptions can be allowed). Anyone who may be affected can make an objection, including on broad public interest issues. In 2014/2015 4% (2,292) of development applications had a review lodged with VCAT.

WALGA's advocacy position paper supports limited third party appeal rights against DAP decisions as a 'good test for the introduction of Third Party appeal rights'. The advocacy position suggests appeals should be limited to parties which previously made a submission, be based on valid planning grounds and not vexatious or commercially motivated.

The benefits include greater capacity for local governments, other interested parties and community members to appeal, particularly any elements of an approved development plan changed after parties they have made submissions.

Third party appeal rights also

- Address community concerns that decisions are being made by those 'removed' from the local community, leading to improved community confidence in the system.
- Mean more transparent process in both decision making and condition setting, resulting in more accountable DAP members

### SCM125/2023

#### **MOTION FOR RETURN FROM BEHIND CLOSED DOORS**

**Moved Cr Harkins**

**Seconded Cr Atkins**

**In accordance with Section 5.23 that the meeting be re-opened to members of the public and media, and motions passed behind closed doors be read out if there are any public present.**

**Carried 6/0**

**For: Crs Sadler, Harkins, MacFarlane, Bulbeck, Wylynko and Atkins**

**Against: Nil**

*The public and members of the media returned to the meeting at 6:23 pm.*

**12.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC**

**12.1.1 LEGAL ADVICE ON OPTIONS AVAILABLE TO SEEK A JUDICIAL REVIEW OF THE RECENT WAPC DECISION IN RELATION TO THE OCEAN BEACH HOTEL REDEVELOPMENT.**

The resolution for item 12.1.1 was read aloud.

**13 MEETING CLOSURE**

The Presiding Member announced the closure of the meeting at 6:27 pm.