



Town of Cottesloe

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

Thursday, 27 February 2020

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

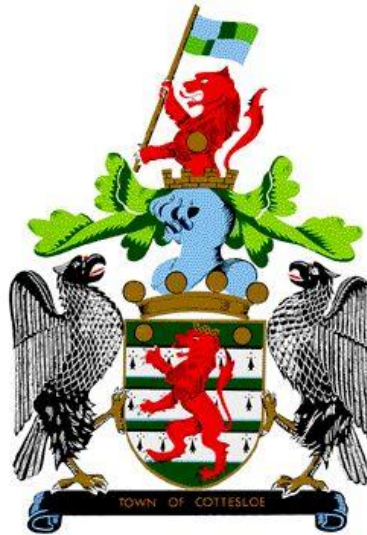
Signed:

A handwritten signature in black ink, appearing to be 'D. King', written over a horizontal line.

Presiding Member

Date: 24/3/2020

TOWN OF COTTESLOE



SPECIAL COUNCIL MEETING

MINUTES

**SPECIAL COUNCIL MEETING
HELD IN THE
Council Chambers, Cottesloe Civic Centre
109 Broome Street, Cottesloe
5:00pm Thursday, 27 February 2020**

NEIL HARTLEY
Acting Chief Executive Officer

4 March 2020

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Agenda and minutes are available on the Town's website www.cottesloe.wa.gov.au

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member announced the meeting opened at 5:05pm.

2 DISCLAIMER

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

3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

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

4 PUBLIC QUESTION TIME**4.1 PUBLIC QUESTIONS**

NIL

5 PUBLIC STATEMENT TIME

Nil

6 ATTENDANCE**Elected Members**

Mayor Philip Angers
Cr Lorraine Young
Cr Caroline Harben
Cr Craig Masarei
Cr Melissa Harkins (from 5:06pm)
Cr Michael Tucak
Cr Kirsty Barrett

Officers

| | |
|---------------------|---|
| Mr Neil Hartley | Acting Chief Executive Officer |
| Mr Shane Collie | Deputy Chief Executive Officer |
| Ms Freya Ayliffe | Manager of Compliance and Regulatory Services |
| Mr Wayne Richards | Finance Manager |
| Ms Mary-Ann Winnett | Governance Coordinator |

6.1 APOLOGIES

Cr Helen Sadler (attending WALGA Zone Meeting)
Cr Paul MacFarlane (attending WALGA Zone Meeting)

Officers Apologies

Nil

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

Cr Tucak declared an IMPARTIALITY INTEREST in item 9.1.1 by virtue "Directors of Sculpture by the Sea are known to me and I've been a donor in the past."

8 PRESENTATIONS**8.1 PETITIONS**

Nil

8.2 PRESENTATIONS

Nil

8.3 DEPUTATIONS

Nil

Cr Harkins entered the meeting at 5:06pm.

MOTION FOR BEHIND CLOSED DOORS

Moved Mayor Angers **Seconded Cr Young**

That, in accordance with Standing Orders 15.10 and the *Local Government Act 1995 S5.23(2)(e)(ii)*, Council discuss item 9.1.1 behind closed doors.

Carried 6/1

The public and members of the media were requested to leave the meeting at 5:06pm.

9 REPORTS**9.1 REPORTS OF OFFICERS****ADMINISTRATION****9.1.1 SCULPTURE BY THE SEA 2020 - FUNDING REQUEST VARIATION**

File Ref: SUB/2798
Attachments: 9.1.1(a) Sculpture by the Sea request [CONFIDENTIAL]
Responsible Officer: Neil Hartley, Acting Chief Executive Officer
Author: Neil Hartley, Acting Chief Executive Officer
Author Disclosure of Interest: Nil

Cr Tucak declared an IMPARTIALITY INTEREST in item 9.1.1 by virtue "Directors of Sculpture by the Sea are known to me and I've been a donor in the past."

SUMMARY

Council at its recent February Council Meeting considered and made a change to its historic funding model for the Sculpture by the Sea event. Sculpture by the Sea has subsequently considered the proposal and requests a modification.

It is proposed that Council consider the Sculpture by the Sea request (see attached under confidential cover) to modify Council's recent financial support position, so that the funds can become available earlier. Officers believe that in light of the urgency of the question to Sculpture by the Sea's event, it is possible for the Council to consider an amendment to its current position, but recommend that if that amendment is supported, Council should require that the Town of Cottesloe provides the required traffic management and temporary ablution facilities (in lieu of requiring Sculpture by the Sea to make those arrangements); that a set of unaudited financial accounts for the event be provided; and that any surplus that might result from the 2020 event is required to be repaid to the Town.

BACKGROUND

Council at its 25 February 2020 meeting resolved in part as follows –

THAT COUNCIL:

4. *REQUIRES Sculpture by the Sea to provide the necessary traffic management plan and personnel, and public toilets, to accommodate the size, scale and timeline of the event, and the necessary level of safety and health obligation it has to the visitors of the Sculpture by the Sea event, as directed by the Town of Cottesloe;*
 5. *ENDORSES the reallocation of 2019-2020 budget funds (up to \$70,000 – assigned to purchasing a sculpture from the 2020 Sculpture by the Sea Exhibition) for the purpose of providing financial assistance to the 2020 event, as requested by Sculpture by the Sea, subject to:*
 - a. *the event proceeding in 2020;*
-

- b. *Sculpture by the Sea providing to the Town of Cottesloe the Sponsorship benefits outlined in its proposal, including giving due recognition to the Town for its support;*
- c. *No payment being made to Sculpture by the Sea until the Town is provided with audited accounts from the 2020 event, showing a net operating loss on the event, with payment by the Town limited to the amount of that operating loss up to a maximum of \$70,000;*
- d. *Sculpture by the Sea complying with all terms pertaining to the Licence Agreement and with the terms of paragraph 4, above;*
- e. *Sculpture by the Sea agreeing to waive any commission otherwise payable on a sculpture purchase by the Town from the 2020 event by the amount of financial assistance given under this paragraph (so that the list price for the item is reduced by the commission so waived);*
- f. *Sculpture by the Sea using all reasonable efforts to ensure that the event continues at Cottesloe beach in future years;*
- g. *That Sculpture by the Sea provides all attendance demographic data (including postcode) for the 2019 and 2020 events to the Town of Cottesloe administration.*

Sculpture by the Sea has respectfully advised that the conditions associated with the above resolution would be difficult for it to commercially accommodate, and would also add further to its operations costs if for example, it was necessary for it to provide specifically prepared audited financial statements to enable it to lodge an application for the (up to) \$70,000 of financial support being offered by the Town.

Sculpture by the Sea has subsequently asked if the offer of funding could be modified to enable funds to reach it earlier than the 25 February Council resolution provides for.

STRATEGIC IMPLICATIONS

This report is consistent with the Town's *Strategic Community Plan 2013 – 2023*.

Priority Area 1: Protecting and enhancing the wellbeing of residents and visitors

Major Strategy 1.3: Identify places to host more cultural events and activities.

This report is consistent with the Town's *Corporate Business Plan 2017 – 2021*.

Priority Area 1: Protect and enhance the wellbeing of residents and visitors.

Major Strategy 5.2: Manage assets that have a realisable value.

POLICY IMPLICATIONS

Purchasing Policy

Beach Policy

STATUTORY ENVIRONMENT

Local Government Act 1995

Public Health Act 2016

Health (Public Buildings) Regulations 1992

Town's Health Local Law 1997

Health (Miscellaneous Provisions) Act 1911

Road Traffic Act 1974

Beaches and Beach Reserves Local Law 2012 has provisions for maintenance and management of the beaches and beach reserves.

Licence Agreement - Portion of Reserves 44617, 6896 and 13718 - Sculpture by the Sea

As per the lease agreement;

8.8 Financial Assistance and In-Kind Support

- I. Subject to subclause 2, the Licensor and the Licensee covenant and agree that the Licensor will provide to the Licensee:*
 - A. A ten thousand dollar (\$10,000) contribution towards the operational expense of the Event which may be applied to signage, security, additional public toilets and publicity costs;*
 - B. A fifteen thousand dollar (\$15,000) contribution in any year where the Licensor elects not to purchase an exhibited artwork. If the Licensor purchases an exhibited artwork, this sum will not be paid and the Licensor will pay commission to the Licensee for the artwork acquired, and*
 - C. In kind support to assist with producing the event including:*
 - a) the Licensor employees cooperation and attendance at meetings with the Licensee's representatives to assist with staging the Event;*
 - b) the provision of additional refuse bins and collection at no additional charge;*
 - c) provision of space within the Licensor's civic centre or depot for temporary storage of the Licensees equipment and Artworks during the Event;*
 - d) use of the 'Rangers Room' within the Indiana Tea Rooms as a temporary site office during the Permitted Times of Use;*
 - e) support to the Public Transport Authority of Western Australia to approve signage at the Cottesloe Train Station specifically promoting the "Cott Catt Park and Ride" initiative;*
 - f) assistance with addressing the need for additional public car parking during the event.*
- II. The Licensee will produce and provide a copy of its audited annual financial statements as soon as reasonably practicable at the end of each financial year. In the event that the Licensee fails or refuses to*

provide the audited financial statements, the Licensor, in its absolute discretion may withhold the financial assistance identified in clause 8.8(l)(a).

- III. *The Licensor may, acting in its absolute discretion, purchase an item of Artwork produced for the Event during each year of this Licence.*

FINANCIAL IMPLICATIONS

2019-2020 Budget

Council at its 25 February 2020 meeting, agreed to reallocate the existing 2019-2020 budget provision of \$70,000 in order to provide a financial assistance package to Sculpture by the Sea (as opposed to the capital purchase of a sculpture, which is now to be considered separately by Council following any recommendation by the Public Art Advisory Committee). The proposal contained in this report is that the funds be provided by an alternative mechanism, namely, that the Town arranges and meets the cost of the provision of the required traffic management and portable ablution facilities (instead of requiring Sculpture by the Sea to undertake this task and then seek a reimbursement from the Town) and the balance of the \$70,000 be also transferred, prior to the receipt of any audited financial statements being forthcoming.

Estimates for Traffic Management and Transportable Toilets:

- Traffic Management: \$15 - 30,000 (the minimum cost estimate is based on two Controllers for 10 hours on Saturday and Sunday only).
- Transportable Toilets: \$35,000 (based on 33 toilets for 18 days, including delivery, daily cleaning and daily pumping).

STAFFING IMPLICATIONS

The undertaking of the provision of the Traffic Management and Transportable Toilets can be accommodated by Town officers, but will take several hours to coordinate and meet the Purchasing Policy provisions.

ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

There are no perceived sustainability implications arising from the officer's recommendation.

CONSULTATION

Sculpture by the Sea

Mayor and Deputy Mayor

OFFICER COMMENT

It is accepted that the Council's resolution does not enable Sculpture by Sea to access the funds until it can provide audited evidence of an eventual deficit for the event. As such, if the organisation does not have sufficient cash flow to support those costs, then it could well

be put further into a financially stressful position (albeit only for several months). The question ought therefore to be considered as a matter of urgency, to accommodate the Sculpture by the Sea’s event timeline and this in part was why there was provision made in the February Ordinary Council Meeting resolution for the potential of a Special Council Meeting.

If Council is satisfied that the funds can be responsibly provided prior to audited financial statements being made available, then the most accountable way of achieving this would be for the Town to take on the role of specifying and procuring those required services it has a good familiarity with, namely, the provision of traffic management and transportable toilets. This would ensure that the services are provided as required by the Town, and costs can be kept to a minimum. As the balance of the maximum \$70,000 provision is not likely to be a significant proportion (estimate to be approximately \$10 – 25,000) this could also be provided to Sculpture by the Sea once a confirmed balance is known (anticipated to be by April 2020).

In light of the increased level of funding support, the Town’s commitments under Clause 8.8 (1 A & B) of the License Agreement should be considered to be completely fulfilled by the provision of the expanded financial assistance package (now \$70,000) and this in combination with conditions already set via the 25 February 2020 Council resolution, as well as the broad spectrum of benefits that the Sculpture by the Sea event provides to Cottesloe, could be seen as a reasonable outcome for all concerned.

The License Agreement already requires the furnishing of audited accounts to the Town following the conclusion of each financial year, but it should not be unduly onerous to expect Sculpture by the Sea to produce a set of “Cottesloe specific” unaudited financial statements by 30 June 2020, which could be used as a guide to whether the event ran at a surplus, or a loss. If the event were to produce at a surplus, then it would be reasonable for the Town to expect any surplus up to \$70,000 to be refunded.

The above result would though, require a modification to some portions of the 25 February resolution as follows -

THAT COUNCIL:

- ~~4. REQUIRES Sculpture by the Sea to provide the necessary traffic management plan and personnel, and public toilets, to accommodate the size, scale and timeline of the event, and the necessary level of safety and health obligation it has to the visitors of the Sculpture by the Sea event, as directed by the Town of Cottesloe;~~
- 4. REQUIRES the Acting Chief Executive Officer to provide the necessary traffic management plan and personnel, and public toilets, to accommodate the size, scale and timeline, and the necessary level of safety and health obligation of the event;
- 5. ENDORSES the reallocation of 2019-2020 budget funds (up to \$70,000 – assigned to purchasing a sculpture from the 2020 Sculpture by the Sea Exhibition) for the purpose of providing financial assistance to the 2020 event, as requested by Sculpture by the Sea, subject to:
 - a. the event proceeding in 2020;

request presented by Sculpture by the Sea and the current and ongoing nett benefits the event provides to the district of Cottesloe, but reinforces that Council's position as outlined in (2) below is not to be interpreted as a precedent, and any future Sculpture by the Sea License Agreements will be separately considered and based on their merits; and

2. **APPROVES** modifications to its 25 February Ordinary Council resolution (at item 13.1.1) as outlined below-
 - I. **Modifies (4) to read "4. REQUIRES the Acting Chief Executive Officer to provide the necessary traffic management plan and personnel, and public toilets, to accommodate the size, scale and timeline, and the necessary level of safety and health obligation of the event"; and**
 - II. **Replaces (5c) and (5d) with the following –**
 - c. **The costs of the Town procuring the services outlined in paragraph 4 above being deducted from the \$70,000 allocation, with any balance being remitted to Sculpture by the Sea once a balance calculation can be responsibly ascertained. Further, that Sculpture by the Sea agrees in writing to provide a set of "Cottesloe specific" unaudited financial statements by 30 June 2020.**
 - d. **That Sculpture by the Sea agrees in writing, that the Town's commitments under Clause 8.8 (1 A & B) of the License Agreement are considered to be fulfilled by the provision of the services referred to in part (4) above, and the balance of funding referred to in part (5c) above.**
 - III. **Modifies (5e) to read 'Sculpture by the Sea agreeing (in writing) to waive any commission otherwise payable on a sculpture purchase by the Town from the 2020 event by the amount of financial assistance given under this paragraph (so that the list price for the item is reduced by the commission so waived)'.**

Carried by Absolute Majority 7/0

RATIONALE

1. Council at its recent February Council Meeting considered and made a change to its historic funding model for the Sculpture by the Sea event. Sculpture by the Sea has subsequently considered the proposal and requests a modification.
2. It is proposed that Council consider the Sculpture by the Sea request to modify Council's recent financial support position, so that the funds can become available earlier. In light of the commercial challenges that Sculpture by the Sea will encounter as a result of the original recommendation proposal a change is warranted.
3. The balance payment referred to reflects the Town's desire to contribute to the artists' installation and freight costs.

MOTION FOR BEHIND CLOSED DOORS

Moved Cr Young

Seconded Mayor Angers

In accordance with Standing Orders 15.10 that the meeting be re-opened to members of the public and media.

Carried 7/0

The public and members of the media returned to the meeting at 5:56pm.

10 MEETING CLOSURE

The Mayor announced the closure of the meeting at 5:56pm.