



Town of Cottesloe

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

Tuesday, 6 September, 2022

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

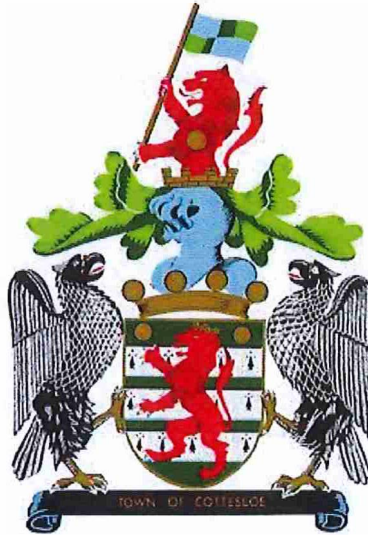
A handwritten signature in blue ink, appearing to read 'I. B. Jones'.

Signed:

Presiding Member

Date:

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, 6 September 2022

A stylized, handwritten signature in black ink, consisting of a large, sweeping loop followed by a smaller, more defined signature.

MATTHEW SCOTT
Chief Executive Officer

14 September 2022

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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 6:03 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

Mr Kevin Morgan – 4/1 Pearse Street, Cottesloe

Q1: Section 6.15 (1)(a) of the Town of Cottesloe's *Local Government (Meetings Procedure) Local Law 2021* requires that any "confidential" documents provided to elected members for the meeting (as per regulation 14(2) *Local Government (Administration) Regulation 1996*) must be identified by the CEO in the agenda.

- (a) Why then has none of the confidential reports to council been identified in tonight's agenda on Indiana?
- (b) What legislative provision entitles the CEO to instead identify the documents as "confidential reports"?

A1: The local law provision referred to must be interpreted in context. Section 6.15 as a whole is aimed at ensuring the preservation of confidentiality for all information which the CEO, at first instance, advises should be considered in a closed meeting, unless and until Council determines that it be made public. It requires that all the information when it comes to councillors is marked confidential and councillors and the Town's staff must keep the information confidential unless Council resolves otherwise.

The provision in our local law requires the information to be identified in the agenda. It does not require a listing of each and every document to be considered by Council.

The Agenda identifies the information as “INDIANA TEA HOUSE REDEVELOPMENT PROPOSAL - RECEIPT OF COMMENTS AND SPECIALIST ADVICE”.

It's open to Councillors to decide if that identification is sufficient, when considering the matter.

- Q2: Given that the council's last resolution on the Indiana proposal instructed the CEO to seek (and provide to council for it to deliberate on):
- Firstly, comment from the Design Review Panel;
 - Secondly, comment from the Foreshore Precinct Advisory Committee;
 - Thirdly, comment from the Cottesloe Surf Life Saving Club;
 - Fourthly, commercial advice;
 - Fifthly, legal advice;
 - Sixthly, heritage advice; and
 - Seventhly, environmental advice,
- (a) Are 7 such documents at least some of the “confidential documents” referred to in tonight's agenda?
 - (b) What legislative provision entitles the closure of that part of tonight's meeting that deals with those 6 such documents other than the ‘legal advice’ (whereby this would entitle the CEO to mark those 6 documents as confidential in tonight's agenda), even though none of those 6 documents are “legal advice” (as per section 5.23(2)(d) of the *Local Government Act 1995*) and even though none of those 6 documents disclose or discuss the price of the Indiana lease (as per section 5.23(2)(h) of the *Local Government Act 1995* and Regulation 4A of the *Local Government (Administration) Regulation 1996*)?
- Q3: Given that s. 5.23(2)(d) of the *Local Government Act 1995* only empowers the council to close the part of the meeting that deals with legal advice obtained which relates to a matter to be discussed at the meeting:
- (a) What legislative provision entitles the council to close the part of the meeting that deals with the matter to which the legal advice relates, rather than only the part that deals with the legal advice?
 - (b) Does the council or the CEO have legal advice that tonight's Agenda and proposed closure is legal?
- Q4: Should not tonight's meeting be postponed until the Agenda has been corrected and re-published?
- Q5: Is the Indiana proposal a “major land transaction” under section 3.59 of the *Local Government Act 1995*, such that the council will prepare a business plan and provide an opportunity for public submissions?

Q6: Have any elected members met with the representatives of the Indiana proponent, if so, who and when?

Q7: Have elected members of council met by way of a closed door 'workshop' relating to the Indiana proposal?

Questions 2 to 7 were taken on notice.

Ms Columba Tierney – Princes Street, Cottesloe

Q1: Why is this a Special Meeting with reports on a building proposal identified as confidential.

A1: The matter concerns the potential redevelopment of the Indiana site. It has taken some time to get to the next step. Council and the Town are of the view that we want the Community to understand that we prioritise this and we want to move it forward as quickly as we can, so the amenity of that site can be enjoyed by the Community as soon as possible. The meeting was scheduled once we were in a position to deal with the confidentiality reports that we have received from the experts of heritage, legal, environmental and commercial.

Q2: Why was the meeting announced on such short notice to residents?

A2: As above.

Q3: Have there already been closed meetings with representation of Fiveight?

A3: It was put to Council in April 2022 OCM by Mr Jack Walsh with the question taken on notice and therefore a detailed answer was provided in the OCM May Minutes and there has been no change since then.

Q4: In relation to the Indiana hotel proposal, has the Council given serious consideration to this matter as this hotel is proposed to be built on public foreshore land. This would set a precedent as this has never occurred anywhere on the coast of Western Australia. Has the Council given serious thought to this because this is a very serious incident/issue?

A4: Council has been considering many aspects relating to the proposal as there has been environmental and heritage advice. It's a complex proposal and all of the items you have mention and many others will be considered by Council.

5 PUBLIC STATEMENT TIME

Kevin Morgan – 4/1 Pearse Street, Cottesloe

Mr Morgan outlined his concerns regarding closing the meeting. He urged the Council to open the confidential documents of the Special Meeting to the community. He raised concerns regarding the lawfulness of the matter being considered behind closed doors.

6 ATTENDANCE**Elected Members**

Mayor Lorraine Young
Cr Helen Sadler
Cr Caroline Harben
Cr Craig Masarei
Cr Melissa Harkins
Cr Kirsty Barrett
Cr Paul MacFarlane
Cr Chilla Bulbeck

Officers

Mr Matthew Scott	Chief Executive Officer
Ms Freya Ayliffe	Director Development and Regulatory Services
Mr Shaun Kan	Director Engineering Services
Ms Jacquelyne Pilkington	Governance Coordinator

6.1 APOLOGIES

Cr Brad Wylynko

Officers Apologies

Mr Shane Collie	Director Corporate and Community Services
Mr Wayne Zimmermann	Manager of Planning
Mr Ed Drewett	Coordinator Statutory Planning

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

Nil

11.2 OFFICERS

Nil

12 MEETING CLOSED TO PUBLIC**12.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED****MOTION FOR BEHIND CLOSED DOORS**

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

SCM127/2022

Moved Mayor Young

Seconded Cr MacFarlane

Alternative Motion

That Council, in accordance with the Local Government Act 1995 sections:

- ***S5.23(2) (c) - relating to a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting;***
- ***S5.23(2)(d) - legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;***
- ***S5.23(2)(e(ii)) - a matter that if disclosed, would reveal information that has a commercial value to a person; and***
- ***S5.23(2)(e(iii)) - a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person discuss the***

confidential report behind closed doors.

Carried 8/0

For: Mayor Young, Crs Sadler, Harben, Masarei, Harkins, Barrett, MacFarlane and Bulbeck

Against: Nil

RATIONALE:

The Council believe there were additional subsections under Section 5.23(2)(d) that would enable the matter to be considered behind closed doors.

The public and members of the media were requested to leave the meeting at 6:22 pm

12.1.1 INDIANA TEA HOUSE REDEVELOPMENT PROPOSAL - RECEIPT OF COMMENTS AND SPECIALIST ADVICE

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.

SCM128/2022

SUSPENSION OF STANDING ORDERS

Moved Cr Barrett

Seconded Cr MacFarlane

That clauses 7.10 and 7.11, the Local Government (Meeting Procedure) Local Law 2021, be suspended at 6:24 pm as per clause 16.1(1)

Carried 8/0

For: Mayor Young, Crs Sadler, Harben, Masarei, Harkins, Barrett, MacFarlane and Bulbeck

Against: Nil

SCM129/2022

RESUMPTION OF STANDING ORDERS

Moved Mayor Young

Seconded Cr Harkins

That clauses 7.10 and 7.11, the Local Government (Meeting Procedure) Local Law 2021, no longer be suspended at 7:02 pm as per clause 16.1(3).

Carried 8/0

For: Mayor Young, Crs Sadler, Harben, Masarei, Harkins, Barrett, MacFarlane and Bulbeck

Against: Nil

OFFICER RECOMMENDATION

Moved Mayor Young

Seconded Cr Masarei

THAT Council:

1. NOTE the receipt of requested comment and specialist advice as required by Council Resolution OCM245/2021 (from the Ordinary Council Meeting of December 2021);

2. AUTHORISES the Chief Executive Officer to develop a Business Plan, as required under Section 3.59 of the Local Government Act 1995, for Council's consideration to enable public consultation on the proposed redevelopment of Indiana's Teahouse; and
3. INSTRUCTS the Chief Executive Officer to continue to engage with the Proponent and relevant State Government Agencies in order to develop the Business Plan required in Point 2.

Moved Cr Bulbeck

Seconded Cr Sadler

COUNCILLOR AMENDMENT

THAT Council:

2. **AUTHORISES the Chief Executive Officer to develop a Business Plan, as required under Section 3.59 of the Local Government Act 1995, taking account of the impact of the proposed redevelopment of the Indiana Teahouse and the relocation of the Cottesloe Surf Lifesaving Club boatshed on the financial, social, and environmental position of the Town and cultural heritage of the site Council's consideration to enable public consultation on the proposed redevelopment of the Indiana Teahouse and relocation of the boatshed,**
4. **NOTES that Council cannot commit to the proposal without informed Cottesloe Community consultation undertaken by the Town, as per Section 3.59, Local Government Act 1995**

The Mayor separated the amendment into two parts to be considered separately, as per 9.2, the Local Government (Meeting Procedure) Local Law 2021

SCM130/2022

THAT Council make the following amendment to the motion:

Moved Cr Bulbeck

Seconded Cr Sadler

2. **That Council AUTHORISES the Chief Executive Officer to develop a Business Plan, as required under Section 3.59 of the Local Government Act 1995, taking account of the impact of the proposed redevelopment of the Indiana Teahouse and the relocation of the Cottesloe Surf Lifesaving Club boatshed on the financial, social, and environmental position of the Town and cultural heritage of the site for Council's consideration to enable public consultation on the proposed redevelopment of the Indiana Teahouse and relocation of the boatshed,**

Carried 5/3

For: Mayor Young, Crs Sadler, Harben, Masarei and Bulbeck

Against: Crs Harkins, Barrett and MacFarlane

SCM131/2022

Moved Cr Bulbeck

Seconded Cr Sadler

COUNCILLOR AMENDMENT**THAT Council make the following amendment to the motion:**

4. **NOTES** that Council cannot commit to the proposal without informed Cottesloe Community consultation undertaken by the Town, as per Section 3.59, Local Government Act 1995.

Carried 6/2

For: Mayor Young, Crs Sadler, Harben, Masarei, MacFarlane and Bulbeck

Against: Crs Harkins and Barrett

SCM132/2022

SUBSTANTIVE MOTION AND COUCILLOR RESOLUTION

Moved Cr Bulbeck

Seconded Cr Sadler

THAT Council:

1. **NOTES** the receipt of requested comment and specialist advice as required by Council Resolution OCM245/2021 (from the Ordinary Council Meeting of December 2021);
2. **AUTHORISES** the Chief Executive Officer to develop a Business Plan, as required under Section 3.59 of the Local Government Act 1995, taking account of the impact of the proposed redevelopment of the Indiana Teahouse and the relocation of the Cottesloe Surf Lifesaving Club boatshed on the financial, social, and environmental position of the town and cultural heritage of the site for Council's consideration to enable public consultation on the proposed redevelopment of the Indiana Teahouse and relocation of the boatshed,
3. **INSTRUCTS** the Chief Executive Officer to continue to engage with the Proponent and relevant State Government Agencies in order to develop the Business Plan required in Point 2,
4. **NOTES** that Council cannot commit to the proposal without informed Cottesloe Community consultation undertaken by the Town, as per Section 3.59, Local Government Act 1995.

RATIONALE

Section 3.59 of the Local Government Act requires the Business Plan to identify the expected short-term and long-term financial impact of the proposed development on the council and other persons providing facilities and services in the district.

The legislation also requires the Business Plan to address the expected impact on matters referred to in the Town's current plans, such as the Strategic Community Plan and the Corporate Business Plan. These identify our commitment to preserving and enhancing the social well-being, natural areas and cultural heritage of the Town.

The insertion of the amendment identifies the major heads of analysis required for a

Business Plan which refers to the present and future values of the Town of Cottesloe.

Carried 8/0

For: Mayor Young, Crs Sadler, Harben, Masarei, Harkins, Barrett, MacFarlane and Bulbeck

Against: Nil

SCM133/2022

MOTION FOR RETURN FROM BEHIND CLOSED DOORS

Moved Mayor Young

Seconded Cr Harben

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 8/0

For: Mayor Young, Crs Sadler, Harben, Masarei, Harkins, Barrett, MacFarlane and Bulbeck

Against: Nil

The public and members of the media returned to the meeting at 7:22 pm.

12.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC

**12.1.1 INDIANA TEA HOUSE REDEVELOPMENT PROPOSAL - RECEIPT OF
COMMENTS AND SPECIALIST ADVICE**

The resolution for item 12.1.1 was read aloud.

13 MEETING CLOSURE

The Presiding Member announced the closure of the meeting at 7:25 pm.