

**These minutes are subject to confirmation at the next Council meeting to be held on
6 October 2016
HUTT CITY COUNCIL**

Minutes of an ordinary meeting of The Hutt City Council held in the Council Chambers,
2nd Floor, 30 Laings Road, Lower Hutt on
Thursday 29 September 2016 commencing at 7.00pm

PRESENT:

Mayor WR Wallace (Chair)	
Deputy Mayor D Bassett	Cr B Branch
Cr C Barry	Cr L Bridson
Cr MJ Cousins	Cr A Finlayson (until 8.25pm)
Cr T Lewis	Cr M Lulich
Cr G McDonald	Cr C Milne
Cr M Shierlaw	Cr M Willard

APOLOGIES: There were no apologies.

IN ATTENDANCE:

Mr T Stallinger, Chief Executive
 Ms K Kelly, General Manager, Strategic Services (part meeting)
 Mrs J Raffills, General Manager, Governance and Regulatory (part meeting)
 Mr B Kibblewhite, Chief Financial Officer
 Mr A Cumming, Divisional Manager Environmental Policy (part meeting)
 Ms C Tessendorf, Senior Environmental Policy Analyst (part meeting)
 Ms R Bangi, Environmental Policy Analyst (part meeting)
 Ms A Wallace, Senior Communications and Marketing Advisor
 Ms K Stannard, Divisional Manager Secretariat Services

PUBLIC BUSINESS

1. APOLOGIES

There were no apologies.

2. PUBLIC COMMENT

Comments are recorded under the items to which they relate.

PRECEDENCE OF BUSINESS

That, in terms of Standing Order 25.5, precedence be accorded to item 5 dealing with the Proposed Private District Plan Change 35.

This item is recorded in the order in which it is listed in the Order Paper.

3. CONFLICT OF INTEREST DECLARATIONS

Cr Milne declared a conflict of interest in relation to item 4a) and took no part in discussion or voting on the matter.

Cr Cousins declared a conflict of interest in relation to item 4b) and took no part in discussion or voting on the matter.

Cr Finlayson declared a conflict of interest in relation to item 4c) and item 5 and took no part in discussion or voting on the matters.

Deputy Mayor Bassett declared a conflict of interest in relation to item 4c) and took no part in discussion or voting on the matter.

4. RECOMMENDATIONS TO COUNCIL FROM THE FINANCE AND AUDIT COMMITTEE MEETING HELD ON 29 SEPTEMBER 2016

a) **Report on Seaview Marina Limited for the Year Ended 30 June 2016**

Cr Milne declared a conflict of interest and took no part in discussion or voting on the matter.

RESOLVED:

Minute No. C 16401(3)

"That Council receives the Annual Report for Seaview Marina Limited for the year ended 30 June 2016 attached as Appendix 1 to Report FandA2016/4/224(2)."

b) **Report on Hutt City Community Facilities Trust for the Year Ended 30 June 2016**

Cr Cousins declared a conflict of interest and took no part in discussion or voting on the matter.

In response to a question from a member, Mayor Wallace advised that any concerns should be raised directly with the General Manager of the Hutt City Community Facilities Trust.

RESOLVED:

Minute No. C 16402(3)

"That Council receives the Annual Report for the Hutt City Community Facilities Trust for the year ended 30 June 2016, attached as Appendix 1 to Report FandA2016/4/225(2)."

c) **Report on UrbanPlus Limited for the Year Ended 30 June 2016**

Deputy Mayor Bassett and Cr Finlayson declared a conflict of interest and took no part in discussion or voting on the matter.

RESOLVED:

Minute No. C 16403(3)

“That Council:

- (i) notes the draft Annual Report for UrbanPlus Limited attached as Appendix 1 to Report FandA2016/4/231(2) and authorises the Chair of the Finance and Audit Committee and the Chief Financial Officer to approve any changes that may be needed following the completion of the audit; and*
- (ii) receives the final Annual Report (including any agreed auditor recommended changes) for UrbanPlus Limited for the year ended 30 June 2016.”*

RESOLVED:

Minute No. C 16404(3)

“That Council schedules an extraordinary meeting of the Hutt City Council to be held on Thursday, 6 October 2016 commencing at 12 noon in the Hutt City Council Chambers, Hutt City Council, 30 Laings Road, Lower Hutt to consider Council’s Annual Report and Summary Annual Report for the year ended 30 June 2016.”

5. **PROPOSED PRIVATE DISTRICT PLAN CHANGE 35 REZONING OF LAND AT MILITARY ROAD/HATHAWAY AVENUE/BOULCOTT STREET AS GENERAL RESIDENTIAL ACTIVITY AREA WITH PROVISION FOR A RETIREMENT VILLAGE** (16/1096)

Report No. HCC2016/4/227 by the Divisional Manager Environmental Policy

Cr Finlayson declared a conflict of interest and left the meeting at 8.25pm.

Speaking under public comment, **Ms Marguerite Renaud** read out a statement on behalf of Mr W Johnston. She highlighted that the site was one of the most significant battles between Maori and government forces in the Hutt Valley and may contain war graves. She also highlighted that neither the independent Hearing Panel's report nor the officer's report made any mention of the Archaeological Assessment Report. She asked Council to defer the decision.

Speaking under public comment, **Mr Ian McLaughlin** expressed concern with the proposed high rise high density retirement village in a low density low rise area. He highlighted that if Council accepted the proposed Plan Change then Summerset Villages Limited ('Summerset') would make proposals on height, density and design directly to the Environment Court. He also highlighted that the proposed new rules in proposed Plan Change 35 removed net site area, allowing buildings that had lengths in excess of 20 metres and allowed for building height in excess of 8 metres. He asked Council to reject or defer its decision on proposed Plan Change 35 given the proposed rules and policies afforded very little protection for the community, the Boulcott School and Boulcott Kindergarten. He considered that the release of the decision on Proposed Plan Change 35 six days before the Council meeting had given very little time for the community to review the decision and have input at the meeting. He highlighted that the Proposed Plan Change 35 hearing failed to address the significant historical and heritage issues associated with the site.

In response to a question from a member, Mr McLaughlin confirmed that the Boulcott School, Boulcott Kindergarten and a number of residents, who had made submissions, had not received a copy of the independent Hearing Panel's recommendations.

Speaking under public comment, **Ms Catherine Ross** advised that the community had never been opposed to a retirement village as a neighbour. She expressed concern with the size, density and flow on effects. She highlighted that she felt cautiously optimistic with the independent Hearing Panel's recommendations. She also highlighted the importance of Council and officers working with the community to ensure a transparent and fair process going forward. She also highlighted the importance of Summerset coming to the party and understanding the impact of the development on the neighbours.

In response to a question from a member, Ms Ross advised that she supported Mr McLaughlin's comments regarding the lack of time for the community to consider the independent Hearing Panel's recommendations.

Speaking under public comment, **Mr Peter McGuinness** advised that he supported Mr McLaughlin's comments. He believed that Summerset had no respect for the City, the Lower Hutt District Plan and Council's Urban Growth Strategy. He also believed that Council should show strong leadership by supporting a low rise development with a building height of up to 8 metres.

The Divisional Manager Environmental Policy introduced Council's legal advisor, Mr Stephen Quinn, Partner of DLA Piper.

The Divisional Manager Environmental Policy elaborated on the report.

In response to a question from a member relating to Council rejecting the proposal in its entirety, the Divisional Manager Environmental Policy advised that although members had not participated in the hearing, heard evidence and submissions and considered the evidence, Council could send the Hearing Panel's recommendations back to the Hearing Panel or appoint another Hearing Panel. He highlighted that by accepting the Hearing Panel's recommendation that allowed the appeal phase to commence.

In response to questions from members, Mr Quinn advised that once Council made a decision, all parties had the right to appeal to the Environment Court. He noted that in effect the Environment Court stepped into the shoes of Council. He elaborated on the difference between a judicial review and an appeal. He noted that he had the opportunity to review Council's process and advised that Council had delegated the tasks of hearing submissions and evidence on proposed Plan Change 35 to an independent Hearing Panel ('the Panel') and then that Panel made a recommendation about whether proposed Plan Change 35 should be approved. He highlighted that he was not aware that the Panel had made an obvious and material error of law in order for Council to reject the Panel's recommendations.

In response to questions from members, Mr Quinn advised that no breach had been made in the process relating to not releasing the Panel's recommendations to all parties. He highlighted that no decision had yet been made by Council and the parties had no decision making powers to reject or accept the Panel's recommendations.

In response to questions from members, the Divisional Manager Environmental Policy confirmed that he did not send the Panel's report and recommendations to the media before members had received it through the Council Order Paper. He advised that the site was not identified in the Lower Hutt District Plan as a 'significant cultural resource'. He highlighted that any archaeology would be covered under the Heritage New Zealand Act.

In response to questions from members, Mr Quinn advised that there were no constraints for all parties sitting down and addressing concerns. He advised that, in his opinion, allowing for building height in excess of eight metres was not a strong reason to reject the Panel's recommendations in their entirety.

In response to a question from a member, the Divisional Manager Environmental Policy advised the opportunity for additional height and larger buildings on site would be covered under a policy framework to manage the design, scale and form of any retirement village sought through a resource consent process.

In response to questions from members, Mr Quinn advised that if Council agreed to defer its decision now it would still need to make a decision at some stage. He highlighted that, in his opinion, there was no sound reason to reject the recommendations of the Panel. He also advised that, for consistency, it would be more desirable for the current Council to make the decision.

MOVED: (Mayor Wallace/Cr Cousins)

"That Council:

- (i) notes the process undertaken under the Resource Management Act 1991 for Proposed Private Plan Change 35;
- (ii) notes that a total of 250 original submissions, four late submissions and eight further submissions were received on Proposed Private Plan Change 35;
- (iii) accepts the proposed amendments to the publicly notified text of Proposed Private Plan Change 35 as recommended by the independent Hearing Panel and set out in Appendix 1 to the report;
- (iv) accepts the further evaluation of Proposed Private Plan Change 35 contained within Appendix 1 to the report;
- (v) approves Proposed Private Plan Change 35 as recommended in Appendix 1 to the report; and
- (vi) instructs officers to notify Council's decision to all parties in the process as soon as practicable, thereby commencing the appeal phase of the process."

Mayor Wallace advised that the community needed certainty in this matter. He noted that if Council agreed to approve the recommendations of the Panel, then the plan change process would move to the appeal phase as all parties in the process had appeal rights to the Environment Court. He highlighted that Council would have the opportunity to support the community at that time. He believed that if Council deferred its decision then the result would be that the Boulcott people would be left in the dark. He also highlighted the importance of Council facilitating a forum for all parties to work together. He considered that the height, bulk and design issues would be looked at through the resource consent process. He believed that there were no appropriate grounds for Council to reject the Panel's recommendations.

Opposing the motion, Cr Branch believed that Summerset had not acted in good faith.

Opposing the motion, Deputy Mayor Bassett advised that he was disappointed that he had not received the Panel's recommendation until 22 September 2016. He expressed concern with the height, density and 5m buffer zone. He highlighted that section 140 of the Panel's recommendations considered that there was an

opportunity for additional height and larger buildings on the site after undertaking a site visit to Woburn Masonic site in Wai-iti Crescent, Lower Hutt. He considered that the two sites were quite different and should not be seen as compatible.

AMENDMENT MOVED (Deputy Mayor Bassett/Cr Branch)

“That the item of business being discussed be deferred.”

Opposing the amendment, Cr Cousins expressed concern that Council could be perceived as attempting to alter the reasons. She advised that the proposed change of zoning was from General Recreation Activity to General Residential Activity Area.

Opposing the amendment, Cr Milne advised that he had heard nothing new to support deferring the item of business.

Speaking in favour of the amendment, Cr Barry believed that deferring the item of business would be the right thing to do.

In response to a question of clarification from a member, Mr Quinn advised that as members had not heard the evidence or submissions, it would leave Council in a very vulnerable position if challenged. He also advised that there could be potential for an award of costs against Council. However, he noted that costs were often not awarded in respect of Plan Change appeals.

Speaking in favour of the amendment, Cr Shierlaw advised that Council had the option of rejecting the Panel’s recommendation and there were other reasons to reject it.

Mayor Wallace advised that deferring the item of business would not provide the community with any certainty.

The amendment was declared LOST by Division, with the voting as follows:

For

Deputy Mayor Bassett
Cr Barry
Cr Branch
Cr McDonald
Cr Shierlaw

Total: 5

Against

Mayor Wallace
Cr Bridson
Cr Cousins
Cr Lewis
Cr Lulich
Cr Milne
Cr Willard

Total: 7

Speaking in favour of the substantive motion, Cr Milne advised that, although his heart was with the residents, Council was required to follow the law.

Speaking in favour of the substantive motion, Cr Lewis advised that she supported Cr Milne’s comments and the advice from Council’s lawyer. She expressed concern that Council’s Lower Hutt District Plan was not robust enough to identify any archaeological records for the site.

Speaking in favour of the substantive motion, Cr Cousins agreed with the opportunity for working together through the resource management consent process including holding a pre-meeting. She advised that if the matter went

directly to the Environment Court, then there was the opportunity for mediation. She stated that she supported Mayor Wallace's leadership in this matter.

Opposing the substantive motion, Cr Shierlaw advised that Council should not be shying away from doing the right thing even if costs were involved. He stated that he was not persuaded by what had been discussed and debated at the meeting. He highlighted that there was very little case law available with regard to the matter.

Opposing the substantive motion, Cr Barry advised that he did not have faith in all the parties working together.

Mayor Wallace advised that the community needed some certainty. He highlighted that it had been a two year process and if Council rejected the Panel's recommendation, then Council would be faced with the same situation in two to three years' time. He highlighted the importance of getting the parties together to work on the issues of height, density, design and the buffer zone.

RESOLVED: (By Division)

Minute No. C 16405(3)

"The Council:

- (i) *notes the process undertaken under the Resource Management Act 1991 for Proposed Private Plan Change 35;*
- (ii) *notes that a total of 250 original submissions, four late submissions and eight further submissions were received on Proposed Private Plan Change 35;*
- (iii) *accepts the proposed amendments to the publicly notified text of Proposed Private Plan Change 35 as recommended by the independent Hearing Panel and set out in Appendix 1 to the report;*
- (iv) *accepts the further evaluation of Proposed Private Plan Change 35 contained within Appendix 1 to the report;*
- (v) *approves Proposed Private Plan Change 35 as recommended in Appendix 1 to the report; and*
- (vi) *instructs officers to notify the Council decision to all parties in the process as soon as practicable, thereby commencing the appeal phase of the process."*

The substantive motion was declared CARRIED by Division with the voting as follows:

For

Mayor Wallace
Cr Bridson
Cr Cousins
Cr Lewis
Cr Lulich
Cr Milne

Total: 6

Against

Deputy Mayor Bassett
Cr Barry
Cr Branch
Cr McDonald
Cr Shierlaw

Total: 5

Cr Willard abstained from voting on the above matter.

RESOLVED:**Minute No. C 16406(3)**

"That Council offers to facilitate a forum of interested parties including Summerset Villages (Lower Hutt) Limited and the Boulcott Preservation Society to discuss working constructively together with a view to finding a mutually agreeable position."

6. MINUTES (16/1167)

Report No. HCC2016/4/169 by the Senior Committee Advisor

RESOLVED:**Minute No. C 16407(3)**

"That the minutes of the meeting of the Hutt City Council held on Tuesday 20 September 2016, Public and Non Public, be confirmed as a true and correct record."

7. QUESTIONS

Cr Branch asked for an update on the Tukutuku Maori Panel. She also asked where the framed pictures of the Mayors of Hutt City were located.

Mayor Wallace advised the Tukutuku Maori Panel was presently housed at the Dowse until 30 October 2016. He said that he would ask the officers to find out about the location of the Mayoral pictures.

There being no further business the Chair declared the meeting closed at 10.05pm.

WR Wallace
MAYOR

**CONFIRMED as a true and correct record
Dated this 6th day of October 2016**