

**Colac Otway  
SHIRE**

**MINUTES**

**SPECIAL COUNCIL MEETING  
OF THE  
COLAC-OTWAY SHIRE  
COUNCIL**

**17 FEBRUARY 2009**

**at 5.30 pm**

**COPACC Meeting Room  
Rae Street, Colac**

An audio recording of this meeting is being made for the purpose of verifying the accuracy of the minutes of the meeting. In some circumstances the recording may be disclosed, such as where Council is compelled to do so by court order, warrant, subpoena or by any other law, such as the Freedom of Information Act 1982.

***Please Note: That Public Notice of this meeting was not given seven days prior to the meeting, as the request for the Special Meeting of Council was not received until 11 February 2009. This Special Meeting of Council was advertised in the Colac Herald on 13 February 2009.***

**COLAC-OTWAY SHIRE  
SPECIAL COUNCIL MEETING**

**17 FEBRUARY 2009**

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**URGENT BUSINESS**

**VICTORIAN BUSHFIRE APPEAL**

**MINUTES of the SPECIAL COUNCIL MEETING OF THE COLAC-OTWAY SHIRE COUNCIL** held in the COPACC Meeting Room, Rae Street, Colac on 17 February 2009 at 5.30 pm.

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**1. PRAYER**

*Almighty God, we seek your blessing and guidance in our deliberations on behalf of the people of the Colac Otway Shire. Enable this Council's decisions to be those that contribute to the true welfare and betterment of our community.*

**AMEN**

**2. PRESENT**

Cr Brian Crook (Mayor)  
Cr Frank Buchanan  
Cr Stephen Hart  
Cr Stuart Hart  
Cr Geoff Higgins  
Cr Lyn Russell  
Cr Chris Smith

Jack Green, Acting Chief Executive Officer

Colin Hayman, General Manager, Corporate & Community Services  
Neil Allen, General Manager, Infrastructure & Services  
Mike Barrow, Acting General Manager, Sustainable Planning & Development  
Marg Scanlon, Manager, Recreation, Arts & Culture

Althea Wright, Executive Officer

**3. APOLOGIES**

Nil

**4. MAYORAL STATEMENT**

Colac Otway Shire encourages active community input and participation in Council decisions. Council meetings provide one of these opportunities as members of the community may ask questions relating to matters being considered by Council at the current meeting. Questions not related to current agenda items can be made in writing and will be addressed if received within two days of the Council meeting. Council meetings also enable Councillors to debate matters prior to decisions being taken.

I ask that we all respect each other during this process by:

- being courteous and respectful in the way in which you speak;

- not speaking unless you have been permitted to by me as chairperson;
- respecting the local laws which govern meeting procedure (copies of these are here for your information); and
- understanding that I have a responsibility to ensure proper meeting procedure and the upholding of the local law.

I also would like to inform you that the meeting is being taped. The audio recording of the meeting is being made for the purpose of verifying the accuracy of the minutes of the meeting. In some circumstances the recording may be disclosed, such as where Council is compelled to do so by court order, warrant, subpoena or by any other law, such as the Freedom of Information Act 1982.

Thank you, now question time. 30 minutes is allowed for question time.

- 1) Questions in Writing
- 2) Questions from the floor

## 5. QUESTION TIME

### Questions Received in Writing Prior to the Meeting

#### Ray Ensley

**During the past few weeks Councillors have been deliberating on the future of the Colac Library and the Joint Use Library. Those deliberations have included discussions with the Minister for Education and the Principal of the Secondary College. The community has not been informed about the nature of those deliberations and discussions on the grounds that they were of a legal or political nature.**

1. **What is it about these legal and political issues that justifies Council's stance of secrecy?**
2. **When, and how, will full details of those legal and political issues, deliberations and discussions be revealed to the community?**
3. **Will written answers to these questions be sent to me?**

*The Background report to the Notice of Motion indicates the meetings that have been held since the Special Meeting held on 10 December.*

*Council's legal advice and discussions that were held with Council are confidential.*

*At the two meetings that were held with the Department Secretaries and the Minister of Education, Bronwyn Pike a number of issues were raised by the Acting CEO and the Mayor and Deputy Mayor.*

*These included:*

- *Community views;*
- *Caretaker Period;*
- *Date of signing of agreement;*
- *History of Joint Use Libraries not working;*
- *Financial issues; and*
- *Signing of contracts.*

*Both the Minister and the Department Secretaries reinforced that they were very committed to the proposal and overwhelmingly supported the project.*

*A number of points were made:*

- The Minister and the Department have been involved in the project for a very long time;*
- Lots of works and decisions have been made to get to this stage;*
- Opportunity for enhanced facilities;*
- Federal Government Policy – schools must make facilities available to the community;*
- Council has already received significant Government funding. No further funds available for the Joint Use Library;*
- The Government intends to continue with the project;*
- The Government is committed to meeting the project timelines to ensure the infrastructure development is not impacted;*
- The implications are very clear;*
- There would be a significant liability if Council withdrew from the project;*
- There are no fallback positions;*
- If the 18<sup>th</sup> February deadline was not met there would be significant implications leading to considerable delays;*
- Government expect Council to honour the contract;*
- Commitment of \$30,000 by the Department of Community Planning and Development to assist in researching possible options.*

*The above points will be confirmed in writing to Mr Ensley.*

### **Questions Received Verbally at the Meeting**

#### **Mr Wessner**

**Would it not be more economical to get out of the Joint Use Library Agreement now which would cost \$500,000 rather than having to pay back a loan of \$1.3 m.**

*Jack Green, Acting Chief Executive Officer advised that the cost to the Council and Community could be more than \$500,000 if we do not go ahead with the Joint Use Library Agreement.*

#### **Lyn Foster, Friends of the Library**

**Will the community be involved in consultation before a decision is made on the Joint Use Library?**

*The Mayor advised that Council had certain legal imperatives to meet and that there would be no further community consultation as a response has to be provided to the Minister by 18 February 2009.*

#### **Helen Paatsch**

- 1. A report in the Colac Herald advised that information had been shared with one community group why was this information not available to the whole community.**

*The Mayor advised that he had made a personal decision to meet with the Friends of the Library group to provide them with background information.*

**2. If the motion is passed will Colac Otway Shire remain a member of the Corangamite Regional Library Corporation?**

*Jack Green, Acting Chief Executive Officer advised that Council is committed to the Corangamite Regional Library Corporation.*

**Paul Cross**

**The Mayor has been quoted in the local press that if the Joint Use Library does not go ahead the school will not have a library. Is this correct?**

*The Mayor advised that the Minister advice is that the Joint Use Library will proceed.*

**How much will it cost to withdraw from the library Agreement?**

*The Mayor indicated that it would cost as much to get out of the Agreement as it would be to stay in the Agreement.*

**Alan Billing**

**What was the cost of the Special Council Meeting held on 10 December 2008 in regards to legal advice, staff time, travel and workshops?**

*Jack Green, Acting Chief Executive Officer advised that the costs are considered to be part of the normal responsibility of Council. The total legal costs have not as yet been assembled.*

**Alan Smith**

**Why is Council not taking notice of the users of the Library when making their decision?**

*The Mayor advised that Council is fully aware of the issues of the Library users since the election and that legal advice was sought in an effort to move forward.*

**Christine Holm**

**Why was Minter Ellison chosen as Council's solicitors to seek legal advice from as they acted on behalf of the Department of Education in drawing up the Joint Use Library agreement?**

*The Mayor advised that it was a decision by Council to get legal advice from Minter Ellison as they had greater knowledge of the Agreement and would be able provide the advice in a very short timeframe.*

*Jack Green, Acting Chief Executive Officer, further clarified that Minter Ellison had been involved in working on the original Agreement on behalf of Council, not DEECD, and as such it was appropriate for Council to continue to use them given their previous role acting for Council and their knowledge of the detail and issues involved.*

**6. DECLARATION OF INTEREST**

Nil

**OFFICERS' REPORTS**

**Notice of Motion**

- SC091702-1 BACKGROUND REPORT TO NOTICE OF MOTION NO. 146-08/09 -  
JOINT USE LIBRARY AGREEMENT
- SC091702-2 NOTICE OF MOTION NO. 146-08/09 - JOINT USE LIBRARY  
AGREEMENT (CR BUCHANAN)

**Urgent Business**

VICTORIAN BUSHFIRE APPEAL

**SC091702-1 BACKGROUND REPORT TO NOTICE OF MOTION NO. 146-08/09 - JOINT USE LIBRARY AGREEMENT**

AUTHOR:	Marg Scanlon	ENDORSED:	Colin Hayman
DEPARTMENT:	Corporate & Community Services	FILE REF:	GEN00374

**Purpose**

The purpose of this report is to provide information pertaining to the current status of the Beechy Precinct Joint Use Library Agreement and Council's resolution to investigate their preference to withdraw from this current Development and Joint Use Agreement for the Beechy Precinct Joint Use Library.

This report is provided for information only.

**Background**

Council resolved at a Special Meeting on 10 December 2008 to investigate the implications and obligations in implementing the Council endorsed preference to end its involvement in the current Development and Joint Use Agreement with the Department of Education and Early Childhood Development for the Beechy Precinct Global Connector.

Further to this a workshop was held with Councillors on 14 January 2009 to determine how the objective was best achieved and as a result the following process was agreed to;

1. A meeting to be held with Councillors Council Management and Council approved legal expert with a view to obtaining legal advice as to how Council might best end its involvement in the planned joint use library. The legal expert to be chosen at the December 2008 Ordinary Council meeting or earlier by agreement.
2. Council's Acting CEO Jack Green, General Manager for Corporate and Community Services Colin Hayman and Manager Recreation, Arts and Culture Marg Scanlon to meet with Professor Peter Dawkins, Department Secretary for the Department of Education and Early Childhood Development, and Yehudi Blacher, Department Secretary for the Department of Community Planning and Development.

The purpose of the meeting being to outline the Council position in relation to the matter and seek support from the relevant Government Departments in releasing Council from its involvement in the Joint Use Library Project.

3. The Mayor, Deputy Mayor and Acting CEO to meet with the Minister for Education, Bronwyn Pike with the same intention as the meeting with the Departmental Secretaries.
4. A workshop be held with Council to discuss the outcomes of the above meetings.

Since this workshop held on 14 January 2009 the following has occurred in accordance with the above process -

1. Minter Ellison were engaged and provided legal advice which has been workshopped and provided to Councillors. In addition specific questions have arisen from Councillors which have been addressed.
2. A meeting between Council's Acting CEO Jack Green, General Manager for Corporate and Community Services Colin Hayman and Manager Recreation, Arts



and Culture Marg Scanlon with Professor Peter Dawkins Department Secretary for the Department of Education and Early Childhood Development, and Yehudi Blacher Department Secretary for the Department of Community Planning and Development was held on 29 January 2009. This meeting was also attended by Arden Joseph Executive Regional Director Metropolitan Melbourne and Gippsland, Department of Planning and Community Development and Peter Stewart Infrastructure Manager for the Department of Education and Early Childhood Development.

3. The Mayor Cr. Brian Crook, Deputy Mayor Lyn Russell and Council's Acting CEO Jack Green met with Bronwyn Pike, Minister for Education on 5 February 2009.
4. Information from these meetings has been workshopped with Council.

#### **Corporate Plan/Other Strategies/Policy**

The agreed actions regarding these investigations are consistent with Council related policies and the Local Government Act.

#### **Issues/Options**

This report is provided for information only.

#### **Proposal**

This report is provided for information only.

#### **Financial Implications**

The financial costs related to the review process are appropriately provided for in the Council operating budget. Costs associated with the legal aspects of the investigations are unbudgeted.

#### **Risk Management & Compliance Issues**

All risk management and compliance requirements have been considered during the establishment of the process to undertake these investigations.

#### **Environmental Considerations**

There are no environmental issues pertaining to these current investigations or the associated process.

#### **Communication Strategy/Consultation**

All Beechy Precinct Joint Use Library project partners were sent correspondence on 12 December 2008 outlining Council's current investigations and indicating that advice regarding further progress would be provided when available.

The open Council Meeting will be attended by interested community members and the local media. A media release will be produced advising the community of the adopted Council position following the Council resolution at the Special Meeting.

#### **Implementation**

Advise the Minister for Education and all project partners immediately following this Special Meeting of the associated outcomes.

#### **Conclusion**

As the process initiated by Council for resolution of this matter has now concluded, a Special Meeting of Council has been called for Tuesday, 17 February 2009 in response to a Notice of Motion by Cr Buchanan to enable a decision to be made by Council on the matter.

**Attachments**

Nil.

**Recommendation**

***That Council receive the Background Report to the Notice of Motion No. 146-08/09 – Joint Use Library Agreement.***

**Resolution**

***MOVED Cr Buchanan seconded Cr Smith that Council receive the Background Report to the Notice of Motion No. 146-08/09 – Joint Use Library Agreement.***

**LOST 3 : 4**

***DIVISION called by Cr Stephen Hart***

***For the Motion: Cr Buchanan, Cr Smith, Cr Crook***

***Against the Motion: Cr Stephen Hart, Cr Russell, Cr Stuart Hart, Cr Higgins***

**SC091702-2 NOTICE OF MOTION NO. 146-08/09 - JOINT USE LIBRARY AGREEMENT  
(CR BUCHANAN )**

TAKE NOTICE that it is my intention to move at the Special Council Meeting of the Colac Otway Shire to be held on Tuesday, 17 February 2009:

*"That Council acknowledges:*

1. *The former Colac Otway Shire Council entered into a legally binding agreement with the State Government regarding the Joint Use Library one month prior to the Shire elections.*
2. *The State Government fully intends to implement the Joint Use Agreement.*
3. *The State Government has agreed to fund a feasibility study to investigate the provision of a library annexe in Colac.*
4. *This Council, after consideration of legal advice and after a deputation to Hon Bronwyn Pike, Minister for Education, has decided to reluctantly abide by its legal obligations with respect to the Joint Use Library."*

**Recommendation(s)**

***That Council consider the contents of this Notice of Motion.***

**Resolution**

***MOVED Cr Buchanan seconded Cr Smith that Council acknowledges:***

1. ***The former Colac Otway Shire Council entered into a legally binding agreement with the State Government regarding the Joint Use Library one month prior to the Shire elections.***
2. ***The State Government fully intends to implement the Joint Use Agreement.***
3. ***The State Government has agreed to fund a feasibility study to investigate the provision of a library annexe in Colac.***
4. ***This Council, after consideration of legal advice and after a deputation to Hon Bronwyn Pike, Minister for Education, has decided to reluctantly abide by its legal obligations with respect to the Joint Use Library.***

**LOST 3 : 4**

***DIVISION called by Cr Stephen Hart***

***For the Motion: Cr Buchanan, Cr Smith, Cr Crook***

***Against the Motion: Cr Stephen Hart, Cr Russell, Cr Stuart Hart, Cr Higgins***

***MOVED Cr Stephen Hart seconded Cr Russell that***

1. ***The former Colac Otway Shire Council agreed to enter into an agreement with the State Government regarding the Joint Use Library one month prior to the 2008 Shire election.***
2. ***The State Government has informed Council representatives that it intends to implement the Joint Use Agreement.***
3. ***The State Government has agreed to consider the funding of a feasibility study to investigate the provision of a library annexe in Colac.***
4. ***This Council, after consideration of legal advice and a deputation to the Hon Bronwyn Pike, Minister for Education, has decided there is a need for further and immediate negotiations with the Department and/or State Government with respect to the Joint Use Library about a number of matters, including but not limited to:***
  - (a) ***An exit of the Colac Otway Shire Council from the joint use library arrangement by agreement between the Parties;***  
***and / or***
  - (b) ***The continued involvement of Council in the joint use library arrangement with issues about operational costs, building specifications and the joint operation of the library needing to be resolved as an urgent priority.***
  - (c) ***In relation to the above matters Council draws particular attention to the requirements outlined in Clauses 6, 27 and 28 of the Agreement.***
5. ***Council is not attempting to delay the building process. However, Council has a responsibility to ensure that relevant matters, as outlined in point 4 are resolved.***

**CARRIED 4 : 3**

***DIVISION called by Cr Stephen Hart***

***For the Motion: Cr Stephen Hart, Cr Russell, Cr Stuart Hart, Cr Higgins***

***Against the Motion: Cr Buchanan, Cr Smith, Cr Crook***

**URGENT BUSINESS****Victorian Bushfire Appeal**

***MOVED Cr Stephen Hart seconded Cr Buchanan that Council consider a matter of Urgent Business in regards to the Victorian Bushfire Appeal***

***CARRIED 7 : 0***

**Declaration of Interest – Nil**

***MOVED Cr Stephen Hart seconded Cr Buchanan that Council***

- 1. Donates an amount of \$10,000 to the Victorian Bushfire Appeal.***
- 2. Donates the hire of the Civic Hall (COPACC for the purpose of a charity ball to be co-ordinated by a local Colac organisation with the proceeds to go the Victorian Bushfire Appeal.***
- 3. Donates tickets to CFA Volunteers for the production of "The Tank" at COPACC on 28 February 2009.***
- 4. Assists in the co-ordination of the Memorial Service to be held at Memorial Square, Colac on Sunday 22 February 2009 at 4.00 pm.***
- 5. Ensures bushfire related information is available through Council's website and through other media.***

***CARRIED 7 : 0***

## IN COMMITTEE

**Resolution**

***MOVED Cr Stuart Hart that pursuant to the provisions of Section 89(2) of the Local Government Act, the meeting be closed to the public and Council move "In-Committee" in order to deal with one or more of the following matters:***

<b><i>SUBJECT</i></b>	<b><i>REASON</i></b>	<b><i>SECTION OF ACT</i></b>
<b><i>Potential Purchase of Property</i></b>	<b><i>Matter may prejudice Council or any person</i></b>	<b><i>Section 89(2)(h)</i></b>

***CARRIED 7 : 0***