

**Colac Otway
SHIRE**

MINUTES

MEETING OF SPECIAL COUNCIL

OF THE

COLAC-OTWAY SHIRE

COUNCIL

9 MAY 2012

at 2:00 PM

COPACC Meeting Rooms

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.

COLAC-OTWAY SHIRE SPECIAL COUNCIL MEETING

9 MAY 2012

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MINUTES of the **MEETING OF SPECIAL COUNCIL MEETING OF THE COLAC-OTWAY SHIRE COUNCIL** held at the COPACC Meeting Rooms on 9 May 2012 at 2.00 pm.

1. OPENING PRAYER

2. PRESENT

Cr Stephen Hart (Mayor)

Cr Brian Crook
Cr Stuart Hart
Cr Geoff Higgins
Cr Lyn Russell
Cr Chris Smith

Rob Small, Chief Executive Officer

Colin Hayman, General Manager, Corporate and Community Services
Neil Allen, General Manager, Infrastructure and Services
Jack Green, General Manager, Sustainable Planning and Development
Maree Redmond, Executive Officer

Ian Seuren, Manager Recreation, Arts and Culture
Jodie Fincham, Recreation and Events Coordinator

3. APOLOGIES

Cr Frank Buchanan

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.

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.

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

I remind you that you must ask a question, if you do not have a question you will be asked to sit down and the next person will be invited to ask a question. This is not a forum for public debate or statements.

5. QUESTION TIME

Tony Grogan

Is this meeting necessary since an agreement has been reached by the parties.

Response:

Meeting has been called to give clear direction to the Chief Executive Officer.

6. DECLARATION OF INTEREST

Nil

7. VERBAL SUBMISSIONS

OFFICERS' REPORTS

Corporate and Community Services

SC120905-1 EASEMENT OF CARRIAGEWAY THROUGH COLAC SPECIALIST
SCHOOL FOR OLD BEECHY RAIL TRAIL

Rob Small
Chief Executive Officer

SC120905-1

**EASEMENT OF CARRIAGEWAY THROUGH COLAC
SPECIALIST SCHOOL FOR OLD BEECHY RAIL TRAIL**

AUTHOR:	Ian Seuren	ENDORSED:	Colin Hayman
DEPARTMENT:	Corporate & Community Services	FILE REF:	11/96660

Purpose

The purpose of this report is to determine whether or not Council will exercise its rights regarding the easement of carriageway through part of the Colac Specialist School to construct an off road section of the Old Beechy Rail Trail.

The report is also to determine whether or not Council develops a policy considering future proposals to put any trail through a site used for a school, kindergarten, health service, CFA shed or any other service providing organisation and that this should require an explicit resolution of Council before the Council begins any work on such a proposal.

Declaration of Interests

Recreation and Events Co-ordinator, Jodie Fincham declared an interest under the *Local Government Act 1989*. This officer is a member of the Section 86 Old Beechy Rail Trail Committee delegated by Council and was involved in the preparation of this report.

No other officer declared an interest under the *Local Government Act 1989* in the preparation of this report.

Background

The Old Beechy Rail Trail is a 45km interpretative walking/cycling trail, located between Colac and Beech Forest. The trail follows much of the original path of the narrow gauge railway "*The Beechy*" which ran from 1902 until 1962.

The official opening of the Old Beechy Rail Trail (OBRT) took place on Saturday 22 October 2005. The opening marked the culmination of eight years of work by the Old Beechy Rail Trail Committee which was formed in 1998, bringing together interested groups from Colac, Gellibrand, Beech Forest and Lavers Hill to make the trail a reality. The Rail Trail Committee is a Section 86 Committee of the Colac Otway Shire Council, under the Local Government Act. In addition, a *Friends Group* was formed in 2000 to help with ongoing track maintenance, development and historical interpretation.

The Trail is located on a combination of Council owned land, private land and Crown Land. The Department of Sustainability and Environment (DSE) has appointed Colac Otway Shire (COS) as Committee of Management over small sections of the trail that traverse crown land. Colac Otway Shire has successfully negotiated license agreements with a number of private land owners for access to the Trail across private land. The Colac Otway Shire therefore retains ultimate management responsibility for the Old Beechy Rail Trail.

The Old Beechy Rail Trail Committee continues to operate as an important Section 86 Committee of Council and includes representation from DSE and private land owners. Committee members (other than Council representatives) are appointed for a 3 year term by Council resolution.

Current Committee membership consists of:

- Two representatives from each of:
 - Gellibrand/Kawarren Progression Association;
 - Beech Forest Progress Association;
 - the Colac area; and
 - Council (one Councillor and one member of Council staff); and
- One representative from each of:
 - Midway Plantations;
 - Parks Victoria;
 - Department of Sustainability and Environment;
 - Otway Scenic Circle Association;
 - Landowner ;
- Friends of the Old Beechy Rail Trail; and
- User groups such as walking and cycling groups.

The Committee is responsible for the development of strategic plans for future management and maintenance, ensuring effective means of communication to encourage community participation and ownership of the Old Beechy Rail Trail.

Council, the Rail Trail Committee and the Friends Group have achieved great success in taking the Old Beechy Rail Trail from concept to reality. Since the official opening in 2005, the Trail continues to be developed, improved and upgraded. The Rail Trail Committee is committed to ensuring that the trail follows the original railway alignment as closely as possible due to the associated benefits this offers trail users. Following the original railway alignment provides visitors with a feel for the former railroad on whose tracks they are now riding, walking or running. It highlights the history of the area including the names of the settlements, people and industries which once existed along the line.

Experiencing original railroad infrastructure such as trestles, viaducts and bridges also exponentially heightens the trail riding experience. Following the original alignment provides a strong link to the glory days of the railroad's past. It is acknowledged that it is unlikely that the entire original line will ever be completely re-opened for public access given existing infrastructure and the complexity of land ownership issues. However, the Old Beechy Rail Trail Committee continues to actively pursue whatever land is available along the original alignment to preserve the history of the trail.

A workshop held in March 2009, explored the Strengths, Weaknesses, Opportunities and Threats (SWOT) associated with the Trail. Key outcomes from the workshop have been used to help inform the development of the 5-Year Strategic Action Plan for the Trail concentrating on the following key areas;

- Trail maintenance and management,
- Capital development and infrastructure improvement,
- Trail marketing,
- Trail access,
- Trail development and expansion, and
- Risk management.

In late 2009, a funding agreement was signed between the Minister for Regional and Rural Development and the Colac Otway Shire for the State of Victoria to provide funding of \$500,000 through the Regional Infrastructure Development Fund (RIDF) for the enhancement/upgrade of the Old Beechy Rail Trail over three financial years. This amount was matched with a Council contribution of \$249,000 over the three year period from existing budget allocations and from other externally sourced funds.

The project involves undertaking works to specific sections of the Old Beechy Rail Trail to redirect the trail off sections of vehicular roads to reduce identified risk and to formally establish the Old Beechy Rail Trail in sections currently not connected. This project will also provide important connections for the local Colac community and other smaller towns along the trail (Beech Forest and Gellibrand) and provide unique opportunities along the trail at specific sections to experience the natural environment, historical and cultural features capturing some spectacular vistas. This project will further promote the heritage, cultural and environmental features along the trail through interpretive signage.

Currently there is approximately an 11 kilometre spread at various points of the Old Beechy Rail Trail which requires users to go on-road. This poses significant risk issues given some sections of the road have an 80 kilometre speed limit and are heavily used local roads. This risk will be addressed through the formal construction of these sections of the Old Beechy Rail Trail off-road.

At the time that the Colac Specialist School was to be erected, an agreement between Council and the Department of Employment, Education and Training was reached to create a separate title for the subject site and sale thereof at an agreed value. Since that time, the significance of the Old Beechy Rail Trail became more evident and Council sought to include an easement of carriageway along the eastern boundary of the subject site. In finalising the sale of land, discussions were held with Council and stakeholders including the Colac Specialist School, the Old Beechy Rail Trail Committee members and the Department of Employment, Education and Training. The land was sold incorporating the creation of a 3 metre wide carriageway easement (E1) along the alignment of the former Old Beechy Rail Trail.

Council Plan / Other Strategies / Policy

Land Use and Development

Council will engage, plan and make decisions about land use and development that takes into account the regulatory role of Council, its diverse geography, social, community, economic and environmental impacts for current and future generations.

Community Health and Wellbeing

Council will promote community health and wellbeing in partnership with other health services. Through a partnership approach, Council will provide a broad range of customer focused health, recreational, cultural and community amenities, services and facilities.

Strategic documents relevant to this report include the Colac Otway Public Open Space Strategy and the Old Beechy Rail Trail Strategic Action Plan and Review 2009 – 2014.

Issues / Options

In 2003, the Department of Employment, Education and Training purchased property at 120A Wilson Street from the Colac Otway Shire Council. This land included the creation of a 3 metre wide carriageway easement along the eastern boundary at the time of purchase. The Colac Specialist School had no objections to the request for the easement by the Colac Otway Shire Council along the alignment of the former Old Beechy Rail Trail, as long as it

was securely fenced and that the students could also use the easement for access to the Central Reserve.

However, in 2012 the Colac Specialist School identified that they are now strongly opposed to the installation of a fence (3 metre wide from the boundary) along the Old Beechy Rail Trail easement on the school site. The school asserts that the proposed fencing will result in a significantly reduced play space for students all who have a diagnosed disability, which will be detrimental to both their physical and emotional needs.

It should be noted that future occupiers of the site, whether for a school use or other use may be in favour of the proposal.

Conversely, the Old Beechy Rail Trail Committee remain strongly in favour of constructing a trail along the easement, particularly in light of the recent success in obtaining funding and to eliminate risks facing trail users who are currently required to use the vehicular road along this section of the trail.

The following points outline the key issues raised by the two groups, each with opposing viewpoints.

Old Beechy Rail Trail Committee issues

Safety issues

The Committee aims to reduce all risks associated with on-road sections of the Old Beechy Rail Trail by providing off-road trail options where possible. State Government funding successfully applied for in 2009 will specifically result in 11 kilometres currently on-road to be off road and provide a safe trail option.

The construction of the off-road shared Old Beechy Rail Trail link from the Colac Railway Station (the formal commencement point) through Central Reserve to Hearn Street Colac is an important connector for the Colac Community between the Colac CBD, the Beechy Precinct, Colac Secondary College and residential zones. This section will not only provide an off-road shared trail option for residents but it will also link directly to key community facilities and amenities along the section.

The Old Beechy Rail Trail Strategic Action Plan 2009-2014 identifies under recommendation 7.2a that "*Trail development should concentrate on rectifying existing gaps in the Trail (i.e. minimising on-road sections) and providing an appropriate quality surface for the entire Trail, prior to future expansion beyond Colac-Beech Forest.*"

Funding secured

A funding amount of \$500,000 was secured in 2009-2012 for enhancement to the trail with the specific intent to increase safety by removing existing on road sections to off road. Failure to use the available funds for this purpose may result in a missed opportunity to construct the trail along the original alignment through the Specialist School. It may be some time before an opportunity arises in the future for this to take place.

The funds may however be used to achieve similar outcomes elsewhere on the trail.

Sale of land

The sale of the site 120A Wilson Street from the Colac Otway Shire to the Department Education and Training included a 3 metre wide easement of carriageway on the eastern boundary. Although not specified in a Council resolution, supporting correspondence including Council Reports, proposed construction plans, Minutes from the Old Beechy Rail Trail Committee meetings and discussions between stakeholders at the time indicate that the easement was intended for use for the purposes Old Beechy Rail Trail.

Committee involvement

In 2003, members of the Old Beechy Rail Trail Committee were involved in initial discussions to secure the easement for use by the Trail to provide additional off road sections and to address risk issues.

Agreement from Colac Specialist School

Correspondence received from the Colac Specialist School (11 November 2003) indicates that the school was not opposed to the use of the easement: *"The 3 metre easement requested by the Colac Otway Shire would cause no great hardship to the school as long as it was securely fenced, our students could also use the easement for access to Central Reserve as the Shire is planning for the general public."*

Colac Specialist School issues

The Colac Specialist School is opposed to the use of the easement as the School has limited land, is landlocked on three sides and has rising enrolments.

Growing enrolments

In 2003 the Colac Specialist School had 35 students enrolled. In 2012 this number has now grown to 47. The student population ranges in age from five to eighteen years old. There is already a limited amount of play space available to students with physical and intellectual disabilities which will be further reduced if the Colac Otway Shire decides to exercise its right to create a 3 metre easement along the eastern boundary.

Award winning playground

The Colac Specialist School has been recognised for its attractive gardens and grounds. In 2011 the school received a Victorian Schools' Garden Achievement Award. Although not large, the area is well maintained and developed to provide a safe outdoor learning environment for students. The creation of a 3 metre easement is considered detrimental to the overall affect and attractiveness of the gardens. It will impact on student's ability to play games and reduce the area for open space at the facility.

Erection of fence

The proposal to erect a 1.8 metre high cyclone fence (with top rail) is likely to be unattractive and detract from the surrounds of the Colac Specialist School. The fenced narrow strip of land has the potential to create security issues, especially in the evening. Most of the school's shade trees exist along the boundary fence and as a sustainable school, their loss would be undesirable.

Policy development

As part of any normal process with the development of any public trail there would be an extensive consultation process which would include briefing of Council and subsequent report seeking endorsement. The briefing and report would identify any issues that affect any community service providing organisation e.g. schools, kindergartens, health services, CFA sheds.

Options

There are 3 options:

1. Council supports this proposal not to use the easement at this time, however acknowledges the issues raised by the Old Beechy Rail Trail Committee and therefore attempts to seek alternative routes for the Trail other than the easement.

2. Council not support this proposal and proceed with constructing a section of the trail through the Colac Specialist School.
3. Council defers a decision whilst discussions continue with representatives from both the Colac Specialist School and Old Beechy Rail Trail Committee to reach a mutually agreed outcome about the use of the carriageway of easement.

Proposal

The proposal is that the carriageway of easement located at 120A Wilson Street Colac is not to be used for the Old Beechy Rail Trail at this time, or any other trail in which Council has any part, while the site is used for the Colac Specialist School.

Development of the access should only occur when the landowner is in agreement and cooperative with such access.

A policy will be developed to consider future proposals to put any trail through a site used for a school, kindergarten, health service, CFA shed or any other service providing organisation, which will require an explicit resolution of Council before the Council begins any work or negotiations on such a proposal

Financial and Other Resource Implications

If Council proceeds with developing the easement of carriageway through the site for the Old Beechy Rail Trail there will be associated construction costs which would be met through the secured funding.

Risk Management & Compliance Issues

Council's solicitors have advised that there is no requirement to enter into a legally binding agreement regarding the decision pertaining to the use of the easement of carriageway. Legal advice received confirms that the Council resolution and written advice to the Colac Specialist School will suffice.

The decision by Council to not exercise its rights regarding the easement of carriageway through part of the Colac Specialist School to construct an off road section of the Old Beechy Rail Trail is unlikely to damage Council's relationship with the Old Beechy Rail Trail Committee of Management, since their objectives in reaching collaboration with land owners along the trail is axiomatic to ongoing successful negotiations.. There is a risk that this decision may some alienate members of the Committee from Council and their delegated role.

Environmental and Climate Change Considerations

Not applicable to this report.

Community Engagement

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of January 2010, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method selected has been to inform and consult. Following the early consultation processes undertaken in 2003, the proposal has been discussed on a number of occasions from November 2011 with the Colac Specialist School Principal and School Council members. Consultation has been undertaken with members of the Old Beechy Rail Trail through attendance at Committee meetings and through discussion. Members of the Central Reserve Advisory Committee were invited to comment on the proposal to continue to the fenced trail through the Reserve and had no objections.

Officers have spoken to Regional Development Victoria regarding the \$500,000 funding obtained through the Regional Infrastructure Development Fund (RIDF). Advice received confirms that not proceeding through the Colac Specialist School land will not detrimentally impact on funding. Council can continue to meet its obligations as per the funding agreement.

Implementation

Council will inform the Colac Specialist School and Committee members of the Old Beechy Rail Trail Committee in writing of its resolution. A Policy to consider future proposals to put any trail through a site used for a school, kindergarten, health service, CFA shed or any other service providing organisation will be developed. The Policy will state that an explicit resolution of Council is required before the Council begins any work or negotiations on such a proposal.

Conclusion

Circumstances around the Colac Specialist School have changed materially since the original discussions regarding the easement were held in 2003. School enrolments have increased, there have been changes in staff and new members have joined School Council. Council and the Old Beechy Rail Trail Committee recognise that obtaining access through privately owned land along the trail requires a spirit of co-operation and willing participative partners. Consideration also needs to be given to the successful long term future management of the trail. The recommendation that the easement is not to be used for the Old Beechy Rail Trail, or any other trail in which Council has any part, while the site is used for the Colac Specialist school will allay the concerns of the school. This recommendation will also enable the easement to be considered should an opportunity arise in the future.

Attachments

1. Title 120A Wilson Street Colac 2 Pages

Original Recommendation(s)**That Council:**

1. ***Notes that it has an easement of carriageway over part of the Colac Specialist School site located at 120A Wilson Street, Colac for possible use of the Old Beechy Rail Trail.***
2. ***Resolves that the easement is not to be used for the Old Beechy Rail Trail, or any other trail in which Council has any part, while the site is used for the Colac Specialist School or as otherwise agreed mutually by the parties.***
3. ***Enters into an agreement with the Department of Education and Early Childhood Development/Colac Specialist School, through the exchange of correspondence between the parties.***

MOVED Cr Lyn Russell seconded Cr Brian Crook that Council:

1. ***Notes that it has an easement of carriageway over part of the Colac Specialist School site located at 120A Wilson Street, Colac intended for use of the Old Beechy Rail Trail.***
2. ***Resolves that the easement is not to be used for the Old Beechy Rail Trail, or any other trail in which Council has any part, while the site is used for the Colac Specialist School or any other school under the Department of Education and Early Childhood Development (DEECD) unless agreed mutually by the school and Council in writing.***
3. ***Instructs the Chief Executive Officer to enter into an agreement, which legally binds Council with the DEECD / Colac Specialist School to give effect to this resolution.***

CARRIED 6 : 0

Land Registry Document

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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958
 VOLUME 11336 FOLIO 793 Security no : 124041425068F
 Produced 11/04/2012 11:35 am

LAND DESCRIPTION
 Land in Plan of Consolidation 372675C.
PARENT TITLES :
 Volume 10626 Folio 164 Volume 11304 Folio 490
 Created by instrument PC372675C 05/03/2012

REGISTERED PROPRIETOR
 Estate Fee Simple
 Sole Proprietor
 MINISTER ADMINISTERING THE EDUCATION AND TRAINING REFORM ACT 2006 of 2
 TREASURY PLACE EAST MELBOURNE VIC 3002
PC372675C 05/03/2012

ENCUMBRANCES, CAVEATS AND NOTICES

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION
 SEE PC372675C FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NUMBER	PLAN OF CONSOLIDATION	STATUS	DATE
<u>PC372675C</u>		Registered	05/03/2012

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 120A WILSON STREET COLAC VIC 3250

DOCUMENT END

Home	Account: 322875		Authority Fee (GST exclusive):	\$9.35	11/04/2012 11:35AM
			Service Fee (GST exclusive):	\$0.00	
			GST Payable:	\$0.00	
			Total:	\$9.35	

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https://www.landata.vic.gov.au/landata.net/img_document_resp.aspx?searchstring=11... 11/04/2012



Delivered by LANDATA®. Land Victoria timestamp 11/04/2012 11:36 Page 1 of 1
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PLAN OF CONSOLIDATION		LTO use only	PC372675C															
EDITION 1			21/02/2012 14:56 PC															
LOCATION OF LAND Parish: COLAC Township: Colac Section: Crown Allotment: 158 (Part) & 159 (Part) Crown Portion: LTO Base Record: LASSI Title Reference: CJT, Vol. 10625 Fol. 164 CIT, Vol. 11304 Fol. 490 Last Plan Reference: PS441072N (Lot 1) TP848596M LOT 1 Postal Address: 120 Wilson Street (at time of consolidation) COLAC 3250 AMG Co-ordinates: E 725 130 N 5 752 435 (of approx. centre of land in plan) Zone: 54		Council Certification and Endorsement Council Name: Colac Otway Shire Council Ref: 530/2011-1 1. This plan is certified under section 6 of the Subdivision Act 1988. 2. This plan is created under section 11(7) of the Subdivision Act 1988. Date of original consolidation under section 6: / / 3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988. Council Delegate: <i>Ch. Deane</i> Council Seal: Date: 9/12/2011 He-certified under section 11(7) of the Subdivision Act 1988. Council Delegate: Council Seal: Date: / /	LTO use only Statement of Compliance/Exemption Statement Received <input checked="" type="checkbox"/> Date: 27 / 02 / 2012 LTO use only PLAN REGISTERED TIME 12.19PM DATE 05 / 03 / 2012 GARY M ROBERTSON Assistant Registrar of Titles Notations Depth Limitation: Does not apply. Easement delineated E-2 has been marked on the ground.															
Easement Information Legend: A - Appurtenant Easement; E - Encumbering Easement; R - Encumbering Easement (Road)																		
<table border="1"> <thead> <tr> <th>Easement Reference</th> <th>Purpose</th> <th>Width (Metres)</th> <th>Origin</th> <th>Land Beneficiary Favour Of</th> </tr> </thead> <tbody> <tr> <td>E-1</td> <td>Carriageway</td> <td>3</td> <td>PS 441072N</td> <td>Lot 2 on PS 441072N</td> </tr> <tr> <td>E-2</td> <td>Carriageway</td> <td>3</td> <td>This Plan</td> <td>CJT, Vol. 10992 Fol. 401 (Lot 2 on PS 532428 S)</td> </tr> </tbody> </table>	Easement Reference	Purpose	Width (Metres)	Origin	Land Beneficiary Favour Of	E-1	Carriageway	3	PS 441072N	Lot 2 on PS 441072N	E-2	Carriageway	3	This Plan	CJT, Vol. 10992 Fol. 401 (Lot 2 on PS 532428 S)			
Easement Reference	Purpose	Width (Metres)	Origin	Land Beneficiary Favour Of														
E-1	Carriageway	3	PS 441072N	Lot 2 on PS 441072N														
E-2	Carriageway	3	This Plan	CJT, Vol. 10992 Fol. 401 (Lot 2 on PS 532428 S)														
ROD BRIGHT & ASSOCIATES PTY. LTD. LICENSED SURVEYORS 26 MURRAY STREET COLAC 3250 TEL. 52 3148 83 A.C.N. 007 20 6 975		Sheet 1 of 1 sheets DATE 9/12/2011 COUNCIL DELEGATE SIGNATURE Original sheet size A3																
SCALE 15 0 15 30 LENGTHS ARE IN METRES		ORIGINAL SCALE SHEET SIZE A3 1:1500																
SIGNATURE: <i>A. Bright</i> REF 11-60 VERSION		LICENSED SURVEYOR (PSW), RODNEY, Arthur, Bright SIGNATURE: <i>A. Bright</i> DATE 22-7-2011																

The Meeting Was Declared Closed at 2:20 pm

CONFIRMED AND SIGNED at the meeting held on 23 MAY 2012.

SLAB

.....**MAYOR**