



Colac Otway
SHIRE

ORDINARY COUNCIL MEETING

MINUTES

Wednesday 29 January 2020

at 4:00 pm

COPACC

95 - 97 Gellibrand Street, Colac Victoria

Next Council Meeting: 26 February 2020



COLAC OTWAY SHIRE ORDINARY COUNCIL MEETING

Wednesday 29 January 2020

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COLAC OTWAY SHIRE ORDINARY COUNCIL MEETING

MINUTES of the *ORDINARY COUNCIL MEETING OF THE COLAC OTWAY SHIRE COUNCIL* held at COPACC on
Wednesday 29 January 2020 at 4:00 pm.

MINUTES

1 DECLARATION OF OPENING OF MEETING

OPENING 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
Cr Kate Hanson
Cr Stephen Hart
Cr Joe McCracken
Cr Chris Potter
Cr Jason Schram (Mayor)
Cr Chris Smith

Peter Brown, Chief Executive
Errol Lawrence, General Manager, Corporate Services
Tony McGann, General Manager, Infrastructure & Leisure Services
Ian Seuren, General Manager, Development & Community Services
Sarah McKew, Manager, Governance & Communications
Lyndal McLean, Governance Coordinator
Alison Martin, Coordinator, Communications
Richard Bianco, Manager, Information Services
Jason Clissold, Manager, Financial Services
Nick Howard, Finance Coordinator
Frank Castles, Manager, Services & Operations
Peter Macdonald, Acting Manager, Community Services
Vicki Jeffrey, Events Officer
Maree East, Customer Service Coordinator
Simon Macbeth, Port Coordinator
Jeremy Rudd, Manager, Assets & Project Delivery
Liza Kennedy, Environment Officer
Buddhima Edi, Assets Management Coordinator

3 APOLOGIES AND LEAVES OF ABSENCE

Nil

4 WELCOME AND ACKNOWLEDGEMENT OF COUNTRY

Colac Otway Shire acknowledges the original custodians and law makers of this land, their elders past, present and emerging and welcomes any descendants here today.

Please note: All Council and Committee meetings will be audio recorded, with the exception of matters identified as confidential items in the Agenda. This includes the public participation sections of the meetings.

By participating in open Council meetings, individuals consent to the use and disclosure of the information they share at the meeting (including any personal and/or sensitive information).

Audio recordings of meetings will be available to the public on Council's website as soon as practicable following the meeting and may be circulated by other means also. Audio recordings are also taken to facilitate the preparation of the minutes of open Council and Committee meetings and to ensure their accuracy. Original audio recordings will be retained by Council for a period of four years.

As stated in Local Law 4, other than an official Council recording, no video or audio recording of proceedings of Council Meetings will be permitted without specific approval by resolution of the relevant Council Meeting.

5 QUESTION TIME

A maximum of 30 minutes is allowed for question time. To ensure that each member of the gallery has the opportunity to ask questions, it may be necessary to allow a maximum of two questions from each person in the first instance. You must ask a question; if you do not ask a question you will be asked to sit down and the next person will be invited to ask a question. Question time is not a forum for public debate or statements.

QUESTIONS RECEIVED IN WRITING PRIOR TO THE MEETING

James Judd, Colac

1. **Has the period of heavy smoke in the atmosphere during the past weeks had any adverse impact on electricity produced by solar panels put in by Council at various locations in the municipality?**

Response from General Manager, Development & Community Services

Bushfire smoke in the atmosphere is known to have an adverse impact on solar yield. Understandably, decrease in yield is most pronounced where smoke is thickest, thus reducing the concentration of solar radiation from reaching the panels. Examination of solar generation at Bluewater and Rae Street Council offices over the first two weeks of January 2020 has revealed that solar yield is down by around 16% at both sites, as compared to the same period in 2019. Allowing for normal variations in cloud cover and other factors, it is likely that most of this difference is due to the recent smoke haze.

2. **If another south-west Victorian municipal council can have two swimming pools in one place (one a 25 metre pool with four lanes plus one 50 metre pool) why does the Colac Otway Shire Council refuse to consider the need to have a 50 metre pool installed in Colac? This is a requirement to recognise swimming times. Without a 50 metre pool in Colac no national recognised swimming events can be held in Colac as a 25 metre pool is too small and a 50 metre pool is an Olympic sized pool today, not what was when the pool was built. There are objections raised in this region about family members having to leave Colac to attend school swimming sports with the added expenses and the time required because we do not have a full sized pool.**

Response from General Manager, Infrastructure & Leisure Services

Colac Otway Shire is not currently considering the construction of a 50 metre pool due to the current and expected population size of Colac, the significant construction costs and the ongoing operating costs. Costs to construct a 50 metre outdoor pool would be in excess of \$10 million for a basic 50 metre pool (this doesn't include change rooms or water play areas). We'd also see an additional operating cost of approximately \$1 million dollars per year on top of current Bluewater operational costs.

These costs are based off a feasibility study currently being undertaken for the construction of an outdoor pool facility by a nearby council and the operational costs of a 50 metre pool based in Geelong.

Further, there are significant requirements that Swimming Australia (the National Swimming Body) would have of an outdoor 50 metre pool to host state or national level swimming competitions. For example, these events would require an indoor 50 metre pool, grandstand seating for over 3,000 spectators, electronic and video timing, media facilities, appropriate change rooms, officials rooms, marshalling rooms and suitable levels of accommodation for competitors and spectators. Regional cities such as Geelong and Ballarat have 50 metre indoor pools however even they are not eligible to host state and national level competitions due to the other facility requirements mentioned.

3. **In all future annual periods will the Colac Otway Shire Council distribute to all in the garbage collection area a hard copy of all the garbage collection dates and details of what is allowed to be put in each bin with the required distance between bins? Although Council claims details are on the web some are still complaining Council never advises them. Plus, methods Council uses to communicate with some are not available to all. People's lives are not to be run by Council by telling us what we have to do with our time. We all have other requirements that need our attention at certain times.**

Response from General Manager, Infrastructure & Leisure Services

Printed waste collection calendars are available and will continue to be available from customer service centres for any resident who requests a copy. There is a detailed list of general waste items on the back of each calendar with a description of each bin. All information is also available on our website which is a convenient resource for many of our residents. We do advise that you ensure there is a half-metre clearance between each bin.

4. What requirements exist on Barwon Water to release a set quantity of treated water from the Colac sewerage treatment plant into Lake Colac in a set period of time;
or,
is this only after all other commitments have been honoured when only a percentage of left-over treated water is to be released in a set period of time;
or,
no requirement at all?

Response from General Manager, Development & Community Services

The Colac sewerage treatment plant is managed and maintained by Barwon Water under an EPA discharge licence. All incoming effluent into the treatment plant is treated in accordance with the EPA licence conditions. All treated water from the treatment plant is directly discharged into Lake Colac; no treated water is removed from the site. No requirements exist to release a set quantity of treated water into Lake Colac. The average flow of treated water into the lake from the treatment plant is around five mega litres per day.

5. Council installed solar panels: How much output can be expected in periods of strong dust storms or heavy smoke and ash fall-out from fires that are very common in this nation now dust storms are not rare and we have had the trans Tasman Sea island people complaining about red snow on their alps then blaming Australia for our Mallee dust storms damaging their tourism industry plus Melbourne is well-known for its red rain and red mud storms?

Response from General Manager, Development & Community Services

Like bushfire smoke in the atmosphere, dust can also have an adverse impact on solar yield. Understandably, high concentrations of smoke/dust reduce the amount of solar radiation reaching the panels. As stated in response to a previous question, examination of solar generation at Bluewater and Rae Street Council offices over the first two weeks of January 2020 has revealed that solar yield is down by around 16 per cent at both sites, as compared to the same period in 2019.

Leigh Barrett, Colac Otway Ratepayers and Residents Association

Bluewater Stadium Floor – The following question was submitted at the last Ordinary Council Meeting on the 11 December 2019:

Why didn't the 3 parties, Colac Otway Shire, BDH Constructions and WDH Suters acknowledge their liability, apologise to the public and release the independent report? CEO Mr Brown answered only the last point about the independent report.

Why didn't Mr Brown answer the first point about acknowledging liability and the second point about apologising to the public? Would Mr Brown answer the question please?

Response from the Chief Executive

Council is not able to speak on behalf of the other parties in the dispute, which has been settled to the mutual satisfaction of the parties. In respect of Council, Council does not acknowledge any fault on its part in relation to the failure of the timber floor because it was not the designer or the builder of the structure. It relied on experts to provide their expertise to the project.

I am concerned that we continue to focus on issues from the past that have now been resolved. I suggest it is time to move on and enjoy the facility that we have.

QUESTIONS RECEIVED VERBALLY AT THE MEETING

Hannah Davis, Birregurra

1. In relation to the petition for the footpath in Roadknight Street, I was just wondering if Councillors were all aware that the petition is for a 1.5 metre footpath, not a 2.5 metre bike path, and if so, which will you be voting on tonight?

Response from General Manager, Infrastructure & Leisure Services

In essence the issue, or the Recommendation, to Council tonight is that they consider this project in their budget deliberations for the 2020/21 year and in terms of whether it's a 2.5 metre wide path or a 1.5 metre wide path, I think both options are open for Council to consider.

2. Also would we be able to consider using some of the open space contributions from subdivisions within the town to fund the footpath?

Response from General Manager, Development & Community Services

Generally funds received through open space contributions are to improve open space areas, so we either take a land contribution or we take cash to then improve open space. I would probably have to take that question on notice to see whether we could use it for footpaths which are considered active transport facilities in a way. I'll take that question on notice if that's okay.

Simon Arundell, Bungador

1. Has the Council reinstated democracy in this Shire? I remember you took it away: Councillors aren't allowed to say anything without the Mayor's permission. It's a fundamental right of democracy that we all hear from our elected members. Are they free to speak up on each and every issue now or are you still robbing us of our democracy, our democratic right?

Response from the Mayor

As far as I can tell, those Councillors have been free to speak. In my time as Mayor, I certainly haven't withheld anyone from being able to speak on anything.

That's strange. Three or four months ago I asked the same question and you said democracy would be looked at about the April or May meeting and it may be reinstated then. Anyway, I must have been dreaming. Can I ask my Councillors why aren't they getting up and writing in the press, etcetera, so then we know what this Council is up to? Now it's all very well to sweep this stuff under the floor – I've got a broom too – but the people have every right to know what went wrong at that fiasco at the basketball courts. How many hundreds of thousands of dollars did it cost the ratepayer? We want to know these things and if our Councillors are free, I want to hear them speak a bit otherwise how can we know who to vote for come the next election?

Response from the Mayor

Thanks, Mr Arundell. But I know the community are asking for an answer and I understand that frustration but it's a legal judgement that we cannot talk about it. It's not a Council decision to not talk about it; it's a legal decision that, you know, you could face consequences...

You must have agreed on it or it wouldn't have been passed so all we can come to the conclusion is: you made a mess of it, it's cost us tens of thousands or hundreds of thousands of dollars. But democracy is more important than anything else. Are they now all free to say to the press, to write to the press, etcetera, their views on what is happening within this Shire? Are they free to do that now?

Response from the Chief Executive

I think it's important and I draw your attention to the Councillor Code of Conduct which all the Councillors have signed up to...

Interjections from Councillors

No we haven't...

Response from the Chief Executive

Haven't you? That's amazing. Alright, well, we've got a Councillor Code of Conduct which has been adopted by this Council and as required by the State Government that sets in place certain parameters around how Councillors will act, the things they will do, the things they won't do and pretty much our Councillors adhere to that. I think it does result in clear messaging from the Council; there's not a lot of confusion. This Council seems to function reasonably well.

[Recording unclear] ...signed the Code of Conduct. You seem to not know what you're doing! Well then you reinstate democracy and I want to hear from our Councillors. The only one I've heard from so far is Mr Potter and the press. We want our freedom back. We want to know how many millions were lost on that basketball court.

Response from the Mayor

I'd love to be able to tell you but the legal ruling is we can't.

Ian Prigg, Traralgon

What is the definite, gazetted description of the Colac precinct post September 23 1994 when the City of Colac was abolished? I had this print-out from an office in Traralgon yesterday stating that on 23 September 1994: "The City of Colac was abolished and formed the Colac Otway Shire". But Colac can't remain just as a void. It has to continue its history so it must have a description. For instance, in Traralgon, the Traralgon City title was "the City of Traralgon was abolished; it then became the urban area of Traralgon inside the La Trobe City". I don't accept that. I accept it legally; constitutionally I don't accept it. Colac is my birth place; it's not a political interest and I'm sorry but the lady that I gave the information to to give to the Councillors – I was relying on that – to help the Councillors see where I'm coming from regarding the importance of our civic identity.

Response from the Chief Executive

The Colac Otway Shire was gazetted in the mid-90s, probably 1994, and in that gazettal there's quite a lengthy description of what the boundary of Colac Otway Shire comprises and essentially it was formed out of the Otway Shire and the Colac City and Shire of Colac.

Yes, and Winchelsea.

Response from the Chief Executive

Well parts of other Shires, perhaps.

And Heytesbury.

Response from the Chief Executive

It's parts of those Shires but the actual gazettal describes the boundary around the Shire. It was formally gazetted by government and Council back in 1994.

Mr Brown, that's not actually my question. If I bring my visitor into Colac – it's my birthplace and I like to go around Colac – I can't say, "Oh, this is Colac" because it was gazetted as a City in 1960. It was a great occasion. It was a status. It was of importance to the people. Now, when it was abolished – abolished means destroyed – it effects our history because if you have a notable event you can give, say, a person the keys to the city. The Colac Otway Shire doesn't have the keys because it has no city.

Response from the Mayor

We might have to take that on notice to get you a correct answer for it. But if it was gazetted as a city in 1960, the changing of the shires might have nothing to do with the actual abolishing of a city, at all, but I don't know that for sure so we might have to take that on notice.

Yvonne Francis, Apollo Bay

- 1. Does the Colac Shire spend more money on Binns Track than the potholes around Apollo Bay and if so, why? I'm sure your responsibilities to aged residents and all the other road users in the town of Apollo Bay far outweigh any interests of a legitimate nature in logging or any other enterprises that may occasionally use this track. No rate payers live there to my knowledge.**

Response from General Manager, Infrastructure & Leisure Services

From memory I think it's Binns Road, which leads from, essentially, near Beech Forest down to Apollo Bay. Over the last couple of years we've received government funding to seal the section between Beech Forest and the Redwood forest which is a distance of about six kilometres. We're finishing that project this year and from memory the government funding has delivered the majority of the cost of that project. What I'd certainly be happy to do is to touch base with Ms Francis outside the meeting to get an idea of particular road maintenance issues in Apollo Bay that she feels need to be addressed.

2. The next question I have refers to sectionalised protectors being installed and I just need to explain what I'm talking about; that's what an electrician said to me it should be. On the afternoon of 20 December 2019 it was day of extreme heat and I became unable to control my body temperature. The electricity supply was purposefully turned off. These bushfire protection switch-offs can occur randomly at any time, night or day, and will continue to do so and I think surely elderly or other vulnerable rate payers deserve some warning and help. I would like to thank the Apollo Bay hotel that actually allowed me to sit near a fridge and took me to what used to be our hospital for assistance. Distressed ratepayers who rely upon their electricity supply for essential services need some support and is Council able to supply them with batteries or generators or access to the nearest source of shelter especially when these switch-offs occur on extremely hot days? My house is brick, architect designed and does not lack proper eaves but on this day the weather was extreme. Planned activities on the foreshore were postponed and our so-called place of last resort (on the foreshore) was far too dangerous and it encourages people to stand in radiant heat outside and this matter was not sufficiently covered by a meeting we had recently organised by the Country Fire Authority.

Response from the Chief Executive

Ms Francis, I might be able to answer part of your question. It is an issue that Council is beginning to give consideration to. I think the day that you're referring to is – or the one that struck me was 30 December – the Monday that was extremely hot.

Well, this was 20 December but it happens, you know, every ten days or so.

Yes and what became clear was that of a certain change from the Victorian state government's approach to advice to people. People are being advised to leave their properties in extreme conditions and go to safe places. What this Council and the Victorian state government needs to give thought to is where those places can be provided. What's been provided in the past has been when there is an immediate threat, an immediate danger, and we have set up emergency management centres for people to go to. We need to give more thought to what people can do when there are just extreme fire days and how they can get refuge from heat. Finding some air conditioned places, we'll need to give thought to that...

They're turning the power off! I mean, what do you do?

Response from the Chief Executive

It's a big issue. It's not simple but we may have to look at generators; we may have to look at what we can do to provide those facilities for people. It'll be expensive; it'll need state government support but it's something we're starting to think about.

The fact is they're turning 50 per cent of the town off.

Response from the Chief Executive

If your issue is around Powercor then we have had discussions with Powercor today and raised the concerns about Apollo Bay and Forrest communities with the loss of power. Powercor's advice to us is that they are directed by the state government to have an absolutely risk adverse approach to bushfires. They're working on the REFCL system [Rapid Earth Fault Current Limiters] and their commitment is to have that operating by the end of March. The switch-over system and the REFCL system will be able to work in unison hopefully for next summer. That's something that this Council has invited Powercor to come and talk to us about – we've been pushing it – but

I think the state government has rightly taken the view that the risk of fire is so catastrophic that it has to put that before having power supplies to towns.

Jenny Handscomb, Birregurra

Concerning the footpath at Birregurra to the station, does Council intend voting this evening on this matter in any way at all, in any aspect to do with this proposal?

Response from the Chief Executive

I can't preempt what Council is going to do with this matter but it is listed on the agenda next and there is a recommendation from officers that suggest that we look at this in our budget.

Yes, I am aware of that and I would say that there is nothing in the agenda to propose a vote on this important subject. I would think that Council shouldn't and can't vote on such a serious matter without some notification to the public that there is an intention to make a decision. They've had over 400 people in the petition from Birregurra about the footpath. The recommendations, in my view, are contradictory. It's an important contradiction. Please look at it because I would like to point out why before I point out what my question will be.

This is the recommendation given in the agenda by Council which presumably is going to be carried out and I would have assumed no vote would be made before it was. So the "Council acknowledges that the construction of a footpath along Roadknight Street is a priority..." – so it acknowledges a priority – "...for the Birregurra community and inform the organiser that a business case has been submitted for consideration in the Council's 2020/21 budget". Now, if you look at that budget you will see that that is not for a footpath, it's for a combined bicycle-pedestrian pathway – a very different kettle of fish. Then you look at the number b. here and this I think is really quite dishonest to put this in this manner. It's very misleading and confusing both for the community and I would suggest for all the Councillors and any other person.

I would like the Council to consider changing the recommendation because b. says that "Council will continue to seek future external grant opportunities to assist in funding the Roadknight Street footpath". Here the word footpath is used. This is not a footpath and the correct language should be used.

Response from the Mayor

We're going to deal with it. It's on the agenda tonight and I can't preempt nor can any other Councillor what might happen but when we get to it, we'll deal with it. Councillors can deal with it whichever way they may see fit but we cannot preempt it and give you an answer to that until we deal with it when we get to that item on the agenda.

Response from Cr Smith

Ms Handscomb, I'd like to understand the wording that you would prefer rather than footpath on item b. I didn't pick up what words you would prefer.

Well, there are two words that have meaning in this argument/description. What the Council is doing is deciding to use a word to cover the project – illegitimate really. It's a deceitful thing. The word is "footpath" and "shared pathway". These are the types of...

Response from the Mayor

It's in the Executive Summary.

1.5 metres for the footpath which is what 400 plus people at Birregurra are insisting on; 2.5 metres for the pathway. I ask that you please use the correct language about this project.

Response from the Mayor

We'll do that when we get to that item. Thank you for your input.

Linda Jacovou, Birregurra

- 1. The survey I signed at the post office was for safety reasons and this is regarding the footpath in Birregurra. By having a shared pathway instead of a footpath does it increase or decrease pedestrian safety? Has Council undertaken any detailed studies to say which is the safer option?**

Response from General Manager, Infrastructure & Leisure Services

A shared path is essentially a 2.5 metre wide path which can accommodate both cyclists and pedestrians and it's designed to that. A footpath is generally 1.5 metres wide and essentially for pedestrian traffic only.

Response from the Mayor

Did you do a safety audit was the question, to come up with the best option?

Response from General Manager, Infrastructure & Leisure Services

So the answer to that would be no, not at this stage.

- 2. A detailed design was prepared by Council for this footpath approximately ten years ago. What triggered Council to do a detailed design for a footpath ten years ago in Birregurra?**

Response from the Mayor

I think Cr Smith believes it may have been a community request back then. A petition back then.

It was a petition and not part of the Tiger Trail.

Response from Cr Smith

It originated – and Cr Hart is saying a petition – it originated by community involvement; they wanted it. There was a connection with the Tiger Trail. They were sort of separate but there was a bit of a conjunction because it was thought that maybe we could get funding for it by leverage off the Tiger Trail. So they were separate but there was sort of a bringing together at that point and obviously it didn't eventuate but that was the only real connection with the Tiger Trail: to see if we could use it for funding leverage at that time.

It just quickly takes me on to the point: the past two petitions, that I know of, presented to Council for a footpath... My question is why does Council continue to pursue a business case for a shared pathway when the petitions have been for a footpath?

Response from General Manager, Infrastructure & Leisure Services

My memory on this is that the business case for a shared path had been submitted into the system prior to us obtaining or receiving the petition. In effect the change between a shared path and a footpath is a pretty simple one to make if the project were to develop.

Sorry, it might be a simple change but it's a lot more expensive.

Lynton Evans, Colac

Two years ago I was approached by members of the Council to put an entry sign into Colac. I was approached twelve months ago by Tony [McGann] and we talked about it and there was a design made but the design included plantings which I had a great disagreement with because there is no water out there; we didn't know who was going to look after it. I had promised that I would mow and keep the area clean and I have since made a suggestion or a submission that we should put a photograph type entry which is picturing the lake, looking over to Warrion, which is simple, easy to see and it does give note to what Colac is. Very few people who ever drive through this place even know there is a lake. Even when they come from that direction or this direction and we've done nothing and I am particularly disappointed that it has taken two years to get to a stage where you've still done nothing. Or is there something happening?

Response from the Mayor

Mr McGann, is there something happening and would you be able to update us?

Response from General Manager, Infrastructure & Leisure Services

No, essentially what Mr Evans says is true. We have lagged in terms of getting this task done. There is a business case to go into the system for the 2020/21 budget to do some design and then to get a sign treatment constructed, but essentially what Mr Evans says is true. We do need to get moving with this.

The Council obtained permission from VicRoads two years ago to have this done.

Marjorie Hamilton, Colac

I would like to know what stage you are all at with the sale of the [former Colac] High School land?

Response from General Manager, Development & Community Services

Council is doing some due diligence around the former high school building to understand what kind of condition that's in and what type of resource might be required to actually bring it up to a standard where it can be usable. It's obviously been closed for ten years. So my understanding is that report should – if it hasn't been finished – almost be ready to be reviewed and then we'll bring that to a Councillor Briefing.

Did you have a meeting with Mr James Merlino? I've got his email here. Have you had a meeting with Mr James Merlino? He was coming up to have a look at it.

Response from General Manager, Development & Community Services

No, we haven't had a meeting with Minister Merlino.

You were going to have a meeting so that he could have a look at it with you in relation to purchasing that little bit of extra land that we weren't really interested in. We're only interested in the land at the back for the sporting facilities. This is ten years, not like some people are saying two years. This is ten years!

Response from the Mayor

We share your frustration; I promise you we're pushing but the state government are really letting us down at the moment by not giving some answers so I appreciate you continuing to push it and hopefully we'll have a better outcome in the near future for you.

6 TABLING OF RESPONSES TO QUESTIONS TAKEN ON NOTICE AT PREVIOUS MEETING

Edith Hammond, Colac Otway Ratepayers and Residents Association

I'd like to ask what are the names of the legal firms that Council paid \$554,000 for services rendered on Bluewater and where are they located?

Response from General Manager, Infrastructure & Leisure Services

I will take that question on notice. During my time we used a firm called MinterEllison who operate out of the CBD of Melbourne. I do recall that there was another legal practice used prior to that but I'm not 100 per cent confident on which one but I'd be happy to provide an answer.

Further response from General Manager, Infrastructure & Leisure Services

The names of the legal firms used were MinterEllison and McFarlane Legal (both located in Melbourne) and Nelson Law (located in Geelong).

Arnold Rowntree, Barongarook

Is it reasonable to come to the conclusion that if the remedial work done on the Bluewater Stadium site before the second floor was laid was done before the first floor was laid, the first floor would not have failed? Is that reasonable?

Response from General Manager, Infrastructure & Leisure Services

I'll take that question on notice. It's quite a complicated, technical question which would require a deal of thought.

Further response from General Manager, Infrastructure & Leisure Services

Thanks for asking the question. It is a hypothetical question but I'll do my best to answer it. In my opinion if the management of air, moisture and drainage is carried out in a proper manner and floor boards are laid properly then that should have resulted in a serviceable floor. So the answer is that the assertion is reasonable.

7 PETITIONS / JOINT LETTERS

Nil

8 DECLARATIONS OF INTEREST

Cr Jason Schram	10.9 Notice of Motion - Prior public notice of spraying
Nature of Disclosure	Direct interest
Type of interest	Section 77B
Nature of interest	My company does contract roadside spraying for the Colac Otway Shire

9 CONFIRMATION OF MINUTES

RESOLUTION

That Council confirm the minutes of the Ordinary Council Meeting held on 11 December 2019.

MOVED Cr Joe McCracken, SECONDED Cr Chris Potter

That Council confirm the above minutes.

CARRIED 7 : 0

Item: 10.1

Petition - Construction of a Footpath in Birregurra

OFFICER	Jeremy Rudd
GENERAL MANAGER	Tony McGann
DIVISION	Infrastructure & Leisure Services
ATTACHMENTS	Nil
PURPOSE	To consider a petition presented by the community in relation to a request for a footpath on Roadknight Street, Birregurra.

RECOMMENDATION

That Council writes to the organiser of the petition advising that:

- a. Council acknowledges that the construction of a footpath along Roadknight Street is a priority for the Birregurra community and inform the organiser that a business case has been submitted for consideration in the Council's 2020/21 budget, and*
- b. Council will continue to seek future external grant opportunities to assist in funding the Roadknight Street footpath.*

The meeting adjourned for a short break at 5.05pm.
The meeting resumed at 5.10pm.

ALTERNATIVE MOTION

MOVED Cr Chris Smith, **SECONDED** Cr Stephen Hart

That Council writes to the organiser of the petition advising that:

- 1. Council supports the construction of a footpath along Roadknight Street, Birregurra as a priority for the Birregurra community and informs the organiser that a business case has been submitted for consideration in the Council's 2020/21 budget;*

2. *Business cases will be prepared and considered in the Council 2020/21 budget including the following options:*
 - a) *a complete 2.5 metre path*
 - b) *a complete 1.5 metre path with the possibility of being widened in future*
 - c) *partial length construction of both a 2.5 metre or 1.5 metre option;*

3. *Council will continue to seek external grant opportunities to assist in funding the Roadknight Street, Birregurra path options.*

CARRIED 7 : 0

Vicki Jeffrey left the meeting at 5:18pm
Jeremy Rudd left the meeting at 5:28pm

Item: 10.2

Proposed Budget Development and Management Policy

OFFICER	Jason Clissold
GENERAL MANAGER	Errol Lawrence
DIVISION	Corporate Services
ATTACHMENTS	1. Proposed Budget Development and Management Policy OCM 29-1-2020 [10.2.1 - 7 pages]
PURPOSE	To present the proposed Budget Development and Management Policy

RECOMMENDATION

That Council adopt the attached Budget Development and Management Policy.

ALTERNATIVE MOTION

MOVED Cr Stephen Hart, SECONDED Cr Joe McCracken

Council notes that it supports rate capping as it reduces the likelihood of excessive rate increases.

CARRIED 7 : 0

ALTERNATIVE MOTION

MOVED Cr Stephen Hart, SECONDED Cr Joe McCracken

That Council adopts the attached Budget Development and Management Policy with the following alteration:

- 1. That the Policy is to include the statement that Council supports rate capping and that it be included in the purpose.*
- 2. Under the heading Rates and Charges Revenue Principle an additional dot point to be added that reads:*

- *Only consider making an application for a higher cap if the Council has authorised the Chief Executive Officer, by an explicit Council resolution in open Council, to prepare the case for applying for a higher cap.*

3. The additional dot point in point 2, is to appear immediately before:

“● Council will:

- *Review rates annually following the announcement of the rate cap set by the Minister” which appears on page 15 of today’s Agenda.*

4. The balance of the policy is to remain unchanged.

CARRIED 6 : 1

DIVISION

For the motion: Cr Joe McCracken, Cr Chris Potter, Cr Stephen Hart, Cr Brian Crook, Cr Kate Hanson, Cr Jason Schram

Against the motion: Cr Chris Smith

Nick Howard left the meeting at 5:54pm

Jason Clissold left the meeting at 5:54pm

Item: 10.3

**Port of Apollo Bay Consultative Committee Membership -
Sailing Club representative and proxy**

OFFICER	Simon McBeth
GENERAL MANAGER	Tony McGann
DIVISION	Infrastructure & Leisure Services
ATTACHMENTS	1. POABCC - Terms of Reference - Final - May 2019 [10.3.1 - 4 pages]
PURPOSE	To nominate new members for the Port of Apollo Bay Consultative Committee.

RECOMMENDATION

That Council appoint new members to the Port of Apollo Bay Consultative Committee as follows:

- a. Lisa Deppeler – Representative for the Apollo Bay Sailing Club (to replace Peter Sarda)*
- b. Mick Heland – Proxy representative for the Apollo Bay Sailing Club (to replace Lisa Deppeler).*

MOTION

MOVED Cr Chris Smith

That Council consider items:

10.3 – Port of Apollo Bay Consultative Committee Membership - Sailing Club representative and proxy

10.4 – Port Delegations

en bloc, allowing for questions for items 3 and 4.

CARRIED 7 : 0

RESOLUTION

MOVED Cr Chris Potter, SECONDED Cr Stephen Hart

That Council adopt the recommendations from items:

10.3 – Port of Apollo Bay Consultative Committee Membership - Sailing Club representative and proxy 10.4 – Port Delegations

en bloc, as detailed below.

1. That Council appoint new members to the Port of Apollo Bay Consultative Committee as follows:

1.1 Lisa Deppeler – Representative for the Apollo Bay Sailing Club (to replace Peter Sarda)

1.2 Mick Heland – Proxy representative for the Apollo Bay Sailing Club (to replace Lisa Deppeler).

2. That Council:

2.1 Authorise the instrument of delegation (attachment 1) and instrument of sub-delegation (attachment 2) from the Port Manager (Colac Otway Shire) to members of council staff.

2.2 Authorise the instrument of delegation (attachment 3) and instrument of sub-delegation (attachment 4) from the Waterway Manager (Colac Otway Shire) to members of council staff.

2.3 Request that the Chief Executive authorise and sign the instruments of delegation and affix the Common Seal of Council; the instruments come into force immediately the Common Seal of Council is affixed.

CARRIED 7 : 0

The meeting adjourned for a short break at 5.58pm

The meeting resumed at 6.10pm

Item: 10.4 Port Delegations

OFFICER	Simon McBeth
GENERAL MANAGER	Errol Lawrence Tony McGann
DIVISION	Infrastructure & Leisure Services
ATTACHMENTS	<ol style="list-style-type: none">1. Attachment 1- Port Manager Instrument of Delegation - 25 November 2019 - Council Copy [10.4.1 - 13 pages]2. Attachment 2- Port Manager Instrument of Sub- Delegation - 25 November 2019 - Council Copy [10.4.2 - 7 pages]3. Attachment 3- Waterway Manager Instrument of Delegation - 25 November 2019 - Council Copy [10.4.3 - 9 pages]4. Attachment 4- Port Manager Instrument of Sub- Delegation - 25 November 2019- Council Copy [10.4.4 - 7 pages]
PURPOSE	The purpose of this report is for Council to consider and endorse the instrument of delegation for the Port of Apollo Bay (POAB).

RECOMMENDATION

That Council:

1. *Authorise the instrument of delegation (attachment 1) and instrument of sub-delegation (attachment 2) from the Port Manager (Colac Otway Shire) to members of council staff.*
2. *Authorise the instrument of delegation (attachment 3) and instrument of sub-delegation (attachment 4) from the Waterway Manager (Colac Otway Shire) to members of council staff.*
3. *Request that the Chief Executive authorise and sign the instruments of delegation and affix the Common Seal of Council; the instruments come into force immediately the Common Seal of Council is affixed.*

This item was heard en bloc with item 10.3. Please refer to the resolution under item 10.3.

Item: 10.5

Section 86 Committee Dissolution - Warrion Hall Committee

OFFICER	Peter Macdonald
GENERAL MANAGER	Ian Seuren
DIVISION	Development & Community Services Infrastructure & Leisure Services
ATTACHMENTS	1. Management Agreement - Warrion Hall Public Hall Committee Inc - 21 January 2020 [10.5.1 - 27 pages]
PURPOSE	To formalise the dissolution of the Warrion Hall Committee as a Section 86 Committee following its incorporation

RECOMMENDATION

That Council:

- 1. dissolves Warrion Hall Committee as a Section 86 Committee and revokes its Instrument of Delegation; and*
- 2. notes the Management Agreement between Colac Otway Shire Council and Warrion Public Hall Committee and recognises Warrion Public Hall Committee Incorporated as a Community Asset Committee.*

MOTION

That item 10.5 - Section 86 Committee Dissolution - Warrion Hall Committee be heard after item 10.10 - Notice of Motion - Section 86 Committees – 1.

LOST 2 : 5

DIVISION

For the motion: Cr Chris Smith, Cr Stephen Hart

Against the motion: Cr Joe McCracken, Cr Chris Potter, Cr Brian Crook, Cr Kate Hanson, Cr Jason Schram

MOTION

MOVED Cr Chris Smith, SECONDED Stephen Hart

That this item be deferred for one month, so as to understand any ramifications of the outcome of item 10.10 - Notice of Motion - Section 86 Committees – 1.

LOST 2 : 5

DIVISION

For the motion: Cr Chris Smith, Cr Stephen Hart

Against the motion: Cr Joe McCracken, Cr Chris Potter, Cr Brian Crook, Cr Kate Hanson, Cr Jason Schram

RECOMMENDATION

MOVED Cr Chris Potter

That Council:

- 1. dissolves Warrion Hall Committee as a Section 86 Committee and revokes its Instrument of Delegation; and**
- 2. notes the Management Agreement between Colac Otway Shire Council and Warrion Public Hall Committee and recognises Warrion Public Hall Committee Incorporated as a Community Asset Committee.**

MOTION

MOVED Cr Stephen Hart

That the motion be split into two parts, to be heard separately.

LOST 2 : 5

DIVISION

For the motion: Cr Chris Smith, Cr Stephen Hart

Against the motion: Cr Joe McCracken, Cr Chris Potter, Cr Brian Crook, Cr Kate Hanson, Cr Jason Schram

RESOLUTION

MOVED Cr Chris Potter, SECONDED Cr Brian Crook

That Council:

- 1. dissolves Warrion Hall Committee as a Section 86 Committee and revokes its Instrument of Delegation; and**
- 2. notes the Management Agreement between Colac Otway Shire Council and Warrion Public Hall Committee and recognises Warrion Public Hall Committee Incorporated as a Community Asset Committee.**

CARRIED 5 : 2

DIVISION

For the motion: Cr Joe McCracken, Cr Chris Potter, Cr Brian Crook, Cr Kate Hanson, Cr Jason Schram

Against the motion: Cr Chris Smith, Cr Stephen Hart

Item: 10.6

Contract 1955 - Provision of Multifunction Print Devices

OFFICER	Richard Bianco
GENERAL MANAGER	Errol Lawrence
DIVISION	Corporate Services
ATTACHMENTS	Nil
PURPOSE	For Council to award the tender received for Contract 1955 – Provision of Multifunction Print Devices.

RESOLUTION

MOVED Cr Brian Crook, SECONDED Cr Chris Potter

That Council:

- 1. Awards Contract 1955 – Provision of Multifunction Print Devices to Barwon Copying Solutions Pty Ltd at the prices referred to in the confidentially distributed document pertaining to this contract.*
- 2. Authorises the Chief Executive to sign the contracts following award of Contract 1955 – Provision of Multifunction Print Devices.*
- 3. Requests that the Chief Executive ensures the contract price is listed on Council's website once steps listed in point 2 have been completed.*

CARRIED 5 : 1

DIVISION

For the motion: Cr Joe McCracken, Cr Chris Potter, Cr Stephen Hart, Cr Brian Crook, Cr Kate Hanson, Cr Jason Schram

Against the motion: Cr Chris Smith

CARRIED 6 : 1

Item: 10.7

Authorisation of Officers under the Planning and Environment Act 1987

OFFICER	Maree Powell
GENERAL MANAGER	Errol Lawrence
DIVISION	Corporate Services
ATTACHMENTS	<ol style="list-style-type: none">1. Authorisation - Leanne Haslem - Planning & Environment Act [10.7.1 - 1 page]2. Authorisation - Gray Bowden - Planning & Environment Act [10.7.2 - 1 page]
PURPOSE	For Council to appoint Leanne Haslem and Gray Bowden, Compliance Officers, as authorised officers.

RESOLUTION

MOVED Cr Chris Potter, SECONDED Cr Kate Hanson

That Council:

- 1. Appoints Leanne Haslem and Gray Bowden, Compliance Officers, as authorised officers pursuant to section 147(4) of the Planning and Environment Act 1987.*
- 2. Notes that the Instruments of Appointment and Authorisation come into force immediately the common seal of Council is affixed to the Instruments and remain in force until Council determines to vary or revoke it.*
- 3. Delegates to the Chief Executive authority to sign and place under Council Seal the Instruments of Appointment and Authorisation.*

CARRIED 6 : 1

DIVISION

For the motion: Cr Joe McCracken, Cr Chris Potter, Cr Stephen Hart, Cr Brian Crook, Cr Kate Hanson, Cr Jason Schram

Against the motion: Cr Chris Smith

Item: 10.8

Audit Committee Minutes - 16 October 2019

OFFICER	Lyndal McLean
CHIEF EXECUTIVE	Peter Brown
DIVISION	Executive
ATTACHMENTS	1. Audit Committee Meeting - Minutes - Signed - 16 October 2019 [10.8.1 - 11 pages]
PURPOSE	To receive for information the Colac Otway Shire Audit Committee minutes dated 16 October 2019.

RESOLUTION

MOVED Cr Stephen Hart, SECONDED Cr Jason Schram

That Council receives for information the Colac Otway Shire Audit Committee minutes dated 16 October 2019.

CARRIED 7 : 0

10.9

Notice of Motion - Prior public notice of Council's intention to spray herbicide in public areas

COUNCILLOR Cr Stephen Hart

ATTACHMENTS Nil

Cr Jason Schram	10.9 Notice of Motion - Prior public notice of spraying
Nature of Disclosure	Direct interest
Type of interest	Section 77B
Nature of interest	My company does contract roadside spraying for the Colac Otway Shire

Having declared a conflict of interest, Cr Jason Schram adjourned from the meeting at 7.19pm and did not take part in debate nor vote on the motion.

Cr Joe McCracken chaired the meeting for this item.

NOTICE OF MOTION

That Council:

1. *Notes that some members of the community are concerned about the spraying of herbicide in nearby public areas for reasons such as health, the environment and/or concerns for the ongoing certification of their organic farming property,*
2. *Notes that Council maintains a 'do not spray' list and that property owners may be able to have their property placed on that list with the intention that Council will not spray herbicide on public areas adjoining such listed properties,*
3. *Resolves that the CEO develop an operational policy containing the following principles:*
 - a. *Council will take all reasonable steps to publish a notice at least twice a year listing public areas to be sprayed with herbicide by Council or on its behalf, the chemical to be used including the common name, if any, together with an indicative timetable at least one calendar month before the earliest time in the indicative timetable,*
 - b. *the list will contain sufficient information to identify the general location,*

- c. *Council will publish the notice in local newsletters such as the Apollo Bay News Sheet, Forrest Post and Otway Light as well on Council's web site.*

ALTERNATIVE MOTION

MOVED Cr Stephen Hart, **SECONDED** Cr Chris Potter

That Council:

1. *Notes that some members of the community are concerned about the spraying of herbicide in nearby public areas for reasons such as health, the environment and/or concerns for the ongoing certification of their organic farming property,*
2. *Notes that Council maintains a 'do not spray' list and that property owners may be able to have their property placed on that list with the intention that Council will not spray herbicide on public areas adjoining such listed properties,*
3. *Resolves that the CEO develop an operational policy containing the following principles:*
 - a. *Council will take all reasonable steps to publish a notice at least twice a year listing public areas to be sprayed with herbicide by Council or on its behalf, the chemical to be used including the common name, if any, together with an indicative timetable at least one calendar month before the earliest time in the indicative timetable,*
 - b. *the list will contain sufficient information to identify the general location,*
 - c. *Council will publish the notice in local media such as the Apollo Bay News Sheet, Forrest Post, Otway Light and Colac Herald as well as on Council's web site.*

EQUAL 3 : 3

The Chair used his casting vote and voted against the motion.

DIVISION

For the motion: Cr Chris Potter, Cr Stephen Hart, Cr Brian Crook

Against the motion: Cr Joe McCracken, Cr Kate Hanson, Cr Chris Smith

The motion was LOST.

The meeting adjourned for a short break at 7.42pm

Frank Castles left the meeting at 7.42pm

The meeting resumed at 7.48pm

Cr Jason Schram returned to the meeting at 7.48pm and resumed the Chair.

10.10

Notice of Motion - Section 86 Committees - 1

COUNCILLOR	Cr Stephen Hart
ATTACHMENTS	<ol style="list-style-type: none"> 1. Extract from Council Minutes 18/04/2018 [10.10.1 - 2 pages] 2. Extract from Council Agenda 18/04/2018 [10.10.2 - 1 page] 3. Section 86 of the Local Government Act 1989 [10.10.3 - 1 page] 4. Section 65 of the Local Government Bill 2019 [10.10.4 - 1 page] 5. Section 47 of the Local Government Bill 2019 [10.10.5 - 2 pages] 6. 'How law is made' from the Parliament of Victoria website [10.10.6 - 1 page]

NOTICE OF MOTION

Council resolves that:

Subject to any agreement entered into prior to 29 January 2020 with a Section 86 Committee to become an incorporated association and/or to enter into a management agreement being honoured by Council if the particular Section 86 Committee still wants to proceed; resolution OM181804-6 "Section 86 Committees" adopted on 18 April 2018 which reads as follows:

"That Council:

- 1. endorses the replacement of the current Section 86 Committee structure with Community Asset Committees, in line with the proposed changes to the Local Government Bill;*
- 2. assists, financially and practically, the Community Asset Committees to become incorporated associations;*
- 3. enters into Management Agreements with the Community Asset Committees; and*
- 4. commences the transition of Section 86 Committees to Community Asset Committees in May 2018, to be completed by June 2020."*

is amended so that it reads:

“That Council:

- 1. endorses the replacement of the current Section 86 Committee structure with Community Asset Committees, in line with the proposed changes to the Local Government Act to commence if and when the Local Government Bill is approved by Parliament and has received Royal Assent and any other required approvals to become law;***
- 2. assists, financially and practically, the Community Asset Committees, when legally formed, to become incorporated associations if they choose to do so;***
- 3. enters into a Management Agreement with each Community Asset Committee when established and that each agreement requires the explicit approval of Council; and***
- 4. defers any steps to transition Section 86 Committees to Community Asset Committees until the Bill receives necessary Parliamentary approval and Royal Assent except for any Section 86 Committee that voluntarily chooses to become an incorporated association.”***

ALTERNATIVE MOTION

MOVED Cr Stephen Hart, SECONDED Cr Chris Smith

Council resolves that:

Subject to any agreement entered into prior to 29 January 2020 with a Section 86 Committee to become an incorporated association and/or to enter into a management agreement being honoured by Council if the particular Section 86 Committee still wants to proceed; resolution OM181804-6 “Section 86 Committees” adopted on 18 April 2018 which reads as follows:

“That Council:

- 1. endorses the replacement of the current Section 86 Committee structure with Community Asset Committees, in line with the proposed changes to the Local Government Bill;***
- 2. assists, financially and practically, the Community Asset Committees to become incorporated associations;***
- 3. enters into Management Agreements with the Community Asset Committees; and***
- 4. commences the transition of Section 86 Committees to Community Asset Committees in May 2018, to be completed by June 2020.”***

is amended so that it reads:

“That Council:

- 1. endorses the replacement of the current Section 86 Committee structure with Community Asset Committees, in line with the proposed changes to the Local Government Act to commence if and when the Local Government Bill is approved by Parliament and has received Royal Assent and any other required approvals to become law;***
- 2. assists, financially and practically, the Community Asset Committees, when legally formed, to become incorporated associations if they choose to do so;***

3. *enters into a Management Agreement with each Community Asset Committee when established and that each agreement requires the explicit approval of Council; and*
4. *defers any steps to transition Section 86 Committees to Community Asset Committees until the Bill receives necessary Parliamentary approval and Royal Assent except for any Section 86 Committee that voluntarily chooses to become an incorporated association.*
5. *informs all Section 86 Committees that transition is not required at this time."*

LOST 2 : 5

DIVISION

For the motion: Cr Chris Smith, Cr Stephen Hart

Against the motion: Cr Joe McCracken, Cr Chris Potter, Cr Brian Crook, Cr Kate Hanson, Cr Jason Schram

10.11

Notice of Motion - Section 86 Committees - 2 - Request for report into what steps Council has taken to replace Section 86 Committees with another structure

COUNCILLOR	Cr Stephen Hart
ATTACHMENTS	<ol style="list-style-type: none">1. Extract from Council Minutes 18 April 2018 [10.11.1 - 2 pages]2. Extract from Audit Committee Minutes - 6 December 2017 - tabled at the Ordinary meeting on 18 April 2018 [10.11.2 - 1 page]3. Assembly of Councillors - 14 March 2018 - tabled at the Ordinary meeting on 28 March 2018 [10.11.3 - 2 pages]

NOTICE OF MOTION

MOVED Cr Stephen Hart, SECONDED Cr Chris Smith

That Council:

- 1. Notes that a report into what steps Council has already taken in compliance with resolution OM181804-6, regarding Section 86 Committees, between 18/4/'18, the date it was adopted, and the date the report is prepared, is due to be presented to Councillor Briefings in March 2020; and*
- 2. Requests that the report in point 1 be provided to an open Council meeting no later than the April 2020 Ordinary Council meeting.*

CARRIED 4 : 3

DIVISION

For the motion: Cr Stephen Hart, Cr Chris Potter, Cr Chris Smith, Cr Brian Crook

Against the motion: Cr Kate Hanson, Cr Joe McCracken, Cr Jason Schram

10.12

Notice of Motion - Section 86 Committees - 3 - Resolution to ensure that Council officers cannot remove members of Section 86 Committees

COUNCILLOR	Cr Stephen Hart
ATTACHMENTS	<ol style="list-style-type: none">1. Extract from Council Minutes - 24 May 2017 [10.12.1 - 1 page]2. Schedule for Delegation to the Chief Executive Officer from the Agenda on 24 May 2017 [10.12.2 - 1 page]

NOTICE OF MOTION

MOVED Cr Stephen Hart, SECONDED Cr Chris Smith

Council resolves that:

- 1. The removal of any member of a Section 86 Committee before the expiry of their term of appointment requires an explicit resolution of Council;*
- 2. Any express or implied delegation of that power to Council officers is revoked effective immediately; and*
- 3. Nothing in this resolution prevents a member of a Section 86 Committee from voluntarily resigning their position with no reason being required.*

LOST 3 : 4

DIVISION

For the motion: Cr Brian Crook, Cr Stephen Hart, Cr Chris Smith

Against the motion: Cr Jason Schram, Cr Kate Hanson, Cr Chris Potter, Cr Joe McCracken

Item: 10.13

Assemblies of Councillors notes

OFFICER	Lyndal McLean
CHIEF EXECUTIVE	Peter Brown
DIVISION	Executive
ATTACHMENTS	<ol style="list-style-type: none"> 1. Assembly of Councillors - Councillor Briefing - 4 December 2019 [10.13.1 - 2 pages] 2. Assembly of Councillors - Councillor Briefing - 11 December 2019 [10.13.2 - 2 pages] 3. Assembly of Councillors - Planning Meeting Preparation - 11 December 2019 [10.13.3 - 2 pages] 4. Assembly of Councillors - Pre- Council - 11 December 2019 [10.13.4 - 1 page] 5. Assembly of Councillors - Friends of the Colac Botanic Gardens Advisory Committee - 20191212 [10.13.5 - 1 page] 6. Assembly of Councillors - Councillor Briefing - 20 January 2020 [10.13.6 - 2 pages]
PURPOSE	To report the Assemblies of Councillors

RECOMMENDATION

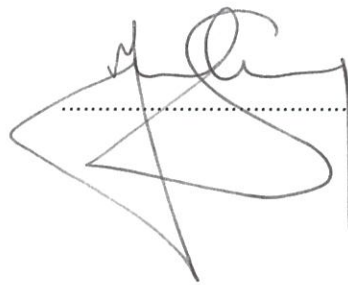
The Assemblies of Councillors are reported herewith.

The Local Government Act 1989 does not require a Council decision.

Cr Chris Smith requested that his opposition to this item be noted.

The meeting was declared closed at 8.19pm.

CONFIRMED AND SIGNED at the meeting held on 26 February 2020.

.....**MAYOR**