



Council Meeting - Minutes

Held on Monday 26 September 2022

**Council Chamber, Malvern Town Hall
Corner Glenferrie Road & High Street, Malvern**

Council Meeting Minutes Monday 26 September 2022 Order of Business

1	Reading of the Statement of Reconciliation	5
2	Reading of the Statement of Commitment.....	5
3	Introduction of Councillors & Executive Staff	5
4	Apologies	6
5	Confirmation of the Minutes of the previous meeting.....	6
5.1	Minutes of the Council Meeting held on 12 September 2022.....	6
6	Disclosure of Conflicts of Interest.....	6
7	Questions From the Community.....	6
8	Business.....	8
8.1	Governance Rules - Council Meetings Physical and Remote Attendance	8
8.2	Planning Amendment 0457/13 - 145 Williams Road, Prahran	9
8.3	Planning Application 0052/22 - G12, 670 Chapel Street, South Yarra	9
8.4	Planning Application 1118/21 - 329-333 Toorak Road, South Yarra.....	11
8.5	Community Grants Program Annual Acquittals.....	13
9	Correspondence	13
10	Tabling of Petitions and Joint Letters	13

11 Notices of Motion.....	13
12 Reports by Councillors.....	13
12.1 Record of Councillor Briefing Session Meeting held on 19 September 2022	13
13 Questions to Council Officers.....	14
14 Urgent Business	15
15 General Business.....	15
16 Confidential Business	16

The meeting commenced at 7:00pm

Councillors Present:

Cr Jami Klisaris, Mayor
Cr Melina Sehr, Deputy Mayor
Cr Marcia Griffin
Cr Kate Hely
Cr Matthew Koce
Cr Alexander Lew
Cr Polly Morgan

Apologies:

Cr Nicki Batagol (Leave of Absence)
Cr Mike Scott (Leave of Absence)

Council Officers Present:

Jacqui Weatherill	Chief Executive Officer
Annaliese Battista	Director Planning & Place
Cath Harrod	Director Community & Wellbeing
Marilyn Kearney	Acting Director Organisation Capability
Ian McLauchlan	Acting Director Environment & Infrastructure
David Thompson	Executive Manager Legal & Governance
Georgie Birch	Manager Economic & Place Development
Judy Hogan	Civic Support Officer
Phil Gul	Coordinator Statutory Planning

Remote Attendance

In accordance with the Governance Rules, the Chief Executive Officer made it known at the commencement of the Council meeting that Cr Alexander Lew had requested to join the meeting by electronic means of communication.

PROCEDURAL; MOTION:

MOVED: Cr Matthew Koce

SECONDED: Cr Polly Morgan

That the Council resolve to approve the request by Cr Alexander Lew to attend the Council meeting on 26 September 2022 by electronic means of communication.

Carried

Councillor Alexander Lew joined the meeting by electronic means of communication at 7:01pm

1 Reading of the Statement of Reconciliation

The Mayor, Cr Jami Klisaris read the following Statement of Reconciliation:

We acknowledge we are meeting on the Traditional Lands of the Wurundjeri Woi Wurrung and Bunurong peoples of the East Kulin Nations and pay our respect to their Elders past, present and emerging.

We extend that respect to all Aboriginal and Torres Strait Islander peoples. We acknowledge their living connection to Country, relationship with the land and all living things extending back tens of thousands of years.

2 Reading of the Statement of Commitment

The Mayor, Cr Jami Klisaris read the following Statement of Commitment:

We are reminded that as Councillors we are bound by our Oath of Office to undertake the duties of Councillor in the best interests of the people of the City of Stonnington and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in us under the Local Government Act and any other relevant Act.

3 Introduction of Councillors & Executive Staff

The Mayor, Cr Jami Klisaris then introduced the Councillors and the Chief Executive Officer introduced the Council officers present.

4 Apologies

The Mayor, Cr Jami Klisaris informed the meeting that Cr Mike Scott and Cr Nicki Batagol were apologies for the Council meeting. Further, both Cr Mike Scott and Cr Nicki Batagol had previously been granted a leave of absence for the Council meeting.

5 Confirmation of the Minutes of the previous meeting

5.1 Minutes of the Council Meeting held on 12 September 2022

MOTION:

MOVED: Cr Polly Morgan

SECONDED: Cr Melina Sehr

That the Minutes of the Meeting of the Council held on 12 September 2022 be confirmed as an accurate record of the proceedings.

Carried

6 Disclosure of Conflicts of Interest

Cr Marcia Griffin declared a general conflict of interest in Item 8.4 - Planning Application 1118/21 - 329-333 Toorak Road, South Yarra.

Cr Marcia Griffin stated the general conflict of interest was *"A corflute sign was erected by a mutual contact on this site during the 2020 election period"*.

7 Questions from the Community

Cr Kate Hely left the Council meeting at 7:05pm.

Mr Marr - Response to Questions asked at the Council meeting on 12 September 2022.

Question 1

"How is the Council satisfied on public safety grounds given the ongoing safety issues repeatedly raised that the outdoor area of the 'Wolf and I' should be allowed to retain a roadside permit on Eastbourne Street"?

Response:

Council Officers have been regularly monitoring the Roadside Dining area at the Wolf and I. While some concerns regarding venue operations have been raised by community members, such as the placing of beer kegs on the footpath, venue management have been responsive in rectifying these issues. Council Officers will continue to monitor the venue for any further concerns.

Question 2

“Does the Council consider that the outdoor area of the 'Wolf and I' is in compliance with the applicable roadside and outdoor dining policies and legislation including the Disability Discrimination Act and Road Safety Act”?

Response:

Although the Wolf and I is currently amending their current Roadside Dining area to meet the specifications of Council’s Outdoor Dining Framework, the relevant application has been assessed by Council’s Transport Engineers and Risk Department to ensure the area is positioned as safely as possible and complies with the Disability Discrimination Act 1992.

Question 3

“Why has the Council not exercised its discretion to revoke any permit for the outdoor area of the 'Wolf and I' given the ongoing compliance breaches as identified to Council officers through substantial photographic and written evidence that has been submitted to Council”?

Response:

Council Officers have continued to monitor the venues Roadside Dining area to ensure compliance with Council’s Local Law and the Roadside Dining Framework. Any concerns raised with the venue have been promptly addressed by venue management. As such, it would be unreasonable for Council to revoke the corresponding Roadside Dining Permit.

Question 4

“How is the Council taking into consideration the large commercial construction site at 1 - 7 Eastbourne Street, combined with the construction sites at 12 Eastbourne Street and 15 Eastbourne Street, with access to those sites from traffic running East to West down Eastbourne Street (as a one-way street), in relation to its assessment of the public safety and amenity impact of the outdoor area at the 'Wolf' and I”?

Response:

Council is unable to prevent construction sites from conducting works, provided they have the necessary approvals in place. 1-7 Eastbourne Street, Windsor is currently operating in accordance with the relevant Council approvals and, while the works will place a burden on available parking the street, the construction 'works zone' parking has been sought and approved in accordance with Council Policy. Regular compliance inspections have confirmed that the site is operating in a safe manner and in accordance with Council's Local Laws.

Question 5

"Given the proximity of the construction site at 1-7 Eastbourne Street to the West of Eastbourne Street, near Chapel Street, noting the narrow one-way street and already damaged vehicles and safety issues raised, will Council consider providing access to the construction site from Chapel Street, and closing Eastbourne Street at Hornby Street, except for local resident and services traffic"?

Response:

Council's Transport Engineers have assessed the proposed plan regarding trucks reversing into Eastbourne Street from Chapel Street and are supportive of this plan. Yarra Trams have also approved this manoeuvre on the condition it takes no longer than two minutes to complete the movement. If a truck is to take longer than two minutes to reverse into position, it must abandon the manoeuvre, drive around to Hornby Street and enter Eastbourne Street with the flow of the traffic.

There were no questions from the community tabled at the meeting.

Cr Kate Hely returned to the Council meeting at 7:07pm.

8 Business

8.1 Governance Rules - Council Meetings Physical and Remote Attendance

MOTION:

MOVED: Cr Polly Morgan

SECONDED: Cr Jami Klisaris

That the Council RESOLVE to conduct the remaining 2022 Council meetings wholly in person.

Carried

DIVISION

Cr Alexander Lew called for a division.

Voting For the motion: Cr Jami Klisaris, Cr Kate Hely, Cr Matthew Koce, Cr Melina Sehr and Cr Polly Morgan

Voting Against the motion: Cr Alexander Lew and Cr Marcia Griffin

The Mayor, Cr Jami Klisaris declared the motion **Carried**

8.2 Planning Amendment 0457/13 - 145 Williams Road, Prahran

MOTION:

MOVED: Cr Melina Sehr

SECONDED: Cr Polly Morgan

That consideration of Notice of Decision to Amend a Planning Permit No: 457/13 for the land located at 145 Williams Road, Prahran be deferred for one Council meeting cycle.

Carried

Note - Cr Alexander Lew abstained from voting on this matter.

8.3 Planning Application 0052/22 - G12, 670 Chapel Street, South Yarra

MOTION:

MOVED: Cr Marcia Griffin

SECONDED: Cr Kate Hely

That the Council AUTHORISE Officers to issue a Notice of Decision to Grant a Planning Permit No: 52/22 for the land located at G 12/670 Chapel Street, South Yarra under the Stonnington Planning Scheme for use of the land for the sale and consumption of liquor (Restaurant and Café liquor licence) in association with a food and drink premises (as of right) in an Activity Centre Zone subject to the following conditions:

- 1. The plans endorsed to accompany the permit must not be amended without the written consent of the Responsible Authority.***
- 2. Before the commencement of the use, an amended Noise and Amenity Action Plan (NAAP), must be submitted to and approved by the Responsible Authority. The NAAP must be generally in accordance with the plan submitted with the application, but modified to reflect the updated operating hours. When approved, it will form part of the permit and the tenancy must operate in accordance with the applicable plan to the satisfaction of the Responsible Authority.***
- 3. A maximum of 51 seats may be housed on the premises (including 27 internal and 24 footpath trading) at any one time to the satisfaction of the Responsible Authority.***
- 4. Without the prior written consent of the Responsible Authority, the sale and consumption of liquor shall only occur within the licensed area between the following hours:***

Internal areas:

Monday to Saturday, 7am to 11pm

Sunday and Public Holidays, 10am to 11pm

Footpath trading / external areas:

Monday to Saturday, 7am to 9:30pm

Sunday and Public Holidays, 10am to 9:30pm

5. **The predominant activity carried out at all times on the licensed premises must be the preparation and serving of meals to be consumed on the premises to the satisfaction of the Responsible Authority.**
6. **Tables and chairs must be placed in position on the licensed premises so as to be available for at least 75% of the patrons in each area at any one time, to the satisfaction of the Responsible Authority.**
7. **No speakers are to be located externally.**
8. **Noise emanating from the subject land must comply with Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.2, Environment Protection Authority, November 2020), to the satisfaction of the Responsible Authority. Any works required to ensure and maintain the noise levels from the premises are in compliance with this policy must be completed prior to the commencement of the use or occupation of the site and maintained thereafter, all to the satisfaction of the Responsible Authority.**
9. **Without the prior written consent of the Responsible Authority, the provision of music and entertainment on the premises must be limited to background music or entertainment by performers using non-amplified instruments or equipment.**
10. **Bottles and rubbish must not be removed from within the premises to the waste storage area between the hours of 11pm and 7am the following day.**
11. **Bottles and rubbish must not be removed from within the premises to the waste storage area between the hours of 11pm and 7am the following day.**
12. **The collection of wastes and recyclables from the premises (other than normal Stonnington City Council collection) must be in accordance with Council's General Local Laws.**
13. **The use must be managed so that the amenity of the area is not detrimentally affected through the:**
 - a) **Transport of materials, goods or commodities to or from the land;**
 - b) **Appearance of any building, works or materials;**
 - c) **Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, and**
 - d) **Presence of vermin.**
14. **This permit will expire if one of the following circumstances applies:**
 - a) **The use is not started within two years from the date of this permit.**

b) The use is discontinued for a period of two years or more. In accordance with Section 69 of the Planning and Environment Act 1987, the Responsible Authority may extend the periods referred to if a request is made in writing within the prescribed timeframes, where the use allowed by the permit has not yet started.

NOTES

- A. This permit is for the use of the land and/or buildings and does not constitute any authority to conduct a business requiring Health Act/Food Act registration without prior approval from the Councils Health Services.**
- B. This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained.**
- C. Unless a permit is not required under the Stonnington Planning Scheme, signs must not be constructed or displayed without a further planning permit.**
- D. Background music level, in relation to premises, means a level that enables patrons to conduct a conversation at a distance of 600 millimetres without having to raise their voices to a substantial level.**
- E. This permit does not give any authority to occupy the footpath for trading without prior approval from Council's Local Laws department. A permit must be obtained for footpath trading and it must accord with the relevant Footpath Trading Code.**
- F. At the permit issue date, Section 69 of the Planning and Environment Act 1987 stated that the Responsible Authority may extend the periods referred to if a request is made in writing within the following timeframes:**
 - i. Before or within 6 months after the permit expiry date, where the development allowed by the permit has not yet started; and**
 - ii. Within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.**

Carried

8.4 Planning Application 1118/21 - 329-333 Toorak Road, South Yarra

In accordance with the Local Government Act 2020 and the Governance Rules, Cr Marcia Griffin declared a general conflict of interest.

Cr Marcia Griffin stated the general conflict of interest was "A corflute sign was erected by a mutual contact on this site during the 2020 election period".

Cr Marcia Griffin left the Council Chamber at 7:18pm prior to consideration and vote on the item.

MOTION:

MOVED: Cr Matthew Koce

SECONDED: Cr Kate Hely

That the Council AUTHORISE Officers to advise VCAT that had a Failure to Determine appeal not been lodged, a Refusal to Grant a Planning Permit No: 1118/21 would have been issued for the land located at 329-333 Toorak Road, South Yarra under the Stonnington Planning Scheme for the construction of a mixed use development in an Activity Centre Zone and Land Subject to Inundation Overlay and a reduction in the car parking and visitor bicycle parking requirements subject to the following grounds (additional grounds highlighted):

- 1. Melbourne Water has objected to the grant of a permit and pursuant to Section 61(2) of the Planning and Environment Act, Council must refuse this application.***
- 2. The proposed development is inconsistent with the Planning Policy Framework relating to floodplain management.***
- 3. The proposed development is inconsistent with the purpose and decision guidelines set out in the Land Subject to Inundation Overlay (LSIO) within the Stonnington Planning Scheme.***
- 4. The proposed development is subject to inappropriate and unacceptable flood risk, where the safety of land users may be affected and potential for flood damage is excessive.***
- 5. The proposed development does not comply with DELWP's Guidelines for Development in Flood-prone Areas, specifically the core criteria relating to site and access safety, flood damage and off-site impacts.***
- 6. The ease, functionality and safety with which vehicles access the car lift is inadequate for a basement accommodating 21 spaces given the accessway is unable to accommodate an on-site passing/waiting area in the event the car lift is in use. This will result in unacceptable traffic impacts along the laneway and the surrounding local road network.***
- 7. The building height is excessive and is contrary to the building height expectations stipulated Schedule 1 to the Activity Centre Zone. The building height will result in excessive visual bulk to the surrounding area.***
- 8. The development fails to meet the massing requirements and interface setback requirements of Schedule 1 to the Activity Centre Zone and constitutes an overdevelopment that is unacceptable in the urban context of the site and lacks policy justification.***
- 9. The proposed eastern boundary construction unreasonably impacts upon the future development prospects of 335 and 337 Toorak Road.***

Carried

Cr Marcia Griffin returned to the Council Chamber and resumed her seat at 7:22pm.

8.5 Community Grants Program Annual Acquittals

MOTION:

MOVED: Cr Polly Morgan

SECONDED: Cr Melina Sehr

That the Council:

- 1. NOTE the acquittals of the 2021-2022 Community Grants Program and the return of unspent funds.***

Carried

9 Correspondence

Cr Marcia Griffin tabled the following correspondence:

- email from Chapel Street Precinct Association (CSPA) providing their Annual Report 2020-21
- email from Chapel Street Precinct Association (CSPA) regarding legal advice
- email from resident regarding Caroline Gardens, South Yarra maintenance issues

10 Tabling of Petitions and Joint Letters

There were no petitions or joint letters tabled at the meeting.

11 Notices of Motion

There were no notices of motion presented to the meeting.

12 Reports by Councillors

12.1 Record of Councillor Briefing Session held on 19 September 2022

MOTION:

MOVED: Cr Marcia Griffin

SECONDED: Cr Jami Klisaris

That the Council RECEIVE the Record of the Councillor Briefing Session held on 19 September 2022.

Carried

13 Questions to Council Officers

Cr Marcia Griffin asked the following question of the Acting Director Environment & Infrastructure.

I am seeing lime bikes increasingly parked on street corners and obstructing footpaths and in parks, can you outline the guidelines regarding where and how long lime bikes can park?

The Acting Director Environment & Infrastructure responded.

Cr Marcia Griffin then asked the following question of the Director Planning & Place.

I am asking about the Murphy Street South Yarra parklet and were residents and businesses in Murphy Street, South Yarra consulted about the parklet and how long was it positioned in this location?

The Director Planning & Place responded.

Cr Alexander Lew asked the following question of the Chief Executive Officer.

I am asking about a conversation which Council officers had with Maddocks Lawyers where telephone advice was given on the confidential item on the agenda tonight and when did this conversation occur?

The Chief Executive Officer responded and the Director Planning & Place took the question on notice.

Cr Alexander Lew asked the following further question to the Director Planning & Place

What information was provided to Maddocks Lawyers in writing in advance of that conversation?

The Director Planning & Place took the question on notice.

Cr Alexander Lew then asked if the advice provided by Maddocks Lawyers had been provided in the last seven days?

The Director Planning & Place took the question on notice.

Cr Alexander Lew also asked to be informed of the rough time period of when that conversation occurred?

The Director Planning & Place took the question on notice.

Cr Alexander Lew then asked that in respect to that particular conversation did you ever request the advice to be confirmed in writing?

The Director Planning & Place responded.

Cr Alexander Lew also asked if the Council was provided legal advice relating to particular sections of the Local Government Act 2020 and one of the sections relates to trade secrets, can the Council officer indicate what type of trade secrets may be in the confidential business under discussion tonight?

The Mayor, Cr Jami Klisaris responded to Cr Alexander Lew.

Cr Alexander Lew then asked if a general explanation of trade secrets could be given which will be discussed under confidential business tonight?

The Director Planning & Place took the question on notice.

Cr Alexander Lew also asked when the initial legal advice was asked for and the nature of confidential business to be discussed.

The Chief Executive Officer responded.

Cr Alexander Lew asked where in the Local Government Act 2020 does it provide a provision for the Council to override the definitions of confidential as provided in the Act.

The Executive Manager Legal & Governance responded.

Cr Alexander Lew asked can the Council officer in a general sense refer to the section under confidential business which defines commercial or financial undertakings and would expose the commercial or financial undertaking to disadvantage by debating this item in general business.

The Director Planning & Place responded.

14 Urgent Business

There was no urgent business submitted to the meeting.

15 General Business

There was no general business submitted to the meeting.

16 Confidential Business

Procedural Motion - Closure of Council Meeting to the Public

PROCEDURAL MOTION:

MOVED: Cr Matthew Koce

SECONDED: Cr Polly Morgan

1. ***That, in accordance with sections 66(1) and 66(2)(a) of the Local Government Act 2020, the meeting be closed to members of the public for the consideration of the agenda item titled:***

16.1 Service Review

2. ***This agenda item is confidential information for the purposes of section 3(1) of the Local Government Act 2020 because:***

(a) the item is Council business information, being information that would prejudice the Council position in commercial negotiations if prematurely released (section 3(1)(a)); and

(b) this item is private commercial information being information provided by a business, commercial or financial undertaking that -

i) relates to trade secrets; or

ii) if released, would reasonably expose the business, commercial or financial undertaking to disadvantage (section 3(1)(g)); and

(c) these grounds apply because:

i) the agenda item concerns commercial negotiations and the premature disclosure of the information would be prejudicial to the interests of the Council and other persons; and

ii) the agenda item contains private commercial information provided by independent consulting firms, which if released, could result in commercial disadvantage by disclosing their intellectual property to industry competitors.

Carried

DIVISION

Cr Alexander Lew called for a division.

Voting For the motion: Cr Jami Klisaris, Cr Matthew Koce, Cr Melina Sehr and Cr Polly Morgan

Voting Against the motion: Cr Alexander Lew, Cr Kate Hely and Cr Marcia Griffin

The Mayor, Cr Jami Klisaris declared the motion **Carried**

The Council meeting was closed to the public at 8:11pm.

Procedural Motion - Reopening of Council Meeting to the Public

PROCEDURAL MOTION:

MOVED: Cr Marcia Griffin

SECONDED: Cr Melina Sehr

That the Council resolve that the Council meeting be re-opened to the public.

Carried

The Council meeting was reopened to the public at 9:17pm with all councillors present except Cr Nicki Batagol and Cr Mike Scott.

The meeting concluded at 9:17pm.

Confirmed on 10 October 2022.

.....
CR JAMI KLISARIS, MAYOR