

**District Council of Robe**

**Special Council Meeting**

Minutes of the Special Council Meeting held on Tuesday, 19th December 2006 commencing at 5.00pm.

**PRESENT** Mayor W Peden, Crs Loxton, Mathews, Riseley, Petrovic, Clements

**APOLOGY** Cr Denton

**BUSINESS:** Item Number: 1  
LGA Industrial Relations Adviser Rob Wallace to Address Council

Cr Loxton moved:-

1. **That under the provisions of the Local Government Act, 1999 an order be made under Section 90(2) that the public, except the Acting Chief Executive Officer and LGA Industrial Relations Advisor Mr. Rob Wallace be excluded from attendance at the meeting in order to consider in confidence Item Number 1 under Sub Section 90(3)(a)**
2. **That the Council is satisfied that it is necessary that the public be excluded to enable the Council to discuss the matter at the meeting on the following grounds -**

*Information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead) and the agenda item relates to the resignation of the Chief Executive Officer.*

3. **That accordingly, on that basis, the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**  
(235/2007)

Seconded Cr Mathews

Carried

Item Number: 2  
Robe Marina Corporation Financial Viability Audit Report

Cr Clements moved:-

1. That under the provisions of the Local Government Act, 1999 an order be made under Section 90(2) that the public, except the Acting Chief Executive Officer be excluded from attendance at the meeting in order to consider in confidence Item Number 2 under Sub Section 90 (3) (b) (d) (h)
2. That the Council is satisfied that it is necessary that the public be excluded to enable the Council to discuss the matter at the meeting on the following grounds -
  - (b) *Information which disclosure of which - (i) could reasonable be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and (ii) would, on balance, be contrary to the public interest;*
  - (d) *Commercial information of a confidential nature (not being a trade secret) the disclosure of which - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest;*
  - (h) *Legal advice - concerning the Robe Marina Corporation and Marina project.*
3. That accordingly, on that basis, the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.  
(236/2007)

Seconded Cr Loxton

Carried

Recommendations

1. That Council receive and note the Financial Viability Review Report prepared by Galpin, Engler, Bruins and Dempsey dated November 2006, and receive and note the and correspondence attached and tabled.
2. In light of the content, comments and findings set out in the Financial Viability Review Report the Council resolves to obtain a further full and detailed financial assessment of the Robe Marina project for the purpose of ensuring that the Council, as owner of and statutory guarantor for the project, is fully appraised of all relevant matters and that all matters of risk are being or are able to be fully addressed.

3. For the purpose of preparing the report above, the Council appoints Don Venn of Dean Newbery and Partners to fully consider and review the Financial Viability Review Report and in this regard (but without limiting the discretion of Mr Venn), to liaise with Mr Galpin of Galpin, Engler, Bruins & Dempsey, to consider the current status and financial viability of the project, to identify all associated risks, to assess the viability of the project and to provide recommendations and options to the Council for consideration. In making this appointment of Mr Venn the Council consciously determines not to undertake a tender or other public process for the following reasons:
  - the necessary urgency to commence this risk management process as soon as possible;
  - that discussions with the Council's auditor, Mr Galpin, confirm the suitability of Don Venn to undertake this project,
  - that preliminary consideration of the Financial Viability Review Report by Mr Venn means that he already has relevant knowledge of the issues of concern, and
  - Mr Venn has agreed to provide this service for a cost which the Council believes is at a very market competitive rate.
4. The Council notes that the term of office for current Board members of the Corporation expires on 31 December 2006 and determines that it will not make any reappointments or other appointments to the Board until it has received and considered the report from Mr Venn as above.
5. That Council recognises that certain steps may need to be taken between 31 December 2006 and the Council's consideration of the Don Venn report in relation to the Robe Marina project. For these purposes, the Council, as the owner of the project, will resume full responsibility for such matters and in this regard directs the Executive Officer of the Corporation to liaise with the Council's acting Chief Executive Officer. The Council further directs that expenditure upon the project may only be incurred if it has been budgeted and approved and there is a contractual obligation to make that payment or otherwise with the express authority of the Council by resolution.
6. For the purpose of Clause 10 of Schedule 2 of the Local Government Act 1999 the Council directs the Robe Marina Corporation to cooperate with Mr Venn of Dean Newbery & Partners and the Council's acting Chief Executive Officer for the purpose of ensuring that all requests from and inquiries of

Mr Venn and/or the Council's acting Chief Executive Officer are responded to by the Corporation in a timely manner and with full detail. In accordance with Clause 10(2) of Schedule 2 to the Local Government Act 1999 the Council instructs the acting Chief Executive Officer to confirm this direction to the Corporation in writing and to retain a copy of it at the principal office of the Council.

7. For the purposes of Clause 11 of Schedule 2 to the Local Government Act 1999 the Council requires the Robe Marina Corporation to furnish to Mr Venn of Dean Newbery & Partners and/or to the Council's acting Chief Executive Officer any information or records in the possession or control of the Corporation as Mr Venn and/or the acting Chief Executive Officer may require in the manner and form specified by them for the purposes of facilitating the investigation and preparation of the report by Mr Venn as above. Further, in accordance with Clause 10 of Schedule 2 to the Local Government Act 1999 the Council expressly directs the Corporation to comply with these obligations to make available to and/or provide copies of (as determined by Mr Venn and/or the Council's Chief Executive Officer) all of the documentation and information set out in Attachment 1 to this resolution. This direction is to be confirmed to the Corporation by Council's acting Chief Executive Officer in writing and a copy retained at the Council's principal office.

Cr Mathews moved **that the listed recommendations 1 to 7 and Attachment 1 be adopted and implemented forthwith.**  
(237/2007)

Seconded Cr Riseley

Carried

Information tabled

- a. Marina Petition - Not a Confidential Document  
Received by acting Chief Executive Officer 19/12/06 from Mr Harvey Nolan
- b. From: Wallace Lawyers dated 18/12/06  
Reference Number: MJK:jlh:062633  
  
To: Hamilton Watts & Co  
5 Gwendoline Street Mt Gambier
- c. From: Wallmans Lawyers  
Dated 18/12/06  
Reference Number: MJK:adc:061939

To: Hamilton Watts & Co  
Mr N Abrahams  
5 Gwendoline Street Mt Gambier

d. Attachment 1

Cr Loxton moved **that in accordance with section 91(7) of the Local Government Act 1999, that the Financial Viability Review Report prepared by Galpin, Engler, Bruins & Dempsey dated November 2006, and the attached and tabled correspondence excluding correspondence items Attachment 1, recommendations listed 1 to 7 and Marina Petition received 19<sup>th</sup> December 2006, having been considered in confidence under section 90(2)(3)(b)(d)(h) of the Act be kept confidential until the Robe Marina project is completed or for the period of five years whichever is earlier. (238/2007)**

Seconded Cr Petrovic

Carried

The Mayor declared the meeting closed at 7.10pm.

Confirmed

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Mayor

## Attachment 1

1. All documents (Council and others) that resulted in the decision by the Council to proceed with the project - from day one.
2. All Council and Subsidiary agendas, minutes, reports etc regarding the project since inception to date.
3. Full details of all formal and informal contractual arrangements for the project - since the project commenced as a concept to now (including for all commitments).
4. All technical reports for the project from day one, including plans, specifications etc.
5. Full details of all employees and contractors to the project from day one - including for all terms of employment.
6. All correspondence and working paper files from inception to date.
7. Full details of all settled and yet to settle sales contracts to date (all types).
8. Full details of all prospective sales as of now - but yet to be contracted.
9. Full details of all contingency plans for the project (such as exit strategies).
10. Full details of all community consultation undertaken for the project - from inception.
11. The original Section 48 prudential review undertaken for the project as well as any updates.
12. Projected additional dredging costs to completion - supported by expert technical advice.
13. Projected calculation and supported cost of disposal of dredged material.
14. Projected calculation and supported cost estimates (all outlays yet to be expended) for power, water, marina infrastructure, breakwater, wash down area, parking areas, roads, drains, waste disposal etc.
15. EPA licences for the marina.
16. Full details of all proposed future marina fees.
17. All lease agreements and templates (for sales).
18. Full costing of projected marina operating costs (inclusive of repairs and maintenance as well as asset replacement) over each of next 20 years. To be supported by full details of the annual funding to meet all costs over the 20 years.
19. Full details/status of all existing disputes with all contractors, stakeholders, customers and any other party with the Robe Marina Corporation.
20. Full details of all Board Members dealings with the project - other than in the normal capacity as Board Members (meaning as paid or to be paid service providers to the project, directly or indirectly since inception to now).
21. All management financial statements from 1/7/06 to date.
22. All budgets from inception to date including all projected from now.

23. All price lists (for all types of sale and lease of commercial and recreational berths as well as for annual fees).
24. Projected future funding requirements to the project by the Council.
25. Projected debt (loan borrowings) of the Subsidiary - over the next 20 years.
26. Master list of all assumptions made for the project both to date and for all projections.
27. Confirmation that any profit (if any) of the project will be income tax free.
28. Details of any competition or any other possible adverse factor(s) that may affect the financial viability of the project.
29. Overview of existing and proposed project management.
30. Latest cash flow model - from inception to 2020 - encompassing full details of all costs (capital and operating) and all receipts (capital and operating) and all funding requirements on an annual and cumulative basis.