



HEPBURN SHIRE COUNCIL

STATUTORY MEETING OF COUNCIL MINUTES

WEDNESDAY 3 DECEMBER 2008

**DAYLESFORD TOWN HALL
76 VINCENT STREET
DAYLESFORD
7PM.**

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Hepburn Shire Council Statutory Meeting of Council

MINUTES

WEDNESDAY 3 DECEMBER 2008

Daylesford Town Hall
Vincent Street, Daylesford
7PM.

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1. **OPENING OF THE MEETING**

The Meeting opened at 7.04pm.

In attendance: Councillors Elect Jonathan Barrell, Janine Booth, Timothy Hayes, Donald Henderson, Sebastian Klein, William McClenaghan and Rod May. Chief Executive Officer, Kaylene Conrick; Director Infrastructure & Development, Rod Conway; Manager Governance & Information, Matthew Morgan.

Also in attendance: Manager Organisational Development, Robert Knight; Manager Community Services, Martin Walmsley, Executive Assistant, Mary Ashdown; Administration Assistant – Councillors, Kathy Graham and 80 Gallery.

2. **WELCOME TO COUNTRY**

The Chief Executive Officer affirmed the “Welcome to Country” for the Hepburn Shire Council.

Hepburn Shire Council would like to acknowledge that we are meeting on Jaara people country, of which members and elders of the Dja Dja Wurrung community and their forbears have been custodians for many centuries.

On this land the Jaara people have performed age old ceremonies of celebration, initiation and renewal.

We acknowledge their living culture and their unique role in the life of this region.

3. **WELCOME by The Chief Executive Officer, Ms Kaylene Conrick**

This Statutory Meeting of Council has been called to conduct the business associated with the Taking of the Oath of Office or Affirmation; the election of Mayor and Deputy Mayor.

The Ordinary Meeting of Council for the month of December will be held on **Wednesday 17 December 2008** and any normal Council business and public question time will be conducted then.

Section 68 & 72 of the Local Government Act 1989 specify that the office of all Councillors became vacant at 6am on the day of election. Consequently, the Chief Executive Officer will open this meeting and following Taking of the Oath of Office will request that Councillors elect a temporary Chairperson who will Chair the Meeting until the Mayor is elected.

4. **APOLOGIES**

Senator Julian McGauran; Catherine King, Federal Member for Ballarat; Geoff Howard, Member for Ballarat East.

5. TAKING OF THE OATH OF OFFICE

Each Councillor was invited by the Chief Executive Officer to take their Oath of Office or Affirmation in alphabetical order of Ward followed by Surname.

BIRCH

1. *Jonathan Geoffrey BARRELL*
2. *Rod MAY*

CAMERON

1. *Timothy HAYES*

COLIBAN

1. *Sebastian John KLEIN*

CRESWICK

1. *Janine Mary BOOTH*
2. *Donald Roy HENDERSON*

HOLCOMBE

1. *William Marks MCCLLENAGHAN*

Councillors Elect Jonathan Barrell, Rod May, Timothy Hayes, Sebastian Klein, Janine Booth and Donald Henderson took the Affirmation. Councillor Elect Bill McClenaghan took the Oath followed by a Pledge.

Local Government Act 1989 Section 63

(1) A person elected to be a Councillor is not capable of acting as a Councillor unless he or she has taken the following Oath of Office, in accordance with section 100 of the **Evidence Act 1958**

OATHS

A person elected to be a Councillor takes the Oath of Office by holding the Bible or the New or Old Testament in his or her uplifted hand and repeating the following words after the Chief Executive Officer (s.63(1), (2) Local Government Act 1989):

“I swear by Almighty God that I will undertake the duties of the office of Councillor in the best interests of the people of the municipal district of Hepburn Shire and faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1989 or any other Act to the best of my skill and judgement”.

The Oath must be dated and signed before the Chief Executive Officer and recorded in the Minutes of the Council.

AFFIRMATION

A person elected to be a Councillor is permitted to make an Affirmation instead of an Oath where the person objects to being sworn or it is not reasonably practicable to do so without inconvenience or delay in the manner appropriate to the religious belief of the person (s.102 of the Evidence Act). A person may make an oral affirmation by repeating the following words after the Chief Executive Officer administering the Affirmation (s.103(1) of the Evidence Act):

“I (name), do solemnly, sincerely, and truly declare and affirm I will undertake the duties of the office Councillor in the best interests of the people of the municipal district of Hepburn Shire and faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1989 or any other Act to the best of my skill and judgement.

The Affirmation must be dated and signed before the Chief Executive Office and recorded in the Minutes of the Council.

Note: section 103(2) of the Evidence Act describes the way an affirmation may be administered and made in writing (which is worded differently to an oral affirmation) and section 103(3) described that way an affirmation may be administered and made by two or more persons at the same time.

6. STATEMENT OF COMMITMENT

Councillors read together the Statement of Commitment.

STATEMENT OF COMMITMENT

“WE THE COUNCILLORS OF HEPBURN SHIRE
DECLARE THAT WE WILL UNDERTAKE ON EVERY OCCASION
TO CARRY OUT OUR DUTIES IN THE BEST INTERESTS OF THE COMMUNITY
AND THAT OUR CONDUCT SHALL MAINTAIN THE STANDARDS OF THE
CODE OF GOOD GOVERNANCE
SO THAT WE MAY FAITHFULLY REPRESENT
AND UPHOLD THE TRUST PLACED IN THIS COUNCIL BY THE
PEOPLE OF HEPBURN SHIRE”

7. APPOINTMENT OF TEMPORARY CHAIRPERSON

The Chief Executive Officer shall call for nominations for the temporary Chairperson. Council’s Local Law No. 1 – Meeting Procedures provides:

[At any meeting to elect the Mayor, any Councillor may be appointed as a temporary Chairperson to deal with:

(a) the receipt of nominations for the election of Mayor; and

(b) the election of Mayor; and

(c) the fixing of the allowances payable to the Mayor and Councillors.]

Following the election of the Mayor the incoming Mayor shall assume the Chair to deal with the remaining matters before the meeting.

Motion moved:

That Councillor Tim Hayes be appointed temporary Chairperson.

Moved: Cr Janine Booth

Seconded: Cr Sebastian Klein

Carried.

8. TERM OF MAYOR

Section 71(2) of the Local Government Act 1989 states that:

Before a Mayor is elected under this section, the Council may resolve to elect a Mayor for a term of 2 years.

This implies that Council must consider the Mayoral term before the election of the Mayor.

Motion moved:

That the term of Mayor shall be for a one (1) year period.

Moved: Cr Rod May
Seconded: Cr Jon Barrell
Carried.

9. ELECTION OF MAYOR

The Office of Mayor is currently vacant. Council's Local Law No. 1 [Section 2.30 (2) (b)]:

[When required:

The meeting to fill the vacancy of Mayor will be held:

(b) where the Council conduct general elections, as soon as possible after the declaration of the result of the general election.]

The Local Government Act [Section 71 (1)] states that:

- Councillors must elect a Councillor to be the Mayor at a meeting of the Council that is open to the public.

The Local Government Act [Section 91 (1) (ca)] states that :

- Voting at a meeting that is open to member of the public must not be in secret.

Nominations are to be called. Once the Mayor is elected, they take over chairing the meeting.

Motion moved:

That Councillor Bill McClenaghan be nominated and elected as Mayor.

Moved: Cr Don Henderson
Seconded: Cr Sebastian Klein
Carried.

9.1. Congratulatory Remarks to Mayor

Each Councillor and the Chief Executive Officer offered their congratulations to the Mayor.

9.2 Incoming Mayoral Speech

At the outset, I would like to thank my fellow Councillors for their trust in me and also my friends and supporters and all my constituents in Holcombe Ward. I want to thank everyone for their trust and support which I will repay with loyalty and hard work

I'd like now to speak about what I see as the way ahead and my goals as a Councillor and Mayor. My main goal is to lead this Council forward as a dynamic and functional "Team Hepburn Shire" where Councillors are able to express their views frankly and fearlessly although respectfully and honestly. In good Australian democratic tradition, there should always be robust debate on issues but never destructive arguments. Also, I would like to see this Council engage with the many communities in the Shire and empower them to realise and achieve their goals because every Council should take their communities with

them. Far more is achieved by a strong partnership between Council and community than by Council acting alone.

There needs to be strong collaborative decision making on Council; talking through problems and issues, finding common ground and arriving at a consensus agreement. No more numbers games and factional votes that create conflict and dysfunction, winners and losers. There must only be win / win outcomes created for Council and the community. I look forward to working in a vibrant and responsive Shire organisation with good communication and management, good Councillor/staff relationships and a service driven culture to advantage all residents and ratepayers. Hepburn Shire is a viable small shire that is a great place to live, work and raise a family and also a fantastic place to visit and enjoy.

As Mayor I remain only one Councillor and the power of Council is in our workings and decisions as a group. Despite that I do have some discretion which I would now like to exercise. The “Mayor’s Room” is now the “Councillors’ Room” and it is for the use of the whole team. Same as the main desk, computer and phone in that room; first come first served. If you are there and I turn up, don’t you dare move. I’ll sit at the side table and fit in with you. If you want to have constituent meetings in that room, that’s fine. No need to ask me. That goes for the fridge too but just take it easy and remember who’s paying for it, OK? Same for the “Mayoral car” which I neither need nor can fit in at my place. We can use it as a Councillors’ car, car pool or make any arrangement we like with that later. I believe that we should restore the position of Deputy Mayor as the Mayor can be double booked or sometimes unavailable. There is also a need for succession training. The key theme of our team approach is the importance of helping and supporting each other in our various roles, meetings and workshops.

Lastly I’d like to tell you a true story that shows how things can be done for the best win – win outcome. You will all see the community flagpole standing at the top of Vincent Street beside the top roundabout. Normally the Hepburn Shire flag flies from that pole but at festival time, various festival flags fly there announcing to our many visitors as well as our residents that something special is happening here. This flagpole became the solution to a divisive debate on whether flags and banners should be flown from flag sticks on the upper balcony of the Town Hall or draped down from that balcony. It was an idea that became the solution to that divisive debate when all the various stakeholders came together and agreed that this was the answer to the problem and the way forward. That flagpole not only proudly flies our Shire flag and our festival flags, it is a symbol of how we can come together and solve problems together and leave the issues of the past behind. That is the way I want to see this Council work from here on and into the future.

Once again, I repeat my thanks and appreciation to my fellow Councillors for their trust and support and look forward to a really great challenging and productive four year Council term.

Motion moved:

That the Mayor’s Speech be received by Council.

Moved: Cr Rod May
Seconded: Cr Jon Barrell
Carried.

10. ELECTION OF DEPUTY MAYOR

Council may elect a Deputy Mayor. If Council resolves to elect a Deputy Mayor, Section 2.30 (10) of Local Law No. 1 provides that if Council resolves to elect a Deputy Mayor, the provisions for election of the Mayor will apply to the election of the Deputy Mayor.

Council has an obligation under Section 73(3) of the Local Government Act 1989 to appoint a Councillor as an Acting Mayor in the instance that there is a vacancy in the Office of the Mayor or the Mayor is otherwise absent.

Councils often elect and appoint a Deputy Mayor to serve this purpose under Section 73(3) of the Act after they have elected the Mayor. In the absence of the Mayor, the Deputy Mayor will become the acting Mayor and in accordance with Section 73(4) of the Act, and "may perform any function or exercise any power conferred on the Mayor." For example it will be the role of the Deputy Mayor to chair any meetings of Council in the absence of the Mayor.

In the instance where Council resolves not to appoint a Deputy Mayor and there is an absence of the Mayor, the Council will need to appoint an acting Mayor in accordance with Section 73(3) of the Act.

Motion moved:

That the Hepburn Shire Council determines to elect a Councillor to be the Deputy Mayor for a period commensurate with the Mayoral Term for the purpose of fulfilling Council's obligations under Section 73 (3) of the Local Government Act 1989, whereby the Deputy Mayor will fulfil the role of acting Mayor and be able to exercise the powers of the Mayor in accordance with Section 73 (4) of the Act.

**Moved: Cr Jon Barrell
Seconded: Cr Tim Hayes
Carried.**

Motion Moved:

That Cr Janine Booth be elected as Deputy Mayor.

**Moved: Cr Jon Barrell
Seconded: Cr Rod May
Carried.**

10.1 Deputy Mayor's Speech.

The immediate past mayor Cr Tim Hayes, my fellow Councillors, the CEO Ms Kaylene Conrick, officers and staff of Council, family and friends, residents of Hepburn Shire, Ladies and gentlemen.

Foremost I wish to thank my family and supportive community for supporting my local government involvement, for being my sounding board, my conscience and for trusting and believing in me.

To my fellow Councillors

I want to thank you for your support and encouragement and the faith and trust you now place in me. I pledge to do my best to work in partnership with you to build and develop a strong leadership team for this Shire. Whilst I know We will not always agree I will endeavour to foster and support an environment where each one of us has input, feels equally valued and supported and continues to learn and grow so that We can provide strong democratic corporate good governance that is founded on common decency and reasonability and a passion for our communities.

To the CEO, the Officers and Staff of Council

I pledge my continued loyalty, support and enthusiasm as together with Councilors' We work hard to provide the best possible service delivery, asset management and corporate good governance to serve the best interests of all residents in all parts of our Shire.

But these are just words.....

We will show by our actions, by our demeanour and by our treatment of others that We are fair dinkum. That We are committed to this cause. We must be positive and proactive and We must lead by example.

This is our chance to move forward...this is our line in the sand.

We have a new CEO. A new Council... a new opportunity.

I look forward to working with you all, together, to make the most of it.

Motion moved.

That the Deputy Mayoral Speech be received.

Moved: Cr Jon Barrell

Seconded: Cr Sebastian Klien

Carried.

11. MAYOR & COUNCILLOR ALLOWANCES

(A/O – Manager Governance & Information)

File Ref: 18/02/01

Introduction

In an election year, Council is required to review and set Mayoral and Councillor allowances within 7 months of their election. The allowances are to be set within a prescribed range based on the size of the Council.

In accordance with the Order in Council published in the Victorian Government Gazette 27 November 2008, as of 1 December 2008, the existing Mayoral and Councillor allowances will be increased by 34.38% and will remain in operation until Council determines the new rates.

Report

Section 74 of the Act requires each Council to review and set their allowance levels within seven months after a general election. The act is quite prescriptive and requires the following to be adhered to:

- A Section 223 public consultation process must occur before the allowances are set.
- Allowances must be set in accordance with the last applicable Order-in-Council (details are attached)

Once set, the allowances will remain in force for the next 4 financial years unless one of the following applies:

- An Order-in-Council is made which changes the ranges of allowances in respect of the Council; and
- The Council has conducted a further review of allowances.

As Council is required to undertake a Section 223 public consultation process for its 09/10 budget, it makes sense to combine the allowance review with the budget consultation.

Under this proposal, the allowances set following the 2005 elections will continue to apply until June 30 2009, with the following changes as prescribed by the Order in Council published 27 November 2008:

- Councillor allowance \$12,000 (set 18 April, 2006) + 34.38% = \$16,125.60
- Mayoral allowance \$22,000 (set 18 April, 2006) + 34.38% = \$29,563.60
- Plus the addition of the equivalent of the Superannuation Guarantee Contribution, which is currently 9%.

It is important to note that the 9% is not Superannuation. It is an additional allowance to the value of 9% which is to be paid on top of the Councillor and Mayoral allowances.

Hepburn Shire Council is defined as a category 1 council which allows Councillors to be paid an allowance between \$6,800 and \$16,200 per annum. The Mayor may be paid up to a maximum of 3 times the permissible councillor allowance.

Relevant Policies / Council Plan Objectives

- Local Government Act 1989
- Order in Council – 27 November, 2008.

Community / Engagement / Communication / Consultation:

A public consultation process in relation to setting the four year Councillor and Mayoral allowance will occur as part of Council's draft Budget 2009 / 10.

Financial & Resource Implications Initial & Ongoing

The changes relating to Councillor / Mayoral allowance were incorporated into Council's 2008 /09 Budget adopted 2008

Motion Moved.

That Council:

11.1 *Note that in accordance with the Order in Council published in the Victorian Government Gazette on 27 November 2008, the Councillor allowance will be increased to \$16,125.60 as of 1 December 2008.*

11.2 *Note that in accordance with the Order in Council published in the Victorian Government Gazette on 27 November 2008, the Mayoral allowance will be increased to \$29,563.60 as of 1 December 2008.*

11.3 *Formally review Councillor and Mayoral allowances as part of the 2009/2010 Budget review process.*

Moved: Cr Janine Booth
Seconded: Cr Tim Hayes
Carried.

Local Government Act 1989 and City of Melbourne Act 2001**LOCAL GOVERNMENT COUNCILLOR AND MAYORAL ALLOWANCES****ORDER IN COUNCIL**

The Governor in Council under section 74B of the **Local Government Act 1989** and section 26 of the **City of Melbourne Act 2001**, and acting under section 27 of the *Interpretation of Legislation Act 1984*, makes the following Order—

Revocation

1. The Order in Council of 27 March 2001 for “Fixing and Limiting Allowances under section 74 of the **Local Government Act 1989** for the Councillors and Mayors of all Councils other than Melbourne City Council” is revoked along with associated amending Orders of 28 June 2005, 20 December 2005, 20 June 2006 and 29 August 2006.
2. The Order in Council of 31 July 2001 for “Fixing Allowances under section 74A of the **Local Government Act** and section 26 of the **City of Melbourne Act 2001** for the Councillors, Deputy Lord Mayor and Lord Mayor of Melbourne City Council” is revoked.
3. The revocation takes effect upon commencement of this Order.

Allowances in two parts.

4. Allowances are in two Parts;

Part A -

- i. lower and upper range limits and levels of allowances applicable to Council categories (excepts Melbourne City Council);
- ii. amounts of allowances for Melbourne City Council; and

Part B -

the *equivalent* of the superannuation guarantee contribution (currently 9%) to be added to the Part A allowances of Councils entitled to receive Part B.

Councillor annual allowances and limits on Councillor allowances

5. Part A: from 1 December 2008, the annual allowance ranges and limits specified for Councillors for the purposes of section 74B(1) of the **Local Government Act 1989** are:
 - (a) \$ 6,800-\$16,200 for Councils listed as Category 1 in the attached Schedule;
 - (b) \$ 8,400-\$20,200 for Councils listed as Category 2 in the attached Schedule; and
 - (c) \$10,100-\$24,200 for Councils listed as Category 3 in the attached Schedule.

Mayoral Annual Allowance Limits

6. Part A: from 1 December 2008 and payable from the time of taking the oath of office, the following ranges limits are specified for the purposes of section 74B(1) of the **Local Government Act 1989**:
 - (a) up to \$48,400 for Councils listed as Category 1 in the attached Schedule;
 - (b) up to \$62,500 for Councils listed as Category 2 in the attached Schedule; and
 - (c) up to \$77,300 for Councils listed as Category 3 in the attached Schedule.

Councillor allowances – Melbourne City Council

7. Part A: the annual allowance specified for the purposes of section 26(1) of the **City of Melbourne Act 2001** from 1 December 2008 and payable from the time of a Councillor taking the oath of office is \$33,600.

Deputy Lord Mayor and Lord Mayoral allowance

8. Part A: the annual allowances specified for the purposes of section 26(2) of the **City of Melbourne Act 2001** from 1 December 2008 and payable from the time of the Deputy Lord Mayor and Lord Mayor taking the oath of office are:
 - (a) \$60,500 for the Deputy Lord Mayor; and
 - (b) \$147,900 for the Lord Mayor.

Application of the equivalent of the superannuation guarantee contribution.

9. Part B: under section 74B(2) of the **Local Government Act 1989** and section 26 (1) and 26 (2) of the **City of Melbourne Act 2001**, for Councils that are not receiving the Superannuation Guarantee Contribution (SGC) as a result of a unanimous resolution to be subject to tax withholding arrangements under Commonwealth taxation legislation, all of the range limits, levels and amounts of allowances in this Order are subject to the addition of the *equivalent* of the superannuation guarantee contribution (SGC) (currently 9%).
10. Under section 74B(2) of the **Local Government Act 1989** and section 26 (1) and 26 (2) of the **City of Melbourne Act 2001**, for any Council that may in the future make a unanimous resolution under Commonwealth taxation legislation to cease tax withholding arrangements, the Part A allowances will be subject to the addition of the *equivalent* of the SGC (currently 9%).

Commencement levels of annual allowances for Councillors and Mayors

11. From 1 December 2008, for categorised councils, the individual annual allowance levels payable to Mayors and Councillors under section 74B of the **Local Government Act 1989** will be the amounts determined as a result of a Council's last review under section 74(1) and with these amounts subject to the addition of 34.38%, and where eligible, Part B. These amounts are payable from the time of taking oath of office and will apply until a Council performs a review under section 74(1).

Remote area travel allowance

12. If a Councillor, including a Mayor normally resides more than 50kms by the shortest possible practicable road distance from the location or locations specified for the conduct of ordinary, special or committee meetings of the Council, or any municipal or community functions which have been authorised by Council resolution for the Councillor to attend he or she must be paid an additional allowance of \$40.00 in respect of each day on which one or more meetings or authorised functions actually attended by that Councillor, up to a maximum of \$5000 per annum.

Manner of payment of allowances

13. The payment of annual allowances is not to exceed more than quarterly (3 months) in advance.
14. This Order is effective from 1 December 2008.

Dated:

Responsible Minister:

RICHARD WYNNE
Minister for Local Government

Clerk of the Executive Council

Local Government Act 1989

LOCAL GOVERNMENT COUNCILLOR AND MAYORAL ALLOWANCES

SCHEDULE TO THE ORDER IN COUNCIL

CATEGORY 1	CATEGORY 2	CATEGORY 3
Alpine Shire Council	Ballarat City Council	Boroondara City Council
Ararat Rural City Council	Banyule City Council	Brimbank City Council
Benalla Rural City Council	Bass Coast Shire Council	Casey City Council
Borough of Queenscliffe	Baw Baw Shire Council	Darebin City Council
Buloke Shire Council	Bayside City Council	Greater Bendigo City Council
Central Goldfields Shire Council	Campaspe Shire Council	Greater Dandenong City Council
Corangamite Shire Council	Cardinia Shire Council	Greater Geelong City Council
Gannawarra Shire Council	Colac Otway Shire Council	Hume City Council
Glenelg Shire Council	East Gippsland Shire Council	Kingston City Council
Golden Plains Shire Council	Frankston City Council	Knox City Council
Hepburn Shire Council	Glen Eira City Council	Monash City Council
Hindmarsh Shire Council	Greater Shepparton City Council	Moreland City Council
Horsham Rural City Council	Hobsons Bay City Council	Moonee Valley City Council
Indigo Shire Council	Latrobe City Council	Mornington Peninsula Shire Council
Loddon Shire Council	Macedon Ranges Shire Council	Port Phillip City Council
Mansfield Shire Council	Manningham City Council	Stonnington City Council
Mount Alexander Shire Council	Maribyrnong City Council	Whitehorse City Council
Moyne Shire Council	Maroondah City Council	Whittlesea City Council
Murrindindi Shire Council	Melton Shire Council	Wyndham City Council
Northern Grampians Shire Council	Mildura Rural City Council	Yarra Ranges Shire Council
Pyrenees Shire Council	Mitchell Shire Council	
Southern Grampians Shire Council	Moira Shire Council	
Strathbogie Shire Council	Moorabool Shire Council	
Towong Shire Council	Nillumbik Shire Council	
West Wimmera Shire Council	South Gippsland Shire Council	
Yarriambiack Shire Council	Surf Coast Shire Council	
	Swan Hill Rural City Council	
	Wangaratta Rural City Council	
	Warrnambool City Council	
	Wellington Shire Council	
	Wodonga City Council	
	Yarra City Council	

12. THE NATIONAL ANTHEM

Please stand and join in singing The National Anthem.

*Australians all let us rejoice,
For we are young and free;
We've golden soil and wealth for toil;
Our home is girt by sea;
Our land abounds in nature's gifts
Of beauty rich and rare;
In history's page, let every stage
Advance Australia Fair.
In joyful strains then let us sing,
Advance Australia Fair.*

13. CLOSE OF MEETING

The Mayor closed the meeting and invited all present to partake of refreshments.

The Meeting closed at 7.45pm.