



**MORNINGTON
PENINSULA**
Shire

MINUTES

COUNCIL MEETING

TUESDAY, 24 JANUARY 2023

10.30AM

ONLINE ZOOM MEETING

MORNINGTON PENINSULA SHIRE COUNCIL

WARDS AND COUNCILLORS

Briars	Cr Steve Holland Cr Anthony Marsh Cr Despi O'Connor
Cerberus	Cr Lisa Dixon
Nepean	Cr Susan Bissinger Cr Sarah Race
Red Hill	Cr David Gill
Seawinds	Cr Antonella Celi Cr Debra Mar Vacant
Watson	Vacant

SENIOR LEADERSHIP TEAM

Mr John Baker Ms Tanya Scicluna Ms Sam Stanton Mr Mike McIntosh	Chief Executive Officer Director – Community Strengthening Director – Corporate Strategy and Business Improvement Director – Planning and Infrastructure
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RECORDING

Please note that this Council Meeting was livestreamed to the Mornington Peninsula Shire's YouTube channel and a recording of the meeting is available on the Shire's website.

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
1	OPENING AND WELCOME	4
1.1	Acknowledgement of Country.....	4
2	PROCEDURAL MATTERS.....	5
2.1	Apologies	5
2.2	Disclosure of Conflicts of Interest Pursuant to Sections 126 – 131 of the <i>Local Government Act 2020</i>	5
3	MANAGEMENT REPORTS.....	6
	OFFICE OF THE CEO	6
3.1	Consideration of Planning Scheme Amendment C270 in light of the Victorian Civil and Administrative Tribunal (VCAT) decision in Ryman Healthcare (Australia) Pty Ltd v Mornington Peninsula SC [2022] VCAT 1495	6
4	CONFIDENTIAL ITEMS.....	9
4.1	Consideration of Victorian Civil and Administrative Tribunal (VCAT) decision in Ryman Healthcare (Australia) Pty Ltd v Mornington Peninsula SC [2022] VCAT 1495	11
5	MEETING CLOSE.....	12

1 OPENING AND WELCOME

Meeting opened at 10.30am

Appointed Chairperson – Mayor, Cr Steve Holland

1.1 Acknowledgement of Country

(Read by Cr Race)

Mornington Peninsula Shire acknowledges the Bunurong people, who have been the custodians of this land for many thousands of years; and pays respect to their elders past and present. We acknowledge that the land on which we meet is the place of age-old ceremonies, celebrations, initiation and renewal; and that the Bunurong peoples' living culture continues to have a unique role in the life of this region.

2 PROCEDURAL MATTERS

Present

Mayor, Cr Steve Holland
Cr Susan Bissinger
Cr Antonella Celi
Cr Lisa Dixon
Cr David Gill
Deputy Mayor, Cr Debra Mar
Cr Despi O'Connor
Cr Sarah Race

Ms Sam Stanton, Acting Chief Executive Officer

2.1 Apologies

Cr Anthony Marsh

2.2 Disclosure of Conflicts of Interest Pursuant to Sections 126 – 131 of the *Local Government Act 2020*

Nil.

PROCEDURAL MOTION

Moved: Cr Dixon
Seconded: Cr Gill

That the item listed at 4.1 on the agenda be considered before the item listed as 3.1.

Carried Unanimously

3 MANAGEMENT REPORTS

OFFICE OF THE CEO

3.1 Consideration of Planning Scheme Amendment C270 in light of the Victorian Civil and Administrative Tribunal (VCAT) decision in Ryman Healthcare (Australia) Pty Ltd v Mornington Peninsula SC [2022] VCAT 1495

RECOMMENDATION

That the Chief Executive Officer and Mayor write to the Minister for Planning to request that she specifically considers the decision handed down in Ryman Healthcare (Australia) Pty Ltd v Mornington Peninsula SC [2022] VCAT 1495 and its impact on the Green Wedge in her consideration of Amendment C270, to prevent any further decisions being made which adversely impact the Mornington Peninsula's Green Wedge.

MOTION

Moved: Cr Gill
Seconded: Cr Mar

1. That the Chief Executive Officer and Mayor write to the Minister for Planning to request that she specifically considers the decision handed down in Ryman Healthcare (Australia) Pty Ltd v Mornington Peninsula SC [2022] VCAT 1495 and its impact on the Green Wedge in her consideration of Amendment C270, to prevent any further decisions being made which adversely impact the Mornington Peninsula's Green Wedge.
2. That the Planning Minister be asked to rescind the Victorian Civil and Administrative Tribunal (VCAT) decision as the decision does not protect the Mornington Peninsula Green Wedge from inappropriate development as previously promised by the State Government.
3. That Council place on record its disapproval to VCAT that they released the result of such an important Green Wedge decision in the Christmas / New year period making a Supreme Court appeal very difficult within the 28 day allowable time frame.
4. That Council calls a meeting with appropriate officers as soon as possible to consider a large advocacy campaign to defend the erosion of the Green Wedge. The campaign will inform our community and the State Government of risks posed by planning decisions, outside of Council control, that pose threats to the future of our Green Wedge.

At the request of Cr Race, the Council decision was voted on in parts.

1. **That the Chief Executive Officer and Mayor write to the Minister for Planning to request that she specifically considers the decision handed down in Ryman Healthcare (Australia) Pty Ltd v Mornington Peninsula SC [2022] VCAT 1495 and its impact on the Green Wedge in her consideration of Amendment C270, to prevent any further decisions being made which adversely impact the Mornington Peninsula's Green Wedge.**

Carried Unanimously

3.1 (Cont.)

2. That the Planning Minister be asked to rescind the Victorian Civil and Administrative Tribunal (VCAT) decision as the decision does not protect the Mornington Peninsula Green Wedge from inappropriate development as previously promised by the State Government.

Vote by Division (Requested by Cr Gill)

For: Cr Gill and Cr Mar

Against: Cr Holland, Cr O'Connor, Cr Dixon, Cr Bissinger, Cr Race and Cr Celi

Lost

3. **That Council place on record its disapproval to VCAT that they released the result of such an important Green Wedge decision in the Christmas / New year period making a Supreme Court appeal very difficult within the 28 day allowable time frame.**

Vote by Division (Requested by Cr Gill)

For: Cr Gill, Cr Holland, Cr O'Connor, Cr Dixon, Cr Bissinger, Cr Race, Cr Mar and Cr Celi

Against: Nil

Carried Unanimously

4. **That Council calls a meeting with appropriate officers as soon as possible to consider a large advocacy campaign to defend the erosion of the Green Wedge. The campaign will inform our community and the State Government of risks posed by planning decisions, outside of Council control, that pose threats to the future of our Green Wedge.**

Vote by Division (Requested by Cr Gill)

For: Cr Gill, Cr Holland, Cr O'Connor, Cr Dixon, Cr Bissinger, Cr Race, Cr Mar and Cr Celi

Against: Nil

Carried Unanimously

For clarity the Council decision is repeated below:

COUNCIL DECISION

Moved: Cr Gill

Seconded: Cr Mar

1. **That the Chief Executive Officer and Mayor write to the Minister for Planning to request that she specifically considers the decision handed down in Ryman Healthcare (Australia) Pty Ltd v Mornington Peninsula SC [2022] VCAT 1495 and its impact on the Green Wedge in her consideration of Amendment C270, to prevent any further decisions being made which adversely impact the Mornington Peninsula's Green Wedge.**

3.1 (Cont.)

2. That Council place on record its disapproval to VCAT that they released the result of such an important Green Wedge decision in the Christmas / New year period making a Supreme Court appeal very difficult within the 28 day allowable time frame.
3. That Council calls a meeting with appropriate officers as soon as possible to consider a large advocacy campaign to defend the erosion of the Green Wedge. The campaign will inform our community and the State Government of risks posed by planning decisions, outside of Council control, that pose threats to the future of our Green Wedge.

Carried Unanimously

4 CONFIDENTIAL ITEMS

Advice to the Public

All reports, information and recommendations contained in 'Section 4 – Confidential Items' of this Agenda have been designated by the Chief Executive Officer as confidential pursuant to section 66 (2) (a) of the *Local Government Act 2020*.

MEETING CLOSED TO THE PUBLIC

The Council may resolve that the meeting be closed to members of the public in accordance with section 66 (5) (a) of the *Local Government Act 2020* if the meeting is discussing any of the following:

- (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released.
- (b) Security information, being information that if released is likely to endanger the security of Council property or the safety of any person.
- (c) Land use planning information, being information that if prematurely released is likely to encourage speculation in land values.
- (d) Law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person.
- (e) Legal privileged information, being information to which legal professional privilege or client legal privilege applies.
- (f) Personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.
- (g) Private commercial information, being information provided by a business, commercial or financial undertaking that:
 - (i) Relates to trade secrets.
 - (ii) If released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.
- (h) Confidential meeting information, being the records of meetings closed to the public under section 66 (2) (a).
- (i) Internal arbitration information, being information specified in section 145.
- (j) Councillor Conduct Panel confidential information, being information specified in section 169.
- (k) Information prescribed by the regulations to be confidential information for the purposes of this definition.
- (l) Information that was confidential information for the purposes of section 77 of the *Local Government Act 1989*.

RECOMMENDATION

That Council considers the confidential report listed below in a meeting closed to the public in accordance with section 66 (2) (a) of the *Local Government Act 2020*:

4.1 Consideration of Victorian Civil and Administrative Tribunal (VCAT) decision in Ryman Healthcare (Australia) Pty Ltd v Mornington Peninsula SC [2022] VCAT 1495

This matter is considered to be confidential under section 3 (1) (e) of the *Local Government Act 2020* as it contains legal privileged information.

COUNCIL DECISION

Moved: Cr Race

Seconded: Cr Bissinger

That the recommendation be adopted.

Carried Unanimously

4.1 Consideration of Victorian Civil and Administrative Tribunal (VCAT) decision in Ryman Healthcare (Australia) Pty Ltd v Mornington Peninsula SC [2022] VCAT 1495

This was the first item heard.

COUNCIL DECISION

Moved: Cr Celi
Seconded: Cr O'Connor

At the request of Cr Gill the substantive motion was voted on in parts.

- 1. That Council publicly notes its disappointment with both the outcome and the timing of the decision handed down by the Victorian Civil and Administrative Tribunal and the resulting impact on the Mornington Peninsula's Green Wedge but resolves not to appeal the decision.**

Vote by Division (Requested by Cr Holland)

For: Cr Gill, Cr Holland, Cr O'Connor, Cr Dixon, Cr Bissinger, Cr Race, Cr Mar and Cr Celi

Against: Nil

Carried Unanimously

- 2. That Council resolves that this report except for the sections headed 'Purpose' and 'Background' under 'Discussion' and Attachments 3 and 4 be retained as confidential items pursuant to section 3 (1) (e) of the *Local Government Act 2020* as they contain legal privileged information.**
- 3. That Council resolves that this resolution and voting record is not confidential and may be communicated immediately after the vote. Further, the Council resolves that the Mayor be authorised, in discussion with the Chief Executive Officer, to release as much information as appropriate from this report to inform the public of Council's decision.**

Vote by Division (Requested by Cr Holland)

For: Cr Gill, Cr Holland, Cr O'Connor, Cr Dixon, Cr Bissinger, Cr Race, Cr Mar and Cr Celi

Against: Nil

Carried Unanimously

5 MEETING CLOSE

As there was no further business, the meeting closed at 11.53am.

Confirmed this 7th day of February 2023

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Mayor, Cr Steve Holland, Chairperson - Council