



*The City with Spirit*

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## NOTICE OF MEETING

Notice is hereby given that the **2020 Annual General** meeting of the Devonport City Council will be held in the convention centre, level 3 paranaple centre, 137 Rooke Street, Devonport on Monday 9 November 2020, commencing at 5:30pm.

**The meeting will be open to members of the public and live streamed from 5:30pm.**

Due to the COVID-19 pandemic, attendees must register to attend prior to the meeting.

Matthew Atkins  
GENERAL MANAGER

**4 November 2020**

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**Agenda for the 2020 Annual General Meeting of Devonport City Council  
held on Monday 9 November 2020, in the convention centre, level 3, paranapple centre,  
137 Rooke Street Devonport, at 5:30pm.**

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## **WELCOME AND INTRODUCTIONS**

Welcome and introductions by Mayor, Councillor Annette Rockliff

## **IN ATTENDANCE**

All persons in attendance are advised that it is Council policy to record Council Meetings, in accordance with Council's Digital Recording Policy. The digital recording of this meeting will be made available to the public on Council's website. The meeting is being live streamed on Council's YouTube channel.

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## 1 ANNUAL GENERAL MEETING GUIDELINES

1. The Annual General Meeting will be conducted as far as practicable in a manner similar to an ordinary Council meeting and generally align with processes in the *Local Government (Meeting Procedures) Regulations 2015*.
2. The Mayor will Chair the meeting or in her absence the Deputy Mayor.
3. All discussion is to be addressed through the Chair.
4. Submissions and questions relating to the Annual Report should where possible be submitted in writing for inclusion in the agenda, however an opportunity will be provided at the meeting for questions from the floor.
5. Motions
  - a) Motions must be submitted by the advertised cut-off date for inclusion in the agenda.
  - b) Motions (other than those related to an existing agenda item) will not be accepted from the floor.
  - c) The Motion must be moved and seconded before debate is permitted.
  - d) Only one motion may be before the Chair at a time.
  - e) Only electors in the Devonport Local Government Area are entitled to vote.
  - f) Voting will be by show of hands.
  - g) A resolution is passed by half plus one of the electors present voting in favour.
  - h) In speaking to a motion, you may speak only once and for a maximum of three minutes.
  - i) The mover of the motion has a final right of reply.
  - j) A motion passed at the Annual General Meeting will be considered at the next available meeting of Council.
6. The process for questions without notice will generally be in accordance with Council's Public Question Time policy.
7. Those wishing to speak at the meeting are asked to come to the lectern and identify themselves by providing their name and address and to limit any comments/questions to no more than 3 minutes on an item.
8. No person may:
  - a) Make any personal reflection on any councillor, council employee or any member of the public;
  - b) Disrupt the meeting; or
  - c) In the opinion of the Chair, use any offensive expression.

**2 APOLOGIES****3 DECLARATIONS OF INTEREST****4 CONFIRMATION OF MINUTES****RECOMMENDATION**

That the minutes of the Annual General Meeting held on 9 December 2019, as attached, be confirmed.

**GENERAL MANAGER'S COMMENT**

The unconfirmed minutes were presented to the December 2019 Council meeting for noting. Since that time, the Local Government Code of Conduct Panel have considered a complaint regarding the 2019 Annual General Meeting. As a result of the Determination Report handed down by the Panel, the last sentence of the minutes presented for confirmation have been amended from, "There being no further business the Mayor declared the meeting closed at 6:24pm" to, "The Mayor closed the meeting at 6:24pm".

## **5 PRESENTATION OF ANNUAL REPORT**

The General Manager will provide an overview of the 2020 Annual Report.

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## 6 SUBMISSIONS/QUESTIONS TO THE ANNUAL REPORT

### RECOMMENDATION

That submissions and questions, and the subsequent answers, on the 2019/20 Devonport City Council Annual Report, be noted.

### OFFICER'S COMMENTS

The attached submissions and questions were received prior to the close of the agenda and written responses have been drafted by the General Manager and are attached for information.

### ATTACHMENTS

1. Annual Report Submission and QoN from Mr Malcolm Gardam [**6.1.1** - 5 pages]
2. Response to Mr Malcolm Gardam [**6.1.2** - 7 pages]
3. Annual Report Submission re Staff from Mr Bob Vellacott [**6.1.3** - 1 page]
4. AGM 2020 QoN from Mr Bob Vellacott [**6.1.4** - 1 page]
5. Response to Mr Bob Vellacott [**6.1.5** - 5 pages]
6. AGM Questions from Mr Doug Janney [**6.1.6** - 2 pages]
7. Response to Mr Doug Janney [**6.1.7** - 2 pages]
8. AGM Questions from Mr Matthew Smith [**6.1.8** - 2 pages]
9. Response to Mr Matthew Smith [**6.1.9** - 2 pages]
10. Annual report submission 1 and 2 from Mr Graeme Nevin [**6.1.10** - 3 pages]

## 7 MOTIONS ON NOTICE

### 7.1 NOTICE OF MOTION FROM MR BOB VELLACOTT

#### MOTION

That – We the ratepayers / electors here present, noting that no apology whatsoever has so far been forthcoming, hereby request an unequivocal apology from the General Manager, Mayor and those Councillors responsible for the intolerable situation in regard to in particular the Food Pavilion now known as Providore Place, and among other things, the mismanagement and subsequent loss of revenue from Stage 1 of the Living City project, for the following reasons:-

1. THE DEVONPORT CITY COUNCIL'S ATTITUDE TO TRANSPARENCY relating to Living City decision making almost exclusively done in Closed (secret) Session and the deals done with private enterprise, has alienated large sections of the electors. This is largely due to Council's refusal in many instances to substantiate its representations and provide few real time disclosures other than those forced upon them. Unfortunately, in relation to many statements made by Council or its appointed Project Development Manager, Council never provided or provides evidence to substantiate its public representations and for over four (4) years has resorted to various tactics to avoid transparency and accountability relating to this project. From what has transpired "Transparency and therefore accountability is/ was not in abundance at the Devonport City Council".

2. THE ARGUABLY DECEITFUL CLAIMS – on 7th December 2016 the Deputy General Manager (at that time and now the General Manager) was reported as saying "we've got a 10-year lease with Providore Place to run it and we're getting a good return above the independently assessed market value," and " the revenue the council received on the food pavilion was guaranteed through the head lease arrangement and removed the council's exposure to financial risk." and "Projected food pavilion income is \$400,000 per year"

All above said and oft repeated; and when challenged to provide the evidence, the statements were never refuted by the Mayor and Councillors, who knew or should have known, that those statements were false. Members of council, with only a skerrick of business acumen, should have known that statements such as those made by the then Deputy General Manager, if made by the management of any public listed company, could have received a severe penalty imposed by ASIC for false representation to investors and/or shareholders (ratepayers in the case on Devonport Council). The Acting General Manager's information was ultimately relied upon by councillors in approving the entering into of the initial head lease agreement, which, with the passage of time, was proved, by the Auditor General, to be grossly deficient and based on misguided advice at best?

3. THE MISLEADING STATEMENTS MADE –the Development Manager In 2013 –said in relation to the then Stage 2 new retail precinct that he had "spoken to 15 national retailers and 13 were keen to come to Devonport" and "Negotiations must remain confidential, but it is expected that key announcements can take place in 2014." As the passage of time has demonstrated and eventually admitted by Council there were never any firm commitments prior to approving Stage 1. The prospect of a "new northern retail precinct" is now all but non-existent. In the extended period leading up to approval of Stage 1 and in 2016 Council represented it was "not a council-funded project" and "without relying on



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income from Council's existing revenue streams." At the same time it announced for the first time only some 14 days prior to approving Stage 1 that a ratepayer contribution of \$11 million of cash reserves (later increased to \$13.3 million) and up to \$39 million of borrowings were required for Stage 1 construction alone. Also the statement "Council will not be the main financier of Living City "which in time has been proven to be a fallacy.

4. THE FARRAGO of EXAGGERATED / UNSUBSTANTIATED CLAIMS – as per the 2014/5 Living City Master Plan Fact sheet, it stated Living City will create \$250 m investment over 5-8 years, and more than 1,100 ongoing jobs will be created. This was later changed to - Living City will generate in relation to NEW on-site jobs "nearly 830 full-time operational jobs in Devonport CBD...." as well as there will be an annual \$112 million economic benefit. Also a claim was submitted that "The project is guaranteed to unlock \$270 million in private investment" all put forwarded to garner ratepayers' support and some to obtain Government funding.

5. THE DEMONSTRATED EFFORTS BY COUNCIL TO CONCEAL INFORMATION AND SUBSEQUENT ABUSE OF PRIVILEGE - at various times and in particular, at the time, the secretive waiving of Providore Place rent just prior to the 2018 council elections. When questioned the present Mayor agreed this could have had a bearing on the outcome of the election had the electors been aware of the unfolding economic mess. The Local Government Act was often, over "cherry picked" to limit the amount of information to be disclosed; no doubt, so as to conceal the mismanagement and deteriorating financial situation in regard to Providore Place.

6. THE MANY NON and/or EVASIVE ANSWERS GIVEN TO QUESTIONS ASKED AT MEETINGS - Council repeatedly refused to confirm any firm or formal commitments, from individual tenant leases, existed prior to approving construction of the food pavilion (Providore Place) despite a written commitment by Council not to start construction as stated in the "Stage 1 Funding Implications" report to Council dated February 2016; being "It is accepted that work will not start on the Food Pavilion until Council has the necessary level of certainty in the form of secured tenant commitments." This assurance was also proved to be incorrect by the Auditor General. Since then we have learnt that council did not seek legal advice and no rent was paid by the head lessee under the initial head lease. The "Head Lease Agreement "was actually not a fully commercial based lease but moreover a "cooperative shared arrangement".

7. THE FAILURE OF COUNCIL TO UNDERTAKE THE REQUIRED DUE DILIGENCE in regard to the comprehensive business case studies as required by consultants HillPDA so as to validate their estimates of 830 new CBD ongoing full-time direct jobs and significantly more indirect jobs and \$112 million of economic output annually despite repeatedly and unambiguously communicating to ratepayers that these outcomes justified the appropriation of approximately \$50 million in ratepayer cash reserves and additional borrowings for Stage 1 of the Living City Project.

\* Council's failure to tender the LIVING CITY project management contract and the appointment of a Company and project director not necessarily the most proven in delivering urban renewal projects of the equivalent size, scale and complexity to that of Living City.

\* Also Council should not have, to ensure ratepayer interests were fully protected, entered into a non-tendered confidential 10 year \$4 million food pavilion head lease with connections of the lead project consultant without Council having any knowledge of the fact that the issued paid up capital of the lessee Company was a minimal \$20,000 (0.5%) of the contract value thereby placing ratepayers at significant risk in the case of default. Council has refused to release the head lease document making it impossible to know whether adequate default clauses existed.

8. THE WAIVING OF RENT of some known, \$357,480 in revenue, as well as other unknown amounts for legal and council staff costs etc, due to an unenforceable agreement. This was because of Council's failure to insist on a director guarantee(s) for the so called Head Lease Agreement. Thus the secrecy about this and the costly extravagant fit outs of some \$651,000 excl. GST plus estimated equivalent amount for tenant-specific base-build requirements all constituted subsidisation of the tenancies in Providore Place that were and or will be in direct competition to other businesses in the city. Consequently, because of the secrecy, it has put them at an unfair advantage in not being able to know the full extent of the subsidisations.

9. The Conflicts of Interest - The Auditor General's Report stated - "Evidence obtained by us indicated the head lease was primarily drafted by P+i and appeared to be missing a number of standard lease clauses " and "DCC did not obtain independent legal advice on the lease agreement before being signed. DCC entered into the head lease agreement with PPD knowing: potential conflicts in future decision making could arise given P+i's development management role" and "The relationship risk between DCC and P+i in entering into the head lease arrangement, although acknowledged, was not adequately managed" and "DCC had not met good governance principles relating to transparency, equity, participation and inclusion and effective and efficient decision making." This and other areas within Living City where potential conflicts of interest could also arise was pointed out and questioned on many occasions by concerned ratepayers but was ignored by council.

10. THE COUNCIL'S FARCICAL ACTION IN NEGOTIATING A REPLACEMENT HEAD LEASE FOR PROVIDORE PLACE- Despite non-payment of rent due, as per the initial head lease agreement, and after Council received from the Auditor General a damning report, Council entered with the same entity, while some \$200,000 remained owing to Council, a 2 year term replacement head lease agreement that was subsequently terminated within 3 months of commencement.

We the Electors wish to also make it known of our extreme disappointment to you the now General Manager, the now Mayor and those Councillors who at the time were complicit in the ongoing mismanagement and concealment of information; also in regard to the cavalier conduct and contempt shown, on many occasions, towards those who questioned and/or expressed concern about the project.

Further - That the apology be given within one (1) month of this AGM and recorded in a meeting Agenda and the minutes. "To you the electors here present I ask for your unequivocal support for this motion by voting in the affirmative.

## **SUPPORT**

Ratepayers are now fully responsible for a total Council debt of approx. \$50 million and are exposed to the real possibility of increased rates and/or reduced services in the future. Instead of being protected they have been let down by Council members who are paid by ratepayers to provide proper and diligent duty of care in their decision making.

The current Mayor Annette Rockliff (Deputy Mayor at the time of approving Stage 1) now tells us in relation to the Providore Place rent that "*It was probably, to be honest, optimistic,....*" with the whole sorry saga described by another councillor as a shemozzle". I suggest as pointed out to Council at the time that it was fantasy and considering the litany of what I suggest were wild statements a better description would be > grossly exaggerated and/or delusional if in fact not deliberately deceptive.

It is absolutely apparent, if council had applied its own funding model criteria, which were published to the community, good governance principles as noted by the Auditor

General plus proper due diligence the Food Pavilion now known as Providore Place would not have been built.

Council is on record as stating "The financial risks with LIVING CITY are significant " – And "Council risks enormous reputational damage if the Master Plan is not implemented".

Other evidence of Council's avoidance in answering questions etc. relating to the Living City could be given; however because of time restrictions I am unable to do so.

In my opinion they the then Acting General Manager, Acting Mayor and those Councillors at the time had concern for just their own reputations and none for ratepayers or some staff who may have been placed in invidious situations because of them been privy to the concealment that was taking place.

Mayor - it is for the reasons listed that I have moved this motion to seek an apology. - Others may be of the opinion and say those responsible should resign: however I leave that for them to make that decision.

Mayor and Councillors responsible, as outlined in my motion and what I have said, it would, I suggest, be pertinent at this time for you and others who are mentioned in this to refrain from voting.

I therefore request the Secretary of the meeting to record all that has been written and said and include all in the minutes of this AGM meeting and the Agenda for November 2020 meeting.

## **ATTACHMENTS**

Nil

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## 7.2 NOTICE OF MOTION FROM MR GRAEME NEVIN

### MOTION

That the Devonport City Council:

1. commission an enquiry and report;
2. independent of council;
3. with the report made public (apart from item A below)

Regarding what has happened with Providore Place including reference to the following:

- a) Whether the DCC has any potential claim against any person or entity (other than the head lessee) concerning recovery of the Providore Place losses suffered by DCC?
- b) Whether the 2016 councillors acted in good faith when granting the head lease in relation to Providore Place?
- c) Why Council granted a head lease with clauses protecting Council's position absent?
- d) Why did Council not want any legal advice on the head lease?

### ATTACHMENTS

Nil

### **7.3 NOTICE OF MOTION FROM MR DOUG JANNEY**

#### **MOTION**

That Council, at the next meeting, consider providing all ratepayers of 50 years or more with Parking Vouchers as provided to Pensioners.

Secunder: R Vellacott

#### **ATTACHMENTS**

Nil

**8 GENERAL BUSINESS**

**9 CLOSURE**