
MINUTES OF PROCEEDINGS



**THE 4197th MEETING [SPECIAL] OF THE BRISBANE CITY
COUNCIL, HELD AT THE CITY HALL, BRISBANE, ON MONDAY
31 JULY 2006
AT 2:00PM.**

Dedicated to a better Brisbane

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MINUTES OF PROCEEDINGS



THE 4197th MEETING [SPECIAL] OF THE BRISBANE CITY COUNCIL, HELD AT THE CITY HALL, BRISBANE, ON MONDAY 31 JULY 2006 AT 2:00PM.

Dedicated to a better Brisbane

PRESENT:

The Right Honourable the LORD MAYOR (Councillor Campbell NEWMAN) – Liberal Party

The Chairperson of Council, Councillor Kevin BIANCHI – Labor Party

Labor Party Councillors

David HINCHLIFFE,
Majority Leader & Deputy Mayor;
Helen ABRAHAMS
Ann BENNISON,
(Deputy Chairperson of Council);
Les BRYANT
John CAMPBELL
Peter CUMMING
Felicity FARMER
Kim FLESSER
Steve GRIFFITHS
Faith HOPKINS
Maureen HAYES
Gail MacPHERSON
Victoria NEWTON
Kerry REA
Shayne SUTTON

Liberal Party Councillors

Carol CASHMAN,
(The Leader of the Opposition);
Margaret de WIT
Geraldine KNAPP
Judy MAGUB
Tim NICHOLLS
Jane PRENTICE
Graham QUIRK
Adrian SCHRINNER
Norm WYNDHAM

OPENING OF MEETING:

The Chairperson (Councillor K L BIANCHI) opened the meeting with prayer, and then proceeded with the business set out in the Agenda.

APOLOGY:

12/2006-07

An apology was submitted on behalf of Councillor C E BERMINGHAM, and she was granted leave of absence from the meeting on the motion of Councillor L D BRYANT, seconded by Councillor V NEWTON.

MATERIAL PERSONAL INTEREST:

Before proceeding with the special report of the Establishment and Co-ordination Committee, the Chairperson (Councillor K L BIANCHI) advised of a Material Personal Interest in the item contained within the special report. Consequently, he called for nominations for an Acting Chairperson during the debate on this report.

13/2006-07

On the motion of Councillor K FLESSER, seconded by Councillor T NICHOLLS, Council resolved that Councillor Les BRYANT assume the position of Acting Chairperson for the duration of the meeting.

Councillors A BENNISON, M de WIT and J MAGUB each declared a potential Material Personal Interest in the items contained in the report.

All those Councillors who declared a Material Personal Interest retired from the Chamber and its immediate surrounds for the remainder of the meeting.

The Acting Chairperson (Councillor L D BRYANT) assumed the Chair.

RECEPTION AND CONSIDERATION OF COMMITTEE REPORT:

ESTABLISHMENT AND CO-ORDINATION COMMITTEE REPORT

[Special Report of 31 July 2006]

14/2006-07

The Right Honourable the LORD MAYOR (Councillor C K T NEWMAN), Chairperson of the Establishment and Co-ordination Committee, moved, seconded by Councillor G M QUIRK, that the special report of the meeting of that Committee held on 31 July 2006, be received. Upon being submitted to the Chamber, the motion was declared carried on the voices.

It was then moved by the LORD MAYOR, seconded by the DEPUTY MAYOR AND Majority Leader (Councillor D B HINCHLIFFE), that the report as received be adopted.

The Acting Chairperson (Councillor L D BRYANT) called for debate on the motion to adopt the report.

LORD MAYOR:

Mr Chairman, back in April Council met to pass a resolution in relation to how the process of selecting a preferred tenderer and then proceeding ultimately to a contract and financial close would be conducted. So we agreed back in April, a process.

Today, we are being asked to approve two items A and B. The process to proceed to financial close will occur over the coming days and these items are the actual approval for Council officers to do that.

This is something really that we have previously resolved to do and it's really of an administrative nature.

I want to stress though that this is not financial close. Financial Close on this very complex transaction will be in some days' time. It is really in the hands of the parties to the transaction: the financiers, engineering firms, the various legal advisers that they have, and all the banks. So we won't know for some days when Financial Close will be.

Nor will we know the actual final amount of Council's contribution. Today we simply know, as we knew back some months ago, that the amount is \$292 million in current dollars, but given the interest rate movements in the market, that might well of course have changed. Notwithstanding our other decision, which was to authorise Council officers to undertake hedging.

Mr Chairman, I just should reflect on the fact that it is a significant transaction for Council. Again, it is probably the largest single transaction this Council has ever undertaken, and certainly the most significant transaction that any local government in the nation has ever undertaken.

I think one of the big things that we have done as a Council is that we have been absolutely open about our process and indeed, after financial close, in an Australian first, we will be releasing all the information on the actual agreement. I think that is profoundly significant.

There are many people in our City who have no doubt chosen to invest in this project and after we get to financial close those shares in the RiverCity Motorway will be trading on the Australian Stock Exchange. I trust that those 'mum and dad investors' will do well from their investment, at the same time as we trust that in future years the travelling public will enjoy this great piece of infrastructure that will, for many years to come, deal with traffic issues in the City.

I close by again taking the opportunity, probably as the final opportunity prior to his departure to the State Government, to thank David Stewart (Executive Manager, Major Projects) for his work for this Council over many years, but particularly of course on the North-South Bypass Tunnel transaction. Again, I reiterate my thanks to the CEO (Jude Munro, Chief Executive Officer) and all the Council officers, Helen Gluer (Chief Financial Officer) and the entire team, for their hard work over a couple of years in making this happen.

Acting Chairperson:

Further debate?

DEPUTY MAYOR:

Yes Mr Chairman, only to add the support of Labor Councillors for the vote of confidence that was implicit in what the LORD MAYOR said about the contribution by David Stewart to the whole process of MIPO (Major Infrastructure Projects Office) and the North-South Bypass Tunnel. I know I speak for all Councillors on our side, but especially for Councillor HAYES from Grange Ward, who more than any of us has had a great deal to do with Dave over many years. We wish him well and we are sure that in his new role, in the Coordinator General's Office, that he will be an invaluable bridge between City Hall and George Street.

Acting Chairperson:

Further debate?

As there was no further debate the Acting Chairperson submitted to the Chamber, the motion for the adoption of the special report of the Establishment and Co-ordination Committee and it was declared carried on the voices.

Thereupon, Councillor C R CASHMAN and Councillor N L WYNDHAM immediately rose and called for a division, which resulted in the motion being declared carried.

The voting was as follows:-

AYES - 23 The Right Honourable the LORD MAYOR (Councillor C K T NEWMAN); the DEPUTY MAYOR (Councillor D B HINCHLIFFE); the Leader of the OPPOSITION (Councillor C R CASHMAN); and Councillors H J ABRAHAMS, K L BIANCHI, L D BRYANT, J H CAMPBELL, P CUMMING, F FARMER, K FLESSER, S GRIFFITHS, M A HAYES, F HOPKINS, G KNAPP, G MacPHERSON, V NEWTON, T NICHOLLS, J PRENTICE, G M QUIRK, K M REA, A SCHRINNER, S SUTTON, and N L WYNDHAM.

NOES - Nil

The report read as follows:

ATTENDANCE:

The Right Honourable the Lord Mayor (Councillor C K T Newman) (Chairperson); The Deputy Mayor (Councillor D B Hinchliffe) (Deputy Chairperson); and Councillors H J Abrahams, J H Campbell, K Flessler, G M Quirk and K M Rea.

A NORTH-SOUTH BYPASS TUNNEL - PROCESS FOR COMPLETION OF FINANCIAL CLOSE
467/26

15/2006-07

1. The Chief Executive Officer provides the following background information in relation to this matter.
2. On 18 April 2006, Council adopted a resolution dealing with matters associated with contract approval (preferment, contract close, financial close), a disclosure process and ancillary matters relating to the North-South Bypass Tunnel (NSBT).
3. Under the Contract Approval Process it was originally proposed that:
 - . The Establishment and Co-ordination Committee (E&C) would meet to make its recommendation immediately before the Council Meeting to approve the commencement of Financial Close; and
 - . that E&C members and Councillors would be conclave until Council made its decision on commencement of Financial Close.
4. On 23 May 2006, Council approved the entry into and execution of all documents necessary to effect Contract Close with RiverCity Motorway (RMC), and to proceed to Financial Close.
5. Since that date:
 - (a) a number of conditions precedent to the Project Deed have been satisfied or waived;

- (b) the Coordinator General has provided his Change Report allowing the NSBT Project to proceed as per the Project Deed;
 - (c) RiverCity Motorway has launched its Initial Public Offering; and
 - (d) A number of consequential amendments have been agreed to take account of the issues under (b) above.
6. Accordingly, the series of transactions that constitute Financial Close can be commenced upon Council confirming that all relevant Conditions Precedent have been satisfied or waived.
 7. Financial Close is now a simple procedural step because there are no changes of significance to the RCM Proposal as approved on 23 May 2006, and all relevant Conditions Precedent have been satisfied or waived.
 8. It is now considered appropriate that normal Council approval and meeting procedures be followed. The resolution submitted hereunder amends the Contract Approval Process to reflect this changed position.
 9. Upon completion of Financial Close, Council's Contribution to the Project can be finally determined according to agreed formulas and frameworks in the base case financial model under the Project Deed.
 10. It is considered essential that the amount of the anticipated Council Contribution and the actual timing of the Financial Close Process be kept commercial in confidence until after Financial Close is actually completed and publicly announced.
 11. Once the Council Contribution is known, it will be reported formally to Council.
 12. On 23 May 2006, Council also resolved to approve amendments to the Disclosure of Information Process by setting out in Attachment B the information that could be disclosed by Councillors after Contract Close.
 13. That embargo should continue to be respected until after Financial Close is completed and publicly announced. At that time, full details of the successful bid will be publicly released. The general arrangement drawing of the project nominated by the unsuccessful proponent will also be disclosed to the public immediately upon Financial Close.
 14. The disclosure of any other information not outlined in Council's Summary and/or contrary to Council's previously approved process could still adversely impact on the RiverCity Motorway Proposal and Council's ability to successfully and properly conclude the transaction.
 15. The Chief Executive Officer therefore submits the following draft resolution, with which the Committee concurs.
 16. **RECOMMENDATION:**

THAT IT BE RESOLVED THAT:

As:

- (a) on 18 April 2006, Council resolved to approve the Contract Approval Process for the North-South Bypass Tunnel Project;
- (b) Council is shortly to move to commence Financial Close with RiverCity Motorway (RCM);
- (c) under that process it was originally proposed that:
 - (1) The Establishment and Co-ordination (E&C) Committee would meet to make its recommendation immediately before the Council Meeting to approve the commencement of Financial Close; and
 - (2) that E&C members and Councillors would be conclave'd until Council made its decision on commencement of Financial Close;
- (d) Financial Close is now a simple procedural step because there are no changes of significance to the RCM Proposal as approved on 23 May 2006, and all relevant necessary Conditions Precedent have been satisfied or waived; and
- (e) it is now considered appropriate that normal Council approval and meeting procedures be followed;

THEN COUNCIL AMENDS ITS CONTRACT APPROVAL PROCESS TO PROVIDE THAT FINANCIAL CLOSE APPROVAL WILL BE EFFECTED USING NORMAL COUNCIL APPROVAL PROCEDURES AND THAT E&C AND COUNCILLORS WILL NOT BE CONCLAVED FOR THAT PROCESS.

ADOPTED

B NORTH-SOUTH BYPASS TUNNEL – APPROVAL TO PROCEED TO FINANCIAL CLOSE

467/26

16/2006-07

- 17. The Chief Executive Officer provides the following background information in relation to this matter.
- 18. On 23 May 2006, Council provided approval to proceed to Contractual Close with RiverCity Motorway. Contractual Close occurred on 24 May 2006.
- 19. Since that time, both parties have been satisfying Conditions Precedent to allow Financial Close to occur and for the North-South Bypass Tunnel (NSBT) Project to proceed. The Conditions Precedent are summarised in Attachment B submitted.
- 20. All of the Conditions Precedent, except those relating to the base case financial model, provision of all insurances and certain conditions precedent under the debt financing documents, have now been satisfied or waived.
- 21. Financial Close involves a series of financial transactions, occurring according to agreed formulas and frameworks under the terms of the Project Deed, resulting in a fully financed and confirmed project. This will take some days to complete.

22. The base case financial model can only be provided in final form once Financial Close occurs because of input data required from the Financial Close Process. It should be noted that Council's advisers are satisfied with the construction of the Financial Model that will be presented after Financial Close. In addition, final arrangements for the public equity raising need to be made, and this is a condition precedent to the availability of the debt finance.
23. In addition, complete information about provision of all insurances is not expected to be available until late in the financial close process, but this is a timing issue rather than a substantive issue.
24. Now that all relevant Conditions Precedent except as outlined above have been satisfied or waived, it is recommended that the process to reach Financial Close be instigated.
25. The trigger to commence this process requires an exchange of letters between Council and RiverCity Motorway acknowledging that the requisite Conditions Precedents have been satisfied or waived.
26. It is important to note that the actual Council Contribution will not be known until Financial Close has occurred and the required formulas have been applied to the calculation of this amount. A separate submission will be provided to Council once this amount is known.
27. This submission approves the confirmation of satisfaction of the requisite Conditions Precedent to allow the Financial Close Process to commence at an appropriate time.
28. There are also a number of minor and consequential amendments to be made to the Project Deed as a result of the conditions contained in the Coordinator-General's Change Report. These conditions were anticipated and accounted for at the time of Contractual Close.
29. These amendments are generally as specified in Attachment C submitted.
30. This submission also seeks approval for the execution of a Deed of Variation to the Project Deed to take account of those amendments.
31. The submission also authorises the Executive Manager, Major Infrastructure Projects Office, to finalise all arrangements in relation to dealings with the unsuccessful proponent, BrisConnections, including organising release documentation and the payment of the unsuccessful proponent fee of \$2,500,000.00.
32. The Chief Executive Officer therefore submits the following draft resolution, with which the Committee concurs.

33. **RECOMMENDATION:**

THAT IT BE RESOLVED THAT:

As:

- (a) on 23 May 2006, Council resolved to enter into a Project Deed and ancillary documentation with RiverCity Motorway Consortium for the delivery and operation of the North-South Bypass Tunnel on terms and conditions as specified in that resolution;
- (b) on 24 May 2006, the Project Deed and ancillary documentation was executed by Council, the RiverCity Motorway Consortium and associated parties;

- (c) Clause 2 of the Project Deed states that the Project Deed will not legally commence until all Conditions Precedents as specified in Schedule 1 to that document, have been satisfied or waived and Financial Close has occurred;
- (d) all Conditions Precedent have now been satisfied or waived as specified in Clause 2 (except for those pertaining to the completion of the base case financial model, provision of insurances and satisfaction of certain conditions precedent under the debt financing documents);
- (e) the Coordinator-General's Change Report has resulted in the necessity to make further amendments to the Project Deed and ancillary documentation as specified in Attachment "C" submitted;
- (f) it is acceptable for the base case financial model to be provided on Financial Close; and
- (g) it is now appropriate for the Financial Close process to begin under the Project Deed;

THEN COUNCIL:

- (1) **CONFIRMS THAT ALL NECESSARY CONDITIONS PRECEDENT HAVE BEEN SATISFIED OR WAIVED** within the meaning of Clause 2 of the Project Deed (except for the delivery of the base case financial model, provision of insurances and satisfaction of certain conditions precedent under the debt financing documents);
- (2) **APPROVES THE AMENDMENT OF THE PROJECT DEED AND ANCILLARY DOCUMENTATION** as set out in Attachment "C" submitted;
- (3) **AUTHORISES THE EXECUTION UNDER SEAL OF ANY AMENDMENT DEED REQUIRED TO GIVE EFFECT TO THE AMENDMENTS** specified in (2);
- (4) **APPROVES THE COMMENCEMENT AND FINALISATION OF THE FINANCIAL CLOSE PROCESS;**
- (5) authorises the Executive Manager, Major Infrastructure Projects Office, to manage all aspects of the transactions authorised by this resolution; and
- (6) authorises the Executive Manager, Major Infrastructure Projects Office, to finalise all arrangements in relation to dealings with the unsuccessful Proponent, including organising release documentation and the payment of the unsuccessful Proponent Fee of \$2,500,000.00.

ADOPTED

As that concluded the business of the meeting, the Acting Chairperson declared the meeting closed.

RISING OF COUNCIL: 2:10pm

PRESENTED: **and CONFIRMED**

.....
CHAIRPERSON

Clerks of the Chamber in attendance:

**Rex Moore
Jan Green**

31 JULY 2006