

MINUTES.

Special Council Meeting

14 November 2017

Mayor and Councillors

Here within are the Minutes of the Special Council Meeting of the City of South Perth Council held Tuesday 14 November 2017 in the City of South Perth Council Chamber, Cnr Sandgate Street and South Terrace, South Perth.



GEOFF GLASS
CHIEF EXECUTIVE OFFICER

15 November 2017

Our Guiding Values

Trust

Honesty and integrity

Respect

Acceptance and tolerance

Understanding

Caring and empathy

Teamwork

Leadership and commitment

Disclaimer

The City of South Perth disclaims any liability for any loss arising from any person or body relying on any statement, discussion, recommendation or decision made during this meeting.

Where an application for an approval, a licence or the like is discussed or determined during this meeting, the City warns that neither the applicant, nor any other person or body, should rely upon that discussion or determination until written notice of either an approval and the conditions which relate to it, or the refusal of the application has been issued by the City.

Further Information

The following information is available on the City's website.

- **Council Meeting Schedule**

Ordinary Council Meetings are held at 7.00pm in the Council Chamber at the South Perth Civic Centre on the fourth Tuesday of every month between February and November. Members of the public are encouraged to attend open meetings.

- **Minutes and Agendas**

As part of our commitment to transparent decision making, the City makes documents relating to meetings of Council and its Committees available to the public.

- **Meet Your Council**

The City of South Perth covers an area of around 19.9km² divided into four wards. Each ward is represented by two Councillors, presided over by a popularly elected Mayor. Councillor profiles provide contact details for each Elected Member.

www.southperth.wa.gov.au/Our-Council/

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Special Council Meeting - Minutes

Minutes of the Special Council Meeting held in the City of South Perth Council Chamber, Cnr Sandgate Street and South Terrace, South Perth at 7.00pm on Tuesday 14 November 2017.

1. DECLARATION OF OPENING

The Presiding Member opened the meeting at 7.25pm and welcomed everyone in attendance. She then acknowledged we are meeting on the lands of the Noongar/Bibbulmun people and that we honour them as the traditional custodians of this land.

2. ANNOUNCEMENTS FROM THE PRESIDING MEMBER

2.1 STANDING ORDERS LOCAL LAW 2007

This meeting is held in accordance with the City's Standing Orders Local Law which provides rules and guidelines that apply to the conduct of meetings.

2.2 AUDIO RECORDING OF THE COUNCIL MEETING

The Presiding Member reported that the meeting is being audio recorded in accordance with Council Policy P673 'Audio Recording of Council Meetings' and Clause 6.15 of the Standing Orders Local Law 'Recording of Proceedings'.

She then gave her permission for the Administration to record proceedings of the Council meeting and requested that all electronic devices be turned off or on to silent.

3. ATTENDANCE

Mayor Sue Doherty (Presiding Member)

Councillors

Councillor Glenn Cridland	Como Ward
Councillor Tracie McDougall	Como Ward
Councillor Blake D'Souza	Manning Ward
Councillor Colin Cala	Manning Ward
Councillor Travis Burrows	Moresby Ward
Councillor Greg Milner	Moresby Ward
Councillor Cheryle Irons	Mill Point Ward
Councillor Ken Manolas	Mill Point Ward

Officers

Mr Geoff Glass	Chief Executive Officer
Mr Colin Cameron	Director Corporate Services
Ms Vicki Lummer	Director Development and Community Services
Mr Mark Taylor	Director Infrastructure Services
Mr Phil McQue	Manager Governance and Marketing
Ms Elyse Maketic	Manager Strategic Planning
Mr Stevan Rodic	Manager Development Services
Ms Danielle Cattalini	Manager Stakeholder and Customer Relations

Mr Cameron Howell
Ms Sharron Kent
Ms Christine Lovett
Ms Christine Vass

Senior Statutory Planning Officer
Governance Officer
Corporate Support Officer
Executive Assistant to CEO

Gallery

There were 3 members of the public and 1 member of the press present.

3.1 APOLOGIES

Nil

3.2 APPROVED LEAVE OF ABSENCE

Nil

4. DECLARATIONS OF INTEREST

Conflicts of Interest are dealt with in the Local Government Act, Rules of Conduct Regulations and the Administration Regulations as well as the City's Code of Conduct. Members must declare to the Presiding Member any potential conflict of interest they have in a matter on the Council Agenda.

The Presiding Member, Mayor Sue Doherty, declared on Interest in relation to Agenda *Item 7.3.1 Consideration of a Proposed Amendment to Town Planning Scheme No. 6 to Modify the Definition of Various Land Uses Relating to Licenced Premises.*

She advised that in accordance with the *Local Government (Rules of Conduct) Regulations 2007* this Declaration would be read out immediately before the Item was discussed.

5. PUBLIC QUESTION TIME

Public Question Time is operated in accordance with Local Government Act Regulations and the City's Standing Orders Local Law.

The Presiding Member advised the meeting that questions are to be in writing and submitted 24 hours prior to the meeting. In accordance with Clause 7(4) of the *Local Government Act Administration Regulations*, questions submitted at this meeting must relate to the Item being considered by Council.

Forms are available on the City's website and at the City's Reception. Questions can also be submitted electronically via the City's website. Questions received 24 hour prior to the meeting would be dealt with first. Questions received less than 24 hours prior to the meeting would be taken on notice and the response provided in the Agenda of the next month's Council meeting.

The Presiding Member then opened Public Question Time at 7.28pm.

There being no questions submitted the Presiding Member then closed Public Question Time at 7.28pm.

6. DEPUTATIONS

A formal process where members of the community may, with prior permission, address Council on Agenda items where they have a direct interest

There were no Requests for a Deputation to Address Council received.

7. REPORTS

At this point Mayor Sue Doherty read aloud her Declaration of Interest at Item 7.3.1 as follows:

"I wish to declare a Financial Interest in Agenda Item 7.3.1 Consideration of a Proposed Amendment to Town Planning Scheme No. 6 to Modify the Definition of Various Land Uses Relating to Licenced Premises on the Special Council Meeting Agenda of 14 November 2017.

I declare that I was the recipient of 1 election related gift in September 2015 and 2 election related gifts in October 2015, all from Pierre Sequeira (owner of the Karalee bottle Shop and Liquor Barons, Angelo Street).

It is my intention to vacate the Council Chamber before the Item is discussed and voted on."

At 7.29pm Mayor Sue Doherty vacated the Chamber and Deputy Mayor Glenn Cridland assumed the Chair as Presiding Member.

7.3 STRATEGIC DIRECTION 3: ENVIRONMENT (BUILT AND NATURAL)

7.3.1 Consideration of a Proposed Amendment to Town Planning Scheme No. 6 to Modify the Definition of Various Land Uses Relating to Licenced Premises

Location:	Not Applicable
Ward:	All
Applicant:	Not Applicable
File Ref:	D-17-95995
Meeting Date:	14 November 2017
Author:	Elyse Maketic, Manager Strategic Planning
Reporting Officers:	Vicki Lummer, Director Development and Community Services
Strategic Direction:	Environment (built and natural): Sustainable urban neighbourhoods
Council Strategy:	3.2 Sustainable Built Form

Summary

This report has been prepared in response to the request from the Mayor for a Special Council Meeting to be convened to:

1. Consider the immediate advertising of an Amendment to the City of South Perth Town Planning Scheme No. 6 related to ensuring that the intent of Amendment No. 50 is reflected in the text of the Scheme.
2. Request the CEO to forthwith contact the Department of Main Roads to:
 - obtain an actual or indicative timing for the implementation of the Department's timed bus bay in the grassed verge adjacent to the Como Hotel in Canning Highway, and
 - progress at the earliest opportunity the Department's proposal to extend the Canning Highway median strip northeast to a point past Norton Street to prevent a right turn into and out of Norton Street at the intersection with Canning Highway.
3. Approve an allocation of \$30,000 from City funds towards the joint funding of

the implementation of the Department's proposal for Canning Highway median strip lengthening

The processes relating to Scheme amendments are outlined in Part 5 of the *Planning and Development (Local Planning Schemes) Regulations, 2015* (the Regulations). In order to initiate a Scheme amendment a resolution of the Council is required. Section 82 of the *Planning and Development Act, 2005* requires referral of a Scheme amendment to the Environmental Protection Authority (EPA) prior to advertising and therefore it is not possible to advertise an amendment immediately following a Council resolution to advertise.

Notwithstanding it is recognised that there is currently a 'loophole' under the *Liquor Control Act, 1988* whereby a large format liquor store that is the subject of a tavern licence (or perhaps a hotel licence) may be approved as a 'tavern' (or perhaps a hotel). It is therefore recommended that Council initiate an amendment to the Scheme to modify the definitions of Liquor Store Large, Hotel and Tavern in order to address this 'loophole'.

Officer Recommendation AND COUNCIL DECISION

Moved: Cr Travis Burrows

Seconded: Cr Tracie McDougall

That the Council:

1. Resolve pursuant to Section 75 of the *Planning and Development Act 2005* and Clause 35(1) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, to initiate the proposed amendment No. 58, to amend Town Planning Scheme No. 6 by :
 - a) modifying the definition of 'Liquor Store (Large)' contained in schedule 1 of the scheme text by:
 - i. deleting the existing definition; and
 - ii. substituting it with the following definition:

'Liquor Store (Large)' means premises:

 - (a) *the subject of a liquor licence granted under the Liquor Control Act 1988, including but not limited to a liquor store licence, tavern licence or hotel licence; and*
 - (b) *where the area used to display and sell packaged liquor has a net lettable area of more than 300 square metres.*
 - b) modifying the definition of 'Tavern' contained in schedule 1 of the scheme text by:
 - i. deleting the existing definition; and
 - ii. substituting it with the following definition:

'Tavern' means any land or building the subject of a tavern licence granted under the Liquor Control Act 1988, but does not include a Liquor Store (Large). For the avoidance of doubt a Tavern may display and sell packaged liquor provided that the area used to display and sell packaged liquor has a net lettable area of not more than 300 square metres.
 - c). modifying the definition of 'Hotel' contained in schedule 1 of the scheme text by:
 - i. deleting the existing definition; and
 - ii. substituting it with the following definition:

'Hotel' means premises the subject of a hotel licence other than a small bar or tavern licence granted under the Liquor Control Act 1988 including any betting agency on the premises, but does not include Tourist Accommodation or Liquor Store (Large). For the avoidance of doubt a Hotel may display and sell packaged liquor provided that the area used to display and sell packaged liquor has a net lettable area of not more than 300 square metres.

d) modifying the definition of 'Shop' contained in schedule 1 of the scheme text by:

- i. deleting the existing definition; and
- ii. substituting it with the following definition:

'Shop' means premises used for the sale of goods by retail, for the hire of goods, or to provide hairdressing or beauty therapy services and the like, but does not include Showroom, Liquor Store (Large), Liquor Store (Small), Tavern, Hotel or any other uses specifically defined elsewhere in this Scheme.

2. Pursuant to Clause 35(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, determine that the amendment is a standard amendment for the following reasons:
 - a) The amendment does not result in any significant environmental, social, economic or governance impacts of land in the scheme area; and
 - b) The amendment would have minimal impact on land in the scheme area that is not the subject of the scheme amendment.
3. Pursuant to Section 81 of the *Planning and Development Act 2005*, refer the proposed amendment No. 58 to the Environmental Protection Authority for consideration prior to advertising.
4. Upon receipt of advice from the Environmental Protection Authority prepare notice of, and advertise, the proposed amendment No. 58 with a submission period of not less than 42 days pursuant to Clause 37 of the *Planning and Development (Local Planning Schemes) Regulations, 2015*.
5. Pursuant to the provisions of Schedule 2, clause 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015*:
 - a) Adopt the draft modified local planning policy P317 – Licenced Premises, as set out in Attachment (a), for public comment for a period of not less than twenty one (21) days; and
 - b) Following completion of the public comment period, receive a further report detailing the outcomes of the advertising period, including any submissions received, for consideration.
6. Request the Chief Executive Officer to commence discussions with Main Roads in relation to:
 - the proposed timing of implementing the timed bus bay adjacent to the Como Hotel, on Canning Highway; and
 - the proposal to extend the Canning Highway median strip northeast to a point past Norton Street to prevent a right turn into and out of Norton Street at the intersection of Canning Highway.

CARRIED (8/0)

Background

The Mayor on 9 November 2017 wrote to the Chief Executive Officer to request a Special Council Meeting on 14 November 2017 to:

1. Consider the immediate advertising of an Amendment to the City of South Perth Town Planning Scheme No. 6 related to ensuring that the intent of Amendment No. 50 is reflected in the text of the Scheme.
2. Request the CEO to forthwith contact the Department of Main Roads to:
 - obtain an actual or indicative timing for the implementation of the Department's timed bus bay in the grassed verge adjacent to the Como Hotel in Canning Highway, and

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- *progress at the earliest opportunity the Department's proposal to extend the Canning Highway median strip northeast to a point past Norton Street to prevent a right turn into and out of Norton Street at the intersection with Canning Highway.*
- 3. *Approve an allocation of \$30,000 from City funds towards the joint funding of the implementation of the Department's proposal for Canning Highway median strip lengthening*

Amendment No. 50 to the Scheme was initiated by the Council on 25 August 2015 following release by WALGA in February 2015 of a document titled Local Government Town Planning 'Guideline for Alcohol Outlets'. The document was produced by WALGA and the Drug and Alcohol Office with the assistance of the planning consultancy, Planning Context. This document was prepared in response to the changing nature of the operation of licenced premises, primarily the introduction of small bars and large scale liquor stores.

The purposes of Amendment No 50 were:

1. To insert three new land use definitions into Schedule 1 of TPS6, these being 'Small Bar', Liquor Store – Small, and Liquor Store – Large. The definitions introduced via this amendment are the same as those contained in the Model Provisions for Local Planning Schemes (Schedule 1 of the Regulations);
2. To amend Table 1 'Zoning – Land Use' to include these new land uses. A 'Liquor Store –Large' was made a prohibited use in all zones except 'District Centre Commercial';
3. To amend the definition of 'Shop' in Schedule 1 of TPS6 to exclude land uses referred to in point 1; and
4. To amend Table 6 – 'Car and Bicycle Parking' to include appropriate requirements for the new land uses;

On 10 February 2016, the Minister approved this Amendment without modifications. It was published in the Government Gazette on 4 March 2016. The new Scheme provisions became operative on that date.

The City made 'Liquor Store (Large)' a prohibited land use in the residential zone and all non-residential zones except for the District Centre Commercial zone, because the City recognised that large format liquor stores potentially have a greater negative impact on amenity due to their scale (i.e. increased traffic generation, increased noise etc). It was recognised at the time that the only appropriate zone within the City for large format liquor stores was the District Centre Commercial zone. This is still the case at present.

Comment

Current Scheme Position

Currently, for a large format liquor store to fall within the definition of 'Liquor Store (Large)' and therefore be prohibited in the residential zone and all non-residential zones except the District Centre Commercial zone (as was intended by the City when it endorsed Amendment No. 50), it must be the subject of a liquor store licence under the *Liquor Control Act, 1988*.

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The land use 'Tavern' is defined in Schedule 1 of TPS6 as "means premises the subject of a tavern licence granted under the Liquor Control Act 1988". The land use 'Tavern' is a discretionary use in the District Centre Commercial and Mends Street Centre Commercial zones and a discretionary use with consultation in the Neighbourhood Centre Commercial and Highway Commercial zones.

It has recently come to the City's attention that it is possible for a liquor store to be the subject of a tavern licence as opposed to a liquor store licence. Further, that the Liquor Control Act 1988 does not require an owner of a small liquor store the subject of a tavern licence to obtain a separate liquor store licence in the event that they decide to redevelop their small liquor store into a large format liquor store. Rather, the owner may apply to the Department of Racing Gaming and Liquor to 'redefine' their existing tavern licence so that it is extended to cover the increase in floor area of the new large format liquor store.

There is a risk that this method may also be employed by the holder of a 'hotel licence', for example, in circumstances where the hotel has an associated bottle shop that sells packaged liquor pursuant to the hotel licence.

Consequently, a 'loophole' exists whereby a large format liquor store that is the subject of a tavern licence (or perhaps a hotel licence) may be approved as a 'tavern' (or perhaps a hotel) in the District Centre Commercial zone, the Mends Street Centre Commercial zone, the Neighbourhood Centre Commercial zone or the Highway Commercial zone. The definition of 'Liquor Store (Large)' is not wide enough to pick up other licences by which an owner of licenced premises may display and sell packaged liquor – specifically a 'tavern licence' and also possibly, a 'hotel licence'.

Proposed Scheme Amendment

The above outcome was not contemplated by the City when Amendment No. 50 was initiated and it is recognised that there is a need to rectify this issue via further amendments to the definitions of Liquor Store (Large), Tavern, Hotel and Shop. These modifications are summarised below:

- Liquor Store (Large) – to include reference to a tavern licence and hotel licence. This modification will ensure that premises the subject of a tavern and hotel licence with an area used to sell and display packaged liquor of more than 300 square metres, are included in this definition. This modification will ensure that all licences by which an owner of licenced premises may display and sell packaged liquor – specifically a 'tavern licence' and also a 'hotel licence' – are now contemplated and covered. ;
- Tavern and Hotel– to strengthen the abovementioned definition, clarify that such a licence does not include a liquor store large, and to preclude such uses from incorporating areas of more than 300 square metres being used to sell and display packaged liquor. This modification will ensure that Tavern and Hotel Licences do not incorporate what would otherwise be considered as a Liquor Store (Large); and
- Shop – to preclude the above uses and Liquor Store (Small) from this definition.

The latter two amendments are required as a consequence of the amendment to Liquor Store (Large) to ensure that there is clear distinction between all the uses.

Consideration of a Proposed Amendment to Town Planning Scheme No. 6 to Modify the Definition of Various Land Uses Relating to Licenced Premises

It should be noted that the land use definitions for licenced premises in the City's Scheme are the same as the definitions in Schedule 1 of the Regulations (Model Provisions for Local Planning Schemes). Consequently, any modification to the land use definitions relating to licensed premises would result in modifications to the Model Provision definitions. The WAPC ordinarily only approves variations to Model Provision definitions where there are extenuating and unique circumstances. It is uncertain as to whether the WAPC would view that the stated 'loophole' represents an extenuating and unique circumstance, given the vast majority of local authorities in Western Australia use the same definitions for Licensed Premises as those contained in the City's Scheme.

Section 82 of the *Planning and Development Act, 2005* requires a scheme amendment to be referred to the Environmental Protection Authority (EPA) for environmental assessment prior to advertising. An amendment can therefore not be advertised immediately following Council initiation. There is generally a four (4) to six (6) week period between Council initiation and advertising having regard to the above referrals and lead time for the publishing of the notices required under the Regulations.

In light of the above, it is recommended that Council resolve to initiate amendment No. 58 to the Scheme to amend the definitions of Liquor Store (Large), Tavern, Hotel and Shop in accordance with point 1 of the Officer Recommendation.

Policy Amendments

In order to address the abovementioned 'loophole' for large format liquor stores an amendment to Policy P317 – Licenced Premises has been proposed. At this stage it is not possible to insert the definitions proposed as part of the proposed scheme amendment in to the Policy until such time as the existing definitions in the Scheme would override any definitions in a Local Planning Policy. Therefore including alternate definitions in the Policy to those in the Scheme would be of no consequence.

The Policy has therefore been amended to:

- Apply to all licenced premises, including Tavern and Hotel;
- Delete the land use definitions and excerpt of the land use permissibility table from the Scheme, and instead reference the relevant clauses in the Scheme. The references to the Scheme are sufficient for the purposes of this policy;
- Replace the word 'venue' with 'development' in the policy for the purposes of consistency with the Scheme and *Planning and Development (Local Planning Scheme) Regulations, 2015*. This will also make clear the intent that the policy is to apply to all development relating licenced premises (new and alterations and/or additions).
- Amend criteria 2(b) relating to design and location to read as follows:
 - b) *"Whether the scale and nature of the development is appropriate for the locality and, in the case of a tavern or hotel that will display and sell packaged liquor from a net lettable area of more than 300 square metres, whether a Liquor Store (Large) is a prohibited use in the subject zone"*

Consideration of a Proposed Amendment to Town Planning Scheme No. 6 to Modify the Definition of Various Land Uses Relating to Licenced Premises

A Tavern or a Hotel is a Discretionary use in all zones (in some circumstances Discretionary with Consultation), meaning that the use is not permitted unless the decision maker has exercised its discretion by granting planning approval. There are therefore a number of matters, outlined in clause 67 of the Deemed Provisions and any applicable policy, that the decision maker must take into account in forming an opinion on whether a discretionary use, or alteration/and or addition to that use, is appropriate in the subject zone.

Whilst it is noted that there is no limit under the Liquor Control Act on the portion of a premises that can be used to sell and display packaged liquor, the size of the area essentially being used as a liquor store should be a relevant consideration in determining the appropriateness of the development and/or use in the location. The modifications to the above policy provision will ensure that this is a relevant consideration in determining such applications and the intent of the provision is to treat a Tavern or a Hotel that will display and sell packaged liquor from a net lettable area of more than 300 square metres the same as a liquor store (large).

The Policy in its entirety is included in **Attachment (a)**. Modifications are shown using strikethrough and underline.

Other Requests

In relation to the other requests provided by the Mayor, it is recommended that the Chief Executive Officer commence discussions with Main Roads in relation to:

- the proposed timing of implementing the timed bus bay adjacent to the Como Hotel, on Canning Highway; and
- the proposal to extend the Canning Highway median strip northeast to a point past Norton Street to prevent a right turn into and out of Norton Street at the intersection of Canning Highway.

Any proposed extension of the median strip would ultimately be the decision and responsibility of Main Roads, and it is therefore considered premature to reallocate \$30,000 of City funds towards this project.

Consultation

The process for the consultation of a Scheme Amendment is outlined in Part 5 of the Regulations. Prior to consultation an amendment must be referred to the EPA for assessment pursuant to Section 82 of the *Planning and Development Act, 2005*.

The process for advertising local planning policies is outlined in Part 2 of the Deemed Provisions. Pursuant to clause 4 (4) of the Deemed Provisions a policy does not have effect until the local government has published a notice of the policy in the local newspaper, following final Council adoption of the Policy

As outlined in the officer recommendation, the Chief Executive Officer would commence discussions with Main Roads in relation to the timed bus bay and the extension of the Canning Highway median strip to a point past Norton Street.

7.3.1 Consideration of a Proposed Amendment to Town Planning Scheme No. 6 to Modify the Definition of Various Land Uses Relating to Licenced Premises

Policy and Legislative Implications

In accordance with the *Local Government Act 1995*, statutory notice of the meeting was given in *The West Australian* on Saturday 11 November 2017.

Scheme Amendments have legislative requirements and processes. The process for Scheme Amendments is outlined in Part 5 of the Regulations.

Financial Implications

There are financial costs to the city associated with processing Scheme Amendments, generally relating to advertising costs and staff time.

The City has not budgeted any funds towards the extension of the median strip on Canning Highway.

Strategic Implications

This report is aligned to Strategic direction 3.2 in the City's [Strategic Community Plan 2017-2027](#), which is expressed in the following terms: *“Develop a local planning framework to meet current and future community needs and legislative requirements”*

Should Council choose to proceed with this amendment there will be an impact on resource allocation for other planned and budgeted strategic planning initiatives.

Attachments

7.3.1 (a): Draft P317 - Licenced Premises

At 7.36pm Mayor Sue Doherty returned to the Chamber and resumed the Chair as Presiding Member and Deputy Mayor Glenn Cridland stepped down.

8. MEETING CLOSED TO THE PUBLIC

There were no matters for which the meeting was closed to the public.

9. CLOSURE

The Presiding Member thanked everyone for their attendance and closed the meeting at 7.38pm.

DISCLAIMER

The City advises that comments recorded represent the views of the person making them and should not in any way be interpreted as representing the views of Council. The minutes are a confirmation as to the nature of comments made and provide no endorsement of such comments. Most importantly, the comments included as dot points are not purported to be a complete record of all comments made during the course of debate. Persons relying on the minutes are expressly advised that the summary of comments provided in those minutes do not reflect and should not be taken to reflect the view of the Council. The City makes no warranty as to the veracity or accuracy of the individual opinions expressed and recorded therein.

These Minutes were confirmed at the Ordinary Council Meeting on Tuesday 21 November 2017.

Signed _____

Presiding Member at the meeting at which the Minutes were confirmed