BRISBANE CITY COUNCIL
SUMMARY MINUTES

SPECIAL MEETING TO DISCUSS THE BAYLANDS
MONDAY, JUNE 19, 2017
BRISBANE CITY HALL, 50 PARK PLACE, BRISBANE

7:30 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

Mayor Liu called the meeting to order at 7:30 p.m. and led the flag salute.

ROLL CALL

Councilmembers present:	Conway, Davis, Lentz, O'Connell, and Mayor Liu
Councilmembers absent:	None
Staff present:	City Manager Holstine, City Attorney Roush, Community Development Director Swiecki, Administrative Management Analyst Ibarra

ADOPTION OF AGENDA

CM Conway made a motion, seconded by CM O'Connell, to adopt the agenda. The motion was approved 5-0.

City Attorney Roush reported that during the closed session held prior to the meeting, the Council voted to reject the claim.

NEW BUSINESS

A. The Baylands City Council Deliberation Process

1. Staff Presentation

Lloyd Zola, of Metis Environmental Group, presented the "decision tree" for the Council's deliberation process. [Note: the staff presentation is available here on the City's website.] He encouraged the City Council to ask themselves what types of land uses they support and where those uses should be located as a starting point. He said the Planning Commission's process began with defining the basic principles that would apply to the Baylands no matter the outcome.

2. Council Questions

CM Davis asked about the timing required for preparing and submitting a ballot proposal for the

November election. She asked if deliberations would be put on hold until the election was held.

Mr. Zola said he had seen a City Council adopt a General Plan followed by an election to verify the General Plan's requirements.

City Attorney Roush stated if the Council presented a ballot measure to the community for an advisory vote, the deliberations would be put on hold until the vote results are tabulated.

Mayor Liu asked if the Council had time to place a measure on the November 2017 ballot.

City Attorney Roush said if the Council reached a preliminary concept plan the first week of August, it was technically possible, but it may not be practically possible.

CM O'Connell said she saw four issues for the Council's consideration: the applicant's proposal, General Plan changes, certifying or not certifying the EIR, and approving or not approving the Specific Plan.

Director Swiecki said the applicant's proposal included a General Plan amendment and a Specific Plan. Certain CEQA decisions must be made based on the Council's action on those applications. The Planning Commission recommendation is at a concept or General Plan level. The Council may direct that a Specific Plan be prepared.

CM O'Connell said the Council should first determine what it wants to see on the Baylands, and then make a determination on the applicant's proposal.

City Attorney Roush said the Council did not have to start with approving or denying the applicant's proposal and could start in any of the decision tree's green boxes.

CM O'Connell thought the applicant's proposal should be acted on first.

Director Swiecki said the Council fundamentally had to have a vision for what it wanted on the Baylands, which could be expressed in the General Plan and in a subsequent Specific Plan. If an action is taken to amend the General Plan or adopt a Specific Plan, a certified EIR would be required for that action.

CM Lentz said he and CM Conway were on the Baylands subcommittee and had wrestled with these questions. He preferred to have a discussion before choosing a preferred outcome. He asked what the difference would be between modifying the Planning Commission's recommendation and creating a new specific plan.

Mr. Zola said the Council could start with the basic principles it wants to see regardless of outcome. Land use mix is a General Plan policy. For each step, they could review the existing General Plan language, the applicant proposal, the Commission's recommendation, and then make the decision. They could use the same process to determine development intensity and location and distribution of land uses at a General Plan level. Once that is determined, the Council would ask the applicant whether they were willing to modify the Specific Plan to be consistent with the Council's General Plan direction. If the applicant disagrees, the City Council

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could approve their General Plan modifications and deny the applicant's application. State law gives the Council the authority to direct preparation of a Specific Plan.

Mayor Liu asked if the Council approved the applicant's proposal with modifications, such as reducing the amount of housing, could the Council present a menu of different levels of housing to the community for an advisory vote? Would the Council not certify the EIR until a Specific Plan was created?

Mr. Roush replied that the Council could ask the voters to weigh in on what level of residential development was desired, using different ranges, after which the matter would return to the Council for decision. The Council could submit their final decision to the voters as well.

CM Lentz said he and CM emeritus Ray Miller helped prepare the Baylands community survey released in 2016. At the time, they acknowledged another survey might be necessary regarding housing, depending on the Council's direction.

CM Davis said she was concerned that more options provided for a vote would result in muddier results. The survey seemed to reflect about half of respondents in favor of some housing and half against any housing. She suggested the Council craft fewer options to get a better read of the community's preferences.

CM Conway said the Council needed to delve into discussion and not pussyfoot around.

Mayor Liu asked about the import of the "regional welfare doctrine" discussed on page 1 of attachment 4A of the staff report on the Council's deliberations.

Mr. Roush said the cited California Supreme Court case involving Livermore provided guidance for cities to consider the regional impacts in the case of restricting housing development, but did not mandate specifically how that would be applied. He said the Council should consider the concept when deliberating. The Court in the San Diego case cited in the attachment found in the favor of the city, as it had considered regional impacts in its deliberations.

Mayor Liu asked if there was any liability on the part of the city in the Livermore case.

Mr. Roush said there were no damages awarded in that case, but rather the Court invalidated the restrictions on housing imposed by the Council.

CM Conway asked staff to explain how the Bi-County Priority Development Area (PDA) shared with San Francisco was created.

Director Swiecki said the PDA was formed approximately ten years ago. There had been discussions whether the Baylands should be a PDA, but given the absence of housing as an allowed use, it was determined that including San Francisco and forming a Bi-County PDA would address that requirement. It did not obligate the City of Brisbane to allow housing in their portion of the PDA.

CM Conway asked what the acronym "MSL" stood for in attachment 4B to the staff report.

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Director Swiecki indicated it stood for Mean Sea Level.

Mayor Liu referred to page two of attachment 4A to the staff report discussing SB 375. She asked what the legal requirements for compliance were and the legal ramifications if housing was not approved as a means to reducing greenhouse gas emissions.

Mr. Roush said SB 375 does not require local jurisdictions to approve housing. It does require Council to look at the components of SB 375, including the Regional Transportation Plan process and the Regional Housing Needs Allocation, in deciding whether to include housing or not.

Mayor Liu asked for additional information about the alternative planning strategy that regions must prepare if the Sustainable Communities Strategy (SCS) falls short of its targets.

Director Swiecki said the SCS is a "bottom up" document based on current General Plans throughout the region. In the most recent draft of the SCS, an adjustment was made to show housing in the Baylands, which is not consistent with the City's General Plan. An alternative planning strategy would be prepared by the Association of Bay Area Governments (ABAG) and Metropolitan Transportation Commission (MTC), and would show what policy changes would be required to meet the SCS targets.

CM Lentz asked if projects requesting transportation funding would have to be compatible with the SCS.

Director Swiecki said certain discretionary transportation funds required projects to comply with SCS requirements, but not all funding sources were restricted.

CM Lentz asked how that would impact projects in the City.

Director Swiecki said the City is part of a bi-county PDA, and he was unsure how San Francisco's transportation funding applications would be impacted over time.

3. Public Comment on the Process

Greg Anderson, Brisbane resident, asked rhetorically why housing would be built on the Baylands? Housing should not be built on the Baylands if it doesn't meet the goals of the people advocating for housing. He asked if voters would vote for a small number of housing units. The area has a transit problem and public transportation is becoming gentrified. Transit is best with large developments. Higher income people are taking public transportation and lower income people are driving long distances. Approaching the housing question requires making a list of the problems to be solved and come up with a plan that solves those problems. He believes the answers are either high density housing or no housing. It is complicated because high density housing brings liquefaction and transportation issues to overcome. The Commission felt the EIR did not address those issues.

Michele Salmon, Brisbane resident, agreed with Mr. Anderson. She said no plans should be approved until the landfill is closed. She said 4,400 units of housing would not contribute to the

regional housing needs as much as a renewable energy farm. She said high speed rail would address regional transportation needs. San Francisco builds high rises and relies on other communities to build housing. The Baylands is much more complicated than housing or no housing. She was disgusted by the housing advocates who spoke to the Council. Greenbelt Alliance got over a fifth of their income from San Francisco housing groups and is funded by developers and the Baylands did a paid event for them previously. Other organizations that spoke to the City did not read the EIR but advocated for housing. Non-profits were funded by developers. She agreed that the Council should not offer too many options, but present a yes or no question to the voters. She did not think millions of square feet of commercial space should be built. There are good uses for the land without huge amounts of development. The Council acts in many ways to safeguard the public health, and building housing and office buildings on unsafe land was a public health issue. There are many unknown contaminants in the landfill and the EIR was inadequate and could not be certified. She asked the Council to have a public vote on the decision to allow housing on the Baylands.

Mayor Liu announced a five-minute break.

4. Council Discussion and Direction

CM Conway asked staff to give clarity as to what was meant by "Council discussion and direction."

Mr. Roush said the agenda item includes a discussion and direction regarding the decision tree, among others. If the Council wants to pick one of the five green boxes to start their discussion and deliberations, they could do so.

CM Conway said the majority of the speakers were either pro-housing or against housing. He thought the Council should start with the applicant's proposal for housing.

CM Davis stated she thought the Council was going to discuss the framework for the deliberations and planning the discussion, not actually deliberating. She still had many unanswered questions and she was not prepared to discuss until they were answered.

Mayor Liu asked if CM Davis's questions could be answered at the meeting.

CM Davis said staff had attached the questions to the staff report. She had asked during closed session if the deliberations would be taking place or if the process would be discussed, and the City Manager indicated the process would be discussed.

Mayor Liu said it was difficult to discuss process without knowing exactly what path the Council desired.

CM Davis said she could choose a path, but didn't have all the information she needed to provide more detailed feedback.

City Manager Holstine asked the Council to articulate which questions were core to being able to

move forward so staff can prioritize their response.

CM Davis said she would review her list. She noted the applicant's presentation provided conflicting liquefaction data compared to the EIR. Another conflict was the applicant's statement that a renewable energy farm was not economically feasible, compared to a report that says it would be. She needs clarification of these conflicts and felt those were core questions.

City Manager Holstine said staff would follow up on those core questions. He asked Council members to provide any additional questions.

CM Davis said she could identify more questions that need priority.

Mr. Roush stated the Council would always receive conflicting information on a project. Part of Council's role is to weigh the information it receives and reach a reasonable conclusion. The Council may never have a situation with no conflict between experts. Staff's response to the questions was provided either based on immediately available information or previously provided information, and some questions were deferred to a time when the Council had direction on where it wanted to go. For example, if there was a question about residential development that would not apply if the Council did not want to allow residential, staff would not spend the time and resources on answering it until Council provided direction to do so.

CM Davis said liquefaction was a straightforward issue and there should not be differences of opinion. The site is either subject to minimal or significant liquefaction.

Mayor Liu said the Council is weighing the evidence, and different facts may be presented by different sides.

CM Lentz said there would be guidelines for how to build at the site that the Council had to be comfortable with. The developer's geotechnical engineer may proposal a certain building location and engineering design, but the City's plan checker would be peer-reviewing those proposals to ensure they are safe.

Director Swiecki said staff could provide information clarifying what the EIR says versus what the applicant's consultant stated at the meeting. It would be useful for Council to identify critical information that they need to know upfront as the critical path to whatever outcome they identified.

CM O'Connell said she interpreted the agenda item as a discussion of the deliberation process, not deliberation. She did not think the Council should give their opinions to the public and to each other at this point because it was not on the agenda.

CM Conway disagreed.

Mayor Liu said in order to determine the process, the Council had to have a discussion.

CM O'Connell said she still had unanswered questions and she would get back to staff with

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priority questions, mostly relating to the EIR.

Mayor Liu asked all Council members to submit priority questions to City staff before the next meeting.

CM Davis said the public clearly did not interpret the agenda to include deliberations as there was not a large audience.

Mayor Liu asked if there was any direction the Council felt comfortable with regarding the decision tree and process.

CM Davis stated she liked the public comment from Mr. Anderson to identify the problems the Council wants to solve first. She could prefer to develop a new plan.

CM O'Connell said she could support modifying the Planning Commission's recommendation and needed more information on the EIR that she would articulate to staff. She said information on the feasibility of the Commission's recommendation and better financial data that was not contradictory was needed. She said it was important that a sample landfill closure plan be presented to the Council. She said more concerns were raised from the speakers series on June 15 regarding the Emeryville project.

CM Davis said she needed financial feasibility information for the Commission's recommendation.

City Manager Holstine said staff would be able to provide feasibility information at the next Council meeting.

CM Davis said that information was necessary to decide on a game plan.

CM Conway said he did not think the applicant was amenable to the Commission's recommendation. If so, the City Council would be wasting their time. He thought the Council could come up with something that most people will be happy with. Somebody will always be unhappy, but that is the case with any decision the Council makes. He had been part of the process from the beginning. He did not want the Council to pussyfoot around the decision. The Council should request the information they need and be ready to go at their next meeting. The Council should be willing to make a decision as a body.

CM O'Connell asked if individual Council members said they were pro or against housing at this point in time without having discussion, would they be put in jeopardy?

Mr. Roush said the answer was no. There was a considerable public record, and if the Council is not interested in a project with housing, they can give that direction. That would be in line with the Planning Commission's recommendation. If there are questions to be answered that do not relate to the residential piece, staff can address them.

CM Lentz asked if the Council identifies a preliminary desired outcome, would it be tied to that

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outcome throughout the deliberations?

CM Conway said if three Council members chose the same outcome tonight, that would determine the deliberation process.

CM Lentz said he wanted to create the most sustainable development possible but had a lot of questions to be answered. If housing was developed, it must be safe. They should understand how to make new housing affordable and mitigate traffic. They have not had that discussion. Staff wanted Council to pick a direction so they could give the feedback the Council needs to shape the vision. UPC owns the property and prepared a specific plan, but the site's vision should come from the community.

Mr. Zola said if the Council decided to not amend the General Plan, the direction would be to deny the applicant's application and come back with findings of denial at the next meeting. It sounded to him that the Council wanted to start by determining the vision for the Baylands, similar to the Commission's process. They could start with the Commission's basic principles. Other cities dealt with programmatic issues by establishing basic principles to lay out performance standards for the applicant to meet. This is what the Commission did in its recommendation. He stated studies for uses that are not desired would be unnecessary. The Council could look at land use after establishing the basic principles.

CM Lentz asked if the Council could make a new plan in collaboration with the applicant's proposal and Commission's recommendation.

Mr. Zola said that could be done and suggested rewriting the last box in the decision tree to say "Use the applicant's proposal and the Commission's recommendation to build a new plan for the Baylands." The Council would follow the process similar to the Planning Commission's, starting at the General Plan level.

Mayor Liu asked if a new EIR would be required if Council makes that decision.

Mr. Zola said staff would analyze the applicability of the EIR once it has reached a preliminary decision. Some EIR analyses may need to be updated.

CM Davis asked if a Council member indicates their mind was already made up, would that open them up to a liability suit?

Mr. Zola said the Council's entire record, including the public hearings, was significant. There is a difference between analyzing a proposal's environmental impacts and its appropriateness from a land use standpoint.

CM Lentz asked how the Council could give direction to help the Council flesh out those ideas. The Sustainability Framework hasn't been used as a tool to advance sustainability goals.

Mr. Zola said it worked well for the Commission to start with basic principles and then work through types of land use, land use intensity, and so on. He suggested that same process for the

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Council.

CM Lentz asked if the Council should discuss the Sustainability Framework now. It was adopted and vetted by the City's advisory bodies. He asked if it could be used to evaluate goals to help with the Baylands planning process.

CM Conway said he could identify several principles tonight to start the process, and then follow up at the next meeting to reconcile those principles and provide the answers to the Council's prioritized questions.

Mr. Zola said if that was the Council's direction, they had already identified several core questions to get the process going. If there were other questions that need to be addressed up front, or basic principles to include as a starting point for the next meeting, that would be helpful.

CM Davis asked if the other Council members had unanswered questions.

CM Lentz noted he had submitted four pages of questions.

CM Davis said the answers to her questions were valuable to the other Council members and she wanted to hear their questions. She wanted the answers provided in a public forum.

CM Lentz agreed.

Director Swiecki said there was a list of questions in attachment three of the staff report.

CM O'Connell said many questions were there but they had not been answered.

City Manager Holstine asked that the Council identify what questions were decision-critical.

CM Davis asked that the answers not be kept private.

City Manager Holstine said all answers would be disclosed to the public in a staff report.

CM O'Connell said at the next meeting, the Council should first decide what land use mixes they want on the Baylands so they can identify pertinent questions.

CM Lentz said he wanted the Council to work together. They may disagree but that should not halt the process.

CM Conway shared several basic principles he prioritized, including: Recology expansion; retaining Golden State Lumber; preserving Ice House Hill, the Roundhouse and the lagoon; moving Lagoon Road north, and fencing the area where the road is now for study by research universities regarding the impacts of landfill on lagoons. He said eventually the lagoon area could be turned into open space after bioremediation. That area is the most reflective of the most recent landfill and is the closest to the landfill. He wanted to ensure the wetland river park was constructed and tied into the project.

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Mayor Liu suggested setting a date for when the Council could submit remaining questions to staff and get answers to them at the July 13th meeting. Each of the Council members should come prepared to give their opinion on their vision for the Baylands- mix of land uses, their distribution and intensity. Regardless of the outcome, the Council members should propose the basic principles they want to see. They should also be prepared to present their opinions on the applicant's proposal and the Commission's recommendation.

CM Davis said she had heard from the public that Dr. Lee should participate in the deliberations as a consultant or speaker. She wanted his input to guide her decision-making.

Mayor Liu asked staff to reach out to Dr. Lee.

Director Swiecki said staff had a discussion with Dr. Lee. He was open to doing more work with the City on a contract basis. He asked the Council to define a scope and a cost to determine his availability.

City Manager Holstine said Dr. Lee could speak to the Council. If the City hired someone to represent the City before the regulatory bodies when the remedial action plans and the Title 27 closure are done, there may be value in having a consultant talk to the Council first regarding that approach.

CM Lentz said Dr. Lee attended the very first Council hearing and he had a discussion with him at the time. Dr. Lee stated he would be willing to help in some advisory capacity. He said Dr. Lee was trusted by many in the community and it was important to have public trust in consultants advising regarding remediation.

CM Davis said it would be important to determine Dr. Lee's availability in terms of time and cost so the Council could understand what he could do for them.

City Manager Holstine said staff could reach out to him with those questions.

CM O'Connell said having Dr. Lee on board as a consultant would be great and may instill some trust in the process. The Brisbane Baylands Citizen Advisory Group (BBCAG) received many reports from the regulatory agencies and she found the Department of Toxic Substances Control (DTSC to) be more encompassing on what they look at and the items they are willing to look at, where the Regional Water Quality Control Board (RWQCB) is much more concerned with one issue. She thought DTSC had been more accommodating to the BBCAG and their questions compared to RWQCB. At a recent BBCAG meeting, a DTSC staffer mentioned that DTSC may be able to take over review of the entire site. She wanted to know if that was possible. DTSC had a more overarching consideration for toxins and safety instead of just what is going into the water.

CM Lentz said the City has control over land use decisions. Whatever consultant they hire can ensure the necessary safeguards are in place depending on the Council's direction.

CM Conway said it seemed the land use direction needed to be determined first before determining the level of remediation, based on whether housing, commercial, or industrial land uses were allowed.

Mr. Zola said there were two categories: non-residential and residential. The question for residential land use brought up at Schlage Lock was what institutional controls are the City willing to accept, such as podium-style housing, if the Council wanted to consider a residential use.

CM Conway said whatever land uses are established, then the remediation measures could be determined with the help of an advisor.

Mr. Zola said the process was similar to the recommendations of the Sustainability Framework to have an independent review through the regulatory process and was incorporated into the Planning Commission's recommendation. The key point is to have a land use recommendation for the remedial action plan to address.

CM Conway asked for clarification as to which regulatory agencies had responsibility for the development process.

CM O'Connell said DTSC should be the lead agency for all three components. The DTSC representative stated that was possible.

Director Swiecki stated staff could look into potentially reconsolidating OU-1 and OU-2.

CM O'Connell said the County had not approached the City about concerns because there was so much soil on top of it that they did not feel there was water intrusion. The existing soil was temporary and not a cap. DTSC seems to have a broader vision on remedial action plans.

CM Lentz asked staff if he was familiar with DTSC reviewing Title 27 landfill closures.

Mr. Zola said they would research that.

CM O'Connell said she agreed with CM Conway's preservation priorities. She said it would be obvious when they outline their vision and what they want, and the answers to the questions coming through, that more questions will come up.

Mayor Liu reiterated she wanted all Council members to submit their current questions and basic principles.

City Manager Holstine confirmed staff would compile those questions and include them in the next staff report. Regarding Dr. Lee, the extent that the Council knows what to do from a land use perspective would determine what the consultant could potentially do for the City. He said it could take staff four to six months to research all of the current questions. He said staff is trying to be responsive in a reasonable fashion to help the decision making process but also help the process move forward. He said additional questions would come out of the deliberations process

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but hopefully they would be able to identify what land uses they are not comfortable with.

MAYOR/COUNCIL MATTERS

A. City Council Schedule Concerning the Baylands Deliberations Process

It was the consensus of the Council to schedule deliberations meetings for July 13th, 24th, August 7th, August 17th, and August 31st.

WRITTEN COMMUNICATION

A. Acknowledge receipt of written communications regarding the Brisbane Baylands Project

Mayor Liu acknowledged there was no correspondence received since the last meeting.

ADJOURNMENT

CM Lentz motioned and CM Conway seconded to adjourn the meeting. The motion was approved 5-0 and the meeting adjourned at 9:54 p.m.

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Ingrid Padilla, City Clerk

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