

CITY OF NEWCASTLE

Minutes of the Ordinary Council Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 25 May at 6.09pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church (*retired 9.04pm*), D Clausen, C Duncan, J Dunn, K Elliott (*retired 9.04pm*), B Luke (*retired 9.04pm*), J Mackenzie, A Robinson (*arrived 6.29pm/retired 9.04pm*), E White and P Winney-Baartz.

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), A Jones (Director City Wide Services), E Kolatchew (Manager Legal), S Moore (Manager Finance), M Bisson (Manager Regulatory, Planning and Assessment), S Gately (Manager Libraries and Learning), M Murray (Chief of Staff), A Mills (Manager Community Programs and Partnerships), N Grinpukel (Youth Engagement Facilitator), L Proctor (Youth Council vice-chair), L Zoneff (Media and Communications Advisor), A Knowles (Councillor Services/Minutes), K Sullivan (Councillor Services/Meeting Support), L Stanhope (Councillor Services/Meeting Support) and G Axelsson (Information Technology Support).

MESSAGE OF ACKNOWLEDGEMENT

The Lord Mayor read the message of acknowledgement to the Awabakal and Worimi peoples.

PRAYER

The Lord Mayor read a prayer and a period of silence was observed in memory of those who served and died so that Council might meet in peace.

REQUEST TO ATTEND BY AUDIO VISUAL LINK / APOLOGIES

MOTION

Moved by Cr Luke, seconded by Cr Clausen

The requests submitted by Councillor Dunn and Robinson to attend by audio visual link be received and leave granted.

The apology submitted on behalf of Councillor Rufo be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Church

Councillor Church declared a less than significant, non-pecuniary interest in Item 48 – Hunter and Central Coast Regional Planning Panel Temporary Membership as he previously declared a conflict for the rezoning of 505 Minmi Road, Fletcher and declared the interest for consistency and managed the conflict by removing himself from the Chamber for discussion on the item.

Councillor Clausen

Councillor Clausen declared a less than significant non-pecuniary interest in Item 44 – Public Exhibition of Draft Wickham Masterplan 2021 Update as had a friend who lived in the Wickham area and managed the conflict by remaining in the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - PUBLIC VOICE COMMITTEE 20 APRIL 2021

MINUTES - ORDINARY COUNCIL MEETING 27 APRIL 2021

MOTION

Moved by Cr Mackenzie, seconded by Cr Clausen

The draft minutes as circulated be taken as read and confirmed.

Carried

LORD MAYORAL MINUTE

**ITEM-12 LMM 25/05/21 - CONDOLENCE MOTION - VERA DEACON
OAM - FREEMAN OF THE CITY**

MOTION

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

- 1 Acknowledges with great sadness that Vera Deacon OAM, Freeman of the City of Newcastle, passed away aged 94 on Sunday, 16 May 2021;
- 2 Notes that in 2018, the City of Newcastle named Mrs Deacon a Freeman of the City of Newcastle for her contribution to Newcastle's heritage, conservation and local history, as well as her commitment to progressive social and political movements;
- 3 Notes that in 2020, Vera received a Medal of the Order of Australia (OAM) for her services to community history and to conservation;
- 4 Notes that in 2020 Vera received an Honorary Doctorate from the University of Newcastle for her lifelong passion, commitment and tireless effort in the conservation of the region's history, her overarching social justice values, and for her important social and philanthropic contributions to the University of Newcastle and Hunter community;

PART B

That City of Newcastle:

- 5 Notes that the Hunter TAFE Foundation have raised concerns about the ongoing viability of funding the Reg Russom (1887- 1952) Memorial Drawing Prize, which was established in 1955 following the death of renowned Novocastrian artist, Hunter Art School (TAFE) Head Teacher, and Newcastle Herald artist, Reg Russom (\$1000 per year), and is currently the longest established regional drawing prize in Australia;
- 6 Notes that Newcastle Art Gallery currently has more than 40 Reg Russom drawings in its collection;
- 7 Notes that Hunter TAFE Foundation have not been able to secure a funding partner for the Reg Russom Memorial Drawing Prize since the funds raised in 1955 were exhausted in 2010;
- 8 Explores opportunities to partner with TAFE NSW, the Newcastle Art Gallery Society, and the Newcastle Herald to ensure the ongoing viability of the Reg Russom Memorial Drawing Prize in perpetuity.

Carried

PROCEDURAL MOTION

Moved by Cr Clausen, seconded by Cr Duncan

That Council alter the order of business to deal with Confidential Item 5 – Supplementary Code of Conduct Matter as the first item for discussion.

Carried

REPORTS BY COUNCIL OFFICERS

ITEM-43 CCL 25/05/21 - TABLING OF REGISTER OF DISCLOSURES OF INTEREST - 1 FEBRUARY TO 30 APRIL 2021

MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

That Council:

- 1 Note the tabling of the Register of Disclosures of Interest (for the period 1 February to 30 April 2021) by the Chief Executive Officer (CEO).

**Carried
unanimously**

ITEM-45 CCL 25/05/21 - VARIATIONS TO DEVELOPMENT STANDARDS

MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

That Council:

- 1 Receives the report on approved development variations between 1 January and 31 March 2021 at **Attachment A** in accordance with the Department of Planning, Industry and Environment's (DPIE) concurrence to vary development standards in the Newcastle Local Environment Plan 2012 (NLEP 2012).

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Dunn, Elliott, Luke, Mackenzie, White and Winney-Baartz.

Against the Motion: Nil.

**Carried
unanimously**

ITEM-47 CCL 25/05/21 - ADOPTION OF THE PLANNING AGREEMENT POLICY 2021

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

That Council:

- 1 Adopt the Planning Agreement Policy 2021 at **Attachment A**.

**Carried
unanimously**

ITEM-49 CCL 25/05/21 - HOBART ROAD AND WALLARAH ROAD, NEW LAMBTON - PROPOSED PEDESTRIAN REFUGES AND KERB EXTENSIONS

MOTION

Moved by Cr Winney-Baartz, seconded by Cr Byrne

That Council:

- 1 Approve a pedestrian refuge on Hobart Road east of Wallarah Road; a painted median on Hobart Road west of Wallarah Road; pedestrian refuges on Wallarah Road north and south of Hobart Road; and kerb extensions on the southern side of the intersection, as generally shown at **Attachment A**.

**Carried
unanimously**

ITEM-53 **CCL 25/05/21 - EXECUTIVE MONTHLY PERFORMANCE REPORT**

MOTION

Moved by Cr Mackenzie, seconded by Cr White

That Council:

- 1 Receives the Executive Monthly Performance Report for April 2021.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen, Duncan, Dunn, Luke, Mackenzie, White and Winney-Baartz.

Against the Motion: Councillors Church and Elliott.

Carried

Councillor Robinson arrived at the meeting at 6.29pm.

All staff other than the Chief Executive Officer, Director Governance, Manager Legal, Councillor Services and IT Meetings Support left the meeting for Item 5 – Supplementary Report – Code of Conduct Matter.

CONFIDENTIAL REPORTS

ITEM-5 **CON 25/05/21 - SUPPLEMENTARY REPORT - CONFIDENTIAL CODE OF CONDUCT MATTER**

PROCEDURAL MOTION

Moved by Cr Byrne, seconded by Cr White

Council move into confidential session for the reasons outlined in the business papers.

Carried

Council moved into confidential session at 6.29pm.

PROCEDURAL MOTION

Moved by Cr White, seconded by Cr Mackenzie

Council move into open Council.

Carried

Council reconvened at 6.56pm.

The Chief Executive Officer reported the outcome of Item 5 at the conclusion of a subsequent confidential session on Item 6, at page 14 within the minutes.

REPORTS BY COUNCIL OFFICERS

ITEM-40 CCL 25/05/21 - ADOPTION OF THE OUR BUDGET 2021/22 (DELIVERY PROGRAM 2018-2022 AND OPERATIONAL PLAN 2021/22)

MOTION

Moved by Lord Mayor, Cr Nelmes, seconded by Cr Byrne

That Council:

- 1 Adopts the 2021/22 Our Budget as at **Attachment A** and the 2021/22 Fees and Charges Register as at **Attachment B**.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen, Duncan, Dunn, Luke, Mackenzie, White and Winney-Baartz.

Against the Motion: Councillors Church, Elliott and Robinson.

Carried

ITEM-41 CCL 25/05/21 - ADOPTION OF SHORTLAND LOCAL CENTRE PUBLIC DOMAIN AND TRAFFIC PLAN

MOTION

Moved by Cr Byrne, seconded by Cr Dunn

That Council:

- 1 Adopts the Shortland Local Centre Public Domain and Traffic Plan as set out at **Attachment A**.
- 2 Adopts the Shortland Light Traffic Thoroughfare Plan as set out at **Attachment B**.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Dunn, Elliott, Luke, Mackenzie, Robinson, White and Winney-Baartz.

Against the Motion: Nil.

**Carried
unanimously**

ITEM-42 CCL 25/05/21 - ADOPTION OF THE ECONOMIC DEVELOPMENT STRATEGY

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

That Council:

- 1 Adopts the Economic Development Strategy (2021) at **Attachment A**.

**Carried
unanimously**

ITEM-44 CCL 25/05/21 - PUBLIC EXHIBITION OF WICKHAM MASTERPLAN 2021 UPDATE

Councillors Dunn and Robinson retired from the meeting at 7.49pm.

MOTION

Moved by Cr Clausen, seconded by Cr White

That Council:

- A i) Places the draft Wickham Masterplan 2021 update (WMP 2021) (**Attachment A**) on public exhibition for 28 days subject to:

- extending the village hub west along Bishopsgate Street from Union Street to Railway Street, Wickham.
- the expansion of the village hub be considered as an action within 5.3.2 of the WMP 2021.

- ii) Considers a report on submissions received following the public exhibition.

- B Consultation be held with Great Lifestyle of Wickham (GLOW) and the residents of Wickham as part of the general public exhibition.

**Carried
unanimously**

ITEM-46 CCL 25/05/21 - ADOPTION OF HERITAGE AMENDMENTS TO NEWCASTLE LEP 2012

MOTION

Moved by Cr Clausen, seconded by Cr Byrne

1 That Council:

- i) Endorse the Planning Proposal (**Attachment A**) with an amendment to maintain Heritage Item 29 on the heritage listing prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), to amend the Newcastle Local Environmental Plan 2012 (NLEP 2012).

- ii) Prepare a local environmental plan pursuant to Section 3.36(2) of the EP&A Act with or without variation to the exhibited plan as provided at **Attachment A** and forward the local environmental plan to the Department of Planning Industry and Environment (DPIE) for publishing on the NSW Planning Portal website.

Councillor Luke foreshadowed a substantive motion that being the Officer's recommendation as outlined in the business papers.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen, Duncan, Mackenzie, White and Winney-Baartz.

Against the Motion: Councillors Church, Elliott and Luke.

Carried

ITEM-48 CCL 25/05/21 - HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL TEMPORARY MEMBERSHIP

Lord Mayor, Cr Nelmes advised of a previously declared conflict in regard to an item to be determined by the Hunter and Central Coast Regional Planning Panel (HCCRPP), and managed the conflict by removing herself from the Chamber for discussion on the item.

The Lord Mayor and Councillor Church left the Chamber for discussion on the item.

The Deputy Lord Mayor took the Chair.

MOTION

Moved by Deputy Lord Mayor, Cr Clausen, seconded by Cr Mackenzie

That Council:

- 1 Appoints the Director Governance and a planning expert as temporary City of Newcastle (CN) representatives to the Hunter and Central Coast Regional Planning Panel (HCCRPP) for one matter only, being consideration of the rezoning review of 505 Minmi Road, Fletcher.
- 2 Note that Councillors received a submission from the Green Corridor Coalition regarding a planning proposal to be determined by the HCCRPP and that the submission be forwarded to the assessing team at the NSW Department of Planning, Industry and Environment.

**Carried
unanimously**

The Lord Mayor and Councillor Church returned to the Chamber at the conclusion of the item.

The Lord Mayor resumed the Chair.

- 1 Formally receives the petition from the Lambton Public School Parents and Citizens' Association with more than 1,000 signatures expressing concern at a range of local and state traffic issues near Lambton Public School;
- 2 Notes that an onsite meeting between representatives from the Council (Transport and Compliance team), School Principal, President of the P&C, Department of Education – School Infrastructure, Police, and Transport for NSW is scheduled to occur in a couple of weeks; and
- 3 Refers issues raised in the petition and accompanying correspondence, and actions arising from the onsite meeting to the Newcastle Traffic Committee and Transport for NSW for further investigation and implementation.

**Carried
unanimously**

ITEM-13 NOM 25/05/21 - YOUTH MOCK COUNCIL MOTIONS

MOTION

Moved by Cr Winney-Baartz, seconded by Cr Clausen

That Council:

- 1 Congratulates the City of Newcastle Youth Council and staff for hosting the Youth Mock Council on 29 and 30 April 2021;
- 2 Congratulates the 22 students from across Newcastle's high schools who participated in the two-day Mock Council to learn more about civic governance in the City of Newcastle;
- 3 Notes that the Youth Mock Council developed and unanimously carried three Notices of Motion on issues relevant to young people in Newcastle (motions attached); and
- 4 Receives the Youth Mock Council's motions and refers onto the relevant Directorates for investigation alongside existing Council programs.

**Carried
unanimously**

**ITEM-14 NOM 25/05/21 - HAMILTON SOUTH COMMUNITY
PLAYGROUND**

MOTION

Moved by Cr Duncan, seconded by Cr Winney-Baartz

That Council:

- 1 Notes with disappointment the recent removal of the Hamilton South Community Playground by the NSW Government's Land and Housing Corporation;

- 2 Notes that the LAHC spent more than \$30,000 in removing the playground;
- 3 Expresses disappointment that the Minister for Housing has advised that the playground will not be replaced or upgraded (Minister's response to Parliamentary Question on Notice 5569);
- 4 Unites with the Hamilton South Community, the Lord Mayor and the Member for Newcastle in advocating for a new playground in Fowler/Ogden Street and Neill Terrace Hamilton South; and
- 5 Writes to the Attorney General, as the Acting Minister for Families, Communities and Disability Services, seeking his assistance in reviewing and resolving this matter.

**Carried
unanimously**

LATE ITEMS OF BUSINESS

ITEM-6 CON 25/05/21 - SUPPLEMENTARY REPORT - CONFIDENTIAL CODE OF CONDUCT MATTER

The Lord Mayor advised that she had been informed by the Chief Executive Officer of a late item of business *Supplementary Report – Confidential Code of Conduct Matter* and that the business proposed was of great urgency and required a decision by Council prior to the next scheduled Council meeting, because of advice received from the Office of Local Government that it would urgently consider the Code of Conduct matter once it was referred under the misconduct provisions of the Local Government Act 1993.

PROCEDURAL MOTION

Moved by Cr Winney-Baartz, seconded by Cr Byrne

That Item 6 – Supplementary Report - Confidential Code of Conduct matter be heard as a late item of business in confidential session.

Carried

The Lord Mayor ruled the matter of Supplementary Report – Code of Conduct Matter be of great urgency on the grounds that it required a decision by Council before the next scheduled meeting.

PROCEDURAL MOTION

Moved by Cr Byrne, seconded by Cr Clausen

Council move into confidential session for the reasons outlined in the business papers.

Carried

All staff other than the Chief Executive Officer, Director Governance, Manager Legal, Councillor Services and IT Meetings Support left the meeting for Item 6 – Supplementary Report – Code of Conduct Matter.

Councillors Elliott, Church and Luke retired from the meeting at 9.04pm, as Council moved into confidential session.

PROCEDURAL MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

Council move into open session.

Carried

Council moved out of confidential session at 9.31pm.

The Chief Executive Officer reported the outcome of the earlier confidential session which dealt with Item 5 – Supplementary Report – Confidential Code of Conduct Matter, and the outcome of the subsequent confidential session which dealt with Item 6 – Supplementary Report – Confidential Code of Conduct Matter.

ITEM-5 CON 25/05/21 - SUPPLEMENTARY REPORT - CONFIDENTIAL CODE OF CONDUCT MATTER

MOTION

Moved by Cr Byrne, seconded by Cr White

That Council:

- 1 notes that an investigation was undertaken into a Code of Conduct complaint against Councillor Kath Elliott. The investigation was undertaken by a Conduct Reviewer independent of City of Newcastle (CN), in accordance with the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW (Procedures);
- 2 receives the Final Investigation Report of the Conduct Reviewer in relation to the complaint at **Attachment A**;
- 3 notes that Councillor Elliott was consulted by the Conduct Reviewer throughout the investigation and that prior to imposing a sanction, Councillor Elliott was provided with a formal opportunity to make a written or oral submission to Council;
- 4 accepts the finding of the Conduct Reviewer in relation to the complaint that at the Extraordinary Council meeting held on 11 February 2020, Councillor Elliott breached clause 20.5 of the Code of Meeting Practice and clause 3.1(b) of the Code of Conduct for Councillors, by removing confidential papers from the confidential session of the meeting and refused to return the confidential papers when requested;

- 5 in accordance with section 440G of the Local Government Act 1993 (Act) and based on the findings and recommendation of the Conduct Reviewer:
- (i) formally censures Councillor Elliott for breaching clause 20.5 of the Code of Meeting Practice and clause 3.1(b) of the Code of Conduct for Councillors, on the grounds that Councillor Elliott engaged in the following forms of conduct:
 - (a) did not return the confidential Business Papers at the conclusion of the Meeting as directed under the Code of Meeting Practice; and
 - (b) conducted herself in a manner that is contrary to statutory requirements, or CN's administrative requirements or policies; and
 - (ii) due to the repeated and serious nature of this matter, refers the matter to the Office of Local Government for further action under the misconduct provisions of the Act;
- 6 treats this confidential report and attachment relating to the matters specified in section 10A(2)(i) of the Act as confidential.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Duncan, Dunn, Mackenzie, White and Winney-Baartz.

Against the Motion: Councillors Church, Luke and Robinson.

Carried

**ITEM-6 CON 25/05/21 - SUPPLEMENTARY REPORT -
CONFIDENTIAL CODE OF CONDUCT MATTER**

MOTION

Moved by Cr Byrne, seconded by Cr Winney-Baartz

That Council:

- 1 receives a supplementary report on the investigation of Code of Conduct complaint made against Councillor Allan Robinson, which Council laid on the table at the Ordinary Council meeting held on 24 November 2020 pending an opinion from the Office of Local Government (OLG);
- 2 notes the time since the Council meeting held on 24 November 2020 and that the OLG is yet to provide an opinion as requested;
- 3 considers options on how to proceed with this matter;

That Council:

- 4 notes that an investigation was undertaken into a Code of Conduct complaint, comprising seven allegations, against Councillor Robinson. The investigation was undertaken, by a Conduct Reviewer independent of City of Newcastle

(CN), in accordance with the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW;

- 5 receives the Final Investigation Report of the Conduct Reviewer in relation to the complaint at **Attachment A**;
- 6 notes that Councillor Robinson was consulted by the Conduct Reviewer throughout the investigation and was provided with a formal opportunity to make a written or oral submission to Council in relation to the complaint;
- 7 accepts the findings of the Conduct Reviewer that:
 - (i) in relation to Allegation 2, at the Ordinary Council meeting held on 23 July 2019, Councillor Robinson breached clauses 3.1(a) and (e), and 3.3 of the Code of Conduct for Councillors, by becoming argumentative with the meeting Chairperson, continually interjecting and making comments in an aggressive tone;
 - (ii) in relation to Allegation 3, at the Ordinary Council meeting held on 23 July 2019, Councillor Robinson breached clause 4.5.1 of the Code of Meeting Practice, by becoming argumentative with the meeting Chairperson, continually interjecting and making comments in an aggressive tone;
 - (iii) in relation to Allegation 4, at the Ordinary Council meeting held on 23 July 2019, Councillor Robinson breached clause 4.5.1 of the Code of Meeting Practice, by becoming argumentative and speaking to a Councillor in a disrespectful manner;
 - (iv) in relation to Allegation 6, at the Ordinary Council meeting held on 23 July 2019, Councillor Robinson breached clause 76.1.4 of the Code of Meeting Practice by referring to a Councillor by a homophobic slur;
 - (v) in relation to Allegation 7, on 25 and 26 July 2019 Councillor Robinson breached clause 3.7 (as defined in clause 3.8) of the Code of Conduct, by comments he made or were attributed to him in the Newcastle Herald, and in the Guardian on the 26 July 2019 that were derogatory, homophobic and sexist; and
 - (vi) in relation to Allegation 8, on 25 and 26 July 2019 Councillor Robinson breached clause 3.9 (as defined in clause 3.10) of the Code of Conduct, by the comments he made or were attributed to him in the Newcastle Herald, and in the Guardian on the 26 July 2019 that were derogatory, homophobic and sexist.
- 8 in accordance with section 440G of the Local Government Act 1993 and based on the findings and recommendation of the Conduct Reviewer, formally censures Councillor Robinson for breaching clauses 3.1(a) and (e), 3.3, 3.7 (as defined in clause 3.8) and 3.9 (as defined in clause 3.10) of the Code of Conduct for Councillors, and clauses 4.5.1 and 76.1.4 of the Code of Meeting

Practice, on the grounds that Councillor Robinson engaged in the following forms of conduct:

- (i) conducted himself in a manner that:
 - (a) brought CN or other CN officials into disrepute;
 - (b) caused, comprised or involved intimidation or verbal abuse;
 - (ii) did not treat others with respect at all times;
 - (iii) did not meet a Councillor's obligation to conduct themselves at Meetings in accordance with the Code of Conduct and accepted standards of behavior; and
 - (iv) committed an act of disorder under the Code of Meeting Practice by insulting or abusing any other Councillor or person.
 - (v) harassed or unlawfully discriminated against others, including but not limited to, harassment and discrimination on the grounds of sex, pregnancy, breastfeeding, age, race, responsibilities as a carer, marital or domestic status, disability, homosexuality, transgender status, infectious disease or political, religious or other affiliation. Noting that for purposes of the Code of Conduct for Councillors, "harassment" is any form of behaviour towards a person that:
 - (a) is not wanted by the person
 - (b) offends, humiliates or intimidates the person, and
 - (c) creates a hostile environment; and
 - (vi) engaged in bullying behaviour towards others. Noting that for the purposes of the Code of Conduct for Councillors, "bullying behaviour" is any behaviour in which:
 - (a) a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons, and;
 - (b) the behaviour creates a risk to health and safety.
- 9 refer the matter to the OLG for further action under the misconduct provisions of the Act.
- 10 treats this confidential report and attachment relating to the matters specified in section 10A(2)(i) of the Local Government Act 1993 as confidential.

**Carried
unanimously**

The meeting concluded at 9.41pm.