

CITY OF NEWCASTLE

Minutes of the Ordinary Council Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West and on video conferencing platform Zoom on Tuesday 27 October 2020 at 6.06pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, J Dunn, K Elliott (*retired 9.03pm*), B Luke, J Mackenzie, A Robinson, A Rufo (*retired 8.40pm*), 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), K Liddell (Director Infrastructure and Property), A Jones (Interim Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), S Moore (Acting Chief Financial Officer), M Murray (Executive Officer), D Moldrich (Manager, Customer Experience), A Knowles (Council Services/Minutes), E Horder (Council Services/Meeting Support), K Sullivan (Council 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.

APOLOGIES

Nil.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - ORDINARY COUNCIL MEETING 22 SEPTEMBER 2020

MOTION

Moved by Cr Byrne, seconded by Cr Clausen

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

**Carried
unanimously**

LORD MAYORAL MINUTE

ITEM-20 LMM 27/10/20 - CITY OF NEWCASTLE SUBMISSION - AUSTRALIAN PARLIAMENTARY INQUIRY INTO AUSTRALIAS CREATIVE AND CULTURAL INDUSTRIES

MOTION

Moved by Lord Mayor, Cr Nelmes

PART A

That City of Newcastle:

1. Notes that the Australian Parliamentary Standing Committee on Communications and the Arts has invited submissions regarding an Inquiry into Australia's Creative and Cultural Institutions;
2. Notes that Newcastle has a thriving arts and cultural scene where creative pursuits are encouraged and artistic flair is celebrated, with more artists per capita than any other city in Australia and that creative industries across the Hunter region are worth almost \$1 billion
3. Recognises the importance of our vibrant creative and cultural industries, and the devastating impact that the COVID-19 global pandemic has had on our makers, traders, creators, artists, designers and producers;
4. Notes that the City Taskforce, comprising of industry leaders from across our City has recognised the valuable contribution the arts sector plays in creating vibrancy for our city and sustaining local jobs;
5. Notes that the City Taskforce, with the Independent Creative Alliance Newcastle [ICAN], believe that more is required to create new and ongoing opportunities in the Greater Newcastle area and that critical to the recovery of the creative sector in Newcastle is the need to address the glaring inconsistencies for both Federal and State Funding (Attachment A: The Newcastle Response: Arts Sector);
6. Makes a submission, on behalf of our local arts and cultural sector workers, to the Australian Parliamentary Inquiry in Australia's creative and cultural industries, noting the research and recommendations of the City Taskforce has developed in close consultation with the Independent Creative Alliance Newcastle (ICAN).

PART B City of Newcastle Civic Cultural Precinct

That City of Newcastle:

1. Supports the Community and Cultural Advisory Committee and Chairperson Cr Carol Duncan who have resolved to explore the creation of a formal Civic

- 3 Congratulates the 16 recipients of funding from the Newcastle Events Sponsorship program, who have received a share of \$177,000 from the City of Newcastle to hold world-class events and activations across the City.

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

Against the Motion: Councillors Church, Elliott and Luke.

Carried

REPORTS BY COUNCIL OFFICERS

ITEM-74 CCL 27/10/20 - TABLING OF REGISTER OF DISCLOSURES OF INTEREST - ANNUAL REPORT

MOTION

Moved by Cr Byrne, seconded by Cr Winney-Baartz

That Council:

- 1 Note the tabling of the Register of Disclosures of Interest (Register) (for the financial year 2019/2020) by the Chief Executive Officer (CEO); and
- 2 Commit to publishing the Register on City of Newcastle's (CN) website in accordance with the *Government Information (Public Access) Act 2009*.

**Carried
unanimously**

ITEM-82 CCL 27/10/20 - EXECUTIVE MONTHLY PERFORMANCE REPORT

MOTION

Moved by Cr Clausen, seconded by Cr White

That Council:

- 1 Receives the Executive Monthly Performance Report for September 2020.

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

Against the Motion: Councillors Church, Elliott and Robinson.

Carried

ITEM-75

CCL 27/10/20 - ADOPTION OF THE 2019/20 FINANCIAL STATEMENTS

MOTION

Moved by Cr Clausen, seconded by Cr Byrne

PART A

That Council:

- 1 Receives and adopts City of Newcastle's 2019/2020 audited annual Financial Statements and Auditor's Report (**Attachment A**).

PART B

That Council:

- 1 Notes that in 2019-20, City of Newcastle spent more than 122% of what OLG guidelines required on asset maintenance, demonstrating a genuine commitment to maintaining the City's infrastructure. Over the past 5 years, CN has spent \$153m on renewing our assets.
- 2 Additionally, notes that the Audited component of the Annual Financials show that Council has prudently put aside over \$137 million in restricted reserves to ensure that it has sufficient funds to renew assets to the standard expected by the elected council and the community (pg 34 – Works Program – Infrastructure Backlog).
- 3 Notes that this could not have been achieved had difficult decisions not been made to ensure CN's long-term financial sustainability in 2015, while protecting local services and jobs.
- 4 Notes that councils in NSW are required to prepare a special schedule of infrastructure asset indicators within their annual financial report. These indicators include a 'building and infrastructure renewal ratio', an 'infrastructure backlog ratio', an 'asset maintenance ratio' and a 'cost to bring assets to agreed service level ratio'.
- 5 Notes that these indicators are NOT audited by the NSW Auditor General, and are developed by each council following guidelines from the Office of Local Government.
- 6 Notes a review for NSW Treasury's TCorp previously found that: "*the basis of information reported in Special Schedule 7 is quite variable between councils ... it will always remain problematic to compare one council's reported backlog quantum with another*"
- 7 Writes to the Minister for Local Government, Deputy Secretary Office of Local Government, Local Government NSW, and the Auditor-General seeking for the

Special Schedule Report on Infrastructure Assets to be included as part of the mandatory audit of all council financials undertaken annually by the NSW Auditor General, to ensure a clear, consistent set of indicators are provided for all of NSW local government.

PROCEDURAL MOTION

Moved by Cr Luke, seconded by Cr Rufo

That Council vote on Part A and Part B in seriatim.

Defeated

AMENDMENT

Moved by Cr Church, seconded by Cr Elliott

That the City of Newcastle revert to the previous and historical method of accounting for the infrastructure backlog and update the report prior to it being submitted to the Office of Local Government.

The amendment moved by Councillor Church and seconded by Councillor Elliott was deemed unlawful.

Councillor Clausen withdrew Part B of the motion and foreshadowed Part B as a substantive motion.

The motion moved by Councillor Clausen and seconded by Councillor Byrne, as amended, was put to the meeting.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen, Duncan, Dunn, Luke, Mackenzie, Rufo, White and Winney-Baartz.

Against the Motion:

Councillors Church, Elliott and Robinson.

Carried

MOTION

Moved by Cr Clausen, seconded by Cr Duncan

That Council:

- 1 Notes that in 2019-20, City of Newcastle spent more than 122% of what OLG guidelines required on asset maintenance, demonstrating a genuine commitment to maintaining the City's infrastructure. Over the past 5 years, CN has spent \$153m on renewing our assets.
- 2 Additionally, notes that the Audited component of the Annual Financials show that Council has prudently put aside over \$137 million in restricted reserves to ensure that it has sufficient funds to renew assets to the standard expected by

the elected council and the community (pg 34 – Works Program – Infrastructure Backlog).

- 3 Notes that this could not have been achieved had difficult decisions not been made to ensure CN's long-term financial sustainability in 2015, while protecting local services and jobs.
- 4 Notes that councils in NSW are required to prepare a special schedule of infrastructure asset indicators within their annual financial report. These indicators include a 'building and infrastructure renewal ratio', an 'infrastructure backlog ratio', an 'asset maintenance ratio' and a 'cost to bring assets to agreed service level ratio'.
- 5 Notes that these indicators are NOT audited by the NSW Auditor General, and are developed by each council following guidelines from the Office of Local Government.
- 6 Notes a review for NSW Treasury's TCorp previously found that: "*the basis of information reported in Special Schedule 7 is quite variable between councils ... it will always remain problematic to compare one council's reported backlog quantum with another*"
- 7 Writes to the Minister for Local Government, Deputy Secretary Office of Local Government, Local Government NSW, and the Auditor-General seeking for the Special Schedule Report on Infrastructure Assets to be included as part of the mandatory audit of all council financials undertaken annually by the NSW Auditor General, to ensure a clear, consistent set of indicators are provided for all of NSW local government.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen, Duncan, Dunn, Mackenzie, White and Winney-Baartz.

Against the Motion:

Councillors Church, Elliott, Luke, Robinson and Rufo.

Carried

ITEM-76

CCL 27/10/20 - ADOPTION OF AMENDMENTS TO THE NEWCASTLE DEVELOPMENT CONTROL PLAN 2012

MOTION

Moved by Cr Clausen, seconded by Cr Byrne

PART A

- 1 That Council:

Adopts the amended Newcastle Development Control Plan 2012 (NDCP 2012) at **Attachment A**.

PART B

1 That Council:

Notes that a more wholistic review of the DCP is intended to be undertaken in 2021, to ensure that its provisions and controls are consistent with the vision outlined in the recently adopted Local Planning strategy (carried unanimously in May 2020).

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

Against the Motion: Nil.

**Carried
unanimously**

ITEM-77 CCL 27/10/20 - ADOPTION OF HERITAGE STRATEGY 2020/2030

MOTION

Moved by Cr Winney-Baartz, seconded by Cr Duncan

1 That Council:

- i) Adopts the Heritage Strategy 2020-2030 at Attachment A with a report on progress with the delivery of the Action Plan to be presented to council within 12-months to include protection of the Wickham School of the Arts and Broadmeadow Railroad Locomotive Depot and associated rolling stock.

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

Against the Motion: Councillor Luke.

Carried

ITEM-78 CCL 27/10/20 - ENDORSEMENT OF HERITAGE AMENDMENTS TO NEWCASTLE LEP 2012

MOTION

Moved by Cr Duncan, seconded by Cr Byrne

1 That Council:

- i) Endorse the attached Planning Proposal (**Attachment A**), 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 in order to address various heritage matters.

- ii) Forward to the Minister for Planning the Planning Proposal for Gateway determination pursuant to section 3.34 of the EP&A Act.
- iii) Consult with the community and relevant government agencies as instructed by the Gateway Determination.
- iv) Receive a report on the Planning Proposal following the exhibition period.

AMENDMENT

Moved by Cr Church

That City of Newcastle provide councillors with a report on the merits of adding Newcastle Ocean Baths to the State Heritage Register.

Councillor Duncan and Councillor Byrne stated they would accept the amendment moved by Councillor Church into the motion.

The motion moved by Councillor Duncan and seconded by Councillor Byrne, as amended was put to the meeting.

For the Motion:

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

Against the Motion:

Nil.

Carried

ITEM-79

CCL 27/10/20 - ADOPTION OF PLANNING PROPOSAL TO AMEND NEWCASTLE LOCAL ENVIRONMENTAL PLAN 2012 FOR LAND AT WICKHAM

MOTION

Moved by Cr Church, seconded by Cr Mackenzie

1 That Council:

- i) Adopts the Planning Proposal at **Attachment A** that includes various amendments to the Newcastle Local Environmental Plan 2012 to implement actions identified in the Wickham Masterplan.
- ii) Forwards the Planning Proposal to the Department of Planning, Industry and Environment (DPIE) requesting the amendments be made.

For the Motion:

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

Against the Motion:

Nil.

Carried

ITEM-80

CCL 27/10/20 - PUBLIC ART REFERENCE GROUP UPDATE

MOTION

Moved by Cr Duncan, seconded by Cr Winney-Baartz

That Council:

- 1 Receives the Public Art Reference Group Annual Report 2020 as at **Attachment A.**
- 2 Notes the Public Art in the Private Domain Procedures 2020 as at **Attachment B.**
- 3 Endorses the continuation of the Public Art Reference Group as a 'standing committee' of Council to continue outside the term of the elected Council.
- 4 Endorses expansion of the membership of the Public Art Reference Group in 2021 to include up to five external experts with:
 - i) Three positions for persons with a strong demonstrated relationship to Newcastle who have acclaimed reputations for excellence in the field/s of visual art, architecture, landscape architecture, cultural leadership and / or design;
 - ii) One specific position for a cultural knowledge holder from the Indigenous community; and
 - iii) One specific position for a heritage expert.
- 5 Terminates the previous Public Art and Placemaking Policy 2002 as at **Attachment C.**

Carried

ITEM-81 **CCL 27/10/20 - ADOPTION OF AMENDED COMMUNITY PARTICIPATION PLAN**

MOTION

Moved by Cr Duncan, seconded by Cr Byrne

1 That Council:

- i) Adopts the amended Community Participation Plan at **Attachment A.**
Carried

Councillor Rufo retired from the meeting at 8.40pm.

NOTICES OF MOTION

ITEM-27 **NOM 27/10/20 - IMPLEMENTATION OF LIVE MUSIC AND AFTER DARK STRATEGIES - PLANNING CERTIFICATES**

MOTION

Moved by Cr Duncan, seconded by Cr Byrne

That City of Newcastle:

- Note the outcomes of the endorsed Live Music Strategy and After Dark Strategy, with particular note to the support of Newcastle's Live Music Industry.
- Acknowledge the importance of growing the City's night time economy.
- Receive a report at the next Ordinary meeting to provide a detailed update of the progress of the implementation of Action 2 of the Live Music Strategy 'Develop a suite of planning controls to reduce the risk of land use conflict including notification in the Section 10.7(5) Planning Certificates.

Carried
Unanimously

ITEM-28 **NOM 27/10/20 - BROADMEADOW HERITAGE RAIL - NSW GOVERNMENT TRANSPORT HERITAGE ITEMS**

MOTION

Moved by Cr Duncan, seconded by Cr Byrne

That City of Newcastle:

- Notes the importance of the state heritage-listed Broadmeadow Rail Depot.
- Notes community concern of the removal of heritage-listed rolling stock from Broadmeadow to Chullora, in particular some 22 items considered to be of particular relevance to the rail heritage of Newcastle and the Hunter Region.

- Write to the NSW Minister for Transport ensuring that any required under Section 60 of the Heritage Act are obtained before any further removals of locomotive stock occur and noting that City of Newcastle will not support removal of the heritage items from Broadmeadow Rail Depot.
- The Greater Newcastle Metropolitan Plan identifies the site as the “Locomotive Depot Precinct” within the Broadmeadow Catalyst Area. This precinct is identified for investigation for medium density housing and business uses which do not impact on heritage values and respond to risk. Given the investigation for future development of the site, it is important and recommended that a Master Plan be commissioned to ensure that some part of the rolling stock can be incorporated into the heritage interpretation of the former use of the site when planning for the site’s redevelopment.
- Liaise with a rail heritage consultant to identify the items **most significant** to the Newcastle/Hunter Region. CN to investigate adding them to the CN LEP listing of the roundhouse buildings with a view to having those items additionally added to the State listing of the buildings and report back to Council keeping in mind the time-sensitive nature of this issue.

**Carried
unanimously**

CONFIDENTIAL REPORTS

ITEM-9 CON 27/10/20 – CODE OF CONDUCT MATTER

PROCEDURAL MOTION

Moved by Cr Byrne, seconded by Cr Duncan

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

Carried

Council moved into confidential session at 9.03pm.

During confidential session:

- Councillor Elliott (the respondent to the complaint) retired from the meeting prior to commencement of Item 9 – Code of Conduct Matter.
- Councillor Clausen (the complainant) left the Chamber for discussion on Item 9 – Code of Conduct Matter as required by the Code of Conduct.
- Only the Chief Executive Officer, Director Governance, Manager Legal, Council Services Team and IT Meetings Support remained in the meeting for Item 9 – Code of Conduct Matter.

As the meeting was nearing 9.30pm, the following procedural motion was moved.

PROCEDURAL MOTION

Moved by Cr Winney-Baartz, seconded by Cr White

That the duration of the meeting be extended for 30 minutes.

**Carried
unanimously**

PROCEDURAL MOTION

Moved by Cr Duncan, seconded by Cr Winney-Baartz

Council move into open session.

Carried

Councillor Clausen and Council staff returned to the meeting in the Chamber and video conferencing platform Zoom at 9.56pm.

Council moved into open session at 9.56pm and the Chief Executive Officer reported the outcome of confidential session.

MOTION

Moved by Cr Byrne, seconded by Cr Winney-Baartz

That Council:

- 1 notes that an investigation was undertaken into a Code of Conduct complaint against a councillor in accordance with the Procedures for the Administration of the Code of Conduct;
- 2 receives the Final Investigation Report of the Conduct Reviewer at **Attachment A**;
- 3 accepts the finding of the Conduct Reviewer that on 9 October 2019, Councillor Kath Elliott breached clauses 3.1(c), 8.10 and 8.11 of the Code of Conduct for Councillors (the Code), by failing to protect, and publicly disclosing, confidential information discussed during part of a Council meeting that was closed to the public in accordance with section 10A(1) of the Local Government Act 1993 (the Act); and include the findings of the investigation report listed at clauses 7.3 to 7.7 inclusive as provided in Attachment A as follows:

7.3 Having regard to the totality of the evidence, Clr. Elliott's conduct is in breach of the Code and is of a sufficiently serious nature.

7.4. Clr. Elliott's conduct of releasing the confidential commercial information in her comment broadcast on NBN News and having thereafter, on the following day, lodged a Notice of Motion in which she (and other councillors) sought to have confidentiality over that same information lifted and made public demonstrate a knowing disregard for her obligations as a Councillor with respect to the protection, use and maintenance of confidential information.

7.5. *Whilst it is accepted that there were speculative reports in the media at the time Clr. Elliott made her comments to the NBN News, there had been no formal lifting of the confidentiality restriction at this time, and her comment became the first to be able to be clearly attributed to a member of Council by the people of Newcastle. Regardless of Clr. Elliott's intentions and motivations for sharing this information with the public, the fact remains that she was beholden to the policies and legislation that prohibited her doing so.*

7.6. *It is noted that Clr. Elliott quoted a figure which was higher than that included in the confidential report. Whilst on one view this might be seen as mitigating against a finding that she released the exact specifics of the confidential information, quoting a figure that was higher than the actual amount had the potential to cause harm to Council's reputation and to mislead the constituency. Further, it had the potential to place Council at risk of breaching a commercial contract to which they were a party.*

7.7 *To the best of the knowledge of the investigator, at no stage has Clr. Elliott sought to apologise or express contrition for her actions.*

- 4 notes that Councillor Elliott 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;
- 5 in accordance with section 440G of the Act and based on the findings and recommendation of the Conduct Reviewer, formally censures Councillor Elliott for breaching clauses 3.1(c), 8.10 and 8.11 of the Code; and
- 6 treats this confidential report and attachment relating to the matters specified in section 10A(2)(i) of the Act as confidential.

Carried

The meeting concluded at 10.01pm.