

# Minutes

## Ordinary Council Meeting



Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 25 July 2023 at 7:30pm.

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### 1. ATTENDANCE

The Lord Mayor (Councillor N Nelmes), Councillors E Adamczyk (*arrived 7.54pm*), J Barrie, J Church, D Clausen (*arrived 7.54pm*), C Duncan, J Mackenzie, C McCabe, C Pull, D Richardson, K Wark, P Winney-Baartz and M Wood.

J Bath (Chief Executive Officer), D Clarke (Executive Director Corporate Services and CFO), J Rigby (Executive Director City Infrastructure), M Bisson (Executive Director Planning and Environment), L Duffy (Acting Executive Director Creative and Community Services), E Kolatchew (Executive Manager Legal and Governance), S Moore (Executive Manager Finance, Property and Performance and Deputy CFO), R Dudgeon (Executive Manager Project Management Office), N Kaiser (Interim Executive Manager Media Engagement Economy and Corporate Affairs), D Manderson (Executive Manager Civil Construction and Maintenance), M Murray (Chief of Staff), M Kikken, (Executive Manager Environment and Sustainability), K Anderson (Senior Environmental Strategist), M Meehan (Senior Media Adviser), A Ryan (City Significant and Strategic Planning Manager), L Barnao (Council Liaison Officer), A Knowles (Councillor Services/Minutes/Meeting Support), W Haddock (AV/Information Technology Support) and B Smith (Information Technology Support).

### 2. ACKNOWLEDGEMENT OF COUNTRY

Read at previous meeting on night.

### 3. PRAYER

Read at previous meeting on night.

### 4. APOLOGIES / LEAVE OF ABSENCE / ATTENDANCE BY AUDIO VISUAL LINK

#### MOTION

Moved by Cr Barrie, seconded by Cr Duncan

The requests submitted by Councillor Adamczyk and Councillor Clausen to attend by audio visual link be received and granted.

**Carried**

Councillors Adamczyk and Clausen joined the meeting by audio visual link at 7.54pm and arrived at the meeting in person at 8.10pm.

Nil apologies.

## **5. DISCLOSURES OF INTEREST**

Nil.

## **6. CONFIRMATION OF MINUTES**

### **6.1. MINUTES - ORDINARY COUNCIL MEETING 27 JUNE 2023**

#### **MOTION**

Moved by Cr Mackenzie, seconded by Cr Richardson

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

**Carried  
unanimously**

Councillor Duncan gave notice of a late item of business.

## **7. LORD MAYORAL MINUTE**

### **7.1. ACKNOWLEDGING YOUTH WITH A MISSION (YWAM) NEWCASTLE'S ASSISTANCE TO UKRAINE**

#### **MOTION**

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1. Notes that YWAM Newcastle, led by Managing Director David Stephenson, has recently organised three delegations of dedicated Novocastrian Volunteers to travel to Ukraine to provide assistance, outreach and support to many towns and cities, affected by the ongoing invasion of Ukraine by Russia;
2. Commends YWAM Newcastle for their bravery and community spirit, and risking their own safety to travel to the other side of the globe galvanizing the support of their community to provide assistance to those in need in the Ukraine;
3. Appreciates the messages of gratitude and thanks to the people of the City of Newcastle from Mayor Vadim Zerdeckij, Mayor of Moschun, Kiev Oblast, and Mayor Roman Polikrovski Mayor of Zbarash; Ternopil Oblast, brought back from Ukraine by YWAM Newcastle;
4. Acknowledges that YWAM Newcastle's efforts in Ukraine delivered:
  - Assistance in building emergency housing;
  - Art activities with parents and children (YWAM Newcastle had an Art Therapist on the team);
  - Restored community assets including the Moschun main bus-stop in town centre;
  - Provided close to 100 Newcastle Jets shirts, and kitted a whole soccer team with Newcastle Jets uniforms;

- Church services which included many families with loved ones on frontline;
- Two YWAM Team members travelled east to Donetsk, via Kharkiv (30km from Russian border) staying near Bakhmut, raising funds for and delivering \$4,000 for tourniquets, gas masks, generators, inverters, sleeping bags and tents to front line soldiers and paramedics at their request. This team travelled to within 40km from Donetsk city and 120km from Mariupol, with two of the soldiers they assisted jumping straight back into their armoured personal carrier after breakfast and heading straight back to the front at Bakhmut.

5. Once again, thanks YWAM Newcastle for their humanitarian assistance to Ukraine.

**Carried  
unanimously**

Council momentarily adjourned to take a group photograph with members of YWAM present in the gallery.

At this stage of the meeting Councillors Adamczyk and Clausen arrived at the meeting by audio visual link.

## **7.6. THANK YOU AND FAREWELL JOANNE RIGBY**

### **MOTION**

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1. Notes that Friday, 28th July marks the final day at City of Newcastle for Executive Director City Infrastructure, Joanne Rigby, who retires after more than 20 years of dedicated service to our community;
2. Acknowledges Executive Director Rigby's many contributions, including:
  - i Serving the City of Newcastle for more than 20 years, joining CN as a civil project officer within the stormwater team and working her way up to retire as Executive Director City Infrastructure;
  - ii Many technical achievements and delivery of numerous complex infrastructure projects as an engineer, which will have lasting impact for our City, notably Joanne's design of Stage 2 of The Bathers Way coastal walk;
  - iii Leading the immense effort by City of Newcastle staff to develop a long-term plan to manage erosion along Stockton's coastline. A significant achievement, this work saw Newcastle become the first Council in NSW to achieve Ministerial approval of a coastal management program under new legislation;
  - iv In 2019, being shortlisted in the Minister's awards for women in local government;
  - v In 2021, attaining Master of Business Administration with distinction at the University of Newcastle;

- vi Breaking gender stereotypes and inspiring others in the fields of assets, engineering, and project management; and throughout her career being a mentor to many women in 'traditional male roles'; and
  - vii Leading the delivery of successive record capital works programs for our City.
3. Extends its sincere gratitude to Joanne for her hard work and dedication to the City of Newcastle and our residents and wishes her all the very best in retirement.

Councillors Adamczyk and Clausen arrived at the meeting in person during discussion of the Lord Mayoral Minute.

The motion moved by the Lord Mayor was put to the meeting.

**Carried  
unanimously**

## **7.2. SISTER CITIES PROGRAM & REGIONAL PARTNERSHIPS**

### **MOTION**

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1. Notes its current adopted Sister City relationships with:
  - a. Ube City, Yamaguchi Prefecture, Japan;
  - b. Arcadia City, California, United States
  - c. Newcastle-Upon-Tyne, Northumberland, United Kingdom
  - d. Dubbo City Council, NSW, Australia.
2. Notes that requests have been received to enter similar relationships with both Berrigan Shire Council and Resen of North Macedonia.
3. Acknowledges the aim of such relationships is to promote and encourage friendship and cooperation between Local Governments, business leaders and the wider community, in addition to facilitating cultural exchange programs and economic development.
4. Develops a Council policy in regard to prospective sister city relationships, including, but not limited to, the following objectives, criteria and process for adoption:
  - a. **OBJECTIVES OF SISTER CITY RELATIONSHIPS**
    - i. Extend the hand of friendship nationally and internationally on a person-to-person basis, utilizing the resources of local government;
    - ii. Perpetuate an understanding between people at all levels and different countries and cultures;
    - iii. Bring together like-minded interest groups of each city;

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- iv. Provide a forum for the exchange of sister city experiences;
  - v. Promote knowledge and understanding and extend the level of contacts through all sectors of the community;
  - vi. Develop economic, trade, cultural, educational and other beneficial exchanges.
- b. CRITERIA FOR CONSIDERATION OF PROSPECTIVE CITIES
- i. That there exists significant historical, cultural, social or geographic similarities between Newcastle and the prospective city;
  - ii. That the prospective city is being governed on a democratic basis;
  - iii. That the prospective city has a positive human rights record;
  - iv. That the establishment of the proposed relationship will benefit specific strategic, national and/or regional interests;
  - v. That there exists significant community support for the proposed relationship;
  - vi. That any prospective international city relationship does not raise concerns with the Department of Foreign Affairs & Trade, who shall be notified of any adopted international relationship;
  - vii. That sufficient funding is available for the administration of the relationship.
- c. PROCESS FOR ACCEPTANCE
- i. That a report be presented to the elected council with a recommendation based upon the abovementioned objectives and criteria;
  - ii. That acceptance or rejection of the proposed city relationship by a majority vote of the elected council;
  - iii. Notification of council's decision will be made to the prospective council by the City of Newcastle.

**Carried  
unanimously**

### **7.3. CITY OF NEWCASTLE WORLD CUP LIVE SITE**

#### **MOTION**

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1. Congratulates Novocastrians who braved a cold Winter's night last Thursday to attend the Newcastle Live Site hosted at Wheeler Place, to help cheer the Matildas to a 1-0 victory against the Republic of Ireland in their opening match of the World Cup;
2. Appreciates the support of the Matildas Active Support group and Matildas Alumni Renaye Iserief (#26), Shelley Youman (#95) and Trae McGovern (#102) for joining us to help promote the Newcastle Live Site at Wheeler Place;

3. Thanks our charity partner *Got Your Back Sista* and their wonderful volunteers for holding a community barbecue at our Live Site to raise funds towards combatting domestic and family violence;
4. Notes that the Matildas take on Nigeria this Thursday (27 July 2023), followed by Canada on Monday, 31 July 2023, with all the action kicking off at the Live Site from 7pm, with food, drinks and festivities available prior to kick-off;
5. Encourages Novocastrians to join with fellow supporters at the Newcastle Live Site to cheer the Matildas into the Round of 16, and into the finals of the World Cup.

**Carried  
unanimously**

#### **7.4. SUPPORTING NRLW STATE OF ORIGIN IN NEWCASTLE**

##### **MOTION**

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1. Acknowledges the great success of the NRL Women's State of Origin 2023 series, with a record breaking 18,250 people attending the decider in Townsville, Queensland;
2. Notes that City of Newcastle has joined with City of Townsville to advocate for a permanent share of Women's State of Origin matches between the rugby league heartlands of Newcastle and Townsville;
3. Acknowledges the support of Venues NSW and McDonald Jones Stadium, who believe that Newcastle is the right location to host NRLW State of Origin in 2024 and beyond;
4. Continues to join City of Townsville, Venues NSW and McDonald Jones Stadium to advocate to the ARL Commission for Newcastle as the rightful New South Wales host city for WNRL State of Origin.

**Carried**

#### **7.5. EV KERBSIDE CHARGING GRANTS**

##### **MOTION**

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1. Notes that in December 2022, through a partnership with Ausgrid and electric vehicle (EV) infrastructure provider EVX, Newcastle became home to Australia's first power pole mounted EV charger, building on our track record of embracing emerging clean energy technology;

2. Continues to help support our community's transition to EVs with the ongoing development of a council-owned public EV charging network, which currently includes seven chargers installed across four sites, providing 11 public charging bays;
3. Welcomes the announcement from the Minister for Energy and Climate Change, the Hon. Penny Sharpe MLC, that the NSW Government has made \$3 million available for the installation of at least 500 EV chargers at kerbside locations throughout NSW, noting that the Newcastle Local Government Area is eligible to apply;
4. Applies for a grant through the NSW Government's EV Kerbside Charging Grants program, following the identification of additional key locations throughout the Newcastle LGA that would assist in the uptake of electric vehicles.

**Carried  
unanimously**

## **8. REPORTS**

### **8.6. TENDER REPORT – MINOR CIVIL WORKS – CONTRACT NO. 2023/122T**

#### **MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

That Council:

1. Accept the following five tenders in line with the rates and charges offered by each tenderer for Minor Civil Works for Contract No.2023/122T:
  - a. All Kerbs & Concrete Pty Ltd,
  - b. Bolla Contracting Pty Ltd,
  - c. Dannenberg Civil Pty Ltd,
  - d. Lawcon Constructions Pty Ltd, and
  - e. Spero Civil Pty Ltd.
2. The confidential attachments relating to the matters specified in s10A(2)(d) of the *Local Government Act 1993* be treated as confidential and remain confidential until the Chief Executive Officer determines otherwise.

**Carried  
unanimously**

### **8.7. TENDER REPORT – BIENNIAL SUPPLY OF TRAFFIC MANAGEMENT SERVICES – CONTRACT NO. 2023/121T**

#### **MOTION**

Moved by Cr Barrie, seconded by Cr Wark

That Council:

1. Accepts the 17 tenders stated in **Attachment B** in line with the rates and charges offered by each tenderer for Biennial Supply of Traffic Management Services for Contract No. 2023/121T.
2. The confidential attachments relating to the matters specified in s10A(2)(d) of the *Local Government Act 1993* be treated as confidential and remain confidential until the Chief Executive Officer determines otherwise.

**Carried  
unanimously**

## **8.1. PUBLIC EXHIBITION OF DRAFT ENVIRONMENT STRATEGY**

### **MOTION**

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

That Council:

1. Move into Committee to receive a briefing on the draft Newcastle Environment Strategy.
2. Places the draft Newcastle Environment Strategy 2023 at **Attachment A** on public exhibition for 28 days.
3. Receives a report back following the public exhibition period.

### **PROCEDURAL MOTION**

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

That items 1, 2 and 3 be dealt with in seriatim.

**Carried**

## **ITEM 1**

### **MOTION**

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

That Council:

1. Move into Committee to receive a briefing on the draft Newcastle Environment Strategy.

**Carried**

Council moved into Committee and Marnie Kikken, Executive Manager Environment and Sustainability and Kristy Anderson, Senior Environmental Strategist provided a briefing to Council on the Draft Environment Strategy.



## **PROCEDURAL MOTION**

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

That Council move out of Committee.

**Carried  
unanimously**

## **ITEM 2**

### **MOTION**

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

2. Places the draft Newcastle Environment Strategy 2023 at **Attachment A** on public exhibition for 28 days.

**Carried**

## **ITEM 3**

### **MOTION**

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

3. Receives a report back following the public exhibition period.

**Carried**

## **8.2. ADOPTION OF SOCIAL STRATEGY**

### **MOTION**

Moved by Cr Wood, seconded by Cr Duncan

That Council:

1. Adopts the Social Strategy 2030 at **Attachment A**.
2. Receives the Social Strategy – Public Exhibition Engagement Report at **Attachment B**.

**Carried  
unanimously**

## **8.3. PUBLIC ART REFERENCE GROUP (PARG) ANNUAL REPORT**

### **MOTION**

Moved by Cr Duncan, seconded by Cr Winney-Baartz

That Council:

1. Receives the Public Art Reference Group Annual Report 2022 as at **Attachment A**.

**Carried  
unanimously**

#### 8.4. OUTCOME OF NSW CIVIL AND ADMINISTRATIVE TRIBUNAL HEARING EXECUTIVE DIRECTOR, LOCAL GOVERNMENT UNDER DELEGATION FROM THE SECRETARY, DEPARTMENT OF PLANNING AND INDUSTRY V ROBINSON (NO 2) [2020] NSWCATOD

##### MOTION

Moved by Cr Clausen, seconded by Cr Duncan

That Council:

1. Notes the decision of the NSW Civil and Administrative Tribunal's regarding former Councillor Allan Robinson dated 13 June 2023 in the matter [Executive Director, Local Government under delegation from the Secretary, Department of Planning and Industry v Robinson (No 2) [2023] NSWCATOD 81]:
  - a. *Pursuant to s 482A(2)(c1) the respondent is disqualified from holding civic office for a period of two years from the date of this order.*

As the time was nearing 10.00pm, Councillor Clausen moved the following procedural motion.

##### PROCEDURAL MOTION

Moved by Cr Clausen, seconded by Cr Richardson

To extend the meeting until conclusion of business.

**Carried**

The motion moved by Councillor Clausen and seconded by Councillor Duncan was put to the meeting.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

**Against the Motion:** Councillor Barrie.

**Carried**

#### 8.5. PUBLIC EXHIBITION OF THROSBY, STYX AND COTTAGE CREEKS FLOOD STUDY

##### MOTION

Moved by Cr Richardson, seconded by Cr McCabe

That Council:

1. Places the draft Throsby, Styx and Cottage Creeks Flood Study (Rhelm, 2023), at **Attachment A** on public exhibition for 28 days.
2. Receives a report back following the public exhibition period.

**Carried  
unanimously**

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## **8.8. TENDER REPORT - NATURAL AREAS REHABILITATION TENDER PANEL – 2023/091T**

### **MOTION**

Moved by Cr Adamczyk, seconded by Cr Mackenzie

1. Council accepts the tenders of:
  - a. Terra Defensor
  - b. Litoria Ecological Restoration Services Pty Ltd
  - c. Traditional Aussie Gardens
  - d. Toolijooa Pty Ltd
  - e. Trees in Newcastle

thus, establishing a panel of suppliers for the provision of natural areas rehabilitation services, with an estimated cost of \$1,200,000 (excluding GST) over the term of contract number 2023/091T, with panellists engaged based on cost, as determined by the tendered service rates, availability to provide the works within required timeframes and ongoing performance.

2. The confidential attachments relating to the matters specified in s10A(2)(d) of the *Local Government Act 1993* be treated as confidential and remain confidential until the Chief Executive Officer determines otherwise.

**Carried**

## **9. NOTICES OF MOTION**

### **9.1. ADOPTION OF LIVEABLE HOUSING DESIGN TO IMPROVE THE ADAPTABILITY AND ACCESSIBILITY OF NEW RESIDENTIAL DEVELOPMENT**

#### **MOTION**

Moved by Cr Wood, seconded by Cr Adamczyk

That City of Newcastle:

#### **PART A**

Calls upon the NSW Labor Government to:

1. Adopt the Liveable Housing Design Standards (silver level) introduced into the National Construction Code in 2022, joining all states and territories (except WA) who have already adopted the new minimum standards.
2. Amend the 2023 NSW Land and Housing Corporation Design Requirements so that the Platinum Level Liveable Housing Design Guidelines are mandatory for all new social housing. This includes all public housing, community housing and housing owned or managed by the Aboriginal Housing Office.
3. Amend planning instruments and laws to mandate that all new build community housing and affordable housing, where the property owner benefits from any

form of financial assistance or other benefit (such as height /FSR exemptions) provided directly or indirectly by the NSW government or a local council, must incorporate the Platinum Level Liveable Housing Guidelines.

4. Include in the 2023-24 Action Plan for the NSW Housing Strategy Housing 2041:
  - a. Targets to ensure that the implementation of the Platinum Level Liveable Housing Guidelines in new public, social and community housing, as well as affordable housing, occurs at the same time as the rollout of state and Commonwealth funding;
  - b. Support for local government in undertaking reviews of their DCP and introducing Platinum Level Liveable Housing Design Guidelines;
  - c. Promotion of government leadership in mandating the Platinum Level Liveable Housing Guidelines in public, social, community and affordable housing;
  - d. Development of a communication strategy which will explain the benefits of improved housing accessibility to the community and industry.

## **PART B**

Writes to the Minister for Housing Rose Jackson MLC and the Minister for Planning Paul Scully MP, within 28 days.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Richardson, Wark, Winney-Baartz and Wood.

**Against the Motion:** Councillor Pull.

**Carried**

## **9.2. NEWCASTLE OCEAN BATHS AND CANOE POOL - STATE HERITAGE LISTING**

### **MOTION**

Moved by Cr Church, seconded by Cr Mackenzie

1. Notes that the Newcastle Ocean Baths are now more than 100 years old, having first opened in 1922 and remain a significant landmark and popular destination for swimmers and tourists.
2. Notes that the Newcastle Ocean Baths are listed in Schedule 5 of the Newcastle Local Environmental Plan (NLEP) 2012 as a heritage item of local heritage significance (item I489) and located within the Newcastle East Heritage Conservation Area.
3. Notes that the Newcastle Ocean Baths are currently closed due to major refurbishment works.
4. Notes that community consultation has begun on stage 2 of the project which will include an upgrade to the facade, change facilities and kiosk.

5. Notes that on 23 November 2021, the Lord Mayor wrote to the then Minister Don Harwin requesting assistance with registration on the SHR, noting, " it would be timely to list the Newcastle Ocean Baths on the SHR to ensure its ongoing preservation and protection for our community." ATTACHMENT A
6. Notes that in a preliminary assessment, Heritage NSW believes the Newcastle Ocean Baths and Canoe Pool may meet the criteria for listing as an item of State Heritage significance and that these are listed in a briefing document from the Department of Planning and Environment released under GIPPA -DPE - 22-2245 (Record #8B) ATTACHMENT B.
7. Notes that a prerequisite for any State Heritage nomination is a successful notice of motion.
8. Proceeds immediately to nominate the Newcastle Ocean Baths to the State Heritage Register.
9. Not finalise contracts for stage 2 restoration until Newcastle Ocean Baths and Canoe Pool is listed on the State Heritage Register.

In moving the amendment, Councillor Clausen stated he was moving the recommendation of the Director's Comment as outlined in the business papers.

## **AMENDMENT**

Moved by Cr Clausen, seconded by Cr Duncan

That Council:

1. Notes that the Newcastle Ocean Baths is owned by the NSW Government on Crown Land. City of Newcastle has prudently invested in upgrading the Baths to protect the facility for generations to come.
2. Notes that City of Newcastle has ensured protection of the Baths as a locally listed heritage item, protected under the *NSW Environmental Planning and Assessment Act 1979* via the *Newcastle Local Environmental Plan 2012*.
3. Notes all works being undertaken at the Baths are assessed against strict heritage requirements. The robust nature of these assessments and protection plans was confirmed by the detailed assessment undertaken when the Heritage Council of NSW previously considered and refused an application for an Interim Heritage Order by the Friends of Newcastle Ocean Baths.
4. Notes the Council's previous unanimous resolution in February 2022 to lobby the NSW Government for the Newcastle Ocean Baths to be listed on the State Heritage Register.
5. Reflecting the significant ongoing cultural heritage value of the Baths to the Newcastle community, City of Newcastle writes to the NSW Government reiterating its previous correspondence to the former Minister for Heritage regarding the listing of the site on the State Heritage Register.

Councillor Pull asked the mover and seconder to consider removing point 9 from the substantive motion.

Councillors Church and Mackenzie accepted Councillor Pull's proposed change to the substantive motion.

The amendment moved by Councillor Clausen and seconded by Councillor Duncan, parts 1 – 5, was put to the meeting.

**For the Amendment:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Clausen, Duncan, Richardson, Winney-Baartz and Wood.

**Against the Amendment:** Councillors Barrie, Church, Mackenzie, McCabe, Pull and Wark.

**Carried**

The Lord Mayor stated the amendment became the motion.

The motion moved by Councillors Church and Mackenzie, as amended by Councillors Clausen and Duncan, was put to the meeting.

**Carried**

## **LATE ITEMS OF BUSINESS**

### **8.10. INVESTIGATION REQUEST**

The Lord Mayor advised she had been given notice of a late item of business regarding an investigation report and requested Councillor Duncan to outline the reasons for Council to consider the late item of business.

Councillor Duncan advised that due to recent intense public scrutiny, various allegations and insinuations which had been culminating that Council should call for an independent investigation.

The Lord Mayor ruled that the matter of "Investigation Report" be heard as a late item of business in accordance with the Code of Meeting Practice and the reasons outlined by Councillor Duncan and asked Councillor Duncan to move the motion.

## **MOTION**

Moved by Cr Duncan, seconded by Cr Adamczyk

That Council:

1. Notes media reports that the Minister for Local Government have referred a complaint to City of Newcastle to be assessed in accordance with the NSW Model Code of Conduct and CN's Code of Conduct for Staff (Newcastle Herald, 25 July);
2. Notes media comments from the City of Newcastle CEO welcoming an investigation (NBN News, 23 July);

3. Notes media comments from S.Hornery MP requesting the Minister for Local Government investigate (Herald 24 July 23) then a subsequent different request for Council to undertake an independent investigate (Herald online 25 July 23);
4. That the Elected Council supports an independent investigation in accordance with any Ministerial directions, the Local Government Act, Code of Conduct for Staff and the Code of Conduct for Members of the Legislative Assembly. Noting the process is clear in the policy and will be undertaken by an independent conduct reviewer ([Code of Conduct policy attached](#));
5. In addition to the concerns raised by the Member and Minister, the scope of the investigation also examines how confidential electoral roll details about Council staff and their friends and family came into the possession of journalists, noting that it is a serious Commonwealth and NSW offense, carrying a penalty exceeding \$100,000 and consider the impact of the breach of privacy on Council staff, their families and friends, including the publication of personal home addresses. Noting this has occurred previously under the direction of S Hornery MP, with charges previously laid (and then withdrawn) by the Electoral Commissioner ([Herald article attached](#));
6. Notes that this investigations' most prominent public supporter is S Hornery MP who has waged a campaign against Councillors via the media for nearly a year now, likely in order to influence internal Labor Party disputes, Council preselection's and the decision making of Councillors on government tender processes;
7. Notes the importance of due process and procedural fairness, and the requirements of the City of Newcastle's Code of Conduct, including at Clause 9.9-9.12:
  - 9.9 *All allegations of breaches of this code must be dealt with under and in accordance with the Procedures*
  - 9.10 *You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.*
  - 9.11 *You must not make allegations about, or disclose information about, suspected breaches of this code at Council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.*
  - 9.12 *You must not disclose information about a complaint you have made alleging a breach of this code.*
8. Reiterates its motion of 27 June 2023, regarding inappropriate influence on Council's pool operations decision making process, which has been followed by personal attacks on the CEO and his friends:

***Motion adopted: 27 June 2023***

***That Council:***

- i. Notes that concerns were raised directly with the relevant NSW Member of Parliament as early as 1 September 2022 regarding the inappropriateness of the Member's demands, and that they were*

*creating circumstances to manipulate the process and cause conflicts of interest for Councillors. Despite repeated warnings, the inappropriate contact continued.*

- ii. Notes that the Member, while previously a Councillor, voted in support of a Pool Service Delivery Model which foreshadowed the closure of three of Newcastle's five public pools, and supported multiple resolutions that partially outsourced operations at Lambton Pool*
  - iii. Notes that City of Newcastle did not receive any state funding commitments to assist it in upgrading its pools, despite \$310 million being committed to public pools elsewhere in NSW during the recent election*
  - iv. Despite this, notes the leadership of this elected council in unanimously adopting a 20 Year Inland Pool Strategy which commits the City to protecting and enhancing all five of the City's public pools now and into the future*
  - v. Notes that the Member has repeatedly been offered formal meetings and briefings on pools and the pool strategy, but has declined these requests, in favour of direct instruction to Labor and non-Labor Councillors. Opportunities to meet with the CEO were ignored as recently as 9 June 2023*
  - vi. Notes that the misinformed position of the Member is inconsistent with their own decisions, and that of the Government they represent. It is one thing to baselessly attack CN, but quite another to take no action to reverse the loss of local jobs and services under the State's direct area of responsibility.*
  - vii. Notes the importance of a strong Code of Conduct, with clear conflict of interest management procedures to ensure due process and probity in Government decision making, and that conflicts of interest cannot be ignored for convenience or political outcomes;*
  - viii. Reiterates the previous comprehensive declarations made by impacted Councillors, and subsequent correspondence from the corruption prevention division of the NSW ICAC which confirms the appropriate and 'pragmatic' way in which Councillors managed the conflict of interest to prevent undue influence on a government tender process*
  - ix. Expresses disappointment with the damaging statements made under Parliamentary Privilege in the NSW Parliament regarding this issue, including on the day the decision was due to be made by Councillors, and the categorically incorrect claims about public health and safety, and the inappropriateness of recklessly raising these false rumours in Parliament without seeking clarification first from CN or NSW Health.*
9. Congratulates Minister Hoenig for exemplary standards and leadership, whilst a Mayor himself in 2010, faced near identical circumstances with inappropriate influence on a Council pools tender. Minister Hoenig's contemporaneous response is attached and available:

***Sep 28, 2010 - Mayor Ron Hoenig, City of Botany Bay***

***New Learn to Swim Programs at Pool***



*Last week I received emails from about twenty or so residents in relation to Council's decision to call for Expressions of Interest for the Learn to Swim program at the City of Botany Bay Municipal Pool and complaining about Council's decision to award the right to conduct such program to Pamstream Aquatic and Leisure Management.*

*I was a little perplexed by so many people writing to me on behalf of only one applicant for an Expression of Interest, suggesting somehow I had some right to interfere in a public tender process. Never in the entire time in office had I ever been requested by so many people to do something, that had I endeavoured to do, would have been so improper, it could have been considered to be corrupt conduct.*

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*Ratepayers and residents would expect council, as is required, to work through a proper process and to consider a number of factors and apply weightings to those factors. To do otherwise would be improper. As a public authority Council must ensure that the proper return on ratepayer's assets is a primary responsibility. Not to do so would be an abuse of that trust. Council has not worked so hard, and succeed to be one of the very few council's that is DEBT FREE by not properly managing ratepayers assets.*

*This Council cannot not make a decision solely based on an orchestrated campaign from fee paying customers of a competing applicant who had submitted an Expression of Interest, and who would gain financially from such a determination. Nor could Council officers be influenced by a media campaign from a group of residents threatening to take their custom elsewhere. Again, to influence the independent determinations of the Expression of Interest, had the council been so influenced, would have been improper and, could be regarded as corrupt conduct. As would any attempt by any elected representative to interfere in that process.*

*Council's decision does not relate to any swim club that may wish book or use the facility. The facility remains to be used and hired in accordance with Council's policies. This decision only affects the financial interests of those who submitted Expressions of Interest. Anyone has the right to attend Learn to Swim classes or swimming clubs at either Council's facility or any other facility where similar services are*

available. They do not have the right to ask me do to do something unlawful or improper.

<http://botanybaycitycouncil.blogspot.com/2010/09/new-learn-to-swim-programs-at-pool.html>

10. Notes Sonia Hornery MP is subject to the Code of Conduct for Members of the NSW Legislative Assembly ([attached](#)). The code includes provision regarding the proper exercise of Power – specifically 2(c) " *A Member must not knowingly and improperly use his or her influence as a Member to seek to affect a decision by a public official including a Minister, public sector employee, statutory officer or officer of a public body...*". Noting the above, requests that the Minister takes steps to refer Ms Hornery's conduct regarding City of Newcastle processes to the NSW Parliament's Independent Complaints Officer. Further, that these actions be included within the scope of CN's independent investigation.

#### **PROCEDURAL MOTION**

Moved by Cr Pull, seconded by Cr Adamczyk

Council allow a 5 minute recess to consider the attachments to the motion.

**Carried  
unanimously**

Council adjourned at 11.30pm and reconvened at 11.36pm.

#### **PROCEDURAL MOTION**

Moved by Cr Pull, seconded by Cr Church

That the motion be dealt with in seriatim.

**Carried**

### **ITEM 1**

#### **MOTION**

Moved by Cr Duncan, seconded by Cr Adamczyk

That Council:

1. Notes media reports that the Minister for Local Government have referred a complaint to City of Newcastle to be assessed in accordance with the NSW Model Code of Conduct and CN's Code of Conduct for Staff (Newcastle Herald, 25 July);

**Carried**

### **ITEM 2**

#### **MOTION**

Moved by Cr Duncan, seconded by Cr Adamczyk

That Council:

2. Notes media comments from the City of Newcastle CEO welcoming an investigation (NBN News, 23 July);

**Carried**

### **ITEM 3**

#### **MOTION**

Moved by Cr Duncan, seconded by Cr Adamczyk

That Council:

3. Notes media comments from S.Hornery MP requesting the Minister for Local Government investigate (Herald 24 July 23) then a subsequent different request for Council to undertake an independent investigate (Herald online 25 July 23);

**Carried**

### **ITEM 4**

#### **MOTION**

Moved by Cr Duncan, seconded by Cr Adamczyk

That Council:

4. That the Elected Council supports an independent investigation in accordance with any Ministerial directions, the Local Government Act, Code of Conduct for Staff and the Code of Conduct for Members of the Legislative Assembly. Noting the process is clear in the policy and will be undertaken by an independent conduct reviewer ([Code of Conduct policy attached](#));

#### **For the motion:**

Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

**Carried**

### **ITEM 5**

#### **MOTION**

Moved by Cr Duncan, seconded by Cr Adamczyk

That Council:

5. In addition to the concerns raised by the Member and Minister, the scope of the investigation also examines how confidential electoral roll details about Council staff and their friends and family came into the possession of journalists, noting that it is a serious Commonwealth and NSW offense, carrying a penalty exceeding \$100,000 and consider the impact of the breach of privacy on Council staff, their families and friends, including the publication of personal home addresses. Noting this has occurred previously under the direction of S

Hornery MP, with charges previously laid (and then withdrawn) by the Electoral Commissioner ([Herald article attached](#));

**For the motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Clausen, Duncan, Richardson, Winney-Baartz and Wood.

**Against the motion:** Councillors Barrie, Church, Mackenzie, McCabe, Pull and Wark.

**Carried**

## ITEM 6

### MOTION

Moved by Cr Duncan, seconded by Cr Adamczyk

That Council:

6. Notes that this investigations' most prominent public supporter is S Hornery MP who has waged a campaign against Councillors via the media for nearly a year now, likely in order to influence internal Labor Party disputes, Council preselection's and the decision making of Councillors on government tender processes;

**For the motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Clausen, Duncan, Richardson, Winney-Baartz and Wood.

**Against the motion::** Councillors Barrie, Church, Mackenzie, McCabe, Pull and Wark.

**Carried**

## ITEM 7

### MOTION

Moved by Cr Duncan, seconded by Cr Adamczyk

That Council:

7. Notes the importance of due process and procedural fairness, and the requirements of the City of Newcastle's Code of Conduct, including at Clause 9.9-9.12:

*9.9 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures*

*9.10 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.*

*9.11 You must not make allegations about, or disclose information about, suspected breaches of this code at Council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.*

9.13 9.12 - You must not disclose information about a complaint you have made alleging a breach of this code.

**For the motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

**Against the motion:** Nil.

**Carried**

## **ITEM 8**

### **MOTION**

Moved by Cr Duncan, seconded by Cr Adamczyk

That Council:

8. Reiterates its motion of 27 June 2023, regarding inappropriate influence on Council's pool operations decision making process, which has been followed by personal attacks on the CEO and his friends:

#### ***Motion adopted: 27 June 2023***

*That Council:*

- i. Notes that concerns were raised directly with the relevant NSW Member of Parliament as early as 1 September 2022 regarding the inappropriateness of the Member's demands, and that they were creating circumstances to manipulate the process and cause conflicts of interest for Councillors. Despite repeated warnings, the inappropriate contact continued.*
- ii. Notes that the Member, while previously a Councillor, voted in support of a Pool Service Delivery Model which foreshadowed the closure of three of Newcastle's five public pools, and supported multiple resolutions that partially outsourced operations at Lambton Pool.*
- iii. Notes that City of Newcastle did not receive any state funding commitments to assist it in upgrading its pools, despite \$310 million being committed to public pools elsewhere in NSW during the recent election*
- iv. Despite this, notes the leadership of this elected council in unanimously adopting a 20 Year Inland Pool Strategy which commits the City to protecting and enhancing all five of the City's public pools now and into the future.*
- v. Notes that the Member has repeatedly been offered formal meetings and briefings on pools and the pool strategy, but has declined these requests, in favour of direct instruction to Labor and non-Labor Councillors. Opportunities to meet with the CEO were ignored as recently as 9 June 2023.*
- vi. Notes that the misinformed position of the Member is inconsistent with their own decisions, and that of the Government they represent. It is one thing to baselessly attack CN, but quite another to take no action to*

*reverse the loss of local jobs and services under the State's direct area of responsibility.*

- vii. *Notes the importance of a strong Code of Conduct, with clear conflict of interest management procedures to ensure due process and probity in Government decision making, and that conflicts of interest cannot be ignored for convenience or political outcomes;*
- viii. *Reiterates the previous comprehensive declarations made by impacted Councillors, and subsequent correspondence from the corruption prevention division of the NSW ICAC which confirms the appropriate and 'pragmatic' way in which Councillors managed the conflict of interest to prevent undue influence on a government tender process.*
- ix. *Expresses disappointment with the damaging statements made under Parliamentary Privilege in the NSW Parliament regarding this issue, including on the day the decision was due to be made by Councillors, and the categorically incorrect claims about public health and safety, and the inappropriateness of recklessly raising these false rumours in Parliament without seeking clarification first from CN or NSW Health.*

**For the motion:**

Lord Mayor, Cr Nelmes and Councillors Adamczyk, Clausen, Duncan, Richardson, Winney-Baartz and Wood.

**Against the motion:**

Councillors Barrie, Church, Mackenzie, McCabe, Pull and Wark.

**Carried**

**ITEM 9**

**MOTION**

Moved by Cr Duncan, seconded by Cr Adamczyk

That Council:

- 9. Congratulates Minister Hoenig for exemplary standards and leadership, whilst a Mayor himself in 2010, faced near identical circumstances with inappropriate influence on a Council pools tender. Minister Hoenig's contemporaneous response is attached and available:

***Sep 28, 2010 - Mayor Ron Hoenig, City of Botany Bay***

***New Learn to Swim Programs at Pool***

*Last week I received emails from about twenty or so residents in relation to Council's decision to call for Expressions of Interest for the Learn to Swim program at the City of Botany Bay Municipal Pool and complaining about Council's decision to award the right to conduct such program to Pamstream Aquatic and Leisure Management.*

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<http://botanybaycitycouncil.blogspot.com/2010/09/new-learn-to-swim-programs-at-pool.html>

**For the motion:**

Lord Mayor, Cr Nelmes and Councillors Adamczyk, Clausen, Duncan, Richardson, Winney-Baartz and Wood.

**Against the motion:**

Councillors Barrie, Church, Mackenzie, McCabe, Pull and Wark.

**Carried**

**ITEM 10**

**MOTION**

Moved by Cr Duncan, seconded by Cr Adamczyk

That Council:

10. Notes Sonia Hornery MP is subject to the Code of Conduct for Members of the NSW Legislative Assembly ([attached](#)). The code includes provision regarding the proper exercise of Power – specifically 2(c) " *A Member must not knowingly and improperly use his or her influence as a Member to seek to affect a decision by a public official including a Minister, public sector employee, statutory officer or officer of a public body...*". Noting the above, requests that the Minister takes steps to refer Ms Hornery's conduct regarding City of Newcastle processes to the NSW Parliament's Independent Complaints Officer. Further, that these actions be included within the scope of CN's independent investigation.

**For the motion:**

Lord Mayor, Cr Nelmes and Councillors Adamczyk, Clausen, Duncan, Richardson, Winney-Baartz and Wood.

**Against the motion:**

Councillors Barrie, Church, Mackenzie, McCabe, Pull and Wark.

**Carried**

At the conclusion of the meeting the Chief Executive Officer read the resolutions of the partial confidential reports (refer resolutions at 8.6, 8.7 and 8.9).

**The meeting concluded at 12.05am.  
Wednesday 26 July 2023**