

CITY OF NEWCASTLE

Minutes of the Ordinary Council Meeting held via video conferencing platform Zoom on Tuesday 28 April 2020 at 6.15pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, J Dunn (*retired 7.21pm*), K Elliott, J Mackenzie, A Robinson, A Rufo, E White and P Winney-Baartz.

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), K Liddell (Director Infrastructure and Property), F Leatham (Director People and Culture), A Jones (Interim Director City Wide Services), E Kolatchew (Manager Legal, Complaints Coordinator), H Sexton (Acting Manager Legal), S Moore (Acting Chief Financial Officer), M Bisson (Manager Regulatory, Planning and Assessment), J Rigby (Manager Assets and Projects), T Uren (Waste Services Manager - *Confidential Item 5*), L Duffy (Manager City Wide Services - *Confidential Item 5*), A Ball (Project Manager - *Confidential Item 5*), I Challis (Contracts Coordinator - *Confidential Item 5*), K Sullivan (Council Services/Minutes), A Knowles (Council Services/Meeting Support) and D Silcock (Information Technology Support).

APOLOGIES

MOTION

Moved by Cr Elliott, seconded by Cr Winney-Baartz

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

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Elliott

Councillor Elliott declared a significant non-pecuniary interest in Confidential Item 6 - Code of Conduct Matter.

Councillor Duncan

Councillor Duncan declared a significant non-pecuniary interest in Confidential Item 6 - Code of Conduct Matter stating that she would not be taking part in the conversation or discussion on that item.

Councillor Clausen

Councillor Clausen declared a less than significant non-pecuniary interest in Confidential Item 5 - Tender - Organics Processing Facility 2019/144T, stating that he made references in a workshop on this item last week that there were some conversations relating to his employer. He stated that he was not directly a party to those conversations and was declaring the interest for the public record.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - PUBLIC VOICE COMMITTEE MEETING 17 MARCH 2020
MINUTES - BRIEFING COMMITTEE MEETING MINUTES 17 MARCH 2020
MINUTES - ORDINARY COUNCIL MEETING 24 MARCH 2020

MOTION

Moved by Cr Clausen, seconded by Cr Duncan

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

Carried

LORD MAYORAL MINUTE

ITEM-5 LMM 28/04/20 - PROTECTING CITY OF NEWCASTLE JOBS

MOTION

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

- 1 Notes that with more than 1,200 staff, City of Newcastle is a significant local employer of a highly valued, diverse and expert staff, who ensure a high level of service to the community;
- 2 Thanks City of Newcastle staff for continuing to deliver for our community through the COVID-19 global pandemic, which has brought much uncertainty and disruption to many aspects of our day-to-day lives;
- 3 Commits to doing all that we can, in close consultation with the United Services Union, to protect our workers from job losses being experienced across local government in Australia;
- 4 Commends the United Services Union, for their advocacy to protect Council jobs across New South Wales, particularly those jobs in rural and regional areas where local councils can often be the largest employers and are also crucial to supporting a wide range of local businesses in these communities;
- 5 Notes that through our Community and Economic Resilience Response, City of Newcastle will invest millions in initiatives aimed at supporting local people, businesses and our City of Newcastle workforce through the COVID-19 pandemic;
- 6 Notes that in the recession of the early 1990s the Federal Keating Government created the Local Government Capital Works Program which was instrumental in protecting council jobs and getting people back into work;

- 7 Raises deep concern that currently, NSW Local Government employees are not covered by the Federal Government scheme – the JobKeeper subsidy - to offer certain employers \$1,500 per fortnight to retain their employees for the next six months;
- 8 Calls on both the Federal Government and NSW Government to commit to protecting Council jobs, by ensuring that local government is included in any future COVID-19 economic survival measures introduced, noting that stimulus and investment of this kind would not only create legacy community infrastructure, but also sustain local services, employment and drive local economies;
- 9 Writes to the Prime Minister, the Hon. Scott Morrison MP, calling on the Federal Government to expand eligibility for the JobKeeper Payment, to include local government employees, as a safety net for all Council workers across the nation during the COVID-19 pandemic.

Councillor Church noted the State Government had introduced its own JobKeeper program of \$1500.00 a fortnight for local government employees and that it was running for three months. He questioned whether Council should note and commend the action but ask the State Government to consider aligning itself with the same duration as the Federal JobKeeper program.

The Lord Mayor stated she would include Councillor Church's proposal as an additional point 10.

- 10 *Notes and commends the State Government for the introduction of its own JobKeeper program of \$1500.00 a fortnight for local government employees (running for three months). In doing so, Council requests the State Government to consider aligning itself with the same duration as the Federal JobKeeper program.*

The motion, as amended, was put to the meeting.

**Carried
unanimously**

ITEM-7 LMM 28/04/20 - LGNSW - COVID-19 FINANCIAL SUPPORT

MOTION

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

- 1 Calls on the Federal Government and NSW Government to urgently deliver comprehensive and multifaceted financial support and stimulus packages to local government to enable them to continue to operate effectively and provide essential services during the COVID-19 pandemic.

- 2 Calls for the packages to include the following measures:
 - Increasing Financial Assistance Grants payments to 1% to help councils maintain essential functions and services, acknowledging the increased costs and mounting revenue losses arising from COVID-19 (and drought and bushfire where affected) as well as giving councils capacity to provide hardship assistance to businesses and residents.
 - Immediate financial assistance to support council employees, especially in early education and care.
 - Providing stimulus funding to councils for projects that will help sustain council operations and boost local economies. This could be achieved through increasing or bringing forward funding under existing funding programs or introducing new programs.
 - Increased access to TAFE, VET and other apprenticeship opportunities that council staff can undertake to address skill shortages, especially for staff in non-essential services who are unable to be redeployed.
 - Ensuring that City of Newcastle is not deemed ineligible for any future grant or stimulus funding due to our status as metropolitan or regional, given the ongoing uncertainty that exists regarding this matter between the State and Federal Governments.
- 3 Commends the NSW and Federal Governments on their stewardship during this crisis and commits to working in partnership to protect community health and sustain local economies through this crisis.
- 4 Writes to the Federal Member for Newcastle, Sharon Claydon MP, Prime Minister, the Hon. Scott Morrison MP, State Member for Newcastle, Tim Crakanthorp MP, NSW Premier the Hon. Gladys Berejiklian MP, Federal Treasurer the Hon. Josh Frydenberg MP, NSW Treasurer the Hon. Dominic Perrottet MP, NSW Local Government Minister the Hon. Shelley Hancock MP, Federal Minister for Local Government, the Hon. Mark Coultan, Federal Opposition Leader the Hon. Anthony Albanese, NSW Opposition Leader Jodi McKay MP, Federal Shadow Minister for Local Government, Jason Clare MP and NSW Shadow Minister for Local Government, Greg Warren MP to confirm their support for increased financial assistance and stimulus funding for local government to help councils maintain essential services and employment during the COVID-19 pandemic.
- 5 Endorses Local Government NSW's sector-wide campaign to obtain financial assistance, employment support and stimulus funding for the local government sector.
- 6 Advises LGNSW President Linda Scott of the passage of this Lord Mayoral Minute.

**Carried
unanimously**

ITEM-8

LMM28/04/20 - CITY OF NEWCASTLE FAST-TRACK INFRASTRUCTURE STIMULUS OPPORTUNITIES

MOTION

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:**Part A**

- 1 Notes that on Sunday 26 April 2020, NSW Treasurer, the Hon. Dominic Perrottet MP, and Minister for Local Government, the Hon. Shelley Hancock MP, announced a \$395 million economic stimulus package to safeguard council jobs, services and infrastructure;
- 2 Thanks the NSW Government for recognising the critical importance of the local government sector, as we continue to provide essential services to our communities through the COVID-19 global pandemic;
- 3 Notes that while this stimulus package is welcomed, raises some concerns regarding the structure of the package, particularly with the majority of stimulus investment coming in the form of low-cost loans tied to Fit for the Future performance, which many Councils may be ineligible for or struggle to pay back given the impact of COVID-19 on the finances of local councils. A greater debt burden will not see the local government sector emerge successfully from the COVID-19 crisis;
- 4 Seeks the support of the NSW and Federal Governments for a dedicated Local Infrastructure Stimulus program, with funding for both large scale infrastructure projects and a 'Local Government New Deal', aimed at protecting jobs by building and improving much needed rapidly deliverable, smaller scale infrastructure projects such as local roads, gutters, footpaths, playgrounds, parks, community and recreation facilities and large scale tree planting throughout the city and our suburbs.

Part B – Large Economic Stimulus projects

That City of Newcastle:

- 1 Once again, calls on the NSW Government and Federal Governments to expedite the delivery of the Catalyst Areas for Greater Newcastle projects, as identified in the Greater Newcastle Metropolitan Plan. These catalyst areas have been endorsed by the NSW Government as projects that will lead to significant jobs growth across Greater Newcastle together with immediate funding support for the following large-scale infrastructure and community support initiatives, as outline in our previously submitted City of Newcastle Budget submissions 2020/2021 (**Attachment A**):
 - Coastal Management Planning and Erosion Management, especially at Stockton Beach
 - Flood mitigation at Wallsend
 - Newcastle Airport Expansion
 - Port of Newcastle Diversification

- Hunter Sports and Entertainment Precinct
- Greater Newcastle Light Rail Expansion
- Lower Hunter Freight Corridor
- Affordable housing initiatives
- Metropolitan wide active transport (walking & cycling) improvements
- John Hunter Hospital campus upgrades
- Newcastle Art Gallery Expansion
- Local Sporting Amenity Upgrades
- Local Playground upgrades, particularly for disability inclusion
- Ferry Terminal at Wickham
- Pensioner Rate Rebates

2 Presents a number of additional, specific large-scale infrastructure projects that we have been actively seeking grant funding support for, but are yet to receive support from the NSW or Federal Government including:

- Summerhill Waste Management Centre – Organics Processing Facility
- Richmond Vale Rail Trail
- Newcastle Beach Community Facility (Stage 2 Newcastle Beach – Bathers Way)
- Junction to Merewether Cycleway
- Newcastle West Bi-directional Cycleway – West End State 2, Phase 1
- Newcastle East End Streetscape Upgrades and Cycleway – Stage 1, Phase 1
- Foreshore Park All Abilities Playground
- Western Corridor Active Hub
- Local Centres Program including:
 - Joslin Street, Kotara – \$2.2 million;
 - Llewellyn Street, Merewether - \$3 million;
 - Shortland - \$500,000; and
 - Stockton (Stage 1 Queen Street to King Street) - \$1.6 million.

3 Notes that following a request from the Deputy Prime Minister, the Hon. Michael McCormack MP, CN has submitted a list of *Local Government Land Transport Infrastructure Projects: Potential for Construction to Commence in 3-6 months (Attachment B)*, totalling more than \$62 million worth of infrastructure investment, including the following projects:

- Cowper Street Wallsend CBD roadworks and bridge culvert expansion, and flood immunity improvements;
- York Drive and Watt Street Newcastle Bathers Way - South Newcastle Beach footpath upgrade, seawall renewal, embankment and cliff stabilisation and safety improvements;
- Honeysuckle Drive Newcastle – bridge replacement and upgrade for heavy vehicles access for City Centre Revitalisation;
- Maitland Road Mayfield West at Tourle Street – pedestrian and road intersections safety improvements;
- Hunter Street Newcastle – East End Centre City Revitalisation – road, intersections and pedestrian and cycle improvements;

- Hunter Street Newcastle – East End Stage 1 - Centre City Revitalisation – road, intersections and pedestrian and cycle improvements, flood mitigation, placemaking. (9 Phase project);
 - Joslin Street Kotara – safety, road and footpath reconstruction in Local Commercial Centre;
 - Llewellyn Street Merewether – safety, road and footpath reconstruction in Local Commercial Centre;
 - Mitchell Street Stockton- safety, road and footpath reconstruction in Local Commercial Centre;
 - Allowah Street Waratah West – road reconstruction to support hospital parking and improve road, cycle and pedestrian safety;
 - Helen Street Merewether at Watkins Street – pedestrian and road intersections safety improvements;
 - Yangan Drive Beresfield – replacement of failed pavement to support freight movement and use of intelligent transport vehicles, heavy industrial transport hub and distribution estate;
 - Wentworth Street Wallsend – replacement of failed road on regular bus route;
 - Cardiff Road New Lambton Heights – replacement of failed road on high volume traffic and bus route;
 - Pebblestone Street Fletcher – replacement of failed road pavement;
 - Elizabeth Cook Drive Rankin Park – replacement of failed road pavement;
 - Enterprise Drive Beresfield – pavement replacement and strengthening in heavy industrial precinct and transport hub;
 - Yarrum Avenue Beresfield – replacement of failed pavement on collector road and regular bus route;
 - Morehead Street Lambton at Elder Street – pedestrian and road intersections safety improvements.
- 4 Writes to the Prime Minister, the Hon. Scott Morrison MP; Treasurer, the Hon. Josh Frydenberg MP; Deputy Prime Minister, the Hon. Michael McCormack MP; Federal Member for Newcastle, Sharon Claydon MP, NSW Premier, the Hon. Gladys Berejiklian MP; NSW Deputy Premier, the Hon. John Barilaro MP; NSW Treasurer, the Hon. Dominic Perrottet MP, Parliamentary Secretary for the Hunter, the Hon Catherine Cusack MLC, and the State Members for Newcastle, Wallsend and Charlestown, seeking their support for these important projects aimed at creating and retaining local jobs, and stimulating the local and broader economy.

Part C: Local Government New Deal

That City of Newcastle:

- 1 Joins with Inner West Council, through Mayor Cr Darcy Byrne, in proposing a 'Local Government New Deal', including joint local, NSW and Federal Government investment in local infrastructure renewal to generate employment across NSW and Australia;

- 2 Advises the NSW and Federal Governments that a Local Government New Deal would comprise of infrastructure renewal works to improve basic community infrastructure, such as footpaths, roads, parks and recreation facilities, which could be brought forward and expedited with the assistance of immediate NSW and Federal capital investment.

Councillor Mackenzie requested that the Broadmeadow Locomotive Depot Restoration Project be included in Part B - 2.

Councillor Church requested that Ocean Baths refurbishment also be included in Part B -2.

The Lord Mayor stated that would include both projects in Part B - 2.

- 2 *Presents a number of additional, specific large-scale infrastructure projects that we have been actively seeking grant funding support for, but are yet to receive support from the NSW or Federal Government including:*

- *Summerhill Waste Management Centre – Organics Processing Facility*
- *Richmond Vale Rail Trail*
- *Newcastle Beach Community Facility (Stage 2 Newcastle Beach – Bathers Way)*
- *Junction to Merewether Cycleway*
- *Newcastle West Bi-directional Cycleway – West End State 2, Phase 1*
- *Newcastle East End Streetscape Upgrades and Cycleway – Stage 1, Phase 1*
- *Foreshore Park All Abilities Playground*
- *Western Corridor Active Hub*
- *Local Centres Program including:*
 - *Joslin Street, Kotara – \$2.2 million;*
 - *Llewellyn Street, Merewether - \$3 million;*
 - *Shortland - \$500,000; and*
 - *Stockton (Stage 1 Queen Street to King Street) - \$1.6 million.*
 - *Broadmeadow Locomotive Depot Restoration Project*
 - *Ocean Baths refurbishment*

The motion, as amended, was put to the meeting.

**Carried
unanimously**

ITEM-6 **LMM 28/04/20 - ICLEI OCEANIA - CITIESWITHNATURE AUSTRALIA INITIATIVE**

MOTION

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

- 1 Notes our longstanding relationship with ICLEI (Local Government for Sustainability) dating back to the Pathways to Sustainability Conference held in Newcastle in 1997 and subsequently by the development of local strategies and solutions through the Cities for Climate Protection Program, the Global Covenant of Mayors for Climate and Energy and through development of practical implementation programs for Local Government in Australia and New Zealand.
- 2 Accepts ICLEI Oceania's invitation to become a Pioneer City for the new CitiesWithNature (CWN) Australia Initiative, aimed at recognising and enhancing the value of nature in and around cities across the world, noting that this initiative provides a shared platform for cities and their partners to engage and connect, working with shared commitment towards a more sustainable urban world.

**Carried
unanimously**

REPORTS BY COUNCIL OFFICERS

ITEM-18 **CCL 28/04/20 - PRACTICE NOTE: CODE OF MEETING PRACTICE**

In moving the motion, Councillor Clausen stated he was moving the alternate recommendation circulated in an all Councillor memo dated 28 April 2020.

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

That Council:

- 1 receives the Practice Note to the Code of Meeting Practice, as set out at **Attachment A**

2 adopts the following meeting schedule for May to September 2020 (inclusive)

(a) for the period May 2020 with meetings commencing at 6.00pm

Week 1 - Tuesday	Advisory Committee (Quarterly as scheduled) (if determined necessary by the Chair and Facilitator)
Week 2 – Tuesday	Extraordinary Council Meeting Councillor Workshops
Week 3 – Tuesday	Committee Meetings (as required): Public Voice Committee Briefings Committee Development Applications Committee
Week 4 – Tuesday	Ordinary Council Meeting

(b) for the period June 2020 to September 2020 with meetings commencing at 6.00pm

Week 1 - Tuesday	Advisory Committee (Quarterly as scheduled) (if determined necessary by the Chair and Facilitator)
Week 2 – Tuesday	Councillor Workshops
Week 3 – Tuesday	Committee Meetings (as required): Public Voice Committee Briefings Committee Development Applications Committee
Week 4 – Tuesday	Ordinary Council Meeting
Week 5 – Tuesday	No scheduled meetings

(c) the location of all meetings will be determined by the CEO in consultation with the Lord Mayor, having regard to all relevant public health orders, and will be either via audio-visual platform or at an appropriate CN facility in accordance with the requirements of the Local Government Act 1993.

For the Motion:

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

Against the Motion:

Councillors Church, Elliott and Rufo.

Carried

ITEM-19 **CCL 28/04/20 - ICLEI REGIONAL EXECUTIVE COMMITTEE
2021 - 2024**

MOTION

Moved by Cr Clausen, seconded by Cr Byrne

That Council:

- 1 Endorses the nomination of the Lord Mayor or delegate for the ICLEI Oceania regional executive committee.

Carried

ITEM-20 **CCL 28/04/20 - EXECUTIVE MONTHLY PERFORMANCE
REPORT**

MOTION

Moved by Cr Byrne, seconded by Cr Mackenzie

That Council:

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

Carried

NOTICES OF MOTION

ITEM-9 **NOM 28/04/20 - EXTENDED POWERS OF PLANNING
MINISTER**

Councillor Mackenzie stated that he was moving an alternate motion to the motion printed in the business papers.

ORIGINAL MOTION

That the City of Newcastle:

- 1 Writes to Premier Gladys Berejiklian, Treasurer Dominic Perrottet the Minister for Planning Rob Stokes MP to:
 - a) Express its opposition to the recent changes to the Environmental Planning and Assessment Act which grant the Minister unprecedented powers to override planning decisions made by local councils, Planning Panels, the Independent Planning Commission;
 - b) Noting the Minister's Order allowing extended building and demolition work on weekends and public holidays, request the NSW Government provide extra funding for local Councils to monitor building sites during the extended working hours to monitor the observance of social distancing, as well as the noise emitted from these sites on the weekend, and;

- c) Request further detail and full disclosure regarding the proposed changes outlined in the Media Release from Treasurer Perrottet and Minister Stokes on 3rd April 2020, such as fast-tracking State Significant Developments and greater Ministerial discretion.
- 2 Reaffirms its commitment to transparency and open governance, acknowledging that:
- a) planning decisions should be community led and that local councils are best placed to make decisions about planning that is appropriate for their local area and constituents;
 - b) planning decisions have long term implications and even in times of crisis, planning approvals should consider the impact of development on the environment, local communities or neighbouring residents;
 - c) existing oversight powers are in place to ensure best possible planning outcomes; and
 - d) the extension of permissible construction hours has the potential to severely disrupt compulsory work and learn from home arrangements, and public health and wellbeing generally.

ALTERNATE MOTION

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

That Council:

- 1 Writes to Premier Gladys Berejiklian, Treasurer Dominic Perrottet, and the Minister for Planning and Public Spaces, Rob Stokes MP to:
 - a) Express its concern with the announcement of recent changes to the *Environmental Planning and Assessment Act* which grant the Minister unprecedented powers to override planning decisions made by local councils, Planning Panels, the Independent Planning Commission;
 - b) Notes that these changes were legislated under the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* to be utilised where necessary “to protect the health, safety and welfare of members of the public”;
 - c) Notes that the Government’s announcement of the changes on 3 April 2020, differed substantially from this approach, described the changes as being a “Planning System Acceleration Program” aimed to “cut red tape and fast track the planning process”;
 - d) Notes the NSW Government’s first tranche of projects to undergo a fast-tracked assessment process as part of the Planning System Acceleration Program in the announcement on 28 April includes the University of Newcastle campus at Honeysuckle;

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- e) Requests that these new emergency planning powers be reserved for COVID related critical projects (such as expansions to public hospitals, modification to operating hours for manufacturers of critical medical goods etc) and that these powers only be utilised where it is necessary to protect the health, safety and welfare of members of the public; and
 - f) Noting the Minister's recent Order allowing extended building and demolition work on weekends and public holidays, request the NSW Government undertake monitoring of building sites during the extended working hours to monitor noise and public amenity impacts from those sites. This monitoring would include protocols and procedures to receive, record and respond to public inquiries and complaints from the public or referred to them by Councils.
- 2 Reaffirms its commitment to transparency and open governance, acknowledging that:
- a) planning decisions should be community led and that local councils are best placed to make decisions about planning that is appropriate for their local area and constituents;
 - b) planning decisions have long term implications and even in times of crisis, planning approvals should consider the impact of development on the environment, local communities or neighbouring residents;
 - c) existing oversight powers are in place to ensure best possible planning outcomes; and
 - d) the extension of permissible construction hours has the potential to disrupt compulsory work and learn from home arrangements, and public health and wellbeing generally.

PROCEDURAL MOTION

Moved by Cr Clausen, seconded by Cr Winney-Baartz

- 1 Part 1, a) to e) lay on the table to enable further consideration of changes.
- 2 Part 1, f) and Part 2, Council move to adopt.

**Carried
unanimously**

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

- 1 Noting the Minister's recent Order allowing extended building and demolition work on weekends and public holidays, request the NSW Government undertake monitoring of building sites during the extended working hours to monitor noise and public amenity impacts from those sites. This monitoring would include protocols and procedures to receive, record and respond to public inquiries and complaints from the public or referred to them by Councils.

- 2 Reaffirms its commitment to transparency and open governance, acknowledging that:
- a) planning decisions should be community led and that local councils are best placed to make decisions about planning that is appropriate for their local area and constituents;
 - b) planning decisions have long term implications and even in times of crisis, planning approvals should consider the impact of development on the environment, local communities or neighbouring residents;
 - c) existing oversight powers are in place to ensure best possible planning outcomes; and
 - d) the extension of permissible construction hours has the potential to disrupt compulsory work and learn from home arrangements, and public health and wellbeing generally.

**Carried
unanimously**

CONFIDENTIAL REPORTS

PROCEDURAL MOTION

Moved by Cr Mackenzie, seconded by Cr White

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

Carried

Council resolved into confidential session at 7.21pm.

During confidential session:

- Troy Uren, Manager Waste Services and Andrew Ball, Project Manager joined the meeting via video conferencing platform Zoom for Confidential Item 5 - Tender - Organics Processing Facility 2019/144T
- Councillor Dunn stated he had been unable to access the confidential reports on his iPad (the Hub) and left the meeting at 7.22pm
- Council adjourned for a short recess to allow Councillors additional time to read the confidential reports
- A procedural motion moved by Councillor Mackenzie and seconded by Councillor Clausen to move into Committee to enable the Manager of Waste Services and Project Manager to answer questions on Confidential Item 5 - Tender - Organics Processing Facility 2019/144T was carried
- Council moved into Committee at 8.26pm
- A procedural motion moved by Councillor Clausen and seconded by Councillor Mackenzie to move back into Council was carried
- Council reconvened at 9.11pm
- The Manager Waste Services and Project Manager left the meeting at the conclusion of Confidential Item 5 - Tender - Organics Processing Facility 2019/144T

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- The Lord Mayor noted the time at 9.19pm and called for a procedural motion to extend the meeting
- A procedural motion moved by Councillor White and seconded by Councillor Winney-Baartz to extend the meeting to 10.00pm was carried
- Councillor Duncan was removed to the waiting room facility via video conferencing platform Zoom at 9.21pm in relation to Confidential Item 6 - Code of Conduct Matter
- Councillor Elliott was removed to the waiting room facility via video conferencing platform Zoom at 9.24pm In relation to Confidential Item 6 - Code of Conduct Matter
- As Confidential Item 6 - Code of Conduct matter was uploaded to iPads on the afternoon of Tuesday 28 April 2020, Councillors were allowed time to read the report

PROCEDURAL MOTION

Moved by Cr Winney-Baartz, seconded by Cr White

Council move out of confidential session.

Carried

Councillors Duncan and Elliott were returned to the meeting from the waiting room facility video conferencing platform Zoom.

Council moved out of confidential session at 9.35pm and the Chief Executive Officer reported the outcomes of confidential session.

ITEM-5 CON 28/04/20 - TENDER - ORGANICS PROCESSING FACILITY 2019/144T

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

That Council:

- 1 Reject the lump sum tender prices submitted and endorse the engagement with Barpa Pty Ltd through an Early Contractor Involvement (ECI) procurement model based on a target budget of \$20,365,222 (excl. GST) for the Organics Processing Facility for Contract No. 2019/144T.
- 2 Award the contract based on delivery being comprised of two separable portions. Council shall fund Separable Portion 1 (Design and Approvals). During Separable Portion 1 City of Newcastle (CN) will seek third party funding. Commencement of Separable Portion 2 (Construction) will be contingent on CN Officers reporting back to Council regarding the success of this funding.
- 3 Condition the contract so that Barpa Pty Ltd must give preference to local companies when selecting the trade sub-contractors for the project.

- 4 This confidential report 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.

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

Against the Motion: Councillors Church, Elliott, Robinson and Rufo.

Carried

ITEM-6 CON 28/04/20 - CODE OF CONDUCT MATTER

PROCEDURAL MOTION

Moved by Cr Clausen, seconded by Cr White

That Council lay the motion:

- 1 *In December 2018, a review of two complaints (containing 12 separate issues) against Councillor Elliott was undertaken by an Independent Conduct Reviewer in accordance with the Procedures for the Administration of the Code of Conduct (Procedures).*
- 2 *The Independent Conduct Reviewer determined that two of the complaints resulted in a breach of the Code of Conduct (Code) by Councillor Elliott.*
- 3 *The only matter before Council relates to the recommendation that Councillor Elliott be censured for that conduct in accordance with section 440G of the Local Government Act 1993 (Act) and clause 7.36 (j) of the Procedures. This is one of the limited circumstances under which code of conduct matters are referred to the elected Council.*
- 4 *Notes that an investigation was undertaken into Code of Conduct complaints against Councillor Kath Elliott in accordance with the Procedures for the Administration of the Code of Conduct;*
- 5 *Receives the report of the Independent Conduct Reviewer at Attachment A and notes that the report has been reviewed by the Office of Local Government;*
- 6 *In accordance with the findings and recommendation of the Independent Conduct Reviewer and to help ensure public accountability; (a) name the censured councillor in its resolution, and; (b) provide details in its resolution of the conduct that has been found to be in breach of the Code of Conduct;*
- 7 *Accepts the finding of the Independent Conduct Reviewer that on 4 December 2018, Councillor Kath Elliott breached clause 3.1(e) of the Code of Conduct by becoming verbally abusive and aggressive toward a member of senior staff;*

- 8 *Notes that Councillor Elliott was consulted throughout the investigation, and was provided with a formal opportunity to make a written or oral submission to Council;*
- 9 *In accordance with section 440G of the Local Government Act 1993 and based on the findings and recommendation of the Independent Conduct Reviewer, formally censures Councillor Elliott for breaching clause 3.1(e) of the Code of Conduct; and*
- 10 *Treats this confidential report relating to the matters specified in s10A(2)(i) of the Local Government Act 1993 as confidential.*

on the table pending urgent advice from the Office of Local Government on how to proceed to ensure the delivery of natural justice for this complaint, noting that a copy of the Investigation Report appears to have been leaked to the media prior to it being distributed to councillors.

Councillors were provided a redacted version of the report at 4pm on Tuesday 28 April 2020, after it appeared in the media. Council notes that under the Procedures for Administering the Code our understanding is that only the respondent (Cr Elliott), City of Newcastle legal and governance staff, the investigator and the Office of Local Government had a copy of the investigation report prior to 4pm.

Carried

At the conclusion of the meeting the Lord Mayor stated that in accordance with clause 20.5 of the Code of Meeting Practice, after the resolution was reported to open session, the report relating to Item 6 would be removed from the Hub (iPads).

The meeting concluded at 9.39pm.