

Minutes of Ordinary Council Meeting held on 10 March 2020 at Ashfield Service Centre

Meeting commenced at 6.30pm

Present:

Darcy Byrne	Mayor
Vittoria Raciti	Deputy Mayor
Marghanita Da Cruz	Councillor
Lucille McKenna OAM	Councillor
Colin Hesse	Councillor
Sam Iskandar	Councillor
Pauline Lockie	Councillor
Victor Macri	Councillor
Julie Passas	Councillor
Rochelle Porteous	Councillor (6.36pm)
John Stamolis	Councillor
Louise Steer	Councillor
Anna York	Councillor
Michael Deegan	Chief Executive Officer
Elizabeth Richardson	Chief Operating Officer, Director Development and Recreation
Cathy Edwards-Davis	Director Infrastructure
Harin Perera	Chief Information Officer
Sasha Sutarov	ICT Infrastructure Manager
Ian Naylor	Manager Governance
Katherine Paixao	Governance Coordinator

APOLOGIES:

Motion: (Hesse/Steer)

THAT apologies from Councillors Drury and Kiat be accepted.

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Raciti, Stamolis, Steer and York

Against Motion: Nil

DISCLOSURES OF INTERESTS:

Clr Steer declared a non-significant, non-pecuniary in item 8 as her husband works for Optus.

Motion: (Hesse/Raciti)

THAT Council note the Disclosure of Interest.

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Raciti, Stamolis, Steer and York

Against Motion: Nil

CONFIRMATION OF MINUTES

Motion: (Hesse/York)

THAT the Minutes of the Council Meeting held on Tuesday, 25 February 2020 and Extraordinary Council Meeting held on Tuesday, 3 March 2020 be confirmed.

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Raciti, Stamolis, Steer and York

Against Motion: Cr Passas

Councillor Porteous entered the Meeting at 6:36 pm.

C0320(2) Item 12 Mayoral Minute: International Day for the Elimination of Racial Discrimination**Motion: (Byrne)**

THAT Council:

- 1. Recognises the 21 March as the International Day for the Elimination of Racial Discrimination and commits to observing it annually;**
- 2. Supports the Inner West March and Festival for the Elimination of Racial Discrimination on 21 March and encourages Inner West residents to attend; and**
- 3. Supports calls for a new federally funded national anti-racism campaign.**

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Porteous, Raciti, Stamolis, Steer and York

Against Motion: Cr Passas

C0320(2) Item 1 Amendment to Leichhardt Development Control Plan clarifying car share provisions**Motion: (McKenna OAM/York)**

THAT Council approves exhibition of an amendment to the Leichardt Development Control Plan 2013 that removes clause C25(c) which currently provides that one car share space can be provided in lieu of five car spaces and the comments from GoGet be reviewed during the exhibition period.

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Porteous, Raciti, Stamolis, Steer and York

Against Motion: Nil

Confidential Session

The Mayor, Councillor Byrne, asked the Chief Executive Officer if any representations had been received from the public on any of the items Council will be discussing in Closed Session as per the Agenda.

The Chief Executive Officer replied that no representations had been received to talk to the items in Closed Session.

The Mayor, Councillor Byrne, asked if there were any members of the public gallery who would like to speak on the reasons Council proposes to consider the items in Closed Session.

There were none.

Members of the Public were asked to leave the Chamber.

Motion: (Byrne/McKenna OAM)

THAT Council enter into Confidential session.

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Porteous, Raciti, Stamolis, Steer and York

Against Motion: Nil

That in accordance with Section 10A(1) of the Local Government Act 1993, the following matters be considered in Closed Session of Council for the reasons provided:

C0320(2) Item 7 Cooks River Parklands - HJ Mahoney Reserve – Tender Recommendation (Section 10A(2)(c) of the Local Government Act 1993) that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business; and commercial information of a confidential nature (Section 10A(2)(d)(ii) of the Local Government Act 1993) that would, if disclosed confer a commercial advantage on a competitor of the Council.

C0320(2) Item 8 RFQ 51-19 WAN, Internet and associated Services (Section 10A(2)(d)(ii) of the Local Government Act 1993) that would, if disclosed confer a commercial advantage on a competitor of the Council.

C0320(2) Item 9 SSROC Tender for Clean up processing (Section 10A(2)(d)(i) of the Local Government Act 1993) that would, if disclosed prejudice the commercial position of the person who supplied it; and commercial information of a confidential nature (Section 10A(2)(d)(ii) of the Local Government Act 1993) that would, if disclosed confer a commercial advantage on a competitor of the council; and commercial information of a confidential nature (Section 10A(2)(d)(iii) of the Local Government Act 1993) that would, if disclosed reveal a trade secret. (Commercial in confidence information)

C0320(2) Item 10 Lease to Transport for NSW - Land in Camdenville Park and Campbell Street St Peters (Section 10A(2)(d)(i) of the Local Government Act 1993) that would, if disclosed prejudice the commercial position of the person who supplied it; and commercial information of a confidential nature (Section 10A(2)(d)(ii) of the Local Government Act 1993) that would, if disclosed confer a commercial advantage on a competitor of the council; and commercial information of a confidential nature (Section

10A(2)(d)(iii) of the Local Government Act 1993) that would, if disclosed reveal a trade secret.

Motion: (Byrne/McKenna OAM)

THAT Council move back into the Open Session of the Council Meeting.

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Porteous, Raciti, Stamolis, Steer and York

Against Motion: Nil

REPORTS WITH CONFIDENTIAL INFORMATION

C0320(2) Item 7 Cooks River Parklands - HJ Mahoney Reserve - Tender Recommendation

Motion: (Byrne/McKenna OAM)

THAT:

- 1. Council enters into a Contract with Regal Innovations Pty Ltd for the lump sum amount of \$1,819,078.26 including GST; and**
- 2. The Chief Executive Officer be delegated the authority to sign the contract.**

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Porteous, Raciti, Stamolis, Steer and York

Against Motion: Nil

C0320(2) Item 8 RFQ 51-19 WAN, Internet and associated Services

Motion: (Da Cruz/Passas)

THAT:

- 1. Council accept the tender from Optus Networks Pty Ltd, limited for a total contract value not to exceed \$2.85 million (including GST) over three years;**
- 2. The Chief Executive Officer (CEO) be delegated the authority to sign the contract;**
- 3. Council approve the review and extension of contract for two years at the end of initial three-year period;**
- 4. Council delegate the authority to approve extension of contract for further two years to the CEO; and**

5. Council note the prices will be included in the confidential report.**Motion Carried****For Motion:** Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Porteous, Raciti, Stamolis, Steer and York**Against Motion:** Nil**C0320(2) Item 9 SSROC Tender for Clean up processing****Motion: (Byrne/McKenna OAM)****THAT:**

1. Council accepts the tender from Bingo-Industries for the receipt and processing of Clean Up material with an approximate contract value of \$1,681,250 +GST per year.; and
2. The Chief Executive Officer be delegated the authority to sign the contract.

Motion Carried**For Motion:** Crs Byrne, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Porteous, Raciti, Stamolis, Steer and York**Against Motion:** Crs Da Cruz and Passas**Foreshadowed Motion (Da Cruz/Passas)****THAT this item be deferred pending the Councillor Briefing next week.**

This Foreshadowed Motion lapsed.

C0320(2) Item 10 Lease to Transport for NSW - Land in Camdenville Park and Campbell Street St Peters**Motion: (Passas/McKenna OAM)****THAT Council approves the proposed short-term construction leases to Transport for NSW for the rental amounts specified in the report and delegate authority to the CEO to finalise the terms of the section 30 agreement and execute the section 30 agreement and leases.****Motion Carried****For Motion:** Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Raciti, Stamolis, Steer and York**Against Motion:** Cr Porteous**C0320(2) Item 2 Notice of Motion to Rescind: C0718 Item 5 Delegations to**

the General Manager - Contracts

Motion: (Stamolis/Passas)

THAT Council rescind C0718 Item 5 Delegations to the General Manager – Contracts.

Motion Lost

For Motion: Crs Da Cruz, Hesse, Passas, Porteous, Stamolis and Steer

Against Motion: Crs Byrne, Iskandar, Lockie, Macri, McKenna OAM, Raciti and York

Councillor Passas left the Meeting at 7:39 pm.

Councillor Passas returned to the Meeting at 7:42 pm.

C0320(2) Item 3 Notice of Motion: Transition of Council’s Fleet

Motion: (Da Cruz/Byrne)

THAT Council:

- 1. Note the receipt of a petition of over 100 signatures reflecting community support for the transition of the Council fleet to electric vehicles and receive an update on the Fleet Transition Plan in early 2020;**
- 2. Write to the Federal Government to look at exemption electric vehicles from luxury tax;**
- 3. Write to the state government proposing a period of 5 years registration free as an incentive to help people change over; and**
- 4. Consider as part of the budget providing electric vehicles with free parking in metered zones.**

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Porteous, Raciti, Stamolis, Steer and York

Against Motion: Nil

Amendment (Macri/Byrne)

THAT Council:

- 1. Write to the Federal Government to look at exemption electric vehicles from luxury tax;**
- 2. Write to the state government proposing a period of 5 years registration free as an incentive to help people change over; and**
- 3. Consider as part of the budget providing electric vehicles with free parking in metered zones.**

Motion Carried

For Motion: Crs Byrne, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Porteous, Raciti, Stamolis, Steer and York
Against Motion: Cr Da Cruz

As the Amendment was carried, it was incorporated into the Primary Motion.

C0320(2) Item 4 Notice of Motion: Council's Electricity and Heating Costs (Large Increases)

Motion: (Stamolis/Passas)

THAT Council receive a report back at the first April Ordinary Council meeting, on the doubling of its electricity and heating costs since the merger.

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, Passas, Porteous, Raciti, Stamolis, Steer and York
Against Motion: Cr McKenna OAM

C0320(2) Item 5 Notice of Motion: Stanmore and Camdenville OOSH Services

Motion: (York/Steer)

THAT Council:

- 1. Note that tenders were awarded in February 2020 for the OOSH services at Stanmore and Camdenville Public Schools – both previously provided in long-running and well-established services by Inner West Council;**
- 2. Note that an alternative private provider was awarded these contracts, and that Inner West Council will no longer be providing OOSH services at these schools after the current contracts have been completed;**
- 3. Write to the NSW Minister for Education and Early Childhood Learning:**
 - a) seeking a comprehensive debrief of Council staff of the tender process and outcome for both schools;**
 - b) noting concerns parents have raised with the tender process and outcome,**
 - c) seeking a response as a matter of urgency to residents' concerns; and**
 - d) seeking confirmation of the order and timing of any further tender processes for Council-run OOSH services in the Inner West LGA.**
- 4. Seek a meeting with the Network of Community Activities to learn from the**

experience of other Councils and related organisations also being required to tender for existing OOSH services, with a view to understanding how to position Council's highly regarded, high quality OOSH services successfully in future decisions about preferred providers at the school or Departmental level; and

5. The outcome of the meeting and requirements be reported back to Councillors.

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Porteous, Raciti, Stamolis, Steer and York
Against Motion: Nil

Confidential Session

The Mayor, Councillor Byrne, asked the Chief Executive Officer if any representations had been received from the public on any of the items Council will be discussing in Closed Session as per the Agenda.

The Chief Executive Officer replied that no representations had been received to talk to the items in Closed Session.

The Mayor, Councillor Byrne, asked if there were any members of the public gallery who would like to speak on the reasons Council proposes to consider the items in Closed Session.

There were none.

Members of the Public were asked to leave the Chamber.

Motion: (Byrne/McKenna OAM)

THAT Council enter into Confidential session.

Motion Carried

For Motion: Crs Byrne, Da Cruz, Hesse, Iskandar, Lockie, Macri, McKenna OAM, Passas, Porteous, Raciti, Stamolis, Steer and York
Against Motion: Nil

C0320(2) Item 11 Code of Conduct Complaint Investigation contains alleged contraventions of any code of conduct requirements applicable under section 440.

Motion: (McKenna OAM/York)

THAT Council move back into the Open Session of the Council Meeting.

Motion Carried

For Motion: Crs Da Cruz, Hesse, Iskandar, Macri, McKenna OAM, Passas, Porteous, Raciti, Stamolis, Steer and York

Against Motion: Nil

Absent: Crs Byrne and Lockie

REPORT WITH CONFIDENTIAL INFORMATION

Councillor Lockie retired from the Meeting at 8:07 pm.

Councillor Byrne retired from the Meeting at 8:09 pm.

The Deputy Mayor, Clr Raciti assumed the chair.

C0320(2) Item 11 Code of Conduct Complaint Investigation

Motion (York/Passas)

THAT Council publish the finding and recommendations of the conduct reviewer's report in the minutes of this meeting.

Motion Carried

For Motion: Crs Da Cruz, Hesse, Iskandar, Macri, McKenna OAM, Passas, Porteous, Raciti, Stamolis, Steer and York

Against Motion: Nil

Absent: Crs Byrne and Lockie

Motion (York/Passas)

THAT Council make minor amendments to the Social Media Policy for Councillors as recommended in the final investigation report.

Motion Lost

For Motion: Crs Iskandar, Macri, McKenna OAM, Raciti and York

Against Motion: Crs Da Cruz, Hesse, Passas, Porteous, Stamolis and Steer

Absent: Crs Byrne and Lockie

Meeting closed at 8.28pm.

Findings and Recommendation for the Code of Conduct Report Item 11.

Respondent: Councillor Darcy Byrne
Complainant: Councillor Pauline Lockie

6 Findings

This section of the report sets out the findings in respect of each potential breach of the Code. These findings are based on the considerations set out in section 4 of this report.

Finding 1

That the Respondent was carrying out a '*function*' for the purposes of the Local Government Act 1993 and Council's Code of Conduct in relation to his posts concerning the apology issued to him by the Complainant.

Finding 2

That the Respondent breached the provisions of Council's Social Media Policy for Councillors in that he made comments about another Councillor which a reasonable person would consider humiliating, and which included aligning motives of personal advancement to the Complainant and accusing her of being unprofessional, disrespectful and having bad manners.

Finding 3

That the Respondent breached clause 3.1(a) of the Code of Conduct, in that his social media posts and comments relating to an apology made to him by the Complainant was conduct which was likely to bring Council and a council officer (the Complainant) into disrepute.

Finding 4

That the Respondent breached the provisions of clause 3.1(b) of the Code of Conduct by failing to appropriately manage comments made to his posts and which was contrary to his obligations under the Council's Social Media Policy for Councillors.

Finding 5

That the Respondent breached clause 3.2 of the Code of Conduct (Section 439 of the Local Government Act 1993), in that he did not apply a reasonable degree of care and diligence, in ensuring his comments on his social media platforms complied with his obligations under the Council's Code of Conduct and Social Media Policy for Councillors.

Finding 6

That the Respondent breached clause 3.2 of the Code of Conduct (Section 439 of the Local Government Act 1993) in that he did not apply a reasonable degree of care and diligence, in ensuring the removal of material from his social media accounts which

did not comply with his obligations under the Code of Conduct and Social Media Policy for Councillors.

7 Recommendations

The following recommendations have been amended to comply with the judgement of the Supreme Court, and advice of the OLG in that regard.

7.1 Recommendations – Code of Conduct

The following recommendation has been made, having considered the options available following the Supreme Court's judgement in *Cornish v Secretary, Department of Planning, Industry & Environment* [2019] NSWSC 1134 & the subsequent issue of an advising on that judgement by the Office of Local Government through Circular 19-25/2. The judgement has restricted the remedies available under clause 7.59 of the Procedures for the Administration of the Model Code of Conduct to those relating to censure (Clause 7.59(h) and reporting of the conduct to the Office for consideration under the misconduct provisions of the LGA1993 (Clause 7.59(i)). It was determined that the conduct did not rise to the level of seriousness to warrant that action. However, the judgement and subsequent advice of the OLG provides that it is still open to Council to make the findings of this report public under the provisions of clause 7.59(f) of the Procedures. Accordingly, and having considered particularly the public nature of the conduct, it is recommended that Council make the conduct public under clause 7.59(f) of the Procedures.

Recommendation 1

That the findings and determinations set out in this report are published in the minutes of the meeting at which Council considers this matter and as provided for under clause 7.59(f) of the Procedures for the Administration of the Model Code of Conduct.

7.2 Recommendations – Matters Arising

The judgement of the Supreme Court in *Cornish v Secretary, Department of Planning, Industry & Environment* [2019] NSWSC 1134, did not affect the ability of Council to amend any policy arising out of a Code of Conduct Investigation. It is strongly recommended that Council revise its Social Media Policy for Councillors, and other related instruments if considered appropriate following this investigation and recent Court judgements. It is recommended that:

- The Policy is currently written more as a guideline than a Policy. It is recommended that to ensure Councillor obligations are clear that Council considers amending the Policy to include clear 'must' and 'must not' do requirements.
- That the relationship between a Councillor's functions and use of social media are more clearly defined, and particularly where social media is used to promote Council functions and/or the work and activities of Councillors outside of Council's administration. It is suggested that this might be achieved through a memorandum to Councillors, or through ongoing training provisions. Emphasis should

be made in respect of the obligation of Councillors to administer comments on their social media accounts and to remove material which might bring them into conflict with the provisions of the Act, the Code and other instruments such as the Defamation Act 2005. Similarly, emphasis should be placed on the correlation between Social Media accounts (not administered by Council) used by Councillors to inform the community of activities and initiatives but which at the same time comply with the requirements of Council's Policy and consider the risk of litigation under instruments such as the Defamation Act 2005.