



MINUTES

The Minutes of the Extraordinary Council Meeting held at the
Council Chambers, North Sydney
at 7:30 PM on Tuesday 28 February 2023.



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1. Opening Meeting

Statement of ethical obligations

Councillors are reminded of the oath or affirmation taken upon commencement of office that they will undertake the duties of the office of councillor in the best interests of the people of North Sydney and the North Sydney Council and that they will faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the [Local Government Act 1993](#) or any other Act to the best of their ability and judgment.

Councillors are also reminded of their obligations under the Code of Conduct to disclose and appropriately manage conflicts of interest.

At the commencement of business (7:30 pm) those present were: The Mayor, and Councillors Beregi, Bourke, Gibson, Lamb, Lepouris, Mutton, Santer, Spenceley, and Welch.

The meeting was opened by the Mayor.

2. Acknowledgement of Country

RECOGNITION OF THE CAMMERAYGAL PEOPLE

We respectfully acknowledge the Traditional Custodians of the land and waters of North Sydney local government area, the Cammeraygal people.

The Acknowledgement of Country was read by Councillor Mutton.

3. Apologies and applications for leaves of absence or attendance by audio-visual link by councillors

There were no apologies or requests for Leave of Absence.

4. Disclosures of Interest

There were no Disclosures of Interest.

5. Public Forum

The Motion was moved by The Mayor, Councillor Baker and seconded by Councillor Spenceley.

1. THAT the following people be permitted to address the meeting as part of the Public Forum:

- Ms Joan Street
- Mr George Gallagher
- Mr Frank Johnson
- Mr James Mullen (did not speak)

- Mr Jeff Hudson
- Ms Julia Connor
- Mr Peter McLean (remotely)
- Ms Kiersten Fishburn, Deputy Secretary Cities and Active Transport TfNSW

The Motion was put and **Carried**.

Voting was as follows:

For/Against 10 / 0

For: Councillor Baker, Councillor Beregi, Councillor Bourke, Councillor Gibson, Councillor Lamb, Councillor Lepouris, Councillor Mutton, Councillor Santer, Councillor Spenceley and Councillor Welch

Against: Nil

Absent: Nil

66. RESOLVED:

1. THAT the following people be permitted to address the meeting as part of the Public Forum:

- Ms Joan Street
- Mr George Gallagher
- Mr Frank Johnson
- Mr James Mullen (did not speak)
- Mr Jeff Hudson
- Ms Julia Connor
- Mr Peter McLean (remotely)
- Ms Kiersten Fishburn, Deputy Secretary Cities and Active Transport TfNSW

6. Mayoral Minutes

Nil

7. Reports to Council

7.1. Bradfield Park - Legal Advice

AUTHOR: Shane Sullivan, Executive Manager Governance

This matter was deferred by resolution of Council on 27 February 2023 to this Extraordinary Meeting.

The purpose of this report is for Council to consider legal advice obtained with regard to Bradfield Park and a proposal by Transport for NSW to acquire and/or develop part of Bradfield Park North for the purpose of the *Sydney Harbour Bridge Cycleway Project*.

The most recent advice obtained by Council and a summary of that advice is provided as an attachment to this report.

On 27 February 2023, Council received a letter from Transport for NSW seeking land owners consent in relation to the Sydney Harbour Bridge Northern Cycleway Access project. A copy of this letter was circulated to Councillors on 27 February 2023 and is attached.

Transport for NSW had previously offered Council \$1.5m as a contribution towards Council's planned improvements to Bradfield Park South. In response, Council has outlined the considerable investment required to progress the Bradfield Park Masterplan. They have now advised that should Council provide land owners consent before the end of February 2023 they will be a position to make a further contribution of \$1m bringing their contribution to a total of \$2.5m.

Land owners consent is required for the purposes of lodging a section 60 application under the Heritage Act 1977. Transport for NSW note that should land owners consent not be provided in a timely manner that these funds of \$2.5m would be expended on additional costs to the project due to the delay.

In accordance with Councils resolution of 14 November 2022, legal advice has been obtained and confirms the ability of the NSW Government to compulsory acquire parcels of land within Bradfield Park.

Further, the advice provides that, in relation to Trust Land, the Council is the legal owner of the land and has full capacity, as a matter of property law, to give or withhold owners consent for the use of land for a specific purpose on the basis that it is acting consistently with its trust obligations.

The advice provides that there is a strong argument available that the development of a publicly accessible cycleway is consistent with the use of the Trust Land for the purposes of public parks and public recreation.

Should land owners consent not be provided, this would also result in the project being progressed via the State Significant Infrastructure pathway and compulsory acquisition of the land owned by Council. This process does not require Council's owners consent and Transport for NSW would lodge a Development Application with the NSW Department of Planning for the Minister for Planning to determine.

On the basis that TFNSW is adamant that the project will be progressed in its current form, albeit through a different approval process, it is recommended that Council accept the contribution towards improvements in Bradfield Park South and provide owners consent to allow the Section 60 application to progress.

The following documents are attached to this report:

1. Advice from Richard Lancaster SC finalised on 24 February 2023
2. Summary of the advice from Richard Lancaster

3. Letter from Transport for NSW dated 27 February 2023 seeking land owners consent
4. Letter to Transport for NSW dated 24 February 2023
5. Advice (CONFIDENTIAL) dated 22 March 2022 from Sparke Helmore

The attached legal advice dated 11 March 2022, in the schedule of lands (page 3 of 14) identifies the relevant interests in the lands associated with the Sydney Harbour Bridge Northern Cycleway Access project. This is provided as a confidential document.

Should Council wish to discuss this advice dated 11 March 2022 it is noted that the confidential document includes advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege and because consideration of the matter in open Council would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community. As such should this matter be discussed it should be considered in closed session.

TFNSW has offered \$2.5 million in funding towards Bradfield Park South improvements. Should they progress to compulsory acquisition of Council land, compensation would be applicable under the *Land Acquisition (Just Terms Compensation) Act 1991*.

RECOMMENDATION:

- 1. THAT** the Council resolves to provide land owners consent as requested for those lands of which Council is the owner thus enabling the lodgement of an application under Section 60 of the Heritage Act 1977 for the Sydney Harbour Bridge Northern Cycleway Access project.
- 2. THAT** Council resolves that the identified attachment to this report (11 March 2022 legal advice) is to be treated as confidential in accordance with section 11(3) of the Local Government Act for the following reason under section 10A(2) of the Local Government Act:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

It is further noted that release of this information would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

The following people spoke on this matter:

- Ms Joan Street
- Mr George Gallagher
- Mr Frank Johnson
- Mr Jeff Hudson
- Ms Julia Connor
- Mr Peter McLean (remotely)
- Ms Kiersten Fishburn, Deputy Secretary Cities and Active Transport TfNSW

A Motion was moved by Councillor Gibson and seconded by Councillor Mutton

1. **THAT** Council resolves not to provide owners consent to TfNSW for the proposed construction of the proposed linear cycle ramp.
2. **THAT** Council continues to lobby TfNSW to work with the local community to refine and progress the community cycleway design and/or lift.
3. **THAT** Council continues to lobby for the western lane of the Sydney Harbour Bridge to be dedicated to cyclists in the long term.
4. **THAT** Council writes to the Local Member, Felicity Wilson MP thanking her for her last minute support.
5. **THAT** Council resolves that the identified attachment to this report (11 March 2022 legal advice) is to be treated as confidential in accordance with section 11(3) of the Local Government Act for the following reason under section 10A(2) of the Local Government Act:
(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege
 It is further noted that release of this information would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

The Motion was put and **Lost**.

Voting was as follows:

For/Against 4 / 6

- For:** Councillor Gibson, Councillor Lepouris, Councillor Mutton and Councillor Spenceley
- Against:** Councillor Baker, Councillor Beregi, Councillor Lamb, Councillor Welch, Councillor Santer, Councillor Bourke
- Absent:** Nil

A further Motion was moved by Councillor Beregi, seconded by Councillor Welch

1. **THAT** Council notes the letter from Mr Steve Issa, Executive Director, Community and Place, Transport NSW dated 27 February 2023 asking for a response to his proposal by the end of February 2023.
2. **THAT** Council notes the legal advice dated 11 March 2022 and the advice provided by Richard Lancaster SC dated 24 February 2023.
3. **THAT** Council regards discussion of the election promise of a new foreshore park at Berrys Bay, and the election promise of a working group to discuss an expansion of public open space at Lavender Bay in Mr Issa's letter to be disingenuous and wholly unconnected to the issue at hand.
4. **THAT** Council notes that amendments were made to the concept designs exhibited with the Review of Environmental Factors (REF) to address submissions made by Council, the community and advice from the Heritage Council to address concerns regarding heritage impacts on the Sydney Harbour Bridge and the entrance to Milsons Point station.
5. **THAT**, in the circumstances where TfNSW advise that they will be proceeding with or without owner's consent, Council provide Land Owner's consent to enable the lodgement of an application under Section 60 of the Heritage Act 1977 to progress the Sydney Harbour

Bridge Northern Cycleway Access (SHBCNA) project on the condition that, with the community front of mind and to support further amenity, active transport and open space outcomes, TfNSW provides Council with a contribution of \$2.5M towards Council's planned improvements to Bradfield Park.

6.THAT Council strongly urge TfNSW to amend the design of the linear ramp during the design and construct phase so as to reduce the safety issues for pedestrians and cyclists that arise from cyclists exiting the ramp in Bradfield Park North which funnels cyclists onto Middlemiss Street and into the roundabout at Lavender and Alfred Streets, and other aspects of the design.

7.THAT Council resolves that the identified attachment to this report (11 March 2022 legal advice) is to be treated as confidential in accordance with section 11(3) of the Local Government Act for the following reason under section 10A(2) of the Local Government Act:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

It is further noted that release of this information would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

The Motion was put and **Carried**.

Voting was as follows:

For/Against 6 /4

For: Councillor Baker, Councillor Beregi, Councillor Lamb, Councillor Welch, Councillor Santer, Councillor Bourke

Against: Councillor Gibson, Councillor Lepouris, Councillor Mutton and Councillor Spenceley

Absent: Nil

67. RESOLVED:

1.THAT Council notes the letter from Mr Steve Issa, Executive Director, Community and Place, Transport NSW dated 27 February 2023 asking for a response to his proposal by the end of February 2023.

2.THAT Council notes the legal advice dated 11 March 2022 and the advice provided by Richard Lancaster SC dated 24 February 2023.

3.THAT Council regards discussion of the election promise of a new foreshore park at Berrys Bay, and the election promise of a working group to discuss an expansion of public open space at Lavender Bay in Mr Issa's letter to be disingenuous and wholly unconnected to the issue at hand.

4.THAT Council notes that amendments were made to the concept designs exhibited with the Review of Environmental Factors (REF) to address submissions made by Council, the community and advice from the Heritage Council to address concerns regarding heritage impacts on the Sydney Harbour Bridge and the entrance to Milsons Point station.

5.THAT, in the circumstances where TfNSW advise that they will be proceeding with or without owner's consent, Council provide Land Owner's consent to enable the lodgement of an application under Section 60 of the Heritage Act 1977 to progress the Sydney Harbour Bridge Northern Cycleway Access (SHBCNA) project on the condition that, with the community front of mind and to support further amenity, active transport and open space outcomes, TfNSW provides Council with a contribution of \$2.5M towards Council's planned improvements to Bradfield Park.

6.THAT Council strongly urge TfNSW to amend the design of the linear ramp during the design and construct phase so as to reduce the safety issues for pedestrians and cyclists that arise from cyclists exiting the ramp in Bradfield Park North which funnels cyclists onto Middlemiss Street and into the roundabout at Lavender and Alfred Streets, and other aspects of the design.

7.THAT Council resolves that the identified attachment to this report (11 March 2022 legal advice) is to be treated as confidential in accordance with section 11(3) of the Local Government Act for the following reason under section 10A(2) of the Local Government Act:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

It is further noted that release of this information would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

8. Matters of Urgency

Nil

9. Confidential Matters

Nil

10. Closure

The Meeting concluded at 9:09 pm.