



## MINUTES

The Minutes of the **3739<sup>th</sup> EXTRAORDINARY MEETING** of **COUNCIL** held at the Council Chambers, 200 Miller Street, North Sydney on Tuesday 15 December 2020.



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## 1. Opening Meeting

The Mayor, Jilly Gibson, in the Chair, and Councillors Baker, Barbour, Beregi, Brodie, Carr, Drummond, Gunning, Keen and Mutton.

At the commencement of business (5.33pm) those present were:

The Mayor, and Councillors Barbour, Brodie, Carr, Drummond, Keen and Mutton.

Those participating remotely were:

Councillors Baker and Beregi.

(NB. Councillor Gunning joined the meeting at 5.36pm prior to the Closed Session.)

The meeting was opened by the Mayor.

## 2. Acknowledgement of Country

The Acknowledgement of Country was read by Councillor Beregi.

## 3. Apologies and Applications for Leave of Absence by Councillors

Nil.

## 4. Confirmation of Minutes

The Minutes of the previous 3738<sup>th</sup> Council Meeting held on Monday, 30 November 2020, copies of which had been previously circulated, were taken as read and confirmed.

A Motion was moved by Councillor Barbour and seconded by Councillor Drummond,

**THAT** the Minutes of the previous 3738<sup>th</sup> Council Meeting held on Monday, 30 November 2020, copies of which had been previously circulated, were taken as read and confirmed with the addition of noting that Councillor Beregi sought to raise a Matter of Urgency.

The Motion was put and **Carried**.

Voting was as follows:

For/Against 9 / 0

**For:** Councillor Gibson, Councillor Beregi, Councillor Keen, Councillor Brodie, Councillor Carr, Councillor Barbour, Councillor Drummond, Councillor Mutton, Councillor Baker

**Against:** Nil

**Absent:** Councillor Gunning

**223. RESOLVED:**

**THAT** the Minutes of the previous 3738<sup>th</sup> Council Meeting held on Monday, 30 November 2020, copies of which had been previously circulated, were taken as read and confirmed with the addition of noting that Councillor Beregi sought to raise a Matter of Urgency.

**5. Disclosures of Interest**

Nil.

**6. Confidential Matters**

Councillor Gunning joined the meeting at 5.36pm and confirmed he had no disclosures of interest in relation to any Items on the Agenda.

**Closed Session**

It was moved by Councillor Drummond and seconded by Councillor Barbour and **carried**,

**THAT** the meeting be closed to the public to discuss the following matters for the reasons identified:

**Item 6.1 Redevelopment of the North Sydney Olympic Pool - Tender 24/2020**

Reason: Section 10A(2)(d) of the *Local Government Act 1993*:

- 10A(2)(d) – commercial information of a confidential nature that would, if disclosed;
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the Council, or
  - (iii) reveal a trade secret.

**Item 10.5 Notice of Rescission No. 5/20 by Councillors Beregi, Baker and Carr - 10.5 Noakes Boatyard - 6 John Street, McMahons Point (30 November 2020)**

Reason: Section 10A(2)(g) of the *Local Government Act 1993*:

- 10A(2)(g) – advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

**Public Interest**

These matters are classified as confidential as they contain: information regarding advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege; and commercial information. On balance, the public interest in preserving the confidentiality of this information outweighs the public interest in openness and transparency in Council decision making by discussing these matters in Open Council.

The recording was stopped and the meeting recommenced in Closed Session at 5.38pm.

## **Adjournment**

During Closed Session the Mayor adjourned the meeting at 6.20pm in accordance with clause 15.13 of the Code of Meeting Practice citing constant interruptions from Councillor Beregi.

The meeting recommenced in Closed Session at 6.26pm.

## **Open Session**

The meeting was re-opened to the public at 7.41pm and the recording resumed.

The General Manager advised that during the Closed Session, Council had resolved as follows:

### **Item 6.1      Redevelopment of the North Sydney Olympic Pool - Tender 24/2020**

#### **224. RESOLVED:**

- 1. THAT** Council increase the budget allocation to the North Sydney Olympic Pool by \$6 million comprising \$3 million from Open Space and Recreation Reserve and \$3 million in additional borrowings.
- 2. THAT** the General Manager be authorised to enter a loan arrangement for the revised borrowing amount of \$31 million with TCorp on the same terms and conditions as previously approved for the \$28 million loan offer.
- 3. THAT** Council reject all offers for Tender No. 24/2020 for the redevelopment of the North Sydney Olympic Pool.
- 4. THAT** Council does not invite fresh tenders as the initial EOI process identified suitable construction companies, the non-proposed conformance amendments to Condition of Contract can be resolved through negotiation, and Council is satisfied the pricing already provided through the process to date ensures competitive market pricing. Furthermore, it is considered that re-tendering, rather than negotiating, will not attract additional suitable submissions for the project.
- 5. THAT** Council resolves to enter into direct negotiation with the preferred tenderer(s) for the redevelopment of the North Sydney Olympic Pool in sequence of their ranking order.
- 6. THAT** authority be delegated to the General Manager to negotiate with the preferred tenderer and enter into a contract for the redevelopment of the North Sydney Olympic Pool subject to:
  - i) the contract value being within the amended budget after allowing for contingencies and project management costs as identified in the Confidential Report.
  - ii) gaining unanimous consent from a committee comprising the Mayor, Deputy Mayor and Cr Mutton; in respect to negotiated amendments to the Construction Contract.
- 7. THAT** once Council has executed the Contract, information relating to the contract be published in Council's Register of Contracts as required by Government Information (Public Access) Act 2009 - Part 3 Division 5 - Government Contracts with Private Sector.
- 8. THAT** a further report be presented to Council addressing the outcome of the negotiations.
- 9. THAT** the further report be presented to Council on the performance of Council's property lease portfolio for the purpose of considering liquidating low performing properties and reducing the ultimate draw down of debt.

**10. THAT** the Confidential Report relating to matters specified in Sections 10A(2)(d) be treated as confidential and remain confidential until Council determines otherwise.

**Item 7.1 Notice of Rescission No. 5/20 by Councillors Beregi, Baker and Carr - 10.5 Noakes Boatyard - 6 John Street, McMahons Point (30 November 2020)**

The Rescission Motion was lost.

**6.1. Redevelopment of the North Sydney Olympic Pool - Tender 24/2020**

*This Item was considered in Closed Session, refer above.*

**AUTHOR:** Duncan Mitchell, Director Engineering and Property Services

This report is to provide Council with an analysis and recommendation of the tender process for Tender 24/2020 for the redevelopment of the North Sydney Olympic Pool.

Tenders were called and were received until 4pm, Thursday 19 November 2020 for the redevelopment of the North Sydney Olympic Pool.

The associated Confidential Report to this item addresses commercial information of a confidential nature. If the Council wishes to discuss the report, the meeting should be closed to the public to do so in accordance with s10A(2)(d) of the Local Government Act (LGA).

**Recommending:**

**1. THAT** the meeting be closed to the public in accordance with Section 10A(2)(d) commercial information of a confidential nature that would, if disclosed;

(i) prejudice the commercial position of the person who supplied it, or

(ii) confer a commercial advantage on a competitor of the Council, or

(iii) reveal a trade secret..

**2. THAT** the report be treated as confidential and remain confidential until Council determines otherwise.

**7. Notices of Motion**

**7.1. Notice of Rescission No. 5/20 by Councillors Beregi, Baker and Carr - 10.5 Noakes Boatyard - 6 John Street, McMahons Point (30 November 2020)**

*This Item was considered in Closed Session, refer above.*

**THAT** the Council's resolution relating to Item 10.5 Noakes Boatyard - 6 John Street, McMahons Point:

**1. THAT** Council authorises the General Manager to negotiate and agree to minor changes or amendments to the Deed of Settlement.

**2. THAT** Council authorises the General Manager to execute the Deed of Settlement.

**3. THAT** Council notes the Deed of Settlement may be provided to residents, interested parties or complainants, upon request and subsequent to execution by the General Manager.

**4. THAT** Council notes that if the Deed of Agreement is not agreed between the parties, the s34 Conciliation Conference will likely be terminated and the Proceedings will thereafter be listed for defended hearing.

**5. THAT** the Confidential Report relating to matters specified in Sections 10A(2)(g) be treated as confidential and remain confidential until Council determines otherwise.

passed at the meeting of the Council held on 30 November 2020 be and is hereby rescinded.

**THAT** the following resolution be passed in lieu thereof:

**1. THAT,** if Council is prepared to finalise the matter based on any agreement reached as part of the s34 conciliation conference currently before the Land and Environment Court, Council instruct its solicitors to resolve the matter by way of Consent Orders in order to ensure that the terms of any agreement are made public prior to final orders being made.

## **7.2. Notice of Motion No. 21/20 - Crs Baker and Beregi - Keep North Sydney Olympic Pool Open**

**1. THAT** the North Sydney Olympic Pool complex remain open as far as is possible given Government advice and guidelines, until the end of the Easter School holidays 2021 - that is until Monday 19 April 2021.

**2. THAT** Council note the important role that swimming, exercise and the North Sydney Pool complex plays in assisting our community to recover and re-connect as the impact of the COVID-19 pandemic eases.

**3. THAT** Council note the strong community support for the Pool staying open until the end of the summer swimming season.

**4. THAT** Council note that many residents and families will be staying at home in Sydney over the Christmas/January holiday period due to the ongoing travel restrictions, including international, and hence the need for a community facility such as North Sydney Pool to remain open is of even greater need and importance.

**5. THAT** Council notes the crucial role exercise and particularly swimming has on our community's mental and physical health.

**6. THAT** Council note that final approval for the DA following the imposing of conditions of consent has only just been granted.

**7. THAT** Council note that the tender process for the building and construction of the pool is still ongoing.

**8. THAT** Council note that no appointment has been made in relation to the building and construction works associated with the redevelopment of NSOP and no contract for the works has been entered into.

**9. THAT** Council note that the Pool was re-opened earlier in the year following a recent structural report on the Pool which allowed the Pool to re-open.

**10. THAT** Council note that, with a hot summer predicted and social distancing measures being enforced at beaches and other locations where the community can swim and cool down, keeping the North Sydney Olympic Pool complex open over the summer is an appropriate and responsible measure and will contribute to the community's well-being.

**11. THAT** Council note that during summer, the Pool usually operates at a surplus and that should there be any shortfall in revenue vs expenses, then Council absorb these costs as part of its relief initiative to support the community recovery from COVID-19.

The Motion was moved by Councillor Beregi and seconded by Councillor Baker.

An Amendment was moved by Councillor Brodie and seconded by Councillor Keen,

**1. THAT** the North Sydney Olympic Pool complex remain open until such time that a contract is signed under its current operating conditions.

The Motion was put and **Carried**.

Voting was as follows:

For/Against 9 / 1

**For:** Councillor Gibson, Councillor Beregi, Councillor Keen, Councillor Brodie, Councillor Carr, Councillor Barbour, Councillor Gunning, Councillor Mutton, Councillor Baker

**Against:** Councillor Drummond

**Absent:** Nil

The Amendment became the Motion and was put and **Carried**.

Voting was as follows:

For/Against 9 / 1

**For:** Councillor Gibson, Councillor Beregi, Councillor Keen, Councillor Brodie, Councillor Carr, Councillor Barbour, Councillor Gunning, Councillor Mutton, Councillor Baker

**Against:** Councillor Drummond

**Absent:** Nil

## **225. RESOLVED:**

**1. THAT** the North Sydney Olympic Pool complex remain open until such time that a contract is signed under its current operating conditions.

### **7.3. Notice of Motion No. 22/20 - Crs Baker and Beregi - Vale Councillor Deborah Hutchens**

**1. THAT** Council acknowledge the significant contribution to the Lane Cove community and the Lower North Shore community by the late Councillor and former Mayor of Lane Cove, Deborah Hutchens.

**2. THAT** Council write to Lane Cove Council and to Councillor Hutchens' family expressing deep sympathy and condolences on the passing of Councillor Deborah Hutchens.

The Recommendation was moved by Councillor Beregi and seconded by Councillor Baker.

The Motion was put and **Carried**.



Voting was as follows:

For/Against 10 / 0

**For:** Councillor Gibson, Councillor Beregi, Councillor Keen, Councillor Brodie, Councillor Carr, Councillor Barbour, Councillor Drummond, Councillor Gunning, Councillor Mutton, Councillor Baker

**Against:** Nil

**Absent:** Nil

**226. RESOLVED:**

- 1. THAT** Council acknowledge the significant contribution to the Lane Cove community and the Lower North Shore community by the late Councillor and former Mayor of Lane Cove, Deborah Hutchens.
- 2. THAT** Council write to Lane Cove Council and to Councillor Hutchens' family expressing deep sympathy and condolences on the passing of Councillor Deborah Hutchens.

**8. Closure**

The Meeting concluded at 8.08pm.