



MINUTES OF THE EXTRAORDINARY MEETING OF COUNCIL

commencing at 5pm on

THURSDAY 1 FEBRUARY 2024

Council Chambers, 11 Manning Street, KIAMA NSW 2533

**MINUTES OF THE EXTRAORDINARY MEETING
OF THE COUNCIL OF THE MUNICIPALITY OF KIAMA
HELD IN THE COUNCIL CHAMBERS, KIAMA
ON THURSDAY 1 FEBRUARY 2024 AT 5PM**

PRESENT: Mayor – Councillor N Reilly,
Councillors M Brown, K Rice, W Steel, J Keast, S Larkins,
K Renkema-Lang and M Croxford

BY AUDIO-VISUAL: Deputy Mayor – Councillor I Draisma
LINK

IN ATTENDANCE: Jane Stroud – Chief Executive Officer
Jessica Rippon – Director Planning, Environment and Communities
Michael Malone – Director Infrastructure and Liveability
Joe Gaudiosi – Chief Operating Officer
Olena Tulubinska – Chief Financial Officer
Daryl Hagger – Public Officer

1 OPENING OF MEETING

The Mayor opened the meeting at 5pm.

2 WEBCASTING STATEMENT

The Mayor stated that the meeting is being recorded and made publicly available on the Council website, and that persons attending the meeting should refrain from making any defamatory statements.

3 ACKNOWLEDGEMENT OF COUNTRY

The Mayor acknowledged the traditional owners.

4 STATEMENT OF ETHICAL OBLIGATIONS

The Mayor read the statement of ethical obligations:

“Councillors are reminded of their oaths or affirmations of office under section 233A of the Act and their obligations under the Code of Conduct to disclose and appropriately manage any conflicts of interest.”

5 APOLOGIES

Nil.

Request from Councillor Draisma to attend meeting via audio-visual link**24/001OC**

Resolved that Council, as required under section 5.2 of the Code of Meeting Practice, permit Councillor Draisma to attend the Extraordinary Council meeting held on 1 February 2024 via audio-visual due to her being overseas at this time.

(Councillors Brown and Croxford)

For: Councillors Brown, Croxford, Draisma, Keast, Larkins, Reilly,
Renkema-Lang, Rice and Steel

Against: Nil

Procedural motion – Councillor excused from standing**24/002OC**

Resolved that Councillor Steel is excused from the requirement to stand when speaking.

(Councillors Croxford and Brown)

For: Councillors Brown, Croxford, Draisma, Keast, Larkins, Reilly,
Renkema-Lang, Rice and Steel

Against: Nil

6 DISCLOSURE OF INTEREST**Disclosure of Interest - Councillor Renkema-Lang**

Councillor Renkema-Lang declared a less than significant non-pecuniary interest in item 8.1 *Notice of Motion: Open letter to Council – Blue Haven* and item 9.1 *Tender – Blue Haven – Bonaira divestment* as she is a member of the United Services Union. Councillor Renkema-Lang proposed to disclose and vote on this matter.

Disclosure of Interest - Councillor Keast

Councillor Keast declared a less than significant non-pecuniary interest in item 9.1 *Tender – Blue Haven – Bonaira divestment* as she is an employee of the Kiama Community College Ltd which offers courses in Certificate III Aged Care. Students undertake placement at Blue Haven Bonaira, though Councillor Keast is not involved in coordinating the course, recruiting the students or arranging the placements. Councillor Keast's father also volunteers at Blue Haven Bonaira, providing entertainment at Friday Happy Hour. Councillor Keast proposed to disclose and vote on this matter.

7 PUBLIC FORUM SUMMARY

Name	Item No.	Subject
Howard Jones	8.1	Notice of Motion: Open letter to Council – Blue Haven

TABLING OF PETITIONS AND OTHER DOCUMENTS

Due to the unlawful, unenforceable and unworkable notice of motion for the Open Letter to Council written by Howard Jones and Sandra McCarthy, the Mayor proposed to table the open letter for the public record.

Councillor Croxford raised a **point of order** in line with clause 10.28 of the Code of Meeting Practice to reduce the speaking time. The Mayor ruled that a motion needed to be put.

Procedural motion**24/003OC**

Resolved that in line with clause 10.28 of the Code of Meeting Practice the speaking time be reduced from 5 minutes to 3 minutes.

(Councillors Croxford and Brown)

For: Councillors Brown, Croxford, Draisma, Keast, Larkins, Reilly, Renkema-Lang, Rice and Steel

Against: Nil

Councillor Rice disagreed with the Mayor's ruling on the tabling of the Notice of Motion open letter. At this time 5:09pm, standing orders were suspended to deal with a motion of dissent.

The Mayor ruled that Councillor Rice could speak for 5 minutes on the dissent motion, as well as for his response.

Councillor Brown raised a **point of order** that the motion was unlawful so should not be debated. The Mayor ruled that the notice of motion was not being debated but the Chair's ruling on the tabling of the letter was the matter being discussed and that Councillor Rice had dissented from the Mayor's ruling.

Councillor Renkema-Lang raised a **point of order** that there are corrections to the advice that the motion is not lawful that need to be stated. The Mayor ruled that the motion of dissent was being discussed, not the recommendation of the Notice of Motion.

Motion of dissent

It was **moved** by Councillor Rice that the meeting dissent from the Chairperson's ruling on the Open Letter being tabled.

The **motion** on being put was **lost**.

For: Councillors Keast, Renkema-Lang and Rice

Against: Councillors Brown, Croxford, Draisma, Larkins, Reilly and Steel

Standing orders resumed at 5:20pm.

The Mayor tabled the Open Letter in petitions and other documents.

8 NOTICE OF MOTION

8.1 Notice of Motion: Open letter to Council - Blue Haven

As the Open letter to Council has been tabled this Notice of Motion did not proceed to debate.

The Mayor advised the public and press attending that the Council would be moving into closed session. As some members of the public (United Services Union officials) refused to leave the gallery standing orders were suspended at 5:23pm to seek Police assistance.

Standing orders resumed at 6:06pm.

9 CONFIDENTIAL SUMMARY

24/004OC

Resolved that at this time, 6.06pm, Council form itself into a Confidential Committee of the Whole to deal with matters listed in the recommendations as set out below subject to the consideration of any representations relating to such action.

(Councillors Steel and Draisma)

For: Councillors Brown, Croxford, Draisma, Keast, Larkins, Reilly,
Renkema-Lang, Rice and Steel

Against: Nil

Public Representations:

The Mayor called for representations regarding issues which had been proposed to be disclosed in Confidential Committee of the Whole. No such representations were received.

10.1 Exclusion Of Press And Public:

24/005OC

Committee recommendation that in accordance with Sections 10 and 10A of the Local Government Act, 1993 as amended, Council close the meeting of the

Confidential Committee of the Whole to the Press and Public to deal with the following matters on the grounds as detailed below.

9.1 TENDER - BLUE HAVEN - BONAIRA DIVESTMENT

Reason for Confidentiality: This matter deals with information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business as per Section 10A(2)(c) of the Local Government Act.

(Councillors Steel and Keast)

For: Councillors Brown, Croxford, Draisma, Keast, Larkins, Reilly,
Renkema-Lang, Rice and Steel

Against: Nil

10 CONFIDENTIAL REPORTS

9.1 Tender - Blue Haven - Bonaira Divestment

Declarations of interest

Councillor Renkema-Lang and Councillor Keast both declared a less than significant non-pecuniary interest in this matter, disclosed and voted.

It was **moved** by Councillor Reilly and seconded by Councillor Brown that Council:

1. receives that by RFT process, Request for Tender – Blue Haven (November 2023) (RFT) Council invited tenders in relation to the sale of its aged care business known as Blue Haven – Bonaira located at 14a Bonaira Street, Kiama NSW 2533 (together with relevant assets used to conduct the Business and the land);
2. receives the confidential report in relation to the RFT, “Tender - Blue Haven - Bonaira Divestment” (**Confidential Report**);
3. receives that the RFT did not include the Council’s Community Transport Operations, due to issues raised by Transport for NSW (TfNSW);
4. declines to accept any of the tenders submitted in response to the RFT;
5. for the purpose of section 178(3)(e) of the *Local Government (General) Regulation 2021 (LG Regulation)*, resolves to enter into direct negotiations with the Preferred Tenderer identified in the Confidential Report in the manner described in the Confidential Report;
6. notes that the reason for Council determining to enter into direct negotiations with the Preferred Tenderer is that Council is satisfied that the Preferred Tenderer would be capable of meeting the requirements set out in the RFT; and
7. accepts that the reasons for Council declining to invite fresh tenders or applications under sections 178(3)(b)-(d) are:
 - (a) it is not expected that further market testing will provide a more satisfactory result;

- (b) despite none of the tenders being capable of acceptance at the end of the RFT Tender, Council considers that there are reasonable prospects of achieving an advantageous outcome through direct negotiations with the Preferred Tenderers;
 - (c) inviting fresh tenders would delay the sale with potentially adverse consequences for the organisation;
8. authorises the Chief Executive Officer to directly negotiate with the Preferred Tenderer(s):
- (a) in the manner described in the Confidential Report for the purposes of entering into an agreement to sell Council's aged care business known as Blue Haven – Bonaira;
 - (b) ensuring in accordance with the Fair Work Act 2009 that for a period of five years, the current terms and conditions of employment be transferred to the employment of the transferring employees with the new employer;
9. directs the Chief Executive Officer to table any draft contract arising from the direct negotiations with either of the Preferred Tenderer(s) before Council for resolution prior to contract execution;
10. resolves that because of extenuating circumstances a satisfactory result would not be achieved by inviting tenders for the sale of the Council's Community Transport Operations related to Blue Haven-Bonaira, and notes that the reasons for forming that view are that a fresh open tender process would be difficult to conduct where Transport for NSW requires direct involvement;
11. authorises the Chief Executive Officer under s55(3)(i) of the LG Act, to:
- (a) directly negotiate with the parties listed in the Confidential Report for the purposes of entering into an agreement to sell the Council's Community Transport Operations related to Blue Haven-Bonaira, and
 - (b) execute any agreement arising from those direct negotiations.

An **amended motion was moved** by Councillor Renkema-Lang and seconded by Councillor Rice, that Council:

1. receives that by RFT process, Request for Tender – Blue Haven (November 2023) (RFT) Council invited tenders in relation to the sale of its aged care business known as Blue Haven – Bonaira located at 14a Bonaira Street, Kiama NSW 2533 (together with relevant assets used to conduct the Business and the land);
2. receives the confidential report in relation to the RFT, "Tender - Blue Haven - Bonaira Divestment" (**Confidential Report**);
3. receives that the RFT did not include the Council's Community Transport Operations, due to issues raised by Transport for NSW (TfNSW);
4. declines to accept any of the tenders submitted in response to the RFT;
5. for the purpose of section 178(3)(e) of the *Local Government (General) Regulation 2021 (LG Regulation)*, resolves to enter into direct negotiations with the Preferred Tenderer identified in the Confidential Report in the manner described in the Confidential Report;

6. notes that the reason for Council determining to enter into direct negotiations with the Preferred Tenderer is that Council is satisfied that the Preferred Tenderer would be capable of meeting the requirements set out in the RFT; and
7. accepts that the reasons for Council declining to invite fresh tenders or applications under sections 178(3)(b)-(d) are:
 - (a) it is not expected that further market testing will provide a more satisfactory result;
 - (b) despite none of the tenders being capable of acceptance at the end of the RFT Tender, Council considers that there are reasonable prospects of achieving an advantageous outcome through direct negotiations with the Preferred Tenderers;
 - (c) inviting fresh tenders would delay the sale with potentially adverse consequences for the organisation;
8. authorises the Chief Executive Officer to directly negotiate with the Preferred Tenderer(s):
 - (a) in the manner described in the Confidential Report for the purposes of entering into an agreement to sell Council's aged care business known as Blue Haven – Bonaira;
 - (b) ensuring in accordance with the Fair Work Act 2009 that for a period of five years, the current terms and conditions of employment be transferred to the employment of the transferring employees with the new employer;
9. directs the Chief Executive Officer to table any draft contract arising from the direct negotiations with either of the Preferred Tenderer(s) before Council for resolution prior to contract execution;
10. defers the decision to sell Council's community transport operations related to Blue Haven Bonaira until the draft contract comes back to Council;
11. authorises the Chief Executive Officer under s55(3)(i) of the LG Act, to:
 - (a) directly negotiate with the parties listed in the Confidential Report for the purposes of entering into an agreement to sell the Council's Community Transport Operations related to Blue Haven-Bonaira and
 - (b) execute any agreement arising from those direct negotiations.

Councillor Brown raised a **point of order** that Councillor Renkema-Lang's motion was in direct contradiction of a decision of Council and could not be put. Prior to the Mayor making a ruling Councillor Draisma raised a **point of order** that as this is outside of the three (3) month timeframe there is capacity to change the motion. The Mayor ruled that he had already not accepted the amendment.

On being **put** the motion was **lost**.

For: Councillors Keast, Renkema-Lang and Rice

Against: Councillors Brown, Croxford, Draisma, Larkins, Reilly and Steel

An **amended motion was moved** by Councillor Keast and seconded by Councillor Rice that Council:

1. receives that by RFT process, Request for Tender – Blue Haven (November 2023) (RFT) Council invited tenders in relation to the sale of its aged care business known as Blue Haven – Bonaira located at 14a Bonaira Street, Kiama NSW 2533 (together with relevant assets used to conduct the Business and the land);
2. receives the confidential report in relation to the RFT, “Tender - Blue Haven - Bonaira Divestment” (**Confidential Report**);
3. receives that the RFT did not include the Council’s Community Transport Operations, due to issues raised by Transport for NSW (TfNSW);
4. declines to accept any of the tenders submitted in response to the RFT;
5. for the purpose of section 178(3)(e) of the *Local Government (General) Regulation 2021 (LG Regulation)*, resolves to enter into direct negotiations with the Preferred Tenderer identified in the Confidential Report in the manner described in the Confidential Report;
6. notes that the reason for Council determining to enter into direct negotiations with the Preferred Tenderer is that Council is satisfied that the Preferred Tenderer would be capable of meeting the requirements set out in the RFT; and
7. accepts that the reasons for Council declining to invite fresh tenders or applications under sections 178(3)(b)-(d) are:
 - (a) it is not expected that further market testing will provide a more satisfactory result;
 - (b) despite none of the tenders being capable of acceptance at the end of the RFT Tender, Council considers that there are reasonable prospects of achieving an advantageous outcome through direct negotiations with the Preferred Tenderers;
 - (c) inviting fresh tenders would delay the sale with potentially adverse consequences for the organisation;
8. authorises the Chief Executive Officer to directly negotiate with the Preferred Tenderer(s):
 - (a) in the manner described in the Confidential Report for the purposes of entering into an agreement to sell Council’s aged care business known as Blue Haven – Bonaira;
 - (b) ensuring in accordance with the Fair Work Act 2009 that for a period of five years, the current terms and conditions of employment be transferred to the employment of the transferring employees with the new employer;
9. directs the Chief Executive Officer to table any draft contract, and the supporting evaluation report, arising from the direct negotiations with either of the Preferred Tenderer(s), before Council for resolution prior to contract execution;
10. resolves that because of extenuating circumstances a satisfactory result would not be achieved by inviting tenders for the sale of the Council’s Community Transport Operations related to Blue Haven-Bonaira, and notes that the reasons for forming that view are that a fresh open tender process would be difficult to conduct where Transport for NSW requires direct involvement;

11. authorises the Chief Executive Officer under s55(3)(i) of the LG Act, to:
 - (a) directly negotiate with the parties listed in the Confidential Report for the purposes of entering into an agreement to sell the Council's Community Transport Operations related to Blue Haven-Bonaira and
 - (b) execute any agreement arising from those direct negotiations.

Councillor Steel raised a **point of order** that the amendment be put.

On being **put** the amended motion was **lost**.

For: Councillors Keast, Renkema-Lang and Rice

Against: Councillors Brown, Croxford, Draisma, Larkins, Reilly and Steel

24/006OC

Committee recommendation that Council:

1. receives that by RFT process, Request for Tender – Blue Haven (November 2023) (RFT) Council invited tenders in relation to the sale of its aged care business known as Blue Haven – Bonaira located at 14a Bonaira Street, Kiama NSW 2533 (together with relevant assets used to conduct the Business and the land);
2. receives the confidential report in relation to the RFT, “Tender - Blue Haven - Bonaira Divestment” (**Confidential Report**);
3. receives that the RFT did not include the Council's Community Transport Operations, due to issues raised by Transport for NSW (TfNSW);
4. declines to accept any of the tenders submitted in response to the RFT;
5. for the purpose of section 178(3)(e) of the *Local Government (General) Regulation 2021 (LG Regulation)*, resolves to enter into direct negotiations with the Preferred Tenderer identified in the Confidential Report in the manner described in the Confidential Report;
6. notes that the reason for Council determining to enter into direct negotiations with the Preferred Tenderer is that Council is satisfied that the Preferred Tenderer would be capable of meeting the requirements set out in the RFT; and
7. accepts that the reasons for Council declining to invite fresh tenders or applications under sections 178(3)(b)-(d) are:
 - (a) it is not expected that further market testing will provide a more satisfactory result;
 - (b) despite none of the tenders being capable of acceptance at the end of the RFT Tender, Council considers that there are reasonable prospects of achieving an advantageous outcome through direct negotiations with the Preferred Tenderers;
 - (c) inviting fresh tenders would delay the sale with potentially adverse consequences for the organisation;
8. authorises the Chief Executive Officer to directly negotiate with the Preferred Tenderer(s):

- (a) in the manner described in the Confidential Report for the purposes of entering into an agreement to sell Council's aged care business known as Blue Haven – Bonaira;
 - (b) ensuring in accordance with the Fair Work Act 2009 that for a period of five years, the current terms and conditions of employment be transferred to the employment of the transferring employees with the new employer;
9. directs the Chief Executive Officer to table any draft contract arising from the direct negotiations with either of the Preferred Tenderer(s) before Council for resolution prior to contract execution;
10. resolves that because of extenuating circumstances a satisfactory result would not be achieved by inviting tenders for the sale of the Council's Community Transport Operations related to Blue Haven-Bonaira, and notes that the reasons for forming that view are that a fresh open tender process would be difficult to conduct where Transport for NSW requires direct involvement;
11. authorises the Chief Executive Officer under s55(3)(i) of the LG Act, to:
- (a) directly negotiate with the parties listed in the Confidential Report for the purposes of entering into an agreement to sell the Council's Community Transport Operations related to Blue Haven-Bonaira and
 - (b) execute any agreement arising from those direct negotiations.

(Councillors Reilly and Brown)

For: Councillors Brown, Croxford, Draisma, Keast, Larkins, Reilly and Steel

Against: Councillors Renkema-Lang and Rice

The Mayor retracted his comments made during the course of the debate.

Close of Confidential Committee of the Whole:

24/0070C

Committee recommendation that at this time, 6.36pm, the Confidential Committee of the Whole revert to Open Council.

(Councillors Croxford and Draisma)

For: Councillors Brown, Croxford, Draisma, Keast, Larkins, Reilly, Renkema-Lang, Rice and Steel

Against: Nil

The Mayor ruled that the public cannot return to the gallery due to the health and safety risk to Councillors and staff.

Adoption of Report

The Chief Executive Officer formally reported the recommendations of the Confidential Committee of the Whole more particularly set out above.

24/008OC

Resolved that that the Confidential Committee of the Whole recommendations numbered 24/005OC to 24/007OC be confirmed and adopted.

(Councillors Reilly and Brown)

For: Councillors Brown, Croxford, Draisma, Keast, Larkins, Reilly,
Renkema-Lang, Rice and Steel

Against: Nil

Addendum to reports**24/009OC**

Resolved that at this time, 6:43pm, Council bring forward and deal with the supplementary item S1 *Notice of Intention to vary a Performance Improvement Order*.

(Councillors Steel and Larkins)

For: Councillors Brown, Croxford, Draisma, Keast, Larkins, Reilly,
Renkema-Lang, Rice and Steel

Against: Nil

S.1 Notice of Intention to vary a Performance Improvement Order

Councillor Croxford raised a **point of order** that Councillor Renkema-Lang was grandstanding and the motion should be put. The Mayor ruled that the motion could not be put as there had not been two speakers in favour and against.

Councillor Renkema-Lang moved a motion of dissent against the Mayor's ruling that she was not allowed to continue to speak. The Mayor ruled that it was not a motion of dissent but a motion [sic] of disorder and in line with section 15.12 of the Code of Meeting Practice "Acts of disorder", asked Councillor Renkema-Lang to withdraw the motion of dissent and apologise to the Councillors.

Councillor Renkema-Lang disagreed with the Chair's ruling and stated that it was not a motion [sic] of disorder.

The Mayor stated that it was a motion [sic] of disorder and again asked Councillor Renkema-Lang to either withdraw the motion and apologise to the Councillors, or leave the meeting.

Councillor Renkema-Lang left the meeting at 6:47pm.

24/010OC

Resolved that Council note the correspondence from the Minister for Local Government, the Notice of Intention to vary a Performance Improvement Order and the John Rayner report.

(Councillors Brown and Croxford)

For: Councillors Brown, Croxford, Draisma, Keast, Larkins, Reilly, Rice and Steel

Against: Nil

11 CLOSURE

There being no further business the meeting closed at 6.49pm.
These Minutes were confirmed at the Ordinary Meeting of Council held on 13 February 2024.

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Mayor