

Council Meeting

held at the Civic Centre, Civic Drive, Greensborough
on Tuesday 25 July 2023 commencing at 7:00pm.

Minutes

Carl Cowie
Chief Executive Officer

Friday 28 July 2023

Distribution: Public

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Nillumbik Shire Council

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Nillumbik Shire Council

**Minutes of the Meeting of Nillumbik Shire Council held Tuesday 25 July 2023.
The meeting commenced at 7.02pm.**

Councillors present:

Cr Ben Ramcharan	Sugarloaf Ward (Mayor)
Cr Richard Stockman	Blue Lake Ward
Cr Karen Egan	Bunjil Ward
Cr Natalie Duffy	Edendale Ward
Cr Peter Perkins	Ellis Ward
Cr Frances Eyre	Swipers Gully Ward
Cr Geoff Paine	Wingrove Ward (Deputy Mayor)

Officers in attendance:

Carl Cowie	Chief Executive Officer
Vince Lombardi	Chief Operating Officer
Blaga Naumoski	Director Governance, Communications and Community Safety
Corrienne Nichols	Director Communities
Rosa Zouzoulas	Director Planning, Environment and Strategy
Jeremy Livingston	Director Culture and Performance
Dimitra Barnes	Acting Manager Governance and Property

1. Welcome by the Mayor

2. Acknowledgement of Country

Acknowledgement of Country was read by the Mayor, Cr Ben Ramcharan.

3. Good Governance Pledge

The Good Governance Pledge was ready by Cr Frances Eyre.

4. Prayer

A prayer was read by Betsy Dere and Oscar Gomez from the Spiritual Assembly of the Baha'is of Nillumbik.

5. Apologies

Nil

6. Presentations

Sporting Presentations - 25 July 2023

Tyler Habel (Swipers Gully Ward) Tyler receives \$250 as a contribution for being selected to participate in the World BMX Championships.

Nillumbik Shire Council wishes Tyler every success with their future sporting pursuits.

7. Confirmation of Minutes

COM.001/23 Confirmation of Minutes Council Meeting held Tuesday 27 June 2023

Summary

Confirmation of the minutes of the Council Meeting and the Confidential Council Meeting held on Tuesday 27 June 2023.

Council Resolution

MOVED: Cr Geoff Paine
SECONDED: Cr Frances Eyre

That Council:

- 1 Confirms the minutes of the Council Meeting and the Confidential Council Meeting held on Tuesday 27 June 2023 (**Attachment 1** and **Attachment 2**).
- 2 Resolves that the Confidential Council Meeting minutes (**Attachment 2**) remains confidential in accordance with section 3(1) of the *Local Government Act 2020*.

CARRIED UNANIMOUSLY

8. Disclosure of conflicts of interest

Nil

9. Petitions

Nil

10. Questions from the gallery

David Smith has submitted the following questions:

Question 1

Is the mission of the Shire of Nillumbik to tax all of the Shire for the sole benefit of Eltham and Diamond Creek?

Question 2

Why are the rates burdened on the residents of Plenty the highest in the Shire when Plenty is not a designated activity center, has no 20 year plan and has no planned infrastructure investment by the Shire?

Response

Rates and charges are calculated in line with the rate capping framework established by the Victorian State Government. Victorian councils must use property values as the basis for distributing the rating burden across the municipality and in keeping with this, rates and charges are not apportioned based on service utilisation, location or other methodologies.

The allocation of funding is not based on geographical location, rather, Council's annual budget process considers service delivery and capital works programming based on community and infrastructure requirements, and legal obligations.

Council levies rates and charges under the *Local Government Act 1989* in order to fund and deliver essential community infrastructure and services. These rates are a statutory charge that applies to all land owners.

Kelvin Granger / Dean Hurlston on behalf of Council Watch have submitted the following question:

Question 1

Can council please advise the dollar (\$) amount of "cost shifting from State Government" they estimate they incurred in 2022/23 Financial Year?

Response 1

Council recognises the very real impacts cost-shifting has on the long term financial sustainability of all Victorian councils. Council acknowledges that increasing cost burdens have resulted in influencing service and amenity delivery however, there is no classification specifically attributable to capturing cost-shifting.

Anthony Millar has submitted the following question:

Question 1

Can you please explain why the council is not following due process with objection notice in relation to planning matters?

Response 1

Council follows all planning processes in accordance with the requirements of the *Planning and Environment Act 1987* and the Nillumbik Planning Scheme. Council understands that Mr Millar is concerned about a development in Discovery Drive Diamond Creek. Officers have responded to Mr Millar and explained that no planning permit was required for the development and the issued building permit accords with the building regulations and design standards with respect to overlooking and overshadowing.

Question 2

Can you please explain why the planning department is letting external parties sign off plans without objections being dealt with in accordance with due process?

A complaint has not been raised and nothing has been done to rectify issue.

“I am now forced to engage a lawyer.”

The first part is a question second part is now going to be the outcome

Response 2

Building permits can be issued by a registered private building surveyor in Victoria. Building designs must be assessed by the relevant building surveyor engaged by the land owner to ensure the design accords with the requirements of the Building Regulations and design standards. Where a design accords and does not seek to vary a building regulation, a building permit can be issued by the registered private building surveyor. Council cannot intervene where the design is compliant.

Darren Zdravko Zilic has submitted the following questions:

Question 1

Is the lords prayer still held prior to council meetings?

Response 1

The decision of Council to endorse the new Governance Rule – Meeting Procedure at the last Council meeting which removed the Prayer from the Order of Business is subject to a Notice of Rescission listed for consideration on tonight’s Council meeting. Once a Notice of Motion to rescind a resolution has been received, no action could be taken to implement the resolution. That means that the Prayer will remain on the Agenda until Council decides on the rescission motion.

Question 2

In the short term what is Nillumbik Council doing about the housing crisis across our region.

Response 2

Council has partnered with other Councils across the region and is advocating to Government:

- to review housing growth direction across Melbourne;
- for improved delivery mechanisms for the creation of new social and affordable housing; and
- for planning reform to reduce barriers in Growth Area Councils to facilitate infill growth and greenfield development.

Paul Ellis has submitted the following question:

Question 1

In relation to council moving to drop the traditional prayer, whilst maintaining the "Welcome to Country" performance. Is council aware that around %50 of the residents of the shire may be offended by such a move, which could be argued to be an offence under the Charter of Human Rights and Responsibilities Act (Vic) 2006 Section 14 (1)(b), (2) and Section 19. Along with Section 19 of the Equal Opportunities Act 2010 (Vic)

Response 1

Council is aware that based on the latest census data from 2021, the predominant religious affiliation in Nillumbik Shire was Western (Roman) Catholic, comprising 21.8% of the population. Meanwhile, nearly half of the residents, totalling 49.9%, identified as having no religious affiliation, and 3.9% chose not to disclose their religious preference.

An Acknowledgement of Country is an opportunity for anyone to show respect for Traditional Owners and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country.

Beginning Council Meetings with an Acknowledgement of Country is consistent with Council's Access, Equity & Inclusion policy which recognises First Nations community as a priority group in Nillumbik. A Welcome to Country will be arranged once per year, on the occasion of the appointment of the Mayor.

The decision of Council to endorse the new Governance Rule – Meeting Procedure at the last Council meeting which removed the Prayer from the Order of Business is subject to a Notice of Rescission listed for consideration on tonight's Council meeting. Once a Notice of Motion to rescind a resolution has been received, no action could be taken to implement the resolution. That means that the Prayer will remain on the Agenda until Council decides on the rescission motion.

Sharrin Murphy has submitted the following question:

Question 1

In relation to Item 13. NOM 001/23.

At the June council meeting, some councillors ignored the Council Officer's recommendation, based on reasonable evidence, to remove the prayer from the agenda of future council meetings. This is despite the fact that 51% of Nillumbik residents indicated in the latest Census that they are not associated with any religion.

Therefore, why does council think it necessary to include a prayer at every meeting, when the Councillor Oath and the Good Governance Pledge already provide clear directions for councillors to carry out their civic responsibilities with diligence and integrity, make sound decisions in a spirit of fairness, and serve the needs and well-being of their community?

Response 1

The decision of Council to endorse the new Governance Rule – Meeting Procedure at the last Council meeting which removed the Prayer from the Order of Business is subject to a Notice of Rescission listed for consideration on tonight's Council meeting.

Council is aware that based on the latest census data from 2021, the predominant religious affiliation in Nillumbik Shire was Western (Roman) Catholic, comprising 21.8% of the population. Meanwhile, nearly half of the residents, totalling 49.9%, identified as having no religious affiliation, and 3.9% chose not to disclose their religious preference.

As this matter is list on the Agenda tonight for Council consideration, we are unable to pre-empt the decision of Council.

Michael Dove has submitted the following question:

Question 1

In relation to Item 13, NOM 001/23

At Boroondara City Council, I am aware that a legal challenge will definitely occur if a prayer continues to be included in the council meeting agenda. The case will argue that it contravenes sections of the Local Government Act (2020) and the Victorian Charter of Human Rights and Responsibilities Act (2006).

The case centres around the proposition that Freedom (emphasis) of Religion is important, but it does not trump Freedom (emphasis) from Religion in the conduct of public government.

Assuming Boroondara does not acquiesce and accept the legal case, it appears highly probable that the prayer will be found to be illegal in the courts. This will have significant repercussions for the minority of councils in Victoria that persist with this anachronistic and divisive practice.

Has Council considered the potential of a legal challenge that could result in a significant financial cost for Council and Nillumbik ratepayers, with associated adverse media coverage and reputational risk?

Response 1

The assertion made regarding the unlawfulness of including the prayer under the Victorian Charter of Human Rights and Responsibilities Act and the Local Government Act has not undergone legal scrutiny in a court of law. Currently, there is no existing case law or precedent in Australia that indicate the inclusion of the prayer is considered unlawful. Council will consider and take into account as circumstances evolve and new information or legal perspectives emerge.

As this matter is list on the Agenda tonight for Council consideration, we are unable to pre-empt the decision of Council.

Meralyn Klein has submitted the following questions:

Question 1

Why did Council who states it is inclusive and represents the community decide to remove the prayer from Council meetings without consultation with the faith community in Nillumbik?

Question 2

Given that Councillors are voted on to Council to represent the public and over 50 percent of the population believe there is a God, what was the basis for removing the prayer from the Council meetings?

Response

The decision of Council to endorse the new Governance Rule – Meeting Procedure at the last Council meeting which removed the Prayer from the Order of Business is subject to a Notice of Rescission listed for consideration on tonight's Council meeting. Prior to making the decision Council undertook a process of community engagement. This public engagement via Council's Participate Nillumbik platform commenced on 1 March and concluded on 30 March 2023.

Based on the latest census data from 2021, the predominant religious affiliation in Nillumbik Shire was Western (Roman) Catholic, comprising 21.8% of the population. Meanwhile, nearly half of the residents, totalling 49.9%, identified as having no religious affiliation, and 3.9% chose not to disclose their religious preference.

As this matter is list on the Agenda tonight for Council consideration, we are unable to pre-empt the decision of Council.

Nada Cunningham has submitted the following question:

Question 1

I would like to know why, given the current discussions on neighbourhood character and biodiversity, No 43 Antoinette Boulevard Eltham has been able to flout the bush residential quality - and planning regulations - of Antoinette Boulevard by painting the iconic mud brick house white and gradually removing the garden to set up a large concrete parking lot - presumably for a business given the number of cars present every day?

Response 1

Council is aware of the activity that has recently taken place at 43 Antoinette Boulevard Eltham and have an ongoing planning investigation underway. Whilst the specifics cannot be provided, a thorough and comprehensive investigation is currently active and appropriate enforcement action is occurring.

11. Reports of Advisory Committees

AC.006/23 Advisory Committee Report - 25 July 2023

Distribution: Public

Manager: Blaga Naumoski, Director Governance, Communications and Community Safety

Author: Dimitra Barnes, Acting Manager Governance and Property

Summary

Council has a range of Advisory Committees which provide a formal mechanism for Council to consult with key stakeholders, seek specialist advice and enable community participation. Although they do not make any formal decisions, they provide valuable advice to Council.

In accordance with Advisory Committee Terms of Reference, the following minutes of Advisory Committee meetings are attached (**Attachment 1**) and presented to Council for noting:

1. Youth Council Formal Advisory Meeting held 5 June 2023.

Council Resolution

MOVED: Cr Karen Egan

SECONDED: Cr Natalie Duffy

That Council notes the Minutes of the Advisory Committee meetings reported (**Attachment 1**).

CARRIED UNANIMOUSLY

11. Reports of Advisory Committees

AC.006/23 Advisory Committee Report - 25 July 2023

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12. Officers' reports**CM.057/23 Climate Action Plan Year 1 (22/23) Annual Performance Report and Year 2 (23/24) Implementation Plan**

Distribution: Public**Manager: Rosa Zouzoulas, Director Planning, Environment and Strategy****Author: Leigh Northwood, Manager Strategic Planning and Environment****Summary**

Council's Climate Action Plan 2022-2032 was adopted in April 2022 and its Year 1 (2022-2023) Implementation Plan was endorsed in July 2022.

The purpose of this report is to present the Climate Action Plan Annual Performance Report – Year 1 (divided into **Attachment 1 and Attachment 2**) for noting; and the Year 2 (2023/34) Annual Implementation Plan (**Attachment 3**) for consideration of adoption.

This work supports Council's ongoing response to its declaration of a Climate Emergency in April 2022:

“As a Green Wedge Shire, Nillumbik Council is acutely aware of the multiple threats facing all communities and ecosystems as a result of climate change. This requires urgent action by all levels of government, including local government.

Council therefore Declares a Climate Emergency, commits to a climate emergency response, and will proactively integrate climate change mitigation and adaptation into all Council actions”.

The overall position, as reflected in the annual performance reporting suggests that Council has made solid progress on delivering on the goals, objectives and targets of the Climate Action Plan.

Council Resolution

MOVED: Cr Geoff Paine**SECONDED: Cr Natalie Duffy****That Council:**

1. Receives and notes the Nillumbik Climate Action Plan – 2022/23 Annual Performance Report (**Attachment 1 and Attachment 2**); and
2. Endorses the Climate Action Plan Year 2 Implementation Plan (2023/24) (**Attachment 3**).

CARRIED UNANIMOUSLY

12. Officers' reports

**CM.057/23 Climate Action Plan Year 1 (22/23) Annual Performance Report and
Year 2 (23/24) Implementation Plan**

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12. Officers' reports

CM.058/23 Ryan's Reserve Rejuvenation Project - Concept Plan Community Consultation

Distribution: Public

Manager: Vince Lombardi, Chief Operating Officer

Author: Rebecca Burton, Manager Recreation and Leisure

Summary

The purpose of this report is to seek approval to undertake community consultation on the draft concept plans for the Ryan's Reserve Rejuvenation Project (**Attachment 1**).

Community consultation on the draft concept plans will be open from 31 July 2023. Public submissions will close 11.59pm on Sunday 20 August 2023 and will be considered by the Planning and Consultation Committee on 12 September 2023.

Council Resolution

MOVED: Cr Peter Perkins

SECONDED: Cr Karen Egan

That Council

1. Endorses the draft concept plans for the Ryan's Reserve Rejuvenation Project (**Attachment 1**) for the purposes of community consultation.
2. Undertakes community consultation for the period 31 July 2023 to 20 August 2023 inviting written submissions for the Ryan's Reserve Rejuvenation Project.
3. Considers public submissions at the Planning and Consultation Committee meeting to be held on 12 September 2023.

CARRIED UNANIMOUSLY

12. Officers' reports

CM.058/23 Ryan's Reserve Rejuvenation Project - Concept Plan Community Consultation

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12. Officers' reports

CM.059/23 Indigenous Voice to Parliament Referendum

Distribution: Public

Manager: Corrienne Nichols, Director Communities

Author: Nichole Johnson, Manager Community Partnerships

Summary

The purpose of this report is to provide Councillors with a succinct summary of the information publicly available with regards to the *Indigenous Voice to Parliament*, with a view for Councillors to establish an organisation stance on the 2023 referendum.

Council Resolution

MOVED: Cr Natalie Duffy

SECONDED: Cr Frances Eyre

That Council:

1. Adopts an organisational stance to support, in principle, the *Uluru Statement from the Heart* and the *Indigenous Voice to Parliament*.
 - a) In doing so, Council recognises and acknowledges that the *Indigenous Voice to Parliament* is a complex socio-political issue, with differences of opinion existing even amongst First Nations communities and individuals.
 - b) Furthermore, Council recognises and acknowledges that adopting an organisational stance to support the *Indigenous Voice to Parliament* is a reflection of the collective opinion of Councillors, and does not necessarily reflect the opinions of individual Councillors, Council officers, volunteers or affiliates.
2. Recognising the complex socio-political nature of this issue, acts as an objective source of information regarding the referendum in providing education and resources to the broader Nillumbik community.

CARRIED

Cr Karen Egan called for a division

For: Crs Natalie Duffy, Frances Eyre, Geoff Paine, Peter Perkins and Ben Ramcharan

Against: Crs Karen Egan and Richard Stockman

The Mayor, Cr Ben Ramcharan declared the Motion Carried.

12. Officers' reports

CM.059/23 Indigenous Voice to Parliament Referendum

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12. Officers' reports**CM.060/23 Audit and Risk Committee member appointment**

Distribution: Public**Manager: Carl Cowie, Chief Executive Officer****Author: Blaga Naumoski, Director Governance, Communications and
Community Safety****Summary**

The *Local Government Act 2020* requires each Council to establish an Audit and Risk Committee to oversee the Council's management of risk, internal controls and financial reporting. As part of the establishment of the Committee, the Act requires that the independent members be appointed. It is a requirement under the Act that the independent members are suitably qualified and have relevant experience.

The Committee meets four times each year and the minutes are presented at a subsequent Council meeting.

The Audit and Risk Committee comprises three members who are independent and two positions for Councillors (currently Mayor and Deputy Mayor). The position of Chairperson is held by one of the independent members.

Council currently has one vacancy for an independent member on its Audit and Risk Committee, following the recent resignation of committee member Chris Eddy.

Applications for the vacant position on the Committee have been invited through externally advertised advertisements. Council received 55 applications.

A formal evaluation process was undertaken by an independent panel consisting of the CEO, Independent Committee Member John Watson (Chairperson) and Director Governance Communications and Community Safety. After conducting interviews of shortlisted applicants, it is recommended that Jonathon Kyvelidis be appointed as an independent member to the Committee.

The remaining two independent members are due for renewal on 1 September 2023. It is recommended that the current independent members John Watson and Gregory Hollyman be reappointed for a term of three years effective from 1 September 2023, in line with the Committee Charter.

Council Resolution

MOVED: Cr Geoff Paine**SECONDED: Cr Frances Eyre****That Council:**

1. Appoints Jonathon Kyvelidis as an independent member of the Audit and Risk Committee for a three year term effective from 31 July 2023 and advises Mr Kyvelidis accordingly.
2. Notifies the other applicants of Council's decision and thanks them for their application.
3. Reappoints John Watson and Gregory Hollyman as independent members for a three year term effective from 1 September 2023 and advises them accordingly.

CARRIED UNANIMOUSLY

12. Officers' reports

CM.060/23 Audit and Risk Committee member appointment

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12. Officers' reports**CM.061/23 Contract Report - Contract 2324-005 Telecommunications Services and Hardware**

Distribution: Public**Manager: Jeremy Livingston, Director Culture and Performance****Author: Daniel Tarquinio, Manager Information Technology****Summary**

This report recommends entering into a new business services (VTS) agreement with Telstra for the provision of telecommunications services and hardware to enable continual provision of telephony, mobile voice and data, internet and site connectivity services.

This is a business as usual contract requirement, and the contract term is for a period of three (3) years.

Currently, Council utilises Telstra to provide:

- Telephony services which includes incoming and outgoing landlines;
- Mobile voice and data services which includes incoming and outgoing mobile voice calls and mobile data (3G/4G/5G for phones and tablets);
- Internet services which include all web and data traffic to and from the world wide web;
- Connectivity services between Council sites which include dedicated connectivity from eight Council sites into our primary data centre located at our Civic Centre offices.

Pursuant to the Instrument of Delegation to the Chief Executive Officer, the value of this contract exceeds the specified financial limits, and a Council resolution is therefore required to award the contract.

Council Resolution

MOVED: Cr Frances Eyre**SECONDED: Cr Natalie Duffy****That Council:**

1. Accepts the VTS business services agreement by Telstra and enters into the following Contract.
Number: 2324-005
Title: Telecommunications Services and Hardware
Term: 3 years from Agreement Signing Date
2. Authorises the Director of Culture and Performance to finalise and execute the contract documentation.
3. Authorises the Director of Culture and Performance to review and approve adjustments to the telecommunications services via the contracted agreement that are a result of changes to operational requirements throughout the term of the contract.

CARRIED UNANIMOUSLY

12. Officers' reports

CM.061/23 Contract Report - Contract 2324-005 Telecommunications Services and Hardware

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12. Officers' reports

CM.062/23 Informal Meetings of Councillors Records - 25 July 2023

Distribution: Public**Manager: Blaga Naumoski, Director Governance, Communications and Community Safety****Author: Dimitra Barnes, Acting Manager Governance and Property****Summary**

In accordance with *Item 19 of Council's Governance Rule – Meeting Procedure*, adopted on 25 August 2020, Council is required to report as soon as practicable to a Council Meeting a record of each Informal Meeting of Councillors held.

This report lists Informal Meetings of Councillors Records submitted since the matter was last reported to Council on 27 June 2023.

An Informal Meeting of Councillors Record was kept for the following meetings (**Attachment 1**):

1. L&LN Neighbourhood House Advisory Committee Meeting held 19 June 2023;
2. Councillor Briefing held 20 June 2023;
3. Health and Wellbeing Partnership Forum held 21 June 2023
4. Biodiversity Strategy Councillor Update held 27 June 2023
5. Council Meeting Pre-Meet held 27 June 2023; and
6. Environment & Sustainability Advisory Committee Meeting held 28 June 2023.

Council Resolution

MOVED: Cr Natalie Duffy**SECONDED: Cr Karen Egan**

That Council, in accordance with *Item 19 of Council's Governance Rule – Meeting Procedure*, receives the Informal Meetings of Councillors Records (**Attachment 1**) for the meetings held.

CARRIED UNANIMOUSLY

12. Officers' reports

CM.062/23 Informal Meetings of Councillors Records - 25 July 2023

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13. Notices of Motion

NOM.001/23 Notice of Rescission - CM.045/23 Seeking Adoption of Council's Governance Rule - Meeting Procedures 27 June 2023

Cr Peter Perkins and Cr Karen Egan advised of their intention to rescind a Council Resolution made on 27 June 2023 as follows:

Council Resolution

MOVED: Cr Peter Perkins

SECONDED: Cr Karen Egan

That Council rescind the Council decision made on 27 June 2023 that refers to item CM.045/23 Seeking Adoption of Council's Governance Rule - Meeting Procedures.

CARRIED

Cr Geoff Paine called for a division

For: Crs Natalie Duffy, Karen Egan, Peter Perkins and Richard Stockman

Against: Crs Frances Eyre, Geoff Paine and Ben Ramcharan

The Mayor, Cr Ben Ramcharan declared the Motion Carried.

NOM.002/23 Notice of Motion - Seeking Adoption of Council's Governance Rules - Meeting Procedure

Conditional on the rescission motion tabled by Cr Perkins and Cr Egan in relation to Officers reports CM.045/23 - Seeking Adoption of Council's Governance Rule - Meeting Procedure being carried, Cr Peter Perkins hereby give notice of my intention to move the following notice of motion at the Council Meeting to be held on 25 July 2023.

Council Resolution

MOVED: Cr Peter Perkins

SECONDED: Cr Karen Egan

That Council:

1. Notes that ten submissions in relation to the draft Governance Rule – Meeting Procedures were received, and that these submissions were considered and submitters were provided with the opportunity to be heard by the Planning and Consultation Committee on 06 June 2023.
2. Having considered the written and verbal submission and pursuant to section 60 of the *Local Government Act 2020*, adopts the Governance Rule – Meeting Procedures as presented to the Council meeting on 27 June 2023 with the following amendment:
 - a. Retain the Prayer in the Order of Business.
3. Requests that officers review council process to allow for multi-faith prayer participation to ensure Council remains inclusive and respectful.
4. Notes that Council's existing Governance Rule - Meeting Procedure adopted on 25 August 2020 ceases to apply.
5. Requests that Officers write to all respondents to the public engagement to express Council's gratitude for their contribution and to advise them of the Council's resolution.

CARRIED UNANIMOUSLY

- 14. Delegates' Reports**
- 15. Supplementary and urgent business**
Nil
- 16. Confidential reports**
- 17. Close of Meeting**

The meeting closed at 8.26pm.

Confirmed: _____
Cr Ben Ramcharan, Mayor