

CITY OF JOONDALUP

MINUTES OF SPECIAL COUNCIL MEETING HELD IN COUNCIL CHAMBER,
JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP, ON THURSDAY,
15 MAY 2003 AND TUESDAY 20 MAY 2003.

ATTENDANCES AND APOLOGIES

Mayor

D CARLOS

Elected Members:

Cr A NIXON	North Coastal Ward	
Cr J F HOLLYWOOD, JP	North Coastal Ward	
Cr A WALKER	Pinnaroo Ward	<i>from 1910 hrs</i>
Cr S HART	South Ward	
Cr M O'BRIEN, JP	South Ward	
Cr M CAIACOB	Whitfords Ward	

Officers:

Chief Executive Officer:	D SMITH
Director Planning & Community Development:	C HIGHAM
Director, Infrastructure & Operations:	D DJULBIC
Director, Corporate Services and Resource Management:	P SCHNEIDER
Manager, Marketing, Communications & Council Support:	M SMITH
Manager Audit and Executive Services:	K ROBINSON
Manager Human Resource Services:	M LOADER
Publicity Officer:	L BRENNAN
Committee Clerk:	J AUSTIN

Apologies

Crs Gollant, Rowlands, Prospero, Baker, Brewer, Kimber and Kenworthy.

Leave of absence previously approved:

Cr C Mackintosh 13 May 2003 to 3 June 2003 inclusive

There were 52 members of the Public and 2 members of the Press in attendance.

ADJOURNMENT OF MEETING

There being a lack of quorum, Mayor Carlos adjourned the meeting at 1930 hrs in accordance with Local Government (Administration) Regulation 8 and advised that the meeting would resume at 7.30 pm on Tuesday 20 May 2003.

RESUMPTION OF MEETING

Mayor Carlos declared the meeting of the Council that commenced on Thursday 15 May 2003 **RESUMED** at 1936 hrs on **TUESDAY 20 MAY 2003**, the following persons being present:

Mayor

D CARLOS

Elected Members:

Cr L PROSPERO	Lakeside Ward	
Cr P KIMBER	Lakeside Ward	<i>Absent from 2232 hrs to 2234 hrs</i>
Cr T BREWER	Marina Ward	
Cr C BAKER	Marina Ward	
Cr A NIXON	North Coastal Ward	<i>from 1937 hrs</i>
Cr J F HOLLYWOOD, JP	North Coastal Ward	
Cr A WALKER	Pinnaroo Ward	
Cr P ROWLANDS	Pinnaroo Ward	
Cr S HART	South Ward	
Cr M O'BRIEN, JP	South Ward	
Cr G KENWORTHY	South Coastal Ward	<i>Absent from 2230 hrs to 2231 hrs</i>
Cr J GOLLANT	South Coastal Ward	<i>from 1939 hrs; absent from 2220 hrs to 2222 hrs</i>
Cr M CAIACOB	Whitfords Ward	

Officers:

Chief Executive Officer:	D SMITH	<i>Absent from 2030 hrs to 2341 hrs</i>
Director Planning & Community Development:	C HIGHAM	<i>Absent from 2030 hrs to 2037 hrs</i>
Director, Infrastructure & Operations:	D DJULBIC	<i>Absent from 2030 hrs to 2341 hrs</i>
Director, Corporate Services and Resource Management:	P SCHNEIDER	<i>Absent from 2030 hrs to 2341 hrs</i>
Manager, Marketing, Communications & Council Support:	M SMITH	<i>Absent from 2030 hrs to 2341 hrs</i>
Manager Audit and Executive Services:	K ROBINSON	<i>Absent from 2030 hrs to 2037 hrs</i>
Manager Strategic & Sustainable Development:	R HARDY	<i>Absent from 2030 hrs to 2341 hrs</i>
Publicity Officer:	L BRENNAN	<i>Absent from 2030 hrs to 2341 hrs</i>

Committee Clerk:	J AUSTIN	<i>Absent from 2030 hrs to 2045 hrs</i>
Minute Clerk:	L TAYLOR	<i>to 2030 hrs</i>

In Attendance

Mr Scott Ellis, Freehills *Absent from 2030 hrs to 2037 hrs*

Apologies

Nil

Leave of absence previously approved:

Cr C Mackintosh 13 May 2003 to 3 June 2003 inclusive

There were 85 members of the Public and 3 members of the Press in attendance.

Cr Nixon entered the Chamber at this point, the time being 1937 hrs.

PUBLIC QUESTION TIME

(Please Note: Section 7(4)(b) of the Local Government (Administration) Regulations 1996 states that a Council at a special meeting is not required to answer a question that does not relate to the purpose of the meeting. It is requested that only questions that relate to items on the agenda be asked).

Comment by Mayor Carlos

Mayor Carlos stated that, following legal advice, the questions (three sets of questions, totalling 77, as shown below) received from Mr S Grech, Ocean Reef, would not be answered this evening.

Mayor Carlos stated that some months ago he expressed concern about the process used and the subsequent appointment of the Chief Executive Officer. The purpose of this evening's meeting is to give consideration to taking steps towards resolving these issues.

Mayor Carlos stated he had received advice from the City's legal advisers that in order to protect the Council's interests, it would be preferable not to publicly comment on this matter in any manner which would adversely affect the position of the Council and therefore declined to answer any questions relating to Mr Smith this evening in regard to the 77 questions already received.

Mayor Carlos advised that no questions would be ruled out of order. Any questions which were unable to be answered this evening would be taken on notice.

Cr Gollant entered the Chamber at this point, the time being 1939 hrs.

The following questions were submitted by Mr Sam Grech, Ocean Reef:

My questions are addressed to the Mayor.

- Q1 Why did you convene tonight's meeting in full knowledge of the fact that Councillors Kimber and Mackintosh would not be able to be present and vote?*
- Q2 Are you trying to deprive them of a vote on this important issue?*
- Q3 If not, will you vote in support of adjourning the meeting to the Special Meeting requisitioned by Cr Kenworthy on 4 June 2003, when all Councillors can be in attendance and vote?*
- Q4 Is this another way to deprive elected members of a vote on an important issue, such as the way in which you deprived Cr Gollant of a vote on the appointment of the Deputy Mayor?*
- Q5 Can you please advise as to whether you had any discussion with Cr Baker prior to the appointment of the Chief Executive Officer, Denis Smith, during the course of which you urged Cr Baker to apply to be appointed as the new CEO of the City of Joondalup to replace the then CEO, Mr Lindsay Delahaunty?*
- Q6 If so, what was the nature and extent of these discussions?*
- Q7 Did you also intimate to Cr Baker that if he didn't seek election as a Councillor of the Marina Ward at the May 2001 Council Elections, you would make sure that he was appointed as the new CEO at the City of Joondalup?*
- Q8 I refer to tonight's agenda item. I refer to Section 5.40 of the Local Government Act which states that no power with regard to matters effecting employees is to be exercised on the basis of nepotism or patronage?*
- Q9 Why have you called this meeting tonight with little or no notice to Councillors, to discuss such an important issue?*
- Q10 I refer to tonight's agenda item and to Section 5.40 of the Local Government Act which provides that employees are to be treated fairly. Why are you continually running off to the media and making statements on behalf of the Council without any authority of a resolution of the Councillors of the City of Joondalup?*
- Q11 I refer to your statements over the last four years or so to the effect that you support the principles of open, accountable and democratic local government. Do you not agree that to knowingly deprive two Councillors of a vote on an important issue such as tonight's agenda item is not in the best interests of open, accountable and democratic local government?*
- Q12 I refer to tonight's agenda meeting. Did you vote in support of the CEO's appointment or did you vote against his appointment when he was appointed?*

- Q13 I refer to tonight's agenda item. Did you have any discussion with Cr Hollywood prior to you giving notice requisitioning tonight's meeting and if so:*
- (a) what was the nature and extent of those discussions?*
 - (b) why weren't all Councillors, as opposed to just a handful, consulted first?*
- Q14 I refer to tonight's agenda item. I also refer to your interview on Liam Bartlett's program on ABC Radio yesterday morning and your interview to Channel 7 News last night.*
- Q15 Did you seek out these interviews?*
- Q16 Did you arrange for any other person on your behalf to seek out these interviews?*
- Q17 Did you agree that it would be very difficult to prove that you arranged for some other person to seek out these interviews on your behalf?*
- Q18 Why did you requisition tonight's meeting dealing with such an important agenda item in circumstances where:*
- (a) you have failed to give adequate notice to Councillors of the proposed meeting;*
 - (b) you failed to consult with all Councillors prior to calling the meeting;*
 - (c) how does this accord with your alleged keen interest in the principles of open, accountable and democratic local government?*
- Q19 I refer to tonight's agenda item. I ask the following question. Did you give any notice of your intention to requisition tonight's meeting to former Councillor Steve Magyar, prior to giving notice of your intention to requisition the meeting?*
- Q20 If so, what is the nature and extent of your relationship with Mr Magyar?*
- Q21 Why didn't you consult with all of your fellow Councillors first?*
- Q22 I refer to tonight's agenda item. Don't you believe that you have a financial interest in tonight's agenda item given that you are in the process of being sued by the CEO for defamation?*
- Q23 On the basis that you do have a financial interest, will you declare that you do have one and vacate the Chamber and not vote on any motion to be debated tonight?*
- Q24 If you will not, is it because you have previously failed to declare financial interests in several other agenda items that have been debated before Council over the last two years?*
- Q25 I refer to tonight's agenda item. In your Mayoral speech you indicated a rate increase, is this proposed increase to fund the termination of the CEO's contract and find a replacement?*

- Q26 I refer to tonight's agenda item. By terminating the CEO's contract are you aware that you will be costing the ratepayer of the City of Joondalup over \$1,000,000 in payments?*
- Q27 Are you also aware that you will be costing ratepayers a minimum of a further \$1,000,000 gratuity for his replacement, plus agency fees which is usually 8% of the package?*
- Q28 Would you agree that by you resigning as Mayor, it would be economically and financially better for all the ratepayers/residences of the City of Joondalup as this will only cost \$15,000 (25% Mayoral allowance) as opposed to the \$2,000,000 you will be inflicting on all ratepayer/residence? If not, why not?*
- Q29 I refer to tonight's item. Have you had discussions with Mr John Turkington, the former City of Joondalup Finance Director, with regard to him replacing our City's CEO, and if so, when? What did you say to him?*
- Q30 On Channel 7 last night you said that the CEO had to go because you had no faith in him. Why does the CEO have to go just because you can't work with him? What about the 14 other elected Councillors?*
- Q31 I refer to your interview on Channel 7 last night. What is the legislative basis for your statement that the CEO's role is to do what you tell him to and obey your directives?*
- Q32 What about the 14 other elected members of Council? Doesn't our Council operate by Council resolution any more?*
- Q33 What do you say about the community perception that you are drunk with power following your recent election as Mayor?*

I refer to your election flyer.

"My aims are to:

- 1 ensure we have a democracy in Joondalup*
- 2 consult with community groups and give the public more time to comment before making major decisions on Council.*

- Q34 My question to you Mr Mayor is when did Point 1 and 2 occur in regard to tonight's agenda item?*

I refer to tonight's agenda item. I refer to your election flyer.

"In the last 14 months the Council has had to have six Special Electors meetings where thousands of ratepayers have voiced their displeasure with decisions made by the Joondalup Council. Each one of these meetings could have been prevented if the Council had consulted with the ratepayers before decisions were made.

- Q35 Mr Mayor, when did you consult with the ratepayers on tonight's agenda item?*

A1-35 These questions will be taken on notice.

The following questions were submitted by Mr Sam Grech, Ocean Reef:

In your reply to my question you stated that “I was on the selection committee that was choosing a CEO” (See minutes of Special Council Meeting 12 May 2003 page 5, A1 paragraph 4) as you stated that you were on the selection committee to choose a CEO, I address these questions to you Mr Mayor.

- Q1 Was the position actually advertised, or was a tender for a suitable agencies advertised? If so, who was the successful agency?*
- Q2 If the actual position for a CEO was not advertised, can you confirm that he was approached (head hunter) by an agency on behalf of the City of Joondalup, as were the other 9 candidates?*
- Q3 Was a CV supplied by any of the candidates or the agency?*
- Q4 If no CVs were supplied by any candidates or agency, did you not fail in your Duty of Care to formally request a CV from all candidates or the agency?*
- Q5 Was it a requirement to supply a CV by any candidate? If not why not? (This is standard procedure both in the private and public section).*
- Q6 Was a CV for any of the candidates requested by you formally in writing prior to short listing? If not why not?*
- Q7 Prior to the position being offered did you formally request in writing that a CV be supplied? If not why not?*
- Q8 Was the sighting and verification of the successful candidates CV a condition of employment? If not why not?*
- Q9 What is the definition of a Curriculum Vitae (CV)? As defined in both the Oxford dictionary, Webster’s dictionary.*
- Q10 What is the definition of a Portfolio (Folio)? As defined in both the Oxford dictionary, Webster’s dictionary.*

A1-10 These questions will be taken on notice.

The following questions were submitted by Mr Sam Grech, Ocean Reef:

- Q1 My question is addressed to the Mayor – Why did you convene a Special Council Meeting on Thursday night last week without having consulted with your community’s Elected Members to determine their availability first?*
- Q2 What was the cost to ratepayers of your aborted Special Council Meeting?*
- Q3 Why have you asked the CEO to resign on three occasions?*

- Q4 Have you had any discussions with John Turkington, the former Finance Director of the City of Joondalup, regarding his possible appointment as the new CEO for the City of Joondalup?*
- Q5 By whose authority did you have these discussions?*
- Q6 During the last Mayoral Election Campaign did you receive any financial or non-financial assistance from Mr Kim Young, unsuccessful Labour Candidate in the last federal election?*
- Q7 I refer to your quoted statement that you have qualifications to be the Mayor of the City of Joondalup. What formal qualifications do you hold?*
- Q8 I refer to your often quoted statements that you were a former Wing Commander in the Royal Australia Air Force. What type of fighter jets did you fly?*
- Q9 I refer to the duties of an Elected Member and Mayor in disclosing interests of financial matters to be debated by Council. Have you ever failed to disclose a financial interest in a matter to be debated by Council and if so, why?*
- Q10 I refer to the obligations of Mayor and Councillors to disclose financial interests in matters to be discussed. Have you ever participated in a debate regarding a Council motion in which you had a financial interest?*
- Q11 I refer to the Delegated Authority Meeting convened during the week commencing 6 May 2003. Why did you conduct this meeting behind closed doors and why was the public not allowed to attend the meeting?*
- Q12 I refer to your statement to the media to the effect that you have the support of the Minister and Director General of Local Government to sack the CEO. Are you aware that the Director General for Local Government and the Minister have both advised that they do not propose to get involved with your dispute with the CEO?*
- Q13 I refer to your decision last week to conduct your Special Council Meeting without having consulted the Elected Members of the City of Joondalup. Did you consult Mr Magyar prior to giving notice of your intention to convene your Special Council Meeting?*
- Q14 I refer to your aborted Special Council Meeting that was supposed to have been conducted at 7 pm on Thursday last week. Did you speak to any Councillors and pressure/threaten them as to the consequences if they did not attend your Special Council Meeting?*
- Q15 I refer to the vote for the Deputy Mayor conducted at the swearing-in ceremony of new Councillors and yourself approximately three weeks ago. Did you advise Cr Janine Gollant on the day before that you would agree to adjourn the vote for the appointment of the Deputy Mayor to enable her to attend and vote?*
- Q16 I refer to the election of Cr John Hollywood as the Deputy Mayor of the City of Joondalup. Did you offer any inducements to the then existing or to any Councillor of the City of Joondalup to vote for Cr Hollywood as Deputy Mayor? If so, what was the nature and extent of those inducements?*

- Q17 Did you as a fact on the night vote against Cr Baker's Motion to adjourn the vote for the appointment of the Deputy Mayor and if so, why?*
- Q18 Within a few minutes thereafter, did you agree to adjourn the vote for the appointment of various Elected Members to the Committees of Council to enable Cr Janine Gollant to vote? Why did you deprive her and her Elected Members of their right to vote for the appointment of the election of the Deputy Mayor?*
- Q19 I refer to your decisions last week to call your Special Council Meeting. Why did you convene the Meeting on a date and a time at which you knew in advance that the majority of Councillors could not attend?*
- Q20 Did you consult with any of the minority of Councillors who did attend prior to you convening that meeting?*
- Q21 I refer to your threats to the CEO of our City that if he did not resign, you would continue with your media campaign and if he did resign you would arrange for your media campaign to be stopped straight away. What is the nature and extent of your control over the media?*
- Q22 Are you receiving any advice of how to manipulate the media from any source and if so, what is the identity of that source?*
- Q23 I refer to your statement last week that you proposed to inquire into my complaint against John Hollywood and his obscene language towards me witnessed by Mrs Gordon. Isn't it the case that Cr John Hollywood is a friend of yours? Why are you inquiring into a complaint involving your friend?*
- Q24 Will that enquiry be conducted behind closed or open doors. If it won't be conducted in open doors, why are you holding a secret inquiry?*
- Q25 Why won't you agree to the inquiry being conducted by an independent person and in public?*
- Q26 How can you be the judge of the inquiry at the same time and then later on vote on the findings of your report on the inquiry? Isn't this an obvious conflict of interest?*
- Q27 I refer to your proposal to auction the Mayoral robes of the former Mayor and donate the proceeds to charity.*
- Is this standard procedure?*
 - Will you be setting a precedent that will cost ratepayers more money?*
- Q28 Would it not be more cost effective to modify the current Mayoral robe to suit your smaller stature (size)? And donate a set sum (say 50% of replacement cost) to charity?*
- Which charity will you donate this money to?*
 - Why have you selected this charity over others?*

Q29 At the Special Meeting held on 12 May 2003 you stated that “I have in my possession a Statutory Declaration by a Mr Davies concerning the events at the conclusion of the Ordinary Meeting held on 29 May 2003” pertaining to the conduct unbecoming a Councillor.

- Do you acknowledge that you have in your possession or know the whereabouts of this Statutory Declaration?*
- Before whom did Mr Davies swear this Statutory Declaration?*
- Will you provide the name of the signing JP on the Statutory Declaration? If not, not?*
- Was this a sworn or affirmed Statutory Declaration?*
- Will you provide a copy of this document to the public? If not, why not?*

Q30 As advised by the Royal Association of Justices for Western Australian on the 13 May 2003 at 2.35 pm that I formally request that you provide me with a copy of this Statutory Declaration immediately.

- Will you provide me with a copy of the Statutory Declaration signed by Mr Davies? If not, why not?*

Q31 Failure to table a copy or the original Statutory Declaration will be seen by the residents and ratepayers that the Statutory Declaration in fact does not exist, a total loss of credibility on your part as Mayor and a clear breach of the Oath of Office as Mayor which you took just two short weeks ago.

- Will you table a copy of the Statutory Declaration signed by Mr Davies at the first available Special/Briefing/Ordinary meeting? If not, why not?*

Q32 I refer to your statement to the members of the public who attended at your aborted Special Council Meeting on Thursday last week when you said quote “It appears the other Councillors have decided they do not wish to attend this meeting”.

- (a) Why did you make that statement when you knew full well that, for example, Cr Mackintosh was overseas on Council business, that Cr Kimber was working away in the South West and you received apologies from the other Councillors?*
- (b) Will you now correct your statement and tell the members of the public that you knew where the other Councillors were and the fact that you knew in advance of the meeting from apologies that said they could not make the meeting. Will you tell the truth to the public?*
- (c) Why did you also say that only seven Councillors considered it to be an important issue? Did you expect Cr Kimber to drive back from Busselton? Did you expect Cr Mackintosh to fly back from Europe on your whim of holding a Special Council Meeting on short notice?*

A1-32 These questions will be taken on notice.

The following questions were submitted by Ms M Moon, Greenwood:

The topic of whether or not the CEO holds the academic qualifications which appeared in his job application has been in the public arena for around 8 months. The ratepayers/community has been refused answers and their questions blocked. The CEO has stated that the question of his qualifications has cost ratepayers in time and money and held up the business of running the City. This is not in the best interest of the community.

In the Joondalup Times 15 May the CEO states lawyers will be supplying the councillors with a letter outlining the appointment process through to now. The CEO also states he believes this will satisfy the Councillors. The concern that needs to be resolved and that councillors need to be satisfied of is if the CEO has the academic and employment qualifications that appeared in his job application as part of the appointment process. The CEO's reference to the appointment process through to now has come about because of the question that the CEO misrepresented himself in the appointment process and has not satisfied the constituents of the City that all the CEO's qualifications academic and employment that appeared in the appointment process are bona fide.

Q1 As ratepayers in all Wards have demonstrated that they want the CEO's qualifications , academic and Employment which appeared in his job application as part of the appointment process verified, will Councillors be satisfied if they can not answer their constituents concerns and the matter remains unresolved in the community and the problem continues to impede the business of running the City and costing ratepayers in time and money? (8 months so far).

Q2 After receiving the letter from the CEO's lawyers can the Councillors answer their constituents:

(a) What academic and employment qualifications appeared in the CEO's application as part of the appointment process?

(b) Have ALL these qualifications been verified and supported by the relevant certificates and documents?

(c) In outlining the appointment process did the CEO cover the qualifications that appeared in his application and their authenticity?

A1-2 These questions will be considered by the elected members when giving consideration to the matters at tonight's meeting.

The following questions were submitted by Mrs M Macdonald, Mullaloo:

Q1 Does the City have a Human Resources Officer and a Human Resources Policy.

A1 The City has a Manager Human Resources and a number of staff dedicated to the human resources function of the City. These staff administer a number of pieces of legislation and policies relating to human resources.

Q2 I am told best practice HR Policy asks new employees to produce certificates for copying and filing. Will Council institute a policy like this and back date it for all employees?

A2 The City is regarded as a leader of human resources practices within the local government industry. The City has current procedures relating to recruitment of its staff.

Mr B van Zuylen, Ocean Reef:

Q1 I refer to the departure last year of Mr J Turkington from the City's employment. Was there a written agreement between the City and Mr Turkington regarding the terms of his departure upon the termination of his employment from the City of Joondalup? If so, were there any secrecy provisions in the agreement and what does the secrecy provision say?

A1 This question will be taken on notice, but it does not relate to the purpose of the meeting this evening.

Mr S Magyar, Heathridge:

Q1 Has the CEO showed his qualifications to any of the elected members of the current Council and if so, which members?

A1 *Response by CEO:* Mr Mayor, I will not be answering any questions pertaining to my contract of employment based on legal advice.

Response by Mayor Carlos: The question will be taken on notice.

Q2 If any of the elected members who have seen the qualifications of the CEO are present, could they confirm that the qualifications they have seen are the qualifications that the CEO listed in the documentation for his current position.

A2 *Response by Mayor Carlos:* Does any elected member wish to answer that question?

Response by Cr Hart: Mr Mayor, I haven't seen any documentation.

Response by Mayor Carlos: The question will be taken on notice.

Q3 Have any elected members asked to see the qualifications of the CEO and been refused the right to review the documents, and if so, which elected members?

A3 The question will be taken on notice.

Q4 Is it correct that a person who is a Council member can have access to any information held by the local government that is relevant to the performance by that person of his or her function under the Local Government Act 1995, and does that hold true also for the supporting documentation for the contract of the employment of the CEO? (Section 5.9 (2) is the general section of the Act regarding Councillors having the right to view all documentation held by local government in relation to any contract and supporting documentation to the contract.

A4 The question will be taken on notice.

Q5 *Does the Local Government Act require Council to be satisfied that the person employed as the CEO is suitably qualified for the position.*

A5 *Response by Mayor Carlos: Yes.*

Mr K Zakrevsky, Mullaloo:

Q1 *May I remind Councillors of their individual role as stipulated in the Local Government Act 1995 Section 2.10:*

- (a) the Councillors represent the interests of electors, ratepayers and residents of the district;*
- (b) the Councillors provide leadership and guidance to the community and the district;*
- (c) the Councillors facilitate communication within the community and the Council;*
- (d) the Councillors participate in local government decisions, making process at the Council/Committee meetings;*
- (e) Councillors perform such other functions as are given to Councillors.*

Are Councillors aware of these situations?

Q2 *Why all the intense secrecy regarding the CEO's appointment and credentials if everything is above board and meets the requirements of the Local Government Act 1995 Section 5.3.6 (2) which states:*

"A person is not to be employed in the position of CEO unless the Council:

- (a) believes that the person is suitably qualified for the position;*
- (b) is satisfied with the provisions of the employment contract.*

Q3 *Was there any misrepresentation of Mr Denis Smith's qualifications covering formal accreditation, positions held, experience, performance evaluation, references and any pending Court inquiries and any possible criminal record?*

Q4 *Are Councillors aware that under the law of contract any agreement or contract is null and void if there is any question of misrepresentation, even if there is tacit agreement?*

Q5 *Are Councillors aware that implied information, whether written or verbal or physical action that cannot be substantiated or is only partly correct and is provided to mislead or so influence a decision is misrepresentation, which renders a contract null and void? No compensation or reward for a supposed uncompleted term of contract can be claimed where there is no contract because of misrepresentation. May I also remind Councillors that the ratepayers and their elected Councillors have witnessed the expensive failure of the secret RANS contract re the recreation centres, the possible litigation over the Mullaloo Tavern because of surreptitious decisions and incomplete reporting. Here we are faced with secrecy again.*

Do Councillors realise that you are elected by the ratepayers to do a job. You do not have any rights to private agendas and allegiances. It does not matter the inconvenience. You volunteered for the role – you have a job to do. Boycotts and petulance are not acceptable.

A1-5 These questions will be taken on notice.

Ms C Woodmass, Kingsley:

Q1 Is Council aware, and especially the new Councillors, that I have asked these simple questions at previous Council meetings before and had them ruled out of order or told the information will not be provided to ratepayers.

A1 *Response by Mayor Carlos:* I have stated previously that no question will be ruled out of order in relation to the CEO. I will take your questions and an answer will be given.

Q2 What university qualifications were listed on Mr Smith's resume as provided to the City during the selection process of our CEO?

Q3 Will Denis Smith provide full copies of his qualifications, and especially his professional university qualifications to the public, and if not to the public, to other Councillors and the Mayor?

Q4 If the CEO's qualifications do not match those listed on his CV, and Mr Smith does not have the qualifications that he claimed to have during the selection process, what action will Council take to resolve this serious matter?

A2-4 These questions will be taken on notice.

Q5 Who is paying for the CEO's legal representation on this matter?

A5 *Response by Mayor Carlos:* The previous Council has voted \$11,000 of ratepayers money to pay for legal representation. I do not know the position on this amount at the present time. I do not know whether the CEO has expended the \$11,000 or not. The CEO does not wish to answer the question. The question will be taken on notice.

Q6 Last week Dr Hollingsworth, the Governor General, was stood down from his post until he was cleared of accusations made against him, whether those accusations are true or false, as they were deemed to be damaging to the position that he holds. Is Council aware that the issue of the CEO's qualifications has been dragging on since last year and now all eyes state-wide are on the City of Joondalup to resolve the issue as soon as possible. Is Council aware that the longer this goes on, the more damage will be done to the credibility not only of the CEO, but to the City of Joondalup and the staff? What action is Council going to take to regain its credibility and restore accountability and trust to the ratepayers who duly elected them?

A6 This question will be taken on notice.

Q7 Why is it that Mr Smith feels the need for secrecy in relation to his qualifications?

A7 This question will be taken on notice.

Q8 *Why did Councillors feel the need to not turn up to last Thursdays (15 May 2003) meeting?*

A8 *Response by Cr Carlos:* Does any Councillor wish to answer that question?

Response by Cr Walker: Mr Mayor, I did turn up to last Thursdays meeting.

Response by Cr Hart: Mr Mayor, I turned up to last Thursdays meeting.

Response by Cr Caiacob: Mr Mayor, I turned up to last Thursdays meeting.

Q9 *Are the new Councillors aware of the Oath that they swore two weeks ago and what it means to be a Councillor?*

A9 *Response by Cr Caiacob:* I am aware of my obligations as to the Form 7 that I have signed. (Local Government Act 1995 13 1(c)).

Response by Cr Hart: Mr Mayor, I am also aware of my obligations.

Response by Cr Walker: I was aware last time and I am aware this time, Mr Mayor.

Q10 *Is Council aware that during the Department of Local Government Commission into the City of Wanneroo, on page 23 of the report, the issue of factions were addressed. Can Council look into reading that particular issue?*

A10 *Response by Mayor Carlos:* Prior to the Special Council of last Thursday (15 May 2003) one Councillor who was at that meeting did put a copy of that in pigeon holes for every Councillor and I believe that at least 13 of the 15 Councillors received that copy and had it in their possession prior to the Thursday evening meeting.

Response by Cr O'Brien: I distributed the copies of that article into the pigeonholes of the new Councillors. I presumed that the existing Councillors who were continuing in their electoral term already had a copy, but if not, I have extra copies.

Mr Sideris, Mullaloo:

Q1 *I have researched all the minutes and records of this Council since the recommendation was made to appoint the CEO, and I can find no record at all in those minutes (I believe the minutes are true and correct because all minutes come back to Council for ratification). On what date and what minuted record was the contract appointing the CEO ratified by this Council?*

A1 *Response by Manager, Audit & Executive Services:* I am unable to answer that question.

Response by Cr O'Brien: On the 28 August 2001. It was moved Cr Rowlands, seconded Cr Kimber

- 1 that Council appoints Candidate A to the position of CEO of the City of Joondalup on a five year performance based contract on a commencing annual remuneration package of \$225,000
- 2 the Mayor, Deputy Mayor and Mr John Turkington (then Director, Corporate Services and Resource Management) be authorised to finalise the contract documentation,
- 3 with Council approving the payment of up to \$20,000 towards the cost of relocation expenses to:
 - (a) written agreement requiring 100% of Council's contribution to be repaid if Candidate A does not complete 12 months service.
 - (b) 50% of Council's contribution to be repaid if Candidate A does not complete 24 months service;
- 4 Council agrees to provide a furnished apartment in Joondalup for a period of eight weeks at the City's expense and a further eight weeks on the basis of the City contributing 50% of Candidate A's 50% of rental costs;
- 5 the expenditure in items (3) and (4) be charged to Budget Item CEO – Salaries.

In favour of the Motion: Mayor Bombak, Crs Hurst, Kenworthy, Patterson, Rowlands, Hollywood, Baker and Kimber **Against the Motion:** Crs Carlos, Nixon and Barnett

Cr O'Brien advised he was not in attendance at that meeting.

Q2 At no stage, and I have still not found any minuted record, where the finalised details of that agreement came back to Council and were ratified by this Council. As I take the recommendation passed by Council, the contract is still incomplete. It has not been agreed to by this Council. When did this contract come back to Council for ratification and approval by this Council?

A2 This question will be taken on notice.

Q3 In relation to the contract with the CEO, has any Councillor sighted the contract?

A3 *Response by Cr Walker:* I have sighted the contract and have a copy.

Response by Cr Hart: Cr Hart stated she had sighted the contract document.

Response by Cr Caiacob: I have not sighted the contract.

Response by Mayor Carlos: I do have a copy of the contract along with a lot of other information that I have been building up since the 20 November 2002 when the first article appeared in the press.

Mr V Cusack, Kingsley:

Q1 At the Council meeting on 18 February 2003, I asked two questions regarding the CEO's qualifications which were ruled out of order by the former Mayor. I have checked the minutes and I cannot find my questions listed anywhere. I did find that Cr Walker raised a query at the Council meeting held on 11 March 2003. The response given to her was that the matter would be investigated. At the Council meeting on 1 April 2003 before the minutes were confirmed, a motion was moved by Cr Walker, seconded Cr Hollywood which read:

“That the minutes of the Council meeting held on 11 March 2003 be confirmed as a true and accurate record subject to the following:

At the ordinary Council meeting on 18 February 2003 Mr Vincent Cusack of Kingsley asked two questions relating to the CEO's qualifications. The Mayor ruled the questions out of order because they may have pertained to a confidential item that was to be discussed later in the evening.”

It also states in the minutes that the Manager, Marketing Communications and Council Support advised the notation had been placed in the Desk of the CEO in relation to questions raised by Mr Cusack and the amendments were in order.

That motion was put and carried 13/0.

In favour of the Motion: Mayor Bombak, Crs Baker, Barnett, Carlos, Hollywood, Kenworthy, Kimber, Mackintosh, Nixon, O'Brien, Patterson, Rowlands and Walker

Was that resolution by full Council acted on and if not, can an explanation be provided as to why it was not acted on?

A1 The Local Government Act requires a summary of every question asked and the summary as read aloud by the motion moved by Cr Walker was duly recorded in the minute books.

Q2 Question to Cr Walker: Was it your recollection that you asked for the two questions to be recorded or were you happy with the notation as listed?

A2 *Response by Cr Walker:* I thought I asked for the two questions to be listed which was ruled out of order by the former Mayor. I may not have been as specific as I should have been.

Response by Mayor Carlos: This question will be taken on notice with advice given as to when the questions have been recorded.

Q3 Does the CEO, Mr Denis Smith, have any university degrees?

A3 The question will be taken on notice.

Q4 Did the City receive any documentation which clearly stated that the CEO, Mr Denis Smith had a specific degree during the selection process for the appointment of the CEO?

- A4 *Response by Mayor Carlos:* Whilst I have documentation that could answer that question, I have been advised by the Council's solicitors that I should not answer. The question will be taken on notice.
- Q5 *Re Policy 2.2.8 – Legal Representation for present and former elected members and staff of the City.*
Question to Cr Baker: If there were no legal proceedings against the CEO, Mr Denis Smith, for him to defend, then why did you move the legal licence amendment to the Cr Kimber/Cr Mackintosh censure motion on 18 February 2003 which as I understand it enabled the CEO to use ratepayers money possibly to initiate legal action against Mayor Carlos?
- A5 *Response by Cr Baker:* I believed that the CEO was in the process of being maliciously defamed. Also, of course, you should be aware of the recently well contrived, well orchestrated media campaign. I thought it was only fair the CEO should have the opportunity to take action in that regard. If that is the case, I think we should leave that issue where it is, as it may well be the City will be before the Court shortly and it may not be appropriate to comment on that. These were the concerns I had.
- Q6 *Is this Council aware that the Baker/Hurst legal licence amendment to the Kimber/Mackintosh censure motion goes directly against the existing legal representation policy currently in place in this Council?*
- A6 This question will be taken on notice.
- Q7 *Is this Council aware that the same Baker/Hurst legal licence amendment is also contrary to the Department of Local Government advice contained in its model policy on legal representation which was sent out to all local government authorities in October 2000?*
- A7 This question will be taken on notice.
- Q8 *Is this Council aware that on 23 April 2002 after being provided with the Department of Local Government's model policy on legal representation, the former full Council in the City of Joondalup overwhelmingly rejected the Mackintosh/Baker motion to amend the City's legal policy 2.2.8 which was specifically designed to enable a Councillor or staff member to commence defamation action using ratepayers' money?*
- A8 *Response by Mayor Carlos:* I was aware of that and I believe the majority of the elected members were, but I will take the question on notice in order that we may have an official response for the benefit of the newly elected members.

Mr H Reason, Kinross:

Q1 The Council I believe appointed an employment agency or similar to carry out a contract to find a suitable person to fulfil the position of CEO. Is it the Council's responsibility to ascertain that that candidate's qualifications and career history is correct, or is it the company that was employed to find a correct person to fulfil that position.

A1 The question will be taken on notice.

Mr D Davies, Connolly:

Q1 Will there be a second public question time this evening?

A1 *Response by Mayor Carlos:* Yes, there will be a second question time.

Mr T O'Brien, Padbury:

Q1 Would a legal context be held that if the management group that actually researched the candidate as a fee stipend in relation to its services can be held legally liable if it embellished, changed or altered the degree of performance, past criteria or performance standard of that person? Would the Council then be able to sue that company in regards to the fact that we as ratepayers have paid for a service that was inefficient?

Q2 Would that then result in the legal proceedings against the candidate who had the successful point brought of his application or his tenure then the contract would be null and void and a legal proceeding then issued from that?

A1-2 These questions will be taken on notice.

DECLARATIONS OF FINANCIAL INTEREST/INTEREST THAT MAY AFFECT IMPARTIALITY

Cr Baker referred to a copy of a legal opinion he had received, and raised a query as to whether Mayor Carlos was required to declare a financial interest in items to be considered at the Special Meeting of Council of 20 May 2003, and also whether he was required to declare an interest which is likely to affect his impartiality.

Mayor Carlos spoke in response to this query from Cr Baker and advised he would not be declaring a financial interest or an interest that may affect his impartiality.

The Chief Executive Officer, Mr Denis Smith declared a financial interest in the item to be considered at the Special Meeting of Council of 20 May 2003 as the meeting deals with his employment as CEO of the City of Joondalup.

ITEM OF BUSINESS

The purpose of the meeting is to discuss the employment of the Chief Executive Officer of the City of Joondalup

JSC58-05/03 MOTION TO GO BEHIND CLOSED DOORS

MOVED Cr Kimber SECONDED Cr Rowlands that, in accordance with Section 5.23 of the Local Government Act 1995 and in view of commercial confidentiality of the agenda item for this Special Meeting of Council, any debate associated with the issue of the Chief Executive Officer’s contract of employment with the City, being a matter affecting an employee, the personal affairs of a person, and a contract entered into by the local government, be conducted BEHIND CLOSED DOORS.

The Motion was Put and

CARRIED (8/6)

In favour of the Motion: Crs Gallant, Kenworthy, O’Brien, Rowlands, Brewer, Baker, Kimber and Prospero.
Against the Motion: Mayor Carlos, Crs Caiacob, Hart, Walker, Nixon and Hollywood.

PERSONAL EXPLANATION – CR O’BRIEN

In accordance with Clause 4.5 of the City’s Standing Orders Local Law, Cr O’Brien made the following personal explanation:

“I primarily was of the view that all of this matter should be held with open doors. I then was referred to the matter of two other staff contracts, for Mr Higham and Mr Djulbic that were recently conducted by Council and the Council’s doors were closed for those confidential matters, and it is in that aspect I do not see that there should be any distinction, and I have taken that advice, of putting Mr Smith’s position in jeopardy compared with the other two officers.”

PERSONAL EXPLANATION – CR WALKER

In accordance with Clause 4.5 of the City’s Standing Orders Local Law, Cr Walker made the following personal explanation:

“I have been asked over the last 24 hours that I show my certification because I was ‘accused’ of having a degree. It was in my election document, which said that I completed all the modules of Elected Member training that were offered by the WA Local Government Association, that I had completed an intensive period of study in Elected Member training at Canberra University and I had completed Councillor training at Canning College. I was asked to show those documents and here they are, all of them, and they were actually also on my form and printed at the bottom.”

All members of the Executive and staff, Mr Scott Ellis of Freehills, members of the public and press left the Chamber at this point, the time being 2030 hrs.

AMENDMENT MOVED Cr Walker SECONDED Cr Nixon that the Motion be amended by the inclusion of the following words at the end of Point 2:

“.....subject to a limit of \$20,000 being set, with any further expenditure being approved by the Council.”

Discussion ensued.

MOVED Cr Kenworthy SECONDED Cr Kimber that the Motion BE NOW PUT.

In order that all elected members be given the opportunity to speak, Mayor Carlos ruled that the Procedural Motion **not be accepted**.

Discussion ensued.

**The Amendment as Moved by Cr Walker and Seconded by Cr Nixon was Put and
LOST (6/8)**

In favour of the Motion: Mayor Carlos, Crs Caiacob, Hart, Walker, Nixon and Hollywood. **Against the Motion.** Crs Gollant, Kenworthy, O'Brien, Rowlands, Brewer, Baker, Kimber and Prospero.

Discussion ensued.

In accordance with Section 4.2.3 of the City's Standing Orders Local Law, Cr Hollywood as mover of the motion, with the consent of Cr Walker as the seconder, amended the wording of the original motion as follows:

“MOVED Cr Hollywood SECONDED Cr Walker that:

- 1 Council APPOINTS Freehills to act as the City's legal advisors in connection with matters relating to the employment of Denis Ian Smith as Chief Executive Officer of the City of Joondalup;
- 2 the expenditure associated with (1) above be charged to account 11.10.11.111.4020.0001;
- 3 it be noted that account 11.10.11.111.4020.0001 has been fully expended however the over expenditure can be funded from account 11.10.11.111.3320.0001.”

Discussion ensued.

Cr Gollant left the Chamber at 2220 hrs and returned at 2222 hrs.

MOVED Cr Kenworthy SECONDED Cr Gollant that the Motion BE NOW PUT

The Procedural Motion Was Put and

CARRIED UNANIMOUSLY

**The Motion as Moved by Cr Hollywood and Seconded by Cr Walker was Put and
LOST (6/8)**

In favour of the Motion: Mayor Carlos, Crs Caiacob, Hart, Walker, Hollywood and Nixon **Against the Motion:** Crs Gollant, Kenworthy, O'Brien, Rowlands, Brewer, Baker, Kimber and Prospero.

JSC62-05/03 MATTERS PERTAINING TO THE CHIEF EXECUTIVE OFFICER'S CONTRACT OF EMPLOYMENT AND RELATED ISSUES

MOVED Cr O'Brien SECONDED Cr Baker:

- 1 That the Council hereby APPOINTS Freehills Lawyers, as the City's legal representative, to present a detailed report to Council for its further consideration, concerning the following matters:**
 - (a) The CEO's legal obligations under the terms of his contract of employment and any body of applicable law to provide the Mayor and/or any Councillor when directed or requested to do so, documentary proof of all or any qualifications that the CEO currently holds or held at the date upon which he was employed by the Council as the City's CEO;**
 - (b) The potential legal liability of the City and the Quantum of any such liability, if any, under the terms of the CEO's contract of employment with the City, and any body of law, should the City purport to terminate the CEO's said contract as a consequence of the CEO's alleged refusal, failure or neglect to provide the documentary proof as described in paragraph 1(a) hereof;**
 - (c) The potential legal liability of the City to date, if any, arising out of the City's performance of its obligations under the said contract and any body of law;**
 - (d) Detailed reasons for the potential legal liability of the City described in 1(a) and 1(c) hereof;**
 - (e) Detailed advice to Council in response to the matters raised in the letter dated 15 May 2003 addressed to Mayor/Councillors, City of Joondalup, from Blake Dawson Waldron Lawyers their reference AOD:09 1336 5842 re: Mr Denis Smith;**
- 2 That the CEO's legal representative be at liberty to make submissions to the City's aforementioned legal representative in response to each of the terms of reference, during the preparation of the said report;**
- 3 That the expenditure associated with (1) above be charged to account 11.10.11.111.4020.0001 with a limit being placed at Twenty Thousand Dollars (\$20,000.00) with any further expenditure requiring the approval of Council;**

- 4 That it be noted that account 11.10.11.111.4020.0001 has been fully expended however the over expenditure can be funded from account 11.10.11.111.3320.0001;
- 5 That the CEO continues to carry out his duties to the best of his ability in accordance with the terms of his contract with the City, pending Council's consideration of the said report.

Discussion ensued.

During discussion:

Cr Kenworthy left the Chamber at 2230 hrs and returned at 2231 hrs;

Cr Kimber left the Chamber at 2232 hrs and returned at 2234 hrs.

AMENDMENT MOVED Cr Hollywood SECONDED Cr Walker that the following additional point 1(f) be added to the Motion:

“1(f) that Freehills advise Council on any matters relating to the employment of Denis Smith, Chief Executive Officer.”

Discussion ensued.

The Amendment was Put and

LOST (6/8)

In favour of the Motion: Mayor Carlos, Crs Caiacob, Hart, Walker, Nixon and Hollywood. **Against the Motion.** Crs Gollant, Kenworthy, O'Brien, Rowlands, Brewer, Baker, Kimber and Prospero.

The Motion as Moved by Cr O'Brien and Seconded by Cr Baker was Put and

CARRIED (12/2)

In favour of the Motion: Mayor Carlos, Crs Caiacob, Gollant, Kenworthy, O'Brien, Hart, Rowlands, Nixon, Baker, Brewer, Kimber and Prospero **Against the Motion:** Crs Hollywood and Walker

MOVED Cr Kimber SECONDED Cr Baker that the Councillors of the City of Joondalup hereby again reaffirm their full confidence in our City's CEO and congratulate him on his many achievements including but not limited to:

- 1 That the City of Joondalup is one of the lowest taxing local government bodies in Western Australia;
- 2 for the restructuring of the City's administration resulting in substantial savings to our ratepayers;
- 3 his thoroughly professional administration of our City.

Discussion ensued.

Cr Kimber, with the consent of Cr Baker, advised he wished the Motion to be

WITHDRAWN

MOVED Cr Rowlands SECONDED Cr Kenworthy that Council:

- 1 forthwith directs Mayor Carlos to desist immediately in carrying out any further actions or investigations in respect of the employment contract for the CEO, qualifications of the CEO and refrain from making any further derogatory or defamatory comments pertaining to the CEO's credibility, and;
- 2 forthwith directs Mayor Carlos to give a public apology to the CEO for the remarks he made during an interview with Channel 7 on Monday 5 May 2003.

Discussion ensued.

Cr Rowlands, with the consent of Cr Kenworthy, advised he wished the Motion to be
WITHDRAWN

PERSONAL EXPLANATION – CR KIMBER

In accordance with Clause 4.5 of the City's Standing Orders Local Law, Cr Kimber made the following personal explanation:

“I will not converse with the media or anyone with respect to this investigation.”

PERSONAL EXPLANATION – CR BAKER

In accordance with Clause 4.5 of the City's Standing Orders Local Law, Cr Baker made the following personal explanation:

“Likewise, expressly or impliedly, directly or indirectly, using friends or associates. Councillors, please be very careful of that as well. We will be able to test the bona fides of these undertakings within the next 48 hours.”

JSC63-05/03 MOTION TO GO TO OPEN DOORS

MOVED Cr Walker, SECONDED Cr Rowlands that the meeting be now held with open doors, the time being 2336 hrs.

The Motion was Put and **CARRIED**

Members of the staff, public and press entered the Chamber at this point, the time being 2336 hrs.

JSC64-05/03 ADJOURNMENT OF MEETING – [02154] [08122]

MOVED Cr Walker, SECONDED Cr Rowlands that the Meeting **ADJOURN** for a period of five (5) minutes, the time being 2336 hrs.

The Motion was Put and **CARRIED**

The meeting **RESUMED** at 2341 hrs. All elected members were present at this point.

In accordance with the City's Standing Orders Local Law, the Manager, Audit & Executive Services read the motions passed in relation to the following items:

- JSC59-05/03 Attendance of Staff – Behind Closed Doors
- JSC60-05/03 Suspension of Standing Orders
- JSC61-05/03 Attendance of Minute Clerk – Behind Closed Doors
- JSC62-05/03 Matters pertaining to the Chief Executive Officer's Contract Of Employment And Related Issues

Mayor Carlos stated that until the investigation is complete and a report is presented to Council, he would undertake to make no further comments to the media. Mayor Carlos believed that all Councillors had also undertaken that no comments be made to the media.

SECOND PUBLIC QUESTION TIME

Mr S Magyar, Heathridge:

Q1 Is there any timeline envisaged for the completion of this report?

A1 Response by Mayor Carlos: No.

Q2 Has Freehills been involved in the drafting of the CEO's contract in the first place?

A2 Response by Mayor Carlos: Yes.

Mr H Reason, Kinross:

Q1 I asked a question earlier in the meeting regarding the company employed to carry out the contract. I did not hear anything about any investigation into the way they carried out the task that they were paid to do. Is there any come back to this company if it is deemed they did not carry out the full job?

A1 Response by Mayor Carlos: This subject will be looked at after the report is received.

Mr M Sideris, Mullaloo:

Q1 Can we have, in layman's terms, what the resolutions are?

A1 Response by Mayor Carlos: A copy of the motion will be published. I think the press has a copy of the motion. We currently have an investigation into matters that have previously been raised. At the end of that investigation the Council will look at the results of the investigation and make a decision.

CLOSURE

There being no further business, the Mayor declared the Meeting closed at 2350 hrs; the following elected members being present at that time:

MAYOR D CARLOS
Cr L PROSPERO
Cr P KIMBER
Cr T BREWER
Cr C BAKER
Cr A NIXON
Cr J F HOLLYWOOD, JP
Cr A WALKER
Cr P ROWLANDS
Cr S HART
Cr M O'BRIEN, JP
Cr G KENWORTHY
Cr J GOLLANT
Cr M CAIACOB