



**MINUTES OF COUNCIL MEETING
HELD ON 17 JUNE 2003 AND 24 JUNE 2003**

In accordance with Clause 5.6 of the City's Standing Orders Local Law and the requirements of the Local Government Act 1995, Item C98-06/03 discussed behind closed doors. Therefore only the resolutions carried by the Council are available for public inspection, unless otherwise resolved by the Council, in accordance with Clause 7.2 of the City's Standing Orders Local Law.

TABLE OF CONTENTS

No:	Item	Page
	OPEN AND WELCOME	1
	ATTENDANCES	1
	PUBLIC QUESTION TIME	2
C89-06/03	EXTENSION OF QUESTION TIME – [01122]	14
	APOLOGIES AND LEAVE OF ABSENCE	15
C90-06/03	REQUEST FOR LEAVE OF ABSENCE - CR T BREWER- [76541]	15
	DECLARATIONS OF FINANCIAL INTEREST/INTEREST AFFECTING IMPARTIALITY	16
C91-06/03	CONFIRMATION OF MINUTES MINUTES OF COUNCIL MEETING, 27 MAY 2003 SPECIAL COUNCIL MEETING, 4 JUNE 2003	16
	ANNOUNCEMENTS BY THE MAYOR WITHOUT DISCUSSION	17
C92-06/03	PETITIONS	19
C93-06/03	COUNCIL DECISION – EN BLOC RESOLUTION NO 1	19

	REPORTS	
CJ128 - 06/03	BUDGET COMMITTEE PROCEDURES - [02153] [66533].....	20
CJ130 - 06/03	CRAIGIE LEISURE CENTRE – REDEVELOPMENT RECOMMENDATION – [09050]	23
C94-06/03	MOTION TO GO BEHIND CLOSED DOORS	38
CJ139 - 06/03	EMPLOYMENT OF THE CHIEF EXECUTIVE OFFICER OF THE CITY OF JOONDALUP – [70544]	39
C95-06/03	CEO REQUEST - REIMBURSEMENT OF LEGAL COSTS - [95375]	42
	MEETING TO GO TO OPEN DOORS	42
C96-06/03	MOTION TO ADJOURN – [02154] [08122]	42
	RESUMPTION OF MEETING	43
	PERSONAL EXPLANATION – MAYOR CARLOS	44
C97-06/03	ALTERATION TO ORDER OF BUSINESS	44
C98-06/03	EMPLOYMENT OF THE CHIEF EXECUTIVE OFFICER OF THE CITY OF JOONDALUP – [70544]	45
C99-06/03	MOTION TO GO TO OPEN DOORS	49
CJ133 - 06/03	AMENDMENT NO 12 TO DISTRICT PLANNING SCHEME NO 2 - LOT 63 (30) AND A PORTION OF LOT 62 (38) HOCKING ROAD, KINGSLEY – [47523].....	52
CJ134 - 06/03	PROPOSED AMENDMENT NO 18 TO DISTRICT PLANNING SCHEME NO 2 - PROPOSED RECREATIONAL VEHICLE CONTROL PROVISIONS – [56527] [53542] [44940] [24185]	58
CJ135 - 06/03	LOCALITY NAME CHANGE – BURNS TO BURNS BEACH – [09163] [01474]	63
CJ136 - 06/03	DELEGATED AUTHORITY REPORT FOR THE MONTH OF APRIL 2003 – [07032].....	66
CJ138 - 06/03	PROPOSED CHILD DAY CARE CENTRE: LOT 575 (65) WANNEROO ROAD AND LOT 1 (1) GORMAN STREET, CNR WANNEROO ROAD, GREENWOOD – [78165]	67
	PERSONAL EXPLANATION – CR PROSPERO	76
	PERSONAL EXPLANATION – CR C BAKER	76
CJ140 - 06/03	MAYORAL VEHICLE – [28469] [45514].....	76
	COUNCIL DECISION – EN BLOC RESOLUTION NO 1	80
CJ126 - 06/03	SCHEDULE OF DOCUMENTS EXECUTED BY MEANS OF AFFIXING THE COMMON SEAL [15876].....	80

CJ127 - 06/03	REIMBURSEMENT OF ELECTED MEMBERS ALLOWANCES AND EXPENSES TO - MAY 2003 – [27122]	82
CJ129 - 06/03	PARKING SIGN POLE ACCESS AGREEMENT – [00415]	84
CJ131 - 06/03	MINUTES OF THE CONSERVATION ADVISORY COMMITTEE OF 26 MARCH 2003 – [12168]	87
CJ132 - 06/03	FINAL ADOPTION OF RETAINING WALLS POLICY 3.1.7 - SUBDIVISION – [05575]	89
CJ137 - 06/03	SUBDIVISION REFERRALS PROCESSED 1 – 30 APRIL 2003 – [05961]	92
C100-06/03	2003/2004 BUDGET – RATING GUIDELINES	93

MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN 102

C101-06/03	MOTION TO LIE ON THE TABLE – EN BLOC RESOLUTION NO 2.102	
C102-06/03	NOTICE OF MOTION NO 2 – CR C BAKER – REVOCATION – COUNCIL PERMIT/APPROVAL	103
C103-06/03	NOTICE OF MOTION NO 3 – CR M O’BRIEN – RESCISSION OF USE APPROVAL FOR A THERAPEUTIC MASSAGE CENTRE, LOT 9 UNIT 16 (7) DELAGE STREET, JOONDALUP EX (TP107-05/96)	104
C104-06/03	NOTICE OF MOTION NO 4 – CR C BAKER – OCEAN REEF BOAT HARBOUR – DRAFT 2003/04 BUDGET	108
C105-06/03	NOTICE OF MOTION NO 7 – CR G KENWORTHY – 2003/04 DRAFT BUDGET	110
C106-06/03	NOTICE OF MOTION NO 8 – CR A WALKER – LEGAL ADVICE	111
C107-06/03	NOTICE OF MOTION NO 9 – CR C BAKER – TERMINATION OF MAYOR’S INVESTIGATIONS INTO CR HOLLYWOOD’S CONDUCT	113
C108-06/03	NOTICE OF MOTION NO 1 – CR C BAKER – REVOKING OF MAYOR’S POWER	113

PERSONAL EXPLANATION – CR BAKER 115

C109-06/03	NOTICE OF MOTION NO 5 – CR M O’BRIEN – 10 OCEANSIDE PROMENADE, MULLALOO	115
C110-06/03	NOTICE OF MOTION NO 6 – CR A WALKER – RANGE OF MEMBERSHIPS - CRAIGIE LEISURE CENTRE	117
C111-06/03	MOTION TO LIE ON THE TABLE NO 1 - REVIEW OF CORPORATE POLICY MANUAL - [07032, 26176, 13399]	119
C112-06/03	MOTION TO LIE ON THE TABLE NO 2 – NOTICE OF MOTION – CR M O’BRIEN –MUNICIPAL TAX (RATES) - [38634] [20086]	121
C113-06/03	MOTION TO LIE ON THE TABLE NO 3 - NOTICE OF MOTION – MAYOR CARLOS – WANNEROO BASKETBALL ASSOCIATION	126
C114-06/03	MOTION TO LIE ON THE TABLE NO 4 - NOTICE OF MOTION – CR G KENWORTHY - POTENTIAL BREACH OF STANDING ORDERS, CODE OF CONDUCT AND THE LOCAL GOVERNMENT ACT 1995, CR J HOLLYWOOD - [38535] [53558] [02154] [08122] [42750]	130
C115-06/03	MOTION TO LIE ON THE TABLE NO 5 - NOTICE OF MOTION – CR P ROWLANDS – MATTERS RELATING TO THE CHIEF EXECUTIVE OFFICER	132

C116-06/03	REQUEST FOR SECOND PUBLIC QUESTION TIME – [01122] [02154]	133
	SECOND PUBLIC QUESTION TIME	133
	DATE OF NEXT MEETING	134
	CLOSURE	134

CITY OF JOONDALUP

MINUTES OF COUNCIL MEETING HELD IN COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP, ON TUESDAY, 17 JUNE 2003 AND TUESDAY 24 JUNE 2003

OPEN AND WELCOME

The Mayor declared the meeting open at 1900 hrs.

ATTENDANCES

Mayor

D CARLOS

Elected Members:

Cr L PROSPERO	Lakeside Ward	<i>Absent from 2224 hrs to 2226 hrs</i>
Cr P KIMBER	Lakeside Ward	<i>Absent from 2214 hrs to 2216 hrs</i>
Cr T BREWER	Marina Ward	
Cr C BAKER	Marina Ward	<i>Absent from 2209 hrs to 2211 hrs; and from 2351 hrs to 2352 hrs</i>
Cr A NIXON	North Coastal Ward	
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>from 2110 hrs; Absent from 2351 hrs to 2352 hrs</i>
Cr J GOLLANT	South Coastal Ward	<i>from 1904 hrs; Absent from 2256 hrs to 2258 hrs</i>
Cr M CAIACOB	Whitfords Ward	
Cr C MACKINTOSH	Whitfords Ward	

Officers:

Chief Executive Officer:	D SMITH	<i>Absent from 2101 hrs to 2349 hrs</i>
Director, Planning & Community Development:	C HIGHAM	
Director, Infrastructure & Operations:	D DJULBIC	<i>Absent from 2101 hrs to 2349 hrs</i>
Director, Corporate Services and Resource Management:	P SCHNEIDER	<i>Absent from 2101 hrs to 2349 hrs</i>
Manager, Marketing, Communications & Council Support:	M SMITH	<i>Absent from 2101 hrs to 2349 hrs</i>
Manager Audit and Executive Services:	K ROBINSON	<i>Absent from 2101 hrs to 2349 hrs</i>
Manager, Strategic & Sustainable Development:	R HARDY	<i>Absent from 2101 hrs to 2349 hrs</i>
Manager, Human Resource Services:	M LOADER	
Manager, Craigie Leisure Centre	G TAYLOR	<i>Absent from 2101 hrs to 2349 hrs</i>
Manager, Assets and Commissioning:	C SMITH	<i>Absent from 2101 hrs to 2349 hrs</i>

Publicity Officer: L BRENNAN *Absent from 2101 hrs to 2349 hrs*
Committee Clerk: L TAYLOR
Minute Clerk: G KELLY *Absent from 2101 hrs to 2349 hrs*

There were 30 members of the Public and 1 member of the Press in attendance.

In Attendance

Mr Nick Manifis - Walman Software *Absent from 2101 hrs to 2349 hrs*

Mr Neil Douglas, Minter Ellison *from 2109 hrs to 2346 hrs*

Mr Andrew Burnett, Minter Ellison *from 2109 hrs to 2346 hrs*

PUBLIC QUESTION TIME

The following question, submitted by Mr B Van Zuylen, Ocean Reef, was taken on notice at the Special Meeting of Council held on 20 May 2003:

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 Yes there was a written agreement between the City and Mr Turkington. There was a confidentiality clause which does not allow either party to disclose the provisions in the agreement.

The following question, submitted by Mr Steve Magyar, Heathridge, was taken on notice at the Special Meeting of Council held on 20 May 2003:

Q1 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 5.92 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.

A1 Section 5.92 allows any Council member to have access to any information that is relevant to the performance as an elected member. Policy 2.3.4 of the City states that the elected member must demonstrate to the CEO that the request for information is relevant to their performance. When determining the level of access, the CEO May:

- allow the member to view the document only with an officer present to assist in interpretation;
- grant access to the information via an edited document;
- be in the best interest to provide access to all elected members in either a full or edited format;
- be released to elected member(s) under a confidential restriction means;

Where the elected member is dissatisfied with the level of information provided by the Chief Executive Officer under this policy, they may request the Mayor to liaise with the Chief Executive Officer.

The following questions, submitted by Mr K Zakrevsky, Mullaloo, were taken on notice at the Special Meeting of Council held on 20 May 2003:

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?

A1 It is assumed that when all elected members made their declarations they were aware of their individual role.

Q2 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?

A2 This question is very difficult to answer because all facts need to be taken into consideration when assessing misrepresentation. Any allegation of misrepresentation does not of itself make a contract null and void.

Q3 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.

A3 The points raised within this question are for elected members to consider.

The following question, submitted by Mr V Cusack, Kingsley, was taken on notice at the Special Meeting of Council held on 20 May 2003:

Q1 Question to Cr Walker: Was it your recollection that you asked for the two questions (regarding the CEO's qualifications) to be recorded or were you happy with the notation as listed?

A1 A Motion was moved at the Council meeting held on 1 April 2003 that the minutes of the 18 February 2003 meeting be amended to reflect that two questions were raised by Mr Vincent Cusack of Kingsley. In accordance with normal practice, a notation was placed in the official minute book of the 18 February 2003 meeting.

The following questions, submitted by Mr T O'Brien, Padbury, were taken on notice at the Special Meeting of Council held on 20 May 2003:

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 comments are noted and are questions to be asked of the lawyers.

The following questions, submitted by Mr P Mak, Sorrento, were taken on notice at the Council meeting held on 27 May 2003:

Q1 This question is directed to the Mayor – Redirection of Funding for the Sorrento Beach Redevelopment. Is Council aware that redirection of the funding for Sorrento Beach Redevelopment is putting local businesses and tourism at risk and also would create a big question mark on the integrity of newly elected Councillors as they were not part of previous debates?

Q2 The entrance to the City of Joondalup along West Coast Highway is the poorest part on display of any Shire on the Sunset Coast, is the Council aware of that?

Thousands of volunteers over the years have looked after the sand dunes along Sorrento Beach and are eagerly waiting for this development to take place. There is a busy bee this Sunday at 9.30 am at the sand dunes, I invite all Councillors to attend. The details are displayed in the Wanneroo Times for your attendance.

A1&2 The points raised in questions 1 and 2 above relating to redirecting funds and the condition of West Coast Highway will be taken into consideration by Council in relation to deliberations pertaining to this beach redevelopment project.

The following questions, submitted by Mr A Bryant, Craigie, were taken on notice at the Council meeting held on 27 May 2003:

Q1 Regarding the answer to my question asked at the meeting of 1 April 2003 about the recovery of materials for recycling. It was stated that such recycling recovery costs amounted to a deficit of almost \$104,500 for the quarter ended 31 December 2002 for the combined Cities of Joondalup, Swan and Wanneroo.

Does this indicate that it is difficult to dispose of recycled goods at a reasonable price to enable a profit to be made? If this is the case, is there a possibility in the near future that the position will vary to the extent that a profit can be expected? What steps are being taken in an endeavour to produce a profit?

A1 The selling of the recyclable materials is subject to market fluctuations and Council's target is to try and aim for neutral costs. At this stage, the market is such that the recycling facility is running at a loss, but certainly the loss is minimised compared to 3 or 4 years ago prior to the arrangement with the City of Swan and Wanneroo.

Q2 Is the \$104,500 the City of Joondalup's share and \$104,500 each for the other cities?

A2 The \$104,399.10 stated in the City's response dated 24 April, 2003 relates to the shared position for the City of Swan, City of Wanneroo and City of Joondalup, i.e. the total operational deficit of \$104,399.10 is shared between the three participating Councils.

The following question, submitted by Mr S Grech, Ocean Reef, was taken on notice at the Council meeting held on 27 May 2003:

Q1 This question is directed to the Mayor: In the Wanneroo Times dated 27 May 2003, "Pool Repair Priority to be Reconsidered". They quoted you saying "a hefty rate increase to fund the leisure pool centre upgrade". Is this true and if so why.

A1 The funding of any redevelopment works at the Craigie Leisure Centre will be determined as part of the City's overall budget deliberations. At this time no decision has been made as to specific rate increases, or borrowings to fund the project. The Craigie Leisure Centre is considered one of the 14 corporate projects being undertaken by the City at this time.

The following questions, submitted by Mrs M Macdonald, Mullaloo, were taken on notice at the Council meeting held on 27 May 2003:

Q1 The Agenda for 23 July 2002 contained a report on the refurbishment of the Carine Glade Tavern. The report refers to a discussion with the Resident's Group in Carine on patron numbers. Given that there is a requirement under the Health Act for uses and patron numbers of public buildings to be identified, can Council indicate when the residents of Mullaloo are to be afforded the same courtesy as that given to the residents of Carine? That is, when will Council enter into discussion with the residents of Mullaloo on the number of patrons to be allowed in the Mullaloo Beach Village?

A1 In regard to the Carine Tavern refurbishment, the issue of patron numbers was a matter that the adjoining owners raised with the Liquor Licensing Board during the tavern's application for the liquor licence. The issue of patron numbers was a consideration for a number of reasons, including the location of outdoor dining areas facing adjoining residents and a history of noise complaints in regard to the operation of the existing tavern. A maximum patronage number was placed on the Liquor Licence following consideration of those issues by the Board.

It is noted that the number of patrons permitted within a public building is governed by the Health (Public Buildings) Regulations 1992. A maximum occupancy certificate is issued to a public building based on the provision of exits, sanitary facilities, floor area, and ventilation and associated matters. The number of patrons permitted within a public building is therefore issued in accordance with the Regulations, and is not a discretionary number that can be varied by discussion with residents.

Q2 Further to the answer to my question at the Special Meeting in May 2003, can Council state whether or not Council has a policy which requires newly appointed staff to produce their degrees or certificates for copying and filing? If they do not have this policy, does Council still state it is following best practice with respect to Human Resource issues?

A2 When an applicant is successful in obtaining a position at the City the manager of the business unit is responsible to sight the tertiary qualification if it is an essential criteria. If an agency is engaged then it is their responsibility unless otherwise agreed.

The following questions, submitted by Mr S Magyar, Heathridge, were taken on notice at the Council meeting held on 27 May 2003:

Q1 Re: Petition for Traffic Calming in Mermaid Way, Heathridge. Can Council undertake the same traffic studies for Admiral Grove and Marybrook Road in Heathridge as the people in these roads have the same concerns?

A1 Admiral Grove and Marybrook Road, Heathridge will be included as part of the traffic assessment for Mermaid Way, Heathridge.

The following question, submitted by Mr D Davies, Connolly, was taken on notice at the Council meeting held on 27 May 2003:

Q1 Since the deferment of a Councillor being elected on the Safer WA Committee, due to a meeting at the weekend where it was believed the Commissioner of Police, Brian Mathews was going to make an announcement on the future of Safer WA, an announcement that did not eventuate, I would now ask that a member be appointed to the Safer WA Committee.

A1 The issue of a Councillor being elected to serve on the Safer WA Committee is the subject of a Council report. The outcome of this will be advised to the Safer WA Committee once resolved.

The following question, submitted by Mrs M Zakrevsky, Mullaloo, was taken on notice at the Council meeting held on 27 May 2003:

Q1 Would Council consider at swearing in ceremonies that, as an alternative, affirmations can be read from the text instead of being repeated?

A1 The suggested change in procedure will be considered when formulating the proceedings for the next swearing in ceremony

The following question, submitted by Mr J McNamara, Sorrento, was taken on notice at the Council meeting held on 27 May 2003:

Q1 I refer to the Special Meeting to be held on Wednesday, 4 June 2003 at the City of Joondalup. The purpose of the meeting is to discuss the contract of employment of the CEO and related issues, and a Notice of Motion from Cr Kenworthy reflecting on the performance of the CEO. The matter of the CEO's qualifications and their inclusion in his original job application are currently under investigation by our lawyers, I request justification from Cr Kenworthy, who proposed the Notice of Motion, for the Special Meeting and what is going to be a significant cost to the ratepayers?

A1 This question has been forwarded to Cr Kenworthy.

The following question, submitted by Mr M Sideris, Mullaloo, was taken on notice at the Special Meeting of Council held on 4 June 2003:

Q1 How much is this meeting costing ratepayers tonight? I want a dollar cost, including travelling as claimed by Councillors and cost of staff.

A1	Security and Staff Costs	\$126.07
	Light supper	\$115.00
	Estimated Mileage Claims (based on those members who normally seek reimbursement)	\$ <u>85.30</u>
	TOTAL	\$326.37

The following questions, submitted by Mr S Magyar, Heathridge were taken on notice at the Special Meeting of Council held on 4 June 2003:

Q1 Is it correct that in the CEO's contract, if a performance review is not conducted on the CEO, that he will automatically receive a pay increase?

A1 No that is not correct.

Q2 Was the complete Council involved in drawing up the criteria by which the CEO's performance was last reviewed?

A2 No.

Questions taken on notice relating to the employment of the CEO:

The following questions will remain on notice pending the report to be submitted by Minter Ellison, Lawyers:

- Questions submitted to Special meeting of Council held on 20 May 2003:

77 questions submitted by Mr S Grech;
3 questions submitted by Mr S Magyar;
2 questions submitted by Mr K Zakrevsky;
6 questions submitted by Ms K Woodmass;
1 question submitted by Mr M Sideris;
5 questions submitted by Mr V Cusack;
1 question submitted by Mr H Reason;

- Questions submitted to Council meeting held on 27 May 2003:

3 questions submitted by Mr S Grech;
1 question submitted by Mr S Magyar.

The following questions were submitted by Mr G Johnson, Joondalup:

Q1 My family owns Commercial Business Land property number 148448, we are concerned that we may have been over charged for the rateable year 2002/2003.

I would like to ask the following questions -

- (a) Have we been overcharged the flat tax (minimum rate) for the year 2002/2003. If so, what is the overcharged amount?*
- (b) How many rateable properties are there in the City of Joondalup?*
- (c) How many properties are affected by "the immoral" use of Section 6.35 of the Local Government Act 1995 and consequently over taxed?*
- (d) We request a statement breaking down for each component and a total amount that has been overcharged for each component (ie) Commercial/Industrial on minimum rate, Residential Pensioner on minimum rate, Residential Non Pensioner on minimum rate, Residential Vacant on minimum rate, Commercial/Industrial Vacant on minimum rate.*
- (e) How long has the administration of the City known of this error?*

A1 Mr Graeme Johnson is not the registered owner of the property number 148448 at 10 Lago Place, Joondalup and the answers provided are therefore not specific to that property.

- (a) No. Council imposed a Minimum Payment of \$450 as part of its 2002/03 budget in accordance with section 6.35 of the Local Government Act 1995.

- (b) The City of Joondalup 2002/03 budget shows 56,536 rateable properties.
- (c) There is no overtaxing as the City applied Section 6.35 of the Local Government Act 1995. The 2002/03 budget shows that the Minimum Payment applies to 9,477 properties.
- (d) There is no overcharge.
- (e) The minimum payment was set in accordance with section 6.35 of the Local Government Act 1995.

The following questions were submitted by Mr S Magyar, Heathridge:

Q1 Regarding Item CJ128-06/03, Budget Committee Procedures and Local Government Administration Regulations 14. If Council resolves to follow the recommendation of holding the Budget Committee Meetings with doors open to the public, will the agenda and associated documents be made available to the public at the same time that these documents are made available to the Elected Members?

A1 The City will comply with its legislative requirements.

Q2 Regarding Item CJ130-06/03, Craigie Leisure Centre Redevelopment, and Notices of Motions No 4, Cr Baker, \$950,000 for studies to develop the Ocean Reef Boat Harbour, and Notice of Motion No 7, Cr Kenworthy, \$500,000 for landscaping enhancements of Marmion Avenue between Warwick Road and Hepburn Avenue. Would Council be able to avoid rate increases and minimize borrowing funds for the Craigie Leisure Centre Redevelopment if the Ocean Reef Boat Harbour project and the Marion Avenue landscaping works were deferred until Council was in a stronger financial position?

A2 The 2003/04 budget is currently being finalised and is being considered by the Budget Committee. The City is currently considering a number of competing demands for funding and an increase in rates or additional borrowings will be considered in light of the final funding requirements for the 2003/04 budget.

Q3 Regarding CJ139-06/03, Employment of the CEO - Will Council be obtaining advice from lawyers, Neil Douglas and Andrew Burnett, of Minter Ellison, on the following questions:

3.1 *What right does the Council have to demand that the CEO produce the documentation required to verify that the academic qualifications listed in the CEO's credentials, when he applied for the job, are true and correct?*

3.2 *Section 5.36 (2)(a) of the Local Government Act requires Council to believe that the person employed as the CEO is suitably qualified for the position. Does an Elected Member who has reasonable grounds to believe that the Council is mistaken in its belief that the CEO is suitably qualified for the position, a duty to present to Council whatever evidence that Elected Member has to support his or her belief that the CEO is not suitably qualified for the position?*

If Council is presented with evidence that the CEO does not have the qualifications that he claimed, is the Council required to examine any such evidence?

If Council does examine the evidence that the CEO does not have the qualifications claimed, can Council terminate the employment contract without any penalties being imposed on the Council?

A3 The Council has appointed Minter Ellison to deal with matters pertaining to the employment of the CEO. It is not considered appropriate to respond to questions relating to these issues until such time as the Council has considered the report.

Q4 *Regarding Notice of Motion No 1, Cr Baker, Revoking the Mayor's Power. Considering that the Mayor's powers for Public Question Time are given under Local Government Administration Regulation 7, expanded by Standing Orders clause 8.2, allowing the Mayor to use the procedures of the Western Australian Parliament, and supported by legal precedents, such as Egan v Willis [1998] HCA 71, which confirm the rights of the various levels of government to maintain order within their own chambers, should not this motion be ruled out of order as it is reasonable to believe such a decision is beyond jurisdiction of the Council?*

A4 The decision to rule a notice of motion that is beyond the jurisdiction of the Council rests with the Chairperson. However, Clause 4.6 of the Standing Orders Local Law allows the meeting by simple majority to submit a different ruling given by the Chairperson.

Q5 *Regarding Notice of Motion No 4 Cr Baker, Ocean Reef Boat Harbour. Considering the huge financial implications of this possible project, and that Council has not yet formally dealt with the information already amassed by the staff, would not it be more reasonable for Council to receive a full report on the variety of issues listed in the Officer's Comment before committing further funds without a resolution of Council supporting the project itself?*

A5 The matter is before Council for determination.

Q6 *Regarding Notice of Motion No 7, Cr Kenworthy, Marmion Avenue Verge and Median Strip Enhancement, has any estimations been made as to the annual maintenance costs that the ratepayers will be forced to fund if this project is approved?*

A6 A preliminary estimate for the annual costs associated with the ongoing maintenance of the enhanced medians and verges is approximately \$75,000.

Q6.1-6.4

Also, how does the Marmion Avenue Verge Enhancement Scheme comply with the guiding principles of the Code of Conduct in relation to:

6.1 *Sustainability, does it promote an integrated environmental, social and economic approach to managing the road reserve?*

6.2 *Does it focus on improving quality of life for current and future residents and ratepayers?*

6.3 *Will it provide value for money when compared to other projects that Council may progress for the benefit of the ratepayers?*

6.4 *Will it be the most efficient and effective use of ratepayers' money that delivers a much needed service or facility to the residents of Joondalup?*

A6.1 – 6.4 It is assumed that these questions relate to the Strategic Plan and not the Code of Conduct. On this basis, it is advised that Council will take into consideration the various matters raised in Questions 6.1 through to 6.4 when deliberating on this matter.

Mr R Privilege, Edgewater:

My question is addressed to the Mayor. I refer to Cr Baker's Notice of Motion to be debated later this evening.

Q1 Has the City received any legal advice from the City's solicitors advising as to whether you do have the power to direct that security staff remove ratepayers from the Public Gallery during Council meetings?

Q2 In the event that you have received advice confirming that you have no such power, will you now apologize to me for your direction given to the security staff several weeks ago when you directed them to remove me from the public gallery?

A1-2 *Response by Mayor Carlos:* Council has received advice from its solicitors, I do not have the power to remove anyone from Council, however the option I have when people in the Gallery stand up and shout at Council and will not sit down is to close the meeting. I will not be using security again to ask people to move, I will close the meeting and adjourn it for 15 minutes. In regard to apologising to you Mr Privilege, I do not believe it necessary because of your conduct on that night. I asked you to sit down six times, I then asked security to ask you to leave.

Mr R de Gruchy, Sorrento:

My question relates to the redevelopment of Craigie Leisure Centre. Councillors would be aware that a recommendation before them this evening seeks approval for Option No 6. My concerns are that the users of the Centre have not had an opportunity to comment on any of the six options put forward and Councillors do not have the benefit of their thoughts before committing to a decision. There is no benefit in allowing for community consultation after a decision has been taken – if anything it may only succeed in alienating those ratepayers who are concerned about the Centre.

Q1 Will Council delay taking any firm decision on the six options put forward for the redevelopment of Craigie Leisure Centre until after the users of the Centre have had the opportunity to express their views on the merits of the various options?

A1 The consultation process outlined in the body of the report was an extensive consultation process, feedback has been sought from over 1000 members of the community and there were a number of stakeholder and user groups that participated in various workshops and seminars. The decision the project team is putting to Council tonight is to adopt an option for the redevelopment of the aquatic side of the leisure centre.

Q2 Regarding funds held in the various Reserve accounts. Would Council please advise:

- (a) the name of each reserve account;*
- (b) the amount, including total interest accrued, held in each account;*
- (c) the date the account was opened.*

A2 This question will be taken on notice.

Cr Gollant entered the Chamber, the time being 1904 hrs

Ms M Macdonald, Mullaloo:

Q1 Council has stated that it consulted the stakeholder groups involved in the Craigie Leisure Centre. Can you tell me who the stakeholder groups are?

A1 There were a number of stakeholder groups consulted. There are user groups, swim clubs, sporting associations, leaseholders, tenants. Effectively, all the members and stakeholders of the Centre who use it for leisure and recreational purposes.

Ms M Moon, Greenwood, on behalf of South Ward Ratepayers Association:

Q1 Does the Chief Executive Officer have a degree in Business Administration from the University of Technology of Sydney?

A1 This question will be taken on notice, pending the report to be submitted by Minter Ellison, Lawyers.

Q2 What is a centre and how is the size of a centre determined?

A2 This question will be taken on notice.

Mr S Magyar, Heathridge:

Q1 Will there be a second public question time at this meeting?

A1 *Response by Mayor Carlos:* That will depend on a resolution of Council and this will be decided later on this evening.

Q2 If the Mayor of the City of Joondalup cannot call upon the security service to assist in controlling a person creating a disturbance in a public place, then who can call upon the security service to assist them in times of public disturbance and what assistance can the security patrol give?

A2 *Response by Mayor Carlos:* The security patrols cannot do anything, the only option is to close the meeting, call the police and if the disturbance still continues, the police can take action. There is a meeting with a number of Mayors on Monday to try and resolve this as this situation has occurred in a number of Councils in Western Australia and the Department of Local Government is looking at ways of correcting this anomaly.

Cr Kenworthy entered the Chamber, the time being 1912 hrs

Mr K Zakrevsky, Mullaloo:

- *Mr Zakrevsky referred to questions asked at the Special Meeting of Council held on 20 May 2003; which he wished to resubmit this evening.*

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

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

Are Councillors aware of these situations?

A1 This question will be circulated to all Councillors for a response.

Q2 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?

A2 This question will be taken on notice.

Q3 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.”*

Q4 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?

A3-4 These questions will be taken on notice pending the report to be submitted by Minter Ellison, Lawyers.

Q5 Do the Council officers in particular and also Councillors understand and realise that delegated authority does not mean absolute authority? A Councillor or a ratepayer has the right to question the delegated authority and how it is being implemented.

A5 This question will be taken on notice.

C89-06/03 EXTENSION OF QUESTION TIME – [01122]

MOVED Cr Walker, SECONDED Cr Baker that public question time be extended for a further period of ten (10) minutes.

The Motion was Put and

CARRIED

Ms M Heckler, Quinns Rock:

I am here on behalf of my son who lives at 18 Barker Drive, Duncraig.

Q1 Would it be possible to have listed on the Warrant of Payments form what the payments are for?

A1 That information is available at Briefing Sessions. The cheque vouchers are provided at that meeting. Providing that information in the Council Agenda would be very time consuming and very voluminous in the agenda process.

Q2 In your Briefing Session, is it actually written down or is it for a ratepayer to ask what a particular payment is for?

A2 If there is a question asked on a specific voucher, details can be provided at the Briefing Session.

Mr K Pattberg, Currambine:

Q1 When will the commercial parking law be changed in order to remove large vehicles from residential areas?

A1 There is an item regarding restrictions on recreational vehicles beyond a certain size in tonight's agenda.

Mr M Sideris, Mullaloo:

Q1 Do the Councillors have for consideration for all of the capital works programmes either a capital work expansion proposal or a cost benefit analysis?

A1 There is a workshop to be held with the Councillors in respect of the Capital Works programme. There has been detailed items of expenditure proposed and explanation notes and there will be whatever information the Councillors deem warranted to be able to make a valued judgment available.

Q2 Is there a capital expansion proposal or a cost benefit analysis associated with each one of those major capital works programmes? Do you have a financial outline over the term of the project, which the Councillors can consider?

A2 There is not a formal document that would be deemed to be a cost benefit analysis to each project. The Council has financial implications on each project defined for it.

Mr S Magyar, Heathridge:

Q1 I refer to the statement that you read out at the beginning of Public Question Time which was a statement prepared by a previous Council regarding restrictions on public question time. I would like to draw Council's attention to Local Government Administration Regulation 7.1, which states:

"Procedures for asking of and responding to questions raised by member of public at a meeting referred to in 6.1 are to be determined by the person presiding at the meeting or in the case where the majority of members of council or committee present at the meeting disagree with the person presiding by the majority of those members."

Did Council when it made these rules act ultra vires and act beyond their powers in that they directed or instructed the Mayor to conduct Public Question Time in a particular manner and Council does not have the power to instruct a Mayor how to conduct Public Question Time in general?

A1 Mr Magyar has raised this matter on numerous occasions and has also had replies, but the matter will be taken on notice and a response given.

The following questions were submitted by Mr M Collier, Woodvale:

- *Street lighting is provided at great expense of construction by ratepayers;*
- *Significant numbers of major roads have large amounts of street lights inoperative;*
- *A number of these instances are at road junctions, precisely the points we should have illuminated for road safety reasons.*

Q1 Can we have some effort by Council to ensure the contractors paid to replace lighting do so quickly during these winter months when we need them?

A1 This question will be taken on notice.

APOLOGIES AND LEAVE OF ABSENCE**Leave of absence previously approved:**

Cr C Baker - 5 July 2003 to 31 July 2003 inclusive
Cr A Nixon - 10 July 2003 to 30 July 2003 inclusive

C90-06/03 REQUEST FOR LEAVE OF ABSENCE - CR T BREWER-[76541]

Cr T Brewer has requested Leave of Absence from Council duties for the period 11 July 2003 to 21 July 2003 inclusive.

MOVED Cr Kimber, SECONDED Cr Prospero that Council APPROVES the request from Cr Brewer for Leave of Absence from Council duties for the period 11 July 2003 to 21 July 2003 inclusive.

The Motion was Put and

CARRIED

DECLARATIONS OF FINANCIAL INTEREST/INTEREST THAT MAY AFFECT IMPARTIALITY

Director, Infrastructure and Operations declared an interest that may affect his impartiality in CJ131-06/03– Minutes of the Conservation Advisory Committee of 26 March 2003 as he is a member of Kingsley Junior Football Club.

Cr Hollywood declared a financial interest in Item CJ136-06/03 – Delegated Authority Report for the month of April 2003, as he is building the single house at 35 Lakeside Drive, Joondalup.

Chief Executive Officer declared a financial interest in Item CJ139-06/03 – Employment of the Chief Executive Officer of the City of Joondalup as the matter impacts on his contract of employment/matters pertaining to CEO’s employment.

Chief Executive Officer declared a financial interest in Item C95-06/03 – CEO Request – Reimbursement of Legal Costs as the matter impacts on his contract of employment/matters pertaining to CEO’s employment.

Mayor Carlos declared a financial interest in Item CJ140-06/03 – Mayoral Vehicle as it relates to the use of the Mayoral car.

Cr P Kimber declared an interest that may affect his impartiality in C113-06/03- Motion to Lie on the Table No 3- Notice of Motion – Mayor Carlos – Wanneroo Basketball Association as a family member is involved with the Wanneroo Basketball Association.

Director, Infrastructure and Operations declared an interest that may affect his impartiality in C113-06/03 - Motion to Lie on the Table No 3- Notice of Motion – Mayor Carlos – Wanneroo Basketball Association as a relative of his is a member of the Wanneroo Basketball Association.

Cr Hollywood declared a financial interest in C114-06/03 - Motion to Lie on the Table No 4 – Notice of Motion – Cr G Kenworthy as this is a matter concerning Cr Hollywood personally.

The Chief Executive Officer declared an interest in Item C98-06/03 – Employment of the Chief Executive Officer of the City of Joondalup as the matter impacts on his contract of employment/matters pertaining to CEO’s employment.

C91-06/03 CONFIRMATION OF MINUTES**MINUTES OF COUNCIL MEETING, 27 MAY 2003****SPECIAL COUNCIL MEETING, 4 JUNE 2003**

MOVED Cr Hart, SECONDED Cr Hollywood that the Minutes of the:

- Council Meeting – 27 May 2003
- Special Council Meeting – 4 June 2003

be confirmed as a true and correct record, subject to the following correction to the minutes of the Special Meeting of Council held 4 June 2003:

“That the words ‘go by performance and not pieces of paper’ used in a statement made by Cr Mackintosh after a question raised by Mrs Marie Macdonald during public question time be included in the statement made by Cr Mackintosh”.

Manager, Marketing Communications & Council Support advised the minutes were not a verbatim document, and are not recorded as such unless at the time of the meeting specific comments or votes are requested to be recorded. It is normal practice that decisions and outcomes of motions are recorded in accordance with the Administration Regulations

The Motion was Put and

LOST (5/10)

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

MOVED Cr Prospero, SECONDED Cr Baker that the following Minutes be confirmed as a true and correct record:

- **Council Meeting – 27 May 2003**
- **Special Council Meeting – 4 June 2003**

The Motion was Put and

CARRIED (13/2)

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

ANNOUNCEMENTS BY THE MAYOR WITHOUT DISCUSSION

SORRENTO QUAY FIRE

I am sure you are aware of the fire which swept through Hillary's Boat Harbour at the weekend. Damage exceeds \$2 million at the complex, owned by the State Department of Infrastructure and Planning.

I understand the damaged area is a "no go" zone. We are offering whatever support the City can give to shop keepers and others severely impacted by the blaze.

STATE SEAT OF JOONDALUP

Feedback from the State Electoral Commission indicates that our efforts to retain the State seat of Joondalup will be successful. This follows submissions by the City and myself objecting to the proposed loss of the seat.

The State Electoral Commissioner has advised the City of a proposal to retain the seat of Joondalup and include in it the whole of the suburb of Joondalup as well as the whole of ‘Ocean Reef’ would be included in the new seat of ‘Mindarie’. This is very good news for the City – and I look forward to a formal announcement by Electoral Commission in the near future.

LOCAL JOBS

Yesterday I had the pleasure of attending the opening of the “Employment Directions Network” in Central Walk. It offers a range of employment services delivered by the Western Australian Government.

I believe that Joondalup has come of age in being able to partner with the State Government in this project. In the five years to 2001, Joondalup regional jobs rose from 34,000 to 45,000. That’s a 30 percent increase, the highest in Metropolitan Perth.

As our “Learning City” concept develops, job increases promise to be even greater and this new initiative is sure to be of great value.

FORMAL HANDOVER

Since our last Council Meeting, the State Government and Landcorp have formally handed over to us the City of Joondalup.

As newly elected Mayor, I must say I was proud to be bearing this office on such an historic occasion. The normalisation or handing over ceremony marks Joondalup’s coming of age.

We heard from Planning Minister, Allannah MacTiernan that the investment in Joondalup has paid dividends to the tune of 40 billion dollars. We are pleased and proud as a City to formally “take over the reins” and hope the State’s commitment will continue as we work together to see Joondalup mature to its full potential.

STATEMENT BY MAYOR CARLOS

Councillors, I wish to raise with you some concerns relating to the conduct of Elected Members and members of the public during Council Meetings.

As I have said before, I want to ensure constructive debate within the Chambers and that every member has the opportunity to express their point of view to ensure informed decisions are made for the benefit of the community of the City of Joondalup.

May I remind members of their obligations under our own Standing Orders Local Law, in particular:

- that members shall not reflect adversely upon the character or actions of another member or officer;
- that members shall not interrupt another member whilst they are speaking, with the exception to raise a point of order;
- that points of order relate to breaches of the Standing Orders, and not where another member is expressing a difference of opinion and contradicting a speaker.

And also our ethical standards under the Code of Conduct, importantly:

- Respect for persons – that we treat other people as individuals;
- Justice – that we treat people fairly without discrimination and with rules that apply equally to all;

- Beneficence – that we do to others what we would have done to ourselves

Councillors and members of the public, it is important that we are able to express our opinions freely within this Chamber while respecting the rights of others and their respective roles within the decision-making process, but also within the rules that we must abide by.

As I mentioned earlier, I want to ensure constructive debate, however if this cannot occur, I may be required to enforce certain provisions of the Standing Orders. Let us ensure we move together as one to achieve informed decisions in the best interest of the community, who we serve.

PETITIONS

C92-06/03 PETITIONS SUBMITTED TO THE COUNCIL MEETING – 17 JUNE 2003

TRAFFIC CALMING ISSUES WITHIN THE SUBURB OF SORRENTO – [00003] [01398]

Cr Gollant submitted a 56-signature petition from residents of Sorrento requesting that Council implement traffic calming works on Seacrest Drive, Sorrento.

This petition will be referred to Infrastructure and Operations for action.

MOVED Cr Baker, SECONDED Cr Walker that the petition requesting the implementation of traffic calming works on Seacrest Drive, Sorrento be received and referred to the appropriate Business Unit for action.

The Motion was Put and

CARRIED (15/0)

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

C93-06/03 COUNCIL DECISION – EN BLOC RESOLUTION NO 1

MOVED Cr Nixon, SECONDED Cr Mackintosh that Council first deals with those items which it requires to consider individually, with the remainder of items to be by EN-BLOC method.

It was requested that items be moved en bloc. Discussion ensued as to which items required to be considered individually.

The Motion was Put and

CARRIED

**CJ128 - 06/03 BUDGET COMMITTEE PROCEDURES - [02153]
[66533]****WARD - All**

PURPOSE

For Council to consider whether the proceedings of the Budget Committee are to be held in open doors.

EXECUTIVE SUMMARY

The Budget Committee at its meetings held on 22 May 2003 and 3 June 2003, gave consideration to the opening of its meetings to members of the public. It was recommended to the Committee that the Budget Committee proceedings be continued to be held behind closed doors.

The current Budget Committee has not been delegated any ability to exercise any powers of the Council. Therefore there is no legislative requirement to open the meetings to the public and the proceedings of all past budget committees have been held behind closed doors.

The decision to open the proceedings of any committee of the Council, where delegation is not granted, is a decision of the Council.

BACKGROUND

The Budget Committee at its meeting held on 22 May 2003 considered the following motion, which was lost:

“That the forthcoming Budget Committee meetings be held with open doors.”

At that 22 May meeting, it was requested that a report be submitted to the next meeting of the Budget Committee. Accordingly a report was submitted to the Budget Committee meeting held on 3 June 2003. The Officer’s Recommendation within that report was that the meetings not be held with open doors. The Committee did not support the Officer’s recommendation and moved that:

“it be recommended that Council APPROVES that the Budget Committee meetings be held with OPEN DOORS.”

In order to assist the Council in determining its future budget deliberations, the Council over the last few years has established a committee comprising all elected members. The proceedings of all past budget committees have been held behind closed doors.

DETAILS

The 2003/2004 Budget Committee comprises the following elected members, with the Mayor being elected as the Chairperson at its first meeting:

MAYOR D CARLOS	Chairman
Cr L PROSPERO	Lakeside Ward
Cr P KIMBER	Lakeside Ward
Cr T BREWER	Marina Ward
Cr C BAKER	Marina Ward
Cr J F HOLLYWOOD, JP	North Coastal Ward
Cr A NIXON	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
Cr J GOLLANT	South Coastal Ward
CR C MACKINTOSH	Whitfords Ward
Cr M CAIACOB	Whitfords Ward

Statutory Provision:

Section 5.8 of the Local Government Act 1995 states:

'A local government may establish committees of three or more persons to assist the Council and to exercise powers and discharge the duties of the local government that can be delegated to committees.'

Section 5.23 of the Local Government Act 1995 states:

"(1) Subject to subsection (2), the following are to be open to members of the public –

- (a) all Council meetings; and*
- (b) all meetings of any committee to which a local government power or duty has been delegated.*

(2) If a meeting is being held by a Council or by a committee referred to in subsection (1) (b) the Council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following -

- (a) a matter affecting an employee or employees;*
- (b) the personal affairs of any person;*
- (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting;*
- (d) legal advice obtained or which may be obtained by the local government and which relates to a matter to be discussed at the meeting;*
- (e) a matter that if disclosed, would reveal:

 - (i) a trade secret;*
 - (ii) information that has a commercial value to a person, or**

(iii) *information about the business, professional, commercial or financial affairs of a person;*

where the trade secret or information is held by, or is about a person other than the local government;

(f) *a matter that if disclosed, could be reasonably expected to:*

(i) *impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;*

(ii) *endanger the security of the local government's property or;*

(iii) *prejudice the maintenance or enforcement of a lawful measure for protecting public safety;*

(g) *information which is the subject of a direction given under Section 23 (1) of the Parliamentary Commissioners Act 1971, and*

(h) *such other matters as may be prescribed.*

(3) *A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.*

The current Budget Committee has not been delegated any ability to exercise any powers of the Council. Therefore there is no legislative requirement to open the meetings to the public. As the committee has no delegated powers, it merely makes recommendations to the Council on the contents of the 2003/04 budget. The final adoption of the 2003/04 budget rests with Council.

The decision to open the proceedings of any committee of the Council, where delegation is not granted, is a decision of the Council.

COMMENT

A number of budget items, projects, and suggested areas of expenditure and resource that are presented to the budget committee are in a preliminary format. The budget is prepared from a number of reports and detailed discussions between elected members, on advice from officers. It is important that elected members can discuss and make suggestions on the contents of the budget in a conducive environment. With the budget committee being held with open doors, such an environment may diminish.

The officer's recommendation submitted to the Budget Committee at its meeting held on 22 May 2003 was:

"That the forthcoming Budget Committee meetings not be held with open doors."

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Rowlands, SECONDED Cr Walker that Council APPROVES the Budget Committee meetings be held with open doors.

Discussion ensued.

The Motion was Put and

LOST (7/8)

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

CJ130 - 06/03 CRAIGIE LEISURE CENTRE – REDEVELOPMENT RECOMMENDATION – [09050]

WARD - All

PURPOSE

The purpose of this report is to:

- 1 Brief Council on the background, current status, issues and redevelopment options pertaining to the redevelopment of the Craigie Leisure Centre;
- 2 Seek Council approval to progress with Option 6 for the redevelopment of Craigie Leisure Centre;
- 3 Seek Council approval for the project budget of \$7.5 million to be expended in the 2003/04 and 2004/05 financial years.

EXECUTIVE SUMMARY

At the 18 February 2003 Ordinary Council Meeting, Council voted to accept the tender submitted by James Christou and Partners Architects (JCPA) to provide the architectural consultancy and design services for the refurbishment of the Craigie Leisure Centre.

Under the direction of the City of Joondalup Project Control Group (PCG), JCPA have undertaken an extensive review and consultation process in the development of a series of design options for the PCG to consider. The PCG has reviewed all options presented by JCPA and generated a short list of 3 options measured against the base case scenario. The PCG then completed an assessment of the shortlisted options against a value-based criteria derived from the Needs Analysis prepared by ABV Consulting and detailed in Attachment 1. The operational costs have been analysed for each of the shortlisted options in order that comparable cost/revenue data can be reviewed and factored into the decision making process.

The detailed analysis and option assessment phase has clearly resulted in Option 6 (Sketch Option 6 in Attachment 3 to this Report) being the recommended option for Council to proceed with.

The PCG recommends that Council does not proceed with the original plans for minor refurbishment of the aquatic facility with the original budget of \$3.0 million. It is the advice of the PCG that following the complete decommissioning of the aquatic facility, the base costs associated with the original proposal will be greater than the current budget allocation due to the heightened risk of plant and pool structure failure. The revised Total Estimated

Cost (TEC) for this proposal detailed in Option 5 is \$4.5 million and shows little benefit to the City when measured against the assessment criteria.

BACKGROUND

The aquatic facilities at the Craigie Leisure Centre were originally developed in 1988. At that time, the centre was a significant investment for the then City of Wanneroo to undertake and was recognised as one of the leading aquatic facilities in Australia recording some of the highest usage statistics in the country. Since that period, the City of Wanneroo, and subsequently, the City of Joondalup, have committed little to the aquatic facilities in terms of capital development and annual maintenance expenditure. Additionally, the standards governing such facilities have incrementally increased resulting in the aquatic centre now being below standards in all key areas negatively affecting the amenity, marketability, financial returns and customer satisfaction levels.

The aquatic component of the facility is in need of major works. Prior to the decision to close the venue, its aesthetic appeal was poor and its functionality tenuous with independent reports confirming the need for substantial works to allow the facility to operate in line with relevant regulations and industry best practice. The reports highlighted a number of high-risk items requiring extensive refurbishment including the pool filtration system, gas boiler, the pool deck and the pool shell itself and that the continued operation of the pool was at an increased risk of major plant or pool structure failure. Such a failure would have resulted in an un-programmed closure of the facility with little to no scope of temporary repair. On this basis, the closure of the aquatic facilities, pending final project scope approval, was approved by Council in March 2003 (CJ053 - 03/03 refers) and re-confirmed in April 2003 (CJ074- 04/03 refers).

In addition to these significant facility and management constraints facing the centre, community demands and expectations for such facilities have evolved considerably and whilst the centre was a national leader during the first few years of operation, it has gradually and increasingly lagged behind market demands and provision. The needs analysis report commissioned by the City and completed by ABV Leisure Consultants highlighted the shift in facility demand by the market and highlighted the requirement for a more comprehensive review of the facility during the design development phase undertaken by JCPA.

The demise of RANS Management Group forced the City to take back the management of the centre for an undefined period of time. This change has also meant that the capital improvements to be funded by RANS, as part of their original contract arrangement, will not be undertaken as originally planned and that Council will be liable for all redevelopment costs.

This set of circumstances presented the opportunity for the City to review the role of Craigie Leisure Centre in satisfying the leisure needs of the surrounding community and ensuring the provision of relevant, equitable and affordable access to leisure opportunities. Specifically, the aquatic component and its relationship with existing dry facilities were explored to ensure any facilities located at this site are positioned to satisfy the current and future needs of the community it serves.

RANS MANAGEMENT GROUP

Council, at its meeting of 24 October 2000 (Report CJ337-11/00) recommended the RANS Management Group as its preferred tenderer for the Operational Management and Lease of

the Cities three leisure centres. RANS took over the management and operations of these facilities on 21 May 2001. RANS subsequently operated these facilities until receivers were appointed to the Group on 12 June 2002 and the operational management and control of the facilities handed back to the City on the following day.

As part of the tender submission received by the City from the RANS Management Group, and subsequently embodied in the management agreement between the City and RANS, it was agreed that RANS would, subject to the completion of market research proving the nature of the projects nominated to be most suitable, commit contractually to undertaking certain works that, at that stage, were noted as:

- Project 1 – expansion of the health and fitness centre for \$1.0 million.
- Project 2 – development of a soft play area for \$180k.

The City of Joondalup made a commitment to also undertake a refurbishment project at the Craigie Leisure Centre, providing for an approximately \$1.0m commitment to tiling the pool basin and surrounds and refurbishing the changerooms and toilets. Following the collapse of RANS, all previous plans for any capital works at the centre have had to be at the City's sole cost.

On re-establishing City management of the centres it was immediately apparent that the RANS Management Group had not maintained the centres in accordance with the lease agreement. All facilities, particularly the Craigie Leisure Centre were in a poor state of repair and general cleanliness. The City, in the first 5 months of the handover spent approximately \$80,000 on the Craigie Leisure Centre to re-establish acceptable standards and undertake maintenance work not completed by RANS.

NEEDS ANALYSIS - CRAIGIE LEISURE CENTRE

Following the collapse of RANS, the Review of the Craigie Leisure Centre was commissioned by the City of Joondalup and undertaken by ABV Consultants and included significant consultation with the key stakeholders, the community and Council. During the course of the needs analysis investigation, the facility was reviewed with respect to facility characteristics and design, community needs, trends, and future developmental opportunities.

The process involved the consultants reviewing all reports and studies previously undertaken with regard to the Craigie Leisure Centre, the consideration of the demographics and trends relating to facility utilisation. This research and analysis of needs and trends provided the foundation for future development considerations.

Community Consultation

Community consultation provided the basis of the Craigie Leisure Centre Needs Study. Consultation undertaken to complete the review included:

- An extensive Needs Survey of the general community (in excess of 1,000 responses to a detailed consumer survey) undertaken through a variety of media (personal, internet etc);
- Regular meetings with Council officers and the Craigie Leisure Centre Project Control Group (PCG);
- Interviews with representatives of key user groups (Refer Attachment 2);

- Interviews with key stake-holders including swimming associations and the Education Department;
- Interview with Marmion Squash Club representative;
- Interviews with officers from other Local Government Authorities with similar facilities;
- Consultation with Craigie Leisure Centre staff and management;
- Interviews with other leisure centre managers and industry professionals; and
- Consultation with Department of Sport and Recreation (WA) representatives.

The response received by the consultant to the needs analysis provided a significant sample in that over 1000 respondents to the questionnaires were collated and analysed.

Further consultation will involve the City providing feedback to the community as to the option Council endorses to proceed with and the involvements of key groups in the design process. The City also intends to undertake an extensive marketing campaign to relaunch the centre.

Study Outcomes

The outcome of the study supported the need to redevelop Craigie Leisure Centre. The Centre, which was once regarded as the leading leisure facility in WA, is now in an ageing condition. Some aspects of the Centre now require replacement as they are at the end of their operational life, while others are either outdated or not relevant to current (and future) demands.

The following recommendations were made:

- That Council considers and commits to the proposed redevelopment of the Craigie Leisure Centre in response to the established needs demonstrated in this report (ABV Consultants Needs Analysis);
- That concept planning for the proposed redevelopments be commenced;
- That the concept plans be costed through detailed review by an independent Quantity Surveyor;
- That the Feasibility of the development be undertaken;
- That the development of Squash be further investigated in regards to feasibility, and commitment from Marmion Squash Club and WA Squash;
- That City of Joondalup make Budget allowance for the redevelopment; and
- That application for CSRFF funding toward the redevelopment is made for the 2002 funding round.

DESIGN BRIEF - JAMES CHRISTOU & PARTNERS (JCPA)

A key element of the JCPA tender submission that resulted in the contract being awarded in their favour was the consultation process that was proposed. In addition to the meetings with the City of Joondalup project control group, seven workshops were conducted to determine visions, expectations and design guidelines for the project. These workshops included Executive, Management and Technical officers of the City, operational staff from the Leisure Centres, Elected Members, Management and Operational staff from other facilities throughout the City, Representatives of key user and stakeholder groups, the Lease holder of the Leisure Centre Kiosk and members of the public.

The outcome of the consultation process to date is the establishment of the project brief (Attachment 2 to this Report) that formed the basis of the options presented to the project control group by JCPA. Table 1 provides a summary of all development options presented to the PCG. The plans for each corresponding option are as per Attachment 3 to this Report.

TABLE 1 - DEVELOPMENT OPTIONS

OPTION	\$M	COMMENT
1	\$12.7	<ul style="list-style-type: none"> • A complete new facility including building, aquatic, gymnasium amenity. • Is inclusive of all elements identified as essential through the community consultation process. • Does not compromise on any design, functionality or operational requirements. • The 8 Lane 50m pool has lane widths of 2.5m that is considered ideal for swimmers and provides sufficient room for lap swimmers to share lanes. • Additional 25m pool also with 2.5m lanes is ideal in that it provides ideal teaching space for learn to swim as well as being at a depth which is ideal for people who wish to walk in water as an exercise. • Leisure pool is necessary for casual swimming for very young children, does have some potential for limited teaching space.
2	\$9.49	<ul style="list-style-type: none"> • Redevelopment of the aquatic facilities within the existing building structure. • Provides many of the features identified in the consultation process in a compromised way. • Compromises substantially on a number of design, functionality and operational requirements. • 50m pool substantially compromised in that it is restricted to 6 lanes of a reduced 2.1m width. • Additional 25m pool also with 2.5m lanes is ideal in that it provides ideal teaching space for learn to swim as well as being at a depth which is ideal for people who wish to walk in water as an exercise • Offers significant improvements to the services attached to the aquatic facilities such as the gymnasium, aerobics room, toilets and change rooms etc. • Limited modifications to the amenity and aesthetic issues of the building i.e. no removal of current internal ducting or improvements in sound and temperature insulation of the building.
3	\$8.2	<ul style="list-style-type: none"> • Redevelopment of the aquatic facilities within the existing building structure. • Provides many of the features identified in the consultation process in a compromised way. • Compromises substantially on a number of design, functionality and operational requirements. • Utilises existing water space but in a reduced manner in order to achieve separate water bodies.

		<ul style="list-style-type: none"> • 50m pool substantially compromised in that it is restricted to 6 lanes of a reduced 2.1m width. • Offers significant improvements to the services attached to the aquatic facilities such as the gymnasium, aerobics room, toilets and change rooms. • Limited modifications to the amenity and aesthetic issues of the building i.e. no removal of current internal ducting or improvements in sound and temperature insulation of the building.
4	\$5.4	<ul style="list-style-type: none"> • Achieves the same water space provision as option 3, which as stated previously, achieves the outcomes sought from the consultation process in a compromised manner. • Upgrade only to all of the surrounding and supporting facilities - no improvements to operations, amenity, and functionality. • Additional plant space has been included in this option in order to meet the additional requirements of separate treatment and heating of separate bodies of water. • Spa and sauna facilities remain in the same location despite historical problems associated with the being located there.
5	\$4.5	<ul style="list-style-type: none"> • This proposal is the cost of the upgrade to the existing facilities only. The scope of works includes tiling the pool basin, tiling the surrounds and upgrading the change rooms and toilets. • A new plant room is included in the plan but the proposal is not inclusive of the structural change necessary to allow for two bodies of water and programme flexibility and enhanced income generating capacity that this would allow.
6	\$7.5	<ul style="list-style-type: none"> • This option meets the majority of the essential components as identified through the consultative process with little compromise. • The major component that is not met is a 50m pool. This can be accommodated in a further stage of the project as a proposed 50m outdoor facility. • The 25m-pool option offers 2.5m lanes that are considered a significant benefit by users of the facility. • The proposals as presented meet all of the requirements identified by the consultation process. • The aquatic facilities are of higher standard than all options with the incorporation of a wet deck. • This option provides for substantial improvements in the building amenity and aesthetics through the relocation of the air ducting and incorporation of acoustic treatments. • By proceeding with proposal 6, the City will be procuring all of the facilities that are presently available at the Craigie Leisure Centre and making substantial improvements to the functionality and quality of the facilities.

DEVELOPMENT OPTION ANALYSIS MATRIX (Attachment 1 to this Report)

The PCG, in conjunction with the consultant team, completed a value-based analysis for each option. This analysis is summarised in Attachment 1.

The Redevelopment Options Matrix (Attachment 1) contains an estimation of:

- 1 Cost of the facility (Detailed cost plans developed in conjunction with Ralph Beatty Bosworth Quantity Surveyors);
- 2 Estimated attendances (Developed by ABV Consultants in conjunction with Leisure Centre Management and Manager Community Development); and
- 3 Estimated net operating result of the 3 preferred options for consideration (excluding corporate overheads and capital depreciation).

Option 5 represents the base level refurbishment project that was previously estimated to cost approximately \$3.0m and is currently estimated to cost \$4.5m.

The level of importance of the particular design elements have been ranked in accordance with:

- 1 Identified features from the ABV Needs Analysis Report;
- 2 Measure of customer satisfaction (defined by management surveys);
- 3 Programmability; and
- 4 New versus remodelled facilities.

A more detailed analysis was completed on options 1, 2, 5 and 6. Options 3 and 4 were not considered further by the PCG due to capital cost and ranking by comparison to the other options. Option 5 was assessed as the benchmark option for the City in that it presents a straight refurbishment on the current facility.

In this further analysis, Table 2 provides a comparison of the key criteria of Option 6 to:

- Option 1 - which presented the ultimate development case that completely fulfils the needs analysis and the consultation issues;
- Option 2 - which presents a major project meeting a considerable portion of the demands of the needs analysis but in a compromised manner; and
- Option 5 - which presents the base case refurbishment option originally costed at \$3.0m and now estimated to cost \$4.5m.

Table 2 Comparative Analysis

Option	Cost	Value Score	Operational Saving ¹	Comments	Rank
1	\$12.73m	87	(\$66,365)	<ul style="list-style-type: none"> Fully meets needs analysis Essentially a new facility Not best value for money 	3
2	\$ 9.50m	70.35	\$98,878	<ul style="list-style-type: none"> Compromised facility in a number of areas Ranks 2nd due to value for money judgement 	2
5	\$ 4.50m	22.4	(\$94,347)	<ul style="list-style-type: none"> Original proposal and base line model (i.e. current facility) Not recommended 	4
6	\$ 7.50m	79.4	\$213,920 ²	<ul style="list-style-type: none"> Provides the facility almost all the same features as Options 1 & 2 with a considerably lower price to build Good balance or refurbishment and new business generation Best value for money option 	1

Additionally, Table 3 - Craigie Leisure Centre Redevelopment Estimates provides for a detailed analysis of budget and attendance estimates. These estimates are based on:

- 1 Optimum facility operations;
- 2 Third year of operation (which accounts for any period of growth);
- 3 Reflects industry comparisons for like facilities; and
- 4 Based on current fees and charges and staff costs.

Table 3 - Craigie Leisure Centre Redevelopment Estimates

Income Category	Option 1		Option 2		Option 5		Option 6	
	Att	\$	Att	\$	Att	\$	Att	\$
Swim Entries	278,365	\$742,100	240,100	\$641,000		\$493,100	240,100	\$641,000
Sauna Spa Hydro	11,155	\$31,234	9,700	\$27,160		\$15,400	9,700	\$27,160
Learn To Swim	63,400	\$561,490	59,400	\$525,304		\$235,800	63,680	\$563,030
Swim Coaching Rights		\$19,500		\$10,000		\$6,000		\$10,000
General Pool Hire		\$28,305		\$17,595		\$4,080		\$5,100
Centre Memberships	208,000	\$845,600	208,000	\$845,600		\$591,920	208,000	\$845,600
Health & Fitness (casual)	34,618	\$313,243	34,618	\$313,243		\$245,000	34,618	\$313,243
Dry Court Programs Team	110,250	\$573,300	110,250	\$573,300		\$507,780	110,250	\$573,300
Leisure Programs	10,000	\$124,000	10,000	\$124,000		\$130,000	14,000	\$156,000
Crèche	23,460	\$65,974	21,420	\$59,900		\$42,840	21,420	\$59,976

Retail Sales	\$73,925	\$69,651	\$50,351	\$70,177
Kiosk Lease	\$66,532	\$62,686	\$45,315	\$63,159
Miscellaneous income			\$20,000	
Sub total income	\$3,445,203	\$3,269,439	\$2,367,587	\$3,327,745
Less GST	\$313,200	\$297,222	\$215,235	\$302,522
TOTAL	739,248 \$3,132,003	696,511 \$2,972,217	528,520 \$2,152,351	701,768 \$3,025,223
Expenditure	Option 1	Option 2	Option 5	Option 6
Salaries Permanent	\$684,297	\$684,297	\$684,297	\$684,297
Salaries Program /Casual	\$1,216,526	\$1,099,019	\$652,430.16	\$1,077,589
Staff costs	\$16,301	\$15,525	\$13,500	\$15,525
Office Costs	\$96,600	\$92,000	\$80,000	\$92,000
Utilities	\$485,000	\$303,125	\$260,000	\$278,875
Cleaning	\$135,000	\$126,500	\$115,000	\$126,500
Pool costs	\$55,000	\$50,000	\$25,000	\$50,000
Program costs	\$163,013	\$155,250	\$135,000	\$155,250
Building costs	\$151,000	\$161,000	\$140,000	\$150,000
Insurances	\$57,500	\$57,500	\$50,000	\$57,500
Advertising & Promotion	\$79,959	\$70,081	\$56,260	\$69,962
Equipment Maintenance	\$17,250	\$17,250	\$15,000	\$17,250
Retail Costs	\$44,355	\$41,791	\$30,210	\$42,106
Total Expenses	\$3,201,801	696,511 \$2,873,338	\$2,246,699	\$2,733,339
NET RESULT	739,248 (\$69,798)	696,511 \$98,879	528,520 (\$94,347)	701,768 \$213,368

¹ The Operational position of each facility is determined on the operating costs directly associated with the Centre. This excludes items such as depreciation, building rental charges and internal allocation charges. All figures are exclusive of GST. Assumes that facilities operating at peak capacity in third year of operation (allowing for set up and growth period).

² Option 6 will return an improved surplus as compared to Option 1 & 2 primarily due to;

- Reduction of expenditure due to decreased staffing and operational costs associated with decreased aquatic facilities; and
- Key programs and facilities generating similar income levels as Option 1 and 2.

RECOMMENDED OPTION

Option 6, whilst not ranking the highest in the needs assessment ranking (Attachment 1 to this Report) or costing the least, provides for the most comprehensive balance between capital cost, operational cost/revenue, functionality and overall value for money by comparison to the other options developed and assessed.

- Option 1 which presents a greater value ranking offers some outdoor water options, hydrotherapy pool, an extensive 50m pool and a 350m² leisure pool. However, in terms of capital investment and operational costs/revenue, it is considerably more expensive to develop and operate, for little increased functionality and attendance, than that option presented by Option 6.

- Option 2 presents a value ranking lower and a capital cost some 22% greater than Option 6. Although the additional feature of a hydrotherapy pool, a 50m pool and a 350m² leisure pool are included, these features are considered of lower value to the overall package and do not substantially increase patronage and programmability sufficiently enough to justify an additional \$1.7m capital expenditure.
- Option 5, as the project originally planned for by the City as a straight refurbishment, provided the benchmark facility against which all the projects could be measured. It represents the lowest capital cost as well as providing a clear indication for comparison as to the impact that the redevelopment may have on the attendances and financial performance of the centre.

The dramatic loss of water from the pool since its closure has indicated that there were major problems in the pools underground services and therefore a cosmetic improvement to the facility may well have been wasted if further more major works were required.

The mix of facility features that Option 6 proposes satisfies the major needs identified by the community in the ABV Needs study with the exception of a 50m pool. From the needs analysis and the consultation process, the PCG has determined that the quality of the swimming experience is the major determinant and therefore, the substitute for a 50m pool is a high quality 25m pool with 8 lanes 2.5metres in width that is specifically designed to meet the needs of lap swimmers and swim clubs. A 25m pool also offers many lower operational cost benefits compared to a 50m pool. An additional peer review workshop held by the City to review the design process and recommended option (attended by the management staff of other Local Government Aquatic Centres) has further re-enforced this informed view.

The need for a hydrotherapy pool is satisfied with the warm leisure pool that can be heated to 32/33degC. The size and temperature of the pool allows for all levels of learn to swim, gentle exercise and rehabilitation. This option also allows for an extensive spa area that meets a large portion of these demands.

The additional elements contained within the Option 6 and including:

- Wet Deck to the entire pool area;
- Acoustic and thermal insulation treatment to the existing building structure; and
- Relocation of ventilation ducts to external building to improve visual amenity and natural lighting;

These additional elements are not contained within any other option with the exception of Option 1, which provides for a new building.

Table 4 – Summary of Design Advantages

Feature	Advantages
Pools – 2 x 25m pools	<ul style="list-style-type: none"> • The 25m-lap pool provides a quality experience for those wishing to pursue lap swimming- 2.5 metre wide lanes, water temp (28C), ideal depth for tumble turns etc. The learn to swim participants approaching squads will be able to utilise as will the training squads. Flexibility will be provided by having two 25m pools for Aquarobics and other forms of water exercise dependant on needs of the class and participants.
	<ul style="list-style-type: none"> • The 25m warm water leisure pool provides ideal learn to swim options in warm water (32C) and exercise options for elderly, disabled and frail with a graded beach entry. The pool will also contain many features appropriate for children to assist with family play, attracting a new family market to the centre.
Group Fitness – larger area	<ul style="list-style-type: none"> • The larger area by approximately 1.5 times previous, allows for a greater quality of experience as the previous area was of irregular shape. Classes can also become more profitable with increased average attendances allowing for fewer classes, thus reducing expenditure. • The new area will also be available and useful for user groups to hire for such activities as dance and martial arts etc • Option 6 introduces a new area for programming via its ability to be split into 2 rooms, one slightly larger than the other and sound proofed walls. This allows maximum utilisation of the area by allowing two areas to be programmed at the same time. The options available to utilise the area are; many hirers in the form of dance and martial arts programs, centre run leisure courses and human interest classes
Gymnasium -larger and more useable area	<ul style="list-style-type: none"> • This shape will allow for a larger membership base to be catered for. The shape and the new finishes will allow the centre to compete with the numerous competitors in the local vicinity. • This is the high net return area of the facility and allows income generation to assist subsidising the use of other facilities within the centre.
	<ul style="list-style-type: none"> • It is envisaged that a 30% increase in membership can be accommodated in this facility • The size of the gym will allow for the introduction of a circuit area that can specifically cater for seniors, rehabilitation and strength training, a facility previously not available. • The size of the gym will also allow for the introduction of specialised equipment that meets the needs of disabled participants.

Community Changeroom – New	<ul style="list-style-type: none"> This feature will cater for families, disabled and frail and bring the centres facilities in line with current state of the art leisure facilities. It will serve to increase the quality experience for users.(It is not as large as the Option 2 Family Changerooms)
Spa Sauna Steam – New	<ul style="list-style-type: none"> The addition of these areas in an exclusive arrangement will allow for a new market addition to the facility. A high quality facility with hot spas and separate male and female spas will compliment memberships (an advantage over competitors) and allow for the therapeutic health market to be tapped.
Café – Relocated	<ul style="list-style-type: none"> The location of the café at this part of the facility will allow for maximum impulse sales from entry and exit customers resulting in maximised sales The location near the entry will attract parents waiting on children trade, with the added bonus of not needing to enter the facility and have to pay to watch - a common complaint at centres
Front Reception - Relocated	<ul style="list-style-type: none"> The new shape and design of the front reception will create a welcoming ambience for customers in the foyer, that will allow for tighter control of participants into the Centre, whilst providing improved secondary supervision to all areas of the Centre.
Community Needs Satisfied	<ul style="list-style-type: none"> Whilst not satisfying every need identified, this option satisfies the majority and partially overcomes the need for a 50m pool in that it provides a high quality lap pool option with the 25m lap pool. The identified need for a Hydro pool is partially satisfied with the provision of a warm water leisure pool (25m) for those requiring to exercise in warm water and by the provision of spas for those requiring the therapeutic qualities of warm water to relax in.

Financial Implications:

Account No:

Budget Item:

Budget Amount: \$1.0m 02/03 CFWD
 \$3.5m 03/04 Proposed

YTD Amount: \$

Actual Cost: \$7,500,000

The TEC for Option 6 is \$7.5 million. As a 1 stage project, and subject to the current development program being endorsed, approximately 80% expenditure will be incurred in the 2003-04 financial year a further 15% incurred in the first quarter of 2004-05.

Alternatively, Council may adopt a 2 stage project that will see the aquatic facilities redeveloped first, followed by the balance of the project being the gymnasium, aerobics, cafeteria and centre management facilities. Following this program, stage 1 of the project will be approximately \$6.0 million with approximately 90% of this incurred in the 2003-04 financial year with the balance of stage 1 in the first quarter of the 2004-05 financial year. Stage 2 can be completed within an 8 month construction period and, depending on construction programming, may be incurred over 2 financial years.

Staging will incur an estimated 10% escalation rate per annum to the stage 2 TEC.

It is the recommendation of the PCG to resource appropriate funds to complete the redevelopment as a 1 stage project.

Current Budget provision

Craigie Leisure Centre currently has \$4.5 million allocated against it in the draft 2003-04 budget. \$3.5 million of this is proposed to be borrowings. Funding for this project may typically be sourced from:

- Rates increases;
- Borrowings;
- Project deferrals;
- Program rationalisations; and/or
- Asset sales.

It is currently anticipated that borrowings will be required due to the City's commitment to a range of corporate projects. In order that the re-opening date for the aquatic facilities is adhered to, the City may require expending against other Asset reserves as an interim measure until borrowings can be arranged by quotation and approved by State Treasury. At this time, any expenditure from other reserve accounts will be replenished.

Future Budget Provision

The current position of a major unbudgeted project shortfall with the Craigie Leisure Centre aquatic redevelopment is, in part, the result of the City lacking any Asset Replacement Strategy for major facilities. Particularly with major sport and recreation facilities, facility requirements constantly change with market demands. Additionally, aquatic facilities have further demands in the areas of building maintenance and replacement due to the environment resulting from an internal water body.

The City of Joondalup will be faced with the same situation again in 7 to 10 years if a capital funding and replacement strategy is not put in place at the same time as approving this project. As a minimum, it is recommended that the City consider putting into a reserve account, the annual building depreciation and any operational surplus generated from the centre.

The Project team, in conjunction with the consultant team will examine strategies for future capital replacement/redevelopment in the course of completed the detailed design for the Council approved option.

COMMENT

The Craigie Leisure Aquatic Centre is an aged facility that requires substantial re-investment to continue operations. A key component of the RANS Management contract for the centre was with regard to a capital upgrade to the aquatic facilities. RANS Management Group made provision in their successful tender for a contribution of \$1.0 million towards this upgrade on the basis that the City was to contribute an equal sum. Documentary evidence would indicate that the RANS contribution was earmarked for investment into the gymnasium with the City being obliged to upgrade the aquatic facilities to a suitable standard. The City of Joondalup had budgeted \$1.0 million for this capital upgrade that is now found to be substantially under-budgeted and not aligned with consumer demand.

It is significant to now note that these figures would not have been sufficient to undertake the required works and certainly not the works the ABV Needs analysis highlighted. The detailed analysis undertaken by the project team, based on the ABV Needs Analysis and the extensive consultation undertaken by James Christou and Partners has resulted in a clear recommendation for development Option 6.

The recommended option of a 25 metre pool is based upon community consultation, professional feedback (peer review) and the outcomes from the cost benefit analysis. The 25 metre option is intended to complement other facilities in the Craigie Leisure Centre catchment, such as the Arena Joondalup, Terry Tyzack Aquatic Centre and Bold Park, all of which have 50 metre options. Consultation with a number of facility managers and the Western Australian Swimming Association has further endorsed this recommendation.

The design brief has highlighted:

- 1 Facilities need to be multi-purpose.
- 2 Construction and design need to assist in minimising energy use and ongoing costs.
- 3 Whole of life costing used as a basis of the business case to support the recommendations.
- 4 Flexibility of design to accommodate changing market demands and community demographics.

From an economic perspective (Table 3) Option 6 performed well in its capacity to accommodate extensive areas of programmable space and had the additional advantage of substantially lower operational costs.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Walker, SECONDED Cr Rowlands that Council:

- 1 ADOPTS Option 6 for the redevelopment of Craigie Leisure Centre Aquatic Facility;**

2 SEEKS approval for the project budget of \$7.5 million to be expended in the 2003/04 and 2004/05 financial years.

Discussion ensued.

MOVED Cr O'Brien, SECONDED Cr Hart that consideration of the redevelopment of Craigie Leisure Centre Aquatic Facility be DEFERRED until the next ordinary meeting of Council to allow every opportunity of proper consultation.

Manager, Marketing, Communications and Council Support gave an explanation as to the technicalities of a deferral motion.

The motion to defer as moved by Cr O'Brien was ruled out of order by Mayor Carlos.

The Motion was therefore

NOT PURSUED

MOVED Cr O'Brien, SECONDED Cr Baker that under Section 5.2 debate on the issue of the redevelopment of the Craigie Leisure Centre Aquatic Facility be ADJOURNED until the next meeting of Council.

The Procedural Motion was Put and

LOST (5/10)

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

AMENDMENT MOVED Cr Prospero, SECONDED Cr Walker that the following words be added to the end of Point 1 of the Motion as Moved by Cr Walker, Seconded by Cr Rowlands:

“subject to public consultation in relation to Option 6”

Discussion ensued.

The Amendment was Put and

CARRIED (9/6)

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

The Original Motion, as amended, being:

1 ADOPTS Option 6 for the redevelopment of Craigie Leisure Centre Aquatic Facility subject to public consultation in relation to Option 6;

2 SEEKS approval for the project budget of \$7.5 million to be expended in the 2003/04 and 2004/05 financial years.

was Put and

CARRIED (12/3)

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

Appendix 3 refers

To access this attachment on electronic document, click here: [Attach3brf100603.pdf](#)

C94-06/03 MOTION TO GO BEHIND CLOSED DOORS

MOVED Cr Hollywood, SECONDED Cr Walker that:

- 1 in accordance with Section 5.23 (2) of the *Local Government Act 1995* and Clause 5.6 of the Standing Orders Local Law, the Council AGREES to hold the meeting behind closed doors with the only officers to remain present being Messrs Higham and Loader and a Minute Clerk, in order for consideration to be given to the interim report in relation to the matter of employment of the City of Joondalup's Chief Executive Officer, being a matter affecting an employee, the personal affairs of a person, and a contract entered into by the local government;**
- 2 in accordance with Clause 8.1 of the City's Standing Orders Local Law the Council suspends the relevant provisions of Clause 5.6 of the City's Standing Orders Local Law in order to invite and allow Messrs Neil Douglas and Andrew Burnett of Minter Ellison Lawyers to be present during the discussions relating to the matter of employment of the City of Joondalup's Chief Executive Officer**
- 3 the matter of Late Item C95-06/03 CEO Request – Reimbursement of Legal Costs be considered at this time.**

The Motion was Put and

CARRIED UNANIMOUSLY (15/0)

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

The Chief Executive Officer, members of the Executive, staff and members of the public and press left the Chamber at this point, the time being 2101 hrs.

The meeting ADJOURNED at 2101 hrs and RESUMED BEHIND CLOSED DOORS at 2109 hrs. The following persons being present:

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 J GOLLANT
CR M CAIACOB
CR C MACKINTOSH

Officers:

Director Planning & Community Development: C HIGHAM
Manager Human Resource Services: M LOADER
Minute Clerk: L TAYLOR

In Attendance

Mr Neil Douglas, Minter Ellison *from 2109 hrs to 2346 hrs*
Mr Andrew Burnett, Minter Ellison *from 2109 hrs to 2346 hrs*

Chief Executive Officer declared a financial interest in Item CJ139-06/03 – Employment of the Chief Executive Officer of the City of Joondalup as the matter impacts on his contract of employment/matters pertaining to CEO’s employment.

Cr Kenworthy entered the Chamber, the time being 2110 hrs.

CJ139 - 06/03 EMPLOYMENT OF THE CHIEF EXECUTIVE OFFICER OF THE CITY OF JOONDALUP – [70544]

WARD - All

PURPOSE

The purpose of this report is for the Council to receive a verbal interim report from Minter Ellison Lawyers in relation to the CEO’s employment.

BACKGROUND

The Council at its meeting on 27 May 2003 (CJ75-05/03 refers) resolved that:

- 1 the Council hereby APPOINTS Minter Ellison Lawyers, in place of 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 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 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 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 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.

DETAILS

Senior lawyers Messrs Neil Douglas and Andrew Burnett from Minter Ellison have been briefed on the Council's resolution and have been provided with Council records pertaining to this matter. Minter Ellison has requested an opportunity to present an interim report to the Council. In discussion with the lawyers from Minter Ellison, they have confirmed that they would prefer to report verbally to the Council behind closed doors at this stage.

COMMENT

Should the Council be receptive to Minter Ellison's request, it will be necessary to move that the meeting go behind closed doors and to nominate the officer representatives from Minter Ellison Lawyers to remain.

ATTACHMENTS

Nil

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Baker, SECONDED Cr Rowlands that in order to better secure the confidentiality of the legal advice provided to the City this evening, the tapes relating to this advice be secured in safe custody by Minter Ellison, Lawyers.

The Motion was Put and

CARRIED UNANIMOUSLY (15/0)

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

MOVED Cr Kenworthy SECONDED Cr Kimber that Council:

- 1 NOTES the interim verbal report presented by Minter Ellison and accepts this verbal report as the detailed report referenced to in the Council Resolution of 27 May 2003;**
- 2 REQUESTS Minter Ellison to provide a written summary of its interim report, including its recommendations for the proposed adjourned meeting of Council;**
- 3 AGREES to the expenditure of a further \$15,000 from Account No 11.10.11.111.4020.0001 to finalise the matter.**

During discussion behind closed doors:

Cr Baker left the Chamber at 2209 hrs and returned at 2211 hrs

Cr Kimber left the Chamber at 2214 hrs and returned at 2216 hrs

Cr Prospero left the Chamber at 2224 hrs and returned at 2226 hrs

Cr Gollant left the Chamber at 2256 hrs and returned at 2258 hrs

The Motion was Put and

CARRIED UNANIMOUSLY (15/0)

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

Chief Executive Officer declared a financial interest in Item C95-06/03 – CEO Request – Reimbursement of Legal Costs as the matter impacts on his contract of employment/matters pertaining to CEO's employment.

C95-06/03 CEO REQUEST - REIMBURSEMENT OF LEGAL COSTS - [95375]**This Notice of Motion Is Confidential - Not For Publication**

A full report has been provided to Elected Members under separate cover.

MOVED Cr Baker SECONDED Cr Kimber that Council AGREES to the request submitted by the CEO for payment of legal expenses to Blake Dawson Waldron amounting to \$9,933.94 excluding GST, the funds to be expended from the appropriate account.

The Motion was Put and

CARRIED

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

Messrs Neil Douglas and Andrew Burnett of Minter Ellison left the Chamber, the time being 2346 hrs.

Crs Kenworthy and Baker left the Chamber, the time being 2349 hrs.

MEETING TO GO TO OPEN DOORS

That the meeting be now held with open doors, the time being 2349 hrs.

The Chief Executive Officer, members of the Executive and staff, members of the public and press entered the Chamber at this point, the time being 2349 hrs. In accordance with the City's Standing Orders Local Law, Director, Planning and Community Development read the motions in relation to the following:

CJ139-06/03 Employment of the Chief Executive Officer of the City of Joondalup
C95-06/03 CEO Request – Reimbursement of Legal Costs

Crs Kenworthy and Baker entered the Chamber, the time being 2352 hrs.

C96-06/03 MOTION TO ADJOURN – [02154] [08122]

MOVED Cr Rowlands, SECONDED Cr Nixon that in accordance with clause 5.1 of the City's Standing Orders the meeting be adjourned to 7.00 pm, Tuesday, 24 June 2003.

It was suggested that due to the lateness of the evening (2353 hrs) and the large number of Items still to be considered, it was appropriate that the meeting be adjourned.

The Motion to Adjourn was Put and

CARRIED

RESUMPTION OF MEETING

In accordance with Clause 3.1.1 of the City's Standing Orders, the Mayor declared the meeting of the Council that commenced on Tuesday, 17 June 2003 **RESUMED** at 1900 hrs on **TUESDAY, 24 JUNE 2003**, the following persons being present:

MAYOR D CARLOS		<i>Absent from 2227 to 2232 hrs</i>
Cr L PROSPERO	Lakeside Ward	<i>Absent from 2101 to 2113 hrs</i>
Cr P KIMBER	Lakeside Ward	
Cr T BREWER	Marina Ward	
Cr C BAKER	Marina Ward	<i>To 2350 hrs; Absent from 2101 hrs to 2114 hrs; and from 2201 to 2204 hrs</i>
Cr A NIXON	North Coastal Ward	<i>To 2040 hrs</i>
Cr J F HOLLYWOOD, JP	North Coastal Ward	<i>Absent from 2145 to 2146 hrs</i>
Cr A WALKER	Pinnaroo Ward	<i>Absent from 2047 hrs to 2050 hrs</i>
Cr P ROWLANDS	Pinnaroo Ward	<i>From 1912 hrs to 2115 hrs</i>
Cr S HART	South Ward	<i>Absent from 2315 to 2318 hrs</i>
Cr M O'BRIEN, JP	South Ward	<i>Absent from 2101 hrs to 2114 hrs</i>
Cr G KENWORTHY	South Coastal Ward	<i>To 2236 hrs; Absent from 2008 hrs to 2009 hrs; from 2054 to 2055 hrs; from 2101 hrs to 2114 hrs; and from 2215 to 2220 hrs</i>
Cr J GOLLANT	South Coastal Ward	<i>Absent from 1936 hrs to 1938 hrs; from 2101 to 2113 hrs; and from 2232 to 2236 hrs</i>
Cr M CAIACOB	Whitfords Ward	
Cr C MACKINTOSH	Whitfords Ward	<i>To 2350 hrs; Absent from 2101 to 2113 hrs</i>

Officers:

Chief Executive Officer:	D SMITH	<i>Absent from 1917 hrs to 2112 hrs</i>
Director, Planning & Community Development:	C HIGHAM	
Director, Infrastructure & Operations:	D DJULBIC	<i>Absent from 1917 hrs to 2112 hrs</i>
Director, Corporate Services and Resource Management:	P SCHNEIDER	<i>Absent from 1917 hrs to 2112 hrs</i>
Manager, Marketing, Communications & Council Support:	M SMITH	<i>Absent from 1917 hrs to 2112 hrs</i>
Manager Audit and Executive Services:	K ROBINSON	<i>Absent from 1917 hrs to 2112 hrs</i>
Manager, Strategic & Sustainable Development:	R HARDY	<i>Absent from 1917 hrs to 2112 hrs</i>
Manager, Financial Services:	A SCOTT	<i>Absent from 1917 hrs to 2112 hrs</i>
Manager, Human Resource Services:	M LOADER	
Manager, Community Development Services;	G HALL	<i>Absent from 1917 hrs to 2112 hrs</i>
Publicity Officer:	L BRENNAN	<i>Absent from 1917 hrs to 2112 hrs</i>
Committee Clerk:	J HARRISON	
Minute Clerk:	L TAYLOR	<i>Absent from 1917 hrs to 2112 hrs</i>

There were 12 members of the Public and 1 member of the Press in attendance.

In Attendance

Mr Neil Douglas, Minter Ellison	<i>from 1917 hrs to 2101 hrs</i>
Mr Andrew Burnett, Minter Ellison	<i>from 1917 hrs to 2101 hrs</i>
Mr Nick Manifis - Walman Software	<i>Absent from 1917 hrs to 2112 hrs</i>

Apologies

Apology for late attendance: Cr Rowlands

PERSONAL EXPLANATION – MAYOR CARLOS

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

“Yesterday afternoon, I was approached about a matter that is being investigated and I did give evidence to the Fraud Squad, and I was only approached yesterday on this matter.”

MOVED Cr Baker SECONDED Cr Kenworthy that the meeting be held behind closed doors.

Mayor Carlos ruled that he would not accept this motion.

MOVED Cr Baker SECONDED Cr Kimber that Council DISSENTS with the Mayor’s ruling.

Following advice from the Manager Marketing Communications and Council Support in relation to Section 4.1.8 of the City’s Standing Orders Local Law, the Mayor continued with his Personal Explanation.

“After another Councillor was interviewed this morning, this Councillor did approach me regarding deferring the item by the CEO until the matter was resolved. I did question this with the Administration, and the Administration said we cannot defer the item because we passed a motion at the adjourned meeting last Tuesday night. I then called eight Councillors, seven other Councillors, to find out whether we wished to have this item discussed at 7.00 pm or later on in the night so that we did not close the doors to the general public as we did last week for some 2 hours 40 minutes. A total of eight Councillors indicated to me that they would prefer it for 9.30 pm tonight and I advised the lawyers that I did not think that they would be needed until 9.30 pm tonight. Notwithstanding that the Administration, because of Cr Baker’s email to, not myself, to other people saying that he wished to bring this matter forward to 7.00 pm. I still advised the lawyers that this item in my view should be discussed after all the other agenda items and suggested they should come at 9.30 pm.”

C97-06/03

ALTERATION TO ORDER OF BUSINESS

MOVED Cr Baker SECONDED Cr Kenworthy that the order of business for tonight’s agenda be altered to enable the late item regarding the employment of the Chief Executive Officer to be dealt with as the first item of business.

Discussion ensued.

Cr Rowlands entered the Chamber at this point, the time being 1912 hrs.

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

The Procedural Motion was Put and

CARRIED

The Motion as Moved by Cr Baker and Seconded by Cr Kenworthy was Put and

CARRIED (9/6)

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

The Chief Executive Officer declared an interest in Item C98-06/03 – Employment of the Chief Executive Officer of the City of Joondalup as the matter impacts on his contract of employment/matters pertaining to CEO's employment.

C98-06/03 EMPLOYMENT OF THE CHIEF EXECUTIVE OFFICER OF THE CITY OF JOONDALUP – [70544]

WARD - All

PURPOSE

The purpose of this report is for Council to receive a summary report and recommendations from Minter Ellison, Lawyers in relation to the CEO's employment.

EXECUTIVE SUMMARY

The Council at its adjourned meeting on 17 June 2003 (CJ139-06/03 refers) resolved:

“That in order to better secure the confidentiality of the legal advice provided to the City this evening, the tapes relating to this advice be secured in safe custody by Minter Ellison, Lawyers.”

“That Council:

- 1 NOTES the interim verbal report presented by Minter Ellison and accepts this verbal report as the detailed report referenced to in the Council Resolution of 27 May 2003;*
- 2 REQUESTS Minter Ellison to provide a written summary of its interim report, including its recommendations for the proposed adjourned meeting of Council;*
- 3 AGREES to the expenditure of a further \$15,000 from Account No 11.10.11.111.4020.0001 to finalise the matter.”*

DETAILS

At the Council meeting held on 17 June 2003, the elected members heard a comprehensive verbal report from Minter Ellison concerning the recruitment, selection and appointment of Denis Smith. The Council resolved for Minter Ellison to prepare a summary report of their advice, including recommendations for the proposed adjourned meeting of Council. The Council meeting was subsequently adjourned to 24 June 2003.

COMMENT

Senior Lawyers Messrs Neil Douglas and Andrew Burnett from Minter Ellison will be in attendance to present their report. They have again requested that they would prefer to present their report behind closed doors.

Should Council wish to receive Minter Ellison's report behind closed doors, then it will be necessary to move that the meeting go behind closed doors and to nominate the officers and representatives from Minter Ellison Lawyers to remain.

ATTACHMENTS

Nil

VOTING REQUIREMENTS

Simple Majority

MOVED Cr O'Brien SECONDED Cr Baker that:

- 1 in accordance with Section 5.23 (2) of the Local Government Act 1995 and Clause 5.6 of the Standing Orders Local Law, the Council AGREES to hold the meeting behind closed doors with the only officers to remain present being Messrs Higham and Loader and a Minute Clerk, in order for consideration to be given to the written summary report and recommendations in relation to the matter of employment of the City of Joondalup's Chief Executive Officer, being a matter affecting an employee, the personal affairs of a person, and a contract entered into by the local government;**
- 2 in accordance with Clause 8.1 of the City's Standing Orders Local Law the Council suspends the relevant provisions of Clause 5.6 of the City's Standing Orders Local Law in order to invite and allow Messrs Neil Douglas and Andrew Burnett of Minter Ellison Lawyers to be present during the discussions relating to the matter of employment of the City of Joondalup's Chief Executive Officer**

The Motion was Put and

CARRIED (11/4)

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

The Chief Executive Officer, members of the Executive, staff and members of the public and press left the Chamber at this point, the time being 1917 hrs.

Mr Neil Douglas and Mr Andrew Burnett of Minter Ellison entered the Chamber at this point.

The meeting ADJOURNED at 2101 hrs and RESUMED WITH OPEN DOORS at 2112 hrs. Members of the public and Press, and the following persons were present:

MAYOR D CARLOS
 CR P KIMBER
 CR T BREWER
 CR J F HOLLYWOOD, JP
 CR A WALKER
 CR P ROWLANDS
 CR S HART
 CR M CAIACOB

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, Strategic & Sustainable Development:	R HARDY
Manager, Financial Services:	A SCOTT
Manager, Human Resource Services:	M LOADER
Manager, Community Development Services;	G HALL
Publicity Officer:	L BRENNAN
Committee Clerk:	J HARRISON
Minute Clerk:	L TAYLOR

In accordance with the City's Standing Orders Local Law, Director, Planning and Community Development read the following motions in relation to C98-06/03 - Employment of the Chief Executive Officer of the City of Joondalup:

MOVED Cr Brewer SECONDED Cr Kimber that Council:

- 1 NOTES AND ACCEPTS the advice and recommendations of Minter Ellison contained in its report dated 24 June 2003 in response to the resolutions of Council on 27 May and 17 June 2003;
- 2 NOTES AND ACCEPTS, in particular, the advice from Minter Ellison in relation to:
 - (a) the nature and effect of legal professional privilege, its relevant for the City in this context, and the consequent need for confidentiality;
 - (b) the nature of the claims made concerning the selection and appointment of the Chief Executive Officer ("CEO");
 - (c) the extent to which these matters were relied on by the Council in the selection and appointment process;

- (d) the limitations of any non-judicial inquiry or investigation and the fact that only a Court, with powers to compel the production of evidence and to test the credibility of evidence by taking evidence on oath or affirmation, and through cross-examination, would be able to make definitive findings of fact about these matters;
 - (e) the potential legal significance and effect of these matters on the interests of the City, having regard to precedent;
 - (f) the costs, financial and otherwise, to the City of pursuing or defending legal proceedings in respect of these matters, the length of time that legal proceedings may take, and the alternative priorities for the City's use of its resources for the good governance of the City; and
 - (g) the conclusion that the Council would be acting lawfully and properly in deciding not to question or pursue any further, issues relating to the selection and appointment of the CEO, including his qualifications;
- 3 DETERMINES that it is in the interests of the City, including the good governance of the City, that:
- (a) issues relating to the selection and appointment of the CEO, including his academic qualifications, should not be questioned or pursued any further;
 - (b) the Mayor and individual Councillors should make no further public statements in relation to these issues;
 - (c) the Mayor and the CEO each act in a way that allows them to carry out, and facilitates them in carrying out, individually and jointly, their functions in the best interests of the City;
 - (d) a copy of these resolutions be provided to the Department of Local Government and Regional Development; and
 - (e) Minter Ellison with City officers, provide an oral briefing to senior officers of the Department of Local Government and Regional Development – to the extent that this can be done without affecting the City's legal professional privilege;
- 4 REITERATES its previously expressed strong support for and full confidence in Mr Denis Smith as the City's CEO (see resolutions of 17 December 2002 and 18 February 2003);
- 5 AGREES that, in the interests of the City and to ensure that the City's legal professional privilege that applies to it is retained, Minter Ellison's report of 24 June 2003 is to remain confidential and must not be disclosed except in the form of the confidential oral briefing to the Department of Local Government and Regional Development referred to in paragraph 3(e).

The Motion was Put and

CARRIED (12/3)

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

MOVED Cr Baker SECONDED Cr Gollant that:

- 1 all copies of the written legal advice provided by Minter Ellison, Lawyers, concerning the CEO's contract of employment and related issues be returned at the conclusion of tonight's discussion regarding this item and any copies of the legal advice not so returned to Minter Ellison, Lawyers, be noted;
- 2 in order to better secure the confidentiality of the legal advice provided to the City this evening, the tapes relating to this advice be secured in safe custody by Minter Ellison, Lawyers.

The Motion was Put and

CARRIED (11/3)

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

During the reading of the motions:

Crs Gollant, Mackintosh and Prospero entered the Chamber at 2113 hrs;

Crs Baker, O'Brien and Kenworthy entered the Chamber at 2114 hrs;

Cr Rowlands left the Chamber at 2115 hrs.

**CJ133 - 06/03 AMENDMENT NO 12 TO DISTRICT PLANNING
SCHEME NO 2 - LOT 63 (30) AND A PORTION OF
LOT 62 (38) HOCKING ROAD, KINGSLEY – [47523]**

WARD - South

PURPOSE

To modify part one (1) of Council's resolution of 13 June 2002 to Report CJ135-06/02 as it pertains to Amendment No 12 to the City's District Planning Scheme No 2 (DPS2) to accord with the changes which have been requested by the Western Australian Planning Commission (WAPC) and the changes which are required to be made as a result of the gazettal of Amendment No 1037/33 North West District Omnibus (No 5) to the Metropolitan Region Scheme (MRS).

EXECUTIVE SUMMARY

Council at its 11 June 2002 meeting resolved to amend the City's DPS2 for the purpose of:

- (a) Rezoning Lot 63 and a portion of Lot 62 Hocking Road, Kingsley, from 'Rural – Additional Use (Fresh Fruit & Vegetables Market & Incidental Shop – Sales & Storage Area not exceeding 400m²)' and 'Parks and Recreation' to 'Residential';
- (b) Applying an R20 coding to Lot 63 and a portion of Lot 62 Hocking Road, Kingsley; (Attachments 1 and 2)

to accommodate an aged persons development and associated facilities.

As the proposed amendment was not consistent with the MRS (Lot 62 was reserved for Parks and Recreation and Lot 63 was zoned Rural) at the time, the City sought the WAPC's consent to advertise the amendment.

The WAPC advised that changes would need to be made to the amendment documents following the gazettal of Amendment No 1037/33 North West District Omnibus (No 5) to the MRS.

The proposed modifications to part one (1) of Council's previous resolution do not affect the intent of Council's previous resolution or of the proposed amendment. The amended resolution simply removes reference to the subject portion of Lot 62 being reserved for Parks and Recreation under the MRS as this land has now been rezoned to Urban under the MRS and as a consequence is unzoned under the City's DPS2.

BACKGROUND

Suburb/Location:	Lot 63 (30) and a portion of Lot 62 (38) Hocking Road, Kingsley
Applicant:	BSD Consultants on behalf of Meath Care (Inc)
Owner:	Lot 63 – Meath Care (Inc) Lot 62 – Metropolitan Region Planning Authority
Zoning:	DPS: Lot 63 – Rural – Additional Use No 1-1 (Fresh Fruit & Vegetables Market & Incidental Shop – Sales & Storage Area not exceeding 400m ²) Lot 62 - unzoned
	MRS: Lot 63 – Urban Lot 62 - Urban
Strategic Plan:	<u>City Development</u> 3.1 – To develop and maintain the City of Joondalup's assets and built environment. 3.3 – To continue to meet changing demographic needs.

Previous Council Decisions

11 June 2002

Council considered the subject amendment and resolved:

“That Council:

- 1 in pursuance of section 7 of the Town Planning and Development Act 1928, amends the City of Joondalup District Planning Scheme No 2 for the purpose of:
 - (a) rezoning Lot 63 and a portion of Lot 62 Hocking Road, Kingsley, from ‘Rural – Additional Use (Fresh Fruit & Vegetables Market & Incidental Shop – Sales & Storage Area not exceeding 400m2)’ and ‘Parks and Recreation’ to ‘Residential’;*
 - (b) applying an R20 coding to Lot 63 and a portion of Lot 62 Hocking Road, Kingsley;**
- 2 seeks the Western Australian Planning Commission’s consent to advertise the proposed amendment for a period of 60 days and recommends that it be referred to the following government agencies for comment during the advertising period:

Water Corporation, Western Power, Health Department of WA, Department of Conservation and Land Management, Water and Rivers Commission, Telstra, Alinta Gas, Agriculture WA, Main Roads WA;*
- 3 refers the proposed amendment to the Environmental Protection Authority for consideration of the need for formal environmental assessment;*
- 4 advises the applicant that it will not be prepared to adopt the amendment for final approval until:
 - (a) the amendment to the MRS has been gazetted;*
 - (b) the subject portion of Lot 62 has been subdivided from the remainder of Lot 62 and a road interface has been provided along the boundary of the subject land with the Yellagonga Regional Park;*
 - (c) an environmental audit has been undertaken on the subject portion of Lot 62 to determine whether it is contaminated from any existing or past land uses on or adjoining the land;**
- 5 places a suitable memorial on the title at the time of subdivision to enable prospective purchasers to be advised of the potential midge problems within the area.”*

DETAILS

27 June 2002

The City sought the WAPC's consent to advertise the amendment due to it not being consistent with the MRS.

9 July 2002

The WAPC advised that changes would need to be made to the amendment documents following the gazettal of Amendment No 1037/33 North West District Omnibus No 5) to the MRS to reflect:

- (a) rezoning from 'Rural – Additional Use No. 1-1' to 'Residential R20' for Lot 63; and
- (b) zoning of a portion of Lot 62 to 'Residential R20'.

14 January 2003

Amendment No 1037/33 North West District Omnibus (No 5) to the MRS was gazetted. The amendment transferred the subject portion of Lot 62 and Lot 63 from the Parks and Recreation Reservation and Rural zone respectively to the Urban zone.

13 May 2003

The EPA advised the City that there was no need for a formal environmental assessment of the amendment.

The City is now in a position to advertise the amendment for public comment once the necessary consent is received from the WAPC. Prior to it being advertised however the amendment needs to be modified to reflect the above changes.

Statutory Provision:

The Town Planning Regulations 1967 set out the procedure for amendments to local government Town Planning Schemes. The procedure is summarised at Attachment 3 and the current stage of the amendment has been highlighted.

Consultation:

In accordance with Council's previous resolution, the City has requested the WAPC to grant consent to advertise the amendment for a period of 60 days. The WAPC has yet to make a determination with respect to this request.

The normal statutory period for such advertising is 42 days, however given the nature of the rezoning Council requested the WAPC's agreement to a 60 day advertising period.

Policy Implications: Nil.

Strategic Implications: Nil.

COMMENT

The proposed modifications to part one (1) of Council's previous resolution do not affect the intent of Council's previous resolution or of the proposed amendment. The amended resolution simply removes reference to the subject portion of Lot 62 being reserved for Parks and Recreation under the MRS as this land has now been rezoned to Urban under the MRS and as a consequence is unzoned under the City's DPS2. The amended resolution also reflects the technical changes requested by the WAPC. These changes are required to ensure that the amendment is legally correct. The amendment maps have been modified accordingly. Refer to Attachment 4 to this Report.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION: That Council BY AN ABSOLUTE MAJORITY RESCINDS part one (1) of its resolution of 11 June 2002 to Report CJ135-06/02, as it pertains to Amendment No 12 to District Planning Scheme No. 2, viz:

"In pursuance of Section 7 of the Town Planning and Development Act 1928, AMENDS the City of Joondalup District Planning Scheme No 2 for the purpose of:

- (a) *Rezoning Lot 63 and a portion of Lot 62 Hocking Road, Kingsley, from 'Rural – Additional Use (Fresh Fruit & Vegetables Market & Incidental Shop – Sales & Storage Area not exceeding 400 M²)' and 'Parks and Recreation' to 'Residential';*
- (b) *Applying an R20 coding to Lot 63 and a portion of Lot 62 Hocking Road Kingsley;"*

and replaces it with the following:

"In pursuance of Section 7 of the Town Planning and Development Act 1928, AMENDS the City of Joondalup District Planning Scheme No. 2 for the purpose of:

- (a) *rezoning Lot 63 from 'Rural – Additional Use No 1-1' to 'Residential';*
- (b) *zoning a portion of Lot 62 'Residential'; and*
- (c) *coding Lot 63 and a portion of Lot 62 'R20'."*

ADDITIONAL INFORMATION

The following alternative recommendation is provided with respect to the above in order to modify not only part 1 but also part 2 of Council's previous resolution. Part 2 of Council's previous resolution required the City to seek the Western Australian Planning Commission's (WAPC) consent to advertise the proposed amendment for a period of 60 days. The normal statutory period for such advertising is 42 days however given the nature of the proposed amendment at the time (i.e. it was not consistent with the Metropolitan Region Scheme (MRS)) Council requested the WAPC's consent for an extended advertising period. Given that the proposed amendment is now consistent with the MRS, the statutory advertising period of 42 days is considered sufficient.

It is recommended that part 2 of Council's previous resolution be modified accordingly.

MOVED Cr Walker SECONDED Cr Hart that Council RESCINDS:

- 1 Part one (1) of its resolution of 11 June 2002 to Report CJ135-06/02, as it pertains to Amendment No 12 to District Planning Scheme No. 2, viz:**

“In pursuance of Section 7 of the Town Planning and Development Act 1928, AMENDS the City of Joondalup District Planning Scheme No 2 for the purpose of:

- (a) Rezoning Lot 63 and a portion of Lot 62 Hocking Road, Kingsley, from ‘Rural – Additional Use (Fresh Fruit & Vegetables Market & Incidental Shop – Sales & Storage Area not exceeding 400 M²)’ and ‘Parks and Recreation’ to ‘Residential’;*
- (b) Applying an R20 coding to Lot 63 and a portion of Lot 62 Hocking Road Kingsley;”*

and replaces it with the following:

“In pursuance of Section 7 of the Town Planning and Development Act 1928, AMENDS the City of Joondalup District Planning Scheme No. 2 for the purpose of:

- (a) rezoning Lot 63 from ‘Rural – Additional Use No 1-1’ to ‘Residential’;*
- (b) zoning a portion of Lot 62 ‘Residential’; and*
- (c) coding Lot 63 and a portion of Lot 62 ‘R20’.”*

- 2 Part two (2) of its resolution of 11 June 2002 to Report CJ135-06/02, as it pertains to Amendment No 12 to District Planning Scheme No. 2, viz:**

“seeks the Western Australian Planning Commission’s consent to advertise the proposed amendment for a period of 60 days and recommends that it be referred to the following government agencies for comment during the advertising period;

Water Corporation, Western Power, Health Department of WA, Department of Conservation and Land Management, Water and Rivers Commission, Telstra, Alinta Gas, Agriculture WA, Main Roads WA;”

and replaces it with the following:

“advertises the proposed amendment for a period of 42 days and refers it to the following government agencies for comment during the advertising period:

Water Corporation, Western Power, Health Department of WA, Department of Conservation and Land Management, Water and Rivers Commission, Telstra, Alinta Gas, Agriculture WA, Main Roads WA;”

Discussion ensued.

The Motion was Put and

**CARRIED BY AN
ABSOLUTE MAJORITY (12/1)**

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

Appendix 6 refers

To access this attachment on electronic document, click here: [Attach6brf100603.pdf](#)

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**CJ134 - 06/03 PROPOSED AMENDMENT NO 18 TO DISTRICT
PLANNING SCHEME NO 2 - PROPOSED
RECREATIONAL VEHICLE CONTROL
PROVISIONS – [56527] [53542] [44940] [24185]**

WARD - All

PURPOSE

The proposed amendment is brought before Council for consideration and consent to advertise in accordance with the provisions of District Planning Scheme No 2 (DPS2) and Section 7 of the Town Planning and Development Act 1928 (TPD Act 1928).

EXECUTIVE SUMMARY

In October 2001 (CJ353-10/01 refers), Council requested the initiation of a review of DPS2 provisions relating to commercial vehicles with input from the Joondalup Business Association. At that time, concern was raised in respect to the number of commercial vehicles permitted to be parked on residential property and the possible review of the definition of a commercial vehicle to ensure that small business operators (plumbers, electricians etc) are permitted to park utilities and panel vans at their place of residence.

In addition to Council's resolution, the definition of a commercial vehicle was also reviewed in respect to vehicles that are commercial in size, being used for recreational purposes (for example a bus converted into a mobile home and used for recreational pursuits).

Legal advice was obtained from the City's solicitors. Local government planning scheme provisions relating to commercial vehicles, the City's parking local laws and the model scheme text were also reviewed.

Council at its meeting on 18 February 2003 (CJ028 – 02/03 refers) resolved to note the findings of the review, determined that any modification to Clause 4.15 and the definition of a 'commercial vehicle' under DPS2 that seeks to capture and impose additional restrictions upon commercial vehicle parking, including the parking of recreational vehicles on residentially zoned land, is not considered appropriate and resolved to draft an amendment to DPS2 to define recreational vehicles, provide parameters for assessment and allow the parking of normal-sized recreational vehicles as of right.

BACKGROUND

Suburb/Location:	All
Strategic Plan:	Lifestyle Strategy 2.6 – Implement projects with focus on improving environmental, social and economic balance.

The following resolution of the 9 October 2001 Council meeting (CJ353-10/01 refers) triggered the review:

“That a review be conducted in conjunction with the executive of the Joondalup Business Association of the definition for commercial vehicles in relation to the City of Joondalup District Planning Scheme No 2 with a further report being submitted to a future Council meeting”.

The review sought to identify the following:

- The number of commercial vehicles permitted on a residential property;
- Examine the definition of commercial vehicle to ensure that small business operators (plumbers, electricians etc) are permitted to park utilities and vans at their place of residence;
- Examine the need for additional commercial vehicle parking restrictions to be incorporated into DPS2;
- Examine the need, if any, for a provision or definition to capture vehicles that are considered commercial in size that are used for recreational purposes (for example a bus converted into a mobile home).

Legal Advice

The City obtained legal advice from its solicitors, whereby such advice suggested that the City’s scheme provisions relating to the parking of commercial vehicles within residential areas is considered adequate and reflects similar provisions within other local government planning schemes (Wanneroo, Swan & Canning).

The legal advice also suggested that the City could consider amending its scheme to place further limitations on the parking of commercial vehicles. However, legal advice also stated that when the commercial vehicle control provisions were prepared for DPS2, concern was expressed that the provisions should not unreasonably restrict the use of recreational vehicles incidental to a residential use.

The DPS2 definition of a commercial vehicle centres around the use of the vehicle for commercial pursuits. Legal advice suggests that it would be very difficult to successfully argue that DPS2 commercial vehicle parking provisions apply to vehicles used for recreational pursuits. Essentially, if a commercial vehicle has been modified to such an extent that it can no longer be used or operate as a commercial vehicle, the commercial vehicle control provisions within DPS2 are no longer applicable.

In addition to the above, legal advice suggested that it would be difficult to define a vehicle used for recreational pursuits as a commercial vehicle under DPS2 due to the wording of the definition of a commercial vehicle and as such, the control provisions outlined within Clause 4.15 would not apply.

At its meeting on 18 February 2003 (CJ028 – 02/03 refers) it was resolved that Council:

- 1 *NOTES the findings of the review as requested by Council's resolution at its meeting on 9 October 2001 (CJ353-10.01 refers).*
- 2 *DETERMINES that as a result of the review, any modification to Clause 4.15 and the definition of a 'commercial vehicle' under District Planning Scheme No 2 that seeks to capture and impose additional restrictions upon commercial vehicle parking, including the parking of recreational vehicles on residentially zoned land, is not considered appropriate.*
- 3 *DRAFTS an amendment to DPS2 to define recreational vehicles, provide parameters for assessment and allow the parking of normal-sized recreational vehicles as of right.*

DETAILS

The parking of vehicles that are used for recreational purposes is an appropriate incidental landuse that can be hosted upon residentially zoned land. It is considered appropriate for a landowner to park a campervan, caravan or other similarly sized vehicle upon their property as of right. However, it is acknowledged that the parking of such vehicles should not unreasonably impact upon the streetscape, or upon adjoining landowners.

Statutory Provision:

Section 7 of the Town Planning and Development Act 1928 (TPD Act 1928) enables Local Authorities to amend a Town Planning Scheme. The scheme amendment process is shown in Attachment 2.

Consultation:

Should Council consider the proposed amendment as suitable for the purposes of advertising, a notice will be placed within both the Joondalup Community Newspaper and the West Australian Newspaper and advertised for a period of 42 days.

Strategic Implications:

Council should be mindful of the ramifications that may arise as a result of modifications to its planning scheme that place additional restrictions upon a landowner's use of their land.

In considering any modification, Council must be convinced that it is in the best interests of the broader community and results in a more desirable outcome than that achieved previously.

COMMENT

Extensive research was undertaken in the generation of these provisions. Research undertaken found that no other Western Australian local government town planning scheme contains such provisions, nor are such provisions provided for within the Western Australian Planning Commissions Model Scheme Text. The new provisions were therefore modelled on

the City's existing DPS2 commercial vehicle provisions, modified to capture the issues contained within Council's resolution at its meeting on 18 February 2003.

The proposed provisions (Clause 4.16 – Recreational Vehicle Parking) are to be inserted into Part 4 of the City's DPS2, immediately following Clause 4.15 – Commercial Vehicle Parking (Attachment 1). Additionally, the definition of a recreational vehicle is proposed to be inserted into Schedule 1 (Clause 1.9) – Interpretations, immediately following the definition of 'recreation centre' (Attachment 1).

It should be noted that the definition of a recreational vehicle does not include a boat, yacht or any other similar watercraft. The provisions provide for one (1) recreational vehicle to be parked as of right, on any lot in the Residential zone without the need for approval from the City provided that the vehicle does not exceed 3 metres in height, 2.5 metres in width and 8 metres in length.

If a person wishes to park more than one (1) recreational vehicle upon residentially zoned land, or if the vehicle(s) to be parked exceed the above size limitations for recreational vehicles, Council approval would be required. In its consideration, Council may impose requirements relating to the vehicle being parked entirely on the subject lot and being located on a hard standing area behind the façade of the dwelling, or alternatively the vehicle being parked within a garage, and the vehicle not being started or manoeuvred on site between the hours of 10.00 pm and 6.00 am.

It should be noted that the size parameters identified above were considered in light of the maximum length of a vehicle that can be towed without the need for a special permit to be issued by the Police Department.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Baker SECONDED Cr Kimber that Council:

1 In pursuance of Section 7 of the Town Planning and Development Act 1928, AMENDS the City of Joondalup's District Planning Scheme No 2 by:

(a) Inserting the following clause after Clause 4.15 – Commercial Vehicle Parking;

CLAUSE 4.16 – RECREATIONAL VEHICLE PARKING

4.16.1 Parking of one (1) recreational vehicle in the Residential zone shall be permitted as of right and without the need for Council approval provided that the vehicle does not exceed 3 metres in height, 2.5 metres in width and 8 metres in length;

4.16.2 The Council may in writing approve a variation to Clause 4.16.1 provided the Council is satisfied in the circumstances that the variation will not adversely affect the amenity of the area surrounding the subject land. Surrounding landowners and occupants may be invited to comment on the proposed variation in accordance with the "D" use provisions contained within Clause 6.6.2;

4.16.3 In supporting a variation to Clause 4.16.1 Council shall impose the following in addition to any other requirements:

- (i) The vehicle(s) shall be parked entirely on the subject lot and shall be located on a hard standing area behind the facade of the dwelling, or alternatively the vehicle being parked within a garage.**
- (ii) The vehicle(s) shall not be started or manoeuvred on site between the hours of 10.00 pm and 6.00 am.**

4.16.4 Any approval of the Council granted under Clauses 4.16.2 and 4.16.3 is personal to the person to whom it is granted, is not capable of being transferred or assigned to any other person and does not run with the land in respect of which it is granted.

- (b) Inserting the following definition into Schedule 1 (Clause 1.9) Interpretations after the term ‘recreation centre’:**

Recreational Vehicle: means a vehicle, whether licensed or not, which is used, designed or modified for recreational use, mobile accommodation or similar purposes and without limiting the generality of the foregoing; includes any mobile home, caravan, campervan and any wheeled attachment to any of them which is rated by the manufacturer as being suitable to carry loads of not more than 1.5 tonnes. The term shall not include a vehicle designed for use as a passenger car, or a van, 4WD, utility or light truck that is rated by the manufacturer as being suitable to carry loads of not more than 1.5 tonnes. The term shall not include a boat, yacht or any other similar watercraft.

- 2 ADOPTS the amendment as suitable for the purpose of advertising for a period of 42 days.**

MOVED Cr O’Brien SECONDED Cr Hart that Council refers the matter to an Occasional Committee to investigate the issue of recreational vehicle control provisions.

Following advice from the Manager Marketing Communications and Council Support that only one motion may be debated at any one time, the Mayor ruled the Motion **OUT OF ORDER**

Discussion ensued.

The Motion as Moved by Cr Baker and Seconded by Cr Kimber was Put and

CARRIED (9/4)

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

Appendix 7 refers

To access this attachment on electronic document, click here: [attach7brf100603.pdf](#)

CJ135 - 06/03 LOCALITY NAME CHANGE – BURNS TO BURNS BEACH – [09163] [01474]

WARD - All

PURPOSE

For Council to consider:

- 1 The results of the questionnaire forwarded to all residents and landowners within the locality of Burns;
- 2 The proposed renaming of Burns to Burns Beach.

EXECUTIVE SUMMARY

At the Council meeting of 15 October 2002, Cr Hollywood tabled a 113-signature petition requesting a change of locality name from Burns to Burns Beach on behalf of the Burns Beach Ratepayers, Residents & Community Recreation Association.

At the Council meeting of 11 March 2003, it was resolved to forward questionnaires to all of the residents and landowners within the locality of Burns to gauge the total level of support. 144 return mail questionnaires were forwarded to all residents and landowners within Burns. Fifty two percent (52%) returned questionnaires, from the returned questionnaires ninety nine percent (99%) voted in favour of renaming Burns to Burns Beach.

The Geographic Names Committee (GNC) considered the renaming matter at its December 2002 meeting and raised no objection to the proposal, provided there was strong community support for the change. The committee recognised that the area had been locally known as Burns Beach since the late 1920's and as the area is still largely undeveloped, it is now an opportune time to change the name. With Council support and the evidence of strong community support, the GNC would be willing to endorse such a name change.

The Department of Land Administration's (DOLAs) GNC is the custodians with regards to naming matters within the State, advises the Minister for Lands who grants the final approval. The GNC has an established procedure and guidelines for the renaming of localities, which are followed by local government. (Attachments 1 and 2 to this Report)

It is now conclusive that there is a strong community support within the locality of Burns to rename Burns to Burns Beach and with the key guidelines set down by GNC being satisfied (Attachment 2 refers), it is recommended that in this case the City supports the proposal to rename Burns to Burns Beach and submits a request to DOLAs GNC for its approval.

BACKGROUND

At the Council meeting of 15 October 2002, Cr Hollywood tabled a 113-signature petition requesting a change of locality name from Burns to Burns Beach on behalf of the Burns Beach Ratepayers, Residents & Community Recreation Association.

The petition tabled at the Council meeting on 15 October 2002 only represented one point of view and it was unknown if all owners and/or residents had been consulted.

At the Council meeting of 11 March 2003, a report was submitted to Council on the investigation into the proposed renaming. Council supported the recommendation to forward questionnaires to all of the residents and landowners within the locality of Burns to gauge the total level of support, with a subsequent report presented to Council advising of the results and providing further direction.

The Department of Land Administration's (DOLAs) GNC is the custodians with regards naming matters within the State, advises the Minister for Lands who grants the final approval. The GNC has established guidelines for the renaming of localities, which are followed stringently by local government.

DETAILS

Burns derives its name from a farmer, Tommy Burns who ran sheep in the area. Burns was a shepherd of Clarkson and an early landowner. The locality name of Burns was approved in 1974 and included all of present day Kinross, however in 1989, when this was identified for subdivision and further development the locality name of Kinross was applied (Attachment 4 to this Report).

The bulk of the Burns locality is largely undeveloped. The small subdivision and the Holiday Village and Leisure Park at the southwest corner of the locality have been known as Burns Beach since the late 1920's.

The petition tabled at the Council meeting on 15 October 2002 only represented one point of view and it was unknown if all owners and/or residents had been consulted.

Consultation:

The GNC has established procedures and guidelines for the renaming of localities, which are followed by local government. (Attachments 1 and 2 to this Report)

The City forwarded the name change proposal to the GNC for its perusal and comment and also to the major landholders, Burns Beach Management Pty. Ltd. and Peet & Company. A response from Peet & Company was received on 1 November 2002 raising no objection, which was provided on behalf of Burns Beach Management Pty Ltd.

The GNC considered the matter at its December 2002 meeting and the City was advised the committee recognised that the area had been known locally as Burns Beach since the late 1920's and as the area is still largely undeveloped, it is now an opportune time to change the name. Should the petition from the Burns Beach Ratepayers, Residents & Community Recreation Association represent strong community support for the name change, the Committee would be willing to receive a request from Council seeking approval for the change of name.

Following the Council meeting on 11 March 2003, the City delivered by post 144 return mail questionnaires to all residents and landowners within Burns allowing 28 days to respond. The City received 75 completed questionnaires (52%), of these 74 (98.75%) voted in favour and 1 (1.25%) voted against the renaming. (Attachment 3 to this Report)

The flowchart at Attachment 1 to this Report shows that very strong community support is required prior to Council resolving to seek formal approval of the name change from GNC.

COMMENT

A seemingly simple change can raise many emotions and have a large impact within all parts of residential, business and government communities. Address is the most fundamental part of any data set and affects a number of things such as advertising, sporting and recreation groups, schools, business etc. In its consideration Council should be aware that other communities may also seek similar treatment, e.g. Northshore-Kallaroo, Beaumaris-Ocean Reef and the associated resource implication this may pose.

The Department of Land Administration's (DOLAs) GNC is the custodians with regard to naming matters within the State it advises the Minister for Lands who grants the final approval. The GNC has established guidelines for the renaming of localities, which are followed stringently by local government.

The City recognises that the area has been known locally as Burns Beach since the late 1920's; it is now conclusive that there is a strong community support within the locality of Burns to rename Burns to Burns Beach, with the key guidelines set down by GNC being satisfied and as the area is still largely undeveloped, it is now an opportune time to change the name.

It is recommended that in this case the City supports the proposal to rename Burns to Burns Beach and submits a request to DOLAs GNC for its approval.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Hollywood SECONDED Cr Baker that Council:

- 1 SUPPORTS the proposal to rename Burns to Burns Beach;**
- 2 FORWARDS to the Department of Land Administration's Geographic Names Committee a request for its approval to rename the locality of Burns to Burns Beach.**

Discussion ensued.

The Motion was Put and

CARRIED (12/1)

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

Appendix 8 refers

To access this attachment on electronic document, click here: [Attach8agn170603.pdf](#)

Cr Hollywood declared a financial interest in Item CJ136-06/03 – Delegated Authority Report for the month of April 2003, as he is building the single house at 35 Lakeside Drive, Joondalup.

Cr Hollywood left the Chamber at this point, the time being 2145 hrs.

CJ136 - 06/03 DELEGATED AUTHORITY REPORT FOR THE MONTH OF APRIL 2003 – [07032]

WARD - All

PURPOSE

To submit items of Delegated Authority to Council for noting.

EXECUTIVE SUMMARY

This report provides a resumé of the Development Applications processed by Delegated Authority for April 2003 (see attachment 1 to this Report).

The total number of Development Applications determined (including Council and delegated decisions) is as follows:

Month	No	Value (\$)
April 2003	59	12,259,800

The focus of the past month's activity was on assessing variations to the prescribed standards for single residential dwellings.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Kimber SECONDED Cr Brewer that Council NOTES the determinations made under Delegated Authority in relation to the applications described in Report CJ136-06/03.

The Motion was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Carlos, Crs Caiacob, Mackintosh, Gollant, Kenworthy, O'Brien, Hart, Walker, Baker, Brewer, Kimber, Prospero

Appendix 9 refers

To access this attachment on electronic document, click here: [Attach9brf100603.pdf](#)

Cr Hollywood entered the Chamber at this point, the time being 2146 hrs.

**CJ138 - 06/03 PROPOSED CHILD DAY CARE CENTRE: LOT 575
(65) WANNEROO ROAD AND LOT 1 (1) GORMAN
STREET, CNR WANNEROO ROAD, GREENWOOD –
[78165]**

WARD - South Ward

PURPOSE

The purpose of this report is to request Council's determination of an application for a Child Day Care Centre.

EXECUTIVE SUMMARY

An application has been received for the development of a new Child Day Care Centre (CDCC). The centre will cater for 64 children and includes a request for a variation to the required front setback to the building, a 1.8 metre high solid front fence and the approval of a discretionary land use in this location.

Two (2) objections were received to the proposal during the public advertising period.

The application was considered under Delegated Authority, however, a decision was not reached and it is therefore forwarded to Council for determination.

It is recommended that the application be refused due to the inappropriate location and potential adverse impact on the adjoining properties.

BACKGROUND

Council at its meeting held on 27 May 2003 (CJ120-05/03 refers), resolved:

“that consideration of the application for a Child Care Centre at Lot 575 (65) Wanneroo Road and Lot 1 (1) Gorman Street, Greenwood be DEFERRED to the next meeting of Council.”

Suburb/Location: No 65 Wanneroo Road and 1 Gorman Street, Greenwood.
Applicant: Synergy WA Pty Ltd.
Owner: Dimitra Sipsas
Zoning: **DPS:** Residential
 MRS: Urban

The subject land incorporates two lots, which are located on the corner of Wanneroo Road and Gorman Street, Greenwood. The existing building will be removed.

The site is situated approximately 200 metres from a Local Reserve (Cockman Park), and 500 metres from East Greenwood Primary School. A location plan is shown at Attachment 1 and the development plan is shown at Attachment 2 to this Report.

DETAILS

The application proposes a purpose built CDCC with 64 children and 9 staff and associated car park.

Statutory Provision:

District Planning Scheme No 2 (DPS2)

A CDCC is a ‘D’ use in a Residential area. A ‘D’ use means:

“A use class that is not permitted, but to which the Council may grant its approval after following the procedures laid down by subclause 6.6.2”.

Clause 6.6.2 requires that the Council in exercising discretion to approve or refuse an application, shall have regard to the provisions of Clause 6.8, as follows:

6.8 Matters to be Considered by Council

6.8.1 The Council when considering an application for Planning Approval shall have due regard to the following:

- (a) interests of orderly and proper planning and the preservation of the amenity of the relevant locality;*
- (b) any relevant submissions by the applicant;*
- (c) any Agreed Structure Plan prepared under the provisions of Part 9 of the Scheme;*
- (d) any planning policy of the Council adopted under the provisions of clause 8.11;*
- (e) any other matter which under the provisions of the Scheme the Council is required to have due regard;*
- (f) any policy of the Commission or its predecessors or successors or any planning policy adopted by the Government of the State of Western Australia;*
- (g) any relevant proposed new town planning scheme of the Council or amendment or proposed Metropolitan Region Scheme Amendment insofar as they can be regarded as seriously entertained planning proposals;*
- (h) the comments or wishes of any public or municipal authority received as part of the submission process;*
- (i) the comments or wishes of any objectors to or supporters of the application;*
- (j) any previous decision made by the Council in circumstances which are sufficiently similar for the previous decision to be relevant as a precedent, provided that the Council shall not be bound by such precedent; and*
- (k) any other matter which in the opinion of the Council is relevant.*

Development Standards under DPS2

DPS2/Policy Standard	Required	Provided
Front Setback	9m	4.4m
Rear Setback	6m	6m
Side Setback	3m	3m
Car parking	17 bays	17 bays
Landscaping	3m min. front strip	2.8m min.
Fencing	1.8m high solid fence may be considered	1.8m high solid fence

Discretion is therefore required for the following development standards:

- Front setback
- Width of Landscaping strip
- Solid boundary fence

Policy 3.1.1 – Child Care Centres

This Policy outlines the requirements for the provision of car parking and landscaping, and the preferred location of CDCCs, as well as the need to advertise proposals due to the possible detrimental effect on the amenity of residential areas.

Applicant's Justification

The applicant has provided the following information (summarised) in support of the proposed CDCC:

- The front setback will allow greater continuity within the streetscape;
- The 1.8 metre high brick wall will reduce noise and pollution from Wanneroo Road and provide increased security and safety for the children;
- The proposed centre is conveniently located to provide easy and safe access for families in the local community;
- The centre will allow for a strong association with the local primary school situated at the end of the street;
- The centre conforms with the guidelines as it is located on a Local Distributor road, it will not conflict with traffic control devices, and it is located 200 metres away from a park and local primary school, and 150 metres from a retail shopping complex on Wanneroo Road;
- The nearest centre is 4 kilometres away and is licensed for 49 children;
- The outdoor play area is located to provide maximum access to morning light and afternoon shade;
- The following Child Care Centres are not located adjacent, or even near, any of the preferred locations:
 - Jelly Beans Child Care Centre- 38 Kinross Drive, Kinross.
 - Magic Circle Child Care- 20 Glenuga Way, Craigie.
 - Warwick Child Care- 565 Warwick Road, Warwick.

Consultation:

The proposal was advertised in writing to the adjoining and nearby owners and a sign was placed on the site. The comment period was 21 days in accordance with DPS2

Two (2) submissions were received, both objecting to the proposal.

The objections are quoted below:

Submission Received	Technical Comments
<p><i>“I strongly oppose the child care centre as it will create lots of congestion on the Wanneroo Rd and Gorman St intersection which is already a busy corner. Also, the safety of the children going to and from the centre and parking facilities”</i></p>	<p>Although the type of road is capable of accommodation an increase in vehicle movements, concern is raised in regard to the location of the proposed CDCC on this corner.</p> <p>Although the provision of car parking complies with DPS2 standards, vehicles may seek to park temporarily on the road, leading to congestion and safety issues in the area.</p>
<p><i>“I do not believe the location is suitable for a Child Care Centre. My concern is the volume of traffic currently using Wanneroo Road and the speed at which traffic exiting Wanneroo Roads enters Gorman Street which is used as a short cut to Warwick Road and the Freeway (avoiding lights at Marangaroo Drive and Warwick Roads. It is difficult to enter Wanneroo Road at peak times now and additional traffic from the centre will make the area hazardous).”</i></p>	<p>See above comments regarding traffic.</p> <p>The proposed location of the CDCC, and the impact on adjoining properties, is a concern.</p>

COMMENTS**Applicant’s Justification**

In a letter of justification for the proposed CDCC, the applicant advised that the City has previously approved Child Care Centres which are not located in the preferred locations, as recommended in the City’s Policy 3.1.11.

However, Jelly Beans Child Care Centre is located on Kinross Drive, which is a Local Distributor road and the Warwick Road Child Care Centre is situated in a Local Reserve for Public Use. Given this, the abovementioned centres are more appropriately located in accordance with the City’s policy.

It should also be noted that the Magic Circle Child Care in Craigie is not located adjacent to non-residential uses, or on a Local Distributor road. However, Council's refusal of that application was overturned through an appeal to the Minister for Planning.

Notwithstanding the above, it is acknowledged that none of the existing locations of CDCCs would meet Council's current Policy. However, all current proposals must be assessed in light of the Policy.

Development Standards under DPS2

Setback Variation

The proposal provides for a front setback variation of 4.4 metres, in lieu of 9 metres. However, given that the existing house is setback approximately 3 metres from the front boundary, the proposed variation for the new building is unlikely to adversely impact the amenity of the street. Also, the fence and vegetation will screen the building.

Solid Fence

In accordance with the Private Property Local Laws 1998 (Part 3 Fencing), Council may approve front fences higher than 1 metre in the front setback area, provided that there are sufficient sightlines for vehicles using the driveway.

The 1.8 metre high brick fence is considered acceptable, as it provides some protection from noise from Wanneroo Road and sufficient sightlines have been provided. Additionally, there is an existing brick fence along Gorman Street and several properties along Gorman Street and Wanneroo Roads have front fences of 1.8 metres in height.

In light of the above and the property location abutting a high traffic road (Wanneroo Rd), the fence is considered not to adversely affect the streetscape or the neighbourhood. However, it is recommended that, if the CDCC is approved, the extent of fencing on the Gorman Street frontage be reduced by approximately 7.5 metres to allow the entrance to the Centre to be visible from the street.

Landscaping requirements

The proposal also complies with the 3 metre wide landscaping strip requirement, apart from a small section in the western corner (200mm). This variation is minor and no objection is raised to this aspect.

Traffic and Parking Issues

Gorman Street currently carries approximately 1500 vehicles per day. With the Child Care Centre, traffic volumes will increase slightly but will remain within acceptable capacity limits for that road.

The CDCC is located on what is clearly perceived as a busy corner, with Gorman Street being one of the few eastern entry points to Greenwood. Although the provision of car parking complies with DPS2 standards, vehicles may attempt to temporarily park on the road. This is likely to create an unsafe environment, particularly at peak times.

Location

Although Council's policy encourages the location of CDCCs to be located adjacent to non residential uses, such as shopping centres, schools and medical centres, this is not a mandatory requirement. Nevertheless, where CDCCs are not located in accordance with the Policy, the impact of the centre on the surrounding area must be carefully considered.

A CDCC is a relatively intense non-residential use which, particularly at peak times, is likely to increase vehicle congestion in the area. The objections to the CDCC in this respect are noted.

One of the play areas of the centre is located adjacent to the adjoining residential property's outdoor living area and although no comments have been received from this neighbour, this may have a negative impact on this property in terms of the noise generated from the CDCC.

Additionally, the location of the carpark directly across the street from residential properties may have an adverse impact on the amenity of these properties. Also, the subject land is located on a Primary Distributor (Wanneroo Road) with vehicle access onto a local distributor road, which is contrary to Policy 3.1.11.

It is considered appropriate that the centre be located adjoining non-residential properties, as suggested in Policy 3.1.1. Such a location would allow an appropriate buffer between a commercial site and a residential area. The view that the subject site is not appropriate is supported by the objections received in regard to the proposal.

The proposed location of the Child Day Care Centre is not considered appropriate in this instance. The application is therefore recommended for refusal.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Baker SECONDED Cr Walker that Council REFUSES the proposed Child Care Centre at Lot 575 (65) Wanneroo Road and Lot 1 (1) Gorman Street, Greenwood for the following reasons:

- 1 The proposal is likely to have a negative impact on the amenity of the surrounding area;
- 2 The proposed site is not considered appropriate, as it does not adjoin non-residential uses as encouraged under Policy 3.1.1 – Child Care Centres;
- 3 The proposal is located on a Local Distributor Road in close proximity to a District Distributor Road, contrary to Policy 3.1.1 – Child Care Centres;
- 4 The proposal is contrary to the principles of orderly and proper planning.

Discussion ensued.

The Motion was Put and

LOST (4/9)

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

MOVED Cr Hart SECONDED Cr O'Brien that Council:

- 1 EXERCISES discretion under clause 4.5.1 of the City of Joondalup District Planning Scheme No.2, Policy 3.1.1 (Child Care Centres) the Private Property Local Law 1998 (Part 3- Fencing), and determines that:
 - (a) The granting of a discretionary land use “ Child Care Centre” for the subject land;
 - (b) A front setback to the building of 4.4 metres, in lieu of 9 metres;
 - (c) A minor variation to the width of the landscaping adjoining the street;
 - (d) A front fence of 1.8 metres in height, in lieu of 1 metre,are considered appropriate in this instance;
- 2 APPROVES the application dated 03/01/2003 submitted by Synergy WA Pty Ltd the applicant on behalf of the owner Dimitra Sipsas for a Child Care Centre on Lot 575 (65) Wanneroo Road and Lot 1 (1) Gorman Road, Greenwood, subject to the following conditions:
 - (a) No more than 64 children being permitted at the centre at any one time.
 - (b) The days and hours of operation being restricted to Monday to Friday from 7am to 6pm.
 - (c) Not less than seventeen (17) parking bays being provided on site.
 - (d) The existing trees along Wanneroo Road and Gorman Street to be retained.
 - (e) The lodging of detailed landscape plans, to the satisfaction of the City, for the development site and adjoining road verge with the Building Licence Application. For the purpose of this condition a detailed landscaping plan shall be drawn to a scale of 1:100 and show the following:
 - (i) The location and type of existing and proposed trees shrubs within the car park area.
 - (ii) Any lawns to be established.
 - (iii) Any natural landscape areas to be retained; and
 - (iv) Those areas to be reticulated or irrigated.
 - (f) Landscaping and reticulation to be established in accordance with the approved plans prior to the development first being occupied and thereafter maintained to the satisfaction of the City.

- (g) The bin store area being screened from the view of the car park to the satisfaction of the City.
- (h) The submission of an acoustics consultant's report demonstrating to the satisfaction of the City that the proposed development is capable of containing all noise emissions in accordance with the Environmental Protection Act 1986.
- (i) The parking bay/s, driveway/s and points of ingress and egress to be designed in accordance with the Australian Standard for Offstreet Car Parking (AS2890) unless otherwise specified by this approval. Such areas are to be constructed, drained, marked and thereafter maintained to the satisfaction of the City prior to the development first being occupied. These works are to be done as part of the building licence programme.
- (j) All storm water must be contained on-site to the satisfaction of the City.
- (k) The driveway/s and crossover/s to be designed and constructed to the satisfaction of the City before occupation of the dwelling.
- (l) The proposed crossovers are to be constructed in concrete to the satisfaction of the City.
- (m) Car bay grades are generally not to exceed 6% and disabled car bay/s are to have a maximum grade of 2.5%.
- (n) The existing crossover(s), not required as part of this development being closed, the kerb line being reinstated and the verge graded, stabilised and landscaped to the satisfaction of the City prior to the development first being occupied.
- (o) Part Lot 575 Wanneroo Road and Lot 1 Gorman Street being amalgamated prior to the issue of a building licence or alternative arrangements to the satisfaction of the City.
- (p) Provision of disabled car bays in accordance with the relevant legislation.
- (q) All fencing to be installed in accordance with the City's Fencing Local Law 1998 prior to the occupation of the Child Care Centre.
- (r) The front fence proposed along the Gorman Street frontage to be reduced by 7.5m, as indicated in red on the approved plan.

FOOTNOTES:

- (a) Development is to comply with the relevant requirements of the Health Act, Regulations and Local Laws.
- (b) Bin Storage facilities are to be located, designed and constructed in accordance with the City's local laws.
- (c) The food preparation area of this development is to comply with the Food Hygiene Regulations 1993:

- (i) Provision of a rear service door may be required should class 1 type foods be prepared or handled on the premises. Modification of the existing food preparation area / location may be required subject to the intended classification of the food preparation area.
 - (ii) Provision of a double bowl commercial sink along with suitable hand wash facilities.
 - (iii) The provision of the mechanical extraction details for any cooking equipment.
- (d) The Applicant / Builder is to arrange for an acoustic consultants report on all installations, activities and processes giving actual sound level measurements of plant both individually and in combination. This report is to include the presence of tonal components, amplitude or frequency modulations or impulses to ensure noise emissions are in compliance with the requirements of the Environmental Protection Act 1986.
 - (e) Applicant is to ensure that the bore / well is covered or modified to the satisfaction of the City.
 - (f) 'Sleep 2' shall be provided with sufficient natural light and ventilation in accordance with the Building Codes of Australia.
 - (g) A separate application being made to the City for approval to commence development and sign licence prior to the installation of any advertising signage.
 - (h) The applicant is advised to obtain a demolition licence from the City's Building Approval Services prior to the demolition of the existing house.

Cr Hart gave the following reasons for her departure from the Officer's Recommendation:

- The child care centre will provide a needed service in Greenwood;
- The amenity of the area will be enhanced;
- Landscaping will improve the appearance of the site.

Cr Baker left the Chamber at 2201 hrs and returned at 2204 hrs.

Discussion ensued.

MOVED Cr Hart SECONDED Cr Baker that Cr O'Brien be permitted an extension of time to speak.

The Motion was Put and

CARRIED

Cr Kenworthy left the Chamber at 2215 hrs and returned at 2220 hrs.

MOVED Cr Kimber SECONDED Cr Kenworthy that Cr Baker be permitted an extension of time to speak.

Cr Baker indicated that he did not require an extension of time to debate. The Motion was
NOT PURSUED

The Motion as Moved by Cr Hart and Seconded by Cr O'Brien was Put and LOST (6/7)

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

Appendix 11 refers.

To access this attachment on electronic document, click here: [Attach11brf100603.pdf](#)

PERSONAL EXPLANATION – CR PROSPERO

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

"I just want to reiterate what I said before. In the spirit of having the child care centre, I would support it, but I do not support the specific motion moved because I believe it was flawed."

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:

Cr Baker expressed the same view as Cr Prospero in relation to the child care centre.

Mayor Carlos declared a financial interest in Item CJ140-06/03 – Mayoral Vehicle as it relates to the use of the Mayoral car.

Mayor Carlos left the Chamber at this point, the time being 2227 hrs. Deputy Mayor, Cr Hollywood, assumed the Chair at this point.

CJ140 - 06/03 MAYORAL VEHICLE – [28469] [45514]

WARD - All

PURPOSE

The purpose of this report is for Council to consider and determine the most appropriate means of providing the Mayor with transport, in connection with Council related business.

EXECUTIVE SUMMARY

- During the Mayoral election, the Mayor indicated that he would not use a City owned and operated vehicle but would instead use his own privately owned vehicle and claim mileage reimbursement for Council related travel.
- It has since been suggested that use of a City owned vehicle may be a more cost effective option.
- This report concludes that for distances travelled up to 10,000km pa, reimbursement for travel using the Mayor's privately owned vehicle would be more cost effective. For distances travelled in excess of 10,000km pa, use of a City owned vehicle would be more cost effective.
- Current estimates indicate that the Mayor will travel less than 10,000km pa on Council related business, based on his travel patterns as a Councillor. It is however suggested that this be reviewed in six months time and if his travel has changed significantly, the cost analysis be re-evaluated at that time.

It is recommended that:-

- 1 *Council does not purchase and provide the Mayor with a City owned vehicle.*
- 2 *The Mayor is reimbursed for Council related travel in accordance with Policy 2.2.13 Payment of Fees, Allowances and Expenses and the Provision of Facilities to the Mayor, Deputy Mayor and Councillors.*
- 3 *The cost effectiveness of the decision in recommendation 2 above be reviewed in six months.*

BACKGROUND

In the lead-up to the Mayoral Elections held on 3 May 2003, Mayor Carlos stated that, if elected, one of his objectives would be to "...personally forgo 75% of the current Mayoral allowances. In addition, I will not have a Council luxury car every year and shall use my own car and just claim mileage for Council business."

The previous Mayor was provided with a Statesman in accordance with Policy 2.5.3 Council Vehicles - Mayor and Council Officers, which states the Mayor is entitled to a "luxury 8 cylinder sedan with interior fittings to a high standard including air conditioning with climate control and automatic transmission. Replacement of the Mayor's vehicle will occur every 12 months or earlier if a cost effective special dealership arrangement can be negotiated, and subject to compliance with tendering requirements."

Further, Policy 2.5.4 Official Vehicles - Use Of, allows the Mayor unrestricted private use of the Council owned and provided vehicle.

It has since been suggested that use of a City owned vehicle may be a more cost effective option for the City.

DETAILS

The Mayor's privately owned vehicle is a Ford Fairlane V8 which has been fitted with a heavy duty towing hitch and an electronic brake controller specifically for towing a caravan.

The current rate of reimbursement for travel costs incurred and paid by elected members for the above vehicle is 63 cents per kilometre, in accordance with Policy 2.2.13 Payment of Fees, Allowances and Expenses and the Provision of Facilities to the Mayor, Deputy Mayor and Councillors.

Over the last three year period, the Mayor has claimed for reimbursement at an average rate travelled of 1,828km per annum.

If the City were to purchase and provide the Mayoral vehicle, it would recommend a Holden Statesman while the purchase price is equivalent to a Ford Fairlane, the resale value of the Statesman is around \$6,500 higher, at the end of 12 months.

As it would not be economical or practical for the Mayor to garage and maintain his private vehicle, as well as a City provided vehicle, it would be expected that he would dispose of his private vehicle. That being the case he would have a need to replicate his current towing system. While the City provides a heavy duty towing hitch in the current mayoral vehicle, it does not provide an electronic braking system which is valued at approximately \$350.00 (fitted).

The Mayor currently undertakes voluntary duties on behalf of the federal government and not for profit organisations for which he receives travel reimbursement of 60 cents per kilometre and 40 cents per kilometre respectively.

In keeping with his commitment to only claim for Council related business the Mayor has indicated that, if Council resolved to provide him with a Council owned vehicle as the most cost effective option, he would reimburse Council as follows:-

- (a) Federal government and not for profit travel - at the rate for which he is currently reimbursed by those organisations, and
- (b) Private usage - maintain a log book for 12 weeks and reimburse the City, at cost, based on the percentage of private versus Council business related travel over that timeframe, applied to the full year. This is in line with the "log book method" permissible by the Australian Taxation Office for making vehicle expense claims and fringe benefit tax calculations.

Attachment 1 is an analysis of costs associated with 1 - Use of a City owned and operated vehicle and 2 - Use of a privately owned vehicle supplied by the Mayor.

The assumptions implicit in the analysis are outlined on the attachment.

The results of the analysis against various annual travel intervals are as follows:

- 1 5,000km pa The lowest cost option is to reimburse the Mayor at the current 63 cents per km rate, for use of his privately owned vehicle.

- 2 10,000km pa The lowest cost option is to reimburse the Mayor at the current 63 cents per km rate, for use of his privately owned vehicle.
- 3 15,000km pa The lowest cost option would be for use of a City owned and provided vehicle.
- 4 20,000km pa The lowest cost option would be for use of a City owned and provided vehicle.

As can be seen from the above, the outcome is, that for travel up to 10,000km pa it is more cost effective to reimburse the Mayor for use of his privately owned vehicle. For distances in excess of 10,000km pa it would be more cost effective for the City to purchase and provide a vehicle to the Mayor.

COMMENT

The number of kilometres that the Mayor will travel on Council related business over the next 12 months is difficult to estimate with any degree of accuracy, at this point in time. The Mayor has indicated though that it is his intention to have ward councillors officiate at more civic functions in the future.

Based on the above, it would not appear unreasonable to use his average kilometres claimed for Council related business over the last three years as a guide. Even assuming that he might travel up to five times as much as Mayor, than he did as a Councillor, this would still put his annual distance travelled at under 10,000km.

This would therefore tend to support reimbursement for travel, using the Mayor's privately owned vehicle, as the most cost effective option available to the City.

It should be noted that no account of reimbursement of travel from external organisations or the Mayor has been taken into account as these are incidental usage factors, i.e. the estimate of distance travelled has been based on Council related business only.

As the distance travelled is largely an unknown at this stage, it is suggested that the situation be reviewed in six months. This will afford City officers and Council the opportunity to revisit this matter with the benefit of data that is both accurate and relevant.

As the current Mayoral vehicle is due for replacement there is no negative impact from a timing basis, in adopting the above proposal.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Baker SECONDED Cr Kimber that:

- 1 Council DOES NOT purchase and provide the Mayor with a City owned vehicle;**
- 2 the Mayor is REIMBURSED for Council related travel in accordance with Policy 2.2.13 Payment of Fees, Allowances and Expenses and the Provision of Facilities to the Mayor, Deputy Mayor and Councillors;**

3 the cost effectiveness of the decision in recommendation 2 above be REVIEWED in six months.

Discussion ensued.

MOVED Cr O'Brien SECONDED Cr Hart that the Motion BE NOW PUT.

The Procedural Motion was Put and

CARRIED

The Motion as Moved by Cr Baker and Seconded by Cr Kimber was Put and

CARRIED (12/0)

In favour of the Motion: Crs Caiacob, Mackintosh, Gollant, Kenworthy, O'Brien, Hart, Walker, Baker, Brewer, Kimber, Prospero and Hollywood

Appendix 12 refers

To access this attachment on electronic document, click here: [Attach12brf100603.pdf](#)

Mayor Carlos entered the Chamber at this point and assumed the Chair, the time being 2232 hrs.

Cr Gollant left the Chamber at this point, the time being 2232 hrs.

COUNCIL DECISION – EN BLOC RESOLUTION NO 1

The following Items were then moved en-bloc – CJ126-06/03, CJ127-06/03, CJ129-06/03, CJ131-06/03, CJ132-06/03 and CJ137-06/03.

CJ126 - 06/03 SCHEDULE OF DOCUMENTS EXECUTED BY MEANS OF AFFIXING THE COMMON SEAL [15876]

WARD - All

PURPOSE

To provide a listing of those documents executed by means of affixing the Common Seal for noting by Council.

Document: Caveat
Parties: City of Joondalup and Peet and Co
Description: Withdrawal of Caveat – 3 Roxburgh Circle, Kinross
Date: 13.05.03

Document: Covenant
Parties: City of Joondalup and Peet and Co
Description: Restrictive Covenant – Deposited Plan 36127
Date: 13.05.03

Document: Copyright
Parties: City of Joondalup and John Nairn
Description: Recording of historical importance
Date: 13.05.03

Document: Deed
Parties: City of Joondalup and Mindarie Regional Council
Description: Deed of Partial Surrender of Lease re Vodafone
Date: 22.05.03

Document: Copyright
Parties: City of Joondalup and Pat Pallor
Description: Recording of historical importance
Date: 22.05.03

Document: Agreement
Parties: City of Joondalup, Kamsui P/L trading as Totally Workwear,
Joondalup
Description: Execution of Contract No 025-02/03 – Supply and delivery of
workwear – as per CJ-89-04/03
Date: 27.05.03

Document: Copyright
Parties: City of Joondalup and Allyn Bryant
Description: Recording of historical importance
Date: 27.05.03

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Walker SECONDED Cr Kenworthy that the Schedule of Documents executed by means of affixing the Common Seal be NOTED.

The Motion was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 1 (11/1)**

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

CJ127 - 06/03 REIMBURSEMENT OF ELECTED MEMBERS ALLOWANCES AND EXPENSES TO - MAY 2003 – [27122]

WARD All

PURPOSE

To provide an account of allowances and expenses incurred by and paid to each Elected Member for May 2003.

EXECUTIVE SUMMARY

The reimbursement of elected members expenses is subject to Council's policy and a signed claim form declaring that the information provided in support of the claim is true and correct.

The underlying principle that applies to payment of various allowances and reimbursement of expenses incurred whilst performing duties as an elected member is:

“to enable any eligible member of the community to be elected and carry out the duties and responsibilities of their elected office, without being financially disadvantaged for doing so.”

BACKGROUND

Following an extensive review of what allowances and reimbursement of expenses are permissible under the Local Government Act 1995 (the Act) and Regulations under the Act, Council at its meeting held on 18 December 2001, adopted a comprehensive policy known as “Policy for Payment of Fees, Allowances and Expenses and Provision of Facilities to the Mayor, Deputy Mayor and Councillors”.

This policy has applied from the first Saturday in May 2002 to coincide with elections and future new Councils. The policy sets out the amount of allowances that can be paid and reimbursement of expenses that can be claimed. It should be noted that the Act and Regulations under the Act do not limit the amount that can be reimbursed for travelling and child minding expenses.

DETAILS

At the ordinary Council meeting held on 11 March 2003, the following resolution was passed:

“1 The Chief Executive Officer cause to be published in all future Agendas of Ordinary Council meetings, a detailed report concerning expenses and allowances incurred by/paid to each Councillor and paid for/reimbursed by the City of Joondalup including, but not limited to, the following expenses and allowances:

- 1.1 *Expenses incurred by each Councillor on Conference and Training*
- 1.2 *Expenses ostensibly incurred by each Councillor on Travel and Childcare*
- 1.3 *Allowances paid to each Councillor by way of the communication allowance and the “sitting” or “meeting” attendance fee; and*
- 1.4 *Other expenses incurred by each Councillor*
- 2 *The first such report also include a summary of all such expenses and allowances incurred by/paid to each Councillor since the date of their election to Council; and*
- 3 *At the foot of each report there be a recommendation to note each such report there be a recommendation to note each such report”.*

The first report was presented to Council on 1 April 2003. This report covers the period since the Policy for Payment of Fees, Allowances and Expenses and Provision of Facilities to the Mayor, Deputy Mayor and Elected Members commenced for the new Council that was elected on the 3 May 2003. Attachment 1 to this Report shows all allowances and expenses reimbursed to the Elected Members for May 2003.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Walker SECONDED Cr Kenworthy that Council NOTES the information in relation to reimbursement of Elected Members’ allowances and expenses for May 2003 as contained in Attachment 1 to Report CJ127-06/03.

The Motion was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 1 (11/1)**

In favour of the Motion: Mayor Carlos, Crs Caiacob, Mackintosh, Kenworthy, O’Brien, Walker, Baker, Brewer, Kimber, Prospero and Hollywood **Against the Motion:** Cr Hart

Appendix 1 refers

To access this attachment on electronic document, click here: [Attach1brf100603.pdf](#)

CJ129 - 06/03 PARKING SIGN POLE ACCESS AGREEMENT – [00415]

WARD - All

PURPOSE

To seek Council approval for the City to enter into an Agreement with Telstra Corporation to install and maintain “low impact” telecommunication facilities on existing infrastructure within the City of Joondalup.

EXECUTIVE SUMMARY

Telstra Corporation has submitted a proposal to the City of Joondalup to enter into a Parking Pole Sign Access Agreement to install “low impact” telecommunications equipment on specified parking/no parking and direction signs and posts within the City of Joondalup.

The proposal will fall under the *Telecommunications (low impact facilities) Determination Act 1997*.

The City is bound by Federal legislation relating to telecommunication facilities and it has no jurisdiction over the location or installation of ‘low impact’ facilities defined under the *Telecommunications (Low-Impact Facilities) Determination Act 1997*.

By accepting the proposal submitted by Telstra Corporation the City will have the power of veto over each and every installation, which the City does not have under Federal Legislation and the ability to utilise existing infrastructure for each proposed installation.

Recommendation

That Council:

- 1 Accepts the proposal submitted by Telstra Corporation for the installation of ‘low impact’ telecommunications facilities to existing infrastructure within the City of Joondalup for an initial term of 5 years with the option of a further five years subject to conditions contained within the Agreement.*
- 2 Approves the initial installation of the ‘low impact’ telecommunication facilities to be installed in two stages at the specified locations, provided under attachment 1 to this report.*

BACKGROUND

Telstra Corporation submitted a proposal in November 2002 to the City to install ‘low impact’ telecommunications facilities on specified parking/no parking and direction signs and posts within the City. As a result of the proposal put by Telstra Corporation the City contacted other local authorities and similar arrangements have been set up with the Cities of Perth,

Stirling, Belmont, Nedlands and Town of Vincent. Telstra Corporation is formalising this process to bring back the consultation process with local authorities.

Council at its meeting of 17 December 2002 (Item C171-12/02 refers) adopted a Policy Statement – Telecommunication Facilities, an extract which states:

- 1 *“The City recognises that it is bound by the Federal legislation relating to telecommunication facilities and that it has no jurisdiction over the location or installation of “low impact” facilities as defined under the Telecommunications (Low-Impact Facilities) Determination Act 1997.*
- 2 *The City, as a general rule, does not support the installation or location of telecommunication facilities, particularly in the vicinity of schools, childcare establishments, hospitals and general residential areas.*
- 3 *The City recognises the right of land owners/applicants to make applications for planning approval for telecommunication facilities deemed to be other than low impact under the Telecommunications Act, and acknowledges its obligation to make a recommendation to the WAPC or determine the application in its own right.”*

DETAILS

This proposal:

- gives Local Authorities and the Community the opportunity to have input into where the infrastructure is installed;
- assists in minimising the need for additional equipment in the streetscape by utilising existing (in a modified form) street parking signs;
- gives the City a power of veto over each and every installation, which the City does not have under Federal Legislation;
- demonstrates to the Community that Telstra Corporation and the City can work together to provide an aesthetically acceptable solution to the provision of telecommunications infrastructure for the Community;
- provides improvement to services ensuring the capacity in the network for members of the community to make and receive phone calls at busy intersections.

Under the proposed Agreement should roadworks require removal of equipment, Telstra Corporation will temporarily remove and subsequently reinstate equipment at no cost to the City.

COMMENT

The purpose of microcellular networks is to improve the performance of the broader mobile networks in a congested area, typically at major intersections. The use of microcellular networks increases the overall quality of network service through the ability to provide coverage for a variety of needs. The electro magnetic energy emitted from the microcel transmitters are approximately equal to that of a mobile telephone.

Telstra Corporation will make a written application to the City for a licence to install Mobile Telephone Equipment for each parking sign selected by Telstra Corporation. Licences granted by the City do not create or vest in Telstra Corporation any ownership or property rights in the parking pole signs or in the land or space they occupy. The City does not receive any licence fee. Telstra Corporation will prepare each proposed site including but not limited to installation of conduits, pits, poles etc and reinstate the works area to its previous condition at its own cost.

It is proposed the initial installation will be in two stages that will take a total of 4 to 5 years and installed on an as needed basis (refer Attachment 1 Microcell Locations to this Report). Microcell Network Pole Installation drawings are provided (refer Attachment 2 to this Report), along with photographs of installed infrastructure within other municipalities are attached (refer Attachment 3 to this Report). Initial advice from Telstra is such that they currently expect to install 3 to 4 sites per year in the City of Joondalup.

This report has been written and developed in conjunction with the Director Infrastructure & Operations and the Director Planning & Community Development.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Walker SECONDED Cr Kenworthy that Council:

- 1 ACCEPTS the proposal submitted by Telstra Corporation for the installation of 'low impact' telecommunications facilities to existing infrastructure within the City of Joondalup for an initial term of five (5) years with the option of a further five (5) years subject to conditions contained within the Agreement;**
- 2 APPROVES the initial installation of the 'low impact' telecommunication facilities to be installed in two stages at the specified locations, provided under Attachment 1 to Report CJ129-06/03.**

The Motion was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 1 (11/1)**

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

Appendix 2 refers

To access this attachment on electronic document, click here: [Attach2brf100603.pdf](#)

Director, Infrastructure and Operations declared an interest that may affect his impartiality in CJ131-06/03– Minutes of the Conservation Advisory Committee of 26 March 2003 as he is a member of Kingsley Junior Football Club.

**CJ131 - 06/03 MINUTES OF THE CONSERVATION ADVISORY
COMMITTEE OF 26 MARCH 2003 – [12168]****WARD - All****PURPOSE**

The minutes of the Conservation Advisory Committee Meeting held on 26 March 2003 are submitted for adoption by Council.

EXECUTIVE SUMMARY

The Conservation Advisory Committee meeting held on the 26 March 2003, discussed a range of conservation matters within the City of Joondalup. The committee discussed issues including a local bio-diversity plan for the City's bushland reserves and the adoption of a tree management policy by the City.

Motions

The following motions were passed at the meeting.

1 Tuart Tree Removal Kingsley Park

That the City of Joondalup prepares a report for the Conservation Advisory Committee detailing the reason the five Tuart trees were removed from Kingsley Park.

Proposed: Cr J Hollywood

Seconded: B. Fitzsimmons

CARRIED

2 Tree Management Policy

“That the City of Joondalup prepare and adopt a tree management policy that will formalise the management and give protection to trees under the City's management.

Proposed: Cr J Hollywood

Seconded: D. Pike

CARRIED

It is recommended that Council:

- 1 NOTES the Minutes of the Conservation Advisory Committee held on the 26 March 2003 forming Attachment 1 to this Report;*
- 2 PROVIDES a summary of findings to the Conservation Advisory Committee resulting from the internal investigation in relation to the removal of trees from Kingsley Park to assist the Conservation Advisory Committee in the development of a Tree Management Policy;*
- 3 ENDORSES the preparation of a Draft Tree Management Policy document for consideration by the Conservation Advisory Committee.*

DETAILS

The committee felt that an investigation into the removal of the trees at Kingsley Park was required and a policy instituted to ensure that healthy, safe trees are not removed without reference to a policy to ensure such removal is strictly necessary.

The view of the Committee was that the City has adopted a Strategic Plan that is strongly in favour of protecting the City's natural environment and that policies should be in place to reflect this strategic direction.

COMMENT

Removal of Tuart Trees

An internal investigation is in progress pertaining to the removal of the Tuart Trees at Kingsley Park. A summary of the internal investigation can be provided to the committee upon completion of the audit to assist the committee in the development of a Tree Management Policy.

Tree Management Policy

The adoption of a Tree Management Policy by the City would have a number of advantages.

A Policy would ensure all trees growing on Council managed properties would receive uniform management in terms of pruning, and if required, removal. It would also have a positive effect on the ability of the City to manage, in a systematic way, its trees in road verges, medians and verges.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Walker SECONDED Cr Kenworthy that Council:

- 1 NOTES the Minutes of the Conservation Advisory Committee held on the 26 March 2003 forming Attachment 1 to Report CJ131-06/03;**
- 2 PROVIDES a summary of findings to the Conservation Advisory Committee resulting from the internal investigation in relation to the removal of trees from Kingsley Park to assist the Conservation Advisory Committee in the development of a Tree Management Policy;**
- 3 ENDORSES the preparation of a Draft Tree Management Policy document for consideration by the Conservation Advisory Committee.**

The Motion was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 1 (11/1)**

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

Appendix 4 refers

To access this attachment on electronic document, click here: [Attach4brf100603.pdf](#)

**CJ132 - 06/03 FINAL ADOPTION OF RETAINING WALLS POLICY
3.1.7 - SUBDIVISION – [05575]**

WARD - All

PURPOSE

To adopt a revised policy in respect to the control of the height and bulk of subdivision retaining walls to ensure that the amenity and aesthetics of the urban environment is not compromised by the construction of inappropriate retaining wall structures (Attachment 1 to this Report).

EXECUTIVE SUMMARY

The City's retaining walls policy operates in recognition of the need to ensure that retaining walls do not detract from the aesthetics of the streetscape, conflict with the character of the built form or impact adversely upon adjoining owners. The policy was adopted on 29 May 1996 and is due for review.

There is increasing concern relating to the apparent trend towards increasingly large scale retaining walls occurring in some subdivisions, particularly those in oceanside localities, and instances where subdividers have erected retaining walls and fences as part of the subdivisional works without first applying for and receiving a building licence from the City.

Excessive earth working can have the cumulative effect of creating streets that are dominated by excessively high retaining walls resulting in unsafe, uninteresting and unattractive urban design outcomes. The need to exercise greater care and control is recognised and the impact should be minimised wherever possible.

The current policy was required to be reviewed as it does not adequately address current subdivision retaining wall related issues. The main policy modifications include definition changes and additions and expansion of the policy statements to provide additional detail in respect to the City's requirements for retaining wall design, height and where approval is required. Changes between the advertised policy and the new policy are shown in Attachment 2 to this Report.

The policy relates to retaining walls associated with the subdivision of land. Retaining walls erected after subdivision and to facilitate development of individual lots are controlled under the provisions of the Residential Design Codes.

Council at its meeting on 1 April 2003 (CJ066 - 04/03 refers) resolved to adopt the revised policy as a draft for the purposes of advertising for a period of 21 days. During the advertising period, no submissions were received.

It is recommended that this policy be adopted for final approval with minor modification.

BACKGROUND

Suburb/Location: All
Strategic Plan: Lifestyle Strategy 2.2 Rejuvenate our suburbs – Enhance standards of infrastructure to meet changing community needs and aspirations.

While recognising that it is often necessary to carry out cut and fill operations on sloping sites, the adverse impact on the residential amenity of the adjoining property owner and the streetscape is of concern.

Subdividers attempting to maximise lot potential or views, particularly upon naturally undulating sites, have previously constructed high retaining walls resulting in the relationship between streetscape amenity and visual security of the residential development being compromised.

The aim of the revised policy is to create awareness in regard to the height and scale of retaining walls having a significant impact on the character of residential areas, and to minimize this impact wherever possible.

Council at its meeting on 1 April 2003 (CJ066 - 04/03 refers) resolved:

That Council in accordance with Clause 8.11.3 of District Planning Scheme No 2 ADOPTS the reviewed 'Retaining Walls – Subdivision' Policy, as per Attachment 1 to Report CJ066-04/03 as a draft policy for the purposes of advertising for a period of twenty-one (21) days for public comment.

DETAILS

The current policy was reviewed as it did not adequately address current subdivision retaining wall related issues. The main policy modifications include definition changes and additions and expansion of the policy statements to provide detail in respect to the City's requirements for retaining wall design, height and where approval is required.

In all cases, where the natural ground levels are being altered, the owner(s) or person(s) making the alterations are responsible for the construction of retaining walls, which are required to be contained wholly within the boundaries of that lot.

Further changes between the advertised policy and the policy to be adopted for final approval are shown in Attachment 2 and are bolded.

These changes are very minor and seek to capture the City's current work practices, particularly the Principal Building Surveyor's authority to issue a building license in relation to subdivision retaining walls.

Statutory Provision:

Clause 8.11 of DPS2 outlines the provisions with respect to the preparation of planning policies and amendments or additions to policies. Clause 8.11.3 outlines the procedures that are required to be followed in order for a policy to become operative.

Consultation:

In accordance with Council's decision at its meeting on 1 April 2003, the reviewed policy was advertised for a period of 21 days. Advertising commenced on 10th April and closed on 1 May 2003. Advertising consisted of two (2) advertisements placed in the Joondalup Community Newspaper on 10 April and 17 April 2003, together with the revised policy being displayed upon the City's website. At the closure of the advertising period, no submissions were received.

Policy Implications:

The implications of the policy would be:

- The restriction and control of excessive earthworks in order to preserve, as much as practicable, the existing topography and amenity of the area affected by the proposed subdivision.
- To ensure that the retaining wall height is appropriate for site conditions with consideration given to the stability and privacy of any adjoining properties.
- To minimise the effect of disturbance on any land and ensure that dangerous excavations are avoided, or where necessary, properly retained.

Strategic Implications:

The strategic implications of the policy would be to:

- Initiate, facilitate and promote best practices that deliver significant benefits to the community in terms of utilising the existing landform throughout the City of Joondalup to the best possible advantage, particularly for residential developments.
- Ensure that the amenity of existing and future development is not compromised by the approval of subdivision retaining walls that are inappropriate in respect to excessive height and bulk.

COMMENT

It is intended that the revised policy will provide a flexible framework for the construction of subdivision retaining walls, which will allow for a wide range of housing types and residential environments.

The revised policy relates to subdivision retaining walls only, whereby retaining walls associated with building construction are considered via the development application or building license approval processes.

The revised policy is generally consistent with the provisions contained within other similar Local Government subdivision retaining wall policies.

The advertised policy has been slightly modified to capture the City's current work practices, particularly the Principal Building Surveyor's authority to issue a building license in relation to subdivision retaining walls. Given that the modification to the advertised policy is minor, together with no submissions being received during the advertising period, it is considered appropriate for the policy to be adopted without the need for further advertising.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Walker SECONDED Cr Kenworthy that Council in accordance with Clause 8.11.3 of District Planning Scheme No 2 ADOPTS the 'Retaining Walls – Subdivision' Policy, as per Attachment No 1 to Report CJ132-06/03.

The Motion was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 1 (11/1)**

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

Appendix 5 refers

To access this attachment on electronic document, click here: [Attach5min240603.pdf](#)

**CJ137 - 06/03 SUBDIVISION REFERRALS PROCESSED 1 – 30
APRIL 2003 – [05961]**

WARD - All

PURPOSE

The purpose of this report is to advise Council of subdivision referrals received by the City for processing.

EXECUTIVE SUMMARY

Attachment 1 to this Report is a schedule of the Subdivision Referrals processed by Urban Design and Policy from 1– 30 April 2003. Applications were dealt with in terms of the delegation of subdivision control powers by the Chief Executive Officer (DP247-10/97 and DP10-01/98).

DETAILS

The subdivision applications processed will enable the potential creation of 1 service industrial lot, 2 strata service industrial lots, 4 additional residential lots and 8 strata residential lots. The average processing time taken was 18 days.

One application was not supported.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Walker SECONDED Cr Kenworthy that Council NOTES the action taken by the Subdivision Control Unit in relation to the application described in Report CJ137-06/03.

The Motion was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 1 (11/1)**

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

Appendix 10 refers

To access this attachment on electronic document, click here: [Attach10brf100603.pdf](#)

C100-06/03 2003/04 BUDGET –RATING GUIDELINES - [66533]

WARD - All

PURPOSE

The purpose of this report is for Council to endorse the recommendations of the budget committee with regard to rate setting for the 2003/04 draft budget.

EXECUTIVE SUMMARY

At its meeting of 12 June 2003, the Budget Committee considered whether to

- impose a general minimum payment for the 2003/04 year in accordance with section 6.35 LGA
- impose a separate refuse charge for the 2003/04 year in accordance with section 112 of the Health Act 1911
- impose differential rating for classes of properties for the 2003/04 year.

The Budget Committee resolved to recommend that Council:

- Does not impose a general minimum payment for the 2003/04 year
- Imposes a separate refuse charge for the 2003/04 year
- Establishes a separate rating group for all vacant land for the 2003/04 year.

The recommendation made by the Budget Committee requests Council to adopt these principles to further develop the 2003/04 Budget and to undertake the necessary public advertising on 21 June 2003 for differential rating. Public comment is invited within a 21 day period and the Budget Committee will consider the public comment in the finalisation of the 2003/04 budget.

BACKGROUND

Section 6.36 of the Local Government Act 1995 (LGA) requires the City to prepare an annual budget by 31 August. Ministerial approval is required if an extension to that date is required. The budget timetable aims for the 2003/04 budget to be adopted on 5 August 2003. An absolute majority is required to adopt the 2003/04 budget.

The City advertised its Draft 2003-2008 Principal Activities Plan for public comment on 31 May 2003. Public comments received within the 42-day period will be included in the determination of the 2003/04 budget. The City is required to advertise the reasons and objects of differential rating for a 21-day period and the closure of public comment will coincide with the further development of the 2003/04 budget to achieve a budget adoption on 5 August 2003.

To assist the Budget Committee (at its meeting of 12 June 2003) in determining its preferred rating methodology, a paper entitled “Background information on rating and funding” explained the legislative background and provided an overview of the City’s rateable property groups and the amounts collected from each of the rating groups. It should be noted that Council established a Rates Working Group in 1999/2000, comprising 5 elected members and 2 officers to consider rating matters within the City of Joondalup. CJ153 – 06/00 – “Rates working group – report on findings” was considered by Council in June 2000.

At the Budget Committee meeting on 12 June 2003, the impact of the alternative options available to Council was considered. Council’s determination in relation to the imposition of minimum payments, separate refuse charge and differential rates will assist in providing certainty in developing appropriate budget models prior to finalisation of the budget.

DETAILS

The Budget Committee considered whether to:

- impose a general minimum payment for the 2003/04 year in accordance with section 6.35 LGA
- impose a separate refuse charge for the 2003/04 year in accordance with section 112 of the Health Act 1911
- impose differential rating for classes of properties for the 2003/04 year.

It is important to note the alternative rating options change WHO pays the rates and does not affect the overall AMOUNT of rate to be collected. The alternative options are a combination of the imposition/removal of a minimum payment or flat refuse charge. The imposition of

differential rating either increase the opportunity to rate a subset of rateable properties differently or to provide more equity when changing the minimum payment or refuse charge.

RATING PROFILE

The City's rating property profile is as follows:

CITY OF JOONDALUP 2003/04 budget (As at 31 March 2003)

No minimum payment

	Rateable Value	No of Properties	Rate in \$	Rate Yield
General Rate – GRV	\$		c	\$
Residential Improved	513,076,853	54,163	6.6773	34,259,681
Residential Vacant	13,476,645	1,657	6.6773	899,876
Commercial Improved	100,562,169	867	6.6773	6,714,838
Commercial Not Improved	633,500	37	6.6773	42,301
Industrial	8,261,041	354	6.6773	551,614
Sub Total GRV	\$ 636,010,208	57,078		42,468,310
General Rate – UV				
Residential	2,123,000	8	0.5165	10,965
Rural	28,677,194	4	0.5165	148,118
Total UV	\$ 30,800,194	12		159,083
TOTAL - RATES LEVIED	\$ 666,810,402	57,090		42,627,393

NB:

Gross rental value (GRV) – The gross rental value method of valuation assesses the estimated rental value of the property and is expressed as gross income per annum.

Unimproved value (UV) - The unimproved method of valuation uses the land's capital value rather than a gross rental value (GRV).

MINIMUM PAYMENT FOR 2003/04

Section 6.35 of the LGA allows a local government to set minimum payments for each rating category. Rating on a property value system means that rates charged depend on the property value only. Imposing a minimum payment means that all properties pay at least the minimum payment regardless of the rates determined as a consequence of the property value.

The LGA also allows for the imposition of a "General Minimum Payment" and a "Lesser Minimum Payment". Section 6.35 (4) provides that a General Minimum Payment is not able to be applied to more than 50% (reg 52) of properties. Section 6.35 (3) provides that there must be more "General Minimum Payments" than "Lesser Minimum Payments". Minimum payments may be applied to differentially rated properties. The lowest Minimum Payment allowable is \$200 (Reg 53).

Retaining a Minimum Payment for 2003/04

The City of Joondalup's general minimum payments were previously set as follows:

Year	Number of Minimum rated properties	General Minimum (all properties)
1998/99	4,755	391
1999/2000	8,799	403
2000/01	9,112	415
2001/02	8,707	435
2002/03	9,477	450
2003/04	10,153	461

The intent of minimum payments recognises that a “base” level of services are provided to the community and that this is notionally valued as a “minimum payment”. Of 31 WA Councils sampled all confirmed that minimum payments were imposed for the 2002/03 year and ranged from \$330 to \$780.

Based on a Minimum Payment of \$461 (i.e. 2002/03 minimum payment of \$450 increased by 2.4%), (GRV of 6,966 or below) 10,153 properties would pay \$4,680,533 in general rates. These properties would pay \$4,284,132 if no minimum payment was set and the rates paid depended solely on the property value. The difference between the Minimum Payment method and No Minimum Payment alternative is \$396,401.

Under this option, the Minimum Payment will apply to properties with a GRV of or below 6,969.

Not imposing a Minimum Payment for 2003/04

If Council does not impose a general minimum payment for the 2003/04-year, the impact is that the rate burden of \$396,401 is to be redistributed across all ratepayers with the higher valued rateable properties carrying a larger share of the rate burden.

This means that a new (higher) rate in the dollar will be required (new rate-in-dollar = 6.6773) and that some properties with a GRV over 6,904 will now have to pay more than the minimum of \$461 which it would pay under the above alternative (i.e. retaining a minimum payment).

Whilst the main beneficiaries of no minimum payment will be residential properties, commercial properties with low GRV's (telephone booth's etc) will receive a rate reduction. The administration costs per rates notice may become uneconomical particularly where individual rates may be as low as \$20.

Budget Committee Recommendation: That Council does not impose a general minimum payment for the 2003/04 year.

REFUSE CHARGE

The Health Act (sections 112 and 334) allows local governments to recover the costs of providing refuse services from land owners. The City provides a “Domestic Refuse Collection Service” that includes domestic refuse collection, tip passes, fortnightly bag recycling service

and kerb side recycling. The City charges a "flat refuse charge" of \$122 (2002/03) to recover the cost of this service from properties that have domestic refuse bins. This is known as the first service. The draft 2003/04 budget has been based upon a flat fee of \$125.

The City also charges separate fees for items such as extra refuse bins and special services such as physical collection away from the kerb, which requires the driver to collect the bin from the property and put the bin back after being emptied.

There are several options available to the City in addressing the first refuse charges. These are as follows:

Option 1 - Flat charge

Maintain the current user pays system as mentioned above. The domestic refuse collection service is provided only to participating properties i.e. properties with a City provided rubbish bin. Commercial, industrial, some group residential dwellings and vacant land do not use this service and therefore do not pay this charge. This is a generic service provided to all participating properties.

Option 2 - Refuse fee based on GRV - no differential rates

The City has the option of incorporating the cost of domestic refuse services into the general rate which would have the effect of redistributing the waste collection burden to other properties by virtue of their property value. By keeping a single rating category, the refuse charge would be borne by all properties according to the property value. In this case, commercial, industrial, rural and some group residential dwellings that use commercial refuse services would effectively pay twice for refuse removal. Vacant land does not use the refuse service but would incur the cost effect of the domestic refuse service. Higher value properties would incur a larger amount of the charge. This may be considered inequitable and may have a detrimental impact on commercial properties which the City aims to encourage, as they provide much required employment within the region. Additional costs to the commercial sector may see businesses not locating to the City and could result in costs of goods and services being more expensive as these are passed on to consumers, thus making local businesses less competitive.

Benefits are that pensioners are able to get this additional portion deferred or discounted through the Rates and Charges (Rebates) 1996 Act, which they cannot do under the existing flat fee option, with the costs being borne by the broader income tax paying community.

Option 3 - Refuse fee based on GRV with differential rates

In order to limit the costs of this service being borne by commercial properties, differential rating categories could be set up to separate them from residential properties. A different rate-in-the-dollar could then be applied to residential properties to raise the required fees to cover the cost of this service.

In this case some group residential dwellings that use commercial refuse services would effectively pay twice for refuse removal. Vacant residential land does not use the refuse service but would incur the cost effect of the domestic refuse service. Higher value properties would incur a larger amount of the charge. This may be viewed as being inequitable. Benefits are that pensioners are able to get this additional portion deferred or discounted through the

Rates and Charges (Rebates) Act with the costs borne by the broader income tax payer community.

Budget Committee Recommendation: That Council imposes a separate refuse charge for the 2003/04 year.

DIFFERENTIAL RATING – VACANT LAND

Section 6.35 of the LGA allows a local government to establish differential rating categories. This power is provided to assist Councils with particular rating difficulties to achieve better rating equity between different land characteristics.

Council may by absolute majority, impose differential general rates on properties within its district according to any, or a combination, of the following characteristics:-

- the zoning of the land under Council's Town Planning Scheme
- the predominant purpose for which the land is held or used as determined by the Council
- whether or not the land is vacant, or
- any other characteristic or combination of characteristics described

The former City of Wanneroo imposed differential rating to assist Commercial-Improved properties during the period 1985/86 (at 31% of the residential rate-in-the-dollar) gradually increasing to 1998/99 (90% of the residential rate-in-the-dollar). The City of Joondalup continued this strategy and imposed differential rating to assist Commercial-Improved properties during the period 1999/2000 (90% of the residential rate-in-the-dollar). The City of Joondalup eliminated this practice in 2000/01 as its original purpose had been largely achieved.

Council's Rates Working Group considered the City's rating matters together with industry practice during 1999/2000 and subsequently reported its findings and recommendations to Council (CJ153-06/00).

Council considered but did not adopt the recommendations from the Rates Working Group, in relation to differential rating of vacant land (CJ153-06/00 refers), which were as follows:

“That Council:

- (b) (i) in accordance with the provisions of Section 6.33 of the Local Government Act 1995 a separate rating group be created for vacant land within each rating category; and
- (ii) the 2000/01 rate in the \$ for residential and rural vacant land in the GRV sector to be set at 115% of the improved residential and rural rate in the \$ with a minimum payment of \$500 with further increases to 130% in 2001/02 and to 145% in 2002/03 and seeks the Ministers approval regarding the imposition of the minimum payment pursuant to Section 6.35 (5) of the Local Government Act 1995”

The purpose of rating vacant land at a higher rate-in-the-\$ than improved land would be to ensure that land speculators contribute to the overall rate burden and to encourage development but this will also impact on the genuine home builder. This strategy has been employed by other local governments for some considerable time.

A summary of the City of Joondalup's rateable vacant land is shown below.

	No of Properties	Rateable Value	Rate in Dollar (100% of residential improved)	Rate Yield	Rate in Dollar (115% of residential improved)	Rate Yield
Gross Rental Value Properties						
Residential Vacant	1,657	13,476,645	6.6773	899,876	7.6789	1,034,857
Commercial Not Improved	867	633,500	6.6773	42,301	7.6789	48,646
Total	2,524	14,110,145		942,177		1,083,503

Vacant land valued on the GRV basis currently contributes income of \$942,177. If Council establishes a separate rating category for vacant land valued on a gross rental value basis, a differential rate will result for this category. By setting a Rate-in-the-\$ at 115% as previously recommended by the Rates Working Group (instead of 100%) of the Residential Rate-in-the-\$, rates income of \$1,083,503 will be collected, an increase of \$141,326.

Unimproved value land is not referenced to general rates or to other improved properties. Council imposes a separate rate-in-the-\$ and / or minimum payment for this group.

To establish a separate rating group for gross rental value - vacant land, the following rating categories will result:

Rating Category	Rate in Dollar	Relativity to Differential General Rate
Differential General Rate		
Residential Improved	6.6300	100%
Commercial Improved	6.6300	100%
Industrial Improved	6.6300	100%

Differential Rate - Vacant Land	7.6245	115%
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Unimproved Value Rate		
Residential	0.5555	N/a
Rural	0.5555	N/a

Additional costs of maintaining and administering the differential rating do exist, however this is not considered to be significant when compared to the additional income raised.

Advertising Requirement - Differential Rating

Before imposing any differential general rates a council is to give local public notice of its intention to do so. This notice must be published in sufficient time so as to allow interested

persons to make submissions during the appropriate time prior to council's budget being set for the new financial year.

Notice can be published within the period of two months preceding the commencement of the financial year to which the proposed rates are to apply. The notice must contain details of each differential rate or minimum payment which the council intends to impose.

Ratepayers or electors must be invited to make submissions regarding the proposed rates within 21 days of the notice. Council must produce a document describing the objects of, and reasons for, each proposed rate and minimum payment, which ratepayers and electors may inspect. Council is required to consider any submissions it may receive, before imposing the proposed differential rates or minimum payments with or without modification.

In order to meet Council's current budget adoption timetable of 5 August 2003, the aims and objectives for Differential Rating is to be advertised on Saturday 21 June 2003 and public comment accepted for 21 days up to 12 July 2003. Should Council approve the establishment of a separate rating group, the proposed public notice indicating reasons and objects is shown as per Attachment A.

Budget Committee Recommendation: That Council establishes a separate rating group for all vacant land for the 2003/04 year.

VOTING REQUIREMENTS

Simple Majority

BUDGET COMMITTEE RECOMMENDATION That Council:

- 1 Does not impose a general minimum payment for the 2003/04 year;
- 2 Imposes a separate refuse charge for the 2003/04 year ;
- 3 In accordance with the provisions of Section 6.33 of the Local Government Act 1995 a separate rating group be created for vacant land.

Cr Kenworthy left the Chamber at this point, the time being 2236 hrs.

Cr Gollant entered the Chamber at this point, the time being 2236 hrs.

MOVED Cr O'Brien SECONDED Cr Hollywood that Points 1, 2 and 3 be voted on separately.

The Motion was Put and

CARRIED (8/4)

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

MOVED Cr O'Brien SECONDED Cr Hart that Council:

- 1 Does not impose a general minimum payment for the 2003/04 year.**

Discussion ensued.

MOVED Cr Kimber SECONDED Cr Mackintosh that Cr Baker be permitted an extension of time to speak.

The Motion was Put and TIED (6/6)

There being an equal number of votes, the Mayor exercised his casting vote and declared the Motion LOST

The Motion as Moved by Cr O'Brien and Seconded by Cr Hart was Put and TIED (6/6)

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

There being an equal number of votes, the Mayor exercised his casting vote and declared the Motion CARRIED

MOVED Cr Hart SECONDED Cr Walker that Council:

- 2 Imposes a separate refuse charge for the 2003/04 year.**

The Motion was Put and CARRIED (11/1)

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

MOVED Cr Walker that:

- 3 In accordance with the provisions of Section 6.33 of the Local Government Act 1995 a separate rating group be created for vacant land.**

There being no Seconder, the Motion LAPSED

Appendix 13 refers

To access this attachment on electronic document, click here: [Attach13min240603.pdf](#)

MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**C101-06/03 MOTION TO LIE ON THE TABLE – EN BLOC RESOLUTION NO 2**

MOVED Cr Hollywood SECONDED Cr O’Brien that the remaining Notices of Motions LIE ON THE TABLE with the exception of:

- **Notice of Motion No 5 – Cr M O’Brien – 10 Oceanside Promenade, Mullaloo;**
- **Notice of Motion No 6 – Cr A Walker – Range of Memberships - Craigie Leisure Centre.**

Cr Hart left the Chamber at this point, the time being 2315 hrs.

Cr Baker requested that Notice of Motion No 1 – Cr C Baker – Revoking of Mayor’s Powers, be considered this evening.

Mayor Carlos stated that this was a matter beyond the jurisdiction of the Council and may be ruled out of order by the Chairperson. Mayor Carlos advised that neither the Mayor nor the Council has the power or authority to remove any person from the proceedings of a Council meeting or any other such gathering.

Mayor Carlos ruled Notice of Motion No 1 – Cr C Baker – Revoking of Mayor’s Powers
OUT OF ORDER.

Cr Baker sought leave to make a personal explanation under Clause 4.5 of the City’s Standing Orders Local Law. Mayor Carlos ruled that the procedural motion would first be considered.

MOVED Cr Baker SECONDED Cr Kimber that the meeting DISSENT with the Mayor’s ruling.

The Mayor advised that this motion could not be accepted as the procedural motion was required to be considered at this point.

The Motion to Lie on the Table as Moved by Cr Hollywood and Seconded by Cr O’Brien was Put and
CARRIED (10/1)

In favour of the Motion: Mayor Carlos, Crs Caiacob, Mackintosh, Gollant, O’Brien, Brewer, Kimber, Prospero, Walker, and Hollywood **Against the Motion:** Cr Baker

C102-06/03 NOTICE OF MOTION NO 2 – CR C BAKER – REVOCATION – COUNCIL PERMIT/APPROVAL

In accordance with Clause 3.12 of the Standing Orders Local Law, Cr C Baker has given notice of his intention to move the following motion at the Council meeting to be held on 17 June 2003:

That:

- 1 the Home Business Occupation Permit (being Home Business Category 2 – repair of plastic crates) issued to the Proprietor of 2 Janthina Crescent, Heathridge be and is hereby revoked;*
- 2 the revocation be effected on the basis of several breaches of the Permit issued to the property owner, fully particularised in correspondence from the adjoining property owner, Mrs Elizabeth Bail to the City of Joondalup over the last 12 months.*

Comment by Cr Baker:

Prior to this motion being debated, I would ask that you arrange for an appropriate Council officer to prepare a detailed report to Council to enable Councillors to have more background information prior to voting on this important motion.

That report would also have attached to it copies of all correspondence between myself and the City and Mrs Elizabeth Bail and the City, including her recent Medical Report, together with copies of all or any correspondence between the City and the property owners and the City and the Minister of Planning.

OFFICER'S COMMENT

Legal advice has previously been sought regarding the City's power to revoke a previously issued planning approval. It is confirmed by the legal advice that the City does not have power under District Planning Scheme No. 2 to revoke a planning approval. The one exception, which is irrelevant for current purposes, is Clause 6.10.2 which provides that an owner may make an application to revoke a planning approval prior to the commencement of the development, the subject of the approval.

It is therefore advised that in accordance with 3.12 of the City's Standing Orders Local Law it would be reasonable for the chairperson to rule the notice of motion out of order as it is reasonable to believe such a decision is beyond jurisdiction of the Council.

However, it is noted that the Home Business approval was issued for a period of 12 months only, and will expire on 7 June 2003, after which time the applicant will need to reapply to the City to continue the activity. The application can therefore be reassessed in regard to the impact on the adjoining owner, and an appropriate determination made on the renewal application.

Given elected members' interest in regard to this matter, the renewal application (when received), will be forwarded to Council for determination.

VOTING REQUIREMENT

Simple Majority

MOVED Cr Hollywood SECONDED Cr O'Brien that in accordance with Clause 5.4 of the City's Standing Orders Local Law, the following Motion Lie on the Table:

“That:

- 1 the Home Business Occupation Permit (being Home Business Category 2 – repair of plastic crates) issued to the Proprietor of 2 Janthina Crescent, Heathridge be and is hereby revoked;*
- 2 the revocation be effected on the basis of several breaches of the Permit issued to the property owner, fully particularised in correspondence from the adjoining property owner, Mrs Elizabeth Bail to the City of Joondalup over the last 12 months.”*

The Motion to Lie on the Table was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 2 (10/1)**

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

In accordance with Standing Orders Local Law, Clause 5.4 – “The Motion Lie on the Table” a record is to be taken of all those who have spoken on the motion under debate. It is therefore recorded that **no member** spoke on the Notice of Motion submitted by Cr Baker.

C103-06/03 **NOTICE OF MOTION NO 3 – CR M O'BRIEN – RESCISSION OF USE APPROVAL FOR A THERAPEUTIC MASSAGE CENTRE, LOT 9 UNIT 16 (7) DELAGE STREET, JOONDALUP EX (TP107-05/96)**

Cr Mike O'Brien gave notice of his intention to move the following motion at the Council meeting to be held on Tuesday 29 April 2003. Council did not consider this item at its meetings held on 29 April 2003 and 27 May 2003 and it is therefore resubmitted for consideration at the Council meeting to be held on 17 June 2003.

The following elected members have indicated their support as required by Clause 4.4 of the City's Standing Orders Local Law:

Cr M O'Brien
Cr C Baker
Cr C Mackintosh
Cr T Barnett
Cr A Patterson

“That Council BY AN ABSOLUTE MAJORITY, REVOKES and RESCINDS the former City of Wanneroo decision of 29 May 1996, Item TP107-05/96 refers, viz:

“That Council approves the application submitted by Artist Holdings Pty Ltd in respect of the use of Lot 9 unit 16 (7) Delage Street, Joondalup, for the provision of medical and sport related massages subject to:

- 1 There being a maximum of four masseuses working in the subject unit at any one time;*
- 2 Standard and appropriate conditions.”*

and substitutes in lieu therefore;

“That Council:

- 1 Takes into account the claim by the Hon Tony O’Gorman MLA, Member for Joondalup that “Bawdy House Activities,” contrary to Sections 209 & 213 of the Western Australian Criminal Code are allegedly occurring at Unit 16, 7 Delage St, Joondalup, and finds that evidence provided in Mr O’Gorman’s allegation, is of important weighting and is “on the balance of probabilities” a true fact;*
- 2 in light of the credit given to Mr O’Gorman’s allegation Council, having revoked and rescinded TP107-05/96, advises Ross Douglas Fraser, of 1B Saltbush Court, WICKHAM WA 6720, the Registered Proprietor, of (Unit) Lot 16 on Strata Plan 29376 Vol 2123 Folio 938 that the Approval TP107 – 05/96 granted to Artist Holdings Pty Ltd ACN 009 314 765 ABN 89 009 314 765 UNDER EXTERNAL ADMINISTRATION (LIQUIDATOR APPOINTED) has been revoked and rescinded, and that the current Unit Use does not comply, as a permitted land use, pursuant to Council’s District Planning Scheme No 2.;*
- 3 advises Leila Elaine Neilson, of 4 Addingham Court, CRAIGIE WA 6025, Director and Company Secretary, of Chadstone Pty Ltd ACN 103 565 617 ABN 15 103 565 617 (formerly LEILA’S [Reg. No 0243333G]), Principal Place of Business, Unit 16, 7 Delage Street, JOONDALUP WA 6027, Registered Office, Sergio D’Orazio & Associates, 20 Ballot Way, BALCATTWA WA 6021 that the land use approval for Unit 16, 7 Delage Street, JOONDALUP, granted to Artist Holdings Pty Ltd by the former City of Wanneroo ref. TP107-05/96 has been revoked and rescinded;*
- 4 advises Vincent Leonard Rossi and Cornelia Alida Rossi of 10 Moline Court, CHURCHLANDS WA 6018, Directors of Artist Holdings Pty Ltd, ACN 009 314 765 ABN 89 009 314 765 that the land use approval for Unit 16, 7 Delage Street, JOONDALUP, granted to Artist Holdings Pty Ltd by the former City of Wanneroo ref. TP107-05/96 has been revoked and rescinded.”*

Reason for Motion:

Cr O'Brien provided the following in support of the above Motion:

- “1 There is no evidence that the former City of Wanneroo Councillors in Decision TP107-05/96 approved “Bawdy House Activities” as a Land Use under City of Wanneroo’s Town Planning Scheme No 1.
- 2 The proprietary company Artist Holdings Pty Ltd as a proprietary company is, according to ASIC Listings, now under External Administration (liquidator appointed) and it seems is no longer a Proprietary Company trading with an interest in Unit 16, 7 Delage Street, Joondalup.
- 3 The City of Joondalup has by its decision in October 2002 decided that “Bawdy House Activities” are not an acceptable Land Use within the boundaries of the Municipality.
- 4 The evidence of the Claim by the Hon Tony O’Gorman MLA, Member for Joondalup, that “Bawdy House Activities” are occurring at Unit 16, 7 Delage Street, Joondalup is “on the balance of probabilities” evidence of enough weight, for Council’s Decision to revoke and rescind the former City of Wanneroo decision of approval to Artist Holdings Pty Ltd.
- 5 Council further reinforced its 15th October 2002 decision, by a unanimous decision on Tuesday 11th March 2003 to prohibit “Bawdy House Activities” as a Land Use in the Municipality, and subsequent to EPA consideration, intends to advertise the amendment to District Planning Scheme No 2. as a Community Consultation, process for 42 days.”

OFFICER’S COMMENTS

Following the receipt of the notice of motion as submitted by Cr O'Brien, legal advice was sought regarding the City’s power to revoke a previously issued planning approval. It is confirmed by the legal advice that the City does not have power under District Planning Scheme No. 2 to revoke a planning approval. The one exception, which is irrelevant for current purposes, is Clause 6.10.2, which provides that an owner may make an application to revoke a planning approval prior to the commencement of the development, the subject of the approval. It is therefore advised that in accordance with 3.12 of the City's Standing Orders Local Law it would be reasonable for the chairperson to rule the notice of motion out of order as it is reasonable to believe such a decision is beyond jurisdiction of the Council.

VOTING REQUIREMENT

Absolute Majority

MOVED Cr Hollywood SECONDED Cr O'Brien that in accordance with Clause 5.4 of the City’s Standing Orders Local Law, the following Motion Lie on the Table:

“That Council BY AN ABSOLUTE MAJORITY, REVOKES and RESCINDS the former City of Wanneroo decision of 29 May 1996, Item TP107-05/96 refers, viz:

“That Council approves the application submitted by Artist Holdings Pty Ltd in respect of the use of Lot 9 unit 16 (7) Delage Street, Joondalup, for the provision of medical and sport related massages subject to:

- 1 There being a maximum of four masseuses working in the subject unit at any one time;***
- 2 Standard and appropriate conditions.”***

and substitutes in lieu therefore;

“That Council:

- 1 Takes into account the claim by the Hon Tony O’Gorman MLA, Member for Joondalup that “Bawdy House Activities,” contrary to Sections 209 & 213 of the Western Australian Criminal Code are allegedly occurring at Unit 16, 7 Delage St, Joondalup, and finds that evidence provided in Mr O’Gorman’s allegation, is of important weighting and is “on the balance of probabilities” a true fact;***
- 2 in light of the credit given to Mr O’Gorman’s allegation Council, having revoked and rescinded TP107-05/96, advises Ross Douglas Fraser, of 1B Saltbush Court, WICKHAM WA 6720, the Registered Proprietor, of (Unit) Lot 16 on Strata Plan 29376 Vol 2123 Folio 938 that the Approval TP107 – 05/96 granted to Artist Holdings Pty Ltd ACN 009 314 765 ABN 89 009 314 765 UNDER EXTERNAL ADMINISTRATION (LIQUIDATOR APPOINTED) has been revoked and rescinded, and that the current Unit Use does not comply, as a permitted land use, pursuant to Council’s District Planning Scheme No 2.;***
- 3 advises Leila Elaine Neilson, of 4 Addingham Court, CRAIGIE WA 6025, Director and Company Secretary, of Chadstone Pty Ltd ACN 103 565 617 ABN 15 103 565 617 (formerly LEILA’S [Reg. No 0243333G]), Principal Place of Business, Unit 16, 7 Delage Street, JOONDALUP WA 6027, Registered Office, Sergio D’Orazio & Associates, 20 Ballot Way, BALCATT WA 6021 that the land use approval for Unit 16, 7 Delage Street, JOONDALUP, granted to Artist Holdings Pty Ltd by the former City of Wanneroo ref. TP107-05/96 has been revoked and rescinded;***
- 4 advises Vincent Leonard Rossi and Cornelia Alida Rossi of 10 Moline Court, CHURCHLANDS WA 6018, Directors of Artist Holdings Pty Ltd, ACN 009 314 765 ABN 89 009 314 765 that the land use approval for Unit 16, 7 Delage Street, JOONDALUP, granted to Artist Holdings Pty Ltd by the former City of Wanneroo ref. TP107-05/96 has been revoked and rescinded.”***

The Motion to Lie on the Table was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 2 (10/1)**

In favour of the Motion: Mayor Carlos, Crs Caiacob, Mackintosh, Gollant, O’Brien, Brewer, Kimber, Prospero, Walker, and Hollywood **Against the Motion:** Cr Baker

In accordance with Standing Orders Local Law, Clause 5.4 – “The Motion Lie on the Table” a record is to be taken of all those who have spoken on the motion under debate. It is therefore recorded that **no member** spoke on the Notice of Motion submitted by Cr O’Brien.

C104-06/03 NOTICE OF MOTION NO 4 – CR C BAKER – OCEAN REEF BOAT HARBOUR – DRAFT 2003/04 BUDGET

In accordance with Clause 3.12 of the Standing Orders Local Law, Cr C Baker has given notice of his intention to move the following motion at the Council meeting to be held on 17 June 2003:

“That an amount of \$950,000 be listed for consideration in the draft 2003/04 Budget for the purpose of commissioning the necessary studies to determine the various options available to the City for the development of the Ocean Reef Boat Harbour and adjacent landholdings.”

OFFICER’S COMMENT

Project Description

Primary objective of the Ocean Reef Development project is to assess the viability of the development proposals for the site, consistent with the City’s original intent to develop regional mixed-use Boat Harbour facility to enable the development of arrange of recreational, commercial and service uses, ancillary to the boat launching facility.

Site Description

The site is located adjacent the coast and is approximately 46 hectares in area. The site currently consists of a boat launching facility, parking for vehicles and boat trailers, Council owned land Lots 1029 and 1032, Water Corporation Land Lot 1033, Groyne Reserve 36732, Foreshore Reserve 20561 and Breakwater Reserve 39014.

The subject site are identified under District Planning Scheme No. 2 as follows:

Part Lot 1029	-	Reserved, Parks & Recreation
Lot 1032	-	Reserved, Public Purposes – Special Use
Lot 1033	-	Reserved, Public Purposes – Special Use
Reserve 36732	-	Reserved, Parks & Recreation
Reserve 20561	-	Reserved, Parks & Recreation
Reserve 39104 10519	-	Reserved, Parks & Recreation
Reserve 39014 10518	-	Reserved, Parks & Recreation

Policy 3.2.8 (Centres Strategy) which is a policy created under District Planning Scheme No. 2 identifies the Ocean Reef Boat Harbour as a Tourist Centre. It is recommended under the policy that Council and the Western Australian Planning Commission consider any proposal for expansion of a marina complex or the establishment of additional leisure oriented commercial business in the context of an approved structure plan.

Previous Actions

- A preliminary investigating by Turen Property Consulting was commissioned by the City in November 2000 on the commercial potential of Ocean Reef. The report indicated that there would be limited potential from commercial developments on the site in the short term.
- A Planning Workshop was held on 21 January 2002, facilitated by consultants Taylor Burrell with landowners, stakeholders, councillors and staff to develop a 'land vision'.
- Bowman Bishaw Gorham were commissioned to produce a detailed description and mapping of the area on 13 March 2002. The final report, received 17 June 2002 provided the following information:
 - A summary of vegetation and flora of the study area
 - Implications for Structure Planning
 - Vegetation unit map over an aerial photograph
 - Vegetation relative importance ranking map
 - Process overview of the Environmental Protection Authority's consideration of development proposals involving significant impact on bushland on Bush Forever sites
- Research Solutions were appointed to undertake a community benchmark survey (both qualitative and quantitative) on 21 March 2002 and which was received 30 August 2002. A total of 500 Joondalup residents were surveyed (200 Ocean Reef residents and 300 from within the rest of the City). The survey included community expectations regarding consultation and development of the area.
- A project team was formed and held its first meeting March 2003, and as a result milestones were updated and the zoning of the area confirmed. The negotiation of the transfer of control of the Ocean Reef Marina to the City is underway between the Department of Planning and Infrastructure and Department of Land Administration.

Recommendations for 2003/2004 (by CCS)

- Arrange external commissions, as a precursor to the Options Workshop
 - Major study brief (single consultant to manage and oversee planning and urban design, architecture, engineering and infrastructure, geotechnical, land survey elements).
 - Business case brief (to critically reassess previous property and market research outcomes and provide detailed commercial direction on opportunities and recommend land uses
 - Environmental consultant (to provide clarity of direction of the marine and terrestrial environment in the current approvals climate.
 - Communications consultant (comprehensive PR and community input strategy required.
- Convene development committee and convene first meeting.
- Prepare development principles and objectives for discussion by the Development Committee.
- Prepare preliminary options for discussion.

VOTING REQUIREMENT

Simple Majority

MOVED Cr Hollywood SECONDED Cr O'Brien that in accordance with Clause 5.4 of the City's Standing Orders Local Law, the following Motion Lie on the Table:

“That an amount of \$950,000 be listed for consideration in the draft 2003/04 Budget for the purpose of commissioning the necessary studies to determine the various options available to the City for the development of the Ocean Reef Boat Harbour and adjacent landholdings.”

The Motion to Lie on the Table was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 2 (10/1)**

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

In accordance with Standing Orders Local Law, Clause 5.4 – “The Motion Lie on the Table” a record is to be taken of all those who have spoken on the motion under debate. It is therefore recorded that **no member** spoke on the Notice of Motion submitted by Cr Baker.

C105-06/03 NOTICE OF MOTION NO 7 – CR G KENWORTHY – 2003/04 DRAFT BUDGET

In accordance with Clause 3.12 of the Standing Orders Local Law, Cr G Kenworthy has given notice of his intention to move the following motion at the Council meeting to be held on 17 June 2003:

“That an amount of \$500,000 be listed for consideration in the 2003/04 Draft Budget to enable median and verge enhancements on Marmion Avenue between Warwick Road and Hepburn Avenue.”

OFFICER'S COMMENT

This proposal falls within the Major Road Median and Verge Enhancement Works program contained within the Draft 2003/04 Five Year Capital Works Program and looks at improving the visual aspects of our major roads through reticulation and grassing works.

As part of the previous 2002/03 budget process, there has been much debate amongst the Council as to the appropriateness of continuing this program whilst the current water shortages exist.

As part of the 2002/03 budget deliberations, a moratorium was placed on this program. It is now time to revisit the continuation of this program in the context of this moratorium and other funding commitments that need to be prioritized by Council as part of the 2003/04 budget deliberations.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Hollywood SECONDED Cr O'Brien that in accordance with Clause 5.4 of the City's Standing Orders Local Law, the following Motion Lie on the Table:

“That an amount of \$500,000 be listed for consideration in the 2003/04 Draft Budget to enable median and verge enhancements on Marmion Avenue between Warwick Road and Hepburn Avenue.”

The Motion to Lie on the Table was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 2 (10/1)**

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

In accordance with Standing Orders Local Law, Clause 5.4 – “The Motion Lie on the Table” a record is to be taken of all those who have spoken on the motion under debate. It is therefore recorded that **no member** spoke on the Notice of Motion submitted by Cr Kenworthy.

C106-06/03 NOTICE OF MOTION NO 8 – CR A WALKER – LEGAL ADVICE

In accordance with Clause 3.12 of the Standing Orders Local Law, Cr A Walker has given notice of her intention to move the following motion at the Council meeting to be held on 17 June 2003:

“That:

- 1 Council adopts a policy that requires that all legal advice be reported in its entirety to Council, complete with the details of the instruction upon which the advice was sought;*
- 2 adequate records of such legal advice be kept;*
- 3 a report be produced of all legal advice expenditure on a quarterly basis and presented to the Audit Committee commencing with the first Audit Committee meeting for the new financial year to begin 1st July 2003;*
- 4 a report be produced of all legal advice expenditure for the financial years ending 2000, 2001, 2002 and 2003 inclusive.”*

REASON FOR MOTION

Cr Walker has submitted the following in support of her notice of motion:

“In the report of the City of Belmont Enquiry, it was recommended that councils adopt a policy requiring that all legal advice be reported to Council. If it is good enough for the City of Belmont, it is good enough for the City of Joondalup.

We will need benchmark from which to embark and compare, hence the need for post expenditure to be recorded.

The production of these reports will enhance the open accountability and transparency of our Council.

The information required for part 4 should be easily available and reportable at the next meeting of the Council in readiness for the new financial year.”

OFFICER’S COMMENT

The Notice of Motion proposed by Cr Walker raises a number of issues that require considerable research. To enable the Council to be fully apprised of all relevant issues and the ramifications of providing details of all legal advice to the City, a detailed report is currently being prepared. The report however will not be available for the Council meeting to be held on 17 June 2003 and as such it is recommended that this matter be deferred until such time as the Council has the benefit of a report from the administration.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Hollywood SECONDED Cr O’Brien that in accordance with Clause 5.4 of the City’s Standing Orders Local Law, the following Motion Lie on the Table:

“That:

- 1 Council adopts a policy that requires that all legal advice be reported in its entirety to Council, complete with the details of the instruction upon which the advice was sought;*
- 2 adequate records of such legal advice be kept;*
- 3 a report be produced of all legal advice expenditure on a quarterly basis and presented to the Audit Committee commencing with the first Audit Committee meeting for the new financial year to begin 1st July 2003;*
- 4 a report be produced of all legal advice expenditure for the financial years ending 2000, 2001, 2002 and 2003 inclusive.”*

The Motion to Lie on the Table was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 2 (10/1)**

In favour of the Motion: Mayor Carlos, Crs Caiacob, Mackintosh, Gollant, O’Brien, Brewer, Kimber, Prospero, Walker, and Hollywood **Against the Motion:** Cr Baker

In accordance with Standing Orders Local Law, Clause 5.4 – “The Motion Lie on the Table” a record is to be taken of all those who have spoken on the motion under debate. It is therefore recorded that **no member** spoke on the Notice of Motion submitted by Cr Walker.

C107-06/03 **NOTICE OF MOTION NO 9 – CR C BAKER – TERMINATION OF MAYOR’S INVESTIGATIONS INTO CR HOLLYWOOD’S CONDUCT**

DETAILS

This Notice of Motion Is Confidential - Not For Publication

A full report has been provided to Elected Members under separate cover.

MOVED Cr Hollywood SECONDED Cr O’Brien that in accordance with Clause 5.4 of the City’s Standing Orders Local Law, Confidential Item – Notice of Motion Cr C Baker – Termination of Mayor’s Investigations into Cr Hollywood’s Conduct - Lie on the Table.

The Motion to Lie on the Table was Put and

**CARRIED BY
EN BLOC RESOLUTION NO 2 (10/1)**

In favour of the Motion: Mayor Carlos, Crs Caiacob, Mackintosh, Gollant, O’Brien, Brewer, Kimber, Prospero, Walker, and Hollywood **Against the Motion:** Cr Baker

In accordance with Standing Orders Local Law, Clause 5.4 – “The Motion Lie on the Table” a record is to be taken of all those who have spoken on the motion under debate. It is therefore recorded that **no member** spoke on the Notice of Motion submitted by Cr Baker

C108-06/03 **NOTICE OF MOTION NO 1 – CR C BAKER – REVOKING OF MAYOR’S POWER**

In accordance with Clause 3.12 of the Standing Orders Local Law, Cr C Baker has given notice of his intention to move the following motion at the Council meeting to be held on 17 June 2003:

“That:

- 1 the Mayor’s putative or alleged powers to direct Security Staff to remove members of the public from the Public gallery during Briefing Sessions, Ordinary Council Meetings or Special Meetings of Council (“the Power”) be and his hereby revoked;*
- 2 the Power can only be exercised by the Mayor following a duly passed resolution of Council carried by a Simple Majority.*

Reason for motion:

Cr Baker provided the following comments in support of his motion:

- 1 Many of us witnessed the incident involving the Mayor's use of his putative power during the Public Question Time session conducted shortly after the commencement of the Mayor's Special Council Meeting conducted on Tuesday, 20 May 2003;
- 2 Members will recall that prior to the Mayor issuing his directive to Security Staff, there were several outbursts from other members of the Public Gallery, which were not sanctioned by the Mayor;
- 3 This putative power is not an actual power at all and the Mayor has no legislative or other power to command a private security guard to remove a member of the public from the Public Gallery;
- 4 The Mayor is not a sworn police officer and hence does not attract the protections or immunities under the Police Act;
- 5 The City could be vicariously liable in circumstances where a senior citizen was forcibly removed from the Public Gallery in the Council Chambers by a private security officer, pursuant to a directive from the Mayor, in the event that the person so removed (in particular, a senior citizen) suffered injury as a consequence;
- 6 The Mayor does not have such powers under the Local Government Act, the Police Act or any other statutory or legislative enactment;
- 7 It is not in the best interest of open and accountable Government and the City's relationship with its ratepayers, particularly senior citizens, for senior citizens to be treated in the manner in which this person was treated by the Mayor during public question time on Tuesday, 20 May 2003;
- 8 During the comments made by the Mayor shortly after the incident, he made it clear that he was well aware of the identity of the person that he was dealing with;
- 9 It should have been unnecessary for me to have pleaded with the Mayor, on behalf of the ratepayers, that the Mayor allow the person concerned to remain in the Public Gallery and for me to raise the concerns I had regarding the impact of a forced physical removal from the Public Gallery would have upon the health of the person concerned;
- 10 Several ratepayers who attended at the meeting advised me afterwards that they were disappointed with the Mayor's apparent selective treatment in terms of how he dealt with other interjectors and hecklers during Public Question Time. They alleged to me that the Mayor went very soft on the members of his support team who regularly attend Council Meetings and believe that the Mayor knowingly and deliberately singled out Mr Privilege for special discriminatory treatment;
- 11 As Mr Cusack noted immediately after the incident, the actions of the Mayor were quote, "*a bit premature, Don*", unquote.

OFFICER'S COMMENT

The Chairperson of a Council Meeting does not possess any powers to forcefully remove any member of the Council, employee or member of the public from the premises. It is suggested that no person should be forcefully removed from the Chamber by a member of the Council, regardless of a direction by the Mayor/Chairperson or a decision of the Council.

If a situation was to arise where the business of the Council was not to be continued due to the behaviour of a member of the public, the meeting should be then adjourned or closed in accordance with the standing orders and then contact should be made with the relevant authorities for the necessary assistance.

VOTING REQUIREMENT

Simple Majority

Mayor Carlos ruled this Motion **OUT OF ORDER**

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:

“Mr Mayor, you have ruled it out of order but the whole point is as you have now acknowledged after receiving legal advice, your actions on that night were totally out of order. You never had the power you said you had, despite the question of a member of the public referring you back to an 1890 Court Case to authorise you to use force on senior citizens. I think it is a pretty crook day in Council when we have to trawl around back to the 18th Century to look for law to justify removing a disabled, blind war veteran from the Council chamber.”

Discussion ensued.

Cr Hart entered the Chamber at this point, the time being 2318 hrs.

C109-06/03 NOTICE OF MOTION NO 5 – CR M O'BRIEN – 10 OCEANSIDE PROMENADE, MULLALOO

In accordance with Clause 3.12 of the Standing Orders Local Law, Cr M O'Brien has given notice of his intention to move the following motion at the Council meeting to be held on 17 June 2003:

That:

- 1 All dealings between the City of Joondalup and Rennet Pty Ltd are suspended forthwith, until final determinations are concluded in proceedings which relate in any manner to the site at 10 Oceanside Promenade, Mullaloo and/or which are before the Town Planning Appeals Tribunal and/or the Inquiry by the Minister for Planning and*

Infrastructure, under the provisions of Section 18.2 of the Town Planning and Development Act 1928 and/or the Supreme Court of Western Australia Matter CIV 1285 of 2003 and/or any actions or other proceedings relating to the said site; and

- 2 *the suspension includes dealings by the Elected Members and the employees of the City of Joondalup; and*
- 3 *this determination by the Council be communicated to Rennet Pty Ltd's solicitors by Council's solicitors Watts and Woodhouse; and*
- 4 *while the suspension as Stay of Proceedings is in place, nothing shall prevent Rennet's solicitors communicating with Watts and Woodhouse while Watts and Woodhouse are acting on instructions for and behalf of the City of Joondalup in regard to the current proposed development on the aforementioned site and/or any new development or building application that Rennet Pty Ltd or any other persons may propose for the site."*

OFFICER'S COMMENT

While it would be possible to work within the terms of this motion for the 3 key matters which are currently before the City there would be additional costs and operational difficulties. Such a requirement could add to the time, and therefore legal costs associated with the planning appeal.

A difficulty may arise where the owner, for example Rennet Pty Ltd, may apply for additional approvals or seek communication on new matters. The most likely examples are the foreshadowed demolition licence application and building licence application, which are expected to be lodged shortly. In these cases, and for some others, the City has a duty to process and discharge duties under relevant legislation. Should Rennet Pty Ltd lodge an application for a building licence and no response is made by the City, within the 35 day statutory period, the applicant could appeal the matter as a deemed refusal and the Minister uphold the appeal and instruct Council to issue a building licence. This would deny the Council having any input into the final plans. The effective veto upon communication with Rennet would restrict the City in carrying out its day to day duties and in meeting its statutory obligations.

Rennet would be represented by the architect and a number of sub-consultants in the Building Licence Application, and protracted dialogue would be required to ensure the structure conforms to the Building Codes and related legislation.

The Council should be aware that if the recommendation is agreed, this practice would have an impact upon legal fees incurred, the extent of which would be difficult to quantify at this stage.

VOTING REQUIREMENT

Simple Majority

MOVED Cr O'Brien SECONDED Cr Hollywood that:

- 1 All dealings between the City of Joondalup and Rennet Pty Ltd are suspended forthwith, until final determinations are concluded in proceedings which relate in any manner to the site at 10 Oceanside Promenade, Mullaloo and/or which are before the Town Planning Appeals Tribunal and/or the Inquiry by the Minister for Planning and Infrastructure, under the provisions of Section 18.2 of the Town Planning and Development Act 1928 and/or the Supreme Court of Western Australia Matter CIV 1285 of 2003 and/or any actions or other proceedings relating to the said site; and**
- 2 the suspension includes dealings by the Elected Members and the employees of the City of Joondalup; and**
- 3 this determination by the Council be communicated to Rennet Pty Ltd's solicitors by Council's solicitors Watts and Woodhouse; and**
- 4 while the suspension as Stay of Proceedings is in place, nothing shall prevent Rennet's solicitors communicating with Watts and Woodhouse while Watts and Woodhouse are acting on instructions for and behalf of the City of Joondalup in regard to the current proposed development on the aforementioned site and/or any new development or building application that Rennet Pty Ltd or any other persons may propose for the site.**

Discussion ensued.

The Motion was Put and

CARRIED (7/5)

In favour of the motion: Mayor Carlos, Crs Caiacob, Hart, Hollywood, O'Brien, Prospero and Walker
Against the motion: Crs Baker, Brewer, Gollant, Kimber and Mackintosh

C110-06/03 NOTICE OF MOTION NO 6 – CR A WALKER – RANGE OF MEMBERSHIPS - CRAIGIE LEISURE CENTRE

In accordance with Clause 3.12 of the Standing Orders Local Law, Cr A Walker has given notice of her intention to move the following motion at the Council meeting to be held on 17 June 2003.

“That the City, BY AN ABSOLUTE MAJORITY, introduces a 10% discount on gym memberships at the Craigie Leisure Centre to all new or renewing members of the community who are resident of the City of Joondalup and are in possession of a State or Commonwealth seniors or pension card.

The aforementioned discount to persons in possession of a State or Commonwealth seniors or pension card is considered on an interim measure until such time as Council has been able to consider recommendations from the administration with regards to a formal policy relating to the setting of fees and charges and the management of community facilities.

Council advertises the proposed new change in accordance with Section 6.19 of the Local Government Act 1995.”

Reason for Motion:

Cr Walker is the Chairperson of the Seniors Interest Advisory Committee who has received items of correspondence regarding the changes to membership fees from Mr Davenport (Association of Independent Retirees) and Mr Ron de Gruchy.

OFFICER'S COMMENT

The City does not presently have a policy with regards to the discounting of fees and charges to specific sections of the community. The City's officers have been working towards a review regarding the discounting of fees and charges at all of the City's leisure facilities. A proposal regarding the review of all policies regarding fees and charges which is inclusive of issues relating to discounting is due to be considered by the Executive at its next meeting.

A report outlining the recommendations regarding the proposed review process is to be forwarded to the Council. Through the provision of all the information available the Council will be able to make an informed decision as to the most beneficial long term way to proceed regarding this matter.

VOTING REQUIREMENTS

Absolute Majority

MOVED Cr Walker SECONDED Cr Gollant that the City introduces a 10% discount on gym memberships at the Craigie Leisure Centre to all new or renewing members of the community who are resident of the City of Joondalup and are in possession of a State or Commonwealth seniors or pension card.

The aforementioned discount to persons in possession of a State or Commonwealth seniors or pension card is considered on an interim measure until such time as Council has been able to consider recommendations from the administration with regards to a formal policy relating to the setting of fees and charges and the management of community facilities.

Council advertises the proposed new change in accordance with Section 6.19 of the Local Government Act 1995.

Discussion ensued.

The Motion was Put and

**CARRIED BY AN
ABSOLUTE MAJORITY (12/0)**

In favour of the Motion: Mayor Carlos, Crs Caiacob, Hart, Hollywood, O'Brien, Prospero, Walker, Baker, Brewer, Gollant, Kimber and Mackintosh

C111-06/03 MOTION TO LIE ON THE TABLE NO 1 - REVIEW OF CORPORATE POLICY MANUAL - [07032, 26176, 13399]

At the Council meeting held on 27 May 2003 the following motions and amendments were moved in relation to Item CJ108 - 05/03:

MOVED Cr Kimber, SECONDED Cr Prospero that Council:

- 1 *DELETES Policy 2.6.3 Public Participation and ADOPTS replacement Policy 2.6.3 – Community Consultation as detailed in Attachment 1 to Report CJ108-05/03;*
- 2 *AMENDS the following Policies as detailed in Attachment 1 to Report CJ108-05/03:*
 - *2.1.5 - Selective Voluntary Severance*
 - *2.2.5 - Council Chamber - Use of*
 - *2.2.6 - Recording of Proceedings*
 - *2.2.7 - Acknowledgement of Service - Elected Members*
 - *2.2.13 - Payment of Fees, Allowances and Expenses and the provision of facilities to the Mayor, Deputy Mayor and Councillors*
 - *2.3.2 - Communications*
 - *2.3.3 – Use of Common Seal and the Signatories for Contract Execution*
 - *2.3.5 - Online Services*
 - *2.4.1 - Accounting Policy*
 - *2.4.2 - Investment Policy*
 - *2.5.1 – Commercial Usage of Beachfront and Beach Reserves*
 - *2.5.2 – Procurement of Council Buildings*
 - *2.5.3 – Council Vehicles – Mayor and Council Officers*
 - *2.5.4 – Official Vehicles – Use of*
 - *2.5.5 - Consent to Alter Council Leased Premises*
 - *2.5.6 – Disposal of Surplus Personal Computers*
 - *2.5.7 - Purchasing Goods and Services*
 - *3.1.1 - Child Care Centres*
 - *3.1.5 - Nomenclature - Public Facilities*
 - *3.2.5 - Design Guidelines for Waterview Estate, Kingsley*
 - *3.2.7 - Pedestrian Accessways*
 - *4.2.2 - Public Online Service Provisions*
 - *5.1.1 - Waste Management*
 - *5.5.1 - Burning of Garden Refuse and Cleared Vegetation*

AMENDMENT MOVED Cr Baker, SECONDED Cr Kimber that the following amendments be made to the Policy Manual:

- *Policy 2.2.6: Paragraph 7: Delete “at the sole discretion of the Mayor or Chairperson” and replace with “determined by an absolute majority of Councillors”;*
- *Policy 2.2.13: Part 1, Governance: Section 2.2. Paragraph (a) be deleted and substituted with the words “The Mayor be entitled to claim*

mileage at the agreed Local Government Rate for the use of his own personal vehicle”;

- *Policy 2.2.13: Part 1, Governance: Section 2.2. Paragraph (b) be deleted;*
- *Policy 2.2.13: Part 4, Payment of Fees and Allowances: 4.3. Delete “ the maximum” and replace with “25% of the maximum” ;*
- *Policy 2.2.13: 4.5: Paragraph (2) to remain within the Policy;*
- *Policy 2.2.13: 5.6 – Payment of Conference and Training Costs: Paragraph (5) delete “Business Class” and replace with “economy class”;*
- *Policy 2.5.3: Delete the first two paragraphs relating to the Mayor;*
- *Policy 2.5.4: Delete reference to use by Mayor.*

The following procedural motion was then moved:

MOVED Cr Walker SECONDED Cr Caiacob, that in accordance with Clause 5.4 of the City’s Standing Orders Local Law, the following Amendment Lie on the Table pending the holding of a workshop on the Policy Manual:

“AMENDMENT MOVED Cr Baker, SECONDED Cr Kimber that the following amendments be made to the Policy Manual:

- *Policy 2.2.6: Paragraph 7: Delete “at the sole discretion of the Mayor or Chairperson” and replace with “determined by an absolute majority of Councillors”;*
- *Policy 2.2.13: Part 1, Governance: Section 2.2. Paragraph (a) be deleted and substituted with the words “The Mayor be entitled to claim mileage at the agreed Local Government Rate for the use of his own personal vehicle”;*
- *Policy 2.2.13: Part 1, Governance: Section 2.2. Paragraph (b) be deleted;*
- *Policy 2.2.13: Part 4, Payment of Fees and Allowances: 4.3. Delete “ the maximum” and replace with “25% of the maximum” ;*
- *Policy 2.2.13: 4.5: Paragraph (2) to remain within the Policy;*
- *Policy 2.2.13: 5.6 – Payment of Conference and Training Costs: Paragraph (5) delete “Business Class” and replace with “economy class”;*
- *Policy 2.5.3: Delete the first two paragraphs relating to the Mayor;*
- *Policy 2.5.4: Delete reference to use by Mayor.”*

The Motion to Lie on the Table was Put and

CARRIED

At the Council meeting held on 27 May 2003, Mayor Carlos declared a financial interest in CJ108-05/03 – Review of Corporate Policy Manual as it related to the use of the Mayoral Car.

Standing Orders Local Law, Clause 5.4 – The Motion Lie on the Table:

Clause 5.4 states:

If a motion that the motion lie on the table is carried debate on that motion shall not be resumed until a motion has been passed to take the motion from the table.

On a motion for the laying of the motion on the table being carried, a record shall be taken of all those who have spoken on the motion under debate and they shall not be permitted to speak on any resumption of the debate on that motion, but this does not deprive the mover of the motion of the right of reply.

(Note: The Minutes of the Council meeting held on 27 May 2003 recorded that:

- *no member spoke on the Motion Moved by Cr Kimber and seconded by Cr Prospero;*
- *Cr Baker spoke on the Amendment Moved by Cr Baker and seconded by Cr Kimber.)*

Any motion that was subject to a resolution that the motion lie on the table and not dealt with subsequently at the same meeting, shall be included in the agenda for the next ordinary meeting.

A member moving the taking of the motion from the table shall be entitled to speak first upon the resumption of the debate thereon.

Prior to any debate occurring on this item, a motion is required to be carried to take the motion from the table.

OFFICER'S COMMENT

It is proposed that a workshop on the Policy Manual be conducted at a future Strategy Session. It is therefore appropriate that the Policy Manual lie on the table pending the holding of that workshop.

This Motion was left to LIE ON THE TABLE

C112-06/03 MOTION TO LIE ON THE TABLE NO 2 – NOTICE OF MOTION – CR M O'BRIEN –MUNICIPAL TAX (RATES) - [38634] [20086]

At the Council meeting held on 27 May 2003 the following motion was moved in relation to Item C84-05/03:

MOVED Cr Kimber SECONDED Cr Rowlands, that in accordance with Clause 5.4 of the City's Standing Orders Local Law, the following Motion Lie on the Table:

- 1 *“That for the 2003 - 2004 Budget Council determines that, pursuant Section 41. and Section 112. of the Health Act 1911, an annual rate shall be set for the provision for removal of refuse and cleansing works;*

- 2 *That for the 2003 -2004 Budget Council determines that the Minimum Payment is abolished, thereby no use of Section 6.35 of the Local Government Act 1995 is made in sourcing additional “flat tax” revenue from low value properties in addition to the proportional tax (rates) that such properties attract from the Valuer General’s valuation set for such properties.”*

The Motion to Lie on the Table was Put and CARRIED (10/4)

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

Standing Orders Local Law, Clause 5.4 – The Motion Lie on the Table:

Clause 5.4 states:

If a motion that the motion lie on the table is carried debate on that motion shall not be resumed until a motion has been passed to take the motion from the table.

On a motion for the laying of the motion on the table being carried, a record shall be taken of all those who have spoken on the motion under debate and they shall not be permitted to speak on any resumption of the debate on that motion, but this does not deprive the mover of the motion of the right of reply.

(Note: The Minutes of the Council meeting held on 27 May 2003 recorded that no member spoke on the Notice of Motion submitted by Cr O’Brien)

Any motion that was subject to a resolution that the motion lie on the table and not dealt with subsequently at the same meeting, shall be included in the agenda for the next ordinary meeting.

A member moving the taking of the motion from the table shall be entitled to speak first upon the resumption of the debate thereon.

Prior to any debate occurring on this item, a motion is required to be carried to take the motion from the table.

The Notice of Motion and the reasons for this motion as submitted by Cr O’Brien, are reproduced below:

In accordance with Clause 3.12 of the Standing Orders Local Law, Cr M O’Brien has given notice of his intention to move the following motion at the Council meeting to be held on 27 May 2003:

- 1 *“That for the 2003 - 2004 Budget Council determines that, pursuant Section 41. and Section 112. of the Health Act 1911, an annual rate shall be set for the provision for removal of refuse and cleansing works;*

- 2 *That for the 2003 -2004 Budget Council determines that the Minimum Payment is abolished, thereby no use of Section 6.35 of the Local Government Act 1995 is made in sourcing additional “flat tax” revenue from low value properties in addition to the proportional tax (rates) that such properties attract from the Valuer General’s valuation set for such properties.”*

Reason for Motion:

IN SUPPORT OF THIS NOTICE OF MOTION, CR O’BRIEN STATES AS FOLLOWS:

“The reasons for the above is to fairly apportion the Health Act costs in proportion to the Valuer General’s valuations and to abolish the discriminatory “flat taxing” of properties thereby complying with the similar abolition of the Commissioner Imposed “\$27.00 flat tax” that was imposed on Joondalup Properties in 1999 and which was abolished following the result of the 2001 Joondalup Municipal Referendum.

The added position of advantage to the Municipality is that the State Government Treasury pays the Municipality 50% of the amount the Municipality Bills its Pensioners for any “Rates” but doesn't pay the Municipality 50% of any “flat” Health Act charge.

For Councillors assistance the relevant sections of both Acts are included below;

HEALTH ACT 1911 - SECT 41

41. Sanitary rate

Every local government may from time to time, as occasion may require, make and levy as aforesaid and cause to be collected an annual rate for the purpose of providing for the proper performance of all or any of the services mentioned in section 112, and the maintenance of any sewerage works constructed by the local government under Part IV

Such annual rate shall not exceed –

- (a) 12 cents in the dollar on the gross rental value; or
- (b) where the system of valuation on the basis of the unimproved value is adopted, 3 cents in the dollar on the unimproved value of the land in fee simple:

Provided that the local government may direct that the minimum annual amount payable in respect of any one separate tenement shall not be less than \$1.

Provided also, that where any land in the district is not connected with any sewer, and a septic tank or other sewerage system approved by the local government is installed and used upon such land by the owner or occupier thereof for the collection, removal, and disposal of night soil, urine, and liquid wastes upon such land, the local government may by an entry in the rate record exempt such land from assessment of the annual rate made and levied under this section, and, in lieu of such annual rate, may, in respect of such land, make an annual charge under and in accordance with section 106 for the removal of refuse from such land.

[Section 41 amended by No. 5 of 1933 s.2; No. 38 of 1933 s.2; No. 25 of 1950 s.5; No. 113 of 1965 s.4(1); No. 2 of 1975 s.3; No. 76 of 1978 s.51; No. 14 of 1996 s.4.]

HEALTH ACT 1911 - SECTION 112

112 - Local government to provide for removal of refuse and cleansing works (1) A local government may, and when the Executive Director, Public Health so requires, shall undertake or contract for the efficient execution of the following works within its district, or any specified part of its district:

- (a) The removal of house and trade refuse and other rubbish from premises.
- (b) The supply of disinfectants for the prevention or control of disease, and pesticides for the destruction of pests.
- (c) The cleansing of sanitary conveniences and drains.
- (d) The collection and disposal of sewage.
- (e) The cleaning and watering of streets.
- (f) The providing, in proper and suitable places, of receptacles for the temporary deposit of refuse and rubbish collected under this section.
- (g) The providing of suitable places, buildings, and appliances for the disposal of refuse, rubbish and sewage.
- (ga) The construction and installation of plant for the disposal of refuse, rubbish and sewage.
- (h) The collection and disposal of the carcasses of dead animals:

Provided that it shall not be lawful to deposit nightsoil in any place where it will be a nuisance or injurious or dangerous to health.

- (2) Any local government which has undertaken or contracted for the efficient execution of any such work as aforesaid within its district or any part thereof may by local law prohibit any person executing or undertaking the execution of any of the work undertaken or contracted for within the district or within such part thereof as aforesaid, as the case may be, so long as the local government or its contractor executes or continues the execution of the work or is prepared and willing to execute or continue the execution of the work.
- (3) After the end of the year 1934 no nightsoil collected in one district shall be deposited in any other district, except with the consent of the local government of such other district, or of the Executive Director, Public Health.

[Section 112 amended by No. 17 of 1918 s.11; No. 30 of 1932 s.17; No. 45 of 1954 s.3; No. 38 of 1960 s.3; No. 102 of 1972 s.9; No. 28 of 1984 s.45; No. 14 of 1996 s.4; No. 28 of 1996 s.8.]

LOCAL GOVERNMENT ACT 1995 - SECT 6.35**6.35. Minimum payment**

- (1) Subject to this section, a local government may impose on any rateable land in its district a minimum payment which is greater than the general rate which would otherwise be payable on that land.
- (2) A minimum payment is to be a general minimum but, subject to subsection (3), a lesser minimum may be imposed in respect of any portion of the district.
- (3) In applying subsection (2) the local government is to ensure the general minimum is imposed on not less than 50% of the number of separately rated properties in the district on which a minimum payment is imposed.
- (4) A minimum payment is not to be imposed on more than the prescribed percentage of the number of separately rated properties in the district unless the general minimum does not exceed the prescribed amount.
- (5) If a local government imposes a differential general rate on any land on the basis that the land is vacant land it may, with the approval of the Minister, impose a minimum payment in a manner that does not comply with subsections (2), (3) and (4) for that land.
- (6) For the purposes of this section a minimum payment may be applied separately, in accordance with the principles set forth in subsections (2), (3) and (4) -
 - (a) to land rated on gross rental value;
 - (b) to land rated on unimproved value; and
 - (c) to each differential rating category where a differential general rate is imposed.”

OFFICER’S COMMENT**Domestic Refuse Charge**

The domestic refuse charge is currently a user-based charge of \$122 per service provided with total budgeted revenue of \$6.5m in the 2002/03 year. The proposed change will include the funding for these services in the general rates. This will result in an increase in the rate-in-the-dollar and redistribute the costs of providing those services across all ratepayers according to the value of the property.

Minimum Payments

The distribution of general rates is in accordance with property values. The Minimum Payment (set at \$450 for the 2002/03 year and is applicable to 9,477 properties) recognises that the City provides a base level of service which is available to all properties. As the total amount to be funded from general rates remains the same, the removal of the Minimum Payment criteria will result in an increase in the rate-in-the-dollar and redistribute the general rates across all ratepayers according to the value of the property with ratepayers with higher GRV's having to compensate for those with lower GRVs.

Recommendation

These items have been included for discussion in the Budget Committee agenda and it is recommended the issues be addressed fully as part of the budget deliberations. Officers will prepare more detailed information to assist the Budget Committee in understanding the ramifications associated with these items.

VOTING REQUIREMENT

Simple Majority

This Motion was left to LIE ON THE TABLE

Cr P Kimber declared an interest that may affect his impartiality in Motion to Lie on the Table No 3- Notice of Motion – Mayor Carlos – Wanneroo Basketball Association as a family member is involved with the Wanneroo Basketball Association.

Director, Infrastructure and operations declared an interest that may affect his impartiality in Motion to Lie on the Table No 3- Notice of Motion – Mayor Carlos – Wanneroo Basketball Association as a relative of his is a member of the Wanneroo Basketball Association.

C113-06/03 MOTION TO LIE ON THE TABLE NO 3 - NOTICE OF MOTION – MAYOR CARLOS – WANNEROO BASKETBALL ASSOCIATION

At the Council meeting held on 27 May 2003 the following motion was moved in relation to Item C85-05/03:

MOVED Cr Kimber, SECONDED Cr Rowlands that in accordance with Clause 5.4 of the City's Standing Orders Local Law, the following Motion Lie on the Table:

“1 That Council amends its decision of 29 April 2003 relating to the Wanneroo Basketball Association Inc by deleting Clause 1 (b) as follows:

“1(b) The Wanneroo Basketball Association Inc. in return for the City writing off the Association's debt to the City, forgives and thereupon forever releases the City from any claim whatsoever the Association may have on the City relating to the area of land as initially leased and amended from time to time and including the stadium building.”

2 That Council deems the Audited Accounts for the period ending 31 December 2002 lodged with Council on 28 April 2003 as having been accepted and as having complied with the 45 days provision.”

The Motion to Lie on the Table was Put and

CARRIED (10/4)

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

Standing Orders Local Law, Clause 5.4 – The Motion Lie on the Table:

Clause 5.4 states:

If a motion that the motion lie on the table is carried debate on that motion shall not be resumed until a motion has been passed to take the motion from the table.

On a motion for the laying of the motion on the table being carried, a record shall be taken of all those who have spoken on the motion under debate and they shall not be permitted to speak on any resumption of the debate on that motion, but this does not deprive the mover of the motion of the right of reply.

(Note: The Minutes of the Council meeting held on 27 May 2003 recorded that no member spoke on the Notice of Motion submitted by Mayor Carlos)

Any motion that was subject to a resolution that the motion lie on the table and not dealt with subsequently at the same meeting, shall be included in the agenda for the next ordinary meeting.

A member moving the taking of the motion from the table shall be entitled to speak first upon the resumption of the debate thereon.

Prior to any debate occurring on this item, a motion is required to be carried to take the motion from the table.

The Notice of Motion and the reasons for this motion as submitted by Mayor Carlos, are reproduced below:

In accordance with Clause 3.12 of the Standing Orders Local Law, Mayor Carlos has given notice of his intention to move the following motion at the Council meeting to be held on 27 May 2003:

“1 That Council amends its decision of 29 April 2003 relating to the Wanneroo Basketball Association Inc by deleting Clause 1 (b) as follows:

“1(b) The Wanneroo Basketball Association Inc. in return for the City writing off the Association’s debt to the City, forgives and thereupon forever releases the City from any claim whatsoever the Association may have on the City relating to the area of land as initially leased and amended from time to time and including the stadium building.”

2 That Council deems the Audited Accounts for the period ending 31 December 2002 lodged with Council on 28 April 2003 as having been accepted and as having complied with the 45 days provision.”

REASON FOR MOTION

Mayor Carlos has submitted the following comments in support of his motion:

“Council has previously resolved on two separate occasions to write off the Association’s alleged debt subject to the provision of Audited Financial Statements for the periods ending 2000, 2001 and 2002. The Association complied with respect to the audited accounts for 2000 and 2001 by lodging those accounts with Council within the prescribed time. Additionally, the audited accounts for 1999 were also lodged with Council within the prescribed time, notwithstanding there was no requirement for the 1999 audited financial accounts to be lodged.

Council’s decision on 29 April 2003 placed a further condition on the write off of the Association’s alleged debt that is considered unnecessarily onerous.

Council’s decision eventuated from the perceived failure of the Association to provide its 2002 audited financial statements within the period of 45 days notwithstanding the 45th day was a public holiday. The statements were provided on the first business day after the 45 day provision had expired. It is unreasonable for Council to reject the audited accounts for 2002 on the first business day following the 45th day, given that in the ordinary course of business practice when a party is unable to comply due to a public holiday then the following business day is considered satisfactory.

The Interpretation Act 1984 sets out how time is calculated and notwithstanding the Act is applied to legislation, the Act is none the less also used as a guide in commercial practice.

Given the minor nature of the breach and what is ordinarily applied in commercial practice, it is considered unreasonable to place any further conditions on the write off of the Association’s debt and further, in order to resolve any ambiguity as to compliance, Council ought to confirm its acceptance of the audited financial accounts for 2002.”

OFFICER’S COMMENT

This matter was last considered by Council, at its meeting held on 29 April 2003 (Item C57-04/03 refers) where Council resolved as follows:

- “1 Council AGREES to write off the Wanneroo Basketball Associations Inc debt and other payments detailed in Council’s resolution 1 (a) (b) and (c) of item number “C23 – 03/03 Resolution of Wanneroo Basketball Association inc.” subject to:
- (a) a deed of agreement between the City and the Wanneroo Basketball Association Inc. outlining the details of what is proposed by the resolution;
 - (b) the Wanneroo Basketball Association Inc. in return for the City writing off the Association’s debt to the City, forgives and thereupon forever releases the City from any claim whatsoever the Association may have on the City relating to the area of land as initially leased and amended from time to time, and including the stadium building;

- 2 Council REQUESTS a report be prepared on the appropriateness or otherwise of the City adopting a policy that it shall not in future act as a lending authority for any sporting club or other external organisation or provide any guarantee for any loan raised by any sporting club or association;
- 3 the actions taken in relation to the Wanneroo Basketball Association Inc. in writing off its outstanding debt to the Council are a one off and do not set a precedent in the way other clubs and associations should expect to be treated by the City in the future. ”

Proposed amendment – deletion of clause 1(b)

Legal advice sought on the impact of the proposed amendment indicates that the Wanneroo Basketball Association would have to prove, quantify and value the actual damages it incurred, in order for it to initiate litigation for loss of quiet enjoyment of the leased land under the terms of the sub lease with the City. There is also some doubt as to whether the area of land and that part of the Basketball Stadium Building that encroaches into the Collier Pass Road Reserve, is part of the land sub leased from the City to the Association.

In light of the legal advice received it is considered that the risk of successful litigation by the Association against the City, for loss of quiet enjoyment of the sub leased land due to the construction works on the southern carriageway of Collier Pass, is minimal.

Given this scenario and the fact that Council previously waived the debt without this release, there is no significant objection raised to the removal of clause 1(b) as proposed.

Proposed amendment – additional new resolution

As no significant objection has been raised to the proposed amendment to delete Council’s resolution 1(b) and provided that deletion proceeds as proposed, it is considered unnecessary to proceed with the proposed additional amendment of clause number 2. Deletion of resolution 1(b) achieves the same result, in that the Associations debt is written off without condition other than preparation of a deed to record what is mutually understood by Council’s resolution.

VOTING REQUIREMENT

Simple Majority

MOVED Cr Hollywood SECONDED Cr Walker that the Motion be TAKEN FROM THE TABLE.

The Motion was Put and

CARRIED

MOVED Mayor Carlos SECONDED Cr Baker that Council:

- 1 AMENDS its decision of 29 April 2003 relating to the Wanneroo Basketball Association Inc by deleting Clause 1 (b) as follows:**

“1(b) The Wanneroo Basketball Association Inc. in return for the City writing off the Association’s debt to the City, forgives and thereupon forever releases the City from any claim whatsoever the Association may have on the City relating to the area of land as initially leased and amended from time to time and including the stadium building.”

- 2 DEEMS the Audited Accounts for the period ending 31 December 2002 lodged with Council on 28 April 2003 as having been accepted and as having complied with the 45 days provision.**

Discussion ensued.

The Motion was Put and

CARRIED (9/3)

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

Cr Hollywood stated his intention to declare a financial interest in Motion to Lie on the Table No 4 – Notice of Motion – Cr G Kenworthy as this is a matter concerning Cr Hollywood personally.

C114-06/03 **MOTION TO LIE ON THE TABLE NO 4 - NOTICE OF MOTION – CR G KENWORTHY - POTENTIAL BREACH OF STANDING ORDERS, CODE OF CONDUCT AND THE LOCAL GOVERNMENT ACT 1995, CR J HOLLYWOOD - [38535] [53558] [02154] [08122] [42750]**

Cr Gerry Kenworthy gave notice of his intention to move the following motion at the ordinary meeting of the Council to be held on 27 May 2003. The following elected members indicated their support as required by Clause 4.4 of the City’s Standing Orders Local Law:

Cr G Kenworthy
Cr C Baker
Cr P Rowlands
Cr C Mackintosh
Cr P Kimber
Cr A Patterson

At the Council meeting held on 27 May 2003 the following motion was moved in relation to Item C86-05/03:

MOVED Cr Kimber SECONDED Cr Rowlands, that in accordance with Clause 5.4 of the City's Standing Orders Local Law, the Confidential Item – Notice of Motion – Cr G Kenworthy – Potential Breach of Standing Orders, Code of Conduct and the Local Government Act 1995, Cr J Hollywood - Lie on the Table.

The Motion to Lie on the Table was Put and CARRIED (10/4)

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

At the Council meeting held on 27 May 2003, Cr Hollywood declared a financial interest in C86-05/03 – Notice of Motion – Cr G Kenworthy – Potential Breach of Standing Orders, Code of Conduct and the Local Government Act 1995, Cr J Hollywood – as this is a matter concerning Cr Hollywood personally.

Standing Orders Local Law, Clause 5.4 – The Motion Lie on the Table:

Clause 5.4 states:

If a motion that the motion lie on the table is carried debate on that motion shall not be resumed until a motion has been passed to take the motion from the table.

On a motion for the laying of the motion on the table being carried, a record shall be taken of all those who have spoken on the motion under debate and they shall not be permitted to speak on any resumption of the debate on that motion, but this does not deprive the mover of the motion of the right of reply.

(Note: The Minutes of the Council meeting held on 27 May 2003 recorded that no member spoke on the Notice of Motion submitted by Cr Kenworthy)

Any motion that was subject to a resolution that the motion lie on the table and not dealt with subsequently at the same meeting, shall be included in the agenda for the next ordinary meeting.

A member moving the taking of the motion from the table shall be entitled to speak first upon the resumption of the debate thereon.

Prior to any debate occurring on this item, a motion is required to be carried to take the motion from the table.

The Notice of Motion submitted by Cr Kenworthy was Marked Confidential - Not For Publication

A full report has been provided to Elected Members under separate cover.

This Motion was left to LIE ON THE TABLE

**C115-06/03 MOTION TO LIE ON THE TABLE NO 5 - NOTICE OF MOTION –
CR P ROWLANDS – MATTERS RELATING TO THE CHIEF
EXECUTIVE OFFICER**

At the Council meeting held on 27 May 2003 the following motion was moved in relation to Item C87-05/03:

MOVED Cr Kimber, SECONDED Cr Rowlands, that in accordance with Clause 5.4 of the City's Standing Orders Local Law, the Confidential Item – Notice of Motion – Cr P Rowlands – Matters Relating to the Chief Executive Officer - Lie on the Table.

The Motion to Lie on the Table was Put and CARRIED (10/4)

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

Standing Orders Local Law, Clause 5.4 – The Motion Lie on the Table:

Clause 5.4 states:

If a motion that the motion lie on the table is carried debate on that motion shall not be resumed until a motion has been passed to take the motion from the table.

On a motion for the laying of the motion on the table being carried, a record shall be taken of all those who have spoken on the motion under debate and they shall not be permitted to speak on any resumption of the debate on that motion, but this does not deprive the mover of the motion of the right of reply.

(Note: The Minutes of the Council meeting held on 27 May 2003 recorded that no member spoke on the Notice of Motion submitted by Cr Rowlands)

Any motion that was subject to a resolution that the motion lie on the table and not dealt with subsequently at the same meeting, shall be included in the agenda for the next ordinary meeting.

A member moving the taking of the motion from the table shall be entitled to speak first upon the resumption of the debate thereon.

Prior to any debate occurring on this item, a motion is required to be carried to take the motion from the table.

The Notice of Motion submitted by Cr Rowlands was Marked Confidential - Not For Publication

A full report has been provided to Elected Members under separate cover.

This Motion was left to LIE ON THE TABLE

C116-06/03 REQUEST FOR SECOND PUBLIC QUESTION TIME – [01122 02154]

MOVED Cr Hollywood, SECONDED Cr Walker that, in accordance with Clause 3.2 of the City’s Standing Orders Local Law, a second public question time be permitted prior to the close of this evening’s meeting in order that members of the public may ask questions in relation to decisions made at this meeting.

The Motion was Put and

CARRIED

SECOND PUBLIC QUESTION TIME

Mr S Magyar, Heathridge:

Q1 Re: CJ138-06/03 - Proposed Childcare Centre, cnr Wanneroo Road and Gorman Street, Greenwood

Is it correct that it was not voted to refuse, nor was it voted to approve this application, so what is the status now of this particular application?

A1 No decision has been made. If it is out of time, one option for the applicant is to appeal.

Q2 Will the officers be bringing this issue back to Council?

A2 That is an option open to the Administration.

Mr M Sideris, Mullaloo:

Re: Questions submitted to the Council Meeting held 17 June 2003 and responses given in relation to capital expenditure proposals or cost benefit analysis:

Q1 In the report regarding the Craigie Leisure Centre it clearly indicates that the design brief has highlighted in dot point format. Dot point 3 talks about a whole of life costing used as a basis for the business case to support the recommendations. What is the difference between a capital expenditure proposal or a whole of life costing, or a cost benefit analysis?

Q2 Where is the whole of life costing in the report for Craigie Leisure Centre?

Crs Mackintosh and Baker left the Chamber, the time being 2350 hrs.

Q3 Are Councillors and Council officers aware that on Monday 26 May 2003, Rennet Pty Ltd through its solicitors lodged to the Town Planning Appeals Tribunal for a Directions Hearing to continue with the appeal process and then that same evening came to Council and gave a presentation to new Councillors, and therefore possibly compromised the position of Councillors?

Q1-3 These question will be taken on notice.

Mrs M Zakrevsky, Mullaloo:

Q1 In relation to Notice of Motion No 2 – Cr Baker and comments made earlier this evening with regard to this issue, I understand you the Mayor have no power to do anything except to close the meeting.

If somebody is in the gallery and is aggressive, violent (through perhaps alcohol), then I understand the Councillors and the Mayor close the meeting and walk out. What are members of the public supposed to do in a situation such as this?

A1 *Response by Mayor Carlos:* A number of Councils within WA have had similar situations of unruly behaviour. At the moment the Director General of the Local Government Department has formed a committee to try and do something in this regard. This committee met on Monday 23 June 2003 and the Cities of Wanneroo and Joondalup sent representatives. This committee will be meeting three or four times in an effort to put forward recommendations of how this problem can be solved. The action the Council can take today is to close the meeting and call Police.

Response by Cr Prospero: If the Council feels the safety of the public is of concern, the person could be isolated and the public encouraged to join Council members and staff in the restricted area until such time as the person is removed.

DATE OF NEXT MEETING

The next meeting of the Council has been scheduled for **7.00 pm on Tuesday, 8 July 2003** to be held in the Council Chamber, Joondalup Civic Centre, Boas Avenue, Joondalup

CLOSURE

There being no further business, the Mayor declared the Meeting closed at 2353 hrs; the following elected members being present at that time:

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