



**MINUTES OF COUNCIL MEETING  
HELD ON 8 JULY 2003**

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# CITY OF JOONDALUP

## MINUTES OF COUNCIL MEETING HELD IN COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP , ON TUESDAY, 8 JULY 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 2133 hrs to 2136 hrs; and from 2153 hrs to 2219 hrs</i>
Cr P KIMBER	Lakeside Ward	
Cr T BREWER	Marina Ward	<i>Absent from 2051 hrs to 2054 hrs</i>
Cr C BAKER	Marina Ward	<i>Absent from 2111 hrs to 2114 hrs</i>
Cr A NIXON	North Coastal Ward	<i>Absent from 1938 hrs to 1945 hrs; from 2028 hrs to 2034 hrs and from 2044 hrs to 2045 hrs</i>
Cr J F HOLLYWOOD, JP	North Coastal Ward	<i>Absent from 2028 hrs to 2034 hrs</i>
Cr A WALKER	Pinnaroo Ward	
Cr P ROWLANDS	Pinnaroo Ward	<i>to 2218 hrs; Absent from 2047 hrs to 2049 hrs</i>
Cr S HART	South Ward	
Cr M O'BRIEN, JP	South Ward	<i>Absent from 2026 hrs to 2027 hrs</i>
Cr G KENWORTHY	South Coastal Ward	<i>To 2304 hrs; Absent from 1938 hrs to 1945 hrs; from 2046 hrs to 2047 hrs; 2130 hrs to 2132 hrs and from 2256 hrs to 2258 hrs</i>
Cr J GOLLANT	South Coastal Ward	<i>Absent from 1951 to 2005 hrs; Absent from 2156 hrs to 2208 hrs and from 2216 hrs to 2217 hrs</i>
Cr M CAIACOB	Whitfords Ward	
Cr C MACKINTOSH	Whitfords Ward	<i>to 2317 hrs; Absent from 2153 hrs to 2155 hrs and from 2207 hrs to 2208 hrs</i>

#### Officers:

Chief Executive Officer:	D SMITH
Director, Planning & Community Development:	C HIGHAM
Director, Infrastructure & Operations:	D DJULBIC
Director, Corporate Services and Resource Management:	P SCHNEIDER

Manager Audit and Executive Services: K ROBINSON  
Manager, Strategic & Sustainable Development: R HARDY  
Manager, Human Resource Services: M LOADER  
Publicity Officer: L BRENNAN  
Committee Clerk: J HARRISON  
Minute Clerk: L TAYLOR

There were 45 members of the Public and 1 member of the Press in attendance.

### In Attendance

Mr Nick Manifis - Walman Software

### **PRESENCE OF TELEVISION CAMERA IN COUNCIL CHAMBER**

**MOVED Cr Kimber, SECONDED Cr Mackintosh that Council DOES NOT permit the Channel 7 cameraman to remain in the Council Chamber.**

To a query raised by Cr Kimber in relation to the presence of a cameraman in the Chamber, Mayor Carlos advised he had been approached in this regard and had given permission for this to occur.

Mayor Carlos advised he could not consider a motion at this time, as the first item on the agenda was Public Question Time.

**This Motion was not pursued.**

**MOVED Cr Kimber, SECONDED Cr Mackintosh that Council DISSENTS with the ruling of the Mayor.**

**This Motion was not pursued.**

### **PUBLIC QUESTION TIME**

**The following question, submitted by Mr R de Gruchy, Sorrento, was taken on notice at the Meeting of Council held on 17 June 2003:**

*Q1 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.*

A1 Full details of Council's Reserve Accounts for the 2002/03 year are contained in the budget papers and are available at the City's Libraries. The information requested has been extracted from the 2002/03 budget as follows:

### Restricted Assets - Reserves

The following reserves have restrictions imposed on them by regulations or other externally imposed requirements:

	Year Opened	Actual 2001/02	Budget 2002/03
Asset Replacement Reserve	1986/87	7,034,398	536,898
Cash in Lieu of Parking Reserve	1993/94	419,551	373,551
Cash in Lieu of Public Open Space Reserve	1993/94	704,311	726,311
Leisure Centre Capital Improvements Reserve	2001/02	14,445	14,445
Domestic Cart – Refuse Collection Reserve	1990/91	2,333,125	2,801,325
Heavy Vehicle Replacement Reserve	1996/97	578,926	723,091
Hodges Drive Drainage Reserve	1988/89	179,309	188,309
Joondalup City Centre Public Parking Reserve	1995/96	455,373	15,818
Light Vehicle Replacement Reserve	1996/97	924,799	539,133
Ocean Reef Boat Launching Facility Reserve	1998/99	51,266	53,766
Performing Arts Facility Reserve	2000/01	2,044,774	3,146,774
Plant Replacement Reserve	1996/97	563,086	530,568
Section 20A Land Reserve (restricted)	1993/94	28,962	30,462
Town Planning Scheme No 10 (Revoked) Reserve	1993/94	986,539	508,235
Wanneroo Bicentennial Trust Reserve	1993/94	26,713	0
		<b>16,345,577</b>	<b>10,188,686</b>

**The following questions, submitted by Mr K Zakrevsky, Mullaloo, were taken on notice at the Meeting of Council held on 17 June 2003:**

- *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:*

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

*Are Councillors aware of these situations?*

**A1** This question has been circulated to elected members. Cr Gollant has responded to Mr Zakrevsky directly.

- 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 Given that the question is directed at individual elected members, it is not possible to provide a collective response from the Administration.
- Q3 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.*
- A3 The City is aware of the requirements of delegated authority provisions under the Local Government Act 1995. Delegated authority issued to officers in accordance with the Town Planning Act and District Planning Scheme allows for elected members to ‘call in’ matters to allow the full Council to give consideration.

**The following question, submitted by Mr M Collier, Woodvale, was taken on notice at the Meeting of Council held on 17 June 2003:**

- *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 The responsibility rests with Western Power for the provision of power and maintenance service for the City’s street lighting network.

In relation to everyday faults and repairs, the City utilises its City Watch service to report any problem locations and also the general public to provide feedback on faults and repairs.

In the last six months, the City has reported 623 maintenance reports to Western Power for its attention. Western Power has advised that faulty lights, once reported, are fixed within 3 to 5 working days.

Western Power provides a Free Call service 24 hours a day for the general public to report faulty street lights and poles. The number is 1800 622 008.

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

The following questions were taken 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.

- Questions submitted to Council meeting held on 17 June 2003:

1 question submitted by Ms M Moon;  
2 questions submitted by Mr K Zakrevsky.

Council considered the issue of the employment of the CEO at its meeting held on 24 June 2003. A copy of Council's decision C98-06/03 - Employment of the Chief Executive Officer of the City of Joondalup has been forwarded to those persons listed above.

**The following question was submitted by Ms M Moon, Greenwood:**

*Q1 Did the CEO state he had academic and employment qualifications during the appointment process? If yes, does he have the certificates, documents and references to support his claims?*

A1 Council considered the issue of the employment of the CEO at its meeting held on 24 June 2003. A copy of Council's decision C98-06/03 - Employment of the Chief Executive Officer of the City of Joondalup has been forwarded to Ms Moon.

**The following question, submitted by Ms M Moon, Greenwood, on behalf of South Ward Ratepayers Association, was taken on notice at the Meeting of Council held on 17 June 2003:**

*Q1 What is a centre and how is the size of a centre determined?*

A1 Schedule 3 of District Planning Scheme No 2 lists the shopping centres within the municipality and nominates the Net Lettable Area for each.

**The following questions, submitted by Mr M Sideris, Mullaloo, were taken on notice at the resumed Meeting of Council held on 24 June 2003:**

*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?*

- A1 A capital expenditure proposal provides details of the overall capital cost associated with the particular project in question.

Whole of life costing in this particular instance relates to the operational/running costs of individual components of the project over the effective life of the asset.

A cost benefit analysis shows the relationship between the capital cost of the project versus the overall return on that particular investment. The overall return not being limited to financial indicators.

- Q2 *Where is the whole of life costing in the report for Craigie Leisure Centre?*

- A2 There is no specific whole of life costing contained in the report for the Craigie Leisure Centre. The Project Team, in developing the various options and determining the recommendations, have taken into account comparative whole of life costs of various critical components of the proposals and related these back to the project brief and needs analysis. This has assisted in determining the total capital and operating costs of each option.

- 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?*

- A3 It is not known whether all Councillors and officers were aware of the timing of the request for a Directions Hearing. However the City is aware that Rennet Pty Ltd wish to continue their planning appeal. The presentation by Rennet Pty Ltd to Councillors is unlikely to compromise the position of Councillors. In addition, past experience shows that dialogue between the parties to the appeal is encouraged by the Town Planning Appeals Tribunal.

**The following questions were submitted by Mr M Baird, Duncraig:**

- Q1 *Why is this the Council that talks the talk but can't walk the walk? In December 2000, the Council adopted the recommendation of the Minister for Local Government to provide copies of the draft Five Year Capital Works Program in conjunction with the Principal Activity Plan to "provide valuable information to the community of individual projects which may impact on them in the future." The logic being that "the level of information contained in the Principal Activity Plan and the use of closed briefing sessions for the formation of the Annual Budget, limited the amount of community participation in the Principal Activity Plan and Budget processes."*

*Two weeks before the cut-off date for community input to the Principal Activity Plan this year and, not only are there no copies of the Five Year Capital Works Program in local libraries, but there is a reluctance to continue a process that has worked for the last two years.*

- A1 It is assumed that Mr Baird is referring to the Minister's letter dated 19 December, 2000 responding to queries pertaining to the Principal Activity Plan and Annual Budget processes.

The Department's assessment in part noted that "the City prepares a comprehensive five year capital works program as part of the budget documentation. If this document was available at an early stage of the decision making process, as part of the principal activity process, it would provide valuable information to the community of individual projects which may impact on them in the future".

Whilst there is no legislative requirement nor Council decision to make the Five Year Capital Works documentation available as part of the Principal Activity Planning public comment process, administration are supportive of making this document available following due consideration by Council as part of the budget process. On that basis, it is noted that the City has not been in a position to exhibit this document in parallel with Principal Activity Plan as it was only considered by Council's Budget Committee on 26 June 2003.

Draft documents have now been made available at all of the City's libraries and Customer Service Centres as from 7 July, 2003.

- Q2 *Accuracy of Council information in the adopted Five Year Capital Works Plan is obviously important. Would the officer ultimately responsible for this document advise ratepayers:*

(a) *Why Merrifield Park (Project DPD010) is listed in 2002-2003 for installation of bore and reticulation at a cost of \$40,105, given that this park was reticulated years ago by developers?*

(b) *What happened to the \$40,105 earmarked in the 2002-2003 budget for this phantom project?*

- A2 Merrifield Park was listed in 2002/03 Capital Works Program with a budgetted amount of \$40,105. Works involved were provision of inground irrigation to 2.5 ha Public Open Space and Road Reserve along Northshore Drive, Kallaroo. This area was originally partially irrigated by the area developer, Whitfords Estates, with the system being dismantled in the late eighties/early nineties by the developer, thereby reverting this area to a dry linear open space. The original bore is located within the area of land owned by Northshore Country Club and is now totally used by the club for private purposes. This area now utilises an existing bore which irrigates the combined area of Merrifield Park.

- Q3 *Can Joondalup Council begin the process of establishing a comprehensive policy for verge/median and dry park development, on a par with that formulated by Wanneroo Council two years ago i.e. a Policy and Information Plan for Upgrading Distributor Roads and Unirrigated Parks?*

- *It must be apparent to Councillors that the following recent developments indicate that the ad hoc criteria currently utilised is inadequate and open to creating "dissension amongst the community and Ward Councillors".*

- *The change in the prioritisation criteria in November 2002, which led to 17 parks suddenly getting an opportunity for development. All credit to Councillor Kimber for finally doing something about an anomaly that had been brought to Council/Administration's attention for years, but the reality is that Wanneroo Council had such a policy since mid 2001.*
- *The request for Council to provide reticulation for Sycamore Drive and environs and the Council's ad hoc decision to "consider" that option, even though it doesn't come close to meeting the Council's own Median and Verge Landscape Criteria. It is noteworthy that the administration officer, whose job it is to provide options/background for the Councillors to enable an informed decision to be made, neglected to even mention the existence of an existing criteria and the fact that Sycamore Drive would not even meeting criteria three let alone criteria one or two. Credit to Councillor Hollywood for pointing out that preliminary consideration for such a request should be through the Dry Parks and Median/Verge Committee.*
- *The current development of a Draft Verge Enhancement scheme recently voted on by the Council in February this year. This has not been put out for public scrutiny and comment, or even minuted in Council documents.*
- *The individual campaign by some Councillors, primarily Councillor Kenworthy to resurrect the reticulation of Marmion Avenue and its tributaries – a project which has a history of consuming over a million dollars to date, and which has never been put to ratepayer scrutiny or input.*

All the above require the drafting of a comprehensive policy document, put out for public scrutiny and input, similar to the admirable working document of Wanneroo Council. When can ratepayers of this City expect their Council and Administration to lift their game?

A3 *Council initiated a Dry Parks, Median and Verge Committee to review and recommend areas for consideration of in ground reticulation. The City has a comprehensive prioritised dry park development program which is based on a criteria developed by the Committee and adopted by Council.*

- *Sycamore Drive*

*It is noted that in the case of Sycamore Drive it was an existing irrigated area and thus it was not necessary for it to be considered as part of the median and verge landscape development criteria.*

- *Draft Verge Enhancement*

*The Dry Parks, Median and Verge Committee (DPMV) at its meeting of 21 August 2002 considered a proposal "for a pilot scheme for enhancement of residential verges within a designated area". At the meeting of 16 October, 2002 Councillor Baker tabled a draft Verge Enhancement Scheme Pilot Project proposal. The proposal was adopted by the committee and referred to Council for consideration at its meeting of 11 March, 2003. At the DPMV Committee meeting of 23 June, 2003 Councillor Baker tabled the community survey response documentation and requested that the*

*information be reviewed and options prepared for consideration at a future DPMV committee meeting.*

- *Marmion Avenue reticulation*

This matter is yet to be considered by Council.

**The following questions were submitted by Mr W Ambler, Sorrento:**

*Q1 Is the Council aware that Lot 1 Hocking Parade, Sorrento has a 9-10 metre fall? The developer has completely ignored for a retaining wall to north end of lot. This would reduce the fall dramatically (4 metre).*

*Pad level on Lot 801 – from 19-15 metres*

*Pad level on Lot 800 – from 15.5-13 or 13.5 metres*

*Making 3 level steps instead of 2.*

*Ground level north end of lot is approximately 3.5-4.0 metres above road height (Hocking Parade).*

A1 The first part of the question is unclear, and does not indicate how a 4 metre reduction in the level of the upper lot could be achieved. In addition, reducing the level of the upper to such an extent would be a major cut of the site, and would ignore the extent of the natural slope of the site.

*Q2 Will the Council set up a site meeting with Building Department, developer, adjoining property owners and two or three Councillors?*

- *As a unit holder on adjoining property, I don't think the developer is doing anything to rectify the problem.*

A2 Formal public consultation has occurred on two occasions. Contact between the adjoining owners and Council staff and elected members has been ongoing throughout the application process.

Council staff met with adjoining owners Mr Ambler and Mr Rowe on 7 July 2003 to further discuss the application.

Given the extensive consultation with both the applicant and adjoining owners and that the application is before Council for determination, it is not considered that additional consultation is warranted.

**The following questions were submitted by Ms M Moon, Greenwood, on behalf of South Ward Ratepayers Association:**

*Q1 Since there has been no reduction in rates, what additional services have been provided to the ratepayers as a result of these savings?*

A1 The organisational restructure, approved by Council in February 2002, resulted in cost savings associated with the reduction in the number of Directors and Managers. These savings were not allocated to any specific areas.

*Q2 Will Council please provide clarification of the following:*

*(i) What was the precise dollar figure amount, purportedly saved by the CEO Mr Smith since his arrival at Joondalup?*

A2(i) A precise dollar figure is unable to be provided. Based on the employment costs associated with Directors and Managers currently employed by the City, it is envisaged that the savings would be approximately \$700,000 per annum.

*Q2(ii) Can Council please identify and provide specific details from where these savings were obtained?*

A2(ii) The savings were obtained from the reduction in the number of Directors and Managers, and associated on costs, such as motor vehicles.

*Q2(iii) Does the claimed savings take into account the additional administrative costs of engaging contractors and consultants following the restructure?*

A2(iii) It is unclear what additional administrative costs and contractors are being referred to.

*Q2(iv) Can Council provide the total dollar cost of employing administrative contractors and consultants following the restructure?*

A2(iv) No. Functions associated with the reduced numbers of Directors and Managers have primarily been absorbed by other management staff.

*Q2(v) Can Council provide the total dollar cost of employing administrative contractors and consultants for the same period before the restructure?*

A2(v) No.

*Q2(vi) Can Council provide a total dollar cost to the ratepayers for legal fees from 1 July 2001 to 30 June 2002?*

A2(vi) The Director of Corporate Services and Resource Management has been requested to ascertain these costs.

*Q2(vii) Can Council provide a total dollar cost to the ratepayers for legal fees from 1 July 2002 to 30 June 2003?*

A2(vi) See answer to QA2(vi).

*Q3 Could the Council please forward the documents to support the argument that Denis Smith has saved the City the amount stated by Cr Kimber and Cr Baker and/or to the Council to support the advice given to Councillors that Denis Smith has saved this money?*

A3 The report, adopted by the Council at its meeting of 26 February 2002, relating to the restructure, is available on the City's website.

**The following questions were submitted by Mr R Privilege, Edgewater:**

*Q1 I refer to a recent change of number plate on the Mayor's personal vehicle in that he changed his number plate from the City of Joondalup No 2 to the City of Joondalup No 1.*

*(a) Why was this done?*

*(b) Why was this necessary?*

*(c) What was the cost to Ratepayers of changing the Number Plates to the City of Joondalup No. 1?*

A1(a) *Response by Mayor Carlos:* The plates became available when the previous City supplied mayoral vehicle was disposed of. This vehicle was not disposed of with COJ plates.

Mayor Carlos accepted the offer from the Administration to change his existing 2COJ plates with 1COJ plates, which are reserved for the mayoral vehicle.

A1(b) *Response by Mayor Carlos:* 1COJ is considered to be the Mayoral plate and was used by the inaugural Mayor Bombak on the City provided Mayoral vehicle. The plates were offered to Mayor Carlos when the Council vehicle was prepared for disposal.

A1(c) *Response by Mayor Carlos:* The cost to transfer was \$13.80.

*Q2 My question is addressed to the CEO. I refer to the Mayor's continued insistence that he wears a Mayoral Chain. I ask:*

*(a) What is the cost of the Mayoral Chain?*

A2(a) *Response by Mayor Carlos:* The Mayoral Chain cost in October 2000, which was purchased for the previous Mayor, was \$11,108. Also at that time the previous Mayor spent \$3,740 on a robe that I have decided that I will not wear because my two colleagues at Wanneroo and Stirling do not have robes and they do not consider that it is necessary. I have decided that the robe will stay in the cupboard for the full four years that I am there.

*Q2(b) Has the Mayor advised you as to why he likes wearing a Mayoral Chain?*

A2(b) *Response by Mayor Carlos:* I do not have a preference for using the Mayoral Chain, except for ceremonial and historical important events. I do use the chain during Citizenships ceremonies.

*Q2(c) Given the fact that the chain is an anachronism, will Council agree that it be sold and its proceeds be given to charity?*

A2(c) The Chain will be retained for ceremonial and historical importance to the City.

*Q3 My question is addressed to the Mayor. I refer to the recent City of Joondalup Mayoral Elections and I ask:*

(a) Did the Labour Premier of Western Australia, Dr Geoffrey Gallop, urge you to nominate for Mayor?

A3(a) *Response by Mayor Carlos:* May I say categorically, no I have never spoken to Dr Geoff Gallop regarding me standing for Mayor and I took no counselling from anyone.

*Q3(b) Did you receive any support from Mr Kim Young, a Mullaloo resident and senior office bearer in Kevin Reynold's CFMEU and failed Labour Party candidate for Moore at the last Federal Election?*

A3(b) *Response by Mayor Carlos:* The answer to that is No, Mr Kim Young did not give me any support for my election to Mayor. He may have voted for me, but that is up to him.

*Q4 My question is addressed to the CEO. I refer to the obligations of Council Officers and the Mayor to properly record all incoming and outgoing correspondence received at the City of Joondalup.*

*Can you assure ratepayers of the City of Joondalup that all such correspondence that has been received by or issued out of the Mayor's office has been properly recorded and if so, is there a register that ratepayers can sight so that they may obtain copies of such documents without the need to lodge a Freedom of Information Act application?*

A4 *Response by Mayor Carlos:* All correspondence addressed to the Mayor, Elected Members and the Administration, which is received through the City's central records system, is registered and on file. On 21 May 2003, the Mayor and all Elected Members were advised in writing of their obligations under the State Records Act 2000, and supplied with a copy of the State Records Commission's Guidelines for Managing State Government Elected Members Records. All Elected Members are therefore fully aware of their legal obligations pertaining to correspondence, including emails that they receive in their capacity as either Mayor or Councillors. Outwards correspondence is also stored electronically on the City's record keeping system. A separate register is not maintained for the Mayoral correspondence.

*Q5 My question is addressed to the CEO. I ask whether we, as ratepayers, are entitled to be provided with a summary of all or any discussions that the Mayor has with the Minister for Local Government since the May Council Elections and if not, why not?*



A5 *Response by Mayor Carlos:* Councillors, the Minister phone me on Monday 5 May 2003 with congratulations on my election as Mayor. He did raise the matter that the CEO's matter needed to be resolved as soon as possible. I stated that I did not want him to intervene as I was sure Mr Smith would produce his documents and we would move on from there. The Minister stated that I could call him if I thought he could help in any way, I have had no further discussions with the Minister since that date.

**Mr R Privilege, Edgewater:**

Q1 *Did you say in relation to the second to last question that no register is kept on any correspondence received by you?*

A1 *Response by Mayor Carlos:* No separate register.

Q2 *Everything is registered? Coming through your office or out of your office, is that correct?*

A2 *Response by Mayor Carlos:* That is correct.

**Mr A Bryant, Craigie:**

Q1 *Re: Recommendations of House Committee Meeting – 1 July 2003 – CJ144-07/03 and Appendix 13 in particular the recommendation no. 4 referring to Honour Roll Boards. Does Council have the opinion that the history of this local government entity should only be available to Councillors, Directors and staff and to a select number of ratepayers who may at some time or other be involved in Committee Meetings or functions held in the Conference Rooms situated off that particular corridor where they are now displayed. Why not place the Honour Rolls in the foyer where everybody can observe them. Will Council reconsider the recommendation?*

A1 The matter raised by Mr Bryant is a recommendation of the House Committee. Council will give consideration to that item tonight, and will take the comments of this matter on board.

**Mr J McNamara, Sorrento:**

Q1 *My wife and I have spoken to both of the South Coastal Ward representatives and not received an adequate reply as to why Council would pay a salary of \$230,000 to an employee, particularly at a senior level, that does not have formal qualifications.*

*The City employed the recruitment agency, Management Recruiters Australia to seek a suitable person as CEO of the City of Joondalup. Subsequently Mr Denis Smith was recommend for the position.*

**Statement by Mayor Carlos:**

Cr Gollant referred to the decision made at the last meeting of Council that any questions regarding the CEO's contract would be ruled out of order during Question Time. Cr Gollant sought clarification in this regard.

Mayor Carlos then made the following statement:

*“Councillors, since the last Council Meeting I have been approached by the talk back radio, by all the print media and by all the television stations wanting me to comment on this. I have endeavoured not to make statements and advised that I have no comment, however, two Councillors within this group have gone on camera.*

*I have also had time to read the transcript of Cr Baker’s talkback radio, and also received a copy of the press release that Cr Kimber released last Friday and also sent to the Sunday Times and Wanneroo Community News on Sunday. Both of these papers asked me to comment on Cr Kimber’s press release. I have decided that no-one in this organisation, after those things have happen, really wants to gag this Council and I have decided that I will not be gagged and I am going to speak out on this subject.*

*I will continue to speak out on this subject until the matter is resolved. Thank you Mr McNamara you may ask your questions.”*

**Mr McNamara, Sorrento:**

*Q1 continued: Because of the hiring of the agency, has the City used this Company Management Recruiters Australia to recruit other staff, if so, what were these positions, what was the cost of these recruitments and finally what was the amount paid to the recruitment agency to recruit Mr Denis Smith?*

A1 *Response by Mayor Carlos: This question will be taken on notice and hopefully we will have an answer for the next Council meeting.*

**Mr A Rowe, Sorrento:**

*Q1 Re: Proposed Development of Retaining Walls in 9 Hocking Parade, Sorrento. Given that this situation may be hypothetical, has Council considered, should the approval be granted at the recommended pad levels and wall heights, the impact that the building R Codes and overshadowing effect will have on the adjoining property owners should any future two storey dwelling proposal be submitted to Council for approval. Should Council not be considering these problems now?*

A1 *It is not possible for Council to assess a hypothetical development in terms of the R Codes, Council can only apply the codes to the application before the meeting tonight for the retaining walls.*

*Q2 I ask that Councillors support our concerns and grievances regarding the proposed development and support the reduction of pad levels by one metre more than that recommended by the Planning Department. I ask Councillors to consider implementing the endorsed building R codes for retaining walls and have the set backs increased to lessen any impact effect the pad levels would impose on adjoining property owners?*

A2 *This question will be taken on notice.*

**Mr M Sideris, Mullaloo:**

*Q1 Re: Questions I have asked at the Special Meetings of Council regarding the appointment of the CEO and his qualifications. I have not received any answers to those questions that were properly constituted and put before Council. Why not and why were they not recorded in tonight's agenda?*

*Q2 Where in Council's resolution, regarding the CEO's qualifications, does it state that Council cannot comment to any questions related to the appointment of the CEO?*

A1-2 These questions will be taken on notice.

**Mr T O'Brien, Padbury:**

*Q1 Re: Council Behaviour and Council Administration – What is the timeframe and criteria for any elected Member to attend and be certified in context to the Local Government Act regarding their role as Councillors of the City of Joondalup, particularly when qualifications would give all Elected Members a standard of performance and function honour and duty bound to the ratepayers who elected them as Ward Representatives?*

A1 This question will be taken on notice.

**Mr N Gannon, Sorrento:**

*Q1(a) Is it correct that the eight ratepayers whose 103 questions on notice have had an answer which consists of a copy of Council's decision C98-06/03 Employment of the Chief Executive Office of the City of Joondalup which was passed at the Council Meeting on 24 June 2003 by 12 votes to 3?*

A1(a) *Response by Mayor Carlos:* This question will be taken on notice.

*Q1(b) Is it also correct that in the motion which was passed the following was included (Page 51 – Minutes 17 & 24.06.03):*

*“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;”*

A1(b) *Response by Mayor Carlos:* That is correct.

*Q2 What action will be taken against Cr Baker, who on Wednesday 3 July 2003, rang Liam Bartlett on ABC Radio 720 and in direct contravention of the above motion, discussed the appointment of the CEO? He stated that no qualifications are necessary for the position of CEO (was this included in information provided to applicants) and that he as a member of the selection committee was not shown a copy of the successful applicant's CV, both of these revelations did not appear to concern him. However, ABC Radio 720 can provide a tape of the interview if requested. It must be noted Cr Baker voted in favour of gagging Council. (Page 52 Minutes 17/24.06.03)*

A2 *Response by Mayor Carlos:* The matter of that plus the other Councillors that have made public statements are being looked at currently by the Administration and as I have said I intend to make as many statements as possible because I was not the first person to make a statement.

*Q3 What action will be taken against other Councillors reported to have spoken on the issue (Wanneroo Times 8/7/03). I will not name them, as I personally did not hear the comments?*

A3 This question will be taken on notice.

**C117-07/03                    EXTENSION OF QUESTION TIME – [01122] [02154]**

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

**The Motion was Put and**

**LOST (7/8)**

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

**ADJOURNMENT OF MEETING – [02154] [08122]**

**In accordance with clause 5.1 of the City's Standing Orders Local Law, Mayor Carlos adjourned the meeting for a period of five (5) minutes, the time being 1938 hrs.**

**The meeting RESUMED at 1944 hrs, the following elected members being present:**

MAYOR D CARLOS  
 CR L PROSPERO  
 CR P KIMBER  
 CR T BREWER  
 CR C BAKER  
 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

Mayor Carlos read from the Local Government (Administration) Regulation 1996 which states:

*“Each member of the public who wishes to ask a question at a meeting referred to in the Regulation 6.1 is to be given an equal and fair opportunity to ask the question and receive a response.”*

Mayor Carlos stated that public question time could not now continue, and advised he will take this matter up with the Department of Local Government to be resolved before the next Council meeting.

*Cr Nixon and Kenworthy entered the Chamber, the time being 1945 hrs.*

## **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  
Cr T Brewer - 11 July 2003 to 21 July 2003 inclusive

## **DECLARATIONS OF FINANCIAL INTEREST/INTEREST THAT MAY AFFECT IMPARTIALITY**

*Cr Mackintosh declared an interest which may affect her impartiality in Item CJ141-07/03 – European Cities Against Drugs 10<sup>th</sup> Anniversary Mayors’ Conference as she attended the conference.*

*Cr O’Brien declared a financial interest in Item CJ145-07/03 – Warrant of Payments – 31 May 2003 (Voucher No 48748 - Chubb Electronic Security) – as Chubb Security has taken over an FAI Extra Watch security at his residence.*

*Cr Hollywood declared a financial interest in Item CJ156-07/03 – Single House (including setback variations and exceeding the building height threshold) Lot 252 (47) Constellation Drive, Ocean Reef as he will be submitting a similar application to Council in the near future.*

*Cr Nixon declared an interest which may affect his impartiality in Item CJ156-07/03 - Single House (including setback variations and exceeding the building height threshold) Lot 252 (47) Constellation Drive, Ocean Reef as the owner of the property is known to him through his employment.*

*Cr Nixon declared a financial interest in Item CJ158-07/03 – Delegated Authority Report for the month of May 2003 as he is an employee of Joondalup Health Campus.*

*Cr Prospero declared a financial interest in Item C125-07/03 – Joondalup Business Incubator – Contribution towards Rates Levied as he has recently been appointed a Director.*

*Cr Baker declared an interest which may affect his impartiality in Item C125-0703 – Joondalup Business Incubator – Contribution towards Rates Levied as he is a member of the Joondalup Business Association.*

**CONFIRMATION OF MINUTES****C118-07/03            MINUTES OF COUNCIL MEETING, 17 and 24 JUNE 2003****MOVED Cr Baker, SECONDED Cr Kimber that the Minutes of the Council Meeting held on 17 and 24 June 2003, be confirmed as a true and correct record.**

A query raised by Cr Walker in relation to a number of questions asked regarding the Contract of Employment of the Chief Executive Officer. It was advised these could be reflected in full within the minutes, but this has already occurred on a previous occasion.

**The Motion was Put and****CARRIED****ANNOUNCEMENTS BY THE MAYOR WITHOUT DISCUSSION**

Councillors, this whole matter of the CEO is really disturbing to me. On 20 November last year after an appearance of an article in the West Australian titled “Civic Chief Lied”, I requested the previous Mayor to advise what qualifications Denis Smith had on his CV when he applied for the job and also have someone confirm that the respective educational authorities the qualifications stated on the CV were valid. Since there have been many articles appearing in the press, on local radio, on TV, in the press in New South Wales, in the WA Parliament, in NSW Parliament. Many ratepayers have asked questions here and we still go ahead that this question still remains unanswered.

**MOVED Cr O’Brien, SECONDED Cr Baker** that the Mayor no longer be heard on this issue tonight.**This Motion was not pursued.****MOVED Cr O’Brien SECONDED Cr Baker** that Council proceeds to the next item of business.Mayor Carlos ruled this motion **OUT OF ORDER.****ADJOURNMENT OF MEETING – [02154] [08122]****In accordance with clause 5.1 of the City’s Standing Orders Local Law, Mayor Carlos adjourned the meeting for a period of ten (10) minutes, the time being 1951.****The meeting RESUMED at 2004 hrs, the following elected members 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 G KENWORTHY  
CR M CAIACOB  
CR C MACKINTOSH

**MOVED Cr Baker, SECONDED Cr Kimber that Council DISSENTS with the ruling of the Mayor, and Cr O'Brien's motion be accepted.**

Discussion ensued.

*During discussion, Cr Gollant entered the Chamber, the time being 2005 hrs.*

**The Motion was Put and**

**CARRIED (10/5)**

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

## PETITIONS

C119-07/03

### PETITIONS SUBMITTED TO THE COUNCIL MEETING – 8 JULY 2003

1 PETITION IN RELATION TO TRAFFIC ISSUES – FLINDERS AVENUE, HILLARYS – [05028]

A 45-signature petition has been received from Hillarys residents seeking the assistance of Council in addressing various traffic issues, including excessive speeds travelled by motorists in Flinders Avenue.

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

2 PETITION IN RELATION TO TRAFFIC ISSUES IN THE SUBURB OF SORRENTO – [04429]

A 34-signature petition has been received from Sorrento residents requesting the City to undertake the following works:

- Close Raleigh Road at junction of Frobisher Avenue (western side)
- Create left turn only from Raleigh Road on to West Coast Drive

The petitioners make this request in order to address serious safety concerns, arising from the volume and speed of traffic on these "Olde Sorrento" streets.

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

3 PETITION OPPOSING APPLICATION FOR PROPOSED BED AND BREAKFAST FACILITY – LAGUNA RISE, MULLALOO - [27341]

A 35-signature petition has been received from residents of the City of Joondalup opposing the application for a proposed bed and breakfast facility in Laguna Rise, Mullaloo.

This petition will be referred to Planning and Community Development for action.

4 PETITION IN RELATION TO THE REDEVELOPMENT OF CRAIGIE LEISURE CENTRE – [09050]

Cr Walker submitted a 152-signature petition on behalf of residents of the City of Joondalup requesting the City to delay making a decision on the redevelopment of the Craigie Leisure Centre until further options which include a 50m 8 lane (2.5m width) pool together with a 25m pool and children's aquatic area are presented to Council, complete with costings.

This petition will be referred to Planning and Community Development for action.

5 PETITION IN RELATION TO THE REDEVELOPMENT OF CRAIGIE LEISURE CENTRE – [09050]

Cr Gollant submitted a 53-signature petition on behalf of members of Westcoast Masters Swimming Club, rejecting Proposals 2-6 for the redevelopment of Craigie Leisure Aquatic facilities, on the basis that the proposals would not meet the needs of the club.

This petition will be referred to Planning and Community Development for action.

**MOVED Cr Baker, SECONDED Cr Prospero that the petitions:**

- 1 **seeking the assistance of Council in addressing various traffic issues, including excessive speeds travelled by motorists in Flinders Avenue;**
- 2 **requesting the City to undertake the following works:**
  - **Close Raleigh Road at junction of Frobisher Avenue (western side)**
  - **Create left turn only from Raleigh Road on to West Coast Drive**
- 3 **opposing the application for a proposed bed and breakfast facility in Laguna Rise, Mullaloo;**
- 4 **requesting a delay in making a decision on the redevelopment of Craigie Leisure Centre;**
- 5 **rejecting Proposals 2-6 for the redevelopment of Craigie Leisure Aquatic facilities,**

**be received and referred to the appropriate Business Units for action.**

**The Motion was Put and**

**CARRIED (15/0)**

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



**C120-07/03            COUNCIL DECISION – EN BLOC RESOLUTION NO 1**

**MOVED Cr Nixon, SECONDED Cr Brewer that the following Items be moved en-bloc CJ141-07/03, CJ146-07/03, CJ147-07/03, CJ148-07/03, CJ149-07/03, CJ150-07/03, CJ151-07/03, CJ152-07/03, CJ154-07/03, CJ155-07/03 and CJ159-07/03.**

**The Motion was Put and**

**CARRIED (15/0)**

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

**CJ142 - 07/03            VACANCIES - WESTERN AUSTRALIAN LOCAL  
GOVERNMENT ASSOCIATION    - COMMITTEE  
VACANCIES – [02011]**

**WARD - All**

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**PURPOSE**

To call for nominations for various committees of the Western Australian Local Government Association.

**EXECUTIVE SUMMARY**

The Western Australian Local Government Association (WALGA) has invited member Councils to submit nominations to various committees.

This report invites nominations from elected member and officer representatives with experience, knowledge and an interest in the relevant issues.

**DETAIL**

The Western Australian Local Government Association has invited member Councils to submit nominations to the following committees:

- Department of Land Administration Customer Service Council – 1 member;
- Heavy Vehicle Advisory Group – 1 member;
- Museum Policy Development Reference Group – 1 metropolitan member;
- Regional Health Strategy Advisory Group – 1 member; 1 deputy member;
- Urban Development Advisory Committee (Water Corporation) – 1 member; 1 deputy member;
- Coastal Zone Council – 1 metropolitan member;
- Environmental and Natural Resources Management Committee – 1 metropolitan member;
- Infrastructure Coordinating Committee – 1 member;
- Statutory Planning Committee (and Perth Region Planning Committee) – 1 member;
- Transport Committee – 1 member.

Nominations are invited from elected member and/or officer representatives with experience, knowledge and an interest in the relevant issues.

Full details of the vacancies and nomination process are provided at Attachment 1 hereto.

### **Nominations for all vacancies close on Wednesday 16 July 2003.**

Nominations must ensure that the Selection Criteria are addressed in full. Appointments are conditional on the understanding that nominees and delegates will resign when their entitlement terminates – that is, they are no longer elected members or serving officers of Local Government. This ensures that the Local Government representative is always active in Local Government as an elected member or serving officer.

Details of the vacancies and Nominations Forms can be found at the Policy section of the WALGA website at: <http://www.walga.asn.au/policy/committees>.

### **ATTACHMENTS**

Attachment 1 – details of WALGA vacancies

### **VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION:** That Council **NOMINATES** the following Elected Members for consideration of appointment to the respective committees:

- Cr Prospero      Department of Land Administration Customer Service Council;
- Cr Gollant        Coastal Zone Council;
- Cr Hart            Environmental and Natural Resources Management Committee;
- Cr Prospero      Infrastructure Coordinating Committee.

**MOVED Cr Baker, SECONDED Cr Kimber that Council NOMINATES the following Elected Members for consideration of appointment to the respective committees:**

**Cr Prospero      Department of Land Administration Customer Service Council;**  
**Cr Gollant        Coastal Zone Council;**  
**Cr Hart            Environmental and Natural Resources Management Committee;**  
**Cr Prospero      Infrastructure Coordinating Committee;**  
**Cr Walker        Museum Policy Development Reference Group;**  
**Regional Health Strategy Advisory Group;**  
**Infrastructure Coordinating Committee;**  
**Statutory Planning Committee.**

**The Motion was Put and**

**CARRIED (15/0)**

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

*Appendix 2 refers*

To access this attachment on electronic document, click here: <attach2brf010703.pdf>

## **CJ144 - 07/03      MINUTES OF MEETING OF HOUSE COMMITTEE HELD ON 1 JULY 2003 – [59064]**

**WARD** - All

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### **PURPOSE**

For the Council to give consideration to the recommendations proposed by the House Committee.

### **SUMMARY**

A meeting of the House Committee was held on 1 July 2003 and the minutes are submitted for noting by Council and endorsement of the recommendations contained therein.

### **BACKGROUND**

The House Committee was established in order to make recommendations on:

- the type and number of civic functions;
- entitlements of elected members;
- awards and presentations to former elected members;
- facilities for elected members.

The membership of the Committee is:

Mayor Carlos  
Cr J Gollant      *Chairperson*  
Cr P Kimber      *Deputy Chairperson*  
Cr G Kenworthy  
Cr C Mackintosh

### **DETAILS**

The Minutes of the House Committee meeting held on 1 July 2003 are included as Attachment 1. At the meeting, the Committee considered:

- Retiring Members' Function
- 2003 Elected Members Christmas Function
- Relocation of past 'Memorabilia' Boards

### **ATTACHMENTS**

Minutes of House Committee Meeting held 1 July 2003

### **VOTING REQUIREMENTS**

Simple Majority

**MOVED Cr Kimber, SECONDED Cr Kenworthy that Council:**

- 1 NOTES the unconfirmed Minutes of the House Committee Meeting held on 1 July 2003, forming Attachment 1 to Report CJ144-07/03;**
- 2 AGREES to hold a retiring members function on Friday 15 August 2003 to be held within the Council dining room based on the following invitation list:**
  - **Mayor, Councillors, CEO, Directors and their partners (38 guests maximum);**
  - **5 retiring elected members and their partners (10 guests maximum);**
- 3 (a) AGREES to the date for this year’s Elected Members’ Christmas function as Saturday, 6 December 2003, to be held at the Joondalup Resort;**  
**(b) APPROVES the suggested guest list, entertainment, gifts and format as outlined in the report submitted to the House Committee on 1 July 2003;**
- 4 does not proceed with the removal and relocation of the honour/roll boards to the main foyer within the Joondalup Civic Centre.**

**1<sup>ST</sup> AMENDMENT MOVED Cr Gollant SECONDED Cr Baker that the date in Point 2 of the motion be amended to read “22 August 2003”.**

Discussion ensued.

**The 1<sup>st</sup> Amendment was Put and**

**CARRIED (15/0)**

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

**2<sup>ND</sup> AMENDMENT MOVED Cr O’Brien SECONDED Cr Prospero that Point 4 of the motion be deleted.**

Discussion ensued.

**The 2<sup>nd</sup> Amendment was Put and**

**CARRIED (12/3)**

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

**MOVED Cr Rowlands, SECONDED Cr Prospero that the original motion as amended BE NOW PUT.**

**The Procedural Motion was Put and**

**CARRIED (12/3)**

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

**The Original Motion, as amended, being:**

**That Council:**

- 1 NOTES the unconfirmed Minutes of the House Committee Meeting held on 1 July 2003, forming Attachment 1 to Report CJ144-07/03;**
- 2 AGREES to hold a retiring members function on Friday 22 August 2003 to be held within the Council dining room based on the following invitation list:**
  - **Mayor, Councillors, CEO, Directors and their partners (38 guests maximum);**
  - **5 retiring elected members and their partners (10 guests maximum);**
- 3 (a) AGREES to the date for this year's Elected Members' Christmas function as Saturday, 6 December 2003, to be held at the Joondalup Resort;**  
**(b) APPROVES the suggested guest list, entertainment, gifts and format as outlined in the report submitted to the House Committee on 1 July 2003.**

**was Put and**

**CARRIED (9/6)**

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

*Appendix 13 refers*

*To access this attachment on electronic document, click here: [Attach13agn080703.pdf](#)*

*Cr O'Brien declared a financial interest in Item CJ145-07/03 – Warrant of Payments – 31 May 2003 (Voucher No 48748 - Chubb Electronic Security) – as Chubb Security has taken over an FAI Extra Watch security at his residence.*

*Cr O'Brien left the Chamber, the time being 2026 hrs.*

## **CJ145 - 07/03      WARRANT OF PAYMENTS – 31 MAY 2003 – [09882]**

**WARD - All**

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### **PURPOSE**

The Warrant of Payments as at 31 May 2003 is submitted to Council for approval.

### **EXECUTIVE SUMMARY**

This report details the cheques drawn on the funds during the month of May 2003. It seeks Council's approval for the payment of the May 2003 accounts.

**DETAILS**

<b>FUNDS</b>	<b>VOUCHERS</b>	<b>AMOUNT</b>
Municipal	000404-000412C	\$11,858,415.06
Director Corporate Services & Resource Management Advance Account	048146-048997	\$6,022,184.88
Trust Account	-	-
	<b>TOTAL</b>	<b>\$17,880,599.94</b>

The difference in total between the Municipal and Director of Corporate Services & Resource Management Advance Account is attributable to the direct debits by the Commonwealth Bank for bank charges, credit card charges, investments and dishonoured cheques being processed through the Municipal Fund.

It is a requirement pursuant to the provisions of Regulation 13(4) of the Local Government (Financial Management) Regulations 1996 that the total of all other outstanding accounts received but not paid, be presented to Council. At the close of May 2003, the amount was \$1,448,040.10.

The cheque register is appended as Attachment A to this Report.

**CERTIFICATE OF THE DIRECTOR OF CORPORATE SERVICES & RESOURCE MANAGEMENT**

This warrant of accounts to be passed for payment, covering vouchers numbered as indicated and totalling \$17,880,599.94 which is to be submitted to each Elected Member on 8 July 2003 has been checked and is fully supported by vouchers and invoices which are submitted herewith and which have been duly certified as to the receipt of goods and the rendition of services and as to prices, computations and costing and the amounts shown are due for payment.

PETER SCHNEIDER  
Director Corporate Services & Resource Management

**CERTIFICATE OF MAYOR**

I hereby certify that this warrant of payments covering vouchers numbered as indicated and totalling \$17,880,599.94 was submitted to Council on 8 July 2003.

.....  
Mayor Don Carlos

**ATTACHMENTS**

Warrant of Payments for 31 May 2003.

**VOTING REQUIREMENTS**

Simple Majority

**MOVED Cr Kimber, SECONDED Cr Walker that Council APPROVES for payment the following vouchers, as presented in the Warrant of Payments to 31 May 2003, certified by the Mayor and Director Corporate Services & Resource Management and totalling \$17,880,599.94.**

<b>FUNDS</b>	<b>VOUCHERS</b>	<b>AMOUNT</b>
<b>Municipal</b>	<b>000404-000412C</b>	<b>\$11,858,415.06</b>
<b>Director Corporate Services &amp; Resource Management Advance Account</b>	<b>048146-048997</b>	<b>\$6,022,184.88</b>
<b>Trust Account</b>	<b>-</b>	<b>-</b>
	<b>TOTAL</b>	<b>\$17,880,599.94</b>

**The Motion was Put and**

**CARRIED (14/0)**

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

*Appendix 3 refers*

*To access this attachment on electronic document, click here: [Attach3brf010703.pdf](#)*

*Cr O'Brien entered the Chamber, the time being 2027 hrs.*

**CJ153 - 07/03      PETITION - REMOVAL OF PINE TREES – [37402]  
[12093]**

**WARD - All**

**PURPOSE**

To review the recommendation of Report CJ313–09/01 as requested by the resident of 9 Leschenaultia Street, Greenwood.

## EXECUTIVE SUMMARY

Council, at its ordinary meeting of September 2001 received Report No. CJ313-09/01 - Petition – Removal of Pine Trees and adopted the following:

*“That Council advises the Petitioners that the removal of the two Pinus radiata Trees adjacent to No: 9 Leschenaultia Street, Greenwood, is not supported.”*

The Resident at 9 Leschenaultia Street has gained the support of surrounding residents and has submitted a request for a review of Council’s determination. In view of the surrounding residents support, it is recommended that Council

1 *BY ABSOLUTE MAJORITY rescinds its decision in Report No. CJ 313–09/01 of 11 September 2001: viz:*

*“MOVED Cr Barnett, SECONDED Cr Kimber that Council ADVISES the petitioners that the removal of the two pinus radiata trees adjacent to No 9 Leschenaultia Street, Greenwood is not supported.”*

2 *AUTHORISES removal of the two Pinus radiata trees adjacent to No: 9 Leschenaultia Street, Greenwood subject to the resident of 9 Leschenaultia Street, Greenwood supplying and planting two advanced Callistemon Kings Park Specials as replacement trees;*

3 *AUTHORISES the resident of 9 Leschenaultia Street to supply and plant two advanced Callistemon Kings Park Specials as replacement trees;*

4 *ADVISES all residents of Council’s determination.*

## BACKGROUND

Council, at its meeting held on 14 August 2001, received a petition from residents in Leschenaultia Street, Leaside Way and Hessel Court Greenwood, supporting the removal of two Pinus radiata trees adjacent to 9 Leschenaultia Street.

Report CJ313-09/01 Petition Removal of Pine Trees was presented for Council’s determination. This Report recommended:

*“That Council ADVISES the petitioners that the removal of the two Pinus radiata trees adjacent to No: 9 Lechenaultia Street, Greenwood is not supported.”*

The owner of 9 Leschenaultia Street Greenwood, requested inspection of these two trees. He previously wrote to Council on 14 August 2000 regarding the problems associated with the trees, e.g. Safety, leaf litter and structural damage.

At the junction of Leschenaultia Street and Leaside Way, various residents had planted Pinus radiata as verge trees, as part of the initial suburb development. These two trees are the remaining trees and are approximately 25 years old and appear healthy and structurally sound. Prior to pruning on the eastern side, the trees were balanced and stable. The pruning has reduced the leaf fall into the property, however it has visually affected their appearance. There is no evidence to determine whether the pruning has affected their stability.



There is evidence of root damage to the kerb and road pavement and repairs have been undertaken previously. Repairs will be required every 3-5 years if the trees are retained and this is acceptable, given the small residential character of the street.

There is limited evidence available to clearly determine the hazardous nature of this species. Information from CALM indicates that they are not affected by normal winter storm damage. Evidence provided by Councillor M O'Brien indicates that trees were damaged in Tasmania during a storm. Photographs were provided with the petition indicating that the trees were damaged during a storm.

#### Reasons to Retain the Trees

- Historical – Significant only due to being planted as part of the development
- Limited number of large trees retained in the street, both on private and road reserve land
- Not a traffic hazard
- Bird feed and habitat for black cockatoos
- Healthy and structurally sound
- Liability to Council – Limited evidence to support determination

#### Reasons to Remove Trees

- Root damage to kerb and road pavement
- Leaf litter problem for resident
- Safety hazard due to lime fall – Limited evidence
- Suitability of tree species for verge of residential area
- Height of trees in residential area
- Insurance liability – Limited evidence to support determination

### **DETAILS**

The resident of 9 Leschenaultia Street has met with various residents in Leaside Way to seek their support for a review of his request for removal of the trees, due to the excessive Pine needle litter being deposited within his property. The residents of 1 Leaside Way have confirmed that their concerns regarding removal have diminished and they have now accepted that the needle litter deposited by these trees is excessive and tree removal is now supported subject to suitable advanced tree replacements being undertaken by the resident.

The resident of 9 Leschenaultia Street has confirmed that 3 advanced Callistemon species trees can be planted by Council or Contractor at his expense, as replacement trees to maintain the aesthetic appearance within the verge adjacent to 9 Leschenaultia Street.

An officer consultation process has been undertaken with other affected residents in Leaside Way as follows.

No: 3 Prefers retention

No: 4 not concerned for removal or retention

No: 7 Preferred retention

No: 6 not concerned for removal or retention

No: 5 Prefers retention but would agree removal is required

No: 9 Prefers retention but would agree removal is required

No: 1 Support removal

While it is acknowledged that the trees are healthy and structurally sound the, the species is not a recognised verge tree.

## COMMENT

The residents are all aware of the ongoing neighbourhood problem regards retention of the pine trees and the problems associated with pine needle litter. The resident of 9 Leschenaultia Street has put the litter in bags on a weekly basis and placed it on the verge for removal by Council or other residents and this practice is ongoing. The leaf drop litter accumulated is high with pine trees and this material falls within the property boundary.

The way forward is for Council to authorise removal and request the resident of 9 Leschenaultia Street to undertake replacement planting as discussed with officers, e.g.

- 1 Two advanced plants that are accepted as suitable verge trees growing to 4 – 5 metres in height;
- 2 The resident of 9 Leschenaultia Street to undertake increased summer watering to ensure the replacement trees survive and develop.

Pinus radiata are a large growing tree that generates a significant amount of ‘fine leaf’ litter that is directly deposited into 9 Lechenaultia Street. The resident of 9 Leschenaultia Street has committed to funding the replacements and this has been accepted by residents in Leaside Way.

## FUNDING

Initial Tree Removal                      \$800.00  
From verge tree maintenance account.

### Resident commitment

<u>Replacement Trees.</u>	
Purchase	\$121.00 each
Planting and transport	\$80.00 each
<u>Total</u>	\$207.00 each
2 Trees	\$414.00

## ATTACHMENTS

Nil.

## VOTING REQUIREMENTS

Absolute Majority

**MOVED Cr Hart, SECONDED Cr O'Brien that Council:****1 RESCINDS its decision in Report No CJ313-09/01 of 11 September 2001: viz:**

*“MOVED Cr Barnett, SECONDED Cr Kimber that Council ADVISES the petitioners that the removal of the two pinus radiata trees adjacent to No 9 Leschenaultia Street, Greenwood is not supported.”*

- 2 AUTHORISES removal of the two Pinus radiata trees adjacent to No: 9 Leschenaultia Street, Greenwood subject to the resident of 9 Leschenaultia Street, Greenwood supplying and planting two advanced Callistemon Kings Park Specials as replacement trees;**
- 3 AUTHORISES the resident of 9 Leschenaultia Street to supply and plant two advanced Callistemon Kings Park Specials as replacement trees;**
- 4 ADVISES all residents of Council's determination.**

**The Motion was Put and****CARRIED BY AN  
ABSOLUTE MAJORITY (11/4)**

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

*Cr Hollywood declared a financial interest in Item CJ156-07/03 – Single House (including setback variations and exceeding the building height threshold) Lot 252 (47) Constellation Drive, Ocean Reef as he will be submitting a similar application to Council in the near future.*

*Cr Nixon declared an interest which may affect his impartiality in Item CJ156-07/03 - Single House (including setback variations and exceeding the building height threshold) Lot 252 (47) Constellation Drive, Ocean Reef as the owner of the property is known to him through his employment.*

*Cr Nixon and Hollywood left the Chamber, the time being 2028 hrs.*

**CJ156 - 07/03 SINGLE HOUSE (INCLUDING SETBACK VARIATIONS AND EXCEEDING THE BUILDING HEIGHT THRESHOLD) LOT 252 (47) CONSTELLATION DRIVE, OCEAN REEF – [22355]**

**WARD - Marina**

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## **PURPOSE**

The purpose of this report is to request Council's determination of an application for a two-storey house with a number of discretions related to the Residential Design Codes 2002 (R-Codes) and exceeding the Building Height Threshold under Policy 3.1.9.

## **EXECUTIVE SUMMARY**

A development application for a new single house has been submitted which requires discretion on a number of matters. The application has been supported by a written statement from the applicant outlining that the variations comply with the performance criteria of the R-Codes.

In accordance with the Notice of Delegation, the application was 'called in' by Cr Baker for determination by Council.

The development application was advertised to the surrounding landowners to obtain comments on the variations. During the 14-day advertising period four objections were received. The objections relate to the building height, overshadowing and overlooking.

The proposal and comments have been assessed, and the proposal is recommended for approval subject to a number of conditions.

## **BACKGROUND**

**Suburb/Location:** Constellation Drive, Ocean Reef  
**Applicant:** J Corp Pty Ltd  
**Owner:** HG and VT Tran  
**Zoning:** **DPS:** Residential R20  
**MRS:** Urban

The 764m<sup>2</sup> site is currently vacant and is surrounded by established dwellings.

## **DETAILS**

### **Proposal**

This proposal involves the construction of a new two storey dwelling with an undercroft double garage. A front fence with piers and picket infill to a height of 1.8 metres is also proposed.

The site faces east onto Constellation Drive and slopes up from the front to the rear boundary by approximately 5.5 metres. Given the level differences, the dwelling would have an undercroft garage which elevates the two storey dwelling above. A sand pad is proposed to surround the house to deal with the slope of the lot. A rear retaining wall cutting into the lot by 1.0 metre is proposed for a cabana area, whilst a terraced front retaining wall is proposed (1.5 metres and 1.4 metres each) to retain the elevated dwelling, with the undercroft garage beneath and to the right side of the property.

The top portion of the roof ridge exceeds the Building Threshold Envelope of the City's Policy 3.1.9 - Height and Scale of Buildings within a Residential Area (refer to the attached plans).

The variations to the Acceptable Development criteria of the R-Codes are:

- Ground floor right-hand side setback to balcony (2.5m setback in lieu of 3.3m)
- Cone of Vision encroachment from ground floor balcony
- Retaining Walls (nil side setback in lieu of 1.8m)
- Fill (800mm of fill in front setback in lieu of 500mm)

### **Statutory Provision:**

#### Policy 3.1.9- Height and Scale of Buildings within a Residential Area

The City's Policy 3.1.9- Height and Scale of Buildings within a Residential Area is a policy adopted under District Planning Scheme No 2 (DPS2). The policy applies a 3 dimensional building envelope over the proposed development. If a development projects outside of the envelope, planning approval is required. Such applications are advertised to surrounding and affected neighbours within (15) fifteen metres of the subject land and across the street.

The objective of the policy is:

*“to ensure that all development within a residential area of significant height and scale is given appropriate consideration with due regard to the protection and enhancement of the amenity and streetscape character of the surrounding area”.*

The proposal complies with the provisions of the policy, apart for a small portion of the roof ridge, which is marginally outside the envelope. This is further assessed in a later section of the report.

#### Residential Design Codes 2003 (R-Codes)

Clause 2.3.4 of the R-Codes allows variations to the Acceptable Development standards to be considered.

<b>R-Code Standard</b>	<b>Acceptable Development Standard</b>	<b>Provided</b>
Front Setback – ground floor	3m min, 4.5m gar, 6m av	>9.8m
Fill in front setback area	<500mm	800mm
Rear – ground floor	1.5m	7.8m
Rear (cabana)	1m	1m
Side (north) – ground floor	3.3m	2.5m

Side (south) – ground floor	1.7m	7m
Retaining wall (south)	1.8m	Nil
Front Setback – upper floor	3m min, 6m av	11m
Rear – upper floor	2.8m	7.8m
Side (north) – upper floor	3.8m	4.5m
Side (south) – upper floor	1.6m	7m
Car Parking	2 bays	2 bays
Site Cover	<50% of site	<50% of site

### **Applicant's Justification**

The applicant has provided the following justification (summarized) in support of the proposed development:

- Building Height – Policy 3.1.9  
A small area of the roof is outside the policy and this would not have any amenity impact on the adjoining lots or the primary school. The increased height would not have any overshadowing implications on the northern and southern lots.
- Setback of balcony at 2.5m in lieu of 3.3m  
The reduced setback of the balcony would achieve an outdoor area open to the winter sun on the northern side. An existing retaining wall exists to the northern boundary. The top of the retaining wall would be 1 metre lower than the level of the balcony and there would be adequate space on the lot to locate the house southwards to comply with the R-Codes. The applicant states that if the adjoining owner does not adversely comment on this, the proposed setback should be pursued.
- Fill to setback area (800mm)  
The applicant has outlined that due to the 5.5 metre slope across the lot, some fill would be required to enable a level building site. Maintaining natural ground levels would require different floor levels of the house and this would jeopardise the streetscape of the dwelling.
- Retaining wall setback variation at nil in lieu of 1.8 metres  
Terraced retaining walls are required to level the site and provide access to the dwelling. Nearby lots are retained to a similar degree. The retaining wall would be 1.5 metres above the adjacent dwelling's garage floor level and would not impact on that neighbour's private open spaces and living areas.
- Overlooking from ground floor balcony and formal lounge/dining area  
The applicant outlines that the balcony would be able to be screened to overcome the extent of overlooking. However, the applicant claims that no screening should be imposed for the dining/lounge room windows, as these are open to the winter sun.

### **Public Consultation**

The proposal was advertised to the adjoining and surrounding neighbours for a period of (14) fourteen days. Four (4) submissions, all objections, were received during the advertising process.

<b>Submission</b>	<b>Technical Comment</b>
<p>1.</p> <ul style="list-style-type: none"> <li>• Opposes the construction of the dwelling outside the building height envelope.</li> <li>• It would not be in keeping with other houses in the street. and would devalue other houses.</li> <li>• Council should only approve residences in keeping with established houses.</li> </ul>	<ul style="list-style-type: none"> <li>• A small portion of the upper roof element would encroach the building height envelope (refer to plans). The extent of encroachment is considered to be minor.</li> <li>• The streetscape and locality is characterised by a range of house styles and heights (both single storey and two storey). The proposed dwelling exceeds the building height by 400mm, and this is not considered to result in a dwelling out of context with the street.</li> <li>• Council may approve variations to dwellings at its discretion as allowed under the R-Codes and the Scheme as applicable in each case.</li> </ul>
<p>2.</p> <ul style="list-style-type: none"> <li>• Oppose the building as it exceeds the building height envelope. It would be out of context with others in the street.</li> <li>• Sees no reason to have a balcony at the rear as it would directly into their backyard.</li> </ul>	<ul style="list-style-type: none"> <li>• Refer to comments made above.</li> <li>• The rear balcony is 7.8m from the boundary and complies with the R-Codes in terms of setback of the structure and any potential cones of vision.</li> </ul>
<p>3.</p> <ul style="list-style-type: none"> <li>• Object to the cone of vision which would affect their privacy</li> <li>• The proposed building height would make their property difficult to sell and would reduce its value.</li> <li>• Such large building which aim to gain views should be located by the ocean.</li> <li>• Also comments in relation to traffic in the area and states that the driveway across the road from the development site should be removed.</li> </ul>	<ul style="list-style-type: none"> <li>• The extent of the cone of vision affecting the objector's property is recommended to be addressed by a condition requiring screening to the offending elements.</li> <li>• Devaluation of property is not a valid planning consideration.</li> <li>• The owners have a right to develop their block and request discretions of Council.</li> <li>• These matters do not apply to the development proposal.</li> </ul>

<p>4.</p> <ul style="list-style-type: none"> <li>• Objects to the height of building being outside the building envelope.</li> <li>• Raises concerns in relation to the resultant overshadowing due to the height of the building.</li> <li>• Building would look out of scale with others in the street.</li> </ul>	<ul style="list-style-type: none"> <li>• Refer to comments made above.</li> <li>• The proposal complies with the overshadowing provisions of the R-Codes.</li> <li>• Refer to comments made above.</li> </ul>
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## COMMENT

### Policy 3.1.9 – Height and Scale of Buildings within Residential Areas

#### Height and Scale of the Proposal/Street Context

The height of the proposed dwelling exceeds the building height envelope as a 400mm central portion of the roof projects above the 8.5m envelope.

The size and bulk of the proposed dwelling is within the building envelope, and is therefore deemed to comply with the Policy. The dwelling generally has generous side and rear setbacks and hence the minor encroachment to the BTE is not considered to be detrimental to the adjoining owners in terms of amenity as the adjoining properties are well clear of the portion outside the envelope.

Various sizes of dwellings, ranging from modest single storey houses to large two-storey dwellings, characterise the streetscape. Due to the slope of the lot, a large rear retaining wall exists, which further elevates rear adjoining two-storey dwellings. It is therefore considered that the streetscape is varied and that no specific pattern exists for this portion of Constellation Drive. It is considered that a two-storey dwelling would not have a detrimental impact on the streetscape, even with an undercroft garage, as this would be expected for such a sloping site.

#### Side Setback of the Balcony (ground floor) and Cone of Vision Encroachment – Clause 3.3.1

The performance criteria of the R-Codes aim to avoid direct overlooking from the subject property to active habitable living areas and outdoor living areas on adjoining properties.

The proposed setback to a section of balcony is 2.5 metres in lieu of 3.3 metres, and the balcony is unscreened. This leads to a cone of vision encroachment onto the adjoining property by approximately 4.5m.

This encroachment is considered significant, and it is appropriate to recommend that the balcony be screened to avoid any overlooking onto the adjoining property.



In regard to building setbacks, the R-Codes aim to ensure that adequate light and ventilation to the building and the adjoining property is maintained. Furthermore, consideration towards the likely bulk of the structure as well as privacy impacts needs to be taken into account.

In regard to the proposed reduced setback to the balcony proper, the screening suggested above would alleviate the real and perceived loss of privacy. The reduced setback of the structure at 2.5m in lieu of 3.3m is considered to meet the performance criteria of the R-Codes given that the 2.5m separation distance, which adjoins the adjacent dwellings garage, would still enable adequate light and ventilation to the building. Given the adjacent dwelling has its garage located closest to the boundary any impacts in terms of bulk are considered negligible.

#### Cone of Vision from the Dining Area – Clause 3.8.1

The proposed setback to a section of dining area is 5 metres in lieu of 6 metres, therefore the cone of vision extends 1 metre into the adjacent property.

This portion of the building would be elevated by approximately 1 metre from natural ground level and would overlook the adjacent properties rear yard. On this basis the encroachment is considered intrusive, and it is appropriate to recommend that this dining area window be screened to avoid any overlooking onto the adjoining property.

#### Setback of the Retaining Wall – Clause 3.6.2

The performance criteria of the R-Codes aim to minimize the impact of walls on the adjoining property. The side retaining wall forming part of a terrace of two walls is required to be setback 1.5 metres in lieu of nil, as proposed by the applicants.

The applicant has outlined that the wall would adjoin the adjacent dwelling's garage and therefore would not create any amenity impact. The adjoining dwelling's garage is 1.5 metres below the top of the proposed retaining wall.

In this instance it is considered that the reduced setback of the retaining wall can be supported as meeting the performance criteria of the R-Codes, which the applicant has adequately addressed. Furthermore, it is noted that the affected neighbour has not commented on this variation.

#### Fill within the Setback Area – Clause 3.6.1

The performance criteria of the R-Codes aim to retain the visual impression of the natural level of the site as seen from the street or adjoining properties. The fill to the setback area exceeds the permitted 500mm in that 800mm is proposed.

The applicant has outlined that, due to the slope of the lot, fill would be proposed, whilst this would be compensated by cut in other areas. In this instance it has been assessed that the applicant has provided an appropriate justification and that the fill would not have a streetscape impact as large areas of cut are proposed within the setback area that would appropriately compensate the minor additional portions of fill. The view of the dwelling from the street and adjacent properties would therefore still retain the natural levels of the site. Furthermore, given that other houses in the street are elevated above street level, the variation is deemed minor and appropriate.

### Overshadowing – Clause 3.9.1

The R-Codes permit up to 25% of an adjacent site to be overshadowed. The proposed development would comply with this provision, as the dwelling is located more than 7 metres from the southern property boundary.

### Front Fence – Clause 3.2.5

A solid front fence of 1.8m in height is proposed, in lieu of the standard R-code requirement of maximum 1.2m solid with the remainder of the fence visually permeable.

The performance criteria of the R-Codes aims to promote active frontages, which promote passive surveillance to the street. It is considered that a condition should be imposed on any approval issued requiring the fence to comply with the acceptable development provisions of the R-Codes, as outlined above.

## **SUMMARY**

The extent of encroachment to the building height is considered minor (400mm) and would not have any amenity impact on the adjoining landowners as the encroachment relates to the central roof portion of the dwelling, which would be well clear of adjoining properties.

In terms of the side setback variation and fill to the setback area, these are also relatively minor in nature and would not be detrimental to the adjoining owners who have not commented on these variations. Furthermore, it is noted that adequate cut would compensate any excessive fill to the front portions of the lot and hence would allow the dwelling to complement the streetscape.

Appropriate screening to the balcony and dining room can be requested as a condition on any planning approval issued.

## **ATTACHMENTS**

Attachment 1    Location Plan  
Attachment 2    Development Plan

## **VOTING REQUIREMENTS**

Simple Majority

## **MOVED Cr Brewer, SECONDED Cr Baker that Council:**

### **1        EXERCISES discretion in accordance with Clause 2.3.4 of the Residential Design Codes 2002 and determines that:**

- the setback of the retaining wall at nil in lieu of 1.5 metres,**
- the 800mm of fill to the setback area,**
- the visual privacy from the lounge and**
- the side setback of the building at 2.5 metres in lieu of 3.3 metres**

- meets the performance criteria outlined in Clauses 3.6.2, 3.6.1, 3.3.1 and 3.8.1. of the Residential Design Codes;
- 2 DETERMINES that the portion of building exceeding the Building Threshold Envelope as defined in Policy 3.1.9 is considered appropriate in this instance;
- 3 APPROVES the application dated 17 March 2003 submitted by J Corp Pty Ltd, the applicant on behalf of the owner HG and VT Tran, for a single house at Lot 252 (47) Constellation Drive, Ocean Reef, subject to the following conditions:
- (a) the ground floor balcony on the northern part of the building as marked in red on the approved plans which results in cones of visions protruding into adjacent properties shall be provided with screening which would comply with the acceptable development provisions of the R-Codes (clause 3.8.1). Details demonstrating compliance shall be submitted for approval prior to the issue of a building licence to the satisfaction of the City;
  - (b) the northern window of the formal dining room area shall be modified to be composed of fixed and obscured glass, achieve a sill height of 1.6m, or be otherwise screened to the satisfaction of the City. Details shall be submitted prior to the issue of a building licence;
  - (c) all stormwater shall be contained and disposed of on site to the satisfaction of the City; and
  - (d) the front fence shall comply with the acceptable development provisions of clause 3.2.5 of the Residential Design Codes 2002.

**Footnotes:**

- (1) The applicant is advised that the crossover and driveway alignment is to be amended so that the main body of the crossover achieves a 1.0 metre offset from the side boundary line, whilst the crossover must be clear of the side entry gully in the road. Details shall be provided to the satisfaction of the City prior to the issue of a building licence.

**The Motion was Put and**

**CARRIED (13/0)**

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

*Appendix 8 refers*

*To access this attachment on electronic document, click here: [Attach8brf010703.pdf](#)*

*Crs Nixon and Hollywood entered the Chamber, the time being 2034 hrs.*

**CJ157 - 07/03      SINGLE HOUSE (RETAINING WALL ADDITIONS INCLUDING SETBACK VARIATIONS – REVISED PLANS) LOT 12 (9) HOCKING PARADE, SORRENTO – [57180]**

**WARD -** South Coastal

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**PURPOSE**

The purpose of the report is to request Council's determination of an application for the construction of retaining walls, which do not comply with the setback provisions of the R-Codes.

**EXECUTIVE SUMMARY**

An application has been received for the construction of retaining walls to align with the boundaries of an approved two lot subdivision over the vacant site.

The subject site contains a significant slope from the north (high side) to the south. The retaining walls are proposed to be 1.65 metres to 4 metres in height from natural ground levels. The lot to the west and south is approximately 2–3 metres below the level of the subject lot, whilst the lot to the north is elevated by approximately 2 metres. When subdivided, the subject site will be 'split level' in accordance with the slope of the site.

The original application was advertised to the surrounding landowners and 3 objections were lodged. Due to the potential impacts of the proposal, the application was referred to Council with a recommendation of approval, however, was deferred on 11 March 2003 subject to further consultation with the applicant.

The applicant met with officers of the City and it was agreed that the retaining walls could be further reduced by up to 2 metres. This would result in the pad levels at approximately RL of 17 and 14, which would result in a 2 metre high retaining wall to the southern adjoining landowner. The rear retaining wall would also be reduced to approximately 2 metres in height from the adjoining landowner. The applicant would investigate the options of reducing the walls further and would resubmit revised plans to the City.

Revised plans were received on 16 April 2003, which had reduced the height of the southern retaining wall to 2.44 metres (from 3.5 metres) and would result in a sloping pad level to the southern of the two proposed sites.

The application was re-advertised to the surrounding landowners and was subject to a number of objections.

The application has been assessed according to the performance standards of the Residential Design Codes 2002 (R-Codes) and is recommended for approval, subject to the height of the retaining walls being decreased to address the objections and impact of the walls to the immediately adjoining landowners.

## BACKGROUND

<b>Suburb/Location:</b>	Hocking Parade, Sorrento
<b>Applicant:</b>	Stoneridge Group (WA) Pty Ltd
<b>Owner:</b>	Colin R Heath
<b>Zoning:</b>	<b>DPS:</b> Residential R20
	<b>MRS:</b> Urban

The location of this site is shown in Attachment 1 and the details of the structure are shown in Attachment 2 to this Report. The site is currently vacant and is covered by shrubs and small trees.

The proposal aims to subdivide a generally rectangular shaped lot with a wider frontage into two lots with frontages of 14.7 metres and 15.4 metres. Due to the crossfall of over 6 metres from the side boundaries of the lot, it would be preferable to provide retaining to create level sites that would then permit the opportunity to develop them further. Although it is acknowledged that a level site is not essential, it is more practical in terms of planning considerations for future development. The applicant does not wish to develop the lots himself and rather aims to sell level sites that have development potential.

On 18 July 2001, Council received an application for a two lot subdivision aiming to split the current lot into two regular shaped lots of 534m<sup>2</sup> (Lot 801) and 533m<sup>2</sup> (Lot 800), each having frontages to Hocking Parade.

The City subsequently requested that the WAPC defer the application until the owners provide a satisfactory site plan showing detailed information pertaining to the retaining walls, and following this, the City's decision on the subdivision application.

The City also wrote to the applicants outlining that a more balanced cut and fill would be required to minimise impacts on the adjoining properties. In reply, two draft proposals were presented, one with the majority of fill to level the site and one that aimed, as far as practicable, to cut and fill the site. The latter option of the two proposals was selected and formed part of the initial submission to Council for the development of the retaining walls. It should be noted that this was the first concept and therefore does not form part of the latest proposal, which has further reduced the height of the southernmost retaining wall. The latest proposal is described in detail later in this report.

On 4 January 2002 the WAPC conditionally approved the subdivision, subject to a condition requiring the grading and stabilising to the satisfaction of the City. An advice note on the subdivision approval stated that a development application would be required for the installation of the proposed retaining walls.

## DETAILS

### Revised Proposal

The proposal has been modified to the extent that the lower lot now retains some slope, rather than being a flat site. This has resulted in the retaining wall to the south being reduced from 3.5 metres to 2.44 metres in height.

No modification has been made to the upper lot, and a 4 metre high retaining wall remains part of the proposal.

### **Statutory Provision:**

#### **Residential Design Codes (R-Codes)**

Retaining walls are assessed under the provisions of the R-Codes.

Development, which is in compliance with the acceptable development provisions of the R-Codes, does not require planning approval, or the exercising of discretion. When a development varies the acceptable development provisions of the R-Codes, the variations can be considered pursuant to the ‘performance criteria’.

Clause 2.3.4 of the R-Codes permits Council to vary the provisions of the Codes if it is determined that the variations comply with the ‘performance criteria’ of the R-Codes.

Clause 3.6.2 of the R-Codes requires retaining walls to be setback from the property boundaries in accordance with the standards prescribed within the R-Codes. This is calculated in accordance with the requirements for a major opening with a wall height of 2.4 metres in addition to the height and length of the retaining wall.

For the southern retaining wall that is 31 metres long, and 2.4 metres, high it is required to be setback 5.7 metres in lieu of the 1.5 metres as proposed.

The south western retaining wall, which is 14m long and 1.65m high, is required to be setback 2.7m in lieu of the 2 metres proposed.

The north western retaining wall, which is 14 metres long and 4 metres in height requires a 4.1 metre setback in lieu of 2 metres, as proposed.

The intent of the R-Codes is to minimise impacts or detrimental outcomes to adjoining landowners. The City is required to consider the setback variations, having regard to the objections lodged by the adjoining owners and the impact the development would have on the adjoining landowners.

### **Policy 3.1.7 – Retaining Walls**

The City has a policy that deals principally with broad acre subdivisional retaining walls, however, the Policy objectives are pertinent to this application:

- 1 Encourage the provision of residential building sites with a minimal slope by the provision of bulk earthworks and subdivision retaining walls.
- 2 To minimise the need for large retaining walls as part of dwelling construction.

Where retaining walls are within 10 metres of a dwelling on an adjoining property in a different ownership, a retaining wall is to be determined in accordance with the R-Codes.

During the subdivision phase, two options were presented as potential solutions. The first was characterised by fill with retaining (and little cutting) and the second attempted, as far as practicable, to cut and fill with retaining walls. The latter option formed part of the original application, which was chosen due to the reduced impact of the two available options.

Applicant's justification:

The applicant has not provided any further justification from the original submission. It was outlined that the topographical constraints of the site and the adjacent sites make the design of the retaining walls difficult, considering that the surrounding properties vary substantially in their relative level and elevation.

**Consultation:**

Advertising

The original retaining wall proposal was advertised for a 14-day period to the surrounding landowners and resulted in three objections being received.

The revised proposal was re-advertised to surrounding owners for a 14-day comment period.

Submissions on Revised Proposal

Submission Received	Comment
<ul style="list-style-type: none"> <li>No objection</li> </ul>	
<ul style="list-style-type: none"> <li>Strongly object as the site does not require such high walls. Will result in loss of sunlight to their home, which would then be constantly dark. A 1.5m retaining wall at a 1.5m setback would still provide for adequate views whilst fitting in with adjacent properties. Concerned of resultant overshadowing for future houses on the lots.</li> </ul>	<p>Noted. Concern is raised in regard to the potential impact of the proposed retaining walls on the amenity of the adjoining sites. However, this must be balanced by the fact that the topography of the area is extreme, and retaining walls and level differences will occur in the area.</p>
<ul style="list-style-type: none"> <li>Strongly objects to the height of the retaining wall. Any future dwelling would be far greater in height than her property blocking views and devaluing the property. If a 2m retaining wall would be proposed with a single storey residence it would still enable adequate views.</li> </ul>	<p>Noted. However, the proposal currently being considered is for the retaining walls. Any proposed dwelling will be assessed in accordance with the R-Codes and Height Policy at a future time.</p>
<ul style="list-style-type: none"> <li>Understands that the block is to be split into two lots and levelled with retaining walls. Concern is raised if the height of the future houses on the lots would be taken from the new retaining walls and not the natural ground levels.</li> </ul>	<p>Noted. In accordance with the provisions of the R-Codes, the height of dwellings will be assessed from the levels determined by the subdivision of the property.</p>

<ul style="list-style-type: none"> <li>Refers to their previous comments made on the initial proposal and still objects to the revised proposal. Suggests that it would be better to make comments on the retaining walls as well as future houses. Only the southern retaining wall has been reduced by 1.1m and the pad level has been reduced by 750mm. This would still result in a retaining wall 3.15m above their level. Requests the rear setback of the retaining walls to be amended to nil as they believe that a setback would create water seepage problems and drainage of water. Requests that the pad levels be reduced to 15.5 and 13.5 respectively for each of the proposed lots. Concerned that high retaining wall would affect their lifestyle and well-being.</li> </ul>	Noted. See above comments.
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## COMMENT

It is acknowledged that the applicant has provided revisions to the original proposal, which have reduced the level of the southern wall. The adjoining landowners, who live on the lower side (west and south) of the site, have commented on those plans objecting to the scale of the walls and the potential impact on their amenity.

The size, design and scale of the walls have been considered carefully, taking into account the topography of the site and its surrounds. However, the current design may have amenity impacts on the adjoining landowners. Consideration should also be given to the potential scale of building that would be placed on the lots. Although it is not known what these are likely to be, it is considered that due to the small size of the lots, that homes of at least two storeys are likely to be proposed for each lot. Note this cannot be considered, as plans are not known at this time.

It is impossible to conclude that any proposed dwellings would comply with the acceptable development provisions of the R-Codes related to overshadowing. Any variations to the applicable standards would be required to go through the normal process of advertising and assessment.

The above comments must also, however, be considered in light of the extreme topography of the site and of the area in general.

The subject area has significantly undulating topography that is not exclusive to the subject lot. In these circumstances it must be expected and accepted that retaining walls, to some extent, will be required to accommodate development.



As the proposed retaining walls do not comply with ‘acceptable criteria’ of the R-Codes, the proposal is considered under the ‘performance criteria’, which states:

*“Retaining walls designed or setback to minimise the impact on adjoining property.”*

The objections from the adjoining owners have outlined that the retaining walls would have a detrimental effect on their amenity.

Notwithstanding, it is noted that the principal private open space areas of the adjoining and potentially affected grouped dwellings do not directly abut the subject site. The impact on the amenity, in terms of the privacy, to the private open space areas due to the proposed retaining walls is therefore decreased.

### **Additional Consultation with Applicant**

The extent of reduction of the heights of the retaining walls does not appear to accord with those agreed in principle between the City and the applicant on 31 March 2003 following the deferral of the application by Council.

It is generally considered that, by reducing the height of the walls in combination with the setback to those walls, this would provide a more suitable outcome, which would assist in overcoming the concerns of the surrounding neighbours.

The scale of the reduction to the retaining walls is the crucial element in determining the level of acceptability of the structures.

It is considered that revised proposal that reduces the southern retaining wall from 3.5 metres to 2.44 metres does not fully address the overall impact on the adjoining owners in terms of the pad levels, or the 4 metre high retaining wall adjacent the western boundary.

Overall, with the exception of the now reduced southern retaining wall, the heights of the other retaining walls are considered to be excessive in their current form, and are capable of being reduced in height. A reduction in height would assist in reducing any potential impact on the adjoining owners. In accordance with the previous report to Council, approval is therefore recommended subject to a reduction in the pad levels and retaining wall heights of 1 metre. This would effectively mean the retaining walls would be reduced to heights of between 2.5 metres and 3 metres.

### **ATTACHMENTS**

Attachment 1      Site Plan

### **VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION:** That Council:

- 1 EXERCISES discretion in accordance with Clause 2.3.4 of the Residential Design Codes 2002 and determines that the setback of the retaining walls meets the performance criteria outlined in Clause 3.6.2;
- 2 APPROVES the application and plans dated 8 October 2002 submitted by Stoneridge Group Pty Ltd, the applicant on behalf of the owners, for retaining walls including side setback variations on Lot 12 (9) Hocking Parade, Sorrento, subject to the following conditions:
  - (a) the height of the retaining wall on the southern boundary to be to a maximum RL 14.5, and the pad level to be a maximum RL 14.5, as indicated in red on the approved plan. Details shall be provided prior to the issue of a building licence, to the satisfaction of the City;
  - (b) the height of the retaining wall on the western boundary of the northern lot to be to a maximum height of 3m, and the pad level to be RL 18, as indicated in the approved plan. Details shall be provided prior to the issue of a building licence, to the satisfaction of the City;
  - (c) boundary fencing shall be replaced where in poor condition and installed to a height of 1.8m adjacent to stair accesses at the applicants expense prior to the completion of the construction of the retaining walls to prevent overlooking from those areas to the adjoining rear properties. Gate accesses will be permitted from the rear stair landings;
  - (d) all stormwater shall be retained and disposed of on site to the satisfaction of the City; and
  - (e) appropriate easements are to be imposed for the side access way and rear stairs to ensure that reciprocal rights of access exist for both sites. This shall be completed prior to the issue of a building licence;
- 3 ADVISES the objectors of (1) above.

## Footnotes:

- 1 The proposed retaining walls shall be designed to allow for a surcharge of the future dwellings, such engineer's design will also need to have certification confirming it has been built in accordance with that design.
- 2 The applicant is advised that the approval of the proposed retaining walls does not in any way imply compliance the applicable R-Code standards in regard to the development of dwellings on the subject lots. Any dwellings on the proposed lots will be assessed in accordance with the R-Code provisions.

**MOVED Cr Kenworthy, SECONDED Cr Gollant that Council:**

- 1 EXERCISES discretion in accordance with Clause 2.3.4 of the Residential Design Codes 2002 and determines that the setback of the retaining walls meets the performance criteria outlined in Clause 3.6.2;
- 2 APPROVES the application and plans dated 8 October 2002 submitted by Stoneridge Group Pty Ltd, the applicant on behalf of the owners, for retaining walls including side setback variations on Lot 12 (9) Hocking Parade, Sorrento, subject to the following conditions:
  - (a) the height of the retaining wall on the southern boundary to be to a maximum RL 14, and the pad level to be a maximum RL 14, as indicated in red on the approved plan. Details shall be provided prior to the issue of a building licence, to the satisfaction of the City;
  - (b) the height of the retaining wall on the western boundary of the northern lot to be to a maximum height of 3m, and the pad level to be RL 17.5, as indicated in the approved plan. Details shall be provided prior to the issue of a building licence, to the satisfaction of the City;
  - (c) boundary fencing shall be replaced where in poor condition and installed to a height of 1.8m adjacent to stair accesses at the applicants expense prior to the completion of the construction of the retaining walls to prevent overlooking from those areas to the adjoining rear properties. Gate accesses will be permitted from the rear stair landings;
  - (d) all stormwater shall be retained and disposed of on site to the satisfaction of the City; and
  - (e) appropriate easements are to be imposed for the side access way and rear stairs to ensure that reciprocal rights of access exist for both sites. This shall be completed prior to the issue of a building licence;
- 3 ADVISES the objectors of (1) above.

## Footnotes:

- 1 The proposed retaining walls shall be designed to allow for a surcharge of the future dwellings, such engineer's design will also need to have certification confirming it has been built in accordance with that design.
- 2 The applicant is advised that the approval of the proposed retaining walls does not in any way imply compliance the applicable R-Code standards in regard to the development of dwellings on the subject lots. Any dwellings on the proposed lots will be assessed in accordance with the R-Code provisions.

Discussion ensued in relation to height reductions in Points 2 (a) and (b).

**MOVED Cr Baker, SECONDED Cr Kimber that the motion BE NOW PUT.****The Procedural Motion was Put and****CARRIED (12/3)**

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

**The Motion as Moved by Cr Kenworthy and Seconded by Cr Gollant was Put and****LOST (7/8)**

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

**MOVED Cr Kimber, SECONDED Cr Mackintosh that Council:**

- 1 EXERCISES discretion in accordance with Clause 2.3.4 of the Residential Design Codes 2002 and determines that the setback of the retaining walls meets the performance criteria outlined in Clause 3.6.2;
- 2 APPROVES the application and plans dated 8 October 2002 submitted by Stoneridge Group Pty Ltd, the applicant on behalf of the owners, for retaining walls including side setback variations on Lot 12 (9) Hocking Parade, Sorrento, subject to the following conditions:
  - (a) the height of the retaining wall on the southern boundary to be to a maximum RL 14.5, and the pad level to be a maximum RL 14.5, as indicated in red on the approved plan. Details shall be provided prior to the issue of a building licence, to the satisfaction of the City;
  - (b) the height of the retaining wall on the western boundary of the northern lot to be to a maximum height of 3m, and the pad level to be RL 18, as indicated in the approved plan. Details shall be provided prior to the issue of a building licence, to the satisfaction of the City;
  - (c) boundary fencing shall be replaced where in poor condition and installed to a height of 1.8m adjacent to stair accesses at the applicants expense prior to the completion of the construction of the retaining walls to prevent overlooking from those areas to the adjoining rear properties. Gate accesses will be permitted from the rear stair landings;
  - (d) all stormwater shall be retained and disposed of on site to the satisfaction of the City; and
  - (e) appropriate easements are to be imposed for the side access way and rear stairs to ensure that reciprocal rights of access exist for both sites. This shall be completed prior to the issue of a building licence;
- 3 ADVISES the objectors of (1) above.

**Footnotes:**

- 1 The proposed retaining walls shall be designed to allow for a surcharge of the future dwellings, such engineer's design will also need to have certification confirming it has been built in accordance with that design.
- 2 The applicant is advised that the approval of the proposed retaining walls does not in any way imply compliance the applicable R-Code standards in regard to the development of dwellings on the subject lots. Any dwellings on the proposed lots will be assessed in accordance with the R-Code provisions.

**The Motion was Put and****LOST (7/8)****In favour of the Motion:** Mayor Carlos, Crs Brewer, Hollywood, Kimber, Mackintosh, Nixon and Rowlands**Against the Motion:** Crs Baker, Caiacob, Gollant, Hart, Kenworthy, O'Brien, Prospero and Walker*Appendix 9 refers**To access this attachment on electronic document, click here: [Attach9brf010703.pdf](#)**Cr Nixon declared a financial interest in Item CJ158-07/03 – Delegated Authority Report for the month of May 2003 as he is an employee of Joondalup Health Campus.**Cr Nixon left the Chamber, the time being 2044 hrs.***CJ158 - 07/03 DELEGATED AUTHORITY REPORT FOR THE MONTH OF MAY 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 May 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 (\$)
May 2003	108	8,521,098

## ATTACHMENTS

Attachment 1 - Development Approvals processed

## VOTING REQUIREMENTS

Simple Majority

**MOVED Cr Mackintosh SECONDED Cr Walker that Council NOTES the determinations made under Delegated Authority in relation to the applications described in REPORT CJ158-07/03.**

**The Motion was Put and**

**CARRIED (14/0)**

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

*Appendix 10 refers*

*To access this attachment on electronic document, click here: [Attach10brf010703.pdf](#)*

*Cr Nixon entered the Chamber, the time being 2045 hrs.*

**CJ160 - 07/03      PROPOSED CHILD DAY CARE CENTRE: LOT 575  
(65) WANNEROO ROAD AND LOT 1 (1) GORMAN  
STREET, CNR WANNEROO ROAD, GREENWOOD –  
[78165]**

**WARD -** South Ward

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## 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.”*

This report on the application was again considered at the Council meeting held on 17 June 2003. A motion to refuse the application as per the Officer's Recommendation was lost. A further motion to approve the application was also lost. Therefore, the application remains undetermined.

Under the Metropolitan Region Scheme Text and the District Planning Scheme No 2, the City/Council is required to determine planning applications within 60 days, unless prior agreement has been reached with the applicant to extend this period. As Council has not determined the application within this period, the applicant has the right to deem the application refused, and appeal to the Town Planning Appeals Tribunal.

**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**

<b>DPS2/Policy Standard</b>	<b>Required</b>	<b>Provided</b>
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>
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## 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.

## **ATTACHMENTS**

Attachment 1 – Location Plan

Attachment 2 – Development Plan

## **VOTING REQUIREMENTS**

Simple Majority

**OFFICER’S RECOMMENDATION:** 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.

**MOVED Cr O’Brien, SECONDED Cr Hart 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;**
  - (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.**

Discussion ensued.

*During discussion, the following movements occurred:*

*Cr Kenworthy left the Chamber at 2046 hrs and returned at 2047 hrs;*

*Cr Rowlands left the Chamber at 2047 hrs and returned at 2049 hrs;*

*Cr Brewer left the Chamber at 2051 hrs and returned at 2054 hrs.*

Cr O'Brien gave the following reasons for his departure from the Officer's Recommendation:

- There is no childcare centre in Greenwood;
- All childcare centres within 8 kms of this site have waiting lists;
- Adjoining residents support the application and have given approval in writing;
- Traffic report indicates minimal impact on the amenity and certainly not sufficient impact to warrant refusal of this application.

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

**The Motion was Put and**

**CARRIED**

Discussion continued.

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

**CARRIED (12/3)**

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

*Appendix 12 refers*

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

## **CJ143 - 07/03      REGISTRATION OF VOTING DELEGATES FOR WALGA ANNUAL GENERAL MEETINGS – [21453]**

**WARD - All**

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### **PURPOSE**

For Council to appoint voting delegates from those elected members who have registered to attend the Annual Local Government Week and who will be attending the Western Australian Local Government Association (WALGA) and Local Government Association (LGA) Annual General Meetings.

### **EXECUTIVE SUMMARY**

The 2003 Local Government Week will be held at the Burswood Convention Centre from Friday, 1 August to Tuesday 5 August. The Statutory Annual General Meetings for the Associations will be held on Sunday 3 August with the LGA and Country Shire Councils Association (CSCA) meetings commencing at 11.30am and the WALGA meeting commencing at 1.00pm. Member Councils having representatives attending the meetings and wanting to participate in voting on matters raised, must register their voting delegates by 11 July 2003.

### **BACKGROUND**

The Annual General Meetings of the various local government associations in Western Australia are traditionally held during Local Government Week Conference when the majority of local governments in the State have representatives attending.

In order to participate in the voting on matters decided at the annual general meetings, each member Council must register their voting delegates by 11 July 2003. Proxy voting is available for delegates from Member Councils who are unable to attend or will not be represented by their full voting entitlement at the AGMs. Appointment of proxies must be registered with the Secretariat before 25 July 2003.

### **DETAILS**

For the WALGA Annual General Meeting, member Councils are entitled to be represented by two voting delegates, with each able to exercise one vote. Voting must be exercised in person, and proxy voting is available provided proxies are registered.

For the LGA Annual General Meeting, member Councils have the same voting entitlements as at the LGA Zone Committees. The Cities of Joondalup, Stirling and Wanneroo make up the North Metropolitan Zone Committee with each Council having four voting representatives. Council's current representatives on the North Zone Committee are:



Cr Gerry Kenworthy (Chairman) Member of State Council of WALGA  
Cr Mike O'Brien  
Cr Louis Prospero  
Cr Allison Walker

## COMMENT

At the time of preparing this report, the following elected members had indicated their initial intention to attend Local government Week 2003 and have been provided with Registration Forms and the program for the week:

Mayor Don Carlos  
Cr Gerry Kenworthy  
Cr Allison Walker  
Cr Janine Gollant

For the City to actively participate in the annual general meetings and exercise their full voting entitlement, registration of voting delegates must be finalised by 11 July 2003.

## ATTACHMENTS

Nil

## VOTING REQUIREMENTS

Simple Majority

**OFFICER'S RECOMMENDATION:** That Council APPOINTS voting delegates as follows:

1 Statutory Annual General Meeting of the Local Government Association

Cr G Kenworthy  
Cr M O'Brien  
Cr L Prospero  
Cr A Walker

2 WALGA Annual General Meeting

Mayor D Carlos  
Cr G Kenworthy

## ADDITIONAL INFORMATION

It has been noted that the delegates outlined in Point 1 of the recommendation within Item CJ143-07/03 are incorrect. The amended Recommendation is submitted for elected members' consideration.

**RECOMMENDATION**

That Council APPOINTS voting delegates as follows:

**1 Statutory Annual General Meeting of the Local Government Association**

Mayor Don Carlos  
Cr Gerry Kenworthy  
Cr Allison Walker  
Cr Janine Gollant

**2 WALGA Annual General Meeting**

Mayor D Carlos  
Cr G Kenworthy

**MOVED Cr Baker, SECONDED Cr Walker that Council APPOINTS voting delegates as follows:**

**1 Statutory Annual General Meeting of the Local Government Association**

**Mayor Don Carlos  
Cr Gerry Kenworthy  
Cr Allison Walker  
Cr M O'Brien**

**2 WALGA Annual General Meeting**

**Mayor D Carlos  
Cr G Kenworthy**

To a query from Cr O'Brien, Cr Gollant advised she was prepared to withdraw from being a voting delegate, in order that Cr O'Brien may fulfil this role.

**The Motion was Put and**

**CARRIED (15/0)**

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

**COUNCIL DECISION – EN BLOC RESOLUTION NO 1**

The following Items were then moved en-bloc CJ141-07/03, CJ146-07/03, CJ147-07/03, CJ148-07/03, CJ149-07/03, CJ150-07/03, CJ151-07/03, CJ152-07/03, CJ154-07/03, CJ155-07/03 and CJ159-07/03

*Cr Mackintosh declared an interest which may affect her impartiality in Item CJ141-07/03 – European Cities Against Drugs 10<sup>th</sup> Anniversary Mayors' Conference as she attended the conference.*

**CJ141 - 07/03 EUROPEAN CITIES AGAINST DRUGS 10<sup>TH</sup>  
ANNIVERSARY MAYORS' CONFERENCE – [00427]**

**WARD - All**

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**PURPOSE**

To consider the report of Cr Carol Mackintosh from the European Cities against Drugs 10<sup>th</sup> Anniversary Mayors' Conference.

**EXECUTIVE SUMMARY**

The European Cities against Drugs 10th Anniversary Mayors Conference was held in Stockholm Sweden, 15 – 17 May 2003.

In Report CJ058-04/03 Council authorised the attendance of Cr Carol Mackintosh at the conference.

In accordance with the resolution of Council, Cr Mackintosh has prepared a report on the conference.

**BACKGROUND**

**Conference Theme: Drug Policy at the crossroads**

The abuse of illegal drugs is a growing problem all over the world. Various actions are taken by the European Union, the member States and Capitals, Cities and municipalities to counteract the problems. However, there is a lack of a common strategy and common goals in the combat against drugs. The conference aimed to address this situation and was based on the United Nation's Conventions, which has 250 Signatory Municipalities in 29 countries.

At the Council meeting held on 1 April 2003 it was resolved that:

*MOVED Cr Baker, SECONDED Cr O'Brien that Council:*

- 1 AUTHORISES the attendance of Cr Carol Mackintosh at the European Cities against Drugs 10<sup>th</sup> Anniversary Mayors' Conference 15 - 17 May 2003;*
- 2 AUTHORISES the expenditure in 1 above to be charged to Budget item Elected Members Conference and Training Allowance, Account number 11 05 05 052 3521 0001;*
- 3 REQUESTS a report from Cr Mackintosh upon her return.*

*The Motion was Put and*

*CARRIED (9/3)*

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

## DETAILS

Cr Carol Mackintosh attended European Cities against Drugs 10<sup>th</sup> Anniversary Mayors' Conference held in Stockholm Sweden, 15 –17 May 2003.

During the conference Cr Mackintosh attended 11 keynote addresses from various European countries and participated in 2 site visits.

## COMMENT

In report CJ058 04/03 Council requested a report from Cr Mackintosh upon her return. Cr Mackintosh has produced the required report, which is provided as attachment 1 hereto.

## ATTACHMENTS

**Attachment 1** – Report of Cr Carol Mackintosh from the European Cities against Drugs 10<sup>th</sup> Anniversary Mayors' Conference.

**Attachment 2** - Conference papers from the European Cities against Drugs 10<sup>th</sup> Anniversary Mayors' Conference.

## VOTING REQUIREMENTS

Simple Majority

*Cr Baker left the Chamber, the time being 2111 hrs.*

**MOVED Cr Kenworthy, SECONDED Cr Walker that Council:**

- 1 NOTES the report of Councillor Carol Mackintosh from her attendance at the European Cities against Drugs 10<sup>th</sup> Anniversary Mayors' Conference;**
- 2 AUTHORISES the City to investigate any suggested strategies from the European Cities against Drugs 10<sup>th</sup> Anniversary Mayors' Conference that may benefit the Local Community.**

**The Motion was Put and**

**CARRIED BY  
EN BLOC RESOLUTION NO 1 (14/0)**

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

*Appendix 1 refers*

*To access this attachment on electronic document, click here: [Attach1brf010703.pdf](#)*

## **CJ146 - 07/03      FINANCIAL REPORT FOR THE PERIOD ENDING 31 MAY 2003 – [07882]**

**WARD - All**

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### **PURPOSE**

The May 2003 financial report is submitted to Council to be noted.

### **EXECUTIVE SUMMARY**

The May 2003 report shows a variance of \$12.8m when compared to the budget for the year to date.

This variance can be analysed as follows:

- The **Operating** position shows an actual operating surplus of \$4.3m compared to a budgeted operating surplus of \$2.0m at the end of May 2003, a difference of \$2.3m, due mainly to the receipt of unbudgeted state government contributions and an underspend in materials and contracts and employee costs for the year to date.
- **Capital Expenditure** for the year to date is \$2.0m compared to budgeted expenditure of \$2.2m as at the end of May 2003, a difference of \$0.2m. This is due mainly to the purchase of some computer equipment (predominantly replacement computers) that has been reclassified as operating expenditure, as it was less than the required \$2,000 for capitalisation. In addition, the purchase of some vehicles has been delayed due to supply difficulties. Several vehicles have been replaced ahead of schedule.
- **Capital Works** expenditure for the year to date amounted to \$8.9m against a budget of \$19.2m, an underspend of \$10.3m as at the end of May 2003. However, the City has committed expenditure through raised purchase orders of \$1.8m. It is estimated that capital works the value of \$11.9m will be carried forward at 30 June 2003 and include the depot project, Currambine community centre, Sorrento beach, Craigie Leisure Centre and Shenton Ave road works.

### **DETAILS**

The financial report for the period ending 31 May 2003 is appended as Attachment A to this Report.

### **ATTACHMENTS**

Financial Report for the period ending 31 May 2003.

**VOTING REQUIREMENTS**

Simple Majority

**MOVED Cr Kenworthy, SECONDED Cr Walker that the Financial Report for the period ending 31 May 2003 be NOTED.**

**The Motion was Put and**

**CARRIED BY  
EN BLOC RESOLUTION NO 1 (14/0)**

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

*Appendix 4 refers*

*To access this attachment on electronic document, click here: [Attach4brf010703.pdf](#)*

**CJ147 - 07/03 RENEWAL OF WORKERS COMPENSATION  
INSURANCE 2003/2004 PUBLIC  
LIABILITY/PROFESSIONAL INDEMNITY  
INSURANCE FOR 2003/2004 AND PROPERTY (ISR)  
INSURANCE FOR 2003/2004 – [02882]**

**WARD - All**

**PURPOSE**

For Council to give consideration to the renewal of Workers' Compensation Insurance 2003/2004 Public Liability/Professional Indemnity Insurance for 2003/2004 and Property (ISR) Insurance for 2003/2004.

**EXECUTIVE SUMMARY**

This report provides details of insurance premiums from Local Government Insurance Services for the 2003/2004 financial year for: -

Workers Compensation Insurance	- Municipal Workcare Scheme
Public Liability/Professional Indemnity Insurance	- Municipal Liability Scheme
Property (ISR) Insurance	- Municipal Property Scheme

This report provides Council with a summary of costs and changes in relation to renewal of the City's insurance policies for Workers Compensation Insurance, Public Liability/Professional Indemnity Insurance and Property (ISR) Insurance for the 2003/2004 financial year.

This report recommends that the City advises Local Government Insurance Services that it:

- 1 continues with a burning cost system of insurance for its Workers Compensation insurance
- 2 accepts the premium quotation of \$471,730 exclusive of GST for Public Liability/Professional Indemnity insurance
- 3 accepts the premium quotation of \$352,340 exclusive of GST for Property (ISR) insurance.

## **BACKGROUND**

In 1995/96 the former City of Wanneroo became an inaugural member of the Local Government Insurance Services insurance scheme operated under the auspices of WALGA. One of the main purposes of the scheme was to gain group purchasing power for all participating local governments in the areas of:

- Workers Compensation insurance (commenced 1995/1996)
- Public Liability/Professional Indemnity insurance (commenced 1995/1996)
- Property (ISR) Insurance (commenced 2002/2003)

As a member of these schemes, the provisions of the Local Government (Functions and General) Regulations 1996 apply. This effectively obviates the need for the City to call tenders for Workers Compensation, Public Liability/Professional Indemnity and Property (ISR) insurances.

## **DETAILS**

### **Workers Compensation Insurance**

From 1 July 2001 the City elected to operate its workers compensation insurance through a “Burning Cost” arrangement. A burning cost arrangement operates where the annual premium is directly related to claims experience with a portion of the premium paid as a deposit and the remainder paid (if applicable) based on claims experience. The premium is based on claims paid and varies between Minimum and Maximum payments. It is capped at the maximum of 3.50% of total salaries/wages and superannuation paid to employees for the year.

By way of a simple example a burning cost insurance scheme works as follows:

The insured pays an initial deposit to the insurer based on a deposit premium. The remaining funds (to the limit of the maximum premium) are shown as a liability in the insured’s (City of Joondalup) balance sheet pending further premium calls. The total expense of 3.50% of salaries/wages and superannuation is shown as an expense in the operating statement for that year.

The period of the burning cost contract is usually between three to five years depending on claims experience and can be settled at any time.

Should the cost of claims paid exceed the deposit premium then a further call is made against the City up to the maximum premium payable and charged against unpaid balance of the maximum in the liability account in the balance sheet. Should the total cost of claims exceed the maximum, the insurer carries the additional cost. If the cost of claims are lower than the maximum at the end of the burning cost period then the

City benefits and the savings are transferred from the liability account in the balance sheet to the operating statement when settlement has been finalised.

Municipal Workcare Scheme has indicated the following rates will apply for 2003/2004:

Single Rate Premium	Total	3.5 % of Payroll (plus 1% HIH surcharge)
Burning Cost Premium	Minimum	1.6 % of payroll
	Deposit	2.0 % of payroll (plus 1% HIH surcharge)
	Maximum	3.5 % of payroll

Estimated salaries/wages and superannuation for 2003/04 is \$22,676,476.

The 1% government surcharge for the HIH collapse is only payable on the deposit premium and the single rate premium, this was 5% for 2001/2002 and 3% for 2002/2003.

### **Public Liability/Professional Indemnity Insurance**

The former City of Wanneroo (and the City of Joondalup since 1 July 1999) has been a member of the Municipal Liability Scheme since its inception on 1 July 1995.

Participants of the scheme since that time have enjoyed the benefits of lower premiums, enhanced insurance coverage and a more personalised service.

The scheme has indicated its 2003/2004 terms and conditions and premium contribution will be \$471,730.00 excluding GST. The equivalent premium for 2002/2003 was \$372,300 excluding GST and for 2001/2002 \$282,490 excluding GST.

Payment of the contribution will be:

50% of contribution	\$235,865 plus GST	Payable 15 August 2003
50% of contribution	\$235,865 plus GST	Payable 15 November 2003

The GST will be claimed back from the Australian Taxation Office as an input tax credit.

### **Property (ISR) insurance**

This scheme is a new scheme set up by Local Government Insurance Services, which commenced on 1 July 2002. Previously the City requested Municipal Insurance Broking Services (MIBS) seek tenders on the City's behalf.

The City's buildings have been reviewed internally for insurance purposes using the Australian Bureau of Statistics Construction Index Rate, with several of the City's major buildings increasing by as much as 7% after valuation by the Valuer Generals Office, additionally the City has included ornamental street lighting, library book stocks, artefacts and artworks, computer equipment, furniture and office equipment and other plant and equipment, consequently the Declared Replacement Value will be \$123,100,880. The 2002/03 declared value was \$113,259,058 with a premium of \$305,219.17 excluding GST.



The scheme has indicated its 2003/2004 terms and conditions and premium contribution at \$352,340.00 excluding GST.

## COMMENT/FUNDING

### Workers Compensation Insurance

The scheme has been notified that the City's estimated Salaries/Wages and Council Contribution for Superannuation for the 2003/2004 financial year is \$22,672,476.

Using the two methods of calculation the premiums are as follows: -

#### a) Single Rate

Total	3.5 % of payroll	\$793,537 plus GST
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#### b) Burning Cost Rating

Minimum	1.6 % of payroll	\$362,760 plus GST
Deposit	2.0 % of payroll	\$460,251 plus GST
Maximum	3.5 % of payroll	\$793,537 plus GST

(The deposit premium payment and the single rate payment includes the government HIH 1.0 % surcharge and is payable in two payments 15 August 2003 and 15 November 2003)

An assessment of the claims history and risk profiles over the last few years indicates that it is more cost advantageous for the City to continue with a performance rating method for Workers Compensation insurance premium calculation (burning cost).

Based on the above calculations the maximum insurance cost exposure is \$793,537 (depending on final payroll calculations at end of financial year) with the distinct ability to have savings at the end of the burning cost period based on a reduction in claims experience.

The maximum insurance cost exposure for 2002/03 was \$751,270 with a deposit of \$491,546. The reason for the overall increase in maximum exposure is the increase in the value of the City's wages and salaries estimate.

### Public Liability/Professional Indemnity Insurance

The City's contribution for these liability insurances for 2003/2004 will be \$471,730 exclusive of GST, an increase of approximately 26% over 2002/2003. This is competitive compared to the market where increases can be as high as 100% plus.

Acceptance of this quotation is recommended.

### Property (ISR) Insurance

In previous years the City called tenders for this insurance cover through brokers Municipal Insurance Broking Service. Due to the lack of interest by insurers to tender (in 2001/2002 only two insurers tendered), nil tenders were received for 2002/2003, Local Government Insurance Services have now set up a Property (ISR) Insurance Scheme for local governments which commenced from 1 July 2002.

The total declared Replacement Value for the 2003/2004 financial year is \$123,150,880 dissected into the following classes: -

Buildings	\$104,802,720
Library Book Purchases	\$ 7,262,394
Ornamental Street Lighting	\$ 3,597,204
Artefacts and Artworks	\$ 242,605
Computer Equipment	\$ 4,945,575
Furniture and Fittings	\$ 988,025
Other Plant and Equipment	\$ 1,312,357
<b>Total</b>	<b>\$123,150,880</b>

**Excess on Claims**

Standard Excess	\$ 2,500
Lighting Damage Excess	\$10,000
Vandalism/Malicious Damage Excess	\$10,000
Named Cyclone	\$50,000 Minimum
Earthquake Damage Excess	\$20,000 or 1% whichever is the lesser

(The property (ISR) insurance premium for this cover for the 2003/2004 financial year will be \$352,340 exclusive of GST.)

The insurance premium for 2002/2003 was \$305,219.17 exclusive of GST.

Acceptance of this quotation is recommended.

**ATTACHMENTS**

Nil.

**VOTING REQUIREMENTS**

Simple Majority

**MOVED Cr Kenworthy, SECONDED Cr Walker that Council ADVISES Local Government Insurance Services that Council:**

**1 CONTINUES with its burning cost scheme of Workers Compensation insurance premium calculation for the 2003/2004 financial year based on the following:**

<b>Minimum Payment</b>	<b>1.60% of payroll</b>
<b>Deposit Payment</b>	<b>2.00% of payroll (plus 1% Govt HIH surcharge)</b>
<b>Maximum Payment</b>	<b>3.50% of payroll</b>

**with payment of the deposit premium \$460,251 (excluding GST) to be in equal instalments including GST with the First Instalment on 15 August 2003 and Second Instalment due on 15 November 2003;**

- 2 ACCEPTS the 2003/2004 premium for Public Liability/Professional Indemnity insurance cover of \$471,730 (exclusive of GST) with payment to be in equal instalments including GST with the First Instalment on 15 August 2003 and the Second Instalment due on 15 November 2003;**
- 3 ACCEPTS the 2003/2004 premium for Property (ISR) insurance cover of \$352,340 (exclusive of GST) with payment to be in equal instalments including GST with the First Instalment on 15 July 2003 and the Second Instalment due on 15 September 2003.**

**The Motion was Put and**

**CARRIED BY  
EN BLOC RESOLUTION NO 1 (14/0)**

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

**CJ148 - 07/03 RENEWAL OF MOTOR VEHICLE AND PLANT INSURANCE AND VARIOUS ANCILLARY LINES OF INSURANCES FOR 2003/2004 – [05581]**

**WARD - All**

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**PURPOSE**

This report provides details of insurance premiums from Municipal Insurance Broking Service obtained through the tender of Motor Vehicle and Plant insurance and quotations for the City's ancillary lines of insurance for the 2003/2004 financial year.

**EXECUTIVE SUMMARY**

The City's insurance cover for Motor Vehicle and Plant insurance and its ancillary lines of insurance expires at 4.00pm 30 June 2003.

Municipal Insurance Broking Service (MIBS) were engaged to act on behalf of the City to seek terms and conditions from underwriters for insurance cover for Motor Vehicle and Plant insurance and ancillary lines of insurance for the 2003/2004 financial year through a tender process.

Following an evaluation of the tender received it is recommended that the City places its 2003/2004 insurance cover for Motor Vehicle and Plant with Zurich Australian Insurance Ltd.

It is recommended that the City place its 2003/2004 ancillary lines of insurance as follows:

Contract Works	Allianz Australia Insurance Ltd
Fidelity Guarantee	Ace Insurance Ltd
Personal Accident and Travel	Ace Insurance Ltd
Councillors' and Officers Liability	Ace Insurance Ltd

## BACKGROUND

The City authorised Municipal Insurance Broking Service (MIBS) to seek tenders for the City's insurance cover for Motor Vehicle and Plant insurance for the 2003/2004 financial year.

Municipal Insurance Broking Service (MIBS) was also requested to seek quotations for the City's following lines of ancillary insurance for 2003/2004:

- Contract Works
- Fidelity Guarantee
- Personal Accident and Travel
- Councillors' and Officers Liability

Municipal Insurance Broking Service (MIBS) placed the advertisement seeking tenders for Motor Vehicle and Plant insurance for the 2003/04 financial year in the West Australian newspaper on Saturday 31 May 2003. This was a joint advertisement that simultaneously sought tenders for other local governments. Tenders closed at 4.00pm on Monday 16 June 2003.

## DETAILS

The following tender was received:

### Motor Vehicles and Plant

The Combined Declared Replacement Value for 2003/2004 is \$7,626,415 comprising:

Light Vehicles	\$3,745,393
Heavy Vehicles	\$1,397,407
Mobile Plant	\$2,233,615
Hired Equipment	\$ 250,000

Only one tender was received for 2003/2004 as follows: -

	<b>Premium</b>	<b>GST</b>	<b>Total</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Zurich Australian Insurance Ltd	70,249.50	7,024.95	77,274.45

GST will be claimed back from the Australian Taxation Office as an input tax credit.

In 2002/2003 the total declared value was \$7,597,085. The City's Motor Vehicle and Plant insurance premium for the 2002/2003 financial year was \$77,881.11 exclusive of GST. The insurer was Zurich Australia Insurance Ltd.

### Ancillary Lines of Insurance

Municipal Insurance Broking Service (MIBS) also sought quotations for the ancillary lines of insurance cover through a bulk purchasing arrangement with other local governments. This effectively reduces the premiums applicable.

The quotations received were:

	<b>Premium</b> \$	<b>GST</b> \$	<b>Total</b> \$
Contract Works	2,000.00	200.00	2,200.00
Fidelity Guarantee	3,200.00	320.00	3,520.00
Personal Accident and Travel	1,335.69	133.57	1,469.26
Councillors and Officers Liability	9,325.58	932.58	10,258.14

### COMMENT/FUNDING

#### Motor Vehicles and Plant

This policy covers all Motor Vehicles and Plant, owned by the City or for which the City is responsible or has accepted responsibility to insure and includes items leased, hired, rented, borrowed or used by the City or purchased by the City under any form of contract or agreement.

The term “Motor Vehicles and Plant” used is deemed to include vehicles and trailers of every description including accessories, apparatus and equipment of the insured and/or their employees used in or on vehicles and trailers insured.

#### Sums Insured

- All Vehicles and Plant           Market Value
- Third Party                        Limit of Liability \$10,000,000
- Councillors, Employees       Market Value  
and Volunteers

#### Deductibles

- Standard                           \$500
- Councillors/ Employees/ Volunteers   NIL

#### Extensions

- Employee Personal Effects \$2,000  
(employees’ personal effects left in Council vehicle at time of accident or theft but only when on Council business)

## Ancillary Lines of Insurance

### **Contract Works**

This policy provides indemnity for accidental physical loss or damage to buildings and other works during construction, renovation or extension. Demolition costs, tools and equipment used at the contract site and professional fees can be included.

#### **Section 1 – Material Damage**

Limit any one Contract	\$1,000,000
Including - Professional Fees	- 10% Contract Value
- Removal of Debris	- 10% Contract Value

#### **Section 2 – Public Liability**

Limit of Liability	Not Required
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#### **Deductibles:**

- <b>Major Perils</b>	\$15,000 (min) or 1% of the contract price whichever is the greater.
- <b>Cyclone</b>	\$1,000 (min) or 1% of the contract price whichever is the greater.
- <b>Minor Perils</b>	\$1,000
- <b>Theft/Malicious Damage</b>	\$1,000

It is recommended that the City places its 2003/2004 Contract Works insurance with Allianz Australia Insurance Ltd via Municipal Insurance Broking Service (MIBS) at a premium of \$2,200.00 (GST inclusive). The GST is claimed back from the Australian Taxation Office as an input tax credit.

For 2002/03, the insurer was Allianz Australia Insurance Ltd. The premium was \$11,088.00 (GST inclusive).

### **Fidelity Guarantee**

This policy covers fraudulent embezzlement or fraudulent misappropriation of money and or negotiable instruments or goods belonging to the City or for which the City is legally liable.

Limit any one person	\$100,000
Aggregate Limit any one period of insurance	\$100,000

Deductible/Excesses	The City shall bear the first \$5000 of each and every loss or series of losses arising from the one source or original cause irrespective of whether they were committed during more than one period of insurance.
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It is recommended that the City places its 2003/2004 Fidelity Guarantee insurance with Ace Insurance Ltd via Municipal Insurance Broking Service (MIBS) at a premium of \$3,520.00 (GST inclusive). The GST is claimed back from the Australian Taxation Office as an input tax credit.

For 2002/03, the insurer was American International Group. The premium was \$2,365.00 (GST inclusive).

### **Personal Accident and Travel**

This policy covers Councillors, Officers and spouses as follows: -

#### **Personal Accident:**

Loss of Income and selected benefits resulting from an accident or illness causing death or permanent / temporary disability while the Insured Person is carrying out Official Duties from any of the insured events as set out in the policy.

#### **Corporate Travel:**

Personnel whilst on Authorised Business Travel are covered for a range of selected exposures such as medical expenses, baggage, loss of Deposits and the like. Personal Computers are not covered.

#### **Insured Persons:**

Councillors/Elected Members/Mayor	\$100,000
All Employees	\$100,000
Accompanying Partner/Spouse	\$100,000
Voluntary Workers	\$100,000
When on Insured Travel	\$100,000
Weekly Benefit for Temporary Total Disablement	\$ 2,000 (Income Earners Only)

It is recommended that the City places its 2003/2004 Personal Accident and Travel insurance with Ace Insurance Ltd through Municipal Insurance Broking Service (MIBS) at a premium of \$1,469.26 (GST inclusive).

For 2002/03, the insurer was Ace Insurance Ltd. The premium was \$1240.25 (GST inclusive).

### **Councillors' and Officers' Liability**

This insurance covers Councillors and Officers for legal costs, which could arise from a claim which may not be covered under the terms and conditions of a Public Liability/Professional Indemnity insurance policy with the Municipal Liability Scheme.

Insurance cover of this nature is popular and is considered essential given that a Councillor or an Officer may give an obviously incomplete or irrelevant answer to a question in a proposal which could give rise to a claim or a possible claim by another party against that person. This policy doesn't cover judgement costs arising from a claim.

**Limits of Liability - Councillors and Officers**

Section 1 Councillors and Officers Liability	\$ 2,000,000
Section 2 Council Reimbursement	\$ 2,000,000

**Deductibles/Excesses**

Section 1 Councillors and Officers Liability	Nil
Section 2 Council Reimbursement	\$ 5,000

It is recommended that the City places its 2003/2004 Councillors and Officers' Liability insurance with Ace Insurance Ltd through Municipal Insurance Broking Service (MIBS) at a premium of \$10,258.14 (GST inclusive).

For 2002/03, the was Ace Insurance Ltd. The premium was \$8,920.12 (GST inclusive).

**ATTACHMENTS**

Nil.

**VOTING REQUIREMENTS**

Simple Majority

**MOVED Cr Kenworthy, SECONDED Cr Walker that Council ACCEPTS the:**

- 1 tender as submitted by Zurich Australian Insurance Ltd through Municipal Insurance Broking Service for the City's 2003/2004 Motor Vehicle and Plant Insurance cover at a premium of \$ 77,274.45 - GST inclusive;**
- 2 quotation submitted by Allianz Australia Insurance Ltd through Municipal Insurance Broking Service for the City's 2003/2004 Contract Works insurance cover at a premium of \$2,200.00 - GST Inclusive;**
- 3 quotation submitted by Ace Insurance Ltd through Municipal Insurance Broking Service for the City's 2003/2004 Fidelity Guarantee insurance cover at a premium of \$3,520.00 - GST Inclusive;**
- 4 quotation submitted by Ace Insurance Ltd through Municipal Insurance Broking Service for the City's 2003/2004 Personal Accident and Travel insurance cover at a premium of \$1,469.26 - GST Inclusive;**
- 5 quotation submitted by Ace Insurance Ltd through Municipal Insurance Broking Service for the City's 2003/2004 Councillors and Officers' Liability insurance cover at a premium of \$10,258.14 - GST Inclusive.**

**The Motion was Put and**

**CARRIED BY  
EN BLOC RESOLUTION NO 1 (14/0)**

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



## **CJ149 - 07/03      TENDER 036-02/03 – SUPPLY AND DISPOSAL OF TWO 2WD 40kW PTO TRACTORS – [88541]**

**WARD - All**

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### **PURPOSE**

To accept the Tender submitted by Wanneroo Agricultural Machinery, for the supply of two new Case JX80U 2WD tractors at \$113,020 and disposal by trade-in of two used tractors, plant numbers 98543 & 98544 for \$56,500, resulting in a net cost to the City of \$56,520 excluding GST.

### **EXECUTIVE SUMMARY**

The City's 2002/03 budget provided for the purchase of mobile plant, as detailed in the Fleet Replacement Program and carried over to the 2003/04 financial year. Funding for the cost of change-over is to be sourced from the Mobile Plant Reserve Account.

The City's 2002/03 budget provided for the purchase of two replacement tractors together with the disposal of the following plant items:

- Plant Number 98543 1998 Massey Ferguson 4225 allocated to Operations Services
- Plant Number 98544 1998 Massey Ferguson 4225 allocated to Operations Services

This report outlines the selection process relating to the purchase of two 55kW 2WD tractors and the disposal of the two old tractors and recommends:

- 1 Accepting the Tender submitted by Wanneroo Agricultural Machinery, for the supply of two new Case JX80U 2WD tractors at \$113,020 excluding GST;
- 2 Accepting the Tender submitted by Wanneroo Agricultural Machinery, for the disposal by trade-in of two used tractors, plant numbers 98543 & 98544, at \$56,500 excluding GST.

### **BACKGROUND**

Tender 036-02/03 for the purchase and supply of two new tractors and the disposal of two used tractors was advertised on 5 April 2003 and closed on 29 April 2003. The two tractors to be sold, by trade-in or by outright purchase, were presented for inspection on 8 April 2003 and were evaluated by all tenderers.

### **DETAILS**

Seven tenders were received and recorded in the tender register. The following tenders were considered to be non-conforming as the tractor engine size was below the minimum specification required by the City:

- 1 Wattleup Tractors to supply the Massey Ferguson MF 4225
- 2 E & MJ Rosher Pty Ltd to supply the Kubota M6800
- 3 CJD Equipment to supply the John Deere JD 5320

Two suppliers offered conforming tenders together with an alternative tender as listed below:

- 1 Wanneroo Agricultural Machinery to supply the Case JX80U and the alternative Case JX75.
- 2 Western Ag Pty Ltd to supply the McCormick CX75 and the alternative Landini DT80.

Under the City's Contract Management Framework and the Code of Tendering AS 4120-1994, the tenders were assessed by an evaluation committee, using a weighted multi-criterion assessment system.

The selection criteria required Tenderers to specifically address the following:

- 1 Prices offered for the outright purchase of the used plant
- 2 Prices offered for the new supply with or without the trade in
- 3 Tenderers demonstrated ability to provide after sales service & product spare parts
- 4 The proposed supply meeting the tender specification
- 5 Whole of life costs
- 6 Scheduled delivery date for the new supply

Only the two conforming & two alternative tender submissions were evaluated. The two alternative tender submissions were considered by the evaluation committee to be less than satisfactory in meeting the above selection criteria.

Of the two conforming tender submissions, Wanneroo Agricultural Machinery with the Case JX80U tractor ranked first on the qualitative criteria, and also provided competitive pricing ranking first on the quantitative criteria.

The Case JX80U tractor was considered by the evaluation committee to be the best value purchase for the City of Joondalup.

#### **Policy 2.4.6. Purchasing Goods and Services**

The City's Policy on purchasing goods and services encourages local business in the purchasing and tendering process. Both conforming tenderers are located in the regional purchasing area. Wanneroo Agricultural Machinery is located in Woodvale and Western Ag Pty Ltd is located in Wangara.

Wanneroo Agricultural Machinery offers the best value purchase for the City and regional purchasing will be supported, if this tender is accepted.

#### **Statutory Provision:**

The statewide public tender was advertised, opened and evaluated in accordance with the *Local Government (F&G) Regulation 1996*. Advertising this tender also ensures compliance with the *Local Government (F&G) Regulation 1996*, where tenders are required to be publicly invited if the consideration under a contract is expected to be or worth more than \$50,000.

In accordance with the provisions of Section 5.42 of the *Local Government Act 1995*, the Chief Executive Officer has the delegated authority to accept purchases to a limit of \$100,000. As this purchase exceeds this limit, it requires Council approval.

### Financial Implications:

Based on the Wanneroo Agricultural Machinery tender, the financial position is:

Make & Model New Supply	Recommended Supply Cost	Recommended Disposal Return	Budget New Supply	Budget Trade	Budget Surplus
Case JX80U x 2	\$113,020	\$56,500	\$100,000	\$30,000	\$13,480

### GST Impact

GST (shown below) can be claimed as a full 100% tax credit on the new supply and 1/11<sup>th</sup> of the Trade Valuation must be remitted to the Tax Office

	Excluding GST	Including GST	Claim GST	Tax
New Supply	\$113,020	\$124,322	Yes	\$11,302 credit
Trade Disposal	\$ 56,500	\$ 62,150	No	\$ 5,650 debit

### COMMENT

The net surplus on budget of \$13,480 (excluding GST) is due to the higher than expected trade in price.

### ATTACHMENTS

Nil.

### VOTING REQUIREMENTS

Simple Majority

### **MOVED Cr Kenworthy, SECONDED Cr Walker that Council:**

- 1 ACCEPTS the Tender submitted by Wanneroo Agricultural Machinery, for the supply of two new Case JX80U 2WD tractors at \$113,020 excluding GST;**
- 2 ACCEPTS the Tender submitted by Wanneroo Agricultural Machinery, for the disposal by trade-in of two used tractors, plant numbers 98543 & 98544, at \$56,500 excluding GST.**

The Motion was Put and

**CARRIED BY  
EN BLOC RESOLUTION NO 1 (14/0)**

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

**CJ150 - 07/03 TENDER 028-02/03 FOR CONSTRUCTION OF THE PEDESTRIAN LINK, RETAINING WALLS & ASSOCIATED WORKS, JOONDALUP CITY CENTRE – [49910]**

**WARD** - Lakeside

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**PURPOSE**

To seek Council approval to reject all tenders received for Tender No 028-02/03 - Construction of the Pedestrian Link, retaining walls & associated works in the Joondalup City Centre.

**EXECUTIVE SUMMARY**

This project has been programmed for construction by an external Contractor to be completed in the current financial year. A public tender was advertised on Saturday 29 March 2003 and closed on Tuesday 15 April 2003. One conforming tender was received and evaluated in accordance with the City's Contract Management Framework.

As a result of the evaluation it is recommended that the tender be rejected. The price submitted is more than fifty per cent higher than the budget allocation, for the construction of the Pedestrian Link, retaining walls & associated works in the Joondalup City Centre.

In reviewing the City's current priorities it is considered that the project could be deferred and that the funds be carried forward as a surplus, to be reallocated as part of the financial year 2003/2004 budget consideration.

It is recommended that Council:

- 1 *NOT ACCEPT the tender received for tender number 028-02/03 Pedestrian Link, retaining walls and associated works in the Joondalup City Centre under Part 4 Regulation 18 (2) of the Local Government (F&G) Regulations 1996;*
- 2 *DEFERS the project to be listed for future budget consideration and that the amount of \$80,000 be carried forward as a surplus, to be reallocated as part of the financial year 2003/2004 budget consideration.*

**BACKGROUND**

As part of the 5 year Capital Works Program in 2002 the construction of the final section of the east west Civic Walk pedestrian link in Joondalup City Centre was approved. Construction was to be undertaken in two stages, Stage 1 in 2002/2003 and Stage 2 in 2003/2004.

The pedestrian link runs between Grand Boulevard and Lakeside Drive. The link is located adjacent to The City's Administration building, Civic Centre and Central Park. The works associated with the implementation of Stage 1 are earthworks and the construction of retaining walls to the Central Park entrance of the Administration building. Stage 2 works includes steps, paving, path, lighting, landscaping and reticulation between the City's Administration Building and the Civic Building.

## DETAILS

One tender for the construction of the Pedestrian Link, retaining walls & associated works in the Joondalup City Centre was received as follows:

TENDERER	LOCALITY	TENDER PRICE
Kato Concrete	Malaga	\$122,947

The tender price does not include GST.

Under the City's Contract Management Framework, the tender was assessed using a weighted multi-criterion assessment system based on the following selection criteria as specified in the Tender Document:

- Lump Sum Price;
- Construction programme with deliverables;
- Tenderers previous experience in carrying out similar works. Tenderers resources including equipment and manpower. How the works will be of benefit to the local community in terms of local employment;
- Quality management Policy and Safety Management Policy.

The budget allocation for stage 1 works is \$80,000. The Capital Works Programme currently has \$80,000 listed for stage 2 works. An additional amount of \$98,925 has been requested in the current budget process for 2003/2004 to enable the completion of stage 2 works. As there are insufficient funds to accept the tender, it is recommended that the tender received be rejected.

### Policy 2.4.6. Purchasing Goods and Services

The City's Policy on purchasing goods and services encourages local business in the purchasing and tendering process; no submissions were received from local businesses.

### Statutory Provision:

The statewide public tender was advertised, opened and evaluated in accordance with the *Local Government (F&G) Regulation 1996*. Under his delegated authority the Chief Executive Officer can accept and reject tenders to the value of \$100,000. As the submitted tender is above this limit a Council decision is required.

## COMMENT

It is recommended that the tender received for tender number 032-02/03 for the construction of the Pedestrian Link, retaining walls & associated works in the Joondalup City Centre be rejected. It is proposed that as a result of reviewing the City's current priorities the project could be deferred and that the funds be carried forward as a surplus, to be reallocated as part of the financial year 2003/2004 budget consideration.

## ATTACHMENTS

Nil.

## VOTING REQUIREMENTS

Simple Majority

### **MOVED Cr Kenworthy, SECONDED Cr Walker that Council:**

- 1 NOT ACCEPT the tender received for tender number 028-02/03 Pedestrian Link, retaining walls and associated works in the Joondalup City Centre under Part 4 Regulation 18 (2) of the Local Government (F&G) Regulations 1996;**
- 2 DEFERS the project to be listed for future budget consideration and that the amount of \$80,000 be carried forward as a surplus, to be reallocated as part of the financial year 2003/2004 budget consideration.**

**The Motion was Put and**

**CARRIED BY  
EN BLOC RESOLUTION NO 1 (14/0)**

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

### **CJ151 - 07/03 TENDER 039-02/03 - MAJOR REPAIRS TO THE DUNCRAIG CHILD CARE CENTRE – [00302]**

**WARD -** South Coastal

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## PURPOSE

To accept the tender from Barclays for the sum of \$355,807, to carry out major repairs to the Duncraig Child Care Centre at 43 Beddi Road, Duncraig.

## EXECUTIVE SUMMARY

The City advertised a public tender to rebuild the Duncraig Child Care Centre, which was damaged by fire in September 2002. The Loss Adjusters acting on behalf of the insurers will forward the funds, required to cover these costs, to the City of Joondalup as progress payments each month.

Additional work, not included in this tender, is required to ensure that the site fencing is improved and that the air conditioning system is modified to incorporate a fire protection system. The Department for Community Development will fund this additional work.

It is recommended that Council accepts the tender from Barclays for the sum of \$355,807, to carry out major repairs to the Duncraig Child Care Centre at 43 Beddi Road Duncraig.

## BACKGROUND

A major fire occurred on 4 March 2002 and destroyed 75% of the roof and building interior. On 2 May 2002 the Mayor authorised the Chief Executive Officer to enter into a contract with the Barclay Group Pty. Ltd. for an estimated expenditure of \$134,920 including GST. The contract was for the reinstatement of the Child Care Centre and was let without going to public tender, as allowed under 11.2(1) of the *Local Government (Functions and General) Regulations 1996*. Council resolved to note (CJ100 - 05/02 refers) the Mayoral action, at its meeting of 21 May 2002.

The second fire occurred in the early hours of 30 September 2002 and destroyed 100% of the roof and the complete interior of the premises. The works to repair the March fire were 95% complete at the time of the second fire and the builders insurance, Allianz, covers all works undertaken in the original scope. The City's Industrial Special Risks (ISR) insurance with the Municipal Property Scheme will cover the remainder of the premises and the standard excess of \$2,500 would apply to the claim.

Tender 039-02/03 for the Major Repairs to the Duncraig Child Care Centre was advertised on 26 April 2003 and closed on 20 May 2003. A pre tender site inspection was arranged for all interested tenderers on 6 May 2003.

**Suburb/Location:** Duncraig as part of Percy Doyle at 43 Beddi Road  
**Owner:** City of Joondalup  
**Land Status:** The land at Percy Doyle is a reserve and the City has a management order with power to lease

## DETAILS

Two tenders were received and recorded in the tender register as follows:

- 1 \$355,807 from Barclay Group
- 2 \$638,322 from Barnet Building Company

The Barclay Group carried out the repairs after the first fire and had possession of the site when the second fire occurred.

Under the City's Contract Management Framework and the Code of Tendering AS 4120-1994, an evaluation committee, using a weighted multi-criterion assessment system, assessed the tenders.

The selection criteria required Tenderers to specifically address the following:

- 1 Lump sum Price with demonstrated pricing break-up and detail
- 2 Construction programme with milestones / deliverables
- 3 Tenderer's resources
- 4 Benefit to the local community in terms of local employment
- 5 Quality Management Policy
- 6 Safety Management Policy

The evaluation committee rated the tender as submitted by the Barclay Group ahead of the tender submitted by the Barnet Building Company.

Additional work will be required to ensure that the site fencing is improved and that the air conditioning system is modified to incorporate a fire protection system. As this extra work is not the responsibility of the insurers, it was not included in this tender specification. The Department for Community Development will fund this additional work.

#### **Financial Implications:**

<b>Account No:</b>	9020
<b>Budget Item:</b>	Not a budget item
<b>Budget Amount:</b>	\$Nil
<b>YTD Amount:</b>	\$Nil
<b>Estimated Expenditure:</b>	\$355,807

#### **COMMENT**

The Department for Community Development (DCD), who lease the premises, has relocated staff and clients to their Balcatta centre. It has been determined that 90% of the clients are willing to return to the Duncraig centre.

DCD requested that the City of Joondalup make the centre available for use no later than December 2003. The Centre has always experienced a high level of occupancy and DCD has stated that all Child Care facilities in Duncraig are at full occupancy.

Limited Child Care facilities at Percy Doyle are available at the neighbouring Community Centre and the Recreation Centre, however none are currently suitable for full time day care. Also, preliminary advice received from DCD indicates that it would be impracticable for the Centre to be included or attached to any of the other buildings at the reserve.

Consequently, it is recommended that the centre be rebuilt as per the tender specifications

#### **ATTACHMENTS**

Nil.

#### **VOTING REQUIREMENTS**

Simple Majority



**MOVED Cr Kenworthy, SECONDED Cr Walker that Council ACCEPTS the tender from Barclays for the sum of \$355,807, to carry out major repairs to the Duncraig Child Care Centre at 43 Beddi Road Duncraig.**

**The Motion was Put and**

**CARRIED BY  
EN BLOC RESOLUTION NO 1 (14/0)**

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

**CJ152 - 07/03      PETITION - REQUEST TO PROVIDE VEHICULAR  
ACCESS INTO HEPBURN HEIGHTS SHOPPING  
CENTRE FROM HEPBURN AVENUE, PADBURY –  
[09077] [08801]**

**WARD - Pinnaroo**

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## **PURPOSE**

The purpose of this report is to present a recommendation in relation to a petition presented to Council at its meeting of 11 March, 2003 requesting provision of vehicular access into the Hepburn Heights Shopping Centre from Hepburn Avenue, Padbury.

## **EXECUTIVE SUMMARY**

A 9-signature petition was presented to Council at its meeting on 11 March, 2003 from local business owners seeking provision of a vehicular access into the Hepburn Heights Shopping Centre from Hepburn Avenue, Padbury. The access is requested to improve accessibility to the shopping centre for customers and provide increased frontage exposure.

The shopping centre has its main access from Blackwattle Parade with a secondary access from Walter Padbury Boulevard.

While the shopping centre is visible from Hepburn Avenue, vehicular access is currently restricted by a 0.1 metre wide pedestrian accessway (PAW) adjacent to Hepburn Avenue.

This access control was put in place as part of the overall road planning for this class of road with a full standard of access approved at the nearby intersection of Walter Padbury Boulevard.

It is recommended that Council:

- 1      *DOES not support the request for provision of a vehicular access into the Hepburn Heights Shopping Centre;*
- 2      *ADVISES the petitioners accordingly.*

## **BACKGROUND**

A 9-signature petition was presented to Council at its 11 March 2003 meeting from local business owners seeking provision of a vehicular access into the Hepburn Heights Shopping Centre from Hepburn Avenue. The access is a request to improve accessibility to the shopping centre for customers and provide an “entry statement” for increased exposure.

The shopping centre is located on Lot 195 Blackwattle Parade, Padbury. The shopping centre has its main access from Blackwattle Parade with a secondary access on Walter Padbury Boulevard. In addition, the centre has a shared access between the centre and the as yet undeveloped Community Purposes site on Blackwattle Parade. In practical terms any proposed access from Hepburn Avenue would have to enter the community purpose site. A plan of the shopping centre and surrounds is shown at Attachments 1 and 2 to this Report.

While the shopping centre is visible from Hepburn Avenue, vehicular access is restricted by a 0.1 metre wide pedestrian accessway (PAW) adjacent to Hepburn Avenue.

Hepburn Avenue is currently classified as a District Distributor A and as such is an important regional road within the overall road network. Main Roads WA data indicates that it carries around 25,000 vehicles per day or Average Weekday Traffic (AWT) and is speed zoned at 70km/h.

## **DETAILS**

Access restrictions such as a 0.1 metre wide PAW are typically put in place as part of the overall planning for this class of road where access points of a high standard are designated.

In this instance, the 0.1 metre PAW has been put in place to prevent vehicular access that may compromise the safe operation of the nearby existing intersection of Walter Padbury Boulevard. The distance to the next road access to the east, which is Glengarry Drive, is approximately 300 metres.

As a guide, the desirable spacing for vehicular access onto a District Distributor is a minimum of 200 metres, with an absolute minimum of 150 metres. This takes into account factors such as the operating speed, acceleration and stopping distances for merges, diverges and turning pocket lengths required to maintain safe operation of the road network.

An assessment of the proposal shows that requested access would be approximately 90-100 metres east of Walter Padbury Boulevard, some 40-50 metres less than the absolute minimum required. The estimated cost of this additional access is in the order of \$100,000.

In view of this, it would be unlikely that provision of an access into the community purpose site/shopping centre could be accommodated without compromising road user safety at this location.

It is to be noted that a roundabout is proposed for the existing Glengarry Drive and Hepburn Avenue intersection. The construction of this treatment, which is the subject of a Black Spot funding application, should assist to improve the traffic situation at the Walter Padbury Boulevard and Hepburn Avenue junction.

Notwithstanding the above, it should be noted that access proposals to roads of this classification are also subject to approval by the West Australia Planning Commission and would ultimately require closure of the 0.1 metre PAW to proceed.

## COMMENT

While the petitioners' request seeking an additional access is noted, provision of vehicular access to the community purpose site/shopping centre from Hepburn Avenue has the potential to significantly compromise safety for all road users at this location. It is also considered that the proposed roundabout treatment at Hepburn Avenue and Glengarry Drive will assist to reduce traffic concerns to Walter Padbury Boulevard. The approval of a non standard access to the shopping centre can also set an undesirable precedent.

As any access from Hepburn Avenue to the shopping centre would have to initially enter the community purpose site, the City would be responsible for this road and need to arrange an agreement with the shopping centre on its usage.

In addition, the estimated cost of the treatment is in the order of \$100,000. No funding has been allocated for this work in the Draft 2003/04 Five Year Capital Works Program.

On this basis, it is recommended that Council does not support the request for provision of vehicular access to the Hepburn Heights Shopping Centre from Hepburn Avenue.

## ATTACHMENTS

Attachment 1 – Plans of Hepburn Heights Shopping Centre.

## VOTING REQUIREMENTS

Simple Majority

**MOVED Cr Kenworthy, SECONDED Cr Walker that Council:**

- 1 DOES not support the request for provision of a vehicular access into the Hepburn Heights Shopping Centre;**
- 2 ADVISES the petitioners accordingly.**

**The Motion was Put and**

**CARRIED BY  
EN BLOC RESOLUTION NO 1 (14/0)**

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

*Appendix 5 refers*

*To access this attachment on electronic document, click here: [Attach5brf010703.pdf](#)*

**CJ154 - 07/03      MINUTES OF THE CONSERVATION ADVISORY  
COMMITTEE MEETING HELD WEDNESDAY 28  
MAY 2003 – [12168]**

**WARD - All**

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**PURPOSE**

The Minutes of the Conservation Advisory Committee meeting held on Wednesday 28 May 2003 are submitted for adoption by Council.

**EXECUTIVE SUMMARY**

The Conservation Advisory Committee held on the 28 May 2003 considered a range of conservation matters within the City of Joondalup. The Committee discussed the application of weed control herbicides in the City's bushland reserves and the compilation of fire management plans for remnant urban bushland.

**DETAILS**

The Committee elected Cr John Hollywood as Chairman. The Minutes of the Conservation Advisory Committee meeting held on Wednesday, 28 May 2003 are submitted for adoption by Council.

**ATTACHMENTS**

Attachment 1 – Minutes of the Conservation Advisory Committee meeting held on Wednesday, 28 May 2003.

**VOTING REQUIREMENTS**

Simple Majority

**MOVED Cr Kenworthy, SECONDED Cr Walker that Council NOTES the Minutes of the Conservation Advisory Committee meeting held on 28 May 2003 forming Attachment 1 to Report CJ154-07/03.**

**The Motion was Put and**

**CARRIED BY  
EN BLOC RESOLUTION NO 1 (14/0)**

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

*Appendix 6 refers*

*To access this attachment on electronic document, click here: [Attach6brf010703.pdf](#)*

## **CJ155 - 07/03      CLOSE OF ADVERTISING - MODIFICATION TO HILLARYS STRUCTURE PLAN – [16047]**

**WARD -**     Whitford Ward

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### **PURPOSE**

The purpose of the report is for Council to consider a number of modifications to the ‘Hillarys Structure Plan’ following public consultation.

### **EXECUTIVE SUMMARY**

Council adopted a number of modifications to the Hillarys Structure Plan at its meeting on 23 July 2002 (CJ182-07/02 refers) and referred the Structure Plan to the Western Australian Planning Commission (WAPC) where it was adopted on 4 March 2003 subject to a number of additional modifications and resolved as follows:

- 1      The structure plan being advertised pursuant to Clause 9.5 of the City of Joondalup District Planning Scheme No 2;*
- 2      A schedule of submissions being forwarded to the WAPC for its consideration.*

The additional modifications requested by the WAPC include deleting all reference to the ‘Residential Planning Codes – 1991 (R Codes)’ and replacing with ‘Residential Design Codes – 2002 (Design Codes)’, and inserts provision into the structure plan that ensures minimum design for climate standards are met (Attachment 1). The latter change seeks to modify Clause 3.9.1 of the Design Codes, which requires no more than 25% of an adjacent lot to be in shadow on 21 June. This modification to the structure plan aims to align the provision with that of the R Codes, which required no more than 50% of an adjacent lot to be in shadow on 21 June. Effectively the result would be that there is no change to the provisions in the Structure Plan.

The modifications were adopted by Council on 29 April 2003 (CJ095-04/03) and were advertised for public comment for a twenty-one (21) day period, which closed on 29 May 2003. No submissions were received.

It is recommended that the proposed modifications to the Hillarys Structure Plan be adopted, and forwarded to the WAPC for adoption and certification.

### **BACKGROUND**

<b>Suburb/Location:</b>	Hillarys
<b>Applicant:</b>	Taylor Burrell
<b>Owner:</b>	Paltara Pty Ltd
<b>Zoning:</b>	<b>DPS:</b> Urban Development
	<b>MRS:</b> Urban
<b>Strategic Plan:</b>	Lifestyle – Strategy 2.6 Promote and enjoy lifestyles that engender Environmental, Social and Economic balance.

## **Previous Council and WAPC Decision**

At its meeting in July 2002, Council resolved to support modifications to the Hillarys Structure Plan and to waive public advertising as the proposed modifications were considered to be minor.

The modifications were in response to a conditional approval of subdivision (WAPC No 117754) that resulted in the creation of 19 freehold lots that are relatively smaller in area and narrower in width than the prevailing lots in the 'General Residential Precinct' (Attachment 2). The modifications would allow a zero lot setback to one boundary for each of the 'new' 19 freehold lots created in the 'General Residential Precinct'.

The modifications to the Hillarys Structure Plan were adopted by the WAPC on 4 March 2003 subject to a number of additional modifications and the WAPC resolved as follows:

- 1 *The structure plan being advertised pursuant to Clause 9.5 of the City of Joondalup District Planning Scheme No 2; and*
- 2 *A schedule of submissions being forwarded to the WAPC for its consideration.*

The modifications were adopted by Council on 29 April 2003 (CJ095-04/03) and were advertised for public comment.

## **DETAIL**

### **Proposal or Issue**

The proposed modifications to the Hillarys Structure Plan include deleting all reference to the R Codes and replacing with Design Codes and inserting a provision into the structure plan that ensures minimum design for climate standards are met (Attachment 1). The latter change seeks to modify Clause 3.9.1 of the Design Codes, which requires no more than 25% of an adjacent lot to be in shadow on 21 June, by allowing previous standards under the R Codes (Clause 1.7.2) to apply which allowed for no more than 50% of an adjacent lot to be in shadow on 21 June.

At the time the subdivision proposal was approved by the WAPC to create smaller lots in the 'General Residential Precinct' (27 March 2002), the proponent's 'expectation' was that the provisions of the R Codes would apply to these lots, which when compared with the Design Codes allowed for more generous design for climate provisions.

Whilst the WAPC has indicated its preference that the City amends the Hillarys Structure Plan to reflect Clause 3.9.1 of the Design Codes, it recognises that in this instance there are sufficient grounds to consider modifying the overshadowing provisions of the Design Codes (2002), given approval of the subdivision proposal the timing of the amendment to the Hillarys Structure Plan and the review of the R Codes.

## **Consultation**

The proposed modifications to the Hillary's Structure Plan were advertised for public comment for a twenty-one (21) day period, which closed on 29 May 2003. A sign was erected at the corner of Amalfi Drive and Tenerife Boulevard and an advertisement placed in the local newspaper on 8 May 2003. No submissions were received.

## **Statutory Provision:**

In accordance with clause 9.6.3(c) of DPS2, the proponent has made the necessary changes in consultation with Council and has resubmitted the structure plan for consideration under Clause 9.4. Council has adopted the modifications and advertised them for public comment in accordance with clause 9.5 of the Scheme.

Upon completion of the advertising period, Council is required to review all submissions within sixty (60) days and then proceed to either refuse to adopt the modifications to the Structure Plan or resolve that the modifications to the Structure Plan are satisfactory with or without changes.

## **COMMENT**

### **Assessment and Reasons for Recommendation**

The modifications are in recognition of the new Design Codes, which supersede the R Codes.

The introduction of the modification requiring no more than 50% of an adjacent lot to be in shadow on 21<sup>st</sup> June is in keeping with both development standards outlined under the R Codes, which are now superseded by the Design Codes, and community expectations in regard to dwelling construction on small lots as previously determined under the Structure Plan.

The proposed modifications to the Hillarys Structure Plan were advertised for public comment and no submissions were received. It is recommended that the modifications to the Hillarys Structure Plan be adopted and forwarded to the WAPC for adoption and certification.

## **ATTACHMENTS**

Attachment 1	Hillarys Structure Plan
Attachment 2	Amended Plan of Subdivision

## **VOTING REQUIREMENTS**

Simple Majority

**MOVED Cr Kenworthy, SECONDED Cr Walker that Council:**

- 1** pursuant to clause 9.7 of the City of Joondalup District Planning Scheme No 2 **RESOLVES** that the modifications to the Hillarys Structure Plan in accordance with Attachment 1 to Report CJ155-07/03 are satisfactory and submits it to the Western Australian Planning Commission for adoption and certification;
- 2** subject to certification of the structure plan by the Western Australian Planning Commission, **ADOPTS** the Hillarys Structure Plan as an agreed structure plan and authorises the affixation of the common seal to, and the signing of, the structure plan documents.

**The Motion was Put and****CARRIED BY  
EN BLOC RESOLUTION NO 1 (14/0)****In favour of the Motion:** Mayor Carlos, Crs Brewer, Caiacob, Gollant, Hart, Hollywood, Kenworthy, Kimber, Mackintosh, Nixon, O'Brien, Prospero, Rowlands and Walker*Appendix 7 refers**To access this attachment on electronic document, click here: [Attach7brf010703.pdf](#)***CJ159 - 07/03      SUBDIVISION REFERRALS PROCESSED 1 – 31 MAY  
2003 – [05961]****WARD - All**

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**PURPOSE**

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

**EXECUTIVE SUMMARY**

Attachment 1 is a schedule of the Subdivision Referrals processed by Urban Design and Policy from 1– 31 May 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 88 additional residential lots and 6 strata residential lots. The average processing time taken was 20 days.

Five applications were deferred.



## ATTACHMENTS

Subdivision referrals processed for 1 – 31 May 2003

## VOTING REQUIREMENTS

Simple Majority

**MOVED Cr Kenworthy, SECONDED Cr Walker that Council NOTES the action taken by the Subdivision Control Unit in relation to the application described in Report CJ159-07/03.**

**The Motion was Put and**

**CARRIED BY  
EN BLOC RESOLUTION NO 1 (14/0)**

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

*Appendix 11 refers*

*To access this attachment on electronic document, click here: [Attachment11brf010703.pdf](#)*

*Cr Baker entered the Chamber, the time being 2114 hrs*

## REPORT OF THE CHIEF EXECUTIVE OFFICER

**C121-07/03                      STATE RECORDS ACT 2000 – [66036]**

**WARD - All**

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### PURPOSE

This report is to outline the intent of the State Records Act 2000 and the responsibilities of recordkeeping by elected members.

### BACKGROUND

The State Records Act 2000 is an Act to provide for the keeping of State records and for related purposes.

The requirements of the City is to establish a recordkeeping plan, review the plan and incorporate any significant changes to the City no later than five years from approval of the State Records Commission and report to the State Records Commission about the plan and its compliance.

The City must also include an excerpt in each Annual Report that addresses any significant improvements or developments of the recordkeeping system (including an evaluation of the system not less than once every five years), details of the City's recordkeeping training program (including an evaluation of the efficiency and effectiveness of the program) and that the City's induction program addresses employee roles and responsibilities in regard to their compliance with the plan.

## **DETAILS**

The plan sets out the matters about which records are to be created by the City and how they are to be kept and must comply with the principles and standards established by the State Records Commission, ensuring that the records kept properly and adequately record the performance of the City's functions and be consistent with any written law to which the City is subject when performing its functions i.e. Local Government Act.

The plan must be complied by the City, including every employee, elected member and contractors that will create records on behalf of the city.

The recordkeeping plan has been prepared and is to be presented at Council for adoption prior to being submitted to the State Records Commission for approval.

## **COMMENTS**

Although under State legislation relating to the keeping of records there is no requirement that all verbal conversations need to be recorded, it is in the interest of accurate recordkeeping and continuous improvement that officers and elected members record relevant action relating to enquiries made via telephone/verbal conversations.

Discretion needs to be made as what information is recorded due to the volume of conversations made. If any conversation meets one or more of the following criteria, it is deemed a corporate record:

1. Does it convey information essential or relevant in making a decision?
2. Does it convey information upon which others will be, or are likely to make decisions affecting the City's operations, or rights and obligations under legislation?
3. Does it commit the City to certain courses of action or the commitment of resources or provision of services?
4. Does it convey information about matters of public safety or public interest, or involve information upon which contractual undertakings are entered into?
5. Is the information likely to be needed for future use, or is it of historical value or interest?

If at the time of a conversation it is deemed that it is not relevant to record, but the matter becomes more significant it is recommended that a file note be stored describing the initial conversation.

This recommendation to store file notes is made to assist rather than hinder the workload, as recording relevant conversations provides the proof of the actions that they have taken and is a reliable record for future reference.

## **RECOMMENDATION**

### **That Council:**

- 1 ADHERES to the guidelines issued by the State Records Commission that states that conversations and the like that relay information or involve matters of significance to the conduct of the business of the local government should be recorded in order to ensure that the records kept by the City adequately record the performance of the City;**
- 2 LOBBIES local members to amend the State Records Act 2000 to indicate that the principles of the Act should be applied to all government departments and state parliamentarians to ensure they keep accurate records of their operations and dealings, for the interests of good government.**

**This Item was not moved.**

### **C122-07/03            ALTERATION TO ORDER OF BUSINESS**

**MOVED Cr Kimber, SECONDED Cr Mackintosh that in accordance with Clause 3.2 of the City's Standing Orders Local Law the Order of Business for this evening's meeting be altered to allow "Notice of Motion No 2 – Cr C Mackintosh – Minimum Rate" to be dealt with at this point in time.**

**The Motion was Put and**

**CARRIED (12/3)**

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

### **C123-07/03            NOTICE OF MOTION NO 2 – CR C MACKINTOSH – MINIMUM RATE - 2003/04**

Cr Carol Mackintosh has given notice of her intention to move the following motion at the Council meeting to be held on Tuesday 8 July 2003. The following elected members have indicated their support as required by Clause 4.4 of the City's Standing Orders Local Law:

Cr P Kimber  
Cr C Baker  
Cr G Kenworthy  
Cr P Rowlands  
Cr C Mackintosh

*“That Council:*

- 1 RESCINDS BY AN ABSOLUTE MAJORITY its decision of 24 June 2003 by deleting clause (1) as follows*
  - 1 Does not impose a general minimum payment for the 2003/04 year.”*
  - 2 AGREES to impose a minimum rate for the 2003/04 year.”*

## **REASONS FOR MOTION**

The imposition of a minimum rate is considered the most equitable basis for ensuring that all ratepayers make a reasonable contribution to the level of services available to all members of the Community. The imposition of a minimum rate has been a long standing practice both in the City of Joondalup and the majority of other Councils' in Western Australia. The departure from the current practice would result in a redistribution of the rate burden towards properties with a higher GRV. Such a redistribution is considered unwarranted.

## **OFFICER’S COMMENT**

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 rate 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).

The City has applied a Minimum Payment to its rates in the past to recognise that a base level of services are provided to all properties regardless of size, location or property value. The minimum payment ensures that every property contributes to that base.

The previous minimums applied are 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 (Draft Budget)	10,153	461

Of 31 local government authorities surveyed for 2002/03, all included a minimum payment, ranging from \$330 to \$734.

The GRV value of an individual property does not necessarily reflect the wealth of the owner. It is not possible to determine wealth based on this single indicator alone.

Some examples of minimum payment properties that do not reflect the wealth of the owners include properties that are owned by companies or organisations, multiple properties that are owned by the same person or where the land is vacant.

It is not correct to suggest in all cases, that those residents that live in or own low value properties are "poor". It is also not possible to assess whether the low value properties are investment or rental properties. Any decision not to impose a minimum payment, that is aimed at assisting the "notional poor" (low income earners and pensioners) in society cannot achieve this accurately using property values as a substitute indicator.

By having no minimum, vacant land, properties owned by organisations or multiple property owners will also receive a benefit.

Current budget modelling indicates that by having no minimum payment, costs of approximately \$396,401 will be shifted from low value properties to higher value properties. 9,136 properties will pay \$40.00 on average less while 47,934 properties will pay \$8.00 on average more. Whilst the impact on the average residential property is not significant, the lowest valued residential property will save \$117.25 while the highest valued residential property will pay an additional \$26.24.

Of the low value properties, 23.4% are pensioner occupied residential properties and 8.6% of properties are vacant land. 4.6% of minimum payment properties are owned by companies or public institutions.

On an overall basis, suburbs facing the biggest increases include Woodvale, Ocean Reef, Kingsley, Duncraig, Sorrento and Hillarys. Suburbs with savings include Heathridge, Craigie, Padbury, Greenwood and Beldon.

Whilst the current draft 2003/04 budget model has assumed a minimum payment of \$461, there is nothing preventing Council from maintaining the 2002/03 minimum of \$450 or adopting another minimum considered more appropriate.

## **VOTING REQUIREMENTS**

Absolute Majority

### **Call for Support of one-third of members of the Council**

The Mayor called for support from one-third of the members of Council. Support for this item was given by Crs Kimber, Baker, Kenworthy, Rowlands and Mackintosh

**MOVED Cr Mackintosh, SECONDED Cr Kimber that Council:**

- 1 RESCINDS its decision of 24 June 2003 by deleting clause (1) as follows**  
**"1 Does not impose a general minimum payment for the 2003/04 year."**
- 2 AGREES to impose a minimum rate for the 2003/04 year.**

**AMENDMENT MOVED Cr Baker, SECONDED Cr Kimber an additional Point 3 be added to the Motion as follows:**

- "3 CONSULTS with the community over the next 12 months as to the merits of imposing a minimum rate for the 2004/05 year".**

Discussion ensued.

*During discussion, the following movements occurred:*

*Cr Kenworthy left the Chamber at 2130 hrs and returned at 2132 hrs;*

*Cr Prospero left the Chamber at 2133 hrs and returned at 2136 hrs.*

**MOVED Cr Gollant, SECONDED Cr Nixon that the Motion BE NOW PUT.**

**The Procedural Motion was Put and CARRIED (9/6)**

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

**The Amendment as Moved by Cr Baker, Seconded Cr Kimber was Put and CARRIED (8/7)**

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

**MOVED Cr Kimber, SECONDED Cr Gollant that the original motion BE NOW PUT.**

**The Procedural Motion was Put and LOST (5/10)**

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

Discussion continued.

**The Original Motion, as amended, being:**

**That Council:**

- 1 RESCINDS its decision of 24 June 2003 by deleting clause (1) as follows**  
**"1 Does not impose a general minimum payment for the 2003/04 year."**
- 2 AGREES to impose a minimum rate for the 2003/04 year;**
- 3 CONSULTS with the community over the next 12 months as to the merits of imposing a minimum rate for the 2004/05 year.**

**Was Put and**

**CARRIED BY AN  
ABSOLUTE MAJORITY (9/6)**

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

**The meeting reverted back to the normal order of the Agenda at this point.**

**C124-07/03            REQUEST FOR SECOND PUBLIC QUESTION TIME – [01122  
02154]**

**MOVED Cr Hart, 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**

*Cr Prospero declared a financial interest in Item C125-07/03 – Joondalup Business Incubator – Contribution towards Rates Levied as he has recently been appointed a Director.*

*Cr Baker declared an interest which may affect his impartiality in Item C125-0703 – Joondalup Business Incubator – Contribution towards Rates Levied as he is a member of the Joondalup Business Association.*

*Crs Prospero and Mackintosh left the Chamber, the time being 2153 hrs.*

**C125-07/03      JOONDALUP      BUSINESS      INCUBATOR      -  
CONTRIBUTION TOWARDS RATES LEVIED      -  
[00104] [20124]**

**WARD - All**

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**PURPOSE**

The purpose of this report is for Council to consider a request from the Joondalup Business Incubator (attached) for a contribution from City of Joondalup towards meeting its 2003/04 rating assessment.

**EXECUTIVE SUMMARY**

- The City has received a written request from the Joondalup Business Incubator (JBI) for approximately \$10,077.50 as an offset against their rate assessment.
- The JBI has indicated that they will request a similar contribution on a year to year basis.
- Council has previously contributed \$51,000 to the fitout of the JBI and a further \$35,000 to operating costs.
- It may take the business incubator 12 months to fully establish itself and secure a sustainable client base.
- It is suggested that Council consider establishing a one-off \$9,900 grant in its 2003/04 draft budget to assist six business incubator clients in meeting their first three month rental payments. This would assist in promoting the JBI whilst at the same time helping it become self sufficient.

*Recommendation*

*That Council provides \$9,900 in its draft 2003/04 budget for grants of \$1,650 each to offset the lease costs of users of the Joondalup Business Incubator.*

**BACKGROUND**

The City has received a written request from the Chair of the Joondalup Business Incubator (JBI), Mr Russell Poliwka (dated 13 June 2003) seeking contribution to the payment of council rates anticipated to be \$10,077.60 (2002/03 assessment). They are seeking assistance for 2003/04 and have indicated that they would apply on a year by year basis for a similar contribution.

The property located at 15 Barron Parade, Joondalup is occupied by both the Westpac Call Centre and the JBI and is rated as a single property with both buildings being rateable.



The total complex including both buildings was valued for rating purposes on 1 January 2003 by the Valuer General at \$561,600 per annum. The value attributable to the JBI for rating purposes is \$156,000 per annum - translating to annual rates of \$10,077.60 per annum (2002/03 year).

Exemption has been informally sought by Edith Cowan University from rates on the land pursuant to the Edith Cowan University Act 1984 (Section 43) which states that:

“(1) No tax or rate may be charged or levied upon any property vested in the University.”

This application has been rejected by the City pursuant to the Clause 2 of Section 43, which, states:

“(2) Subsection (1) does not operate so as to exempt property that is vested in the University if it is leased to or ordinarily occupied by any other person.”

The Joondalup Business Incubator is operated by Business Development Association (North West Metro) a not-for-profit association for token rent paid to ECU.

### **City of Joondalup Exemptions from Rates under the Local Government Act 1995**

Section 6.26(2) of the Local Government Act allows rates to be exempted under the Act. Currently, 85 rateable properties are exempted under the following categories:

- (a) Land which is the property of the Crown (2)
- (d) Land used or held exclusively by a religious body as a place of public worship or in relation to that worship, a place of residence of a minister of religion, a convent, nunnery or monastery, or occupied exclusively by a religious brotherhood or sisterhood (45)
- (f) Land used exclusively as a non-government school within the meaning of the School Education Act 1999 (8)
- (g) Land used exclusively for charitable purposes (30)

### **Arrangements in other Incubators in Western Australia**

A survey of other incubators around Western Australia found that there was a variable mix of arrangements for the payment of rates to the Local Government Authority concerned. These range from the full payment of rates through to a complete exemption where an incubator activity is taking place on land owned by and leased from the respective local government. Moreover, these exemptions were viewed as the local government authority's contribution to the project. Those incubators that paid rates in full were, however in the small minority of establishments surveyed.

In the case of Midland for instance, the incubator has been incorporated into the operation of the Midland Redevelopment Authority and thus comes under the following categories pursuant to Section 6.26(2) of the Act:

- “(j) Land which is exempt from rates under any other written law; and
- (k) Land which is declared by the Minister to be exempt from rates.”

Where the land in question was not owned by the local government authority concerned, the contribution was made in the form of a grant and viewed as an economic development project. This was particularly the case in the City of Swan which hosted a number of incubators operated by a third party on land that is not owned by the City.

## **DETAILS**

The Joondalup Business Incubator premises were completed in October 2002 using seeding capital from:

- (a) \$200,000.00 - Edith Cowan University contribution in land on which the Joondalup Business Incubator premises are located.
- (b) \$500,000.00 - Commonwealth Government “Ausindustry” contribution toward construction of the premises.
- (c) \$60,000.00 - Lotteries Commission contribution toward furnishing the facilities.
- (d) \$51,000.00 - City of Joondalup contribution toward fittings/furnishing costs (2000)

Its board is made up of:

- Joondalup Business Association Representatives – Mr Russell Poliwka plus one other, currently vacant.
- City of Joondalup – Cr Louis Prospero and Ms Rhonda Hardy .
- Edith Cowan University – Mr Warren Snell and Ms Helen Cripps.
- Community Representative – Mr Tony Thompson.

According to the JBI the contribution requested from the City would be used to assist the incubator with its cash flow and to allow it to provide the best service available to its tenants at the lowest cost.

In October 2002 Council considered a request from the Joondalup Business Incubator for the secondment from the City of an employee to fill the role of Incubator Co-Ordinator for 3 months and to grant an unconditional amount of \$35,000.00 for operational purposes (CJ250-10/02).

Whilst Council advised that it did not have a suitable employee available for secondment, it did agree to fund the \$35,000.00 for operational purposes.

## **COMMENT**

Awarding a grant in these circumstances may well set a precedent for similar requests from other organisations. However, should support be forthcoming it may be worth noting that it is made on a one-off basis only.

In addition, to allow the City to gauge whether it is achieving value for money in relation to any grants awarded, measurable outcomes (KPI's) should be set and agreed between the City and the JBI, a form of acquittal.

As a suggestion, these might take the form of:-

- (a) Incubator occupancy by month and type of business (using ANZISC categories)
- (b) Length of occupancy by tenant.
- (c) Number of incubator graduates.
- (d) Whether incubator graduates continue their business.
- (e) Where the incubator graduate locates their business (within the district or outside the district).
- (f) The number of employees the incubator graduate employs.

In addition to the \$86,000.00 (\$51,000 + \$35,000) Council has already contributed to the establishment of the Joondalup Business Incubator, they also receive in kind support as the City's Manager Strategic and Sustainable Development acts as Treasurer.

The Joondalup Business Incubator may well need a 12 month period in which to fully establish itself and secure a sustainable client base.

It is therefore recommended that instead of providing a contribution to offset rates, that Council sets aside a grant in its 2003/04 budget of \$9,900. The purpose of this grant would be to enable six users of the business incubator to receive \$1,650 each, to be applied in payment of their first three month rental period with the JBI.

The JBI could use this as a marketing tool and refer interested parties to the City for grant assessment. This would promote the business incubator whilst at the same time assisting it in becoming self sufficient, ie it is not suggested that this grant be provided for on a recurrent basis in future budgets of the City.

### **Further information**

A notice of motion has since been received from Cr Baker in relation to this matter as follows:-

“That the City hereby waives municipal rates to be levied by the City for the 2003/04 financial year in respect of the Joondalup Business Incubator premises located at 15 Barron Parade, Joondalup and managed by the Business Development Association (Northwest Metro) Inc together with the premises owned and occupied by the Joondalup Business Association Inc situated in Lakeside Drive Joondalup.”

It has been noted in the officer comments to Cr Baker's Notice of Motion, that Council does not have the capacity, under the Local Government Act 1995, to waive the rates for either of the above organisations.

### **ATTACHMENTS**

JBI letter dated 13 June 2003

### **VOTING REQUIREMENTS**

Simple Majority

**MOVED Cr Baker SECONDED Cr Rowlands that Council PROVIDES \$9,900 in its draft 2003/04 Budget for grants of \$1,650 each to offset the lease costs of users of the Joondalup Business Incubator.**

Discussion ensued.

*During discussion, the following movements occurred:*

*Cr Mackintosh entered the Chamber, the time being 2155 hrs;  
Cr Gollant left the Chamber at 2156 hrs and returned at 2208 hrs;  
Cr Mackintosh left the Chamber at 2207 hrs and returned at 2208 hrs;  
Cr Gollant left the Chamber at 2216 hrs and returned at 2217 hrs.*

Mayor Carlos advised that Cr Prospero has asked to be removed as a Board Member of the Joondalup Business Association as he is concerned at any potential personal liability he may incur as a result of holding this position.

Mayor Carlos requested Cr O'Brien to withdraw inappropriate terminology he had used. Cr O'Brien advised he would withdraw the use of the word "gangster", but would not withdraw the use of the term "political gang".

*Cr Rowlands left the Chamber at this point, the time being 2218 hrs.*

**The Motion was Put and**

**CARRIED (7/6)**

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

*Appendix 14 refers*

*To access this attachment on electronic document, click here: [Attach14min080703.pdf](#)*

### **PERSONAL EXPLANATION – CR BREWER**

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

“In regards to the comments that were bandied around *[during discussion on the previous item regarding the Joondalup Business Incubator]* about gangsters and Councillors not thinking when they make decisions. I think those statements were grossly inappropriate and unfortunate. For me personally, on top of the positions I hold with work and family commitments, I do 30 hours a week to make sure that the decisions that I make, or contribute to making in Council, are truly what I believe are in the best interests of the City and I take great detest to some of those comments.”

**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:

“In terms of the use of the term ‘political gangs’, nothing could be further from the truth, of course. It helps in terms of perceptions and the media, it creates furtive ground when emotive terms of that kind are used. Of course, this is not the case, and it stands to reason, if you believe that was the case O’Brien, which I know you don’t because you were just getting a bit emotional there, it stands to reason that it is just nonsensical.”

*Cr Prospero entered the Chamber at this point, the time being 2219 hrs.*

**MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

**C126-07/03**                    **MOTION TO LIE ON THE TABLE NO 1 - REVIEW OF CORPORATE POLICY MANUAL - [07032, 26176, 13399]**

**WARD - All**

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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**

**C127-07/03      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

**MOVED Cr Walker SECONDED Cr Hollywood that the Motion be TAKEN FROM THE TABLE.**

**The Motion was Put and**

**CARRIED (11/3)**

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

**This Notice of Motion was NOT MOVED.**

**C128-07/03**

**MOTION TO LIE ON THE TABLE NO 3 - NOTICE OF MOTION**  
**- CR C BAKER - REVOCATION - COUNCIL**  
**PERMIT/APPROVAL**

At the Council meeting held on 24 June 2003 the following motion was moved:

*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*

### **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 24 June 2003 recorded that no member spoke on the Notice of Motion submitted by Cr Baker)*

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 Baker, are reproduced below:**

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 Kimber, SECONDED Cr Walker that the Motion be TAKEN FROM THE TABLE.**

**The Motion was Put and**

**CARRIED (14/0)**

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

Mayor Carlos ruled the Motion **OUT OF ORDER**

**C129-07/03      MOTION TO LIE ON THE TABLE NO 4 - NOTICE OF MOTION  
- 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)**

At the Council meeting held on 24 June 2003 the following motion was moved:

*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, 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."*

*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*

#### **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 24 June 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:**

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, 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."*

**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 15<sup>th</sup> October 2002 decision, by a unanimous decision on Tuesday 11<sup>th</sup> 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

**This Motion was left to LIE ON THE TABLE**

**C130-07/03**      **MOTION TO LIE ON THE TABLE NO 5 - NOTICE OF MOTION  
– CR C BAKER – OCEAN REEF BOAT HARBOUR – DRAFT  
2003/04 BUDGET**

At the Council meeting held on 24 June 2003 the following motion was moved:

*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*

### **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 24 June 2003 recorded that no member spoke on the Notice of Motion submitted by Cr Baker)*

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 Baker, are reproduced below:**

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 Kimber, SECONDED Cr Brewer that the Motion be TAKEN FROM THE TABLE.**

**The Motion was Put and**

**CARRIED (10/4)**

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

Cr Baker advised that he wished the Notice of Motion to be **WITHDRAWN**

**C131-07/03      MOTION TO LIE ON THE TABLE NO 6 - NOTICE OF MOTION**  
**- CR G KENWORTHY – 2003/04 DRAFT BUDGET**

At the Council meeting held on 24 June 2003 the following motion was moved:

*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*

**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 24 June 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 and the reasons for this motion as submitted by Cr Kenworthy, are reproduced below:**

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 Walker, SECONDED Cr Prospero that the Motion be TAKEN FROM THE TABLE.**

**The Motion was Put and**

**CARRIED (10/4)**

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

**MOVED Cr Kenworthy, SECONDED Cr Gollant 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**

Discussion ensued.

**The Motion was Put and**

**LOST (2/12)**

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

**C132-07/03      MOTION TO LIE ON THE TABLE NO 7 - NOTICE OF MOTION**  
**- CR A WALKER – LEGAL ADVICE**

At the Council meeting held on 24 June 2003 the following motion was moved:

*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*

**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 24 June 2003 recorded that no member spoke on the Notice of Motion submitted by Cr Walker)*



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 Walker, are reproduced below:**

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 appraised 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 Prospero, SECONDED Cr Hart that the Motion be TAKEN FROM THE TABLE.**

**The Motion was Put and**

**CARRIED (13/1)**

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

**MOVED Cr Walker, SECONDED Cr Hart 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

Discussion ensued.

**MOVED Cr Kimber, SECONDED Cr Prospero that the Motion BE NOW PUT**

**The Procedural Motion was Put and**

**CARRIED (8/6)**

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

**The Motion as Moved by Cr Walker and Seconded by Cr Hart was Put and LOST (5/9)**

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

**MOVED Cr Walker, SECONDED Cr Hollywood that a report be prepared outlining the advantages and disadvantages of legal advice being reported to the Council in its entirety.**

**The Motion was Put and**

**CARRIED (9/5)**

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

**C133-07/03**

**MEETING TO REMAIN IN OPEN DOORS - [02154]**

**MOVED Cr Hollywood, SECONDED Cr Hart that the Confidential Item Motion to Lie on the Table No 8 –Notice of Motion – Cr G Kenworthy - Potential Breach of Standing Orders, Code of Conduct and the Local Government Act 1995, Cr J Hollywood – NOT BE discussed Behind Closed Doors.**

**The Motion was Put and**

**CARRIED (10/4)**

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

**C134-07/03**

**CONFIDENTIAL - MOTION TO LIE ON THE TABLE NO 8 –  
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.

**MOVED Cr Walker, SECONDED Cr Hart that the Motion be TAKEN FROM THE TABLE**

**The Motion was Put and**

**CARRIED (12/2)**

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

**This Notice of Motion was NOT MOVED.**



**C136-07/03                    MEETING TO REMAIN IN OPEN DOORS - [02154]**

**MOVED Cr Hollywood, SECONDED Cr Hart that the Confidential Item - Motion to Lie on the Table No 10 –Notice of Motion – Cr C Baker – Termination of Mayor’s Investigations into Cr Hollywood’s Conduct – NOT BE discussed Behind Closed Doors.**

**The Motion was Put and**

**CARRIED (12/2)**

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

**C137-07/03                    CONFIDENTIAL - MOTION TO LIE ON THE TABLE NO 10 –  
NOTICE OF MOTION – CR C BAKER – TERMINATION OF  
MAYOR’S INVESTIGATIONS INTO CR HOLLYWOOD’S  
CONDUCT**

At the Council meeting held on 24 June 2003 the following motion was moved:

*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*

**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 24 June 2003 recorded that no member spoke on the Notice of Motion submitted by Cr Baker)*

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 Baker was Marked Confidential - Not For Publication**

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

**MOVED Cr Walker, SECONDED Cr Prospero that the Motion be TAKEN FROM THE TABLE.**

**The Motion was Put and**

**CARRIED (14/0)**

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

**MOVED Cr Baker SECONDED Cr Kimber:**

- 1 That the Mayor be and is instructed by the Councillors of the City of Joondalup to forthwith terminate his investigations into the allegations of obscene and vulgar language directed by Deputy Mayor Hollywood to Mr Sam Grech, Justice of the Peace and Cr Paul Kimber ("the Complainants") for the following reasons:
  - (a) the Mayor has no legislative or other authority or competence to conduct the investigation;
  - (b) the investigation does not have the requisite authorisation of a duly passed resolution of the Councillors of the City of Joondalup and is manifestly ultra vires;
  - (c) the Complainants believe that the investigation does not have an air of independence about it;
  - (d) Cr Hollywood is a friend of the Mayor;
  - (e) alternatively, there is a perception that Cr Hollywood is a member of the Mayor's alleged "team" on Council;
  - (f) the inquiry is not sufficient or at all independent;
  - (g) one of the potential witnesses to the incidents complained of is a friend of the Mayor;
  - (h) the Mayor does not possess the requisite skills, training, expertise or qualifications to conduct such an investigation;

- (i) it is in the best interest of open, accountable and transparent Government that the said inquiry be terminated as aforesaid.
- 2 That the Mayor forthwith deliver up and circulate to all the Councillors of the City of Joondalup copies of all documentation whatsoever, howsoever described received by him during the course of his unlawful investigation to date;
- 3 That the aforementioned investigation be conducted by an independent body or person to be appointed by the Councillors of the City of Joondalup ("the Appointee");
- 4 The Appointee be nominated by the Councillors by resolution during the debate associated with the motion.

Mayor Carlos advised that he had completed the investigation and ruled the Motion **OUT OF ORDER**

Discussion ensued.

*During discussion, Cr Kenworthy left the Chamber at 2256 hrs and returned at 2258 hrs.*

**MOVED Cr Baker, SECONDED Cr Kimber** that the Meeting **DISSENT** with the Ruling of the Mayor.

**The Motion was Put and**

**LOST (5/9)**

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

**C138-07/03**

**NOTICE OF MOTION NO 1 – CR C BAKER – WAIVER OF MUNICIPAL RATES**

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 8 July 2003:

*“That the City hereby WAIVES Municipal Rates to be levied by the City for the 2003/2004 financial year in respect of the Joondalup Business Incubator Premises located at 15 Barron Parade, Joondalup and managed by the Business Development Association (Northwest Metro) Inc together with the premises owned and occupied by the Joondalup Business Association Inc situated in Lakeside Drive, Joondalup.”*

**OFFICER’S COMMENT**

**Joondalup Business Incubator**

Joondalup Business Incubator (JBI) occupies premises situated on a portion of land located at 38 Collier Pass, Joondalup (property number 195086). The property is owned by Edith Cowan University. Edith Cowan receives a rates notice in relation to the property and then invoices the Joondalup Business Incubator for the value of the rates associated with the portion of land occupied by the JBI.



The rates payable by the JBI for the period 1 July 2002 to 30 June 2003 was \$10,077.60.

The land concerned is rateable property and is not subject to an exemption under section 6.26 of the Local Government Act 1995 (LGA).

Whilst Section 6.12 of the LGA allows for debts to be waived or written off, this is not extended to general rates or services charges. Therefore Council does not have the capacity to waive the rates in this instance.

### **Joondalup Business Association Inc**

The Joondalup Business Association Inc (JBA) occupies premises situated on Lakeside Drive, Joondalup, (property number 189822). The property is owned under the name of North West Metro Business Association (Inc).

The rates payable by the JBA for this property for the period 1 July 2002 to 30 June 2003 was \$1,242.90.

The land concerned is rateable property and is not subject to an exemption under section 6.26 of the Local Government Act 1995 (LGA).

Whilst Section 6.12 of the LGA allows for debts to be waived or written off, this is not extended to general rates or services charges. Therefore Council does not have the capacity to waive the rates in this instance.

### **VOTING REQUIREMENTS**

Simple Majority

Mayor Carlos ruled the Motion **OUT OF ORDER**

### **C139-07/03      NOTICE OF MOTION NO 3 – CR O'BRIEN – PROPOSED CHILD DAY CARE CENTRE: LOT 575 (65) WANNEROO ROAD AND LOT 1 (1) GORMAN STREET, CNR WANNEROO ROAD, GREENWOOD – [78165]**

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 8 July 2003:

*“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;*
    - (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."*

**OFFICER'S COMMENT**

An Officer's report on this development application is contained within this agenda – (CJ160-07/03 refers). The report recommendation is not to support a child day care centre in this location.

**VOTING REQUIREMENTS**

Simple Majority

Cr O'Brien advised that he wished the Notice of Motion to be **WITHDRAWN**

**ADJOURNMENT OF MEETING – [02154] [08122]**

**In accordance with clause 5.1 of the City's Standing Orders Local Law, Mayor Carlos adjourned the meeting for a period of two (2) minutes, the time being 2304 hrs.**

**The meeting RESUMED at 2307 hrs, the following elected members 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 S HART  
CR M O'BRIEN, JP  
CR J GOLLANT  
CR M CAIACOB  
CR C MACKINTOSH

**SECOND PUBLIC QUESTION TIME**

**Mr S Magyar, Heathridge:**

*Q1 Did Cr Baker donate any funds to any of the candidates in the May 2003 Elections for the City of Joondalup? If so, to whom and how much to each candidate was donated?*

*Q2 Did the former Mayor, John Bombak donate any funds to any of the candidates in the May 2003 Elections for the City of Joondalup? If so, to whom and how much was donated to each candidate?*

*A1-2 Response by Mayor Carlos: These questions will be taken on notice.*

*Q3 Did any of the Councillor of the City of Joondalup receive any donations from any members of the Joondalup Business Association and if so which Councillor and how much?*

*A3 Response by Cr Gollant: I am not responding for everyone but I am quite happy to respond for myself Mr Magyar. My campaign consisted of an \$80.00 fee that I had to pay to enrol to register to vote and one advertisement that I took out at my own cost in a community newspaper. I didn't put out any flyers or receive any funds or have any other contact with Councillors during my campaign.*

*Response by Cr Baker:* I did not receive any donations or donate to the Joondalup Business Association.

*Cr Mackintosh left the Chamber, the time being 2317 hrs.*

*Response by Cr Brewer:* I am going to have to check the details, as I had a number of people helping me out in my campaign, they helped me out due to a belief in who I was not to their own advantage. People helped out on different things like door knocks as well as financial, all of those I have declared and are listed on the register. I will have to go and ask individually if any of them are involved, they gave personal donations but I will have to check that out and get back to you. I will not be bullied or pressured to make decisions by the Mayor, any Councillor or the media. I make decisions that I genuinely believe, with the information I have at hand, for the City of Joondalup. That is my stance and I am not moving from that, if you want to make accusations and people have made them all you want but that is the truth.

*Response by Cr Prospero:* Mr Mayor, I am quite proud that I funded and I worked on my own campaign, I had no assistance from anybody and it sounds like sour grapes from Mr Magyar for his loss.

*Q4 I refer to Cr Baker's Notice of Motion that was then turned into a report etc. about the decision of Council to gift approximately \$11,000 to the Joondalup Business Association and the Joondalup Business Incubator. I refer also to the Local Government Act Sections 5.59 to 5.90 which deal with declaring interests and donations etc. These sections require that any Councillor who receives a notifiable gift should not participate in deciding items where there is a financial interest. If a Councillor receives a donation for their election campaign from a member of the Joondalup Business Association should that Councillor have participated in the decision for that organisation that was made tonight?*

*A4 Response by Cr Baker:* The Business Incubator project is a project of a separate body to the Joondalup Business Association and of course it is just well known and well accepted that the particular incubator project is proceeding very well indeed. I had no involvement with the Incubator, I am not a member of the body, which owns or operates the incubator and so I have no involvement with the incubator.

**Ms M Moon, Greenwood:**

*Q1 I asked a question last time, what is a centre and how is the size of a centre determined? I have in the answer shopping centres are listed in the DPS2. I did not ask about shopping centres, I am quite aware what a shopping centre is. You also have net lettable area for each, could you please tell me what a centre is and how the size of the whole centre is determined as in your Amendment 10 and your Centre Strategy and your DPS2?*

*A1 This question will be taken on notice.*

**Mr R Privilege, Woodvale:**

*Q1 Is there any Councillor here who belongs to the Green Party. Did any Councillors give any money towards Mr Magyar's two failed campaigns?*

A1 *Response by Cr Baker:* I quite often make donations to the Green Party but I am not sure what they do with the funds.

**Mr A Bryant, Craigie:**

Q1 *A couple of Council Meetings ago I asked what profit Council received from recycled objects that Wanneroo picks up once a fortnight. The answer given was a loss on the resale of the recycled articles of \$104,000, I then asked was that \$104,000 a loss to this Council or was it a divided loss between the Cities of Stirling, Swan, Wanneroo and Joondalup?*

A1 The response the City gave a couple of weeks ago was a combined operational loss for the facility and that loss is share between Swan, Wanneroo and Joondalup.

**Mr T O'Brien, Padbury:**

Q1 *Re: Legality and legal reference to the Infrastructure and Management Department of which I expect the CEO to take notice. Issues that have come up in the past have been in respect to building and community projects i.e., community kindergartens. There are four questions I would like the City of answer:*

*Is the Council aware that the Education Department has a new regulation and stated and passed in Parliament in WA of year 1999 and fully ratified in the year 2000. And in participant of that Act is that there is community kindergartens in subjective to Section 205 and the laws pursuant to those in the State and that in consultation with those community groups which are incorporated public bodies, their parents are the you and I's who run them and almost in a charitable notation. They are being directed to sign up leasing and lease agreement, which are in effect business agreements, and not pursuant to peppercorn leases for a community kindergarten. There is no consultation taken into context to those lease agreements your legal department are offering generalised business agreements which have no context to public consultation, no context to community kindergarten and their prosperity, and in the fact you have most of the community kindergartens of the City of Joondalup nearly reaching a thirty year age mark in life and term and they offer a great propensity to the community as there is no legal requirement for education of school children as from the year 6 and under. The difference being that I would like you to investigate that the context that there is no public consultation, there is no performance criteria in relation to the community kindergarten committees. There is no performance in regards to what is returned in rates and charges and fees to infrastructure management in relation to the upkeep of the buildings they are subjective to taking on the full cost of building in its entirety which is not true to a lease, including as has happened in the past with Padbury Kindergarten the expensive repair of the roof. There needs to be an investigation in regards to the legality and the legal reference and the legal departments where there is no propriety to the operation of community kindergartens to this community.*

A1 This question will be taken on notice.

**The following question was submitted by Mr R Corkill, Heathridge:**

*Q1 Is Council aware that the 1989 proposal for the development of a 50 metre pool at Craigie Leisure Centre included the upgrade of the filtration system and plant equipment due to the identified inadequacy of the equipment identified shortly after the centre opened in 1987?*

A1 This question will be taken on notice.

**The following questions were submitted by Mr R de Gruchy, Sorrento:**

*Re: Concerns about the proposed redevelopment of the Craigie Leisure Centre.*

*Q1 In the event that a reorganisation of the kiosk at Craigie does take place, what steps are being taken to:*

*(a) provide the service currently provided by the kiosk, and*

*(b) compensate the lessee of the kiosk for the loss of income caused by both the closure of the pool and any demolition etc of the kiosk itself?*

A1 This question will be taken on notice.

*Q2 When will a report be presented to Council relating to the outcome of a meeting held at Craigie Leisure Centre last Wednesday night (02/07/2003)?*

A2 Arrangements have been made for Council architects and consultants who have been associated with the Craigie Leisure Centre to attend a session after Council's next Briefing Session. The intention would be for a report to be submitted to Council following that workshop session.

**Minute's Silence**

The meeting then observed a minute's silence for the recent death of Jane Heilkema, a member of the Seniors Advisory Committee.

**DATE OF NEXT MEETING**

The next meeting of the Council has been scheduled for **7.00 pm** on **TUESDAY, 29 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 2328 hrs; the following elected members being present at that time:

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