



City of
Joondalup

NOTICE IS HEREBY GIVEN THAT THE NEXT
ORDINARY MEETING OF THE COUNCIL OF THE CITY OF JOONDALUP
WILL BE HELD IN THE COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE,
BOAS AVENUE, JOONDALUP
ON TUESDAY, 9 SEPTEMBER 2003 AT 7.00 pm

DENIS SMITH
Chief Executive Officer
3 September 2003

PUBLIC QUESTION TIME

As adopted by Council on the 17 December 2002

Public question time is provided at meetings of the Council or briefing sessions that are open to the public.

Public question time is not a public forum for debate or making public statements. The time is limited to asking of questions and receiving responses. This procedure is designed to assist the conduct of public question time and provide a fair and equitable opportunity for members of the public who wish to ask a question. Public question time is not to be used by elected members. Members of the Council are encouraged to use other opportunities to obtain information.

Questions must relate to the ordinary business of the City of Joondalup or the purpose of the special meeting.

Prior to the Meeting/Briefing Session

To enable prompt and detailed responses to questions, members of the public are encouraged to lodge questions in writing to the Committee Clerk by close of business on the Friday prior to the Council meeting or Briefing Session at which the answer is required. Answers to those questions received within that time frame, where practicable, will be provided in hard copy form at that meeting.

At the Meeting/Briefing Session

A register will be provided for those persons wanting to ask questions to enter their name, and the order of registration will be the order in which persons will be invited to ask their questions.

Public question time will be limited to the legislative minimum of fifteen (15) minutes and may be extended by resolution of the Council, but the extension of time is not to exceed ten (10) minutes in total. Public question time will be limited to two (2) questions per member of the public. When all people who wish to do so have asked their two (2) questions, the presiding member may, if time permits, provide an opportunity for those who have already asked their two (2) questions to ask further questions.

During public question time at the meeting, each member of the public wanting to ask questions will be required to provide a written form of their question(s) to a Council employee.

Where the number of required questions exceeds the number able to be asked, the member of the public may submit the unasked questions to the Council, where they would be 'taken on notice' and a written response provided.

The procedure to ask a public question during the meeting is as follows:

- persons are requested to come forward in the order they registered;
- give their name and address;
- read out their question;
- before or during the meeting each person is requested to provide a written form of their question to a designated Council employee;
- the person having used up their allowed number of questions or time is asked by the presiding member if they have more questions; if they do then the presiding member notes the request and places them at the end of the queue; the person resumes their seat in the gallery;
- the next person on the registration list is called;
- the original registration list is worked through until exhausted; after that the presiding member calls upon any other persons who did not register if they have a question (people may have arrived after the meeting opened);
- when such people have asked their questions the presiding member may, if time permits, provide an opportunity for those who have already asked a question to ask further questions;
- public question time is declared closed following the expiration of the allocated time period or where there are no further questions.

The Mayor or presiding member shall decide to:

- Accept or reject the question and his/her decision is final;
- Nominate a member of the Council and/or Council employee to respond to the question;
- Due to the complexity of the question, it be taken on notice with a written response provided as soon as possible, and included in the agenda of the next briefing session or Council meeting, whichever applicable.

The following rules apply to public question time:

- *question time is not to be used by a member of the public to make a statement or express a personal opinion;*
- *questions should properly relate to Council business;*
- *question time shall not be used to require an Elected Member or an officer to make a personal explanation;*
- *questions should be asked politely in good faith and are not to be framed in such a way as to reflect adversely or be defamatory on a particular Elected Member or Council employee;*
- *where a response has been provided to a question asked by a member of the public, and where that response, in the opinion of the presiding person, adequately deals with the question, there is no obligation to further justify the response;*
- *where an elected member is of the opinion that the question is not relevant to the business of the City of Joondalup or that a member of the public is making a statement, they may bring it to the attention of the meeting.*

It is not intended that question time should be used as a means to obtain information that would not be made available if it was sought from the City's records under Section 5.94 of the Local Government Act 1995 or the Freedom of Information (FOI) Act 1992. Where the response to a question(s) would require a substantial commitment of the City's resources, the Chief Executive Officer (CEO) will determine that it is an unreasonable impost upon the City and refuse to provide it. The CEO will advise the member of the public that the information may be sought in accordance with the FOI Act 1992.

Second Public Question Time

Clause 3.2 of the Standing Orders Local Law allows the Council to alter its order of business, which may include a second period of public question time.

Where the Council resolves to include a second period of public question time, an additional period of 15 minutes will be allowed.

This time is allocated to permit members of the public to ask questions on decisions made at the meeting.

Disclaimer

Responses to questions not put in writing are provided in good faith and as such, should not be relied upon as being either complete or comprehensive.

CODE OF CONDUCT

The Code recognises these ethical values and professional behaviours that support the principles of:

Respect for persons - this principle requires that we treat other people as individuals with rights that should be honoured and defended, and should empower them to claim their rights if they are unable to do so for themselves. It is our respect for the rights of others that qualifies us as members of a community, not simply as individuals with rights, but also with duties and responsibilities to other persons.

Justice - this principle requires that we treat people fairly, without discrimination, and with rules that apply equally to all. Justice ensures that opportunities and social benefits are shared equally among individuals, and with equitable outcomes for disadvantaged groups.

Beneficence - this principle requires that we should do good, and not harm, to others. It also requires that the strong have a duty of care to the weak, dependent and vulnerable. Beneficence expresses the requirement that we should do for others what we would like to do for ourselves.

* Any queries on the agenda, please contact Council Support Services on 9400 4369.

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CITY OF JOONDALUP

Notice is hereby given that an Ordinary Meeting of Council will be held in the Council Chamber, Joondalup Civic Centre, Boas Avenue, Joondalup on **TUESDAY, 9 SEPTEMBER 2003** commencing at **7.00 pm**.

DENIS SMITH
Chief Executive Officer
3 September 2003

Joondalup
Western Australia

AGENDA

1 OPEN AND WELCOME

2 PUBLIC QUESTION TIME

The following question, submitted by Ms M Macdonald, Mullaloo, was taken on notice at the Meeting of Council held on 19 August 2003:

Q1 The CEO indicated in a report to Council on precinct planning at Mullaloo that traffic advice had been obtained from consultants before producing the preliminary concept plan for Mullaloo. Subsequent questioning revealed that the advice was verbal and that no written report had been produced. The Freedom of Information Commissioner has confirmed this stating "In normal circumstances I would not expect a State or Local Government agency to engage consultants to perform work without there being a record of the work performed." But later agreed after interviewing the consultants concerned "I accept the advice given to me by the consultants that their advice to the agency was verbal advice only." Given that statement can Council state when it expects a proper written verifiable accountable report on traffic issues in the Mullaloo Precinct and the surrounding suburb to be produced given that Council has approved an over development of the precinct centre?

A1 Council has not approved an "over development" within Mullaloo and furthermore, the City has no immediate plans to seek a traffic report on the suburb.

The following questions, submitted by Mr J McNamara, Sorrento, was taken on notice at the Meeting of Council held on 19 August 2003:

Q1 I refer to a previous question that I asked concerning Management Recruiters Australia. How much has the City spent with Management Recruiters Australia since Denis Smith was appointed, not only on recruitment, but also on fees charged for advice on the restructure of the Administration and other organisational matters?

A1 For the period 1 December 2001 to 31 July 2003, a total amount of \$93,879 has been spent.

3 APOLOGIES AND LEAVE OF ABSENCE

Leave of absence previously approved:

Cr P Kimber 8 - 12 September 2003 inclusive

REQUEST FOR LEAVE OF ABSENCE - CR T BREWER - [50521]

Cr T Brewer has requested Leave of Absence from Council duties for the period 10 – 18 September 2003 inclusive.

RECOMMENDATION

That Council APPROVES the request from Cr T Brewer for Leave of Absence from Council duties for the period 10 – 18 September 2003 inclusive.

4 DECLARATIONS OF FINANCIAL INTEREST/INTEREST THAT MAY AFFECT IMPARTIALITY

Cr O'Brien stated his intention to declare a financial interest in Item CJ201-09/03 – Warrant of Payments – 31 July 2003 (Voucher No 57433 - Chubb Electronic Security) – as Chubb Security has taken over an FAI Extra Watch security at his residence.

Cr Hollywood stated his intention to declare an interest that may affect his impartiality in Item CJ206-09/03 – Single House (Additions exceeding Building Height Envelope – Policy 3.1.9) Lot 245 (16) Vauchuse Place, Kallaroo as he is the applicant for this development proposal.

Cr Mackintosh stated her intention to declare a financial interest in Item CJ206-09/03 – Single House (Additions exceeding Building Height Envelope – Policy 3.1.9) Lot 245 (16) Vauchuse Place, Kallaroo as she lives in close proximity to this development proposal.

5 CONFIRMATION OF MINUTES

MINUTES OF COUNCIL MEETING, 19 AUGUST 2003

RECOMMENDATION

That the Minutes of the Council Meeting held on 19 August 2003 be confirmed as a true and correct record.

6 ANNOUNCEMENTS BY THE MAYOR WITHOUT DISCUSSION

7 PETITIONS

8 REPORTS

CJ197 - 09/03 SCHEDULE OF DOCUMENTS EXECUTED BY MEANS OF AFFIXING THE COMMON SEAL - [15876]**WARD - All****PURPOSE**

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

Document: Lease
Parties: City of Joondalup and Padbury Community Kindergarten
Description: Lease (and amendments) – Padbury Community Kindergarten, 2 Caley Road, Padbury
Date: 15.07.03

Document: Deed
Parties: City of Joondalup and WA Land Authority
Description: Deed of Assignment – Joondalup Normalisation Agreement – Transfer of Copyrights
Date: 15.07.03

Document: Deed
Parties: City of Joondalup and M S Spargo and C and S A Zencion
Description: Deed for Construction of a battle-axe access leg after completion of dwelling – Lot 503 Abaco Close, Hillarys
Date: 17.07.03

Document: S.70A
Parties: City of Joondalup and Peet and Co
Description: Notification on Title – Lots 2294 and 2295 Laidon Way, Kinross – re creation of subdivision lots and future retaining walls
Date: 28.07.03

Document: Management Statement
Parties: City of Joondalup and Beauchamp Nominees
Description: Notification of drainage easement – Lot 513 Shenton Avenue, Joondalup
Date: 28.07.03

Document: S.70A
Parties: City of Joondalup and Nathan and Tracey Green
Description: Notification on Title – 51 Ellersdale Avenue, Warwick – ancillary accommodation
Date: 31.07.03

- Document: Deed
Parties: City of Joondalup (and other member Councils) and Vodafone Network to Crown Castle
Description: Deed of Assignment of Lease – Tamala Park
Date: 31.07.03
- Document: Agreement
Parties: City of Joondalup and Department for Planning and Infrastructure
Description: Licence Agreement – Ocean Reef Jetty – #2766
Date: 05.08.03
- Document: Covenant
Parties: City of Joondalup and Dinichi Holdings Pty Ltd
Description: Restrictive Covenant pursuant to Sec 129BA of Transfer of Land Act 1893 – Plan #37088
Date: 05.08.03
- Document: Easement
Parties: City of Joondalup and State of WA (Minister for Lands)
Description: Easement in Gross re portion of Lot 15046 on Plan #36875 (drainage infrastructure)
Date: 05.08.03
- Document: Deed of Variation
Parties: City of Joondalup and Mullaloo Surf Lifesaving Club
Description: Re Reserve 20561, Location 10520, Mullaloo
Date: 05.08.03
- Document: Caveat
Parties: City of Joondalup and Anchor Holdings
Description: Withdrawal of Caveat – G185376 –Lot 656 (11/265) – Eddystone Avenue, Beldon
Date: 08.08.03
- Document: Lease
Parties: City of Joondalup and Elanta Nominees and Aquis P/L
Description: Assignment of Lease – Lot 906 (6) Dugdale Street, Warwick (Grove Child Care Centre)
Date: 11.08.03
- Document: Agreement
Parties: City of Joondalup and Barclay Group P/L
Description: Agreement for major repairs to the Duncraig Child Care Centre
Date: 11.08.03
- Document: Caveat
Parties: City of Joondalup
Description: Withdrawal of Caveats, Lot 11 on Strata Plan 20948 – Lot 656 (11/265) Eddystone Avenue, Beldon
Date: 12.08.03

Document: Deed
Parties: Cities of Joondalup, Perth, Stirling, Wanneroo, Cambridge, Victoria Park and Vincent and Vodafone
Description: Deed of Variation to allow for increased lease area – Tamala Park
Date: 19.08.03

Document: Agreement
Parties: City of Joondalup and FESA
Description: Service Agreement for fire alarm system – Connolly Community Centre
Date: 19.08.03

Document: Deed
Parties: City of Joondalup and Clayton Sanders
Description: Creation of easement over Lot 184 Regents Park Road, Joondalup
Date: 19.08.03

ATTACHMENTS

Nil

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That the schedule of documents executed by means of affixing the Common Seal be NOTED.

**CJ198 - 09/03 VACANCIES - WESTERN AUSTRALIAN LOCAL
GOVERNMENT ASSOCIATION - COMMITTEE
VACANCIES – [02011]**

WARD - All

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:

- **State Emergency Management Committee** – Emergency Services Group – 1 Member and 1 Deputy Member;
- **Local Health Authority Analytical Committee** – 1 Metropolitan member;
- **State Tourism Council** – 1 Member;
- **WA Road Freight Council** – 1 Member;
- **Road Safety Council & Local Government and Community Road Safety Committee** – 1 Member and 1 Deputy Member (READVERTISED).

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 17 September 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

RECOMMENDATION

That Council NOMINATES Manager, Strategic and Sustainable Development for consideration of appointment to the State Tourism Council.

Appendix 1 refers

To access this attachment on electronic document, click here: [Attach1agn090903.pdf](#)

CJ199 - 09/03 MINUTES OF HOUSE COMMITTEE MEETING HELD 14 AUGUST 2003 - [59064]

WARD - All

PURPOSE

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

EXECUTIVE SUMMARY

A meeting of the House Committee was held on 14 August 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 14 August 2003 are included as Attachment 1. At the meeting, the Committee considered:

- Review of remainder of 2003 Civic Function Calendar of Events
- 2004 Civic Function Calendar of Events
- Elected Member Calling Cards

ATTACHMENTS

Attachment 1 - Minutes of House Committee Meeting held 14 August 2003

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council NOTES the unconfirmed minutes of the House Committee meeting held on 14 August 2003, forming Attachment 1 to Report CJ199-09/03 and ENDORSES the recommendations contained therein.

Appendix 2 refers

To access this attachment on electronic document, click here: [Attach2brf020903.pdf](#)

CJ200 - 09/03 ENACTMENT OF LOCAL LAWS FOR CONTROL AND MANAGEMENT AND CULTIVATION OF CANNABIS – [23513] [05885]

WARD - All

PURPOSE

To advise Council on its powers to make local laws relating to the control, management and cultivation of cannabis within the City.

EXECUTIVE SUMMARY

As resolved by Council in consideration of a Notice of Motion by Cr Baker, this report provides advice on powers of local governments to make local laws in reference to the control and management and cultivation of cannabis. While the Local Government Act 1995 (the Act) permits local governments to make local laws that support good government of the district, which covers a very wide cross section of matters, Section 3.7 of the Act provides that “a local law made under this Act is inoperative to the extent that is inconsistent with this Act or any other written law.”

In this instance, cannabis is an illegal substance under the Misuse of Drugs Act 1981, therefore any local law relating to the control, management and cultivation of cannabis within the City would be inoperative.

BACKGROUND

At its meeting held on 11 June 2002, Council in considering a Notice of Motion by Cr Baker, resolved:

“That:

- 1 in view of the State Government’s recent confirmation of its plans to decriminalise the possession and cultivation of cannabis, the clear link between illicit drugs and crime, and the desire of the City of Joondalup to protect its citizens, particularly our young children, writes to the State Government advising that this City does not support the decriminalisation of cannabis;*
- 2 a report be prepared and presented to Council examining the powers of the City of Joondalup to enact Local Laws:*
 - (a) compelling cannabis cultivators who reside in the City of Joondalup to secure their cannabis crops in an appropriate manner to prevent young children accessing the same;*

- (b) *restricting the site or sites where cannabis can be grown within residential or non-residential premises;*
- (c) *providing for periodic inspections by suitably qualified Council staff of all State Government sanctioned cannabis crops so as to ensure that any such Local Laws are complied with, and;*
- (d) *providing for any other necessary, related or incidental matter.”*

DETAILS

Statutory Provision:

The Local Government Act 1995 details the powers and process to be followed by local governments to make local laws. (Sections 3.5 – 3.17 refer)

In accordance with section 3.5(1) of the Local Government Act 1995,

“a local government may make local laws prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.”

The over riding provision of the Act that determines whether or not a local law as suggested would in this instance be effective, is Section 3.7 which states:

“A local law made under this Act is inoperative to the extent that is inconsistent with this Act or any other written law.”

Under the “Misuse of Drugs Act 1981” cannabis or cannabis resin or any other cannabis derivative is classified and listed as a Prohibited Drug and cannabis is a Prohibited Plant. On the basis of cannabis being a prohibited and illegal substance at this time, it would not be possible to make an effective, operative local law relating to any aspect of the control management and regulation of cannabis within the City.

Joint Standing Committee on Delegated Legislation

As part of the process for making a local law, a local government must provide copies of the proposed local law plus an Explanatory Memorandum with comment on compliance with the requirements to make the local law such as, its adoption by Council, advertising for public comment, public comment received and how this was dealt with as well as compliance with existing legislation to the Joint Standing Committee on Delegated Legislation. This committee has the power to require amendments to the local law or recommend to Parliament that the proposed local law be disallowed. A local law relating to cannabis would not proceed beyond the Joint Standing Committee on Delegated Legislation.

COMMENT

The current laws relating to cultivation, production, use and management of drugs are administered and enforced by the State and Federal Government Agencies and any role that local government has is restricted to supporting those agencies. This situation will not change until such time as the government decriminalises the use and possession of cannabis. Under the provisions of the Local Government Act, there is no opportunity for a local government to make operative local laws relating to a substance which is already classified as prohibited under the Misuse of Drugs Act 1981.

Under the circumstances it is suggested that no further action be taken on this matter until such time as the State Government initiates action to decriminalise possession and cultivation of cannabis. At that time the City could review its options so as to take the most effective action to support its community.

ATTACHMENTS

Nil

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That as the City is unable under current law, to enact an operative local law to manage the possession and cultivation of cannabis, NO FURTHER ACTION be taken in this regard until such time as the State Government decriminalise possession and cultivation of cannabis.

Cr O'Brien stated his intention to declare a financial interest in Item CJ201-09/03 – Warrant of Payments – 31 July 2003 (Voucher No 57433 - Chubb Electronic Security) – as Chubb Security has taken over an FAI Extra Watch security at his residence.

CJ201 - 09/03 WARRANT OF PAYMENTS – 31 JULY 2003 – [09882]

WARD - All

PURPOSE

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

EXECUTIVE SUMMARY

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

DETAILS

FUNDS	VOUCHERS	AMOUNT
Municipal	000420-000427	5,771,976.54
Director Corporate Services & Resource Management Advance Account	057001-057624	5,716,996.28
Trust Account	-	-
	TOTAL	\$11,488,972.82

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 July 2003, the amount was \$638,416.99.

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

CERTIFICATE OF THE DIRECTOR OF CORPORATE SERVICES & RESOURCE MANAGEMENT

This warrant of payments to be passed for payment, covering vouchers numbered as indicated and totalling \$11,488,972.82 which is to be submitted to each Elected Member on 9 September 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 \$11,488,972.82 was submitted to Council on 9 September 2003

.....

Mayor Don Carlos

ATTACHMENTS

Attachment A – Warrant of Payments for Month of July
Attachment B – Municipal Fund Vouchers

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council APPROVES for payment the following vouchers, as presented in the Warrant of Payments to 31 July 2003, certified by the Mayor and Director Corporate Services & Resource Management and totalling \$11,488,972.82.

FUNDS	VOUCHERS	AMOUNT
Municipal	000420-000427	5,771,976.54
Director Corporate Services & Resource Management Advance Account	057001-057624	5,716,996.28
Trust Account	-	
	TOTAL	\$11,488,972.82

Appendix 3 refers

To access this attachment on electronic document, click here: [Attach3brf020903.pdf](#)

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CJ202 - 09/03 FINANCIAL REPORT FOR THE PERIOD ENDING 30 JUNE 2003 – [07882]

WARD - All

PURPOSE

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

EXECUTIVE SUMMARY

The June 2003 report shows a variance of \$14.7m when compared to the budget for the year.

This variance can be analysed as follows:

- The **Operating** position shows an actual operating surplus of \$5.3m compared to a budgeted operating surplus of \$2.8m at the end of June 2003, a difference of \$2.5m, due mainly to the receipt of unbudgeted acquired infrastructure assets contributed from developers, additional government contributions and an underspend in employee costs for the year.
- **Capital Expenditure** for the year is \$9.0m compared to budgeted expenditure of \$8.4m as at the end of June 2003, a difference of \$0.6m. This is due to the receipt of additional infrastructure assets acquired from developers, particularly the earlier than expected hand over of University Village from Landcorp.
- **Capital Works** expenditure for the year amounted to \$10.3m against a budget of \$23.1m, an under spend of \$12.8m as at the end of June 2003. This is mainly due to capital works to the value of \$12.6m that have either been carried forward to 2003/04 or deferred to future years. These works 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 30 June 2003 is appended as Attachment A to this Report.

ATTACHMENTS

Attachment A Monthly Financial Report for the Year Ending 30 June 2003

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That the Financial Report for the period ending 30 June 2003 be NOTED.

Appendix 4 refers

To access this attachment on electronic document, click here: [Attach4brf020903.pdf](#)

**CJ203 - 09/03 AMENDMENT NO 10 TO DISTRICT PLANNING
SCHEME NO 2 – DECISION OF THE MINISTER –
[09030]**

WARD - All

PURPOSE

The purpose of the report is for Council to consider modifications (Attachment 1 refers) as requested by the Minister to Amendment No 10 to District Planning Scheme No 2 (DPS2), following the Minister's decision to adopt the amendment on 26 March 2003.

EXECUTIVE SUMMARY

Amendment 10 to DPS2 was prepared to incorporate amongst other matters recommendations made by the Centres Strategy. Council adopted Amendment 10 to DPS2 at its meeting on 26 March 2002 (CJ070 – 03/02 refers) subject to the exclusion of the proposal to rezone Lot 199 Kinross Drive from 'Residential' to 'Commercial'.

As a result of the community submissions, Council resolved at its meeting on 23 July 2002 (CJ188 – 07/02 refers) after deferring its decision at the special meeting of Council on 24 June 2002 (JSC3 – 06/02 refers) to review the 'Centres Strategy' and recommend to the Minister for Planning the following in regard to Amendment 10 (Attachment 2 refers):

- 1 Delete the proposed definition for 'Centres Strategy';
- 2 Delete proposed schedule 3;
- 3 Delete proposed clauses 3.5.2, 3.6.3 and 4.16; and
- 4 Delete replacement of clauses 3.6.2, 3.7.2 and 3.11.4 (Clause 3.6.2 is not proposed to be replaced and was included in Council's resolution as a result of a typing error).

The Minister for Planning adopted Amendment 10 on 26 March 2003, subject to a number of further modifications.

The Minister's decision sought to retain certain elements of Amendment 10 that the City requested be deleted and requested further additional modifications. The City raised a number of concerns to this decision and met with officers of the Minister's Office and the Department for Planning and Infrastructure to resolve matters. The issues discussed were as follows:

- 1 The justification for including Clauses 3.5.2, 3.6.3, 3.7.2 and 3.11.4 given that all aspects of the 'Centres Strategy' had been deleted from Amendment 10.
- 2 The use of the term 'Centre' in Clauses 3.5.3 and 3.6.4.
- 3 The inclusion of Lot 60 Warburton Avenue as a Local centre is Schedule 3 of the Scheme.

Following the meeting, the City received a letter from the Minister on 14 August 2003 advising that the above issues have been rectified to accord with Council's request. As a result of the meeting the Minister's decision now generally reflects that of Council at its meeting on 23 July 2003 apart from two minor differences to retain the definition of 'Take Away Food Outlet' and not include 'Dry Cleaning Premises' as a discretionary use in the Mixed-Use zone.

In making her decision the Minister for Planning has not requested that the modifications be advertised for public comment. In accordance with provisions 25AA (6) of the Town Planning Regulations 1967 the City may comply with the Minister's request or resolve not to proceed with the amendment. Given that the proposed amendment is in accordance with Council's resolution of 23 July 2003, it is recommended that Council adopt Amendment 10 as modified by the Minister for Planning as per Attachment 1.

BACKGROUND

Suburb/Location:	Various
Applicant:	City of Joondalup
Owner:	Various
Zoning:	DPS: Various
	MRS: Various
Strategic Plan:	Lifestyle – Strategy 2.6 Promote and enjoy lifestyles that engender Environmental, Social and Economic balance.

Amendment No 10 to DPS2

The original proposed Amendment 10 was prepared to incorporate a number of matters including recommendations made by the 'Centres Strategy in DPS2, namely the following (See attachment 2):

- Modify schedule 1 to include 'new' definition for 'shop', 'showroom' and 'bakery'
- Modify Table 1 to permit 'Dry Cleaning Premises' subject to Council's discretion in a Mixed-Use Zone;
- Modify clause 3.2.2 and Table 1 to include a new symbol 'AS' that would permit a 'shop' use in the Mixed Use and Business Zone subject to Council's discretion;
- Modify Part 4 to include a new clause (4.16) 'Development of Centres';
- Include in schedule 1 a definition for 'Centres Strategy';
- Delete the use classes 'Road House' and 'Animal Husbandry' from Schedule 1 and Table 1 and 'Takeaway Food Outlet' from schedule 1, Table 1 and Table 2;
- Adjust the zone boundary of Kinross Drive, Centre and include in Schedule 3 as Kinross 'Local Shop';
- Modify Schedule 3 to reflect recommendations for net leasable area (NLA) as per 'Centres Strategy' (Attachments 4, 5 and 6) and include all lots in each centre;

- Include all properties zoned 'Commercial', 'Centre', 'Business' and 'Mixed-Use' zones in the calculation of shopping NLA, thus modifying Schedule 3 by deleting the column headed 'Description of Centre and Commercial Zone';
- Include Lot 60 Warburton Avenue (Padbury – Warburton Avenue West) as a 'Centre' in Schedule 3 of DPS2 to enable 'shop' to be considered as a possible land use for the site.

Previous Council Decision

At the Council meeting of 23 October 2001, Amendment 10 was adopted for the purpose of advertising (CJ226 – 07/01 refers). At the Council meeting of 26 March 2002 (CJ070 – 03/02 refers) it was resolved subject to the exclusion of Lot 199 Kinross Drive to endorse the documents and forward them to the WAPC for final determination.

Rescission Request

Members of the community raised a number of issues concerning the Centres Strategy and Amendment 10, namely, changes proposed to the NLA for commercial centres, introduction of development standards to encourage 'Main Street' development and a lack of definition for 'Centres' not being provided.

Council considered the concerns raised by the community at its special meeting on 24 June 2002 (JSC3-06/02 refers) and resolved to defer its decision for further discussion. At its meeting on 23 July 2002 (CJ188 – 07/02 refers) Council resolved as follows:

- 1 *REVIEWS the City of Joondalup Centres Strategy and Policy 3.2.8 – Centres Strategy having particular regard to the concerns raised by the community such as:*
 - (a) *The maximum net lettable area allocated to commercial centres;*
 - (b) *The lack of a definition for 'Centre' and clarification of the extent of the Centre; and*
 - (c) *The appropriateness of 'Main Street' principles as a development guide for all centres within the City.*
- 2 *RECOMMENDS to the Hon Minister for Planning that she requires District Planning Scheme No 2 Amendment No 10 to be modified in order to delete reference to the Centres Strategy by:*
 - (i) *deleting the proposed definition for 'Centres Strategy';*
 - (ii) *deleting proposed schedule 3;*
 - (iii) *deleting proposed clauses 3.5.2, 3.6.3 and 4.16;*
 - (iv) *deleting replacement of clauses 3.6.2, 3.7.2 and 3.11.4; but*
- 3 *WRITES to the Western Australian Planning Commission with details of the above recommendations and an explanation of the City's reasons for it.*

- 4 *ALLOCATES an amount in the 2002/2003 budget of \$45 000 for review and appropriate public consultation.*

A letter was forwarded to the WAPC on 31 July 2002 detailing Council's decision (Attachment 2 refers). It is not proposed to replace Clause 3.6.2, its inclusion in the Council's resolution is a result of a typing error.

Decision of the Minister for Planning

The Minister for Planning adopted Amendment 10 on 26 March 2003, subject to a number of modifications:

- 1 *Delete the proposal for the rezoning of Lot 199 Kinross, Drive, Kinross from 'Residential' to 'Commercial';*
- 2 *Delete the proposal to include a definition for 'Centres Strategy' in Schedule 1;*
- 3 *Delete the proposal which removes the definition of 'Take Away Food Outlet' in Schedule 1 and the respective use classes in Table 1 and Table 2;*
- 4 *Delete the proposal to include 'Dry Cleaning Premises' as a discretionary use in the Mixed-Use zone in Table 1 of the scheme;*
- 5 *Delete the proposal which removes existing Schedule 3, and replaces it with a new Schedule 3;*
- 6 *Include Lot 60 Warburton Avenue, Padbury as a 'Local Centre' with a NLA of less than 1000m² in Schedule 3 of the Scheme;*
- 7 *Delete the proposal to include a new Clause 4.16 – Development of Centres;*
- 8 *Delete proposed changes to Clause 3.2.2 from the amendment and after Clause 3.5.2 add the following:*

3.5.3 *A shop may be permitted in the Mixed Use Zone, subject to Council's discretion after giving notice in accordance with Clause 6.7, and provided the following conditions have been met:*

- (a) *Shopping floor space does not exceed 200m² NLA;*
- (b) *The parcel of land is on a separate lot of not less than 1000m²;*
- (c) *The aggregate shopping NLA in the Business and Mixed Use Zones in any Centre must exceed 1000m²; and*
- (d) *The direct street frontage of any lot containing a shop must be at least 20 metres in width.*

After Clause 3.6.3 add the following:

3.6.4 *A shop may be permitted in the Business Zone, subject to Council's discretion after giving notice in accordance with Clause 6.7, and provided the following conditions have been met:*

- (a) *Shopping floor space does not exceed 200m² NLA;*
- (b) *The parcel of land is on a separate lot of not less than 1000m²;*
- (c) *The aggregate shopping NLA in the Business and Mixed Use Zones in any Centre must not exceed 1000m²; and*
- (d) *The direct street frontage of any lot containing shop must be at least 20 metres in width.*

In table 1, insert the symbol ‘’ against the use class ‘Shop’ under the Business and Mixed Use Zones, to read ‘X*’.*

At the end of Table 1, include the following footnote:

** - refer to Clause 3.5.3 and/or Clause 3.6.4 for further information.*

DETAILS

Statutory Provision:

In accordance with provision 20 (5) of the Town Planning Regulations 1967 the Minister shall consider all submissions together with the recommendations made thereon by the Local Authority and the recommendation made by the WAPC and shall refuse to approve the scheme amendment or require the responsible authority to modify the scheme amendment in such manner as seen required before approval is given.

In accordance with the provisions of Regulations 25AA (6) of the regulations, the City is required to return the executed modified amending documents to the WAPC within 42-days of being notified of the Minister’s decision or resolve not to proceed with the amendment and notify the WAPC accordingly.

Current Situation

The Minister’s decision sought to retain certain elements of Amendment 10 that the City requested be deleted and requested further additional modifications. The City raised the matter of the Minister’s decision and subsequently met with officers of the Minister’s Office and the Department for Planning and Infrastructure. The elements discussed were as follows:

- 1 The justification for including Clauses 3.5.2, 3.6.3, 3.7.2 and 3.11.4 given that all aspects of the ‘Centres Strategy’ had been deleted from Amendment 10.
- 2 The use of the term ‘Centre’ in Clauses 3.5.3 and 3.6.4.
- 3 The inclusion of Lot 60 Warburton Avenue as a Local centre is Schedule 3 of the Scheme.

It was determined at the meeting that Clauses 3.5.2, 3.6.3, 3.7.2 and 3.11.4 could not be applied in light of Council’s resolution to review the Centres Strategy, more specifically the reference in the clause to ‘Centre’.

On this basis it was also determined to delete reference to ‘Centre’ in Clauses 3.5.3 and 3.6.4, therefore modifying points (b) and (c) of that clause as follows:

- (b) the parcel of land is on a separate green title lot of not less than 1000sqm;
- (c) the aggregate shopping NLA on any group of adjoining or adjacent lots in the Business and Mixed Use zones must not exceed 1000sqm.

It was also determined to delete the proposal to include Lot 60 Warburton Avenue from Schedule 3. This is due to it being zoned ‘Mixed Use’ and schedule 3 only applies to that land zoned ‘Commercial’ and ‘Centre’. In addition clause 3.5.3 allows limited ‘shop’ use to be permitted so therefore inclusion to Schedule 3 is not required for this purpose.

The above changes have been conveyed to the City via a letter from the Minister's Office on 14 August 2003.

COMMENT

The modifications requested by the Minister relating to the Centres Strategy and the deletion of the proposal to rezone Lot 199 Kinross Drive, Kinross from 'Residential' to 'Commercial' is in response to community concerns and is in keeping with Council's decision on this matter.

The Minister's decision sought to retain certain elements of Amendment 10 that the City requested be deleted and requested further additional modifications. These concerns were raised at a meeting with officers of the Minister's Office and the Department for Planning and Infrastructure and as a result the Minister's decision was modified to reflect that of Council's at its meeting on 23 July 2003 apart from some minor matters.

The matters that are not in accordance with Council's resolution include the Minister's decision to retain the definition for 'Take Away Food Outlet' and not include 'Dry Cleaning Premises' as a discretionary use in the Mixed-Use zone. The Minister has advised that this decision was made to ensure that DPS2 is consistent with the Model Scheme Text provisions. The Model Scheme Text is a guide for the preparation of Town Planning Schemes and associated scheme amendments providing for amongst other matters land use definitions and the distribution of land uses in various zones.

The Minister determined to delete the proposed changes to Clause 3.2.2 as requested by the City and in its place add new provisions (Clause 3.5.3 and 3.6.4) to permit 'shop' in the Mixed-Use and Business zones. Essentially this results in the same objectives being achieved as those proposed by Council.

In making her decision the Minister has not requested that the modifications be advertised for public comment.

In accordance with provision 25AA (6) of the Town Planning Regulations 1967 the City may comply with the Minister's request or resolve not to proceed with the amendment. Given that the proposed amendment is generally in accordance with Council's resolution of 23 July 2003 it is recommended that Council adopt Amendment 10 as modified by the Minister for Planning as per Attachment 1.

ATTACHMENTS

Attachment 1 - District Planning Scheme No. 2 – Amendment No. 10

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION**That Council:**

- 1 Pursuant to Town Planning Regulations 25AA(6) ADOPTS Amendment No 10 as per Attachment No 1 to Report CJ203-09/03;**
- 2 RESUBMITS the amendment document with the required modifications, duly carried out as shown on Attachment 1 to Report CJ203-09/03 to the Western Australian Planning Commission;**
- 3 AUTHORISES the affixation of the common seal to, and ENDORSES the signing of, the amendment documents.**

Appendix 5 refers

To access this attachment on electronic document, click here: [Attach5brf020903.pdf](#)

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**CJ204 - 09/03 PROPOSED AMENDMENT NO 19 TO DISTRICT
PLANNING SCHEME NO 2 (PROPOSED REZONING)
& STRUCTURE PLAN - LOTS 742 AND 743
CARIDEAN STREET & ADMIRAL GROVE,
HEATHRIDGE – [31540] [54548]**

WARD - Marina

PURPOSE

The proposed Amendment No 19 to District Planning Scheme No 2 (DPS2) and proposed structure plan is brought before Council for consideration of initiation and adoption for the purpose of advertising (See Attachment 1 for the structure plan and Attachment 2 for the rezoning).

EXECUTIVE SUMMARY

Lots 742 and 743 Caridean Street and Admiral Grove, Heathridge, are zoned 'Business' and coded R20 (See Attachment 3, location plan). It is proposed to rezone the lots to 'Centre' and uncode them (Attachment 2 refers) and propose a structure plan in order to facilitate the future construction of twelve 'Aged Persons Dwellings' on Lot 743 and thirteen 'Single Bedroom Dwellings' on Lot 742 (Attachment 1 to this Report).

The amendment is to facilitate the development of 'Aged Persons Dwellings' and 'Single Bedroom Dwellings' by rezoning the land to 'Centre', and will allow a structure plan to be prepared for the subject site to guide the form of development. The Structure Plan prescribes the development requirements applicable to both to the 'Single Bedroom Dwellings' and the 'Aged Person Dwellings' through criteria detailed in Part 5. The criteria addresses building height, car parking, building setbacks from primary and secondary frontages, site coverage and building materials to ensure the development is of high built form quality.

Ultimately the structure plan may be updated to encompass the commercial land adjoining the subject site (Lot 741 Caridean Street), should this land be redeveloped or improved in future. The 'Centre' zone and structure plan would be appropriate to allow this to occur.

It is anticipated that the Heathridge Shopping Centre will receive an injection of 'new life' as a result of the adjoining residential development creating demand for retail services. In addition, the amenity of the area will improve by developing the subject sites that have been vacant for some time. The provision of 'Aged Person' and 'Single Bedroom' dwellings on the subject site will also improve the housing mix by providing a variety of dwelling types and accommodating changing demographic needs. The proposed development of the site will tie in with improvements currently being considered to Lot 740 Caridean Street, which will see this part of the centre dramatically improved.

It is recommended that Council initiates and adopts Amendment No 19 to DPS2 for the purpose of advertising for a period of 42 days and in accordance with Part 9 of DPS2, adopts the structure plan for the purpose of advertising for a period of 42 days.

BACKGROUND

Suburb/Location:	Lots 742 and 743 Caridean Street & Admiral Grove, Heathridge		
Applicant:	Koltasz Smith on behalf of the Department of Housing and Works and Isador Pty Ltd.		
Owner:	Isador group (Lot 742) and Department of Housing and Works (Lot 743)		
Zoning:	DPS:	Business	
	MRS:	Urban	
Coding:	R20		
Strategic Plan:	Strategy 2.1 – Rejuvenate our suburbs. Strategy 2.6 – Promote and enjoy lifestyles that engender Environmental, Social and Economic balance.		

Previous development on both lots has been associated with the Heathridge Shopping Centre, including a Service Station formally located on Lot 742 and a Medical Centre on Lot 743. Both lots are presently vacant.

Both landowners consider that development of both lots for ‘Business’ related purposes is not practical on the basis that the existing centre is large enough to service the needs of the surrounding area and a number of tenancies have been vacant for some time

The landowners have further justified the development on the basis that there is a lack of ‘Single Bedroom Dwellings’ and ‘Aged Persons Dwellings’ in the area and that the proximity of the development to the Heathridge Shopping Centre would benefit the adjoining centre by providing surveillance and additional patronage. The location also appears appropriate for this type of residential development given its proximity to commercial facilities and public transport.

DETAILS

Amendment No 19

Koltasz Smith on behalf of the Isador Group and the Department of Housing and Works have submitted for consideration an amendment to DPS2 for Lots 742 and 743 Caridean Street and Admiral Grove, Heathridge to be rezoned from ‘Business’ zone to ‘Centre’ zone and uncode the land (Attachment 2 refers). It is intended that the land be developed for the purpose of ‘Aged Person’s Dwellings’ and ‘Single Bedroom Dwellings’. A structure plan is also proposed concurrently with the amendment to facilitate this development.

The lots abut the Heathridge Shopping Centre and Admiral Park Recreation Reserve. Heathridge Primary School is in close proximity.

Both lots are proposed to be rezoned to accommodate ‘Special Purpose’ dwellings as development for ‘Business’ related purposes is not practical on the basis that the existing centre is large enough to service the needs of the surrounding area and a number of tenancies has been vacant for some time.

In addition, the development of the land for 'Aged Person's Dwellings' and 'Single Bedroom Dwellings' is considered an appropriate alternative given there is a shortage of this type of accommodation in the area and the proximity to commercial facilities and public transport. The proximity of the residential development to the Heathridge Shopping Centre would also benefit the adjoining centre by providing surveillance and additional patronage.

The rezoning of the subject site to 'Centre' zone is considered appropriate to facilitate this type of development.

Structure Plan

The structure plan consists of two parts, the first being the 'Statutory Planning Section' that sets out the objectives and the criteria that determine the overall detailed landuse and form of development upon each lot (Attachment 1 refers). The criteria addresses building height, car parking, building setbacks from primary and secondary frontages, site coverage and building materials to ensure the development is of high built form quality.

More specifically part one of the structure plan addresses the following issues:

- The development orientation for both Lots 742 and 743 towards the adjoining centre (Lot 741 Caridean Street) and towards both Caridean Street and Admiral Grove to encourage surveillance and improved built form interface between the proposed development and both the existing centre and surrounding residential area.
- The requirement for a legal agreement for pedestrian access between Lots 742 and 743.
- Strata title of individual lots not being permitted until construction has reached plate height.

The second component is the 'Explanatory Report', which is the supporting documentation to part one. It includes the following:

- Identification of landuse areas;
- Rationale for the design philosophy;
- Relationship of proposed development to surrounding landuses;
- Movement, access and parking arrangements;
- Services; and
- Implementation.

Ultimately the structure plan may be updated to encompass the commercial land adjoining the subject site (see Attachment 3 for location of Lot 741 Caridean Street) should this land be redeveloped or improved in future. The 'Centre' zone and structure plan would be appropriate to allow this to occur.

Statutory Provision:

Amendment No 19

Section 7 of the Town Planning and Development Act 1928 (TPD Act 1928) together with Town Planning Regulations 1967 enable Local Authorities to amend a Town Planning Scheme and sets out the process to be followed (Attachment 4 refers).

Structure Plan

Clause 9.1 of DPS2 states that Council may require the preparation of a structure plan as a prerequisite to the Council's support for a proposal to rezone or reclassify land in the District.

Consultation:

Amendment No 19

The Town Planning Regulations 1967 requires the amendment to be advertised for a period of forty two (42) days. All adjoining landowners would be notified in writing, a sign erected on the site and a notice placed in the Joondalup Community newspaper. In addition the landowners of Lot 740 (Heathridge Shopping Centre) and the landowners and residents along Admiral Grove and Caridean Street immediately opposite Lots 742 and 743 Admiral Grove and Caridean Street Heathridge, would be notified in writing of the proposal.

Structure Plan

Clause 9.5 of DPS2 requires structure plan proposals to be advertised, in accordance with clause 6.7 of DPS2. Clause 6.7 requires advertising to be no less than 21 days. Given both the structure plan and the amendment will be advertised concurrently, it is recommended that the structure plan be advertised for a period of 42 days, with advertising to all adjoining landowners being notified in writing, a sign erected on site and a notice placed in the Joondalup Community newspaper. It is also suggested that landowners of Lot 740 Caridean Street (Heathridge Shopping Centre) and landowners and residents along Admiral Grove and Caridean Street immediately opposite Lots 742 and 743 Admiral Grove and Caridean Street Heathridge, be notified in writing of the proposal.

Strategic Implications:

The rezoning and structure plan will facilitate the development of 'Aged Person's Dwellings' and 'Single Bedroom Dwellings'. The development will address the needs of the ageing population and changing demographics that warrants the creation of special purpose dwellings. The development will also assist in rejuvenating the area. This accords with Strategy 2.1 'Rejuvenate our Suburbs' of the City's strategic plan.

COMMENT

The amendment and the proposed structure plan will result in the creation of twelve 'Aged Persons Dwellings' and thirteen 'Single Bedroom Dwellings'. The structure plan provides the guidelines that will guide the development and ensure the amenity of the surrounding residential area is maintained and the final built form is of a high quality.

It is anticipated the Heathridge Shopping Centre will receive an injection of 'new life' as a result of the adjoining residential development creating demand for retail services. The Department of Housing and Works has advised that the demand for 'Aged Person' and 'Single Bedroom' dwellings is high in Heathridge given most dwellings in the surrounding locality consist of traditional housing (3 to 4 bedrooms and 2 bathrooms). It is beneficial for 'Special Purpose' dwellings to be located in proximity to public transport, open space and community facilities, which the subject site provides.

It is recommended that Council initiates and adopts Amendment No 19 to DPS2 for the purpose of advertising for a period of 42 days and in accordance with Part 9 of DPS2, adopts the structure plan for the purpose of advertising for a period of 42 days.

ATTACHMENTS

Attachment 1 – Structure Plan – Lot 742 & 743 Caridean Street & Admiral Grove, Heathridge

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council:

- 1 in accordance with clause 9.4 of the City of Joondalup's District Planning Scheme No 2 ADOPTS the Heathridge Structure Plan as per Attachment 1 to Report CJ204-09/03 and makes it available for public comment for a period of forty two (42) days;**
- 2 in pursuance of Section 7 of the Town Planning and Development Act 1928, AMENDS the City of Joondalup District Planning Scheme No 2 for the purpose of rezoning Lots 742 and 743 Caridean Street and Admiral Grove, Heathridge, from the 'Business' zone to the 'Centre' zone and uncoding the same;**
- 3 ADOPTS Amendment No 19 as suitable for the purpose of advertising for a period of forty two (42) days.**

Appendix 6 refers

To access this attachment on electronic document, click here: [Attach6brf020903.pdf](#)

CJ205 - 09/03 MIXED USE DEVELOPMENT (ADDITION OF EIGHT MULTIPLE BEDROOM DWELLINGS & SIX SINGLE BEDROOM DWELLINGS ABOVE EXISTING COMMERCIAL DEVELOPMENT): LOT 740 (1-11/99) CARIDEAN STREET, HEATHRIDGE – [63542]

WARD - Marina

PURPOSE

The purpose of this report is to request Council's determination of an application for a mixed-use development that intends to construct a number of residential dwellings above existing commercial tenancies at a shopping centre.

EXECUTIVE SUMMARY

An application has been received for the development of a number of residential dwellings on top of an existing commercial development, forming part of the Heathridge City Shopping centre. In total fourteen dwellings are proposed, including six single bedroom dwellings. The proposal would be classified as a multiple dwelling in a mixed-use configuration given that the existing shops would be retained. A new public alfresco area in the forecourt of the shopping center is also proposed. Discretion is required in relation to land use and provision of parking.

A number of submissions were received including various objections during the 28-day public advertising period.

The type of development proposed is unique to the City. It is also considered that the proposal has a large significance in terms of upgrading the existing shopping centre.

It is recommended that the application be approved as it is considered that the community benefit and improvement to the streetscape would provide a major benefit to the locality.

BACKGROUND

Suburb/Location:	99 Caridean Street, Heathridge.
Applicant:	Peter Raynes Design Consultant
Owner:	Strata Management for Heathridge City Shopping Centre
Zoning:	DPS: Commercial R20
	MRS: Urban

The subject land incorporates the lot on which the existing shopping centre is located. The shopping centre was developed in 1986. The site adjoins Lot 741 to the east that contains other retail development. The battleaxe shaped Lot 745 is located to the west and is owned by the City. (Refer to attachment 1).

DETAILS

The application would result in a mixed-use development that comprises of fourteen new residential dwellings on top of the existing commercial development. The fourteen dwellings would be comprised of eight dwellings with two to three bedrooms, whilst six dwellings would have a single bedroom. The existing commercial tenancies at the ground floor level would be retained. A new outdoor dining area is also proposed for the existing restaurant. Car parking for the new dwellings would be provided to the rear, off the service lanes where dedicated spaces with a storage facility for each unit would be located. Parking for the commercial tenancies would generally remain as existing in the forecourt of the “U” shaped shopping centre. (A site plan is shown in Attachment 2).

Statutory Provision:

The development is subject to the provisions of the City’s District Planning Scheme No 2 (DPS2) and the Residential Design Codes 2002 (R-Codes).

In this instance the provisions of DPS2 are used for the classification of land use and the permissibility of this use on the subject lot, the permissible gross leasable area (GLA) of retail floor space, landscaping, parking provisions for the commercial portion and overall use and management of the site with adjoining lots. The R-Codes stipulate matters specifically related to the residential portion, and as such include parking considerations for the residential portion, the residential density, size of units and their interaction with the shopping centre overall.

Specifically, it should be noted that the provisions of the R-Codes now include a section for mixed use developments, where residential is proposed in conjunction with other types of development, and in this case this includes commercial tenancies. Part 4.2 of the R-Codes outlines such provisions for mixed-use developments and outlines that the residential portion would be assessed on the basis of a multiple dwelling.

Zoning

The lot is currently zoned “Commercial”. A density coding of R20 applies.

The objectives of the “Commercial” zone pursuant to the provisions of clause 3.7 of DPS2 aim to *“provide for a wide range of uses within existing commercial areas, including retailing, entertainment, professional offices, business services and residential.”*

Land use

The residential land uses proposed above the existing commercial development would be classed as a “multiple dwelling”. A “multiple dwelling” is a “D” (discretionary) land use in a “Commercial” 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”.

Given that the multiple dwelling development proposal is a discretionary land use, clause 6.6.2 of DPS2 requires that the Council in exercising its discretion to approve or refuse an application, to 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.*

Retail floor space (NLA)

Schedule 3 of DPS2 provides floor space limits for shopping centres. In this instance Schedule 3 limits the subject centre to 1500m² of retail NLA. It should be noted that no additional retail floor space is currently proposed and the existing commercial units would be retained in their current configuration.

Consultation:

The applicant has submitted written comments supporting the proposed development from the owners of Lot 743, the former Medical Centre site along Admiral Grove.

Furthermore, the proposal was advertised in writing to 143 of the adjoining and nearby owners and a sign was also placed on the site advising passers by of the development proposal. The comment period was 28 days in accordance with DPS2. In total nineteen submissions, including four objections, were received during the comment period. These are detailed below.

Summary of submission Received	Technical Comments
<p><i>Opposed to the development as this would be the start of on-going future building developments in this already crowded area.</i></p> <p><i>The size of the shopping centre is sufficient for the area and feels that if the development goes ahead that the oval would be developed next. Provision of more parks would be better. (14 Trochidae Way, Heathridge)</i></p>	<p>The development is assessed separately to any future proposal, which may be proposed. The area has an R20 coding and this is a low-density type R-Coding predominantly found across the City.</p> <p>The size of the shopping centre (commercial floor space) would not be increased. The proposal intends to add residential on top of existing commercial tenancies. There is no proposal to develop on the park.</p>
<p><i>Concern about an increase in criminal activity and additional noise.</i></p> <p><i>Caridean Street is a busy street and does not require the additional traffic the dwellings would create.</i></p>	<p>It is considered that permanent residents would provide passive surveillance to the shopping centre after operating hours and that the additional residents comprising the additional 14 dwellings would have a negligible impact on Caridean Street, which would be able to carry large amounts of traffic at present.</p>
<p><i>Ratepayer likes the shopping centre as it is "family-friendly" within close walking and cycling distance.</i></p> <p><i>They use the centre about once a week for the newsagent, supermarket and the Chinese restaurant and pizza outlet.</i></p> <p><i>The car park is roomy and flat and allows their car to not be damaged/scratched and allows their children to cross the car park safely and visibly to other drivers.</i></p> <p><i>The centre is wide, open and has a low vista architecture which is non threatening and non stressful.</i></p> <p><i>The grounds of the centre are generally kept clean apart from the rear.</i></p> <p><i>The development would mean that the car park becomes busy with residents and their visitors, which would impact on the parking of customers.</i></p> <p><i>Socially and emotionally in the longer term (1 to 2 years) residents of the development would not benefit as living so close to the centre without own space and backyard would lead to negative activities which would impact on the customers who would be forced to go elsewhere.</i></p> <p><i>As shopping hours may be extended the impact on residents would be compounded. The centre would increase its property</i></p>	<p>Noted.</p> <p>It appears as though these comments relate to the adjacent site, which has these facilities.</p> <p>Noted. The layout and operation of the car park would not be altered as residents' parking is dedicated to the rear of the shopping centre.</p> <p>Noted.</p> <p>Noted.</p> <p>Refer to comment above.</p> <p>The provision of balconies would comply with the R-Codes. Residents that require large backyards would be unlikely to purchase a unit that would not serve their lifestyle needs. Increased surveillance and customers to the centre by way of the new residents would enable the centre to function better 24 hours a day.</p> <p>The City does not have any control over operational hours, although noise impacts</p>

Summary of submission Received	Technical Comments
<p><i>valuation, the value of the centre property would decrease forcing taxpayers and the community to address security issues.</i></p> <p><i>Request for the back of the centre to be tidied up. The former service station site turned into landscaped area with benches etc. allowing a community meeting area to be created. Objects to the development as the existing centre should remain unaltered. (Anon)</i></p>	<p>and regulation would occur in the normal fashion in the event of noise intrusion. The Building Code of Australia also requires noise insulation between various uses within a building. Natural surveillance of the centre would be increased due to the movement of new residents resulting in a reduction of opportunities for antisocial behaviour. Improving the visual aesthetics of the centre can be achieved by requiring additional lighting/landscaping as part of an approval. The other sites mentioned are separate from the development proposal. It is currently considered that additional housing may be constructed on the former service station site. However, this is subject to a separate development application.</p>
<p><i>The development will result in more traffic and air pollution on Admiral Grove as congestion occurs, especially on Sundays when Rugby is played.</i></p> <p><i>The Councillors should come to the park on those days to see the congestion and rubbish left behind, not to mention the reticulation they have to pay.</i></p>	<p>There is no evidence that the development would cause further traffic congestions. The site is separate from the Council-owned park, and any traffic issues associated with such sporting uses should be considered separately from the development proposal on the adjoining lot.</p> <p>Noted.</p>

Furthermore, letters of no objection were received from fifteen owners within close proximity of the development site. It is noted that a number of the favorable submissions received outlined that the addition would revitalize the existing run down facility and that this would provide redevelopment opportunities which would also enhance property prices in the immediate locality.

Sustainability Implications:

It has been assessed that the functioning of the shopping centre will be improved and would result in a far more vibrant and interactive environment, as residents would live on-site, rather than having to commute to the centre to shop. It is acknowledged that the number of residents that would be able to enjoy this privilege is small.

Preliminary discussions have been held with regard to the former service station and medical centre sites, which could potentially be utilised for further housing. This would further enhance the vitality and functioning of the overall neighbourhood centre.

This would mean that the functioning of the shopping centre becomes animated and lively as its residents who would share these grounds for private and recreational purposes, ultimately providing for better community interaction opportunities. Furthermore, an upgrade of the facilities of the centre has been considered necessary and certainly the provision of residential land uses, would allow for vibrancy of the centre to be rejuvenated.

COMMENT

The addition of residential land uses on top of existing commercial land uses within a residential suburb is considered to be something not yet tested, other than in the City Centre of Joondalup. Although similar developments exist in the Joondalup City Centre, such as in Central Walk, such developments are inherently different due to their location within a city centre where shared land uses are the norm.

Given that the development would provide a redevelopment spur for the shopping centre in that the centre would be revitalized, passive surveillance improved, land uses better utilised and a bonafide centre of activity created for Heathridge, the proposal is supported.

Development Standards under DPS2 and the R-Codes

Density and development potential of the lot.

As previously noted, the commercially zoned lot has an R20 density coding. The R-Codes under clause 4.2 provide for mixed-use development. The acceptable development or 'as of right' provisions outline that if a mixed-use development is proposed and the lot remains uncoded under the applicable Town Planning Scheme, that a default R60 coding would be applied. Generally and historically density have not been assigned to non-residential zoned land as they generally apply only in residential areas. The City in its DPS2 has however, applied a R20 density coding to this commercial parcel of land.

The mixed use provisions outline that the development should be assessed as a multiple dwelling as defined in the R-Codes.

It is noted that the R-Codes do not have any provisions for assessment (setbacks and lot size requirements) in term of multiple dwellings within a low density zoning (R20), as multiple dwellings are typically found within higher density areas such as the Joondalup City Centre. The City's DPS2 outlines that a multiple dwelling is a discretionary land use within the commercial area, meaning the Council has the ability to consider the discretionary land use on its merits.

The Western Australian Planning Commission as the authors of the R-Codes have elaborated on the query of multiple dwellings in low density coded areas, in the following terms:

"Q. In Table 1, does the lack of a performance standard for Multiple Dwellings in areas coded R30 or less prohibit multiple dwellings in these areas?"

- A. *No. The R-Codes relate principally to residential and related development and, as stated on p11 of the Codes, are essentially performance standards relating to control of development. The use and development of land, and more particularly the permissibility of land uses in specific areas, is controlled by means of zones and zoning tables in local government town planning schemes. The R-Codes do not determine the permissibility or otherwise of a particular residential use in a particular zone. They simply provide the performance standards which residential development is required to comply with if it is permissible in that particular zone. The absence of performance standards in Table 1 of the R-Codes for a particular residential use listed in the Codes (e.g. multiple dwellings in a residential zone that is coded R30 or below) simply means that there are no performance standards prescribed in the R-Codes for that use under those codings. In these instances, and in the absence of any relevant performance standards prescribed elsewhere in the town planning scheme or elsewhere in the Codes, the development would be subject to the local government's general discretion. A local government wishing to prohibit multiple dwellings in a residential zone that is coded R30 or below, or wishing to specify a default set of performance standards in these areas (e.g. perhaps the R35 performance standards for multiple dwellings as set out in Table 1), will need to do so by means of a specific clause in its town planning scheme."*

On this basis, the area calculations for a multiple dwelling have been taken from the provisions of a single house, which require the highest standards for the R20 coding. The single house provisions require 500m² per dwelling. This can be further reduced 'as of right' to 300m² for a single bedroom dwelling pursuant to clause 3.1.3 of the R-Codes.

The lot has an area of 6012m². Given that eight normal dwellings are proposed (8 x 500m²) this results in an area requirement of 4000m². Furthermore six single bedroom dwellings are proposed (6 x 300m²) which require 1800m². In total a land area of 5800m² is required, whilst 6012m² is available.

The land area per dwelling requirements of the R-Codes have therefore been met and no discretion is requested in relation to the approval of the density of the development.

Land use

It has been previously noted that a multiple dwelling pursuant to DPS2 is a discretionary land use and that the City can consider the application on merit having regard to the overall development proposal and taking into consideration the provisions of clause 6.8 of DPS2.

The concept of a multiple dwelling on a commercially zoned site is supported, given that it would provide better utilization and sharing of land and parking requirements, due to the proximity of available public open space adjoining the site and it providing a landmark quality for the shopping centre.

Parking (Commercial and Residential)

The existing centre has 109 car bays. It is further noted that access and parking easements exist with the adjoining sites. The centre currently has approximately 1329m² of retail NLA. This results in a parking requirement of 94 car bays given that parking calculated at 7 bays per 100m² of NLA for shopping centres of less than 10,000m² pursuant to Table 2 of DPS2. Therefore, the centre has an oversupply of parking by 15 car bays.

Clause 4.2.1 of the R-Codes outlines that mixed use developments require one bay per residential dwelling irrespective of the size or the number of bedrooms proposed, as parking would normally be shared with other land uses on the site. In this instance fourteen bays are dedicated to each of the proposed new dwellings, meaning that one car bay is provided in excess of the requirements of the DPS2 and the R-Codes.

The proposal does, however, also include a proposal to provide additional alfresco areas adjacent to the existing restaurant. This would result in seven existing car bays being lost, meaning that a car-parking shortfall of six car bays would be created.

	Required	Provided	Shortfall
Commercial parking @ 7 bays per 100sqm pursuant to Table 2 of DPS2 (1329sqm of NLA)	94 bays	88 bays	6 bays
Residential parking @ 14 dwellings (1 bay per dwelling pursuant to clause 4.2.1 of the R-Codes)	14 bays	14 bays	Nil

The applicant has verbally advised that they would be supportive of providing parking in the form of verge embayments within the verge. This is considered inappropriate in this instance given the number and location of crossovers and driveways adjacent to the lot that would cause sightline and traffic issues.

A cash in lieu payment could be required in accordance with clause 4.11 of DPS2, however, given that an access and parking agreement is in place with the two adjoining properties, it is considered that the shortfall of six car bays can be waived pursuant to clause 4.5.3 of DPS2, provided that these agreements are updated and modified to include the new residential traffic likely to be created. Clause 4.5.3 allows the City to vary the parking requirements after considering matters pursuant to clause 6.8 of DPS2 and if the City is satisfied that the non-compliance would have no adverse affects in terms of the amenity of the occupiers, inhabitants and users of the area. Given that adequate parking is available on the site, the land uses would share parking requirements due to different requirements at different stages throughout the day and that shared parking and access provision exists between the adjoining sites, it is assessed that the variation can be supported as having no amenity impacts on the users, inhabitants and the general locality.

Access agreements

Access to the site is provided via three separate driveways, one on the centre of the lot and two on the eastern and western side of the site. The subject site (Lot 740) is bounded by Lot 745 to the west, which is owned by the City, and Lot 741 to the east, which comprises the adjacent shopping centre with the Supa Valu Supermarket as well as other minor shops. It is noted that two of the three driveways are located on the adjoining sites and that these are used to gain access to the rear portion of the shopping centre to service the various establishments.

This is where bin and service yards are also located. The subject site has an access agreement with Lot 745 (owned by the City) and has a reciprocal access and parking agreement with the adjoining shopping centre (Lot 741).

The existing access and parking agreements need to be updated to reflect the additional parking and access requirements of the proposed dwellings and the rights of each party.

Alfresco dining

Alfresco dining has been proposed for the existing restaurant. No specific details with regard to the likely number of tables and chairs had been outlined, however, the applicant has recently outlined that this area would not be solely utilised for patrons of the restaurant, but rather that it be used as a public seating area whether they be paying customers or not.

The concept of this public space is supported as it allows interaction of shoppers and those wishing to stop and rest to utilise these facilities whether they are paying customers or not. This ensures that the liveliness and vitality of the centre is increased and the resultant loss of six car bays is supported, as the overall parking provision would still be adequate.

Elevation Treatments

The form of the development including elevation and site planning has also been analysed and additional windows within the turret lobbies would improve the interaction of the residential dwellings with the commercial areas and the parking forecourt. This shall be required with any approval.

The applicant has provided a rear elevation of the new rear carport structures, which show a half height wall and open construction above. It is considered that some level of security would be provided for these and that the specifics of this design be submitted for further approval once detailed at the building licence stage.

Landscaping

Landscaping has already been provided in the form of a strip within the front portion of the lot, as well as to the property's verge. It has been assessed that it would be necessary to condition the landscaping to be upgraded across the entire site to ensure that landscaping on the verge and within the property is of modern standards and that the extent of landscaping is commensurate with the standard of development proposed. A condition requiring a landscaping plan for the upgrades shall be provided prior to the issue of a building licence.

Lighting

No details of lighting have been provided as part of the application. Comments from the community have outlined that the rear service yard areas are dimly lit after hours and this contributes to incidents of antisocial behaviour. It is considered appropriate to require details of lighting to be provided prior to the issue of a building licence and to add a footnote outlining that upgrading to the rear service areas would be necessary.

Signage

Details of signage have not been submitted for the proposal. It is considered appropriate to require a signage strategy to be prepared to ensure that signage space is uniform for existing tenancies.

CONCLUSION

It has been assessed that the development complies with the provisions of the R-Codes, particularly in relation to density. The discretionary land use of a multiple dwelling on top of existing commercial tenancies as well as the shortfall of six car parking bays has been assessed with regard to the provisions of clause 6.8 of DPS2. In this instance it determined that the overall interest of orderly and proper planning and the preservation of the amenity of the locality has been addressed satisfactorily by the applicant. The discretionary land use and shortfall of six car bays would not detriment the locality and the amenity of the area as the multiple dwelling land use would significantly improve the vitality and functioning of the centre. As parking is shared between land uses and their hours of operation, together with access and parking rights with both adjoining sites, the shortfall of six bays has been assessed as resulting in no amenity loss.

Having considered the applicant's justification as well as the community's views and requests following public consultation, it is recommended to support the application with standard conditions as well as further conditions addressing security, lighting, landscaping and overall amenity of the centre. This would address the objectors' concerns and would enhance the amenity of the centre for its users, inhabitants and for the greater benefit of the locality. It is noted that there is no structure plan or policies of Council or the State Government which have to be taken into consideration on this occasion. There are also no previous similar determinations, which exist within the City. Approval is recommended on this basis.

ATTACHMENTS

Attachment 1 - Location Plan
Attachment 2 - Development Plan

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council:

- 1 EXERCISES discretion under clause 6.8 and 4.5.3 of District Planning Scheme No 2 and determines that:**
 - (a) the additional land use of a multiple dwelling,**
 - (b) the shortfall of six car parking bays is appropriate in this instance;**

- 2 APPROVES the application dated 2 April 2003 and, submitted by Peter Raynes, on behalf of the owner(s) of Heathridge City Shopping centre, for a mixed use development incorporating an additional fourteen new dwellings at Lot 740 (99) Caridean Street, Heathridge, subject to the following conditions:**
- (a) appropriate access and car parking easements to be prepared with the landowners of Lots 741 and 745 to reflect additional access and parking demands created by the proposed dwellings. The access and car parking easement documentation shall be completed to the satisfaction of the City prior to the occupation of the new dwellings. The granting of an easement in gross pursuant to section 196 of the Land Administration Act (at full cost of the owner) in favour of the City of Joondalup for Lot(s) 741, 745 and 740. For the purposes of this easement, it shall include land proposed for vehicular accessway(s), carparking areas and drainage where required for the benefit of the public at large. The easement must be registered on the title before the development is occupied;**
 - (b) additional windows as marked in red on the approved plans shall be added to the turrets. Details shall be submitted for further approval prior to the issue of a building licence;**
 - (c) a lighting strategy shall be prepared for the subject site detailing existing and proposed additional lighting to upgrade and improve visibility and security for the site. Details shall be submitted to the satisfaction of the City prior to the issue of a building licence;**
 - (d) all landscaping on the site and the verge adjacent to the development site shall be upgraded to the satisfaction of the City prior to the occupation of the new dwellings;**
 - (e) the lodging of detailed landscape plans, to the satisfaction of the City, for the development site and the adjoining road verge(s) 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 and shrubs within the carpark area;**
 - (ii) any lawns to be established;**
 - (iii) any natural landscape areas to be retained; and**
 - (iv) those areas to be reticulated or irrigated**
 - (f) landscaping and reticulation to be established in accordance with the approved plans prior to the development first being occupied and thereafter maintained to the satisfaction of the City;**

- (g) the annotated “alfresco dining area” adjacent to the existing restaurant as marked in red on the approved plans shall be utilized for public enjoyment and a general open area which may accommodate seating. The public shall be able to utilise and use this area whether they are paying customers or not at any of the commercial tenancies of the centre and the area shall not be associated with any commercial tenancy unless further approved by Council;
- (h) the parking bay/s, driveway/s and points of ingress and egress to be designed in accordance with the Australian Standard for Offstreet Carparking (AS2890). 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 programme;
- (i) all stormwater must be contained on-site to the satisfaction of the City;
- (j) the driveway/s and crossover/s to be designed and constructed to the satisfaction of the City before occupation of dwellings;
- (k) car bay grades are generally not to exceed 6% and disabled car bay/s are to have a maximum grade of 2.5%;
- (l) end bays in a blind aisle should be a minimum of 3.5 metres wide (bays 72 and 98);
- (m) disabled bays shall be a minimum of 3.2 metres wide and be provided with kerb ramps (bays 62 and 63);
- (n) the existing stormwater drainage system, parking areas, landscaping and crossovers should be improved (if necessary) to bring them up to appropriate standards;
- (o) submission of a Construction Management Plan detailing phasing of construction, access, storage of materials, protection of pedestrians, footpaths and other infrastructure;
- (p) the applicant shall, in writing, advise prospective purchasers of the residential units that it may be subject to activities, odour or noise not normally associated with a typical residential development. The City is to advise that purchasers should recognise and accept that, in selecting to reside in this locality, that noise, odour traffic and other factors that constitute part of commercial activities are likely to occur, which are not normally associated with typical residential developments;
- (q) any roof mounted or freestanding plant or equipment such as air conditioning units, satellite dishes or radio masts to be located and screened so as not to be visible from beyond the boundaries of the development site;

- (r) no obscure or reflective glazing to be used in the shop fronts facing into the shopping centre;**
- (s) the provision of at least three lockable bicycle parking facilities is to be provided in the location/s marked in red on the approved plans prior to the development first being occupied and being to the satisfaction of the City;**
- (t) the preparation of a signage strategy to the satisfaction of the City prior to the issue of a building licence ensuring that signage for the tenancies is uniform in their size and location;**
- (u) development shall be designed and constructed in compliance with the requirements of the Environmental Protection Act 1986;**
- (v) prior to the issue of the Building Licence, the Architect or Builder is to arrange and submit to the City's Approval Services, an Acoustics Consultant's Report on all installations, activities and processes, giving sound level measurements both individually and in combination. This report shall 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.**

Footnote(s):

- (a) The applicant is advised to refer to the Building Code of Australia 1996 (as amended) for compliance with Volume 1 part C – C3.11 Bounding Construction (a), (b) and (g), Part–D2.20 Swing doors and Part E2 – Smoke Hazard Management Specification E2.2a Smoke detection and Alarm System.**
- (b) In relation to Condition 2(g), the applicant is advised that with the deletion of the al fresco area, this area shall be utilised for car parking purposes.**
- (c) Applicant shall provide adequate bin storage facilities for commercial and residential units to the satisfaction of the City. Bin areas to consist of a concrete floor graded to an industrial floor waste connected to sewer.**
- (d) With regards to condition 2(v) above, an acoustic consultants report shall address issues including exhaust canopy discharges, plant and equipment, patron noise, bin pick-up vehicles, goods delivery vehicles and the acoustic design of the residential units.**
- (e) A management plan shall be submitted addressing operational issues such as bin pick-up times, goods delivery times, restaurant operating hours, restaurant music, alfresco areas, odours and nuisances.**

- (f) Mechanical exhaust discharges shall maintain compliance with AS1668.2. To this regard discharges shall be relocated above the new roof level and maintain the minimum statutory setbacks.**
- (g) Applicant be advised that you have an obligation to comply with all relevant provisions of the Health Act 1911, City of Joondalup Health Local Laws 1999 and all other applicable health legislation.**
- (h) A separate application to be made to the City for Approval to Commence Development and sign licence prior to the installation of any advertising signage.**

Appendix 7 refers

To access this attachment on electronic document, click here: [Attach7brf020903.pdf](#)

Cr Hollywood stated his intention to declare an interest that may affect his impartiality in Item CJ206-09/03 – Single House (Additions exceeding Building Height Envelope – Policy 3.1.9) Lot 245 (16) Vaocluse Place, Kallaroo as he is the applicant for this development proposal.

Cr Mackintosh stated her intention to declare a financial interest in Item CJ206-09/03 – Single House (Additions exceeding Building Height Envelope – Policy 3.1.9) Lot 245 (16) Vaocluse Place, Kallaroo as she lives in close proximity to this development proposal.

**CJ206 - 09/03 SINGLE HOUSE (ADDITIONS EXCEEDING
BUILDING HEIGHT ENVELOPE – POLICY 3.1.9)
LOT 245 (16) VAUCLUSE PLACE, KALLAROO –
[03856]**

WARD - Whitfords

PURPOSE

To consider a development proposal for additions to an existing dwelling which exceed the City's Height and Scale within a Residential Area (Policy 3.1.9).

EXECUTIVE SUMMARY

An application has been received for additions to an existing property that would result in a portion of the roof being outside the Building Height Policy 3.1.9. The building is three storeys in height and has its alterations designed to slightly exceed the building height. The City previously approved the additions, which at that stage, had a flat roof profile that allowed the additions to comply with the Building Height Policy.

The applicant has now submitted revised plans with a gable roof instead of a flat style roof. This element requires the further discretion of Council. The proposal was referred to the adjoining affected landowners pursuant to the Policy and one objection was received.

The proposal was to be referred to Delegated Authority for determination. However, Councillor Mackintosh requested that the proposal be referred to Council if it was not refused at Delegated Authority. On presentation to Delegated Authority, the Mayor also requested that this application be presented to the Council.

The proposed policy encroachment is considered to be unnecessary and it is recommended that the application be refused.

BACKGROUND

On 29 November 2002, following consideration under Delegated Authority, additions were approved to the existing dwelling comprising a third storey addition with a new roof deck. The third storey roof was shown as flat and complied with the Building Height Envelope as per Policy 3.1.9.

A building licence corresponding with the approved plans was issued and construction work has since commenced.

On 4 July 2003, revised plans for the third storey roof were lodged with a gable roof instead of the original flat style roof.

Suburb/Location: 16 Vacluse Place, Kallaroo
Applicant: John Hollywood
Owner: Simon A Corconan
Zoning: **DPS:** Residential R20
MRS: Urban

DETAILS

An application has been received for various additions to an existing dwelling. The amended design to that previously approved by the City in late 2002 now proposes a gable roof for the third storey portion. The original design proposed a flat style roof that would have complied with the City's Height and Scale Policy 3.1.9.

The new gable roof addition on the third storey would result in additional building bulk that would be outside the City's Building Height Envelope and hence requires the further discretion of the City. The extent of the encroachment is approximately 500mm.

Statutory Provision:

Policy (Height and Scale within Residential Areas – Policy 3.1.9)

Applicant's Justification

The applicant has submitted the following grounds of support:

The additional height is as a result of engineering and architectural requirements during the building licence stage. The impact of the changes has been minimised by maintaining minimum ceiling heights and reducing the roof pitch from 34 to 20 degrees. This has resulted in 400mm over a length of 5 metres that is outside of the building envelope. This should be considered in terms of the building's overall 24 metre depth. This is not significant in size and would not cause any overlooking issues nor would it infringe on the visual amenities of neighbouring properties.

Consultation

One submission has been received, and makes the following comments.

Submission	Technical Comment
<ul style="list-style-type: none"> • The new additions have been exaggerated due to aesthetic reasons. • Raises concern as to overshadowing. 	<ul style="list-style-type: none"> • The proposal would comply with the overshadowing provisions of the R-Codes. • Noted.

<ul style="list-style-type: none">• The overall change to the roof design poses an unnecessary addition causing further visual bulk.	
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COMMENT

The portion of the building for the new gable roof is approximately 500mm outside the building envelope. The City granted a Development Approval in late 2002 for additions, which at that time, complied with the building height as a flat style roof was proposed.

A building licence for these additions was granted with the flat roof and construction work commenced.

During construction, the revised proposal was submitted which required further discretion for the building height. It is now considered that the additional height created by the gable roof is unnecessary and would provide an unnecessary building bulk to the dwelling as well as adversely affecting adjoining owners (one of which has objected). On this basis refusal is recommended.

The neighbouring area also includes examples of other houses which have been designed and constructed with flat roofs with no apparent problems.

ATTACHMENTS

Attachment 1 - Location Plan

Attachment 2 - Development Plan

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council REFUSES the application submitted by the applicant, John Hollywood, on behalf of the owners, JR and SA Corcoran, for additions to the existing dwelling on Lot 245 (16) Vaucluse Place, Kallaroo, for the following reasons:

- 1 the proposal would be contrary to the proper and orderly planning of the locality;**
- 2 the City has already approved a similar development on 29 November 2002, which at that stage had a flat roof profile that complied with the height envelope included in Council's Height and Scale of Buildings Policy 3.1.9;**
- 3 the additional gable roof is unnecessary and would create additional bulk to adjoining landowners.**

Footnote(s):

- (a) In relation to refusal condition 2 the applicant is advised that the need to improve the visual aesthetics of the dwelling should not result in building encroachment, given that a complying roof profile had previously been approved.**

Appendix 8 refers

To access this attachment on electronic document, click here: [Attach8agn090903.pdf](#)

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**CJ207 - 09/03 FEES AND CHARGES FOR CONNOLLY
COMMUNITY CENTRE AND KINGSLEY
CLUBROOMS – [23108] [07174]**

WARD - All

PURPOSE

The purpose of this report is to seek Council's approval to introduce new fees and charges for the Connolly Community Centre and to maintain the current fees for the redeveloped Kingsley Clubrooms.

EXECUTIVE SUMMARY

As the construction of the Connolly Community Centre and the redevelopment of the Kingsley Clubroom are due to be completed in September 2003 and October 2003 respectively, Council approval is sought for the associated fees and charges at each facility. It is recommended that the fees and charges for the Kingsley Hall, Annexe and Clubroom remain consistent with the budget agreed by Council at its meeting on 5 August 2003, despite the facility being substantially improved from the previous clubrooms. It is also considered that the hourly hire charges shown below are a fair and equitable representation, as well as being consistent with the existing Council schedule of fees and charges:

Connolly Community Centre – Main Hall

Commercial	\$40.70
Functions	\$31.10
Regular Community	\$20.30
Casual Groups / Clubs	\$24.50

Connolly Community Centre – Meeting Room

Commercial	\$11.95
Functions	\$9.00
Regular Community	\$6.00
Casual Groups / Clubs	\$7.15

Kingsley Sports Hall

Commercial	\$34.70
Functions	\$26.30
Regular Community and	\$17.35
Casual Groups / Clubs	\$20.95

Kingsley Hall

Commercial	\$34.70
Functions	\$26.30
Regular Community and	\$17.35
Casual Groups / Clubs	\$20.95

Kingsley Annexe

Commercial	\$28.70
Functions	\$21.55
Regular Community and	\$15.00
Casual Groups / Clubs	\$17.35

DETAILS

The objective of the current Council Policy 2.4.3 - "Setting Fees and Charges" is:

"To establish a fair and equitable fee structure on a user contributes basis which reflects actual costs for goods and services provided by council and takes into account the City's objectives and community obligations".

Hire charges referred to in this policy encompass halls, community rooms and sporting or recreation venues that are hired for a specific period. The existing Council schedule of fees and charges are determined by a facility's available room space to hire, in conjunction with the type of event / function requested. Currently each facility has four categories to which hiring rates are applied:

- 1 Commercial
- 2 Functions
- 3 Regular Community and
- 4 Casual Groups / Clubs

The Connolly Community Centre, due to be completed in September 2003, will consist of a main hall and a meeting room in which the City of Joondalup will allocate to interested community organisations or alternatively hire to casual bookings. The size of the Connolly main hall and meeting room is comparable to that of the hall and meeting room at the Duncraig Community Hall. For this reason, it is recommended that the City charges the same hourly rates to hire the Connolly Community Centre as those for the Duncraig Community Hall. These rates being:

Connolly Community Centre – Main Hall

Commercial	\$40.70
Functions	\$31.10
Regular Community	\$20.30
Casual Groups / Clubs	\$24.50

Connolly Community Centre – Meeting Room

Commercial	\$11.95
Functions	\$9.00
Regular Community	\$6.00
Casual Groups / Clubs	\$7.15

The old Kingsley Clubroom building consisted of three separate rooms that were all available to hire. The following details the hourly hire charges, as per the 2003/04-draft budget, for this building, before the redevelopment was finalised:

Kingsley Sports Hall

Commercial	\$34.70
Functions	\$26.30
Regular Community and	\$17.35
Casual Groups / Clubs	\$20.95

Kingsley Hall

Commercial	\$34.70
Functions	\$26.30
Regular Community and	\$17.35
Casual Groups / Clubs	\$20.95

Kingsley Annexe

Commercial	\$28.70
Functions	\$21.55
Regular Community and	\$15.00
Casual Groups / Clubs	\$17.35

When the redeveloped Kingsley Clubrooms are completed in October 2003, it is recommended that the fees and charges for the Kingsley Hall, Annexe and Clubroom remain consistent with the Council resolved 2003/04 budget as an act of “goodwill” to the respective existing hirers of these facilities. However, it should be noted that as the new sports hall is larger than the previous sports hall (comparable to the Fleur Freame Pavilion – Function Room), an increase in the fees and charges should be considered for future budgets.

COMMENT

It is considered that the proposed new fees and charges for both facilities, Connolly Community Centre and the Kingsley Clubrooms, are a fair, equitable and consistent representation of the appropriate charges to apply. As is the case with the most of the City’s facilities, the majority of user groups will qualify for subsidised use, or “free use” of these facilities, as per the Council’s current policy on “Setting Fees and Charges”.

ATTACHMENTS

Nil

VOTING REQUIREMENTS

Absolute Majority

RECOMMENDATION**That Council BY AN ABSOLUTE MAJORITY:**

- 1 AUTHORISES, pursuant to the provisions of Section 6.19 of the Local Government Act 1995, the following additional hourly hire charges:**

Connolly Community Centre – Main Hall

Commercial	\$40.70
Functions	\$31.10
Regular Community	\$20.30
Casual Groups / Clubs	\$24.50

Connolly Community Centre – Meeting Room

Commercial	\$11.95
Functions	\$9.00
Regular Community	\$6.00
Casual Groups / Clubs	\$7.15

- 2 MAINTAINS the current hire charges for the Kingsley Clubroom facility, as per the Council resolved 2003/04 budget;**
- 3 ADVERTISES the proposed new charges in accordance with Section 6.19 of the Local Government Act 1995;**
- 4 IMPLEMENTS the proposed new charges effective from 11 September 2003.**

CJ208 - 09/03 LEISURE CENTRES – FEES AND CHARGES AMENDMENTS – [09050]

WARD - All

PURPOSE

To implement an interim discount of 10% for State or Commonwealth Senior or Pension Concession Cardholders on the complete range of Lifestyle programs offered at Craigie, Ocean Ridge and Sorrento Duncraig Leisure Centres.

EXECUTIVE SUMMARY

The City of Joondalup administration is currently reviewing the application of fees and charges across the whole organisation in relation to accessing City facilities and services, so that a clear policy can be developed and presented to Council.

Ocean Ridge Leisure Centre and Sorrento Duncraig Leisure Centre have previously had a discount rate for State or Commonwealth Senior or Pension Concession Cardholders who participate in Lifestyle Guide Term Activities at each of the centres. At the time of setting the 2003/2004 fees and charges for the Leisure Centres there was an intention to remove the extensive list of discounts previously offered by RANS Management Group. Administration acknowledges that whilst the review of fees and charges is being undertaken an interim discount should apply to recognised groups that require concessions.

The Term Program accounts for the majority of programs that are conducted at the Ocean Ridge and Sorrento Duncraig Leisure Centres, providing over One Hundred and Fifty activities such as pottery, pilates, dancing and social badminton each term.

Current usage statistics show that more than 70% of users at Sorrento Duncraig, 40% of users at Ocean Ridge and 25% of users at Craigie Leisure Centre are aged 45 years and over, highlighting strong usage from customers moving towards or already categorised in the seniors market.

It is the recommendation of officers that whilst the review of fees and charges is being conducted, an interim discount is offered to State or Commonwealth Senior or Pension Concession Cardholders be applied under the same guidelines as the 10% discount currently offered on gym memberships at Craigie Leisure Centre.

BACKGROUND

The City of Joondalup at its Council meeting of 24 June 2003 introduced a 10% discount on memberships at Craigie Leisure Centre to all new or renewing members of the community who are residents of the City of Joondalup and are in possession of a State or Commonwealth Senior or Pension Concession Card.

The discount to persons in possession of a State or Commonwealth Senior or Pension Concession Card has been implemented as an interim measure, until such time as Council has been able to consider recommendations from the administration with regards to a formal policy relating to the setting of fees and charges and the management of community facilities.

Officers are recommending that the previously adopted discount on gym memberships at Craigie Leisure Centre be extended under the same guidelines to include lifestyle programs at the City of Joondalup Leisure facilities.

The process of reviewing the City's policy of fees and charges will be a very detailed and in-depth review that is expected to take most of the 2003/2004 financial year. Due to the length of this process officers believe an interim discount should apply.

The Lifestyle Program currently caters for over 700 participants per term. Participants in the program are usually children and seniors. The Lifestyle Program offers over 150 activities each term for a ten-week period. Some of the programs offered include pottery, pilates, dancing, yoga, sports coaching and social badminton. The program is promoted to 55,000 residents in the City of Joondalup through a letterbox distribution, which has seen an increase in participation levels at all Centres.

COMMENT

Since the collapse of RANS Management Group there has been feedback from seniors participating in programs at the Centres that a discounted fee is a key factor when considering continuing in these programs. The fees and charges adopted for 2003/2004 at the leisure centres does not include discount for lifestyle programs. Whilst officers recognise that a State Seniors Card is not means tested and does not represent an individual's propensity to pay for programs and services, it is recognised in the community that a discount to this group is fair and equitable. Current usage statistics show that more than 70% of users at Sorrento Duncraig, 40% of users at Ocean Ridge and 25% of users at Craigie Leisure Centre are aged 45 years and over, highlighting strong usage from customers moving towards or already categorised in the seniors market.

With such a large range of Lifestyle Guide Term Activities that cater for all sections of the community, the inclusion of a discount to State or Commonwealth Senior or Pension Concession Cardholders will ensure that the factor of price will have less of an impact of people with a lower propensity to pay.

SUMMARY

The proposed introduction of an interim 10% discount to State or Commonwealth Senior or Pension Concession Cardholders on Lifestyle Guide Term Activities will ensure fair and equitable access is available to the community on key activities provided from Craigie, Ocean Ridge and Sorrento Duncraig Leisure Centres. The 10% discount will be applied under the same guidelines as the current 10% discount offered to State or Commonwealth Senior or Pension Concession Cardholders on memberships at Craigie Leisure Centre. It is recommended that the 10% discount be applied as an interim measure until such time as Council has been able to consider recommendations from the administration with regards to a formal policy relating to the setting of fees and charges and the management of community facilities.

ATTACHMENTS

Nil

VOTING REQUIREMENTS

Absolute Majority

RECOMMENDATION**That Council BY AN ABSOLUTE MAJORITY:**

- 1 ADOPTS a 10% discount on Lifestyle Guide Term Activities at Craigie, Sorrento Duncraig and Ocean Ridge Leisure Centre to all new or renewing members of the community who are residents of the City of Joondalup and are in possession of a State or Commonwealth Senior or Pension Concession Card;**
- 2 AGREES that the discount for Lifestyle Guide Term Activities at Sorrento Duncraig and Ocean Ridge Leisure Centres be considered an interim measure until such time as Council has been able to consider a formal policy relating to the setting of fees and charges for the leisure centres;**
- 3 ADVERTISES the proposed new charges in accordance with Section 6.19 of the Local Government Act 1995.**
- 4 IMPLEMENTS the proposed new charges effective from 13 October 2003.**

CJ209 - 09/03 DELEGATED AUTHORITY REPORT FOR THE MONTH OF JULY 2003 – [07032]**WARD - All****PURPOSE**

To submit items of Delegated Authority to Council for noting.

EXECUTIVE SUMMARY

This report provides a resume of the Development Applications processed by Delegated Authority for July 2003.

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

Month	No	Value (\$)
July 2003	86	7,355,207

ATTACHMENTS

Attachment 1 - Development Approvals processed in July

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council NOTES the determinations made under Delegated Authority in relation to the applications described in Report CJ209-09/03.

Appendix 9 refers

To access this attachment on electronic document, click here: [Attach9brf020903.pdf](#)

CJ210 - 09/03 SUBDIVISION REFERRALS PROCESSED 1 – 31 JULY 2003 – [05961]

WARD - All

PURPOSE

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

EXECUTIVE SUMMARY

Attachment 1 is a schedule of the Subdivision Referrals processed by Urban Design and Policy from 1– 30 July 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 9 additional residential lots and 6 strata residential lots. The average processing time taken was 17 days.

Four applications were deferred and 1 application was not supported:

Ref: SU667-03 – 34 and 36 Peninsula Avenue, Heathridge

This application was deferred pending further discussion and possible submission of an amended plan of subdivision. As a result of preliminary investigations and a subsequent site inspection, it is suggested that a better subdivision design outcome could possibly be achieved.

Ref: SU122168 – 499 Burns Beach Road, Iluka

This application was deferred as the proposed plan of subdivision differed from the approved Iluka Structure Plan. A report was subsequently submitted to the Council meeting held on 29 July 2003 (CJ170-07/03) and the application was supported.

Ref: SU749-03 – 7 Reserve Close, Greenwood

This application was deferred pending a development application being approved by the City for the proposed rear lot.

Ref: SU122516 – 6-8 Howland Road, Sorrento

This application was not supported for the following reasons:

- 1 Proposal does not conform to the requirements of the Residential Design Codes (the Codes) or Western Australian Planning Commission (WAPC) policy DC 2.2 – Residential Subdivision with respect to average lot size;

- 2 Approval to the subdivision application would set an undesirable precedent for the further subdivision of surrounding lots.

Ref: SU534-03 – 8 Ranford Way, Hillarys

This application was deferred pending guidance from the Western Australian Planning Commission as to how subdivision/survey strata proposals, which render existing developments non-compliant with the Acceptable Development provisions of the Residential Design Codes (2002) (the Codes), are to be dealt with.

ATTACHMENTS

Attachment 1 - Schedule of Subdivision Referrals

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council NOTES the action taken by the Subdivision Control Unit in relation to the application described in Report CJ210-09/03.

Appendix 10 refers

To access this attachment on electronic document, click here: [Attach10brf020903.pdf](#)

**CJ211 - 09/03 LEGAL ADVICE – ENACTMENT OF LOCAL LAWS –
MOBILE PHONE TOWERS – [53538]****WARD - All****PURPOSE**

To report on advice received in regard to the ability for Council to enact local laws concerning Mobile Phone Towers.

EXECUTIVE SUMMARY

In response to a Notice of Motion by Cr Baker, Council at its April 2003 meeting resolved that:

“The City Joondalup instructs its solicitors to conduct a comprehensive review (“the Review”) of the powers of the City of Joondalup, under the Local Government Act of 1995, the Town Planning and Development Act 1928 or any other statute, to enact new local laws or to amend any existing local laws to prevent or discourage the owners of any land situated in the City of Joondalup from entering into licence or lease agreements in respect of the whole or part of their land, or any improvements constructed on their land, with Mobile Phone Towers Service Operators and their sub-contractors in respect of the installation of Mobile Phone Towers on any such land, with the prior written consent of the City of Joondalup and the approval of the community likely to be adversely affected”.

The City’s solicitors were provided with a copy of the Council’s resolution and have conducted the review.

The advice concludes that the local law or similar contemplated in the above resolution would be discriminatory in regard to the Telecommunications Act and consequently would be of no effect.

COMMENT

The advice of the City’s solicitors contains the following key points:

- (a) Clause 6 of Schedule 3 of the Telecommunications Act 1997 (Commonwealth) – Carriers’ powers, empowers a carrier, for purposes connected with the supply of a carriage service, to carry out the installation of the facility if the facility is a “low impact facility”;

- (b) For purposes in connection with the carrying out of that activity, clause 6(2) authorises the carriers to:
- (i) enter on, and occupy, any land; and
 - (ii) on, over or under the land, do anything necessary or desirable for those purposes.
 - (a) Before engaging in such activities, the carrier must give written notice to the owner and occupier of the land under clause 17 (generally 10 business days);
 - (b) Clause 37 of Division 7 of Schedule 3 of the Act provides that a carrier may engage in the activity despite certain laws of the state, these include town planning;
 - (c) The Telecommunications Act expressly deals with the possibility that such local laws might be made;
 - (d) Clause 44 of Schedule 3 of the Act provides that a law of the State which has the effect of discrimination against the carrier or eligible users of the facilities, is of no effect;
 - (e) A local law would be discriminatory in terms of clause 44 of the Act and consequently would have no effect.

From the advice provided, it is clear that Council is unable to enact local laws which have the effect contemplated in the Notice of Motion. Any such laws would have no effect and persons would neither be entitled to exercise powers under those laws nor be required to comply with such a law.

ATTACHMENTS

Nil

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That:

- 1 the advice provided by the City's solicitors in regard to Telecommunications Facilities be NOTED;**
- 2 Council NOT PROCEED to enact new local laws to prevent or discourage the owners of any land situated in the City of Joondalup from entering into licence or lease agreements in respect of the whole or part of their land, or any improvements constructed on their land, with Mobile Phone Tower Services Operators and/or sub-contractors.**

**CJ212 - 09/03 PROPOSED CROSSOVER TO LEICHHARDT
STREET FROM PADBURY SHOPPING CENTRE –
LOT 26 1-25/75 WARBURTON AVENUE, PADBURY –
[04751]**

WARD – All

This Item Is Confidential - Not For Publication

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

RECOMMENDATION

That Council ADVISES the Town Planning Appeal Tribunal of its decision as detailed in Confidential Report CJ212-09/03, relating to the proposed additional crossover from the Padbury Shopping Centre at Lot 26 Warburton Avenue, Padbury, onto Leichhardt Avenue.

9 REPORT OF THE CHIEF EXECUTIVE OFFICER

10 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

MOTION TO LIE ON THE TABLE - 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, BALCATT WA 6021 that the land use approval for Unit 16, 7 Delage Street, JOONDALUP, granted to Artist Holdings Pty Ltd by the former City of Wanneroo ref. TP107-05/96 has been revoked and rescinded;*
- 4 *advises Vincent Leonard Rossi and Cornelia Alida Rossi of 10 Moline Court, CHURCHLANDS WA 6018, Directors of Artist Holdings Pty Ltd, ACN 009 314 765 ABN 89 009 314 765 that the land use approval for Unit 16, 7 Delage Street, JOONDALUP, granted to Artist Holdings Pty Ltd by the former City of Wanneroo ref. TP107-05/96 has been revoked and rescinded."*

The Motion to Lie on the Table was Put and

*CARRIED BY
EN BLOC RESOLUTION NO 2 (10/1)*

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

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, BALCATTWA 6021 that the land use approval for Unit 16, 7 Delage Street, JOONDALUP, granted to Artist Holdings Pty Ltd by the former City of Wanneroo ref. TP107-05/96 has been revoked and rescinded;*
- 4 *advises Vincent Leonard Rossi and Cornelia Alida Rossi of 10 Moline Court, CHURCHLANDS WA 6018, Directors of Artist Holdings Pty Ltd, ACN 009 314 765 ABN 89 009 314 765 that the land use approval for Unit 16, 7 Delage Street, JOONDALUP, granted to Artist Holdings Pty Ltd by the former City of Wanneroo ref. TP107-05/96 has been revoked and rescinded."*

Reason for Motion:

Cr O'Brien provided the following in support of the above Motion:

- “1 There is no evidence that the former City of Wanneroo Councillors in Decision TP107-05/96 approved “Bawdy House Activities” as a Land Use under City of Wanneroo’s Town Planning Scheme No 1.
- 2 The proprietary company Artist Holdings Pty Ltd as a proprietary company is, according to ASIC Listings, now under External Administration (liquidator appointed) and it seems is no longer a Proprietary Company trading with an interest in Unit 16, 7 Delage Street, Joondalup.
- 3 The City of Joondalup has by its decision in October 2002 decided that “Bawdy House Activities” are not an acceptable Land Use within the boundaries of the Municipality.
- 4 The evidence of the Claim by the Hon Tony O’Gorman MLA, Member for Joondalup, that “Bawdy House Activities” are occurring at Unit 16, 7 Delage Street, Joondalup is “on the balance of probabilities” evidence of enough weight, for Council’s Decision to revoke and rescind the former City of Wanneroo decision of approval to Artist Holdings Pty Ltd.
- 5 Council further reinforced its 15th October 2002 decision, by a unanimous decision on Tuesday 11th March 2003 to prohibit “Bawdy House Activities” as a Land Use in the Municipality, and subsequent to EPA consideration, intends to advertise the amendment to District Planning Scheme No 2. as a Community Consultation, process for 42 days.”

OFFICER’S COMMENTS

Following the receipt of the notice of motion as submitted by Cr O'Brien, legal advice was sought regarding the City’s power to revoke a previously issued planning approval. It is confirmed by the legal advice that the City does not have power under District Planning Scheme No. 2 to revoke a planning approval. The one exception, which is irrelevant for current purposes, is Clause 6.10.2, which provides that an owner may make an application to revoke a planning approval prior to the

commencement of the development, the subject of the approval. It is therefore advised that in accordance with 3.12 of the City's Standing Orders Local Law it would be reasonable for the chairperson to rule the notice of motion out of order as it is reasonable to believe such a decision is beyond jurisdiction of the Council.

VOTING REQUIREMENT

Absolute Majority

NOTICE OF MOTION NO 1 – CR S HART – TRAFFIC CONCERNS – BENBULLEN BOULEVARD, KINGSLEY

In accordance with Clause 3.12 of the Standing Orders Local Law, Cr Sue Hart has given notice of her intention to move the following motion at the Council meeting to be held on Tuesday 9 September 2003:

“In response to the petition submitted to Council on 29 July 2003 regarding traffic concerns in Benbullen Boulevard, Kingsley, that the City of Joondalup as pilot project, consults with the residents of Benbullen Boulevard regarding suitable options to traffic manage this street. The City to include representatives from Main Roads WA and WA Police Service in this consultation process.”

OFFICER’S COMMENT

The preferred approach when receiving petitions involving excessive speed and antisocial driver behaviour is for officers to undertake a traffic analysis within the street in question.

This involves the setting out of traffic counters to record traffic volumes, speeds, vehicle types and time of recorded vehicle movements.

Following the collection of this data, a report is then presented to Council outlining the extent of the problem.

Council is then in a better position to make a decision on the remedial and consultation strategies available to the City when dealing with this item.

There is a risk from a resourcing and funding perspective to engage in a community consultation process without the appropriate information being made available to Council to assist in its deliberations.

VOTING REQUIREMENT

Simple Majority

NOTICE OF MOTION NO 2 – CR M O'BRIEN – COUNCIL SEATING ARRANGEMENTS

Cr Mike O'Brien has given notice of his intention to move the following motion at the Council meeting to be held on Tuesday 9 September 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 S Hart
Cr J Hollywood
Cr M Caiacob
Mayor D Carlos.

"That Council, BY AN ABSOLUTE MAJORITY, RESCINDS and REVOKES its decision C166-08/03, viz:

"That Council AGREES that:

- 1 the seat to the right of the Mayor within the Council Chamber shall remain available for seating of special guests, at the invitation of the Mayor;*
- 2 the Deputy Mayor shall be allocated a seat on the floor of the Council Chamber next to their fellow ward representative."*

And REPLACES C166-08/03 with the following:

"That Council AGREES that:

- 1 the seat on the Mayor's right at the Mayoral Table, within the Council Chamber, shall be available for the seating of special guests, at the invitation of the Mayor and on such occasions, the Deputy Mayor shall be allocated a seat next to the Deputy Mayor's Co-Ward Councillor while the special guest is seated at the Mayoral Table;*
- 2 the seat on the Mayor's left at the Mayoral Table, within the Council Chamber shall be available for the CEO or the Municipal Officer exercising the CEO's functions when the CEO is absent;*
- 3 other seating authorisation in the Council Chamber shall be determined by the Mayor, in keeping with the tradition that Elected Members, when elected, occupy the seat vacated by the previous Member for that Ward;*
- 4 officer seating in the Council Chamber shall be determined by the Mayor, after receiving advice from the CEO."*

Reasons for Motion:

Cr O'Brien has submitted the following reasons for his Notice of Motion:

- “1 Municipal Protocol places the Deputy Mayor’s seat next to the Mayor in a Municipal Chamber;
- 2 Municipal Protocol has a succeeding Elected Member occupying the previous Ward Member’s seat in the Chamber;
- 3 The convenience of having the Deputy Mayor at the Mayoral Table, facilitates an extra pair of eyes to call the Mayor’s attention to Elected Members who may be wishing to speak;
- 4 On occasions when the Mayor leaves the Chamber, or there is dissent from the Mayor’s ruling the Deputy Mayor is “at hand” to take the Chair;
- 5 The previous decision C166-08/03 is seen by the electors as an attempt to degrade the Deputy Mayor.”

OFFICER’S COMMENT

It was the practice of the former City of Wanneroo to allow the Deputy Mayor to sit alongside the Mayor during Council meetings. This practice was discontinued with the newly elected Council of the City of Joondalup until recently with the current Mayor agreeing to seat the Deputy Mayor to his right.

The newly constituted City of Joondalup allowed the Mayor to be elected by the people of the City, with the Deputy Mayor being elected by the Council for a two-year term. It is regarded that the Deputy Mayor is the elected head of the Council by their peers, and serves as a Councillor representing their Ward. As the Deputy Mayor represents a Ward, it is agreed that they be allocated a seat on the floor of the Council Chamber. A recommendation from the 2001 Strategic Review into the City of Wanneroo was that the Deputy Mayor be allocated a seat on the floor of the Chamber with their fellow Ward representative.

VOTING REQUIREMENTS

Absolute Majority

11 DATE OF NEXT MEETING

The next meeting of the Council has been scheduled for **7.00 pm** on **TUESDAY, 30 SEPTEMBER 2003** to be held in the Council Chamber, Joondalup Civic Centre, Boas Avenue, Joondalup

12 CLOSURE

DECLARATION OF INTEREST FORM, CLICK HERE: [declofininterestsept2001.pdf](#)



QUESTION TO BRIEFING SESSION/ COUNCIL MEETING

NAME _____

ADDRESS _____

QUESTIONS

Please submit this form at the meeting or post to:

The Chief Executive Officer, City of Joondalup, P O Box 21, Joondalup WA 6919

NOTE: Questions must relate to the ordinary business of the City of Joondalup or the purpose of the special meeting.

FOR SEATING PLAN OF THE COUNCIL CHAMBER, CLICK HERE: [seatplan july 2003.pdf](#)