



**MINUTES OF SPECIAL COUNCIL MEETING
HELD ON 9 NOVEMBER 2003**

In accordance with Clause 5.6 of the City's Standing Orders Local Law and the requirements of the Local Government Act 1995, Item JSC73-11/03 was discussed behind closed doors. Therefore only the resolutions carried by the Council are available for public inspection, unless otherwise resolved by the Council, in accordance with Clause 7.2 of the City's Standing Orders Local Law.

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CITY OF JOONDALUP

MINUTES OF SPECIAL COUNCIL MEETING HELD IN COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP, ON SUNDAY 9 NOVEMBER 2003

OPEN AND WELCOME

The Mayor declared the meeting open at 1800 hrs.

ATTENDANCES

Mayor

D CARLOS

Elected Members:

Cr L PROSPERO	Lakeside Ward	
Cr P KIMBER	Lakeside Ward	
Cr T BREWER	Marina Ward	<i>From 1801 hrs; absent from 2015 to 2017 hrs</i>
Cr C BAKER	Marina Ward	<i>From 1801 hrs</i>
Cr A NIXON	North Coastal Ward	<i>From 1801 hrs</i>
Cr J F HOLLYWOOD, JP	North Coastal Ward	
Cr A WALKER	Pinnaroo Ward	
Cr P ROWLANDS	Pinnaroo Ward	<i>From 1820 to 1822 hrs</i>
Cr S HART	South Ward	
Cr M O'BRIEN, JP	South Ward	
Cr G KENWORTHY	South Coastal Ward	<i>From 2020 to 2022 hrs</i>
Cr J GOLLANT	South Coastal Ward	
Cr M CAIACOB	Whitfords Ward	
Cr C MACKINTOSH	Whitfords Ward	

Officers:

Chief Executive Officer:	D SMITH	
Director, Corporate Services and Resource Management:	P SCHNEIDER	<i>To 1950 hrs</i>
Manager Audit and Executive Services:	K ROBINSON	
Manager, Marketing, Communications & Council Support:	B ROMANCHUK	<i>To 1950 hrs</i>
Manager Human Resources Services:	M LOADER	
Publicity Officer:	L BRENNAN	<i>To 1950 hrs</i>
Committee Clerk:	J HARRISON	

In Attendance:

Mr Neil Douglas - Minter Ellison

There were 38 members of the Public and 4 members of the Press in attendance.

Crs Brewer, Nixon and Baker entered the Room at 1801 hrs.

Mayor Carlos sought confirmation from those elected members who had called this Special Meeting of Council that they wished the meeting to proceed. Crs Mackintosh, Kimber, Gollant, Brewer and O'Brien confirmed they did wish the meeting to proceed.

PUBLIC QUESTION TIME

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

Mr E Ellery, Woodvale:

Q1 Has this meeting adhered to all of the requirements of the Local Government Act? Is there any requirement to inform the ratepayers that an urgent meeting is to be held and of when, where and why this urgent meeting is to be held, and on a Sunday?

A1 Upon receipt of the notice by five Councillors calling for a Special Meeting, consultation took place with Council's lawyers, Minter Ellison, who examined the notice submitted and advised the notice was in order and it was for the CEO to convene the meeting in accordance with the request made. The time and place of the meeting was set by the Councillors in the meeting request. According to legal advice, the notice did meet the statutory requirements of the Act and Regulations, therefore the meeting was proceeded with and a notice placed in The West Australian newspaper of Saturday 8 November 2003.

Q2 Where was the notice placed in The West Australian newspaper?

A2 The notice was placed under public notices.

Ms Moon, Mullaloo:

Q1 Why was this meeting, at great expense to the ratepayers, called 48 hours before a meeting of Council where these items could have been added to the agenda, and who determined that it was urgent?

A1 *Response by Cr O'Brien:* A series of events have occurred and as a result of that I instigated the request for a Special Meeting and had the support of four other Councillors who were also concerned over events which transpired.

Q2 Have any of the five Councillors spoken to Cr Hart over the Thursday incident to verify or establish fact?

A2 *Response by Cr O'Brien:* That is one of the reasons for having a meeting tonight, to give Cr Hart the opportunity of being heard on the matter.

Mr J McNamara, Sorrento:

Q1 For the past six months the ratepayers of the City of Joondalup have been subjected to a discordant diatribe of infighting amongst Councillors and the CEO, culminating in a reported lock out last week which would not be tolerated in another organisation. When will this nonsense, which is costing ratepayers an unjustified large amount, cease?

A1 Response by Mayor Carlos: I would like this nonsense, as you have called it, to cease immediately however I do not believe it will cease until all the facts are out and I believe that this Council is verging on being sacked. I believe that the Council has had plenty of time to get this in order, as has Mr Smith, but he has failed to take heed of the requests made by ratepayers, myself and other Councillors, and the press.

Q2 I notice that this is a Special Meeting of Council. Item three of the purpose of the meeting states "Any other business in order brought forward by the administrative and/or elected persons present in person at the meeting". I understood that a Special Meeting requires a specific agenda so that item three would rule this meeting out of order and I would like a ruling on that.

A2 Response by Mayor: That is correct. Item three will be ruled out of order. I have had advice from the Department of Local Government and Regional Development in writing, and item three will not be discussed tonight.

Mr T Westall, Joondalup:

Q1 Can one of the Councillors who called this meeting explain what is so urgent about this item of business that makes it necessary to call a Special Meeting at 6pm on a Sunday when an ordinary meeting is scheduled within a few days?

A1 Response by Cr O'Brien: An urgent set of circumstances occurred on Thursday, and 72 hours notice was given in relation to calling this meeting. This meeting could indeed have been called as an ordinary meeting of Council. No doubt the proceedings of the meeting and the eventual determinations of Council will explain the urgency of the meeting.

Q2 Approximately how much of rates have been spent on this urgent meeting?

A2 This question will be taken on notice.

Mr K Zakrevsky, Mullaloo:

Q1 How can you discuss contracts when the requests and proposed terms have not been fully scrutinised and vetted?

Q2 How can you discuss contracts when there is no contract between the Council and the CEO? There is no contract because of defaults, the last default being on Item 15 – legal expenses.

A1-2 *Response by Cr O'Brien:* We thank Mr Zakrevsky for his opinion, and no doubt other legal opinions will be received on the matters expressed. No doubt we will finally achieve a solution.

Q3 *How much has the solicitor cost for yet another legal opinion?*

A3 This question will be taken on notice.

Mrs M Zakrevsky, Mullaloo:

Q1 *What was so urgent that the CEO and five Councillors called a meeting on a Sunday night, two days before the normal Council meeting, involving staff and Councillors who are entitled to their weekend?*

A1 *Response by Cr O'Brien:* There are urgent events that have occurred which need to be handled.

JSC68-11/03 EXTENSION OF QUESTION TIME – [01122] [02154]

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

The Motion was Put and

CARRIED (10/5)

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

Cr Rowlands left the Chamber at this point, the time being 1820 hrs.

Mr M Sideris, Mullaloo:

Q1 *What is the cost of tonight's meeting?*

A1 This question will be taken on notice?

Q2 *Why is it necessary to receive legal advice from Minter Ellison as to whether this meeting should be held tonight?*

A2 The matter pertaining to Special Meetings of Council is often complex and it was deemed necessary by the administration.

Q3 *Is a copy of the solicitor's brief available?*

A3 No.

Cr Rowlands entered the Chamber at this point, the time being 1822 hrs.

Mr V Cusack, Kingsley:

Q1 I have submitted questions on legal costings over the past four years. Will those questions be answered for the ordinary meeting on Tuesday?

A1 It is understood that the administration will be in a position to provide a response at the Council meeting.

Q2 Under the Local Government Act 1995, only the Mayor and the CEO can speak on behalf of the Council. I refer to the unidentified Council spokesman reported in the West Australian yesterday. Who was that person and who authorised him to speak on behalf of the City of Joondalup?

A2 The spokesman referred to was the Publicity Officer, who was authorised by the CEO to speak on behalf of the City.

Ms C Woodmass, Kingsley:

Q1 Why did the CEO in November 2002 not admit the error on his CV when he had numerous opportunities to do so at an ordinary non-urgent Council meeting?

A1 This question does not relate to an item on the agenda for this Special Meeting of Council.

Q2 In The Sunday Times of 27 July it claimed that the CEO had a certificate as an approved mediator from the Australian Commercial Disputes Centre obtained in March 1996. Has he got that certificate and if so when is he likely to apply these skills to unite this Council as soon as possible to resolve this conflict?

A2 No response was given.

Mr S Magyar, Heathridge:

Q1 Item two of the purpose of the meeting. Is this conflict caused by the failure of the CEO to meet the requirements of the Local Government Act, Sections 5.41 and 5.41(b)? I refer to the recent report on the Ocean Reef Road extension and transfer of funds from Hodges Drive drainage reserve, and the requirements of Section 6.11. As the CEO is responsible for the content of reports put before Council why was there a gross failure to inform Council of its legal obligation to advertise the transfer of funds for one month?

A1 This question will be taken on notice.

Q2 Am I correct to presume that the purpose of this meeting is to ensure that the CEO will comply with the requirements of Section 6.8 of the Local Government Act that for expenditures of greater than \$5,000 he must obtain prior approval of the Council or approval by the Mayor in the case of emergency expenditures? Looking at the sequence of events for the CEO's legal expenses, is this meeting to resolve the issue of whether the CEO complied with the requirements of 6.8 and that he had at all

times obtained proper authorisation by absolute majority to expend the monies he has on his own legal expenses?

A2 This is a matter on which the Council is seeking legal advice. Councillors will be considering the matter at the Council meeting on 11 November 2003.

JSC69-11/03 REQUEST FOR MEDIA ACCESS

MOVED Cr Walker SECONDED Cr Hart that electronic media be allowed to enter the Chamber to witness the proceedings of this Special Meeting of Council.

The Motion was Put and

CARRIED

APOLOGIES AND LEAVE OF ABSENCE

Nil

DECLARATIONS OF FINANCIAL INTEREST/INTEREST THAT MAY AFFECT IMPARTIALITY

The Chief Executive Officer declared a financial interest in Items 1 and 2 of the purpose of this Special Meeting of Council as these items could impact on his contract of employment.

PURPOSE OF MEETING

In accordance with Section 5.4(a)(ii) of the Local Government Act 1995, the following elected members have requested that a Special Meeting of Council be convened:

Cr Carol Mackintosh
Cr Paul Kimber
Cr Janine Gollant
Cr Tim Brewer
Cr Mike O'Brien

The purpose of the meeting is to discuss:

- 1 The urgent and extraordinary situation that occurred on Thursday 6 November 2003, in the City's administration offices;
- 2 The elected and administrative conflict that has developed, including the current contract of employment of the CEO;
- 3 Any other business in order brought forward by the administrative and/or elected persons present in person at the meeting.

JSC70-11/03 MEDIA ACCESS TO MATTERS OF PUBLIC INTEREST

MOVED Cr Caiacob SECONDED Cr Walker that Council:

- 1 ACKNOWLEDGES the important role of strong investigative journalism in maintaining a vibrant democracy;**
- 2 ACKNOWLEDGES the public’s right to be informed of matters of public interest by strong investigative journalism;**
- 3 ENCOURAGES the Chief Executive Officer to maintain a good public image for the City by always being available to the media regarding all issues.**

Discussion ensued.

1ST AMENDMENT MOVED Cr O’Brien SECONDED Cr Kimber that the following Point 4 be ADDED to the Motion:

“4 provided that the press is acting within the Code of Ethics of the Australian Press Council.”

Discussion ensued.

The 1st Amendment was Put and

CARRIED UNANIMOUSLY

Discussion continued on the motion as amended.

The Chief Executive Officer provided a summary of the events which occurred on Thursday 6 November 2003.

2nd AMENDMENT MOVED Cr Baker SECONDED Cr Kimber that the following words be ADDED to Point 3:

“3 ENCOURAGES the CEO and Mayor to maintain a good public image for the City by always being available to the media regarding all issues, when duly authorised to do so by the democratically elected members of our Council.”

Concerns were raised at the passing of notes from members of the public to elected members, and also between elected members themselves and queries raised as to whether this was appropriate procedure. The Mayor advised he would pursue this issue and provide a ruling at the Council meeting to be held on Tuesday 11 November 2003.

Discussion resumed.

MOVED Cr Rowlands SECONDED Cr Gollant that the 2nd Amendment be Now Put.

Mayor Carlos ruled this Procedural Motion **Out of Order** as he believed there had been insufficient debate on the amendment.

Therefore, the Procedural Motion was not pursued.

Discussion resumed.

MOVED Cr Rowlands SECONDED Cr Gollant that the 2nd Amendment be Now Put.

The Procedural Motion was Put and

CARRIED (10/5)

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

The 2nd Amendment as Moved by Cr Baker and Seconded by Cr Kimber was Put and

CARRIED (8/7)

In favour of the 2nd Amendment: Crs Mackintosh, Gollant, Kenworthy, O'Brien, Rowlands, Baker, Kimber and Prospero. **Against the 2nd Amendment:** Mayor Carlos, Cr Caiacob, Hart, Walker, Hollywood, Nixon and Brewer.

MOVED Cr Kimber SECONDED Cr Rowlands that the following Motion, as amended, **LIE ON THE TABLE**, pending the submission of a report to Council:

“MOVED Cr Caiacob SECONDED Cr Walker that Council:

- 1 ACKNOWLEDGES the important role of strong investigative journalism in maintaining a vibrant democracy;**
- 2 ACKNOWLEDGES the public's right to be informed of matters of public interest by strong investigative journalism;**
- 3 ENCOURAGES the CEO and Mayor to maintain a good public image for the City by always being available to the media regarding all issues, when duly authorised to do so by the democratically elected members of our Council;**
- 4 provided that the press is acting within the Code of Ethics of the Australian Press Council.”**

The Motion to Lie on the Table was Put and

CARRIED (10/5)

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

In accordance with Standing Orders Local Law, Clause 5.4 – “The Motion Lie on the Table” a record is to be taken of all those who have spoken on the motion under debate. It is therefore recorded that:

- No member spoke on the 1st amendment as Moved by Cr O’Brien and Seconded by Cr Kimber;
- Crs Baker, Caiacob, Kimber and Walker spoke on the 2nd amendment as Moved by Crs Baker and Seconded by Cr Kimber;
- Crs Caiacob, Kenworthy and Hollywood spoke on the motion as Moved by Cr Caiacob and Seconded by Cr Walker.

JSC71-11/03 MOTION TO GO BEHIND CLOSED DOORS - [02154] [08122]

MOVED Cr Kimber SECONDED Cr Gollant that in accordance with clause 5.6 of the City’s Standing Orders Local Law and Section 5.23 of the Local Government Act 1995, the meeting be held BEHIND CLOSED DOORS to enable consideration to be given to the agenda items for this Special Meeting of Council, being matters relating to legal advice and a matter affecting an employee and elected member with the following persons in attendance:

Chief Executive Officer

Mr Neil Douglas, Minter Ellison

Mr Kevin Robinson, Manager Audit and Executive Services

Mr Mark Loader, Manager Human Resources

Minute Clerk

Mayor Carlos ruled this Motion OUT OF ORDER

MOVED Cr Baker SECONDED Cr Kimber that the meeting DISSENT with the ruling of the Mayor.

This Motion was not acknowledged.

ADJOURNMENT OF MEETING

In accordance with Clause 4.7 of the City’s Standing Orders, the Mayor **ADJOURNED** the meeting for a period of fifteen (15) minutes, the time being 1932 hrs.

The Meeting **RESUMED** at 1947 hrs.

MOVED Cr Prospero SECONDED Cr Baker that the meeting PROCEED with the order of business.

The Motion was Put and

CARRIED UNANIMOUSLY

JSC72-11/03 MOTION TO GO BEHIND CLOSED DOORS - [02154] [08122]

MOVED Cr Kimber SECONDED Cr Gollant that in accordance with clause 5.6 of the City's Standing Orders Local Law and Section 5.23 of the Local Government Act 1995, the meeting be held BEHIND CLOSED DOORS to enable consideration to be given to the agenda items for this Special Meeting of Council, being matters relating to legal advice and a matter affecting an employee and elected member with the following persons in attendance:

Chief Executive Officer

Mr Neil Douglas, Minter Ellison

Mr Kevin Robinson, Manager Audit and Executive Services

Mr Mark Loader, Manager Human Resources

Minute Clerk

The Motion was Put and

CARRIED (10/5)

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

Members of the public and press, and members of staff (with the exception of the Chief Executive Officer, Manager Audit and Executive Services, Manager Human Resources Services and Minute Clerk) left the Chamber at this point, the time being 1950 hrs.

JSC73-11/03 CODE OF CONDUCT – CENSURE

**NOTE: This page of these Minutes has been edited
to remove information which is
Confidential – Not for Publication**

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During discussion, Cr Brewer left the Chamber at 2015 hrs and returned at 2017 hrs.

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Cr Kenworthy left the Chamber at 2020 hrs and returned at 2022 hrs.

CLOSURE

In accordance with Clause 4.7 of the City's Standing Orders Local Law, the Mayor declared the Meeting closed at 2030 hrs; the following elected members being present at that time:

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