

# CITY OF JOONDALUP

## MINUTES OF SPECIAL COUNCIL MEETING HELD IN COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP, ON TUESDAY 25 NOVEMBER 2003 AND WEDNESDAY 3 DECEMBER 2003

### OPEN AND WELCOME

The Mayor declared the meeting open at 2005 hrs.

### ATTENDANCES

#### Mayor

D CARLOS *Absent from 2220 to 2223 hrs; and from 2230 to 2256 hrs.*

#### Elected Members:

Cr L PROSPERO	Lakeside Ward	
Cr P KIMBER	Lakeside Ward	<i>Absent from 2229 to 2231 hrs</i>
Cr T BREWER	Marina Ward	<i>Absent from 2109 to 2112 hrs</i>
Cr C BAKER	Marina Ward	
Cr J F HOLLYWOOD, JP	North Coastal Ward	<i>Absent from 2023 to 2025 hrs</i>
Cr A NIXON	North Coastal Ward	<i>From 2007 hrs</i>
Cr A WALKER	Pinnaroo Ward	<i>Absent from 2045 to 2047 hrs</i>
Cr P ROWLANDS	Pinnaroo Ward	<i>Absent from 2057 to 2058 hrs</i>
Cr M O'BRIEN, JP	South Ward	
Cr S HART	South Ward	<i>From 2014 hrs; absent from 2211 to 2214 hrs</i>
Cr G KENWORTHY	South Coastal Ward	
Cr J GOLLANT	South Coastal Ward	<i>From 2014 hrs; Absent from 2057 to 2058 hrs</i>
Cr M CAIACOB	Whitfords Ward	<i>Absent from 2154 to 2155 hrs</i>
Cr C MACKINTOSH	Whitfords Ward	<i>From 2006 hrs; absent from 2057 to 2059 hrs</i>

#### Officers:

Chief Executive Officer:	D SMITH	<i>To 2057 hrs</i>
Director, Corporate Services and Resource Management:	P SCHNEIDER	<i>To 2057 hrs</i>
Director, Infrastructure & Operations	D DJULBIC	<i>To 2057 hrs</i>
Director, Planning & Community Development:	C HIGHAM	<i>To 2057 hrs</i>
Manager Audit and Executive Services:	K ROBINSON	<i>To 2057 hrs</i>
Manager, Marketing Communications & Council Support:	B ROMANCHUK	<i>To 2057 hrs</i>
Manager, Human Resources:	M LOADER	
Media Advisor:	L BRENNAN	<i>To 2057 hrs</i>
Committee Clerk:	J HARRISON	
Minute Clerk:	L TAYLOR	<i>To 2057 hrs</i>

**In Attendance:**

Mr Neil Douglas - Minter Ellison

Mr Andrew Burnett – Minter Ellison

Mr Stephen Cole, Department of Local Government and Regional Development

There were approximately 160 members of the Public and 2 members of the Press in attendance.

**PUBLIC QUESTION TIME**

(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).

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

*Q1 Please name the five individual Councillors that are referred to in the first item of business listed for the purpose of this meeting.*

A1 Crs Nixon, Brewer, Gollant, Prospero and O'Brien.

*Q2 Please explain and supply some details of the alleged communication from the five Councillors to the Minister referred to in the first item of business listed for the purpose of this meeting.*

A2 An approach was made by Cr O'Brien through Ms Margaret Quirk.

*Q3 Please explain and supply some details of the response to the Minister to the Councillors' request as referred to in the first item of business listed for the purpose of this meeting.*

A3 Correspondence has been received from the Hon Minister for Local Government and Regional Development requesting Council to demonstrate to the Minister by 4 December 2003 that it has achieved a satisfactory resolution to the underlying issues at the City, and that it has embarked on a programme to restore proper working relationships within Council.

*Q4 Regarding the second item of business listed for this meeting, did the Minister for Local Government make a demand on Council under Section 9.13A of the Local Government Act?*

A4 No, not specifically.

*Cr Mackintosh entered the Chamber at 2006 hrs*

**Ms K Woodmass, Kingsley:**

*Q1 Why has Cr O'Brien put forward a motion for leave of absence for Mayor Carlos? If it is to attempt to quash the feelings of the ratepayers and to make the Mr Smith saga go away, can I suggest that he adds or amends the motion that he sends away the four Councillors who are currently supporting the Mayor and possibly all the ratepayers?*

A1 *Response by Mayor Carlos: I am not going anywhere.*

*Cr Nixon entered the Chamber at 2007 hrs.*

*Q2 Regarding the two motions on Breach of Code of Conduct, directed at the Mayor and Cr Hart, why has the motion on Cr Hart been put when she is not here to defend herself? I am unsure whether any Councillor has asked her exactly what happened on that day. Why have the motions been made public when other motions regarding the CEO and various other Councillors have always been confidential?*

A2 The items listed for the purpose of the meeting are as provided by the five Councillors that called the Special Meeting. Council can move behind closed doors to deal with any of those items.

*Q3 Why at the last Special Council meeting the reason we were given for a Sunday night meeting was that Cr Prospero would be unable to attend at any other time, yet Cr Hart is unable to attend tonight and no-one has had the courtesy to delay this meeting until she is able to attend?*

A3 The five Councillors called the meeting at the prescribed time, and that meeting was convened. Cr Hart is at a conference.

*Q4 Can I ask the five Councillors why they did not wait until Cr Hart returned?*

A4 This question will be taken on notice.

**Mrs M Zakrevsky, Mullaloo:**

*Q1 Re: Point 4 of the purpose of the meeting: Would Cr O'Brien explain the matter of whether leave should be granted to the Mayor to undertake his previously approved caravan trip?*

A1 This question will be taken on notice.

**Mr S Magyar, Heathridge:**

*Q1 Re: Point 5 – Contract of Employment between the City and CEO: The Local Government Act says that it is meant to be a document that is open to public inspection other than parts considered by the CEO to be confidential. Considering the large public interest in this issue, as a gesture of goodwill from the CEO to ratepayers, will the censored version of the contract be made available over the Council's website?*

A1 The CEO will not make this available.

**Mr K Zakrevsky, Mullaloo:**

*Q1 What is the cost of the solicitor's present tonight?*

A1 The cost is unable to be determined until the length of the meeting is known.

*Q2 When was this meeting advertised?*

A2 It was not publicly advertised. The meeting was convened at approximately 6.45 pm on 24 November 2003, and there was no practical means of advertising in any newspaper circulating on the following day. This complies with the provisions of the Local Government Act and Regulations.

*Crs Hart and Gollant entered the Chamber at 2014 hrs.*

**Mr M Sideris, Mullaloo:**

*Q1 I understand that the Local Government Act requires the CEO to take all reasonable steps to publicly advertise a meeting.*

A1 All reasonable steps were taken. Notice was placed on the notice board at the Administration Centre and on the City's website.

**APOLOGIES AND LEAVE OF ABSENCE**

Nil

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

*The Chief Executive Officer stated his intention to declare a financial interest in Item 5 of the Purpose of the Meeting – The Contract of Employment between the City and the CEO as this matter deals with his contract of employment.*

**ITEM OF BUSINESS**

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 M O'Brien  
Cr C Mackintosh  
Cr J Gollant  
Cr P Kimber  
Cr C Baker

The purpose of the meeting is to discuss:

- 1 The Minister's Response to the 5 individual Councillors' request;
- 2 The Minister's latest demand on the Council;
- 3 The alleged incidents of the Mayor's dealings with Staff;
- 4 The matter of whether the leave should be granted to the Mayor, to undertake his previously proposed Caravan trip;
- 5 The Contract of Employment between the City and the CEO;
- 6 Any late item report from the Council's Administrative Officers.

**JSC76-11/03                    MOTION TO GO BEHIND CLOSED DOORS - [02154] [08122]**

**MOVED Cr Kimber SECONDED Cr Gollant that in accordance with clauses 5.6 and 3.2 of the City's Standing Orders Local Law and Section 5.23 of the Local Government Act 1995, and in accordance with the advice given by senior bureaucrats of the Department of Local Government and Regional Development, the order of business for this evening's meeting be altered and the meeting be held BEHIND CLOSED DOORS to enable consideration to be given at this point to the following items:**

**Item 2            The Minister's latest demand on the Council, being a matter relating to legal advice, with the following persons in attendance:**

**All Staff**

**Neil Douglas and Andrew Burnett of Minter Ellison**

**Mr S Cole, Department of Local Government and Regional Development**

**Item 5            The Contract of Employment between the City and the CEO, being a matter relating to legal advice with the following persons in attendance:**

**Manager Human Resource Services, Mr Mark Loader**

**Neil Douglas and Andrew Burnett of Minter Ellison**

**Minute Clerk**

**Mr S Cole, Department of Local Government and Regional Development**

**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.

**JSC77-11/03                    THE MINISTER'S RESPONSE TO THE FIVE INDIVIDUAL COUNCILLOR'S REQUEST**

**MOVED Cr O'Brien SECONDED Cr Baker that Council seeks a deputation to the Minister for Local Government as a result of the Minister's latest statement regarding the deadline placed on the Council, with a cut off date of 4 December 2003.**

Discussion ensued.

*Cr Hollywood left the Chamber at 2023 hrs and returned at 2025 hrs.*

**AMENDMENT MOVED Cr Hart SECONDED Cr Hollywood** that the following words be added to the end of the Motion:

“... with the Mayor, Deputy Mayor and Cr Walker and any other Councillor who may wish, to attend the proposed deputation.”

Discussion ensued.

**Extension of Time to Speak**

**MOVED Cr Kimber SECONDED Cr Walker** that **Cr Baker** be permitted an extension of time to speak for a further five (5) minutes.

**The Motion to Extend was Put and CARRIED**

Discussion continued.

**The Amendment as Moved by Cr Hart and Seconded by Cr Hollywood was Put and LOST (6/9)**

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

**AMENDMENT MOVED Cr Kimber SECONDED Cr Baker** that the following words be added to the end of the Motion:

“...the deputation to the Minister to include Crs O'Brien, Prospero, Gollant, Brewer and Mackintosh.”

**MOVED Cr Baker SECONDED Cr Mackintosh** that the Amendment be now PUT.

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

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

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

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

Discussion ensued.

*Cr Walker left the Chamber at 2045 hrs and returned at 2047 hrs.*

### **PERSONAL EXPLANATION – CR HART**

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

“I would like it on record that since 29 October 2003 I have been requesting the terms of reference and the brief that was given from the City to our lawyers on each instance where the CEO issue has come before Council. I have not been able to get that, up until last Friday. I don’t know whether there is an e-mail on my computer at the moment but I would like it recorded, I believe I am entitled to see this as every Councillor is.

I don’t know what the brief was that we gave Minter Ellison but it’s important for us to get the information.”

Discussion ensued.

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

**That Council seeks a deputation to the Minister for Local Government as a result of the Minister’s latest statement regarding the deadline placed on the Council, with a cut off date of 4 December 2003, the deputation to the Minister to include Crs O’Brien, Prospero, Gollant, Brewer and Mackintosh.**

**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

**JSC78-11/03**

### **PROVISION OF INFORMATION TO ELECTED MEMBERS**

**MOVED Cr Hart SECONDED Cr Walker that every Councillor be given a copy of the briefs that went to Minter Ellison from the City and any associated documents, ie e-mails or letters.**

**JSC79-11/03**

### **MOTION TO GO BEHIND CLOSED DOORS - [02154] [08122]**

**MOVED Cr Baker SECONDED Cr Kimber 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, and in accordance with the advice given by senior bureaucrats of the Department of Local Government and Regional Development, the meeting be held BEHIND CLOSED DOORS to enable consideration to be given to JSC78-11/03, being a matter relating to a contract of employment and legal advice.**

**The Motion was Put and**

**CARRIED (9/6)**

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

*Members of the public, press and staff (with the exception of Manager Human Resource Services and the Minute Clerk) left the Chamber at this point, the time being 2057 hrs.*

*Crs Mackintosh, Gollant and Rowlands left the Chamber at this point, the time being 2057 hrs.*

Discussion ensued.

*Cr Rowlands and Gollant entered the Chamber at 2058 hrs.*

*Cr Mackintosh entered the Chamber at 2059 hrs.*

**With the APPROVAL of Cr Hart as Mover, and Cr Walker as Seconder, the motion was AMENDED to read:**

That every Councillor be given a copy of the briefs that went to Minter Ellison from the City and any associated documents, ie e-mails or letters, *and legal advice pertaining to the contract of the CEO.*

**MOVED Cr Hart SECONDED Cr Gollant that the Motion be now Put.**

**The Procedural Motion was Put and**

**CARRIED**

**The Motion as Moved by Cr Hart and Seconded by Cr Walker, as amended, being:**

That every Councillor be given a copy of the briefs that went to Minter Ellison from the City and any associated documents, ie e-mails or letters, and legal advice pertaining to the contract of the CEO.

**was Put and**

**LOST (5/10)**

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

**JSC80-11/03 AMENDMENT TO ORDER OF BUSINESS**

**MOVED Cr Kimber SECONDED Cr Nixon that so much of the City's Standing Orders Local Law be set aside to allow the following items to be considered at this point:**

**Item 2           The Minister's latest demand on the Council;**

**Item 5           The Contract of Employment between the City and the CEO.**

**The Motion was Put and**

**CARRIED**

**JSC81-11/03 SUSPENSION OF STANDING ORDERS LOCAL LAW**

**MOVED Cr Kimber SECONDED Cr Baker that in accordance with Clause 8.1 of the City's Standing Orders Local Law the Council suspends Clause 4.7 of the Standing Orders Local Law relating to serious disorder, to ensure all business is transacted at this evening's meeting.**

**The Motion was Put and**

**CARRIED**

**JSC82-11/03 THE MINISTER'S LATEST DEMAND ON THE COUNCIL**

**MOVED Cr O'Brien SECONDED Cr Baker that the full submission made by Mr Neil Douglas of Minter Ellison and Mr Mark Loader, on behalf of the City, to the Standing Committee on Public Administration and Finance on Monday 17 November 2003 becomes the basis of the deputation to the Minister to allow the Minister to be fully aware of the position of the Council, and that Council fully endorses the submission made on behalf of Council by Minter Ellison.**

Discussion ensued.

*Cr Brewer left the Chamber at 2109 hrs and returned at 2112 hrs.*

**MOVED Cr Baker SECONDED Cr Gollant that the Motion be now Put.**

**This Procedural Motion was NOT PURSUED**

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

**CARRIED (10/5)**

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

**JSC83-11/03 THE CONTRACT OF EMPLOYMENT BETWEEN THE CITY AND THE CEO**

Cr Brewer sought direction from Mr Douglas as to whether it was appropriate to now move a motion relating to the progress of the Working Group.

Mr Douglas considered that a report from the Working Group would fall within the purpose of this evening's meeting.

Mr Douglas stated that aspects of the report from the Working Group dealt with matters that involve a financial conflict of interest that Mayor Carlos may have with the City. Mr Douglas recommended that Mayor Carlos may wish to consider whether he would remain in the Chamber during the report of the Working Group. Mayor Carlos stated he would remain in the Chamber.

Mr Douglas stated he would seek Council's views, but proposed that he would not provide the Council, in the presence of the Mayor, with advice on those matters in which the Mayor has a conflict of interest.

Mr Douglas then provided a report on the Working Group.

*Cr Caiacob left the Chamber at 2154 hrs and returned at 2155 hrs;  
Cr Hart left the Chamber at 2211 hrs and returned at 2214 hrs.*

*Mayor Carlos left the Chamber at 2220 hrs. Deputy Mayor, Cr Hollywood, assumed the Chair at this point.*

*Mayor Carlos entered the Chamber at 2223 hrs and **assumed the Chair.***

*Cr Kimber left the Chamber at 2229 hrs.*

*Mayor Carlos left the Chamber at 2230 hrs. Deputy Mayor, Cr Hollywood, assumed the Chair at this point.*

*Cr Kimber entered the Chamber at 2231 hrs.*

**JSC84-11/03     ADJOURNMENT OF MEETING – [02154] [08122]**

**MOVED Cr O'Brien, SECONDED Cr Nixon that in accordance with clause 5.1 of the City's Standing Orders Local Law, the meeting be ADJOURNED to 8.00 pm on Monday 1 December 2003.**

*Mayor Carlos entered the Chamber at 2256 hrs and **assumed the Chair.***

**The Motion to Adjourn was Put and**

**CARRIED (15/0)**

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

**The Meeting ADJOURNED BEHIND CLOSED DOORS at 2259 hrs.**

### **RESUMPTION OF MEETING**

The Special Council Meeting was unable to resume behind closed doors on Monday 1 December 2003 due to the presence of members of the public and press in the Council Chamber.

### **ADJOURNMENT OF MEETING**

The Meeting was **ADJOURNED** to 7.30 pm on Wednesday 3 December 2003.

## **RESUMPTION OF MEETING**

The Mayor declared the meeting of the Council that commenced on Tuesday 25 November 2003 **RESUMED** at 1930 hrs on **WEDNESDAY 3 DECEMBER 2003**, the following persons being present:

### **ATTENDANCES**

#### **Mayor**

D CARLOS

#### **Elected Members:**

Cr L PROSPERO	Lakeside Ward
Cr P KIMBER	Lakeside Ward
Cr T BREWER	Marina Ward
Cr C BAKER	Marina Ward
Cr J F HOLLYWOOD, JP	North Coastal Ward
Cr A NIXON	North Coastal Ward
Cr A WALKER	Pinnaroo Ward
Cr M O'BRIEN, JP	South Ward
Cr S HART	South Ward
Cr J GOLLANT	South Coastal Ward
Cr M CAIACOB	Whitfords Ward
Cr C MACKINTOSH	Whitfords Ward

#### **Officers:**

Manager, Human Resources:	M LOADER
Media Advisor:	L BRENNAN
Committee Clerk:	J HARRISON

#### **In Attendance:**

Mr Neil Douglas - Minter Ellison  
Mr Steve Cole, Governance Review Board  
Mr Ian Mickel, Governance Review Board  
Mr Cliff Frewing, Governance Review Board  
Mr Bruce Wittber – Governance Review Board

There were approximately 200 members of the Public and 2 members of the Press in attendance.

#### **JSC85-12/03 MEETING TO GO TO OPEN DOORS**

**MOVED** Cr Hart, **SECONDED** Cr Caiacob that the meeting be now held with **OPEN DOORS** and continue with the members of the public in the gallery.

**The Motion was Put and**

**CARRIED**

**JSC86-12/03     ATTENDANCE OF ELECTRONIC MEDIA**

**MOVED Cr Hollywood, SECONDED Cr Hart that the electronic media remain in the Council Chamber during this evening’s meeting.**

**The Motion was Put and**

**CARRIED**

**JSC87-12/03     MEETING BE NOW CLOSED**

**MOVED Cr O’Brien SECONDED Cr Gollant that in accordance with Clause 5.7 of the City’s Standing Orders Local Law, the MEETING BE NOW CLOSED, the time being 1940 hrs.**

**The Motion was Put and**

**CARRIED (8/5)**

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

In accordance with Clause 5.7 of the City’s Standing Orders Local Law, the following items of business outstanding from the notice paper for the special meeting of the Council held on 25 November 2003 and 3 December 2003 will be carried forward to the notice paper for the next ordinary meeting of the Council to be held on 16 December 2003:

- 3     The alleged incidents of the Mayor’s dealings with Staff;
- 4     The matter of whether the leave should be granted to the Mayor, to undertake his previously proposed Caravan trip;
- 5     The Contract of Employment between the City and the CEO;
- 6     Any late item report from the Council’s Administrative Officers.