



**MINUTES OF MEETING OF JOINT COMMISSIONERS
HELD ON 8 JUNE 2004**

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CITY OF JOONDALUP

**MINUTES OF COUNCIL MEETING HELD IN COUNCIL CHAMBER,
JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP, ON TUESDAY, 8
JUNE 2004**

OPEN AND WELCOME

The Chairman declared the meeting open at 1900 hrs.

ATTENDANCES

CMR J PATERSON – Chairman
CMR P CLOUGH – Deputy Chairman
CMR M ANDERSON
CMR A FOX
CMR S SMITH

Officers:

Acting Chief Executive Officer:	C HIGHAM
Director, Corporate Services and Resource Management:	P SCHNEIDER
Director, Infrastructure & Operations	D DJULBIC
Manager Audit and Executive Services:	K ROBINSON
Acting Manager, Marketing Communications & Council Support:	P DUNN
Manager, Community Development:	G HALL
Media Advisor:	L BRENNAN
Customer Service Co-ordinator:	F LOOKER
Committee Clerk:	J HARRISON
Minute Clerk:	L TAYLOR

There were 29 members of the Public and 2 members of the Press in attendance.

Chairman of Commissioners, J Paterson made the following announcement:

NEW COMMISSIONER FOR CITY OF JOONDALUP

Mr Peter Clough will replace Mr Allan Drake-Brockman as Commissioner and Deputy Chairperson of the City of Joondalup.

It is with regret that I announce that Mr Drake-Brockman has resigned from his position due to work and personal commitments.

On behalf of the City and my fellow Commissioners, I thank outgoing Commissioner Drake-Brockman for his significant contribution and work towards restoring good governance in the City of Joondalup.

Local Government Minister, Tom Stephens, announced the appointment of Mr Clough today.

“As well as being a City of Joondalup resident, Mr Clough is an experienced corporate professional, who will bring valuable knowledge and expertise to his new role,” Mr Stephens said.

While bidding farewell to Allan Drake-Brockman, we welcome Mr Clough and look forward to him joining the team at the City of Joondalup.

PUBLIC QUESTION TIME

The following question, submitted by Mr C Baker, Connolly was taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

Question to Chairman of Commissioners:

Q1 Can the Chairman provide ratepayers with a report concerning the extent of the City’s success in recovering its costs against the Mullaloo Progress Association following its failed bid in the Supreme Court to block the redevelopment of the Mullaloo Tavern. Will the City explore the merits of recovering these costs against other groups (incorporated or otherwise) who assisted or sponsored this group in its failed bid? Do preliminary investigations disclose that the said group is insolvent?

A1 The claim will be considered on 22 June 2004 by the Supreme Court and the precise amount determined at that time.

The City is not exploring the merits of recovering the costs from any associated groups or individuals, as the Supreme Court action was brought by the Mullaloo Progress Association.

The City is currently unaware of the financial status of the Mullaloo Progress Association.

The following questions, submitted by Mr R Privilege, Edgewater were taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

- *I refer to recent reports in the Local media that the City of Joondalup did not provide any support to the West Perth Falcons Football club. I ask:*

Q1 Is this correct?

A1 No.

Q2 If not, what was the nature and extent of any such support?

A2 The City of Joondalup has 75 sporting clubs using its facilities located throughout the City. All of these sporting clubs have needs and it is important that the City is equitable in the level of assistance that it provides to individual clubs.

With regards to the West Perth Football Club in late 2001, when the Club first considered a move to Kingsway the City engaged a consultant to undertake a thorough analysis of WAFL clubs and their ground tenancy arrangements with the various local authorities. This report provided considerable detail with regards to the income and expenditure positions of the various WAFL clubs.

In 2003 and 2004 the City of Joondalup provided the West Perth Football Club with \$20,000 and \$17,125 respectively as a result of the club making a submission to the City's Sports Development Programme. This funding was allocated on the basis that \$15,000 was specifically for ground and facility rental, with the remainder being available for sports development programmes conducted by the club.

As part of the requirements of the Sports Development programme the Club will be required to acknowledge the City of Joondalup in the same way that any sponsor receives recognition. Members of the Public will see City of Joondalup signage located on the ground, the players shorts and jumper will also carry the City of Joondalup logo. Having been successful with their applications for the Sports Development Fund grants in 2003 and 2004 the West Perth Football Club will not be eligible for assistance from this source of funding in 2005.

Q3 Will you issue a media release to correct 'misinformation' in the said media reports?

A3 The City is satisfied with the relationship that it has with the West Perth Football Club. The Club has shown its appreciation of the City's support and will meet all of the conditions of the Sports Development programme which require that they acknowledge the City as a sponsor. The issuing of a media release regarding this matter is not seen as necessary.

- *I refer to recent letters to the Editor complaining about the lack of debate and vigorous scrutiny of Council agenda items at Council meetings. I ask:*

Q4 Why is there no such public debate or scrutiny at the Council meetings?

A4 The Standing Orders Local Law, which governs the conduct of Council meetings, has not changed since the appointment of Commissioners.

Q5 Is perhaps because discussions have taken place between the Commissioners behind closed doors before the formal commencement of formal Council meetings?

A5 See A4 above.

Q6 *Why have you shortened public question time and abolished public question time at the end of the Council meetings?*

A6 Public question time is conducted in accordance with the Standing Orders Local Law.

Q7 *Why have you abolished Strategy sessions?*

A7 Strategy sessions are being conducted, immediately following Briefing Sessions.

- *I refer to your recent public statement to the media concerning the Council's new policy of openness in decision making. With this in mind:*

Q8 *Why won't you immediately release a copy of Harry Dixon's legal advice to the City concerning the CEO issue?*

A8 This advice is confidential.

Q9 *Don't the ratepayers deserve to have a copy of this advice that was paid for by ratepayers?*

A9 See A8 above.

- *I refer to your ongoing criticisms of suspended Councillors for not sacking the CEO:*

Q10 *Did the Commissioners 'sack' the CEO?*

A10 Under the deed of settlement the previous CEO Denis Smith resigned from his position.

Q11 *What was the nature and extent of the Commissioners' consultation with ratepayers prior to (to use the words of the Editor of the West Australian Newspaper) "rewarding" the CEO with a half a million dollar payout?*

A11 The City is not aware of what the editor of the West Australian Newspaper is referring to.

Q12(a) *I refer to the Governance Review Report. Why is this document being kept a secret from ratepayers? Why don't ratepayers deserve to know its contents and findings? Is it because it is in the process of being politically 'cleansed' by the Minister?*

A12(a) A report in relation to the Governance Review is included on the agenda for the Council meeting to be held on 8 June 2004.

Q12(b) *I refer to your criticisms of suspended Councillors concerning the CEO issue. Are you aware that at all material times a majority of Councillors acted in strict accordance with legal advice? Are you alleging the legal advice was wrong and if so, will you be seeking a refund of all legal fees paid to the lawyers who advised the City on this issue?*

A12(b) As this matter is likely to be the subject of the McIntyre Inquiry, it is not considered appropriate to respond to questions of this nature.

Q13 I refer to your recent appointment of Mr Clayton Higham as the City's Acting CEO. Without in any way casting aspersions against him, I ask why did you agree to pay him such a high salary package in excess of \$200,000 per annum? Does Mr Higham hold a much vaunted Bachelor of Business Degree?

A13 The decision to remunerate the Acting CEO a total package of \$215,000 came after consultation with all Commissioners, after receiving advice from three sources of professional remuneration data and after consulting with Mr Higham. Mr Higham does not have a Bachelor of Business Degree.

▪ *I refer to recent public concerns regarding the brevity of Council meetings. I ask:*

Q14 What is the average duration of each ordinary Council meeting presided over by the Commissioners since their appointment?

A14 An average of 1 hour 10 minutes per Council meeting.

Q15 What was the hourly rate paid to the Commissioners for each such meeting?

A15 Commissioners are not paid an hourly rate. They receive an allowance and are able to claim expenses associated with their appointment.

Q16 Does the electronic media have an as of right entitlement to attend at and film Council briefing sessions and Ordinary meetings? If not, will you confirm that a right will be bestowed upon them as part of the Commissioners new policy of 'openness in decision making'?

A16 Council's policy 2.2.6 requires that *"the use of video cameras, electronic recording devices (other than for the express purpose of official minute taking) or still photography to record proceedings of the local government within the Council Chamber shall be by a simple majority decision of the Council."*

▪ *I refer to Council's policy of openness in decision making. Are you aware that the group styled as the Joondalup Combined Residents Group:*

Q17 Is unincorporated?

A17 The City is aware that the Joondalup Combined Residents Group is currently going through the process of incorporation.

Q18 Does not represent the views of a majority of the City's ratepayer groups that are incorporated?

A18 The City welcomes the views expressed by all ratepayer groups.

Q19 Excludes members of the public from its meetings when it meets?

A19 No.

Q20 Comprises of a majority of persons who are members of the ALP, Greens and sympathisers?

A20 No.

- *I refer to the group of persons using the name “Joondalup Combined Residents”. Are you aware that:*

Q21 This group, which allegedly represents all ratepayers in the City of Joondalup has fewer than ten financial members?

A21 No.

Q22 Has failed to incorporate for over 12 months?

A22 See A17 above.

Q23 Has recently failed in its attempts to stop a local community group incorporating?

A23 No.

Q24 May not be complying with the provisions of the Act?

A24 No.

The following question, submitted by Mr M Leather, Ocean Reef was taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

Q1 What is the total cost to Council, that is the ratepayers, involved since the Ocean Reef Road Extension was put on hold for the second time last October 2003 including the cost of engineers and planners drawing up plans that have been disregarded, the cost of awarding contracts, any costs involved in the cancellation of awarded contracts, the cost of contracting for the purpose of consultation, increased cost of building the road since 1997 and then 2003 and what the estimated cost would be in 2004 or 2005 if the process is dragged out?

A1 These costs have not been determined at this point in time.

The following question, submitted by Mr R Dallas, Ocean Reef was taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

Q1 Are the Commissioners also aware of a statement that was made to them opposing this extension regarding the claims that the rabbits and foxes will be run over and killed by the building of this project? In fact these animals are not natural inhabitants to our shores and do more harm to the natural flora/fauna and wildlife than is necessary regarding the concerned area. Also that CALM has an ongoing plan in our State to eradicate or control these animals which should then again apply here?

A1 The Commissioners have not received any formal correspondence or communication to this effect to date.

The following questions, submitted by Mr K Zakrevsky, Mullaloo were taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

Q1 With reference to the Building Licence Approval as issued for the development known as Mullaloo Beach Village on 23 December 2003 there is a potential patronage of 900 persons in this building which will adversely affect the low density, high amenity R20 neighbourhood localities of Mullaloo and Kallaroo. Council has not responded to repeated requests to state the allowable patronage. How many patrons will be allowed in this building if health requirements are met?

A1 The subject land is zoned for commercial purposes and has been for approximately 30 years. In comparing size, it is important to note that the new development is comprised of other areas in addition to the tavern element of the development.

As to the tavern maximum patronage, the calculations have been required to be modified over time due to changes in the legislation governing patron limits.

Under the Health (Public Buildings) Regulations 1992 the “old tavern” had limited patronage in its darts bar and upstairs function room of a total of 175 persons. At this point in time there was no limit on the maximum patronage of the other bars or the courtyard area.

In 2002, the regulations were amended and the building was subject to individual patronage limits in each of its drinking areas. The total floor area for these areas cumulatively added to 369 persons, however due to the fact that there were only 3 exits, this limited the allowable maximum accommodation figure to 350 persons. Accordingly, and with respect, it is incorrect to state “the old tavern had a maximum capacity of 175 which was then increased to 350 persons shortly before demolition”.

In regard to the patron numbers in the ‘new’ tavern, an internal fit-out plan will be required before the City can determine the maximum occupancy.

Q2 The developer of the Mullaloo Beach Village and Council told the residents of Mullaloo and Kallaroo that the new tavern would be the same size as the old tavern but this is not correct. Carine residents negotiated with the developer and Joondalup Council on patron number before the tavern was granted approval for a development application approval. Given that the maximum number of patrons in the old Mullaloo Tavern was 175 and was increased to 350 just before demolition, will the Commissioners afford the same negotiating opportunity to the residents of Mullaloo and Kallaroo for an acceptable level of patronage?

A2 The licensed floor space of the new tavern is 983m² which is very similar to that of the old tavern (old tavern 972m² licensed area).

A development approval has already been granted for the Mullaloo Tavern redevelopment. The maximum accommodation number for the new tavern will be determined by relevant statutory controls in comparison with design aspects such as:

- The amount of floor area,
- Ventilation systems,
- The number of exits, and
- Toilet facilities.

In the case of the Carine Tavern redevelopment, the Liquor Licensing Court intervened with the cooperation of the Council to regulate the patronage limits. This occurred in recognition of the history of noise complaints and anti social behaviour that was known to the Licensing Court.

The following questions, submitted by Ms L Scott-Sellars, Ocean Reef were taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

Q1 City officers have admitted to ORCS that extending the Ocean Reef Road will not solve the peak time traffic jams on Constellation Drive. Is the real agenda so that the Ocean Reef Road extension can be used for dirt trucks to carry waste from the Ocean Reef Marina construction site?

A1 No.

Q2 Will the City place the same technical engineering and financial resources at the service of the Community Amenity Option of the second workshop phase of the Ocean Reef Road extension as it will for the detailed design option of the Ocean Reef Road?

A2 This matter has not been determined at this point in time.

Q3 The Department of Premier and Cabinet gave Ms Rhonda Hardy some specific recent advice on how the consultation process on the Ocean Reef Road extension should proceed; e.g., to allow full and equal consideration of all points of view and perceived values for this piece of land. Why have Department of Premier and Cabinet's detailed recommendations been watered down to a virtually unrecognisable form as contained in Late Item No. 1 – Status Report? What Celia Broderick said is not contained in that report.

A3 The Department of Premier and Cabinet has not given the advice that was stated in the question put by Ms Scott-Sellars. The City has received no advice from Premier & Cabinet in relation to late Item 1 - Status Report, which sought to broaden the consultation parameters. The advice that has been received from Premier & Cabinet to date was received at a meeting held in April 2004 at which advice to the City was as follows:

1. The City must determine the parameters of the consultation.
2. The City must set clear objectives for the consultation process which will then be used for the purpose of evaluation by Premier & Cabinet.
3. The City should, if possible, use a working party to evolve and support the broader consultation process.

The following questions, submitted by Mrs M Zakrevsky, Mullaloo were taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

Q1 Re: Mullaloo Beach Development CJ204-08/02 – The residential building approved in August 2002 was for five short stay apartments and this number was amended by private negotiated agreement to consist of nine short stay apartments. Given that this was a significant alteration can you advise:

(a) why this did not require a new development application as this necessitated a change of floor space use?

A1 (a) Rennet Pty Ltd appealed Condition No 19 of Council's planning approval to the Town Planning Appeals Tribunal. Part of the appeal process is the requirement to mediate, if possible, an agreed outcome. The modification to the proposed tavern development was the result of a mediation process which resulted in Consent Orders being issued by the Town Planning Appeals Tribunal. These Consent Orders in effect modify the planning approval issued in August 2002 to the extent of the Consent Orders. No new Development Application was required. This process was managed by lawyers acting on behalf of the Council.

Q1 (b) if Council was advised that this was a change of floor space use and therefore required a new development application?

A1 (b) A report on the proposed mediated outcome in relation to the appeal by Rennet Pty Ltd was referred to Council at its meeting held on 30 September 2003. Council approved the mediated outcome at that meeting. No new Development Application was required given that the mediation outcome was to be the subject of Consent Orders from the Town Planning Appeal Tribunal.

Q2 With reference to the Building Certificate issued for the Mullaloo Beach Tavern on 23 December 2003:

(a) if the kitchen and dining facilities of the tavern are made available to the residents of the residential part of the building will this make the facility a resort or a hotel?

A2 (a) The use of kitchen and dining facilities by residents of the building would not make the development a resort or a hotel.

(b) will a tavern licence still be applicable to this site or does Council want to issue a retrospective change of use to a hotel?

A2 (b) The question is unclear. There has been no application for Council to consider retrospective approval for a change of use to a hotel.

The following question, submitted by Mr K Luck, Mullaloo was taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

Q1 A condition of the development application approval was that an acoustic report be produced. A building certificate was issued without an acoustic report, why?

A1 The Building Licence approval was issued in accordance with the Building Code of Australia and the Building Regulations 1989, as required under the requirements of the Local Government (Miscellaneous Provisions) Act 1960. The acoustic report in question is a health requirement and as such is a condition of the environmental health approval. Condition No 6 on the health approval states:

Prior to fit out the Architect or builder is to arrange and submit to the City's Approval Services, an Acoustics Consultants Report on all installations, activities and processes, giving actual sound level measurements of plant, 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.

Therefore, when the City in is receipt of a fit out application, the applicant is required to adhere to the condition requiring an Acoustics Consultants Report to accompany the application.

The following question, submitted by Ms M Macdonald, Mullaloo was taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

Q1 The Mullaloo Beach Village requires approximately 90 car bays off site. Given that the previous building was allowed off site bays of 34, 60 new bays will be need in the area. Can Council state where it intends to site these car bays and how it will they fund them as no cash in lieu was required from the developer?

A1 The Mullaloo Beach Tavern does not require the provision of 90 car bays off-site, or the provision of 60 car bays in the area. Council granted a variation to the provision of on-site car parking in approving the tavern redevelopment, and did not require the provision of any off site bays.

The following questions, submitted by Mr M Sideris, Mullaloo were taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

Q1 Re: Questions asked at the Council Meeting on 27 April 2004 – I sought clarification on a resolution of Council which clearly referred to all dealings between the City and the tavern developer. Can the Chairman advise me if he and other Commissioners were advised of this resolution when signing off on the building licence approval under delegated authority and if not, why not, when the resolution has still not been rescinded?

- A1 Building Licences are issued by the City's Building Surveyor who is the authorised officer under the Local Government Act. There is no requirement for the Building Surveyor to seek the approval of the Commissioners prior to the issue of a Building Licence. Consequently the Commissioners/Council were not advised when the licence was issued.
- Q2 *Given that the building licence approval certificate allowed a reduction to the number of on site parking bays, allowed relocation of the staff and patron bays including those for people with disabilities, can you please advise me as to:*
- (a) *Why this has not been seen as a significant change or departure from the plans as reported in the agenda and approved by Council as part of the development approval?*
- (b) *Why, with all the public and Councillor interest, a further reduction to the number of parking bays on site was not seen as requiring a new development application?*
- A2(a&b) The City and the developer are aware that the Building Licence plans indicate carparking bays less than are shown on the Development Approval. These bays are required to be incorporated into the design of the building in order to comply with the planning approval. The City is awaiting fit out plans that will indicate the location of the bays.
- It should be noted that an applicant would need to conform to both approvals.
- (c) *Why parking bays for people with disabilities have been relegated to the basement of the building, when the expectation and best practice is in providing equitable access for all members of the community with easy and safe path of travel between parking bays and facilities such as shops, restaurants, and taverns thereby ensuring that they are not treated as second class citizens?*
- A2 (c) There are disabled parking bays available in the basement and upper carpark level.
- The disabled car parking bays comply with the requirements of the Building Code of Australia (BCA) 2004 Volume 1, Table D3.5 Carparking Spaces for People with Disabilities. Disabled access is also in accordance with Part D3 Access for People with Disabilities.
- (d) *If advice was sought from the Policy and Project Officer of ACROD as to whether they approved changes and deemed them acceptable?*
- A2 (d) No, advice was not sought (nor was it required) from the Policy and Project Officer of ACROD.

The following questions, submitted by Mr M Caiacob, Mullaloo were taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

Q1 Re: Campus District Structure Plan – In response to my questions received in this agenda, who approved the plot ratios over the allowable in the Campus District?

A1 Any application seeking a plot ratio in excess of what is stipulated within the Joondalup City Centre Development Plan and Manual for the Campus District is required to be presented to and determined by the Director of Planning & Community Development.

Q2 Are the laws administered by the City of Joondalup, administered equally to all?

A2 Yes.

The following question, submitted by Mr N Gannon, Sorrento was taken on notice at the Meeting of Joint Commissioners held on 18 May 2004.

Q1 Re: CSIRO Site in Marmion and to the last paragraph of the answer given to my previous questions as shown on tonight's agenda.

What was the common advice given to all potential purchasers of the site?

A1 The advice provided was with respect to the zoning of the site under the City's District Planning Scheme No 2 and that any future redevelopment of the site requires a rezoning of the site to be approved by both Council and the Western Australian Planning Commission.

The following questions were submitted by Mr T Donatelli, Ocean Reef:

Q1 Traffic congestion, especially during school hours is of extreme concern to my family and me. Why hasn't the Ocean Reef Road extension been approved and commenced to alleviate this problem?

Q2 The extension of Ocean Reef Road between Hodges Drive and Shenton Avenue has been planned and known about for many years. Given that no homes actually enter from Ocean Reef Road, why the delay in constructing it?

A1&2 The Ocean Reef Road extension has been deferred pending community consultation on the matter.

The following questions were submitted by Ms C Mackintosh, Kallaroo:

Q1 Has the City recently paid out a Workers Compensation claim from the former CEO? If so, what was the payout figure paid to the CEO?

A1 Yes. As the parties have signed a confidentiality agreement the City will not release the terms of settlement.

Q2 What were the facts giving rise to the Workers Compensation payout?

A2 See A1 above.

The following questions were submitted by Ms C Mackintosh, Kallaroo:

- *Over the past few months, I have been 'pestering' Commissioner Paterson with questions on a number of items. Several of these remain unanswered, so I would appreciate them being chased up and the answers made public at the next Council meeting.*

I will put the date of the question originally asked, and the outstanding question again:

Q1 (Outstanding - 17/2/04) I refer to letter from Mr Don Carlos (suspended mayor of City Of Joondalup) in Wanneroo Community News dated 10th February 2004, where he admits to (misusing) his mayoral allowance to pay the airfare for Cr Hart to return from a conference, in order to secure her vote at a Special meeting of Council in December 2003.

Will Donald Carlos be required to repay the cost of the airfare to the City of Joondalup if this is a misuse of the allowance? If this is a permitted use of Mayoral allowance under the Local Government Act 1995, will Mr Carlos be required to explain why he did not also pay for the return of Cr Kenworthy and Cr Rowlands who were also at conferences at that time? And also, if this is a permitted use of the Mayoral allowance, why Mr Carlos did not also choose to pay for the return of Cr Mackintosh and Cr Kimber in May 2003, when he (Mayor Carlos) and four other Councillors called a Special meeting of Council at a moment's notice?

The answer received, so therefore outstanding was "The matter will be referred to the Audit Committee for investigation". What is the outcome of that Audit investigation?

A1 The Audit report is still to be finalised.

Q2 (Outstanding) Are there any other recorded occasions where Mr Carlos has used his Mayoral allowance to secure a councillor's vote during his term of office?

The answer received was again: "matter to be referred to Audit investigation". What is the outcome of that Audit investigation?

A2 See A1 above.

Q3 (Outstanding - 9/3/04) Will all the questions submitted in relation to this item (Mayoral Carlos' misuse of mayoral credit card) be made public, once the committee has completed its investigation?

The answer received was "It was not considered appropriate to respond to this question at this point in time. If the Audit Committee has completed its investigation, is it now an appropriate time to respond to this question?"

A3 See A1 above.

Q4 (Outstanding - 16/2/04 and 12/3/04) How much money has the City spent to date on legal advice concerning the CEO issue? The question was taken on notice.

A4 \$228,747.89 has been expended to date.

Q5 (Outstanding - 30/3/04) Is it still the intentions of the Commissioners to agree to the financial requests of Mr Donald Carlos, resident of Ocean Reef? and

(Outstanding) Will you reconfirm that the financial requests are for debts incurred defending a PERSONAL writ upon himself (Mr Carlos) by Mr Denis Smith?

The answer given for both questions was “ the matter is still to be determined”. Has the matter yet been determined?

A5 Reports relating to financial requests from Mr D Carlos are listed for consideration on the agenda for the Council meeting of 8 June 2004.

Q6 In relation to answer given to 18/5/04: that no consideration has been given by Commissioners of requesting a retraction from the media, when misinformation was printed in relation to (suspended) Council's deferment of decision on Ocean Reef Road extension item.

Given Commissioners' confirmation that they were aware of the deferment decision made by Council in relation to the Ocean Reef Road extension, and the false statement made in the press, why are the Commissioners unwilling to print or seek a retraction from the Community News?

A6 Mrs Mackintosh is correct that the former Council made a decision to defer the proposed extension of Ocean Reef Road (C229-11/03, 11 November 2003 refers) and the Commissioners have recognised this by themselves deferring the extension to allow for full community consultation.

The media article refers to the former Council's initial decision to proceed with the road extension (CJ218-09/03, 30 September 2003 refers) which was welcomed by some residents and opposed by others.

Q7 Given the Commissioners' answer that they were unaware of a meeting held with ratepayers and Councillors (re Ocean Reef Road) prior to their suspension, would it not be more professional and ethical to avail themselves of such information, before making false statements to the press?

A7 The answer given was that the Commissioners were unaware of the times and dates of a meeting. They have since canvassed residents' opinions for themselves and are now undertaking full community consultation.

The following questions were submitted by Mrs M Macdonald, Mullaloo:

Q1 Would Commissioners please confirm that the City of Joondalup's Development Plan and Manual is an “Agreed” Structure plan endorsed by the WAPC, as I believe it was a deemed Structure Plan without a statutory component?

A1 Yes, the Joondalup City Centre Development Plan and Manual is an ‘Agreed’ Structure Plan and has been previously endorsed by the WAPC.

Q2 Can a Centre Zone be developed without an Agreed Structure Plan under the DPS2?

A2 No.

Q3 Would Commissioners please confirm the status of the City of Joondalup’s Structure Plan No.1, which covers the CBD, and which was requested by the WAPC?

The above named structure plan was approved by Commissioners to go out for advertising on 9/2/99.

- *It was in A4 format and had a statutory component.*
- *It contained a density map showing the CBD having a density of R60.*
- *It was approved for advertising after the approval of Amendment 832 to the TPS1 on 22/12/98.*
- *It appeared on the City’s website as at 20/6/2000.*
- *On Attachment 5 of a letter dated 16/8/2000 from WAPC to the City of Joondalup regarding the draft DPS2, under the heading of “Additional minor modifications to scheme” at item 13 the following request was made.*

Modify the Residential Density Codes Map by deleting reference to “Structure Plan No.1” for the Joondalup City Centre.

Reason: development of the Joondalup City Centre is currently guided by a “Development Plan and Manual”. Draft Structure Plan No.1 has been prepared by the City to replace the Plan and Manual but this has not been finalised to date.

A3 The Joondalup City Centre Development Plan and Manual (JCCDPM) is referred to as Structure Plan No 1 and was approved in 1995. It was approved under Clause 5.42 of the then City of Wanneroo Town Planning Scheme No 1 (TPS1). Clause 5.42 of TPS1 provides that a Development Plan and Manual shall be prepared by Landcorp and approved by the Council and when approved shall form part of the Scheme.

Clause 9.13 of the City’s current District Planning Scheme No 2 (DPS2) states that structure plans adopted and approved under the previous TPS1 have the same status as if they were adopted and approved under DPS2. The JCCDPM is therefore adopted and approved and its status as an ‘Agreed’ Structure Plan continues under DPS2.

The following questions were submitted by Cr Baker (Suspended), Connolly:

My question is addressed to the Chairman. I refer to the former CEO’s Worker’s Compensation Payout referred to in the local print media.

Q1 Who authorised the payout by the City and why?

A1 The Deed of Settlement was signed by the Acting CEO and Chairman of Commissioners on advice received from the solicitors to settle.

Q2 How much was paid?

Q3 Will the City be holding those persons responsible for the payout, responsible for the payout?

Q4 Will the City be seeking an indemnity from the suspended Councillor responsible and if not, why not?

A2-4 The Deed of Settlement contains a confidentiality clause that prevents disclosure of details of the settlement.

Clarification of response given to Mr Gannon, Sorrento:

Acting Chief Executive Officer referred to the question taken on notice from Mr N Gannon of Sorrento in relation to the CSIRO site, refer page xvii of agenda (page 12 of these Minutes). The answer given indicated that any future redevelopment of the site required a rezoning of the site to be approved by both the Council and WA Planning Commission.

The Acting Chief Executive Officer stated that this response should be expanded to indicate that because the site is currently reserved for Parks and Recreation purposes, it is possible to redevelop that land within that current reserve and therefore technically speaking, that would not require a rezoning.

This explanation is given to avoid a misconception that any development of the site or use of the existing buildings would require rezoning.

The following questions were submitted by Mr Ron Privilege, Edgewater:

To the Chairman of Commissioners.

Q1 I refer to your recent public statement heralding the new era of open, accountable and transparent local government in the City of Joondalup. In view of these statements, why have you refused to:

Q1(a) release the legal advice obtained from Mr Harry Dixon QC regarding the CEO issue?

Q1(b) publish the independent Governance Review report on the City of Joondalup, particularly given that the persons who prepared that report witnessed first hand what was happening at Council meetings and before Council meetings?

Q1(c) reject suspended Mayor Carlos' claim for \$16,000 in legal fees?

Q1(d) confirm that ratepayers can attend at the interviews for the future CEO and ask questions?

Q1(e) allow the public to attend budget strategy sessions and ask questions?

Q1(f) provide details as to who authorised the former CEO's recent workers' compensation payout?

- Q1(g) say what the amount of the payout was?*
- Q1(h) actively sue for the City's wasted legal fees in defending the failed Supreme Court bid by the Mullaloo Progress Association to stop the Mullaloo Tavern?*
- Q1(i) conduct a forensic audit of the former suspended Councillors' expense accounts?*
- Q1(j) enquire into Mayor Carlos' Council funding of a return airfare from Canberra to Perth to enable suspended Cr Hart to attend Council meeting?*
- Q1(k) make available to ratepayers copies of instructions and briefing letters to the City's lawyers regarding the CEO issue?*
- Q1(l) answer questions regarding the party political independence or otherwise of the Commissioners and the City's new lawyers?*
- Q1(m) take any action against suspended Mayor Carlos following the resounding criticism of him both in the Governance Review inquiry report and the submission made to the Upper House Inquiry by Mr Neil Douglas of Minter Ellison Lawyers?*
- Q2 Can you please provide ratepayers with a brief report regarding the nature and extent of your consultation with the community prior to authorising your recent workers' compensation payout to the City's former CEO?*
- Q3 Why do you refuse to allow any suspended Councillors to ask questions regarding the party political affiliations of Commissioners and the City's new lawyer, yet make no comment in response when the Minister himself makes the same or similar comments concerning suspended Councillors?*
- Q4 I refer to the findings of the City's one and only independent inquiry into the Governance of the City of Joondalup, extracts of which were recently published in the Wanneroo Times newspaper. What action do you propose to take in respect of the damning findings against suspended Mayor Carlos and his supporters, particularly in relation to those findings which indicate that this group of people breached a recommendation of the Wanneroo Inc Royal Commission?*
- A1-4 Due to their late receipt, these questions will be taken on notice to allow responses to be prepared.

The following questions were submitted by Ms M Moon, Greenwood:

These questions are put forward on the understanding that these are the statutory procedure for Structure Plans and that no subdivision or development should be commenced or carried out in a Centre Zone until a structure Plan has been PREPARED and ADOPTED under the provisions of Part 9 of the Scheme.

I do not want the answer this has been signed off recently and went for legal opinion, I would like the answers to the questions which are the statutory preparation and adoption procedures that have occurred or not occurred.

Q1(a) Was the JCCDPM adopted and approved as an Agreed Structure Plan under Town Planning Scheme 1?

A1(a) Yes. However the provisions of TPS1 did not contain the wording ‘Agreed’.

Q1(b) On what date and Agenda Reference no. was the JCCDPM Structure Plan submitted to Council?

A1(b) At the Special Meeting of Council in May 1990 (Report E80503 refers).

Q1(c) On what date and Agenda reference no. did Council determine that the JCCDPM Structure Plan was satisfactory and send a copy to the commission?

A1(c) At the meeting of Council on 22 August 1990 (Report E20803 refers). The document was approved in accordance with clause 5.42 of TPS1 and advised the Joondalup Development Corporation that the document is required to be reviewed to accommodate a number of investigations. These conditions were satisfied by 1995 when Council adopted the reviewed document at its meeting on 20 December 1995 (Report TP393-12/95 refers).

Q1(d) On what date and in which medium did Council advertise the JCCDPM Structure Plan under the provisions of the Town Planning Scheme No.1?

A1(d) Under TPS1 at the time, there were no provisions that required the structure plan to be advertised for public comment. These provisions became part of TPS1 on 29 April 1997 (Amendment 731 refers).

*Q1(e) On what date did the WAPC adopt the JCCDPM Structure Plan **and** on what date did it convey its decision to Council?*

A1(e) At the time the JCCDPM was prepared there were no provisions/processes that required the WAPC to approve of the structure plan.

Q1(f) On what date did Council adopt, sign and seal the JCCDPM Structure Plan in the form illustrated in Town Planning Scheme No. 1?

A1(f) 22 August 1990 (see response to Question 1(c)).

Q1(g) On what date and what agenda reference did the JCCDPM receive the status of an AGREED Structure Plan before the revocation of Town Planning Scheme No. 1?

A1(g) The JCCDPM was deemed to be an Agreed Structure Plan on 29 April 1997 (Gazettal date of Amendment 731).

When DPS2 was gazetted on 28 November 2000 all current structure plans were automatically adopted as ‘Agreed’ structure plans (Section 9.13 – clause 9.13.1 of DPS2 refers).

Q2(a) Was the JCCDPM a draft structure plan prepared under the provisions of Town Planning Scheme No 1 which had not completed the procedures required to give it the status of an agreed structure plan under Town Planning Scheme No. 1?

A2(a) The JCCDPM was adopted through provision 5.42 of TPS1 and became and was deemed to be an agreed structure plan on 29 April 1997 as a result of Amendment 731 to TPS1.

Q2(b) Were the procedures necessary for the JCCDPM to have effect as an Agreed Structure Plan completed under the current DPS2?

A2(b) Refer to the answer to Question 1(g).

Q2(c) On what date and Agenda Reference no. was the JCCDPM Structure Plan submitted to Council?

A2(c) The answer to Question 1(b) refers.

Q2(d) On what date and Agenda reference no. did Council determine that the JCCDPM Structure Plan was satisfactory and send a copy to the commission?

A2(d) The answer to Question 1(c) refers.

Q2(e) On what date and in which medium did Council advertise the JCCDPM Structure Plan under the provisions of DPS2 Cl.9.5?

A2(e) The JCCDPM was adopted under TPS1 and was automatically adopted under DPS2. Refer to the answer to Question 1(g).

*Q2(f) On what date did the WAPC adopt the JCCDPM Structure Plan **and** on what date did it convey its decision to Council?*

A2(f) The answer to Question 1(e) refers.

Q2(g) On what date did council adopt, sign and seal the JCCDPM Structure Plan in the form illustrated in Schedule 8 of the DPS2?

A2(g) It is not required. Answer to Question 1(g) refers.

Q2(h) On what date and what agenda reference did the JCCDPM receive the status of an AGREED Structure Plan with all the procedures required for the preparation and adoption deemed to have been carried out under this scheme and completed under this scheme the DPS2?

A2(h) The answer to Question 2(g) refers.

Q2(i) On what date did the council provide a copy of the agreed Structure Plan JCCDPM to the Commission?

A2(i) This was not required.

Q2(j) *Were there any change in title of the JCCDPM Structure Plan or in the form of the JCCDPM Structure Plan?*

A2(j) No change to the title, however its form has evolved over time.

Q3(a) *Was a structure plan for the JCCDPM area initiated and completed under the DPS2 and on what date did it receive approval of the Commission?*

A3(a) No, it is not required to do so.

Q3(b) *What are the Structure Plan numbers and Titles for Agreed Structure Plans in this JCCDPM area initiated and completed under the DPS2 and the dates of adoption and signing and sealing of the structure plans and the dates a copy were provided to the commission?*

A3(b) The JCCDPM has been modified from time to time since the gazettal of DPS2. An example is the adopting of the Campus District Development Guidelines certified by the WAPC on 15 July 2002.

The following questions were submitted by Ms Sue Hart, Greenwood:

Q1 *What was the total cost, to ratepayers, for the Governance Review recently undertaken by the City?*

A1 \$21,482.84.

▪ *RE: Budget Item 1.1110.4201.0001.9999-CEO'S Consultancy Account.*

Q2 *What is the total \$ figure in this account now?*

A2 An amount of \$117,113.74 has been expended in this account as at 31 May 2004.

Q3 *What was the \$ allocations in the 2001-2002, 2002-2003,2003-2004 Budgets?*

A3 The amounts set aside in the adopted budgets were:-

2001-2002	\$60,000
2002-2003	\$100,000
2003-2004	\$100,000

Q4 *What was the balance in this account 1st July 2001,2002,2003?*

A4 See A3 above.

Q5 *Apart from the recent Governance Review, what other withdrawals/non consultancy accounts/payments have been made from this account?*

A5 Amounts were paid to the following organisations from this account:-

Back RJ	2,500
BHW Management Consultant	13,594
City of Stirling	458
City of Swan	3,916
Clifton Coney Stevens	20,568
Connell Mott MacDonald	5,500
Deloitte Touche Tohmatsu	52,311.00
Equilibrist Pty Ltd	13,628
Garry Hunt Consulting Group	3,258
JFT International Pty Ltd	750
Lee Patrick	630
	\$117,113

▪ *RE: Dialogue with the City*

Q6 *When was the acting CEO appointed to the "Making Perth the City We Want" Local Government Liaison Team?*

A6 Mr Clayton Higham was asked to join the Local Government Liaison Team in late November 2003.

Q7 *Has any of the Staff at the City, taken the initiative and informed the Minister, Western Australian Planning Commission or the appropriate Working Groups, the response from the Community when "Precinct Planning", "Precinct Action Planning" or whatever Staff choose to call it now, was proposed for the South Ward?*

A7 Yes, both the Minister and the WAPC were advised on this issue.

Q8 *How many workshops has the City attended on behalf of the community?*

A8 The City staff have not attended any workshops on behalf of the community. Staff were invited to attended workshops due to planning experiences.

Q9 *Does the Staff recognise 'Dialogue with the City', as 'Precinct Planning' under another heading?*

A9 The question has not been evaluated by staff.

Q10 *If no, please explain why?*

A10 See answer to A9.

Q11 *The South Ward Ratepayers and Electors Association received an invitation to workshop 'Community north of the river'. What other ratepayer/community groups/stakeholders in the City were contacted and extended the same invitation? If any, who?*

A11 The forums have been organised by the State Government, however the City has advised all ratepayer groups of the Community Workshop set up by the State Government agencies.

Q12 The 'Making Perth the City We Want' booklet was dated April 2004. The letter accompanying the booklet (to the SWREA) was dated 13 May 2004.

Why did the SWREA not receive the booklet/ invitation well before 19/05/2004?

A12 This question will need to be referred to the Department of Planning and Infrastructure, who was responsible for sending the booklets and invitations.

Q13 When was other community/ratepayer groups/stakeholders, booklet and letter, sent from the City?

A13 Please see A12.

Q14 Has the City applied for a share of the \$1.5million, State Governments grant, that encourages Local Governments to work with communities on planning?

A14 The City has just recently received the application forms for the Dialogue in the City Communities program. It will be investigated by the Strategic and Sustainable Business Unit.

▪ *RE: The lifting of Structure Plan Ellersdale Road Warwick.*

Q15 Will Commissioners please record, that information in the reports to Commissioners, and answers to Commissioners and ratepayers, re the lifting of the Structure plan Ellersdale Road Warwick, were in fact incorrect, and the area is not fully developed, and the vacant block in Ellersdale Road does not and has not had a building permit issued?

A15 A record of this has been made within the response provided to Ms Hart to her earlier questions pertaining to this matter and tabled within the Briefing agenda dated 1 June 2004.

Q16 Would this correction have had an impact on Commissioners voting on the issue, as structure plans are usually lifted when all development is completed?

A16 Despite the error, any future development application upon the vacant lot, (including any redevelopment/extension proposals for existing lots) would need to comply with the Residential Design Codes of Western Australia 2002 and would also be assessed having regard to what has happened in the area, the planning history of the area and the built form of the remainder of the Structure Plan area.

Q17 What was the purpose of lifting this structure plan?

A17 The purpose was outlined within the officer's report on 27/4/04 (CJ090-04/04 refers).

Q18 Is the lifting of this Structure Plan any way related to the Commercial parcels of land opposite in Ellersdale Road, including the old Bank West site and the Commercial area next to Centrelink on the eastern side?

A18 No.

Q19 Should this item come back before Commissioners with the correct information presented?

A19 This is not considered necessary.

- *Delegated Authority - DA 03/0594, DA 03/0731, DA 03/0773*

Q20 What is the area of the blocks in these three delegated authority items?

A20 DA03/094 1430m²
DA03/0731 946m²
DA03/0773 500m²

Q21 What discretion was sought?

A21 With regard to DA03/0594 discretion was exercised in relation to height and setback of retaining walls. There was no discretion exercised in regard to DA03/0731 and DA03/0773.

The following questions were submitted by Ms M Moon, Greenwood:

These questions have previously been asked of the Acting CEO and I believe one of the reasons legal opinion and recent signing off mentioned at the briefing session on the JCCDPM being an Agreed Structure Plan.

Could I please now have the attached questions put before the Meeting of Council on Tuesday the 8th of June 2004.

To the Acting CEO 15-May-04

RE: Joondalup Development Plan and Manual

Q1 Could I please have a copy of the Agreed Structure Plan-Joondalup Development Plan and Manual as approved by the WAPC and which received the seal of approval by the City of Wanneroo in 1995. In the format presented to and approved by the WAPC.

(The wording that it is the Joondalup Development Plan and Manual was approved as a agreed structure plan in 1995 comes from the Campus District Structure Plan.)

A1 The City is able to make a copy of the Joondalup City Centre Development Plan and Manual (JCCDPM) available at a cost of approximately \$155, however this figure is a guide only and the true cost would depend upon the total cost incurred by the City to replicate the document. Unfortunately, the City has no extra copies of the document available for public purchase however, the public are welcome to inspect the document at the City's main administration building. Landcorp may have spare copies of the JCCDPM available for purchase. In this regard, it is suggested that Ms Moon liaise with Landcorp directly. The City is also seeking to place the document upon its website in the near future.

Q2 Could I please have a copy of the statutory requirements of this Agreed Structure Plan and any amendments approved by the WAPC to this date, 2004.

A2 The Joondalup City Centre Development Plan and Manual (JCCDPM) was approved in 1995. It was approved under Clause 5.42 of the then City of Wanneroo Town Planning Scheme No.1 (TPS1). Clause 5.42 of TPS1 provides that a Development Plan and Manual shall be prepared by Landcorp and approved by the Council and when approved shall form part of the Scheme. Under TPS1, there were no clauses/statutory requirements relating to Structure Plans until 1997 when such provisions were introduced into TPS1 by Amendment No. 731.

In response to the question regarding past amendments to the JCCDPM, all such amendments were considered by Council and as such, these reports and minutes can be searched and obtained via the City's website.

Q3 The Density Code Map indicates the residential code for this area is as per Structure Plan can I have included in this request any maps that were part of the proposed and subsequent approval of the Structure Plan referred to on the Statutory Density Code Map.

A3 Refer to response to Q1 above. A complete version of the JCCDPM, including all maps, can be provided at cost.

Q4 Included could I please be given a copy of the report and approval to have the density code map amended to as per structure plan?

A4 The Council report that dealt with this matter was presented to Council at its meeting on 20 December 1995 (TP393-12/05 refers). The minutes of this meeting can be obtained from the City's website.

Q5(i) Could I please have a copy of the certification of Agreed Structure Plan by WAPC for the Joondalup Development Plan and Manual.

A5(i) Refer answer to Q2 above. The JCCDPM was not approved under the City's current District Planning Scheme No.2. The JCCDPM was approved prior to the former City of Wanneroo Town Planning Scheme No.1 being amended via amendment 731 that introduced certification provisions relating to structure plans in 1997. As such, there is no 'certification' component within the JCCDPM, as there was no provision within TPS1 at that time that required a Structure Plan to be certified.

Q5(ii) Could I please have the date the seal of the municipality was affixed for the Agreed Structure Plan Joondalup Development Plan and Manual?

A5(ii) Refer answer to Q5 above.

Q6 When a structure Plan indicates a base code of R60 is the residential code restricted to R60.

A6 Yes. Any development for residential purposes is generally required to comply with the R Code applicable to the land unless the structure plan states otherwise.

Q7 If no, how high can the R-Code become without approval?

A7 Refer answer to Q6.

Q8 For a code higher than R60 would an amendment or variation require approval?

A8 Any proposal to increase residential density coding of land in WA requires a scheme amendment (rezoning) application to be approved by both Council and the WAPC.

The following questions were submitted by Ms M Moon, Greenwood:

Re: Joondalup Structure Plan – CJ33-02/99

SUMMARY

The Joondalup City Centre Development Plan and Manual were approved and adopted by the City of Wanneroo in August 1990. On 16 October 1996 the Council of the former City of Wanneroo (the former Council) deemed a revised document to be an Agreed Structure Plan.

The Western Australian Planning Commission has asked that it now be revised and formally endorsed as a Structure Plan under Part 10 of the City of Joondalup Town Planning Scheme No 1.

In the process, the Structure Plan has been rearranged in a standard format to eliminate repetition of provisions and relate maps to lot boundaries. Car parking standards are also included.

Approval is recommended for the revised document to be advertised as the Joondalup Structure Plan.

Clause 5.42 (b) of the Scheme states “The Joondalup City Centre Development Plan and the Joondalup City Centre Development Manual adopted by the former Council on 20 December 1995 shall be deemed to be an Agreed Structure Plan and may be changed, subject to such changes being approved under the provisions of Part 10 of the Scheme.”

DETAILS

The Western Australian Planning Commission has recently questioned the status of the Joondalup City Centre Development Plan and Manual and now that responsibility for its preparation lies solely with the City, the formal preparation of a revised document is seen as appropriate.

*The Joondalup City Centre Structure Plan (Attachment 2) contains an introduction as required by Part 10 of the Scheme; it eliminates repetition of provisions for each district and has been rearranged in a standard Structure Plan format. The maps are now related to lot boundaries and consolidated, **CAR PARKING STANDARDS ARE INCLUDED** and the proposed A4 black and white format will allow more convenient access to the information.*

The draft Structure Plan has been passed to LandCorp, the Ministry for Planning and Council officers and comments received have been acted upon where appropriate.

**CITY OF JOONDALUP - MINUTES OF MEETING OF JOINT COMMISSIONERS - 09.02.99
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MOVED Cmr Morgan, SECONDED Cmr Buckley that the Joint Commissioners, pursuant to Clause 10 of the City of Joondalup Town Planning Scheme No 1, ADOPT the modified Joondalup City Centre Structure Plan as satisfactory and make it available for public comment.

*The Motion was Put and **CARRIED***

- Q1 When was this resolution of Council acted on?*
- Q2 What were the dates of advertising and in what medium?*
- Q3 When did the closure of advertising report come before council/commissioners for determination?*
- Q4 What was the resolution of Council/Commissioners was this Structure Plan progressed?*
- Q5 Could I please be issued with a copy of the correspondence from the WAPC referred to in the interest of orderly and proper planning?*
- Q6 Could I please be issued with a copy of the attachments of this report in the interest of proper and orderly planning?*
- Q7 There is evidence that in 2000 there was a black and white copy of the City of Joondalup Structure Plan on the Joondalup site could I please have a copy?*
- Q8 On 16 October 1996 the Council of the former City of Wanneroo (the former Council) deemed a revised document to be an Agreed Structure Plan could I have a copy of the resolution of Council to this effect as it is not available on the web and there is no record of a meeting on that date?*
- Q9 Clause 5.42 (b) of Town Planning Scheme 1. Could I please be informed of the date and reference no. this amendment to Town Planning Scheme 1 was made?*
- A1-9 Due to their late receipt, these questions will be taken on notice to allow responses to be prepared.

The following questions were submitted by Ms C Mackintosh, Kallaroo:

- Q1 Given Mayor Carlos' demand to Council of Commissioners, to receive full mayoral allowance back-pay amounting to \$16,000+, and given that Mayor Carlos' choice to receive 25% of Mayoral salary commencing May 2003 was agreed by resolution of full Council, is it not in order to expect that the original motion be rescinded by Council (Commissioners) and a new motion moved?*

- A1 A search of Council minutes has been unable to locate any resolution restricting Mayor Carlos to 25% of the Mayoral allowance.
- Q2 *Mayor Carlos stated in his electoral material that “if elected he would claim only 25% of his Mayor allowance.” This has now proved to be false, therefore misrepresentation in printed electoral material. Will this attempt to deceive be reported to the L.G Electoral Commission for investigation?*
- A2 It is considered that this matter should be referred directly to the WA Electoral Commission by Cr C Mackintosh (suspended).
- Q3 *The Writ taken out by Mr Denis Smith, (FORMER) CEO, was upon Mr Donald Carlos (not Mayor Carlos) (as confirmed by yourself in response to a previous question). Why therefore, are the Commissioners considering funding Mr Carlos with ratepayers funds, to help reimburse Mr Carlos for fees incurred in this PERSONAL ISSUE?*
- A3 The options available to the Joint Commissioners are detailed in two reports listed for consideration at this evening’s meeting.
- Q4 *Under Policy 2.2.8 – Legal representation for present and former elected members and staff of the City; will (suspended) elected members, former elected members and staff be entitled to legal representation, full costs to be met by the City, during the forthcoming Royal Commission into the City of Joondalup?*
- A4 Policy 2.2.8 is currently being reviewed and will be the subject of a further report to the Joint Commissioners for determination.

Mr M Caiacob, Mullaloo:

Re: *Mullaloo Beach Tavern*

- Q1 *The City advised me that the laws applied equally to all, the Code of Conduct requires we treat people with rules that apply equally to all, we uphold the laws of the Council of the City of Joondalup and we comply with the State and Federal legislation. Officers’ comments and I quote: “Reluctance to issue a building licence that is not in conformity with the development application.” The relevant DPS2 clauses such as 6.10, 8.8 and 8.10 and to the extent of the changes previously viewed by the Commissioners, would the Commissioners consider requiring a new development application for the development currently being constructed on site that does not have a valid planning approval as required by the law of the DPS2?*
- A1 The question, although not in exact wording, has been put to Council at a recent session with representatives of the Mullaloo Progress Association, and the City will be answering that question in the near future. This question will be taken on notice.
- Q2 *The Commissioners have viewed an illustration of the development as applied for in 2002, the Commissioners have also viewed an illustration of a development currently being constructed in 2004. As these are significant changes from the planning*

approval granted, will the Commissioners revoke the now redundant development approval and the building licence due to the street scape not conforming to the information provided to Council and the public, used as a basis of petition support, used as officers' recommendation justifications for main street principles and set back, height, bulk and scale justifications, plans submitted of elevations and safety concerns for footpath pedestrians surrounding the time of Council's approval?

A2 This question will be taken on notice.

Mr K Zakrevsky, Mullaloo:

Q1 Re: Mullaloo Beach Village Mixed Use Development – The plan for the current Building Licence issued was for a development with an NLA of 511 square metres which is in excess of that permitted by law and fails to satisfy the Council's Development Approval. Will the Commissioners uphold the laws of this Council and comply with relevant State and Federal legislation as required by the Code of Conduct?

A1 This question will be taken on notice.

Q2 With reference to my question of 18 May 2004, it was stated that the patronage figures I quoted for the old building were not correct. Officers' stated: "More than 175 and more than 350 persons were permitted." The answer in the Agenda confirms my figures as correct but more importantly the question relating to the potential number of people that will be permissible in the building on this site of 900 persons, if all health provisions are met, has not been answered. Will Council confirm a figure of approximately 900 persons being able to occupy this building if health provisions are met?

A2 It is not possible at this stage to calculate those numbers until the City sees the fit out for the new tavern. This question will be taken on notice.

Ms M Macdonald, Mullaloo:

Q1 Re: Building Approval given to the Mullaloo Beach Village on 23 December 2003 – In answer to a question on the Agenda it is stated: "That an acoustic report will be provided at the fit out stage to meet condition 6 of the Health requirements."

Are Commissioners aware that:

- (a) *an acoustic report for Herring Storer which accompanied the original application states: "It is suggested that the building fabric e.g., type of walls, location and size of windows, requirements for extensions of masonry walls etc may need to be considered and that having living areas directly above bar areas is a demanding requirement which will require construction considerably more than a concrete slab and ceiling"?*

- (b) *this statement by the applicant's technical specialist confirms that an appropriate acoustic report (condition j) and a noise management plan (condition k) are construction engineering issues and not building health issues and that the absence of both reports is a breach of the development approval?*

Q2 I refer to the same building approval – At the last Council meeting in answer to a question from Mr Luck a statement was made that the change from dual ramps between levels in the multi-storey car park to a single ramp with traffic lights did not need a new development application because the change was internal to the building and would not affect the performance of the building.

Will Commissioners investigate and confirm that this change which will increase traffic noise and exhaust pollution and will have no adverse effects on the amenity of the local community and in particular the surrounding properties and does not need a new development application, as this is clearly a departure from the dual ramp system as approved?

A1-2 These questions will be taken on notice.

Mrs M Zakrevsky, Mullaloo:

Q1 Re: Mullaloo Beach Village Mixed Use Development – The restaurant as approved on 13 August 2002 had a retail NLA of 180 square metres and the restaurant as approved for construction on 23 December 2003 has a retail NLA of 206 square metres. Can you please advise why the increase in NLA and the resulting increase in car bays required under DPS2 did not require consideration by Council and a new development application?

Q2 Re: Mullaloo Beach Village Mixed Use Development – In response to a question at last Council meeting on 18 May 2004, page xiv, City of Joondalup Agenda 8 June 2004 I was advised that Rennet appealed to the Town Planning Appeals Tribunal and that an outcome of a mediation process with the City “resulted in consent orders being issued by the Town Planning Appeals Tribunal”:

- (a) *Are the Commissioners aware that the Town Planning Appeals Tribunal stated on 7 October 2003 that the modifications to the development were by private negotiation and outside the Town Planning Appeals Tribunal mediation process?*
- (b) *Are the Commissioners aware that the new 2002 R Codes were not considered in the deliberations?*

A1-2 These questions will be taken on notice.

Mr J Varley, Iluka:

Mr Varley spoke in relation to a strata title issue he had previously raised with the City. As no question was being asked, the Chairman requested Mr Varley to resume his seat. Mr Varley declined this request.

ADJOURNMENT OF MEETING

In accordance with Clause 4.7 of the City's Standing Orders Local Law, the Chairman ADJOURNED the meeting for a period of ten (10) minutes, the time being 1915 hrs.

RESUMPTION OF MEETING

The Meeting **RESUMED** at 1925 hrs.

Chairman Paterson drew the meeting's attention to the rules of Public Question Time in that public question time is not to be used by a member of the public to make a statement or express a personal opinion.

Mr M Sideris, President of Mullaloo Progress Association:

Q1 Re: Mullaloo Beach Tavern – In response given to a previous question referred to in tonight's agenda Page XVI where and I quote: "The City and the developer are aware that the Building Licence plans indicate carparking bays less than are shown on the Development Approval." This shortfall in car bays represents a 'cash in lieu' value of approximately \$200,000 bringing the total cash in lieu value foregone to approximately \$1 million when calculated in accordance with the City of Joondalup policy 3.1.12 and at a conservative land value of \$500,000 for a prime beachfront lot.

Can the Commissioners please advise why this was not brought to Commissioners for consideration and deliberation, bearing in mind that in Report CJ084-04/04 Lot 708 Joondalup, 13 bays and CJ127-06/04 Mixed Use Joondalup, 12 bays, were all submitted for consideration and deliberation?

Q2 Having now put before the Commissioners irrefutable evidence that the development known as Mullaloo Beach Village exceeds the allowable retail Net Lettable Area for this commercial site, failed to provide the required number of specified carparking bays, failed to satisfy the required size (width) of car parking bays, failed to provide the specified noise management report, mislead and failed to provide a suitable mechanical services report and failed to provide a FESA report for the current building, will the Commissioners:

- (a) Immediately initiate an independent investigation into the breaches as identified?*
- (b) Immediately seek independent legal advice as to what course of action is available to Council including the issue of an injunction to cease construction?*
- (c) Immediately withdraw the Section 40 Certificate issued to the Liquor Licensing Department as the building licence plans do not meet the requirements of the DPS2?*

A1&2 These questions will be taken on notice.

Mr P Robinson, Kingsley:

Re: Correspondence submitted by me and replies from Council – Reference: 01184 415785 dated 24 May 2004 and Reference: 0114 415785 dated 26 May 2004 in reference to antisocial behaviour in Moolanda Park, Kingsley.

Q1 I believe the wider community concerned would like some discussion on the issue. It is my opinion that one speed hump is not sufficient. There was a speed hump being installed but it was in the wrong place and Council has stopped installation until further investigation. There are other ways (see letter referenced above) and one is that a site meeting be arranged to discuss this issue with the input of local residents. Can this meeting take place as soon as possible with the residents listed on my petition? Can you please notify residents when the meeting is to take place?

A1 Council has had discussions with Mr Robinson and has indicated that a local working group will be formed to look at the issues and come up with some options to put to Council.

Q2 Re: Moolanda Boulevard Speeding – Regarding my correspondence and Council letters reference above. The Moolanda Boulevard calming and beautification programme – Can all residents of Moolanda Boulevard be kept fully up to date with the discussion and planning stages together with the anticipated commencement date of the works? Can the alternatives I have submitted to Council be given serious consideration?

A2 The treatment for Moolanda Boulevard is listed in the five-year Capital Works Programme and will be given budgetary consideration. When the works proceed, letter drops will be undertaken with local residents in Moolanda Boulevard during the design stage for comment and feedback and there will be another letter drop prior to construction.

Ms S Hart, Greenwood:

Q1 Re: JCCDPM – Can I please have a detailed step by step explanation of the process that this has gone through including dates and references to the signing off on the agreed Structure Plan?

A1 This question will be taken on notice.

Q2 Re: City North – What representations were made by the City of Joondalup to the Western Australian Planning Committee to allow a subdivision that conflicts with an agreed Structure Plan?

A2 Council was acting under Delegated Authority in dealing with the subdivision. Council presented a case to the Western Australian Planning Committee, which supported the subdivision. Council deemed that the subdivision was generally consistent with the structure plan.

Mr S Magyar, Heathridge:

Q1 Re: Special Meeting of Council held on 2 June 2004 – Why was no mention made of this meeting for the Principal Activities Plan at the Briefing Session and could I have some reassurance that when a meeting is called you let the public know?

A1 Response by Cmr Paterson: The Principal Activities Plan needed to be passed before the end of the week in question, but it is fair comment that an announcement of the meeting could have been made at the Briefing Session.

Q2 Re: Late Item No. 1 – Inquiry into the City of Joondalup, recommendation from officers not to disclose documents that were exchanged by the City and its lawyers. Can I have an explanation as to how hiding the truth can be beneficial to the City of Joondalup?

A2 There is no intention to hide the truth; Council needs to take each piece of advice on its merits and to take that under consideration.

Response by Cmr Paterson: The inquiry is starting to take place and it should not be out to the general public at this stage.

APOLOGIES AND LEAVE OF ABSENCE**C35-06/04 REQUEST FOR LEAVE OF ABSENCE - CMR A FOX - [02154]**

Cmr A Fox has requested Leave of Absence from Council duties for the period 29 June 2004 to 7 July 2004 inclusive.

MOVED Cmr Anderson, SECONDED Cmr Smith that Council APPROVES the request from Cmr A Fox for Leave of Absence from Council duties for the period 29 June 2004 to 7 July 2004 inclusive.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

DECLARATIONS OF FINANCIAL INTEREST/INTEREST THAT MAY AFFECT IMPARTIALITY

Nil.

CONFIRMATION OF MINUTES**C36-06/04 MINUTES OF MEETING OF JOINT COMMISSIONERS, 18 MAY 2004**

MOVED Cmr Anderson, SECONDED Cmr Fox that the Minutes of the Meeting of Joint Commissioners held on 18 May 2004 be confirmed as a true and correct record.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

C37-06/04

MINUTES OF SPECIAL COUNCIL MEETING , 2 JUNE 2004

MOVED Cmr Fox, SECONDED Cmr Smith that the Minutes of the Special Council Meeting held on 2 June 2004 be confirmed as a true and correct record.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

ANNOUNCEMENTS BY THE CHAIRMAN WITHOUT DISCUSSION

PRINCIPAL ACTIVITIES PLAN

In the spirit of community consultation, the City is seeking public comment on its Draft Principal Activities Plan for the next five years.

This Plan lists the major projects the City will embark upon to serve the community.

The Principal Activities Plan 2004/05 – 2008/09 is available for the next 42 days in order to enable members of the community to make submissions in relation to the activities proposed within the document and I would encourage the community to do so.

It will be available for public inspection and comment until 16 July 2004 and can be viewed at the City's website, all the City's libraries and Customer Service Centres.

Submissions must be lodged in writing by 16 July 2004.

MALAYSIAN VISIT

The City of Joondalup has hosted a top-level delegation from the Malaysian Government, in Australia to study sports facilities and programs for youth.

The Malaysian delegation was headed by Minister for Youth and Sports, Miss Azalina Dato Othman Said, her country's first female Minister.

They were most interested in Joondalup Arena to which the City contributed \$3 million and the programs the City runs for our youth.

OCEAN REEF TRAFFIC IMPACT STUDY

A report on the Traffic Impact Study for the Ocean Reef/Iluka area will be presented at the next Briefing Session scheduled for meeting 22 June 2004.

Following this, the Commissioners will give due consideration to the findings in the report at the meeting of the Joint Commissioners scheduled for 29 June 2004.

PETITIONS**C38-06/04 PETITIONS SUBMITTED TO THE COUNCIL MEETING – 8 JUNE 2004****1 PETITION IN RELATION TO ANTI-SOCIAL BEHAVIOUR IN MOOLANDA PARK AND SPEEDING TRAFFIC, MOOLANDA BOULEVARD, KINGSLEY – [01184] [09092]**

A 14-signature petition has been received from Kingsley residents in relation to anti-social behaviour in Moolanda Park (bounded by Moolanda Boulevard and Harness Street, Kingsley and speeding traffic on Moolanda Boulevard, Kingsley.

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

2 PETITION IN RELATION TO SPEEDING TRAFFIC AND ANTI-SOCIAL BEHAVIOUR – EDDYSTONE AVENUE, BELDON – [01308]

A 10-signature petition has been received from residents of Eddystone Avenue, Beldon seeking the assistance of Council in attempting to address the problems of speeding vehicles and anti-social behaviour of drivers along the dual carriageway section of Eddystone Avenue, Beldon.

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

3 PETITION CONCERNING RATING CLASSIFICATION IN RELATION TO SORRENTO BOWLING CLUB (INC) – [07125 03078]

An 85-signature petition has been received from members of the Sorrento Bowling Club concerning the rating classification applied to the club.

The petitioners request that consideration be given to implementing the following:

“There are only three rating categories in the City of Joondalup, residential, commercial and industrial. The Sorrento Bowling Club does not fit into any of these categories, however, we are rated as “residential improved”. We therefore consider that the City of Joondalup should create another rating category, namely “Recreational” or “Sporting” to be applied to sporting organisations using leased Crown land and that the rate applied should be half that applied to residential improved properties.”

This petition will be referred to Corporate Services and Resource Management for action.

It was resolved that the petitions requesting:

- 1 in relation to anti-social behaviour in Moolanda Park (bounded by Moolanda Boulevard and Harness Street, Kingsley and speeding traffic on Moolanda Boulevard, Kingsley;**

- 2 seeking the assistance of Council in attempting to address the problems of speeding vehicles and anti-social behaviour of drivers along the dual carriageway section of Eddystone Avenue, Beldon;**
- 3 from members of the Sorrento Bowling Club concerning the rating classification applied to the club;**

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

CJ115 - 06/04 REVIEW OF THE CORPORATE DELEGATED AUTHORITY MANUAL - [07032]

WARD - All

PURPOSE

To review and make the necessary changes to the City's Delegated Authority Manual.

EXECUTIVE SUMMARY

The Local Government Act 1995 requires that, at least once each financial year the delegator reviews its delegations. The Council last reviewed its delegations on 29 April 2003 to meet the legislative requirements (Item CJ078-04/03 refers)

This report details the suggested changes to the Delegated Authority Manual, which require consideration by Council.

BACKGROUND

The Local Government Act 1995 requires the delegator (in most cases either the Local Government or the Chief Executive Officer) to review each of its delegations at least once each financial year. The review of the Delegated Authority Manual for the last financial year was submitted to the Council meeting held on 29 April 2003 (Item CJ078-04/03 refers).

DETAILS

A review has been undertaken of the City's Delegated Authority Manual. An explanation of the proposed changes is provided on Attachment 1 hereto. Attachment 2 to this Report gives the relevant pages of the Delegated Authority Manual, with revisions marked.

The Local Government Act 1995 (the Act) assigns certain powers and duties directly to the Chief Executive Officer. Whilst powers and duties assigned directly to the Chief Executive Officer are included in the manual for ease of reference, the Council's approval is not sought in relation to these delegations. The Chief Executive Officer has undertaken a review of his powers and duties, which are as follows:

Entry in an emergency	Page 16
Annual Review of Employees' performances	Page 31
Powers and Functions by the Chief Executive Officer	Pages 33-36
Minister may allow members disclosing interest to participate etc, in meetings	Page 44
Register of Financial interest	Page 45
Representing local government in Court	Page 67
Evidence in legal proceedings – definitions	Page 68
Receiving and opening tenders	Page 80
Tender register	Page 81
Tenderers to be notified of outcome	Page 83
Persons expressing an interest to be notified of outcome	Page 86
Financial Management duties of the Chief Executive Officer	Pages 87-88
Payment from the municipal fund and trust fund	Page 90
Occupational Safety and Health	Page 93
Redundancy and severance pay	Page 94
Selective voluntary severance	Page 95
Staff uniforms	Page 96
Payment of fees, allowances and expenses and the provision of facilities to the Mayor, Deputy Mayor and Councillors	Pages 97-98
Legal representation for present and former elected members and staff of the City of Joondalup	Pages 99-100
Elected Members' advertising	Page 101
Nomenclature – public facilities	Page 104
Uniform fencing – subdivision	Pages 105-106
Retaining Walls	Page 107
Authority to waive fees	Page 109
Emergency closure of public libraries	Page 111
Council owned stock – public libraries	Page 112
Assessment – Community Funding	Page 113
Acquisition of the City's Art Collection	Page 115
Procurement of Council buildings	Page 116
Access to information for people with disabilities	Page 117
Domestic Waste Collection and Recycling Service	Page 118
Verge treatments – protective devices	Page 119
Sand drift control	Page 120
Subsidy – vehicle crossing	Page 121
Roadworks – opening up	Page 122
Acknowledgement of Service – elected members	Page 123
Freedom of information	Page 126
Media contact	Page 129
Council meetings – electronic sound recording	Page 130
Use of Council vehicles	Page 131
On-line service provision	Page 133
Council reserves and parks	Page 134

COMMENT

As previously stated, the Local Government Act 1995 requires each delegator to review its delegations at least once every financial year. As required by the Act, the Chief Executive Officer has reviewed his delegations and made the necessary amendments.

This review will ensure that the Council has a Delegated Authority Manual that reflects the focus of the Council. This manual will continue to be reviewed, with items submitted to the Council where necessary. An annual review will continue to occur.

Governance Review

A copy of the Governance Review report was received by the City on 18 May 2004. Over the next few weeks the Joint Commissioners and Administration will be considering the contents of the Governance Review and deciding on the appropriate responses to any recommendations contained in the report. The outcome of the Governance Review may necessitate some further amendments to the Delegated Authority Manual. If that is the case, a further review will be conducted and a report submitted to the Joint Commissioners.

Legal Representation for Present and Former Elected Members and Staff of the City of Joondalup – Pages 99 and 100 of Delegated Authority Manual

No change is recommended to this delegation at this stage. It should be noted that Policy 2.2.8 – Legal Representation for Present and former Elected Members and Staff of the City of Joondalup – is currently under review and it is anticipated that the delegation will be required to be amended in conjunction with that review.

Town Planning Delegations – Pages 136 and 137

A report was presented to the Council meeting held on 18 May 2004 to review the Town Planning Delegations in accordance with District Planning Scheme No 2 which requires delegations to be renewed annually.

At that meeting the Joint Commissioners resolved to *“AMEND and ADOPT the Town Planning Delegations as outlined at Attachment 1 to Report C34-05/04 with this delegation to last for a term of two months only, when the report is to be represented with the benefit of being processed through a Council briefing session.”* Accordingly a separate report will be submitted to Council to give consideration to the Town Planning Delegations.

ATTACHMENTS

Attachment 1	Explanation of proposed changes
Attachment 2	Required changes to Delegated Authority Manual

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION: That the Joint Commissioners BY AN ABSOLUTE MAJORITY:

- 1 ENDORSE the review of the delegations in accordance with the Local Government Act 1995;
- 2 NOTE that the Chief Executive Officer has reviewed those powers and duties assigned to him by the Local Government Act 1995 in relation to the following:
 - Entry in an emergency
 - Annual Review of Employees' performances
 - Powers and Functions by the Chief Executive Officer
 - Minister may allow members disclosing interest to participate etc, in meetings

 - Register of Financial interest
 - Representing local government in Court
 - Evidence in legal proceedings – definitions
 - Receiving and opening tenders
 - Tender register
 - Tenderers to be notified of outcome
 - Persons expressing an interest to be notified of outcome
 - Financial Management duties of the Chief Executive Officer
 - Payment from the municipal fund and trust fund
 - Occupational Safety and Health
 - Redundancy and severance pay
 - Selective voluntary severance
 - Staff uniforms
 - Payment of fees, allowances and expenses and the provision of facilities to the Mayor, Deputy Mayor and Councillors
 - Legal representation for present and former elected members and staff of the City of Joondalup
 - Elected Members' advertising
 - Nomenclature – public facilities
 - Uniform fencing – subdivision
 - Retaining Walls
 - Authority to waive fees
 - Emergency closure of public libraries
 - Council owned stock – public libraries
 - Assessment – Community Funding
 - Acquisition of the City's Art Collection
 - Procurement of Council buildings
 - Access to information for people with disabilities
 - Domestic Waste Collection and Recycling Service
 - Verge treatments – protective devices
 - Sand drift control
 - Subsidy – vehicle crossing
 - Roadworks – opening up

- Acknowledgement of Service – elected members
- Freedom of information
- Media contact
- Council meetings – electronic sound recording
- Use of Council vehicles
- On-line service provision
- Council reserves and parks

3 AMEND the Delegated Authority Manual as outlined on Attachment 2 to Report CJ115-06/04.

MOVED Cmr Anderson, SECONDED Cmr Smith that:

- 1 consideration of the review of the Corporate Delegated Authority Manual be **DEFERRED** until the next Ordinary meeting of Council scheduled to be held on **29 June 2004;**
- 2 the delegation “Legal Representation for present and former Elected Members and staff of the City of Joondalup” as shown on Pages 99 and 100 of the Manual be **REPEALED.**

Cmr Smith advised she wished to add an additional Point 2 and sought the approval of Cmr Anderson as the Mover to incorporate this as part of his Motion. Cmr Anderson agreed to this request.

Discussion ensued.

The Motion was Put and

**CARRIED BY AN
ABSOLUTE MAJORITY (5/0)**

Appendix 1 refers

To access this attachment on electronic document, click here: [Attach1brf010604.pdf](#)

CJ116 - 06/04 GOVERNANCE REVIEW – [25548] [08122]

WARD - All

PURPOSE

To advise the Joint Commissioners that the City received the final version of the Report of the Governance Review Panel on 18 May 2004.

EXECUTIVE SUMMARY

The final version of the Report of the Governance Review Panel has been received and it is recommended that the recommendations listed in the report be released for public information whilst the remainder of the report remain confidential.

BACKGROUND

A Governance Review Panel was established in September 2003 as a means of restoring Council equilibrium and function.

DETAILS

The terms of reference for the Governance Review were as follows:

- 1 The development of an appropriate working relationship between elected members that will achieve good government for the City and an appropriate public image for the local government within the community.
- 2 Whether or not the behaviour of elected members related to their local government responsibilities, both personal and collective, is appropriate in terms of the Council's responsibilities and public perception.
- 3 The ordinary meetings of Council with particular regard to meeting procedures, behaviour of participants, the operation of Standing Orders and whether those Standing Orders require amendment.
- 4 Whether or not the relationships between elected members are having, or could be perceived to be having, an impact on the fairness, objectivity and outcome of the decisions being made by Council.
- 5 Whether the code of conduct is appropriate and adherence to that code.
- 6 The nature and effectiveness of the working relationship between elected members and senior employees.
- 7 Whether the information and advice to elected members from the executive is appropriate and sufficient and how that advice is being received and used in Council's deliberations and determination of matters.
- 8 The adherence to the requirements of the Local Government Act that the Mayor and CEO are to "liaise on the local government's affairs and performance of its functions".
- 9 The nature and effectiveness of the Council decision-making structures.
- 10 Whether the Council decision-making processes are fair, open and objective (in accordance with the Act and community interest).
- 11 Whether or not the nature and source of statements to the media regarding Council matters and decisions are appropriate, fair, reasonable and within the context of the Local Government Act.
- 12 The participation, nature and effectiveness of the elected member induction process and on-going development opportunities for elected members.

The panel has given 34 recommendations for the City to consider.

A detailed response on each of the recommendations is currently being prepared and will be submitted for consideration at a future meeting of the Joint Commissioners.

FINANCIAL IMPLICATIONS

Account No:	1.1110.4201.001.9999
Budget Item:	CEO Administration - Consultancy
Budget Amount:	\$30,000
YTD Amount:	\$21,482.84

COMMENT

The Chairman of the Governance Review Panel has advised that; “I appreciate that in the development phase of the Governance Review that public release of the document was promoted as an appropriate outcome. Since then, however, the Ford Inquiry under Division 2 of Part 8 of the Local Government Act 1995, has been initiated. It will be examining, inter alia, the same matters addressed in the report of the Governance Review Panel. It is apparent that any release of the Panel’s report prior to the release of the report of the Ford Inquiry is likely to have an adverse and disruptive effect on the integrity of the Ford Inquiry. Moreover, any release other than pursuant to the Parliamentary order or authority may give rise to actions of defamation. The City must take its own legal action advice in these respects. At this time the Department countenances against release of the report – at least at this stage. It may later be appropriate for it to be released in some form after all due precautions. If there is a request from members of the public for the report to be released I submit it would be appropriate for Council to state the reasons given above but there may be real value in releasing the recommendations of the report as these relate to operational and policy matters for Council to consider”

The position outlined by the Department in relation to the disclosure of the recommendations whilst treating the balance of the report as confidential is supported.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Smith, SECONDED Cmr Fox that the Joint Commissioners:

- 1 RELEASE for public information the recommendations contained in the Governance Review Report with the remainder of the report to be treated confidentially;**

2 NOTE that Administration will submit reports on recommendations contained therein for consideration by the Joint Commissioners.

Cmr Smith spoke to the Motion and made reference to verbal advice received from the Department of Local Government that as this report had not been released in Parliament, it did not have Parliamentary privilege; and as such there would be considerable risk in it being released.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

CJ117 - 06/04 APPOINTMENT OF REPRESENTATIVES TO EXTERNAL COMMITTEES – [02153, 00046]

WARD - All

PURPOSE

To give consideration to amending Council's representation on various external committees.

EXECUTIVE SUMMARY

This report recommends amendments and additions to Council's representation on:

- Joondalup Business Association
- North West Metropolitan Business Enterprise Centre Committee of Management
- Joondalup Business Incubator
- Mindarie Regional Council.

BACKGROUND

Following the appointment of Joint Commissioners on 5 December 2003, consideration was given at the Council meeting held on 17 February 2004 to appointing Commissioners to various internal and external committees to which elected members were previously appointed. At that meeting, the following appointments were made:

Joondalup Business Association:

Chairman of Commissioners, Cmr J Paterson;

North West Metropolitan Business Enterprise Centre Committee of Management:

Commissioner M Anderson
Manager Strategic and Sustainable Development

Mindarie Regional Council:

Commissioner A Fox
Commissioner S Smith;

DETAILS

Changes are required to external committees as outlined below.

Joondalup Business Association and the North West Metropolitan Business Enterprise Centre Committee of Management

As both the Joondalup Business Association and the North West Metropolitan Business Enterprise Centre Committee of Management have combined meetings, it is considered appropriate that they have the same Council representatives appointed to them. It is recommended that Cmr Paterson be appointed as representative to both Committees, with Cmr Anderson as his deputy.

Joondalup Business Incubator

To date the City of Joondalup has been represented on the Joondalup Business Incubator by Cmr Paterson and the Manager Strategic and Sustainable Development, however these appointments have previously been made administratively through the Chief Executive Officer. It is recommended that a Commissioner, a deputy and an officer be appointed to this external committee.

The objectives of the Joondalup Business Incubator as stated in its original business plan are:

- To provide proactive and efficient business and administrative support to enhance the business success of its tenants
- To create a centre that will become the hub and reference point for small business in the Joondalup/Wanneroo area
- To act as a tool and catalyst in the information and development of new businesses and business concepts
- To operate a self-sustaining business incubator within 18 months of establishment
- To continuously improve the type and quality of services offered
- To create strong links with the varied business sectors of the area
- To extend the incubator tenants categories to that of light manufacturing within 18 months of operations.

It should be noted that the Committee of Management has recently reviewed its objectives and a revised Business Plan will soon be considered.

The following details concerning the Joondalup Business Incubator are provided for information:

In 2000 the City of Joondalup entered into a partnership with Edith Cowan University (ECU) and North West Metropolitan Business Association (NWMBA) to seek government funding from the Commonwealth Government for the construction of an Incubator.

The Commonwealth Government, under its Department of Employment, Workplace Relations and Small Business (DEWRSB) granted the entity \$500,000 to administer for the purposes of a building.

The City of Joondalup, the NWMBA and ECU have agreed to create a separate legal entity which was named the Business Development Association (North West Metropolitan) Inc. and holds the trading name of The Joondalup Business Incubator which is now located at - Barron Parade, Joondalup. Construction of a 27 office space building was finished in March 2003 and the Incubator has been operating for 12 months. The Incubator currently has 12 tenants and is managed by a full time manager.

Under the constitution of the Business Development Association (North West Metropolitan) Inc it is stated that a Committee of Management will govern the incorporated body and that foundation members being the City of Joondalup, Edith Cowan University and the Joondalup Business Association shall be entitled to appoint two members to the committee.

Mindarie Regional Council

The City has two voting representatives on the Mindarie Regional Council. It is considered appropriate that deputies be appointed for the two representatives on the Mindarie Regional Council, as has been the practice in the past.

ATTACHMENTS

Nil

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That the Joint Commissioners:

- 1 AMEND their representatives and APPOINT the following representatives to external committees:

Joondalup Business Association:

Chairman of Commissioners, Cmr J Paterson – as delegate
Commissioners M Anderson – as deputy

North West Metropolitan Business Enterprise Centre Committee of Management:

Chairman of Commissioners, Cmr J Paterson– as delegate
Commissioner M Anderson – as deputy
Manager Strategic and Sustainable Development – as delegate

Mindarie Regional Council:

1 deputy to Cmr A Fox
1 deputy to Cmr S Smith

2 APPOINT the following representatives to the Joondalup Business Incubator:

Chairman of Commissioners, Cmr J Paterson– as delegate
Commissioner M Anderson – as deputy
Manager Strategic and Sustainable Development – as delegate

MOVED Cmr Anderson, SECONDED Cmr Fox that the Joint Commissioners:

1 **AMEND their representatives and APPOINT the following representatives to external committees:**

Joondalup Business Association:

Chairman of Commissioners, Cmr J Paterson – as delegate
Commissioner M Anderson – as deputy

North West Metropolitan Business Enterprise Centre Committee of Management:

Chairman of Commissioners, Cmr J Paterson– as delegate
Commissioner M Anderson – as deputy
Manager Strategic and Sustainable Development – as delegate

2 APPOINT the following representatives to the Joondalup Business Incubator:

Chairman of Commissioners, Cmr J Paterson– as delegate
Commissioner M Anderson – as deputy

Cmr Anderson spoke to the Motion and advised he would attend meetings as an observer.

Cmr Paterson advised that Manager Strategic and Sustainable Development did not wish to be a delegate to the Joondalup Business Incubator until such time as legal advice is received determining legal responsibility of those representatives appointed to the Incubator Board.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

CJ118-06/04 MAYOR D CARLOS (SUSPENDED) - REQUEST FOR PAYMENT OF LEGAL COSTS - [67543]

WARD – All

This Item Is Confidential - Not For Publication

A full report has been provided to Joint Commissioners under separate cover.

MOVED Cmr Smith, SECONDED Cmr Fox that no determination is made on this matter at this time and the item be DEFERRED until the McIntyre Inquiry completes its deliberations and issues a Report.

Cmr Smith spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

**CJ119 - 06/04 MAYOR DON CARLOS (SUSPENDED) - REQUEST
FOR PAYMENT OF MAYORAL ALLOWANCE –
[67543]**

WARD - All

PURPOSE

To submit for consideration by the Joint Commissioners, a request by Mayor Don Carlos (Suspended) for retrospective payment of a portion of his unclaimed Mayoral Allowance being \$16,075.52.

EXECUTIVE SUMMARY

At the time of his election as Mayor of the City, Mr Carlos wrote to the Chief Executive Officer advising that he only wanted to receive 25% of the total Mayoral Allowance of \$60,000 per annum. Mr Carlos was elected Mayor on 3 May 2003 and with all other City of Joondalup elected members, was suspended on 5 December 2003. His time in the office of Mayor was approximately 7 months. Council's records indicate that Mr Carlos has been paid \$8,831.03 whereas he would have been entitled to approximately \$35,000 had he chosen to take the full Mayoral Allowance. The difference in what was paid and the entitlement is \$26,168.97.

As a result of having to obtain legal advice to defend a Writ issued by the former Chief Executive Officer, Mr Denis Smith, Mr Carlos has incurred legal expenses totalling \$16,075.52. Mr Carlos has requested that in the event that Commissioners do not support his request under the Policy 2.2.8 – Legal Representation for Present and Former Elected Members and Staff of the City, then consideration be given by the Joint Commissioners to pay him the equivalent sum as part of his unclaimed Mayoral Allowance.

It is recommended that the Joint Commissioners approve the retrospective payment of a further portion of the maximum Mayoral Allowance payable during the period 3 May 2003 to 5 December 2003 to Mayor Carlos (Suspended) totalling \$16,075.52.

BACKGROUND

The former CEO of the City, through his legal representatives, issued a Writ of Summons against Mayor Carlos and the City claiming damages. Both Mayor Carlos and the City appointed legal representatives to assist in this matter and in so doing incurred legal expenses.

On 15 April 2004, Mayor Carlos forwarded correspondence to the Chairman of Commissioners requesting payment of his legal expenses as follows:

“Further to my request of 17 February 2004 which requested payment of my legal expenses and your reply of 18 February 2004 in which you stated the matter would be presented to Council on 9 March 2004.

Please be advised that Denis Smith has dropped the writ and the matter is now resolved. A copy of the document from Blake Dawson Waldron has been faxed to Kevin Robinson confirming this event.

Legal fees that have been incurred resulting from this writ amount to \$16,075.52 and I now request this amount be reimbursed so the matter can be finalized. Documentary evidence of these accounts has also been faxed to Kevin Robinson.

I would also like to point out at this time that when I was elected to the position of Mayor on the 3 May 2003, I elected to only take 25% of the Mayoral allowance. Thus, for the six months I held the position of Mayor I was entitled to receive \$30,000 and only was paid \$7,500 - a saving of \$22,500 for the City of Joondalup.

Thanking you in anticipation of an early resolution of this matter.”

In a subsequent telephone conversation with the City’s Manager Audit and Executive Services, Mr Kevin Robinson, Mr Carlos requested that in the event that Commissioners do not support his request under the Policy 2.2.8 – Legal Representation for Present and Former Elected Members and Staff of the City, then consideration be given by the Joint Commissioners to pay him the equivalent sum as part of his unclaimed Mayoral Allowance.

DETAILS

Statutory Provision:

In accordance with Sections 5.98, 5.98A, 5.99 and 5.99A of the Local Government Act 1995, (the Act) Councils may pay specified allowances and reimburse expenses to Elected Members, including a Mayoral Allowance. Council has resolved to pay the maximum Mayoral Allowance permitted under Regulation 33 of the Local Government (Administration) Regulations 1996 (the Regulations). That amount is \$60,000. Neither the Act or the Regulations place any restriction on how or on what the Mayor may spend the Mayor Allowance.

At the time of his election to the office of Mayor, Mr Carlos elected to be paid only 25% or \$15,000 per annum, of the Mayoral Allowance of \$60,000 permitted under the Regulations and approved by Council.

Policy Implications:

The following extracts from Policy “2.2.13 - Payment of Fees Allowances and Expenses and the Provision of Facilities to the Mayor, Deputy Mayor and Councillors” apply to this matter.

“4.3 Annual Local Government Allowances - Mayor and Deputy Mayor

Council resolves to pay the maximum Annual Local Government Allowance within the prescribed legislated limit that may be paid to the Mayor and Deputy Mayor.”

In accordance with Regulation 33(1)(b) of the Local Government (Administration) Regulations 1996, the maximum Mayoral Allowance that the City can pay annually to its Mayor is \$60,000.

“4.5 Conditions of Payment

- (1) Payment of meeting fees and allowances under this policy, shall be subject to the following conditions:
 - (a) The meeting fees, allowances for Mayor and Deputy Mayor and annual telecommunication allowance, shall be paid monthly in arrears unless an elected member has advised the CEO in writing that they do not want to claim any or part of those fees and allowances. Without advice to the contrary, payment of the fees and allowances will be automatic.
 - (b) If payment is not accepted initially, subsequent requests for payment will be accrued from the date of such request.
 - (c) Payment is applicable to each Expense Period;
 - (d) Each elected member regularly attends Council and associated meetings and carries out other normal duties of the office;
 - (e) The taxation liability arising from these payments is the individual responsibility of each elected member.
- (2) The value of fees and allowances included in this policy shall be reviewed at the Ordinary Council Meeting following each bi annual election.”

Financial Implications:

The following details relate to payments made within the current financial year.

Account No:	1.0520.3512.0001.9999
Budget Item:	Mayoral Local Government Allowance
Budget Amount:	\$15,000
YTD Amount:	\$6,452

COMMENT

Payment of Allowances and Fees to Elected Members

In accordance with Sections 5.98, 5.98A, 5.99 and 5.99A of the Act, Councils may pay specified allowances and reimburse expenses to Elected Members. These allowances include Mayoral and Deputy Mayor Allowances, Meeting Fees, Communication Allowance and reimbursement of particular expenses incurred due to the holding the office of an elected

member. The Act and Regulations do not specify what the Mayoral Allowance may be spent on.

With the exception of Mr Carlos, the elected members have been paid the maximum allowances and fees they were entitled to. It should be noted that this does not apply with reimbursement of expenses, as some elected members do not claim travelling costs and other costs they could be entitled to.

Application of Policy

In assessing the eligibility for Mr Carlos to be paid by the City the amount equivalent to his legal expenses of \$16,075.52, due regard must be given to relevant Council Policy “2.2.13 - Payment of Fees Allowances and Expenses and the Provision of Facilities to the Mayor, Deputy Mayor and Councillors” and any precedents concerning payment made outside the policy. It is considered that the relevant policy provisions are outlined at clause 4.5 Conditions of Payment, in particular sub clause (1) (a) and (b). All of clause 4.5 has been outlined under the heading Policy Implications.

In summary, sub clause 1(a) details that the payment of fees and allowances will be automatic unless an elected member advises the CEO in writing that they do not want to claim any or part of those fees and allowances. In this instance Mr Carlos advised in writing that he only wanted to claim 25% of the Mayoral Allowance amount of \$60,000 per annum.

Sub clause 1(b) details that “if payment is not accepted initially, subsequent requests for payment will be accrued from the date of such request.” In this instance Mr Carlos first requested that the City pay his legal fees on 17 February 2004. It is noted that the elected Council of the City of Joondalup was suspended on Friday 5 December 2003. From that date, elected members were no longer entitled to payment of fees and allowances previously available to them. If the terms of the Fees and Allowances Policy were to be strictly applied, under sub clause 1(b), Mr Carlos would not be entitled to any Mayoral or other Allowances and therefore not entitled to payment under the terms of policy.

Payment Precedents

At its meeting on 22 August 2000, Council approved reimbursement payment of travel cost for Councillor Rowlands. The claim was lodged for payment after the processing time detailed in the Policy 2.2.12 Members of Council – Reimbursement of Expenses.

At its meeting on 12 September 2000, Council approved reimbursement payment of travel and childcare cost for Councillor Walker. The claim was lodged for payment after the processing time detailed in the Policy 2.2.12 Members of Council – Reimbursement of Expenses.

On another occasion in 2003, payment of expense reimbursement has been made outside the time limit of two months after the expense was incurred, as specified in the Policy 2.2.13 - Payment of Fees Allowances and Expenses and the Provision of Facilities to the Mayor, Deputy Mayor and Councillors.

The above three incidents of payment outside the policy conditions indicate that such matters have been applied on a fair and reasonable basis, albeit those elected members were not suspended at that point in time.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That the Joint Commissioners APPROVE the retrospective payment of a further portion of the maximum Mayoral Allowance payable during the period 3 May 2003 to 5 December 2003 to Mayor Carlos (Suspended) totalling \$16,075.52.

Comr Paterson stated advice had been received from Mr Carlos that he wished his request to be withdrawn.

It was resolved by the Joint Commissioners that this Item be WITHDRAWN

CJ120 - 06/04 FINANCIAL REPORT FOR THE PERIOD ENDING 30 APRIL 2004 – [07882]

WARD - All

PURPOSE

The April 2004 financial report is submitted to Council to be noted.

EXECUTIVE SUMMARY

The April 2004 year to date report shows an overall variance (under spend) of \$11.3m when compared to the year to date revised budget.

This variance can be analysed as follows:

- The **Operating** position (Change in Net Assets Before Reserve Transfers) shows an actual surplus of \$7.0m compared to a budgeted surplus of \$6.3m at the end of April 2004. The \$0.7m variance represents an under spend driven primarily by the timing of consultancy and contribution costs relating to proposals and of utility expenses.
- **Capital Expenditure** is \$2.2m compared to a budget of \$2.3m at the end of April 2004. The \$0.1m under spend is due primarily to the timing of computer network upgrades and equipment and mobile plant purchases.

- **Capital Works and Corporate Projects** expenditure is \$7.0m against a budget of \$17.5m, an under spend of \$10.5m at the end of April 2004. This is a timing difference of which \$4.5m relates to normal Capital Works while \$6.0m relates to Capital Works classified as Corporate Projects. Total committed funds in relation to all Capital Works are \$4.4m.

DETAILS

The financial report for the period ending 30 April 2004 is appended as Attachment A.

ATTACHMENTS

Attachment A Financial Report for the period ending 30 April 2004.

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, SECONDED Cmr Fox that the Financial Report for the period ending 30 April 2004 be NOTED.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 2 refers

To access this attachment on electronic document, click here: [Attach2brf010604.pdf](#)

**CJ121 - 06/04 TENDER NUMBER 036-03/04 - IT RESEARCH AND
ADVISORY SERVICES – [78557]**

WARD - All

PURPOSE

To seek the approval of the Joint Commissioners to choose the tender submitted by Gartner Australasia Pty Ltd for the provision of IT Research and Advisory Services, Tender Number 036-03/04, for an initial period of twelve (12) months with an option to extend, subject to satisfactory performance reviews, for a further maximum period of twenty four (24) months. The maximum term of the contract shall be three (3) years.

EXECUTIVE SUMMARY

Tenders were advertised on 10 March 2004 through statewide public tender for the provision of IT Research and Advisory Services. Tenders closed on 25 March 2004. Two submissions were received from Gartner Australasia Pty Ltd and Ovum Pty Ltd.

It is recommended, in relation to Tender Number 036-03/04 for the provision of IT Research and Advisory Services, that the Joint Commissioners:

- 1 *choose Gartner Australasia Pty Ltd as the successful tenderer for the provision of IT Research and Advisory Services (Tender No. 036-03/04) for Option 2 of their submission for a lump sum price of thirty four thousand nine hundred dollars (\$34,900) excluding GST for the first year;*
- 2 *authorise the Chief Executive Officer (CEO), on behalf of the City, to enter into a contract with Gartner Australasia Pty Ltd in accordance with the tender submitted by Gartner Australasia Pty Ltd, subject to any minor variations that may be agreed between the CEO and Gartner Australasia Pty Ltd;*
- 3 *determine that the contract is to be for an initial period of 12 months commencing on 1 July 2004 and ending on 30 June 2005 with an option to extend, subject to satisfactory annual performance reviews, for a further maximum period of 24 months, in 12 month increments, with the total term of the contract not to exceed 3 years.*

BACKGROUND

The City of Joondalup is dedicated to being a leader in the appropriate use of technology to support and facilitate all interactions between itself and its various stakeholders.

To meet these requirements the City is required to keep abreast of new and emerging information technologies and be able to obtain 'up to the minute' IT market research and advice. This research and advice is used to assist the Information Management Unit in the following areas:

- development of corporate IT strategies and policies
- IT benchmarking
- implementation of IT best practice
- IT risk management
- IT procurement

To assist with the ongoing development of the IT function, the City requires an IT Research and Advisory Service that provides:

- Online access to a comprehensive database of IT research material which examines issues and provides guidance on IT strategic planning, IT management, IT procurement, technology trends, IT vendors and IT products and services
- Access to specialised research analysts to discuss and clarify information provided in the online reports and to periodically review specific IT strategies and procurement recommendations.

The City has utilised IT Advisory Services in the above form since 2000.

DETAILS

Under the City's Contract Management Framework, the tenders were assessed by the Evaluation Team using a weighted multi-criterion assessment system and AS 4121-1994 'code of ethics and procedures for the selection of consultants'.

Each member of the Evaluation Team assessed the Tender submission individually against the selection criteria using the weightings determined during the tender planning phase. The Evaluation Team convened to submit and discuss their assessments, leading to a ranking of each submission in an order of merit.

The Selection Criteria for this tender was as follows:

Resources and Experience of Tenderer in providing similar services:

- Relevant Industry Experience, including details of providing similar supply.
- Level of Understanding of tender documents and work required.
- Provide access to the tenderer's website to evaluate search and interaction capabilities and sample documents.
- Provide access to the tenderer's research analysts to evaluate the quality of analysts interaction.
- Attach details of three reference sites as a minimum, where the same or similar services have been provided. You shall provide the organisation's name, the contact name and title, telephone and facsimile numbers and email address. Provide the scope of service completed and outline the current relationship with each reference site.

Levels of Service as determined by the Capability/Competence of Tenderer to perform the work required:

- Company Structure.
- Qualifications, Skills and Experience of Key Personnel.
- Equipment and Staff Resources available.
- Percentage of Operational Capacity represented by this work.
- Financial Capacity.
- Risk Assessment.
- Compliance with tender requirements – insurances, licenses etc.
- Extent of local support.
- Service management processes.
- In-depth knowledge of technology trends, industry analysis and technology forecasting capabilities.
- A wide coverage of current IT research material both at a global and Asia/Pacific level.
- Inclusion of Australian vendors products and trends.
- Ability to provide analyst advice and guidance on technology issues when required.
- Provision of value added services, which may be, bundled e.g. email alert services, special forums.

Beneficial Effects of Tender/Local Content:

- The Potential Social and Economic Effect of the tender on the City of Joondalup community.
- The Potential Social and Economic Effect of the tender on the West Australian community.
- Infrastructure/Office/Staff/Suppliers/Sub-Contractors within the City of Joondalup.
- Sustainability/Efficiency/Environmental.

Tendered Price/s:

- The price to supply the specified goods or services, licensing, training.
- Schedule of rates for additional goods or services, variations and disbursements.
- Discounts, settlement terms.

The tender submitted by Gartner Australasia Pty Ltd complied with the requirements of the RFT. The tender demonstrated that Gartner Australasia Pty Ltd has the ability to provide the services to the City on a value for money basis. A limited number of tenders were received due to the specialised nature of the required services.

Statutory Provision:

The statewide public tender was advertised, opened and evaluated in accordance with the *Local Government (F&G) Regulation 1996*. Advertising this tender also ensures compliance with the *Local Government (F&G) Regulation 1996*, where tenders are required to be publicly invited if the consideration under a contract is expected to be or worth more than \$50,000. The consideration for this contract exceeds the Chief Executive Officer's Delegated Authority limit of \$100,000 for the acceptance of tenders.

Policy 2.5.7 Purchasing Goods and Services

The City's Policy on purchasing goods and services encourages local business in the purchasing and tendering process; a tender was not received from a business located in Joondalup.

FINANCIAL IMPLICATIONS

Provision for this service has been included in the City's 2004/5 operating budget as follows:

Account No:	1.3810.4206.0001.9999
Budget Item:	IT Advisory Services
Budget Amount:	\$35,000

COMMENT

As a part of contract management processes, the City will regularly review/monitor the Contractor's performance and service quality to ensure services meet the City's standards.

Subject to Council approval, the contract term will be for an initial period of twelve (12) months (commencing on 1 July 2004 and ending on 30 June 2005). There will be an option to extend the contract for a further twenty four (24) months that will be subject to suitable performance by the Contractor in annual performance reviews that ensure that the requirements of the contract have been met. Subject to a satisfactory outcome of each review an extension, in increments of twelve-month periods, will be made. The duration of the contract will not exceed three (3) years.

Notwithstanding any statutory changes, the City may negotiate a price variation on the Lump Sum Price submitted for extending the Contract. The price variation shall not be more than the change in the consumer price index for the construction material and labour for Perth Metropolitan region as published by Australian Bureau of Statistics for a period of the previous 12 months.

The tender submitted by Gartner Australasia Pty Ltd demonstrated that they have the ability to provide the required services to the City on a value for money basis.

ATTACHMENTS

Nil

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, SECONDED Cmr Fox that in relation to Tender Number 036-03/04 for the provision of IT Research and Advisory Services, the Joint Commissioners:

- 1 choose Gartner Australasia Pty Ltd as the successful tenderer for the provision of IT Research and Advisory Services (Tender No. 036-03/04) for Option 2 of their submission for a lump sum price of thirty four thousand nine hundred dollars (\$34,900) excluding GST for the first year;**
- 2 authorise the Chief Executive Officer (CEO), on behalf of the City, to enter into a contract with Gartner Australasia Pty Ltd in accordance with the tender submitted by Gartner Australasia Pty Ltd, subject to any minor variations that may be agreed between the CEO and Gartner Australasia Pty Ltd;**
- 3 determine that the contract is to be for an initial period of 12 months commencing on 1 July 2004 and ending on 30 June 2005 with an option to extend, subject to satisfactory annual performance reviews, for a further maximum period of 24 months, in 12 month increments, with the total term of the contract not to exceed 3 years.**

Cmr Anderson raised concern at the number of non-conforming tenders received by the City during his term of office.

Director, Corporate Services and Resource Management advised that the tender processes used by the City are currently being reviewed in an effort to increase the number of tenders being submitted. The City is investigating an education process for tenderers of having pre-tender meeting. Currently the City conducts post-tender evaluation meetings with the unsuccessful tenderers.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

**CJ122 - 06/04 METROPOLITAN REGIONAL ROAD PROGRAMS
2005/2006 TO 2009/2010 – [06759]**

WARD - All

PURPOSE

This report outlines information about projects to be submitted to Main Roads WA for the 2005/06 Five Year Metropolitan Regional Road Program.

EXECUTIVE SUMMARY

Main Roads WA has sought submissions for the 2005/06 to 2009/2010 Metropolitan Regional Road Program for Improvement Projects and Rehabilitation Projects.

This report outlines the guidelines for the assessment of roadworks and recommends projects for consideration by the Metropolitan Regional Road Group.

This report recommends that the Joint Commissioners:

- 1 SUBMIT Burns Beach Road – Marmion Avenue to Mitchell Freeway for consideration for funding as part of the 2005/2006 Metropolitan Regional Road Program as shown at Attachment 1 and Attachment 2 to this report..*
- 2 SUBMIT the Road Rehabilitation Projects to Main Roads WA for consideration for funding as part of the 2005/2006 Metropolitan Regional Road Program as shown at Attachment 3 to this report.*

BACKGROUND

Each year, Main Roads WA (MRWA) invites project submissions for consideration as part of the Metropolitan Regional Road Program. Main Roads WA requests detailed project submissions up to two years in advance to allow Councils to program approved projects into their Budgets with certainty of grant funding. Less detail is required for projects submitted in the following three years.

The project types are separated into two categories as outlined below:

Road Improvement Projects

Improvement projects are:

- a) those which would involve upgrading of an existing road to a higher standard than currently exists, i.e. pavement widening, new overtaking lanes, traffic control measures, etc;
- b) new works where a road pavement does not currently exist at the proposed standard, e.g. dual carriageway or new carriageway construction.

A multi-criteria analysis, (taking into consideration road capacity, geometry, accidents, benefits and costs) is used to score and prioritise road improvement projects on urban arterial roads submitted by Councils within the metropolitan area.

Road Improvement Projects are audited, scored and approved for the first year only (2005/06) with any projects submitted for future years beyond 2005/06 to provide MRWA with information only on possible projects and cash flows.

Road Rehabilitation Projects

Road rehabilitation projects are those proposed for existing roads where the pavement is to be brought back to as new physical condition, e.g. resealing, reconstruction, re-sheeting and reconditioning. A one year programme only is required for these submissions – 2005/06.

Funding Distribution

The distribution of the MRRP funds is based on 50% of the pool to Improvement Projects and 50% to Rehabilitation Projects. A limit of \$1 million per Council per year has been set for Improvement Projects and \$500,000 for Rehabilitation Projects. Funding approval is based on Council's contribution of at least a third to each project.

Strategic Plan

These projects fall under the Key Focus Area of City Development and the Objective to Develop and maintain the City of Joondalup's assets and built environment (3.1).

DETAILS

Road Improvement Projects

The proposed Road Improvement Project for 2005/06 is Burns Beach Road – Marmion Avenue to Mitchell Freeway as detailed on Attachment 1 and shown at Attachment 2.

This project is listed in the Major Road Construction Program in the Draft 2004/05 Five Year Capital Works Program. The other section of Burns Beach Road from the Mitchell Freeway to Joondalup Drive shown in the Major Road Construction Program in the Five Year Capital Works Program has been evaluated and submitted for future MRRP submissions. These projects and other roads are re-evaluated on an annual basis and the five year MRRP programme adjusted in accordance with the results of the multi-criteria analysis and Main Roads audited scoring.

Road Rehabilitation Projects

A road rehabilitation and mechanical study has been undertaken for a number of roads, which provides technical details and recommendations to comply with the criteria for assessing projects. A review is also undertaken on other works such as the traffic management program where traffic islands are located in a red asphalt median on local distributor roads. The resurfacing component of these construction works can be funded via this program if it meets the specified criteria. The inspections, analysis, scoring and documentation have been undertaken by a specialist pavement Consultant. The Road Rehabilitation Program recommended for submission to Main Roads WA for funding consideration in the 2005/06 financial year is shown at Attachment 3.

Statutory Provisions

The funds for these programs come from the State Road Funds to Local Government Agreement. There are no statutory provisions applicable to the funds application but there are procedural requirements as outlined below:

Process for 2005/2006 Metropolitan Regional Road Program

- 1 Project submission to be forwarded to Main Roads WA (MRWA) by 3 May 2004. MRWA will accept submissions with later endorsement by Council.
- 2 Submissions are checked for omissions and errors in computations.
- 3 Submissions are audited:
 - Rehabilitation projects by Materials Engineering Branch, Main Roads WA
 - Improvement projects by an independent consultant auditor
- 4 Audit queries are discussed with affected Councils.
- 5 Final audited projects are sent to Main Roads WA for collation and priority listing based on points score.
- 6 Lists of audited projects distributed to all Councils in August 2004.
- 7 The Sub Groups of the Metropolitan Regional Road Group each have technical meetings to discuss and approve projects within the Sub Group only. The Cities of Wanneroo, Joondalup, Stirling and Town of Vincent form the North West Sub Group.
- 8 Recommendations are forwarded to the Technical Members Committee of the Metropolitan Regional Road Group. The Director Infrastructure & Operations from the City is a member of this Technical Group which then recommends the projects to be funded across the metropolitan area to the Metropolitan Regional Road Group.
- 9 The Metropolitan Regional Road Group considers funding submissions in accordance with the guidelines and makes recommendations to the Advisory Committee. This committee forwards those recommendations to the Commissioner of Main Roads who in turn forwards recommendations to the Minister For Planning and Infrastructure who approves the funding.
- 10 Councils would expect advice of approval of projects during November/December 2004.

Policy Implications

There are no policy implications.

Financial Implications

The successful grant funding of the road improvement project will require Council to allocate funds in the 2005/06 Capital Works Budget – Major Road Construction Program and Road Preservation and Resurfacing Program. The grants are provided on the basis of a two thirds contribution by Main Roads WA to one third by the City. The maximum annual grant for Rehabilitation Projects is \$500,000 and \$1,000,000 for Road Improvement Projects. The City's contribution is funded from the Municipal Fund for road improvement projects and the Federal Local Roads component (FLRG) of Federal Assistance Grants (FAG) for road rehabilitation projects.

Following auditing, some of the Rehabilitation Projects may not be funded in 2005/2006 and may need to be re-evaluated for submission with further projects for funding in subsequent years. It is also possible that the City may not receive funding for the Improvement Project. These circumstances occur because projects from all metropolitan Councils compete for the limited funds each year. At this time, the City has not received confirmation of the 2004/05 MRRG Program Fund allocation although it is estimated to be approximately \$8M in total for Improvement and Rehabilitation Programs. Therefore, it is anticipated to be the same amount in 2005/06 with around \$4M for each program. The scores of all projects are rigorously audited leading to some projects not achieving the points scores or being below the funding cut off level for each Council or the program pool.

Strategic Implications

The projects fit into the Strategic Plan for the City by improving infrastructure, which leads to an improved lifestyle. Under the MRRG Road Improvement Program, the dualling of arterial roads such as Burns Beach Road means that these million dollar plus projects can be undertaken using an external funds source, and include upgrading junction treatments, installing bus embayments and adding smooth asphalt seal to reduce traffic noise on an existing chip seal carriageway.

The section Burns Beach Road from Marmion Avenue to Mitchell Freeway has been submitted for 2005/06 because it has the highest points score using the multi-criteria assessment and is the section which would provide the termination road for the extension of the Mitchell Freeway. The extension of the Mitchell Freeway to Shenton Avenue and Burns Beach Road is tentatively scheduled within the timeframe 2005 to 2008. If the Mitchell Freeway extension to Burns Beach Road is advanced because of construction efficiencies and available funding, then the dualling of this section can accommodate the traffic volumes. The City would also undertake the construction of the dual carriageway of Burns Beach Road from Marmion Avenue to Delgado Parade at this time.

The City will also submit the section, Mitchell Freeway to Joondalup Drive as a 2006/07 project. Using the multi-criteria analysis, its points score is expected to improve following the Freeway extension and increasing traffic volumes from Joondalup Drive. In future years it is expected that Connolly Drive will require dualling, with others roads to be evaluated as the Freeway is extended and traffic growth in the area occurs.

The major benefit for the community is a more efficient road network as a result of better roads and paths, reduced travel times, less crashes and easier access to facilities. Moreover, using the MRRP process in this way enables the City to construct major roads using the best combination of grant income and its own funds.

For Road Rehabilitation projects, roads can be resurfaced using the MRRP grant as an external funds source that can offset the prohibitive cost of resurfacing and refurbishment of arterial, major and local distributor roads. These treatments prolong the life of the road pavement by resurfacing when it is most beneficial to do so rather than waiting until the pavement fails which may require more expensive reconstruction.

COMMENT

The Metropolitan Regional Road Program is administered by Main Roads WA using well established formulae, conditions and procedures that are outlined in State Road Funds to Local Government Agreement. The City has received grant funding in the past from the program and subject to priorities and auditing of other projects across the metropolitan area, expects to receive funding for the projects nominated this year.

ATTACHMENTS

Attachment 1	Road Improvement Project
Attachment 2	Locality Plan of Projects
Attachment 3	Road Rehabilitation Projects

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Fox, SECONDED Cmr Anderson that the Joint Commissioners:

- 1 SUBMIT Burns Beach Road – Marmion Avenue to Mitchell Freeway for consideration for funding as part of the 2005/2006 Metropolitan Regional Road Program as shown at Attachment 1 and Attachment 2 to Report CJ122-06/04;**
- 2 SUBMIT the Road Rehabilitation Projects to Main Roads WA for consideration for funding as part of the 2005/2006 Metropolitan Regional Road Program as shown at Attachment 3 to Report CJ122-06/04.**

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 3 refers

To access this attachment on electronic document, click here: [Attach3brf010604.pdf](#)

**CJ123 - 06/04 TENDER NUMBER 031-03/04 - SUPPLY OF TRAFFIC
MANAGEMENT AND CONTROL SERVICES –
[65556]**

WARD - All

PURPOSE

To seek the approval of the Joint Commissioners to choose WARP Pty Ltd as the successful tenderer for the supply to the City of traffic management and control services (Tender Number 031-03/04), (in accordance with the Schedule of Rates [as outlined in Attachment 1]), for an initial period of twelve (12) months with an option to extend, subject to satisfactory performance reviews, for a further maximum period of twenty four (24) months. The maximum term of the contract shall be three (3) years.

EXECUTIVE SUMMARY

A Request for Tenders (**RFT**) (Number 031-03/04) for the supply to the City of traffic management and control services was advertised on Wednesday 18 February 2004 through statewide public notice. The closing date for submitting tenders was Thursday 4 March 2004. Three tenders were received from: WARP Pty Ltd, Roadwise Traffic Control and Carrington Traffic Services.

It is recommended, in relation to Tender Number 031-03/04 for the supply of traffic management and control services, that the Joint Commissioners:

- 1 *reject the tender submitted by Roadwise Traffic Control and the tender submitted by Carrington Traffic Services under regulation 18(2) of the Local Government (Functions and General) Regulations 1996 without considering the merits of those tenders because they each fail to comply with requirements specified in the RFT; and*
- 2 *choose WARP Pty Ltd as the successful tenderer for the supply to the City of traffic management and control services (under Tender No. 031-03/04);*
- 3 *authorise the Chief Executive Officer (CEO), on behalf of the City, to enter into a contract with WARP Pty Ltd in accordance with the tender submitted by WARP Pty Ltd, subject to any minor variations that may be agreed between the CEO and WARP Pty Ltd;*
- 4 *determine that the contract is to be for an initial period of 12 months commencing on 1 July 2004 and ending on 30 June 2005 with an option to extend, subject to satisfactory annual performance reviews, for a further maximum period of 24 months, in 12 month increments, with the total term of the contract not to exceed 3 years.*

BACKGROUND

All major capital works within road reserves require suitable traffic management plans. Operations Services manages traffic control for minor works, however where major projects are carried out by Operational Services (e.g. Hepburn Glengarry roundabout and Grand Boulevard Redevelopment) more complex traffic control is necessary.

The City currently does not have the expertise or resources to provide traffic management plans or complex traffic management control for major works. The requirement for approved traffic management plans and accredited traffic control is a mandatory requirement under Australian Standard 1742.3-2002 '*Manual of Uniform Traffic Control Devices, Part 3-Traffic Control Devices for Works on Roads*'.

The Tender Evaluation Team assessed the tenders and made recommendations to the Joint Commissioners in item CJ081-04/04 of the Agenda for the meeting of the Joint Commissioners on 27 April 2004. As a result of the Agenda item CJ081-04/04 recommending WARP Pty Ltd as the preferred tenderer and deeming the tenders submitted by Carrington Traffic Services and Roadwise Traffic Control as non-conforming, the City received written notification from Carringtons Traffic Services and Roadwise Traffic Control on 22 and 23 April 2004 respectively, expressing dissatisfaction on the proposed tender outcome.

The Joint Commissioners at the meeting on 27 April 2004 resolved to defer consideration of tenders submitted in response to the RFT.

The City sought legal advice, which recommended 'that the Tender Evaluation Team reassess each of the tenders lodged in response to the RFT' and following this reassessment the report to the Commissioners in relation to the tenders should, for certainty and transparency, outline the following:

- (a) that the tenders have been reassessed following legal advice regarding the initial assessment of the tenders; and
- (b) if the Tender Evaluation team recommends that any of the tenders be rejected, the specific reasons for the recommendation should be specified'.

The City has reassessed the tenders submitted by WARP Pty Ltd, Carrington Traffic Services and Roadwise Traffic Control.

Financial Implications:

Expenditure on this item is a component of the approved project within the City's Capital Works Budget as authorised by Council.

DETAILS

Under the City's Contract Management Framework, all tenders that are conforming (or non-conforming but accepted by the City) are assessed by a Tender Evaluation Team using a weighted multi-criterion assessment system and AS 4120-1994 '*Code of Tendering*'.

Each member of the Tender Evaluation Team individually assessed the tenders submitted in response to the RFT. The Tender Evaluation Team convened to submit and discuss their assessments.

The Selection Criteria for Tender Number 031-03/04 was as follows:

Resources and Experience of Tenderer in providing similar services:

- Relevant Industry Experience, including details of providing similar supply. Tenderers were required to submit a detailed schedule of previous experience on similar and/or relevant projects. Details were to include:
- past record of performance and achievement with a local government
- past record of performance and achievement with other clients
- level of understanding of tender documents and work required
- references from past and present clients
- ability to provide electronic pricing schedules.

Levels of Service as determined by the Capability/Competence of Tenderer to provide the services required:

- Company structure.
- Qualifications, skills and experience of key personnel including registration, training and experience.
- Equipment and staff resources available.
- Percentage of operational capacity represented by this work.
- financial capacity.
- Compliance with tender requirements – insurances, licenses etc.
- Quality systems.
- Occupational health and safety management system and track record.
- Post contract services offered.

Methodology:

- Tenderers were required to detail the procedures and process they intend to use to achieve the requirements of the Specification.

Beneficial Effects of Tender/Local Content:

- The potential social and economic effect of the tender on the City of Joondalup community.

Tendered Price/s:

- A fixed Schedule of Rates was required to be provided for the services and disbursements.

ASSESSMENT

Regulation 18(2) of the *Local Government (Functions and General) Regulations 1996* states:

'A tender that is submitted at a place, and within the time, specified in the invitation for tenders but fails to comply with any other requirement specified in the invitation may be rejected without considering the merits of the tender'.

Clause 1.6(a) of the RFT (which sets out the 'Selection Process') states:

'tenders are checked for completeness and compliance. Tenders that do contain all information (eg completed offer form and attachments) may be excluded from evaluation'.

Each member of the Tender Evaluation Team assessed each tender independently.

Under clause 4.4.2 of the RFT tenderers were required to complete the entire price schedule by inserting fixed prices in each row. The tender submitted by Carrington Traffic Services did not provide a fixed price for the provision of item 10 'variable message board'. In its tender, Carrington Traffic Services specified that it would provide a 'variable message board' for the 'Best Perth Price'.

Similarly the price schedule submitted by Roadwise Traffic Control gave no price for the provision of a 'vehicle mounted flashing arrow' (i.e. N/A was inserted), nor for the pick up and drop off for 'Triton water filled barriers' (i.e. 'TBA. AS PER QTY' was inserted).

Accordingly, the tenders submitted by Carrington Traffic Services and Roadwise Traffic Control did not provide fixed prices for each item in the price schedule, which was an express requirement of the RFT.

Clause 4.3.2(d) of the RFT (which relates to the Qualitative and Qualitative Criteria) states that:

'tenders shall address each issue and complete each appendix outlined with a qualitative criterion'.

In breach of the requirement in clause 4.3.2(d) of the RFT, Carrington Traffic Services failed to complete and provide Attachment 10 'Methodology', and Roadwise Traffic Control failed to complete and provide Attachment 10 'Methodology' and Attachment 11 'Beneficial Effects of Tender/Local Content'.

As a result of the reassessment of the tenders, the Tender Evaluation Team considers that the tenders submitted by Carrington Traffic Services and Roadwise Traffic Control are non-conforming tenders because each, in the manner set out above, fail to comply with requirements specified in the RFT.

Importantly, the failure of the tenders submitted by Carrington Traffic Services and Roadwise Traffic Control to comply with all of the requirements of the RFT prevented the Tender Evaluation Team from being able to compare the value of each of the three tenders, and to properly evaluate if the tenders from Carrington Traffic Services and Roadwise Traffic Control would be the most advantageous for the City to accept.

The tender submitted by WARP Pty Ltd complied with the requirements of the RFT. The tender demonstrated that WARP Pty Ltd has the ability to provide the services to the City on a value for money basis.

Statutory Provision:

Statewide public notice was given of the RFT, and all tenders submitted were opened and evaluated in accordance with the requirements in the *Local Government (Functions and General) Regulations 1996*.

Advertising the RFT also ensures compliance with the *Local Government (Functions and General) Regulations 1996*, where tenders are required to be publicly invited if the consideration under a contract is expected to be or worth more than \$50,000. The consideration for this contract is expected to exceed \$100,000 and, therefore, will exceed the Chief Executive Officer's delegated authority limit for the acceptance of tenders.

Policy 2.5.7 Purchasing Goods and Services

The City's Policy on purchasing goods and services encourages local business in the purchasing and tendering process. None of the tenders received in response to the RFT are from contractors located in Joondalup.

COMMENT

As a part of contract management processes, the City will regularly review/monitor the Contractor's performance and service quality to ensure services meet the City's standards.

Subject to Council approval, the contract term will be for an initial period of twelve (12) months (commencing on 1 July 2004 and ending on 30 June 2005). There will be an option to extend the contract for a further twenty four (24) months that will be subject to suitable performance by the Contractor in annual performance reviews that ensure that the requirements of the contract have been met. Subject to a satisfactory outcome of each review an extension, in increments of twelve-month periods, will be made. The duration of the contract will not exceed three (3) years.

The tender submitted by WARP Pty demonstrated that WARP Pty Ltd has the ability to provide the services to the City on a value for money basis.

ATTACHMENTS

Attachment 1 Schedule of Rates

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, SECONDED Cmr Fox that in relation to Tender Number 031-03/04 for the supply of traffic management and control services, the Joint Commissioners:

- 1 REJECT the tender submitted by Roadwise Traffic Control and the tender submitted by Carrington Traffic Services under *regulation 18(2) of the Local Government (Functions and General) Regulations 1996* without considering the merits of those tenders because they each fail to comply with requirements specified in the RFT;**
- 2 CHOOSE WARP Pty Ltd as the successful tenderer for the supply to the City of traffic management and control services (under Tender No. 031-03/04);**
- 3 AUTHORISE the Acting Chief Executive Officer on behalf of the City, to enter into a contract with WARP Pty Ltd in accordance with the tender submitted by WARP Pty Ltd, subject to any minor variations that may be agreed between the Acting Chief Executive Officer and WARP Pty Ltd;**
- 4 DETERMINE that the contract is to be for an initial period of 12 months – commencing on 1 July 2004 and ending on 30 June 2005 - with an option to extend, subject to satisfactory annual performance reviews, for a further maximum period of 24 months, in 12 month increments, with the total term of the contract not to exceed 3 years.**

Cmr Anderson referred to comments he had made earlier in relation to Item CJ121-06/04.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 4 refers

To access this attachment on electronic document, click here: [Attach4brf010604.pdf](#)

**CJ124 - 06/04 MINUTES OF THE CONSERVATION ADVISORY
COMMITTEE OF 28 APRIL 2004 – [12168]**

WARD - All

PURPOSE

The unconfirmed Minutes of the Conservation Advisory Committee Meeting held on 28 April 2004 are submitted for noting by Council.

EXECUTIVE SUMMARY

The Conservation Advisory Committee meeting held on 28 April 2004 discussed a range of conservation matters within the City of Joondalup. The Committee discussed issues including natural areas budget expenditure, a review of the Terms of Reference of the Conservation Advisory Committee and natural areas management staffing levels.

It is recommended that the Joint Commissioners:

- 1 *NOTE the unconfirmed Minutes of the Conservation Advisory Committee held on 28 April 2004;*
- 2 *ADOPT the revised Terms of Reference for the Conservation Advisory Committee;*
- 3 *NOTE that the Conservation Advisory Committee CARRIED the following motion at the April meeting “That the City of Joondalup’s Natural Areas Supervisor is provided with a team of at least three skilled and enthusiastic bushland regeneration workers with a suitable vehicle and equipment to carry out their tasks.”*

BACKGROUND

The Conservation Advisory Committee is a Council Committee, which advises Council on matters pertaining to conservation and nature areas management.

The Committee comprises representatives of bushland friends groups, community members with specialist knowledge of natural resource management. The Committee meets on a monthly basis.

DETAILS

A meeting of the Conservation Advisory Committee was held on 28 April 2004 and the unconfirmed minutes of this meeting are provided as Attachment 1. The revised Conservation Advisory Committee Terms of Reference are provided as Attachment 2. The existing Terms of Reference are shown as Attachment 3.

The following matters were considered:

The Terms of Reference for the Conservation Advisory Committee
Staffing Levels for Natural Areas Management
Natural Areas Budget Expenditure

The Terms of Reference for the Conservation Advisory Committee were revised to reflect recent changes made to Council’s committee structure and to reflect the more strategic direction the Committee is now taking. The Committee is very much involved in the City’s development of the Bio-diversity strategy and members are very conversant with natural resource management issues in the wider sense.

A number of members had a concern about the slow rate of expenditure on both the City’s maintenance and capital natural areas budgets, this concern was alleviated when it was explained in detail that in most instances budget expenditure is greatly influenced by climatic conditions, that planting of native species and control of exotic weed species is dependent on the winter rains and that budget expenditure in this area will increase when rain occurs.

Committee members requested that the City gives consideration to employing a team of bushland regenerators to work in Joondalup’s natural areas. Currently all work in natural areas is carried out by the following volunteers, Department of Justice Offenders, participants in Work for the Dole Schemes or local bush regeneration contractors. Committee members expressed the view that many large and small local authorities employed full time dedicated teams to manage their natural areas and the City of Joondalup should adopt this practice.

COMMENT

Bush regeneration in the City's reserves is currently undertaken by using a combination of bushland regeneration contractors, Work for the Dole participants and offenders from the Department of Justice serving Community Work Orders. Council staff are currently preparing tender documents for seeking the supply of bushland regeneration services for a two year period. This contract will give Council an on-call trained workforce to undertake work in the City's natural areas on a needs basis.

The budget estimate for the City to employ three skilled bushland regenerators with a vehicle and equipment as part of the City's full time work force is \$250,000. The suggested employment of an in-house team for bushland regeneration needs a detailed business case and this therefore can be listed as a proposal for future budget deliberations.

It is recommended that the Joint Commissioners note the unconfirmed Minutes of the 28 April 2004 meeting of the Conservation Advisory Committee.

ATTACHMENTS

Attachment 1	Conservation Advisory Committee Minutes 28 April 2004
Attachment 2	Conservation Advisory Committee revised Terms of Reference
Attachment 3	Conservation Advisory Committee existing Terms of Reference

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That the Joint Commissioners:

- 1 NOTE the unconfirmed Minutes of the Conservation Advisory Committee held on 28 April 2004 as shown in Attachment 1 to Report CJ124-06/04;
- 2 ADOPT the revised Terms of Reference for the Conservation Advisory Committee as shown in Attachment 2 to Report CJ124-06/04;
- 3 NOTE that the Conservation Advisory Committee CARRIED the following motion at the April meeting "That the City of Joondalup's Natural Areas Supervisor is provided with a team of at least three skilled and enthusiastic bushland regeneration workers with a suitable vehicle and equipment to carry out their tasks."

MOVED Cmr Smith, SECONDED Cmr Anderson that the Joint Commissioners:

- 1 NOTE the unconfirmed Minutes of the Conservation Advisory Committee held on 28 April 2004 as shown in Attachment 1 to Report CJ124-06/04;
- 2 ADOPT the revised Terms of Reference for the Conservation Advisory Committee as shown in Attachment 2 to Report CJ124-06/04 with the addition of the words "*when requested*" before the words "*technical advice*" in paragraph 2 of the Objectives;

3 NOTE that the Conservation Advisory Committee CARRIED the following motion at the April meeting:

“That the City of Joondalup’s Natural Areas Supervisor is provided with a team of at least three skilled and enthusiastic bushland regeneration workers with a suitable vehicle and equipment to carry out their tasks”,

and REQUEST the Chief Executive Officer to develop a business case on this proposal to be considered as part of the Principal Activities Plan deliberations for the year 2005/06.

Discussion ensued.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 5 refers

To access this attachment on electronic document, click here: [Attach5brf010604.pdf](#)

CJ125 - 06/04 FINAL ADOPTION OF COOK AVENUE STRUCTURE PLAN NO 5 - LOT 124 (92) COOK AVENUE, HILLARYS – [26549]

WARD Whitfords

PURPOSE

The purpose of this report is for the Joint Commissioners to consider minor modifications to the proposed Cook Avenue Structure Plan No 5 and to adopt the modified version of the Structure Plan.

EXECUTIVE SUMMARY

The Joint Commissioners considered a report on the proposed Structure Plan at their meeting on 16 December 2003 (CJ303–12/03 refers) when it was resolved to adopt the Structure Plan for the purposes of advertising. Advertising closed and a summary of all submissions and responses was provided in a report prepared for consideration by the Joint Commissioners at their meeting on 30 March 2004 (CJ065-03/04 refers). The concerns raised within these submissions related to density, building form and types, signage, traffic, parking, and public open space provision.

It is noted that a report relating to Amendment No 20 to the City’s District Planning Scheme No. 2 (DPS2) seeking to appropriately zone the subject property to enable future development of the land for residential purposes in accordance with the Structure Plan was also considered at the 30 March 2004 meeting (CJ064-03/04). Amendment No 20 was adopted at this meeting and awaits final approval of the Western Australian Planning Commission (WAPC).

It was resolved at the meeting on 30 March 2004 that further consideration needed to be given by the City's officers to some of the concerns raised and, consequently, consideration of final adoption of the Structure Plan was deferred. These concerns have been addressed by way of further modifications to the Structure Plan (see Attachment 3). These modifications are minor in nature and do not alter the intent or details of the Structure Plan. Re-advertising of the Structure Plan is considered not to be required.

It is recommended that the Joint Commissioners:

- 1 *Pursuant to Clause 9.6 of the City of Joondalup District Planning Scheme No 2 RESOLVE that the modified Cook Avenue Structure Plan No 5 as shown in Attachment 3 be adopted and submitted to the Western Australian Planning Commission for final adoption and certification.*⁸
- 2 *Subject to certification by the Western Australian Planning Commission ADOPT the modified Cook Avenue Structure Plan No 5 as an Agreed Structure Plan and authorise the affixation of the Common Seal to, and the signing of, the Structure Plan documents.*

BACKGROUND

Suburb/Location:	Lot 124 (92) Cook Avenue, Hillarys
Applicant:	Environmental Management Resources
Owner:	Investa Developments Pty Ltd
Zoning:	DPS: Local Reserve: Public Use – Primary School
	MRS: Urban
Strategic Plan:	Strategy 3.3 – Provide residential living choices to meet changing demographic needs

Lot 124 (92) Cook Avenue, Hillarys is bounded by Cook Avenue, New England Drive, Willandra Drive, Ferndene Mews and a PAW and has a total area of 4.0 hectares. It is located within a residential area in close proximity to commercial, community, recreational and educational facilities and the beach. The subject site is characterised by steep slopes to the southern and eastern boundaries towards Willandra Drive and New England Drive respectively.

The site was initially subdivided and vested in the Department of Education in the early 1990s as part of the Whitfords Beach Estate, Hillarys. It has since become surplus to the Department's requirements and was sold back as vacant land to the developers, Whitfords Beach Estate, now a wholly owned subsidiary of Investa Property Pty Ltd (Investa). The site has since been zoned "Urban" under the Metropolitan Region Scheme (MRS) and remains reserved as "Local Reserve: Public Use - Primary School" under DPS2. An amendment to the DPS2 to suitably zone and code the site to "Urban Development" in line with the provisions of the proposed Structure Plan was the subject of a separate report (CJ064-03/04).

The developer has indicated that the dwellings within the Structure Plan area are to be developed to maximise sustainability principles utilising small lot sizes and including 5 star energy rated dwellings designed to achieve passive solar access and are equipped with rainwater tanks, grey water re-use systems and energy efficient appliances.

Previous Council considerations of Structure Plan

The Joint Commissioners considered a report on the proposed Cook Avenue Structure Plan No 5 (the Structure Plan) at their meeting on 16 December 2003 (CJ030–12/03 refers) when it was resolved to adopt the Structure Plan and to make it available for the purposes of advertising. Advertising closed and a summary of all submissions and responses was provided in a report prepared for consideration by the Joint Commissioners at their meeting on 30 March 2004 (CJ065-03/04). However, it was resolved at this meeting that further consideration needed to be given by the City's officers to some of the concerns raised and, consequently, consideration of final adoption of the Structure Plan was deferred.

DETAILS

A Structure Plan outlines the development requirements for a particular parcel of land. A Structure Plan generally sets out provisions relating to residential density, building height, scale, setbacks and form, and associated criteria such as car parking and retaining walls. Dwellings within a Structure Plan area are required to be developed in accordance with the requirements of the Acceptable Development Provisions of the Codes, unless otherwise provided for in the Structure Plan.

The purpose of the Structure Plan is to establish parameters for the future subdivision of this site into 87 lots, including one lot for grouped dwelling development. It is proposed to divide the site into three distinct precincts - Perimeter Dwelling Precinct, Internal Dwelling Precinct and a Grouped Dwelling Precinct - featuring different design elements to ensure a variety of dwelling types and forms are developed and to assist in integrating the development into the surrounding established residential area which is predominantly R20 density. To this end, it is proposed that the Perimeter Housing Precinct be low density with a density coding of R25, consistent with the surrounding residential area. The Internal and Grouped Dwelling Precincts are proposed to be medium density with a density coding of R40. The proposed dwellings are to be designed using best practice sustainability principles with 5 star energy ratings and including the reuse of grey water.

Minor modifications were made to the Structure Plan in order to address issues contained within submissions received from the public during the advertising period. Other minor modifications were made to the structure plan to increase clarity and to clearly recognise the intent of the Structure Plan to guide future residential development of the site and as a development assessment tool. These minor modifications have been incorporated into the modified Structure Plan.

The Joint Commissioners considered the Cook Avenue Structure Plan No 5 for final adoption at their meeting on 30 March 2004 (CJ065-03/04) when it was resolved to defer a decision on the following grounds (italicised):

“...to enable the officers to give further consideration to the concerns raised in the public submissions including, but not limited to, the permissible height of buildings”.

The major concerns with respect to the future residential buildings on the site related to the following issues:

- Density and zoning
- Building height, bulk and scale
- Finished ground levels

Further assessment of the provisions in Part 1 and discussions with the applicant have been undertaken. A number of modifications have been made to the Structure Plan to address these issues, in addition to some formatting changes that are detailed later in this report.

Statutory Provision

Clause 9.1 of DPS2 states that the Joint Commissioners may require the preparation of a Structure Plan as a prerequisite to its support for a proposal to rezone or classify land in the district. Clause 9.5 of DPS2 requires Structure Plan proposals to be advertised in accordance with the provisions of clause 6.7 prior to further consideration by the Joint Commissioners. Under clause 9.6 of DPS2, the Joint Commissioners shall consider all submissions received during the advertising period within sixty (60) days of the last submission (Attachment 4). After consideration of all submissions, the Joint Commissioners shall either resolve to refuse or to adopt the Structure Plan, with or without modification and to submit three copies to the Western Australian Planning Commission (WAPC) for final adoption and endorsement.

Consultation

The proponent has previously undertaken workshops and community consultation with respect to the proposal. The purpose for community consultation that was undertaken by the proponent was to obtain the local communities views with respect to future development of the site. This consultation was non statutory in nature and the City was not a party to, nor did it control this consultation process.

Advertising of the Structure Plan, as required under the City's DPS2, was undertaken by the City for a period of forty-two (42) days by way of notification of all adjoining landowners, two signs being erected on the site and a notice being placed in the Joondalup Community newspaper on 22 January 2004. Given that the site is bounded by four existing roads and a public accessway (PAW), adjoining landowners were taken to be all landowners located immediately opposite the site on all four streets which border the site, together with the landowners on the opposite side of the PAW at the south-east corner of the site.

The issues raised by the public are tabled within Attachment 4 and addressed in this report.

Strategic Implications

The proposed Structure Plan would facilitate the development of a variety of housing forms in line with the objectives of the City's Strategic Plan.

Sustainability Implications

The proposed Structure Plan provides for small lot subdivision of low and medium density which will facilitate better utilisation of the existing services infrastructure, community facilities and public transport in line with the State's overall planning objectives. Furthermore, the dwelling types proposed support sustainability principles through utilising small lot sizes and maximising energy efficiency by using 5 star energy rated designs that will achieve passive solar access. Furthermore, all dwellings are to be equipped with rainwater tanks, grey water re-use systems and energy efficient appliances.

COMMENT

As reported at the meeting on 30 March 2004 (CJ065-03/04)

Advertising closed on 3 March 2004 with a total of twelve submissions being received, including three late submissions. Of the submissions received, four were of no objection, one supported the proposal and the remainder objected to the proposal (Attachment 4 refers). The City was also made aware of a circular letter (Attachment 5 refers) which had been delivered to numerous homes in the area of the subject site. The circular (author unknown) made a number of statements which may also be considered relevant.

Comment with respect to issues raised during the advertising period

Issues raised during the advertising period have been summarized, listed within each underlined heading and a response provided under each heading below.

Concern was raised with respect to the uncertainty of plans forming the Part 1 (statutory) or Part 2 (non statutory) component of the Structure Plan.

As a result of this, and to ensure clarity, the contents page of the Structure Plan has been modified to include reference to Plans 1-3 in Part 1. In addition, the densities of each Precinct are now noted in the objectives of these Precincts. These densities are R25 for the Perimeter Dwelling Precinct and R40 for the Internal and Grouped Dwelling Precincts.

Concern was raised with respect to various definitions contained within the Structure Plan.

Whilst the term "housing" is commonly understood to refer to residences used for permanent habitation and therefore previously approved Structure Plans have not defined it, the word "housing" has been removed in the modified Structure Plan and replaced with the word "dwelling" which is clearly defined in the Codes as "a building...to be used for the purpose of human habitation on a permanent basis.....".

The term "a variety of residential housing" refers to the style of housing that will be developed and does not refer to different forms. These are otherwise referred to under the objectives of the three Precincts.

Concern with respect to future heights of lots, dwellings and tower elements.

Given proposed maximum wall and roof ridgeline height requirements, standard two storey dwellings are likely to prevail throughout the area, with the exception of dwellings fronting Willandra Drive and New England Drive. Development upon these lots is likely to be one storey in height, however may contain undercroft garages (split level) in order to best utilise the existing topography of the land and steep slopes. This is sympathetic to, and compatible with, existing dwellings in the surrounding area, including the opposite side of Cook Avenue, which is characterised by a mix of single and two storey dwellings. The grouped dwelling development, located adjacent to the PAW at the south east corner of the site, would be 3-4 storeys and no towers are permitted on this lot.

Tower elements of additional height are proposed on key corners of the site (See Plan 2 within Attachment 2 for exact locations). Tower elements may include towers, lookouts and lofts and the allowable dimensions and overall heights being set out within the development criteria 2.10.2 (xv) on page 8 & 2.11.2 (xv) on page 10.

Finished floor level details are not required at the Structure Plan stage, rather these will be required at the building licence stage. Nevertheless, Plan 4 – Indicative Street Elevation and Section shows that the dwellings will need to observe the natural ground contours with minimal need for filling and retaining as a result. It is also noted that a contoured subdivision plan was provided in Part 2 which, whilst not an approved plan at this time, provides an understanding of the way that the dwellings could be developed by observing the natural ground levels. To allay any concerns about extensive filling and retaining, an additional provision has been included in the Structure Plan in the Perimeter Dwelling Precinct [item (v)] limiting the height of any retaining walls to 2 metres.

Concerns with respect to signage within a residential area

The only signage that could be permitted in a residential area under the City's Signs Local Law would be in relation to home businesses and, to a lesser extent, real estate 'for sale' signs on a temporary basis. Any other signage would be considered commercial in nature requiring a separate development application that would be unlikely to be supported.

Concerns with respect to traffic and parking

A Traffic Management Report was submitted prior to the commencement of advertising that considered, amongst other things, the increased volumes of traffic on Cook Avenue given it is the point of entry to the proposed subdivision, together with other roads bordering the site. Traffic management devices are proposed and include traffic islands, narrowing of Cook Avenue and the proposed location of crossovers in relation to existing crossovers on the north side of Cook Avenue. These measures will be required to be implemented at the subdivision stage.

On-street car parking bays for visitors have been provided on the proposed internal streets and are additional to the required 2 car parking bays for each dwelling. The City encourages the provision of on-street car parking bays and seeks to maximise the provisions of these bays during the subdivision stage.

Concerns with respect to public open space

As noted in the previous report to the Joint Commissioners, with the proposed arrangement of lots there is a shortfall of public open space of approximately 350m² (0.125% of the site area), resulting in the provision of 9.875% of the required area of open space. A minimum area equating to 10% of the area of the subdividable land is normally required at the subdivision stage in accordance with the WAPC's Policy DC 2.3 Public Open Space in Residential Areas. As little as 8% POS can, however, be accepted subject to a cash-in-lieu payment to the local authority for the required balance. The shortfall is considered to be acceptable in this instance and a cash-in-lieu payment is intended to be finalised at the subdivision stage.

Public open space is owned by the Crown and vested in the local government for its care and management and, therefore, the costs associated with maintaining this space would be borne by the City. This matter will be considered further at the subdivision stage when an agreement may be made with the developer to maintain this area for an extended period.

Proposed Further Modifications to Structure Plan for meeting of 8 June 2004

As a result of the deferral of a decision by the Joint Commissioners at its meeting on 30 March 2004 to enable the City's officers to further consider the concerns raised in the public submissions, a number of modifications to the Structure Plan are proposed to address these issues. These are outlined in Attachment 3 and detailed as follows:

Proposed Modifications

- The definition of "BUILDING HEIGHT" as defined in clause 2.3 DEFINITIONS has altered to read:

"BUILDING HEIGHT" means the vertical distance at any point from natural ground level to the uppermost part of the building above that point (roof ridge, parapet or wall), excluding minor projections above that point. Minor projections include finials, chimneys, vent pipes, aerials or other appurtenance of like scale.

- The definition of "GROUND LEVEL" as defined in clause 2.3 DEFINITIONS has altered to read:

"GROUND LEVEL" means the finished level of the lot relative to the finished Australian Height Datum (AHD) level of the road that it fronts (existing or as established at subdivision stage) and immediately adjacent to the lot. The finished level of the lot shall be +/- 0.5 metres from the AHD level of the midpoint of the road and measured from the midpoint of the frontage of each lot frontage.

- Additional definition for ground floor level in relation to the grouped dwelling site, to read:

"GROUND FLOOR LEVEL" means the floor level of a grouped dwelling at or nearest to the finished ground level of the lot immediately adjacent to the grouped dwellings.

- Addition of a statement of intent in clause 2.7 relating to the Grouped Dwelling site, as follows:

Grouped Dwellings

- Because of the steep ground contours in the Grouped Dwelling Precinct, it is proposed to contour the precinct with the use of retaining walls. The natural ground slope will be terraced to create three level building platforms, on which the three grouped dwellings will be constructed. The maximum building height in this precinct has therefore been defined from ground floor level rather than ground level, in order to accommodate the steep ground contours
- Addition of clause (xi) in the Grouped Dwelling Precinct stating that tower elements are not permitted in this Precinct.
- Modifications to clauses 2.10.2 in the Perimeter Dwelling Precinct, clauses 2.11.2 (xiv) and (xvi) in the Internal Dwelling Precinct, and clauses 2.12.2 (x) in the Grouped Dwelling Precinct relating to maximum building heights, as follows:

2.10.2 (xiii) Wall height - 4 m; Roof ridge - 6.5 m

(xiv) Notwithstanding clause xiii above, dwellings fronting Willandra and New England Drives shall be single storey at these street frontages, with a maximum building height as follows: Wall height - 4m; Roof ridge – 6.5m.

(xvi) Tower elements must contribute to the landmark quality of the building, and can take the form of towers, lookouts, and lofts. Tower elements can only be located on corner lots and at the entrance to the Cook Ave (C-Air Housing Development), and shall have a maximum building height as follows: Roof ridge – 11m, and plan dimensions no greater than 4m by 4m.

2.11.2 (xiv) Wall height - 7m; Roof ridge - 9.5m.

(xvi) Tower elements must contribute to the landmark quality of the building, and can take the form of towers, lookouts, and lofts. Tower elements can only be located on corner lots and at the entrance to the Cook Ave (C-Air Housing Development), and shall have a maximum building height as follows: Roof ridge – 11m, and plan dimensions no greater than 4m by 4m.

2.12.2 (x) Wall height – 9m; Roof ridge – 11m.

- Inclusion of a maximum building heights in clauses 2.10.2 in the Perimeter Dwelling Precinct and 2.11.2 in the Internal Dwelling Precinct, as follows:
- Reordering of clauses 2 10.2 and 2.11.2 (xv) and (xvi), and clause 2.12.2 (xi) and (xii).

Discussion on proposed modifications

The site is challenging in terms of the variety of levels that exist over the site. These range from very steep lots along Willandra Drive to less steep lots along New England Drive and Ferndene Mews and relatively flat lots towards the centre of the site. The concerns expressed are that the floor levels of dwellings will be measured from the highest levels of these lots and therefore these buildings will be much higher than the maximum heights stipulated in the Structure Plan provisions for each Precinct.

The modified definitions of Building Height and Ground Level seek to clarify the relationship of the proposed buildings that will be sited on the lots to the existing and proposed levels of roads. These levels are either known because they are existing roads, or will be constructed as relatively level roads as part of the subdivision works. A differential of 0.5 metres has been allowed to take account of the fact that the levels of subdivisional roads have not yet been established. This 0.5 metre differential is consistent with the amount of landfill that can be permitted on residential lots under the Residential Design Codes (R Codes) without the need for the applicant to seek special approval. This extent of landfill is also recognised as being adequate to ensure that residential amenity in terms of privacy and overshadowing are maintained.

The definition of minor projections that has been added to the Building Height definition is consistent with the definition in the R Codes. The modified definitions are therefore appropriate and supported.

The overall building heights have been reduced in all Precincts by 2.0-2.5 metres, with the exception of the lots where tower elements are permitted. This reduction recognizes the fact that the original proposed Structure Plan stipulated a roof pitch of 45⁰, however this was reduced to 26-35⁰ and therefore the maximum heights in fact only relate to the lots where tower elements are permitted (Plan 3). The overall effect is a significant reduction in the permissible height of the remainder of the dwellings.

In addition, the modifications clarify the maximum allowable total overall building height and clarify that no tower elements will be permitted in the Grouped Dwelling Precinct.

A new definition has been included that relates to the Grouped Dwelling lot to recognise the fact that this site has a significant slope with a fall of 5 metres towards the centre of the site and that more than one dwelling (6 grouped dwellings) could ultimately be built on this lot. These dwellings will therefore be built at different floor levels, which cannot be directly related to the levels of the Pedestrian Accessway (PAW) or roads immediately adjacent to this lot. An explanatory statement in clause 2.7 helps to explain the reason for the new definition. The provisions relating to maximum heights of the grouped dwellings will provide sufficient surety that they will not be excessively high in relation to the surrounding residential developments.

The other modifications to the Structure Plan relate to reformatting to provide increased clarity and better order of provisions. They do not affect the content of any provisions.

Conclusion

The issues raised during the submission stage have either been addressed in this report or are intended to be addressed at the future subdivision stage of development. Notwithstanding this, some minor modifications were identified during the advertising period, partly as a result of the submissions received, as being necessary for clarity and to clearly recognise the intent of the Structure Plan as a development assessment tool.

As the proposed modifications are required for clarity purposes or to recognise that altered formatting is of a minor nature in that they do not alter the intent or purpose of the Structure Plan, re-advertising of the Structure Plan is considered to be unwarranted in this instance.

It is recommended that the Joint Commissioners adopt the modified version of the Structure Plan.

ATTACHMENTS

Attachment 1	Location Plan
Attachment 2	Tracked Copy Showing Changes to Cook Ave Structure Plan
Attachment 3	Modified Cook Avenue Structure Plan
Attachment 4	Summary of Submissions
Attachment 5	Circular Letter

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That the Joint Commissioners:

- 1 pursuant to Clause 9.6 of the City of Joondalup District Planning Scheme No 2 **RESOLVE** that the modified Cook Avenue Structure Plan No 5 as shown in Attachment 3 to Report CJ125-06/04 be adopted and submitted to the Western Australian Planning Commission for final adoption and certification;
- 2 subject to certification by the Western Australian Planning Commission **ADOPT** the modified Cook Avenue Structure Plan No 5 as an Agreed Structure Plan and authorise the affixation of the Common Seal to, and the signing of, the Structure Plan documents.

MOVED Cmr Smith, SECONDED Cmr Fox that the Joint Commissioners:

- 1 pursuant to Clause 9.6 of the City of Joondalup District Planning Scheme No 2 **RESOLVE** that the modified Cook Avenue Structure Plan No 5 as shown in Attachment 3 to Report CJ125-06/04 be adopted subject to a further modification to the ground floor level definition to read:

“Ground Floor Level” means the floor level of a group dwelling at or nearest to the ground level of the kerb height in Ferndene Mews adjacent to the group dwelling site.

and submitted to the Western Australian Planning Commission for final adoption and certification;

- 2 subject to certification by the Western Australian Planning Commission ADOPT the modified Cook Avenue Structure Plan No 5 as an Agreed Structure Plan and authorise the affixation of the Common Seal to, and the signing of, the Structure Plan documents.**

Cmr Smith spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendices 6, 6(a), 6(b) and 6(c) refer

To access this attachment on electronic document, click here:
[Attach6min080604.pdf](#)
[Attach6mina080604.pdf](#) [Attach6a080604.pdf](#) [Attach6bagn080604.pdf](#)
[Attach6cagn080604.pdf](#)

**CJ126 - 06/04 CLOSE OF ADVERTISING - PROPOSED
MODIFICATIONS TO THE JOONDALUP CITY
CENTRE DEVELOPMENT PLAN AND MANUAL –
CITY NORTH DISTRICT – [45083] [58538] [17169]**

WARD - Lakeside

PURPOSE

The purpose of this report is for the Joint Commissioners to consider public submissions received following advertising of a proposed modification to the A1 Land Use Plan (Attachment 1 refers) under the Joondalup City Centre Development Plan and Manual (JCCDPM) and to grant final approval to the proposed modifications.

EXECUTIVE SUMMARY

At their meeting on 30 March 2004, the Joint Commissioners resolved to adopt the proposed modifications to the JCCDPM for public comment for a period of 21 days, commencing on 8 April 2004 (CJ068-03/04 refers). The modifications proposed to the JCCDPM will rectify an anomaly that exists between the subdivision approved for Stage 6 City North and the JCCDPM and will also ensure that the existing A1 Land Use Plan in the JCCDPM is consistent with the approved plan of subdivision (Stage 6 City North – Attachment 2 refers).

A total of five (5) submissions were received during the advertising period. Of these, two submissions were from Western Power and Alinta Gas. Two submissions received object to the proposal.

The concerns raised by the two submissions objecting to the proposed amendment are addressed in both the comment section of this report and in the schedule of submissions contained within Attachment 4 of this report.

The modifications are necessary to ensure the A1 Land Use Plan is in accordance with the approved subdivision plan for the area.

It is recommended that the Joint Commissioners:

- 1 *Pursuant to clause 9.7 of the City of Joondalup District Planning Scheme No 2 RESOLVE that the modifications to the Joondalup City Centre Development Plan and Manual in accordance with Attachment 3 – Proposed A1 Land Use Plan, be adopted and submitted to the Western Australian Planning Commission for adoption and certification;*
- 2 *Subject to certification of the modifications to the Joondalup City Centre Development Plan and Manual – A1 Land Use Plan by the Western Australian Planning Commission, ADOPT the Joondalup City Centre Development Plan and Manual as an agreed structure plan and authorise the signing and sealing of the structure plan documents;*
- 3 *NOTE the submissions received;*
- 4 *ADVISE the submitters of the Joint Commissioner’s decision.*

BACKGROUND

On 12 September 2001 the Western Australian Planning Commission (WAPC) approved a subdivision for Stage 6 City North to create 12 ‘General City’ and 37 ‘Residential’ lots. The City identified a portion of the subdivision proposal, as being contrary to the A1 Land Use Plan in the JCCDPM and accordingly, the JCCDPM is required to be amended to ensure that it is consistent with the approved subdivision. The reasons for the anomaly have been outlined in the City’s report to the Joint Commissioners on 30 March 2004 and are reiterated in the comment section of this report.

At its meeting on 30 March 2004, the Joint Commissioners resolved to adopt the proposed modifications to the JCCDPM for public comment for a period of 21 days (CJ-068-03/04).

DETAILS

There are seven (7) modifications proposed to the Existing A1 Land Use Plan (Attachment 1 refers), with these modifications shown in the Proposed A1 Land Use Plan (Attachment 3 refers). A summary of each of the modifications proposed is as follows:

- 1 Delete the “Public Parking” use and replace with “Residential” use;
- 2 Delete a section of “General City” use and replace with “Residential” use;
- 3 Identify Pimlico Place as a through road connecting to Grand Boulevard;
- 4 Identify Hammersmith Court as a through road connecting to McLarty Avenue;
- 5 Identify a laneway to the rear of the lots fronting Hammersmith Court and Pimlico Place;
- 6 Identify a road connecting Hammersmith Court to McLarty Avenue; and
- 7 Identify a road connecting Pimlico Place and Hammersmith Court (dividing the 8 Residential use lots from the General City use lots).

Consultation:

The modifications proposed to the JCCDPM were advertised for public comment for a 21-day period, commencing on 8 April 2004. An advertisement was placed in the Joondalup Times on 8 April 2004 and a sign erected on site. A letter outlining the proposed modification was also sent to LandCorp for distribution to potential landowners who at the time were awaiting final settlement for the purchase of lots affected by the proposed modifications. A letter was also sent to residents in the immediate vicinity of the area and to public service authorities for their comment. A total of 15 letters were sent inviting comment.

Five (5) submissions were received. Two submissions were received from Western Power and Alinta Gas. Western Power has indicated its support for the proposed amendment, whilst Alinta Gas provided some advice regarding the maintenance of the gas network.

The third submission received objects to the removal of the public car parking station and raises a number of issues concerning the rationale for doing so. The submission also raises a perceived inconsistency between two previous Council reports with respect to car parking standards in the JCCDPM and the Joondalup City Centre Public Parking Strategy (JCCPPS).

The fourth submission objects to the proposed amendment based on an anomaly between the JCCDPM and the JCCPPS (See attachment 4). The submission also raises a number of concerns in relation to the City's assessment of the Stage 6 City North subdivision.

The fifth submission advises the City that the land subject to the amendment has already been sold by LandCorp, accordingly has stated that *'the time for public consultation has passed'*.

Responses to each submission are outlined in the comments section of this report and are tabled in Attachment 4 to this report.

Statutory Provision:

Upon completion of the advertising period the Joint Commissioners are required to review all submissions within sixty (60) days and consider either refusing to adopt the modifications to the Structure Plan or resolve that the modifications to the Structure Plan are satisfactory, with or without further modifications.

Where the Joint Commissioners resolve that the Structure Plan is satisfactory with or without further modifications, three copies are to be forwarded to the Western Australian Planning Commission for adoption and certification in the form illustrated in schedule 8 of the City's District Planning Scheme No.2 (DPS2).

COMMENT**Submissions 1, 2 & 5**

The two (2) submissions received from service authorities provided standard comments and are noted. The fifth submission received stated that the land subject to the amendment has already been subdivided and sold, and is also noted.

Submission 3

The third submission received objects to the removal of the public car parking station for the following reasons:

Point 1

The parking station was identified in the JCCDPM prior to the subdivision and therefore should remain.

Response

This is partly correct however this needs to be considered alongside the JCCPPS. The JCCPPS does not identify any parking station for the City North area, despite one proposed under the JCCPDM. The JCCPPS is a more recently prepared strategic document in relation to the provision of public parking stations in the City Centre and it focuses totally on parking issues. Accordingly, the subdivision proposed for Stage 6 City North was designed with the public parking station removed to accord with the JCCPPS.

Point 2

The predominance of residential land use in the District as a reason to remove the parking station is not warranted as 'General City' uses also predominate in the immediate vicinity.

Response

A greater portion of the Stage 6 City North subdivision is set aside for residential development which, as a land use class, traditionally requires less parking than that required for commercial land uses. Irrespective of this, the development of both commercial and residential lots requires the provision of on-site parking.

Point 3

A previous Council report (CJ068-03/04) indicates that the District is well serviced with on street parking and this indicates that there may be a speculated short fall in commercial car parking. Accordingly future parking demands need to be catered for.

Response

The existence of on-street car parking in the form of verge embayments, provided at the time of subdivision, supplements on-site parking to ensure that any future demand for car parking in the area is catered for to an appropriate level.

Point 4

Changing the existing land uses is not a concern with the exception of comments made in relation to car parking.

Response

This comment is noted.

Point 5

Inconsistency between report CJ068-03/04 stating that the parking strategy was endorsed and supersedes the JCCDPM and report CJ089-04/04 stating that there are no car parking requirements for the CBD or City North within the JCCDPM needs to be confirmed and corrected.

Response

An anomaly exists between the JCCPPS and the JCCDPM when it comes to the identification of car parking stations in the City Centre. A car parking station is shown in the JCCDPM but not in the JCCPPS. This has been acknowledged and accordingly the JCCDPM is required to be modified to remove the car parking station so that it accords with the JCCPPS.

The JCCPPS provides no advice on the number of car bays that are required when individual lots are developed. It is the role of the JCCDPM, DPS2 and the Residential Design Codes to set out these standards. The reason for the report to Council to modify the JCCDPM (CJ089-04/04 refers) is to recognise that the JCCDPM provides little to no car parking standards for individual lot development. Accordingly, the amendments proposed in that report intends to rectify this anomaly.

Submission 4

The fourth submission received objects to the proposed amendment for the following reasons:

Point 1

The statement “the JCCPPS was endorsed after the JCCDPM and supersedes the car parking requirements stipulated within the latter” in report (CJ-086-03/04) is incorrect as the WAPC has not endorsed the strategy as forming part of the JCCDPM.

Response

The JCCPPS is a strategic planning document endorsed by the City of Joondalup and does not require the approval of the WAPC.

Point 2

The area covered in the JCCPPS does not include the City North area so no relevance can be attached to it.

Response

The JCCDPM A1 Land use plan was approved prior to the City endorsing the JCCPPS. Accordingly the JCCPPS does not recognise the public parking station that is identified in City North under the JCCDPM.

Point 3

The subdivision was approved under delegated authority. There is no evidence that parking in this area of City North has been considered a part of the approval process.

Response

The City's role in the subdivision process is to provide an assessment then forward a recommendation to the WAPC who is responsible for issuing an approval for the subdivision.

The City when assessing the subdivision proposal, considered a number of issues, particularly the provision of parking in the immediate area. The City's decision to support the removal of the public parking station identified in the JCCDPM is based upon the ample provision of on-street and on-site parking, as well as the fact that its removal accords with the JCCPPS.

Point 4

The process of approval of subdivision does not appear to have been handled correctly in that the City of Joondalup supported an approval that did not conform to the structure plan.

Response

City has followed the necessary process to assess the subdivision proposal and has provided advice to the WAPC so a final decision can be made.

Sustainability

A long-term objective of the JCCPPS is to ensure the City Centre has been designed and developed to facilitate a high level of public transport use, pedestrian and cyclist activity so that a sustainable urban form is created. To encourage this, only a limited number of public parking bays are to be provided in the City Centre and the road network is to be designed to control traffic speeds to encourage all these alternative forms of transport and reduce the use of the private motor vehicle.

The removal of the car parking station proposed in this amendment will contribute to this long-term objective being achieved.

Recommendation

The amendment will rectify an anomaly that exists between the subdivision proposal approved for Stage 6 City North and the JCCDPM. The modifications proposed will ensure that the existing A1 Land Use plan in the JCCDPM is consistent with the approved plan of subdivision and accordingly the proposed modifications are recommended for final approval.

ATTACHMENTS

Attachment 1	Existing A1 Land Use Plan
Attachment 2	Approved Subdivision Plan WAPC Ref: 116320
Attachment 3	Proposed Modified A1 Land Use Plan
Attachment 4	Schedule of Submissions

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That the Joint Commissioners:

- 1 pursuant to clause 9.7 of the City of Joondalup District Planning Scheme No 2 **RESOLVE** that the modifications to the Joondalup City Centre Development Plan and Manual in accordance with Attachment 3 to Report CJ126-06/04 – Proposed A1 Land Use Plan, be adopted and submitted to the Western Australian Planning Commission for adoption and certification;
- 2 **SUBJECT** to certification of the modifications to the Joondalup City Centre Development Plan and Manual - A1 Land Use Plan by the Western Australian Planning Commission, **ADOPT** the modifications to the Joondalup City Centre Development Plan and Manual (Agreed Structure Plan No 1);
- 3 **NOTE** the submissions received;
- 4 **ADVISE** the submitters of the Joint Commissioner's decision.

MOVED Cmr Smith, SECONDED Cmr Anderson that the Joint Commissioners:

- 1 **pursuant to clause 9.7 of the City of Joondalup District Planning Scheme No 2 RESOLVE** that the modifications to the Joondalup City Centre Development Plan and Manual in accordance with Attachment 3 to Report CJ126-06/04 – Proposed A1 Land Use Plan, be adopted and submitted to the Western Australian Planning Commission for adoption and certification;
- 2 **SUBJECT** to certification of the modifications to the Joondalup City Centre Development Plan and Manual - A1 Land Use Plan by the Western Australian Planning Commission, **ADOPT** the modifications to the Joondalup City Centre Development Plan and Manual (Agreed Structure Plan No 1);
- 3 **NOTE** the submissions received and express appreciation for the pertinent matters that have been raised;
- 4 **ADVISE** the submitters of the Joint Commissioner's decision;

5 ADDRESS as part of the review of the Town Planning Delegations the impact of staff making determinations under delegated authority that have the effect of defacto binding the Council to future decisions that fall outside the delegations.

Cmr Smith sought the approval of Cmr Anderson as the Seconder of the Motion to add a Point 5 to the Motion and gave an explanation for this. Cmr Anderson agreed to this request.

Discussion ensued.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 7 refers

To access this attachment on electronic document, click here: [Attach7brf010604.pdf](#)

CJ127 - 06/04 PROPOSED MIXED USE DEVELOPMENT(13 COMMERCIAL AND 137 RESIDENTIAL UNITS) LOTS 1, 2, 3 & 6 MOLLOY PROMENADE, LOTS 4 & 72 WALSH LOOP AND LOTS 7-11 CORNELL PARADE/DEAKIN GATE AND THE RIGHT OF WAY BETWEEN MOLLOY PROMENADE AND WALSH LOOP, JOONDALUP – [10532]

WARD - All

PURPOSE

The proposed mixed use development is referred to the Joint Commissioners for determination due to its size and the significance of this proposal as a landmark development within the City Centre.

EXECUTIVE SUMMARY

The proposal is for the construction of ten (10) buildings, which together make up three (3) ‘villages’. Overall the proposal comprises 1573.9m² of commercial space and one hundred and thirty seven (137) dwellings (including thirty-three (33) single bedroom dwellings and five (5) grouped dwellings). The proposed heights of the buildings range from two storeys to seven storeys.

The proposal requires the amalgamation of two (2) lots to form Village 1, four (4) lots and a right of way to form Village 2, and five (5) lots to form Village 3.

Each village is designed to accommodate a mixed use development, although the predominant use in Village 1 and 2 is residential. In Village 3 the proportion between the residential and non-residential component is approximately equal.

The proposal represents a significant development for the City Centre. It is a landmark development that will serve to strengthen the character of the Campus District within the City Centre and provide a visual gateway to the City. The site is ideally located in terms of its proximity to all the facilities available in the City, in particular the existing educational facilities.

The density, height and urban form of the development will create urban spaces with active frontages to all streets and serves to create an urban area that is compatible with the overall City Centre environment.

Discretion is sought under the City's District Planning Scheme 2 (DPS2) and the Residential Planning Codes (R-Codes) in regard to car parking standards and under the R-Codes in regards to minimum balcony dimensions.

The proposal includes a provision for reciprocal car parking between the villages and an overall shortfall of 12 car bays. The applicant has requested to pay cash-in-lieu for the car parking shortfall.

Traffic, pedestrian movements, aesthetic design and landscaping are considered to have been suitably addressed by the design proposal.

Given the prominence of the development on the corner of two major approach routes into the City, its contribution to the character of the City Centre area and the diverse type of residential and commercial accommodation provided, the proposed development is supported.

BACKGROUND

Suburb/Location: Lot 1,2,3 & 6 Molloy Promenade, Lot 4 & 72 Walsh Loop and Lots 7-11 Cornell Parade/Deakin Gate and the Right of Way between Molloy Promenade and Walsh Loop, Joondalup

Applicant: Proven Joondalup Pty Ltd

Owner: Proven Joondalup Pty Ltd

Zoning: **DPS:** Centre
MRS: Central City Area

The subject lots are in a prominent location at the southern corner of the Joondalup City Centre. The area is on the northern side of the intersection of Lakeside Drive and Joondalup Drive, which are both major access routes into the City. As such the sites serve as the southern gateway to the City.

The lots (all currently vacant) fall within the 'Campus District' within the Joondalup City Centre, where they are earmarked to be used for mixed use/residential. The preferred uses are residential (mandatory) retail, office, entertainment, restaurant/café, medical suites, accommodation, community facilities and recreation.

Eleven (11) lots are affected by the proposal and the total development area is 11189m². The application for the closure of a Right of Way and the amalgamation of the 11 lots and the Right of Way to allow for the three land parcels to be created, has been lodged with the Western Australian Planning Commission (WAPC) and is currently being processed.

DETAILS

The proposed development includes the following features:

- Combined development of 10 buildings (demarcated as block A-J on the plans) grouped into 3 Villages on the basis of three ‘street blocks’.
- Height of buildings varying from 2 storeys (Village 3) to 6 and 7 storeys (Village 1 and 2)
- One hundred and thirty seven (137) residential dwellings and 1579m² of commercial space, distributed amongst the Villages.
- The total number of car parking bays provided is 178.
- Villages 1 and 2 include an undercroft level that accommodates car parking, most stores and services.
- Parking for Village 3 is provided at ground level, with some bays undercover. Each unit has its own store on the upper level.
- Service access is provided for all commercial units.
- The upper level residential units in Village 1 & 2 are accessed via a lift located in a central location of each building.
- The residential and commercial units in Village 3 address both Walsh Loop and Deakin Gate with access being provided from both streets.
- Various open spaces and communal areas are created as part of the design.
- Commercial tenancy frontages include pedestrian shelter in the form of colonnades and awnings that extend over the road reserve.
- Amalgamation of Lots 1 and 2 to form Village 1, Lots 3,4,6,7,2 and the Right of Way to form Village 2, and Lots 7-11 to form Village 3.

The table below summarises the development details for each village:

	Village 1 Total area: 3337m²	Village 2 Total area: 6028m²	Village 3 Total area:1824m²	TOTAL 11189m²
Number of Buildings proposed	4 (Blocks A- D)	5 (Blocks E – I)	1 (Block J)	
Height in storeys (ground floor counted as storey)	A: 6 plus undercroft B: 7 plus undercroft C: 7 plus undercroft D: 6 plus undercroft	E: 7 F: 7 G: 6 plus undercroft H: 6 plus undercroft I: 6 plus undercroft	J: 2	
Number of residential dwellings	Block A 12 x 3 Bed Block B 5 x 1 Bed 11 x 3 Bed 1 x Penthouse Block C 5 x 1 Bed 10 x 3 Bed 1 x Penthouse Block D 10 x 3 Bed	Block E 5 x 1 bed 1 x 2 bed 11 x 3 bed 1 x Penthouse Block F – 5 x 1 bed 1 x 2 bed 11 x 3 bed 1 x Penthouse Block G - 4 x 1 bed 9 x 3 bed 1 x Penthouse Block H 4 x 1 bed 8 x 3 bed 1 x Penthouse Block I – 4 x 1 bed	Block J: 1 x 1 bed 3 x 3 bed 1 x 4 bed	137 dwellings

	Village 1 Total area: 3337m²	Village 2 Total area: 6028m²	Village 3 Total area:1824m²	TOTAL 11189m²
	Sub total: 55 Dwellings	9 x 3 bed 1 x Penthouse Subtotal: 77 Dwellings	Subtotal 5 Dwellings	
No of storerooms	55	77	5	
Areas for plot ratio calculations for residential component	Block A 1584 m ² Block B 2008.7m ² Block C 1880m ² Block D 1320.5m ² Subtotal: 6792.7m ²	Block E 2190.3m ² Block F 2195.7m ² Block G 1693m ² Block H 1562m ² Block I 1693m ² Subtotal: 9334m ²	Block J: 875.55m ² Subtotal: 875.55m ²	17002.25m ²
Residential Plot ratio	2.03	1.54	0.47	
Density Coding (where a 1 bedroom unit = 0.6666 of a multiple bed unit)	R156	R116	R25	R113
Number and area of commercial units	Block B: Complex manager's office = 49m ² Block C: 2 units = 189m ² Subtotal: 238m² (2 tenancies)	Block G: 80m ² 211m ² 50m ² 54m ² Alfresco 5m ² ATM Block H 106 m ² 78m ² Block I 116m ² 66m ² 42m ² alfresco Subtotal: 808m² (6 tenancies)	Block J 75m ² 72m ² 74m ² 69m ² 225m ² - (Ground & upper level) 24m ² alfresco Sub total: 527.6m² (5 tenancies)	1460m ² plus 120m ² of alfresco
Commercial plot ratio	0.071	0.13	0.29	
Additional facilities	Block D Recreation rooms			

Statutory Provision:

Development within this area is controlled by the provisions of the DPS2 the Joondalup City Centre Development Plan and Manual (JCCDPM) (Campus District), and the R-Codes.

District Planning Scheme No 2 (DPS2)

The site is zoned “Centre” under DPS2 and is subject to the Campus District Structure Plan.

In regard to the force and effect of a structure plan Clause 9.8.2 (a) and Clause 9.8.3 (f) of DPS2 state:

“9.8.2 Where an Agreed Structure Plan imposes a classification on the land included in it by reference to reserves, zones (including Special Use Zones) or Residential Density Codes, until it is replaced by an amendment to the scheme imposing such classifications:

(a) the provision of the Agreed Structure Plan shall apply to the land within it as if its provisions were incorporated in this Scheme and it shall be binding and enforceable in the same way as corresponding provisions incorporated in the Scheme;...”

“9.8.3 Without limiting the generality of the preceding subclause, under an Agreed Structure Plan:

(f) an other provisions, standard, or requirements in the Structure Plan shall be given the same force and effect as if it was a provision standard or requirement of this Scheme, but in the event of there being any inconsistency or conflict between any provision, requirements or standard of the Scheme and any provision requirement or standard of the an Agreed Structure Plan, the provision requirement or standard of the Scheme shall prevail.

When determining an application clause 6.8 of the DPS2 applies 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.*

Clause 4.3.1 of DPS2 makes special provision allowing the Council to vary certain standards of the R-Codes for residential development in a mixed use development:

4.3 Special Application of Residential Planning Codes

- 4.3.1 Where residential development is proposed to be mixed with non-residential development, Council may vary any provision of the Codes with the exception of the minimum area of lot per dwelling prescribed in Column 3, Table 1 of the Codes.*

Before exercising its powers of discretion Council may require that a proposal be advertised and plans made available for public inspection in accordance with the procedures laid down in clause 6.7.

Clause 4.8 of DPS2 allows the City to consider appropriate car parking standards for all types of developments within the City as follows:

4.8 Car Parking Standards

- 4.8.1 The design of off-street parking areas including parking for disabled shall be in accordance with Australian Standards AS 2890.1 or AS 2890.2 as amended from time to time. Car parking areas shall be constructed and maintained to the satisfaction of the Council.*

The number of on-site car parking bays to be provided for specified development shall be in accordance with Table 2. Where development is not specified in Table 2 the Council shall determine the parking standard. The Council may also determine that a general car parking standard shall apply irrespective of the development proposed in cases where it considers this to be appropriate.

Clause 4.11.2, 4.11.3 and 4.11.4 of DPS2 allow Council to accept the payment of cash in lieu of the provision of on-site parking. The clauses are as follows:

4.11.2 *Council may accept a cash payment in lieu of the provisions of any required land for parking subject to being satisfied that there is adequate provision for car parking or a reasonable expectation in the immediate future that there will be adequate provision for public car parking in the proximity of the proposed development.*

4.11.3 *The cash payment shall be calculated having regard to the estimated cost of construction of the parking area or areas suitable for the proposed development and includes the value, as estimated by the Council, of that area of land which would have had to be provided to meet the car parking requirements specified by the Scheme. The cash payment may be discounted and may be payable in such manner as the council shall from time to time determine.*

4.11.4 *Any cash payment received by the Council pursuant to this clause shall be paid into appropriate funds to be used to provide public car parks in the localities deemed appropriate by Council.”*

In the City Centre the current rate is \$8,100 per bay.

Clause 4.9 of DPS2 allows approval of reciprocal car parking arrangement with neighbouring properties as follows:

“If the Council approves car parking and pedestrian access on neighbouring premises in a manner which relies on the reciprocal movement of vehicles and pedestrians between or across the premises, the owners concerned shall allow the necessary reciprocal access and parking at all times to the Council’s satisfaction.”

Joondalup City Centre Development Plan and Manual - Campus District

The subject lots are earmarked for Mixed Use/Residential under the Structure Plan.

The following provisions of the Structure Plan apply to Mixed Use/Residential:

“3.2 Mixed Use/Residential

For residential purposes building should, as far as practical, comply with the R60 provisions for Multiple Dwellings under the Residential Design Codes. For other preferred uses, generally a plot ratio of 0.5 will apply. Council may approve a higher plot ratio and density for buildings of land mark qualities.

4.0 Car Parking

Car parking for residential development to be provided in accordance with the Residential Planning Codes.

5.2 Mixed use Setback/Residential

Front

- *0m setback preferred*

Side and Rear

- *0m setback preferred or in accordance with the Residential Planning Codes*

5.3 Building Height

Residential/Mixed use and Institutional Uses – maximum two storeys. Council may approve a building in excess of two storeys for buildings of considerable landmark quality.

Residential Design Codes (R-Codes)

The provisions of the R-Codes apply in regard to all residential development.

Clause 2.3.4 of the R-Codes allows for the exercise of discretion, which shall be exercised having regard to the clause 2.3.4 (2) of the R-Codes as follows:

“2.3.4 (2) Discretion shall be exercised having regard to the following considerations:

- (i) the stated purpose and aims of the Scheme;*
- (ii) the provisions of Parts 2,3 and 4 of the Codes as appropriate;*
- (iii) the Performance Criterion of Criteria in the context of the R-Coding for the locality that correspond to the relevant provision;*
- (iv) the explanatory text of the Codes that corresponds to the relevant provision;*
- (v) any Local Planning Strategy incorporated into the Scheme;*
- (vi) the provision of a Local Planning Policy pursuant the Codes and complying with sub-clause (5) below; and*
- (vii) orderly and proper planning.*

Consultation

Although there is no compulsory requirement to advertise the proposed development, the proposal was advertised for public comment for a twenty-one (21) day period, commencing on 9 January 2004.

Two signs advising the public of the proposed development and inviting comment were erected in prominent locations on the development site. Within the three-week comment period, only one submission was received. That submission was received from ECU supporting the proposal.

Strategic Implications

ECU’s student population is projected to increase from the current level of 8000 persons to 20,000 persons by 2020. This will result in an increase in demand for accommodation and other services in close proximity to the existing educational establishments.

It is likely that this mixed use development proposal will contribute to meeting the projected demand for housing as well as provide key facilities to assist in meeting the needs of the nearby student population.

It is considered that the proposal is in line with many objectives of the City's Strategic Plan, including the areas of Community Wellbeing and City Development.

COMMENT

General

The subject sites form a unique parcel of land. Located to one side of the Campus District, it has the potential to develop a character of its own, while its prominent location as the southern gateway to the City Centre lends this area to be developed as a landmark.

Its close proximity to the existing educational establishments of ECU, TAFE and the Police Academy render these lots ideal to providing accommodation and facilities for the student population. With Lakeside Drive and Joondalup Drive providing a buffer between this land and surrounding residential land, the impact of this development on any of the adjacent residential areas is likely to be minimal.

Urban Design

The proposal is designed to provide a landmark feature when viewed from Lakeside Drive and Joondalup Drive.

Internally, the basis of the design is a ring of buildings on each of the three land parcels, located along the edges of these land parcels. "L" shaped buildings articulate the respective corners while all buildings address the adjacent streets either by way of access from the street and/or the location of balconies which overlook the public street. Except for blocks A and D, which are accessed internally from the undercroft car parking area, access to all other residential and commercial units is provided from the internal public road system.

All commercial space is located at the street level. Village 3 effectively forms an activity node in the area, while the commercial areas in Villages 1 and 2 serve to interface with the public open space that is a part of this land parcel and strengthen Molloy Promenade that is intended as a link between this development and the university campus. By ensuring that buildings address Cornell Parade, the design establishes a relationship between this development and the ECU campus.

Throughout the development highlighted entrance foyers, active shop fronts with alfresco dining areas, a piazza style forecourt space, pedestrian shelter, street furniture, lighting and landscaping will ensure that activities are brought out onto the streets and will help to bring life into the public spaces of the built form. The street façades include the use of a variety of building materials and colours, which will add to the visual quality of the development.

Land use

As the proposal provides for both residential dwellings and commercial space, the proposed built form complies with the mixed use/residential land use for which the lots have been earmarked under the Structure Plan.

The proposal provides thirteen (13) commercial tenancies of a variety of sizes and configurations. In this form the commercial space is flexible enough to adequately accommodate the permitted uses under the Structure Plan being retail, office, entertainment, restaurant/café, medical suites and community facilities.

With a diverse mix of residential accommodation ranging from 1 to 4 bedroom dwellings and providing a total of 137 dwellings, the proposal also contributes to the range of housing stock available in the City.

Density

Villages 1 and 2 respectively propose fifty-five (55) and seventy-seven (77) multiple dwellings. Village 3 proposes five (5) grouped dwellings. These numbers include single bedroom units (10 for Village 1, 22 for Village 2 and 1 for Village 3) for which the R-Codes permit a density bonus.

Under the R-Codes, the density bonus is permitted for single bedroom dwellings that do not exceed 60m² in plot ratio area. With the exception of one dwelling in Village 3, all single bedroom dwellings meet the 60m² requirement. The one single bedroom dwelling in Village 3 is 102.53m² in area, however, it is clearly suitable for only one or two people, and is therefore considered to meet the Performance Criteria of the R-Codes and can be considered a single bedroom dwelling.

Taking the density bonus into account the equivalent individual densities for Village 1, 2 and 3 are R156, R116 and R25.54 respectively. The density difference between the villages allows a built form that has landmark qualities while at the same time is compatible with the largely double storey residential lots to the north of the subject site.

According to the JCCDPM, a density coding of R60 applies to the land, with the provision that *“Council may approve of higher plot ratio and density for buildings of landmark qualities”*.

Although the development will technically be developed on 3 separate lots, it will effectively be viewed as one development and it is noted that the average equivalent density across the entire development is R113. This density is consistent with other approved developments within the City Centre.

The subject lots form a unique area in one section of the Campus District. Although the proposed density is higher than the R60 density generally applicable in the Campus District, the density of this development is considered to be appropriate given the unique character of this section of the Campus District.

From an overall city perspective, the subject lots are in a prominent location at the southern entry to the Joondalup City Centre. The proposed development, due to the height and scale of its buildings, maximises the landmark potential of this land, which is seen as highly desirable given the location.

Therefore, it is recommended that the Joint Commissioners determine that the proposed density is commensurate with the landmark status of the proposed development.

Plot Ratio

For the residential component, the JCCPDM requires that the development “*should, as far as practical, comply with the R60 provisions for Multiple Dwellings under the Residential Planning Codes*”, however, “*Council may approve of higher plot ratio and density for buildings of landmark qualities.*”

The R-Codes specify a plot ratio of 0.7 for multiple dwellings at the R60 density.

Only Village 3 with a residential plot ratio of 0.47 complies with this requirement, while Village 1 (plot ratio: 2.03) and Village 2 (plot ratio: 1.54) are greater than the standard plot ratio requirement.

As the subject land is appropriate to develop for landmark status, any proposal is likely to use height to achieve a landmark development and a plot ratio of 0.7 is counterproductive to this objective.

It is noted that the Campus District of the JCCDPM is the only mixed use district within the City Centre to stipulate a plot ratio requirement for residential development. All other mixed use precincts specifically exclude residential development from plot ratio provisions.

The plot ratio for commercial use complies with the requirements of 0.5 as specified under the structure plan.

The current plot ratios of the development are considered to be appropriate as they allow an intensity of built form expected on a landmark site in the City Centre.

It is therefore recommended that the Joint Commissioners determine that the proposed plot ratio is appropriate due to the landmark quality of the building.

Height

Under the JCCDPM, a height restriction of a maximum of 2 storeys applies with the provision that “*Council may approve a building in excess of two storeys for buildings of considerable landmark quality*”.

Of the ten buildings comprising the development, only the building in Village 3 is two storeys. All other nine buildings in Villages 1 and 2 are either 6 or 7 storeys high. The height differentiation between Villages 1, 2 and 3 enables the overall development to blend in with the remainder of the lots in the Campus District, which are limited to two storeys, while at the same time achieving the landmark status appropriate for the lots.

The height restrictions were included in the Structure Plan in order to control any potential adverse impact upon the streetscape. However, given that the proposal is being developed as a whole, it has been possible to provide a design whereby buildings are located such that any negative impact on adjoining buildings and spaces is minimized.

Furthermore given the unique location of these lots in relation to other residential land and within the City with Lakeside Drive and Joondalup Drive providing buffers, the height of the buildings are not considered to have a negative impact on surrounding properties.

To date, the maximum building height in the City is approximately 5 storeys, although higher developments have been approved however have not been constructed.

It is not considered that the height of the proposal will have any negative impact on the surrounding area. In fact, it is considered that the proposed height will provide an important landmark for the City Centre and contribute as a reference point to identify the City Centre.

Therefore, it is recommended that the Joint Commissioners determine that the buildings in excess of two storeys in height are appropriate due to the considerable landmark quality of the development.

Setbacks

Under the JCCDPM, a 0m front setback is preferred, indicating that the desired outcome is the creation of strong urban spaces, with urban walls creating a strong presence to the street.

The setbacks proposed for the commercial tenancies vary from 400mm to 10.5m. All frontages to commercial tenancies in Villages 1 and 2 are characterised by canopies, many of which extend beyond the property boundary, while the public spaces that are created as a result of the larger front setbacks include colonnades, benches, planters and lighting, with an emphasis on pedestrian scale.

In Village 3, on-site car parking is provided alongside the entrances to the tenancies, while overhanging balconies from the upper level residential units provide shelter for the pedestrian path along the full frontage of the commercial tenancies.

Essentially the design promotes the interaction between the commercial tenancies and the adjoining public areas creating animated spaces at a human scale. The proposed setbacks to the public streets are therefore considered appropriate.

Car parking

The JCCDPM is currently silent on the car parking standards for the commercial land uses, although it prescribes that car parking for the residential component is required to be in accordance with the R-Codes.

Under the R-Codes, multiple dwellings require car parking at a rate of 0.35 bays per dwelling, plus 0.015 spaces per m² of plot ratio area, to a maximum of two spaces per dwelling. Single Bedroom dwellings require 1 bay per dwelling to be provided.

Based on the R-Codes standard each multiple bedroom dwelling is required to be provided with two car parking spaces.

This requirement is considered to be excessive given the location of the site within the City Centre, its proximity to the educational establishments it intends to serve, the availability of public transport, and the importance of sustainability principles. In this instance it is considered appropriate that car parking is assessed in accordance with the general car parking ratios that have been applied as a standard throughout the City Centre.

It is noted that at the meeting of the Joint Commissioners on 27 April 2004 (CJ089 –04/04) it was resolved to adopt certain modifications to the JCCDPM. These are currently being advertised for comment before final adoption and being referred to WAPC for certification.

Among these, the following car parking provisions are proposed to apply for a Residential/Mixed use development:

- Residential Mixed Use: 1 bay per 30m² net lettable area (Commercial) and 1 bay per dwelling

This standard has been applied consistently throughout the City.

Clause 4.8 of DPS2 provides that Council can determine car parking standards deemed to be appropriate to the use and area of a proposed development

It is therefore recommended that the Joint Commissioners exercise discretion under clause 4.8 of DPS 2 and the Clause 2.3.4 of the R-Codes and applies the above car parking standards. On this basis car parking is provided as follows:

	Parking Ratio that applies	Number of Dwellings/ floorspace	Number of car bays required	Number of bays provided	Shortfall/ surplus
Village 1					
Residential	1 bay per dwelling	55	55	55	complies
Commercial	1 bay per 30m ² NLA	238m ²	8	6	Shortfall of 2 bay
Subtotal				61	
Village 2					
Residential	1 bay per dwelling	77	77	77	complies
Commercial	1 bay per 30m ² of NLA	808m ²	27	16	Shortfall 11 bays
Subtotal				93	
Village 3					
Residential	1 per dwelling except unit J1-1 at 2 bays / dwelling *	5	6	5	complies
Commercial	1 per 30m ² of NLA	527.6m ²	18	18	Surplus 1 bay
Subtotal				24*	
TOTAL			190	178*	

*car bays 1 & 2 on Village 3 count as only one bay due to the configuration of the double carport attached to unit J1-1.

From the above table it is noted that there is a shortfall of 12 commercial car parking bays, based on the assumption that there will be a reciprocal car parking arrangement between the Villages.

Clause 4.9 of DPS2 allows the City to approve reciprocal car parking. It is therefore recommended that any planning approval issued be subject to a condition requiring that the land be subject to reciprocal car parking agreements.

The applicant has requested that the shortfall in car parking be provided by payment of cash-in-lieu of parking. Council may consider accepting cash-in-lieu of car parking under the provisions of Clause 4.11 of DPS 2.

Cash-in-lieu has been accepted for developments throughout the City Centre in instances where the City's Parking Strategy provides for the provision of public parking in proximity of the development.

The City's Parking Strategy does not provide for a parking station in the Campus District. However, it has been identified that there is potential to provide some additional on-street car parking bays in the Walsh Street road reserve where it abuts the Lakeside Drive road reserve. A further 8 bays could potentially be accommodated in this location.

The cash-in-lieu payment would provide the funds to allow the City to construct the car bays in Walsh Street, should this be appropriate at some future time.

It is noted that the JCCDPM stipulates that visitor car parking is provided in the form of parking within the road reserve. There are currently approximately 28 existing on-street bays provided as embayments within the road reserves of Walsh Loop, Molloy Promenade and Cornell Parade. The provision of additional bays therefore would be in keeping with the area.

In addition, the car parking shortfall is less than 6% of the overall car parking requirement. Given that there is potential to provide additional bays in the road reserve, there are existing on-street bays and the shortfall is small in the overall context, it is considered appropriate that cash-in-lieu for twelve (12) car bays be accepted.

Balconies/Open Space

The R-Codes require that each multiple dwelling be provided with a balcony with a minimum dimension of 2 metres and a minimum area of 10m².

While the balconies provided for the dwellings in Village 3 comply with the R-Codes requirement, the configuration of the balconies on Villages 1 & 2 represent variations.

Although the multiple bedroom units in Village 1 and 2 provide a minimum of two (2) balconies for each unit, including at least one balcony with a minimum area of 10m², the minimum dimension of the balconies at 1.285 metres is less than the required 2 metres. However, given the shape of the balcony there is adequate space to ensure that the balcony is usable.

The single bedroom dwellings in Village 1 and 2 each have one balcony 6.5m² in extent, with a minimum dimension of 1.480 metres. This represents a variation in both minimum area and dimension. Although smaller than the minimum required, the balconies are considered to be sufficiently large to be usable outdoor living areas.

In both instances the balconies are directly accessible from the living rooms of the dwellings and can be used effectively as open space to the dwellings. As such the balconies are considered to be acceptable.

The dwellings in Village 3 are technically considered grouped dwellings, notwithstanding 4 of the 5 dwellings are located above commercial tenancies. Clause 4.3.1 allows that where residential is mixed with non-residential development, Council may vary any provision of the R-Codes, with the exception of the minimum lot area per dwelling. In this instance, it is considered appropriate that the grouped dwellings be assessed as multiple dwellings for the purposes of this development.

Amalgamation of lots

Fundamental to the proposal, is the assumption that the Right of Way located within proposed Village 2 can be closed and that the existing lots and Right of Way can be amalgamated to create 3 'street blocks' as follows:

- Lots 1 and 2 Molloy Promenade, to form Village 1,
- Lots 3 and 4 Molloy Promenade, plus Lots 6 and 72 Walsh Loop and the Right of Way to form Village 2
- Lots 7-11 Cornell Parade/Deakin Gate) to form Village 3.

Applications for the amalgamation of lots and for closure of Right of Way are currently being processed. It is appropriate that a condition be applied to any planning approval issued, to ensure that the Right of Way is closed and lot amalgamations are finalised, prior to commencement of construction.

Conclusion

The location of the buildings relative to each other, the public spaces being created, the emphasis in the design on the human scale, landscaping and street furniture result in an urban area that is conducive to promoting social interaction.

Given the size of the development and the potential to provide some additional car parking within existing road reserves, the cash-in-lieu provision to address the relatively small car parking shortfall in relation to the overall development, is considered to be appropriate.

It is considered that the proposed development makes a high profile and positive contribution to the City Centre. Not only will it have the ability to provide accommodation and facilities to meet future demands of the growing City Centre and nearby education facilities, but as a landmark development also contributes to the legibility and status of the City. As a landmark development the proposed densities, plot ratio and height are considered appropriate.

It is therefore recommended that the development be approved, subject to appropriate conditions.

ATTACHMENTS

Attachment 1	Locality Plan
Attachment 2	Development Plan

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That the Joint Commissioners:

- 1 EXERCISE discretion under clause 2.3.4 of the R-codes and determine that the performance criteria of Clause 3.5.1 and 3.4.3 and 4.1.3 have been met and that:
 - (a) A car parking ratio of 1 bay per dwelling
 - (b) Minimum dimensions of less than 2m and 10sqm for the balconies of dwellings,
 - (c) A single bedroom dwelling exceeding 60sqm in areaare appropriate in this instance;
- 2 EXERCISE discretion under clause 4.8 of District Planning Scheme No 2 and determine that a car parking ratio of 1 bay per 30m² for the commercial uses is appropriate in this instance;
- 3 VARY provisions of the R-Codes under Clause 4.3.1 of District Planning Scheme No 2 and determine that it is appropriate that the grouped dwellings within the development are assessed as multiple dwellings;
- 4 DETERMINE that the proposed height, density and plot ratio of the development is appropriate in this instance;
- 5 ACCEPT the provision of the payment of cash-in-lieu of 12 car bays in accordance with the provision of clause 4.11 of District Planning Scheme No 2;
- 6 APPROVE the application dated 15 April 2003 and revised plans dated 14 May 2004 submitted by Proven Joondalup PTY Ltd for a mixed use development comprising 137 multiple dwellings and 13 commercial tenancies on Lot 1,2,3 & 6 (Nos 2, 4, 1 & 5 Molloy Promenade) Lot 4 & 72 (Nos 2 & 3 Walsh Loop) and Lots 7-11 (Nos 65 Cornell Parade & 1-7 Deakin Gate) and the Right of Way between Molloy Promenade and Walsh Loop, subject to the following conditions:
 - (a) Amalgamation of:
 - (i) Lots 1 and 2 (2 & 4 Molloy Promenade) to form Village 1;
 - (ii) Lots 3 & 4 (1 & 5 Molloy Promenade) & Lot 6 & 72 (1 & 5 Walsh Loop) and the Right of Way to form Village 2;
 - (iii) Lots 7-11 (65 Cornell Parade & 1-7 Deakin Gate) to form Village 3 to be finalised prior to the issue of a building licence;

- (b) 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 over all three Villages to allow for reciprocal vehicle and pedestrian movement and car parking for the benefit of the public at large;
- (c) One hundred and ninety (190) car parking bays to be provided on site;
- (d) The parking bays, driveways and points of ingress and egress to be designed in accordance with the Australian Standard for Offstreet Carparking (AS2890) and AS2890.5 (on-street parking). Such areas are to be constructed, drained and 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;
- (e) An on-site stormwater drainage system with the capacity to contain a 1:100 year storm of a 24-hour duration is to be provided prior to the development first being occupied and thereafter maintained to the satisfaction of the City. The proposed stormwater drainage system is required to be shown on the Building Licence submission and be approved by the City prior to the commencement of construction;
- (f) The lodging of detailed landscape plans, to the satisfaction of the City, for the development sites prior to the issue of Building Licence. 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;
 - (ii) any lawns to be established;
 - (iii) reticulation of all areas that are to be landscaped;
 - (iv) all proposed texture, colour and pattern of paving. Where paved areas meet the road reserve, the proposed paving is required to complement the existing paving in the street reserve;
 - (v) details of all proposed outdoor furniture, public art and other features provided in the public spaces; and
 - (vi) details of lighting of the public and communal spaces;
- (g) The landscaping plans, including reticulation, to be established prior to the development first being occupied, and thereafter being maintained to the satisfaction of the City;
- (h) All bin storage areas are to be suitably screened to the satisfaction of the City and constructed with a concrete floor, graded to a 100mm industrial floor waste gully connected to sewer and be provided with a hose cock;
- (i) Each multiple dwelling to be provided with an adequate clothes drying area that is screened from view from beyond the external boundary of the sites or alternatively be provided with clothes drying facilities within the unit;

- (j) Any roof mounted or free standing plant or equipment such as air conditioning units, satellite dishes, and radio masts to be designed and located so not to be visible from beyond the boundaries of the development site;
- (k) No obscure or reflective glazing being used for commercial units fronting onto public spaces and road reserves;
- (l) All proposed pedestrian shelters to be a minimum width of 2 metres and a minimum ceiling height clearance of 2.75 metres measured from the footpath;
- (m) All boundary walls and parapet walls being of a clean finish and made good to the satisfaction of the City;
- (n) All fencing to be designed and constructed in accordance with the attached extract from the Joondalup City Centre Plan and Manual and thereafter be maintained to the satisfaction of the City;
- (o) Submission of Construction Management Plan detailing phasing of construction, access, storage of material, protection of pedestrians, footpaths and other infrastructure;
- (p) In the event that the development is staged, temporary landscaping and fencing must be installed prior to the development being occupied to the satisfaction of the City;
- (q) A detailed colour and material schedule to be submitted and approved to ensure that each of the proposed buildings has its own character and style;
- (r) Privacy screening mechanisms for the residential units are to be detailed and approved by the City prior to commencement of construction;
- (s) Alterations to existing retaining walls are to match the style, shape and building material of the existing retaining wall to the satisfaction of the City;
- (t) All paving within the road reserve to match the existing paving in type and colour of paving block and pattern of paving;
- (u) The driveway in front of the bulk bin store of Village 3 to be capable of taking the weight of a 26 tonne refuse vehicle;
- (v) The Passive Recreation Rooms in Village 1 are for the exclusive use of the residents of the development;

Footnote:

- (a) With reference to condition (c) a cash-in-lieu payment will be accepted in regard to the shortfall of 12 bays;

- (b) With reference to condition (c) it is noted that the double carport attached to Unit J1-1 is counted as one car bay only, due to its ability to be utilised by that unit only;
- (c) Plans submitted for a Building Licence must show the full width of the verge and any street furniture, traffic islands, statutory services, road gullies, crossovers on the opposite side of the road, the existing site levels, design levels of all proposed development and include levels on top of the kerb at the crossover;
- (d) A mechanical Services Plan, signed by a suitably qualified Mechanical Services Engineer to certify that any mechanical ventilation complies with relevant legislation;
- (e) A separate application is to be made to the City for Approval to Commence Development and sign licence prior to the installation of any advertising signage. In this regard the City encourages a detailed and consistent signage strategy to be prepared to ensure future sign are appropriate and complimentary to the proposed buildings and public spaces;
- (f) Compliance with the Building Code of Australia requirements;
- (g) It is advised that the City will not support the erection of telecommunications infrastructure on any part of the proposed buildings;
- (h) There is an obligation to design and construct the premises in accordance with the requirements of the Environmental Protection Act 1986. Your particular attention is drawn to noise from any plant and equipment. An acoustic consultant's report may be required at building licence stage to indicate compliance;
- (i) Bin store areas including transient bin areas shall be provided with a concrete floor that grades to an industrial floor waste connected to sewer, and a hose cock;
- (j) Undercroft carpark shall be provided with ventilation in accordance with AS1668.2. Consideration may need to be given to the floor levels of the carpark;
- (k) Development shall comply with the natural light and ventilation requirements of the BCA;
- (l) Internal laundries, bathrooms and toilets shall be provided with mechanical ventilation and flumed to external air in accordance with the Sewerage (Light, Ventilation and Construction) Regulations 1971;
- (m) Floors to wet areas shall be suitably surfaced and shall grade evenly to a floor waste;

- (n) Development shall comply with the Health (Food Hygiene) Regulations 1993. To this regard, consideration shall be given to the provision of a service entry, floor area of kitchen being 25% of the total kitchen and dining area combined, provision for an externally located grease trap and location of ducting and discharge for exhaust canopy;

- 7 LIST the construction of Walsh Street on-street car parking for consideration in future budget deliberations.

MOVED Cmr Anderson, SECONDED Cmr Smith that consideration of Proposed Mixed Use Development (13 Commercial and 137 Residential Units) Lots 1, 2, 3 and 6 Molloy Promenade, Lots 4 and 72 Walsh Loop and Lots 7-11 Cornell parade/Deakin Gate and the right of way between Molloy Promenade and Walsh Loop, Joondalup be DEFERRED.

It was felt by Commissioners that this was a large project, which required further consideration by Commissioners.

Acting Chief Executive Officer advised that the application has gone beyond the 60 day period by which, under the Town Planning Scheme, the Council is required to make a determination. He stated that the applicant could now deem their application had been refused by the Council and initiate an appeal process.

Cmr Smith stated that it would be of benefit to Commissioners to receive a comprehensive briefing at a Briefing Session regarding the full impact of this matter, the exercise of discretion that is required and other issues associated with student accommodation in the City of Joondalup.

Cmr Anderson requested that Commissioners be provided with information of forthcoming major projects.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 8 refers

To access this attachment on electronic document, click here: [Attach8brf010604.pdf](#)

CJ128 - 06/04 PROPOSED CLOSURE OF A 1245M² UNUSED PORTION OF ROAD RESERVE AND SUBSEQUENT AMALGAMATION OF THE LAND INTO ADJOINING RESERVE 37633 - QUARRY RAMBLE, EDGEWATER – [32585]

WARD - Lakeside

PURPOSE

The purpose of this report is for the Joint Commissioners to consider the closure of approximately 1245m² of unused road reserve land within Quarry Ramble, Edgewater and the subsequent amalgamation of this land into the adjoining Reserve 37633 - Quarry Ramble Park. (Attachment 1 refers).

EXECUTIVE SUMMARY

In September 2003, the City received correspondence from a nearby resident of Quarry Ramble, Edgewater requesting that this particular portion of Quarry Ramble road reserve be closed, citing instances of antisocial behaviour, rubbish and noise.

As an interim solution, the City programmed works to restrict vehicular access to the area by installing bollards and kerbing, with these works being completed in October 2003.

Formal road closure actions were subsequently initiated and the proposal was referred to the Department for Planning and Infrastructure (DPI) and servicing authorities for comment. With the exception of the Water Corporation that has a sewer line within the area, there was no objection to the proposal. The proposal was advertised for public comment from 1 April to 6 May 2004. No submissions were received.

The road closure proposal is unlikely to create any adverse impact upon vehicle or pedestrian manoeuvrability and road safety, nor create any adverse impacts with respect to residential amenity loss.

It is recommended that the Joint Commissioners:

- 1 *SUPPORT the closure of approximately 1245m² of Quarry Ramble road reserve as shown in Attachment 1 to this Report;*
- 2 *COMMUNICATE its decision to the Department of Land Information and REQUEST that both the Department of Land Information and the Department for Planning and Infrastructure proceed in finalising the road closure;*
- 3 *NOTE that a future rezoning (scheme amendment) application will be required to be initiated by the City and considered by Council to rezone the 1245m² portion of closed road reserve land to Local Reserves 'Parks and Recreation' should the Department for Planning and Infrastructure grant final approval to the proposed road closure.*

BACKGROUND

Suburb/Location: Quarry Ramble, Edgewater
Applicant: City of Joondalup
Owner: Crown
Zoning: **DPS:** Residential
MRS: Urban
Strategic Plan: No Relevant objectives/strategies

DETAILS

The subject land is located within the suburb of Edgewater and immediately adjoins Quarry Ramble Park (Attachment 1 refers). The land had been previously used as an informal parking area associated with the park.

Road Closure Process

A request can be made to close a portion of road reserve and amalgamate that land into an adjoining property. As part of this process, service authorities are requested to provide details of any service plant that is within the road reserve sought to be amalgamated and, if such infrastructure exists, the cost of relocation or provision of easements to protect and access that infrastructure, should the need arise in the future. All costs and conditions associated with service plant modification are to be met by the applicant if closure is the outcome.

The proposal is also forwarded to the DPI for comment. If the service authorities and the DPI do not raise any objections and the applicant(s) have agreed to meet all associated costs and conditions, then the application can be advertised for public comment.

If Council supports a road closure application, all relevant documentation is forwarded to Department of Land Information (DLI) with a request to formally close the road. The Minister for Planning and Infrastructure makes the final decision on whether or not closure takes place.

Statutory Provision:

Under Section 58 of the Land Administration Act 1997, closure of a portion of road is required to be advertised for 35 days by way of a notice in a local newspaper. Any submissions received during the advertising period are to be considered by Council and if the closure is supported, all associated submissions are to be forwarded to the DLI. The DLI also requires other supporting documentation to be provided such as confirmation that the DPI has not objected to the proposal.

The DLI determines the purchase price to apply, arranges any easements and survey requirements and undertakes conveyancing. The purchase price is fixed by DLI in consultation with the Valuer General and is usually the unimproved market value of the land.

Consultation:

Comments were sought from the DPI and the service authorities and the DPI advised it has no objection.

Telstra, Western Power and AlintaGas do not have any objections to the proposal. Water Corporation has objected as it does have an existing sewer main in the area and therefore requires this sewerage main to be protected by a 5 metre wide easement.

The public advertising period took place between 1 April 2004 and 6 May 2003. A newspaper notice was placed within the Joondalup Community Newspaper on 1 April 2004, a sign was placed on site and letters were forwarded to the residents immediately surrounding the subject land. At the close of advertising, no submissions were received.

Policy Implications:

Whilst the City does not currently have a defined road reserve closure policy, the Department of Land Information (DLI), formerly the Department of Land Administration (DOLA) has processes and guidelines to assist in the assessment of such road reserve closures.

Sustainability Implications:

Amalgamation of the surplus road reserve land into the adjoining reserve will create a larger reserve thus assisting in increasing the ecological value of this reserve, which is largely comprised of native vegetation. Future replanting of the land with native vegetation is also expected to increase the ecological value of the reserve.

Budget Implications:

The City's Operations Services has advised that no funds have been allocated in the 04/05 budget to undertake the removal of hardstand, kerbing, bollards and the replanting of the area with remnant native vegetation. The cost of such works is estimated to be approximately \$12,600.

COMMENT

Assessment and Reasons for Recommendation

The road closure proposal is unlikely to create any adverse impact upon vehicle or pedestrian manoeuvrability and road safety, nor create any adverse impacts with respect to residential amenity loss, as no development is proposed upon the portion of land that is sought to be closed.

The erection of bollards and kerbing by the City as an interim solution to restrict vehicular access appears to have had a significant impact in minimising the instances of antisocial behaviour occurring in the area. Formal closure of this unused portion of road and amalgamation into the adjoining reserve will finalise outstanding statutory requirements arising from the vehicular restriction works previously undertaken by the City.

The costs associated with the proposed road closure are expected to be minimal, as the City is not seeking to acquire the 1245m² portion of road reserve to be closed from the Crown. It is proposed that this land be amalgamated with adjoining Reserve 37633 (Quarry Ramble Park), which is also owned by the Crown and this action, if supported, will ultimately increase the size of the park.

If the road closure proceeds through the DLI and is ultimately approved by the DPI, a formal rezoning application will be required to be initiated to the City's District Planning Scheme No.2 to modify the zoning of the 1245m² portion of road reserve land to Local Reserves 'Parks and Recreation'. The rezoning application (scheme amendment) will be presented to a future Council meeting for the Commissioners to consider.

Furthermore, given that no funds have been allocated in the 04/05 budget to undertake the removal of hardstand, kerbing, bollards and the replanting of the closed road reserve area with remnant native vegetation, the Commissioners are requested to consider the allocation of sufficient funds in the 05/06 Budget (approximately \$12,600) should the proposed road closure be supported by the DPI.

It is recommended that the proposed road closure and subsequent amalgamation of the closed portion of land into adjoining Reserve 37633 (Quarry Ramble Park) be supported.

ATTACHMENTS

Attachment 1 Site Plan & Photographs

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, SECONDED Cmr Fox that the Joint Commissioners:

- 1 SUPPORT the closure of approximately 1245m² of Quarry Ramble road reserve as shown in Attachment 1 to Report CJ128-06/04;**
- 2 COMMUNICATE their decision to the Department of Land Information and REQUEST that both the Department of Land Information and the Department for Planning and Infrastructure proceed in finalising the road closure;**
- 3 NOTE that a future rezoning (scheme amendment) application will be required to be initiated by the City and considered by Council to rezone the 1245m² portion of closed road reserve land to Local Reserves 'Parks and Recreation' should the Department for Planning and Infrastructure grant final approval to the proposed road closure.**

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 9 refers

To access this attachment on electronic document, click here: [Attach9brf010604.pdf](#)

CJ129 - 06/04 DELEGATED AUTHORITY REPORT FOR THE MONTH OF APRIL 2004 – [07032]

WARD - All

PURPOSE

To submit items of Delegated Authority to Council for noting.

EXECUTIVE SUMMARY

This report provides a resumé of the Development Applications processed by Delegated Authority during April 2004 (see attachments 1).

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

Month	No	Value (\$)
April 2004	52	5,965,170

Eighty-two (82) development applications were received for the month of April, an increase from the previous month's figure of 67.

ATTACHMENTS

Attachment 1 April determinations

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, SECONDED Cmr Smith that the Joint Commissioners NOTE the determinations made under Delegated Authority in relation to the applications described in Report CJ129-06/04.

Cmr Anderson spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 10 refers

To access this attachment on electronic document, click here: [Attach10brf010604.pdf](#)

**CJ130 - 06/04 SUBDIVISION REFERRALS PROCESSED 1 – 30
APRIL 2004 – [05961]**

WARD - Whitfords, Lakeside, South Coastal, Pinnaroo, North Coastal

PURPOSE

The purpose of this report is to advise the Joint Commissioners of subdivision referrals received by the City for processing in the period 1- 30 April 2004.

EXECUTIVE SUMMARY

Attachment 1 is a schedule of the Subdivision Referrals processed by Urban Design and Policy from 1 – 30 April 2004. Applications were dealt with in terms of the delegation of subdivision control powers by the Chief Executive Officer (DP247-10/97 and DP10-01/98).

DETAILS

The subdivision applications processed will enable the potential creation of 1 city centre lot, 122 residential lots and 6 strata residential lots. The average processing time taken was 22 days. 1 application was deferred and 1 application was not supported. These applications are as follows:

Ref: SU208-04 – 31 Portree Way, Duncraig

This application was deferred for the following reasons:

- 1 A Development Application being submitted to and approved by the City for the rear lot.
- 2 The applicant demonstrating access to the common property lot from the front dwelling.

Ref: SU254-04 – 52 Blaxland Way, Padbury

This application was not supported for the following reason:

- 1 The City is not supportive of the proposed 11m² of common property. The City only supports the creation of common property where it is necessary to allow for vehicle access to be obtained and shared by two or more survey strata lots or for other legitimate purposes.

ATTACHMENTS

Attachment 1 Schedule of Subdivision Referrals

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, SECONDED Cmr Fox that the Joint Commissioners NOTE the action taken by the subdivision control unit in relation to the applications described in Report CJ130-06/04.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 11 refers

To access this attachment on electronic document, click here: [Attach11brf010604.pdf](#)

**CJ131 - 06/04 MINUTES OF JOONDALUP EISTEDDFOD
WORKING PARTY MEETING HELD 12 FEBRUARY
2004 – [50027]**

WARD - All

PURPOSE

The purpose of this report is to submit to the Joint Commissioners the unconfirmed minutes of the meeting of the Joondalup Eisteddfod Working Party which was held on 12 February 2004

EXECUTIVE SUMMARY

A meeting of the Joondalup Eisteddfod Working Party was held on 12 February 2004 and the unconfirmed minutes are submitted for noting by the Joint Commissioners.

It is recommended that the Joint Commissioners NOTE the unconfirmed minutes of the Joondalup Eisteddfod Working Party held on 12 February 2004.

DETAILS

The minutes of the Joondalup Eisteddfod Working Party meeting held on 12 February 2004 are included as Attachment 1. All matters arising at the meeting were of an administrative nature and will be handled by the City's administration.

ATTACHMENTS

Attachment 1 Minutes of the Joondalup Eisteddfod Work Party meeting held 12 February 2004.

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Fox, SECONDED Cmr Anderson that the Joint Commissioners NOTE the unconfirmed minutes of the Joondalup Eisteddfod Working Party meeting held on 12 February 2004 forming Attachment 1 to Report CJ131-06/04.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 12 refers

To access this attachment on electronic document, click here: [Attach12brf010604.pdf](#)

CJ132- 06/04 ART COLLECTION PURCHASES – [14158]

WARD - All

PURPOSE

The purpose of this report is to recommend artworks to be purchased for the City of Joondalup Art Collection

EXECUTIVE SUMMARY

A meeting was held on Friday, 14 May 2004 between the Manager Community Development Services and the City's Art Collection Curator to discuss the purchase of new artworks for the collection, two for the City's collection and one in response to a request from Parliament House for an artwork from the City of Joondalup's collection to be contributed to the Parliament House Collection.

The purchase of an artwork to donate to another collection is not normal practice within the Art Collection Policy, however on this occasion it is a one off recommendation to enable Joondalup to be represented in a state collection.

It is recommended that the Joint Commissioners:

- 1 *ENDORSE the purchase of the following art works for the City of Joondalup Art Collection at the cost of \$4,521 from account number 1 4430 6781 0001 A007 – Art Purchases:*

ARTIST	TITLE	MEDIUM	ART GALLERY	PRICE GST INC	PRICE GST EXC
<i>Ben Pushman</i>	<i>Blue Scar</i>	<i>Oil on Canvas</i>	<i>Goddard de Fiddes</i>	<i>\$3,300</i>	<i>\$ 3,181</i>
<i>Mia Schoen</i>	<i>New Estate II</i>	<i>Oil on Canvas</i>	<i>Direct from Artist</i>	<i>\$ 840</i>	<i>\$ 840</i>
<i>Mia Schoen</i>	<i>New Estate V</i>	<i>Oil on Board</i>	<i>Direct from Artist</i>	<i>\$ 500</i>	<i>\$ 500</i>
TOTAL				\$4,600	\$ 4,521

- 2 *ENDORSE the donation of New Estate V (2003) oil on board by Mia Schoen to the Parliament House Art Collection.*

BACKGROUND

The Art Collection has the following objectives:

- To support contemporary Western Australian Art and Artists
- To provide the citizens of the City of Joondalup access to high quality visual art within the boundaries of the region.

The profile of the collection is to establish a collection of good quality artwork by contemporary Western Australian artists with a second priority of having a regional focus.

Artworks over the value of \$1,000 are required to be considered by the Art Collection Working Party for acquisition for the City's collection. This Working Party has been disbanded during the Commissioners tenure. Consequently the matter is being brought directly to Council.

DETAILS

The following artworks are recommended for purchase:

ARTIST	TITLE	MEDIUM	ART GALLERY	PRICE GST INC	PRICE GST EXC
Ben Pushman	<i>Blue Scar</i>	Oil on Canvas	Goddard de Fiddes	\$3,300	\$ 3,181
Mia Schoen	<i>New Estate II</i>	Oil on Canvas	Direct from Artist	\$ 840	\$ 840
Mia Schoen	<i>New Estate V</i>	Oil on Board	Direct from Artist	\$ 500	\$ 500
TOTAL				\$4,600	\$ 4,521

Financial Implications

Funds for the purchase of the artworks are as detailed below.

Account No:	1 4430 6781 0001 A007
Budget Item:	Art Purchases
Budget Amount:	\$10,000
Carry Forward:	\$4,250
Current Balance	\$5,159
Actual Cost:	\$4,521
Remaining Budget:	\$ 637

COMMENT

The Curator recommended the purchase of the following artworks for the reasons stated:

Blue Scar, (2004) Oil on Canvas by Ben Pushman for \$3,181

- the work meets the Art Collection profile
- There are few aboriginal artworks represented in the collection, since the Joondalup Art Collection was split in 1998 resulting in all of the aboriginal artworks being handed over to the Wanneroo Art Collection.
- The 6 aboriginal artworks in the collection represent artists from the Kimberly, Western Desert, Arnhem Land and Noongyar regions. This particular artwork will represent a different aspect of aboriginal art – contemporary abstract work by an aboriginal artist originating from the South Western region of WA.
- This young artist is represented in various public and private collections, has participated in nationally recognized awards and is exhibiting internationally.

New Estate II, (2003) Oil on Canvas by Mia Schoen for \$840

- The work meets the Art Collection profile
- This well executed artwork by Mia Schoen will complement other examples of urban landscapes within the City of Joondalup's art collection.
- It represents a moment in time, depicting a typical street scene and the growth of the Joondalup suburban landscape.

New Estate V, (2003) Oil on Board by Mia Schoen for \$500 (is proposed for purchase and donation to the Parliament House Art Collection – see attached letter)

- This artwork fits the profile of the Parliament House Art Collection (size, format requirements).
- It is a unique and contemporary interpretation of the urban landscape and represents a moment in time in the Joondalup lifestyle.
- The purchase of an artwork to donate to another collection is not normal practice within the City's Art Collection Policy, however on this occasion it is a one off recommendation to enable Joondalup to be represented in a state collection.

ATTACHMENTS

Attachment 1 Letter from Dr Elizabeth Constable MLA, Chairperson, Parliament House Artwork Committee.

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Smith, SECONDED Cmr Anderson that the Joint Commissioners:

- 1 ENDORSE the purchase of the following art works for the City of Joondalup Art Collection at the cost of \$4,521 from account number 1 4430 6781 0001 A007 – Art Purchases:**

ARTIST	TITLE	MEDIUM	ART GALLERY	PRICE GST INC	PRICE GST EXC
Ben Pushman	<i>Blue Scar</i>	Oil on Canvas	Goddard de Fiddes	\$3,300	\$ 3,181
Mia Schoen	<i>New Estate II</i>	Oil on Canvas	Direct from Artist	\$ 840	\$ 840
Mia Schoen	<i>New Estate V</i>	Oil on Board	Direct from Artist	\$ 500	\$ 500
TOTAL				\$4,600	\$ 4,521

- 2 ENDORSE the donation of New Estate V (2003) oil on board by Mia Schoen to the Parliament House Art Collection.**

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 13 refers

To access this attachment on electronic document, click here: [Attach13brf010604.pdf](#)

REPORT OF THE ACTING CHIEF EXECUTIVE OFFICER

CJ133 - 06/04 APPOINTMENT OF SELECTION COMMITTEE FOR CHIEF EXECUTIVE OFFICER – [20006]

WARD - All

PURPOSE

To appoint a Selection Committee to undertake the recruitment and selection of a new Chief Executive Officer for the City of Joondalup.

EXECUTIVE SUMMARY

It is important that the City of Joondalup undertakes the recruitment process to appoint a new Chief Executive Officer in line with best practice standards and in a manner that complies with local government legislation.

To facilitate this process a Selection Committee first needs to be established. It will be necessary for the Selection Committee to guide and make recommendations to Council on the appropriate process to be followed in a whole range of issues. The most immediate considerations will be:

- Selection criteria
- Key performance indicators
- Remuneration package
- Contract of employment
- Recruitment model

Decisions made by the Selection Committee in each of these areas will need to be referred to Council for endorsement.

It is recommended that a Selection Committee be established comprising the Joint Commissioners and a quorum of 3 members be set.

ATTACHMENTS

Nil

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION: That the Joint Commissioners:

- 1 ESTABLISH a Selection Committee for the recruitment and selection of a new Chief Executive Officer comprising:

Commissioner J Paterson
Commissioner M Anderson
Commissioner A Drake-Brockman
Commissioner S Smith
Commissioner A Fox

- 2 SET a quorum of 3 members.

MOVED Cmr Smith, SECONDED Cmr Anderson that the Joint Commissioners:

- 1 ESTABLISH a Selection Committee for the recruitment and selection of a new Chief Executive Officer comprising:

Commissioner J Paterson
Commissioner M Anderson
Commissioner P Clough
Commissioner S Smith
Commissioner A Fox

2 SET a quorum of 3 members.

Discussion ensued.

The Motion was Put and

**CARRIED BY AN
ABSOLUTE MAJORITY (5/0)**

C39-06/04 INQUIRY INTO CITY OF JOONDALUP - [70544]

WARD - All

PURPOSE

The City has received a request from the Executive Officer of the Inquiry into the City of Joondalup for the City to waive its legal professional privilege in respect of all matters relevant to the Inquiry. The purpose of this report is to consider the request in terms of what response would be in the best interests of the City and to recommend accordingly.

EXECUTIVE SUMMARY

The Executive Officer from the McIntyre Inquiry has requested that the Council waive its legal professional privilege in respect of documents requested by the Inquiry. This report recommends that:

- 1 It is not considered in the City's best interests for the City to waive its legal professional privilege at this point in time;
- 2 the releasing of documents for which privilege could be maintained would be evaluated on a case by case basis with the clear expectation that documents that would not prejudice the City would be released to the Inquiry either unconditionally or with appropriate conditions as to their disclosure to others beyond Mr McIntyre and the Inquiry's staff.

BACKGROUND

The Hon Minister for Local Government and Regional Development by written notice dated 26 May 2004 appointed Mr Gregory McIntyre to –

Inquire into all matters considered relevant to the activities of the Council and its Chief Executive Officer (CEO) during the period 13 March 2001 to 4 December 2003, including events predating this period that are relevant, to determine whether there has been a failure to provide good government at the City of Joondalup.

- (i) Without limiting the generality of the inquiry, inquire into –
 - (a) the processes associated with the selection and appointment of Mr Smith as CEO;

- (b) decisions made by the Council, or purported to have been made by the Council, in relation to the selection, employment and retention of Mr Smith as CEO;
 - (c) advice provided by any parties in relation to the selection, appointment and retention of Mr Smith as CEO;
 - (d) the terms of the contract of the CEO and in particular the performance assessment provisions and their application;
 - (e) adherence to the provisions of the contract of employment by the CEO and the Council; and
 - (f) the provision, cost and use of legal advice associated with all aspects of the appointment and on-going employment of the CEO; and
- (ii) with specific reference to the period 5 May 2003 to 4 December 2003, address the effect on the government provided by the Council of the conduct of Mr Smith, the Mayor and Councillors, and the operations of the Council; and
- (iii) any other matters coming to the panel's attention during the course of the inquiry but only to the extent to which the Panel regards it as necessary for the purpose of reporting on whether there has been failure to provide good government in the City of Joondalup.

Mr John Staude has been appointed Counsel Assisting the Panel Inquiry and Mr Brendan Peyton appointed as Executive Officer.

DETAILS

Mr Peyton in a letter dated 2 June 2004 has advised in part –

...Counsel assisting the Panel Inquiry, Mr John Staude, has advised that the Inquiry will investigate the instructions given to, and the legal advice received from, solicitors on behalf of the City in relation to various issues arising out of Mr Denis Smith's appointment, including, but not limited to, his contract of employment, the submission made on behalf of the City to the Public Administration and Finance Committee of the Legislative Council in 2003, and the termination of his contract.

In the circumstances I am instructed to request the Commissioners of the City to formally waive legal privilege in respect of such instructions and advice and to direct the disclosure of the relevant files as held by the City or its solicitors as the case may be.

In addition Mr Higham has been served with a summons to appear and produce documents before the inquiry into the City of Joondalup on 21 June 2004. The documents detailed in the summons are extensive and include instructions and any legal advice received by the City in respect of various identified matters. The identified matters in the majority of circumstances relate to the employment of Mr Smith and related issues including the Standing Committee on Public Administration and Finance Inquiry into the Local Government Act 1995.

COMMENT

Legal Professional Privilege

Legal professional privilege is a common law principle which provides that confidential communications between legal practitioners and client for the sole purpose of the client obtaining, or the legal practitioner giving, legal advice or for use in existing or contemplated litigation need not be given in evidence nor disclosed by the client or by the legal practitioner, without the consent of the client.

The protection afforded by the common law principle extends to matters that are subject to quasi-judicial hearings or the subject of investigations conducted under statutory powers unless expressly excluded or excluded by necessary implication in the relevant legislation.

There appears to be some doubt whether this common law privilege applies to a Panel Inquiry under the *Local Government Act 1995*. Despite this doubt, the Inquiry's request for the City to waive its privilege indicates that the view of the Inquiry, at this stage at least, is that legal professional privilege does apply to the proceedings of the Inquiry into the City of Joondalup. While this conclusion may be open to question, unless the Inquiry changes its position on this issue, it would seem to be in the City's interests to proceed on the same basis.

In considering the Inquiry's formal request to waive the City's legal professional privilege, it is necessary to determine whether the waiver of the privilege would be in the City's best interests.

Preliminary legal advice has suggested that it would be difficult to determine without reference to each item of advice whether an absolute and unconditional waiver of all legal professional advice would be in the City's best interests. Given this uncertainty it would not seem prudent at this point in time to waive the privilege.

Circumstances where the waiver of legal professional privilege could prejudice the City's position include where matters pertaining to the advice could potentially be the subject of future legal proceedings taken by or against the City.

Notwithstanding the above comment it is considered essential that a decision to maintain legal professional privilege is not seen as inconsistent with the City's genuine desire to co-operate with and assist the Inquiry. For this reason it is suggested that the appropriate response would be to maintain legal professional privilege at this point in time on the proviso that the release of documents for which privilege could be maintained would be evaluated on a case by case basis with the clear expectation that documents that would not prejudice the City would be released to the Inquiry either unconditionally or with appropriate conditions as to their disclosure to others beyond Mr McIntyre and the Inquiry's staff.

ATTACHMENTS

Nil

VOTING REQUIREMENTS

Simple Majority

OFFICER’S RECOMMENDATION: That the Executive Officer for the McIntyre Inquiry be advised that:

- 1 it is not considered in the City’s best interests for the City to waive its legal professional privilege at this point in time;
- 2 the releasing of documents for which privilege could be maintained would be evaluated on a case by case basis with the clear expectation that documents that would not prejudice the City would be released to the Inquiry either unconditionally or with appropriate conditions as to their disclosure to others beyond Mr McIntyre and the Inquiry’s staff.

MOVED Cmr Smith, SECONDED Cmr Anderson that the Executive Officer for the McIntyre Inquiry be advised that:

- 1 it is not considered in the City’s best interests for the City to waive its legal professional privilege at this point in time;
- 2 the releasing of documents for which privilege could be maintained would be evaluated on a case by case basis with the clear expectation that documents that would not prejudice the City would be released to the Inquiry either unconditionally or with appropriate conditions as to their disclosure to others beyond Mr McIntyre and the Inquiry’s staff;
- 3 all decisions made in relation to Item 2 are to be made with a high regard to the community’s interests.

Discussion ensued in relation to the processes involved for providing documentation to the Panel Inquiry.

AMENDMENT MOVED Cmr Smith, SECONDED Cmr Anderson that an additional Point 4 be added as follows:

“4 that the CEO be required to refer documents for which it is proposed that legal professional privilege be maintained to the Council for determination.”

Discussion ensued.

The Amendment was Put and CARRIED UNANIMOUSLY (5/0)

The Original Motion, as amended, being:

That the Executive Officer for the McIntyre Inquiry be advised that:

- 1 it is not considered in the City’s best interests for the City to waive its legal professional privilege at this point in time;

- 2 the releasing of documents for which privilege could be maintained would be evaluated on a case by case basis with the clear expectation that documents that would not prejudice the City would be released to the Inquiry either unconditionally or with appropriate conditions as to their disclosure to others beyond Mr McIntyre and the Inquiry's staff;**
- 3 all decisions made in relation to Item 2 are to be made with a high regard to the community's interests;**
- 4 that the CEO be required to refer documents for which it is proposed that legal professional privilege be maintained to the Council for determination.**

was Put and

CARRIED UNANIMOUSLY (5/0)

MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

CONDUCT DURING PUBLIC QUESTION TIME

CMr Paterson made reference to the interruption of the meeting earlier in the evening during Public Question Time, and stated in his six months at the City it was the first occasion a member of the community had stopped the Chairperson conducting the meeting.

CMr Paterson stated this was an unfortunate incident, and hoped it would not happen in the future as generally the community of Joondalup was well behaved and it had been a pleasure to be at meetings.

DATE OF NEXT MEETING

The next meeting of the Council has been scheduled for **7.00 pm** on **TUESDAY, 29 JUNE 2004** to be held in the Council Chamber, Joondalup Civic Centre, Boas Avenue, Joondalup

CLOSURE

There being no further business, the Chairman declared the Meeting closed at 2030 hrs; the following Commissioners being present at that time:

CMR J PATERSON
CMR P CLOUGH
CMR S SMITH
CMR M ANDERSON
CMR A FOX