



**MINUTES OF COUNCIL MEETING
HELD ON 9 AUGUST 2005**

TABLE OF CONTENTS

No:	Item	Page
	OPEN AND WELCOME	1
	ATTENDANCES	1
	PUBLIC QUESTION TIME	2
C40-08/05	EXTENSION OF PUBLIC QUESTION TIME – [01122] [02154]	10
C41-08/05	EXTENSION OF PUBLIC QUESTION TIME – [01122] [02154]	12
C42-08/05	EXTENSION OF PUBLIC QUESTION TIME – [01122] [02154]	14
	APOLOGIES AND LEAVE OF ABSENCE	14
	DECLARATION OF FINANCIAL INTEREST/INTEREST THAT MAY AFFECT IMPARTIALITY	14
	CONFIRMATION OF MINUTES	
C43-08/05	MINUTES OF COUNCIL MEETING, 19 JULY 2005	15
C44-08/05	MINUTES OF SPECIAL COUNCIL MEETING, 28 JULY 2005.....	15
	ANNOUNCEMENTS BY THE CHAIRMAN WITHOUT DISCUSSION	16
C45-08/05	PETITIONS	
	PETITION REQUESTING CLOSURE OF LANEWAY BETWEEN GRADIENT WAY AND CAMFIELD COURT, BELDON – [04163, 13473].....	16
	PETITION OPPOSING DEVELOPMENT APPLICATION DA05/0123 – 36 MULTIPLE DWELLINGS WITH UNDERCROFT PARKING, 5 EASTLEIGH LOOP, CURRAMBINE – [38659]	17
	REPORTS	
CJ153 - 08/05	REVIEW OF STANDING ORDERS LOCAL LAW – [01369, 05885, 08122].....	17
CJ154 - 08/05	PROTOCOLS FOR STRATEGY AND BRIEFING SESSIONS – [25548, 08122, 76541, 01139, 02154].....	24
CJ155 - 08/05	COUNCIL ELECTIONS – [17518]	35
CJ156 - 08/05	OCEAN REEF MARINA STRUCTURE PLAN DEVELOPMENT - [04171] [07303].....	40

CJ157 - 08/05	DRAFT JINAN-JOONDALUP SISTER CITIES RELATIONSHIP PLAN - [52469] [11014].....	49
CJ158 - 08/05	SCHEDULE OF DOCUMENTS EXECUTED BY MEANS OF AFFIXING THE COMMON SEAL - [15876].....	58
CJ159 - 08/05	WARRANT OF PAYMENTS 30 JUNE 2005 - [09882]	62
CJ160 - 08/05	MODIFICATIONS TO THE DRAFT BURNS BEACH STRUCTURE PLAN NO 10 – PORTION OF LOT 9017 BURNS BEACH ROAD, BURNS BEACH - [29557].....	65
CJ161 - 08/05	DRAFT BURNS BEACH FORESHORE MANAGEMENT PLAN - [85565] [07086].....	76
CJ162 - 08/05	PROPOSED FIFTEEN SINGLE STOREY GROUPED DWELLING DEVELOPMENT - LOTS 1 AND 2 (HN 110 & 112) EDDYSTONE AVENUE AND LOT 143 (HN 3) ELWOOD COURT, CRAIGIE - [32306].....	85
CJ163 - 08/05	PROPOSED CHILD CARE CENTRE: LOT 501 (107) WARWICK ROAD (NORTH-EAST CORNER) CURRAJONG ROAD, DUNCRAIG - [39873].....	97
CJ164 - 08/05	REMOVAL OF RESTRICTIVE COVENANTS RELATING TO RETAIL FLOORSPACE RESTRICTIONS FOR LOTS 8 (NO 1) TRAPPERS DRIVE, LOT 9 (NO 937) & LOT 10 (NO 933) WHITFORDS AVENUE, WOODVALE - [83561].....	118
CJ165 - 08/05	MONTHLY TOWN PLANNING DELEGATED AUTHORITY REPORT – JUNE 2005 - [07032]	121
CJ166 - 08/05	SUBDIVISION REFERRALS PROCESSED BETWEEN 1 AND 30 JUNE 2005 - [05961].....	125
CJ167 - 08/05	ARRANGEMENTS FOR THE HERITAGE COLLECTIONS ACCESS AND MANAGEMENT – CITY OF JOONDALUP AND CITY OF WANNEROO - [59011].....	127
	REPORT OF THE CHIEF EXECUTIVE OFFICER	134
CJ168 - 08/05	REPORT ON FUNDING TO DATE TO THE CITY OF JOONDALUP PURSUANT TO POLICY 2.2.8 – LEGAL REPRESENTATION FOR ELECTED MEMBERS AND EMPLOYEES - [72559] [01173] [13562] ...	135
CJ169 - 08/05	CITY OF JOONDALUP RESPONSE TO PROPOSED FUTURE FUNDING STRUCTURE FOR THE BUSINESS ENTERPRISE CENTRE NETWORK OF WESTERN AUSTRALIA.....	147
C46-08/05	CHIEF EXECUTIVE OFFICER - PERFORMANCE REVIEW COMMITTEE - [20006].....	148
	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN.....	152
	DATE OF NEXT MEETING.....	153
	CLOSURE	153

CITY OF JOONDALUP

MINUTES OF COUNCIL MEETING HELD IN COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP, ON TUESDAY, 9 AUGUST 2005

OPEN AND WELCOME

The Chairman declared the meeting open at 1200 hrs.

ATTENDANCES

CMR J PATERSON - Chairman
CMR P CLOUGH - Deputy Chairman
CMR M ANDERSON
CMR S SMITH
CMR A FOX to 1339 hrs

Officers:

Chief Executive Officer	G HUNT	<i>Absent from 1259 hrs to 1300 hrs and from 1345 hrs to 1352 hrs</i>
Director, Planning and Community Development:	C HIGHAM	<i>Absent from 1301 hrs to 1303 hrs and from 1338 hrs to 1345 hrs</i>
Director, Corporate Services and Resource Management:	P SCHNEIDER	<i>Absent from 1338 hrs to 1345 hrs</i>
Director, Infrastructure & Operations: Manager, Marketing Communications & Council Support:	D DJULBIC M SMITH	<i>Absent from 1338 hrs to 1350 hrs</i>
Manager, Audit and Executive Services: Manager, Community Development: Manager, Strategic and Sustainable Development:	K ROBINSON G HALL R HARDY	
Manager, Library and Information Services: Acting Manager, Approvals Planning and Environmental Services:	R MOORE G CATCHPOLE	
Executive Officer:	E KANIA	
Media Advisor:	L BRENNAN	
Committee Clerk:	J HARRISON	
Minute Clerk:	L TAYLOR	

There were 86 members of the Public (including 70 high school students, representing Mater Dei College, Greenwood Senior High School, Woodvale Senior High School, Padbury Senior High School, Ocean Reef High School and Kinross Community College) and 1 member of the Press in attendance.

PUBLIC QUESTION TIME**The following questions were taken on notice at the Council meeting held on 19 July 2005:****Mr Vincent Cusack, President Southward Ratepayers and Electors Association:**

Q1 *I refer to the answer given to my question No 3 in the agenda for the 19 July 2005 Council meeting, which admits that the Commissioners were not informed of the resolution contained in CJ247-10/02 of 15 October 2002, not to increase the tender limit of the CEO, because it was deemed “not relevant”? Is the answer provided in question 3 above an admission that there is now no accountability to the ratepayers in the City of Joondalup?*

A1 As indicated in the response to Mr Cusack’s earlier Question 2(b), the Council and the Chief Executive Officer are accountable to the community.

Mr M Sideris, Mullaloo:

Re: Mullaloo Beach Tavern

Q1 *What are the patron numbers, and will that be affected by this DA?*

A1 The maximum accommodation numbers for the Mullaloo Tavern are currently being calculated. Once the calculations have been completed a certificate of approval will be served on the owner of the premises. Under the Health (Public Building) Regulations 1992, this certificate must be displayed in a conspicuous location near the main entrance for any patron to observe. The building cannot be open or be used until this certificate has been served on the owner of the premises.

Under the Health Act 1911, a person shall not open or use a public building unless the local government has issued a certificate of approval in relation to that building specifying:

- (a) the purpose for which the public building may be used; and
- (b) the maximum number of persons that the building may be used to accommodate.

There is no increase proposed pursuant to DA05/0265 regarding either seating or standing area on the Tavern level. Furthermore, the balcony was included in floor area calculations as part of the original development application.

As such, relocation of the bi-fold doors resulting in more internal floor area and less balcony area does not affect the total seating or standing area as approved in the original Development Application.

Mr J Hollywood, Burns Beach:

Re: Burns Beach development

Q1 *Will the ratepayers of Burns Beach be notified when the developers are to demolish the bushland?*

- A1 The City has been advised that the developers will inform nearby residents of the proposed works and to provide them with contact details in relation to any issues that may arise as a consequence of the clearing of the land and any associated earthworks as a matter of course. In any event, this would be included as a condition of approval relating to any application for these works.

Ms M Macdonald, Mullaloo:

- Q1 *With reference to the answer to my question in tonight's agenda on page viii, and in particular to DA05/0202 lodged by the owners of the Mullaloo Beach Village. Given that any rearrangement of previously approved floor spaces and sizes is likely to have amenity issues for the locality, and as this building has been constructed thus making this DA a retrospective DA, will Commissioners ensure that this DA comes before the Council for determination and if Commissioners will not give this assurance, does this mean that developers can have a building approved and build something contrary to that approval with no consequences to themselves, and that this can be done behind closed doors and without public scrutiny and no accountability?*

- A1 The application being considered by Council (DA05/0202) is not a retrospective development application. A retrospective development application is required for works that have been carried out:

- not in accordance with approved plans; or
- where there have been no plans.

The owners are seeking Council's approval to carry out certain works within the same area, which will amend any other approvals issued by Council. This is the proper process for any person to follow, should they wish to amend a planning approval previously granted by Council.

At present, the development application with changes proposed to the application, would not require advertising as they would not affect the amenity of the surrounding properties nor vary any development standards, in particular parking. Therefore, the development application can be determined under the Notice of Delegation.

In assessing development applications, due regard would be had in relation to the relevant provisions of the District Planning Scheme No. 2 or any other planning document, including the amenity provisions contained within those documents.

Mr M Caiacob, Mullaloo:

- Q1 *In reply to Mrs Macdonald's questions on page viii and ix of the agenda for the 19 July 2005 Council meeting, advice was given that the enclosure of 15.45 square metres of tavern balcony is to become part of the main tavern area. Can I be advised if the enclosure has been constructed or is pending construction?*

- A1 The enclosure has not been constructed, which was confirmed by an inspection carried out on Friday 29 July 2005.

- Q2 *Could I be advised how DA05/0265 is set for approval under delegated authority by the relevant Director and/or Manager without advertising when the installation of shade sails on the upper car deck vary the landscaping development standards by not the permissible 10% but by 100% and the enclosure of 15.45 square metres of tavern balcony increases the car parking requirement due to the seating area being amended to standing area?*

A2 Further to the answer given at the Council meeting of 19 July 2005, car parking spaces are not included as landscaping and therefore, there is no change to the landscaping requirement, whether the car parking spaces are covered or not.

Q3 *What dates were DA05/0202 and DA05/0265 received by the City?*

A3 DA05/0202 was received by the City on 4 April 2005.
DA05/0265 was received by the City on 22 April 2005.

Mr S Kobelke, Sorrento:

Q1 *In relation to the response given to my fourth question regarding the height in the coastal view-shed area. In recent weeks I have asked a number of questions in relation to high-rise and not one question has been answered. I would again ask how many commercial properties on the coastal view shed exceed the current domestic dwelling height?*

A1 Mr Kobelke has subsequently met with the Director Planning and Community Development to discuss this issue. It is difficult to meaningfully apply the building height envelope, which is applicable to residential zoned land, to commercial properties.

Mr D Carlos, Ocean Reef:

Q1 *I am concerned about the closure of the Makro Warehouse and have been informed by its staff they have been told by their management it is because of pressure being exerted by Council. Can this be confirmed?*

A1 Further to the comments made at the Council meeting of 19 July 2005, Council has not exerted any pressure to close the store. It is understood that Miller's Retail, which owns the Makro Warehouse group and other stores, is closing down 80 of its 1050 stores nationwide. This also includes the Makro store in Bunbury, which is due to close on the same day as the Joondalup store, or earlier depending upon clearance of existing stock.

Q2 *Prior to this warehouse opening, I raised the question as to whether it was complying and was told by your staff that everything was in order and they could start. I am now concerned that I may have been told incorrect information. Accordingly, I would ask that this matter be investigated.*

A2 Following the issue of Council's Planning Approval and Building Licence, the store commenced trading and was inspected to determine whether it was operating in accordance with the approvals issued by Council. No action was required to be taken following these inspections.

The following questions were submitted in writing prior to the Council Meeting and responses were tabled at the meeting.

Mrs M Macdonald, Mullaloo:

Further to the answers to my questions on today's agenda regarding the development known as the Mullaloo Beach Village, at 10 Oceanside Promenade, Mullaloo I ask the following questions.

Q1 *Could you explain why car parking will not be increased by the approval of the Development Approval Application lodged by the developers, given that car parking in the standing area of a tavern is based on 1 car bay per 3 sqms of NLA as per the DPS2 and approval of this new development approval will increase NLA.*

A1 For the purposes of determining car parking (based on NLA), the original calculation included the area of the balconies and the internal tavern areas. Therefore, the relocation of the line of the wall between the balcony and the internal tavern area will not affect the car parking requirement as the NLA does not vary.

Q2 *What is the NLA of the tavern floor as approved on 13 August 2002 and what will be the NLA of the Tavern floor on the plans received by the City with a request for the new approval?*

A2 On 13 August 2002, the Council approved NLA for the tavern level at 553.7m². The NLA proposed in application DA05/0265 is 553.1m².

Q3 *What was the size of the licensed area of the tavern (not including bottle shop) as approved on the 13 August 2002 and what is size of the licensed area of the tavern (not including bottle shop) on the plans received by the City with a request for new approval?*

A3 The licensing of premises occurs under the Liquor Licensing Act 1988, which is administered by the Department of Racing, Gaming and Liquor as distinct from Council granting its Planning Approval under the District Planning Scheme No. 2.

Therefore, contact should be made with the Department of Racing, Gaming and Liquor in order to establish what areas were originally licensed under that Act and the areas that they may or may not licence under the Liquor Licensing Act of 1988, for the new development.

Q4 *Given that your excellent recording keeping system has identified DA05-0202 as an application for change of use why aren't the ratepayers being given the opportunity to determine whether or not this change of use affects their amenity.*

A4 Following a public consultation process, Council determined that the proposed land uses and building designed for the site was acceptable by granting its Planning Approval with various conditions of approval.

The application for Planning Approval (DA05/0202) involves a very minor re-configuration of the approved land uses within the same location of the building. The applicants are currently modifying the floor space allocation so that there is no increased demand for parking or an increase that would exceed the 500m² Retail NLA allowable on the subject site. Having regard to the design of the approved development, the location of the changes, the re-configuration of the land use location and the location of surrounding residential properties, the proposed changes would not have any impact on the amenity of the surrounding locality and as such, would be dealt with in accordance with the Notice of Delegation.

Q5 *Please give details of the changes to the development as approved on 13 August 2002 contained within DA05-0265 and DA05-0202 so that the community can be informed.*

- A5 The new development applications involve the changes outlined below. It must be noted that there are discussions still being held between the applicant and Council on the two development applications, which will involve changes being required before a decision is made on the applications.

DA05/0265

This application involves three parts and these are the:

- provision of shade sails over car parking spaces on the upper level car parking area;
- relocation of a set of bi-fold doors to increase the enclosed area of the Tavern and reduction of the floor area of the Tavern balcony by 15.45m²; and
- provision of roof cover over the exit driveway abutting the property at No. 6 Oceanside Promenade.

The works proposed in dot point three were in response to concerns raised by the owner of No. 6 Oceanside Promenade. The owner of the property has provided written support for the works to be carried out over the exit driveway.

DA05/0202

When originally approved, the ground floor plan had three land uses fronting onto Oceanside Promenade. An office tenancy was proposed to be located south of the main vehicular entry into the site, with a retail tenancy and then the restaurant.

The current application now has only two tenancies fronting onto Oceanside Promenade. The restaurant is proposed to be relocated south of the main vehicular entry into the site, with the retail tenancy being located south of the restaurant. The office tenancy will be relocated behind the retail use, with its entrance being from the main lobby.

The following questions were submitted verbally at the meeting; a summary of each question and the response given is shown below:

Mr David Hindmarsh, Mater Dei College:

- Q1 *Are there any plans for construction of a skate park close to the centre of Joondalup? If not, what other youth facilities does the City plan to implement for the area?*

- A1 The City has not allocated any funds in the 2005/2006 budget for a skate park facility. The City has two existing skate parks at Carine Open Space and MacNaughton Park in Kinross. These two facilities each cost approximately \$150,000 to construct. The City has received a number of petitions for skate parks around the area of Ocean Reef and Hillarys and is going through a process of consultation with the community as to possible locations.

It is important when considering skate parks and their location that community consultation is undertaken because some people are not keen on having those sorts of facilities close to their premises. The process being undertaken will hopefully find the City some areas to consider skate parks in the future.

Ms Rebecca Keating, Mater Dei College:

Q1 What is the Joondalup City Council doing to promote the expansion of cultural and civic facilities in the local area, such as Council sponsorship of movies that would attract young people to the Pines Theatre at ECU and the establishment of a drama theatre or culture centre?

A1 The City is highly committed to a cultural programme and that cultural programme hopefully meets the needs of all components of the community. At this point in time there is about \$900,000, which the City has committed towards cultural programmes on an annual basis.

With regards to the development of a Cultural Facility, the City is close to planning a site. The problem the City faces at the moment is the high cost, somewhere in excess of \$20 million, which means that it will require significant State Government or other sources of funding.

With regards to the programming of the Perth International Arts Festival Pines Theatre, obviously the City has limited input to that, but Council takes on the comment and will use the City's influence with PIAF to hopefully find some more youth orientated programming with regards to movies at the theatre. There are also a number of outdoor movie versions and the City will be looking at that for the forthcoming summer events programme.

Ms Emma Palandri, Greenwood Senior High School:

Q1 Does the Joondalup City Council support in principle the introduction of compulsory voting in local Council elections?

A1 *Response by Chairman Paterson:* As Chairman I can say that I do support compulsory voting and I was very interested at the conference this weekend when the State President of Local Government brought that item to the fore.

Mr Brodie Williams, Greenwood Senior High School:

Q1 Given the increasing weight problems in young people today, would the Council consider providing more facilities such as full basketball courts and play equipment in all local parks?

A1 The City has three indoor Leisure Centres at Craigie, Duncraig and Heathridge, which provide six full basketball courts, six full outdoor courts and 20 half-court outdoor basketball courts, which are available to the community. The City also has relationships with schools and encourages them to make their facilities available to the community.

The construction, development and management of facilities such as basketball courts and tennis courts is something that Council needs to be very careful with to avoid duplication and making sure those facilities get maximum use. The City has a process in place to encourage people to participate and make sure it puts the right facilities in the right place.

With regards to the question on growing obesity and people's physical exercise, there are a number of initiatives that the City is embracing both at a State level and a local level. A leisure plan is in development and hopefully that will, through the use of a physical activity plan, drive people to participate more actively in sport and recreation opportunities.

Ms Leanne Hunt, Woodvale Senior High School:

Q1 As a Council, what do you consider to be the most important issue that needs to be dealt with by the Council?

A1 The issues that a local government faces are many and varied, but there are three that stand out that need to be taken into account for the diversity of community and the business base. The issues that have prominence are: quality of life, a sense of community, and to make sure there is adequate infrastructure to serve both the quality of life and the sense of community.

Ms Hayley Davidson, Woodvale Senior High School:

Q1 How do you become a Councillor? What characteristics and qualities does a person need?

A1 The Local Government Act 1995 is the primary legislation that determines how many things in local government happen. Under that legislation to be eligible to stand for local government you have to:

- be 18 years of age or older;
- be an elector of the district;
- be an Australian citizen
- have an interest in the community is very important

The attributes that people need are a thick skin, because you get a lot of criticism when you are an elected member, an ability to listen to the community and engage with them and a willingness to look at all sides of arguments that exist in the community and to understand that sometimes there is a very quiet majority who do not say too much on anything.

Ms Brooke McDonald, Padbury Senior High School:

Q1 As money has been allocated to Youth Services in the Annual Budget, what Youth Services are available to young people within the City of Joondalup?

A1 The City makes a considerable contribution to youth services. In the 2005/2006 budget some \$600,000 was allocated to the provision of youth services. Most of the services are developed on a developmental model and the City works with the not-for-profit sector, churches, and other tiers of government to delivery a range of services and programmes. Some of those programmes include:

- Youth Advisory Council
- The Scene” Youth Magazine
- Youth and Public Space
- Anchors Youth Service
- Skate, Blade & BMX Competitions
- Extreme Youth Festival
- Youth Financial Counselling

From a young people’s perspective the Youth Advisory Council would be the main voice to speak and communicate with the Council and this has been in place since 1997. One of problems faced with the Youth Advisory Council is dwindling attendance and a problem in recruiting members has made it hard to make it a viable body so Council is in the process of reviewing that Committee.

Ms Alyce DeBiasi, Padbury Senior High School:

Q1 What avenues are available for young people to have input to the City of Joondalup Council regarding Youth issues?

A1 The Youth Advisory Council does represent the main means by which young people have been able to communicate in the past. The City is in the process of reviewing that committee and hopefully Council will find a vehicle by which the community can and particularly the young people, can express their views and help to provide the services that meet their needs. In addition to youth services there are also a number of services within the library area where people can directly communicate and have input into the City and also find out information that will assist them.

Mr Nick Kotevski, Ocean Reef Senior High School:

Q1 What are the plans for the development of the area near the Ocean Reef Marina?

A1 The Ocean Reef Boat Harbour development site is located on the coast at Ocean Reef and is approximately 46 hectares in area. The site currently consists of a boat launching facility, parking for vehicles and boat trailers, Reserves, freehold land and the sea sports club and sea rescue building.

Council is developing a structure plan for the site to meet the social/lifestyle needs of the region, and to promote economic development and protection of the environment in a sustainable way.

Ms Charlotte Ducie, Ocean Reef Senior High School:

Q1 Is Currambine going to remain strictly residential or are there plans to develop public facilities such as shopping centres?

A1 The District Planning Scheme is the document that largely guides development in the City of Joondalup and indicates that Currambine will be substantially residential although there are opportunities for some parks, schools and shopping areas. The Currambine district shopping centre has some opportunity to expand and that is likely to occur in the near future.

Ms Charnele Johnstone, Ocean Reef Senior High School

Q1 Are there any plans for exchanging all current recycling bags with bins?

A1 The City is currently reviewing its waste management strategy and as part of that process there will be an opportunity for the community and schools to have their say on the future of waste management services, in particular the recycling service. The City will await that consultation process and seek the views of the community and the matter will come back to Council for a decision. If there is strong support for a second bin Council will give that serious consideration as part of the 2006/07 budget process.

Ms Alyce Mayes, Kinross Community College:

Q1 *What environmental studies have been done in relation to the Burns Beach development specifically in relation to animal habitats?*

A1 The land at Burns Beach some years ago was zoned in the Metropolitan Regional Scheme as rural. To go through the process of changing that zoning in the Metropolitan Regional Scheme to urban, which allows development, required it to go through quite a lengthy process. A Public Environmental Review was undertaken by the Environmental Protection Authority in around 1999. At that time there were many studies done on that land and as a result about half of the land has been zoned to enable development and the other half is to remain as a reserve for parks and recreation.

Mr Matthew Stephen, Kinross Community College:

Q1 *The junction at Marmion Avenue and Edinburgh Avenue in Kinross is a dangerous one. Is there any possibility of a roundabout being constructed to alleviate traffic hazards?*

A1 To the west of Marmion Avenue, opposite Kinross, is the future Burns Beach subdivision. There is a proposal to install a roundabout or traffic signal at that location as part of the overall subdivisional development. It is still in the planning and design stages but that will occur as part of that subdivision.

Mr Matthan Kipps, Kinross Community College:

Q1 *I am concerned at the delays of the roundabout where Burns Beach Road meets Joondalup Drive. When is this likely to be finished?*

A1 There have been delays mainly associated with relocating Western Power utilities, but the City has managed to overcome that and it is anticipated that the intersection work should be completed by the end of this month. This includes some outstanding works for the final connection of the drainage into a sump, which is to the north of that intersection.

C40–08/05**EXTENSION OF PUBLIC QUESTION TIME – [01122] [02154]**

MOVED Cmr Anderson, **SECONDED** Cmr Fox that public question time be extended for fifteen minutes.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Mr A Bryant, Craigie:

Q1 *I asked questions on 19 July and 9 August as to when the community building would be built in Perilya Road, Craigie without any definite result. May I again ask when is it expected to be built?*

A1 That is a decision for the Department of Community Development to make. It is a building that has been proposed by them, although it is on land that is currently owned by the City. The City still has to make a determination as to how it wants to dispose of that land to the Department. The timeframe for the development of that building will rest with the Department of Community Development.

Q2 *\$898,000 that has been allocated by Community Development. Is that in the Council's coffers or still with Community Development?*

A2 The funds are with the Department of Community Development and not with the City although the Department of Community Development is relying on the City or using funds that they had for purchase of land to partly construct that building.

Q3 *In regard to illegally parked cars in Stocker Court turning circle on Saturdays, Sundays and Public Holidays, which I raised by question on 28 June 2005. Cars are still being illegally parked. Do the Council Rangers patrol the area at weekends and public holidays?*

A3 The Rangers do patrol on weekends, but there is a huge area that they have to cover. The City will take on board Mr Bryant's concerns and target that area.

Mr D Biron, Mullaloo:

Q1 *Why are the Commissioners refusing to make the recordings of these public Council Meetings freely available to the community and how does this secrecy provide good governance and enable the community to better participate in the decision making process?*

A1 Recordings are available to the public, but there is a fee for making a tape available.

Q2 *What is the \$15 printing charge for each tape and also the 50% mark up per tape and how has this been calculated as representing the cost of copying the recording of this meeting and this includes the length of time of the tape?*

A2 This question will be taken on notice.

Mr R de Gruchy, Sorrento:

Q1 *Re: The total amount of funds received by the City of Joondalup from ratepayers and/or all other sources over the past seven years. I understand that the total budget for the City of Joondalup during 2005/06 is in the vicinity of \$118,000 million. Would you please advise both the estimated, that is the budgeted, and the actual amounts received by the City for the financial years 1998/98, 1999/2000, 2000/01, 2001/02, 2002/03, 2003/04 and 2004/05.*

Q2 *Re: Proposed building of the Works Depot – Would you please advise the current state of negotiations with Land Corp in relation to the potential purchase of land for the proposed Works Depot?*

(a) *what areas of land are currently under consideration?*

(b) *what is the total expenditure of ratepayers' funds that are involved in purchasing these various blocks of land?*

The following question was tabled at the meeting by Mr de Gruchy, Sorrento:

Q3 *Do you really believe that the City of Joondalup should commit to the extravagant cost (\$11-12 million) of a Works Depot when you are saying that the financial position of the City of Joondalup is in such bad shape?*

A1-3 These questions will be taken on notice.

Mr M Sideris, Mullaloo:

Q1 *Re: Agenda for today's meeting – The City has still not given me the patron numbers for the Mullaloo Beach Tavern.*

A1 The patron numbers have not been determined at this stage. The plans have only just been lodged, and the final determination has not been made. When the determination has been made, Council will advise the applicant and then advise the people who have asked the question.

Q2 *(Mr Sideris provided a copy of a document relating to Section 39 Certificate to the Commissioners.)*

The Commissioners will see that a Section 39 Certificate, the first page that you have is an extract from the Racing, Gaming and Liquor Act, it also identifies how those requirements must be satisfied for a Section 39 Certificate. If you refer to 39.1 (iv) it says the satisfaction that the provisions of the Local Government Miscellaneous Act have also been met.

On page 3 it is an order to comply against the developer and on page 3 it indicates that the order to comply was issued under the Miscellaneous Provisions Act. If you go to the next page it refers to Section 374 of that Miscellaneous Provisions Act and that is the pertinent part of that order to comply.

Can you please inform me how a Section 39 Certificate has been issued to the developer, a copy handed to the Department of Racing, Gaming and Liquor without condition, that is an unconditional Section 39 Certificate when it is very clear that this City has an order to comply against the developer in accordance with Section 374 of the Miscellaneous Provisions Act. I now understand that the matter is now being heard at a Directions Hearing in front of the State Administrative Tribunal which is due to commence at 12.15 today?

A2 An amended Section 39 Certificate has been issued, with three conditions attached to it.

Q3 *What are the three conditions on the Section 39 Certificate?*

A3 This question will be taken on notice.

C41–08/05

EXTENSION OF PUBLIC QUESTION TIME – [01122] [02154]

MOVED Cmr Anderson, **SECONDED** Cmr Clough that public question time be extended for a maximum of ten minutes subject to all questions being limited to a maximum of two minutes per questioner.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Ms M Macdonald, Mullaloo:

Q1 *Can the City tell me if the pavement in front of the Mullaloo Tavern development currently being replaced is being replaced by the developer or the City?*

A1 It will be replaced at the developers' cost.

Q2 *Further to your answers to my earlier questions, could the City please give me a definition of NLA as per the DPS2?*

A2 The definition of NLA as per the DPS2 is: net lettable area: means the area of all floors confined within the finished surfaces of permanent walls but excludes the following areas:

- (a) all stairs, toilets, cleaners' cupboards, lift shafts and motor rooms, escalators, tea rooms and plant rooms, and other service areas;
- (b) lobbies between lifts facing other lifts serving the same floor;
- (c) areas set aside as public space or thoroughfares and not for the exclusive use of occupiers of the floor or building;
- (d) areas set aside for the provision of facilities or services to the floor or building where such facilities are not for the exclusive use of occupiers of the floor or building.

Ms S Hart, Greenwood:

Re: CJ168-08/05 – Page 117 of tonight's agenda

Q1 *Will Council explain why it has taken almost six months to deal with my written request of 18 February 2005 for further legal funding assistance of \$2,500 pursuant to Policy 2.2.8?*

A1 This question will be taken on notice.

Q2 *Are any of the Commissioners or the Chief Executive Officer of the view that I have been discriminated against and consequently denied a fair and equal opportunity for legal assistance and procedural justice at the Inquiry into the City of Joondalup as a result of this lengthy delay in dealing with my request?*

A2 There was no intention to discriminate.

Mr D Davies, Connolly:

Q1 *Re: CJ153-08/05 – Review of Standing Orders Local Law – I would like Section 33 of the document to be withdrawn or revisited by the Commissioners or Administration. Item 45 (2) reads: "A person who fails to comply with the direction giving by the Presiding Person under subclause 1 commits an offence, maximum penalty \$1000. 45 (3) & (4) reads: No person observing a meeting is to create a disturbance at a meeting by interrupting or interfering with the proceedings whether by expressing approval or dissent by conversing or by any other means." Does this include applause?*

Item 45 (5) and (6) which read: "Where a person is considered by the Presiding Person or the Council to be in breach of subclause 1 and 3 the Presiding Person or the Council may direct the offending person to leave the meeting room and the person must immediately comply with the direction. A person failing to comply with the direction, given under clause 1 and 5 may, by order of the Presiding Person, be removed by the police from the meeting room."

These suggested amendments appear to be a draconian measure and could be construed as a vehicle to persuade the public gallery from asking questions and their right to criticize an answer if required. I request Commissioners to look at these amendments carefully and hopefully delete them.

A1 No response was given.

C42–08/05 EXTENSION OF PUBLIC QUESTION TIME – [01122] [02154]

MOVED Cmr Anderson that public question time be extended for five minutes.

There being no Secunder the Motion

LAPSED

The following question was tabled at the meeting by Mr D Carlos, Ocean Reef:

Q1 At Page 118 where reference is made to Policy 2.2.8 and the Council meeting of 20 July 2004, it is stated that:

- An application for legal assistance funding was received from Mr Denis Smith;*
- The Administration Recommendation was NOT to approve this application;*
- Council subsequently amended the resolution and approved Mr Smith's application.*

When, where and by whom was Mr Smith's funding application under Policy 2.2.8 approved?

A1 This question will be taken on notice.

APOLOGIES AND LEAVE OF ABSENCE

Nil.

DECLARATIONS OF FINANCIAL INTEREST/INTEREST THAT MAY AFFECT IMPARTIALITY

The Chief Executive Officer, Mr Garry Hunt, declared a financial interest in Item CJ155-08/05 – Council Elections as in the event that in-person elections are held, he may be appointed as Returning Officer.

Cmr Fox declared an interest that may affect her impartiality in Item CJ163-08/05 – Proposed Child Care Centre: Lot 501 (107) Warwick Road (North-east corner) Currajong Road, Duncraig as she is acquainted with the applicant and their daughters are friends.

The Director Planning and Community Development, Mr Clayton Higham, declared an interest that may affect his impartiality in Item CJ163-08/05 – Proposed Child Care Centre: Lot 501 (107) Warwick Road (North-east corner) Currajong Road, Duncraig as an objector to the proposal is a former colleague.

Cmr Clough declared an interest that may affect his impartiality in Item CJ164-08/05 – Removal of Restrictive Covenants relating to retail floorspace restrictions for Lots 8 (No 1) Trappers Drive, Lot 9 (No 937) and Lot 10 (No 933) Whitfords Avenue, Woodvale as he lives in Woodvale.

The Director Planning and Community Development, Mr Clayton Higham, declared an interest that may affect his impartiality in Item CJ166-08/05 – Subdivision Referrals processed between 1 and 30 June 2005, as one of the subdivision applicants is known to Mr Higham.

The Director Planning and Community Development, Mr Clayton Higham, declared a financial interest in Item CJ168-08/05 – Report on Funding to Date to the City of Joondalup Pursuant to Policy 2.2.8 – Legal Representation for Elected Members and Employees as he is an applicant for funding.

The Director, Corporate Services and Resource Manager, Mr Peter Schneider, declared a financial interest in Item CJ168-08/05 – Report on Funding to Date to the City of Joondalup Pursuant to Policy 2.2.8 – Legal Representation for Elected Members and Employees due to his involvement in the Panel Inquiry.

The Manager Marketing Communications and Council Support, Mr Mike Smith, declared a financial interest in Item CJ168-08/05 - Report on Funding to Date to the City of Joondalup Pursuant to Policy 2.2.8 – Legal Representation for Elected Members and Employees as he is an applicant for funding.

In relation to Item CJ169-08/05 – City of Joondalup Response to proposed future funding structure for the Business Enterprise Centre Network of Western Australia, Cmr Anderson stated he is a member of the Joondalup Business Incubator, however he would deal impartially with this issue.

The Chief Executive Officer, Mr Garry Hunt declared a financial interest in Item C46-08/05 – Chief Executive Officer – Performance Review Committee as it concerns his Contract of Employment.

Cmr Fox declared a financial interest in Item C46-08/05 – Chief Executive Officer – Performance Review Committee as her husband is employed by Integral Leadership Centre.

The Director, Corporate Services and Resource Management, Mr Peter Schneider, declared an interest that may affect his impartiality in Item C46-08/05 – Chief Executive Officer – Performance Review Committee due to the nature of his employment relationship.

CONFIRMATION OF MINUTES

C43-08/05 MINUTES OF COUNCIL MEETING, 19 JULY 2005

MOVED Cmr Smith, SECONDED Cmr Clough that the Minutes of the Council Meeting held on 19 July 2005 be confirmed as a true and correct record.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

C44-08/05 MINUTES OF SPECIAL COUNCIL MEETING, 28 JULY 2005

MOVED Cmr Smith, SECONDED Cmr Anderson that the Minutes of the Special Council Meeting held on 28 July 2005 be confirmed as a true and correct record.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

ANNOUNCEMENTS BY THE CHAIRMAN WITHOUT DISCUSSION

Welcome along everybody to this Special Meeting of the City of Joondalup Council, comprised of myself, John Paterson as Chairman and my fellow Commissioners, Deputy Chairman Peter Clough, Commissioners Steve Smith, Anne Fox and Michael Anderson.

Together today, you will see Commissioners make some very important decisions on behalf of the 160,000 residents of the City of Joondalup.

Commissioners will be considering matters like:

- The format for Strategy and Briefing sessions;
- Elections for a new Council when the Minister for Local Government decides there should be one;
- A structure Plan for the multi-million dollar development of Ocean Reef Marina;
- And another important visit – a delegation from our sister city in Jinan in China on 18 August 2005.

Today, of course, is the occasion of another special visit by you, the students.

As part of Local Government Week, Commissioners welcome students from:

- Mater Dei College
- Greenwood Senior High School
- Woodvale Senior High School
- Padbury Senior High School
- Ocean Reef Senior High School
- Kinross Community College

Thank you very much for coming to see how decisions are made for the community. Commissioners hope you enjoyed this experience and perhaps some of you may even consider being involved in Local Government in the future.

To the teachers who accompanied students, if you consider this has been a worthwhile exercise, please write to the Council suggesting it may be appropriate that students attending a Council meeting become an annual event.

PETITIONS

C45-08/05 PETITIONS SUBMITTED TO THE COUNCIL MEETING – 9 AUGUST 2005

1 PETITION REQUESTING CLOSURE OF LANEWAY BETWEEN GRADIENT WAY AND CAMFIELD COURT, BELDON – [04163, 13473]

A 5-signature petition has been received in support of the closure of the laneway between Gradient Way and Camfield Court, Beldon. The petitioners, whose properties adjoin the laneway, state that the closure of the laneway will remove the nuisance factor of youths using the laneway.

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

MOVED Cmr Anderson, SECONDED Cmr Clough that the petition requesting the closure of the laneway between Gradient Way and Camfield Court, Beldon be RECEIVED and referred to the appropriate business unit for action.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

2 PETITION OPPOSING DEVELOPMENT APPLICATION DA05/0123 – 36 MULTIPLE DWELLINGS WITH UNDERCROFT PARKING, 5 EASTLEIGH LOOP, CURRAMBINE – [38659]

The Chief Executive Officer advised a 44-signature petition has been received from Currambine residents opposing development application DA05/0123 for 36 multiple units with undercroft parking, including setback variations, 5 Eastleigh Loop, Currambine.

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

MOVED Cmr Anderson, SECONDED Cmr Clough that the petitions opposing development application DA05/0123 for 36 multiple units with undercroft parking, including setback variations, 5 Eastleigh Loop, Currambine be received and referred to the appropriate Business Unit for action.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

CJ153 - 08/05 REVIEW OF STANDING ORDERS LOCAL LAW – [01369, 05885, 08122]

WARD: All

RESPONSIBLE Garry Hunt

DIRECTOR: Chief Executive Officer

CJ050802_BRF.DOC:ITEM 1

PURPOSE

For Council to consider adopting the revised Standing Orders Local Law to enable the advertising of the local law for public submissions as required by the Local Government Act 1995.

EXECUTIVE SUMMARY

As a result of the split of the former City of Wanneroo, all the local laws that it operated became applicable for the newly created City of Joondalup.

In an effort to ensure that the City of Joondalup had a set of current and enforceable local laws that applied to its operations, a comprehensive review of all local laws was undertaken. The Standing Orders Local Law is the final local law to be reviewed that pertained to the former City of Wanneroo.

The revised Standing Orders have been drafted with the assistance of the City's solicitors and based on the following principles:

- Shorter sentences;
- Plain English;
- Adoption of a gender neutral approach; and
- Following the State legislative style.

A number of recommendations contained within the 'Governance Review – Final Report', presented to the Council on 23 November 2004 (Item CJ276-11/04 refers), highlighted the need for the Council to adopt a revised set of Standing Orders to overcome the shortcomings of the existing set of meeting procedures.

The revised local law addresses all the identified shortcomings of the current set of Standing Orders, paying particular attention to the clauses relevant to Notices of Motion and Revocation Motions.

Section 3.12 of the Local Government Act 1995 details the procedure to be followed when adopting a new local law and it is intended to follow that process by initially inviting public submissions on the draft Standing Orders Local Law 2005.

BACKGROUND

With the split of the former City of Wanneroo on 1 July 1998, all the local laws of the former City of Wanneroo became the local laws of the City of Joondalup.

Since that time there has been a concerted effort to review those former local laws and revise them to better reflect the operations of the City of Joondalup. This also allowed the City to have a complete and updated set of enforceable local laws. The comprehensive review of the Standing Orders Local Law is scheduled to be the final local law reviewed from the former City of Wanneroo. This review initially commenced in late 1999 and has continued to progress to-date.

The proposed Standing Orders Local Law was based on the intent and reference to well-structured Council meetings as described in the publication 'The Preparation of Agendas and Minutes – A guide for Western Australian Local Governments', as produced by the then Department of Local Government.

The guide makes the following statement:

'With well-structured agendas a Council can have meetings that are efficient and effective in that they produce good decisions that are made following analysis of sound advice and constructive debate. At the end of such meetings those involved should be satisfied that the local government and the community have gained maximum benefit from the valuable time that has been contributed. A well-structured agenda will provide the elected body with the maximum time to debate and set policy and strategy and to plan for the future. It is generally agreed that short, sharp meetings directed towards decisions are the ones most likely to achieve good results.'

As part of the recommendations from the Governance Review – Final Report that was presented to the Council on 23 November 2004 included the following:

Recommendation 3:

Council take urgent action to adopt contemporary standing orders.

Recommendation 4:

Upon adoption of the new Standing Orders Local Law all Elected Members, CEO and relevant staff undertake appropriate training.

Recommendation 7:

In the review of the Standing Orders Local Law strong consideration be given to limiting the potential abuse of meeting outcomes by inappropriate use of procedural motions. Training in meeting procedures for Elected Members to include content on the appropriate use of procedural motions.

Recommendation 8:

The role of the presiding person in controlling abuse of personal explanations be strengthened in the review of the Standing Orders Local Law.

Recommendation 10

The treatment of notices of motion should be an essential element of the review of the Standing Orders Local Law. It is essential the Standing Orders should stipulate that where a notice of motion, including a rescission motion, is placed on the agenda it should be moved at the first available meeting or else lapse. If the mover is not present then another member should be authorised to move it, failure to do so would render the matter as lapsed. There should be a position that a similar notice of motion cannot be moved for at least three months unless it is approved by an absolute majority of the Council.

Recommendation 11:

Confidential items should be listed in the agenda to be handled at the end of the meeting or if such an item requires attendance by a specialist advisor then the item should be subject to a special meeting.

The Council at its meeting held on 31 August 2004 resolved that:

“4 during the next review of the City’s Standing Orders Local Request a report be provided to the Council on whether Briefing and Strategy Sessions can be formally recognised in the Standing Orders Local Law with flexibility as to the procedures that would apply.”

DETAILS

When drafting the revised set of Standing Orders, the following general principles applied: -

- Shorter sentences;
- Plain English;
- Adoption of a gender neutral approach; and
- Following the State legislative style.

The revised Standing Orders Local Law has included relevant sections of the Local Government Act 1995 in the form of footnotes. These footnotes do not form part of the local law, and therefore if there is a change to the legislation the footnote can be easily amended without the need to amend the entire local law. The addition of these footnotes also allows for direct reference to the Act without the need to refer to other documents. This will enable a quicker and easier level of interpretation of the Standing Orders.

As a result of the recommendations from the 'Governance Review – Final Report' and the shortcomings of the existing Standing Orders, the review has paid close attention to the drafting of Part 6, which relates to revocation motions.

Further to the previous decisions of the Council, the order of business for Council meetings now reflects a public statement time. This clause allows for the guidelines/procedures to be determined by the Council.

Issues and options considered:

The comprehensive review of the Standing Orders Local Law has been progressing for some time and throughout the review a number of issues and options were considered when dealing with the overall intent and purpose of the local law and also when drafting individual clauses.

Link to Strategic Plan:

Outcomes:

The City of Joondalup is an interactive community.

Objectives:

4.3 To ensure the City responds to and communicates with the community.

Strategies

4.3.3 Provide fair and transparent decision-making processes.

Legislation – Statutory Provisions:

Section 3.1 of the Local Government Act 1995 states:

- (1) The general function of a local government is to provide for the good government of the persons of the district.
- (2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.
- (3) A liberal approach is to be taken to the construction of the scope of the general function of a local government.

Section 3.4 of the Act states:

The general function of a local government includes legislative and executive functions.

Section 3.5(1) of the Act states:

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

Sections 3.12 and 3.13 of the Act detail the procedures for the making a local law: -

Section 3.12 of the Act states:

- (1) In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.
- (2) At a Council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.
- (3) The local government is to —
 - a give Statewide public notice stating that —
 - (i) the local government proposes to make a local law the purpose and effect of which is summarized in the notice;
 - (ii) a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and
 - (iii) submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;
 - b as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and
 - c provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.
- (3a) A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.
- (4) After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.

* *Absolute majority required.*
- (5) After making the local law, the local government is to publish it in the *Gazette* and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.
- (6) After the local law has been published in the *Gazette* the local government is to give local public notice —
 - a stating the title of the local law;
 - b summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and
 - c advising that copies of the local law may be inspected or obtained from the local government's office.
- (7) The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.

(8) In this section —

“**making**” in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.

Section 3.13 of the Act states:

If during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.

Section 3.16 of the Act requires a local government to undertake periodic reviews of its local laws, which states:

(1) Within a period of 8 years from the day when a local law commenced or a report of a review of the local law was accepted under this section, as the case requires, a local government is to carry out a review of the local law to determine whether or not it considers that it should be repealed or amended.

Risk Management considerations:

The risk associated with not progressing with the adoption of a revised set of Standing Orders is that the proceedings of Council and Committee meetings will continue to be governed by a local law that has numerous shortcomings in its operations.

The failure to complete the review will mean that the City has not complied with section 3.16 of the Local Government Act 1995.

Financial/Budget Implications:

Not Applicable.

Policy implications:

The Standing Orders Local Law governs the meeting procedures. As the order of business in the proposed local law includes provision for a public statement time, necessary guidelines/policies will need to be developed in due course.

Regional Significance:

Not Applicable.

Sustainability implications:

A revised set of Standing Orders that offers a contemporary approach to governing the proceedings of Council and Committee meetings will greatly assist the decision-making process.

Consultation:

The level of consultation will be dictated by the requirements of the Local Government Act 1995.

COMMENT

The proposed Standing Orders Local law has been based on the best practice principles of well-structured agendas that are short and sharp, which allows sufficient time to debate, and set policy and strategy to achieve the best results for the community.

The proposed local law includes the repeal of the current Standing Orders Local Law carried over from the former City of Wanneroo, being:

City of Wanneroo Standing Orders Local Law 1997, as published in the Government Gazette - 30 October 1997.

The repeal of the current local law coincides with the commencement of the proposed local law. The City's solicitor has reviewed the proposed local law to ensure that the content is within the bounds of operation of the Local Government Act 1995.

It is recommended that the proposed local law be advertised in accordance with section 3.12 of the Local Government Act 1995, in order to seek public comment. The revised set of Standing Orders will assist in better decision making by Council, the orderly and efficient conduct of meetings dealing with Council business and greater community understanding of the business of the Council by providing open and accountable local government.

ATTACHMENTS

Attachment 1	Draft Standing Orders 2005 – Explanatory Notes
Attachment 2	Draft Standing Orders Local Law 2005

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That Council in accordance with section 3.12 of the Local Government Act 1995, APPROVES the advertising of the proposed local law, "City of Joondalup Standing Orders Local Law 2005", forming Attachment 2 to Report CJ153-08/05, in order to seek public comment.

ADDITIONAL INFORMATION

The following amendment is required to be made to the proposed Standing Orders Local Law:

Clause 25(2): The word "come" is to be deleted and replaced with the word "cause".

AMENDED OFFICER'S RECOMMENDATION

That Council in accordance with section 3.12 of the Local Government Act 1995, APPROVES the advertising of the proposed local law, "City of Joondalup Standing Orders Local Law 2005", forming Attachment 2 to Report CJ153-08/05, in order to seek public comment, subject to amending Clause 25(2) by deleting the word "come" and replacing it with the word "cause".

MOVED Cmr Anderson, SECONDED Cmr Clough that Council:

- 1 in accordance with section 3.12 of the Local Government Act 1995, APPROVES the advertising of the proposed local law, “City of Joondalup Standing Orders Local Law 2005”, forming Attachment 2 to Report CJ153-08/05, in order to seek public comment;**
- 2 will issue, in association with the Standing Orders Local Law 2005, the Department of Local Government and Regional Development Guidelines No 6, as necessarily amended to reflect recent legislative changes.**

Discussion ensued. With the approval of the meeting, Cmr Anderson altered the wording of Point 2 as suggested by the Chief Executive Officer.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 1 refers

To access this attachment on electronic document, click here: [Attach1agn020805 .pdf](#)

CJ154 - 08/05 PROTOCOLS FOR STRATEGY AND BRIEFING SESSIONS – [25548, 08122, 76541, 01139, 02154]

WARD: All

RESPONSIBLE DIRECTOR: Garry Hunt
Office of CEO

CJ050802_BRF.DOC:ITEM 2

PURPOSE

To provide suggested protocols and parameters for the operation of Strategy and Briefing Sessions for the consideration of Council.

EXECUTIVE SUMMARY

The Council agreed to conduct a review of its governance processes in late 2003. The Governance Review Final Report was prepared and presented to the Council in early 2004 and it contained the following recommendations pertaining to the currently established Strategy and Briefing Sessions that the Council operates as part of its decision-making process.

“The agenda briefing session process would be improved by:

- (a) Retaining public access to the sessions but removing public question time;*
- (b) Members of the public who have a specific interest in a matter may be given an opportunity to address the Council if they submit a written request to the CEO at least 24 hours before the session;*

- (c) *Advising Elected Members at the beginning of the session of the issues that will be subject to a formal presentation by a staff member during the session. Such issues will be determined by the CEO taking into account (d) below;*
- (d) *Requiring all Elected Members to advise at least 24 hours before the session of the issues they wish to have addressed. Staff would then make presentations on such requests;*
- (e) *The chair making it very clear that no debate between Elected Members will be allowed;*
- (f) *Being more liberal with the time made available for the sessions;*
- (g) *Providing notes to members who do not attend of the issues that have been covered so that such members can seek answers to their queries from other Elected Members or staff prior to the matter being considered in the ordinary meeting.”*

The Council considered a number of the Governance Review recommendations at its meeting held on 23 November 2004 where it resolved in particular relating to Strategy and Briefing Sessions as follows:

“That nothing in this resolution prevents the Administration from carrying out preliminary administrative tasks in connection with a review of:

- *Guidelines relating to public question time*
- *Protocols and procedures relating to strategy and Briefing Sessions*
- *Standing Orders*
- *Code of Conduct*
- *Electronic controls within the Council Chamber*
- *Induction program for Mayors and Councillors/Commissioners”*

This report presents draft protocols relating to Strategy Sessions and Briefing Sessions. The revised protocols are based on previously established procedures for these sessions and also embrace some of the improvements suggested as part of the recommendations of the Governance Review – Final Report.

BACKGROUND

The City of Joondalup was established on 1 July 1998 as a result of the splitting of the former City of Wanneroo into two (2) new local governments.

The division of the former City of Wanneroo was overseen by five (5) Joint Commissioners, following the suspension of the former elected Council of the City of Wanneroo in late 1997. The former Council was reinstated immediately prior to the Governor’s Orders disbanding the former City of Wanneroo and establishing the two (2) new local governments.

The City of Joondalup conducted its inaugural elections in December 1999 and has had subsequent elections in May 2001 and 2003.

A Governance Review Panel was established in September 2003 comprising of:

- Mr Steve Cole, Director Capacity Building – Department of Local Government and Regional Development – (Chairman);
- Councillor Ian Mickel, President – Shire of Esperance;
- Mr Cliff Frewing, Executive Manager – Financial and Information Services – City of Swan and President, WA Division of Local Government Managers Australia;
- Mr Bruce Wittber, Consultant (Executive Officer).

The following terms of reference for the Governance Review were agreed to by the City of Joondalup in September 2003:

“The Governance Review Panel will assess and make recommendations on the operations of the Council of the City of Joondalup with particular reference to

- 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 structure.*
- 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 Governance Review report provides further background to the establishment of the review. The review included the following recommendation relating to Strategy and Briefing Sessions:

“The agenda briefing session process would be improved by-

- (a) Retaining public access to the sessions but removing public question time;*
- (b) Members of the public who have a specific interest in a matter may be given an opportunity to address the Council if they submit a written request to the CEO at least 24 hours before the session;*
- (c) Advising Elected Members at the beginning of the session of the issues that will be subject to a formal presentation by a staff member during the session. Such issues will be determined by the CEO taking into account (d) below;*
- (d) Requiring all Elected Members to advise at least 24 hours before the session of the issues they wish to have addressed. Staff would then make presentations on such requests;*
- (e) The chair making it very clear that no debate between Elected Members will be allowed;*
- (f) Being more liberal with the time made available for the sessions;*
- (g) Providing notes to members who do not attend of the issues that have been covered so that such members can seek answers to their queries from other Elected Members or staff prior to the matter being considered in the ordinary meeting.”*

It should be noted that the Council has previously agreed to retain public question time as part of Briefing Sessions in response to recommendation (a) above from the Governance Review.

A report was presented to the Council meeting held on 23 November 2004 where a number of resolutions were carried by the Council in response to the recommendations contained within the Governance Review – Final Report. Part of the resolution carried on 23 November 2004 including the following pertaining to Strategy and Briefing Sessions:

“That nothing in this resolution prevents the Administration from carrying out preliminary administrative tasks in connection with a review of:

- Guidelines relating to public question time*
- Protocols and procedures relating to strategy and Briefing Sessions*
- Standing Orders*
- Code of Conduct*
- Electronic controls within the Council Chamber*
- Induction program for Mayors and Councillors/Commissioners”*

The Council at its meeting held on 31 August 2004 adopted procedures that relate to the operations of the Strategy and Briefing Sessions. Copies of these appear at the front of each Strategy and Briefing Session agenda.

DETAILS

Issues and options considered:

The Council's current decision-making process involves a rolling three weekly cycle based on the following:

- Strategy Session (closed to the public);
- Briefing Session (open to the public);
- Ordinary Council meeting (open to the public).

The Council has been operating this decision-making format since March 2002. The Council also established five (5) advisory-type committees of specific nature, which make recommendations to the Council for its consideration.

Strategy Sessions

Strategy Sessions involve Elected Members/Commissioners and staff meeting to exchange information and ideas for the development of the local government and the district.

Such Strategy Sessions often involve projects that are in the early planning stages and are some time away from being presented to Council for decision. During Strategy Sessions, staff seek input from the Elected Members/Commissioners as they research the matter and draft the report. Elected Members/Commissioners and staff are also looking to present ideas for future consideration.

At Strategy Sessions it is important that Elected Members:

- provide input into matters;
- become informed on matters to ensure future decisions are made in the best interests of the City;
- represent the community on matters presented.

The input provided by Elected Members/Commissioners in their role as community representatives can be of invaluable assistance in providing direction for staff to proceed with their research and eventual report on a matter. Examples of the type of issues Strategy Sessions may cover include:

- current matters of a local or regional significance;
- matters relating to the future development of the local government;
- significant revenue-raising requirements or expenditure needs;
- the development of internal strategic, planning, management and financial documents; and
- significant staff issues such as cultural change and major restructures.

Strategy Sessions are held in a relatively informal manner, and this privacy and informality allows Elected Members/Commissioners to propose ideas and ask questions for the better understanding of those in attendance. Such Strategy Sessions assist individuals to become better informed and to clarify their views.

Briefing Sessions

For the most effective decision-making, Elected Members/Commissioners must have the opportunity to gain maximum knowledge and understanding of any issue presented to the Council on which they must vote. It is reasonable for Elected Members/Commissioners to expect that they will be provided with all the relevant information they need to understand issues listed on the agenda for the next or following ordinary Council meetings, and thereby avoid the necessity of deferring an item due to lack of adequate information.

The complexity of many items means that Elected Members/Commissioners may need to be given information additional to that in a staff report and/or they may need an opportunity to ask questions of relevant staff members. This is achieved by the Elected Members/Commissioners meeting as a body to receive a briefing on issues listed for Council decision. It is considered Briefing Sessions are much more efficient and effective than Elected Members/Commissioners meeting staff on an individual basis for such a purpose, with the added benefit that all Elected Members/Commissioners hear the same questions and answers.

Briefing Sessions conducted by the City are open to the public. Briefing Sessions may go behind closed doors to consider an item of a confidential nature that is listed on an agenda, however this seldom occurs. In addition to having the opportunity to receive detailed presentations from staff and consultants about matters that are to be on the Council Meeting Agenda for decision, Briefing Sessions are the forum used by the City to receive deputations from the public, ratepayer and other community groups, about matters of interest and due for consideration and decision of Council.

To protect the integrity of the decision-making process it is essential that Briefing Sessions be conducted in keeping with agreed procedures that are consistently applied.

Council Meetings

Council meetings, whether they be Ordinary, or Special meetings, are the only meetings at which decisions are made by the Council. Each of the other meeting processes is for the provision of relevant information to all Elected Members/Commissioners to assist each of them to make informed decisions.

Council meetings are therefore conducted in a more formal and structured manner in accordance with the Local Government Act 1995 and the City's Standing Orders Local Law.

The following table demonstrates the main characteristics of the current meeting cycle:

	Strategy Session	Briefing Session	Council Meeting
Open to Public	No	Yes	Yes
Public Question Time	No	Yes	Yes
Deputation Session	No	Yes	No
Presentation of information by officers	Yes	Yes	Yes
Debate	No	No	Yes
Formal Decisions made	No	No	Yes
Record kept of meeting	Informal Notes	Informal Notes	Minutes

Link to Strategic Plan:

- Outcome: The City of Joondalup is an interactive community.
- Objectives: To ensure the City responds to and communicates with the community.
- Strategy: Provide fair and transparent decision-making processes.

Legislation – Statutory Provisions:

Local governments are only allowed to make decisions by law when the Council as a whole meets and forms properly constituted resolutions. The exceptions to this is where the Mayor may exercise some emergency powers allowed for by the Local Government Act 1995 or where the decision rests with the Chief Executive Officer, or the Council has formally delegated the decision-making power to either a committee or an officer of the local government.

Section 5.8 of the Local Government Act 1995 states: -

5.8. Establishment of committees

A local government may establish* committees of 3 or more persons to assist the Council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.

** Absolute majority required.*

Section 5.42 of the Local Government Act 1995 states: -

5.42. Delegation of some powers and duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.

**Absolute majority required.*

- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

Risk Management considerations:

The Governance Review – Final Report made a number of recommendations that are being considered by the Council. The need to establish clear protocols relating to Strategy and Briefing Sessions is critical in assisting the decision-making process of the City of Joondalup.

Financial/Budget Implications:

Not Applicable

Policy implications:

The adoption of the protocols will have implications relating to the operation of the Strategy and Briefing Sessions.

Regional Significance:

Not Applicable

Sustainability implications:

The City recognises its responsibility to work with its community towards an environmentally, socially and economically sustainable future. Consideration of the recommendations of the Governance Review Panel will enhance the social aspect of sustainability by demonstrating improved governance practices for the benefit of the community of the City of Joondalup.

Consultation:

Not Applicable.

COMMENT

The modern role of the elected body is to set policy and strategy, and to provide goals and targets for the local government. A well structured decision-making process will provide the elected body with the opportunity to seek points of clarification, ask questions and adequate time to research issues. Such a process requires clear protocols to assist in the information gathering and sharing process.

Revised protocols have been drafted and are attached for consideration by the Council. The protocols have been based on the current decision-making process that the Council has in place, previous decisions of the Council in setting parameters for Strategy and Briefing Sessions and the recommendations from the Governance Review – Final report.

ATTACHMENTS

Attachment 1 Draft Protocols for Strategy Sessions and Briefing Sessions.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION: That Council:

1 BY AN ABSOLUTE MAJORITY, REVOKES its decision of 31 August 2004 being:

“ADOPT the Procedures for Strategy and Briefing Sessions, as set out in Attachment 2 to Report CJ195-08/04, subject to:

(a) Addition of a new point 10 to Procedures Applying to Both Strategy and Briefing Sessions, being:

“10 An exception to point 7 above would be a situation where a consultant who has/declares a financial interest in the matter, is asked to attend a Strategy or Briefing Session to provide information only, on that matter being considered at the Session.”

- (b) *Addition of a new point 6 to Procedures Specific to Briefing Sessions, being:*

“6 A period for Public Questions be held at the commencement of Briefing Sessions that relate only to items on the agenda;”

- (c) *Deletion of point 3 under the heading “Procedures Specific to Strategy Sessions” and substituting that with a new point 3 as follows:*

“3 In specific instances when it is considered appropriate by Elected Members/Commissioners to be more fully informed on a matter, proponents may be invited to provide a presentation at a Strategy Session and in those instances headings of matters will be disclosed to the public.”

- (d) *Purpose of Strategy Sessions to be included in the procedures, to make it clear what they are meant to achieve, and that purpose to generally accord with the description given to Concept Forums in Item 3.1 of the Guidelines on Council Forums published by the Department of Local Government and Regional Development dated January 2004 forming Attachment 3 to Report CJ195-08/04;”*

- 2 ADOPTS the Procedures for Strategy Sessions and Briefing Sessions, as set out in Attachment 1 to Report CJ154-08/05.

MOVED Cmr Clough, SECONDED Cmr Anderson that Council:

- 1 **REVOKES** its decision of 31 August 2004 being:

“ADOPT the Procedures for Strategy and Briefing Sessions, as set out in Attachment 2 to Report CJ195-08/04, subject to:

- (a) ***Addition of a new point 10 to Procedures Applying to Both Strategy and Briefing Sessions, being:***

“10 An exception to point 7 above would be a situation where a consultant who has/declares a financial interest in the matter, is asked to attend a Strategy or Briefing Session to provide information only, on that matter being considered at the Session.”

- (b) ***Addition of a new point 6 to Procedures Specific to Briefing Sessions, being:***

“6 A period for Public Questions be held at the commencement of Briefing Sessions that relate only to items on the agenda;”

- (c) ***Deletion of point 3 under the heading “Procedures Specific to Strategy Sessions” and substituting that with a new point 3 as follows:***

“3 In specific instances when it is considered appropriate by Elected Members/Commissioners to be more fully informed on a matter, proponents may be invited to provide a presentation at a Strategy Session and in those instances headings of matters will be disclosed to the public.”

(d) *Purpose of Strategy Sessions to be included in the procedures, to make it clear what they are meant to achieve, and that purpose to generally accord with the description given to Concept Forums in Item 3.1 of the Guidelines on Council Forums published by the Department of Local Government and Regional Development dated January 2004 forming Attachment 3 to Report CJ195-08/04;*

2 **ADOPTS** the Protocols for Strategy Sessions and Briefing Sessions, as set out in Attachment 1 to Report CJ154-08/05, subject to the deletion of the note on page 3 that reads:

“These protocols do not relate to the operations of public question time and public statement for Council meetings and Briefing Sessions. Such protocols for public question time and public statement time are the subject of further consideration by the Council”;

3 **NOTES** that these protocols do not relate to the operations of public question time and public statement for Council meetings and Briefing Sessions. Such protocols for public question time and public statement time are the subject of further consideration by the Council.

Cmr Clough spoke to the Motion.

AMENDMENT MOVED Cmr Smith, **SECONDED** Cmr Anderson that Council an additional subclause be added to Point 2 of the Motion as follows:

“2(b) The following Point 10 being added to the Protocols for Briefing Sessions:

“10 Other requirements for deputations are to be in accordance with the Standing Orders Local Law where it refers to the management of deputations”.

Cmr Smith spoke to the Amendment.

The Amendment was Put and

CARRIED (5/0)

The Original Motion as amended, being:

That Council:

1 **REVOKES** its decision of 31 August 2004 being:

“ADOPT the Procedures for Strategy and Briefing Sessions, as set out in Attachment 2 to Report CJ195-08/04, subject to:

(a) *Addition of a new point 10 to Procedures Applying to Both Strategy and Briefing Sessions, being:*

“10 An exception to point 7 above would be a situation where a consultant who has/declares a financial interest in the matter, is asked to attend a Strategy or Briefing Session to provide information only, on that matter being considered at the Session.”

- (b) **Addition of a new point 6 to Procedures Specific to Briefing Sessions, being:**

“6 A period for Public Questions be held at the commencement of Briefing Sessions that relate only to items on the agenda;”

- (c) **Deletion of point 3 under the heading “Procedures Specific to Strategy Sessions” and substituting that with a new point 3 as follows:**

“3 In specific instances when it is considered appropriate by Elected Members/Commissioners to be more fully informed on a matter, proponents may be invited to provide a presentation at a Strategy Session and in those instances headings of matters will be disclosed to the public.”

- (d) **Purpose of Strategy Sessions to be included in the procedures, to make it clear what they are meant to achieve, and that purpose to generally accord with the description given to Concept Forums in Item 3.1 of the Guidelines on Council Forums published by the Department of Local Government and Regional Development dated January 2004 forming Attachment 3 to Report CJ195-08/04;”**

- 2 ADOPTS the Protocols for Strategy Sessions and Briefing Sessions, as set out in Attachment 1 to Report CJ154-08/05, subject to:**

- (a) **the deletion of the note on page 3 that reads: “These protocols do not relate to the operations of public question time and public statement for Council meetings and Briefing Sessions. Such protocols for public question time and public statement time are the subject of further consideration by the Council”;**

- (b) **The following Point 10 being added to the Protocols for Briefing Sessions:**

“10 Other requirements for deputations are to be in accordance with the Standing Orders Local Law where it refers to the management of deputations”;

- 3 NOTES that these protocols do not relate to the operations of public question time and public statement for Council meetings and Briefing Sessions. Such protocols for public question time and public statement time are the subject of further consideration by the Council.**

Was Put and

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

Appendix 2 refers

To access this attachment on electronic document, click here: [Attach2agn090805.pdf](#)

The Chief Executive Officer, Mr Garry Hunt, declared a financial interest in CJ155-08/05 – Council Elections as in the event that in-person elections are held, he may be appointed as Returning Officer.

Chief Executive Officer left the Chamber, the time being 1259 hrs.

CJ155 - 08/05 COUNCIL ELECTIONS – [17518]

WARD: All

RESPONSIBLE DIRECTOR: Garry Hunt
Chief Executive Officer

CJ050802_BRF.DOC:ITEM 3

PURPOSE

For Council to give consideration to whether the forthcoming Council Elections will be voting-in-person elections or postal elections.

EXECUTIVE SUMMARY

Upon completion of the McIntyre Inquiry into the City of Joondalup, the Minister for Local Government and Regional Development will set a date for City of Joondalup Council Elections.

Local government elections must be conducted in accordance with the *Local Government Act 1995 (the Act)* and the *Local Government (Elections) Regulations 1997 (the Regulations)*.

In accordance with the Act and the Regulations, Council is required to decide the type of election to be held and declare who will be responsible for the conduct of the elections.

It is recommended that Council resolve to decide that the method of conducting the election will be as a postal election and declare that the Electoral Commissioner be responsible for the conduct of the election.

Council may also decide at this point if it desires to appoint the Electoral Commissioner as the person responsible for the conduct of all City of Joondalup Council Elections between now and 31 December 2011.

It is also recommended that Council resolve that the method of conducting all Council elections due to be held between now and 31 December 2011 will be as postal elections and declare that the Electoral Commissioner be responsible for the conduct of those elections.

BACKGROUND

As a result of the suspension of the City of Joondalup Council, the City did not take part in the May 2005 ordinary local government elections. As a result, elections for the City of Joondalup will not be held until a date is set by the Minister upon the completion of the McIntyre Inquiry.

Prior to the elections taking place the Council is required to decide what type of election will be held (voting in person or postal) and who will be responsible for the conduct of the election.

In accordance with Act the written agreement of the Electoral Commissioner is required before a local government can declare the Electoral Commissioner to be responsible for the conduct of the election.

The Electoral Commissioner has been requested to provide a written undertaking that it is willing to be responsible for the conduct of the next City of Joondalup Council Elections. A response from the Electoral Commissioner has now been received and Council is now in a position to declare the Electoral Commissioner responsible for the next Council elections and future elections to 31 December 2011.

DETAILS

Issues and options considered:

The Act allows a local government the option of having a voting in person election or a postal election. A Council election shall be a voting in person election unless the local government decides (by absolute majority) to conduct the election has a postal election. The decision to conduct the election as a postal election must be made at least 80 days before Election Day and can only be made after or in conjunction with a declaration that the Electoral Commissioner is to be responsible for the election.

A recent amendment to the Act now allows a local government to appoint the Electoral Commissioner to be responsible for the conduct of all elections within a particular period of time.

The options for Council are as follows (Council must first decide on the method by which an election is to be held as other available options are determined by the method of the election):

1 Voting in person election

- The CEO is the returning officer, unless other arrangements are made,
- Council may, having first obtained the permission of the person concerned and the written approval of the Electoral Commissioner, appoint a person other than the CEO to be the returning officer for an election or for all elections held while the appointment of that person subsists (such an appointment is to be made at least 80 days before an election day and cannot be rescinded after 80 days before election day).

2 Postal election

- A decision to conduct a Postal Election can only be made after or in conjunction with a declaration by the Council that the Electoral Commissioner be responsible for the conduct of the election (this declaration must be made at least 80 days before an election day and cannot be rescinded after 80 days before election day and can only be made after the Electoral Commissioner has provided a written agreement to do so).
- The Council may decide to appoint the Electoral Commissioner to be responsible for the conduct of all elections conducted with a particular period of time. The Electoral Commissioner has advised Council that it is willing to be responsible for the conduct of all elections from now until 31 December 2011.

Link to Strategic Plan:

Not Applicable.

Legislation – Statutory Provisions:*Local Government Act 1995**Division 7 – Provisions about electoral officers and the conduct of elections**4.19 The Returning Officer*

The principal electoral office of a local government is that of returning officer.

4.20 CEO to be returning officer unless other arrangements are made

- (1) Subject to this section the CEO is the returning officer of a local government for each election.*
- (2) A local government may, having first obtained the written agreement of the person concerned and the written approval of the Electoral Commissioner, appoint* a person other than the CEO to be the returning officer of the local government for –*
 - (a) an election; or*
 - (b) all elections held while the appointment of the person subsists.*

** Absolute majority required.*

- (3) An appointment under subsection (2) –*
 - (a) is to specify the term of the person's appointment; and*
 - (b) has no effect if it is made after the 80th day before an election day.*
- (4) A local government may, having first obtained the written agreement of the Electoral Commissioner, declare* the Electoral Commissioner to be responsible for the conduct of an election, or all elections conducted within a particular period of time, and, if such a declaration is made, the Electoral Commissioner is to appoint a person to be the returning officer of the local government for the elections or elections.*

** Absolute majority required.*

- (5) A declaration under subsection (4) has no effect if it is made after the 80th day before election day unless a declaration has already been made in respect of an election for the local government and the declaration is in respect of an additional election for the same local government.*
- (6) A declaration made under subsection (4) on or before the 80th day before election day cannot be rescinded after that 80th day.*

*Stage 4 – Preparing for voting**4.61 Choice of methods of conducting the election*

- (1) The election can be conducted as a –*
“postal election” which is an election at which the method of casting votes is by posting or delivering them to an electoral officer on or before election day;
or

“voting in person election” which is an election at which the principal method of casting votes is by voting in person on election day but at which votes can also be cast in person before election day, or posted or delivered, in accordance with regulations.

- (2) *The local government may decide* to conduct the election as a postal election.*

**Absolute majority required.*

- (3) *A decision under subsection (2) has no effect if it is made after the 80th day before election day unless a declaration has already been made in respect of an election for the local government and the declaration is in respect of an additional election for the same local government.*
- (4) *A decision under subsection (2) has no effect unless it is made after a declaration is made under section 4.20(4) that the Electoral Commissioner is to be responsible for the conduct of the election or in conjunction with such a declaration.*
- (5) *A decision made under subsection (2) on or before the 80th day before an election day cannot be rescinded after that 80th day.*
- (6) *For the purposes of this Act, the poll for an election is to be regarded as having been held on election day even though the election is conducted as a postal election.*
- (7) *Unless a resolution under subsection (2) has effect, the election is to be conducted as a voting in person election.*

Risk Management considerations:

Not Applicable.

Financial/Budget Implications:

A provision has been made in the 2005/06 draft budget for the conduct of Council elections. The proposed budget amount is \$300,000.

Policy implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Consultation has taken place with the Electoral Commissioner.

COMMENT

In accordance with the requirements of the Act the Electoral Commissioner has been requested to provide a written agreement to conduct the next City of Joondalup Council Elections.

The Electoral Commissioner has provided a written agreement to conduct the next Council elections and all elections for the City of Joondalup until 31 December 2011.

The Electoral Commissioner has advised that the estimated cost for a postal election in 2005 is \$240,000 - \$260,000 including GST, which has been based on the following assumptions:

- 104,000 electors;
- response rate of approximately 30%;
- up to 15 vacancies (including Mayoral); and
- count to be conducted at the premises of the City of Joondalup.

Costs not incorporated in this estimate include:

- non-statutory advertising (i.e. additional advertisements in community newspapers and promotional advertising);
- any legal expenses other than those that are determined to be borne by the Western Australian Electoral Commission in a Court of Disputed Returns; and
- one local government staff member to work in the polling place on election day.

The City of Joondalup has been conducting postal elections since its inaugural elections in May 1999 as a result of recommendations made by the Royal Commission into the former City of Wanneroo.

The table below shows the election method, voter turn-out and elections costs for all Council elections since May 1997 (note that the May 1997 elections were for the City of Wanneroo and elections from 1999 onwards are for the City of Joondalup).

Election Date	Election Method	Voter Turn-out	Election costs (approx.)
May 1997	Voting in person	6.51%	\$60,000
Dec 1999	Postal	28.2%	\$200,000
May 2001	Postal	29.7%	\$240,000
May 2003	Postal	25.87%	\$260,000

The table confirms that postal elections do increase voter turn-out, however the associated costs of running the election are higher.

Provision has been made in the 2005/06 Budget for \$300,000 for the conduct of Council elections. The quote received from the Electoral Commissioner is within the budget parameters.

It is recommended that Council opt for postal elections due to the significant increase in voter turnout associated with postal elections.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, **SECONDED** Cmr Fox that Council:

- 1 **NOTES** that the Electoral Commissioner has agreed in writing to be responsible for all elections for the City of Joondalup until 31 December 2011;
- 2 **DECLARES**, in accordance with section 4.20(4) of the *Local Government Act 1995*, the Electoral Commissioner to be responsible for all Council elections for the City of Joondalup between now and 31 December 2011;
- 3 **DECIDES**, in accordance with section 4.61(2) of the *Local Government Act 1995*, that the method of conducting all Council elections for the City of Joondalup between now and 31 December 2011 will be postal elections;
- 4 **CONFIRMS** that Resolutions 2 and 3 are not a binding contract with the Electoral Commissioner to conduct all elections until 31 December 2011 and nothing shall prevent Council from rescinding the decisions at any time in the future.

Discussion ensued.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

CJ156 - 08/05 OCEAN REEF MARINA STRUCTURE PLAN DEVELOPMENT - [04171] [07303]

WARD: Marina
RESPONSIBLE DIRECTOR: Garry Hunt
Chief Executive Officer

CJ050802_BRF.DOC:ITEM 4

PURPOSE

To approve the preparation of the Ocean Reef Marina structure plan and the calling of tenders for consultants required to develop the structure plan.

EXECUTIVE SUMMARY

Council purchased Part Lot 1029, 24.4 ha of land at Ocean Reef adjacent to the boat launching facility in 1979. The purchase was made as an investment for the benefit of the community, to enable the development of a range of recreational, commercial and ancillary service uses.

The Ocean Reef Marina development site is located on the coast at Ocean Reef and is approximately 46 hectares in area. The site currently consists of a boat launching facility, parking for vehicles and boat trailers, reserves, freehold land and the sea sports club and sea rescue building.

The site includes Foreshore Reserve 20561, City owned land, Lots 1029 and 1032, Groyne Reserve 36732 and Breakwater Reserve 39014 both vested in the City and Water Corporation land Lot 1033.

The first stage of the project focuses on identifying a concept design and structure plan for Ocean Reef Marina to meet the social/lifestyle needs of the region, promote economic development and protection of the environment in a sustainable way.

The structure plan will broadly identify what should be part of the development, which might include elements like boat pens, recreation areas, natural bushland, restaurants/shops. Physical development of the site will be a future project, once Council has considered the best way for development to take place.

Consultants required for this project will include services such as community consultation and public relations, environmental, planning and urban design, architecture, engineering and infrastructure, geotechnical, marine, land survey and heritage.

A Project Control Group consisting of City officers, State Government Departmental representatives and relevant consultants has been established to manage the project. Clifton Coney Group has currently been appointed as the external Project Manager for this project, in accordance with their existing contract with the City, up to the appointment of the required consultants stage. Clifton Coney Group will then be required to submit their proposal to manage the Structure Plan Process.

It is recommended that Council:

- 1 *APPROVES the preparation of a structure plan in accordance with Part 9 of District Planning Scheme No. 2 for the Ocean Reef Marina Development and the calling of tenders for key consultants required to prepare the plan for the following key areas:*
 - *Urban design;*
 - *Engineering services;*
 - *Environmental services;*
 - *Community consultation and public relations;*

- 2 *NOTES that the Clifton Coney Group has been appointed as Project Managers up to the appointment of key consultants for the preparation of the structure plan as detailed in (1) above and is required to submit a proposal to manage the structure plan process in accordance with its term contract.*

BACKGROUND

Council purchased Part Lot 1029, 24.4 ha of land at Ocean Reef adjacent to the boat launching facility in 1979. The purchase was made as an investment for the benefit of the community, to enable the development of a range of recreational, commercial and ancillary service uses.

In 1997 the City commenced discussions with the Water Corporation and Department of Transport regarding the possible transfer of vesting the Ocean Reef boat launching facilities and associated groynes to the City. It was considered there was potential for development of the Ocean Reef breakwater for commercial and other complimentary uses. In November 2000 Council resolved to execute the Deed for the vesting of Ocean Reef boat launching facilities and groynes with the City.

The City of Joondalup, Water Corporation and the Department of Planning and Infrastructure received the stamped Ocean Reef Marina Deed of Agreement on 22 August 2002. The agreement transfers the vesting of Groyne Reserve 36732 (Water Corporation) and Breakwater Reserve 39014 (Minister for Transport) to the City.

The area also encompasses two lease sites, that of the Whitfords Sea Sports Club and the Whitfords Sea Rescue. Both of these leases are currently expired.

The City commissioned a preliminary report on the commercial potential of the site in 2000. It identified that the site may have limited income potential for commercial development in the short term due to geographic and demographic constraints. It also concluded that competition with other nearby commercial centres and little prospect of tourism based activities contributed to the limited viability for commercial development on the site.

Pt Lot 1029 is in the northern part of Bush Forever Site 325, which is most of the coastal strip extending from Burns Beach south to Hillarys. Lots 1032 and 1033 are not in the Bush Forever site, but bush land west of these lots is in the site. In 1999 the City raised concerns with the Ministry for Planning regarding the Bush Forever classification of land at Ocean Reef. At the conclusion of these discussions it was agreed that the Bush Forever classification identified the site as a future tourism and recreation node and did not preclude development. Further it was identified that development needs to respond to conservation values of the site and that these should be protected in part through preparation of bushland sensitive design criteria.

A Vegetation and Flora survey was commenced in March 2002. The study resulted in the mapping and identification of vegetation in terms of distribution, condition and conservation significance. It concluded that Ocean Reef is important in terms of conservation and that further discussion should occur with the Bush Forever Officer to determine constraints for future development.

At an Ocean Reef Development Committee meeting in 2001 it was agreed that a Planning Workshop be held with interested stakeholders concerning Ocean Reef. The Committee was made up of the Mayor, Marina Ward members, one elected member from each of the remaining wards and Council officers. The purpose of the workshop was to develop a 'Land Vision' for the site. The key findings of the workshop emphasised the importance of continued community consultation, a whole of government approach and that the City should proceed with the preparation of a Structure Plan in the form of a concept for discussion.

In March 2002 the City appointed consultants to undertake a community benchmark survey. The survey was completed by 199 residents in the vicinity of Ocean Reef and 301 residents in the Joondalup district. The purpose of the survey was to gauge community expectations and attitudes in relation to redevelopment of Ocean Reef Marina. The findings of the survey indicated that respondents were informed there would be a comprehensive plan of community consultation throughout the development process and that 57.5% of respondents were in favour of a marina development at Ocean Reef.

The Ocean Reef Marina development site is located on the coast at Ocean Reef and is approximately 46 hectares in area. The site currently consists of a boat launching facility, parking for vehicles and boat trailers, Reserves, freehold land and the sea sports club and sea rescue building.

This City Project focuses on identifying a concept design and structure plan for Ocean Reef Boat Harbour to meet the social/lifestyle needs of the region, promote economic development and protection of the environment in a sustainable way.

The structure plan will broadly identify what should be part of the development, which might include facilities like boat pens, recreation areas, natural bushland, restaurants/shops and residential development. Physical development of the site will be a future project, once Council has considered the best way for development to take place. The State Government announced funding assistance for this project of up to \$700,000 to ensure that the project could proceed than earlier planned.

Consultants required for this project will include services such as community consultation and public relations, environmental, planning and urban design, architecture, engineering and infrastructure, geotechnical, marine, land survey and heritage.

The Ocean Reef Marina is a significant project and it is important to get the planning right to make sure that when the area is developed, it meets the social, economic and environmental needs of both the immediate and wider community. It will take approximately 12 to 18 months to get to a point where a concept design and structure plan have been finalised and approved by Council.

The resultant structure plan will enable the City to lodge proposals with various government authorities for statutory approval, which is required before any physical development can proceed. It is estimated that statutory approval might take 12 months.

The reports referred to within this report were incorporated in January 2005 into a document called Ocean Reef Boat Harbour Background Reports.

DETAILS

The primary objective of this project is to assess the viability of development proposals for the Ocean Reef Marina consistent with Council's original intent to develop a regional mixed-use boat harbour facility to enable the development of a range of recreational, commercial and service uses, ancillary to the boat harbour launching facilities.

The project will consist of four stages extending over an 18-month period. The first three stages will focus on the development of the structure plan and the final stage will conclude with the production of the structure plan in accordance with Council's Planning Scheme requirements.

The structure plan will identify areas for future uses based on previous studies and preliminary investigations of the study area's characteristics. It will result in detailed design required for a structure plan (as identified in *District Planning Scheme No.2*), identifying areas where development can occur and key infrastructure required.

The first three stages will conclude with the delivery of the structure plan, implementation strategy and a summary report outlining the findings and conclusions of the study team to Council.

The structure plan will include design drawings, perspectives and designation of land for particular uses and densities of development.

The following draft indicative program for the project will be confirmed on appointment of the consultant team:

STAGE 1 – Preliminary Feasibility (4 months)

Consultant research and assessment
Establish Project Control and Community Reference Groups
Scoping Workshop to establish vision, guiding principles and triple bottom line criteria for option evaluation
Identify and formulate preliminary development options
Report to Council

STAGE 2 – Business Case (3 months)

Development Options Workshop to identify preferred options - assess feasibility of each option and prepare documentation for public exhibition
Design development of options
Preliminary business case and feasibility analysis compiled for the preferred options
Report to Council

STAGE 3 – Public Exhibition (6 months)

Detailed Analysis and Costing
Implementation Workshop to select the Preferred Option Strategy
Public exhibition of Draft Structure Plan options
Prepare Draft Structure Plan and Implementation Strategy Reports
Submission of final report to Council

STAGE 4 – Structure Planning (5 months)

Preparation of material for Structure Plan in accordance with *District Planning Scheme No.2*
Submission of final report to Western Australian Planning Commission

The Project Objectives are as follows:

- Developing a Structure Plan in accordance with the City's objectives
- Ongoing review and management of risk
- Sustainable redevelopment of the Ocean Reef Marina
- Community involvement in and ownership of the process in developing the Structure Plan
- Identification of the proportion of bushland areas for conservation and rehabilitation
- Business Case for the preferred option including a review of the commercial potential of the site
- Engagement of a consultant team to finalise project documentation
- Environmental Management System for implementation with the Structure Plan
- Development of a Structure Plan incorporating best practice sustainable development principles and concepts
- A Structure Plan document for Council and State Government endorsement and public exhibition

Issues and options considered:

Council purchased Part Lot 1029, 24.4 ha of land at Ocean Reef adjacent to the boat launching facility in 1979. The purchase was made as an investment for the benefit of the community, to enable the development of a range of recreational, commercial and ancillary service uses. The development of a structure plan is the first stage in relation to future development of the site.

Clifton Coney Group

The Council at its meeting held on 17 December 2002 resolved to accept the tender submitted by Clifton Coney Stevens (WA) Pty Ltd (CCG) to provide program and project management consultancy services to the City of Joondalup for a period of up to five years based on hourly rates schedule detailed in Report CJ 314 - 12/02. The contract entered into with the CCG is non exclusive and the City has the ability to appoint alternative project managers to undertake works at its discretion in conjunction with or independent of services provided by CCG.

CCG have been used as project managers on a number of the City's major projects including Ocean Reef and the Craigie Leisure Centre. In more recent times the City has also appointed a project management coordinator who has taken on responsibility for the delivery of project outcomes such as the Craigie Leisure Centre and management of the CCG contract. The additional internal expertise has reduced the City's reliance on independent project managers. It is planned that the Project Management Coordinator will take a lead role in the delivery of the outcomes required of the Ocean Reef Project in conjunction with the external project managers.

Given the significance of the Ocean Reef Project and as a result of a number of personnel changes recently made at Clifton Coney it is intended that they be requested to submit a written proposal outlining how they intend to manage and resource the proposed structure planning process. In the event that the proposal does not satisfy the City's requirements the services of alternative project management consultancy firms may need to be sought. In the event that alternative project managers are required tenders will need to be sought as the estimated fees for project management of the structure plan process will be approximately \$185,000.

Link to Strategic Plan:

Development of Ocean Reef Marina will be consistent with each of the four key focus areas of the City's Strategic Plan as follows:

Caring for the Environment: The structure plan will incorporate bushland sensitive design criteria and will recognise the conservation values of the site utilising best practice urban design principles in the plan.

Community Wellbeing: Providing a cohesive system of integrated land use planning that balances built form and land use, community needs and the environment.

City Development: Encourage local employment and economic development through the urban design of the development.

Organisational Development: Manage the development to provide a maximum return on the investment to benefit the City's ratepayers and community.

Legislation – Statutory Provisions:

Tender requirements in accordance with the *Local Government (Functions & General) Regulations 1996*, where tenders are required to be publicly invited if the consideration under a contract is expected to be or is worth more than \$50,000 will be actioned. The consideration for the each consultant contract is not expected to exceed the Chief Executive Officer's Delegated Authority in relation to the acceptance of tenders to \$250,000.

The structure plan is required to be prepared in accordance with the City's District Planning Scheme No. 2.

Consultation with and participation from State Government agencies will continue through the structure plan process to ensure compliance with their various requirements.

Risk Management considerations:

The City's Project Control Group has developed a risk management report (Attachment 2 refers) for the project. The report will be reviewed by consultants once appointed and on an ongoing basis. The Project Control Group is currently and will continue to formulate strategies to mitigate these risks.

Financial/Budget Implications:

This project has a budget allocation of \$1.184m.

The cost estimates for the development of the structure plan are as follows:

Stage	Stage Estimate \$	Government Contribution \$	City Contribution \$
1 Preliminary Feasibility	179,850	179,850	0
2 Business Case	394,350	394,350	0
3 Public Exhibition	372,350	125,800	246,550
4 Structure Planning	108,900	0	108,900
Total	1,055,450	700,000	355,450

Policy implications:

Not applicable

Regional Significance:

The Ocean Reef Marina development is a regionally significant project highlighted by the funding offered by the State Government to expedite the preparation of the structure plan.

Sustainability implications:

A key element of the design outcomes for this project will be consideration and demonstration of urban design and environmental design solutions for the site that are acceptable to Council and the community and that incorporate best practice for coastal development.

The structure Plan should be developed in consideration of its ability to demonstrate principles and concepts of sustainable development. Under this brief the consultant is encouraged to proactively respond to challenges of sustainable development, and is required to demonstrate how sustainable development initiatives can be responsibly incorporated into the design approach.

Consultation:

Extensive consultation has been undertaken in the past with key stakeholders and the community in regards to this project and will be required throughout the structure plan process. It is intended to utilise the services of external communications and public relations consultants to supplement in-house skills to facilitate positive consultation, participation and marketing of the project. The City's Public Participation Strategy will be applied to this project.

COMMENT

Council purchased Part Lot 1029, 24.4 ha of land at Ocean Reef adjacent to the boat launching facility in 1979. The purchase was made as an investment for the benefit of the community, to enable the development of a range of recreational, commercial and ancillary service uses.

The Ocean Reef Marina development site is located on the coast at Ocean Reef and is approximately 46 hectares in area. The site currently consists of a boat launching facility, parking for vehicles and boat trailers, reserves, freehold land and the sea sports club and sea rescue building.

The first stage of the project focuses on identifying a concept design and structure plan for Ocean Reef Marina to meet the social/lifestyle needs of the region, promote economic development and protection of the environment in a sustainable way.

The structure plan will broadly identify what should be part of the development, which might include things like boat pens, recreation areas, natural bushland, restaurants/shops. Physical development of the site will be a future project, once Council has considered the best way for development to take place.

Consultants required for this project will include services such as community consultation and public relations, environmental, planning and urban design, architecture, engineering and infrastructure, geotechnical, marine, land survey and heritage.

A Project Control Group consisting of City officers, State Government representatives and relevant consultants has been established to manage the project.

ATTACHMENTS

Attachment 1 Ocean Reef Development Site Map

VOTING REQUIREMENTS

Simple Majority

Chief Executive Officer entered the Chamber, the time being 1300 hrs.

OFFICER'S RECOMMENDATION: That Council:

- 1 APPROVES the preparation of a structure plan in accordance with Part 9 of District Planning Scheme No 2 for the Ocean Reef Marina Development and the calling of tenders for key consultants required to prepare the plan for the following key areas:
 - Urban design;
 - Engineering services;
 - Environmental services;
 - Community consultation and public relations;
- 2 NOTES that the Clifton Coney Group has been appointed as Project Managers up to the appointment of key consultants for the preparation of the structure plan as detailed in (1) above and is required to submit a proposal to manage the structure plan process in accordance with its term contract.

MOVED Cmr Smith, SECONDED Cmr Anderson that:

- 1 **Council APPROVES the preparation of a structure plan in accordance with Part 9 of District Planning Scheme No 2 for the Ocean Reef Marina Development and the calling of tenders for key consultants required to prepare the plan for the following key areas:**

Urban design;
Engineering services;
Environmental services;
Community consultation and public relations;
- 2 **Council NOTES that the Clifton Coney Group has been appointed as Project Managers up to the appointment of key consultants for the preparation of the structure plan as detailed in (1) above and is required to submit a proposal to manage the structure plan process in accordance with its term contract;**
- 3 **the proposal in Point 2 above to be submitted to Council for determination;**
- 4 **Council formally expresses its appreciation to the State Government for its contribution to this project.**

Cmr Smith spoke to the Motion.

AMENDMENT MOVED Cmr Anderson, SECONDED Cmr Clough that the word "Interim" be added prior to the words "Project Managers" in Point 2 of the Motion.

Cmr Anderson spoke to the Amendment.

The Amendment was Put and

CARRIED (5/0)

The Original Motion as amended, being:

That:

- 1 **Council APPROVES the preparation of a structure plan in accordance with Part 9 of District Planning Scheme No 2 for the Ocean Reef Marina Development and the calling of tenders for key consultants required to prepare the plan for the following key areas:**

**Urban design;
Engineering services;
Environmental services;
Community consultation and public relations;**

- 2 Council NOTES that the Clifton Coney Group has been appointed as Interim Project Managers up to the appointment of key consultants for the preparation of the structure plan as detailed in (1) above and is required to submit a proposal to manage the structure plan process in accordance with its term contract;**
- 3 the proposal in Point 2 above to be submitted to Council for determination;**
- 4 Council formally expresses its appreciation to the State Government for its contribution to this project.**

was Put and

CARRIED UNANIMOUSLY (5/0)

Appendices 3 and 3(a) refer

*To access this attachment on electronic document, click here: [Attach3brf020805.pdf](#)
[Attach3aagn090805.pdf](#)*

**CJ157 - 08/05 DRAFT JINAN-JOONDALUP SISTER CITIES
RELATIONSHIP PLAN - [52469] [11014]**

WARD: All
RESPONSIBLE DIRECTOR: Garry Hunt
Chief Executive Officer

CJ050802_BRF.DOC:ITEM 5

PURPOSE

To seek endorsement from Council to release the draft Joondalup-Jinan Relationship Plan for public comment.

EXECUTIVE SUMMARY

Friendly relations between the City of Joondalup and the City of Jinan in eastern China have been developing since 2000. A Memorandum of Friendly Talks was signed between the two Cities in 2002 and in September 2004 the Chairman of Commissioners led a delegation to Jinan where a Protocol of Friendly Relations was signed. This was followed by a visit to the City by delegates from Jinan in November 2004 when an official protocol agreement formalising the Sister City Relationship between the two Cities was signed.

Council at its meeting on the 2 November 2004 resolved inter alia: -

“ To provide details for a 5 year plan to establish and sustain the sister-city relationship and also to outline how the relationship will be measured and monitored”;

The City has finalised a draft long-term Relationship Plan, which will guide the development of the Sister City Relationship over the next 5 to 10 years.

In April 2005 Council received a report outlining proposed visits for 2005. (*CJ066-04/05 refers*) Council deferred consideration of an outbound visit to Jinan in October 2005 until after the draft Relationship Plan is presented to Council.

It is envisaged that the draft Relationship Plan would be a point of discussion during the proposed visit in August by Mayor Bao Zhiqiang and his delegation. The discussion will enable agreement for the long-term management of the relationship including agreement on future visitations by both Cities.

It is recommended that the Council:

- 1 *ENDORSES the draft Plan shown as Attachment A to be disbursed to all interested parties for a comment period no longer than 30 days;*
- 2 *PRESENTS the draft plan to Mayor Bao and his delegation from Jinan in August 2005 seeking support for the draft plan;*
- 3 *REQUESTS a further report on the draft Plan be presented to Council for final endorsement following the receipt of comment from interested parties and the Jinan delegation.*

BACKGROUND

Friendly relations between the City of Joondalup and the City of Jinan in eastern China have been developing since 2000. A Memorandum of Friendly Talks was signed between the two Cities in 2002 and, in late 2003, the City received an invitation to lead a delegation to Jinan in September 2004 where a Protocol of Friendly Relations to establish a formal Sister City relationship was signed. In August 2004 the Chairman of Commissioners extended an invitation to official representatives from the City of Jinan to form a delegation to visit Joondalup in November 2004.

The delegation lead by Mr Duan Yihe, Director of the Standing Committee of Jinan's People Congress from Jinan was received by the City of Joondalup from 19-22 November, 2004. During this visit the two Cities signed an official protocol agreement formalising the Sister City relationship between the two Cities.

Council at its meeting on the 2 November 2004 resolved inter alia: -

“ To provide details for a 5 year plan to establish and sustain the sister-city relationship and also to outline how the relationship will be measured and monitored”;

In April 2005 Council received a report outlining proposed visits for 2005 (*CJ066-04/05 refers*) Council deferred consideration of an outbound visit to Jinan in October 2005 until after the draft Relationship Plan had been presented to Council.

Further details on the history of the relationship with Jinan can be found in the following reports, previously submitted to Council:

- CJ007 - 02/04 Invitation to further formalise friendly relations with Jinan in Shandong Province, China*
- CJ155 - 07/04 Delegation to formalise friendly relations with Jinan in Shandong Province, China*

CJ250 – 11/04	<i>A Protocol for Friendly Relations with the City of Jinan in Shandong Province, China – September 2004</i>
CJ306 – 12/04	<i>Overview of the Official Visit from Jinan Delegation (Shandong province), China to Joondalup – November 2004</i>
CJ066 - 04/05	<i>Notification of visits between Joondalup and Jinan Sister Cities during 2005</i>

DETAILS

Issues and options considered:

The key issues and options arising from the draft Relationship Plan are as follows:

- 1 Implementation of the Plan – The draft Plan identifies strategies that will require resource allocations and scheduling of the required work. Once systems and processes are established then resourcing will need to focus on the ongoing maintenance of the systems and processes. The City will need to consider its options for resourcing the plan during its annual business planning and budgetary process. The City will need to consider new external sources of funding that may be applied to achieving strategies of the plan. These options will enable the plan to seamlessly integrate into the City's existing processes and financial constraints.
- 2 System and Processes – In order to measure and report on the plan, systems and processes will need to be developed and agreed in the first instance. The City needs to determine through action planning what systems and processes are required. In order to ensure the plan does not impinge negatively upon the operations of the City, the measures being presented in the draft plan are considered to align with the existing corporate reporting framework of the City and will enable integration with existing system and processes of the City.
- 3 Sustaining interest in the Relationship – To date the Joondalup-Jinan relationship has been strongly supported by key City Stakeholders. In ensuring this level of support is continued the draft plan articulates strategy to encourage stakeholders enthusiasm for the initiative. The partnership approach has provided greater benefits to wider sectors of the community as well as assists in sharing costs associated with hosting and entertaining sister city visitors.
- 4 Community Involvement – The aim of any sister city relationship needs to remain grounded in a civic focus. To this end the draft plan identifies strategy to facilitate community engagement and views on the relationship. Furthermore the City needs to be proud of its relationship and needs to promote and celebrate the successes that the relationship will bring in a manner that community feel they have contributed to the success.
- 5 Managing expectations – A sister city relationship must constantly be managed and monitored to ensure that different sectors with different views do not perceive or create unrealistic expectations for the City. The City must be clear of its role in the relationship, which is clearly shown in the plan to be a facilitator, connector and to ensure a civic focus is maintained.
- 6 A Relationship of Values – The draft plan articulates the values by which the relationship will be managed. These values will provide the long-term commitment to the relationship. Values driven processes evolve over time, they need a long-term commitment of application in order that they can return long-term benefits. A cultural relationship driven by values will take time, patience and understanding to become enshrined in all we do.

- 7 Acceptance of the plan – A plan provides for continuity and sustainability however should the community and the sister City of Jinan not support having a long term plan then the City will need to rethink its approach to the relationship.

From the City's perspective if a blueprint is not laid down then the relationship will likely be subject to adhoc decision making and even vested interests which may result in the true purpose of the relationship being lost.

The City has drafted a long-term Relationship Plan to guide the development of the Sister City relationship over the next 5-10 years. The Plan was developed with involvement from the City's key stakeholders, Commissioners and staff who have contributed their views on how the relationships should be managed and maintained.

A survey was distributed in March 2005 to collect the views and aspirations of stakeholders, Commissioners and key staff. The surveys was analysed and collated in order to provide the basis for formulation of the draft Relationship Plan. Furthermore the draft plan was also informed from research undertaken of other Sister City relationships from around Australia. The draft plan will provide the necessary protocols and overall direction for exchanges into the future.

Upon being accepted by Council, the draft Relationship Plan should be made available for broader consultation with community, stakeholders and the Jinan Government prior to final endorsement.

It is envisaged that the draft Relationship Plan will be a point of discussion during the scheduled visit in August by Mayor Bao and his delegation. The draft Plan will enable agreement for the long-term management of the relationship and this will include agreements on future visitations by both Cities.

The draft Plan will consolidate more appropriate arrangements into the future. For example an outbound delegation would travel to Jinan biennially and a delegation from Jinan would also be received biennially. This would ensure that the relationship has a single major interaction annually or two major interactions biennially. This approach would serve to ensure the cost of maintaining the relationship is managed effectively and efficiently and that regular contact is undertaken to provide sustainability and maturation of the relationship.

The Draft Plan outlines four Key Focus Areas from which the strategy has been applied. These are as follows:

1 *Relationship Management*

The City of Joondalup will maintain leadership by ensuring the accountability, transparency and consistency of the Relationship. The City of Joondalup will promote the Relationship locally, nationally and internationally with the people of Joondalup and Jinan.

2 *Socio-cultural exchange*

The City of Joondalup will enhance mutual understanding, friendship and goodwill; maintain effective and efficient communication channels; and facilitate the sharing of traditions, customs, and culture between the two cities.

3 *Environmental exchange*

The City of Joondalup will share knowledge with the City of Jinan in leading practice environmental management techniques and approaches.

4 *Economic exchange*

The City of Joondalup will proactively develop and maintain a range of exchanges and business cooperation between the two cities. Education, training and tourism will be seen as an important part of economic development of the Relationship

The draft Plan has been constructed using the Key Focus Areas as the key themes and outcomes, objectives, strategies and performance measures have been applied to each area.

The draft Plan will be measured and reported annually through existing annual reporting mechanisms of the City. It is envisaged that this may form a new section within the annual report or may be a separate stand-alone report, which could form an addendum to the annual report.

Link to Strategic Plan:

This item links to the City's Strategic Plan 2003-08 under Key Focus Area One - Community Well-being through the following outcome:

“The City of Joondalup is recognised globally as a community that value and facilitates Lifelong Learning”

- 1.1 To develop, provide and promote a diverse range of lifelong learning opportunities.
 - 1.1.1 Continue the development of the City as a learning city – plan for student growth
 - 1.1.2 Continue the development of learning precincts and relationships with local stakeholders and service providers
- 1.2 To meet cultural needs and values of community
 - 1.2.1 Continue to enhance and create new cultural activities and events

And under Key Focus Area Three – City Development

“The City of Joondalup is recognised for investment and business opportunities.”

- 3.5 To provide and maintain sustainable economic development
 - 3.5.1 Develop partnerships with stakeholders to foster business development opportunities
 - 3.5.2 Assist the facilitation of local employment opportunities

Legislation – Statutory Provisions:

There are no legislative requirements that relate to this report.

Risk Management considerations:

With respect to the Draft Relationship Plan a number of risk management issues have been identified. These include:

Ethical Risk

In order to sustain a Sister City relationship a set of values is required to underpin the behaviours and direction of the relationship. The values as outlined in the draft Plan will need to be adopted and enshrined in all that the City does with its Sister City. Without this level of commitment the credibility of the relationship will be placed at risk.

Project Risk

A long-term commitment will be required following adoption of the draft Relationship Plan. It is therefore necessary to fully understand the implications of the draft Plan and to understand that a whole of Council and City approach is required to support ongoing projects that may emanate from the relationship. In managing the overall project across the long term, the City will need to consider how it will provide continuity to its project management approach. This can be achieved through dedicated resources being allocated the task to project manage and coordinate all aspects of the relationship so that the City has a single entry point for matters that arise from the relationship. This approach will provide the continuity that a Sister City relationship will need.

Physical Risk

The City needs to be aware that when inviting dignitaries to the City a number of safety and security matters relating to hosting should be considered. These include such things as ensuring the safety of Sister City visitors and ensuring that the City is cognisant of issues of immigration, visas and national security to ensure the City is protected from the risk of potential defections by Chinese citizens and associated customs related matters. The City has already made networks with the key Australian agencies such as the Australian Federal Police (AFP) and the Department of Foreign Affairs and Trade (DFAT). These key agency relationships will need to be maintained over the long term.

Funding Risk

The funding of the draft Relationship Plan is a matter that needs to be considered by the City and in turn the Strategic Financial Management Committee during the annual budget process. The risk of inappropriate funding to the draft Plan may eventuate in an erosion of the capability of successfully achieving the outcomes of the Plan. The City has shown commitment by ensuring an amount is allocated annually for the ongoing development of the relationship to date. As the relationship grows and develops, new initiatives will emerge, and these initiatives will need to be cognisant of the current financial position of the City and its capability to deliver on key initiatives.

Financial/Budget Implications:

The draft Relationship Plan does not have any direct or significant financial implications arising at this stage. However it does provide a strategic direction for developing initiatives into the future. Furthermore the draft plan indicates the need for a recurrent operating budget to be set aside annually to undertake annual visitations whether they be inbound or outbound. With respect to new initiatives that may arise from the Plan, the Plan clearly outlines that such initiatives will be subject to the normal annual budgetary processes on the City.

The current level of funding that has been allocated to the Joondalup – Jinan Relationship to date has been as follows:

2001/2	\$15,000	Utilised by former Mayor Bombak's outbound visit
2002/3	\$15,000	Not Utilised
2003/4	\$15,000	Not utilised
2004/5	\$15,000	Utilised for outbound and inbound delegations
2005/6	\$20,000	Increased to allow for an inbound and outbound delegation

It is envisaged that an amount of \$15,000 should be allocated annually to meet expenses related to either an inbound or an outbound visit.

Policy implications:

At this point in time the City does not have any associated policy to guide Sister City Relationships. It may be necessary for this matter to be referred to the Policy Review Committee to consider if the City needs an overarching policy to guide formation and direction of Sister City relationships in general.

Regional Significance:

The potential for Sister City relationships to grow regional economic development is quite significant. The potential for development with a country like China and its massive markets has real opportunities for the northwest metropolitan region.

A sister city relationship has the ability to grow an appreciation of cultural differences and it is through the development of robust relationships built on trust and like values that will give region's economy a competitive advantage when dealing with Chinese markets.

Sustainability implications:

The draft Sister City Relationship Plan with Jinan, China has been built on social, environmental, economic and governance outcomes as follows:

Community Well-being

The growth of cross-cultural awareness is a global phenomenon. The global village scenario has brought all cultures closer together and by effectively using a Sister City vehicle to bridge cross-cultural understanding is another benefit and focus of the plan. The two Cities have a large scope for developing programs for cultural and social exchange benefit. For example a senior staff member from Joondalup, whilst on annual leave paid a visit to Jinan recently to discuss the potential to send entertainers from Jinan to Joondalup for future Joondalup festivals. The Jinan Cultural Department was delighted to receive the officer and is now progressing the concept. This is just one example of the opportunities that the City can derive from the Sister City relationship that will enhance community well being in Joondalup.

Caring for the Environment

The draft plan provides for environmental development within the relationship through encouraging the exchange of environmental knowledge. China will face increasing environmental challenges into the future as it continues to gear up and grow its industry sectors and there is a significant opportunity for the two cities to work together in this emergent area.

Research undertaken from other local government has revealed that Councils on the eastern seaboard of Australia are focussed on harnessing a competitive advantage from their sister city relationships based on environmental exchange programs. For example Hervey Bay Council (Queensland) has interwoven its water and waste management systems with their sister city goals. They are now undertaking work in the City of Leshan, Sichuan Province and in Guangdong Province China installing and commissioning water treatment plants. The council also attends and contributes to 'Water Futures' conferences in China and are undertaking a 'water demand' project in Leshan. Both Cities have embarked on creating a sister city 'garden project' that will result in a 'national garden' in each sister city.

City Development

The visits in 2004 have opened up many opportunities for Joondalup that will support the City's economic development pathway.

- Edith Cowan University has signed a Memorandum of Understanding with Jinan University and will be exchanging research opportunities and increasing their student intakes from Jinan.
- The WA Police Academy has made an offer to Jinan to train 20 senior level officers at the Academy during 2005. This offer has been accepted and a program is currently being implemented between the Learning City partners and City of Joondalup for hosting and managing the 12-week program. The 20 police officers will be living in Joondalup during this time.
- West Coast TAFE and the Joondalup Health Campus are developing a training program for nurses from Jinan.

Organisational Development

The draft plan outlines that the City will need to manage the relationship in an accountable and transparent manner and this objective will be measured and reported annually.

The City in its commitment to community consultation and knowledge management outlines in the draft plan how it will achieve such outcomes and how they will be measured.

Finally the City will develop ongoing protocol operational guidelines and provide guidance in order to assist the City, the community and business on how to best interact with visitors from our sister city.

Consultation:

A web page has been constructed that contains up to date information on the progress of the relationship with online opportunities for the community to comment or provide ideas for the City to consider.

The Joondalup-Jinan Relationship Plan was constructed on input from a survey that was used to collect views of Commissioners, senior staff and key stakeholders involved to date. The information was analysed and the themes that evolved were applied to the strategy development of the draft Plan.

The draft Relationship Plan if so endorsed by Council will be publicly displayed on the City's website and will be issued to stakeholders who have an interest to provide comment on the draft plan. Furthermore an advertisement will be placed in the community newspaper advising community that the draft plan is available for comment. A comment period of 30 days is being recommended.

COMMENT

The draft Joondalup-Jinan Relationship Plan was developed through consultation with stakeholders and also through research and benchmarking best practice approaches from other Councils around Australia who have developed sister cities relations.

The draft Joondalup-Jinan Relationship Plan sets clear boundaries for managing the relationship and also is a blueprint from which all our sister city activities can be pursued. The draft Plan will need to be reviewed annually and incorporated into the normal business planing and budgetary processes of the City. The draft Plan provides opportunities for both community and business sector involvement and is viewed by the City as a key opportunity for advancing community engagement through an initiative that has civic purpose.

It is envisaged that the draft Plan will be discussed with Mayor Bao and his delegation in August 2005. Upon closure of the comment period all feedback received will be collated and a report will be presented to Council outlining the comments and seeking adoption of the final Plan.

ATTACHMENTS

Attachment A Draft Joondalup – Jinan Relationship Plan

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, SECONDED Cmr Smith that Council:

- 1 ENDORSES the draft Joondalup-Jinan Relationship Plan shown as Attachment A to Report CJ157-08/05, to be disbursed to all interested parties for a comment period no longer than 30 days;**
- 2 PRESENTS the draft Plan to Mayor Bao and his delegation from Jinan in August 2005 seeking support for the draft plan;**
- 3 REQUESTS a further report on a final Plan be presented to Council for endorsement following the receipt of comment from interested parties and the Jinan delegation.**

Discussion ensued.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 4 refers

To access this attachment on electronic document, click here: [Attach4brf020805.pdf](#)

CJ158 - 08/05 SCHEDULE OF DOCUMENTS EXECUTED BY MEANS OF AFFIXING THE COMMON SEAL - [15876]

WARD: All

RESPONSIBLE DIRECTOR: Mr Garry Hunt
Chief Executive Officer

CJ050802_BRF.DOC:ITEM 6

PURPOSE

To provide a listing of those documents executed by means of affixing the Common Seal for noting by the Council for the period 27 May 2005 to 12 July 2005.

EXECUTIVE SUMMARY

The City of Joondalup enters various agreements by affixing its Common Seal. The Local Government Act 1995 states that the City is a body corporate with perpetual succession and a common seal. Those documents that are executed by affixing the Common Seal are reported to the Council for information on a regular basis.

BACKGROUND

Not Applicable.

DETAILS

Document: Structure Plan
Parties: City of Joondalup and WA Planning Commission
Description: Structure Plan 8, Currambine Village Structure Plan
Date: 27.05.05

Document: Restrictive Covenant
Parties: City of Joondalup and Investa Developments Pty Ltd
Description: Lot 124 (92) Cook Avenue, Hillarys on Deposited Plan 42945
Date: 27.05.05

Document: Contract
Parties: City of Joondalup and Lattimore Holdings Pty Ltd
Description: Tender No 041-04/05 – Supply and laying of concrete kerbing
Date: 27.05.05

Document: Contract
Parties: City of Joondalup and Dawn Express Construction Pty Ltd
Description: Tender No 039-04/05 – Joondalup Admin Reception Security Upgrade
Date: 27.05.05

Document: Amendment
Parties: City of Joondalup and WA Planning Commission
Description: District Planning Scheme No 2 – Amendment No 29 – Lot 647 (107) Eddystone Avenue, Craigie
Date: 27.05.05

Document: Debenture
Parties: City of Joondalup and WA Treasury Corporation
Description: Borrowings for the upgrade of the Craigie Leisure Centre – 069/04-05
Date: 27.05.05

Document: Contract
Parties: City of Joondalup and Brierty Contractors Pty Ltd
Description: Tender No 042-04/05 – Ocean Reef Road Roadworks from Hodges Drive to Shenton Avenue, Ocean Reef
Date: 27.05.05

Document: Contract
Parties: City of Joondalup and Diamond Industries Pty Ltd
Description: Tender No 037-04/05 – Whitfords Library air-conditioning replacement
Date: 27.05.05

Document: Easement
Parties: City of Joondalup/State Housing Commission and Isodor Pty Ltd
Description: Public access easement to facilitate legal public pedestrian access over No 893 Caridean Street, Heathridge
Date: 02.06.05

Document: Structure Plan
Parties: City of Joondalup and WA Planning Commission
Description: Modifications to Iluka Structure Plan No 26
Date: 02.06.05

Document: Amendment
Parties: City of Joondalup
Description: Scheme Amendment No 29 – Rezoning of Lot 674 (107) Eddystone Avenue, Craigie
Date: 02.06.05

Document: Agreement
Parties: City of Joondalup and Whitfords Volunteer Sea Rescue Group Inc
Description: Financial agreement for contribution to funding for Whitfords Volunteer Sea Rescue vessel
Date: 10.06.05

Document: Caveat
Parties: City of Joondalup and Crews
Description: Withdrawal of Caveat – 17 Parker Avenue, Sorrento
Date: 13.06.05

Document: Contract
Parties: City of Joondalup and Gorey Unit Trust trading as Turfmaster Facility Management
Description: Execution of Contract No 043-04/05 – Supply and application of bulk fertiliser
Date: 14.06.05

Document: Covenant
Parties: City of Joondalup and Meath Care
Description: Restrictive Covenant re access required pursuant to condition of approval (SU125642) – Lots 62 and 63 Hocking Road, Kingsley
Date: 30.06.05

Document: Agreement
Parties: City of Joondalup and FESA
Description: Agreement for payment option for ESL
Date: 30.06.05

Document: Contract
Parties: City of Joondalup and Asphaltech Pty Ltd
Description: Execution of Contract 033-04/05 – supply and laying of asphalt within the City of Joondalup
Date: 30.06.05

Document: Contract
Parties: City of Joondalup and Bill Express Ltd
Description: Agreement to provide over-the-counter bill payment services
Date: 30.06.05

Document: Copyright
Parties: City of Joondalup and Irene Herry
Description: Recording of historical importance
Date: 12.07.05

Document: Copyright
Parties: City of Joondalup and Louise Ainsworth
Description: Recording of historical importance
Date: 12.07.05

Document: Caveat
Parties: City of Joondalup and Energym Pty Ltd
Description: Withdrawal of Caveat – Lot 950 (18) Dugdale Street, Warwick
Date: 12.07.05

Issues and options considered:

Not Applicable.

Link to Strategic Plan:

Some of the documents executed by affixing the common seal may have a link to the Strategic Plan on an individual basis.

Legislation – Statutory Provisions:

Sub-sections (2) and (3) of section 2.5 of the Local Government Act 1995 states:

- (2) The local government is a body corporate with perpetual succession and a common seal.
- (3) The local government has the legal capacity of a natural person.

Risk Management considerations:

Not Applicable.

Financial/Budget Implications:

Some of the documents executed by the City may have financial and budget implications.

Policy implications:

Policy 2.3.3 titled Use of Common Seal and the Signatories for Contract Execution has the following objective:

To provide a policy for the use of the common seal and signatories for the execution of agreements.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Not Applicable.

COMMENT

The various documents have been executed by affixing the Common Seal of the City of Joondalup and are submitted to the Council for information.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Clough, **SECONDED** Cmr Smith that the schedule of documents executed by means of affixing the Common Seal for the period 27 May 2005 to 12 July 2005 be **NOTED**.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

CJ159 - 08/05 WARRANT OF PAYMENTS 30 JUNE 2005 - [09882]**WARD:** All**RESPONSIBLE DIRECTOR:** Mr Peter Schneider
Corporate Services and Resource Management

CJ050802_BRF.DOC:ITEM 7

PURPOSE

The Warrant of Payments for the month ended 30 June 2005 is submitted to Council for approval.

EXECUTIVE SUMMARY

This report details the payments drawn on the funds during the month of June 2005, totalling \$10,309,184.52 and seeks approval by Council for the payments listed.

It is recommended that Council APPROVES for payment the vouchers, as presented in the Warrant of Payments to 30 June 2005 certified by the Chairman of Commissioners and Director Corporate Services & Resource Management and totalling \$10,309,184.52

BACKGROUND

Council has delegated to the Chief Executive Officer the exercise of its power to make payments from the City's Municipal and Trust funds. In accordance with Local Government (Financial Management) Regulations 1996 a list of accounts paid by the Chief Executive Officer is to be provided to Council, where such delegation is made.

DETAILS

The table below details the payments drawn on the funds during the month of June 2005 and seeks approval by Council for the payments listed.

FUNDS	DETAILS	AMOUNT
Municipal Account	Cheques 71537 – 71969 EFT 3001 – 3304 66A – 73A	\$10,309,184.52
Trust Account		Nil
		\$10,309,184.52

The cheque and voucher registers are appended as Attachments A & B.

The total of all other outstanding accounts received but not paid at the close of June 2005 was \$3,408,182.11.

CERTIFICATE OF THE DIRECTOR OF CORPORATE SERVICES & RESOURCE MANAGEMENT

This warrant of payments to be passed for payment, covering vouchers numbered as indicated and totalling \$10,309,184.52 which is to be submitted to Council on 9 August 2005 has been checked, is fully supported by vouchers and invoices and which have been duly certified as to the receipt of goods and the rendition of services and as to prices, computations and costing and the amounts shown were due for payment.

.....
PETER SCHNEIDER
Director Corporate Services & Resource Management

CERTIFICATE OF CHAIRMAN OF COMMISSIONERS

I hereby certify that this warrant of payments covering vouchers numbered as indicated and totalling \$10,309,184.52 was submitted to Council on 9 August 2005.

.....
JOHN PATERSON
Chairman of Commissioners

Issues and options considered:

Not Applicable.

Link to Strategic Plan:

Objective 4.1.1 – Ensure financial viability and alignment to plan.

Legislation – Statutory Provisions:

The Council has delegated to the CEO the exercise of its power to make payments from the Municipal and Trust Funds, therefore in accordance with Regulation 13(1) of the Local Government (Financial Management) Regulations 1996, a list of accounts paid by the CEO is prepared each month showing each account paid since the last list was prepared. In addition regulation 13 (4) requires that after the list of payments has been prepared for a month, the total of all other outstanding accounts is to be calculated and a statement of that amount is to be presented to the Council.

Risk Management considerations:

In accordance with section 6.8 of the Local Government Act 1995, a local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure is authorised in advance by an absolute majority of Council.

Financial/Budget Implications:

All expenditure from the municipal fund was included in either the 2004/05 Annual Budget, half year budget review, or approved in advance by Council.

Policy implications:

All expenditure included in the warrant of payments is drawn from the City's accounting records, which are maintained in accordance with Policy 2.4.1.

Regional Significance:

Not Applicable.

Sustainability implications:

Expenditure has been incurred in accordance with budget parameters, which have been structured on financial viability and sustainability principles.

Consultation:

In accordance with Section 6.2 of the Local Government Act 1995, the annual budget was prepared having regard to the plan for principal activities which was advertised for a 42 day period with an invitation for submissions in relation to the plan.

COMMENT

All expenditure included in the warrant of payments is in accordance with the 2004/05 Annual Budget, 2004/05 Half Year Budget review or has been authorised in advance by Council where applicable.

ATTACHMENTS

Attachment A Warrant of Payments for Month of June 2005
Attachment B Municipal Fund Vouchers for Month of June 2005

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, **SECONDED** Cmr Fox that Council **APPROVES** for payment the following vouchers, as presented in the Warrant of Payments to 30 June 2005 certified by the Chairman of Commissioners and Director Corporate Services & Resource Management and totalling \$10,309,184.52

FUNDS	DETAILS	AMOUNT
Municipal Account	Cheques 71537 – 71969 EFT 3001 – 3304 66A – 73A	\$10,309,184.52
Trust Account		Nil
		\$10,309,184.52

Cmr Anderson spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 5 refers

To access this attachment on electronic document, click here: [Attach5brf020805.pdf](#)

CJ160 - 08/05 MODIFICATIONS TO THE DRAFT BURNS BEACH STRUCTURE PLAN NO 10 – PORTION OF LOT 9017 BURNS BEACH ROAD, BURNS BEACH - [29557]

WARD: North Coastal

RESPONSIBLE DIRECTOR: Clayton Higham
Planning and Community Development

CJ050802_BRF.DOC:ITEM 8

PURPOSE

This report is for Council to consider modifications to the proposed Burns Beach Structure Plan No 10 required by the Western Australian Planning Commission (WAPC) and to consider other proposed minor modifications.

EXECUTIVE SUMMARY

The Council considered submissions resulting from public advertising of the proposed Burns Beach Structure Plan No 10 (the structure plan) at its meeting on 15 March 2005 (CJ037-03/05 refers). At this meeting, the Council resolved to adopt the structure plan and submit it to the Western Australian Planning Commission (WAPC) for final adoption and certification as an Agreed Structure Plan.

The WAPC resolved to adopt the structure plan, subject to modifications to the text and the accompanying plan.

In addition, minor amendments in relation to the current definitions of ground floor level, building height and fencing development provisions for corner lots have been undertaken by the organisation in consultation with the applicant. These modifications are proposed to provide greater clarity in the interpretation of these provisions within the structure plan and to facilitate the future development of the site (see Attachments 2 & 3). The proposed modifications do not alter the intent, purpose, or integrity of the structure plan. The required WAPC modifications have now been completed. A summary of all proposed modifications is provided below.

Summary of Modifications
<p><u>WAPC modifications:</u></p> <ul style="list-style-type: none"> • Addition of R60 area around public open space (POS) 6 • Special Design Precinct and staging boundaries to be shown • Clarification within Traffic Report • Provision of R40 lots between POS 5 and the foreshore road • Objective to be added to clause 6.1
<p><u>Other modifications:</u></p> <ul style="list-style-type: none"> • Modify ground floor level definition • Modify building height definition and associated development provisions in clauses 6.2 & 7.3f • Modify fencing development provisions in clauses 6.2 & 7.3

In accordance with sections 9.4 and 9.6 of the District Planning Scheme No 2 (DPS2), where the WAPC requires modifications to the draft structure plan, the applicant is required to make the modifications in consultation with the Council, and the structure plan is then resubmitted to Council for consideration, prior to its return to the WAPC for final adoption and certification. Should Council resolve not to adopt the modifications to the structure plan, the WAPC may not adopt and certify the structure plan, leaving the site without provisions to guide the development of the area.

It is recommended that the Council:

1. *Pursuant to clauses 9.4 of the City of Joondalup's District Planning Scheme No 2, RESOLVES that advertising of the modified Burns Beach Structure Plan No 10, as shown in Attachment No 2 to report Modifications to the draft Burns Beach Structure Plan No 10 – Portion of Lot 9017 Burns Beach Road, Burns Beach, be waived;*
2. *Pursuant to clauses 9.4 & 9.6.3 of the City of Joondalup's District Planning Scheme No 2, RESOLVES to adopt the modified Burns Beach Structure Plan No 10 and submit it to the Western Australian Planning Commission for final adoption and certification;*
3. *Subject to certification by the Western Australian Planning Commission, ADOPTS the modified Burns Beach Structure Plan No 10 as an Agreed Structure Plan and authorises the affixation of the Common Seal to, and signing of, the Structure Plan documents.*

BACKGROUND

Suburb/Location:	Portion of Lot 9017 Burns Beach Road
Applicant:	Development Planning Strategies
Owner:	Burns Beach Property Trust
Zoning:	DPS: Urban Development
	MRS: Urban; Parks and Recreation

The Burns Beach structure plan is intended to facilitate the future development of approximately 1600 low and medium density dwellings with density codes of R20 and R40, a primary school and associated senior-sized sporting oval, a beach shop/lunch bar/restaurant, a local shop and fifteen (15) areas of public open space (POS) distributed across the subject site, together with road and dual use and pedestrian path works external yet adjacent to the subject site.

Five (5) development precincts and the Parks and Recreation Reserve land to the north were identified in draft structure plan, with associated objectives and development provisions, as follows:

- Residential R20 Precinct
- Residential R40 Precinct
- Special Residential Precinct
- Local Shop Precinct
- Beach Shop/Lunch Bar/Restaurant Precinct
- Parks & Recreation Reserve

Historical context

Urban development of the structure plan site has been opposed by individuals and environmental groups over the course of approximately 6 years. The northern part, and much of the southern part, of the structure plan area were identified in the former draft Perth Bushplan and subsequent Bush Forever plan on the basis of its representation of ecological community types, maintaining ecological process, scientific or evolutionary importance and its value meeting coastal reserve criteria. The land is not, however, identified in the draft Metropolitan Region Scheme Amendment No.1082/33 that seeks to establish Special Control Areas over Bush Forever sites. This draft Amendment post-dates the gazettal of the MRS Amendment 992/33 that zoned the southern portion of the land for development.

The City also expressed concerns about the environmental impacts of development of the subject portion of Lot 9017. As a result, an additional 24 hectares of land (northern part of the structure plan area) was reserved for conservation in a negotiated outcome as a result of the MRS rezoning of the land and the development area was reduced accordingly to the current 147 hectares. This negotiated outcome was also reflective of community concerns.

Two subdivision applications over portions of the structure plan site have to date been granted conditional approval by the WAPC, and one other is pending. It is not normal practice for the WAPC to grant subdivision approval prior to an agreed structure plan being in place. Consideration of a subdivision application by Council prior to the adoption of a structure plan over the site can occur in special circumstances in accordance with clause 9.11 of DPS2. The City has required extensive consultation with regard to the structure plan, as well as in the formulation of a Foreshore Management Plan associated with the subdivision of the structure plan site. Approval of subdivision of portions of the site that does not follow due process may affect community confidence in planning processes.

Council's previous resolution:

The structure plan was considered by Council at its meeting on 15 March 2005 further to the close of public advertising (CJ037-03/05 refers). Council's resolutions are shown below. The actions taken in regard to the resolutions are shown below the applicable resolution, in normal text.

1. *Pursuant to clause 9.6 of the City of Joondalup's District Planning Scheme No 2 RESOLVES that the modified Burns Beach Structure Plan No 10 shown in Attachment No 2 to report *CJ037-03/05 be adopted and submitted to the Western Australian Planning Commission for final adoption and certification.*

The modified Structure Plan was forwarded to the WAPC for final adoption and certification.

2. *Subject to certification by the Western Australian Planning Commission, ADOPTS the modified Burns Beach Structure Plan No 10 as an Agreed Structure Plan and authorises the affixation of the Common Seal to, and the signing of, the Structure Plan documents.*
3. *In accordance with the Western Australian Planning Commission's (WAPC) Statement of Planning Policy No 2.6 – State Coastal Planning Policy, ADVERTISES the draft Foreshore Management Plan for public comment for a period of 30 days, prior to the finalisation of the City's comments to the WAPC regarding subdivision of the site.*

A Foreshore Management Plan (FMP) for the reserve land adjacent to the structure plan area has been received, in accordance with the Western Australian Planning Commission's (WAPC) Statement of Planning Policy No 2.6 – State Coastal Planning Policy. The FMP was advertised for a period of 30 days commencing on 16 May 2005, by way of notice in the Joondalup Community newspaper, the Council website, the Joondalup Library and letters to all submitters on the draft Structure Plan.

Submissions closed on 15 May 2005 and 92 submissions were received, of which 86 submissions are in support of the FMP. The FMP is the subject of a separate report on this agenda (Draft Burns Beach Foreshore Management Plan refers) for consideration by the Council.

4. *ADVISES the developer that the City wishes to be included in discussions during adjoining landowner stages of development of the subject site with regard to any intentions by the developer or any telecommunications carriers to locate telecommunications facilities within, or adjacent to, the Burns Beach Structure Plan No 10 area.*

The developer has been advised to involve the City in discussions regarding the provision and possible locations of any telecommunications facilities. At this stage, no such proposals have eventuated.

5. *ADVISES the applicant to include the provision of up to 120 car parking bays along the foreshore road and adjacent to POS 6, including details of the location, dimensions and form of such bays, in the Foreshore Management Plan in relation to the Burns Beach Structure Plan area, to be finalised at the subdivision stage to the satisfaction of City of Joondalup.*

The FMP now includes the provision of 120 car parking bays along the foreshore road and adjacent to POS 6. The FMP is discussed separately in this agenda.

6. *ADVISES the Western Australian Planning Commission that the Council will not accept the vesting for the foreshore adjacent to the southern part of the Burns Beach Structure Plan area;*

The City of Joondalup currently has "vesting" (management order for the care, control and management) of the foreshore land between the City's western boundary and the western boundary of the subject portion of Lot 9017 (see Attachment 5). The area between the subject land boundary and the proposed foreshore road will become foreshore reserve as a part of this development. It is this area that is the subject of the Council's resolution. The WAPC has been advised that the Council will not accept vesting (control and management by way of a management order) of this foreshore. No response has been received at the time of this report.

7. *REQUESTS the CEO to investigate the role the Council can play to assist the community to achieve a change to the width of the foreshore reserve in the Metropolitan Region Scheme, as it pertains to the Burns Beach coastal zone.*

The western boundary of the subject land was finalised through Amendment No 922/33 to the Metropolitan Region Scheme (MRS) that rezoned 147 hectares of this land from "Parks and Recreation" to "Urban". DPS2 was required to reflect this with an appropriate zoning to enable development, in this case "Urban Development".

Correspondence has been sent to the WAPC requesting reconsideration of the process undertaken that arrived at the MRS boundary. No response has been received at the time of this report.

DETAILS

Issues and options considered:

WAPC decision and required modifications

The WAPC has advised that it has resolved the following:

- 1. to adopt, pursuant to Clause 9 of the City of Joondalup Town Planning Scheme No 2, the Burns Beach Structure Plan No 10 as modified by the Local Government and submitted on 24 March 2005, subject to the modifications included in the attached schedule; and*
- 2. to advise the City of Joondalup of its concern that the proposed method of road construction will result in unacceptable intrusion into the foreshore reserve, and that the extent of battering is to be resolved prior to approval of any subdivision/development in the vicinity of the proposed foreshore road.*

The WAPC's schedule of required modifications is noted below:

Schedule of Modifications Burns Beach Structure Plan No 10

- 1. The proposed configuration being modified to provide laneway lots at a density of R60 around POS area No 6, in order to facilitate future subdivision at a higher density.*
- 2. The Special Design Area and staging boundary being depicted on the structure plan map*
- 3. Clarification of the second last paragraph on page 49 of the structure plan document and page 16 of the traffic report. With respect to the eastern most access to Burns Beach Road, the former refers to left in/left out access only, while the latter refers to a 4 way intersection with a roundabout.*
- 4. The proposed configuration being modified to provide R40 laneway lots between POS area 5 and the foreshore road, in accordance with the plan provided to the Department for Planning and Infrastructure on 15 April 2005.*
- 5. In clause 6.1, an additional objective being added stating:*

“To promote subdivision and housing development which provides for housing at higher densities as the neighbourhood matures.”

Other Proposed Modifications

The first stage of subdivision of structure plan area has recently been approved and queries from the public are currently being received regarding the proposed development provisions. These queries have highlighted some interpretation issues within the structure plan text that could benefit from minor rewording to provide greater clarity for developers and for staff in terms of the assessment of Building Licence applications. These relate to building height and fencing for corner lots.

In addition, a development application has been received for earthworks for a portion of the site, which has raised concern about the appropriateness of the ground floor definition in relation to the undulating natural topography of the site. These issues are outline below.

Ground floor level

The current definition of ground floor level relates to the levels of the road that the lots front. For sloped lots on either side of a road there can be a significant discrepancy in the lot levels and the current definition could result in an unsatisfactory streetscape outcome. Compliance may also create a need for additional retaining at the rear of these lots. It also appears impractical for the developer to comply with the definition in a small number of cases.

Building Height

The maximum building height within the current definition under structure plan is unclear with respect to what measure relates to the eaves and what the overall height is in the event of a concealed roof being constructed. There is the potential that this clause may lead to inconsistency in the manner in which applications are assessed.

Fencing location

Clauses 6.2 and 7.3, which set out development provisions for the Residential R40 and R60 Precinct and the Local Shop Precinct, include provisions for fencing on corner lots aimed at achieving an appropriate presentation of building form to both the primary and secondary streets.

The current wording includes a measurement from the front building line. The front setback for buildings can be expressed as a minimum or an average setback under the structure plan, depending on the precinct, and it is not clear which setback of the dwelling represents the front building line. This may lead to inconsistency in the manner in which applications are assessed.

Options

Council, in considering the modifications to the structure plan may:

- Not adopt the modifications to the structure plan. The previously adopted documents and plan would be returned to the WAPC with the Council's position. There is a risk that the WAPC may not adopt and certify the structure plan in this event.
- Adopt the modifications to the text and plan and forward these to the WAPC for final adoption and certification.

Link to Strategic Plan:

The structure plan will support the City's Strategic Plan of providing residential living choices to meet changing demographic demands by facilitating the future subdivision of various lot sizes and, therefore, the subsequent development of a variety of housing forms.

Legislation – Statutory Provisions:

Clause 9.7 of DPS2 enables Council to amend/modify an Agreed Structure Plan and, should Council determine that the amendment/modification is satisfactory, advertising is required in accordance with this clause.

Clause 9.6.3 of DPS2 relates to consideration of the structure plan by the WAPC. Clause 9.6.3(c) states that modifications to a structure plan required by the WAPC are to be undertaken by the applicant in consultation with the Council and resubmitted to the Council for its consideration and determination in accordance with clause 9.4. Should Council determine that the structure plan is satisfactory, advertising of minor modifications may be waived under clause 9.4. Should Council determine that the modifications are satisfactory, the modified structure plan is to be resubmitted to the WAPC for its final adoption and certification.

Risk Management considerations:

The proposed modifications do not increase the risks associated with the original structure plan.

Financial/Budget Implications:

There are no financial or budget implications associated with the proposed modifications to the structure plan.

Policy implications:

There are no policy implications associated with the proposed modifications to structure plan.

Regional Significance:

The proposed modifications to the structure plan will have some minimal regional significance in the provision of additional medium density lots (R40 and R60) that will facilitate a variety of housing choices across the City.

Sustainability implications:

The modifications requested by the WAPC to the structure plan provide additional medium density lots to be created which will facilitate better utilisation of the existing infrastructure, community facilities and public transport system in the locality, in line with the State's planning objectives. The provision of R60 density lots around public open space is in accordance with the requirements of the WAPC's Liveable Neighbourhoods document, which provides a guide for subdivision design.

This is achieved by providing a greater variety of lot sizes to enable a greater mix of housing types, and their location in close proximity to public open space in order to facilitate community interaction and surveillance.

Consultation:

The draft structure plan was advertised previously when the Council resolved to adopt and make it available for the purposes of advertising (CJ267-11/04). This occurred by way of signs being erected on the site, adjoining and affected landowners and service authorities being notified in writing, advertisement in the Joondalup Community newspaper and a notice placed on the City's website.

The proposed modifications have either been required by the WAPC or are minor modifications proposed by the organisation for clarity and to facilitate the future development of the land. No change to the overall layout of the structure plan area will result from these modifications and its intent and purpose are unaltered. The proposed modifications have not been raised as a result of public advertising. For these reasons, further public consultation is not considered necessary in this instance.

COMMENT

Required WAPC modifications

The WAPC required certain modifications to the text and Plan 1 of structure plan to be completed prior to its return to the WAPC for final adoption and certification. These are discussed below.

The proposed configuration being modified to provide laneway lots at a density of R60 around POS area No 6, in order to facilitate future subdivision at a higher density.

The required inclusion of an area of R60 density adjacent to public open space (POS) 6, which is shown on the structure plan as the southern POS intruding into the foreshore, supports the requirements of the WAPC's Liveable Neighbourhoods document that provides a guide to subdivision. This is achieved by providing a greater variety of lot sizes to enable a greater mix of housing types than are provided for by the current R20 and R40 density areas of the structure plan. These lot sizes, in association with their location in close proximity to public open spaces, facilitate community interaction and surveillance. Plan 1 of structure plan and the text need to reflect this requirement by identifying this area within a precinct and the inclusion of any associated appropriate development provisions in the text of structure plan.

In this case, it is proposed to expand the Residential R40 Precinct to include the R60 density lots which would be subject to the same development provisions, with the exception of the private open space (outdoor living area) which is proposed to be a minimum area of 16m² in accordance with the provisions of the Residential Design Codes (R Codes). The proposed development provision is considered to be acceptable since it aligns with the R Codes requirement for R60 density coded land.

The Special Design Area and staging boundary being depicted on the structure plan map.

The Special Design Precinct will be the subject of future development provisions and has now been more clearly identified on Plan 1. Staging of subdivisions over the structure plan area have also been included on Plan 1 to emphasise that this precinct will not be developed until the rest of the area is developed.

Clarification of the second last paragraph on page 49 of the structure plan document and page 16 of the traffic report. With respect to the eastern most access to Burns Beach Road, the former refers to left in/left out access only, while the latter refers to a 4 way intersection with a roundabout.

Page 16 of the Traffic Report, contained in Part 2 of the structure plan document, has been amended in relation to the intersection of the eastern-most access road and Burns Beach Road by the deletion of the last sentence (see Attachment 4). This sentence implied there would be also be a four-way intersection at this junction whereas it will in fact only be left-in/left-out.

The proposed configuration being modified to provide R40 laneway lots between POS area 5 and the foreshore road, in accordance with the plan provided to the Department for Planning and Infrastructure on 15 April 2005.

The expansion of the R40 density around POS 5 to the foreshore road supports the requirements of the WAPC's Liveable Neighbourhoods document by providing additional lots in close proximity to public open space in order to facilitate community interaction and surveillance. In addition, a "green" pedestrian link between POS 6, the main and central POS and the foreshore is created to further enhance the recreational use of these spaces.

In Clause 6.1, an additional objective being added stating:

"To promote subdivision and housing development which provides for housing at higher densities as the neighbourhood matures."

The WAPC's requirement to include a statement supporting higher density housing as the current Residential R40 Precinct neighbourhood (the now proposed Residential R40 and R60 Precinct) matures further supports the objectives of the WAPC's Liveable Neighbourhoods document.

All required modifications required by the WAPC support the intentions of structure plan and are considered acceptable.

The advice from the WAPC regarding the extent of battering in relation to the proposed foreshore road relates to matters that will be addressed in the Foreshore Management Plan (FMP).

Other proposed minor modifications

Ground floor level

A development application for earthworks on a portion of the Structure Plan No. 10 land has been received, raising concern about the appropriateness of the ground floor definition in relation to the undulating natural topography of the site.

The current definition of ground floor level (italicised below) relates to the level of the mid-point of the road that a lot fronts, relative to the mid-point of the frontage of that lot.

"GROUND FLOOR LEVEL" shall mean 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 mid-point of the road and measured from the mid point of the frontage of the lots.

The above definition sought to ensure that a maximum 0.5m high retaining wall would occur on the front boundary of a lot. For sloped lots on either side of a road there can be a significant discrepancy in the lot levels. Compliance with the definition may create a need for additional retaining at the rear of these lots. Lots developed under the current definition could also result in an unsatisfactory streetscape outcome. These situations may arise due to a need to retain some frontages rather than the level of the lot being at the street level. Using the level of the verge immediately in front of the lot as a reference rather than the road level would more accurately reflect the natural ground level of the lots and result in potentially less retaining. It is also more appropriate to refer to 'Ground Lot Level', rather than 'Ground Floor Level'. The following modified definition (italicised) is proposed:

“GROUND LOT LEVEL” shall mean the finished level of the lot relative to the midpoint of the verge 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 level of the verge at the front of the lot, measured from the mid point of the frontage of the lots.

In relation to the above definition, discussions with the applicant have indicated that, in a small number of cases of lots with rear lane access, it will be impractical to comply with the requirement. Due to level differences from the rear of the lots to the front, retaining walls higher than 0.5m will be required at the front of the lot, so as to maintain appropriate levels to cater for vehicle access at the rear of the lot.

Therefore, it is proposed to allow the opportunity for a small number of lots that are required to be accessed from the rear, and therefore have a rear laneway, to construct a front retaining wall of up to 1.5 metres. It is proposed to include the following in the above proposed definition of ground lot level:

“Lots with rear lane access that are required to be accessed from the rear lane may be permitted to substitute +/-1.5 metres in lieu of +/-0.5 metres.”

Two areas of the text of structure plan document have been identified that could be made clearer with some rewording. These relate to building height and fencing for corner lots and do not change the overall intent of the development provisions.

Building Height

The current definition of Building Height (italicised below) is one item that would benefit from some rewording:

“BUILDING HEIGHT” shall mean a maximum building height of 2 storeys or 6.5 metres to the top of the eaves or 7.5 metres to the top of an external parapet wall for a concealed roof and 9.5 metres to the apex of the roof, the height being measured vertically from natural ground level.

The current maximum building height within this definition is unclear with respect to what measure relates to the eaves and what the overall height is in the event of a concealed roof being constructed. The applicant has been consulted on this matter and the following modified definition (italicised) is proposed:

“BUILDING HEIGHT” shall mean 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 allowable maximum height of buildings would then be set out in the development provisions of clauses 6.2 and 7.3 that currently refer only to storeys, not building height. It is proposed, therefore, to include a statement regarding maximum building height in these clauses, as follows (italicised):

The maximum building height measured from natural ground level shall be:

Maximum wall height (with pitched roof) - 6.5 metres;

Maximum total height to roof ridge – 9.5 metres;

Maximum wall and total height (parapet wall with concealed roof) - 7.5 metres.

The other development provisions will need to be renumbered accordingly to accommodate this inclusion in both clauses.

Fencing

Currently clauses 6.2 & 7.3 include the following provision in relation to corner lots (italicised):

- *by reducing the fencing along the secondary street boundary so that it is located at least 4 metres behind the front building line.*

Since the front setback for buildings in these Precincts can be a minimum or an average setback under structure plan, it is unclear what represents the front building line. It is proposed, therefore, to relate the measurement to the average front setback. This point would therefore read as follows in clauses 6.2 & 7.3 (italicised):

- *by reducing the fencing along the secondary street boundary so that it is located at least 4 metres behind the average front setback line.*

Conclusion

The proposed modifications seek to improve and clarify the definitions and development provisions of the structure plan, as well as facilitate the future development of the site. The modifications required by the WAPC further support the objectives of its Liveable Neighbourhoods document that provides a guide to subdivision based on sustainability principles by enabling a variety of lot sizes in close proximity to public open space, facilitating community interaction and surveillance.

The proposed modifications are considered to be of a minor nature and, on this basis, are supported. No change to the overall layout and integrity of the structure plan area will result from these modifications, and its intent and purpose are unaltered. For these reasons, it is recommended that advertising of the proposed modifications be waived in this instance.

ATTACHMENTS

Attachment 1 -	Location plan
Attachment 2 -	Modified Structure Plan No 10 (Text - Part 1 only)
Attachment 2A -	Modified Plan 1 (Part 1)
Attachment 3 -	Structure Plan No. 10 (current, tracked)
Attachment 4 -	Modified page 16 of Traffic Report (Part 2)
Attachment 5 -	Plan of vesting of foreshore reserve

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, **SECONDED** Cmr Clough that Council:

- 1 Pursuant to clause 9.4 of the City of Joondalup's District Planning Scheme No 2, RESOLVES that advertising of the modified Burns Beach Structure Plan No 10, as shown in Attachment No 2 to Report CJ160-08/05, be waived;**
- 2 Pursuant to clauses 9.4 & 9.6.3 of the City of Joondalup's District Planning Scheme No 2, RESOLVES to adopt the modified Burns Beach Structure Plan No 10 and submit the document to the Western Australian Planning Commission for final adoption and certification;**
- 3 Subject to certification by the Western Australian Planning Commission, ADOPTS the modified Burns Beach Structure Plan No 10 as an Agreed Structure Plan and authorises the affixation of the Common Seal to, and signing of, the Structure Plan documents.**

Cmr Anderson spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 6 refers

To access this attachment on electronic document, click here: [Attach6agn090805.pdf](#)

**CJ161 - 08/05 DRAFT BURNS BEACH FORESHORE
MANAGEMENT PLAN - [85565] [07086]**

WARD: North Coastal

RESPONSIBLE DIRECTOR: Clayton Higham
Planning and Community Development

CJ050802_BRF.DOC:ITEM 9

PURPOSE

For the Council to consider submissions received as a result of public advertising of the draft Burns Beach Foreshore Management Plan (FMP).

EXECUTIVE SUMMARY

The draft FMP relates to the foreshore adjacent to the draft Burns Beach Structure Plan No 10 (Structure Plan No 10) area. Council considered and resolved to adopt for final approval draft Structure Plan No 10 at its meeting on 15 March 2005 (CJ037-03/05 refers). Council also resolved to advertise the FMP for the foreshore land adjacent to the structure plan area prior to finalisation of its comments to the Western Australian Planning Commission (WAPC) regarding the subdivision of this site. A further report to Council regarding modifications to Structure Plan No 10 is the subject of a separate report to this Council meeting (Modifications to the draft Burns Beach Structure Plan No 10 – Portion of Lot 9017 Burns Beach Road, Burns Beach refers).

Submissions on the FMP closed on 15 May 2005 and a total of 92 submissions were received, of which 86 submissions are in support and 6 object to the FMP. Of these submissions in support, the signatures of 23 of the submissions were illegible and 78 did not provide an address. The main issues raised were in relation to the width and stability of the coastal reserve, the location of the north-south dual use path, re-contouring of the foreshore, location of public open space (POS) 6 (which is proposed in Structure Plan No. 10 to be located adjacent to and intruding into the foreshore), the condition, types and location of existing vegetation, proposed planting, monitoring, maintenance and ongoing community consultation.

In addition, the FMP was considered by the Conservation Advisory Committee (CAC), a non-statutory advisory body to the City of Joondalup on conservation issues.

As a result of the concerns raised during the public and CAC consultation, the FMP was revised and this document was considered by the CAC at its meeting on 29 June 2005. The CAC resolved to give in principle support for the revised FMP.

It is recommended that Council:

- 1 *SUPPORTS the revised Burns Beach Foreshore Management Plan dated June 2005 and forwards its determination to the Western Australian Planning Commission, along with all submissions received.*
- 2 *REQUESTS the Western Australian Commission continues to involve the City of Joondalup in the finalisation of the revised Foreshore Management Plan.*
- 3 *REQUESTS the Western Australian Planning Commission notes the errors identified in the Burns Beach Foreshore Management Plan with regard to the timing of approvals for the Burns Beach Structure Plan No. 10 and subdivision of this land.*
- 4 *REAFFIRMS its decision of March 15 2005 (CJ037-03/05 refers) to the Western Australian Planning Commission that Council does not accept vesting of the foreshore reserve abutting the developable portion of the Burns Beach Structure Plan No. 10 area.*
- 5 *ADVISES the submitters of the Council's resolution.*

BACKGROUND

Suburb/Location	Portion of Lot 9017 Burns Beach Road
Applicant:	Development Planning Strategies
Owner:	Burns Beach Property Trust
Zoning:	DPS: Urban Development
	MRS: Urban; Parks and Recreation

Previous Council Resolution

At its meeting on 15 March 2005 (CJ037-03/05 refers), the Council considered submissions received on the draft Burns Beach Structure Plan No. 10 (Structure Plan No 10) over the land adjacent to the foreshore land and subject of the FMP.

The following was included in the resolution:

3. *In accordance with the Western Australian Planning Commission's (WAPC) Statement of Planning Policy No 2.6 – State Coastal Planning Policy, ADVERTISES the draft Foreshore Management Plan for public comment for a period of 30 days, prior to the finalisation of the City's comments to the WAPC regarding subdivision of the site.*

WAPC Coastal Planning Requirements

The WAPC's Statement of Planning Policy No 2.6 – State Coastal Planning Policy supplements the WAPC's DC Policy 6.1 – Country Coastal Planning Policy. The Policy and Statement requires consideration with regard to the formulation and adoption of a FMP. The objectives of the Policy are to:

- protect, conserve and enhance coastal values, particularly in areas of landscape, nature conservation, indigenous and cultural significance;
- provide for public foreshore areas and access to these on the coast;
- ensure the identification of appropriate areas for the sustainable use of the coast for housing, tourism, recreation, ocean access, maritime industry, commercial and other activities; and
- ensure that the location of coastal facilities and development takes into account coastal processes including erosion, accretion, storm surge, tides, wave conditions, sea level change and biophysical criteria.

One of the Policy measures is to ensure that development is in the public interest and, to this end, that adequate opportunity has been provided to enable the community to participate in coastal planning and management, including the support and guidance of voluntary coast care groups.

During the structure plan preparation process, and in response to a resolution of the Council at the time of the amendment to DPS2 to rezone the site appropriately for future development, the developer of the Structure Plan No 10 area undertook extensive public consultation. A Foreshore Management Strategy was included in the draft Structure Plan and provided the basis for the detailed FMP.

Subdivision Approvals

It is noted that two out of three subdivision applications over the Structure Plan No 10 area have been granted approval by the WAPC.

Vesting of the Foreshore Reserve

The draft FMP relates to the foreshore adjacent to the draft Burns Beach Structure Plan No 10 (Structure Plan No 10) area. The City of Joondalup currently has "vesting" (control and management by way of a management order) for the care, control and management of the foreshore land between the City's western boundary and the western boundary of the subject portion of Lot 9017 (see Attachment 2). The area between the subject land boundary and the proposed foreshore road will become foreshore reserve as a part of this development.

Council resolved at its meeting on 15 March 2005 (CJ037-03/05 refers) not to accept "vesting" of this portion of foreshore reserve and has advised the WAPC accordingly. No response has been received at the time of preparing this report.

DETAILS

Issues and options considered:

Process for Advertising of a Foreshore Management Plan

There is no statutory process for public consultation specified under the Western Australian Planning Commission (WAPC) Statement of Planning Policy No. 2.6 – State Coastal Planning Policy in relation to FMPs. Further to consultation with officers of the Department for Planning and Infrastructure (DPI) in relation to the manner in which the public consultation requirements of the State Coastal Planning Policy could be achieved, the FMP was advertised for a period of 30 days, in accordance with Council's resolution. Advertising commenced on 14 April 2005 by way of notice in the local newspaper, the Council website, Joondalup Library and letters to all people who made submissions on draft Structure Plan No 10. The FMP was also referred to the Conservation Advisory Council (CAC) for comment.

Revised Foreshore Management Plan

A number of concerns were raised regarding the draft FMP during the advertising period and upon consideration by the CAC. The main issues were in relation to the width and stability of the coastal reserve, the location of the north-south dual use path, re-contouring, location of public open space (POS) 6 (which is proposed in Structure Plan No. 10 to be located adjacent to and intruding into the foreshore), existing vegetation condition, types and location, proposed planting, monitoring, maintenance and ongoing community consultation.

As a result of the concerns raised, meetings and discussions between the consultant, officers of the City and members of the public occurred which resulted in the submission of a revised FMP. The revised FMP addresses the main issues that will be discussed later in this report.

Due to the size of the FMP document, an extract of the revised FMP has been attached to this report. Full copies have been made available in the Council's reading room.

Council, in considering the FMP, may:

- Support the revised FMP and forward its resolution to the WAPC.
- Not support the revised FMP, and forward its resolution to the WAPC.
- Request changes to the FMP.

Link to Strategic Plan:

The revised FMP supports objective 2.1 of the Strategic Plan to provide responsible natural resource management to ensure environmental sustainability.

Legislation – Statutory Provisions:

There is no statutory process associated with the formulation and adoption of a FMP.

Risk Management considerations:

Should Council not be satisfied with the content of the revised FMP, the future care, control and management of the foreshore reserve may be difficult since the document relates to reserve land that is currently vested with the City of Joondalup and land adjacent to this which is not yet vested. Irrespective of Council resolving not to accept "vesting" for a portion of the land that is the subject of the revised FMP, it is in the Council's interest to ensure proper planning and development of this land since it holds vesting of the foreshore land between the City's western boundary and the western boundary of the subject land (Attachment 2 refers).

Financial/Budget Implications:

There are no financial implications associated with the revised FMP at this time since Council has resolved not to accept “vesting” of the subject area of the foreshore reserve.

Policy Implications:

There are no policy implications associated with supporting the revised FMP.

Regional Significance:

The revised FMP has high regional significance as it relates to Regional Parks and Recreation land that is intended as recreational space for the use and enjoyment of the wider community.

Sustainability implications:

Given the significant natural constraints of the foreshore reserve, such as dune systems and coastal vegetation, the revised FMP provides for the development of the Burns Beach foreshore for recreational use in the most environmentally sustainable manner possible.

Consultation:

In accordance with Council's resolution, the draft FMP was advertised for a period of 30 days in accordance, commencing on 14 April 2005. A notice was placed in the local newspaper, on the Council website, a copy of the document provided at the Joondalup Library and letters to all submitters who made comments on the draft Structure Plan.

Submissions closed on 16 May 2005 and a total of 92 submissions were received, of which 86 submissions were in support of the FMP. Of the submissions in support, the signatures of 23 of the submissions were illegible and 78 did not provide an address. A summary of all submissions received and evaluating comments are shown in Attachment 3.

The main issues raised during advertising were in relation to the width and stability of the coastal reserve, the location of the north-south dual use path, location and size of public open space (POS) 6, existing vegetation types and location, proposed planting, monitoring, maintenance and ongoing public consultation.

In addition, the FMP was considered by the CAC, a non-statutory advisory body to the City of Joondalup on conservation issues, for its comments.

The consultant for the initial draft FMP, officers of the City, some community and some CAC members also met on site to discuss significant issues raised. A revised FMP dated June 2005 largely addresses these issues and was considered by the CAC at its meeting on 29 June when in principle support was given to the revised FMP and further involvement in the further development of the revised FMP was sought.

COMMENT**Submissions on the initial draft FMP**

The major issues raised during public advertising (*italicised*) and a summary of the evaluating comments to each issue are as follows:

- *Width and stability of the coastal reserve. The concern raised is that the coastline is unstable and has been inaccurately assessed.*

It is accepted that coastlines are to some degree unstable since they are moving, natural features that erode and accrete naturally with the seasons and the elements. This includes wind and wave erosion to dune systems and cliff faces.

The width of the foreshore reserve was set with Amendment 992/33 to the Metropolitan Region Scheme (MRS). This process took over 6 years during which time a thorough assessment of the land and all associated environmental issues was undertaken, including in relation to the coastline.

Nevertheless, in accordance with Council's previous resolution, the WAPC has been requested to reconsider the width of the foreshore reserve under the MRS (CJ037-03/05 refers).

- *Location of the north-south dual use path*

Section 5.2.2 of the initial draft FMP noted the continuation of the existing dual use path in Iluka in a northerly direction past Burns Beach would be a meandering alignment, following existing tracks where possible. It has been pointed out during the consultation period that this alignment may cause significant damage to dunes and dune vegetation, and also could result in some duplication of paths. In response, the revised FMP states that this path will now follow the alignment of the foreshore road.

- *Location of POS 6. The concern raised is that POS 6 intrudes into the foreshore reserve and should be confined to the Structure Plan No. 10 area.*

On occasions, some intrusion of development into reserve land does occur, with the endorsement of the City. The acceptability of this situation occurring needs to be assessed relative to the particular proposal, extent of intrusion and its impact. In this case, the location and area of POS 6 was considered in association with Structure Plan No 10 and the extent of intrusion was considered to be acceptable by Council. It is noted that Structure Plan No 10 is yet to be finally adopted and certified by the WAPC (Report in this agenda entitled Modifications to the draft Burns Beach Structure Plan No 10 – Portion of Lot 9017 Burns Beach Road, Burns Beach refers).

- *Existing vegetation condition, types and location*

Sections 3.2 and 5.4.4 of the initial draft FMP dealt with assessment of the vegetation within the foreshore land, referring to percentages of the land as "degraded", or in "good" condition, which were disputed during the consultation period. The revised FMP provides a more complete assessment of the vegetation condition by referring to these areas as being in "excellent" condition or are "subject to some form of degradation".

The number, location and condition of plant species, and the identification of weeds, in sections 4.6.2 and 4.6.3 required further details. These sections have been appropriately amended in the revised FMP.

- *Recontouring of land. Construction design and access needs have raised concerns in relation to the impact on the natural topography of the foreshore, in particular the dune system and the extent of battering that will be required where the foreshore abuts the proposed foreshore road within Structure Plan No 10.*

Under the revised FMP, the process of re-contouring the land that changes the profile of the land will be confined to existing tracks, and these tracks utilised for access wherever possible. Battering is the term used to describe sloping backwards from the base and does not involve retaining techniques. Battering is proposed with slopes of 1:1 and 1:2 that results in slopes that are less intrusive into the foreshore reserve than the standard 1:3 slopes. These proposed batters would, therefore, reduce the impact on the foreshore reserve land and vegetation disturbance or removal.

- *Proposed planting*

The proposed list of plants for the foreshore area in section 5.4.4 does not provide a high degree of detail in terms of the number of species and the planting of local species. This list has now been enlarged in the revised FMP and includes more local plant species.

- *Monitoring and maintenance*

Section 6.5.2 of the initial draft FMP did not allocate responsibility for monitoring the rehabilitation and restoration of the foreshore land. The revised FMP states that specialist contractors will undertake the restoration/rehabilitation work, with the developer monitoring and being responsible for any works over a 2 year period. It would be usual for the local authority to also monitor progress during the initial stages, as well as maintain the area once development of the foreshore reserve is completed. The Department for Planning and Infrastructure will either manage the area or offer vesting to another government authority that will then take on these functions.

It is important to note that the revised FMP includes a significant area of foreshore land that is currently vested in the City of Joondalup (see Attachment 2). It is therefore in the City's interest to continue to participate in the finalisation of the revised FMP and the subsequent site works, particularly in relation to the proposed foreshore road within the adjacent Structure Plan No. 10 area.

- *Ongoing community consultation*

Section 1.3 in the initial draft FMP did not include two environmental -focused groups that have provided comments that have assisted with improvements to the draft FMP (these being the CAC and the Joondalup Community Coast Care Forum) in its list of contacts. These groups are now included in the revised FMP and the developer has committed to ongoing consultation at the detailed design stage, associated with the implementation of the FMP.

Other more minor issues raised in submissions are either beyond the scope of the FMP or have been addressed in the revised FMP. Many will be addressed at the detailed design stage when engineering drawings are received.

In addition, Figure 2 Foreshore Condition and Management Areas have been amended to provide more clarity.

Outstanding Issues in the Revised FMP

The revised FMP includes two discrepancies in the background and approval processes with regard to timing of approvals (sections 1.1 and 2.1). These relate to the statements about approval by the WAPC of Structure Plan No 10 and also subdivision of the Structure Plan No 10 area. Neither statement affects the integrity of the revised FMP.

The WAPC has required modifications to Structure Plan No 10 prior to its final adoption and certification and is the subject of a separate report to this Council meeting (Modifications to the draft Burns Beach Structure Plan No 10 – Portion of Lot 9017 Burns Beach Road, Burns Beach refers). Only subdivision of a part of the Structure Plan No10 area has been approved to date by the WAPC. The provision of a FMP to the satisfaction of the Council and the WAPC is one of the conditions of the subdivision approved for a portion of the Structure Plan No. 10 land south of POS 6 that adjoins the foreshore.

There are also references in section 6.6 of the document to the City of Joondalup's involvement in the future management of the foreshore reserve. Council has resolved not to accept vesting of the balance of the foreshore reserve land adjacent to the Structure Plan No 10 area and the WAPC could be reminded of this resolution when providing the Council's position on the revised FMP.

Whilst the above issues do not affect the integrity of the revised FMP, the WAPC should be made aware of their existence.

Submission on the revised FMP by the Conservation Advisory Committee (CAC)

As noted, the CAC resolved to give in principle support to the revised FMP at its meeting on 29 June 2005. A separate submission on the revised FMP on behalf of the CAC has since been received, summarised below (italics) with the City's evaluating comments:

1. *The consultant has made a serious attempt to respond to community and City of Joondalup concerns and the revised FMP is a much improved document.*

It is agreed that the revised FMP addresses the main concerns raised.

2. *Monitoring by the City of Joondalup in conjunction with the Department for Planning and Infrastructure of coastal erosion over the life of the development is requested prior to accepting vesting of the foreshore reserve.*

The City of Joondalup can readily be involved with monitoring such events as sand erosion and may work with the Department for Planning and Infrastructure irrespective of the vesting of this land to ensure the best environmental and community outcomes.

3. *Specific wording regarding barrier fencing, the use of windguards and certain plant species is requested to be added.*

These issues are details that can be addressed at the detailed design stage when the City assesses engineering and landscape drawings in relation to the foreshore and also the foreshore road.

4. *Details of monitoring techniques are not provided.*

This issue has been discussed previously in this Council report.

5. *The City of Joondalup is still noted as being responsible for the ongoing management of the foreshore reserve.*

This issue has been discussed previously in this Council report.

Conclusion

A draft FMP was received as part of the subdivision process for the adjacent land within Structure Plan No 10 area. In accordance with Council's resolution, the draft FMP was advertised for public comment. The draft FMP did not adequately address a number of issues, resulting in further consultation and discussions. A revised FMP that addresses the main issues raised has now been received and endorsed by the CAC. Other issues can be addressed at the detailed design stage when engineering drawings are received.

Although Council has resolved not to accept vesting for a large portion of the foreshore reserve, given that the revised FMP includes a portion of the foreshore reserve that the City of Joondalup does currently manage, it is in the interests of Council to be satisfied with its content in terms of the community and environmental implications of the development of this land.

It is recommended that the revised FMP be supported by Council and be forwarded to the WAPC with a request to continue to be involved in its finalisation.

ATTACHMENTS

Attachment 1	Extract of revised Burns Beach Foreshore Management Plan
Attachment 2	Plan showing vesting of foreshore reserve
Attachment 3	Schedule of submissions

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, **SECONDED** Cmr Clough that Council:

- 1 SUPPORTS the revised Burns Beach Foreshore Management Plan dated June 2005 and forwards its determination to the Western Australian Planning Commission, along with all submissions received;**
- 2 REQUESTS the Western Australian Planning Commission continues to involve the City of Joondalup in the finalisation of the revised Foreshore Management Plan;**
- 3 REQUESTS the Western Australian Planning Commission notes the outstanding errors identified in the Burns Beach Foreshore Management Plan with regard to the timing of approvals for the Burns Beach Structure Plan No 10 and subdivision of this land;**
- 4 REAFFIRMS its decision of 15 March 2005 (CJ037-03/05 refers) to the Western Australian Planning Commission that Council does not accept vesting of the foreshore reserve abutting the developable portion of the Burns Beach Structure Plan No 10 area;**
- 5 ADVISES the submitters of the Council's resolution.**

Cmr Anderson spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 7 refers

To access this attachment on electronic document, click here: [Attach7brf020805.pdf](#)

CJ162 - 08/05 PROPOSED FIFTEEN SINGLE STOREY GROUPED DWELLING DEVELOPMENT - LOTS 1 AND 2 (HN 110 & 112) EDDYSTONE AVENUE AND LOT 143 (HN 3) ELWOOD COURT, CRAIGIE - [32306]

WARD: Pinnaroo

RESPONSIBLE DIRECTOR: Clayton Higham
Planning and Community Development

CJ050802_BRF.DOC:ITEM 10

PURPOSE

To request the Council's determination of an application for planning consent for a development of 15 single storey grouped dwellings on Lots 1 and 2 (HN 110 and 112) Eddystone Avenue and Lot 143 (HN3) Elwood Court, Craigie.

EXECUTIVE SUMMARY

The development is proposed to be located on three individual lots that front Eddystone Avenue (western boundary), Elwood Court (northern boundary) and Warrandyte Drive (southern boundary), Craigie.

The site is directly opposite an existing commercial centre on Eddystone Avenue. All other immediate land uses are low density single residential developments.

The applicant proposes to construct fifteen grouped dwellings on the above lots. Five of the units are served by two common vehicular access ways, with the remaining units accessible directly from Eddystone Avenue, Warrandyte Drive and Elwood Court. Each unit has an exclusive outdoor living area, storeroom and two car bays.

The Residential Design Codes (R-Codes) require development of each grouped dwelling to comply with development standards including minimum defined site areas, setbacks, car parking etc. The proposed development incorporates variations to those standards. The majority of these variations occur within the site between the new dwellings.

Instances where the applicant has sought assessment under the performance criteria include variations to side setbacks, retaining wall heights, garage setback variations, fill and excavation in excess of 500mm.

The proposed development will be a positive addition to the area and will assist in meeting key objectives of the Strategic Plan. It will contribute to the diversity of housing choice, help create employment opportunities and support the local economy.

The development is required to be determined by Council as the number of grouped dwellings proposed (fifteen) is beyond the limits set out in the Notice of Delegation (ten grouped dwellings) for staff to determine the development application.

Grouped dwellings are a discretionary land use within the Residential zone. The proposed development is residential, complies with the relevant R40 provisions of the R-Codes and the proposed variations requested are considered appropriate in this instance.

It is recommended that the application for planning consent be approved, subject to appropriate conditions.

BACKGROUND

Suburb/Location: Craigie
Applicant: Citadel Constructions Pty Ltd
Owner: IA Investments Pty Ltd
Zoning: **DPS:** Residential R40
MRS: Urban

The proposed development site includes three lots, two of which are vacant, with the remaining lot currently occupied by a disused medical centre. For the purposes of this report, all three lots will now be referred to as the 'site'. The City recently amended District Planning Scheme No 2 to facilitate the rezoning of the site from low density (Residential R20) to medium density (Residential R40) through Amendment No. 26. Under the R40 density coding, the site could be developed with a maximum of 18 grouped dwellings whereas the applicant is proposing to construct 15 single storey grouped dwellings.

24/12/2004: Amendment from R20 to R40 finalised by Western Australian Planning Commission (WAPC)

10/03/2005: Application for fifteen grouped dwellings submitted

09/05/2005: Amended plans/additional information requested

08/06/2005: Amended plans/additional information received

23/06/2005: Advertising commences

27/06/2005: Letter of non-objection received

06/07/2005: Letter of objection received

06/07/2005: Amended plans received reducing the amount and extent of variations sought for the development

07/07/2005: Advertising closes

DETAILS

Description of Development

The applicant proposes to construct 15 single storey grouped dwellings on three lots which includes:

1. Two car bays provided to each dwelling.
2. A 4m² lockable storage area accessible from the outside being provided to each dwelling.
3. Pedestrian and vehicular access to Eddystone Avenue is via a communal street that serves Units 3 and 15.
4. Pedestrian and vehicular access to Elwood Court is via a communal street that serves Units 11, 12, 13, 14.
5. All other remaining units having independent vehicular access from Elwood Court, Eddystone Avenue and Warrandyte Drive.

6. Two boundary walls with an aggregate length of 9.0 metres abutting the eastern lot boundary shared with 9 Elwood Court.
7. A boundary wall with a length of 6.0 metres abutting the northern lot boundary shared with 5 Elwood Court.

Applicant Justification For Variation To The Acceptable Standards Of The R-Codes

The applicant has provided written justification, as required by the R-Codes, for the variations that are being sought to the Acceptable Standards of the R-Codes. The variations relate to building setbacks, boundary walls, retaining walls within the proposed defined site areas, fill and excess of 500mm within the front setback area and within the proposed internal strata boundaries.

Internal Variations

The following is a list of internal R-Code variations to the development, which are the subject of the applicant's letter of the 7 June 2005 (Attachment 4):

Retaining Wall Setback Variations	Acceptable Development	Proposed
Unit 4 Retaining Wall North	1.5m	0m
Unit 5 Retaining Wall North	1.5m	0m
Unit 5 Retaining Wall East	1.5m	0m
Unit 7 Retaining Wall North	1.5m	0m
Unit 8 Retaining Wall North	1.5m	0m
Unit 9 Retaining Wall North	1.5m	0m
Unit 10 Retaining Wall North	1.5m	0m
Unit 14 Retaining Wall North	1.5m	0m

Wall Setback Variations	Acceptable Development	Proposed
Unit 3 Southern Wall	1.5m	0.75m

Boundary Wall Variations	Acceptable Development Length	Proposed
Unit 12 Eastern Wall	66% (12m)	68% (12.2m)
Unit 13 Eastern Wall	66% (12m)	68% (12.2m)

Boundary Wall Variations	Acceptable Development Height	Proposed
Unit 4 Northern Wall	3.0m average	3.2m average

No. of Boundary Walls	Acceptable Development	Proposed
Unit 2	1	2 (North and East)
Unit 3	1	2 (North and South)
Unit 14	1	2 (West and South)
Unit 15	1	2 (North and South)

External Variations

Variations to the Acceptable Standards of the R-Codes that have the potential to impact upon adjoining properties and the streetscape (Eddystone Avenue and Elwood Court) have been addressed by the applicant through their letter of 7 June 2005. The applicant's justification for these proposed variations are shown in italics below:

Garage Setback for Unit 2

In its current position, the garage does not detract from the streetscape or appearance of the dwelling, or obstruct views of dwellings from the street. The current position of the garage is in keeping with the prevailing setback proposed along Eddystone Avenue for Units 1 to 6, which have all similar setbacks. As previously mentioned, setting back the garage to 4.5 metres would reduce the size of the private courtyard space for the dwelling with little gain from a streetscape perspective. The performance criteria has been satisfied in this instance and the variation is minor, therefore it is recommended that the variation be supported.

Unit 2 Eastern Side Setback of 1.0 metre in lieu of 1.5 metres

The eastern side setback for Unit 2 has been increased from 1.0 metre to a maximum distance of 1.683 metres. Due to the shape of the lot, a portion of the length of proposed wall is between 1.0 metre and 1.5 metres from the boundary. We request that the minor setback variation for part of the wall be approved in accordance with the performance criteria of the R-Codes (3.3.1 P1) for the following reasons:

- 1 The minor setback variation will not reduce the level of direct sun or ventilation for the unit and will not result in reducing the level of sun and ventilation to the adjoining properties;*
- 2 The variation is necessary to ensure sufficient internal space is provided to Unit 2 and is necessary to accommodate an unfortunate angle provided by the shape of the lot.*

Unit 10 Retaining Wall Setback of nil in lieu of 1.5 metres

We seek approval under the performance criteria for this retaining wall as it is necessary to accommodate the overall slope of the site and the retaining wall will have no impact on the adjoining property as it is located adjacent to the 'common access' for Units 12 to 14. Units 11 to 14 are also located north of the retaining wall. Accordingly these properties are not affected by the 'shadow' that may normally result from a retaining wall of this height (see shadow diagram). The retaining wall therefore satisfies the performance criteria under clauses 3.6.1 and 3.6.2 of the R-Codes.

Variations to Acceptable Development Standards No Longer Applicable

It should be noted that the applicant's letter (Attachment 4) dealt with additional R-Codes variations to those discussed above. These variations have since been removed through amended plans submitted to the City on 06/07/2005. Attachment 4 has been amended by Council to identify these proposed variations that were removed as a consequence of the amended plans.

Issues and options considered:

Council has the discretion to:

- Approve the application without conditions;
- Approve the application with conditions; or
- Refuse the application.

Link to Strategic Plan:

The proposal will contribute to certain Key Focus Area Outcomes of City Development.

The proposal will address Strategies 3.3.1 and 3.3.2, which seek to provide residential living choices and integrate plans to support community and business development.

It will address Strategy 3.5.2, which seeks to assist the facilitation of local employment opportunities by providing an increased population to frequent nearby commercial land uses.

Legislation – Statutory Provisions:City of Joondalup District Planning Scheme No 2

Clause 3.3.2 describes a 'D' land use as a use which is not permitted, but to which Council may grant its approval after following the procedures laid down by sub-clause 6.6.2. The proposed development is a "D" use within the Residential Zone.

The following clauses are also relevant under the existing District Planning Scheme No 2:

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.*

6.8.2 *In addition to the matters referred to in the preceding subclause of this clause, the Council when considering whether or not to approve a “D” or “A” use application shall have due regard to the following (whether or not by implication or otherwise they might have required consideration under the preceding subclauses of this clause):*

- (a) *the nature of the proposed use and its relationship to the use of other land within the locality;*
- (b) *the size, shape and character of the parcel of land to which the application relates and the nature and siting of any proposed building;*
- (c) *the nature of the roads giving access to the subject land;*
- (d) *the parking facilities available or proposed and the likely requirements for parking, arising from the proposed development;*
- (e) *any relevant submissions or objections received by the Council; and;*
- (f) *such other matters as the Council considers relevant, whether of the same nature as the foregoing or otherwise.*

Risk Management considerations:

Not Applicable.

Financial/Budget Implications:

Not Applicable.

Policy implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability implications:

The proposed development seeks to achieve sustainability by providing diversity of housing choice and through the utilisation of existing infrastructure.

Consultation:

Comments were sought in accordance with clause 6.6.2 of the DPS No.2 in addition to the requirements of the R-Codes, since a number of variations to the Acceptable Standards of the R-Codes were requested by the applicant.

Letters were sent to surrounding and adjoining owners likely to be impacted by the development, advising them of the proposed development, with plans and supporting documentation made available for perusal at the City's offices for two weeks from 23 June 2005 to 7 July 2005.

One letter of non-objection was received from a property owner opposite at 131 Warrandyte Drive.

One letter of objection was received from a property owner opposite at 129 Warrandyte Drive who expressed concern at the increase in traffic volumes and vehicle reversing onto Warrandyte Drive should the propose development be approved.

COMMENT

Grouped dwellings are a discretionary use within the Residential Zone. As such, it is a use that is not permitted but Council may grant its approval after following the procedures set out in subclause 6.6.2.

The nature of the proposed use and its relationship to the use of other land within the locality is considered to meet the objectives of the Residential R40 provisions of the R-Codes. The nature of the roads and surrounding road network has been deemed to satisfy all the R-Codes and other technical requirements. The parking facilities proposed meet the requirements of the R-Codes and the development is therefore unlikely to generate on-street parking.

The R-Codes require development of each grouped dwelling to individually comply with the R-Codes in relation to defined site areas, including development controls relating to setbacks, car parking, open space, etc. The proposed development has been assessed in this manner and numerous variations to the Acceptable Standards have been identified, including fill/excavation in excess of 500mm, side, retaining, and boundary wall setback variations. The majority of these variations occur within the site and nine relate to adjoining properties or the streetscapes at Eddystone Drive and Elwood Court.

R-Code Variations Within Development

The internal variations that have been identified are likely to impact on any future occupier of the development. Those internal variations to the R-Codes, which are shown below, have been assessed against the performance criteria of the R-Codes and are considered to have met the relevant performance criteria. (Refer to the applicant's justification in their letter dated 7 June 2005 - Attachment 4).

Retaining Wall Setback Variations	Acceptable Development	Proposed
Unit 4 Retaining Wall North	1.5m	0m
Unit 5 Retaining Wall North	1.5m	0m
Unit 5 Retaining Wall East	1.5m	0m
Unit 7 Retaining Wall North	1.5m	0m
Unit 8 Retaining Wall North	1.5m	0m
Unit 9 Retaining Wall North	1.5m	0m
Unit 10 Retaining Wall North	1.5m	0m
Unit 14 Retaining Wall North	1.5m	0m

Wall Setback Variations	Acceptable Development	Proposed
Unit 3 Southern Wall	1.5m	0.75m

Boundary Wall Variations	Acceptable Development Height	Proposed Height
Unit 4 Northern Wall	3.0m average	3.2m average

Boundary Wall Variations	Acceptable Development Length	Proposed Length
Unit 12 Eastern Wall	66% (12m)	68% (12.2m)
Unit 13 Eastern Wall	66% (12m)	68% (12.2m)

No. of Boundary Walls	Acceptable Development	Proposed
Unit 2	1	2 (North and East)
Unit 3	1	2 (North and South)
Unit 14	1	2 (West and South)
Unit 15	1	2 (North and South)

R-Codes Variations External to Development

The following identifies those variations that are considered likely to impact on the streetscape or adjoining properties.

Design Element 2 - Streetscape

According to clause 3.2.1 of the R-Codes, development shall generally be setback from the primary street at a minimum of 2.0 metres with an average of 4.0 metres. Garages shall be setback 4.5 metres, although this may be reduced where the garage adjoins a dwelling, provided the garage is at least 0.5 metres behind the dwelling alignment.

Units 1 to 11 satisfy these requirements with the exception of the garage to Unit 2. However, it is considered that the proposed garage would not detract from the streetscape as it is consistent with the proposed building setbacks at Units 1 and 3, which have part of the building forward of the Unit 2 garage. Therefore, as the structure will not obstruct views of dwellings from the street and vice versa, it is considered that it will meet the performance criteria for this design element as set out in the R-Codes.

There is concern about the excessive width of the two driveways that serve Units 3, 4, 15, 5 and 6. It is considered that the combination of driveways to the Eddystone Avenue frontage is excessive and will not provide a safe refuge for pedestrians using the public footpath. It is recommended that a condition be attached to the planning consent that requires each driveway to be separated by a 1.0 metre landscaping strip.

Design Element 3 - Boundary Setbacks

All internal boundary and retaining wall setback variations have been accounted for in the applicant's written justification (Attachment 4) and are considered to comply with the relevant performance criteria.

Unit 2 of the proposed development includes a wall 8.2 metres in length, which is located near the eastern boundary of the site. Based on the acceptable standards of the R-Codes, a setback of 1.5 metres is required whereas a setback of 1.0 metre has been proposed. The setback variation is considered to be minor and will not adversely impact upon the amenity of the adjoining property owner. No objection relating to this wall was received from the affected property owner at 9 Elwood Court.

The proposed retaining wall pertaining to the eastern boundary of Unit 10 requires a setback of 1.5 metres according to the acceptable standards of the R-Codes. A nil setback has been proposed. Setting back the wall 1.5 metres from the lot boundary will create a space that would be difficult to use and would not benefit the streetscape or the amenity of the neighbouring properties to a considerable degree. Reducing the fill and height of the retaining wall would serve minimal purpose as the proposed Unit would sit considerably below the street level, reduce surveillance to the street and be inconsistent with the proposed streetscape that will be created by Units 6, 7, 8 and 9. Therefore it is recommended that these proposed variations to the Acceptable Standards be supported.

Design Element 6 - Fill/Excavation in Excess of 500mm

Clause 3.6.1 of the R-Codes allows excavation or filling to a maximum of 0.5m between the street alignment and building, or within three metres of the street alignment, whichever is the lesser, as acceptable development. Any filling or excavation greater than this level is required to be assessed against the performance criteria of the R-Codes. The 6m fall of the land from the southern boundary to the north has resulted in many of the proposed units exceeding this standard. Units 1, 4, 5, 6, 10 and 11 do not satisfy this requirement.

The proposed retaining walls range in height from 500mm to 1.7 metres above natural ground level. However, in these instances the extent of the fill and excavation is necessary due to the topography of the site and the need to accommodate the dwellings on a flat surface. The change in level between dwellings is considered to retain the visual impression of the natural level of the site. Therefore the extent of fill and excavation is considered to comply with the performance criteria of Design Element 6.

Design Element 8 - Visual Privacy

Since many of the proposed units include fill and retaining walls in excess of 500mm, most of which are internally within the site, they are to be assessed in relation to performance criteria of Design Element 8 (Visual Privacy) of the R-Codes. Where such development occurs, it is recommended that a condition of planning consent be attached requiring permanent screening as defined by the R-Codes, to be located on top of the retaining walls to prevent any overlooking.

CONCLUSION

The Council is required to assess the proposed development against the City of Joondalup District Planning Scheme No 2, R-Codes and the Council's other relevant policies. The majority of the development complies with the acceptable development provisions of the R-Codes. Most of the variations requested are internal to the development, meet all the relevant performance criteria of the R-Codes and are considered not to have a major impact on the future occupiers of those dwellings. Variations that affect the external areas of the development also meet the relevant performance criteria.

The proposed development will be a positive addition to the area and will assist in meeting key objectives of the Strategic Plan. It will contribute to the diversity of housing choice, help create employment opportunities and support the local economy.

Having regard to the:

- details of the application;
- justification submitted by the application for the variations to the Acceptable Standards of the Residential Design Codes;
- two submissions received during the consultation process; and
- provisions of the District Planning Scheme No. 2,

It is recommended that Council approves the application with conditions.

ATTACHMENTS

Attachment 1	Locality Plan
Attachment 2	Development Plans
Attachment 3	Photos
Attachment 4	Applicant Justification

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Clough, SECONDED Cmr Fox that Council:

- 1 EXERCISES discretion under clause 6.1.3 (b) of the Residential Design Codes 2002 and determines that the performance criteria under clauses 3.2.3, 3.3.1, 3.3.2, 3.6.1, 3.6.2 has been met and that:**
 - (a) Retaining wall setback of nil in lieu of 1.5 metres pertaining to Unit 10 eastern boundary;**
 - (b) Garage setback of 4.0 metres in lieu of 4.5 metres pertaining to Unit 2;**
 - (c) Side setback of 1.0 metre in lieu of 1.5 metres pertaining to the eastern wall of Unit 2;**

- (d) Excavation in excess of 500mm within the front setback area pertaining to Unit 1;
- (e) Excavation in excess of 500mm within the front setback area pertaining to Unit 4;
- (f) Fill in excess of 500mm within the front setback area pertaining to Unit 5;
- (g) Excavation in excess of 500mm within the front setback area pertaining to Unit 6;
- (h) Fill in excess of 500mm within the front setback area pertaining to Unit 10;
- (i) Excavation in excess of 500mm within the front setback area pertaining to Unit 11;
- (j) The following internal variations within the development site are appropriate in this instance:

Retaining Wall Setback Variations	Acceptable Development	Proposed
Unit 4 Retaining Wall North	1.5m	0m
Unit 5 Retaining Wall North	1.5m	0m
Unit 5 Retaining Wall East	1.5m	0m
Unit 7 Retaining Wall North	1.5m	0m
Unit 8 Retaining Wall North	1.5m	0m
Unit 9 Retaining Wall North	1.5m	0m
Unit 10 Retaining Wall North	1.5m	0m
Unit 14 Retaining Wall North	1.5m	0m

Wall Setback Variations	Acceptable Development	Proposed
Unit 3 Southern Wall	1.5m	0.75m

Boundary Wall Variations	Acceptable Development	Proposed
Unit 12 Eastern Wall	66% (12m)	68% (12.2m)
Unit 13 Eastern Wall	66% (12m)	68% (12.2m)

Boundary Wall Variations	Acceptable Development Height	Proposed
Unit 4 Northern Wall	3.0m average	3.2m average

No. of Boundary Walls	Acceptable Development	Proposed
Unit 2	1	2 (North and East)
Unit 3	1	2 (North and South)
Unit 14	1	2 (West and South)
Unit 15	1	2 (North and South)

- 2 APPROVES the application for Planning Consent dated 10/03/2005 submitted by Citadel Constructions Pty Ltd the applicant on behalf of the owner IA Investments for fifteen (15) grouped dwellings on Lots 1 & 2 (110 & 112) Eddystone Avenue and Lot 143 (3) Elwood Court, Craigie, subject to the following conditions:**
- (a) The boundary walls shall be of a clean finish and made good to the satisfaction of the Manager, Approvals, Planning & Environmental Services;**
 - (b) The applicant obtaining a new certificate of title for the amalgamation of the three lots prior to occupation of the development;**
 - (c) All stormwater must be contained on-site to the satisfaction of the Manager, Approvals, Planning & Environmental Services;**
 - (d) The reversing bay adjacent to Unit 14 shall be amended and constructed as marked in red on the approved plans;**
 - (e) The single garage pertaining to Unit 6 shall be increased to achieve a minimum internal width of 3000mm as marked in red on the approved plans;**
 - (f) The driveways and crossovers to be designed and constructed to the satisfaction of the Manager, Approvals, Planning & Environmental Services including a one (1) metre wide landscaping strip as marked in red on the approved plans, before occupation of the development;**
 - (g) The lodging of a detailed landscape plan to the satisfaction of the Manager, Approvals, Planning & Environmental Services , for the development site and the adjoining road verge with the Building Licence Application. For the purpose of this condition a detailed landscaping plan shall be drawn to a scale of 1:200 and show the following:**
 - (i) The location and type of existing and proposed trees and shrubs;**
 - (ii) Any lawns to be established;**
 - (iii) Those areas to be reticulated or irrigated;**
 - (h) Screening to be provided on any portion of a retaining wall behind the front setback area that exceeds a height of 500mm above natural ground level to meet acceptable development provisions of clause 3.8.1 of the Residential Design Codes;**
 - (i) The street poles and street signs shall be relocated at the applicant's expense to avoid conflict with the approved driveways and crossovers.**

Footnote:

1. In regard to condition (h), a 1.8 metre high dividing fence located on a retaining wall is considered to meet the acceptable criteria of clause 3.8.1 of the Residential Design Codes.
2. According to clause 3.5.4 of the R-Codes, the driveway serving Units 12, 13 and 14 cannot be narrower than 3.0 metres. This width is to comprise of the brickpaving or the like and does not include the width of kerbing.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 8 refers

To access this attachment on electronic document, click here: [Attach8brf020805.pdf](#)

Comr Fox declared an interest that may affect her impartiality in Item CJ163-08/05 – Proposed Child Care Centre: Lot 501 (107) Warwick Road (North-east corner) Currajong Road, Duncraig as she is acquainted with the applicant and their daughters are friends.

The Director Planning and Community Development, Mr Clayton Higham, declared an interest that may affect his impartiality in Item CJ163-08/05 – Proposed Child Care Centre: Lot 501 (107) Warwick Road (North-east corner) Currajong Road, Duncraig as an objector to the proposal is a former colleague.

**CJ163 - 08/05 PROPOSED CHILD CARE CENTRE: LOT 501 (107)
WARWICK ROAD (NORTH-EAST CORNER)
CURRAJONG ROAD, DUNCRAIG - [39873]**

WARD: South Coastal

RESPONSIBLE DIRECTOR: Mr Clayton Higham
Planning and Community Development

CJ050802_BRF.DOC:ITEM 11

PURPOSE

The purpose of this report is to request Council's determination of an application for Planning Approval for a Child Day Care Centre (CDCC) at Lot 501 (107) Warwick, Road (north-east corner) Currajong Road, Duncraig.

EXECUTIVE SUMMARY

The development site is Lot 501 (107) Warwick Road and is located on the north-east corner of Warwick Road and Currajong Road. The site was previously approved for use as consulting rooms (psychiatric consulting rooms).

The subject site abuts and is opposite existing single house residential development. The southern side of Warwick Road is occupied by a Local Reserve.

The applicant proposes to convert the existing building into a CDCC, as well as carry out additions to the existing building and reconfigure the existing car parking area. The CDCC does not meet certain criteria set out in Council's Local Planning Policy 3.1.1 – Child Care Centres.

The assessment criteria for the location of CDCCs does not support:

- CDCCs being located on a Primary District Distributor (Warwick Road) or adjacent to Access Roads (Currajong Road) in residential areas; and
- the location of a CDCC within a residential area, with the preferred location being adjacent to non-residential uses.

The degree of proposed activity represents a significant intensification of activity when compared to the predominance of single houses within the area and the previous land use (psychiatrist consulting room) that existed prior to this application. Along the western portion of Warwick Road towards Marmion Avenue, there are three instances of non-residential uses, including a Medical Centre and two Consulting Rooms

Traffic movement within the car parking area will further inconvenience and reduce the amenity of the adjoining property at 39 Currajong Road. Verge and pavement parking at Currajong and Warwick Roads during peak traffic times is not desirable and would adversely impact upon the amenity of the adjoining residential properties by creating an unsafe environment.

The proposed development is considered to be an incompatible land use within the existing predominantly residential area. The intensity of the land use exceeds what is reasonably expected within such an area and will be likely to adversely impact upon the amenity of the adjoining and surrounding residential properties.

It is recommended that the application for Planning Consent be refused.

BACKGROUND

Suburb/Location:	Lot 501 (HN 107) Warwick Road, Duncraig
Applicant:	Sharose Investments Pty Ltd
Owner:	Sharose Investments Pty Ltd and P & A Chemello Nominees Pty Ltd
Zoning:	DPS: Residential
	MRS: Urban

The subject site has a land area of 1409m² and is located on the north-east corner of Warwick and Currajong Road at a 'T' junction with limited access. The site is directly opposite a Local Reserve (Galston Park) on the southern side of Warwick Road and approximately 150 metres from an aged care facility adjacent to another Local Reserve (Percy Doyle Reserve). It is approximately 400 metres from Duncraig Primary School and 500 metres from the nearest shopping centre (Marri Road).

The development site and surrounding area is zoned Residential with a density coding of R20. The area predominantly consists of single houses with the following exceptions:

1. Consulting Rooms at 93 Warwick Road (Eye Specialist)
2. Consulting Rooms at 85 Warwick Road
3. Medical Centre at 41 Roche Road

DETAILS

The existing site consists of a single storey building, previously used as consulting rooms with three practitioners. This building is located near the eastern boundary of the site. The car parking area serving this building is located between the building and Currajong Road, with vehicle and pedestrian access from that road. A landscaping strip separates the car parking area and the residential house located at 39 Currajong Road.

The applicant proposes to modify and carry out additions to the existing building and convert it to a CDCC with 47 children, 8 staff and an associated car park. It is proposed to operate from 7am to 6pm, Monday to Friday.

The approved car parking layout for the consulting rooms shows sixteen parking spaces. A previous approval (30/1096) permitted an additional practitioner to operate from the premises, which would result in a total of 3 practitioners. Consequently, to satisfy the extra car parking demand, the applicant was given a choice of providing 2 additional carparking bays to a total of 18 or payment of cash in lieu of the 2 bays. The City's records do not clarify whether the bays were provided or a payment was received.

Fifteen car bays are proposed to be provided on-site to accommodate visitor and staff car parking arising from the CDCC. These spaces are to be located along the northern side of the lot adjacent to 39 Currajong Road. The car parking area at the corner of Currajong and Warwick Roads is to be altered to form part of the children's play area.

The proposal includes replacement of an existing retaining wall that abuts Warwick and Currajong Road. Further, additions to the existing building have been proposed at the eastern and southern sides of the existing building.

Council's planning policy on Child Care Centres requires that 8% of the total site area consist of landscaping including a 3 metre wide landscaping strip at both street frontages. The applicant has provided a 3 metre wide strip and 10% of the total site area is dedicated to landscaping.

APPLICANT JUSTIFICATION

In support of the application, the applicant has provided:

- A letter in support of the application, setting out details of the proposal;
- A traffic engineer's report; and
- An acoustic report.

In addition, the applicant has responded to the objections raised by surrounding property owners during the advertising process as follows:

Increase in Traffic Volume

The traffic impact report, which was submitted on 21 April 2005, outlines that the roads do have sufficient capacity to handle a minor increase in traffic.

Parking on Council Verge

We are prepared to landscape and reticulate this verge to prevent vehicle parking with plants less than one metre in height, thus avoiding any vision impairment and road safety issue, thus effectively relieving any problem.

Property Value

As per reports provided, property will not devalue because there will be no significant increase in traffic, bearing in mind that these properties are situated next to a dual carriageway (Warwick Road). The acoustic report states that there will be no noise increase – the property has previously been used as a medical centre, with no complaints from neighbours.

The play area away is located away from adjoining residential outdoor areas to reduce any inconvenience to neighbours.

Discretionary Use

Whilst child care centres are a discretionary use within a residential zone, there has been a number of centres approved within residential zones which has set a precedent

The current use is a medical centre and a discretionary use is already in existence along with car parking.

Extension of existing building into adjoining lot

The proposed extension totals approximately 140m² – and the lot totals over 1400m² which could theoretically allow development of at least two double storey grouped dwellings, which would be considerably more than is proposed.

Vehicle Manoeuvring

The car parking area is sufficient as per Council guidelines and we acknowledge, as addressed in the report, that the site layout needs modifying so that an appropriate turn around facility is provided.

Development out of Character

The use as a medical centre was tolerated and it will blend in with the adjoining properties. It will be a replica of the Child Care Centre at 555 Beach Road. Other commercial uses along Warwick Road are currently in existence and have been given discretionary approval.

The proposed centre is conveniently located to provide easy and safe access for families in the local community. We seek to provide a quality product and building.

Link to Strategic Plan:

Not Applicable.

Legislation – Statutory Provisions:

A CDCC is a 'D' use in a Residential area. A 'D' use means:

“A use class that is not permitted, but to which the Council may grant its approval after following the procedures laid down by subclause 6.6.2.”

Clause 6.6.2 requires that Council in exercising discretion to approve or refuse an application shall have regard to the provisions of clause 6.8, as follows:

6.8 MATTERS TO BE CONSIDERED BY COUNCIL

6.8.1 *The Council when considering an application for Planning Approval shall have due regard to the following:*

- (a) *interests of orderly and proper planning and the preservation of the amenity of the relevant locality;*
- (b) *any relevant submissions by the applicant;*
- (c) *any Agreed Structure Plan prepared under the provisions of Part 9 of the Scheme;*
- (d) *any planning policy of the Council adopted under the provisions of clause 8.11;*
- (e) *any other matter which under the provisions of the Scheme the Council is required to have due regard;*
- (f) *any policy of the Commission or its predecessors or successors or any planning policy adopted by the Government of the State of Western Australia;*
- (g) *any relevant proposed new town planning scheme of the Council or amendment or proposed Metropolitan Region Scheme Amendment insofar as they can be regarded as seriously entertained planning proposals;*
- (h) *the comments or wishes of any public or municipal authority received as part of the submission process;*
- (i) *the comments or wishes of any objectors to or supporters of the application;*
- (j) *any previous decision made by the Council in circumstances which are sufficiently similar for the previous decision to be relevant as a precedent, provided that the Council shall not be bound by such precedent; and*
- (k) *any other matter which in the opinion of the Council is relevant.*

With the proposed use being a “D” use, the additional matters identified in Clause 6.8.2 also require Council consideration in relation to this application for Planning Consent:

6.8.2 *In addition to the matters referred to in the preceding subclause of this clause, the Council, when considering whether or not to approve a “D” or “A” use application, shall have due regard to the following (whether or not by implication or otherwise they might have required consideration under the preceding subclauses of this clause):*

- (a) *the nature of the proposed use and its relationship to the use of other land within the locality;*
- (b) *the size, shape and character of the parcel of land to which the application relates and the nature and siting of any proposed building;*
- (c) *the nature of the roads giving access to the subject land;*
- (d) *the parking facilities available or proposed and the likely requirements for parking, arising from the proposed development;*
- (e) *any relevant submissions or objections received by the Council; and*
- (f) *such other matters as the Council considers relevant, whether of the same nature as the foregoing or otherwise.*

Development Standards under District Planning Scheme 2 (DPS 2)

DPS 2 Policy Standard	Required	Provided
Front Setback (Warwick Rd)	6.0m	7.1m
Rear Setback	1.5m	4.8m
Side Setback (Currajong Rd)	1.5m	16.5m
Side Setback	1.5m	2.3m
Car parking	15 bays	15 bays
Landscaping	8%	10.9%
Fencing	1.2m solid (max)	1.8m solid

Policy 3.1.1 – Child Care Centres

This policy sets out guidelines for the development of a CDCC including the requirements for the provision of car parking and landscaping, the preferred location of CDCCs, as well as the need to advertise proposals due to the possible detrimental effect on the amenity of residential areas. The policy is reproduced below:

POLICY 3.1.1 - CHILD CARE CENTRES

OBJECTIVE

The purpose of this policy is to provide guidance for the location and development of Child Care Centres to maximise user convenience and maintain a high level of amenity in residential areas.

STATEMENT

Relevant Legislation

District Planning Scheme No.2 Clause 1.9:

CHILD CARE CENTRE means premises used for the daily or occasional care of children in accordance with the Community Services (Child Care) Regulations 1988.

Table No 1 Zoning Table

The use class Child Care Centre is a 'D' use in the Residential, Mixed Use, Business, Commercial, Civic and Cultural, Private Clubs/Recreation and Special Residential Zones. A 'D' use is a use that is not permitted, but the Council may grant its approval after following the procedures of the scheme that relate to matters to be considered by Council and advertising. The use is not permitted in the Service Industrial and Rural zones.

TABLE 6

USE	NUMBER OF CARS
Child Care Centre	Not less than 5 and 1 per staff member

Related Legislation And Policies

Community Services (Child Care) Regulations 1988 (Government Gazette 25/11/1988)

*Location*1 *Road Hierarchy*

Child Care Centres are reasonably high traffic generators and therefore should not be located on Primary District Distributors where the primary function is to cater for through traffic or on Local Distributors in close proximity to District Distributors or in or adjacent to Access Roads in residential areas where amenity, safety and aesthetics must take priority. Accordingly, these Centres should be located on Local Distributor roads in such a fashion that they will not conflict with traffic control devices and will not encourage the use of nearby Access Roads for turning movements.

2 *Neighbouring Uses*

Wherever possible it is preferred to locate Child Care Centres adjacent to non-residential uses such as Shopping Centres, Medical Centres/Consulting Rooms, School Site, Parks and Community Purpose Buildings to minimise the impact such Centres will have on the amenity of residential areas.

3 *Existing Child Care Centres*

When submitting an Application for Approval to Commence Development for a new child care centre, the proponents should demonstrate their awareness of the number, size and location of existing or approved centres within the locality.

*Parking*1 *Location*

All parking areas should be located in front of buildings or at least be easily visible from the entry to the site so that patrons are encouraged to use the on-site parking and not the road verges. Any difficult to use or access parking bays should be allocated to staff.

2 Design

Parking areas should preferably be designed to allow traffic to flow through using entry and exit crossovers so that traffic conflicts and congestion do not unnecessarily restrict the use of the parking area. For the purposes of determining parking requirements, designs incorporating through flow are referred to as Type 1 and those accessed only by a two-way crossover as a Type 2. In certain circumstances, detailed below, Type 2 designs require more parking bays than Type 1 designs.

3 Number - Children And Staff

All Child Care Centres must provide a minimum of one parking bay for each staff member and at least five parking bays for up to 25 children. For Centres with more than 25 children the required parking bays are determined by reference to the attached figure. The actual parking requirement for Centres in this category varies with the configuration of the parking area and the number of children.

At least one parking bay must conform to ACROD standards and be set aside for that purpose.

Setbacks

1 Street

In residential areas all buildings should be set back from the street boundary at least as far as the lesser of the two adjoining residences and if the adjoining lots are vacant should be set back a minimum of six metres.

2 Other

Side and rear setbacks should generally be in accordance with the Residential Planning Codes for residential buildings. Care should be taken to ensure outdoor play areas are not located adjacent to private open space or living areas.

Landscaping

1 Onsite

All street frontages of the site to a depth of three metres are required to be suitably landscaped and reticulated to assist to preserve the character of residential areas.

2 Verge

The verge area in front of all Child Care Centres is required to be suitably landscaped and reticulated and maintained to discourage patrons from parking on the verge instead of using the parking areas provided. Under no circumstances is the verge to be paved or sealed as this would encourage its use for parking and detract from the amenity of the area.

Advertising

1 Application

Because of the possible detrimental effect Child Care Centres can have on the amenity, safety and aesthetics of residential areas, all applications must be advertised for public comment prior to consideration for approval.

Approved Child Care Centres can display only one advertising sign approved by the Chief Executive Officer. The maximum lettering height is 20cm. Where letters or numerals are individually fixed to walls, the Chief Executive Officer shall approve the colours and materials. Where signboards are used the board shall not exceed 50cm in height and 100cm in length, and lettering shall be black on a gold/bronze background. Signs shall not be illuminated after 8.00pm each night.

Risk Management Considerations:

Not Applicable.

Financial/budget implications:

Not Applicable.

Policy Implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

A Traffic Impact Statement (TIS) was submitted by the applicant following a request by the City. The following conclusions were made in the report:

- *Currajong Road has significant spare traffic bearing capacity.*
- *No congestion and excessive queuing is anticipated at the intersection of Warwick Road and Currajong Road.*
- *On-street parking should be prohibited along one car length north of the proposed CDCC crossover and south of the crossover to Warwick Road intersection on the eastern side of Currajong Road.*
- *The parking layout should be remarked to show 8 staff bays and 7 visitor's bays*
- *It is suggested that the site layout be modified so that an appropriate turn around facility is provided at the end of the parking circulation isle.*
- *Traffic related issues should not form an impediment to the approval of the CDCC.*

The report was assessed and the conclusions and recommendations contained within the TIS were accepted. It is believed that the proposed parking layout should be modified with the provision of a turnaround facility to improve internal circulation and any parking prohibitions recommended should be provided at the applicant's cost if the application is approved.

In addition, an acoustic assessment report was required to be submitted in conjunction with this application. The following conclusions were made by the Acoustic Consultants in their report:

- *In terms of child play activities, prediction of the worst case noise propagation indicate that compliance with the Regulatory criteria will be achieved at all residential locations.*
- *Similarly, car noise, including closing of doors and engine start up, will also be within the relevant criteria at all neighbouring residences.*

In response to the contents of the report, it was noted that the acoustic report submitted does not address noise associated with toys and play frames. Where any metal tube frames are used, they should be filled with sand. Furthermore, plastic children trucks or cars may require rubber tyres to reduce noise disturbances.

The Acoustic Consultant's Report also indicates that noise emissions from vehicles accessing the car park complies with LAMax levels (LAMax is the level of noise that is not to be exceeded at any time). During peak drop off times, the duration of vehicle noise may warrant that the noise also comply with LA1 levels. The Acoustic Consultant's report indicates that the noise from motor vehicle movements on site and from car doors closing will not meet LA1 (LA1 is the level of noise that is not to be exceeded for more than 1% of the assessment time) levels should this occur prior to 7am. It is reasonable to expect that centre staff will arrive on-site prior to the centre's opening time of 7am. Traffic noise from vehicles on Warwick Road will be lower in the early hours of the morning and whilst noise emissions from the premises may meet the requirements of current noise legislation, it would be reasonable to expect an increase in background noise emissions that residents will be subjected to should the development be approved.

The Environmental Protection (Noise) Regulations 1997 deal with noise emissions from the actual property and no consideration for noise from cars parking on the road and vehicle noise on the road has been made. Noise emissions from motor vehicles operating on roads is exempt from these Regulations and this noise will need to be assessed from an amenity perspective.

Compliance with the Noise Regulations will also require centre staff to be vigilant in ensuring that the noise from children playing is reasonable. This will mean policing the children playing in the outside area at all times to ensure that they are not yelling or screaming or playing in the areas adjacent to neighbouring residential premises. The area of the site identified on the plans for outside play areas is 445m². This would include the narrow areas of the site to the north and east of the existing building, which abuts the adjoining residential properties.

The proposal was advertised in writing to the adjoining and nearby owners for a period of 14 days in accordance with DPS 2.

Five objections and one non-objection were received and are summarised below:

Objection/Comment	Technical Comments
The existing road network does not have sufficient capacity to handle increased traffic	The Traffic Report states that traffic related issues should not form an impediment to the approval of the Child Care Centre. However, there are concerns about on-site traffic movement and kerbside parking, especially during peak times.

The proposal may entail parking on the Council verge causing inconvenience and result in a safety hazard	Although the proposed development does provide the required amount of bays on site, there are concerns that customers may resort to verge parking. Verge and street parking could be possible for convenience purposes or when car parking area is full.
The proposal will devalue properties within the immediate area.	Impact upon property values is not a planning consideration.
A Child Care Centre is a discretionary use within a residential zone and is not generally permitted	Agreed. The land use is not a permitted land use within this Zone but the Council may grant approval after following the procedures laid down by subclause 6.6.2. There are concerns that the proposed CDCC will result in an escalation of intensity of activity that is typically not suited to a residential zoned lot, which could impact on adjoining or surrounding properties
The proposal may result in poor quality advertising signage visible	Any subsequent signage will be subject to a separate application and full assessment.
The extension of the existing building will encroach onto the adjoining lot	The proposed additions satisfy the minimum setback requirements.
There is insufficient space within the site for vehicle manoeuvring	An assessment of internal vehicle manoeuvring space by has been considered acceptable.

COMMENT

The proposed development will involve:

- (i) a change in land use from consulting rooms (3 practitioners) to a CDCC;
- (ii) relocation of the existing car park so that it abuts the residential property at 39 Currajong Road to create play areas that are not adjacent to residential properties; and
- (iii) single storey additions and alterations to the existing building to suit the proposed use.

Location in relation to Other Land Uses

According to clause 3.4 of DPS 2, the Residential Zone is intended primarily for residential development in an environment where high standards of amenity and safety predominate to ensure the health and welfare of the population. It also provides for certain cultural and recreational development to occur where Council considers the same to be appropriate in residential neighbourhoods within the Residential Zone.

The proposed development would provide an important community facility for the surrounding area. It would assist in satisfying the growth of CDCCs and bring additional employment opportunities to the surrounding area.

However, the proposed CDCC would appear to be better suited within a Commercial Zone, which is intended to provide for a wide range of uses within existing commercial areas, including retailing, entertainment, professional offices, business services and residential.

A survey of the surrounding area has revealed that the nearest commercial centre is located approximately 500 metres away and Duncraig Primary School approximately 400 metres away. All other development within similar proximity consists of residential use or local reserves (Percy Doyle Reserve and Galston Park). Exceptions to this include:

1. Consulting Rooms at 93 Warwick Road (Eye Specialist)
2. Consulting Rooms at 85 Warwick Road
3. Medical Centre at 41 Roche Road

Policy 3.1.1 states that, where possible it is preferred to locate Child Care Centres adjacent to non-residential uses such as shopping centres, Medical Centres/Consulting Rooms, School sites and Community Purpose Buildings to minimise the impact such Centres will have on the amenity of residential area.

It is clear that the location of the proposed CDCC is not near enough non-residential uses, where any impact resulting from the CDCC would assist in minimising the impact upon the amenity of the residential areas.

Noise

Concerns have been expressed by the City about the possibility of noise generated from the proposed CDCC to inconvenience the adjoining residences. The concerns relate to the general increase in background noise, the possibility of excessive noise emanating from the children, vehicles accessing the site before 7am and throughout the day and the general increase in car associated noise. The latter point has not been addressed in the consultant's report. However, it is a consideration when determining the suitability of the proposed land use. The general increase in noise as a result of the proposed use and intensification of activities is a concern that is also shared by several adjoining affected property owners who objected to the proposed CDCC.

Due to the width of Warwick Road, it is not considered that the CDCC would have any impact on the land uses on the opposite side of Warwick Road.

The State Administrative Tribunal (SAT) has previously ruled that compliance with the Noise Regulations does not necessarily mean that the noise does not constitute an adverse impact on the existing amenity of the locality in a planning sense in *Land Alliance Pty Ltd v City of Belmont (2005) WASAT 100*. Whilst it may be argued that the surrounding area is already subject to above normal noise emanations given its close proximity to Warwick Road, the proposed CDCC does constitute an intensification of the land use and general increase in noise from vehicle movements, parking, opening and closing of car doors and the children.

The proposal includes modification of the existing car park, which will result in the car bays being directly opposite the adjoining property, 39 Currajong Road

Upon consideration of the residential nature of the locality, the number of immediately adjacent residences and the times at which noise is to be generated, particularly the noise emanating from the car park early in the morning, the use will adversely impact upon the existing amenity of the area, and is therefore incompatible.

Location in relation to Roads

The CDCC is intended to cater for 47 children between 7am to 6pm, Monday to Friday. The CDCC is located within close proximity to a District Distributor (Warwick Road) that is adjacent to an Access Road (Currajong Road) in a residential area. This is contrary to Policy 3.1.1 which states CDCCs should not be adjacent to Access Roads in residential areas where amenity, safety and aesthetics must take priority. Such centres should be located on Local Distributor roads so that they will not conflict with traffic control devices and will not encourage the use of nearby access roads for turning movements.

Vehicular access and egress to the site is currently restricted as there is no break in the median strip at Warwick Road. It is reasonable to assume that most CDCC customers will attempt to use Warwick Road to gain access to the site. Vehicles from the west to the CDCC will be able to access the site directly from Warwick Road. However, the median strip will deny those same vehicles access onto the road and direction that they originated from when they leave the premises. From the locality plan (Attachment 1) it is evident that drivers may choose alternate routes to gain access to Warwick Road. This may include traversing Currajong Road and Roche Road, which also intersects with Warwick Road but does not possess a break in the median strip. Alternatively, such vehicles may traverse along Currajong Road, Pyrus Street and Lilburne Road before gaining access onto Warwick Road.

Similarly, vehicles wishing to access the premises from Warwick Road from an easterly direction are likely to gain access from adjacent access roads. Accessing Warwick Road and traversing in an easterly direction can be achieved from the intersection at Warwick and Currajong Roads. However, it is acknowledged that the absence of a median strip at this intersection will give rise to increased traffic volumes on access roads (Currajong Road, Roche Road, and Pyrus Street), which is not encouraged by Policy 3.1.1.

Given the nature of CDCCs, traffic movements would be concentrated during specific times as parents/guardians would most likely set down and pick up their children between the hours of 7am to 10am and 3pm to 6pm respectively. This would serve to exacerbate the problem and further compromise the amenity of the residential properties along the adjoining access roads in addition to those immediately adjoining the site.

It is reasonable to assume that a proposed CDCC such as this will generate significantly more traffic movements than the proposed surrounding residential dwellings. Whilst it is possible that some may walk or use public transport, it is expected that the majority of customers and or staff will commute to and from the site in a private vehicle.

By employing 8 staff, it can be assumed that provided those staff do not car pool or utilise public transport, 16 trips would be generated. If all proposed 47 children are picked up and dropped off separately, then 94 trips would be generated each day. If 2 children are dropped off and picked up together at any one time, then 48 trips would be generated. From this rudimentary calculation, the total number of vehicle movements that would result from the operation of the CDCC is likely to be between 64 and 110. Whilst the traffic movement will be distributed within the locality, it will be focused in the new car parking area that abuts 39 Currajong Road.

In each case, the volume of traffic generated is significantly more than that generated from a typical single house. The proposed CDCC represents a significant intensification of activity when compared to the predominance of single houses within the area.

Whilst there is agreement with the Traffic Consultant's report that the road network has the capacity to accommodate the extra traffic, the proportional increase in vehicle movements will cause a reduction in residential amenity. This is exacerbated due to the median break at Warwick Road, which will increase vehicle movements along the adjoining access roads. Policy 3.1.1 states that proposed CDCCs should not encourage the use of nearby Access Roads and will not conflict with traffic control devices.

The traffic report acknowledges that there will be an increase in vehicle movements between 8am to 9am along Currajong Road. It is stated that 32 trips will be generated with 17 in and 15 out. Of these trips, 16 trips will use Currajong Road, north of the site.

The report acknowledges that there will be an increase in vehicle movements between 5pm to 6pm along Currajong Road. It is stated that 35 trips will be generated with 16 in and 19 out. Of these trips, 17 trips will use Currajong Road, north of the site.

The Traffic Report states that 67 trips will be generated during peak periods as a result of the proposed development. It also confirms that there will be an increase in vehicle movements involving Currajong Road and therefore other roads within the surrounding locality.

Whilst there will be a discernable increase in the vehicle movements within the surrounding road network, the movements will be focused within the proposed car parking area, which will further inconvenience and cause a reduction in the amenity at 39 Currajong Road. This will be further exacerbated when the CDCC hosts social events, that are proposed to involve other members of the community including seniors, parents, students from university and TAFE (refer to applicant's submission). Such activity is likely to result in additional vehicle movements when these events are conducted and may result in verge and pavement parking.

Upon consideration of the existing road network and traffic issues that arise from the proposal, it is not considered to be an appropriate use for the site.

Car Parking - Numbers

Most of the car parking area provided for the proposed development is located in front of the building at Currajong Road and is easily visible from the street. Vehicular access onto Warwick Road has not been proposed. According to Policy 3.1.1, there is a requirement of 7 bays for visitors and 8 for the staff, which equates to a total of 15 bays. These have been provided by the applicant and are separated by the sole vehicular access point off Currajong Road. The car park is located between the building and the adjacent residential property, 39 Currajong Road.

The City's records indicate that the consulting rooms had previously been approved to accommodate three practitioners in 1995. This approval required a car parking ratio of 6 bays per practitioner, resulting in a total of 18 bays to be provided. However, it appears that only 16 bays have been established and the City's records do not provide detail on whether this was originally agreed upon.

DPS 2, adopted in 2000, states that 5 bays are required per practitioner, resulting in a total of 15 bays to be provided. Therefore, the existing configuration and car parking provisions would comply with current standards. However, it is reasonable to assume that there will be distinct differences regarding the concentration and distribution of traffic activity throughout the day.

A consulting room typically operates and serves patrons during normal business hours and the volume of patrons served is dependant upon the number and type of practitioners. In most cases, one practitioner could only serve one customer at a time and it can be expected that the customers would be evenly spread throughout the course of the day. However, the primary role of a CDCC is to provide care for children whose parents or guardians are unable to do so. It is expected that in most cases, a CDCC will have a high concentration of traffic volumes early in the morning and later in the afternoon.

The applicant has stated that the CDCC will operate from 7am to 6pm, Monday to Friday. As most vehicular activity, from the staff and parents/guardians, can be expected to occur close to these opening and closing times, it is considered to constitute a significant adverse impact upon the amenity of the adjoining residential properties. This is corroborated in the Traffic Impact Statement, which suggest that the majority of children drop-offs and pick-ups are typically between 7am to 10am and 3am to 6pm respectively. Additionally, the morning drop-offs normally peak around 8:30am and the afternoon/evening pick-ups typically peak around 5pm.

It is reasonable to expect that the concentration of street traffic flows at peak times may lead to overflow and drivers may elect to park on the verge or street to avoid conflict. Verge and street parking at Currajong and Warwick Roads during peak traffic times is not desirable and would adversely impact upon the amenity of the adjoining residential properties by creating an unsafe environment.

Relocation and configuration of existing Car Parking Area

Currently, the car parking for the site is located on the western portion of the site, adjacent to Currajong Road. The applicant is proposing to convert the south west portion of the lot to serve as a children's play area, with new car parking bays and turning area running adjacent to the adjoining property at 39 Currajong Road. Therefore, it is reasonable to expect that more car associated noise will result, further inconveniencing and impacting upon the adjoining property, particularly during peak drop off and pick up times.

In their report, the Traffic Consultants recommend that on-street parking be prohibited on the eastern side of Currajong Road along one car length north of the proposed CDCC crossover and south of the crossover to the Warwick Road intersection. It does not address the potential occurrence of street parking on the western side of Currajong Road or anywhere else within close proximity of the site.

The possibility of street parking cannot be overlooked. Such practice should not be encouraged in residential areas and there is a real concern that this may occur should planning consent be given to this proposal.

Landscaping

The proposed development provides 10% landscaping, and includes a three metre wide landscaping strip at both Warwick and Currajong Roads, which satisfies the minimum requirements prescribed by Policy 3.1.1. The existing landscaping strip located between the existing car parking area and 39 Currajong Road is to be removed for the relocation of the car parking area.

Retaining Walls

Currently, the site has a two part staggered retaining wall abutting Warwick and Currajong Roads. As part of this application, the applicant has proposed to replace the upper retaining wall only, which will be of a similar scale and height to the existing one. Therefore, the wall is considered to be acceptable. Should planning consent be given to this proposed development, any fencing proposed to be located on top of the upper wall should be conditioned to be visually permeable as defined by the R-Codes.

Conclusion

Having regard to the relevant clauses of DPS 2, the proposed CDCC is not supported. The proposal (non-residential activity) is considered to have a poor relationship to those uses of other land (residential) within the locality and is of an inappropriate scale for the 'Residential' zone. It is not appropriate given the nature of the roads that give access to the subject land such as Roche Road, Currajong Road and Pyrus Street.

Upon consideration of the objective and criteria of the City's Policy 3.1.1 (Child Care Centres) the proposed CDCC is considered not to be appropriate within this locality. The proposal is not adjacent to non-residential uses, is commercial in nature and will encourage use of nearby Access Roads.

Further, the increase in noise levels and traffic movement on site, design configuration of the proposed use and the potential of verge and street parking to occur in Currajong Road, it is considered to constitute a significant adverse impact upon the amenity of residential properties within the locality.

Having regard to the:

- details of the application;
- justification submitted by the applicant;
- six submissions received during the consultation process;
- details provided in the acoustic and traffic consultants' reports;
- provisions of the District Planning Scheme No 2; and
- provisions of Policy 3.1.1 – Child Care Centres;

it is recommended that the application for Planning Consent be refused.

ATTACHMENTS

Attachment 1	Locality Plan
Attachment 2	Development Plans
Attachment 3	Traffic Impact Statement
Attachment 4	Acoustic Assessment

VOTING REQUIREMENTS

Simple Majority

ADDITIONAL INFORMATION

The following additional information is provided:

Explanation of Terminology

LAMax levels	(LAMax is the level of noise that is not to be exceeded at any time)
LA1	(LA1 is the level of noise that is not to be exceeded for more than 1% of the assessment time) – shown on page 106 of these Minutes.

Within these Minutes, page 110, seventh paragraph, second sentence is required to be amended to read: “This is exacerbated due to the **lack of a** median break at Warwick Road, which will increase vehicle movements along the adjoining access roads.”

Western Australian Planning Commission (WAPC) Draft Planning Bulletin Number 72 – Child Care Centres

See Attachment 1.

This is a draft Planning Bulletin that has recently been released by the WAPC on Child Care centres, and is currently open to public comment. The bulletin seeks to provide a consistent policy approach to the planning for Child Care centres and advise of planning considerations to the location and development of these centres. The background to the bulletin indicates that this Planning Bulletin has been developed in response to issues raised by the community, Local Government and recent decisions made by the State Administrative Tribunal on the lack or shortcoming of existing policies on Child care centres.

Effect Of Proposed Development On Amenity

In response to Cmr Fox’s query requesting clarification as to whether the concern relating to the amenity of the adjoining property at 39 Currajong Road was as a result of an objection, the following comments are made:

No. When considering an application for Council’s Planning Approval, Council is required to have due regard to:

“...the preservation of the amenity of the relevant locality;”

(Note: Clause 6.8.1(a) of the District Planning Scheme)

The receipt of submissions or lack of submissions, is only part of the assessment of the application. Ultimately, it is the decision maker that is required to be satisfied whether the proposed development will or will not adversely impact on the amenity of the locality.

In this instance, the relocation of the car parking area and the potential adverse impact of noise from the operation of the centre were seen to be matters that would adversely impact on the adjoining properties. Whilst there was no submission from the owner of the adjoining property in Warwick Road, concern does exist for the potential impact of the development on that site, as well as the other adjoining properties (which had submissions received from the owners).

Details of Previously Approved Use

A search of the City's records has revealed the following about the history of the medical consulting rooms on the subject site:

Use of Site

- 08/02/1988 – Correspondence from the owner at the time (Dr Zelko Mustac) appears to indicate that the appointments are approximately one hour in duration. This is generally longer than appointments for the majority of medical practitioners.
- 01/08/1996 – Correspondence from the owner confirms that the centre specialises in psychiatry and accommodates fewer patients than a general practitioner.

Carparking

- 13/05/1992 – Council resolved to authorise an additional practitioner to the existing medical consulting rooms. This would bring the number of practitioners operating at the site to a total of three (3).
- At the time, the site provided sixteen (16) bays. The statutory requirements meant that six (6) car bays were to be provided per practitioner. Council's approval on 13/05/1992 stated that two (2) additional car bays, eighteen (18) total, were required. A condition requiring two (2) additional bays to be provided or a cash-in-lieu payment of the car bays was attached to the approval.
- In 1994 there was an exchange of letters between the owner and the City regarding the provision of car parking bays.
- 23/09/1994 – A site inspection revealed that the owner had not satisfied condition number 2 of the previous approval dated 13/05/1992. The owner was requested to provide detail as to what steps had been taken to satisfy this, i.e. provide two (2) additional bays or a cash-in-lieu payment.
- 24/10/1994 – Further correspondence from the City provides more precise detail as to what is required from the owner.
- 04/10/1995 – The City appears to have sent a copy of a modified plan, which satisfies the above condition. The owner was subsequently requested to make 'appropriate' changes and submit amended plans for formal approval. This refers to condition number 2 of the Council approval dated 13/05/1992, which requires two (2) additional bays or a cash-in-lieu payment.
- 11/01/1996 – A site plan that indicates the provision of eighteen (18) bays was submitted to the City. The plans also include relocation and modification of the crossover and new retaining walls to the northwest of the site.

- However, there appears to be a discrepancy between the 1996 plans and what currently exists on site. The 1996 plans do not correlate well with the digital map and the plans provided with this application.
- It can be concluded that the existing car park/crossover/retaining walls depart from the approved plans in 1996.
- From the records, it cannot be determined that condition number 2 of the Council approval dated 13/05/1992 was ever satisfied and that eighteen (18) bays were provided.
- If the practice was previously operating with three practitioners, then it may have done so in contravention of Council's approval dated 13/05/1992.

History of Child Care Centres Dealt with by the City Within the Last 2 Years

The attached table (Attachment 2 refers) shows a list of Child Care centres that have been dealt with by Council in the past 2 years. It also identifies the proposed Child Care centres that are currently being considered by the City.

Location of Child Care Centres and applicable zoning

This list provides the location of existing child care centres and the zoning applicable to those centres.

EXISTING CHILDCARE CENTRE APPROVED PRIOR TO 2003		
Address of childcare centre	Date approved/refused	Location/Zoning of Lot
185 Eddystone Ave Beldon	Approved 1992 - 48 children	Residential Zone 1415m ²
9 Pacific Way Beldon	Approved 2002	Residential Zone adjoining pre-primary and across the road from school
126 Eddystone Ave Craigie	Approved 1995 - 28 children	Residential Zone 1253m ² corner lot across from commercial development
20 Glenunga Way Craigie	Approved 1995 - 59 children	Residential Zone 1602m ² end lot adjoins Whitfords Road Reserve
43 Beddi Road Duncraig		Civic & Cultural Use, crown land vested in the City of Joondalup
555 Beach Road Duncraig	Approved 1995	Residential Zone 1397m ² adjoining Freeway Reserve
39 Regatta Drive Edgewater	Approved 1992 – 64 children	Residential Zone 1807m ² adjoins Primary School, across the road from Public Open Space.
Gateway Commercial Centre Edgewater	Approved 1996	Business Zone
91 Prince Regent Drive Heathridge		Residential Zone 2400m ² corner lot and across road from POS
21 Endeavour Rd Whitfords	Located within Jean Beasly Community Centre	Civic and Cultural Use
5 Burlos Court Joondalup	Approved 1993	Residential Zone R40 1920m ² across road from commercial development

29 Goollelal Drive Kingsley	Approved 1993 – 65 children	Residential Zone 1438m ² POS on two boundaries and across road
1/133 Moolanda Blvd Kingsley	57 Children	Residential Zone 2822m ² City of Joondalup owned childcare. Next to commercial development and across from POS
135 Kingsley Drive Kingsley	Approved 1981	Residential Zone 1360m ²
6 Thornton Ret Kinross	Approved 1994	Residential R40 1108m ²
77 Marina Blvd Ocean Reef	Approved 1989	Residential Zone 2402m ²
54 Constellation Drive Ocean Reef	Approved 2002	Residential Zone 2622m ² POS at rear and adjoining Commercial Zone
78 Warburton Ave Padbury	Approved 1996	Residential Zone 1374m ²
21 Giles Ave Padbury	Approved 2000	Public Purpose – Primary School
177 Timberlane Dr Woodvale	Approved 1989	Residential 1466m ²
6 Dugdale Street Warwick	Operating Kindergarten/childcare centre since 1972	City of Joondalup owned facility Commercial Zone 1814m ²
565 Beach Road Warwick	Approved 1982	Zoned Public Purpose adjoining Freeway Reserve
38 Kinross Drive Kinross	Approved 1992	Residential R40 1002m ²

NB: List does not include after school care provided by not for profit organizations (i.e.YMCA).

NB: It has not been possible to confirm whether any of these centres are still operating.

OFFICER'S RECOMMENDATION: That Council:

- 1 REFUSES the application for planning approval for the proposed Child Care Centre at Lot 501 (107) Warwick Road, Duncraig for the following reasons:

The proposal is contrary to the principles of orderly and proper planning as:

- (a) The proposed site is not considered appropriate as it does not adjoin non-residential uses as encouraged by Policy 3.1.1 – Child Care Centres;
- (b) The commercial nature of the proposed use is not compatible with existing uses of other land within the locality, contrary to clause 6.8.2 (a) of DPS2;
- (c) The proposal is located on an access road in a residential area, contrary to Policy 3.1.1 – Child Care Centres;
- (d) The nature of the roads giving access to the subject land is inappropriate contrary to clause 6.8.2 (c) as it will distribute traffic to nearby access roads;
- (e) The changes to the car parking area and the increased intensity of uses will adversely impact upon the amenity of the adjoining residential property at No 39 Currajong Road;
- (f) The potential for car parking overflows onto the access road and the adverse impact on adjoining and surrounding residential properties;

- 2 ADVISES the submitters of Council's decision.

MOVED Cmr Anderson, **SECONDED** Cmr Clough that Council:

- 1 REFUSES** the application for planning approval for the proposed Child Care Centre at Lot 501 (107) Warwick Road, Duncraig for the following reasons:

The proposal is contrary to the principles of orderly and proper planning as:

- (a) The proposed site is not considered appropriate as it does not adjoin non-residential uses as encouraged by Policy 3.1.1 – Child Care Centres;
 - (b) The commercial nature of the proposed use is not compatible with existing uses of other land within the locality, contrary to clause 6.8.2 (a) of DPS2;
 - (c) The proposal is located on an access road in a residential area, contrary to Policy 3.1.1 – Child Care Centres;
 - (d) The nature of the roads giving access to the subject land is inappropriate contrary to clause 6.8.2 (c) as it will distribute traffic to nearby access roads;
 - (e) The changes to the car parking area and the increased intensity of uses will adversely impact upon the amenity of the adjoining residential property at No 39 Currajong Road;
 - (f) The potential for car parking overflows onto the access road and the adverse impact on adjoining and surrounding residential properties;
- 2 ADVISES** the submitters of Council's decision;
- 3 UNDERTAKES** a traffic safety audit at the intersection of Currajong Road and Warwick Road to determine what improvements are necessary to further mitigate the risk of an accident at this location.

Discussion ensued.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendices 9 and 15 refer

To access this attachment on electronic document, click here: [Attach9brf020805.pdf](#)
[Attach15min090805.pdf](#)

Comr Clough declared an interest that may affect his impartiality in Item CJ164-08/05 – Removal of Restrictive Covenants relating to retail floorspace restrictions for Lots 8 (No 1) Trappers Drive, Lot 9 (No 937) and Lot 10 (No 933) Whitfords Avenue, Woodvale as he lives in Woodvale.

CJ164 - 08/05 REMOVAL OF RESTRICTIVE COVENANTS RELATING TO RETAIL FLOORSPACE RESTRICTIONS FOR LOTS 8 (NO 1) TRAPPERS DRIVE, LOT 9 (NO 937) & LOT 10 (NO 933) WHITFORDS AVENUE, WOODVALE - [83561]

WARD: Lakeside

RESPONSIBLE DIRECTOR: Clayton Higham
Planning & Community Development

CJ050802_BRF.DOC:ITEM 12

PURPOSE

For Council to consider the removal of existing restrictive retail floorspace covenants for Lot 8 (No 1) Trappers Drive, Lot 9 (No 937) and Lot 10 (No 933) Whitfords Avenue, Woodvale.

EXECUTIVE SUMMARY

Schedule 3 of City of Joondalup District Planning Scheme No 2 (DPS2) sets out retail floorspace (nett lettable area) limits for 'Commercial' and 'Centre' zoned lots.

Four of the lots that comprise the greater Woodvale Shopping Centre area were not included in Schedule 3 of DPS2 and the retail floorspace limits for these lots (Lots 8, 9 and 10) were achieved by way of restrictive covenant on the land title for each lot. The covenants were initiated prior to the adoption of DPS2 and its hierarchy of retail floorspace allocation.

Amendment No 27 to DPS2 (CJ294-11/04 refers) was progressed in order to rectify this anomaly and sought to facilitate the inclusion of all 'Commercial' zoned lots comprising the greater Woodvale Shopping Centre into Schedule 3 of DPS2 and to allocate marginal retail floorspace increases to each of these lots.

The Minister for Planning and Infrastructure granted final approval to Amendment 27 and Notification of this decision was placed in the Government Gazette on 1 April 2005.

The effect of Amendment No 27 is that retail floorspace restrictions are now included within Schedule 3 of DPS2 for Lots 8, 9 and 10 and therefore the restrictive retail floorspace covenants upon the land titles of these lots are no longer required.

It is recommended that Council:

- 1 *CONSENTS to the removal of the existing restrictive retail floorspace covenants upon the land titles of Lots 8 (No 1) Trappers Drive, Lot 9 (No 937) and Lot 10 (No 933) Whitfords Avenue Woodvale;*

- 2 *NOTES that the envisaged legal costs incurred to facilitate the removal of the existing restrictive floorspace covenants be shared equally between the landowners of Lots 8 (No 1) Trappers Drive, Lot 9 (No 937) and Lot 10 (No 933) Whitfords Avenue Woodvale.*

BACKGROUND

Suburb/Location: Woodvale Boulevard Centre, Corner Whitfords Avenue and Trappers Drive, Woodvale
Applicant: City of Joondalup
Owner: Various Landowners
Zoning: DPS: Commercial
MRS: Urban

Restrictive covenants were placed upon the certificate of title for the subject lots to ensure retail floorspace allocation was controlled when the land was first developed, approximately 10 years ago. The covenants were originally required to control retail floorspace allocation as the City's previous town planning scheme (TPS1) did not contain provisions relating to retail floorspace allocation at that time.

Amendment No 27 to DPS2 was initiated to include retail floorspace allocations to Lots 8, 9 & 10 within the Woodvale Shopping Centre. The amendment (CJ294–11/04 refers) was approved by the Minister for Planning and Infrastructure and the decision subsequently published in the Government Gazette on 1 April 2005. DPS2 now provides retail floorspace limits for Lots 8, 9 & 10.

DETAILS

Issues and options considered:

Lots 8, 9 and 10 have an existing restrictive covenant upon their land title that restricts retail floorspace to a specified amount. The restrictive covenants were placed upon the certificate of title for these lots to ensure retail floorspace allocation was controlled when the land was first developed.

Retail centres throughout the City are generally zoned either 'Commercial' or 'Centre'. Subclauses 3.7.2 and 3.11.4 of DPS2 relates to retail floorspace control and allocation within the 'Commercial' and 'Centre' zones respectively. Schedule 3 of DPS2 lists retail floorspace allocation for each retail centre throughout the City.

The old retail floorspace restriction applicable to each lot under the restrictive covenant, together with the new retail floorspace restriction for each of these lots under Schedule 3 of DPS2 as a result of gazettal of Amendment 27 are listed in the table below.

Lot No	Retail floorspace limitation under restrictive covenant (Old)	Retail floorspace limitation under Schedule 3 of DPS2 (New)
8	300m ²	600m ²
9	180m ²	540m ²
10	70m ²	300m ²

Advice was sought from the City's solicitors with respect to the likely costs incurred to have the restrictive covenants removed from Lots 8, 9 and 10. The City's solicitors advised that the legal process required to facilitate covenant removal is complex and as such, the likely professional fee incurred is approximately \$310 to \$410 for all three lots, together with a registration fee of \$79 for each lot.

Correspondence was sent to all three landowners advising them of the intention to simultaneously remove the restrictive covenants upon each of the three lots. The landowners were also advised of the above legal fees and were requested to agree to meet the shared costs. All three landowners responded in writing agreeing to the removal of the covenants and stating that they are prepared to meet the legal costs incurred to facilitate the covenant removal.

Link to Strategic Plan:

Objective 3.1 – To develop and maintain the City of Joondalup's assets and built environment.

Legislation – Statutory Provisions:

Not Applicable.

Risk Management considerations:

The removal of the restrictive covenants will ensure that there is no inconsistency between the covenants and DPS2.

Policy implications:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Consultation with the relevant land owners has been undertaken and all landowners support the removal of the restrictive covenant.

COMMENT

Appropriate retail floorspace restrictions and allocations are applied in the 'Commercial' and 'Centre' zones via subclauses 3.7.2 and 3.11.4 respectively, and within Schedule 3 of DPS2. Restrictive covenants are now generally not used to control retail floorspace.

Given the gazettal of Amendment 27, retail floorspace restrictions are now in place over Lots 8, 9 and 10 within Schedule 3 of DPS2.

The existing retail floorspace restrictive covenant recorded against the land title for Lots 8, 9 and 10 are therefore no longer required. The existing restrictive retail floorspace covenants upon Lots 8, 9 and 10 are now inconsistent with DPS2.

It is therefore recommended that Council consent to their removal.

ATTACHMENTS

Attachment 1 Aerial Site Plan

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Smith, SECONDED Cmr Anderson that Council:

- 1 CONSENTS to the removal of the existing restrictive retail floorspace covenants upon the land titles of Lots 8 (No 1) Trappers Drive, Lot 9 (No 937) and Lot 10 (No 933) Whitfords Avenue Woodvale;**
- 2 NOTES that the envisaged legal costs incurred to facilitate the removal of the existing restrictive floorspace covenants be shared equally between the landowners of Lots 8 (No 1) Trappers Drive, Lot 9 (No 937) and Lot 10 (No 933) Whitfords Avenue Woodvale.**

Cmr Smith 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: [Attach10brf020805.pdf](#)

CJ165 - 08/05 MONTHLY TOWN PLANNING DELEGATED AUTHORITY REPORT – JUNE 2005 - [07032]

WARD: All

**RESPONSIBLE
DIRECTOR:** Clayton Higham
Planning and Community Development

CJ050802_BRF.DOC:ITEM 13

PURPOSE

To provide an explanation of the town planning delegated authority report included in this agenda and to submit items of Delegated Authority to Council for noting.

EXECUTIVE SUMMARY

The provisions of clause 8.6 of the text to the District Planning Scheme No 2 allows Council to delegate all or some of its development control powers to those persons or committees identified in Schedule 6 of the Scheme text.

The purpose of delegation of certain powers by Council to staff is to facilitate timely processing of development applications and subdivision applications. The framework for the delegation of those powers is set out in resolutions adopted by Council and is reviewed generally on a yearly basis. All decisions made by staff, acting under delegated authority as permitted under the delegation notice, are reported to Council on a monthly basis.

The normal monthly report identifies the major development applications that have been determined under delegated authority. A second approval process exists which deals with requests for Council to exercise its discretion to vary an acceptable standard of the Residential Design Codes for a single house. This process is referred to as “R-Codes variation approval for single houses” (this was introduced by the 2002 R-Codes).

This report provides a list of the development applications determined by those staff members with delegated authority powers during June 2005 (see Attachment 1) and now include the codes variations referred to above.

The number of “development applications” determined for June 2005 (including Council and delegated decisions) and those applications dealt with as an “R-code variations for single houses” for the same period are shown below:

Approvals Determined Under Delegated Authority – Month Of June 2005		
Type of Approval	Number	Value (\$)
Development Applications	69	3,741,375
R-Code variations (Single Houses)	27	1,745,309
Total	96	5,486,684

There was only one development application determined by Council during this month and this project was valued at \$29,000,000. The number of development applications received in June 2005 was 75. This figure does not include any applications that may become the subject of the R-Code variation process.

BACKGROUND

The District Planning Scheme No 2 requires that delegation be reviewed annually, unless a greater or lesser period is specified by Council. The Joint Commissioners, at their meeting of 12 October 2004 considered and adopted the most recent Town Planning Delegation.

DETAILS

Issues and options considered:

Not Applicable.

Link to Strategic Plan:

The strategic plan includes a strategy to provide quality value-adding services with an outcome to provide efficient and effective service delivery. The use of a delegation notice allows staff to efficiently deal with many simple applications that have been received and allows the elected members to focus on strategic business direction for the Council, rather than day to day operational and statutory responsibilities.

City development is a key focus area of the City’s Strategic Plan. The proposals considered by staff acting under delegated authority relate closely to the objectives of providing for a growing and dynamic community.

The Council adopted the Delegation of Authority instrument after detailed consideration, in accordance with the Strategic Plan objective of providing a sustainable and accountable business.

The delegation is necessary due to the large volume of development applications received for development within the City. It is a key instrument in providing a range of services that are proactive, innovative and using best practice to meet organisational and community needs. This is also a strategy of the City's Strategic Plan.

Legislation – Statutory Provisions:

Clause 8.6 of the District Planning Scheme No 2 permits development control functions to be delegated to persons or Committees.

Risk Management considerations:

The delegation process includes detailed practices on reporting, checking and cross checking, supported by peer review in an effort to ensure decisions taken are lawful, proper and consistent.

Financial/Budget Implications:

Not Applicable.

Policy implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Consultation may be required by the provisions of the Residential Design Codes 2002, any relevant Town Planning Scheme Policy and/or the District Planning Scheme.

Of the 77 applications determined during the report summary period, consultation was undertaken for 47 of those applications.

All applications for an R-codes variation require the written support of the affected adjoining property owner before the application is submitted for determination by the Coordinator Planning Approvals. Should the R-codes variation consultation process result in an objection being received, then the matter is referred to the Director Planning and Community Development or the Manager, Approvals, Planning and Environmental Services, as set out in the notice of delegation.

COMMENT

Large local governments utilise levels of delegated authority as a basic business requirement in relation to Town Planning functions. The process allows determination times to be reasonably well accepted and also facilitates consistent decision-making in rudimentary development control matters. The process also allows the elected members to focus on strategic business direction for the Council, rather than day-to-day operational and statutory responsibilities.

Without such a mechanism, it would be exceptionally difficult for the Council to be properly informed to make decisions itself, regarding approximately 70-110 planning applications per month.

All proposals determined under delegated authority are assessed, checked, reported and crosschecked in accordance with relevant standards and codes.

The delegation notice itself outlines specific delegations to respective levels and the limits to those levels of determination. The delegation allows the Director Planning & Community Development and Manager Approvals, Planning & Environmental Services to implement aspects of the District Planning Scheme No 2 that relate to the determination of certain types of development applications, and to process subdivision applications.

The Coordinator Planning Approvals and Senior Planning Officers (Planning Approvals) have authority to approve development applications that are in compliance with the District Planning Scheme No 2 or with minor variations to the applicable standard.

In addition to the major development applications dealt with under delegated authority, the Residential Design Codes and the District Planning Scheme provisions require an applicant to seek Council's written approval to exercise its discretion to vary an Acceptable Standard of the Residential Design Codes for a development that relates to a single house or additions to a single house, such as patios, outbuildings, carports, garages, retaining walls, etc. As this type of written approval requires an exercise of discretion, they are required to be reported to Council in accordance with the notice of delegation.

Where a development does not require planning approval (complying development), the application is dealt with as a building licence only. Should a building licence application be received and it is identified that an R-Codes variation is required, then the applicant will be requested to seek the relevant approval.

ATTACHMENTS

Attachment 1 June 2005 Approvals – Development Applications
Attachment 2 June 2005 Approvals – R-code variations for Single House

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Fox, SECONDED Cmr Smith that Council NOTES the determinations made under Delegated Authority in relation to the applications described in Report CJ165-08/05 for the month of June 2005.

Cmr Anderson spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendices 11 and 11(a) refer

*To access this attachment on electronic document, click here: [Attach11brf020805.pdf](#)
[Attach11abrf020805.pdf](#)*

The Director Planning and Community Development, Mr Clayton Higham declared an interest that may affect his impartiality in Item CJ166-08/05 – Subdivision Referrals processed between 1 and 30 June 2005, as one of the subdivision applicants is known to Mr Higham.

CJ166 - 08/05 SUBDIVISION REFERRALS PROCESSED BETWEEN 1 AND 30 JUNE 2005 - [05961]

WARD: Marina, South, South Coastal, Whitfords and Pinnaroo

RESPONSIBLE DIRECTOR: Clayton Higham
Planning and Community Development

CJ050802_BRF.DOC:ITEM 14

PURPOSE

This report is to advise the Council of subdivision referrals received by the City for processing in the period 1-30 June 2005.

EXECUTIVE SUMMARY

Attachment 1 is a schedule of the Subdivision Referrals processed from 1–30 June 2005. Applications were dealt with in terms of the delegation adopted by the Council in October 2004.

BACKGROUND

Suburb/Location: Refer Attachment 1
Applicant: Refer Attachment 1
Owner: Refer Attachment 1
Zoning: **DPS:** Various
MRS: Various

DETAILS

Issues and options considered

Eight subdivision referrals were processed within the period. The average time taken to provide a response to the Western Australian Planning Commission was 24 days, which compares with the statutory timeframe of 30 working days. The subdivision applications processed enabled the potential creation of four (4) residential lots and two (2) strata residential lots. Two applications were not supported. These applications are as follows:

Ref: SU128323 – 2 Elbury Court, Kingsley

This application was not supported as the proposal does not conform to the requirements of the Residential Design Codes with respect to provision of minimum lot size for one of the two proposed lots.

Ref: SU522-05 – 28 Windsor Place, Kallaroo

This application was not supported as the proposal does not comply with the minimum and average lot size requirements for a single house under the Residential Design Codes.

Link to Strategic Plan:

City Development is a key focus area of the City's Strategic Plan. The proposals considered during the month relate closely to the objectives of providing for a growing and dynamic community.

Legislation – Statutory Provisions:

All proposals were assessed in accordance with relevant legislation and policies, and a recommendation made on the applications to the Western Australian Planning Commission.

Risk Management considerations:

The delegation process includes details practices on reporting, assessment, and checking to ensure recommendations are appropriate and consistent.

Financial/Budget Implications:

Not Applicable.

Policy implications:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

No applications were advertised for public comment for this month, as either the proposals complied with the relevant requirements, or were recommended for refusal due to non-compliance.

COMMENT

Not Applicable.

ATTACHMENTS

Attachment 1 Schedule of Subdivision Referrals

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Clough, **SECONDED** Cmr Fox that Council **NOTES** the action taken by the subdivision control unit in relation to the applications described in Report CJ166-08/05 for the month of June 2005.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 12 refers

To access this attachment on electronic document, click here: [Attach12brf020805.pdf](#)

CJ167 - 08/05 ARRANGEMENTS FOR THE HERITAGE COLLECTIONS ACCESS AND MANAGEMENT – CITY OF JOONDALUP AND CITY OF WANNEROO - [59011]

WARD: All

RESPONSIBLE DIRECTOR: Clayton Higham
Planning and Community Development

CJ050802_BRF.DOC:ITEM 15

PURPOSE

To consider a process for the ongoing sharing of the jointly owned heritage collections and the handover of the Sinagra and Kastoria Sister City memorabilia to the City of Wanneroo.

EXECUTIVE SUMMARY

Following the abolition of the former City of Wanneroo, the Council determined at a meeting on 7 December 1999 that the Heritage Collections would be jointly owned under certain arrangements.

The City of Joondalup would be charged with the care, control and maintenance of the local studies collection and that the City of Wanneroo would likewise be charged with the care, control and maintenance of the Artefact collection.

The decision of the Council on 7 December 1999 also supported the establishment of an advisory committee and it has been understood the makeup of the committee be of senior officers from both Cities with the responsibility of overseeing all aspects of the collections. The advisory committee was to be known as the “Heritage Collections Advisory Group”.

The recommended approach is to form an Officer Advisory group to oversee the day-to-day management of the collections under the umbrella of a deed of agreement.

It is recommended that Council:

1 *NOTES the establishment of a joint officer level Heritage Collections Advisory Group that will advise the CEO on:*

(a) *Policy relating to management of the collection;*

- (b) *Negotiation of possible solution where access arrangements cannot be agreed;*
 - (c) *Recommendations regarding the management and disposal of items that are jointly owned.*
- 2 *ENDORSES the development of a deed of arrangement between the City of Joondalup and City of Wanneroo that encompasses the terms of reference for the group and the principles for borrowing items from the jointly owned Heritage Collection;*
- 3 *AGREES to permanently deed the Kastoria and Sinagra Sister City items to the City of Wanneroo.*

BACKGROUND

Following the abolition of the former City of Wanneroo at 30 June 1998, both the City of Joondalup and City of Wanneroo Councils resolved on 7 December 1999 to:

- 1 *RECOGNISE that the Heritage Collections of the former City of Wanneroo, as described in Report C56-12/99 are a regional resource;*
- 2 *pursuant to Clause 8 of the Joondalup and Wanneroo Order 1998, DETERMINE that the Heritage Collections referred to in 1 above, be adjusted/transferred to the ownership of the City of Joondalup and the new City of Wanneroo as tenants in common in equal shares;*
- 3 *ENDORSE the framework for the care control and management of the Heritage Collections as outlined in Report C56-12/99;*
- 4 *SUPPORT the establishment of the Heritage Collections Advisory Group recommended within Report C56-12/99.*

From the report considered by both Councils at the 7 December 1999 meetings the following was agreed upon:

- The 'Heritage Collection' means the local studies collection together with the collections of memorabilia and artefacts.
- The Cities of Wanneroo and Joondalup agreed that the 'Local Studies Collection' includes memorabilia displayed by the former City of Wanneroo and now located at the City of Joondalup.
- The 'Artefacts' collection includes those artefacts held at various locations, including Gloucester Lodge, Cockman House and Buckingham House all of which are in the district of the new City of Wanneroo.

As a result of the decisions made on 7 December 1999 the City of Joondalup was charged with the care, control and maintenance of the local studies collection and the City of Wanneroo was charged with the care, control and maintenance of the Artefact collection.

Both Councils supported the establishment of an advisory committee of senior officers from both Cities to have the responsibility of overseeing all aspects of the collections. This advisory committee to be known as the "Heritage Collections Advisory Group" was to make recommendations on:

- Policy development
- Collection development
- Dispute resolution
- Acquisition standards
- Access arrangements between the two cities

The Heritage Collection Advisory Group was not formally established at that time. Following the split of the two Cities a dispute arose between the City of Joondalup and the City of Wanneroo over the custody of some items of memorabilia.

The Council at its meeting held on 27 May 2003 resolved:

“That in the spirit of cooperation, municipal and filial confraternity, the City of Joondalup hereby gifts all its rights, title and interest in the historically significant ornament known as the Wanneroo Mayoral Chain to the City of Wanneroo and be retained in perpetuity for the benefit of both municipalities in the spirit of the original determination of the Joint Commissioners.”

Following a number of meetings between officers it was agreed in 2004 to develop an officer advisory group and appropriate protocols for borrowing of items.

In a Council meeting dated 14 December 2004 the City of Wanneroo resolved the following:

That Council:

- 1 *AGREES to establish an officer level Heritage Collections Advisory Group that will advise the Councils on:*
 - (a) Policy drafting;*
 - (b) Negotiation of possible solution where access arrangements cannot be agreed;*
 - (c) Recommendations regarding the disposal of items that are jointly owned;*
- 2 *ENDORSES the Terms of Reference as per Attachment 2;*
- 3 *REQUESTS a loan from the Joint Heritage Collection as listed in Attachment 3 and the former Mayoral Chain of the old City of Wanneroo;*
- 4 *NOTES the Protocol for borrowing items from the jointly owned Heritage Collection as outlined in Attachment 1 to this report*
- 5 *APPOINTS BY ABSOLUTE MAJORITY the Chief Executive Officer and the City’s Heritage Officer to the Heritage Collections Advisory Group.*

A copy of the attachments referred to in the City of Wanneroo resolution is provided at Attachment 3.

DETAILS

Issues and options considered:

It is recognised that the safekeeping and availability of the joint Heritage Collection is of concern. To this end it is proposed that a Joint Heritage Advisory Group be established to advise on shared access protocols. This group would comprise two representatives from each City and would be entirely managed at an officer level.

The Joint Heritage Collection Advisory Group would only consider those items jointly owned i.e. acquired prior to the split of the old City of Wanneroo at 30 June 1998.

The Objectives for the Group are to:

- Assist in the development of policies in relation to the access arrangements between the Cities of Wanneroo and Joondalup pertaining to the jointly owned heritage collections. Any decision on policy development relating to the Heritage Collection will be made by the Council.
- Negotiate solutions where access arrangements between the two cities cannot be agreed.
- Decide on permanent housing arrangements for jointly owned items.
- Make recommendations on the management and disposal of items that are jointly owned.

It is suggested that a deed of arrangement be established between the City of Joondalup and City of Wanneroo that would encompass the Terms of Reference for the Heritage Collections Advisory Group (Attachment 1) and the principles for loaning of items (Attachment 2 refers). These include:

- Joint ownership of the items by both Cities to be acknowledged where appropriate.
- The safety, protection and preservation of items will govern access.
- A loan form, which is signed by borrower, will contain conditions governing display conditions, length of loan, insurance and movement of items. All costs incurred will be the responsibility of the borrowing City.

The former City of Wanneroo established Sister City relationships with the City of Sinagra in 1987 and the City of Kastoria in 1992. The following items relevant to the Sister City relationship have been reviewed with the City of Joondalup:

Sinagra Picture (Medieval Castle) gift to City Of Wanneroo	Mb106
City Of Wanneroo Copy Of Presentation Certificate To Sinagra 1987	Mb108
Sister City Declaration For Sinagra And Wanneroo, One In Italian, One In English	Mb110
Sister City Agreement between Kastoria And Wanneroo - 3 items (1 Agreement in English, 1 in Greek and a presentation certificate)	Mb111
Plaque in Greek - Kastoria presented to City of Wanneroo June 1991	Mb112
Kastoria Wanneroo Sister City Kastoria Plaque	Mb115
Greek Costume from Kastoria	Mb124
Greek Costume (Male)	Mb125
Greek Costume from Kozanis	Mb126
Photo Album - Sister City Formalisation – Wanneroo and Kastoria 1992	Mb134
Wooden Plaque - Wanneroo & Kastoria Sister City	Mb146

A list of all the items following the split of the former City of Wanneroo that are held by the City of Joondalup and the City of Wanneroo is provided at Attachment 4.

The remainder of the collection and all other items will remain jointly owned and subject to the normal loan provisions as devised by the group.

Link to Strategic Plan:

1.1.3 Support whole of life learning and creation of knowledge opportunities.

Legislation – Statutory Provisions:

Not Applicable.

Risk Management considerations:

The collection would be at risk of permanent damage and could be lost if not managed appropriately.

Financial/Budget Implications:

Not Applicable.

Policy implications:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

This report will ensure greater public access to the collections and is principally about access arrangements.

COMMENT

Over the years there has been a perceived issue of access to items within the collections. This at times has been confused with ownership. It is considered important to both Cities that this situation be resolved.

Discussions between officers of the two Cities have been ongoing in order to clarify issues and identify possible protocols for future shared access to the heritage items of interest to both Cities.

The purpose of the proposed Heritage Collections Advisory Group is to facilitate appropriate access arrangements for the jointly owned collection.

Collection development and acquisition standards presently apply to new items in either City's collections and are included in the Terms of Reference for the proposed Group.

The terms of reference are different to those endorsed by the City of Wanneroo. The City of Wanneroo Council has indicated a preference for a formal Committee that reports to Council. However, the City of Joondalup recommends that the Group should be an Officer Reference Group reporting to the CEOs of both Cities.

The principles in attachment 2 also vary slightly to those endorsed by the City of Wanneroo. The main areas of difference are in the media and recognition section of the principles. The City of Joondalup recommends that the following is an important aspect of having jointly owned resources:

- Increased recognition and appropriate badging of jointly owned resources both held within buildings and/or on individual display;
- Any Media referring to the relevant collections and/or items should state that they are a jointly owned resource.

The City of Wanneroo has previously requested the loan of the Sinagra and Kastoria Sister City items as per the City of Wanneroo Council resolutions dated 14 December 2004. The City acknowledges that these items are specifically relevant to the City of Wanneroo and officers recommend that these items be permanently deeded rather than loaned to the City of Wanneroo. This recommendation is based on the fact that the former City of Wanneroo has established links with these two Sister Cities. Given the fact that the new City of Wanneroo has maintained relationships, it is appropriate that the associated heritage collection be deeded to the City of Wanneroo.

The matter relating to the access of the heritage collection of the former City of Wanneroo has been subject to much discussion for some time. In the spirit of cooperation and goodwill, the establishment of the reference group will be a substantial step forward and the start of a new era in progressing the matters to a satisfactory outcome.

ATTACHMENTS

Attachment 1	Terms of reference for Heritage Collections Advisory Group
Attachment 2	Principles for loaning of items
Attachment 3	Attachments from the decision of the City of Wanneroo of 14 December 2004
Attachment 4	Memorabilia lists

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That Council:

- 1 NOTES the establishment of an officer level Heritage Collections Advisory Group that will advise the CEO on:
 - (a) Policy relating to management of the collection;
 - (b) Negotiation of possible solution where access arrangements cannot be agreed;
 - (c) Recommendations regarding the management and disposal of items that are jointly owned;

- 2 ENDORSES the development of a deed of arrangement between the City of Joondalup and City of Wanneroo that encompasses the terms of reference for the group and the principles for borrowing items from the jointly owned Heritage Collection;
- 3 AGREES to permanently deed the Kastoria and Sinagra Sister City items to the City of Wanneroo.

MOVED Cmr Smith, SECONDED Cmr Anderson that:

- 1 **Council NOTES the establishment of an officer level Heritage Collections Advisory Group that will advise the CEO on:**
 - (a) **Policy relating to management of the collection;**
 - (b) **Negotiation of possible solution where access arrangements cannot be agreed;**
 - (c) **Recommendations regarding the management and disposal of items that are jointly owned;**
- 2 **Council ENDORSES the development of a deed of arrangement between the City of Joondalup and City of Wanneroo that encompasses the terms of reference for the group and the principles for borrowing items from the jointly owned Heritage Collection;**
- 3 **with the concurrence of the City of Wanneroo, Council transfers the 11 items relating to Kastoria and Sinagra listed in Report CJ167-08/05 from the Local Studies Collection to the Artefacts Collection;**
- 4 **Council NOTES the resolution of the City of Wanneroo of 14 December 2004, which refers to the loan of the Mayoral Chain and seeks the agreement of the City of Wanneroo that as part of the Deed of Arrangement, the position of the Mayoral Chain be formalised such that it forms part of the Artefacts Collection.**

Discussion ensued.

With the approval of the meeting, the motion moved by Cmr Smith, seconded by Cmr Anderson was **WITHDRAWN**

MOVED Cmr Smith, SECONDED Cmr Anderson that:

- 1 **Council NOTES the establishment of an officer level Heritage Collections Advisory Group that will advise the CEO on:**
 - (a) **Policy relating to management of the collection;**
 - (b) **Negotiation of possible solution where access arrangements cannot be agreed;**
 - (c) **Recommendations regarding the management and disposal of items that are jointly owned;**

- 2 Council **ENDORSES** the development of a deed of arrangement between the City of Joondalup and City of Wanneroo that encompasses the terms of reference for the group and the principles for borrowing items from the jointly owned Heritage Collection;
- 3 in recognition of the shared history and heritage of the City of Wanneroo and City of Joondalup, with the concurrence of the City of Wanneroo, Council transfers the 11 items relating to Kastoria and Sinagra listed in Report CJ167-08/05 from the Local Studies Collection to the Artefacts Collection;
- 4 as part of the Deed of Arrangement, arrangements for the Mayoral Chain are clarified.

Discussion ensued. Cmr Fox stated that this issue relates to the joint history of both the Cities of Wanneroo and Joondalup and should be preserved as such for the benefit of all residents of the City.

Cmr Clough believed the Motion recognises the City of Wanneroo has a stronger claim to the items in question than the City of Joondalup, but also identifies these are part of the history of Joondalup and forms part of a process where both Cities can enjoy the use of the collections.

The Chief Executive Officer referred to comments made during debate by Commissioners and suggested it may be appropriate with the approval of the Mover and Seconder to amend Point 3 of the Motion as follows:

“That Council in recognition of the shared history and heritage of the City of Wanneroo and City of Joondalup”

Cmr Smith as the Mover and Cmr Anderson as the Seconder agreed to this change.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendix 13 refers

To access this attachment on electronic document, click here: [Attach13agn090805.pdf](#)

REPORT OF THE CHIEF EXECUTIVE OFFICER

The Director Planning and Community Development, Mr Clayton Higham, declared a financial interest in Item CJ168-08/05 – Report on Funding to Date to the City of Joondalup Pursuant to Policy 2.2.8 – Legal Representation for Elected Members and Employees as he is an applicant for funding.

The Director, Corporate Services and Resource Manager, Mr Peter Schneider, declared a financial interest in Item CJ168-08/05 – Report on Funding to Date to the City of Joondalup Pursuant to Policy 2.2.8 – Legal Representation for Elected Members and Employees due to his involvement in the Panel Inquiry.

The Manager Marketing Communications and Council Support, Mr Mike Smith, declared a financial interest in Item CJ168-08/05 - Report on Funding to Date to the City of Joondalup Pursuant to Policy 2.2.8 – Legal Representation for Elected Members and Employees as he is an applicant for funding.

Director Planning and Community Development, Director, Corporate Services and Resource Manager and Manager Marketing Communications and Council Support left the Chamber, the time being 1338 hrs.

CJ168 - 08/05 REPORT ON FUNDING TO DATE TO THE CITY OF JOONDALUP PURSUANT TO POLICY 2.2.8 – LEGAL REPRESENTATION FOR ELECTED MEMBERS AND EMPLOYEES - [72559] [01173] [13562]

WARD: All

RESPONSIBLE DIRECTOR: Garry Hunt
Chief Executive Officer

PURPOSE

For the Council to consider the funding to date made by the City of Joondalup in relation to legal expense applications that have been made by suspended and former elected members and current and former employees of the City of Joondalup pursuant to *Policy 2.2.8 – Legal Representation for Elected Members and Employees*.

EXECUTIVE SUMMARY

The report discusses the funding applications pursuant to *Policy 2.2.8 – Legal Representation for Elected Members and Employees* that have been approved to date by the Council with regard to the Inquiry into the City of Joondalup. The report also discusses outstanding matters that need to be addressed by the Council in relation to the policy and the possible courses of action to be taken.

BACKGROUND

At the Council meeting held on 29 June 2004, the Council adopted *Policy 2.2.8 – Legal Representation for Elected Members and Employees*.

The City has received a number of applications in relation to legal expenses pursuant to the Policy. The total amount of funding **approved** to date under the Policy is \$80,000.

The City has recently received additional applications from two suspended elected members for further assistance under the Policy that have yet to be considered. These are for an additional \$2,500 each.

DETAILS

1. *Policy 2.2.8*

The Council at the City of Joondalup adopted Policy 2.2.8 Legal Representation for Elected Members and Employees at their meeting held on 29 June 2004. (A copy of this policy is attached to this document and marked Attachment 1.)

The policy formed part of the Policy Manual Review that began with the establishment of the Policy Manual Review Committee in July 2003. At its meeting dated 26 August 2003, the Council considered the Committee review of the policy manual with regard to section 2, of which Policy 2.2.8 formed part. Council resolved at that meeting that Policy 2.2.8 be withdrawn and reviewed at a later date following legal advice. The policy was reviewed, by assessing it against similar policies from interstate and other local governments. The Department of Local Government and Regional Development was also consulted and provided a copy of a draft policy that it recommended local governments adopt. Council were advised that there were relatively few differences between the policy and the DLGRD document.

It was expected at the time of the policy being adopted that the City would receive a number of applications for legal representation. It was considered pertinent that the City have in place a comprehensive policy to facilitate the effective management of such requests. At the time of the adoption of the policy in June 2004 the City was in receipt of a summons to produce documents before the Inquiry.

2. *Applications for Funding for Legal Expenses Pursuant to Policy 2.2.8*

(a) *Meeting of the Council held on 20 July 2004*

At its meeting held on 20 July 2004, the Council considered the applications for financial assistance in relation to legal expenses from seven suspended elected members and one former councillor. These being suspended councillors Paul Kimber, Carol Mackintosh, Michael O'Brien, Louis Prospero, Allison Walker, Michael Caiacob, Sue Hart, and former councillor Andrew Patterson. An application from Mr Denis Smith was also received. The administration recommendation was to approve the applications of the suspended elected members but not to approve Mr Smith's application. The Council subsequently amended this resolution and all nine applications were approved. The total sum granted was up to a maximum of \$5,000 per applicant.

In reaching its recommendation in relation to the applicants, the Council required each applicant to provide a signed statement that he or she had read the terms of the policy, acknowledged that any approval was conditional on the repayment provisions of clause 7 and any other conditions to which the approval was subject; and each applicant made an undertaking to repay to the City any legal representation costs in accordance with the provisions of clause 7.

(b) *Meeting of the Council held on 31 August 2004*

At its meeting held on 31 August 2004, the Council approved an application for funding assistance before the Inquiry made by the Manager Human Resources, Mr Mark Loader. The amount approved was up to a maximum of \$5,000.

On 16 March 2005, Mr Loader formally withdrew his application for assistance under the Policy in favour of legal representation provided by McLeods in accordance with the resolution made by the Council at their meeting dated 10 September 2004.

(c) *Meeting of the Council held on 10 September 2004*

Throughout the early part of the Inquiry concern was raised over whether or not the City of Joondalup could have standing before the Inquiry as an entity and have interests that could be legally represented. The matter was finally determined at the meeting of the Council held on 10 September 2004. At that meeting the Council resolved that while the City would not be legally represented the City's employees would be. The resolution stated, that –

- 1 *the Joint Commissioners DETERMINE that, notwithstanding Policy 2.2.8 relating to legal representation of elected members and employees in recognition of the special nature of an Inquiry and the duty that the City has to current employees, the City undertakes to provide legal assistance for current employees to the extent that they have acted within the scope of their functions and duties;*
- 2 *the legal assistance in 1 above is expected to be provided for all employees through the services of one law firm and extends to appearing on behalf of the City at the Inquiry to the extent necessary to assist employees with their evidence if this is necessary and if the Presiding Member of the Inquiry gives permission for this to occur;*
- 3 *the legal assistance in 1 above is only to be accessed after an employee has signed a declaration to the effect that:*
 - (a) *he or she has acted in good faith and has not acted unlawfully or in a way that constitutes improper conduct in relation to matters that are the subject of the terms of reference of the Inquiry and;*
 - (b) *that he or she is aware that the legal assistance will be terminated if it becomes apparent to the Lawyer appointed by the City that he or she has acted improperly outside the scope of their proper functions and duties;*
- 4 *in addition to the legal assistance provided in 1 above, employees continue to have access to Policy 2.2.8;*
- 5 *the Human Resources Manager be advised of this determination and provided with an opportunity to withdraw (in writing) his previous application under the Policy if he wishes to do so;*
- 6 *the Chief Executive Officer be requested to arrange for McLeod's to undertake to provide the legal assistance in 1 above and that this is advised to Counsel Assisting the Inquiry;*
- 7 *the arrangements and conditions applying to legal assistance to employees is advised to Counsel Assisting the Inquiry with the request that Council Assisting reviews the decision contained in the letter at Attachment 1 to JSC32-09/04 that the officers are not capable of being jointly represented;*
- 8 *in addition, the co-operation of the Inquiry is sought so that staff can be advised in advance, where this is possible, if questioning is anticipated to relate to the possibility that staff have acted improperly outside the scope of their proper functions and duties so that the staff have the opportunity to make alternative arrangements.*

McLeods Solicitors were appointed to represent those staff called to give evidence before the Inquiry on the proviso that the employee had acted in good faith and had not acted unlawfully or in a way that constituted improper conduct in relation to matters that would be the subject of the terms of reference of the Inquiry. The legal assistance provided under this resolution would be terminated if it became apparent to McLeods that the employee had acted improperly or outside the scope of their proper functions and duties.

The resolution did not preclude an employee from seeking assistance pursuant to Policy 2.2.8 or under the City's Councillors and Officers Elite Liability Insurance Policy.

(d) Meeting of the Council held on 21 September 2004

At its meeting of 21 September 2004, the Council were required to consider the applications of Cr Tim Brewer (suspended) and a former employee of the City of Joondalup, Ms Monica Juricev. In each case, the Council approved an amount up to \$5,000 per applicant pursuant to the terms of the Policy and subject to the same conditions as previous applicants.

(e) Meeting of the Council held on 12 October 2004

The Council at their meeting of 12 October were required to consider subsequent applications for further funding pursuant to Policy 2.2.8 in relation to three suspended elected members, Cr Carol Mackintosh (suspended), Cr Michael O'Brien (suspended) and Cr Paul Kimber (suspended). In each case, the Council resolved to grant an additional \$2,500 subject to the same conditions in relation to clause 7 of the Policy.

(f) Meeting of the Council held on 14 December 2004

On 14 December 2004, the Council considered two applications from the Manager Audit and Executive Services, Mr Kevin Robinson, and the Acting Chief Executive Officer, Mr Clayton Higham. These two officers had been able to access advice from McLeods in accordance with the Council's resolution of 10 September 2005. However, Mr Robinson expressed concern that there may be a conflict of interest between his interest and that of other employees, and desired to appoint his own legal representation before the Inquiry. Mr Higham also held the view that it may be necessary to appoint an alternative legal representative to McLeods to represent him before the Inquiry, pending the outcome of his insurance claim. The Council resolved to approve an amount up to \$5,000 per applicant.

At this meeting, the Council were also required to consider applications for additional funding from three suspended elected members. Cr Carol Mackintosh (suspended) requested an additional \$7,457.43, Cr Michael O'Brien (suspended) an additional \$7,447.43, and Cr Paul Kimber (suspended) an additional \$2,392.42.

The Council resolved that consideration of the requests for assistance for legal funding made by:

- 1 *Cr Mackintosh (suspended) for the Inquiry into the City of Joondalup for the additional amount of \$7,457.43;*
- 2 *Cr Kimber (suspended) for the Inquiry into the City of Joondalup for the additional amount of \$2,392.42;*

- 3 *Cr O'Brien (suspended) for the Inquiry into the City of Joondalup for the additional amount of \$7,447.43;*

be DEFERRED until the meeting of Joint Commissioners to be held on 22 February 2005.

- (g) Meeting of the Council held on 22 February 2005*

An application for additional funding for \$2,500 was received from Cr Allison Walker (suspended) dated 9 February 2005. The Council approved the application upon the same conditions as her previous application.

The Council were also required to consider an application made by Mr Michael Smith, Manager Marketing, Communications and Council Support for funding pursuant to Policy 2.2.8. At that meeting, the Council resolved that they –

- 4 *DEFER the application from Mr Michael Smith to allow the Chief Executive Officer to:*
- (a) provide advice to the Commissioners on how access to this policy impacts on officers' access to the City's legal representative;*
- (b) check that the application provided is complete in all respects.*

Mr Michael Smith has subsequently withdrawn his application for funding, as he comes within the terms of the Council's decision of 10 September 2004.

In a separate report, the Council were also required to reconsider the applications for additional funding from three suspended councillors – Cr Carol Mackintosh (suspended) (\$7,457.43), Cr Michael O'Brien (suspended) (\$7,447.43) and Cr Paul Kimber (suspended) (\$2,392.42).

The Council resolved that Council DEFERS the matter relating to the request for funding assistance pursuant to Policy 2.2.8 – Legal Representation for Elected Members and Employees – Elected Members (Suspended being Cr O'Brien, Cr Mackintosh and Cr Kimber) to a Special Meeting of Council with the purpose of the meeting to consider the following specific matters:

- 1 *the provision of a form of security for any further funding provided to suspended elected members by the Council;*
- 2 *an indication from suspended elected members pertaining to the City's Insurance Policy including:*
- (a) the level of access currently existing under the policy;*
- (b) the dates the insurance policy was accessed;*
- (c) any process undertaken to seek or approval being granted for retrospective approval for the payment of legal costs incurred;*
- 3 *an indication as to whether or not Council should set a limit on the amount of funding to be provided to suspended elected members, pending the finalisation of the Inquiry.*

(h) *Meeting of the Council held on 15 March 2005*

Three items were listed for consideration by the Council, all of these were withdrawn from the agenda by the Chief Executive Officer who formally advised the Council that he would not proceed with these items at this time.

These items dealt with:

1. The requests for additional funding from Cr Carol Mackintosh (suspended) for the amount of \$7,457.43, Cr Paul Kimber (suspended) for the amount of \$2,392.42 and Cr Michael O'Brien (suspended) for the amount of \$7,447.43.
2. The request for additional funding from Cr Sue Hart (suspended) for the amount of \$2,500.
3. The request for funding from the Manager Marketing, Communications and Council Support, Mr Michael Smith for the amount of \$5,000.

3. *Outstanding Matters*

(a) *Crs Mackintosh, O'Brien and Kimber (suspended)*

As a result of the items having been withdrawn from the agenda, the matters from the meeting of 22 February relating to the applications for funding by Mr Michael Smith, Cr Carol Mackintosh (suspended), Cr Mike O'Brien (suspended), and Cr Paul Kimber (suspended) remain outstanding. With regard to the three suspended elected members, on 4 September 2004, the City advised them that given the fact that they had made an application under the policy of insurance that was conditionally accepted by the insurer the City would no longer progress their application nor be responsible for the payment of any further invoices. The City has received no further advice from these individuals.

(b) *Application by Cr Hart (suspended)*

An application for funding of \$5,000 was approved by Council on 20 July 2004 for Cr Hart (suspended).

On 21 February 2005, the City received an application for additional funding for legal representation from Cr Hart (suspended) for the amount of \$2,500. This relates to expenses for legal advice and representation by her appointed legal representatives, Phillips Fox.

Cr Hart (suspended) has attended the hearing as a witness during November 2004.

Cr Hart's (suspended) application was placed on the agenda for the 15 March meeting of the Council. It was formally removed from the agenda and remained outstanding until now. Unlike Crs Mackintosh, O'Brien and Kimber (suspended), Cr Hart (suspended) has not made a claim under the City's Councillors and Officers Liability Insurance Policy and has made only one prior application for legal assistance pursuant to Policy 2.2.8.

Cr Sue Hart's (suspended) application meets the requirements of clause 3.2 and 3.3(a) of Policy 2.2.8. In assessing the application, the first payment criterion has been met namely that the legal representation costs relate to a matter that arises from the performance of Cr Hart's (suspended) function as an elected member of the City.

The second criterion requires that the costs be in respect of legal proceedings. The Inquiry comes within the application of Policy 2.2.8.

The third requirement states that the elected member must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct. As mentioned in previous reports to Council, the assessment of this criterion is difficult as it deals with issues that will be addressed as part of the Inquiry process. For the purposes of assessing this criterion, Cr Hart (suspended) has given an undertaking that she acted in good faith at all times.

Under clause 4 of Policy 2.2.8, an elected member or employee may make a further application to the Council in respect of the same matter. The application for additional funding therefore comes within the parameters of Policy 2.2.8. As the City has previously awarded an additional \$2,500 to Crs Mackintosh, O'Brien and Kimber (suspended) under Policy 2.2.8, it is appropriate on the basis of equity that the Council grant the application for legal representation under Policy 2.2.8 to Cr Hart (suspended).

(c) Application by Cr Caiacob (suspended)

On 8 June 2005, Cr Caiacob (suspended) made an application for additional funding for an undisclosed amount. This request for funding represents advice and representation by his appointed legal representatives. Cr Caiacob (suspended) has not made a claim under the City's Councillors and Officers Liability Insurance Policy and this present application would be his second pursuant to Policy 2.2.8.

Cr Caiacob (suspended) has attended the hearing as a witness on two days during November 2004 as well as a day in May 2005 for cross-examination by other parties.

Cr Michael Caiacob's (suspended) application meets the requirements of clause 3.2 and 3.3(a) of Policy 2.2.8. In assessing the application, the first payment criterion has been met namely that the legal representation costs relate to a matter that arises from the performance of Cr Caiacob's (suspended) function as an elected member of the City.

The second criterion requires that the costs be in respect of legal proceedings. The Inquiry comes within the application of Policy 2.2.8.

The third requirement states that the elected member must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct. As mentioned in previous reports to Council, the assessment of this criterion is difficult as it deals with issues that will be addressed as part of the Inquiry process. For the purposes of assessing this criterion, Cr Caiacob (suspended) has given an undertaking that he acted in good faith at all times.

Under clause 4 of Policy 2.2.8, an elected member or employee may make a further application to the Council in respect of the same matter. The application for additional funding therefore comes within the parameters of Policy 2.2.8. As the City has previously awarded an additional \$2,500 to Crs Mackintosh, O'Brien and Kimber (suspended) under Policy 2.2.8, it is appropriate on the basis of equity that the Council grant the application for legal representation under Policy 2.2.8 to Cr Caiacob (suspended).

(d) Application by Mr Michael Smith

An application was received on 5 January 2005 for funding for legal representation from Mr Michael Smith. As mentioned consideration of Mr Smith's application was formally withdrawn from the agenda of 15 March 2005 by the CEO and since that date Mr Smith has subsequently withdrawn his application.

(e) *Application by Mr Mark Loader and Mr Clayton Higham*

An outstanding issue in relation to legal expenses has been the position of Mr Loader's and Mr Higham's claims under Policy 2.2.8 and the subsequent entitlement under the policy of insurance. The suspended and former elected members and Mr Robinson and Mr Denis Smith who have been granted financial assistance pursuant to Policy 2.2.8 and who have subsequently availed themselves of the Policy of Insurance have all engaged legal representatives separate from that provided by the City. In the case of Mr Loader and Mr Higham, they have been provided with legal representation by the City in the form of McLeods, have both made applications and been approved legal assistance under Policy 2.2.8, and have made subsequent submissions to the City's insurer that have been conditionally accepted. The City has paid the costs of legal representation for Mr Loader from July 2004 to 13 December 2004 as per the Council resolution of 10 September 2004, with all costs after this date being forwarded to ACE Ltd for payment under the City's Councillors and Officers Liability Insurance Policy. This determination has also applied to Mr Higham.

Neither Mr Loader nor Mr Higham have made a claim to the \$5,000 approved by the Council under Policy 2.2.8. Mr Loader and Mr Higham have both withdrawn their applications pursuant to Policy 2.2.8.

Advice received from Municipal Insurance Broking Services has indicated that due to the City having met the first \$5,000 in legal representation costs for Mr Loader and Mr Higham, the \$5,000 excess payment would not be required.

4. *Policy of Insurance*

In accordance with subclause 5.3 of the Policy, suspended and former elected members and employees, current and former, may be able to apply under the City's Councillors and Officers Elite Liability Insurance Policy.

In an effort to clarify the requirements of the insurance policy for elected members and employees a protocol was developed between the City's legal advisors Minter Ellison and the legal representatives of the insurer.

In order to invoke the policy, individuals must satisfy the requirements of clause 3(b). This clause states that the Insurer will pay on behalf of the Insured on an ongoing basis all reasonable legal fees, costs and expenses incurred in being legally represented with respect to any legally compellable attendance at any Investigation. However, it must be satisfied that

–

- 1 The Investigation involves an allegation that the Insured committed a wrongful act;
- 2 The allegation is first made against the Insured during the Policy Period;
- 3 Such legal fees, costs and expenses are incurred within the written consent of ACE, such consent not to be unreasonably withheld;
- 4 The extension does not cover any fines or penalties imposed by law which are deemed uninsurable under the law;
- 5 The extension does not cover wages, salaries or other remuneration of the Insured or of any employee of the Company;
- 6 Such advanced payments by ACE shall be repaid to ACE in the event that the Insured shall not be entitled to payment of any loss or receipt of any benefit under the Policy.

From correspondence with ACE Asia Pacific the Inquiry Panel comes within the terms of an 'Investigation' for the purpose of clause 3(b) of the Policy; the Insured includes current and former Councillors, Commissioners and Employees of the City; and an allegation could be written, oral, express or implied, as long as the Panel Inquiry involves an allegation that the Insured committed a wrongful act.

A number of suspended elected members and three current employees have made a submission pursuant to the City's insurance policy. The City has been notified that suspended elected members Mr Paul Kimber, Mrs Carol Macintosh, and Mr Michael O'Brien, current employees Mr Mark Loader, Mr Kevin Robinson, and Mr Clayton Higham have all made submissions.

Each of the suspended elected members and current employees mentioned above has been advised that their applications under the City's Officer and Councillor Insurance Policy have been conditionally accepted. The policy covers the period from 30 June 2002 to 30 June 2005, has a limit of indemnity of \$2 million (per claim and in the aggregate) and a costs inclusive excess of \$5,000 per claim.

The indemnity to each applicant is extended pursuant to Extension 3(b) of the Policy subject to the terms and conditions of the Policy and on the facts and circumstances presently known. The grant is subject to the following standard conditions. (Please note that this list of conditions is not exhaustive and that some applicants have been subject to other specific requirements) :

1. The itemised accounts are sent to ACE within a week of being rendered by the lawyer to the Insured.
2. ACE is at liberty to direct the Insured to query any lawyer's accounts and to ask the lawyer for any accounts to be faxed.
3. ACE reserves the right to ask for funds advanced to be repaid by the Insured if:
 - 3.1 it turns out that the Inquiry does not involve an allegation that the Insured committed a Wrongful Act; or
 - 3.2 the Wrongful Act was not committed in the Insured's capacity as an Insured (that is, acting properly in his or her capacity as a Councillor or an employee); or
 - 3.3 the allegation was first made against the Insured before 30 June 2002.

The indemnity provided in respect of the suspended and former Councillors and current and former employees has the potential to reduce the City's exposure to significant legal costs associated with legal representation before the Inquiry.

The City is not able to provide exact figures as to the number of individuals who have made a submission under the Insurance Policy or the amount that the insurance company has underwritten to date.

5. *Representation of the City's Employees by McLeods in Accordance with the Council Decision of 10 September 2004*

As mentioned above, the Council at their meeting of 10 September 2004 resolved that McLeods be appointed to represent the interests of the City's staff called before the Inquiry. This representation was conditional. To date, the majority of staff called to give evidence before the Inquiry have availed themselves of this representation. They include, Mr Michael Smith, Mr Laurie Brennan, Ms Helen Hill, Ms Hazel Yarranton, and Mr Peter Schneider.

Mr Mark Loader and Mr Clayton Higham initially came within the terms of the Council's resolution of 10 September 2004, however, both have subsequently made submissions under the City's policy of insurance.

6. Policy 2.2.8 – Total Amount Granted to Date

The City has approved 18 formal applications for legal funding pursuant to Policy 2.2.8. Of these 18 applications 14 applications were for an initial \$5,000 and a further 4 applications were for additional funding of \$2,500 per applicant. The total therefore is \$80,000 that has been allocated to applications under Policy 2.2.8. However, it should be noted that Mr Mark Loader formally withdrew his application pursuant to Policy 2.2.8, on 16 March 2005. Mr Clayton Higham formally withdrew his application pursuant to Policy 2.2.8 on 22 July 2005.

A summary matrix of the applicants, date of grant, and additional funding applications is attached to this report and marked Attachment 2. It should be noted that while \$80,000 has been approved in applications this does not represent the costs actually paid. For example, a former employee of the City who made an application pursuant to Policy 2.2.8 has costs to date that amount to less than \$2,000. The total costs to the City of this funding will be reported on once the findings of the McIntyre Inquiry has been handed down as it will only be then that final costs may be quantified.

Link to Strategic Plan:

The grant of funding pursuant to Policy 2.2.8 affects the Key Focus Area of Organisational Development as it significantly reflects on the City's ability to maintain good leadership by ensuring that the duty of care the City owes to its employees and elected representatives is adequately discharged, whilst also maintaining that the City act in a commercially viable manner and within a corporate framework that ensures efficient service delivery.

Legislation – Statutory Provisions:

The Policy applies to the Inquiry, the document expressly stating under the definition of 'Legal Proceedings' that these may be civil, criminal or investigative (including an inquiry under any written law). This reference to any written law applies equally to the creation of inquiry bodies made pursuant to the *Local Government Act 1995* and the *Royal Commissions Act 1968*.

Risk Management considerations:

Failure to adequately address the issues relating to the funding of legal representation may lead to the City's organisation suffering loss of corporate credibility and reputation within the community.

Financial Implications:

An amount of \$500,000 was allocated in the 2004/2005 Budget to meet the expenses associated with the Inquiry. To date \$80,000 has already been approved by the Council in response to applications for legal funding. In 2005/2006 an amount of \$280,000 was carried forward to meet the costs to the City of the Inquiry. A separate report that deals with the costs to the City of the Inquiry will be submitted to Council after the McIntyre Inquiry has handed down its findings.

Policy implications:

Policy 2.2.8 – Legal Representation for Elected Members and Employees.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Not Applicable.

ATTACHMENTS

Attachment 1	Policy 2.2.8 – Legal Representation for Elected Members and Employees
Attachment 2	Summary Matrix of costs pursuant to Policy 2.2.8

VOTING REQUIREMENTS

Simple Majority

Cmr Fox left the Chamber, the time being 1339 hrs.

OFFICER'S RECOMMENDATION: That Council:

- 1 in accordance with *Policy 2.2.8 – Legal Representation for Elected Members and Employees* APPROVES the request for assistance for legal funding made by:
 - (a) Cr Michael Caiacob (suspended) for the Inquiry into the City of Joondalup for the additional amount of \$2,500;
 - (b) Cr Sue Hart (suspended) for the Inquiry into the City of Joondalup for the additional amount of \$2,500;
- 2 NOTES that funding in 1 above is conditional on Cr Caiacob (suspended) and Cr Hart (suspended) in accordance with clause 3.3(a), (b) and (c) of Policy 2.2.8 supplying to the City a signed statement that they:
 - (a) have read, and understood, the terms of this Policy;
 - (b) acknowledge that any approval of Legal Representation Costs is conditional on the repayment provisions of clause 7 and any other conditions to which the approval is subject;
 - (c) undertake to repay to the City any Legal Representation Costs in accordance with the provisions of clause 7;

- 3 CHARGES the expenditure in 1 above to the City of Joondalup Inquiry Account;
- 4 NOTES no further action is required to in relation to the requests for funding of Cr Carol Mackintosh (suspended), Cr Paul Kimber (suspended), Cr Michael O'Brien (suspended), due to these costs being met by the City's Officers and Councillors Liability Insurance Policy;
- 5 NOTES that a further report be prepared by Administration at a later date that quantifies the legal representation costs to the City. This report will not be able to be completed until the McIntyre Inquiry hands down its final report.

Chief Executive Officer gave an update on the status of requests seeking legal funding.

Discussion ensued.

MOVED Cmr Anderson, SECONDED Cmr Clough that Council:

- 1 in accordance with *Policy 2.2.8 – Legal Representation for Elected Members and Employees* **APPROVES** the request for assistance for legal funding made by:
 - (a) **Cr Michael Caiacob (suspended) for the Inquiry into the City of Joondalup for the additional amount of \$2,500;**
 - (b) **Cr Sue Hart (suspended) for the Inquiry into the City of Joondalup for the additional amount of \$2,500;**
- 2 **NOTES** that funding in 1 above is conditional on Cr Caiacob (suspended) and Cr Hart (suspended) in accordance with clause 3.3(a), (b) and (c) of Policy 2.2.8 supplying to the City a signed statement that they:
 - (a) **have read, and understood, the terms of this Policy;**
 - (b) **acknowledge that any approval of Legal Representation Costs is conditional on the repayment provisions of clause 7 and any other conditions to which the approval is subject;**
 - (c) **undertake to repay to the City any Legal Representation Costs in accordance with the provisions of clause 7;**
- 3 **CHARGES** the expenditure in 1 above to the City of Joondalup Inquiry Account;
- 4 **REFUSES** the requests for funding of Cr Carol Mackintosh (suspended), Cr Paul Kimber (suspended), Cr Michael O'Brien (suspended), due to these costs being met by the City's Officers and Councillors Liability Insurance Policy;
- 5 **NOTES** that a further report be prepared by Administration at a later date that quantifies the legal representation costs to the City. This report will not be able to be completed until the McIntyre Inquiry hands down its final report.

Cmr Anderson gave an explanation in relation to a question from suspended Councillor Hart during public question time earlier in the meeting.

The Motion was Put and

CARRIED UNANIMOUSLY (4/0)

Appendix 14 refers

To access this attachment on electronic document, click here: [Attach14agn090805.pdf](#)

CJ169 - 08/05 CITY OF JOONDALUP RESPONSE TO PROPOSED FUTURE FUNDING STRUCTURE FOR THE BUSINESS ENTERPRISE CENTRE NETWORK OF WESTERN AUSTRALIA

WARD: All

RESPONSIBLE DIRECTOR: Garry Hunt
Chief Executive Officer

The purpose of the report is to consider the State Government announcement on the proposed future funding structure for the Business Enterprise Centre Network of Western Australia.

The Chief Executive Officer advised this Item was

WITHDRAWN

Director, Planning and Community Development and Director, Corporate Services and Resource Management entered the Chamber, the time being 1345 hrs.

The Chief Executive Officer, Mr Garry Hunt declared a financial interest in Item C46-08/05 – Chief Executive Officer – Performance Review Committee as it concerns his Contract of Employment.

Cmr Fox declared a financial interest in Item C46-08/05 – Chief Executive Officer – Performance Review Committee as her husband is employed by Integral Leadership Centre. Cmr Fox was not present at this point in the meeting.

The Director, Corporate Services and Resource Management, Mr Peter Schneider declared an interest that may affect his impartiality in Item C46-08/05 – Chief Executive Officer – Performance Review Committee due to the nature of his employment relationship.

Chief Executive Officer left the Chamber, the time being 1345 hrs.

C46-08/05 CHIEF EXECUTIVE OFFICER - PERFORMANCE REVIEW COMMITTEE - [20006]**WARD:** All**RESPONSIBLE DIRECTOR:** Peter Schneider
Corporate Services and Resource Management

PURPOSE

The purpose of this report is to delegate power to the CEO Performance Review Committee to appoint an external and independent human resources expert, or similar, to facilitate the review of the CEO's performance. Additionally the report seeks to expand the terms of reference of the committee to allow it to make recommendations to Council in relation to salary reviews and contract variations as provided for in the CEO's Employment Contract.

EXECUTIVE SUMMARY

Clause 11.3(e)(i) of the Employment Contract of the Chief Executive Officer for the City of Joondalup states that the Performance Review Committee must appoint and seek guidance from an external and independent human resources expert, or similar, to facilitate the review of the CEO's performance. In accordance with legal advice obtained this will require a formal delegation of power by Council to the committee.

Additionally clause 12.10 covering Salary Reviews and clause 18.4 covering Amendments to the contract do not specifically deal with the process of making recommendations to Council in relation to these matters. It is proposed that the Performance Review Committee's terms of reference be expanded to allow it to deal with these issues and refer their recommendations to Council.

It is recommended that:

- 1 *Council BY AN ABSOLUTE MAJORITY delegates power to the Chief Executive Officer - Performance Review Committee, to appoint and consult with and seek guidance from an external and independent human resources expert, or similar, to facilitate the review of the Chief Executive Officer's performance.*
- 2 *The terms of reference for the Chief Executive Officer - Performance Review Committee be expanded to include:*
 - (a) *Review the Chief Executive Officer's remuneration package, in accordance with the appropriate provisions within the Chief Executive Officer's Employment Contract.*
 - (b) *Review the Chief Executive Officer's Employment Contract and make recommendations to Council in relation to varying the contract, as and when deemed necessary.*

BACKGROUND

At the Council meeting held on 7 June 2005 Council considered report CJ104-06/05 Chief Executive Officer - Performance Review Committee and resolved as follows:

- 1 *Council in accordance with Section 5.8 of the Local Government Act 1995, ESTABLISHES a Performance Review Committee consisting of five (5) Joint Commissioners as follows:*

<i>Chairman of Commissioners</i>	<i>Cmr J Paterson</i>
<i>Deputy Chairman</i>	<i>Cmr P Clough</i>
<i>Cmr M Anderson</i>	
<i>Cmr S Smith</i>	
<i>Cmr A Fox</i>	

- 2 *The terms of reference for the Performance Review Committee be to:*

- (a) *Review the Chief Executive Officer's performance in accordance with the appropriate provisions contained within the Chief Executive Officer's Employment Contract;*
- (b) *Prepare and table the concluded report, in accordance with the appropriate provisions within the Chief Executive Officer's Employment Contract to the Council at a Council meeting for consideration and actioning;*
- (c) *Review the Chief Executive Officer's performance on an on-going basis as and when deemed necessary in accordance with the appropriate provisions contained within the Chief Executive Officer's Employment contract;*
- (d) *Review the Key Performance Indicators to be met by the Chief Executive Officer.*

DETAILS

Issues and options considered:

Clause 11.3(e)(i) of the CEO's Employment Contract states that "In conducting the review, the Performance Review Committee must appoint and consult with and seek guidance from an external and independent human resources expert, or similar, to facilitate the review of the Executive's performance".

Neither at the time of endorsing the CEO's Employment Contract (the contract) nor at the time of establishing the Performance Review Committee (the committee) did Council take specific steps to delegate power to the committee. Based on advice from the solicitors who drafted the contract, it would be preferable if the Council specifically delegates power to the committee for the appointment of the human resources expert.

Additionally clause 12.10 of the contract specifies that the Council is required to review the CEO's remuneration package, taking into account certain factors. It is then for Council to decide whether any increase is to be made to the CEO's remuneration package or not. There is no express requirement that a recommendation on this issue must be made by the committee. Again, based on the advice of the solicitors who drafted the contract, a recommendation regarding the CEO's remuneration package should most appropriately be made by the committee pursuant to clause 11.3(f)(i).

For example, positive findings about the CEO's performance during the period the subject of the review, may result in a conclusion being made by the committee that an increase to the remuneration package should be recommended. This would not require a delegation of power but would be an expansion of the Committee's terms of reference.

Further, there is no express provision in the contract providing an opportunity for negotiations to be entered into between the CEO and Council regarding possible changes to the contract after the initial or annual performance review.

Clause 18.4 of the contract states "This contract may only be varied or replaced by agreement in writing signed by the parties." This envisages that the parties may wish to vary the contract at some point during the term of the contract.

There is no specific process outlined in the contract other than clause 18.4 and it may be beneficial for such discussions to be held initially with the committee who could make a recommendation to Council. As per the salary review provisions, this would not require a delegation of power but would be an expansion of the committee's terms of reference, which should be formally recognised as such by Council.

Link to Strategic Plan:

Objective 4.5 - To manage our workforce as a strategic business resource.

Legislation – Statutory Provisions:

In accordance with Section 5.8 of the Act a local government may establish (by absolute majority) committees of three or more persons to assist the Council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.

Section 5.10 of the Act states inter alia that a committee is to have as its members persons appointed (by absolute majority) by the local government to be members of the committee.

Included in Clause 3 Executive Duties, of the CEO's Employment Contract are the following references to the Local Government Act 1995 and other regulatory requirements:

- "3.3 exercise such powers and carry out such duties and functions as are imposed in the Act, and all other relevant laws, regulations and Standing Orders
- 3.4 fulfil the functions of a CEO as prescribed in the Act
- 3.5 comply with the Council's policies and procedures and Code of Conduct, as varied from time to time by the Council"

Section 5.16 of the Act provides that a local government may delegate to a committee any of its powers and duties other than this power of delegation (absolute majority required).

Section 5.17 of the Act states that a local government can delegate to a committee comprising Council members only, any of the Council's powers or duties under the Act except (i) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government and (ii) any other power or duty that is prescribed.

Risk Management considerations:

The performance review process is designed to evaluate and assess the CEO's performance against Key Performance Indicators on a periodic basis and the Performance Review Committee is required to refer its concluded report to the Council for consideration and actioning. Schedule 2 of the CEO's Employment Contract details the initial Key Performance Indicators to be achieved by the CEO.

Financial/Budget Implications:

In conducting the performance review under the CEO's Employment contract, the Performance Review Committee is required to appoint and consult with and seek guidance from an external and independent human resources expert, or similar, to facilitate the review of the Executive's performance (Clause 11.3(e)(i)).

An estimate for this work will be determined in conjunction with the Performance Review Committee in due course.

Policy implications:

Not Applicable

Regional Significance:

Not Applicable

Sustainability implications:

Not Applicable

Consultation:

Not Applicable

COMMENT

It is recommended that the committee be delegated power to appoint a human resources expert per clause 11.3(e)(i) of the contract as proposed by Jackson McDonald Lawyers.

It is also suggested that the committee's terms of reference be expanded to allow it to discuss and make recommendations to Council on matters to do with salary review and contract variation matters. This would assist Council in performing its obligations under the contract.

ATTACHMENTS

N/A - All commissioners have previously been issued with a confidential signed copy of the "Employment Contract of the Chief Executive Officer for the City of Joondalup".

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION: That:

- 1 Council BY AN ABSOLUTE MAJORITY delegates power to the Chief Executive Officer - Performance Review Committee, to appoint and consult with and seek guidance from an external and independent human resources expert, or similar, to facilitate the review of the Chief Executive Officer's performance.
- 2 The terms of reference for the Chief Executive Officer - Performance Review Committee be expanded to include:
 - (a) Review the Chief Executive Officer's remuneration package, in accordance with the appropriate provisions within the Chief Executive Officer's Employment Contract.
 - (b) Review the Chief Executive Officer's Employment Contract and make recommendations to Council in relation to varying the contract as and when necessary.

Manager, Marketing Communications and Council Support entered the Chamber, the time being 1350 hrs.

MOVED Cmr Clough, SECONDED Cmr Smith that:

- 1 Council **APPOINTS** Integral Leadership Centre as per their submission forming Appendix 16 hereto in the official Minute Book as the external and independent human resources expert to facilitate the review of the Executive's performance per clause 11 of the CEO's Employment Contract;
- 2 the terms of reference for the Chief Executive Officer - Performance Review Committee be expanded to include:
 - (a) Review the Chief Executive Officer's remuneration package, in accordance with the appropriate provisions within the Chief Executive Officer's Employment Contract;
 - (b) Review the Chief Executive Officer's Employment Contract and make recommendations to Council in relation to varying the contract as and when necessary.

Discussion ensued.

The Motion was Put and

CARRIED UNANIMOUSLY (4/0)

Chief Executive Officer entered the Chamber, the time being 1352 hrs.

MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

DATE OF NEXT MEETING

The next meeting of the Council has been scheduled for **7.00 pm** on **TUESDAY, 30 AUGUST 2005** to be held in the Council Chamber, Joondalup Civic Centre, Boas Avenue, Joondalup

Commissioner Paterson thanked students for attending the Council meeting and reiterated his earlier comments encouraging schools to write to the City with a view to this becoming an annual event.

CLOSURE

There being no further business, the Chairman declared the Meeting closed at 1353 hrs; the following Commissioners being present at that time:

CMR J PATERSON
CMR P CLOUGH
CMR M ANDERSON
CMR S SMITH