



**MINUTES OF COUNCIL MEETING
HELD ON 14 MARCH 2006**

TABLE OF CONTENTS

No:	Item	Page
	DECLARATION OF OPENING	1
	ANNOUNCEMENT OF VISITORS	1
	ATTENDANCES	1
	PUBLIC QUESTION TIME	2
	PUBLIC STATEMENT TIME	13
	APOLOGIES AND LEAVE OF ABSENCE	13
	CONFIRMATION OF MINUTES	
C06-03/06	MINUTES OF COUNCIL MEETING, 21 FEBRUARY 2006	14
	ANNOUNCEMENTS BY THE CHAIRMAN WITHOUT DISCUSSION	
	CITY OF JOONDALUP ELECTIONS	14
	JINAN DELEGATION	14
	FESTIVAL GRANT	14
	PRESENTATION OF FESTIVAL GRANT	15
	DECLARATIONS OF INTEREST	15
	IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY SIT BEHIND CLOSED DOORS	16
	PETITIONS	
	PETITION REQUESTING INSTALLATION OF SPEED CONTROL/ TRAFFIC CALMING MEASURES – SCADDAN STREET/ SYCAMORE DRIVE, DUNCRAIG - [44308] [03076].....	16
	PETITION REQUESTING INSTALLATION OF SPEED CONTROL/ TRAFFIC CALMING MEASURES – TWICKENHAM DRIVE, KINGSLEY - [09430]	16

REPORTS

CJ031 - 03/06	REDESIGN OF THE COUNCIL CHAMBER – [14977].....	17
CJ032 - 03/06	BUSINESS EXCELLENCE FRAMEWORK CITY POLICY – [26176].....	22
CJ033 - 03/06	LIST OF PAYMENTS MADE DURING THE MONTH OF JANUARY 2006 – [09882].....	26
CJ034 - 03/06	WRITE OFF OF MONIES – RANS MANAGEMENT GROUP – [46492] [04881].....	28
CJ035 - 03/06	FINANCIAL ACTIVITY STATEMENT FOR THE PERIOD ENDED 31 JANUARY 2006 – [07882].....	31
CJ036 - 03/06	PROPOSED ROAD CLOSURE FOR EXCESS ROAD RESERVE: OCEAN REEF ROAD AND MITCHELL FREEWAY, BELDON – [42015] ..	33
CJ037 - 03/06	PROPOSED CLOSURE OF PORTION OF THE LANEWAY BETWEEN LEACH STREET & WEST COAST DRIVE, MARMION – [09031]	39
CJ038 - 03/06	MONTHLY TOWN PLANNING DELEGATED AUTHORITY REPORT – JANUARY 2006 – [07032]	45
CJ039 - 03/06	CHANGE OF USE FROM SHOWROOM TO PLACE OF WORSHIP: LOT 1 (1/15) VANDEN WAY, JOONDALUP – [18562]	48
CJ040 - 03/06	PROPOSED AMENDMENTS TO THE JOONDALUP CITY CENTRE PLAN AND MANUAL - ARENA JOONDALUP COMPLEX, NORTHERN RECREATION DISTRICT – [55582] [00152].....	55
CJ041 - 03/06	INITIATION OF LOCAL PLANNING POLICY - SATELLITE DISH, AERIALS AND RADIO EQUIPMENT – [81513].....	63
C08-03/06	2005 COMPLIANCE AUDIT RETURN – [09492]	67
C09-03/06	MINUTES OF THE AUDIT COMMITTEE MEETING HELD ON 7 MARCH 2006	71
C10-03/06	OUTCOME OF MEDIATION – PROPOSED EXTENSIONS TO LAKESIDE SHOPPING CENTRE FRONTING GRAND BOULEVARD AND BOAS AVENUE ON PART OF LOT 504 JOONDALUP DRIVE [08431].....	74
C11-03/06	SUSPENSION OF STANDING ORDERSLOCAL LAW - [02154] [08122] [01369].....	83
C12-03/06	RESUMPTION OF STANDING ORDERS LOCAL LAW – [05885].....	84
C13-03/06	REQUEST FOR PAYMENT OF LEGAL COSTS BY FORMER MAYOR D CARLOS – [72559].....	85
	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	94
	ANNOUNCEMENTS OF NOTICES OF MOTION FOR THE NEXT MEETING	94
	CLOSURE.....	94

CITY OF JOONDALUP

MINUTES OF COUNCIL MEETING HELD IN THE COUNCIL CHAMBER, JOONDALUP
CIVIC CENTRE, BOAS AVENUE, JOONDALUP, ON TUESDAY, 14 MARCH 2006

DECLARATION OF OPENING

The Chairman declared the meeting open at 1903 hrs.

ANNOUNCEMENT OF VISITORS

Chairman welcomed members of the delegation from Jinan, who are in the City of Joondalup for on a six months training program.

ATTENDANCES

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

Officers:

Chief Executive Officer	G HUNT
Director, Planning and Community Development:	C HIGHAM
Director, Corporate Services:	P SCHNEIDER
Director, Infrastructure Services:	D DJULBIC
Manager, Marketing Communications & Council Support:	M SMITH
Manager Approvals, Planning Environmental Services	C TERELINCK
Media Advisor:	L BRENNAN
Committee Clerk:	J HARRISON
Minute Clerk:	L TAYLOR

There were 20 members of the Public and 1 member of the Press in attendance.

PUBLIC QUESTION TIME

The following questions were taken on notice at the Council meeting held on 21 February 2006:

Mr M Caiacob, Mullaloo:

Q1 *Could I please be advised of when City officers have had meetings or met with the applicants or the applicants' representatives for the Sorrento Shopping Centre redevelopment?*

A1 It is not possible to provide exact historic information, as the City receives many enquiries about the development requirements for land within the City. However, in regard to the latest potential redevelopment, the following meetings have been held; 1 February 2005, 3 August 2005 and 17 January 2006.

Q2 *Re: Hillarys Shopping Centre – Noise Issues – Who were the officers that met with the applicant at the noted meeting?*

A2 The officers in attendance were the Principal Environmental Health Officer, a Senior Planning Officer and an Environmental Health Officer.

Ms S Hart, Greenwood:

Q1 *I read in the newspaper that an employee at the City of Joondalup was sacked for not producing or not having their driver's licence. Can Council please tell me if this is correct?*

A1 This is not correct. No employee at the City of Joondalup has been sacked for not providing their driver's licence.

The following questions were submitted in writing prior to the Council meeting on 14 March 2006

Dr Vincent Cusack, Kingsley:

Q1 *Section 4.2.5 of the City of Joondalup's District Planning Scheme No 2 states "notwithstanding the provisions of clause 4.2.4, where land within the Scheme is subject to an Agreed Structure Plan, the Residential Density Codes for the area shall be determined according to the Agreed Structure Plan".*

Considering that the City's residential R Code map for Kingsley clearly shows that Lot 550 Woodlake Retreat is subject to "Agreed Structure Plan No 3" – can Council please explain why it neglected to specify the specific R Code applicable to the proposed aged care facility in the Woodlake Retreat Structure Plan No 3?

A1 The application of a residential density coding to land is required if that land can be developed for those residential purposes dealt with by the Residential Design Codes (RDC).

The Residential Design Codes deal with the following residential purposes:

- single houses;
- grouped dwellings;
- multiple dwellings;

- aged or dependent persons dwellings;
- single bedroom dwellings; and
- Inner city housing

The RDC does not provide for an “Aged Care Facility”, which is the only permitted land use within the Woodlake Retreat Structure Plan – Structure Plan No 3 (the Structure Plan). Part 1.4.2 of the Structure Plan specifically states the following:

The following land uses are permissible within the portion of Lot 550 to the east of Woodlake Retreat:

- *Aged Care Facility*

No other land uses are permissible.

Consequently, as the RDC do not control an “Aged Care Facility” and there are no other land uses permitted on the site, including the residential uses identified above, there is no requirement to allocate a density coding to Lot 550 Woodlake Retreat. Therefore, Council did not neglect to specify a density coding for Lot 550 Woodlake Retreat.

Q2(a) *Considering the default position, contained in section 4.2.4 of the DPS No 2, which is “unless otherwise specified on the map the R20 density code applies unless the Council determines that a higher code should apply” – can Council provide the details of the density of the proposed aged care facility?*

A2(a) Density of a development under the RDC refers to the “minimum site area per dwelling”. The Aged Care Facility does not have “dwellings” contained within it, as defined in the RDC.

Q2(b) *Is the density of the proposed aged care facility higher than the default R20 density code?*

A2(b) Refer to A2(a) above.

Q2(c) *If yes, is Council required to amend the Woodlake Retreat Structure Plan No 3?*

A2(c) Refer to A2(a) above.

Q3 *Section 9.8.3(f) of the DPS No2 states that “any other provision, standard or requirement in the Structure Plan shall be given the same force and effect as if it was a provision standard or requirement of this Scheme, but in the event of there being any inconsistency or conflict between any provision, requirement or standard of the Scheme and any provision requirement or standard of an Agreed Structure Plan, the provision requirement or standard of the Scheme shall prevail”.*

Can Council provide details of any other conflicting provisions between the Woodlake Retreat Structure Plan No 3 and the City’s DPS No2 (as Gazetted on 28 November 2000)?

A3 There are no conflicting provisions between the Woodlake Retreat Structure Plan No 3 and the City’s DPS2 that have been determined by the City.

Mrs Marie Macdonald, Mullaloo:

I refer to the answers to my question regarding illegal parking at the Mullaloo Tavern and surrounds. In the week after the meeting I saw on one occasion a van parked in front of the steps of the tavern and on another occasion a large truck blocking the exit of the building and completely blocking the pavement. It is evident that the building is not being and cannot be serviced from the site and does not meet its development approval.

Q1 *How does the City intend to insure that the building meets the requirements of its development approval and when will it implement its local laws with respect to the illegal parking there?*

A1 The owner and operator of the tavern are responsible for ensuring that the operation of the development, including deliveries and servicing of the building, are conducted in accordance with the conditions of approval from Planning and Building, and for compliance with the City's Local Laws and any other relevant legislation. Operators of the vehicles servicing this development are also required to ensure that they do this in accordance with relevant legislation.

The City monitors this development and other developments and if there are operating issues, the City will discuss the matter with the owners of the property and seek compliance with relevant conditions or legislation. Failing this, the City may take legal action to enforce those provisions.

In relation to illegal parking, the City of Joondalup Rangers have issued infringement notices on vehicles that have not complied with the above requirements, under the provisions of the City of Joondalup Parking Local Law 1998.

Q2 *In the event of an accident in the area will the City be liable for damages as it has continued to ignore the obvious failure of this developer to comply with the requirements of the development approval, building approval and BCA standards.*

A2 The City has not ignored the non-compliance issues arising from the construction or the ongoing operation of the tavern.

Those matters continue to be a concern to the Council and will be the subject of continued action in order to achieve compliance.

Mr M Sideris, Mullaloo:

It is noted in this Report that the Responsible Director has stated that this write off of "bad debt" is "merely an accounting entry" and that the City was an "unsecured creditor" can you:

Q1 *Confirm whether or not this brings to finality and closure the accounting entries associated with outsourcing of the City's Leisure Centre's to RANS?*

A1 Yes.

Q2 *Can you assure the ratepayers of this City that there are no other exposures associated with outsourcing to RANS?*

A2 The City is not aware of any further exposure in relation to this matter.

Q3 *Assuming that this is closure, can you advise the sum total losses incurred in outsourcing to RANS, including the forced redundancy payments to the then Leisure Centre's staff who were at that that time employees of the City?*

Q4 *Provide a breakdown schedule of these financial losses.*

Q5 *Can you advise why the City of Joondalup and Principal (Owner) of the Leisure Centre's failed to ensure that the City to be identified as a "Secured Debtor"?*

A3-A5 Numerous reports have been previously presented to the Council relating to the RANS Management Group. The responses to these questions would direct a substantial portion of the City's resources away from its normal operation and it has not been possible to provide a response to this Council meeting.

Q6 *Can you advise whether or not this current Council (being appointed Commissioners) have altered the City of Joondalup Tendering Conditions of Contract documents and Tendering process to ensure that the City will always be a "secured party" in matters of any commercial contract between the City of Joondalup and any other external contracted "party"?*

A6 The Commissioners have provided advice and feedback on the tender process and reporting to Council, especially in the first year of their appointment. That feedback was incorporated into an administrative review of the tendering, contract documentation and reporting processes.

In the majority of contracts entered into between the City and external parties, the City is the creditor, and as such the City's main focus on risk is to ensure that the supplier/service provider is financially viable and has the ability to ensure continuity of supply during the term of the contract period. Where deemed appropriate the City seeks security by way of bank guarantees, deposits, retentions and the like. This mainly applies to construction type contracts and those containing a defects liability clause.

Q7 *Can you advise exactly and explicitly what the current Conditions of Tender Schedules include to ensure this, when this City seeks the services of external parties'?*

A7 Conditions of Tendering vary depending on the nature of the supply or service being sought. Each Request for Tender is evaluated for risk, with appropriate conditions included in the document to mitigate those identified.

Refer also to the answer given in 6 above.

Mr D Biron, Mullaloo:

Noise Policy from the AGM - Motion No 10 - Implementation of noise policy re answers to questions 21 February 2006 – previous meeting.

MOVED Mr K Zakrevsky, 49 Korella Street, Mullaloo SECONDED Mr M Sideris, 12 Page Drive, Mullaloo that a Noise Policy is long overdue and should be implemented as quickly as possible.

The Motion was Put and CARRIED

Officer's Comment

The control of noise is governed by the Environmental protection Noise Regulations 1997, which provide clear methods for noise assessment and control, providing certainty to industry and the community as to what standard is expected. This clear guidance makes for effective enforcement where noise emissions are excessive. As such it is considered that a "noise policy" is not required.

While the officers of the COJ state in this report to Council that a Noise policy is not required it is clear from numerous COJ documents that the officers of the COJ routinely do not follow the Environmental protection Noise Regulations 1997 in a large number of critical ways. Rather the Officers of the COJ prefer to adopt and follow their own separate noise policies, which they employ in a very individual manner whenever they so choose. These policies are clearly documented in individual ratepayer correspondence and bear little relation to the clear methods for noise assessment and control as specified in the Environmental Protection Noise Regulations 1997.

In the answer to my Q1 presented to Council on the 21st February, the COJ presented no answer to the question. Instead they only quoted the relevant section of the relevant Act in order to conceal the secret noise policies as practised by the City of Joondalup. They also ignored the differing content of COJ letters to me as quoted and supplied in the same set of questions.

Accordingly I repeat question 1 again,

- Q1 Where in the Environmental Protection Act 1986 and the Environmental Protection (Noise) Regulations does it state or infer that only noise from a stereo, radio or other equipment can be controlled under the Environmental Protection Act 1986 since this is the clearly documented position of the City of Joondalup?*

To help the City of Joondalup out with their answer this time I provide some of Chris Terelinck's comments on the ways in which the City of Joondalup noise policy is operated.

'Furthermore we also advised that the City has not and does not intend to measure noise from voices although technically again, no exemption for this noise exists in the Regulations' Chris Terelinck

So much for providing certainty to the Community.

- A1 It is the City's belief that the intent in prescribing statewide noise regulations is to control noise from equipment, and that these regulations are not the ultimate solution for dealing with all noise issues. The City does not wish to use an act of Parliament in curtailing the normal and reasonable behavioral activity of people enjoying the use of their own property. For this reason the City will not always measure or deal with noise from voices or noise considered to be normal for residential type activities.*
- Q2 Since this is the documented position of the City of Joondalup i.e. that the City of Joondalup has not and does not intend to measure noise from voices although again no exemption for this type of noise exists in the Regulations' can someone please explain to the Community what is meant exactly by the statement presented to the Community that*

'The control of noise is governed by the Environmental protection Noise Regulations 1997, which provide clear methods for noise assessment and control, providing certainty to industry and the community as to what standard is expected. This clear guidance makes for effective enforcement where noise emissions are excessive. As such it is considered that a "noise policy" is not required.'

When the City Executive of the COJ, sitting at Council when this incorrect comment was originally presented are clearly well aware that they routinely do not follow the clear methods for noise assessment and control as legislatively defined, although this was what was presented and claimed to ratepayers at the previous Council meeting?

- A2 The Regulations provide clear methods for assessment and control in regard to the types of noise for which it covers. The Department of Environment (DOE) has confirmed the City's view that noise from voices, or behavioural type noise activity of a reasonable nature, are not intended to be controlled under these regulations.
- Q3(a) *Where in the Environmental Protection Act 1986 and the Environmental Protection (Noise) Regulations does it state or infer that 4 parties a year plus any number of Family gatherings and One Off parties are permitted by law since this is the documented position of the City of Joondalup?*

The answer provided previously was that 'The City does not have a Noise policy. The regulations that control noise provide clear requirements for noise assessment and control, providing certainty to industry and the community as to what standard is expected. This clear guidance makes for effective enforcement where noise emissions are excessive. As such it is considered that a "noise policy" is not required, as this is covered by Acts, Regulations, relevant Australian Standards and enforcement protocols.'

- Q3(b) *Since this is clearly an untrue answer bearing in mind Chris Terelinck's written comments above perhaps the COJ would like to reconsider its previous answer presented to the Community regarding the repeated claims that the City does not already operate a secret noise policy?*

In order to assist the response I offer some more of Chris Terelinck's written comments on the 4 party a year policy i.e. 'that the City advises residents that up to 4 parties a year where noise levels exceed these assigned levels as reasonable, although technically these noise regulations do not provide any allowances for noisy parties.'

- A3(a) & 3(b)

This is not stated in the regulations but it is accepted that normal residential living allows for social gatherings. Officers attempt to aid residents of the City to obtain some assistance if they are placed in situations where neighbours are having an unreasonable number of parties, taking into consideration the type of party, the circumstances of the party and time of day it is held.

- Q4 *Why do these Noise reports then subsequently disappear from any documents obtained from the City of Joondalup under FOI applications, without any exemptions being claimed for their absence?*

When I asked this question I originally received the following answer;

'Noise reports received from the City's Acoustic Consultants are retained within the City's official recordkeeping system and are therefore discoverable during a freedom of information application process. One such report was provided as part of a freedom of information application, with Clause 3 Schedule 1 (Personal Information) being cited.'

However there were references to at least 4 such reports detailed in my FOI documents, OBTAINED FINALLY OVER A YEAR LATE – what happened then to the other 3 reports not provided? What happened to all of Councillor Caiacob's correspondence as well and the email from the City of Joondalup ordering the City's Acoustic Consultant not to attend on a Public Holiday, and all the other missing documents from my sanitised FOI application?

A4 As far as the City is aware all relevant documentation was included in the FOI application. This particular FOI enquiry was also the subject of an external review by the Office of Information Commissioner who deemed the content of this application appropriate.

Q5 *Who is the author of this particular City of Joondalup Noise policy – the one relating to the 4 parties a year plus any number of Family gatherings and One Off parties?*

The answer previously given was:

'The City does not have a Noise policy. The regulations that control noise provide clear requirements for noise assessment and control, providing certainty to industry and the community as to what standard is expected. This clear guidance makes for effective enforcement where noise emissions are excessive. As such it is considered that a "noise policy" is not required, as this is covered by Acts, Regulations, relevant Australian Standards and enforcement protocols.'

However my correspondence reveals that the 4 party a year policy was expanded to include family gatherings and one off parties – exemptions outside of the Environmental Protection Act 1986 and the Environmental Protection (Noise) Regulations – as confirmed by Chris Terelinck years ago – at the apparent behest of Former Councillor Mackintosh. When did Council debate and approve this policy change to the City's secret noise policy?

A5 As previously advised the City does not have a Council Policy on Noise.

Q6 *The City proclaimed as part of its previous answers with reference to the documentation provided by me that 'The extract above has been provided by Mr. D Biron, Mullaloo. The City has not been provided with the name or a copy of the report that has been mentioned in the documentation.'*

Q6(a) *What was the point of this statement bearing in mind that a number of the excerpts provided with my previous questions only stated the same points as made by Chris Terelinck? I.e. that*

'that the City advises residents that up to 4 parties a year where noise levels exceed these assigned levels as reasonable, although technically these noise regulations do not provide any allowances for noisy parties.'

And

'Furthermore we also advised that the City has not and does not intend to measure noise from voices although technically again, no exemption for this noise exists in the Regulations'

A6 & 6(a)

Further clarification will be required on this matter.

Q6(b) *Why did the City deny these policies existed to me for so long?*

Q6(c) *Why is its still denying the existence of these ever changing secret noise policies to the Community still?*

A6(b) & (c)

There are no secret noise policies. Each noise case assessed by the City has different circumstances and variables. Action is taken by trained officers based on the circumstances of the case presented, working inside the limitations of the regulations.

Q6(d) *Bearing in mind the many missing and destroyed documents from my FOI applications how does the City know that they never received this report?*

A6(d) See answer to question 4 above. Mr Biron is invited to lodge evidence of missing or destroyed documents at his convenience and this will be investigated.

Q6(e) *What other Council in Western Australia allows people to sing and shout all night long at the top of their voices and then says to ratepayers that 'The regulations that control noise provide clear requirements for noise assessment and control, providing certainty to industry and the community as to what standard is expected.' And 'As such it is considered that a "noise policy" is not required' despite the fact that these same regulations that control noise and provide for such clear requirements for noise assessment and control are just not applied in the City of Joondalup as made crystal clear by Chris Terelinck's internal policy statements?*

A6(e) The DOE advises that no other Local Government deals with voice noise associated with normal residential activity.

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

Mr M O'Brien, Warwick:

A document from Fiocco's Lawyers, dated 16 January 2004, which became Exhibit No 3708 of Joondalup's Inquiry documents and is now in the public record, states in handwritten text:

“TT/Paterson

- *M O’Brien – (former Councillor) knows what Paterson’s agenda is.*
- *D Smith talk to Hazel to try to get Paterson to talk to O’Brien”.*

Q1 What was ‘Paterson’s agenda’ referred to in the document by either Sarah Burke, (daughter of former Premier Brian Burke) or John Fiocco?

A1 Response by Cmr Paterson: The agenda of myself and the Commissioners was to see a resolution to the problems in Joondalup.

Q2 If the answer to question 1 is unknown by Commissioner Paterson, will the Chairman of Commissioners make every effort to find out, before his term of appointment as a Commissioner expires and let me know the answer?

A2 The date of 16 January 2004 was a long way from when the Commissioners made a resolution.

Mr S Kobelke, Sorrento:

Re: Item CJ035-03/06 – Financial Activities Statement for the period ending 31 January 2006, Appendix 3.

Q1 (a) Has the overspend in item (f) of \$114,000 been saved from Item (j) where several minor projects have been underspent by \$189,000?

(b) If so, was one of the minor projects the traffic calming strategy for the Sorrento area that has not been started?

A1 This question will be taken on notice.

Q2 (a) This relates to Appendix 3, item (I), why has the appointment of a Natural Areas Management Team delayed foreshore protection work, and

(b) Is the appointment of a Natural Areas Management Team a sign that Council is going to discontinue ignoring input from local conservation groups, like the Joondalup Community Coast Care Forum and recommence embracing community involvement?

A2 In relation to the operational team there have been delays in obtaining the equipment, being a vehicle, and also the staff involved. The work will be completed as soon as the team is up and running.

In relation to the consultation process, there will be no impact on that.

Mr J McNamara, Sorrento:

Q1 When is the City Watch community security patrol service contract up for review and renewal?

A1 December 2006.

Q2 Would the Chief Executive Officer consider a further increase in the formal duties of the provider service to include a more proactive reporting of anti-social hoon behaviour?

A2 The review of the service will be undertaken prior to the completion of the contract period. The City will seek advice from the elected Council at that stage and also from the community. If this were a matter that was asked for, the City would take this on board.

Ms S Hart, Greenwood:

Re: Late Item No. 4 – Request for payment of legal costs for former Mayor D Carlos.

Q1 *Is it mentioned in this report that Mayor Carlos was right and in light of the fact that Council charges ratepayers interest for late payment, will the City be paying Mr Carlos interest for late payment?*

A1 In the report, the City deals primarily with the initial request from former Mayor D Carlos. There is limited comment on the issues surrounding the Writ; the City is dealing purely with the reimbursement. Comments have been made in the report in relation to statements made by Mr Greg McIntyre concerning Mr Carlos.

There has not been any request for interest and consequently this has not been taken into account in the report before Council.

Q2 *Part 2 of the Recommendation requests that the Chief Executive Officer pursues the recovery of the amount of \$11,075.52 from the City's Council and Officers Liability Policy. Will Council be disclosing amounts other Councillors have spent through the insurance policy? If this recommendation is passed tonight it will be public knowledge what Council has claimed on behalf of Mr D Carlos.*

A2 The claim is being made by the City as an option, rather than Council paying \$5,000 to Mr Carlos and Mr Carlos having to make his own claim for the balance. The position the City has taken, in view of the extensive period of time that has elapsed, is that Mr Carlos should be paid the full amount. The City is merely identifying that the City intends to pursue the matter with the insurer, therefore reducing the amount potentially to be paid by the ratepayers of the City in lodging the claim.

In terms of what the insurer has paid to other people involved in the Inquiry, the City is not at liberty to release that information.

Mr M Sideris, Mullaloo:

Q1 *Re: Questions and answers received to questions submitted with notice in regard to the RANS item in tonight's agenda.*

Answer 5 states:

"Numerous reports have been previously presented to this Council".

This is correct, but none of the reports have identified the cost of breakdown associated with the RANS issue and hence the question asking for a full summarised cost. I note the City does not have time at this stage, but I am willing to extend to Council plenty of time to at least provide a summarised breakdown of the total costs associated with the RANS outsourcing?

A1 The City will consider the request again, but there is a limit to the amount of resource that the City can spend constantly going back to decisions of past Councils. It is having a major impact on the City's ability to service the existing community and a community that wants the City to focus on the future.

Q2 *Re: Questions submitted by Ms M Macdonald - question 2 states that in the event of an accident in the Mullaloo Tavern area will the City be liable for damages. There is no comment by the City as to that aspect of the question therefore, I ask the question again?*

A2 The City cannot give an answer to a hypothetical situation, it would depend on the circumstances that exist at that time.

Dr V Cusack, Kingsley:

Re: Woodlake Retreat - I would ask that Commissioners carefully look at the questions previously submitted by me and to contact me when convenient if they are in agreeance with the responses given.

Q1 *Can you please inform the residents and ratepayers, which prevails in law, the City of Joondalup District Planning Scheme No. 2 or the Woodlake Retreat Structure Plan No. 3?*

A1 The Structure Plan forms part of the Scheme, it is an integral part and cannot be separated.

Q2 *I refer you to question 3 of my questions tonight where it says in the summary that if there is a conflict between the District Planning Scheme and the Structure Plan, the District Planning Scheme prevails.*

A2 This question will be taken on notice.

Ms M Zakrevsky, Mullaloo:

Q1 *Re: Business outstanding from previous Meetings in the Briefing Session Agenda. How soon will Mr Carlos receive reimbursement for his legal costs claim relating to the McIntyre Inquiry?*

A1 *Response by Cmr Paterson:* It is a decision before the Commissioners tonight; if it is passed the claim will be paid within seven days.

Mr D Davies, Connolly:

Q1 *Re: City Watch's service. Is it correct that the vehicles on the road at daytime have been reduced from six to three vehicles and evenings kept on at six vehicles? If this is correct has there been a reflection seen as a reduction in the City of Joondalup rates?*

A1 The level of service has been altered to curtail the costs and to minimise costs to the ratepayers.

This is not a recent change to the service and there would have been an additional cost to ratepayers if this had not happened.

Q2 *Is it correct that the City of Joondalup still has a practice of sending single City of Joondalup security officers to control rowdy parties? The normal practice within the North Metropolitan Police District is to send two police vehicles with a minimum of four officers to the same situation? If this is current practice will the City review the situation with extreme urgency to save a security officer being put into a situation where they face injury or even death?*

A2 It is not the role of the City security officers or patrol personnel to involve themselves in controlling rowdy parties. The City's security service is to observe and report; the officers do not and are not to be involved, therefore the risk should be minimal. There is a very strong liaison between the City and the police service. The City can see no reason why the security officers should be putting themselves at risk in the manner that Mr Davies suggests could occur.

Mr S Magyar, Heathridge:

Re: Page 13 of Attachments – Payments made by the City to various organisations

Q1 *Electronic Funds Transfer of \$65,000 to Turf Masters Facility Management. How much does the City annually pay to Turf Masters Facility Management and how does the City ensure that it gets value for money out of this organisation?*

A1 This question will be taken on notice.

Q2 *Electronic Funds Transfer of \$8,000 to Watts Woodhouse. Is any of this money going to Watts Woodhouse for advice that they gave during the process of formulating the new standing orders?*

A2 This question will be taken on notice.

PUBLIC STATEMENT TIME

The following statements were submitted verbally at the meeting; a summary of each statement is shown below:

Mr J McNamara, Sorrento:

Mr McNamara made a statement on the social disturbances of young people doing burnouts on roads and the reaction State Government is taking.

Mr S Kobelke, Sorrento:

Mr Kobelke requested Council to make a decision on the legal advice regarding the former Chief Executive Officer, Mr D Smith.

Ms M Zakrevsky, Mullaloo:

Ms Zakrevsky spoke about safety considerations for children's playgrounds and requested Council to look at the safety criteria when constructing new playgrounds or updating them.

Mr S Magyar, Heathridge:

Mr Magyar requested Council to get legal advice regarding the former Chief Executive Officer, Mr D Smith and to recover monies paid to Mr Smith if possible.

APOLOGIES AND LEAVE OF ABSENCE

Nil.

CONFIRMATION OF MINUTES**C06-03/06****MINUTES OF COUNCIL MEETING –14 MARCH 2006**

MOVED Cmr Fox, **SECONDED** Cmr Smith that the Minutes of the Council Meeting held on 14 March 2006, be confirmed as a true and correct record.

The Motion was Put and

CARRIED UNANIMOUSLY (5 /0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

ANNOUNCEMENTS BY THE CHAIRMAN WITHOUT DISCUSSION**CITY OF JOONDALUP ELECTIONS**

The City's elections on 6 May 2006 are drawing closer, and are welcomed by the Commissioners.

I encourage all residents to exercise their right to vote – and all candidates to look to the future for the benefit of the community.

Prospective Councillors had the opportunity to hear CEO Garry Hunt and other speakers at an information session at Warwick on Monday, 13 March 2006 and there will be another information session here at the Civic Centre on Wednesday, 15 March 2006 at 7pm.

On behalf of Commissioners, the City and the people of Joondalup I would acknowledge that Mr Don Carlos is ill in hospital and wish him well.

JINAN DELEGATION

Welcome to our international guests tonight – the delegation from Jinan in China, in Joondalup as part of our sister city relationship.

The Jinan Managers are here for a six months training program to learn about Australian business, a program which came about after our delegation to China in 2004.

While in Joondalup the delegation will study Communications at ECU, receive presentations from City of Joondalup staff and lectures from local businesses in Joondalup.

(The delegation was presented with gifts from the City.)

FESTIVAL GRANT

More good news - the 8th annual Joondalup Festival on 25 – 26 March 2006 has received a grant from Lotterywest.

I am delighted with the \$27,000 grant which will go towards performance and other Festival costs.

We are expecting thousands of people from all over Perth to come and enjoy the great festivities and fantastic free entertainment.

I thank Lotterywest very much for the grant and I have much pleasure in calling forward the Member for Joondalup, Tony O’Gorman to present the cheque.

PRESENTATION OF FESTIVAL GRANT

Mr O’Gorman stated the role of Lotterywest is to provide a vital source of support for public hospitals, sports, the arts and many community groups. Lotterywest support for the community is possible only through the purchase of lottery products. Western Australia is the only state in Australia where the profits from the games are returned directly back to community groups in the form of grants such as this. Every year almost \$300 million is won in prizes by players of lotto, scratch and win, and Lotterywest games. Since its establishment in 1933, Lotterywest has provided over \$2 billion to the WA community. In 2004/05 almost \$165 million to the WA community, which included \$79 million to WA’s public hospitals, almost \$10 million to arts organisations, \$10 million to sports organisations and \$65 million in grants to many different community groups and local governments such as the City of Joondalup.

DECLARATIONS OF FINANCIAL INTEREST

Disclosure of Financial Interests

A declaration under this section requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration. An employee is required to disclose their financial interest and if required to do so by the Council must disclose the extent of the interest. Employees are required to disclose their financial interests where they are required to present verbal or written reports to the Council. Employees are able to continue to provide advice to the Council in the decision making process if they have disclosed their interest.

Name/Position	Mr Garry Hunt - Chief Executive Officer
Item No/Subject	C09-03/06 - Minutes of the Audit Committee meeting held on 7 March 2006 (Item 2 – Quarterly Report – Corporate Credit Card Usage)
Nature of interest	Financial
Extent of Interest	Relates to CEO credit card expenditure

Disclosure of interest affecting impartiality

Commissioners and staff are required under the Code of Conduct, in addition to declaring any financial interest, to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making process. The Commissioner/employee is also encouraged to disclose the nature of the interest.

Name/Position	Mr Garry Hunt - Chief Executive Officer
Item No/Subject	C08-03/06 – 2005 Compliance Audit Return
Nature of interest	Interest that may affect impartiality
Extent of Interest	Mr Hunt is a signatory to the document

Name/Position	Mr Garry Hunt – Chief Executive Officer
Item No/Subject	C09-03/06 - Minutes of the Audit Committee meeting held on 7 March 2006 (Item 1 – 2005 Compliance Audit Return)
Nature of interest	Interest that may affect impartiality
Extent of Interest	Mr Hunt is a signatory to the document

Name/Position	Mr Peter Schneider – Director Corporate Services
Item No/Subject	C08-03/06 – 2005 Compliance Audit Return
Nature of interest	Interest that may affect impartiality
Extent of Interest	Mr Schneider is an auditee for the 2005 Compliance Return

Name/Position	Mr Peter Schneider - Director Corporate Services
Item No/Subject	C09-03/06 - Minutes of the Audit Committee meeting held on 7 March 2006 (Item 1 – 2005 Compliance Audit Return)
Nature of interest	Interest that may affect impartiality
Extent of Interest	Mr Schneider is the Director of areas audited under the 2005 Compliance Audit Return item.

Name/Position	Mr Peter Schneider - Director Corporate Services
Item No/Subject	C09-03/06 - Minutes of the Audit Committee meeting held on 7 March 2006 (Item 2 – Quarterly Report – Corporate Credit Card Usage)
Nature of interest	Interest that may affect impartiality
Extent of Interest	Reporting nature to the CEO

IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY SIT BEHIND CLOSED DOORS

Nil.

PETITIONS

C07-03/06 PETITIONS SUBMITTED TO THE COUNCIL MEETING –14 MARCH 2006

- 1 PETITION REQUESTING INSTALLATION OF SPEED CONTROL/TRAFFIC CALMING MEASURES – SCADDAN STREET/SYCAMORE DRIVE, DUNCRAIG - [44308] [03076]

A 22-signature petition has been received from Duncraig residents requesting the installation of speed control/traffic calming measures in the vicinity of Scaddan Street/Sycamore Drive, Duncraig.

This petition will be referred to Infrastructure Services for action.

- 2 PETITION REQUESTING INSTALLATION OF SPEED CONTROL/TRAFFIC CALMING MEASURES – TWICKENHAM DRIVE, KINGSLEY - [09430]

A 34-signature petition, together with five letters of support have been received from Kingsley residents requesting the installation of speed control/traffic calming measures in Twickenham Drive near the corner of St Johns Court.

This petition will be referred to Infrastructure Services for action.

MOVED Cmr Clough, **SECONDED** Cmr Fox that the petitions requesting the installation of:

- 1 speed control/traffic calming measures in the vicinity of Scaddan Street/Sycamore Drive, Duncraig;
- 2 speed control/traffic calming measures in Twickenham Drive near the corner of St Johns Court, Kingsley;

be received and referred to Infrastructure Services for action.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

CJ031 - 03/06 REDESIGN OF THE COUNCIL CHAMBER – [14977]

WARD: North

RESPONSIBLE DIRECTOR: Mr Garry Hunt
Office of CEO

CJ060307_BRF.DOC:ITEM 1

PURPOSE

To give consideration to possibly redesigning the Council Chamber.

EXECUTIVE SUMMARY

Following some of the recommendations from the Governance Review Final Report and a decision by the Council to examine the possibility of utilising the Council Chamber for alternative community related uses, architects were appointed in December 2004 to prepare a project plan to progress the matter.

A number of conceptual options were prepared by the architects along with indicative costings ranging upwards of \$429,000. Subsequent to those costings being prepared, further discussions occurred with an interior designer to examine the concept of redesigning the Council Chamber table only to meet the recommendations of the Governance Review Panel.

There are no funds allocated in the 2005/06 budget, and with a newly elected Council scheduled to return in May 2006, it is suggested that the matter be referred to it for consideration.

BACKGROUND

An independent panel conducted a review of the Governance operations of the City of Joondalup in May 2004. One of the recommendations was:

“Review the structure of the Council Chamber to make it more conducive to a better meeting environment. At the very least Council needs to review the electronic controls for the meeting.”

Subsequent to the Governance Review Panel's report, the Joint Commissioners made the following resolution on 10 August 2004 (CJ174-08/04 refers):

- “5 *REQUEST the CEO to prepare a report for Council covering the costs and options of redesigning the Council Chamber to meet the provisions of the Governance Review and at the same time to allow for greater availability and usage for performing arts and other community events.*”

A further report was presented to the ordinary meeting of the Council held on 14 December 2004 the following resolution was carried:

- “That the Joint Commissioners ENGAGE James Christou and Partners to undertake the process as detailed within Report CJ302-12/04 regarding the possible modification of the Council Chamber, at a fixed cost of \$6,000 plus GST to be charged to Account 1.1110.4201.0001.9999 – CEO Consultancy.”*

Subsequent to the decision of the Council held on 14 December 2004, a brief was issued to the architects and a number of site meetings occurred to further discuss the concept. The brief issued to the architects was based on the Council decision of 10 August 2004, for the redesign to deal with the following aspects:

- meeting the recommendations of the Governance Review – Final Report being to review the structure of the Council Chamber to make it more conducive to a better meeting environment;
- to allow for greater availability and usage for performing arts and other community events.

Following the designs prepared by the architect, an interior designer was contacted to explore further options based on redesigning the chamber to assist in the environment for Council meetings.

DETAILS

Issues and options considered:

The conceptual drawings for the redesign of the Council Chamber have considered a number of options and issues in order to meet the resolution of the Council.

The conceptual drawings provided by the architect were indicatively costed at \$429,000. These indicative costings did not include:

- Professional fees;
- Relocation of furniture and equipment (by Council);
- Demountable screens etc, required for different uses of the Council Chamber;
- Upgrade of lighting, finishes etc.;
- Contingencies;
- Cost escalation.

It also needs to be noted that the indicative costings of the furniture is not at the same standard as currently installed.

Following receipt of the conceptual drawings from the architect, contact with made with an interior designer to examine alternative designs of the chamber in an effort to meet the recommendation of the Governance Review Panel only.

The indicative costs provided by the interior designer provided for the following works:

- Remove a section of the dais located at the presiding person's chair;
- Remove existing Council Chamber table;
- Remove existing carpet;
- Install new Council chamber table with removable desks;
- Install new power and data outlets.

The indicative costs for the works was approximately \$75,000. This costing does not allow for an alteration to the existing sound system.

Link to Strategic Plan:

Objective 1.2

To meet the cultural needs and values of the community

Strategies

- 1.2.1 Continue to enhance and create new cultural activities and events
- 1.2.2 Create cultural facilities.

Objective 3.1

To develop and maintain the City of Joondalup's assets and built environment.

Strategies

- 3.1.1 Plan the timely design, development, upgrade and maintenance of the City's infrastructure.

Objective 4.3

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

Strategies

- 4.3.1 Provide fair and transparent decision-making processes.

Legislation – Statutory Provisions:

Not Applicable.

Risk Management considerations:

Not Applicable.

Financial/Budget Implications:

There are currently no funds identified in the 2005/06 budget to undertake any redesign of the Council Chamber.

Policy Implications:

Not Applicable.

Regional Significance:

A redesign of the Council Chamber may allow for greater availability and usage for community groups within the region.

Sustainability Implications:

The potential redesign of the Council Chamber may allow for a more conducive environment for the decision-makers and the members of the public while possibly providing an alternative facility for the public to utilise for alternative uses.

Consultation:

Not Applicable.

COMMENT

The decision of the Council to explore possible redesigns of the Council Chamber was as a result of the recommendations of the Governance Review Panel.

The Civic Centre and Joondalup Library were opened in 1997, and were purpose built facilities.

With the proposed changes in the number of offices of Councillors from 14 to 12, there may be the need to modify the Council Chamber table to better reflect the makeup of the elected Council.

The newly elected Council is scheduled to take office following the elections to be held on 6 May 2006. Given the pending return of elected members and the fact that no funds exist in the current budget, it is recommended that the matter be referred to the newly elected Council for consideration.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That Council REFERS the matter of redesigning the Council Chamber to the newly elected Council, paying particular attention to the recommendations of the Governance Review Panel and the decision of the Council dated 10 August 2004.

MOVED Cmr Anderson, SECONDED Cmr Fox that Council:

- 1 DETERMINES that the most appropriate format for the Council Chamber is one of two (2) lines of six (6) Council seats parallel to one another at an appropriate distance from one another so as to be conducive to the development of a sense of collegiality and with the Mayor and Chief Executive Officer desks being positioned on a slightly raised platform on the Council Chamber floor at the head of and between the two lines of Councillors in front of the current City crest on the podium. Further the City officers other than the Chief Executive Officer in attendance at Council meetings sit at tables placed in the second row behind each of the Councillors' seats. All desks are to be moveable, such that the Chamber floor can be cleared of all desks when Council is not meeting and thereby provide opportunities for greater flexible use of the Chamber at such times;**
- 2 REQUESTS the Chief Executive Officer to advise the in-coming Council at its first meeting of this Council's decision;**
- 3 RECOMMENDS to the in-coming Council the redesign of the Council Chamber and sound system upgrade be effected as a matter of extreme urgency;**
- 4 RECOMMENDS that \$75,000 be allocated in the budget for 2006/07 for the redesign of the Chamber and \$125,000 be allocated in 2006/07 budget for the upgrade of the Council Chamber sound system.**

Discussion ensued.

Cmr Smith foreshadowed her intention to move a different motion should the motion under consideration not be successful.

The Motion was Put and

LOST (1/4)

In favour of the Motion: Cmr Anderson **Against the Motion:** Cmrs Paterson, Clough, Smith and Fox

MOVED Cmr Smith, SECONDED Cmr Fox that Council REFERS the matter of redesigning the Council Chamber to the draft 2006/07 budget and draws the attention of the newly elected Council to the Governance Review Panel recommendations.

Discussion ensued.

At the request of Commissioners, Chief Executive Officer suggested the following words be added at the commencement of the motion.

"That Council LISTS for consideration in the draft 2006/07 Budget the proposal for....."

MOVED Cmr Smith, **SECONDED** Cmr Fox that Council **LISTS** for consideration in the draft 2006/07 Budget the proposal for the redesigning of the Council Chamber and will draw the attention of the newly elected Council to the Governance Review Panel recommendations.

MOVED Cmr Anderson that an additional Point 2 be added to the Motion as follows:

“2 that the proposal from James Christou, Architects not be considered as part of the review process;”

There being **NO SECONDER**, the Motion

LAPSED

The Motion as Moved by Cmr Smith, and Seconded by Cmr Fox was Put and **CARRIED (4/1)**

In favour of the Motion: Cmrs Paterson, Clough, Smith and Fox Against the Motion: Cmr Anderson

CJ032 - 03/06 BUSINESS EXCELLENCE FRAMEWORK CITY POLICY – [26176]

WARD: All

RESPONSIBLE DIRECTOR: Mr Garry Hunt
Office of CEO

CJ060307_BRF.DOC:ITEM 2

PURPOSE

For the Council to adopt the City Policy 8-10, Australian Business Excellence Framework.

EXECUTIVE SUMMARY

The Council adopted, as a City Policy, the use of the Australian Business Excellence Framework in November 2005.

This report provides a Draft City Policy - Australian Business Excellence Framework for the review and endorsement of the Council.

The adoption of City Policy 8-10 shown as Attachment 1 to this report will provide the City with a policy position as well as a practical methodology for continuous improvement across all management aspects of the organisation, and better practice in the provision of services to the community.

BACKGROUND

At the Council Meeting of November 2005 the Council adopted, as a City Policy, the use of the Australian Business Excellence Framework as the City's leadership and management framework for a period of five (5) years.

DETAILS

Issues and options considered:

The Australian Business Excellence Framework has been adopted by a number of Australian organisations including many Australian and Western Australian Local Governments. The Framework provides a systematic process for the continuous review and improvement of all aspects of the leadership and management aspects of the City, and provides a basis for measuring adherence to business excellence principles.

The Australian Business Excellence Framework translates the principles of Business Excellence into a set of criteria that can be used for assessment and improvement planning. The assessment can be either internal (self-assessment) or external (evaluation towards an Australian Business Excellence Award).

The Framework identifies:

- Twelve Principles of Business Excellence.
- Seven interrelated Categories that emphasise the holistic nature of the model.
- Seven Categories, and
- Twenty-Two items (spread across the seven categories).

The categories create a specific structure in which the City will be able to review, question and analyse leadership and management systems.

Link to Strategic Plan:

Key Focus Area 4

Organisational Development

Outcome

The City of Joondalup is a sustainable and accountable business

Objective 4.1

To manage the business in a responsible and accountable manner.

Legislation – Statutory Provisions:

Not Applicable.

Risk Management considerations:

The Australian Business Excellence Framework provides an opportunity to assess the current state of the whole organisation against the criteria, to identify strengths and opportunities for improvement, and to prioritise opportunities for improvement.

The principles and categories characterise the essential features, characteristics and approaches of leadership and management systems to achieve sustainable and excellent performance and includes an assessment of governance whereby organisations are required to assess how responsibilities to all stakeholders are identified and effective systems of leaderships, authority, accountability and relationships are implemented to fulfil them.

The framework also requires organisations to assess their environmental and community contribution and the impact on the community in terms of the extent to which the organisation minimises harm and maximises community well-being, how the organisation assesses the risks its business activities and practices pose to the community, how it reduces those risks through its policies and practices, its impact on the natural environment, and contribution to the community in terms of processes for community involvement.

Financial/Budget Implications:

The following costs may be applicable:

Training (Certificate 111 in Business Excellence and Certificate 1V in Organisational Assessment)	\$1,300 per participant.
Organisational Assessment	Cost of consultant to conduct external organisational assessment and prepare report.
<p>Application for Awards</p> <p>Application for Awards can be at two levels:</p> <p>Award level – requires an evaluation against all categories in the Framework</p> <p>Category level – an evaluation against a category nominated in the application form.</p>	<p>Award level:</p> <ul style="list-style-type: none"> • Evaluation Fee - \$2,050 • Site Visit Fee - \$3,750 per day <i>(includes travel and accommodation expenses)</i> <p>Category level:</p> <ul style="list-style-type: none"> • Evaluation Fee - \$1,050 • Site Visit Fee - \$2,750 per day <i>(includes travel and accommodation expenses)</i>

Policy Implications:

The Business Excellence City Policy will provide a policy framework that aligns the City's performance management systems and practices with the principles of the Business Excellence Framework".

The aim of the Policy is to adopt a proven business improvement model that promotes excellent leadership and management practices and processes.

Regional Significance:

Not Applicable.

Sustainability Implications:

The Australian Business Excellence Framework provides a vehicle and process for sustainable business improvement. The Framework provides the methodology for a planned, systematic approach to assessing and identifying improvements to the City's leadership and management systems, and, therefore, sustainable business improvement.

The Business Excellence Framework will assist the City to progress and assess organisational sustainability that will result in improved services to the community, greater efficiencies in operations, and improved community and stakeholder relations.

Adoption of the Framework will assist the City to focus on business excellence and long-term sustainability.

Consultation:

Not Applicable.

COMMENT

The Australian Business Excellence Framework is a powerful tool, which will assist the City to achieve long-term improvement by introducing best practice methodologies across all aspects of the organisation, and to integrate and deploy quality management into its total leadership and management systems.

The framework has been specifically designed to assist organisations to measure current performance and to continually improve performance in order to provide:

- Improved service delivery/provision to the community.
- Improved community satisfaction.
- Improved operational efficiency.
- Improved organisational performance.
- Improved employee morale.
- Improved council member, community, government and key stakeholder relations.

The adoption of the Australian Business Excellence Framework City Policy will provide the City with a policy position as well as a practical methodology and process for driving continuous improvement throughout the organisation, and will provide a solid basis for continual improvement and better practice in the provision of services to the community.

ATTACHMENTS

Attachment 1 Draft City Business Excellence Framework Policy

VOTING REQUIREMENTS

Absolute Majority

MOVED Cmr Clough, SECONDED Cmr Smith that Council ADOPTS the Australian Business Excellence Framework City Policy, shown as Attachment 1 to Report CJ032-03/06 for a period of five (5) years.

The Motion was Put and

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

In favour of the Motion: Cmr's Paterson, Clough, Anderson, Smith and Fox

Appendix 1 refers

To access this attachment on electronic document, click here: [Attach1agn140306.pdf](#)

CJ033 - 03/06 LIST OF PAYMENTS MADE DURING THE MONTH OF JANUARY 2006 – [09882]

WARD: All

RESPONSIBLE DIRECTOR: Mr Peter Schneider
Corporate Services

CJ060307_BRF.DOC:ITEM 3

PURPOSE

To present to Council the list of accounts paid under the CEO's delegated authority during the month of January 2006 to note.

EXECUTIVE SUMMARY

This report presents the list of payments made under delegated authority during the month of January 2006, totalling \$6,700,042.62.

It is recommended that Council NOTES the CEO's list of accounts for JANUARY 2006 paid under delegated power in accordance with regulation 13 (1) of the Local Government (Financial Management) Regulations at Attachments A and B to Report CJ033-03/06, totalling \$6,700,042.62.

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 Regulation 13 of the 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 summarises the payments drawn on the funds during the month of January 2006. A list detailing the payments made is appended as Attachment A. The vouchers for the month are appended at Attachment B.

FUNDS	DETAILS	AMOUNT
Municipal Account	Cheques 74108 - 74351 & EFT 4986 - 5270	3,693,354.64
	Vouchers 121A - 124A & Vouchers 128A - 130A	3,006,687.98
Trust Account		Nil
		\$ 6,700,042.62

Issues and Options Considered:

Not Applicable.

Link to Strategic Plan:

Strategy 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.

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 the 2005/06 Annual Budget, or approved in advance by Council.

Policy Implications:

All expenditure included in the list of payments is drawn from the City's accounting records.

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 Strategic Financial Plan 2005/06-2008/09 which was advertised for a 30 day period with an invitation for submissions in relation to the plan.

COMMENT

All expenditure included in the list of payments is in accordance with the 2005/06 Annual Budget, or has been authorised in advance by Council where applicable.

ATTACHMENTS

Attachment A	CEO's Delegated Payment List for the month of January 2006
Attachment B	Municipal Fund Vouchers for the month of January 2006

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Clough, **SECONDED** Cmr Smith that Council **NOTES** the CEO's list of accounts for January 2006 paid under delegated power in accordance with regulation 13 (1) of the Local Government (Financial Management) Regulations 1996 at Attachments A and B to Report CJ033-03/06, totalling \$6,700,042.62.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

Appendix 2 refers

To access this attachment on electronic document, click here: [Attach2brf070306.pdf](#)

CJ034 - 03/06 WRITE OFF OF MONIES – RANS MANAGEMENT GROUP – [46492] [04881]

WARD: All

RESPONSIBLE DIRECTOR: Mr Peter Schneider
Corporate Services

CJ060307_BRF.DOC:ITEM 4

PURPOSE

To obtain Council approval to write-off monies outstanding as a result of the voluntary liquidation of the RANS Management Group.

EXECUTIVE SUMMARY

The RANS Management Group was responsible for the management and operation of the City's Leisure Centres from 1 February 2001 until it sought voluntary liquidation on 12 June 2002. The Liquidators managed the Leisure Centres until 12 July 2002 when full management returned to the City. As a consequence of the liquidation \$31,424.04 recorded as due to the City remained outstanding. Subsequent verification has confirmed the amount is unrecoverable and approval is therefore sought from Council to write off the outstanding monies.

It is recommended that Council APPROVES the write-off as a bad debt, the sum of \$31,424.04, being the amount of outstanding monies as a result of the voluntary liquidation of the RANS Management Group.

BACKGROUND

Council resolved at its meeting of 28 November 2000 to award a lease to RANS Management Group for the operational management of the City's Leisure centres. The period of the lease was for 5 years, with an option of a further 5 years, commencing on 1 February 2001 - (Item CJ337 – 11/00 refers). A cash bond of \$184,000 was deposited with the City under the terms of the lease.

The RANS Management Group went into voluntary liquidation on 12 June 2002. Mr Ian Carson and Mr Rod Slattery of PPB Chartered Accountants were appointed as Liquidators. (Item JSC3 – 06/02 refers).

An agreement was reached between the Liquidators and the City of Joondalup to continue operations of the Leisure Centres until 31 July 2002 to allow the City to analyse future management operations of the Leisure Centres. (Item JSC3 – 06/02 refers).

The City resumed control of operation of the Leisure Centres on 12 July 2002 after receiving a revised proposal from the Liquidator. (Item C89 – 07/02 refers).

A Provision for Doubtful Debts was created in 2002/2003 for \$31,424.04 in anticipation that there would be insufficient funds available for unsecured creditors, and in line with generally accepted accounting principles.

DETAILS

In October 2005 the City received confirmation from the liquidator, PPB Chartered Accountants, that pursuant to S508 (1) of the Corporations Act 2001, an AGM was called to deal with the final accounts and winding up of RANS. As a result of the winding up there were no dividends payable to creditors. Based on this information the City is left with no alternative other than to write-off as a bad debt the amount of \$31,424.04 previously provided for as doubtful.

It should be noted that there will be no cash impact as a result of this write-off, it is merely an accounting entry required to finalise the accounts associated with the RANS liquidation.

Issues and options considered:

Not Applicable.

Link to Strategic Plan:

Not Applicable.

Legislation – Statutory Provisions:

Section 6.12 (1) (a) of the Local Government Act 1995 gives the Council the power to write off any amount of money owing to the City. By authority of section 5.42 of the Act, the Council delegated this authority to the CEO who in turn delegated his authority up to the limits provided in the instrument of delegation, to other employees under section 5.44 of the Local Government Act 1995, as stated in the Register of Delegation of Authority manual under Write off of Monies. The delegated Authority to write off monies is for individual items to \$20,000.00.

Risk Management considerations:

Not Applicable.

Financial/Budget Implications:

All amounts to be written off were charged back to the revenue accounts originally credited when the Provision for Doubtful Debts was created in 2002/03.

Policy Implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Not Applicable.

COMMENT

Confirmation was received from the Liquidator on 12 October 2005 that no dividends were available to unsecured creditors. Therefore the amount of \$31,424.04 is unrecoverable. It is recommended that the amount be written off as a bad debt against the previous Provision for Doubtful Debts entry made in 2002/03. There is no cash impact on the accounts of the City as a result of this write-off and the matter is being referred to Council as it exceeds the CEO's delegated authority to write off monies.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Smith, SECONDED Cmr Fox that Council APPROVES the write-off as a bad debt, the sum of \$31,424.04 being the amount of outstanding monies as a result of the voluntary liquidation of the RANS Management Group.

Cmr Smith spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

CJ035 - 03/06 FINANCIAL ACTIVITY STATEMENT FOR THE PERIOD ENDED 31 JANUARY 2006 – [07882]

WARD: All

RESPONSIBLE DIRECTOR: Mr Peter Schneider
Director Corporate Services

CJ060307_BRF.DOC:ITEM 5

PURPOSE

The January 2006 financial activity statement is submitted to Council to be noted.

EXECUTIVE SUMMARY

The January 2006 year to date report shows an overall variance (under spend) of \$15.4m when compared to the year to date budget approved by Council at its special meeting of 28 July 2005 (JSC4-07-05 refers).

This variance can be analysed as follows:

- The **Operating Surplus** is \$31.3m compared to a budgeted surplus of \$25.4m at the end of January 2006. The \$5.9m variance is primarily due to greater than budgeted rates, interest income and contributions, reimbursements and donations and lower than budgeted expenditure in employee costs and materials and contracts. This is partially offset by reduced revenue from fees and charges and government grants and subsidies.
- **Capital Expenditure** is \$11.6m against the year to date budget of \$21m. The \$9.4m under spend is due to delays in purchasing heavy and light vehicles and in the construction of Infrastructure assets.

Note: The January 2006 report was prepared prior to the adoption of the 2005/06 Revised Budget. Comparatives are therefore YTD Actual vs. original YTD Adopted Budget.

It is recommended that Council NOTES the Financial Activity Statement for the period ended 31 January 2006.

BACKGROUND

The Local Government (Financial Management) Regulations 1996 requires the production of financial activity statements. Council approved at the 11 October 2005 meeting to accept the monthly Financial Activity Statement according to nature and type classification.

DETAILS

The financial activity statement for the period ended 31 January 2006 is appended as Attachment A.

Issues and options considered:

Not Applicable.

Link to Strategic Plan:

Objective 4.1.1 – Ensure financial viability and alignment to plan.

Legislation – Statutory Provisions:

Section 6.4 of the Local Government Act 1995 requires a local government to prepare an annual financial report for the preceding year and such other financial reports as are prescribed.

Regulation 34(1) of the Local Government (Financial Management) Regulations 1996 as amended, requires the local government to prepare each month a statement of financial activity reporting on the sources and applications of funds as set out in the annual budget.

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:

Refer attachment A.

Policy Implications:

All expenditure included in the Financial Activity Statement is drawn from the City's accounting records.

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 Strategic Financial Plan, prepared under Section 5.56 of the Local Government Act 1995, which was made available for public comment from 21 May to 20 June 2005.

COMMENT

All expenditures included in the Financial Activity Statement are incurred in accordance with the approved 2005/06 Annual Budget or has been authorised in advance by Council where applicable.

Note: The January 2006 report was prepared prior to the adoption of the 2005/06 Revised Budget. Comparatives are therefore YTD Actual vs. original YTD Adopted Budget.

ATTACHMENTS

Attachment A Financial Activity Statement for the period ended 31 January 2006.

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Clough, SECONDED Cmr Anderson that Council NOTES the Financial Activity Statement for the period ended 31 January 2006.

The Motion was Put and CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

Appendix 3 refers

To access this attachment on electronic document, click here: [Attach3brf070306.pdf](#)

CJ036 - 03/06 PROPOSED ROAD CLOSURE FOR EXCESS ROAD RESERVE: OCEAN REEF ROAD AND MITCHELL FREEWAY, BELDON – [42015]

WARD: Central

RESPONSIBLE DIRECTOR: Mr Clayton Higham
Planning and Community Development

CJ060307_BRF.DOC:ITEM 6

PURPOSE

To request Council approval to advertise a proposed road closure for portion of Ocean Reef Road and adjacent Mitchell Freeway reserve that are surplus to requirements of the Department for Planning & Infrastructure and Main Roads WA.

EXECUTIVE SUMMARY

The Department for Planning & Infrastructure (DPI) has advised of its intention to rationalise the road reserve and status of surrounding reserves/lots in proximity to the Ocean Reef Road frontage to the Beenyup Water Treatment Plant. At present, the surplus road reserve in this area extends up to 96m in depth. The closure of the subject portion of road reserve will result in the reserve of Ocean Reef Road being not less than 40m. It is proposed to include the former road reserve and other land into the adjoining Reserve 28971 (the Beenyup Water Treatment Plant).

There are a number of services within the existing road reserve that can all be protected by various easements over the land. The Water Corporation has no plans for building within the area. The Council's preferred site for the relocation of its work depot is within the existing Water Corporation reserve and will not be affected by these proposed boundary adjustments.

The Council's only involvement in this process is to advertise the proposed road closure and resolve whether to support its closure. The road reserve land is not owned or managed by Council and therefore the Council has no entitlement to the land.

It is recommended that Council INITIATES the permanent closure of the excess portion of the road reserve of Ocean Reef Road, Beldon and the adjacent section of the Mitchell Freeway reserve, as shown on Attachment 2 to Report CJ036-03/06 for the purposes of public advertising for a period of 35 days.

BACKGROUND

Suburb/Location:	Beldon
Applicant:	Department for Planning & Infrastructure
Owner:	Crown (State of Western Australia)
Zoning:	DPS: Residential
	MRS: Urban
Site Area:	Not known
Structure Plan:	Not Applicable

In 2002, Main Roads WA (MRDWA) requested that Council commence action to close the subject portion of road reserve in accordance with Section 58 of the Land Administration Act (LAA). At that time, initial consultation with service authorities was undertaken and there were a number of objections received. In addition, the Water Corporation was proposing to realign its access road to Beenyup Water Treatment Plant and the City was considering relocating its works depot to the road reserve land, once the road reserve was closed. The proposed road closure did not proceed at that time due to the objections received from the service authorities and the uncertainty of the location for Council's works depot.

In October 2005, DPI wrote to the City advising that it is proposed to:

- (a) close those portions of Ocean Reef Road as shown on the attached plan (Attachment 2) for inclusion into Reserve 28971 (Beenyup Water Treatment Plant);
- (b) close the portion of the Mitchell Freeway reserve as shown on the attached plan (Attachment 2) for inclusion into Reserve 28971 (Beenyup Water Treatment Plant);
- (c) Transfer Lot 96 (currently owned by Main Roads) to the State of WA for inclusion into Reserve 28971 (Beenyup Water Treatment Plant);
- (d) Cancel Reserve 41897 (land for St Johns Ambulance) and amalgamate this land into Reserve 28971 (Beenyup Water Treatment Plant).

Refer Attachment 2 for the plan prepared by DPI identifying the land described above.

In regard to the above, the City is required to advertise the road closures and resolve to close the roads in accordance with the requirements of the LAA. In addition, the City has the opportunity to comment on the proposed transfer of Lot 96 and cancellation of Reserve 41897 (originally set aside for an ambulance depot) for inclusion into Reserve 28971.

At its December 2005 meeting, Council determined that an area of 2.5 hectares within the Beenyup Water Treatment Plant reserve is the preferred site for the proposed Council works depot (resolution 1 of Item CJ295-12/05 refers). The preferred site is contained within the existing reserve for Beenyup Water Treatment Plant and the proposed road closures and other proposals outlined above would not affect the area proposed for the City of Joondalup works depot relocation.

The City has not initiated the proposed road closures, and will not be the determining authority for the proposal. The City is however required by the LAA to undertake the public consultation on this matter. The subject land is not owned or managed by the City, and therefore has no entitlement to or control over the land.

DETAILS

Issues and options considered:

The subject portions of road reserves were identified as surplus to MRDWA and DPI requirements in 2002. The Council has the option to:

- (a) resolve to advertise the road closures, or
- (b) resolve to not advertise the road closures or only advertise part of the closures

Previously, the road closures did not proceed as there are a number of services within the road reserve land that made the land unsuitable for development. At that time the Council was considering relocating its works depot to the road reserve land. Given that the City is no longer wishing to pursue use of this land for the works depot, the services located in the road reserve could be protected via an easement within Reserve 28971.

Link to Strategic Plan:

Objective 2.1

To plan and manage our natural resources to ensure environmental sustainability

Strategies 2.1.1

Maintain and protect natural assets to retain biodiversity

Objective 4.2

To provide quality services within the best use of resources

Strategies 4.2.1

Provide efficient and effective service delivery

Legislation – Statutory Provisions:

The road closure is required to be undertaken in accordance with Section 58 of the Land Administration Act (LAA). This section of the Act outlines that the proposed road closure must be advertised for 35 days with a notice to be placed in a newspaper. The Council is then to consider any submissions lodged, resolve to close the road, and forward the request to the Minister for Planning & Infrastructure via DPI for a determination.

In regard to the inclusion of Lot 96 and Reserve 41897 into Reserve 28971, the Council is requested to provide comment to the DPI, however, there is no statutory process that the Council is required to conduct.

Risk Management considerations:

If the City did not support the proposed road closures, the land would remain as a road reserve. It is considered that if the land is included in the Beenyup Water Treatment Plant reserve, then it can be effectively managed by the Water Corporation. Overall, there are no identified risk management considerations.

Financial/Budget Implications:

The City is responsible for all costs associated with advertising the proposed closure. The current budget has sufficient funds to cover these costs.

Policy implications:

Not Applicable

Regional Significance:

The subject land contains mature native vegetation that has been identified in Bush Forever. The adjoining Reserve 28971 is identified in Bush Forever as Site 303. By including the subject land into Reserve 28971, this will result in better protection mechanisms for this regionally significant vegetation. Attachment 3 (aerial photo) shows the extent of vegetation on the subject land.

Sustainability implications:

The inclusion of this land into the adjoining reserve will result in stronger mechanisms being in place for the protection of the existing mature native vegetation on site.

Consultation:

Initial consultation was undertaken with service authorities in 2001/02 in order to identify any services located within the road reserve land. This revealed that there were a number of services located within the road reserve land that would make the land unsuitable for future development, or alternatively would require relocation of those services. The location of the services and substantial cost to relocate the services resulted in the City not pursuing the proposed relocation of the Council's works depot to this road reserve land and therefore the road closure did not proceed at that time. However, as it is now proposed to include the subject road reserve within the adjacent Water Corporation reserve with no development proposed on the land, easement for the services can be created.

If this proposal is supported by the Council, nearby landowners will be notified in writing, a notice placed in the newspaper and a sign erected on site, seeking comment on the proposed road closure, with the advertising period being for 35 days. A notice will also be placed on the City's website. Upon the closure of advertising, the matter will be again presented to Council for consideration, together with details of submissions received.

COMMENT

Services with the road reserve land

The subject road reserve land contains a Water Corporation water main located along the southern boundary of the land (adjacent to the Water Treatment Plant). In 2001 the Water Corporation lodged an objection to the proposed road closure due to the presence of this main. As it is proposed to amalgamate this land into the adjacent reserve for which the management order is granted to the Water Corporation, this objection would be satisfied by way of a reserve over the main.

Telstra has advised that there is Telstra cable located within the road reserve, and on that basis it objected to the proposed road closure when first considered in 2001. However, Telstra advised that it would be satisfied if the subject land were to be included in the Water Corporation reserve. As the road reserve land is now proposed to be amalgamated into the Water Corporation reserve, this matter is addressed.

Alinta Gas also objected to the proposed road closure in 2001. However, it advised that this matter could be addressed via creation of a 5m wide easement to protect the Alinta Gas mains.

Western Power also lodged an objection to the road closure in 2001 due to the presence of switchgear and cables within the road reserve land. Western Power advised at that time “the objection would be lifted if the City supported relocation of the cable, at a cost of \$100,000 or creation of an easement.” In this instance, as development is no longer proposed on the land, the cable could be protected via an easement.

Given that it is now proposed to include the subject road reserve land into the Water Corporation reserve and there are no proposals for building on this land, the concerns of the service authorities can be addressed and easements lodged to protect the services.

Other land transfers

Reserve 41897 was originally set aside as a reserve for a future depot for St John Ambulance. St John Ambulance has advised that the reserve is now surplus to its requirements and the recent construction of a Joondalup depot precludes the need for an ambulance depot in the Beldon vicinity.

MRDWA has advised that it owns Lot 96 and that the land is no longer required. It has therefore agreed to transfer this land into Reserve 28971. In addition, the section of Mitchell Freeway as shown on Attachment 2 is surplus to requirements and MRDWA has advised that this is also proposed to be amalgamated into Reserve 28971. This section of the freeway reserve would also have to be zoned under the Metropolitan Region Scheme and the Council’s District Planning Scheme as part of the process.

In regard to these specific other land transfers, the Council is not required to undertake any processes, but when the Council considers the road closures after advertising, it is recommended that the Council advises DPI of its comments on these matters.

Future use of the land

At this time the City is not aware of any proposed use of the land. Given that there will be a number of easements that traverse the subject land (to protect the services within the land), that land will be constrained for development in the future.

MRS Amendment Process

In regard to the Metropolitan Region Scheme (MRS), the Ocean Reef road reserve is currently zoned Urban, the surplus freeway land is reserved for Primary Regional Roads and the Water Corporation reserve is Reserved for Public Purpose, specifically for the Water Authority of WA. If all of the land is to be included in the existing Water Corporation reserve, it is recommended that the Department for Planning & Infrastructure be requested to initiate an amendment to the MRS to reserve all the land for Public Purpose.

With the new Planning and Development Act 2005 coming into operation on 9 April 2005, the Council can request an automatic amendment of its District Planning Scheme to comply with an amendment to the MRS without the need for a separate local amendment. This matter can be addressed with a resolution requesting DPI to undertake the MRS amendment and automatic local scheme amendment, however, such a resolution would be more appropriate when Council again considers this matter at the conclusion of advertising of the proposed road closures.

In conclusion, the proposed road closures as detailed on Attachment 2 are supported for the purposes of advertising.

ATTACHMENTS

Attachment 1	Locality Plan
Attachment 2	Plan showing proposed road closures and land amalgamation
Attachment 3	Aerial Photo of the subject land

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Smith, **SECONDED** Cmr Clough that Council **INITIATES** the permanent closure of the excess portion of the road reserve of Ocean Reef Road, Beldon and the adjacent section of the Mitchell Freeway reserve, as shown on Attachment 2 to Report CJ036-03/06 for the purposes of public advertising for a period of 35 days.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmrs Paterson, Clough, Anderson, Smith and Fox

Appendix 4 refers

To access this attachment on electronic document, click here: [Attach4agn140306.pdf](#)

CJ037 - 03/06 PROPOSED CLOSURE OF PORTION OF THE LANEWAY BETWEEN LEACH STREET & WEST COAST DRIVE, MARMION – [09031]

WARD: South

RESPONSIBLE DIRECTOR: Mr Clayton Higham
Planning and Community Development

CJ060307_BRF.DOC:ITEM 7

PURPOSE

The purpose of this report is to seek Council approval to close to through vehicular traffic portion of the laneway between Leach Street and West Coast Drive, Marmion.

EXECUTIVE SUMMARY

Since 2002, several complaints have been received from the residents adjacent to the laneway between Leach Street and West Coast Drive, Marmion regarding parking, vehicle speed and antisocial behaviour.

In August 2005, Council resolved to advertise the proposal to close the laneway by use of bollards at the mid point (Attachment 1 refers). The closure would prevent through traffic while still allowing use by pedestrians. Seventeen (17) submissions were received, with some parties suggesting that the bollards be placed closer to West Coast Drive. A submission also proposed that the vehicle crossover to West Coast Drive be closed.

In order to prevent this laneway being used as a short cut and thoroughfare for vehicles yet still providing pedestrian access, it is recommended that Council:

- 1 *SUPPORTS the closure of a portion of the laneway between Leach Street and West Coast Drive, Marmion, specifically a 0.3m wide strip adjacent to the West Coast Drive road reserve;*
- 2 *REQUESTS that, in accordance with Section 58 of the Land Administration Act 1997, the Department for Planning & Infrastructure close that portion of the laneway as detailed in point 1;*
- 3 *In regard to the road closure land, as described in point 1, REQUESTS that the Department for Planning & Infrastructure set aside this land as a separate reserve for the purposes of "Pedestrian Access" and that a Management Order be granted to the City of Joondalup;*
- 4 *ADVISES the adjacent landowners that upon the creation of the Pedestrian Access reserve the existing "crossover" to the laneway to West Coast Drive will be removed and new kerbing put in place and bollards placed within the pedestrian access reserve and adjacent to the driveway of Lot 37 (38) West Coast Drive as shown on Attachment 2 to Report CJ037-03/06.*

BACKGROUND

Suburb/Location:	Marmion
Applicant:	City of Joondalup
Owner:	Crown land
Zoning:	DPS: Not Applicable
	MRS: Not Applicable
Site Area:	Not Applicable
Structure Plan:	Not Applicable

Since 2002, the City has received several complaints from the residents adjacent to the laneway regarding parking, vehicle speed and antisocial behaviour.

At its meeting of 5 April 2005, while considering the proposed rezoning from Local Reserves "Parks and Recreation" to "Urban Development" of Lot 61 (14) Leach Street, Marmion (former CSIRO site) Council resolved, in part, to:

"Direct the CEO to investigate the implementation of a suitable traffic management treatment within the laneway linking West Coast Highway through to Leach Street in conjunction with the preparation of the draft structure plan."

Following the City's consultation with the immediately affected land owners, Council, at its meeting of 30 August 2005 (item CJ175 – 08/05 refers), resolved to:

"INITIATES the permanent road closure of Laneway Number 6 between Leach Street and West Coast Drive to vehicular traffic at mid-point in accordance with the requirements of the Land Administration Act (1997)."

In accordance with the Act, the proposal has been advertised and a number of submissions were received. As the adjoining landowners had requested different locations for the bollards in their submissions, two on site meetings were held with the adjoining landowners. At the meeting of 6 February 2006 all abutting residents were in attendance and all agreed to a revised location for the bollards. The revised location for the bollards is shown on Attachment 2.

DETAILS

Issues and options considered:

The laneway provides vehicle access to all four (4) adjoining properties and also acts as a pedestrian thoroughfare. There are garages that front onto the laneway and it is a frequently used pedestrian thoroughfare, therefore it has not been considered appropriate to close the laneway entirely.

There was further concern from local residents about safety within the laneway especially due to the speed of traffic using the laneway and suggested inadequate sight lines at the intersection of the laneway with West Coast Drive. Use of traffic claming devices such as speed humps has been considered, however this option was not considered appropriate to control the issues.

Alternative location of proposed closure

Initial consultation with the adjoining owners resulted in the proposal for the laneway to be closed at the midpoint via use of bollards being advertised (refer Attachment 1).

Whilst there were submissions in support for use of bollards at the mid point, in four (4) of submissions it was suggested that the bollards be placed at the West Coast Drive end. It was suggested that this would alleviate the concern about vehicle sight line problems from West Coast Drive for one of the residents fronting West Coast Drive that want access to their garages to be via Leach Street. If this alternative location were preferred, an option supported by all abutting residents is to place bollards adjacent to the West Coast Drive road reserve as shown on Attachment 2.

The Department for Planning Infrastructure (DPI) recommended that if it is the Council's intention to place bollards in the laneway, it would be required to close that portion of the road (laneway) where the bollards are to be placed and it was recommended that the Council request that the portion of laneway be made a reserve for pedestrian access and a management order given to the City of Joondalup.

In summary, Council has the option to:

- (a) request the creation of a pedestrian access reserve and bollards adjacent to the West Coast Drive road reserve;
- (b) request the creation of a pedestrian access reserve and bollards be placed at the mid point of the laneway (as advertised);
- (c) Allow the laneway to remain open to vehicles.

Link to Strategic Plan:

This recommended proposal is in line with the Council's Strategic Plan, as detailed below:

Objective 1.4

To work with the community to enhance safety and security in a healthy environment

Strategies 1.4.1

Continue to implement the Safer Community Program

Objective 3.1

To develop and maintain the City of Joondalup's assets and built environment

Strategy 3.1.1

Plan the timely design, development, upgrade and maintenance of the City's infrastructure

Objective 4.2

To provide quality services with the best resources.

Strategy 4.2.1

Provide efficient and effective service delivery

Legislation – Statutory Provisions:

The Department of Land Information (DLI) has advised that the laneway is Crown Right of Access, approved and dedicated on the approval of Crown Plan 5288 dated 27/04/1939. Therefore, the closure procedure is the same as for a Public Road.

Under the Local Government Act 1995, section 3.5, the laneway can be closed by Order, subject to community consultation, to through vehicular traffic, however it needs to be renewed every four years. A permanent closure, as required in this case, is undertaken under the Land Administration Act 1997.

Under this Act, a road closure as defined in the DLI's Crown Land Administration and Registration Practice Manual requires a Council resolution to initiate the road closure process. A further resolution to close the road, after the public consultation process has been undertaken, is then required. The request is then forwarded to the Minister for Planning & Infrastructure, via DPI, for final approval. In closing the portion of the laneway, the City would need to resolve to request that the portion of the road to be closed be a reserve for the purpose of "pedestrian access" and that the City would accept a management order for this reserve.

Risk Management considerations:

If the laneway is not closed, there are traffic safety concerns in relation to the pedestrian/vehicle conflict as well as safety concerns for vehicles exiting the laneway to West Coast Drive especially given the limited sight lines available for drivers.

Placing bollards at the West Coast Drive end of the laneway, removing the laneway crossover, and placing 'no through road' signs at both ends of the laneway should alleviate the problem of other residents turning into the laneway from Leach Street to access West Coast Drive. However, there is still a risk that people may turn into the laneway from Leach Street, until they are aware that this access is no longer available. However, this situation should only be short term.

Financial/Budget Implications:

There are sufficient funds in the budget to cover costs associated with the closure process, installation of bollards and removal of the crossover (\$3,000 estimated).

Policy Implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability Implications:

The laneway will remain open for pedestrian access to and from the beach and the addition distance that vehicles would need to travel is less than 350m. Closure of portion of the laneway to vehicles will improve social amenity of the neighbours and will not increase vehicle travelling distances by more than 350m. The laneway will still be open for pedestrian access from Leach Street to West Coast Drive.

Consultation:

The proposed closure was advertised for a period of 35 days and a total of 17 submissions were received, being 4 non-objections from servicing authorities, 10 residents supporting the proposed closure, and 3 residents objecting to the closure of the laneway to vehicles. Refer Attachment 3 for a summary of the submissions received. Full copies of all submissions have been placed in the Commissioner's reading room for information.

All advertising referred to the proposal to place bollards at the mid point of the laneway. A number of the submissions did request that the bollards be placed at the West Coast Drive end of the laneway. This is an option that is given further consideration in this report.

As outlined previously, the location of the proposed bollards was further discussed with the adjoining owners at two on-site meetings. At the second meeting, all adjacent landowners were present and a number of options for placement of the bollards was discussed. All four landowners agreed to the use of new kerbing, vegetation, and bollards adjacent to the West Coast Drive road reserve in order to close the laneway at that point.

COMMENTProposed Closure to Through Traffic

In two objections received there was concern about the additional travel distance should the laneway be closed to through traffic.

The additional distance to the Marmion shopping centre is not more than 100m and the maximum increase in travel distance for vehicles travelling from West Coast Drive to Leach Street or vice versa is not more than 350m. Vehicle access from West Coast Drive to Leach Street will still be available via Troy Avenue or Ozone Road. This is not considered a significant additional distance to travel in a vehicle. Pedestrian travelling distances will not be increased as the laneway will still be open to pedestrians.

Location of Proposed Bollards

The proposed closure of the laneway to through traffic was advertised outlining of the intention to place bollards at the mid point of the laneway. Four (4) of the submissions, including three submissions from the abutting residents, suggested that the bollards be placed closer to West Coast Drive.

The option of putting bollards at the mid-point of the laneway is no longer supported as there is a garage located adjacent to the rear boundary of 38 West Coast Drive and should the bollards be placed at the mid point, there would be an inadequate turning area from the garage. In addition, it would result in those residents with garages to the rear of 36 & 38 West Coast Drive having to use West Coast Drive for access for those garages, however the resident at 38 West Coast Drive would prefer to use Leach Street.

A site meeting was held on 6 February 2006 with all adjoining landowners present. At that meeting various options were considered and all landowners unanimously supported the bollards being adjacent to the West Coast Drive road reserve and the verge modified at that point.

The front driveways of both 36 & 38 West Coast Drive are adjacent to the laneway and have direct access onto those laneways (refer to the photos included in Attachment 4). If bollards were placed adjacent to West Coast Drive road reserve only, then through drivers could potentially cross onto the adjacent driveways and still use the laneway as a thoroughfare.

This was raised with both landowners and the owners of 38 West Coast Drive agreed to place planter boxes or have the City install bollards in the laneway adjacent to the driveway to ensure that vehicles cannot use their driveway as a thoroughfare. The owner of 36 West Coast Drive still wants their front driveway (that connects from the laneway to West Coast Drive) to remain open. This landowner is aware that there is potential for drivers to use their driveway as a thoroughfare but has advised that they support this option. Her driveway is located 0.3m from the West Coast Drive road reserve. Therefore if this option is pursued, the pedestrian access reserve would need to be not more than 0.3m in width.

In conclusion the concept to close this laneway to vehicles, however, keep it open to pedestrians, is supported. The option supported by all adjacent landowners and City officers is to close a 0.3m wide portion of the laneway adjacent to West Coast Drive and create a pedestrian access reserve adjacent to the West Coast Drive road reserve in which bollards can be placed. It is recommended that DPI be requested to grant the management order over the new reserve to the City of Joondalup. Once the reserve is created, the City can then place bollards within that pedestrian access reserve and modify the road pavement in that location adjacent to West Coast Drive.

ATTACHMENTS

Attachment 1	Closure location as advertised
Attachment 2	Revised location of closure
Attachment 3	Summary of Submissions
Attachment 4	Photos of laneway adjacent to West Coast Drive

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, SECONDED Cmr Clough that Council:

- 1 SUPPORTS the closure of a portion of the laneway between Leach Street and West Coast Drive, Marmion, specifically a 0.3m wide strip adjacent to the West Coast Drive road reserve;**
- 2 REQUESTS that, in accordance with Section 58 of the Land Administration Act 1997, the Department for Planning & Infrastructure close that portion of the laneway as detailed in Point 1;**
- 3 In regard to the road closure land, as described in Point 1, REQUESTS that the Department for Planning & Infrastructure set aside this land as a separate reserve for the purposes of “Pedestrian Access” and that a Management Order be granted to the City of Joondalup;**

- 4 ADVISES the adjacent landowners that upon the creation of the Pedestrian Access reserve the existing “crossover” to the laneway to West Coast Drive will be removed and new kerbing put in place and bollards placed within the pedestrian access reserve and adjacent to the driveway of Lot 37 (38) West Coast Drive as shown on Attachment 2 to Report CJ037-03/06.**

Cmr Anderson thanked officers for the efforts made with respect to consulting with ratepayers.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

Appendix 5 refers

To access this attachment on electronic document, click here: [Attach5brf070306.pdf](#)

CJ038 - 03/06 MONTHLY TOWN PLANNING DELEGATED AUTHORITY REPORT – JANUARY 2006 – [07032]

WARD: All

RESPONSIBLE DIRECTOR: Mr Clayton Higham
Planning and Community Development

CJ060307_BRF.DOC:ITEM 8

PURPOSE

To report on the number and nature of applications considered under Delegated Authority.

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 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 the months of November and December 2005 (see Attachments 1 and 2 respectively) and now includes the codes variations referred to above.

BACKGROUND

The number of development applications determined for January 2006 under delegated authority 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 January 2006		
Type of Approval	Number	Value (\$)
Development Applications	72	\$6,581,716
R-Code variations (Single Houses)	43	\$935,912
Total	115	\$7,517,628

No applications were determined by Council during this month.

The number of development applications received in January 2006 was 87 (This figure does not include any applications that may become the subject of the R-Code variation process).

Suburb/Location: All
Applicant: Various – see attachment
Owner: Various – see attachment
Zoning: **DPS:** Various
MRS: Not applicable

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 19 July 2005 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.

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 72 applications determined, during January 2006, consultation was undertaken for 20 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.

All proposals determined under delegated authority are assessed, checked, reported and crosschecked in accordance with relevant standards and codes.

ATTACHMENTS

Attachment 1 January 2006 Approvals – Development Applications

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Clough, **SECONDED** Cmr Fox that Council **NOTES** the determinations made under Delegated Authority in relation to the applications described in Report CJ038-03/06 for the month of January 2006.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

Appendix 6 refers

To access this attachment on electronic document, click here: [Attach6brf070306.pdf](#)

CJ039 - 03/06 CHANGE OF USE FROM SHOWROOM TO PLACE OF WORSHIP: LOT 1 (1/15) VANDEN WAY, JOONDALUP – [18562]

WARD: North

RESPONSIBLE DIRECTOR: Mr Clayton Higham
Planning and Community Development

CJ060307_BRF.DOC:ITEM 9

PURPOSE

To request the Council determination of an application for planning approval for a change of land use from a Showroom to a Place of Worship at Lot 1 (1/15) Vanden Way, Joondalup.

EXECUTIVE SUMMARY

An application for planning approval has been received for a change of land use from a Showroom to a Place of Worship (Church) at 1/15 Vanden Way, Joondalup. The subject land is occupied by an existing commercial development that consists of 10 units. The lot has a land area of 5,672m² and is zoned Service Industrial under the City of Joondalup District Planning Scheme No 2 (DPS2). (Attachment 1 refers)

A Place of Worship is a 'Discretionary' use under the DPS2 within the Service Industrial zone.

The original planning approval issued in 1993 allowed for 10 commercial units to be erected on the site. The City subsequently received an application for planning approval in 2004 for a change in land use of Unit 1 from Showroom to a Place of Worship (church). The approval was issued on the 2 October 2004 under delegated authority.

One of the conditions of the 2 October 2004 approval was that the proposed use was valid for a period of 12 months only, after which, the applicant would be required to seek a new planning approval. The purpose of this condition was to permit the use to operate for a limited period of time, which would then allow the City to assess the impact of the proposed use and provision of onsite parking on the surrounding area.

The October 2004 approval has lapsed and the applicant is now seeking to obtain a new planning approval for the existing use. The details of the current application are the same as the 2004 application.

The Town Planning delegations were modified on 12 October 2004. Due to the car parking considerations involved with this application, the current application for planning approval is now required to be determined by Council.

It is recommended that the application be approved subject to:

- There being no restriction on the validity of the approval; and
- Appropriate conditions relating to the days and hours of operation and the seating capacity during those periods.

BACKGROUND

Suburb/Location:	Joondalup
Applicant:	Philip Chia
Owner:	Cheng Han Pty Ltd
Zoning:	DPS: Service Industrial
	MRS: Central City Area
Site Area:	5,672m ²
Structure Plan:	Not applicable

The subject site is located on Vanden Way, Joondalup which is on the western side of the Central City area and is zoned Special Industrial. The overall area of the lot is 5,672m² and includes 10 units (1 warehouse and 9 showrooms).

The original planning approval for this site was issued during 1993 and 77 car bays were required, whilst in 1996 the Wacky Warehouse (children's entertainment venue) was approved and 86 bays were required to be provided on-site under the then Town Planning Scheme No 1, however, a variation was granted to reduce the requirement to 72 bays. In 2004 the Place of Worship land use was granted in which 101 car bays were required.

A development application for a change of use was submitted to the City on 17 June 2004. An assessment of the proposed use of the site for a church indicated that, in a worst case scenario, a 30% shortfall in car parking between the hours of 10am and midday on a Sunday morning would occur. However, given that the other uses on the site generally did not operate on a Sunday, demand for car parking by these uses was minimal. At all other times, the parking demand for the church uses would be met by the existing car parking spaces allocated to that unit.

The use of the site as a Place of Worship was approved under delegated authority on 2 October 2004, subject to the use operating for a period of 12 months only from the date of that approval. Following the expiry of that time period, the applicant was required to submit a new application for planning approval to continue the use of the site as a church.

The approval included a condition requiring a disabled parking space to be provided. This condition was met by the amalgamation of two car parking spaces into one, resulting in the number of onsite car parking bays being reduced to 71. The exercise of discretion was used to allow the reduction in the number of car parking bays.

The applicant submitted the application for renewal to the City on 12 October 2005 which was twelve (12) days after the expiry of the 2004 approval. The effect of that original decision has no further effect as it was for a limited period of 12 months only.

On 12 October 2004, Council adopted modified Town Planning delegations. In effect, since the car parking variation is greater than 10%, the current can no longer be determined under delegated authority and is to be referred to Council.

DETAILS

The applicant seeks to continue operating as a church from Unit 1 in a similar manner as to how the land use is currently operating (presently without a Planning Approval).

Retrospective approval under the DPS2 relates to building construction and not land use. As such, a change in land use is dealt with as a planning application for the future use of the site, even though the use has already commenced. It does not prevent the Council from taking legal action for the commencement of the use without obtaining the necessary approval.

The current application involves the following:

- During Monday to Friday from 9am to 5pm, 10 people will occupy the unit to operate daily business;
- On Sundays, Place of Worship congregations will be held from 10am to 12pm;
- On Friday or Saturday night once a month, 20 people will gather in the unit from 7.30pm to 9.30pm; and
- On a Saturday and Sunday night twice yearly from 7.30pm to 9.30pm, 30 people will accommodate the unit.

When considering the proposed operation times, arrival and departure times should be taken into account, and as such, approximately 30 minutes either side of those times have been considered in the assessment of any potential impact.

Issues and options considered:

Council has the discretion to:

- Approve the application
- Approve the application subject to conditions; or
- Refuse the application

Link to Strategic Plan:

It will address Strategy 1.3.2 and 1.3.3, which seek to provide quality-of-life opportunities for all community members and provide support, information and resources.

Legislation – Statutory Provisions:

Clause 3.2.2 describes a 'D' land use as a use 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 allows Council to determine whether the application needs to be advertised as set out in Clause 6.7 of the DPS2.

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

4.8 CAR PARKING STANDARDS

- 4.8.1 *The design of off-street parking areas including parking for disabled shall be in accordance with Australian Standards AS 2890.1 or AS 2890.2 as amended from time to time. Car parking areas shall be constructed and maintained to the satisfaction of the Council;*
- 4.8.2 *The number of on site car parking bays to be provided for specified development shall be in accordance with Table 2. Where development is not specified in Table 2 the Council shall determine the parking standard. The Council may also determine that a general car parking standard shall apply irrespective of the development proposed in cases where it considers this to be appropriate.*

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:

Policy 7-10 – Cash-in-lieu of Car Parking

DPS2 provides the ability for the consideration of a cash payment in lieu of the provision of on-site provision. The DPS2 provisions are supplemented by Policy 7-10 – Cash-in-lieu of Car Parking.

In this instance, given that there is no current or expectation of public parking being provided in the immediate locality, it is not considered appropriate that the cash-in-lieu provisions are relevant to this application. In this instance, any discretion in the provision of car parking is considered on the merits of the application, and the potential impact on the surrounding area.

Regional Significance:

Not Applicable.

Sustainability Implications:

Not Applicable.

Consultation:

The application was not advertised for public comment as it was considered that the proposal would not cause any significant impact or loss of amenity on the surrounding area. No complaints or issues have arisen in regard to the operation of the church since its initial approval.

Additionally, a signed letter of support from the Strata Manager of the units where the church is located was submitted with the application. The Strata Managers provided this letter on the basis that:

- the strata owners had no objection to the original application when the application was first discussed with them;
- there have been no objections or complaints lodged in relation to this activity since the commencement of the church use;
- this was a renewal of the previous activity.

COMMENT

When the site was originally approved for a showroom development in 1993, a total of 86 car parking spaces were required. A car parking variation was granted for the development, and as such, 72 spaces were required to be provided as part of the original approval.

On 2 October 2004, Planning Approval was granted for a Place of Public Worship (church), subject to a disabled car parking bay being provided. To achieve this, approval was given for a reduction in the number of car parking bays from 72 to 71.

In granting the 2004 approval, it was acknowledged that the proposed use of the site for a church on a Sunday morning would result in a 30% shortfall in car parking (101 car parking spaces required compared with 71 onsite bays), between the hours of 10am and midday on a Sunday morning. However, this shortfall would only occur if all the other commercial tenancies on this site operated on a Sunday and during the hours of 10:00am and midday. The church use would only need 25 car parking spaces, as set out in the DPS2, to satisfy its demand whereas there are 71 spaces onsite. At all other times, the parking demand for the church activities would be met by the existing car parking spaces allocated to that unit (8 bays).

The following table below represents the number of people visiting unit 1 within other specific time frames and on each individual day. At these times, the number of parking spaces allocated to that unit (8 bays) would satisfy the demand for parking at other times based on Scheme requirements:

Time/Frequency	People	Bays Required
9 am-5 pm Monday-Friday	10	2.5
10 am-12 pm Every Sunday	100	25
7:30 pm-9:30 pm Friday or Saturday night (once a month)	20	5
7:30 pm-9:30 pm Friday & Saturday night (twice yearly)	30	7.5

Conclusion

It is noted that a shortfall of car parking will only occur on the site, based on Scheme requirements, during the Sunday congregation if the church operates to its maximum capacity and all the other uses on the site operate at the same time as the Sunday morning congregation time. During all other times of operation the parking for the site will be sufficient.

The City has no record of any complaints in relation to car parking or the operation of the Place of Worship at this site.

Having regard to the information above and the proposed operation of the Place of Worship, it is considered the amenity of the surrounding area will not be affected by the continued use of the site as a church. Therefore the development in its current form is considered to be acceptable.

The proposed condition of approval is different to the original approval in that the:

- 12 month length of time for the validity of the approval has been removed;
- need for a disabled bay has been satisfied and as such no longer required as a condition of approval;
- condition of approval relating to the hours of operation and the number of people permitted within the premises at any one time have been refined.

ATTACHMENTS

Attachment 1 Locality Plans

VOTING REQUIREMENTS

Simple Majority

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

- 1 **EXERCISES** discretion under clause 4.5 of the City of Joondalup District Planning Scheme No 2 and determines that car parking provided at 71 bays in lieu of 101 bays is appropriate in this instance;
- 2 **APPROVES** the application for Planning Approval dated 12 October 2005 submitted by Philip Chia, the applicant, on behalf of the owner, Cheng Han Pty Ltd, for a change of use for a Place of Worship at (1/15) Vanden Way, Joondalup, subject to the operation of the Place of Worship being limited as follows:
 - (a) **Monday to Sunday - no more than 10 persons, except for those periods identified in (b) and (c) below;**
 - (b) **Sundays - no more than 100 persons between the hours of 9.30am – 12.30pm;**
 - (c) **Friday, Saturday and Sunday (7:00pm to 11:00pm) no more than 30 persons.**

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

Appendix 7 refers

To access this attachment on electronic document, click here: [Attach7brf070306.pdf](#)

CJ040 - 03/06 PROPOSED AMENDMENTS TO THE JOONDALUP CITY CENTRE PLAN AND MANUAL - ARENA JOONDALUP COMPLEX, NORTHERN RECREATION DISTRICT – [55582] [00152]

WARD: North

RESPONSIBLE DIRECTOR: Mr Clayton Higham
Planning and Community Development

CJ060307_BRf.DOC:ITEM 10

PURPOSE

To request Council to consider advertising proposed amendments to the Joondalup City Centre Plan and Manual (JCCDPM) to include development provisions for the Arena Joondalup Precinct within the Northern Recreation District of the City Centre.

EXECUTIVE SUMMARY

Lot 101 Kennedy Drive, Joondalup, and the Joondalup Baptist College comprise the Northern Recreation District within the JCCDPM. Currently, there are no provisions that specifically guide development within this District.

The proposed amendments include adding objectives, interpretations, permitted land uses and development provisions for the site, to be known as the Arena Joondalup Precinct. The proposed Permitted Uses are based on the intentions for the land as a major regional sporting complex as described in the Plan portion of the JCCDPM. The proposed Permitted Uses are drawn from the range of “P” and “D” uses within the Private Clubs/Recreation Zone of DPS2. The proposed Permitted Uses in part reflect the current land uses on the site, as well provide a broader range of land uses that complement the existing uses.

The owner of the site currently has an application for review (an appeal) before the State Administrative Tribunal (SAT) in regard to the Western Australian Planning Commission’s (WAPC) refusal of an application to establish a stand-alone child care facility on the site.

It is considered that the proposal is satisfactory for the purposes of initiating public advertising. In view of the link between the proposed amendments to the JCCDPM to the current appeal before the SAT, Council’s determination should be forwarded to the SAT, along with an estimated timeframe for the completion of the structure plan process by Council.

It is recommended that Council:

- 1 *Pursuant to clause 9.6 of the City of Joondalup’s District Planning Scheme No 2, ADOPTS the proposed amendments to the Joondalup City Centre Plan and Manual to include objectives, interpretations, permitted land uses and development provisions for the Arena Joondalup Precinct within the Northern Recreation District as per Attachment 3 to report CJ040-03/06 and make these available for public comment for a period of 28 days;*
- 2 *ADVISES the State Administrative Tribunal of the Council’s decision to advertise the draft structure plan, that Council’s final determination will have regard to the comments received during public advertising period, and an estimated timeframe for the completion of the structure plan process by Council.*

BACKGROUND

Suburb/Location:	Lot 101 (25) Kennedy Drive, Joondalup
Applicant:	Planning Applications Consultants
Owner:	Western Australian Sports Centre Trust
Zoning: DPS:	Central City Area
MRS:	Centre
Site Area:	30.12 hectares
Structure Plan:	Joondalup City Centre Plan and Manual

Location

Lot 101 and the Joondalup Baptist College comprise the Northern Recreation District within the JCCDPM. Lot 101 is located south of Moore Drive, north of Shenton Avenue and west of Joondalup Drive (see Attachments 1 & 2). Lot 101 is approximately 30 hectares in area and its northern portion is occupied by the Arena Joondalup sports and recreation complex. The site adjoins the existing Lake Joondalup Baptist College located to the south. Kennedy Drive intersects the site and provides vehicular access to the existing open-air car park for Arena Joondalup.

A special events railway station adjacent to Arena Joondalup to cater for large sporting and recreational events has been informally considered by the Public Transport Authority.

Proposed Child Care Centre

In July 2004, the City received a development application for a stand-alone child care centre on the Arena Joondalup site. The City did not support this application and the WAPC, as the determining authority, did not approve the application for the following reasons:

- 1 *The proposed development is contrary to the intent of the Joondalup City Centre Development Plan and Manual, Northern Recreation District;*
- 2 *Permitting such uses within the Northern Recreation District not clearly associated with Sport and Recreation would be contrary to the orderly and proper planning of the locality.*

The proponent is currently pursuing a review of the decision of the WAPC with the SAT. This action has prompted the applicant to lodge a structure plan over the site in order to address the lack of planning controls in the JCCDPM and, therefore, satisfy one of the reasons for WAPC's refusal relating to "orderly and proper planning of the locality". SAT, at its directions hearing on 27 January 2006, adjourned to a further directions hearing on 31 March 2006 "in order to allow the City of Joondalup to consider and determine the Structure Plan lodged by the applicant".

It is noted that, although the City of Joondalup is not directly involved in the above proceedings, it is acknowledged that the review arose from the current planning framework (JCCDPM) for the land.

DETAILS

The JCCDPM is an agreed structure plan under the City's DPS2 that relates to the Centre Zone of the Joondalup City Centre. The subject site is located in the Northern Recreation District of the Centre Zone. There are currently no detailed provisions for this District within the Manual portion of the JCCDPM.

Proposed Amendments to the Joondalup City Centre Plan and Manual

The proposed amendments to the JCCDPM (see Attachment 3) are intended to provide the framework for the future expansion of the Arena Joondalup complex as a major regional sporting facility, and to provide certainty for future land uses on the site.

Part 1 of the structure plan sets out the proposed statutory provisions that will guide the future development of the site, by including the following:

- Objectives and Interpretations, including a Sporting Academy.
- Permitted certain land uses, including a number of land uses that are to be incidental to the primary land use, and others that support and/or relate to sport and recreational activities.
- Planning provisions relating to setbacks, building height, building form, materials and finishes, and car parking.

Figure 2 in Part 1 of the structure plan shows the structure plan area. Part 2 Explanatory Report provides background for Part 1.

Applicant's Justification

The applicant has provided the following comments regarding the proposal:

“The Arena Joondalup site has been partially developed. A current Master Plan shows likely developments in the short to medium term. All infrastructure is in place together with major buildings and facilities. Arena Joondalup is a focal point for the community.

The reason for addressing land use provisions in the Structure Plan is to provide certainty for current and future land uses on the site. With the exception of sporting academy, all the proposed land uses currently occur on site under the broad interpretation of the JCCDPM. “The complex is intended to be multifunctional, servicing entertainment, leisure, cultural, social and business functions in addition to the sports programme.” The land use description in the JCCDPM appears to have been based on the original proposed master plan for the site. The detailed list of indoor sporting and social facilities accurately described the facilities as originally built. The indoor social facilities were described as including restaurant, bar, kiosk, function rooms, tenancy space, crèche and administrative facilities.

The Joondalup community's demands and expectations for the site have evolved since the original proposal. There are limited constraints to the future development of the site.

- *The site is relatively isolated from the major services of the Centre Zone. It is likely the users of Arena Joondalup will use cars to travel between the Arena and other Districts in the City Centre;*
- *An opportunity was missed to use the Baptist College as a buffer between the adjoining residential zone and the more intensely used Arena Joondalup Precinct. As a consequence, any future develop of facilities on the Moore Drive side of the Arena Joondalup site will need to comply with appropriate planning requirements to minimise amenity conflict between the land uses on the Arena Precinct Site and the residential zone;*
- *The site is large and development of relatively small structures (such as facilities for possible sporting academy facilities, child care services, extended tenancy spaces and administrative facilities for sporting / recreational organisations) should be easy. However, they will need careful location because facilities such as sporting halls and ovals require large amounts of space on relatively level ground.”*

Issues and options considered:

There are currently no development provisions, and therefore no specific development controls, for the Northern Recreation District of the JCCDPM. Subsequently, the JCCDPM does not provide any direction for the further development of the Arena Joondalup Precinct to facilitate it becoming the major sporting and recreational complex in the north-west District of the City Centre.

The issues associated with the proposed amendments to the JCCDPM in relation to Lot 101 include:

- The suitability and implications of the proposed Objectives, Interpretation of a Sporting Academy and Permitted Uses for the Northern Recreation District, and the current SAT appeal relating to the site.
- The suitability of the proposed associated proposed development provisions in facilitating the future expansion of the Arena Joondalup Precinct as a major regional sporting facility, as well as the appropriate built outcome for the allowable uses in terms of impacts, particularly on surrounding properties.

Options

Council may undertake the following courses of action:

- Support the initiation of the proposed amendments to the JCCDPM for the purposes of public advertising;
- Determine that the proposed amendments to the JCCDPM should not be advertised until specified matters have been included or addressed; or
- Not support the initiation of advertising of the proposed amendments to the JCCDPM for stated reasons.

Link to Strategic Plan:

Objective 1.2

To meet the cultural needs and values of the community

Strategy 1.2.1

Continue to enhance and create new cultural activities and events

Objective 1.3

To continue to provide services that meet changing demographic needs of a diverse and growing community

Strategy 1.3.1

Provide leisure and recreational activities aligned to community expectations, incorporating innovative opportunities for today's environment.

Objective 3.5

To provide and maintain sustainable economic development

Strategy 3.5.2

Assist the facilitation of local employment opportunities

Legislation – Statutory Provisions:

Clause 9.7 of DPS2 enables Council to amend an Agreed Structure Plan subject to approval of the Western Australian Planning Commission (WAPC). Should Council determine the amendment to the Structure Plan is satisfactory, advertising of the proposal is required in accordance with clause 9.5 of DPS2.

Upon the completion of public advertising, Council is required to consider all submissions within sixty (60) days and proceed to either adopt or refuse to adopt the amended Structure Plan, with or without modifications.

Risk Management considerations:

Should Council support the proposal without modification, its advice may be considered as inconsistent with its non-support of the stand-alone child care facility currently the subject of a review by the SAT.

There is a risk that the SAT will uphold the appeal on the child care facility if the proposed amendments to the JCCDPM are supported by Council and subsequently approved by the Western Australian Planning Commission.

Financial/Budget Implications:

There are no known financial or budgetary implications associated with the proposed amendments to the JCCDPM.

Policy Implications:

There are no policy implications associated with the proposed amendments to the JCCDPM.

Regional Significance:

The proposed amendments to the JCCDPM are regionally significant as they seek to facilitate further development of the existing significant sporting facility that supports the overarching intent of for the City being the largest sub-regional centre (satellite CBD) outside of the Perth with the major regional sporting complex located in the north-west District of the City Centre.

Sustainability Implications:

The proposed amendments to the JCCDPM will facilitate the future social, cultural, environmental and economic sustainability of the City Centre by enabling expanded uses on the existing Arena Joondalup site to better utilise existing services and promote greater use of the public transport system.

Consultation:

Clause 9.5 of DPS2 requires structure plan proposals to be advertised in accordance with the provisions of clause 6.7 prior to further consideration by Council. Clause 6.7 of DPS2 requires a minimum advertising period of 21 days. In view of the significance of the site, an advertising period of 28 days is recommended.

Advertising would consist of written notification of all adjoining landowners, a sign or signs erected in a prominent location/s on the site, an advertisement being placed in the Joondalup community newspaper and a notice being placed on the Council website.

COMMENT

Under clause 4.2 Permitted Uses, three Notes are added to some land uses to provide various degrees of linkage to the current and intended future uses at Arena Joondalup. These refer to uses being incidental to the predominant use, floor area restrictions or connections to sport and recreational activities. In relation to Note 3, whilst the intention is for these noted land uses to maintain a relationship with Arena Joondalup, it is possible they may be patronised by the wider community. For example, a medical centre specialising in sports related medicine may be appropriate given its relationship to the predominate sporting activities on the Arena Joondalup site, however, may be utilised by the general public.

It is considered that there are some proposed Permitted Uses that may be inappropriate in terms of the intentions within the Northern Recreation District of the JCCDPM. These have no proposed statutory connection to the sporting or recreational uses of the land, and the incidental nature of the use may be considered marginal. These uses include Child Care Centre, Restaurant, and Reception Centre and the implications of these will need to be considered in the broader context of permissible land uses, particularly with those in the CBD.

With regard to the proposed Child Care Centre use, locating such a use has been problematic in some other areas of the City in terms of the impact on residential amenity. The subject land is separated from residential land by roads and the Joondalup Baptist College, and the proposed setback provisions of the draft structure plan would provide further separation. This use is therefore unlikely to have a detrimental impact on the surrounding area. Furthermore, the provision of a Child Care Centre may add value to the existing activities on the site and the area generally.

At this time, the proposed inclusion of a Child Day Centre as a permitted land use in the draft structure could be supported. The appropriateness of this land use, and the other proposed land uses, can be further considered following the public comment period, having regard to any submissions received.

Notwithstanding the above, the relationship between the current SAT appeal relating to a proposed Child Care Centre and the structure plan proposal need to be considered by Council in a consistent manner. It is apparent that the SAT will be awaiting the outcome of Council's decision on the draft structure plan, and whether a Child Care Centre is a permitted use under that structure plan.

Traffic Impacts

The City normally requires either a traffic study or traffic report to be submitted at the structure plan stage. The Arena Joondalup complex is already utilised for major events without significant traffic problems, and the uses that may be incorporated as part of the Sporting Academy are largely unknown at this stage. Therefore, it is not considered that a traffic study is required at this point in time, however, the proposal will be further assessed during the public advertising period.

Conclusion

It is considered that the draft amendments to the JCCDPM will provide an appropriate framework for the future expansion of the Arena Joondalup Precinct. This is in line with the intentions of the JCCDPM in relation to the site being multifunctional and servicing a range of activities in addition to the existing sports and recreational functions.

It is recommended that the proposal to amend the JCCDPM to facilitate the development of the Arena Joondalup complex by including the appropriate objectives, interpretations, land uses and associated proposed development provisions be advertised for public advertising for a period of 28 days. In addition, the SAT is to be advised of the Council decision regarding initiation of the proposed amendments, as well as being provided with a realistic timeframe for Council to finalise the structure plan process to enable an informed and proper appeal determination.

ATTACHMENTS

Attachment 1	Location Plan
Attachment 2	JCCDPM Districts Plan
Attachment 3	Draft amendments to JCCDPM – Arena Joondalup Precinct, Parts 1 & 2
Attachment 4	Structure Plan Process

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Anderson, SECONDED Cmr Smith that Council:

- 1 Pursuant to clause 9.6 of the City of Joondalup’s District Planning Scheme No 2, ADOPTS the proposed amendments to the Joondalup City Centre Plan and Manual to include objectives, interpretations, permitted land uses and development provisions for the Arena Joondalup Precinct within the Northern Recreation District as per Attachment 3 to Report CJ040-03/06 and make these available for public comment for a period of 28 days;**
- 2 ADVISES the State Administrative Tribunal of the Council’s decision to advertise the draft structure plan, that Council’s final determination will have regard to the comments received during public advertising period, and an estimated timeframe for the completion of the structure plan process by Council.**

Cmr Smith spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

Appendix 8 refers

To access this attachment on electronic document, click here: [Attach8agn140306.pdf](#)

CJ041 - 03/06 INITIATION OF LOCAL PLANNING POLICY - SATELLITE DISH, AERIALS AND RADIO EQUIPMENT – [81513]

WARD:	All
RESPONSIBLE DIRECTOR:	Mr Clayton Higham Planning and Community Development

CJ060307_BRF.DOC:ITEM 11

PURPOSE

To recommend that Council initiates a draft local planning policy relating to satellite dishes, aerials and radio equipment in the Residential zone, for the purpose of public advertising.

EXECUTIVE SUMMARY

Currently there is no local planning policy in relation to satellite dishes, aerials and radio equipment (generically termed communication equipment for the purpose of this report) in the Residential zone. District Planning Scheme No 2 (DPS2) currently does not require planning approval for this type of communication equipment where it is less than 2m in horizontal or vertical dimension, however, there is no stipulation with regard to maximum height or location of the equipment.

While some forms of communication equipment in a residential area are considered acceptable, others have a potentially detrimental impact on the visual amenity of adjoining owners and the locality. It is considered appropriate that a policy be initiated to guide the size and location of communication equipment via a local planning policy.

The policy seeks to specify standards that are considered acceptable in residential areas. In principle, it is considered that smaller types of communication equipment or those that are not visible from the street or adjoining properties can be erected without the requirement for planning approval. Larger equipment that can be seen from the street or neighbouring properties should be subject to planning consideration.

The policy will provide guidance relating to the size and height of devices and will ensure that impacts on adjoining owners are minimised. It is noted that in the event that Council adopts the draft policy, amendments to DPS2 will be required to allow certain sizes and locations of communication equipment to be erected without the need for planning approval.

It is recommended that Council ADOPTS the Satellite Dish, Aerial and Radio Equipment Policy in accordance with Clause 8.11.3 of District Planning Scheme No 2 as shown in Attachment 1 to Report CJ041-03/06 as a draft policy for the purposes of advertising for a period of twenty one (21) days for public comment.

BACKGROUND

Communication equipment is defined in DPS2 as 'Communications Antenna' and is defined as:

Any mast, antenna, aerial, satellite dish and other associated equipment used for the reception or transmission of television or radio signals or for other electronic communication where its vertical or horizontal dimensions exceed two metres but does not include telecommunications infrastructure.

A 'Communications Antenna' is a discretionary use in the Residential, Mixed Use, Business, Commercial, Private Clubs and Recreation zones and rural zone. No specific development standards apply to satellite dishes, aerials or radio equipment in DPS2.

The Residential Design Codes provide some guidance on the acceptable location of communication equipment as follows:

A2.3 Antennas, satellite dishes and the like not visible from the street.

The City often receives complaints from adjoining owners where communication equipment has been installed. Many of the complaints relate to devices that have not had the appropriate development approval from the City, are large, and are sited inappropriately.

There is currently no policy relating to satellite dishes, aerials and radio equipment within the City of Joondalup. A policy can assist with setting the parameters for the consideration of the exercise of discretion.

DETAILS

Issues and options considered:

A proposed policy would provide guidance to those people looking at erecting devices on a residential property. Communication equipment can include satellite dishes, aerials and radio equipment. The policy provides guidance with regard to the location and maximum heights of such equipment.

While some types of communication equipment may be considered appropriate, such as domestic antennas, in some instances larger equipment can be particularly problematic. The draft policy states that the following are considered acceptable 'as of right' and would not require a planning approval:

- A satellite dish is located on the roof and has a diameter of not greater than 0.9m. (0.9m is based on an average Foxtel Satellite dish).
- A satellite dish (combined dish and support) which is located at existing natural ground and is 2.4m or less in total height (considered to be a standard size dish). The dish is to be located so as not to be visible from any street or adjoining property.
- A domestic TV antenna not greater than 4m in dimension.
- A radio antenna that is not greater than 2m in height if mounted on the roof, or does not project more than 2 metres above roof ridge if located at ground level and is not located between the street and the house.

A maximum of one of each type of communication equipment would be permitted, exclusive of a domestic TV antenna.

It is noted that in order to accommodate the provisions of the draft policy, DPS2 would need to be amended in the event that the draft policy is adopted. This would give statutory effect to the above 'as of right' provisions.

Options

In considering the draft local planning policy, Council can:

- Adopt the policy for the purpose of public advertising
- Modify the draft policy, then adopt it for the purpose of public advertising
- Not adopt the draft policy.

Link to Strategic Plan:

- Objective 1.2 To meet the cultural needs and values of the community
(communication equipment is often used to gain access to a variety of overseas television programs)
- Objective 3.1 To develop and maintain the City of Joondalup's assets and built environment
- Strategy 3.1.1 Facilitate the safe design, construction and approval of all buildings and facilities within the City of Joondalup.

Legislation – Statutory Provisions:

Clause 8.11 of DPS2 outlines the requirements and process steps for the preparation of local planning policies. This clause enables the Council to prepare a Local Planning Policy in respect of any matter related to the planning and development of the scheme area.

Once the draft policy is prepared, it is required to be advertised by way of a notice published once a week for two consecutive weeks in a local newspaper, giving notice where the draft policy may be inspected. The draft policy would also be advertised on Council's website. The specified period for advertising is not to be less than twenty-one (21) days.

Risk Management considerations:

Not Applicable.

Financial/Budget Implications:

Not Applicable.

Policy Implications:

It is proposed to implement a new City policy. Council has determined the City's policies as follows:

"A policy that is developed for administrative and operational imperatives and has an internal focus.

City policies are referred to Council for review and endorsement."

Regional Significance:

Not Applicable.

Sustainability Implications:

Satellite dishes, aerials and radio equipment have the ability to support and enhance the cultural wellbeing of the community. However, the size and location of the equipment can have an impact on the visual amenity of that same community.

Consultation:

The policy is required to be advertised for public comment for a twenty one (21) day period.

COMMENT

The policy seeks to specify standards relating to the installation of satellite dishes, aerials and radio equipment in residential areas and specifies when planning approval is required, development provisions, planning application requirements and details relating to advertising.

The draft policy attempts to provide a balance between a straightforward, 'as-of-right' approach to domestic communication devices, and the need to be mindful of the impact of such devices on adjoining owners.

In principle, it is considered that if communication devices are either relatively small, or cannot be seen from the street or adjoining properties, then specific planning approval should not be required. Alternatively, larger equipment that can be seen from the street or neighbouring properties should be subject to planning consideration. The policy will provide guidance relating to the size and height of devices and will ensure that impacts on adjoining owners are minimised.

It is noted that in order to accommodate the provisions of the draft policy, DPS2 will need to be amended in the event that the draft policy is adopted. Amendments to DPS2 principally relate allowing certain sizes and locations of communication devices to be erected without the need for a planning application as outlined in the draft policy.

It is considered that the draft policy will provide guidance when considering the location of communication equipment. It is recommended that the policy be initiated for public advertising.

ATTACHMENTS

Attachment 1 Draft Policy – Satellite Dishes.

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Fox, **SECONDED** Cmr Clough that Council **ADOPTS** the satellite dish policy in accordance with clause 8.11.3 of District Planning Scheme o 2 as shown in attachment 1 to report CJ041-03/06 as a draft policy for the purposes of advertising for a period of twenty one (21) days for public comment.

Chief Executive Officer advised the last dotpoint on page 1 of the Attachment was incorrect and should be amended to read:

“A radio antenna is not greater than 2 metres in height.....”

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmrs Paterson, Clough, Anderson, Smith and Fox

Appendix 9 refers

To access this attachment on electronic document, click here: [Attach9min140306.pdf](#)

Disclosure of interest affecting impartiality

Name/Position	Mr Garry Hunt - Chief Executive Officer
Item No/Subject	C08-03/06 – 2005 Compliance Audit Return
Nature of interest	Interest that may affect impartiality
Extent of Interest	Mr Hunt is a signatory to the document

Name/Position	Mr Peter Schneider – Director Corporate Services
Item No/Subject	C08-03/06 – 2005 Compliance Audit Return
Nature of interest	Interest that may affect impartiality
Extent of Interest	Mr Schneider is an auditee for the 2005 Compliance Return

C08-03/06 2005 COMPLIANCE AUDIT RETURN – [09492]

WARD: All

RESPONSIBLE Garry Hunt
DIRECTOR: Office of CEO

PURPOSE

To present the completed 2005 Compliance Audit Return to the Council for final adoption.

EXECUTIVE SUMMARY

The City has completed the Department of Local Government’s compliance audit return for the period 1 January 2005 to 31 December 2005.

BACKGROUND

Some years ago, the Department of Local Government introduced a voluntary statutory compliance assessment as a result of its concerns at the level of non-compliance within the industry.

To ensure requirements of the Local Government Act Section 7.13(i) are followed, Sections 13, 14 and 15 of the Local Government (Audit) Regulations have been amended. This means that there is now a legal requirement to annually complete a Compliance Audit Return and return it to the Department of Local Government by 31 March each year.

The Compliance Audit is required to be presented to the Audit Committee prior to consideration by the Council. The Audit Committee met on 7 March 2006, where it resolved that:

- 1 *in relation to discussions and comments at the Audit Committee meeting held on 7 March 2006 in respect to the 2005 Compliance Return, the officers investigate queries raised and make any appropriate amendments prior to the Council meeting scheduled to be held on 14 March 2006;*
- 2 *it be noted that Pages 11 – 16 are supporting documents only to the summary as shown on stamped page 9 and should be deleted;*
- 3 *subject to the queries in (1) above being investigated, the Audit Committee subsequently recommends to the Council the adoption of the completed Local Government Compliance return for the period 1 January 2005 to 31 December 2005;*
- 4 *in accordance with Regulation 15 of the Local Government (Audit) Regulations 1996, Council submits the completed Local Government Compliance Return to the Executive Director.*

DETAILS

Issues and options considered:

The completed return is an attachment to this report.

To enable all of its statutory requirements to be met, necessary initiatives have been put in place to ensure a thorough and ongoing compliance process.

The return indicates compliance, with the exception of:

- Section F (Meeting Process) number 22;
- Section I (Finance) number 25;

With regard to non-compliant sections, the following explanatory notes are offered:

Section F (Meeting Process):

- 22 On two occasions, motions were not supported by at least 1/3 of Council. However on both occasions the decisions to revoke were carried by an absolute majority.

Section I (Finance):

- 25 The advertisement for the Night Markets Fees and Charges was not placed. The Fees and Charges have been subsequently advertised.

Preliminary legal advice indicates that the failure to give local public notice prior to the date of which the fees and charges were imposed, as required by Section 6.19 of the Local Government Act 1995, does not automatically invalidate the imposition of those fees and charges.

Link to Strategic Plan:

4.1 To manage the business in a responsible and accountable manner.

Legislation – Statutory Provisions:

Regulations 14 and 15 of the Local Government (Audit) Regulations 1996 state as follows:

14 Compliance audit return to be prepared

- (1) A local government is to carry out a compliance audit for the period 1 January to 31 December in each year.
- (2) After carrying out a compliance audit the local government is to prepare a compliance audit return in a form approved by the Minister.
- (3) A compliance audit return is to be:
 - (a) presented to the council at a meeting of the council;
 - (b) adopted by the council; and
 - (c) recorded in the minutes of the meeting at which it is adopted.

15 Completion of compliance audit

- (1) After the compliance audit return has been presented to the council in accordance with regulation 14(3) a certified copy of the return together with:
 - (a) a copy of the relevant section of the minutes referred to in regulation 14(3)(c); and
 - (b) any additional information explaining or qualifying the compliance audit;is to be submitted to the Executive Director by 31 March next following the period to which the return relates.
- (2) In this regulation:

“certified” in relation to a compliance audit return means signed by:

 - (a) the mayor or president; and
 - (b) the CEO.

Risk Management considerations:

The risk associated with the Council failing to consider the Compliance Audit Return would result in non-compliance with the legislative requirements of the Local Government Act 1995.

Policy Implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability Implications:

Not Applicable.

Consultation:

Not Applicable.

COMMENT

The Internal Auditor has undertaken a review and a report was presented to the Audit Committee meeting held on 7 March 2006. Following the meeting of the Audit Committee, the updates to the Compliance Return have been made. The Return is now presented to the Council for final adoption. Following the adoption of the Compliance Audit Return, the Chairman and the Chief Executive Officer will jointly certify it.

ATTACHMENTS

Attachment 1 2005 Compliance Audit Return

VOTING REQUIREMENTS

Simple Majority

Note: It is a requirement of the Return that details of voting be recorded in the Minutes.

MOVED Cmr Smith, SECONDED Cmr Anderson that Council:

- 1 ADOPTS the completed Local Government Compliance Return for the period 1 January 2005 to 31 December 2005 forming Attachment 1 to Report C08-03/06;**
- 2 in accordance with Regulation 15 of the Local Government (Audit) Regulations 1996, SUBMITS the completed Local Government Compliance Return to the Executive Director.**

No matter of concern was raised in relation to the 2005 Compliance Audit Return.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

Appendix 10 refers

To access this attachment on electronic document, click here: [Attach10min140306.pdf](#)

Disclosure of Financial Interests

Name/Position	Mr Garry Hunt - Chief Executive Officer
Item No/Subject	C09-03/06 - Minutes of the Audit Committee meeting held on 7 March 2006 (Item 2 – Quarterly Report – Corporate Credit Card Usage)
Nature of interest	Financial
Extent of Interest	Relates to CEO credit card expenditure

Disclosure of interest affecting impartiality

Name/Position	Mr Peter Schneider - Director Corporate Services
Item No/Subject	C09-03/06 - Minutes of the Audit Committee meeting held on 7 March 2006 (Item 1 – 2005 Compliance Audit Return)
Nature of interest	Interest that may affect impartiality
Extent of Interest	Mr Schneider is the Director of areas audited under the 2005 Compliance Audit Return item.

Name/Position	Mr Peter Schneider - Director Corporate Services
Item No/Subject	C09-03/06 - Minutes of the Audit Committee meeting held on 7 March 2006 (Item 2 – Quarterly Report – Corporate Credit Card Usage)
Nature of interest	Interest that may affect impartiality
Extent of Interest	Reporting nature to the CEO

C09-03/06 MINUTES OF THE AUDIT COMMITTEE MEETING HELD ON 7 MARCH 2006

WARD: All

RESPONSIBLE DIRECTOR: Mr Garry Hunt
Office of the CEO

PURPOSE

To submit the minutes of the Audit Committee to Council for noting.

EXECUTIVE SUMMARY

A meeting of the Audit Committee was held on 7 March 2006, with the following items being discussed:

- 2005 Compliance Audit Return
- Quarterly Report – Corporate Credit Card Usage

It is recommended that Council NOTES the minutes of the Audit Committee meeting held on 7 March 2006 forming Attachment 1 to this Report.

BACKGROUND

The Council's Audit Committee was established in May 2001 to oversee the internal and external Audit, Risk Management and Compliance functions of the City. The City has also employed an internal auditor since May 2002.

DETAILS

A meeting of the Audit Committee was held on 7 March 2006, and the minutes are attached for noting – Attachment 1 refers.

Issues and options considered:

As contained within the minutes of the Audit Committee.

Link to Strategic Plan:

- 4.2.1 Provide efficient and effective service delivery
- 4.3.3 Provide fair and transparent decision-making processes

Legislation – Statutory Provisions:

Section 5.8 of the Local Government Act 1995 provides for a local government to establish a committee to assist Council.

Local Government Amendment Act 2004

Amendments to the Act regarding audit include the insertion of a new division 7.1A entitled "Audit Committee". The new division deals with the establishment, membership, decision-making and duties that a local government can delegate to an Audit Committee. It also includes a new section 7.12A dealing with "Duties of local government with respect to audits".

Local Government (Audit) Amendment Regulations 2005

Amendments have been made on several minor issues such as definitions and interpretations. The most significant change has been the inclusion of new regulation 16, which deals with the "Functions of the Audit Committee"

Risk Management considerations:

Not Applicable.

Financial/Budget Implications:

Not Applicable.

Policy implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Not Applicable.

COMMENT

The minutes of the Audit Committee meeting held on 7 March 2006 are submitted to Council for noting.

ATTACHMENTS

Attachment 1 Minutes of the Audit Committee meeting held 7 March 2006.

VOTING REQUIREMENTS

Simple Majority

MOVED Cmr Smith, SECONDED Cmr Clough that Council NOTES the minutes of the Audit Committee meeting held on 7 March 2006 forming Attachment 1 to Report C09-03/06.

Discussion ensued. Cmr Smith suggested that the submission of a quarterly report to the Audit Committee on corporate credit card usage should be recommended to the incoming Council as a process that should continue.

A query was raised in relation to the position of Mayor being issued with a credit card and how many credit cards were in operation at the City of Joondalup. It was advised that confirmation has been requested from the Department of Local Government that the comments do not apply to the use of credit cards by Mayors where they are using the allowance assigned to them.

With respect to the procedures and guidelines, there is an entitlement for nine corporate credit cards, with seven cards currently in use.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

Appendix 11 refers

To access this attachment on electronic document, click here: [Attach11min140306.pdf](#)

**C10-03/06 OUTCOME OF MEDIATION - PROPOSED
EXTENSIONS TO LAKESIDE SHOPPING CENTRE
FRONTING GRAND BOULEVARD AND BOAS
AVENUE ON PART OF LOT 504 JOONDALUP DRIVE
– 08431]**

WARD: North

RESPONSIBLE Mr Clayton Higham
DIRECTOR: Planning and Community Development

PURPOSE

To consider the outcome of a State Administrative Tribunal (SAT) mediation hearing. The mediation followed the lodgement of an appeal by the applicant in response to Council's conditional approval to an Application for Planning Approval for extensions to the Lakeside Shopping Centre in the Joondalup Central Business District (CBD).

EXECUTIVE SUMMARY

At its November 2005 meeting, Council conditionally approved an application for extensions to the Lakeside Shopping Centre located in the area bounded on the western side by the existing shopping centre, Boas Avenue on the north, Grand Boulevard on the east and Collier Pass on the south. A copy of the original report considered by Council when determining the development application at its November 2005 meeting will be provided in the Councillors' reading room.

The applicant appealed to the State Administrative Tribunal (SAT) against 14 conditions and all the footnotes contained within Council's approval notice dated 13 January 2006.

A mediation conference was held at the SAT on 9 February 2006 to discuss the conditions under appeal.

The outcome of that mediation has resulted in prospective changes to the present notice of approval by way of either deletion or modification to the stated conditions and footnotes, as recommended in this report. Attachment 1 is an extract from the minutes of the November 2005 meeting, containing the conditions of planning approval. Attachment 2 has been provided by the applicant, which shows a marked up copy of the proposed changes they wish to make to Council's planning approval. Attachment 3 is a clean copy of the applicant's recommended approval, incorporating changes to Council's conditions and a restructuring of the approval. Attachment 4 is the City's recommended position based on changes made to the document in Attachment 3.

The final position of the Council on the modified approval will then be presented to the next mediation hearing, which is to be held on Thursday 16 March, 2006.

BACKGROUND

Council approved the development application to carry out major extensions to the existing shopping centre at its meeting held on the 22 November 2005. The approval was issued with 30 conditions and 12 footnotes.

The applicants appealed to the SAT on 21 December 2005. A directions hearing was held on 27 January 2006. At that hearing, the applicants requested that one or more Commissioners with delegated powers and senior staff attend any mediation hearings.

As part of the directions from the directions hearing, the SAT invited the Chief Executive Officer and one or more Commissioners to attend the mediation hearing(s).

On 9 February 2006, the Chief Executive Officer, Director of Planning and Community Development, Director of Infrastructure Services, Coordinator Planning Approvals and Mr Steve Allarding (Allarding Burgess) attended the mediation hearing.

During that meeting, the various conditions of approval under review were discussed. At the end of the meeting, both parties were required to provide information to the other party on certain matters. Following receipt of that information, a draft set of conditions was to be prepared by the applicant. These conditions were to be reviewed by the City and referred through to Council for consideration.

Following consideration of these conditions at the meeting of Council on 14 March 2006, the next mediation hearing set for 16 March 2006. At that meeting, the applicant would consider Council's position on the draft conditions and either:

- (i) accept Council's position;
- (ii) enter into further dialogue; or
- (iii) seek to take the matter to a hearing of the SAT.

DETAILS

The conditions of approval that are being challenged are identified and discussed in the Comment section of this report.

Issues and options considered:

Council has the discretion to:

- Accept the modifications as recommended;
- Reject the modifications as recommended in whole or in part; or,
- Require further modifications.

At the mediation hearing, further discussion on Council's position will occur. It will be recommended that the Chief Executive Officer be granted delegated authority to negotiate on the Council's behalf at the mediation hearing to be held on 16 March 2006, on any challenges to the adopted position of Council.

Link to Strategic Plan:

Objectives taken from the City of Joondalup Strategic Plan (2003-2008):

Work with stakeholders to create a vibrant city centre and community
Work towards a safe and secure environment

3.1.2 *Facilitate the safe design, construction and approval of all buildings and facilities within the City of Joondalup.*

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:**State Administrative Tribunal Act 2004**

The applicants have requested the SAT to review Council's decision under the State Administrative Tribunal Act 2005 (SAT Act), which has a different decision making process to the DPS2. Council is required to determine and convey its position on the proposed changes to its approval to SAT and the applicant. Council does not make a formal planning decision as such. The process under the SAT Act will result in a "Minute of Consent" if both parties agree to a mediated outcome or if no agreement, the matter is then taken to a hearing and the SAT will then make its decision on the request for a review.

Risk Management considerations:

The form of the development will have a substantial impact on the streetscape around the site, and also upon the commercial hub of the City Centre. The decisions taken and mediated proceedings need to fully consider the best manner in which to achieve the best outcome for the City.

Financial/Budget Implications:

This matter is before the State Administrative Tribunal following the lodging of a request for review of Council's decision. It is a Class 2 hearing, which allows for legal representation by each party. The City has engaged the services of Allering Burgess (Planning Consultants) to represent the Council at the hearings. Currently, the matter is being dealt with through the mediation process. However, this may escalate to a full hearing in which case, the City may need to engage the services of solicitors to represent Council at the hearing.

If Council accepts the modified approval as presented in attachment 4, in terms of accepting a one third cost for the construction of traffic lights at the intersection of Joondalup Drive and Collier Pass, there would be an estimated cost of \$50,000 to the City.

If the proposal is not agreed at mediation, the escalation of the appeal to a hearing could result in expenditure of approximately \$20-50 000 to facilitate the Council's position being reaffirmed in proceedings brought by the landowner.

Policy Implications:

Not Applicable

Regional Significance:

Joondalup is identified in regional planning terms as Perth's second CBD. The success of the City depends in part upon its commercial viability and attractiveness. The development scale (\$130 million approx) means that the proposal will have a substantial impact on the Joondalup City Centre.

Sustainability Implications:

Not Applicable

Consultation:

No further consultation has occurred as part of the SAT review process.

COMMENT

The applicants have appealed against 14 of the 30 conditions of planning approval and all of the 12 footnotes. Of the 14 conditions appealed, three Council conditions were considered to be core conditions of significance during the mediation process and these are discussed below:

Core Conditions Under Appeal

1 Condition (e) i, ii and vi

Summary

- 1 Condition (e) i, ii and vi requiring the preparation of a Car Parking Management Plan that addressed:
- (a) Provision of sufficient parking for workers during the construction period to avoid disruption to the CBD;
 - (b) The provision of sufficient bays during construction so that there is no net loss in parking numbers for the existing shopping centre development to avoid disruption to the CBD;
 - (c) The provision of a minimum of 3981 bays to meet the requirements of DPS2;

To address workers parking and no net loss of parking (e i & ii above) the applicants are proposing a modified condition requiring the preparation of a construction management plan which seeks to address the Council's desire to ensure adequate parking control is provided during the construction period to "minimise" any impact on the CBD.

In relation to (e)(vi) above, the applicants argued that the car parking requirements should only be applied to the new development and not the existing development. This is considered to be an acceptable argument by the City. In response to this matter, a recalculation by City has determined that the total number of bays required based on the change in methodology of calculating car parking numbers, results in a lesser number of parking spaces than originally calculated or required. The amended car parking numbers have been provided in the revised approval (refer to attachment 4).

Detailed discussion on Condition (e) Car Parking Management Plan

Condition e (i) (ii) and (vi) read as follows:

- (e) *The applicant shall submit for the City's approval, a comprehensive car parking management plan that addresses but is not limited to, the following matters:*
 - (i) *The applicant shall:*
 - (A) *provide sufficient on-site parking to meet the demands of the proposed workforce for the construction of the proposed development. Details of the proposed workforce car parking area, identification of any special work areas and supporting documentation is to be submitted; and*
 - (B) *require any worker or contractor to use the workforce car parking area or identified work areas as required in conditions (A);*

- (ii) *the provision of off street at grade and multi deck parking is to be staged so that there is no net loss in overall parking bays currently provided within the shopping centre precinct, during the course of construction of the proposed development;*
- (vi) *overall, the development shall have a minimum of 3981 car parking spaces to satisfy the overall car parking requirements of District Planning Scheme No 2;*

The applicants are seeking to amend Council's condition (e)(i) and (ii) by:

- incorporating this matter as part of the building licence; and
- showing the location but not identifying the number of parking spaces that would be required and provided in the designated area;

Refer to Attachment 3 – condition (m)(i) and (ii) for details of the proposed condition.

It is believed that this matter relates to the amenity of the area through the impact of the car parking expected to be generated by the construction of the proposed development, which is a planning matter rather than a building licence matter. Consequently, it is a matter that should be dealt with in the planning approval.

It is considered reasonable that the conditions be modified to the extent that the car parking management plan demonstrate that any loss to the overall number of parking bays is minimised and that workers and contractors are encouraged to use the dedicated area(s).

In relation to (e) iv, the applicants have requested Council to reconsider the car parking demand. This request is based on:

- (a) the existing development having satisfied the relevant parking standards at that time, including any car parking concessions having been granted by Council for the various stages in the development of the site; and
- (b) the current car parking standard should only be applied to the new stage of development.

The car parking standard, as set out in Table 2 – Car Parking Standards of the DPS2, was applied as required by the provisions of the Scheme. Having regard to the history of the development of the site and the car parking concession granted in the earlier stages of development, it is considered that this request as presented by the applicant in the review process is a reasonable request and warrants support.

If this position is considered acceptable, the application of the current car parking standard is difficult due to the structure of the standard. The standard relies on the development providing a set number of car parking spaces at the threshold level, with a specific rate of car parking spaces to be provided once the threshold level is passed (Refer to the following table which is an extract from Table 2 – Car Parking Standards of DPS2). For instance, a new development with over 50,000m² would require 3000 car parking spaces to be provided, plus the additional car parking spaces required at a rate of 4.8 spaces per 100m² of NLA. However, an existing development approved under previous Planning Schemes will not have the required number of parking spaces due to the different parking standards that were applied at that time, irrespective of any car parking concessions that may have been granted.

USE CLASS	NUMBER OF ON-SITE PARKING BAYS (NLA = NET LETTABLE AREA)
Shopping Centres under 10,000m ²	7 per 100m ² NLA
Shopping Centres from 10,000 to 30,000m ²	700 bays for the first 10,000m ² NLA plus 6.25 per 100m ² NLA thereafter
Shopping Centres from 30,000 to 50,000m ²	1950 bays for the first 30,000m ² NLA plus 5.25 per 100m ² NLA thereafter
Shopping Centres greater than 50,000m ²	3000 bays for the first 50,000m ² NLA plus 4.8 per 100m ² NLA thereafter

In this situation, the centre has an existing floor area of 40,595 m². It is recommended that the car parking assessment be carried out as follows:

- accept the current floor space and parking numbers as they exist;
- calculate the parking required for the difference in the retail floor areas between the existing centre (40,595 m²) and the 50,000 m² limit at a rate of 5.25 spaces per 100 m² NLA; and
- calculate the remaining proposed retail floor space above 50,000 m² at a rate of 4.8 spaces per 100 m² thereafter, without requiring the 3000 car parking bays; and
- calculate the proposed office floor space at a rate of 1 space per 30 m².

Based on this methodology, the revised parking calculations are shown below:

Existing Retail Floor Space	Use	Floor Area	CP Required
	Shopping centre	40,595.00	2,436.00
	Kiosks	334.00	20.00
	McDonalds	412.00	25.00
	Liquor Store	240.00	15.00
	Sub-Total	41,581.00	2,496.00

Proposed additional retail floorspace	Area	Proposed car parking ratio for new development	Floor Area	CP Required
	30-50,000 m ²	5.25/100 m ² NLA	8,419.00	442.00
	>50,000 m ²	4.8/100 m ² NLA	19,963.00	958.22
	Sub-total		28,382.00	1,400.22

Proposed Additional Office Floorspace	Car parking space for 1 space for every 30 m ²	672.00	23.00
	Total	70,635.00	3,919.22

This results in a reduced car parking requirement of 3,920 (rounded up) compared with the original calculation of 3981, which is a reduced demand of 61 car parking spaces. It is recommended that this revised figure be accepted and the relevant conditions be amended accordingly. The proposal would now satisfy the required number of parking spaces for the proposed development as it is proposed to provide 3,929 on-site parking spaces, compared to the required number of car parking spaces of 3,920.

The applicant would still need to make arrangements for the location on-site for the loss of any street car parking spaces that would be lost as a consequence of the proposed development.

2 Condition (j) Signalisation at Joondalup Drive and Collier Pass Intersection

Summary

- 2 Condition (j) required the applicant to provide for the design and installation of traffic signals at Joondalup Drive and Collier Pass intersection at its own cost. The applicant considered that such cost was unreasonable as the development does not generate the need for the installation of traffic signals at this location.

Contrary to the applicant's assertions, it is considered that the traffic generated by the shopping centre does give rise to the need for the installation for traffic signals at this intersection. However, it is also acknowledged that the intersection is also utilised by non shopping centre traffic and the provision of signals will likely be required in the future in order to improve access and egress in the area generally. A mediated outcome is recommended requiring the applicant to provide a two thirds contribution toward the design and construction of the traffic signals with Council contributing one third. This will be effected by way of a condition requiring the preparation of a legal agreement between the City and the applicant. The applicant has agreed in writing to this contribution breakdown.

The funding contribution is in keeping with the provision of traffic signals under the States Black Spot program whereby the City contributes one third and the State contributes two thirds. In view of the broader benefits to the community, the provision of a contribution of up to one third by the City is considered reasonable.

Detailed Discussion on Condition (j)

Condition (j) reads as follows:

The owners arranging at its cost for the design and installation of traffic signals at Joondalup Drive and Collier Pass intersection to the satisfaction of the City and MRWA, prior to the opening of the Shopping Centre Development;

It was noted in the previous report to Council that the proposed expansion of Lakeside Shopping Centre by 29,392m² (including storage and amenities) could increase the traffic generation of the existing centre from 29,280 vehicles per day (VPD) to 48,870 VPD. The overall increase in external traffic around Lakeside Shopping Centre taking account of adjacent developments could increase from 34,820 VPD to 53,520 VPD.

At the Joondalup Drive - Collier Pass junction, the applicant's traffic consultant, Uloth and Associates (Uloth), recommends traffic signals in the future to facilitate movements into and out of Collier Pass from Joondalup Drive. Uloth believes that the City has programmed to have traffic signals installed at this intersection as part of its road improvement program. A left hand turn lane from Collier Pass into Joondalup Drive - headed south - is also recommended.

In support of the proposed access points into and out of the proposed extensions off Grand Boulevard, Uloth identified future traffic flows and carried out detailed intersection operational analyses for the Grand Boulevard - Boas Avenue signalised intersection under the alternative scenarios. The analysis showed that the Grand Boulevard - Boas Avenue signalised intersection would (in Uloth's opinion) operate at a Level of Service D, indicating poor but manageable operating conditions, with manageable queue lengths within Boas Avenue.

In Uloth's opinion, the analysis also showed that the junctions of the proposed parking access driveways in both Grand Boulevard and Collier Pass would operate, unsignalised, at Levels of Service B and C, indicating (in Uloth's opinion) good and satisfactory operating conditions, respectively.

Longer Term Traffic Assessment

Uloth also carried out an analysis to assess the longer term effects of further (hypothetical) expansion at Lakeside (to include a department store and other extensions envisaged in the long term - see Figure 14 below) to 110,00m² of retail floor space plus a nominal 11,000m² expansion of the city to the north of Boas Avenue. This long-term scenario reflects what Uloth believes is the full retail development scenario envisaged in the existing Masterplan for Joondalup.

This analysis, Uloth believes, shows that all of the intersections and junctions adjacent to Lakeside Joondalup Shopping City (with the various improvements discussed above), would continue to operate at acceptable Levels of Service. However, Uloth also believes the analysis shows that the Grand Boulevard - Boas Avenue intersection would need to revert back to its original layout at some time in the future, with two through lanes in each direction.

The issue with respect to condition (j) was that the applicant considered that Council's requirement that the full cost of providing signalisation at this location be met by the applicant was unreasonable as the development does not of itself generate the need for the installation of traffic signals at the intersection of Joondalup Drive and Collier Pass.

Contrary to the applicant's assertions, it is considered that the traffic generated by the shopping centre does give rise to the need for the installation of traffic signals at this intersection. However, it is also acknowledged that the intersection is utilised by non shopping centre traffic and the provision of signals will likely to be required in the future to improve access and egress in the area generally. An equitable contribution arrangement has been further discussed and a mediated outcome is recommended requiring the applicant to provide a two thirds contribution toward the full design and construction cost of the traffic signals with Council contributing one third. This will be effected by way of an amended condition (j) on the approval requiring the preparation of a legal agreement between the City and the applicant, stating the nature of the applicant's contribution.

The funding contribution split is in keeping with the provision of traffic signals under the State's Black Spot program whereby the City contributes one third and the State two thirds. In view of the broader benefits to the community and the likely requirement that signals will be necessary, the provision of a contribution of up to one third by the City is considered reasonable in this circumstance.

3 Condition (k) Modifications to channelisation and surrounding road systems

Summary

- 3 Condition (k) required the applicant to undertake all road channelisation treatments and modifications to the traffic signals at Collier Pass Road and Grand Boulevard intersection to Council's satisfaction and at the applicants cost. The applicant considered that such cost was unreasonable.

The applicant has now agreed to undertake all channelisation works and intersection modifications at its own cost.

4 Other Appealed Conditions

For the remaining conditions appealed, some conditions are deleted and incorporated into other existing or new conditions on the approval. These include conditions relating to:

- vegetation mulching (included as part of the required landscaping plan);
- requiring the City's approval for changes to the "car parking management plan";
- car parking to meet Australian Standards (to apply to new parking areas and not existing parking areas);
- dust suppression (to be incorporated into a "construction management plan and program");
- heavy vehicle movement management (to be incorporated into a "construction management plan and program");
- drainage plan (to be incorporated into a "construction management plan and program");

The changes identified in the second dot point referred to above, is being challenged by the City and it is considered that this condition should remain unchanged.

Other conditions are proposed to be deleted on the basis that they were adequately covered under other legislation. These included conditions relating to:

- Littering and general rubbish arising from earthworks; and
- Rehabilitation works

The changes recommended by the applicant are included in Attachment 3 and are not considered to materially affect the basis of the original approval granted by Council.

5 Footnotes

A number of footnotes included on the original approval have been deleted as they are already adequately covered under other legislation. These include footnotes relating to compliance with the Environmental Protection Act and the Health Act.

Other footnotes have been included within the body of the conditions. These footnotes relate to car parking construction standards. The inclusion of footnotes within the body of the conditions is preferred in any event as footnotes are not enforceable and incorporation within the body of the conditions gives them greater status.

Other footnotes, not deleted and not able to be incorporated into conditions, have been retained in the current modified approval for the applicant's guidance as to the City's expectations. It is possible that they will not be accepted for inclusion in any Minute of Consent by the Tribunal based on its previous decision in *Empire Securities and Ors and Western Australian Planning Commission* [2005] WASAT 98. If that is the case, it is recommended that the City detail its expectations, as provided in those footnotes, in separate correspondence to the applicant.

CONCLUSION

The modified and re-structured approval as prepared by the applicant in Attachment 3 is considered as an acceptable mediated outcome and Council's approval to a Minute of Consent effecting these changes is sought, subject to the following changes (as shown in Attachment 4), which includes the following change:

- modifications to proposed condition (d)(ii)(B) and (C) to reflect the change in the methodology for the calculation of the required car parking numbers; and

ATTACHMENTS

Attachment 1	Extract from the minutes of the November 2005 meeting, containing the conditions of approval.
Attachment 2	Marked up copy of Council's original approval showing proposed changes.
Attachment 3	Applicants copy of proposed approval containing modified conditions and amended structure.
Attachment 4	Proposed amended approval based on changes to the applicants document in Attachment 3.

VOTING REQUIREMENTS

Simple Majority

Chief Executive Officer requested the Director Planning and Community Development be permitted to give an update in relation to this issue. A timetable has been set by the State Administrative Tribunal, with a hearing set for Thursday, 16 March 2006.

**C11-03/06 SUSPENSION OF STANDING ORDERS LOCAL LAW – [02154]
[08122] [01369]**

MOVED Cmr Anderson, SECONDED Cmr Fox that Council SUSPENDS Standing Orders in order that the Council may receive a presentation in relation to this issue.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

Director, Planning and Community Development gave an overview of the history of the proposed extensions to Lakeside Shopping Centre and the mediation process to date.

C12-03/06 RESUMPTION OF STANDING ORDERS LOCAL LAW – [05885]**MOVED Cmr Smith, SECONDED Cmr Fox that Standing Orders be RESUMED.****The Motion was Put and****CARRIED UNANIMOUSLY (5/0)**In favour of the Motion: **Cmrs Paterson, Clough, Anderson, Smith and Fox****OFFICER'S RECOMMENDATION:** That Council:

- 1 APPROVES the modified conditions of approval for the proposed extensions to the Lakeside Shopping Centre, in accordance with Attachment 4 to Report C-03/06 and forwards these conditions to the State Administrative Tribunal;

- 2 AUTHORISES the Chief Executive Officer under Clause 9.29 of the Local Government Act 1995 to agree to changes to the above conditions contained in Attachment 4 to Report C-03/06 under delegation for the purpose of finalising a Minute of Consent Order, where such changes do not materially affect the intent of the conditions referred to 1 above.

MOVED Cmr Smith, SECONDED Cmr Fox that Council:

- 1 **APPROVES** the modified conditions of approval for the proposed extensions to the Lakeside Shopping Centre, in accordance with Attachment 4 to Report C10-03/06, subject to a change to Clause 1(h) to read:

“(h) The owners will enter into an agreement with the City to fund the design and installation of traffic signals at Joondalup Drive and Collier Pass intersection. The agreement will set out the timing of the installation of the signals, the referral process with the City and MRWA, the amount of contribution of the owners (set at two thirds of the cost) and the timing of repayment of the remaining one third of the costs of design and installation by the City to the owners.”

and will forward these conditions to the State Administrative Tribunal;

- 2 **AUTHORISES** the Chief Executive Officer under Clause 9.29 of the Local Government Act 1995 to agree to changes to the above conditions contained in Attachment 4 to Report C10-03/06 under delegation for the purpose of finalising a Minute of Consent Order, where such changes do not materially affect the intent of the conditions referred to 1 above.

The Motion was Put and**CARRIED UNANIMOUSLY (5/0)**In favour of the Motion: **Cmrs Paterson, Clough, Anderson, Smith and Fox***Appendix 12 refers**To access this attachment on electronic document, click here: [Attach12min140306.pdf](#)*

C13-03/06 REQUEST FOR PAYMENT OF LEGAL COSTS BY FORMER MAYOR D CARLOS - [72559]

WARD: All

RESPONSIBLE Mr Garry Hunt
DIRECTOR: Office of CEO

PURPOSE

To submit to Council, a request by former Mayor Don Carlos for payment of legal costs associated with defending the Writ issued against him by the former Chief Executive Officer, Mr Denis Smith.

EXECUTIVE SUMMARY

This matter has previously been considered by Council at its meeting dated 8 June 2004. At the meeting, it was resolved that –

“no determination is made on this matter at this time and the item be deferred until the McIntyre Inquiry completes its deliberations and issues a report.”

This matter relates to the issue of a Writ of Summons made on 27 November 2003, by the former Chief Executive Officer, Mr Denis Smith through his legal representatives Blake Dawson Waldron, against Mr Don Carlos and the City of Joondalup, claiming damages. Mr Don Carlos appointed solicitors Phillips Fox to represent him and the City appointed Minter Ellison to represent it in the matter. On a Memorandum of Consent Order Dismissing the Action against the first defendant filed at Court on 25 March 2004, the matter was dismissed. It was agreed that there would be no order as to costs.

In the interim period, Mr Carlos had sought and obtained legal advice on the matter, amounting to \$16,075.52. Mr Carlos wrote to the Chairman of Commissioners in February 2004 requesting payment pursuant to the then *Policy 2.2.8 – Legal Representation for Present and Former Elected Members and Staff of the City*.

The McIntyre Inquiry into the City of Joondalup was conducted from 2004, with the final Report being released in October 2005 and the Minister for Local Government and Regional Development handing down a decision to dismiss the Council in December 2005.

Determination of this matter has been complicated by the conclusions contained in the McIntyre Report. A number of options have been canvassed within this report for consideration.

BACKGROUND

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

On 25 March 2004, the matter was dismissed with a Memorandum of Consent Order Dismissing the Action against the first defendant being filed at the Court.

In June 2004, the Commissioners resolved to deal with the issue of the payment of the former Mayor's legal expenses after the McIntyre Report had been handed down. In October 2005 the findings of the McIntyre Inquiry were published and the issue of the former Mayor's legal expenses can now be dealt with.

DETAILS

Issues and options considered:

In assessing this matter, reference has been made to relevant sections of the *Local Government Act 1995* (the Act), legal advice that was previously sought from Minter Ellison Lawyers, and the findings of the McIntyre Report. Further independent advice has also been obtained from solicitors.

Statutory Provision

Section 6.7 of the Act is significant in determining the City's legal entitlement to pay the legal expenses requested by Mr Carlos. Section 6.7 of the Act is reproduced as follows:

6.7. Municipal fund

- (1) *All money and the value of all assets received or receivable by a local government are to be held and brought to account in its municipal fund unless required by this Act or any other written law to be held in the trust fund.*
- (2) *Money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by this Act or any other written law.*

In determining, for the purposes of section 6.7(2), what are the functions conferred on a local government to which money can lawfully be applied, section 3.1(1) is particularly relevant. Section 3.1(1) states:

“The general function of a local government is to provide for the good governance of persons in its district.”

It follows therefore that the City has power to pay the legal expenses of Mr Carlos if the payment can be justified as being “for the good government of persons” in the City's district.

The City's legal advice (received from Minter Ellison in May 2004) was that it would not be within the “good governance” power for the City to pay for the legal expenses of an elected member or employee that arose as a result of actions by the elected member or employee that:

- (a) were outside his or her proper role and responsibilities;
- (b) were in breach of, or inconsistent with, a formal resolution of the Council, as the City's decision - making body.

Sections 2.6 – 2.8 and 2.10 of the Act detail that local governments are to be run by elected councils, and detail the roles and responsibilities of the Council, the Mayor and Councillors. The following extracts are considered particularly relevant in determining whether or not it is considered that Mr Carlos, in his actions to pursue the matter of the CEO's employment, was carrying out the official responsibilities of his office of Councillor and Mayor:

2.6 Local governments to be run by elected councils

(1) Each local government is to have an elected Council as its governing body.

2.7. The role of the Council

(1) The Council —

- (a) directs and controls the local government's affairs; and*
- (b) is responsible for the performance of the local government's functions.*

(2) Without limiting subsection (1), the council is to —

- (a) oversee the allocation of the local government's finances and resources; and*
- (b) determine the local government's policies.*

The Council as a whole makes decisions on behalf of the City and its decisions are binding on the City.

2.8. The role of the mayor or president

(1) The mayor or president —

- (a) presides at meetings in accordance with this Act;*
- (b) provides leadership and guidance to the community in the district;*
- (c) carries out civic and ceremonial duties on behalf of the local government;*
- (d) speaks on behalf of the local government;*
- (e) performs such other functions as are given to the mayor or president by this Act or any other written law; and*
- (f) liaises with the CEO on the local government's affairs and the performance of its functions.*

(2) Section 2.10 applies to a councillor who is also the mayor or president and extends to a mayor or president who is not a councillor.

2.10. The role of councillors

A councillor —

- (a) represents the interests of electors, ratepayers and residents of the district;*
- (b) provides leadership and guidance to the community in the district;*
- (c) facilitates communication between the community and the council;*
- (d) participates in the local government's decision-making processes at council and committee meetings; and*
- (e) performs such other functions as are given to a councillor by this Act or any other written law.*

Council Decisions relating to the CEO

In response to Mr Carlos raising matters relating to the CEO, with the media, Mr Carlos was the subject of censure motions. For example, Council at its meeting of 18 February 2003 (Item C13-02/03 Censure Motion refers) resolved:

“THAT:

- 1 *Cr Carlos be and is hereby formally censured for his ongoing and repeated attacks on our CEO, current and former council staff and the mayor, and for his ongoing attempts to bring the City of Joondalup into disrepute;”*

Further censure motions occurred on 9 September 2003 and in October 2003.

Legal Opinion

Council sought and obtained a number of legal opinions in 2003 and 2004 from solicitors Minter Ellison concerning this matter. The following extract has been taken from one such opinion and relates to conclusions reached concerning the Mayor’s performance of his duties of office including his failure to act in accordance with the resolutions of the Council.

“4 Conclusions

(h) as was the case with his earlier public comments, the Mayor’s most recent actions:

- (i) breach his statutory powers to make public comments only on behalf of the City;*
- (ii) breach his duties of office that he undertook to fulfil in his formal declaration on being elected to the position;*
- (iii) appear to be a deliberate refusal to accept the lawful and proper exercise of Council’s decision making powers;*
- (iv) undermine the lawful authority of the City’s duly elected Council;*
- (v) have adversely affected the City’s reputation; and*
- (vi) have adversely affected the functioning of the City;”*

The legal proceedings against Mr Carlos, in respect of which Mr Carlos has sought payment by the City of his legal expenses, involve various actions of Mr Carlos that were considered at the time to be in breach of, or inconsistent with, resolutions of the Council.

Report into the Inquiry into the City of Joondalup - The McIntyre Report

Notwithstanding the above legal opinion or the censure motions, the McIntyre Report in its recommendations and conclusions went some way in justifying the position taken by Mr Carlos.

Indeed, Mr McIntyre concluded that as a Councillor, Mr Carlos *“was under a duty to raise his concerns relating to Mr Smith’s honesty and acted appropriately in the manner he did so.”* Further, Mr McIntyre found that *“there was no sufficient rational basis upon which the Council could decide that it was in the interests of the City to censure Cr Carlos, express confidence in Mr Smith, and authorise expenditure by the City on his legal advice.”* In relation to the decision passed by Council on 17 June 2003 whereby all elected members other than Mayor Carlos resolved to pay Mr Smith’s legal fees it was determined that this resolution *“was irresponsible as it was based upon insufficient information from the Administration and should not have been made. It could not be justified as being in the interests of good government of the City when Mr Smith’s solicitors had, by this time, given clear and unequivocal notice of Mr Smith’s reservation of his right to sue the City for damages for repudiation of his contract.”*

However, Mr McIntyre also concluded that *“Mayor Carlos should have resigned from office and subjected himself to the vote of the electorate at least by the time of the resolution of Council censuring him on 9 September 2003.”*

Mr McIntyre’s general conclusion with regard to the former Mayor was that –

“5 Mr Carlos, both as a Councillor and as Mayor adopted a principled position in relation to the investigation of the probity of Mr Smith, but alienated other Councillors by the occasionally unsatisfactory manner in which he pursued the matter, such as –

- his use of the public media to comment adversely on other Councillors;*
- his carelessness with the truth in relation to certain matters of fact of significance to other Councillors; and*
- his failure to take appropriate steps to reveal to other Councillors information upon which he based his views,*

all of which contributed to a loss of confidence in him by a number of Councillors.

6 He was, therefore ultimately unsuccessful as a leader of the Council and ought to have resigned when that position became irreversible.”

While there is argument to suggest that the former Mayor may have acted outside his statutory roles and responsibilities, the McIntyre Report does not go so far as to conclude this issue. Mr McIntyre concluded that the former Mayor was more careless in his presentation of the truth rather than deliberately stating misinformation. Indeed, Mr McIntyre states that *“Mr Carlos did not take enough care to ascertain the accuracy and truth of the statements he made in his letter to the Minister in December 2002 and in his e-mail to elected members in May 2003, that he had asked questions of Mr Smith as to his qualifications. I am not satisfied to the requisite standard that when Mr Carlos made those statements he was deliberately saying something which he then knew to be false. I, therefore, do not conclude that he lied. However, I am satisfied that he was not sufficiently concerned and had not made sufficient enquiries of others present, in those instances, to ensure that the statements he made to persuade others were accurate and true.”*

Mr McIntyre does conclude that Mr Carlos did breach the Code of Conduct at the 20 May 2003 Council meeting *“in that he was less than frank and honest with other Councillors when he denied that he had asked Mr Smith to resign, having conceded that on 6 or 14 May 2003 he suggested to Mr Smith that it would be to his advantage to resign.”* This breach however, does not amount to a serious dereliction of the role of the Mayor.

On the balance of the findings of the McIntyre Report, it would appear that Mr Carlos did not act outside his roles and responsibilities both as a Councillor and as Mayor in his actions concerning the former CEO.

Options Available to the Council

Policy 2.2.8 - Legal Representation for Present and Former Elected Members and Staff of the City - was adopted by the Council in July 1999. In June 2004, modification was made to the original policy to specifically take into account issues which were of concern to the Council arising from the Inquiry into the City of Joondalup. This policy was subsequently replaced, in October 2005, by Policy 8-7.

The application for payment of legal costs by former Mayor Don Carlos, was not in relation to the Inquiry but rather a matter which preceded the Inquiry in relation to a defamation action.

Following consultation with solicitors McLeods in February 2006, the following advice, in part, was received:

“One of the key points in the application of the original Policy 2.2.8 is the opinion of solicitors appointed by the City as to whether adverse findings have been made against the relevant person by “any previous Royal Commission or Inquiry under the ... Local Government Act 1995.”

The criterion is not directly applicable to circumstances where a Council member is seeking indemnification for legal costs incurred in defending an action for defamation. The criterion which refers to adverse findings seems to be designed to deal with a situation where a claim is made for payment of legal fees arising out of a relevant person’s involvement in a Royal Commission or a Local Government Inquiry. An action for defamation would not ordinarily be described as an Inquiry, and certainly would not be described as an Inquiry under the Local Government Act 1995.”

It is understood that at the time the current Council dealt with the request of Mr Carlos in February 2004, there were concerns in relation to the actions of Mr Carlos, both as a Councillor and Mayor.

The Inquirer subsequently found that Mr Carlos, both as a Councillor and as Mayor, adopted a principled position in relation to the investigation and probity of Mr Smith. Any comments out of the Inquiry report concerning actions in relation to Mr Carlos were not adverse findings which affect the appropriateness of his actions and comments which gave rise to the action for defamation. In light of these circumstances, it is within the power of the Council to reimburse to Mr Carlos funds incurred in defending the action. The amount of the claim totalled \$16,075.52.

Although this amount is greater than the ceiling on the original assistance under Policy 2.2.8 in place at the time of the initial claim, the policy does recognise that further assistance may be granted. A Policy can only operate as a guide for decision making, and the Council is not bound by it if it is deemed to have good reason to depart from it.

1. *Policy 2.2.8 - Legal Representation for Present and Former Elected Members and Staff of the City*

Under section 3.1 of the *LGA 1995*, the general function of a local government is to provide for the good governance of persons in the district.

The City should only pay the legal expenses of suspended elected members and employees if the payment can be justified as being for the good government of persons in the City's district.

The policy relating to the legal representation for elected members and employees allows, in appropriate circumstances, for the City to pay for the legal representation costs of an individual elected member or employee.

Mr Carlos made an application for payment of legal expenses pursuant to *Policy 2.2.8 - Legal Representation for Present and Former Elected Members and Staff of the City*. It should be noted that this policy has been amended twice and renumbered since Mr Carlos made his application. It is the view however, that the application by Mr Carlos should be considered in terms of the previous policy given the fact that the application was made in February 2004 prior to the amendments.

Under clause 1 of the Policy, it would apply to Mr Carlos's application as the writ dealt with legal proceedings and Mr Carlos was at the time an elected member, the legal proceedings relating to his actions while a Councillor and Mayor.

With regard to other former elected members, Council has provided a maximum of \$7,500 based on two applications under Policy 2.2.8.

Due to the fact that the McIntyre Report did not conclude that Mr Carlos acted in bad faith, unlawfully or in a way that constituted improper conduct, it should be noted that Mr Carlos's application under the amended Policy 2.2.8 would also meet that criteria.

2. Policy of Insurance

The initial position was that Mr Carlos could have availed himself of the City's Councillors and Officers Elite Insurance Policy.

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 This extension does not cover any fines or penalties imposed by law which are deemed uninsurable under the law;
- 5 This 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 this Policy.

The City has notified the Insurer by e-mail of the Writ of Summons by on 4 December 2003 therefore providing timely advice to the Insurer of the potential claim. On 24 March 2004, the City wrote to Municipal Insurance Broking Services requesting assistance in referring Mr Carlos' request to the insurers by way of claim under the City's Policy of Insurance. On 22 April 2004 the City wrote to Municipal Insurance Broking Services submitting the claim for

\$16,075.52 from Mr Carlos to the insurer. On 28 April 2004 the Insurer advised that they were waiting advice. On 11 June 2004 the Insurer requested advice of the decision of Council. On 17 June 2004 the City informed the Insurer that the Commissioners had deferred the decision on the matter. While Mr Carlos would come within the requirements of clause 3(b), the problem that arises is that the proceedings have been finalized, the costs were incurred without the consent of the Insurer, the action was discontinued without the consent of the Insurer, and an order for costs was not made.

Discussions have been held with the Insurer that in light of the circumstances arising from the findings of the Inquiry, there is a different view that has now been determined regarding the actions of Mr Carlos concerning the qualifications of the former CEO. In view of the extended delay in addressing the amount paid by Mr Carlos, it is proposed that he be reimbursed and the City pursue any claim with the Insurer. This matter has been canvassed with the insurance broker and it is believed to be an appropriate action to be undertaken by the City.

Link to Strategic Plan:

Not Applicable.

Legislation – Statutory Provisions:

Sections 3.1 and 6.7 of the Local Government Act, 1995.

Risk Management considerations:

Rejection of the insurance claim by the Insurers.

Financial/Budget Implications:

Provision has been made in the 2005/06 financial year for legal costs associated with the Inquiry. It is intended that this expenditure be allocated against that account.

Policy implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Not Applicable.

COMMENT

The application for reimbursement for legal expenses by Mr Don Carlos has been outstanding since February 2004. This report outlines the background to the determination by the Council that the request should not be dealt with pending the outcome of the Inquiry into the City of Joondalup.

The Inquiry report was released in October 2005, with submissions closing with the Minister for Local Government in November 2005, and members of the suspended Council, including former Mayor Carlos, being dismissed by the Minister in December 2005.

Since that time, investigation into the basis of the initial request, the circumstances prevailing at that time, review of the limitations placed on the original Council decision of June 2004, and advice from solicitors has been undertaken.

It is the considered view of the Chief Executive Officer that, taking all these matters into account, it is appropriate for Mr Carlos to be reimbursed for the full amount of \$16,075.52. It is proposed that a claim for an amount of \$11,075.52 be made under the Council and Officers Liability Policy to seek recovery of the amount over and above the \$5,000 policy excess.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Absolute Majority

MOVED Cmr Clough, SECONDED Cmr Fox that Council:

- 1 APPROVES reimbursement of the amount of \$16,075.52 to Mr Don Carlos for costs incurred in defending the Defamation Writ initiated by Mr Denis Smith, a former Chief Executive Officer of the City of Joondalup;**
- 2 REQUESTS the Chief Executive Officer to pursue recovery of the amount of \$11,075.52 under the City's Council and Officers Liability Policy.**

Discussion ensued.

MOVED Cmr Smith, SECONDED Cmr Fox that Commissioners be permitted to speak longer than five (5) minutes on this issue.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

Further discussion ensued.

The Motion Moved by Cmr Clough and Seconded by Cmr Fox was Put and

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

In favour of the Motion: Cmr Paterson, Clough, Anderson, Smith and Fox

MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

ANNOUNCEMENTS OF NOTICES OF MOTION FOR THE NEXT MEETING

Nil.

CLOSURE

There being no further business, the Chairman declared the Meeting closed at 2051 hrs; the following Commissioners being present at that time:

CMR J PATERSON
CMR P CLOUGH
CMR M ANDERSON
CMR S SMITH
CMR A FOX