

MINUTES

City of Joondalup

MINUTES OF
ORDINARY MEETING OF THE COUNCIL
OF THE CITY OF JOONDALUP
HELD IN THE COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE,
BOAS AVENUE, JOONDALUP

MEETING DATE



ON TUESDAY, 19 SEPTEMBER 2006



**MINUTES OF COUNCIL MEETING
HELD ON 19 SEPTEMBER 2006**

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CITY OF JOONDALUP

MINUTES OF COUNCIL MEETING HELD IN THE COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP, ON TUESDAY, 19 SEPTEMBER 2006

DECLARATION OF OPENING

The Mayor declared the meeting open at 1903 hrs.

ANNOUNCEMENT OF VISITORS

Nil.

ATTENDANCES

Mayor:

T PICKARD

Councillors:

Cr K (Kerry) HOLLYWOOD	North Ward
Cr T (Tom) McLEAN	North Ward
Cr A (Albert) JACOB	North-Central Ward
Cr S (Steve) MAGYAR	North-Central Ward
Cr J (John) PARK	Central Ward
Cr G (Geoff) AMPHLETT	Central Ward
Cr M (Michele) JOHN	South-West Ward
Cr S (Sue) HART	South-East Ward
Cr B (Brian) CORR	South-East Ward
Cr R (Russel) FISHWICK	South Ward
Cr R (Richard) CURRIE	South Ward

Officers:

G (Garry) HUNT	Chief Executive Officer	<i>Absent from 2039 hrs to 2040 hrs</i>
C (Chris) TERELINCK	Acting Director, Planning and Community Development:	
M (Mike) TIDY	Director, Corporate Services:	<i>Absent from 2152 hrs to 2154 hrs</i>
D (David) DJULBIC	Director, Infrastructure Services:	
I (Ian) COWIE	Director, Governance & Strategy:	
M (Mike) SMITH	Manager, Marketing Communications & Council Support:	
K (Karen) GREGORY	A/Media Advisor:	
L (Lesley) TAYLOR	A/Administrative Services Co-ordinator:	
G (Gillian) KELLY	Administrative Secretary:	

There were 26 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 29 August 2006:****Mr D Biron, Mullaloo:**

Q1 *Will Council please explain in detail in writing why following the issue of the following written answer in February 2006 to a submitted question regarding noise reports - namely that:*

A13 *'A summary of the results of the sound level analysis assessment is available upon request. This Consultant has been engaged by the City to provide an independent report at a cost to the City.'*

Joondalup City Council are still refusing to supply even any such summary notably in respect of the noise report of the 1ST May 2004 despite repeated written requests and the noise report itself under a still incomplete FOI application going back 2 and half years?

A1 As previously advised to you in the City's letter dated 15 June 2006, the scope of your freedom of information application related to documents over a two year period from March 2002 to April 2004, therefore the sound level analysis assessment dated 1 May 2004 is outside of the scope, and was not provided. A copy of the report will now be provided.

Q2 *When will the Council finally complete my outstanding FOI application and provide all the requested documents clearly covered by the ambit of my FOI application and not just those it is prepared to release? My FOI application of March 2004 clearly required the release under the FOI Act of all documents relating to building works at a specified address but the City has chosen not to provide them without claiming any exemption or reason for this corrupt refusal. For example despite swimming pools requiring an application for a building license the City of Joondalup at the highest level persists in claiming that this building work is not covered by the term building work? Please explain in considerable written detail this ongoing corruption of required legal process?*

A2 The FOI application was finalised on 27 July 2005 following the City's acceptance of a conciliatory proposal offered by the Office of the Information Commissioner. All documents located at the time of the document discovery process were provided.

The Freedom of Information Act 1992 provides for an internal review process. Mr Biron did not submit such a request.

However, in every effort to assist Mr Biron, the City conducted an informal review based upon his past concerns.

A further review was conducted and found that a building licence application (BA02/4323) was approved on 19 December 2002. This application was not discovered during the original document discovery. All documents relating to this application will now be provided.

Q3 *Similarly no plans have been provided to me under FOI for any building work carried out at the specified address nor any legal exemption claimed for this refusal to disclose any of these documents. Either no plans were submitted as required by Council policy or the City of Joondalup has deliberately destroyed them all contrary to the operation of the State Records Act and the FOI Act. Which answer is it:*

(a) *has the Council retained these plans? Or*

(b) *has the Council destroyed them?*

A3 Refer to A2.

Q4 *In written answers provided recently by the Council in relation to the operation of the electronic document management system of the City it is clearly stated that this system produces a number of reports and that all City documents are retained onto this electronic system. Again no reports from this system have been provided to me as part of my still outstanding FOI application despite all these reports being clearly covered by the ambit of my FOI application. Please explain in written detail the reasons for the ongoing refusal of the City to provide any of these reports since they were yet again covered by the ambit of my FOI application, and the City has made no claim for their exemption from either disclosure or supply?*

A4 It is unclear as to the nature of the reports referred to. The City's electronic recordkeeping system produces standard recordkeeping reports to assist in:

(a) preparing responses to correspondence within the specified timeframes

(b) performance indicators on these response times

(c) document volumes

(d) usage of the system

In relation to the Freedom of Information Act 1992 and as part of the document discovery process, an excel spreadsheet can be produced from this system listing several attributes of each document. This report is not produced to be supplied to an applicant, as a separate document schedule is prepared describing all documents located, regardless if access is made or denied. This report is only released to an applicant to assist in the reduction of the scope of an application, when it is deemed too excessive.

Mr M Caiacob, Mullaloo:

Q1 *Why was the applicant advised to apply for a Residential Building (short stay accommodation) when the R-Code will be removed?*

A1 The applicant applied for Short Stay Accommodation. It is the City's responsibility to categorise the land use as part of the assessment process.

The density coding of the site is not proposed to change.

Mr E Burton, Kingsley:

Q1 *I submitted questions to Council on 18 July 2006, some of which were taken on notice. On 8 August 2006 I received the answers to the questions on notice. I refer to my question to commence construction of the extension of Woodlake Retreat from the retirement village to facilitate and provide additional parking area for workmen etc., the reply was inter alia that the land immediately west of the retirement village is currently in private ownership and subject to a forthcoming subdivision.*

As a large proportion of the land has previously been developed and, in fact, building along the eastern boundary backing Wanneroo Road extends from the southern boundary to the northern boundary, I am perplexed as to why this land was not suited when the original application was made, further what affect will this have on the commencement of the construction of the extension of Woodlake Retreat?

A1 The development of the Kingsley Retirement Village required approval from both the City and the Western Australian Planning Commission (WAPC). Planning approval was granted by the City for the first stage of development in June 1999, subject to the following condition:

37. *Suitable arrangements being put in place to the satisfaction of the WAPC prior to the development first being occupied for the future construction and dedication of a north-south access road adjacent to Lake Goollelal with its centre line being along the 30-metre AHD contour line in accordance with the approved structure plan.*

The WAPC subsequently granted its planning approval in September 1999 for the subdivision of Lot 709, including the creation of the Woodlake Retreat road reserve, subject to Condition 3, which is reproduced below:

3 *Arrangements being made to the satisfaction of the Western Australian Planning Commission prior to the development being occupied for the construction and dedication of a north-south access road adjacent Lake Goollelal, with the centre line being along the 30 metre AHD contour line in accordance with the approved structure plan.*

The WAPC advised the developers of the site in April 2000 the following in relation to its requirements concerning Condition 3:

"The Commission is prepared to accept an undertaking from the developer that it will fully construct the foreshore road, prior to the expiry date of subdivision application 111339 on 23 September 2002 or prior to the occupation of half of the units proposed in stage 2 of the retirement village."

Although the subdivision approval has expired, stage 2 of the retirement village has yet to be commenced and therefore, the developers of the site have not been required to develop the extension of Woodlake Retreat at this stage.

Mrs M Macdonald, Mullaloo:

Q1 *Re: CJ148-08/06 – The Health Act requires that local governments administer Health Laws. The house referred to was a dwelling. If Council agrees to allow the owner to conduct a business of providing short term accommodation at the address, will the owner be required to meet new standards under the Health Act and, if so, how will the building be defined under the Health Act?*

A1 The premise will be defined as a 'dwelling house' under the Health Local Laws and will not need to meet any new standards under the Health Act, however the owner must maintain the premise in compliance with the Housing & General requirements of the Health Local Laws.

Q2 *Has the City adopted the recommendations of the Health Act with respect to buildings and their use or does it have variations to that Act within its local law?*

A2 The Health Act does not make recommendations with respect to buildings, however empowers the City to make Local Laws to provide for regulation, control and management of day-to-day health matters within the district.

Mr M Sideris, Mullaloo:

Q1 *Recently the City refused to identify and supply the date and location of the land transfer in Wangara relating to the cash in lieu land transfer for the Mullaloo Tavern. Would Council please confirm that this transaction did in fact occur, that it has a copy of the title deed transfer details and that this record was used for reference to the redevelopment report presented to Council in 2002, for the Supreme Court in 2003 and for the current State Administrative Tribunal hearing in 2006 as dealt with by the current elected Council?*

A1 This question relates to a matter that is over 20 years old. Further, it does not relate to a current application before Council. Research of this historical matter would require the diversion of resources, which cannot be justified. Consequently, in accordance with paragraph 45 of the Guidelines for Managing Public Question Time, produced by the Department of Local Government and Regional Development in 2002, the research will not be undertaken because it represents an unreasonable impost on the local government.

Q2 *Further to Council's previous answers relating to the non sale of the car park opposite to the Mullaloo Tavern on the grounds that they did not own it, would Council please explain why they stated to the Supreme Court and the State Administrative Tribunal that the Tavern owners had indeed funded the construction of the car park opposite the Tavern when the car park existed at least ten years earlier?*

A2 It was not necessary to distinguish between the current and previous owners of the site as to who paid the cash-in-lieu payment for the shortfall in the car parking.

Mr S Kobelke, Sorrento:

Q1 *Re: Wyllie Group's new tavern and boardwalk across the Hillarys Boat Harbour proposal – Can Council confirm that at the Briefing Session the week prior to the Council Meeting on that matter, the applicants had indicated they would present a deputation to the Commissioners but failed to appear on the night?*

A1 At the Council meeting held on 15 March 2005, consideration of the Item Parks and Recreation – Proposed Tavern, Boardwalk and Retail Additions on Pt Res 39197 (52) Southside Drive, Hillarys was deferred to allow the proponents to present a deputation to Commissioners. A presentation was provided to Commissioners by the Wyllie Group at a Strategy Session on 28 September 2004.

Q2 *Since the Commissioners voted unanimously not to approve the Wyllie Group's proposal due to concerns regarding the parking and transport at the Hillary's Boat Harbour, what has changed in relation to these matters that the City would support the increased infrastructure proposal that is before Council tonight?*

A2 The application before the Council is for the upgrade and enhancement of the eastern precinct and parts of the northern and southern precincts. These works are aimed at improving the aesthetics and usability of these existing areas and facilities for the general public.

The Wyllie Group's proposal is a commercial venture that will increase the commercial/retail floor space. Typically an increase in commercial floor space would require parking numbers to be increased.

The following questions were submitted in writing prior to the Council meeting on 19 September 2006:

Mr D Stephens, Currambine:

Re: Answers to my question: 29 August 2006

Q1 *I am not satisfied with the answers provided, specifically to:*

“Original Q2: “Did Mike Smith and/or any other who attended this conference declare an interest?”

Original A2: There is no financial interest for Mike Smith to declare. The report notes a payment that has already been made to Mr Smith. There is no financial benefit or loss to Mr Smith with the Council noting the payment.”

Please explain how such a payment cannot be a financial benefit to Mr Smith?

A1 The payment to Mr Smith is a financial benefit as the question identifies. However, the original question related to declaring a financial interest.

There are significant differences between financial benefits and declarations of interest. Financial interest declarations are governed by provisions within the Local Government Act. In particular, the Act indicates that a financial interest only arises if a matter under consideration could be dealt with in a particular way which would create a financial gain or loss. In the case of Mr Smith, payment had already been made and Mr Smith had received the money. The payment was, therefore, presented to the Council for noting. As Council was only noting the report which identified a prior payment to Mr Smith, no financial interest arises.

Detailed information on the operations of the financial interest provisions are available in a report published by the Department of Local Government and Regional Development. The City is also in the process of producing a short guide to financial interests. A copy of this guide will be provided to Mr Stephens once finalised.

Q2 *“Original Q5: “Why are the other attendants funded by the City not named in the “payments list”, (if any)?*

Original A5: Mr Smith sought a cash advance and that is what is reflected in the payment. The Mayor did not seek such an advance for attending the Conference. The cash advance is paid under Council Policy 8-2.”

Council Policy 8-2 is for Elected Members Allowances. When did Mr Smith become an elected member?

A2 It is agreed that City Policy 8-2 relates to allowances for Elected Members. This Policy includes the concept of cash advances. It is also agreed that Mr Smith is not an Elected Member.

It is the Chief Executive Officer's responsibility to determine payments to staff. The cash advance was provided, as it was consistent with City Policy 8-2. It also accords with the City's Corporate Procedures Manual.

Q3 *Can you please provide me with a copy of the policy directly relating to Mr Smith's Cash Advance?*

A3 On page 12 of the Corporate Procedures Manual, under Section 5, Finance, it is stated that “staff attending conferences...will be given the option to either obtain an advance payment prior to departure or use their own funds and claim a recoup”.

Q4 *Does such a payment /payments need to come before Council for approval?*

A4 No.

Q5 *“Original Q6: Is “this” conference item related to all the other listed “conference items”, and what was the total cost of the City's involvement with this conference?*

Original A6: The item raised in the question only related to the cash advance for Mr Smith. The two attendees at the Conference were funded for travel, accommodation and conference registration. It is estimated that the total cost for the two attendees to attend the Conference will be approximately \$6,000.”

The Answer provided is not complete and avoids answering the original question in full. Please provide a full and clear response?

A5 The original answer to Question 6 provided a full and clear response to the question from the City's perspective. If Mr Stephens has issues with this response, he is requested to rephrase the question to make his intentions clear.

Q6 *Where and how long was this conference for, to have cost the ratepayers \$6,000?*

A6 Surfers Paradise, Queensland from 2-4 August 2006.

Mrs H Kraus, Mullaloo:

Q1 *How many fines have been given out to dog owners over the past year for taking their dogs illegally on Mullaloo Beach?*

A1 None, however a total of 12 written caution notices had been issued to offenders during this period. A check of the City's database has revealed that none of the above has since re-offended.

Q2 *Of those fines given out, how many have actually been paid?*

A2 Refer to Answer 1.

Q3 *How many dogs had been given 2 fines?*

A3 Refer to Answer 1.

Q4 *How many dogs have been taken away from owners after breaching the Dog Act twice.*

A4 None for offences at this location as no further offences were committed by the identified offenders, however the City's Rangers have issued 4 Final Warning Notices to dog owners that have permitted their dogs to re-offend on more than two separate occasions within the City. The City is legally obliged to issue a final warning notice before a dog can be seized as required under Section 16 of the Dog Act (1976). To date there have not been any further offences committed by these offenders after the issuing of these notices.

Mrs M Macdonald, Mullaloo:

I refer to the Proposed Amendment to the DPS2 regarding Short Stay Accommodation. Item (i) where it states:

Insert the following definition into Schedule1:

Short stay accommodation: means and land or buildings used for accommodation that may be occupied for a continuous maximum period of three months in a twelve month period with a minimum of one month between each stay. The term excludes Motel, Hotel and Bed and Breakfast.

Q1 *Why isn't Residential Building excluded from the definition of Short Stay accommodation?*

A1 The proposed definition of short stay accommodation now excludes Residential Building.

Q2(a) *Is it the intention of Council to still allow Residential building to be used as short stay accommodation?*

Q2(b) *If yes to the above, is it the intention of Council to allow short stay accommodation to occur in a residential zone and at residential densities as low as R20 by using the use class residential building?*

Q2(c) *If yes to (a) do Council believe that the definition of short stay and its policy will ever be used if it can be bypassed by the continued use of residential building to develop short stay accommodation without density control and development standards in a residential zone and any other zone?*

A2(a-c) As outlined in A1, the definition of short stay accommodation has been amended to exclude Residential Building. The answer to Q2(a) is therefore no. Questions 2(b) and (c) are not applicable.

Q3 *Is Council going to apply density control and development standards to Residential Building by an amendment to its DPS2?*

A3 No, the proposal before the Council is to develop density controls for short stay accommodation.

Q4 *What development controls and standards are applicable to Residential Buildings currently?*

A4 Tables 1 and 2 of the City's DPS2 specify land use permissibility and car parking standards for Residential Buildings. No further development controls and standards are specified in DPS2 or the Residential Design Codes.

Q5 *How are Residential buildings treated under the health local laws and the Health Act currently?*

A5 There is no definition or reference to residential buildings under the Health Act 1911 or Health Local Laws. How the building will be treated is dependent on the use and operation of the building, as such the premises is either treated as a 'Dwelling House' or a 'Lodging House'. The Health Act and Health Local Laws do not make reference to length of stay.

If a premise is intended to provide short-term accommodation and rooms are let out on an individual basis to more than 6 persons, exclusive of the keeper of the house, and the various occupiers have to share access to the kitchen, ablutions and laundry facilities, then the lodging house provisions may need to be applied.

If the house is let out as a whole premises and not on an individual room basis, the premise will be defined as a 'dwelling house' under the Health Local Laws and will not need to meet any new standards under the Health Act. However, the owner must maintain the premise in compliance with the Housing & General requirements of the Health Local Laws.

Q6 *Can short stay accommodation be occupied by the owner for nine months of the year?*

A6 No.

The following questions refer to the proposed policy on Short Stay accommodation:

Q1 *Does this policy apply to Residential Building as it is not specifically excluded?*

A1 No. The definition of short stay accommodation has been amended to exclude residential building.

Q2 *At point 5 "long term" guests is mentioned. What does this mean? Surely the one wouldn't expect to find long term guests in a facility that has short stay accommodation would they? Does long term mean permanent, which means that there are dwellings in the short stay accommodation?*

A2 As per the definition of short stay accommodation, guests would be permitted to stay in short stay accommodation for a maximum of 3 months in a 12 month period. No permanent guests would be permitted.

It should be noted that the City's definition of Short Stay Accommodation will be subject to review by legal counsel during the public advertising period.

Q3 *Residential density applies only to permanent accommodation, that is "dwellings" the City has proposed a maximum density of R40 for short stay accommodation in its policy. Council is not bound by this policy. There is no density control in the DPS2 for short stay accommodation. So that residents of the City have certainty about what can occur adjacent to their homes why doesn't City apply the R density of the site to the short stay accommodation and make the R codes apply to it?*

A3 Short stay accommodation is proposed to be included in DPS2 as a new use class. The recommendation is that the density proposed in the policy is appropriate.

Q4 *How many people can stay at short stay accommodation?*

A4 The Health Local Laws provide for control of overcrowding in a dwelling. A formula is provided for the calculating of sufficient space in a house for sleeping purposes. The number of people that can stay is dependent on the amount of air space in a room, the use of the room and whether children or adults are sleeping in the house.

Q5 *The policy states that lodging house requirements may apply. Why may? What other local health laws can apply to them?*

A5 If a premise is intended to provide short-term accommodation and rooms are let out on an individual basis to more than 6 persons, exclusive of the keeper of the house, and the various occupiers have to share access to the kitchen, ablutions and laundry facilities, then the lodging house provisions may need to be applied.

If the house is let out as a whole premises and not on an individual room basis, the premise will be defined as a 'dwelling house' under the Health Local Laws and will not need to meet any new standards under the Health Act. However, the owner must maintain the premise in compliance with the Housing & General requirements of the Health Local Laws.

Q6 *What development standards and controls will apply to short stay accommodation?*

A6 It is proposed that DPS2 be amended to introduce land use permissibility and car parking standards for short stay accommodation.

In addition, Clause 4.7 of DPS2 specifies the setback requirements for non-residential buildings while Section 3 of DPS2 includes some development standards relating to particular zones.

Ms M Moon, Greenwood:

The report states short stay have been classified as a residential building under the DPS2.

Q1 *With the inclusion of short stay as a land use can residential building still be classified as short stay at the request of the applicant or determination of Council?*

As stated in the report short stay had been classified as residential building and the Planning Ministers request related to all residential development forms used for short stay. (The advice came after looking at residential Building – Mullaloo)

A1 The proposed policy and DPS2 amendment on Short Stay Accommodation have been amended to specifically exclude residential buildings. It is up to the Council to decide the most appropriate use classification for any proposal.

Q2 *Is it Councils purpose in making short stay a use class to bypass the urgent direction of the Minister and only establish development guidelines and density for short stay that falls under the use class short stay. (Leaving residential building and other use classes with a short stay component without guidelines and still with no density applicable)?*

The Minister's request states at a minimum these measures should address the density of those forms of residential development that don't have explicit density controls. She stated there was a gap in the DPS2.

A2 No. Short Stay Accommodation is required to be introduced as a new use class in DPS2 as Residential Building is, by definition, very restrictive on who can be accommodated and for how long. Tables 1 and 2 of the City's DPS2 specify land use permissibility and car parking standards for Residential Buildings and other use classes.

Q3 *How does the Council believe this gap is being met when density is still not being introduced into the DPS2 for all forms of residential development without explicit density control?*

*At the time of the direction the direction was clearly linked to residential building, short stay as a use class was non existent. In creating short stay as a use class an added short stay use class needs to be dealt with not the exclusion of those that exist. The direction clearly states to those **forms** of residential development.*

The policy does not say it applies to the use class short stay it only gives the definition. The policy should apply to all short stay. Chris's response that the policy does not apply to residential building as they can not change the definition of residential building is flawed. The policy does not go to changing the definition of Residential building but creating guidelines for short stay as this is where all the problems lie. The definition for Residential Building is not altered just the term short stay is defined and controls put in place as they are not contained in the definition Residential building.

A3 The proposed Short Stay Accommodation policy will introduce additional density provisions for this land use. As stated in A1 above, the policy and associated Scheme Amendment have been modified to specifically exclude Residential Buildings.

The definition of Residential Building is contained within the R-Codes, which is a State Government document.

Q4 *I know where residential can be found, the report and the R Codes, my question is does the definition of Residential Building allow a single person or those of one family to stay on a short stay basis?*

A4 No.

Mr R de Gruchy, Sorrento:

Re: Feasibility study of a 50 metre pool, situated at the Craigie Leisure Centre, the study has been approved by Council to take place in the 2006/2007 financial year.

Would you please advise:

Q1 *Have the terms of reference for this study been finalised ?*

Q2 *If not, could you please advise when it is expected that they will be completed ?*

Q3 *If the terms of reference have been completed, has a consultant been approved who will carry out this feasibility study ?*

Q4 *Has any feasibility study been started ?*

Q5 *When is it expected that a feasibility study will be completed ?*

Q6 *When is it expected that a report will be presented to Council, for Council to make a determination regarding the outcome of the feasibility study?*

A1-6 A draft brief has been prepared but not finalised at this stage.

The 2006/2007 consultancy budget includes a provision of \$30,000 to undertake the necessary research, and it is proposed that the study will commence in October.

The objective is that the Council will consider the findings and recommendations of the study in February 2007.

The following questions from Ms M Moon, Greenwood were taken on notice at the Briefing Session held on 12 September 2006:

Q1 *When will the lodging house apply to short stay accommodation and when won't it?*

A1 The Lodging House provisions of the Health Act 1911 were intended to regulate situations where groups of individuals were boarded or lodged in a premises and these individuals did not have full control of the sanitary conveniences.

As such, if short stay accommodation is let out on an individual room basis to more than 6 persons exclusive of the keeper, then the lodging house provisions would be applied.

However, if the premise is let out as a whole, this will not constitute a Lodging House and the Lodging House local laws will not be applied. This is consistent with the advice from the Department of Health received in June 2004 clarifying the definition of a Lodging House and its relevance for private dwellings offered for rental holiday accommodation.

Q2 *Why doesn't the density of the site apply to all short stay accommodation and allow a 100% land bonus and more in some cases?*

A2 This question is unclear and requires clarification.

Q3 *Density for special purpose is contained in the DPS2. Why not apply the density here?*

A3 DPS2 does not contain provisions relating to density for special purpose dwellings. The proposed policy is intended to be adopted under DPS2 and would include density provisions to provide clarity on this matter.

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

Mr M Caiacob, Mullaloo:

Q1 *Is there an amendment to the short stay accommodation agenda item? Is there going to be or has there been any revision to the Policy or to the Scheme Amendment as published in the Briefing Agenda?*

A1 *Response by Mayor Pickard:* There has been a minor amendment made since the Briefing Session.

Q2 *Will this item be coming back to another Briefing Session?*

A2 *Response by Mayor Pickard:* It is going out for public advertising and then will come back to Council, it will not be going to the next Briefing Session.

Re: Short Stay Accommodation Amendment and Policy

Q3 *Can Council please explain in detail how this Short Stay Policy and Amendment will affect the units and residential building at the Mullaloo Tavern and the current SAT issues?*

A3 The Policy and Amendment do not have any bearing on the approval being granted for the Tavern. It may have some bearing on future use of the Tavern, but that would depend on the outcome of the policy and the decision to use the building in whatever manner.

Response by the CEO: It cannot affect the SAT. This issue has been heard and the judge has reserved his decision. When the judge makes his decision there will be a determination, it will then depend on the applications that are lodged, if any, whether the proposed policy has implications.

Q4 *Re: Roof – 100 Oceanside Drive, Mullaloo – When Council approves this additional roof, will the car park still be classed as a naturally ventilated car park and/or is air-conditioning and additional plant required and will this affect the noise management plans and arrangements that are currently in place?*

A4 It will not affect the ventilation engineering or the noise management plan for the car park, these factors have already been considered and no changes will be required.

The following questions were tabled at the meeting by Mr M Caiacob, Mullaloo:

Re: Residential Building

Q5 *Following the reply to my question at the Briefing Session that the Policy and Scheme Amendment do not include residential building, why is it not defined the same as hotel, motel, bed and breakfast. Can the Council and/or SAT then use Clause 6.8.1(g) or the DPS2 to approve residential buildings as short stay accommodation as it is not specifically defined as being excluded?*

Re: Roof – Lot 100 Oceanside Drive, Mullaloo

Q6 *Does the current development comply with the required Conditions J and K of the Approval in regards to noise management and control as the report comments that:*

“The proposed roof cover will provide further noise attenuation to the residential property located at No 6 Oceanside Promenade from the impact of any noise that may emanate from the driveway or bottle shop area.”

Indicates or implies that it does not currently comply?

Q7 *Prior to making its deliberation on this issue, was Council provided with the relevant Noise Management Plan required by Condition (k) of Council’s approval?*

Re: Commercial Delivery Vehicles

Q8 *When is the City to enforce its Development Application on the Tavern in respect to the repeated ongoing violation of the Development Application by permitting commercial vehicles servicing this development from outside the property?*

- Q9 *Why is the City to approve amendments to the car park exit whilst head heights contravene the approved Development Application and commercial vehicle deliveries cannot be made in a safe and publicly acceptable manner?*
- Q10 *Has any City department specially or tacitly approved the commercial vehicle deliveries procedure contrary to Council's lawful orders, the approved plans and the accompanying report, for a central point for waste collection and goods delivery?*
- Q11 *Why are the Ranger Services unable to issue parking infringements for public car parks, as they are not parking stations. Was any infringements issued at the Tavern vicinity on 16 September 2006?*
- Q12 *Why is Ranger Services attending dog issues in Malaga, this does not fall with the City of Joondalup?*
- Q13 *Where are the designated "Loading Zones" located in this vicinity?*

A5-13 These questions will be taken on notice.

Mr E Marra, Marmion:

Re: *CJ163-09/06 Consideration of the Outcome of Public Advertising for Proposed DPS2 Amendment 33 and Structure Plan No. 7: Lot 4 (25) Sheppard Way, Marmion*

Q1 *Do any Councillors have any issues that they would like clarification with?*

A1 *Response by Mayor Pickard:* Questions cannot be directed to individual Elected Members, you can only ask questions to Council per se.

Mr M Sideris, Mullaloo:

Q1 *I refer to an article in the West Australian on 13 September 2006 regarding the lack of parking in transit stations and in particular those of the northern suburbs railway. The article clearly states:*

"The City of Joondalup said it was buying land in Lawley Court adjacent to the railway line which would provide 246 additional bays."

Please explain why this authorised statement was made to the press only, following Council's approval being granted for the building of a \$2.7 million car park funded by ratepayers. Why was this fact not included in any of the information sent out for public comment or the final report presented to Council since the City is required by law to fully inform both Council's decision making process and the ratepayers before such significant financial decisions is made?

A1 *Response by Mayor Pickard:* The land that was purchased by the City of Joondalup is not specifically for the train station. There were a variety of statements made to the press relative to car parking challenges and one of the statements omitted is that Council will be formally approaching the relevant government agency to talk about the challenges, not just about Joondalup train station, but all the train stations that fall within the auspices of our local government.

Response by the CEO: The question that was posed by the media was the number of bays that were available in the CBD and one of the many comments that was made related to that particular site that had recently been acquired.

Q2 *With reference to the answer given to question 1 as published in tonight's agenda, would the Mayor and the CEO please explain clearly how the officer responsible for the Report CJ204-08/02 could make a financial impact statement that "a further 34 car bays paid and constructed by the Tavern has previously been provided on the opposite side of the road." Without, according to this answer, any necessary evidentiary documents of this transaction being in their possession at all. Precisely on what basis did the City present this financial transaction as fact to:*

1 *the former Council and community as part of the original decision making process;*

2 *the Supreme Court by sworn affidavit;*

3 *the SAT in July 2006.*

How could Mr Slarke on instruction from the current Mayor, Council and CEO make that same statement in good faith in his oral evidence to Judge Chaney at the SAT in July 2006 when according to the answer given here from the Mayor and the CEO they still have no record at all of this alleged transaction currently in their possession?

A2 This question will be taken on notice.

Ms M Moon, Greenwood:

Re: CJ166-09/06 – Initiation of Amendment to DPS2 and Local Planning Policy – Short Stay Accommodation.

Q1 *Has the City considered making the use class 'holiday home units' specifically for short stay and has the definition 'short stay' a policy applied to all forms of development which is defined and has use classes in parking for short stay accommodation to meet the Minister's request?*

A1 No, the recommendation before Council is as produced in the Report and the draft policy.

Q2 *In all the Metropolitan and Regional Town Planning Schemes I researched, hotel, motel and bed and breakfast etc., even though defined and listed as use classes in their Town Planning Scheme, why has the City not done the same as these, as they do not have density or development controls, they are all considered short stay?*

A2 *Response by Mayor Pickard:* The Council in consultation with its residents and ratepayers is entitled to adopt whatever policy and framework it chooses and is not bound by any other local government.

The descriptions of the various activities typically form separate use classes in planning schemes and the reasons for that is people's own common knowledge of what a motel or a hotel looks like and also in comparison to what a short stay accommodation proposal might look like. As an example, there is an item on the Agenda tonight in Foston Drive, Duncraig which is not a motel or hotel and yet it is short stay accommodation. The reasoning is to allow Council to look at separate land uses with separate characteristics and grounds and appropriate package of rules.

Mr M O'Brien, Duncraig:

Q1 *On Crown land in 1995 the Pensioners' League constructed twenty-four (24) independent living units at 7 Chessell Drive, Duncraig. The League was granted exemption from Municipal Property Tax (Rates) in 1995 and remained so granted until 2004. When in 2004 did Council by formal motion rescind the 1995 decision?*

A1 This question will be taken on notice.

PUBLIC STATEMENT TIME**Mr M O'Brien, Duncraig:**

Mr O'Brien spoke on CJ157-09/06 Local Government Rating of Land Used For Charitable Purposes and not-for-profit organisations.

Mr M Simpson, Duncraig:

Mr Simpson raised objections to the short stay accommodation proposal at 17 Foston Drive, Duncraig and rezoning in general.

Ms M Moon, Greenwood:

Ms Moon spoke on CJ166-09/06 Initiation of Amendment to DPS2 and Local Planning Policy – Short Term Accommodation.

Mrs M Macdonald, Mullaloo:

Mrs Macdonald spoke on CJ166-09/06 Initiation of Amendment to DPS2 and Local Planning Policy – Short Term Accommodation.

Mr M Sideris, Mullaloo:

Mr Sideris spoke in relation to the SAT Appeal and the availability of the Chris O'Neill Report.

APOLOGIES AND LEAVE OF ABSENCE**C64-09/06****REQUESTS FOR LEAVE OF ABSENCE**

Requests for Leave of Absence from Council duties have been received from:

Cr B Corr	17 October 2006
Cr S Hart	4 October 2006 to 17 October 2006 Inclusive
Cr K Hollywood	4 October 2006 to 8 October 2006 Inclusive
Cr T McLean	17 October 2006 to 9 November 2006 Inclusive

MOVED Cr John, SECONDED Cr Hart that Council NOTES the apology from Cr Evans and APPROVES the following requests for leave of absence:

Cr B Corr	17 October 2006
Cr S Hart	4 October 2006 to 17 October 2006 Inclusive
Cr K Hollywood	4 October 2006 to 8 October 2006 Inclusive
Cr T McLean	17 October 2006 to 9 November 2006 Inclusive

The Motion was Put and CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

C65-09/06 REQUEST FOR LEAVE OF ABSENCE - CR J PARK

MOVED Cr Hart, SECONDED Cr Corr that Council APPROVES the request from Cr J Park for Leave of Absence from Council duties for the period 2 November 2006 to 27 November 2006 inclusive.

The Motion was Put and CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

CONFIRMATION OF MINUTES

C66-09/06 MINUTES OF COUNCIL MEETING, 29 AUGUST 2006

MOVED Cr Currie, SECONDED Cr McLean that the Minutes of the Council Meeting held on 29 August 2006 be confirmed as a true and correct record.

The Motion was Put and CARRIED (11/1)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Corr, Fishwick and Currie **Against the Motion:** Cr Hart

ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION

ARTS IN THE CITY OF JOONDALUP

September is shaping up as a recognised Arts Month in the City of Joondalup.

The City has seen the best of Western Australia's artists at the 2006 City of Joondalup Invitation Art Award. Congratulations to winner Shane Pickett and to Nicole Andrijevic, whose quirky sand mandala attracted the judges' commendation.

I was also delighted to open Wanneroo Art Society's Exhibition and Sale at Sorrento Surf Life Saving Club. It's a huge advantage to this area to have a society that produces such artistic talent on a regular basis for the community to enjoy.

The Society gives all donations from the public received at the door to the Surf Life Saving Club. To date, it has given more than \$36,000 to help the club play a crucial role in protecting the community, particularly our children, through its beach patrols.

This is a wonderful example of what happens when talent is combined with strong community spirit. Everyone benefits.

In the wider Arts World, the final concert of the 2006 City of Joondalup Eisteddfod will be held on Sunday, bringing to a close superb performances of music, speech and drama.

Our Eisteddfod has established itself as the largest in the northern suburbs. This year's event attracted around 675 entries, which includes 2,000 competitors, a growth of around 15% over last year.

FUNCTION – WOODVALE SENIOR HIGH SCHOOL

I was privileged to attend a function organised by Woodvale Senior High School to recognise the recent delegation that visited our sister City, Jinan. The function was also attended by Cr Park, Cr Amphlett and the Chief Executive Officer. The function provided an opportunity for both the school and the City through certificates to recognise the 12 students that participated and indeed played a leading role in the global scale of opening the International Children's' Festival. This was an honour for the school and the City of Joondalup and I commend Woodvale High School on its initiative for a sister-school relationship with Jinan Middle School Number 9.

DECLARATIONS OF 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	CJ158-09/06 – Minutes of the Chief Executive Officer Performance Review Committee Meetings held on 1 and 8 August 2006
Nature of interest	Financial
Extent of Interest	This Item relates to Mr Hunt's Contract of Employment

Name/Position	Mr Mike Tidy - Director, Corporate Services
Item No/Subject	C69-09/06 - Request for Annual Leave – Chief Executive Officer
Nature of interest	Financial
Extent of Interest	Mr Tidy will be Acting CEO during the period of the CEO's annual leave which has a financial impact.

Disclosure of interest affecting impartiality

Elected members 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 Elected member/employee is also encouraged to disclose the nature of the interest.

Name/Position	Mr Garry Hunt - Chief Executive Officer
Item No/Subject	CJ157-09/06 – Local Government Rating of Land Used for Charitable Purposes
Nature of interest	Interest that may affect impartiality
Extent of Interest	A family member is a resident of an aged complex.

Name/Position	Cr Russel Fishwick
Item No/Subject	CJ165-09/06 - Proposed Roof Over Portion of the Vehicle Exit Lane – Mullaloo Tavern – Lot 100 (10) Oceanside Promenade, Mullaloo
Nature of interest	Interest that may affect impartiality
Extent of Interest	A member of Cr Fishwick's family owns property within close proximity to the Tavern in Alice Drive, Mullaloo.

Name/Position	Mayor Troy Pickard
Item No/Subject	CJ168-09/06 - Condition of Hire for City of Joondalup Facilities - Child Protection Policy
Nature of interest	Interest that may affect impartiality
Extent of Interest	Mayor Pickard is a Community Vision Inc Board Member.

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

Nil.

PETITIONS

Nil.

REPORTS**CJ153 - 09/06 REVIEW OF CODE OF CONDUCT – [09358] [74591]**

WARD: All

RESPONSIBLE DIRECTOR: Mr Ian Cowie
Governance and Strategy

CJ060912_BRF.DOC:ITEM 1

PURPOSE

For Council to review the Code of Conduct of the City of Joondalup and make two amendments.

EXECUTIVE SUMMARY

The Local Government Act 1995 requires each Local Government to review its Code of Conduct within 12 months of an ordinary election. This report assists the Council to conduct a review and, consequently, comply with the legislation. Two changes are proposed: one relates to non-vilification while the other relates to increase the value of a token gift.

It is also noted that the State Government is introducing legislation that will establish a uniform Code of Conduct for all Local Governments. The precise timing of the introduction of the uniform statewide Code is uncertain but is likely to occur within the next 6 months. Following the introduction of the uniform Code, the City will need to make a decision on whether to abolish its individual Code or whether to amend the Code to complement the uniform one.

BACKGROUND

The Local Government Act 1995 requires every local government to adopt a Code of Conduct that establishes the level of behaviour expected of its elected members, committee members and employees.

The former City of Wanneroo first adopted its Code of Conduct in April 1997, which subsequently became the Code of Conduct for the newly created City of Joondalup in July 1998. The Code has been reviewed in accordance with the Local Government Act 1995 since that time.

The Code of Conduct has not been reviewed since the suspension of the elected Council in December 2003. Consequently, it is considered timely to review the Code again. This accords with the Act's requirement that it be reviewed within 12 months of each ordinary election.

It is also noted that the legislation, which establishes the parameters for Codes of Conduct in Local Government, is about to change dramatically.

In 2003, the then Minister for Local Government & Regional Development introduced to Parliament a Local Government (Official Conduct) Amendment Bill 2003. This Bill has passed through the Legislative Assembly and is now in the Legislative Council awaiting debate. The Minister for Local Government & Regional Development anticipates that the Bill will pass through the Parliament in the Spring Session and will come into operation later in the year.

The purpose of the Bill is to introduce a new disciplinary framework to deal with individual misconduct by local government Council members. At present, apart from prosecution, the only avenue for action in response to inappropriate individual behaviour is against the whole Council.

The Bill contains detailed provisions enabling regulations to be made prescribing the uniform rules of conduct for elected members. A draft of these rules has been prepared which covers the following key areas: -

- Standards of general behaviour;
- Use of information;
- Securing unauthorised advantages or disadvantages;
- Disclosing certain interests (not financial); and
- Restriction on receiving, and requirement to disclose, certain gifts.

The Bill also details the establishment of a standards panel to consider of breaches of the rules of conduct by Elected Members. More serious breaches or repeated minor breaches are to be referred to the Director General of the Department of Local Government and Regional Development, who may direct the matters to the State Administrative Tribunal (SAT) for consideration.

A copy of the Local Government (Official Conduct) Amendment Bill 2005, the Second Reading speech and the relevant explanatory memorandum are attached (Attachments 1, 2 and 3).

DETAILS

The City's current Code of Conduct is attached (Attachment 4). This provides a range of guiding principles and it establishes values and ethical standards that guide the behaviour of Elected Members and employees when dealing with each other and members of the public. Part 5 of the Code deals with conflicts of interest and disclosures of interest. Such conflicts arise where there are incompatibilities between one's public duty and interests which are personal or which relate to immediate family members, business partners or close associates.

Part 6 of the Code covers a range of matters including:

- The use of confidential information (the Code prohibits using confidential information to gain improper advantage for either the person or another person or body);
- Improper or undue influence (the Code prohibits using a position to improperly influence any other person to gain an advantage or benefit);
- Gifts and acts of hospitality (the Code limits the extent to which gifts of hospitality can be accepted);
- Disclosure of election campaign contributions (the Code requires all electoral candidates to comply with the Local Government Act 1995 and its associated regulations in relation to disclosing electoral donations);
- Personal behaviour (the Code indicates that people should, amongst other things, act in accordance with the requirements of the Code, perform duties impartially, act in good faith, make no allegations which are improper or derogatory and not publicly reflect adversely upon decisions);
- Honesty and integrity (the Code supports being frank and honest in official dealings and resolving conflict through discussion);
- Administrative and management practices (the Code supports maintaining full and accurate records); and
- Defamation (where the Code notes that Members only have qualified privilege against defamation).

Part 7 of the Code deals with the use of Council property. The Code requires Members to be scrupulously honest in the use of Council facilities and resources.

The Code also covers corporate obligations in relation to communication and public relations as well as whistle-blower protection provisions.

With the possibility of regulations being finalised in the near future to implement the uniform statewide Code of Conduct, a comprehensive analysis of the current Code in relation to the model Code prepared by the WA Local Government Association (WALGA) and the Codes of other Local Governments does not appear to be an efficient use of resources. However, one

issue, which has been identified as problematic, is the definition for token gifts under the current Code. This indicates that “token gifts or moderate acts of hospitality can be accepted under the Code”. However, the Code defines these gifts or acts of hospitality as being less than \$200 in value. This \$200 amount has not been amended for a numbers of years.

A comparison has been made with a range of other Councils to identify the amount set for the definition of a token gift. These amounts are as follows:

- City of Canning – Maximum of \$30
- City of Subiaco – Less than \$50
- City of Perth – Of or below \$100
- Town of Cambridge – Of or below \$100
- Shire of Roebourne – Of or below \$199
- Town of Vincent – Less than \$200
- Town of Kwinana – Of or below \$200
- City of Kalgoorlie-Boulder – Of or below \$250
- City of Fremantle – Of or below \$250
- City of South Perth – Less than \$200 but more than \$100
- City of Wanneroo – Less than \$500 but more than \$50

Attachment 5 identifies CPI increases over the past 10 years. This shows that a value of \$200 in 1997 would be worth over \$250 in 2006 dollar terms. With several Councils using \$250 or more as the maximum value for a token gift, it would appear reasonable to increase the value of a token gift to \$250.

The amount set should also be increased in general accordance with CPI movements in future years or until the City’s Code is replaced by the uniform Code.

A second amendment is also proposed relating to non-vilification. Council at its meeting held on 14 December 2004 considered the following motion that was carried at the Annual General Meeting of Electors held on 22 November 2004:

“That the words “and ratepayers” be added to Recommendation 25 in the Governance Review (refer Item CJ276-11/04 for Council meeting of 23 November 2004, Appendix 2, Page 32) so that this recommendation will read “All elected members must adhere to the Code of Conduct and refrain from vilifying fellow elected members, staff and ratepayers”.

In response to the motion carried by the AGM, Council resolved as follows:

“That the Joint Commissioners:

- 13 *in relation to Motion 12 of the Annual General Meeting of Electors held on 22 November 2004, NOTE that recommendation No 25 referred to in the motion is a recommendation of the Governance Review Panel and cannot be altered by the City, however, the issue on non-vilification of ratepayers will be considered as part of the review of the Code of Conduct.”*

Issues and options considered:

The Council may decide to:

- Amend its current Code of Conduct in accordance with the recommendation in this report;
- Retain the current Code of Conduct pending proclamation of the Local Government (Official Conduct) Amendment Bill 2005 and the introduction of uniform Code provisions.

Link to Strategic Plan:

The current Code of Conduct links the guiding principles of the Code to those contained within the Strategic Plan for the City.

Legislation – Statutory Provisions:**5.103. Codes of Conduct**

- (1) *Every local government is to prepare or adopt a Code of Conduct to be observed by council members, committee members and employees.*
- (2) *A local government is to review its Code of Conduct within 12 months after each ordinary elections day and make such changes to the Code, as it considers appropriate.*

Regulation 34B and 34C of the Local Government (Administration) Regulations 1996 states:

34B. Codes of conduct (token gifts) — s. 5.103(3)

- (1) *In this regulation — “gift” does not include —*
 - (a) *a gift from a relative as defined in section 5.74(1);*
 - (b) *a gift as defined in regulation 30A of the Local Government (Elections) Regulations 1997;*
 - (c) *an educational or professional benefit conferred on an employee to further or improve the knowledge or skill of the employee by:*
 - (i) *this State, another State, a Territory, the Commonwealth or a body established under a written law; or*
 - (ii) *an incorporated association under the Associations Incorporation Act 1987, or a corresponding law of another State or Territory, if the employee is eligible for membership of that body on the basis of tasks he or she performs for the local government;*

“token gift” means a gift of, or below, a value specified by the particular local government.

- (2) A Code of Conduct is to contain a requirement that a Council member or an employee cannot accept a gift, other than a token gift, from a person who is undertaking, or is likely to undertake, business:
 - (a) that requires the person to obtain any authorisation from the local government;
 - (b) by way of contract between the person and the local government; or
 - (c) by way of providing any service to the local government.

- (3) A Code of Conduct is to contain a requirement that the CEO is to keep a register of token gifts that are recorded under subregulation (4).
- (4) A Code of Conduct is to contain a requirement that a Council member or an employee who accepts a token gift from a person referred to in subregulation (2) is, subject to subregulation (5), to record:
 - (a) the names of the persons who gave, and received, the token gift;
 - (b) the date of receipt of the token gift; and
 - (c) a description, and the estimated value, of the token gift.
- (5) If the particular local government decides that:
 - (a) a specified thing given by way of hospitality; or
 - (b) a thing given by way of hospitality that belongs to a specified class of things, does not need to be recorded under subregulation (4), the specified thing, and things belonging to the specified class, do not need to be so recorded.

34C. Codes of conduct (disclosure of interests affecting impartiality) — s. 5.103(3)

- (1) In this regulation —
 - “employee”** has the meaning given by section 5.70;
 - “interest”** means an interest that would give rise to a reasonable belief that the impartiality of the person having the interest would be adversely affected but does not include an interest as referred to in section 5.60.
- (2) A Code of Conduct is to contain a requirement that a Council member or an employee is to disclose any interest that he or she has in any matter to be discussed at a Council or committee meeting that will be attended by the member or employee.
- (3) A Code of Conduct is to contain a requirement that a Council member or an employee is to disclose any interest that he or she has in any matter to be discussed at a Council or committee meeting in respect of which the member or employee has given, or will give, advice.
- (4) A Code of Conduct is to contain a requirement that disclosure of an interest under subregulation (2) or (3) is to be made at the meeting immediately before the matter is discussed or at the time the advice is given, and is to be recorded in the minutes of the relevant meeting.

Risk Management considerations:

Failure to review the Code of Conduct in accordance with legislation and/or best practice will lead to:

- Breach of the relevant legislation provisions; and
- The Code of Conduct becoming outdated with contemporary practices.

Financial/Budget Implications:

Not applicable

Policy Implications:

The Code of Conduct is a Council policy and is a crucial document of the City. It must be read in conjunction with other such documents as the: -

- Governance Framework;
- Strategic Plan;
- Local Government Act 1995.

Regional Significance:

Not Applicable.

Sustainability Implications:

Not applicable.

Consultation:

Not applicable.

COMMENT

With the Code of Conduct having not been reviewed for some time and pending the proclamation of the Local Government (Official Conduct) Amendment Bill 2005, it is appropriate to amend the amounts attributed to a token gift and effect the change requested at the Annual General Meeting of Electors in 2004.

ATTACHMENTS

Attachment 1	Local Government (Official Conduct) Amendment Bill 2005
Attachment 2	Second Reading Speech
Attachment 3	Explanatory memorandum to Bill
Attachment 4	City of Joondalup's Code of Conduct
Attachment 5	CPI Increases

VOTING REQUIREMENTS

Simple majority.

OFFICER'S RECOMMENDATION: That Council AMENDS the City's Code of Conduct by:

- 1 Adding a sentence in Part 1 before the second last paragraph to state:
"All Elected Members must adhere to the Code of Conduct and refrain from vilifying fellow Elected Members, employees and Members of the Public";
- 2 Changing the dollar value which defines a token gift in Part 6 to \$250.

ADDITIONAL INFORMATION

An alternative Recommendation to add a Point 3 to the Recommendation was provided for the consideration of Elected Members as follows:

- “3 deleting paragraph (ii) of Part 6 and replacing with the following:
- (ii) the name and address of the person who made each gift to which paragraph (i) applies unless the amount of the gift does not exceed the amount prescribed in regulation or was received from a relative.”

MOVED Cr Jacob, SECONDED Cr Currie that Council AMENDS The City’s Code of Conduct by:

- 1 **Adding a sentence in Part 1 before the second last paragraph to state:**
“All Elected Members must adhere to the Code of Conduct and refrain from vilifying fellow Elected Members, employees and Members of the Public”;
- 2 **Changing the dollar value which defines a token gift in Part 6 to \$250;**
- 3 **deleting paragraph (ii) of Part 6 and replacing with the following:**
 - (ii) **the name and address of the person who made each gift to which paragraph (i) applies unless the amount of the gift does not exceed the amount prescribed in regulation or was received from a relative.**

Discussion ensued.

The Motion was Put and

CARRIED (11/1)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Amphlett, John, Hart, Corr, Fishwick and Currie **Against the Motion:** Cr Park

Appendix 1 refers

To access this attachment on electronic document, click here: [Attach1brf120906.pdf](#)

**CJ154 - 09/06 GRAFFITI TAGGING - STUDY PROPOSAL -
RESPONSE TO NORTH METROPOLITAN ZONE OF
WALGA – [07004]**

WARD: All

**RESPONSIBLE
DIRECTOR:** Mr Ian Cowie
Governance and Strategy

CJ060912_BRF.DOC:ITEM 2

PURPOSE

To formulate a response to the North Metropolitan Zone of the Western Australian Local Government Association (WALGA) on the research proposal relating to graffiti tagging.

EXECUTIVE SUMMARY

This report recommends:

- That the City provides a statement of support for the research project on graffiti tagging to the WALGA Zone;
- That the City provides financial support for this project if other Councils in the Zone support the proposal financially; and
- That the City agrees to work collaboratively with other local governments and with WALGA to reduce graffiti crime and damage.

BACKGROUND

At the meeting of the North Metropolitan Zone of WALGA on 3 August 2006, a proposal from Genevieve Rowles was tabled in relation to graffiti tagging. The Zone has requested that member Councils consider the issues detailed in the paper written by Genevieve Rowles (Attachment 1) and provide feedback to the next Zone meeting on 28 September 2006.

It is noted that the issue of graffiti received some prominence at the Annual General Meeting (AGM) of WALGA where a report was presented on graffiti management that was instigated by the City of Belmont. The report is included as Attachment 2. In response to this paper, the AGM carried the following motion:

“That WALGA continues to lobby the State Government to address the issue of graffiti by:

- (a) ensuring a State-wide approach is taken to graffiti;*
- (b) seeking representation to the State Judiciary to impose greater penalties on convicted graffiti offenders;*
- (c) setting up a central reporting point through the WA Police Service;*
- (d) working with State Government to develop policy guidelines for the collection and reporting of incidences of graffiti;*
- (e) working with State Government to research and develop mechanisms for ascertaining the true cost of graffiti across the State;*
- (f) allowing sufficient resources to the WA Police Service so they can properly record and investigate graffiti offences; and*
- (g) giving the WA Police Service the ability to shut down websites specifically used for displaying illegal graffiti tags.”*

Thus, the general issue of graffiti is being pursued by WALGA on behalf of local government. This knowledge provides a context for this report, which deals with the proposal from Ms Rowles.

DETAILS

Ms Rowles is a forensic document examiner who is completing a Masters in Forensic Science Degree with the University of Western Australia. Her thesis is considering the nexus between traditional handwriting examinations and graffiti tag examinations to determine the similarities of the spatial properties of tags when compared to handwriting.

Ms Rowles is a resident of Joondalup. Her proposal is seeking support for her study. The first option she provides is based on a budget of \$132,740, which includes a research assistant salary of \$118,000 over 2 years. Her second option involves a cost of \$64,000, which deletes the research assistant proposal and includes a 2 year scholarship of \$49,300.

While the research is considered useful, it is suggested that the City respond to the WALGA Zone in terms of support for initiatives to address graffiti rather than specifically agreeing to funding. However, should other Councils in the Zone support funding, it is suggested that the City agree to financial support on a proportionate basis with the other contributors. It should be noted that there is no money allocated in the budget for this purpose.

Issues and options considered:

Council has three options. It could agree to a budget adjustment and offer to provide monies to support the research. Alternatively, it could provide a general indication of support with no financial commitment attached unless others make a commitment. Finally, it could indicate that it does not consider the research to be a priority.

Link to Strategic Plan:

Not applicable.

Legislation – Statutory Provisions:

Not applicable.

Risk Management considerations:

Not applicable.

Financial/Budget Implications:

Ms Rowles' report does not make it clear exactly how much money she is seeking from the City of Joondalup for this research initiative. The City's budget does not identify monies to support research projects of this type.

Policy implications:

Not applicable.

Regional Significance:

Research would be beneficial to the whole of Western Australia.

Sustainability implications:

Not applicable.

Consultation:

Not applicable.

COMMENT

Not applicable.

ATTACHMENTS

Attachment 1	Proposal from Genevieve Rowles
Attachment 2	WALGA Report

VOTING REQUIREMENTS

Simple majority

OFFICER'S RECOMMENDATION: That Council:

- 1 REPORTS to the North Metropolitan Zone of WALGA that it is supportive of initiatives to reduce the prevalence of graffiti but offers no specific funding unless other Councils in the Zone offer financial support. In this case, the financial support would be on a proportionate basis with the other contributors;
- 2 AGREES to work collaboratively with other local governments and with WALGA to reduce graffiti crime and damage.

MOVED Cr Fishwick, SECONDED Cr Magyar that Council:

- 1 **REPORTS to the North Metropolitan Zone of the Western Australian Local Government Association (WALGA) that it is supportive of initiatives to reduce the prevalence of graffiti but that no funding is available to support the research proposal submitted by Genevieve Rowles;**
- 2 **RECOMMENDS that the North Metropolitan Zone of WALGA refers the proposal submitted by Genevieve Rowles to the State Government's Office of Crime Prevention as the most appropriate body to fund such initiatives;**
- 3 **ENCOURAGES the State Government to take a far more active role in the fight against graffiti crime; and**
- 4 **AGREES to work collaboratively with other local governments and with WALGA to reduce graffiti crime damage.**

Discussion ensued.

AMENDMENT MOVED Cr Corr, SECONDED Cr McLean that an additional Point 5 be added to the Motion as follows:

- “5 RAISES concerns with the Police Service of WA within the Joondalup district office with its apparent lack of focus in addressing the graffiti problems within the City of Joondalup.”**

Discussion ensued.

The Amendment was Put and

CARRIED (8/4)

In favour of the Amendment: Mayor Pickard, Crs Amphlett, Corr, Currie, Fishwick, Magyar, McLean and Park
Against the Amendment: Crs Hart, Hollywood, Jacob and John

The Original Motion as amended, being:

That Council:

- 1 **REPORTS** to the North Metropolitan Zone of the Western Australian Local Government Association (WALGA) that it is supportive of initiatives to reduce the prevalence of graffiti but that no funding is available to support the research proposal submitted by Genevieve Rowles;
- 2 **RECOMMENDS** that the North Metropolitan Zone of WALGA refers the proposal submitted by Genevieve Rowles to the State Government's Office of Crime Prevention as the most appropriate body to fund such initiatives;
- 3 **ENCOURAGES** the State Government to take a far more active role in the fight against graffiti crime; and
- 4 **AGREES** to work collaboratively with other local governments and with WALGA to reduce graffiti crime damage;
- 5 **RAISES** concerns with the Police Service of WA within the Joondalup district office with its apparent lack of focus in addressing the graffiti problems within the City of Joondalup.

Discussion ensued.

was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

Appendix 2 refers

To access this attachment on electronic document, click here: [Attach2brf120906.pdf](#)

CJ155 - 09/06 RESPONSE TO WALGA'S SYSTEMIC SUSTAINABILITY STUDY – [12542]

WARD: All

**RESPONSIBLE
DIRECTOR:** Mr Ian Cowie
Governance and Strategy

CJ060912_BRF.DOC:ITEM 3

PURPOSE

To provide a response to the Western Australian Local Government Association's (WALGA) Systemic Sustainability Study.

EXECUTIVE SUMMARY

WALGA is seeking feedback on an interim report titled “In Your Hands; Shaping the Future of Local Government in Western Australia”. This report poses a range of questions for local governments to answer and provides a framework against which individual local governments can assess their financial sustainability.

Proposed responses to the questions raised within the interim report are provided for consideration.

BACKGROUND

In January 2006 WALGA commissioned a comprehensive study into the Systemic Sustainability of Local Government in Western Australia. “In Your Hands; Shaping the Future of Local Government in Western Australia” is the interim report of the Systemic Sustainability Study panel (Attachment 1). The document highlights a range of issues for consideration by local governments and, based on this feedback, a final report will be prepared.

DETAILS

The interim report’s questions and suggested responses are as follows:

- Q1 *What are the important dimensions of sustainability for a Local Government? How could these dimensions be used to strengthen or enhance the future role of Local Government in Western Australia?*
- A1 The most important dimension of sustainability is relevance. If local government loses its relevance, its sustainability must be questioned. There are numerous elements which allow local government to be relevant. These include financial capacity, skill base, legislative authority, etc.
- Q2 *Do Councils believe it is important to have an agreed vision for the sector developed with State Government?*
- A2 The vision for local government should be set by local government. Any agreed vision would be most effective if it is developed with the State Government. However, the vision should not be developed by the State Government.
- Q3 *Do Councils believe it is necessary to define the roles and responsibility of Local Government?*
- A3 Roles are broadly defined within the Local Government Act and other legislation. If such roles and responsibilities are defined more specifically, local government loses flexibility which could impact on its relevance. Local government should have general powers to operate as is currently the case.
- Q4 *Are there other significant principles that should define the scope and role of Local Government activities?*
- A4 The principles identified in Chapter 3 (covering respect, engagement, autonomy, responsiveness, etc.) appear comprehensive.

- Q5 *Is there a need for more transparent and authoritative sector-wide financial practices to be developed? (The Panel suggests that these should include debt policies, the rating mechanism, policy choices, accounting practice, asset management systems and policies, and consistent monitoring and reporting of a Council's financial position and performance.)*
- A5 Great care needs to be taken in terms of the development of sector-wide financial practices. For instance, some Councils will have valid reasons to take on significant debt while others will not need to. Further, while consistent monitoring and reporting allows for cross-local government comparisons, it does not assist local governments to provide services and be responsive to local communities.
- Q6 *Would there be benefit in defining a best practice debt policy? How could this be applied to best effect across the industry?*
- A6 There can be no best practice debt policy as each local government's situation is different. However, it is important that local governments are informed of levels of debt which can bring viability into question.
- Q7 *Is there value in monitoring rate increases and matching them with financial sustainability?*
- A7 Rate increases should be determined by individual local governments based on the needs of the Council as the decision maker.
- Q8 *Would the requirement for a 'New Zealand-style services policy' statement, that clearly states the roles and functions than an individual authority is prepared to adopt and that details the number, nature and method of service delivery, improve or strengthen the sustainability of Local Government in Western Australia?*
- A8 Local governments produce a range of statements which indicate to the community what they are doing. These include strategic plans or plans for the future and many would have customer service charters. It is considered important for local government autonomy that individual local governments continue to set their service direction. However, it is appropriate for local governments to identify the level of services they will be providing to their communities to ensure expectations are clear.
- Q9 *If there is a need for more consistent accounting policies, what would be the best way to introduce them? Are there capacity, capability or systems issues that would preclude their successful introduction?*
- A9 Local governments are required to comply with accounting standards and this is considered sufficient.
- Q10 *Is there a need for the development of accepted industry standards of asset management? How might these be successfully introduced in Western Australia?*
- A10 A range of Councils are working on improving asset management in a variety of ways. However, again it is considered important to provide flexibility and there should not be one standard which fits all local governments unless the standard is high level, broad and flexible to complement the varying capacities of individual local governments.

- Q11 *Do Councils believe that there is a need for regular sustainability monitoring?*
- A11 It is up to each individual local government to monitor its “sustainability” and take action to ensure that it maintains or enhances its position in the future.
- Q12 *What would be the most important issues to monitor in order to assess financial sustainability?*
- A12 It should be up to each individual local government to monitor its financial sustainability in terms of the actions it wishes to take.
- Q13 *The Panel invites Local Governments to conduct the financial sustainability self-assessment included in Appendix 3. This will enable participating authorities to identify their positioning and performance against WA Local Government benchmarks as set out elsewhere in this document.*
- A13 See “Comment” section of this report.
- Q14 *Do Councils believe that the principles of Local Government should more clearly address the principles of ‘subsidiarity’ and ‘correspondence’ in strengthening and confirming its role and relationship with the State Government?*
- A14 The role of local government and its relationship with the State should be left broad to enable flexibility. Should local government be concerned about cost shifting in a particular area, it is incumbent on local government, through WALGA, to tackle the State on this matter.
- Q15 *How applicable do Councils believe the Panel’s definition of community of interest is? Are there measures or experiences Council can identify that may help to better quantify or rate the attributes – to assist planning, jurisdictional and service enhancement?*
- A15 It is extremely difficult to identify communities of interest in any finite way. This is because people have different communities of interest for different areas of their lives. (That is a shopping community of interest will be different from a schooling community of interest, etc.)
- In particular the Panel wants individual Councils to comment on the key dimensions that define a sustainable Local Government’s boundaries. In providing commentary to question 16, please reference your Council’s responses to the sustainability self-assessment.*
- Q16 *The Panel wishes to discuss the potential dimensions for assessing a Local Government’s boundaries with the sector. What dimensions does your Council believe are important? How can they be defined?*
- A16 A local government’s boundary should be based on a variety of factors. The Local Government Act identifies factors for the Advisory Board to take into consideration (including communities of interest, physical features, demographic trends, economic factors, history, etc) and this is considered sufficient.
- Q17 *Is workplace planning an important consideration of your Council?*
- A17 Workplace planning is an important consideration.

Q18 Has your Council adopted any innovative strategies to ensure the industry recruits and retains the best and most appropriate workforce for the future? Are there specific measures you consider appropriate to strengthen the governance capabilities of elected Councillors?

A18 The City has used a variety of mechanisms to recruit and retain its workforce. These strategies are used by many Councils and include the use of specialised recruitment firms and attractive enterprise bargaining arrangements. The governance capabilities of elected members have been enhanced by a very extensive induction program conducted by the City.

Q19 Do Councils believe that there is a role for an objective and independent sectoral audit process on issues dealing with financial sustainability?

A19 There could be some benefit from an independent sectoral audit process if the audit was performance-based. However, it would be important to ensure that this did not lead to all local governments operating in the same way. Should this be the case, the essence of “local government” would disappear.

Q20 What are the strengths and weaknesses of a two-tiered system of Local Government? Are there particular services that are best delivered on a regional basis?

A20 For smaller, particularly non-metropolitan local governments there are potential advantages to a two-tiered system of local government with services such as road construction provided on a regional basis.

Q21 Do Councils believe that there is a need for State-wide resource sharing arrangements? How could these be structured for best effect?

A21 There are a range of resource sharing arrangements operating within local government at the moment. The Department of Local Government and Regional Development has attempted to encourage this. It is considered that the current initiatives in this area are adequate and sufficient.

Q22 The Panel asks Councils to consider these and other potential changes to the Local Government Act as part of the development of an industry response to this study.

A22 The Report makes a range of suggestions. Responses to each are as follows:

- Increase tender limit from \$50,000 to \$100,000:
This is supported.
- Increase the threshold for major land transactions to \$2 million:
This is supported.
- Establish asset management plans and require the establishment of reserves to fund the replacement of infrastructure:
This should be at the discretion of individual local governments. However replacing assets is, obviously, vitally important.
- Allow for flexibility in paying Councillors and the mandatory number required:
Further consideration should be given the amounts which elected members can receive.

- Introduce mandatory training programs for Councillors:
The City has obtained extremely strong commitment for voluntary training programs. The necessity for mandatory training is questioned.
- Allow Councils to conduct postal voting without using the WA Electoral Commission:
This is supported.
- Introduce less prescriptive requirements in relation to business planning and the disposal of land and other property:
The preparation of business plans is considered important and these provisions have not constrained the City's operations in the past.
- Revisit the rate exemptions provision within the Act:
This approach is supported.
- Allow Councils to hold electronic meetings:
The provisions in the Local Government Act which allow for electronic meetings in certain circumstances are supported.
- Have external decision making criteria to guide local governments in rate setting:
While this may be useful for some, it could be seen as a way of standardising the setting of rates and reducing local autonomy and is, therefore, not supported.
- Increase the level of developer contributions for public facilities:
This is supported in theory and needs further consideration from a planning and asset management perspective.

Q23 *What improvements should be made to the distribution of FAGS in Western Australia? How might incentives to pursue best use of own source revenue be developed? How might the concept of a minimum grant be modified to ensure the grant is awarded based on sustainable performance by authorities?*

A23 The issue of Financial Assistance Grants being paid on the basis of efficiency is a concept which has previously been considered and rejected by the Commonwealth Government. It requires further consideration.

Q24 *What role can the State Government play in supporting Councils and the industry to address the challenge of change and more sustainable operation? Does the Industry require some form of transitional funding to assist Councils plan for and execute a change agenda consistent with the themes identified in this review?*

A24 The State Government's support is always valuable. However, local government needs to be careful that it does not abrogate its responsibility as a decision maker as it seeks State Government funding to implement changes.

Q25 *Do Councils believe that there is a need for a State Government-established fund to help achieve specific reform objectives?*

A25 Such a fund would be useful but, again, local governments need to be careful that the fund does not ultimately lead to a reduction in local government autonomy.

Q26 *Do the current arrangements for capacity building in the Local Government sector meet the needs of the sector?*

A26 The City has rarely used current capacity building arrangements and, consequently, is not in a good position to comment. However, additional guidance from the Department on specific legislative matters, in the form of guidelines and frequently asked questions, would be very useful.

Issues and options considered:

Council could:

- Accept the suggested responses;
- Amend the suggested responses as it considers appropriate; or
- Not provide a response.

Link to Strategic Plan:

Not applicable.

Legislation – Statutory Provisions:

The interim report of the Systemic Sustainability Study panel makes reference to a range of provisions in the Local Government Act and these are commented on in this report.

Risk Management considerations:

Not applicable.

Financial/Budget Implications:

Not applicable.

Policy implications:

Not applicable.

Regional Significance:

The Systemic Sustainability Study has state wide implications.

Sustainability implications:

The Systemic Sustainability Study addresses local government sustainability.

Consultation:

Not applicable.

COMMENT

The study panel's report includes an individual local government financial sustainability self-assessment tool. The City of Joondalup is currently examining itself against this tool and the results will be reported to Council and to WALGA. The document "In Your Hands; Shaping the Future of Local Government in Western Australia" is available in the Councillors' Reading Room.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Simple majority.

OFFICER'S RECOMMENDATION: That Council ENDORSES a submission being forwarded to WALGA along the lines presented in this Report as the City of Joondalup's response to questions in WALGA'S Systemic Sustainability Study.

MOVED Cr Magyar, SECONDED Cr Park that Council REFERS Report CJ155 - 09/06 - Response to WALGA'S Systemic Sustainability Study to the Sustainability Advisory Committee for advice regarding the sustainability of local government prior to endorsing a submission being forwarded to WALGA.

Cr Magyar spoke to the Motion.

The Motion was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

CJ156 - 09/06 MINUTES OF POLICY COMMITTEE MEETING HELD ON 24 AUGUST 2006 – [01435]

WARD: All

RESPONSIBLE DIRECTOR: Mr Ian Cowie
Governance and Strategy

CJ060912_BRF.DOC:ITEM 4

PURPOSE

To submit the unconfirmed minutes of the Policy Committee to Council for information and to seek endorsement of various policies.

EXECUTIVE SUMMARY

A meeting of the Policy Committee was held on 24 August 2006.

It is recommended that Council NOTES the unconfirmed Minutes of the Policy Committee meeting held on 24 August 2006, forming Attachment 1 to this Report and endorses the recommendations contained therein.

BACKGROUND

Council at its meeting held on 26 April 2005 resolved to:

“ESTABLISH a Policy Committee comprising membership of the five Commissioners with the following terms of reference:

- (a) To make recommendations to Council on the development and review of strategic (Council) policies to identify the direction of the Council;*
- (b) To Initiate and formulate strategic (Council) policies;*

- (c) *To devise and oversee the method of development (level and manner of community consultation) for the development of strategic (Council) policies;*
- (d) *To review the Council Policy Governance Framework in order to ensure compliance with provisions of the Local Government Act 1995.”*

DETAILS

A meeting of the Policy Committee was held on 24 August 2006 and the minutes of the meeting form Attachment 1 to this Report.

The items of business considered by the Policy Committee were:

- 1 Council Policies:
 - Financial Planning – Strategic Matters
 - Economic Development;
 - Community Development; and
 - Public Participation.
- 2 Proposed policy to assist with assessing requests for purchase of Public Open Space Reserves
- 3 A Nuclear Free City – Policy
- 4 Freeman of the City

Requests were also raised for reports in relation to the following policies:

- City's Art Collection – (Policy 5-3 - Cultural Development)

A review of the policy on the City's art collection was requested, to clarify the intent of the policy and to enable elected members to become more involved in the City's art collection.
- Use of Council Chamber and meeting rooms (Policy 8-3 – Elected Members – General)

A review of the policy relating to the use of the Council chamber and meeting rooms was requested, to enable relationships to be built with State and Federal politicians.

Issues and options considered:

As detailed in the minutes of the meeting held on 24 August 2006.

Link to Strategic Plan:

This item has a general connection to the Strategic Plan.

Legislation – Statutory Provisions:

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

Risk Management considerations:

Not applicable.

Financial/Budget Implications:

Not applicable.

Policy implications:

The review and development of policies will align with the strategic directions established by Council and outlined in the Strategic Plan 2003 – 2008. Council's vision is to be '*A sustainable City and community that are recognised as innovative, unique and diverse*'. The Strategic Plan was designed to reflect the themes of economic, social and environmental sustainability as well as good governance.

Regional Significance:

Not applicable.

Sustainability implications:

Not applicable.

Consultation:

Not applicable.

COMMENT

The unconfirmed Minutes of the Policy Committee meeting held on 24 August 2006 are submitted to Council for information and to seek endorsement of various policies.

As part of the consideration of the proposed policies, the Policy Committee has suggested a number of changes which have been reflected and are submitted to the Council for consideration.

ATTACHMENTS

Attachment 1	Minutes of the Policy Committee meeting held on 24 August 2006.
Attachment 2	Summary of Public Submissions
Attachment 3	Economic Development Policy
Attachment 4	Financial Planning Policy – Strategic Matters
Attachment 5	Community Development Policy
Attachment 6	Public Participation Policy
Attachment 7	Schedule of submissions – Proposed Draft Policy for request for sale of public open space reserve
Attachment 8	Proposed Policy – Requests for Sale of Public Open Space Reserves
Attachment 9	Draft Policy – Freeman of the City of Joondalup

VOTING REQUIREMENTS

Absolute Majority.

MOVED Cr Hart, SECONDED Cr Magyar that Council:

- 1 NOTES the unconfirmed Minutes of the Policy Committee meeting held on 24 August 2006, forming Attachment 1 to Report CJ156-09/06;**
 - 2 ADOPTS the:**
 - (a) Economic Development Policy shown at Attachment 3 to Report CJ156-09/06;**
 - (b) Financial Planning – Strategic Matters Policy shown at Attachment 4 to Report CJ156-09/06;**
 - (c) Community Development Policy shown at Attachment 5 to Report CJ156-09/06; and**
 - (d) Public Participation Policy shown as Attachment 6 to Report CJ156-09/06;**
 - 3 RECEIVES the Community Submissions shown as Attachment 2 to Report CJ156-09/06;**
 - 4 THANKS the Joondalup Business Association and the Business Development Association (North West Metro) for their submissions;**
 - 5 (a) RECEIVES the submissions shown at Attachment 7 to Report CJ156-09/06;**
 - (b) Pursuant to Clause 8.11.3 of District Planning Scheme No 2 ADOPTS for final approval the policy regarding Requests for Sale of Public Open Space Reserves, as modified and forming Attachment 8 to Report CJ156-09/06;**
 - (c) In accordance with the abovementioned policy, AMENDS the Town Planning Delegations by inserting new clauses 2(i) & 3(h), as follows:**
 - 2 (i) the determination that a request for sale of POS should not proceed where:**
 - (i) there is no clear benefit to the community; and/or**
 - (ii) such proposals do not promote sustainability objectives.**
- And**
- 3(h) the determination that a request for sale of POS should not proceed;**
- 6 ENDORSES the draft Policy – Freeman of the City of Joondalup, forming Attachment 9 to Report CJ156-09/06 and MAKES the draft policy available for public comment for a period of 30 days;**

7 REQUESTS a review of the following policies:

- (a) **Policy 5-3 - Cultural Development, in relation to the City's art collection;**
- (b) **Policy 8-3 – Elected Members – General, in relation to the use of the Council Chamber and meeting rooms.**

Discussion ensued.

AMENDMENT MOVED Cr Park, SECONDED Cr Hart that in Point 6 of the Motion:

DELETES the word ENDORSES and REPLACES it with the word NOTES.

Discussion ensued.

The Amendment was Put and**LOST (3/9)**

In favour of the Amendment: Mayor Pickard, Crs Hart and Park **Against the Amendment:** Crs Amphlett, Corr, Currie, Fishwick, Hollywood, Jacob, John, Magyar and McLean

Further discussion ensued in relation to the Motion as Moved by Cr Hart, Seconded Cr Magyar.

The Motion as Moved Cr Hart, Seconded Cr Magyar was Put and CARRIED BY AN ABSOLUTE MAJORITY (11/1)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Amphlett, John, Hart, Corr, Fishwick and Currie **Against the Motion:** Cr Park

Appendix 3 refers

To access this attachment on electronic document, click here: [Attach3brf120906.pdf](#)

Disclosure of interest affecting impartiality

Name/Position	Mr Garry Hunt - Chief Executive Officer
Item No/Subject	CJ157-09/06 – Local Government Rating of Land Used for Charitable Purposes
Nature of interest	Interest that may affect impartiality
Extent of Interest	A family member is a resident of an aged complex.

CJ157 - 09/06 LOCAL GOVERNMENT RATING OF LAND USED FOR CHARITABLE PURPOSES – [00104]

WARD: All

RESPONSIBLE DIRECTOR: Mr Mike Tidy
Corporate Services

CJ060912_BRF.DOC:ITEM 5

PURPOSE

The purpose of this report is to provide a response to the Minister for Local Government and Regional Development with a copy to the Western Australian Local Government Association in relation to the Minister's proposed strategies to implement the recommendations of the Local Government Advisory Board into the general issue of local government rating of land used for charitable purposes.

EXECUTIVE SUMMARY

Broadly speaking the Minister's proposed strategies are supported. Strategy 5 in relation to exempting vacant land on the basis that it would be used in the future for charitable purposes is not supported. This would financially penalise local governments, is open to manipulation and goes against basic rating principles.

Although not included in the proposed strategies it is recommended that the Minister be asked to consider the impacts of the burden of rate exemptions on individual local governments. There is a contradiction in how pensioners in their own homes are supported by the whole community through a State rebates and deferrals scheme but the burden of rate exemptions rests with individual local governments.

BACKGROUND

In December 2004 the then Minister for Local Government & Regional Development requested the Local Government Advisory Board examine and report on the general issue of local government rating of land used for charitable purposes. This was in response to a number of approaches that had been made to her office in relation to this matter.

The Board has completed its investigation and has provided a report to the Minister. The Minister has considered the recommendations and has proposed strategies for implementing the recommendations. Prior to finalising the proposals for implementation he has written to each local government seeking feedback on what is proposed.

The Western Australian Local Government Association is also preparing a response to the Minister's request and has written to each local government seeking their responses to be consolidated into a formal response from the Western Australian Local Government Association.

The response to the Minister is required by October 2006.

DETAILS

The Minister has proposed eight strategies in relation to recommendations of the Advisory Board. They are summarised as follows:

Strategy 1

Independent Living Units (ILU) owned and operated by religious, charitable and other not-for-profit organisations (NFPO) are to be rated if the accommodation is not subsidised. The nature and level of the subsidy will be prescribed in the Local Government Act 1995 Regulations.

These arrangements are to apply to ILUs in villages established after 1 July 2007 and, from 1 July 2015, to all retirement villages. Existing leaseholders will not be rated while they hold their lease.

Response

This is broadly supported on the premise that if a facility is not subsidised then it is effectively self supporting and not charitable in nature. The rationale for why already established villages will not be covered by these arrangements until 1 July 2015 is that many residents have entered into leases having been told they would not have to pay rates. It is proposed that existing leaseholders will not be rated while they hold their lease even if this tenure goes beyond 2015, ie the village would be rated from 2015 but they will not be able to pass this on to tenants who had leases from prior to 1 July 2007.

Strategy 2

Religious, charitable and other NFPOs providing aged care services and receiving care subsidies in accordance with the Aged Care Act 1987 (Commonwealth) are to be exempted from rates. This may require an amendment to the Act and/or Regulations.

Response

This is broadly supported again on the basis that if no subsidy were being received by the facility then it is effectively not charitable in nature. It is presumed that the nature and level of subsidy that is proposed to be prescribed by regulation in 1 above, would equally apply to this strategy as well so that very minor subsidies cannot be orchestrated in order to gain a rate exemption.

Strategy 3

Land held by NFPO community housing providers and used for crisis accommodation or housing for people with a disability should be exempt from being rated. This may require an amendment to the Act and/or Regulations.

Response

Some of this type of accommodation is already exempt under the charitable provisions of the Act. The proposal is generally supported however there needs to be very clear definitions around the notions of crisis accommodation and housing for people with a disability.

Strategy 4

Request the Local Government Advisory Board to undertake further work to determine how to isolate the types of community housing that should be rated without negatively impacting upon –

- occupiers of this housing that are financial disadvantaged
- community housing providers

Response

The request to undertake further work is supported and the key issues in relation to determining any form of exemption are around the issue of clear definitions and guidelines on which a local government can make an assessment and clear provisions requiring applicants requesting an exemption to supply information that enables the assessment to be done.

Strategy 5

The Act and/or regulations to be amended to address the following matters in relation to vacant land –

- vacant land that is held for use as a charitable purpose in the future is exempt from rates
- the owner of the vacant land seeking an exemption is to provide information to the relevant local government that is sufficient for it to be able to satisfy itself of the future land use intended
- if the land is not eventually used for charitable purpose, back rates are to be paid to compensate for the time that it was previously exempted. Back rating is to extend back for a period not exceeding 15 years from the time a decision is made that an exemption is not appropriate.

Response

This strategy is not supported. It would be almost impossible to come up with guidelines setting out the basis for justification that land is held for use as a charitable purpose in the future. The back rating provisions would be very difficult to implement. There is already considerable community resistance to the existing back rating provisions in the Act. Also, the inflationary effects of 15 years would make the back rating worth far less than if the rates had been received at the actual time that they were due. Philosophically this strategy goes against a lot of the principles on which rating currently applies. No other property is rated on the basis of how it might be used in the future.

Strategy 6

That the Act and/or Regulations be amended to prescribe that incidental and ancillary non charitable land uses do not jeopardise the overall dominant charitable purpose of a property.

Response

It has already been established in case law that incidental and ancillary non charitable land uses do not jeopardise the overall dominant charitable purpose of a property despite the fact that it is not spelt out in the current legislation. The issue really is not that this type of use should not jeopardise the overall dominant use but the question of the quantum of what constitutes incidental and ancillary. Any proposal that could define incidental and ancillary would be supported.

Strategy 7

That the Act and/or Regulations be amended to clarify that it is possible to rate part of a property, if that part is clearly non charitable and not incidental or ancillary to a dominant charitable purpose.

Response

In conjunction with Strategy 6 this proposal would be supported.

Strategy 8

That the Act and/or Regulations be amended so that organisations seeking a rate exemption are required to provide local governments with the relevant information to allow it to make a considered decision about whether land is being used for a charitable purpose.

Response

This proposal is strongly supported particularly if the regulations also provide guidelines as to the type of information that is required to be provided. This is an area that causes great difficulty for the City in its current assessments of applications for exemptions from rates. It is not unusual for the City to be challenged as to why information needs to be provided or the type of information that is requested to be provided.

Issues and options considered:

Broadly speaking, many of the proposed strategies are supported with perhaps some suggestions for clarification. Strategy 5 however is strongly opposed. There is no way of controlling the justification of future use. The ability to back rate 15 years is really no compensation at all to the local government if the use changes. In fact the lost value of rates over that time means that this would be a net financial loss to the local government.

The other issue that needs to be considered and is not part of the Minister's proposed strategies is the whole notion that the burden for rate exemptions falls on the local government in which the land in question is located. There is a whole of State approach to providing concessions by way of rebates and deferrals for pensioners living in their own homes. This is on the basis that all eligible persons should have these basic entitlements regardless of where they choose to live. Although the quantum of the rebates and deferrals would be dependent on the rates levied on that property and these will vary from council to council the fact that they are entitled to a rebate or a deferral is universal across the State. A local government that has a significant proportion of eligible persons in relation to pensioner rebates and deferrals is not penalised financially for that fact.

It seems unreasonable that if a local government is not penalised for the number of pensioners living in their own properties within the local government area, why the local government should bear the full burden of rates exemptions on the retirement or aged care facilities that are located within its area. The whole community should bear the burden of the cost of these arrangements.

Link to Strategic Plan:

Key focus area 1 Community Wellbeing

1.3 provides social opportunities that meet community needs

Key result area 3 City Development

3.3 recognises the changing demographic needs of the community

Legislation – Statutory Provisions:

The strategies proposed by the Minister are for a number of changes to be made to the Act and/or Regulations.

Risk Management considerations:

No applicable.

Financial/Budget Implications:

There are potential financial implications for the City in relation to a number of these strategies. The full extent would need to be determined on the basis of the final detail which is not included in the strategy proposals.

Policy implications:

No applicable.

Regional Significance:

No applicable.

Sustainability implications:

There are issues of long-term financial sustainability in relation to these proposals. The changing demographics and the increase in numbers of people occupying the types of facilities covered by these proposals will increase the burden of the exemptions being passed to the remaining members of the community. This will become increasingly difficult to manage in the long term, in particular if each local government is required to carry the burden of all of the rate exemptions within their local government area.

Consultation:

The Minister has sought the views from each local government in relation to strategies that he is proposing as a result of the recommendations from the Local Government Advisory Board into the general issue of local government rating of land used for charitable purposes. The Western Australian Local Government Association is also seeking comments from members so that it can provide a consolidated response to the Minister's request.

COMMENT

Whether or not the specifics of the strategies are supported, the whole issue of land used for charitable purposes and exemptions is becoming an increasingly difficult area, administratively for local governments. There is a clear lack of guidelines, definitions and objective measures for determining whether the land is used for charitable purposes.

This confusion causes difficulties for local government in being able to make assessments about whether land is used for charitable purposes and equally causes confusion for property owners who are seeking exemption but have no clear way of determining whether they are eligible or indeed what information they should be providing in order to demonstrate eligibility.

ATTACHMENTS

Attachment 1 Letter from the Minister for Local Government & Regional Development dated 3 August 2006

VOTING REQUIREMENTS

Simple majority.

OFFICER'S RECOMMENDATION: That the Minister for Local Government & Regional Development be provided with the following response in relation to the issue of local government rating of land used for charitable purposes and a copy be provided to the Western Australian Local Government Association as follows:

- 1 In relation to the eight proposed strategies the City's responses are as follows -
 - (a) Strategy 1

This is broadly supported on the premise that if a facility is not subsidised then it is effectively self supporting and not charitable in nature.
 - (b) Strategy 2

This is broadly supported again on the basis that if no subsidy were being received by the facility then it is effectively not charitable in nature. It is presumed that the nature and level of subsidy that is proposed to be prescribed by regulation in Strategy 1, would equally apply to this strategy as well so that very minor subsidies cannot be orchestrated in order to gain a rate exemption.
 - (c) Strategy 3

The proposal is generally supported however there needs to be very clear definitions around the notions of crisis accommodation and housing for people with a disability.

(d) Strategy 4

The request to undertake further work is supported and the key issues in relation to determining any form of exemption are around clear definitions and guidelines on which a local government can make an assessment and clear provisions requiring applicants requesting an exemption to supply information that enables the assessment to be done.

(e) Strategy 5

This strategy is not supported. It would be almost impossible to come up with guidelines setting out the basis for justification that land is held for use as a charitable purpose in the future. The back rating provisions would be very difficult to implement. There is already considerable community resistance to the existing back rating provisions in the Act. The inflationary effects of 15 years would make the back rating worth far less than if the rates had been received at the actual time that they were due. Philosophically this strategy goes against a lot of the principles on which rating currently applies. No other property is rated on the basis of how it might be used in the future.

(f) Strategy 6

It has already been established that incidental and ancillary non-charitable land uses do not jeopardise the overall dominant charitable purpose of a property despite the fact that it is not spelt out in the current legislation. The issue really is not that this type of use should not jeopardise the overall dominant use but the question of the quantum of what constitutes incidental and ancillary. Any proposal that could define the quantum of incidental and ancillary is supported.

(g) Strategy 7

In conjunction with Strategy 6 this proposal is supported.

(h) Strategy 8

This proposal is strongly supported particularly if the regulations also provide guidelines as to the type of information that is required to be provided. This is an area that causes great difficulty for the City in its current assessments of applications for exemptions from rates. It is not unusual for the City to be challenged as to why information needs to be provided or the type of information that is requested to be provided.

- 2 That the Minister be urged to give serious consideration to a whole of State approach to the issue of rating exemptions for land used for charitable purposes, such that individual local governments are not unfairly burdened due to the amount of land within their local government area that is used for charitable purposes. There should be equity and fairness in rating or exemption of these types of facilities in the same way that there is a whole of State approach to the provision of rebates and deferments for pensioners.

MOVED Cr Magyar, SECONDED Cr Jacob that Council:

- 1 REFERS consideration of CJ157- 09/06, Local Government Rating of Land Used for Charitable Purposes, to an elected members' workshop to further investigate the implications of the proposed amendments;**
- 2 REQUESTS relevant stakeholders including but not limited to ACSWA, Elderbloom, RWA, non-Government organisations and not-for-profit organisations to provide a submission for consideration at the workshop;**
- 3 REQUESTS the Western Australian Local Government Association to conduct a local government forum on Local Government rating of land used for charitable purposes.**

Discussion ensued.

The Motion was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

Appendix 4 refers

To access this attachment on electronic document, click here: [Attach4brf120906.pdf](#)

Chief Executive Officer left the Chamber at 2039 hrs.

Disclosure of Financial Interests

Name/Position	Mr Garry Hunt - Chief Executive Officer
Item No/Subject	CJ158-09/06 – Minutes of the Chief Executive Officer Performance Review Committee Meetings held on 1 and 8 August 2006
Nature of interest	Financial
Extent of Interest	This Item relates to Mr Hunt's Contract of Employment

CJ158 - 09/06 MINUTES OF THE CHIEF EXECUTIVE OFFICER PERFORMANCE REVIEW COMMITTEE MEETINGS HELD ON 1 AND 8 AUGUST 2006 – [74574]

WARD: All

RESPONSIBLE DIRECTOR: Mr Mike Tidy
Corporate Services

CJ060912_BRF.DOC:ITEM 6

PURPOSE

To submit the minutes of the Chief Executive Officer Performance Review Committee meetings to Council for noting and endorsement of the recommendations of the Committee.

EXECUTIVE SUMMARY

Meetings of the Chief Executive Officer Performance Review Committee were held on 1 August 2006 and 8 August 2006.

It is recommended that Council NOTES the Minutes of the Chief Executive Officer Performance Review Committee held on 1 and 8 August 2006 forming Attachment 1 to Report CJ158-09/06 and ENDORSES the recommendations contained therein.

BACKGROUND

The Chief Executive Officer Performance Review Committee is formed for the purpose of conducting the annual performance reviews of the CEO in accordance with the following terms of reference -

- (a) *Review the Chief Executive Officer's performance in accordance with the appropriate provisions contained within the Chief Executive Officer's Employment Contract;*
- (b) *Prepare and table the concluded report, in accordance with the appropriate provisions within the Chief Executive Officer's Employment Contract to the Council at a Council meeting for consideration and actioning;*
- (c) *Review the Chief Executive Officer's performance on an on-going basis as and when deemed necessary in accordance with the appropriate provisions contained within the Chief Executive Officer's Employment contract;*
- (d) *Review the Key Performance Indicators to be met by the Chief Executive Officer;*
- (e) *Review the Chief Executive Officer's remuneration package, in accordance with the appropriate provisions within the Chief Executive Officer's Employment Contract;*
- (f) *Review the Chief Executive Officer's Employment Contract and make recommendations to Council in relation to varying the contract as and when necessary.*

The CEO's annual performance review is required to be undertaken in August of each year or as soon thereafter as is possible. The 2006 review is currently underway.

DETAILS

Issues and options considered:

As contained within the minutes of the Chief Executive Officer Performance Review Committee.

Link to Strategic Plan:

Objective 4.5 - To manage our workforce as a strategic business resource.

Legislation – Statutory Provisions:

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

Section 5.38 of the Local Government Act 1995 (the Act) states that each employee who is employed for a term of more than one year, including the CEO and each senior employee, is to be reviewed at least once in relation to every year of employment.

Risk Management considerations:

The performance review process is designed to evaluate and assess the CEO's performance against key performance indicators on an annual basis. The requirement for the performance review is a contractual one between the Chief Executive Officer and the Council. The Contract provides for the review to be conducted by the Chief Executive Officer's Performance Review Committee. Failure to undertake the review as required in the contract terms would risk a breach of contract.

Financial/Budget Implications:

The provisions of the Chief Executive Officer's Employment Contract in relation to performance reviews requires that the Performance Review Committee engage an independent consultant to advise it and assist it in undertaking the Chief Executive Officer's performance review. Provisions have been made within the City's consultancy budget for the engagement of a suitable consultant to assist the Committee in the performance review process.

Policy implications:

Not applicable.

Regional Significance:

Not applicable.

Sustainability implications:

Not applicable.

Consultation:

Not applicable.

COMMENT

The minutes of the Chief Executive Officer Performance Review Committee are submitted to Council for noting.

ATTACHMENTS

Attachment 1 Minutes of the Chief Executive Officer Performance Review Committee held on 1 August 2006 and 8 August 2006.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Fishwick, SECONDED Cr Corr that Council NOTES the Minutes of the Chief Executive Officer Performance Review Committee held on 1 and 8 August 2006 forming Attachment 1 to Report CJ158-09/06 and ENDORSES the recommendations contained therein.

The Motion was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

Appendix 5 refers

To access this attachment on electronic document, click here: [Attach5brf120906.pdf](#)

Chief Executive Officer entered the Chamber, the time being 2040 hrs.

CJ159 - 09/06 FINANCIAL ACTIVITY STATEMENT FOR THE PERIOD ENDED 30 JUNE 2006 – [07882]

WARD: All

RESPONSIBLE DIRECTOR: Mr Mike Tidy
Corporate Services

CJ060912_BRF.DOC:ITEM 7

PURPOSE

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

EXECUTIVE SUMMARY

The June 2006 report for the year ended 30 June 2006 has not been audited and is presented to Council as an interim report.

The June 2006 year to date report shows an overall variance (under spend) on operations and capital of \$22m when compared to the year to date revised budget approved by Council at its meeting of 21 February 2006 (CJ029-02-06).

This variance can be analysed as follows:

- The **Operating Surplus** is \$14.3m compared to a budgeted surplus of \$8.9m at the end of June 2006. The \$5.4m variance is primarily due to additional interest income and contributions and lower than budgeted expenditure in employee costs. This is partially offset by reduced revenue from government grants and subsidies.
- **Capital Expenditure** is \$24.8m against the year to date budget of \$41.8m. The \$17m under spend is due to delays in purchasing heavy and light vehicles and in the construction of infrastructure assets and council projects.

In rate setting terms after taking into account, non-cash movements, other cash movements and reserve fund transfers the closing funds position at 30 June 2006 was \$12.0m. This is in line with the estimated surplus of \$12.1m used for the 2006/07 Budget.

It is recommended that Council NOTES the Financial Activity Statement for the period ended 30 June 2006 forming Attachment 1 to Report CJ159-09/06.

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 interim financial activity statement for the period ended 30 June 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 revised 2005/06 Annual Budget or have been authorised in advance by Council where applicable.

ATTACHMENTS

Attachment A - Financial Activity Statement for the period ended 30 June 2006.

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Jacob, SECONDED Cr Hollywood that Council NOTES the Financial Activity Statement for the period ended 30 June 2006 forming Attachment 1 to Report CJ159-09/06.

The Motion was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

Appendix 6 refers

To access this attachment on electronic document, click here: [Attach6brf120906.pdf](#)

CJ160 - 09/06 FINANCIAL ACTIVITY STATEMENT FOR THE PERIOD ENDED 31 JULY 2006 – [07882]

WARD: All

RESPONSIBLE DIRECTOR: Mr Mike Tidy
Corporate Services

CJ060912_BRF.DOC:ITEM 8

PURPOSE

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

EXECUTIVE SUMMARY

The July 2006 year to date report shows an overall variance (under spend) of \$375k when compared to the year to date budget approved by Council at its meeting of 25 July 2006 (JSC25-07/06).

This variance can be analysed as follows:

- The **Operating** Deficit is \$4.7m compared to a budgeted deficit of \$5.1m at the end of July 2006. The \$0.4m variance is primarily due to additional interest income, additional fees and charges and lower than budgeted expenditure in employee costs and materials and contracts. This is partially offset by reduced revenue from government grants and subsidies and contributions.

It is recommended that Council NOTES the Financial Activity Statement for the period ended 31 July 2006 forming Attachment 1 to Report CJ160-09/06.

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 July 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 29 April to 29 May 2006.

COMMENT

All expenditures included in the Financial Activity Statement are incurred in accordance with the adopted 2006/07 Annual Budget or have been authorised in advance by Council where applicable.

ATTACHMENTS

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

VOTING REQUIREMENTS

Simple majority.

MOVED Cr Jacob, SECONDED Cr Hollywood that Council NOTES the Financial Activity Statement for the period ended 31 July 2006 forming Attachment 1 to Report CJ160-09/06.

The Motion was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

Appendix 7 refers

To access this attachment on electronic document, click here: [Attach7brf120906.pdf](#)

**CJ161 - 09/06 CONTRACT 004-06/07 SUPPLY AND
MAINTENANCE OF ORNAMENTAL STREET LIGHTS
IN JOONDALUP AND ILUKA – [17593]**

WARD: North

**RESPONSIBLE
DIRECTOR:** Mr Dave Djulbic
Infrastructure Services

CJ060912_BRF.DOC:ITEM 9

PURPOSE

This report is to seek the approval of Council for the City to engage High Speed Electrics on a sole provider basis for the Supply and Maintenance of Ornamental Street Lights in Joondalup and Iluka for an initial period of twelve (12) months with two (2) further twelve-month optional extensions at the absolute discretion of the City (Contract 004-06/07).

EXECUTIVE SUMMARY

Tenders were advertised on 27 July 2005 through statewide public notice for the Supply and Maintenance of Ornamental Street Lights in Joondalup and Iluka. Tenders closed on 11 August 2005. Two Submissions were received from:

- Energize Electrics
- High Speed Electrics

Only one Respondent was able to meet the City's requirements, consequently, the City conducted further market assessments to ascertain availability of alternative suppliers or products and to determine the best possible options for the City. The findings confirmed no known products in the market place other than that offered by High Speed Electrics were compatible with the City's existing lighting equipment.

It is recommended that Council:

- 1 *ACCEPTS the tender submitted by High Speed Electrics on a sole provider basis for the Supply and Maintenance of Ornamental Street Lights in Joondalup and Iluka in accordance with the requirements in Tender 004-05/06 at the rates as set out in the schedule at Attachment 1 to Report CJ161-09/06 for an initial period of twelve (12) months with two (2) further twelve-month optional extensions at the absolute discretion of the City;*
- 2 *Delegates to the Chief Executive Officer Authority to approve if considered appropriate each of the twelve-month optional extensions and any price variations sought subject to satisfactory compliance with, and performance of, the requirements of Tender 004-05/06 by High Speed Electrics.*

BACKGROUND

The Scope of Work involves Supply and Maintenance of Ornamental Street and Pathway Lighting in Joondalup City Centre and Beaumaris Beach Estate, Iluka.

DETAILS

Tenders were advertised on 27 July 2005 through statewide public notice for the Supply and Maintenance of Ornamental Street Lights in Joondalup and Iluka. Tenders closed on 11 August 2005. Two Submissions were received from:

- Energize Electrics
- High Speed Electrics

Only one Respondent, High Speed Electrics, was able to meet the City's requirements. Energizer Electrics withdrew its tender due to a conflict of interest with High Speed Electrics, being its sub-contractor. This issue did not directly involve the City however concerns about the situation meant the City was reluctant to proceed with the acceptance of the tender until it had been resolved.

The City conducted further market assessments to ascertain availability of alternative suppliers or products and the best possible options for the City. The findings confirmed no known products in the current market place other than that offered by High Speed Electrics were compatible with the City's existing lighting equipment.

Issues and options considered:

It was noted that the costs of materials for the maintenance and replacement of the existing streetlights had increased significantly. An assessment of the schedule of rates against the previous schedule identified an overall average increase of 9% based on normal requirements. Many of these increases are due to cost escalation in raw materials such as copper and plastics. The other contributing factor to price increases includes reduction in quantity of items now required by the City (affected unit pricing), costs of specially manufactured items to replace obsolete items or materials and increased transportation costs for items manufactured overseas and interstate.

Reverse engineering was considered an option, which involved re-engineering of the materials required to identify any alternative options from another supplier that may or may not meet the initial design specifications but would operate to meet the requirements for normal street lighting. However, due to time constraint and resources required for undertaking this as a project, it was deemed not viable for there was no guarantee of any cost effective outcome for the City.

The unique and/or exclusive nature of the lighting fixtures and fittings is a major contributor to the rising costs of maintenance.

Link to Strategic Plan:

This requirement is linked to the Strategic Plan in accordance with the following items:

3 City Development.

Objective 3.1 To develop and maintain the City of Joondalup's assets and built environment.

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

Legislation – Statutory Provisions:

A statewide public tender was advertised, opened and evaluated in accordance with the *Local Government (Functions & General) Regulations 1996*, where tenders are required to be publicly invited if the consideration under a contract is, or is estimated to be, more, or worth more, than \$50,000. The consideration for this contract exceeds the Chief Executive Officer's Delegated Authority in relation to the acceptance of tenders to \$250,000.

Risk Management considerations:

It is considered that awarding the contract to the recommended Supplier will represent a low risk to the City based on it being a very well established service provider with the capacity to supply the goods and complete the required services. It is a third party accredited company to ISO9001.

Financial/Budget Implications:

The City has sufficient funds in its operational budget for this Contract to proceed. The total cumulative Contract value over the three (3) years of the Contract is approximately \$900,000 (excluding GST) based on previous requirements.

The City of Joondalup is a registered business entity for GST purposes. The nett effect on the price submitted by the successful tenderer is that the City pays GST but is able to claim an input tax credit for the amount of GST paid.

Policy implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Not Applicable.

COMMENT

High Speed Electrics has been undertaking work of this nature for many years for both the City and Mains Roads Department, WA. The company has a third party accredited Quality Assurance System ISO9001 for Electrical Installation and Maintenance of Street Lighting.

The price offered has increased by an average 9% per annum in comparison with previous contract rates.

Due to the length of the period since the original tender submission was received the City has sought and obtained confirmation from High Speed Electrics that the Statement of Requirements and the Schedule of Rates as previously submitted are still current.

ATTACHMENTS

Attachment 1 Schedule of Rates

VOTING REQUIREMENTS

Absolutely Majority.

MOVED Cr McLean, SECONDED Cr Hollywood that Council:

- 1 ACCEPTS the tender submitted by High Speed Electrics on a sole provider basis for the Supply and Maintenance of Ornamental Street Lights in Joondalup and Iluka in accordance with the requirements in Tender 004-05/06 at the rates as set out in the schedule at Attachment 1 to Report CJ161-09/06 for an initial period of twelve (12) months with two (2) further twelve-month optional extensions at the absolute discretion of the City;**
- 2 DELEGATES to the Chief Executive Officer Authority to approve if considered each of the twelve-month optional extensions and any price variations sought subject to satisfactory compliance with, and performance of, the requirements of Tender 004-05/06 by High Speed Electrics.**

The Motion was Put and

**CARRIED BY AN
ABSOLUTE MAJORITY (12/0)**

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

Appendix 8 refers

To access this attachment on electronic document, click here: [Attach8brf120906.pdf](#)

**CJ162 - 09/06 CITY WATCH COMMUNITY SECURITY PATROL
SERVICE - SERVICE REVIEW – [23565] [89558]**

WARD: All

**RESPONSIBLE
DIRECTOR:** Mr Dave Djulbic
 Infrastructure Services

CJ060912_BRF.DOC:ITEM 10

PURPOSE

For Council to exercise its option to extend its current contract with Wilson Security Pty Ltd for the provision of community security and patrol services within the City of Joondalup to its full term to 17 December 2009.

EXECUTIVE SUMMARY

The City has entered into a contract with NGR Pty Ltd to provide security and patrol services. The contract was for a 12-month period commencing on 18 December 2004, with options to extend at the City's discretion for 4 subsequent 12-month periods (subject to satisfactory performance reviews) for a maximum of 5 years duration in total.

In May 2006, NGR Pty Ltd was sold to Wilson Security. The City Watch contract is now being undertaken by Wilson's as the contract was been assigned to them as part of the sale. There has been no adverse impact on service provision as the service delivery company has been retained by Wilson's along with the majority of the City Watch Officers who deliver the service.

On appointment of NGR Pty Ltd in November 2004, the (then) Council of the City of Joondalup resolved that a report be submitted to Council prior to extension of the contract beyond 2 years. The third year of the contract commences on 18 December 2006.

In summary, performance by the contractor has been good. All key performance indicators have been met or exceeded in the majority of cases.

It is recommended that Council resolves to extend Contract 014-04/05 with Wilson Security Pty Ltd (previously NGS Guards and Patrols) for the provision of community security patrol services for the full term of the contract to 17 December 2009.

BACKGROUND

A security or patrol service (known as 'City Watch') has been provided in various forms by the City since 1997. The service was initially provided by a combination of Rangers and Security staff. In 2000, a new approach was taken with Rangers being separated from the service, and contractors appointed to provide the service following a public tender process.

Following some questioning by the community and Council on the need for the service and how it should be funded, these questions were put to the community in the referendum held in conjunction with the 2001 Biennial Local Government Elections. In relation to the question on provision of the service, 27,423 responses were provided, with 18,742 indicating their support for continuing the service.

The current service is provided under contract, and operates on a 24 hour, 7 days per week, 365 days per year basis, covering 6 patrol zones. Wilson Security Pty Ltd (previously NGR Pty Ltd and trading as NGS Guards and Patrols) is the present service provider.

There are 8 key performance indicators that are required to be met. Comment about these indicators and the degree to which they have been achieved appears below.

Resource deployment is able to be varied by the City within the overall parameters of the contract and is currently tailored to suit periods where most incidents occur:

Hours/Shift	Hours	Vehicles	Days	Zones	Total Hours per Annum
0430 - 1630	12	3	Mon - Fri	6	9,360
1630 - 0430	12	6	Mon - Sun	6	26,208
0430 - 1630	12	6	Sat - Sun	6	7,488
2000 - 0500	9	1	Thu - Sat	CBD	1,404
				Total	44,460

The main role of City Watch is to provide a visible deterrent to anti social behaviour, to observe and report matters that may require immediate Police attention, and to provide feedback to other City service units on issues that may require attention.

City Watch patrols work closely with the local Police having direct two way and mobile phone contact with the Joondalup Police Incident Management Unit that directs and manages Police resources. All staff engaged by the contractor are licensed Security Guards and have a First Aid Certificate level 1.

Some other services provided include:

- Removal of used syringes
- Attending to noise complaints on behalf of Environmental Health Officers
- Attending to all alarms in City buildings
- Checking City buildings and facilities to ensure they are secured each day/night
- Checking and confirming that facilities used have been paid for and are authorized
- Checking facilities after use, recording any damage and advising bookings staff for repairs and cost recovery.
- Arranging emergency repairs to City buildings or facilities after break in/accident.
- Delivering “Welcome Packs” to new residents and promote the City Watch service.
- Reporting broken or not working street lights.
- Undertaking “Party Alert” patrols, especially on weekends and when the City’s Recreation Halls are booked.
- Providing “Holiday Alert” patrols and specific checks on properties where residents have advised they will be on holidays.
- Providing special target patrols at specific times and locations where anti social behaviour has been identified.
- Providing first aid assistance if required.
- Assisting Police at traffic accident scenes.
- Identifying dumped or stolen vehicles and reporting their location to Rangers/Police.
- Assist in locating missing persons, particularly aged people who may wander away from their care facility.
- When requested, usually by a neighbour or relative, visit a residence to check on the location and well being of the resident who may not have been sighted or does not answer the telephone.

DETAILS

Issues and options considered:

The contract provides in essence, for the contractor to provide staff for the City Watch patrols on an hourly rate basis, their uniforms, appropriate vehicles, communications equipment, and GPS unit in each vehicle, and all support services. The City provides fuel for the vehicles used in the service, administrative support and liaison during office hours and the 1300 655 860 after hours telephone answering service.

Ongoing monitoring of the level and effectiveness of services provided is undertaken by measurement of performance against 8 indicators:

Key Performance Indicator 1

Number of kilometres traveled per day. Average per patrol vehicle per 12 hour shift to be 200 km or higher.

Key Performance Indicator 2

Respond to seventy five percent of incident calls within 10 minutes

Key Performance Indicator 3

Customer Contacts through direct introduction with Welcome Packs

Key Performance Indicator 4

Independent market research survey conducted. Minimum levels of 70% satisfaction and 80% awareness of the service, to be achieved and maintained.

Key Performance Indicator 5

Reporting requirements and timelines as set by the City to be met on time and to the standard established in the tender documentation and templates as agreed from time to time.

Key Performance Indicator 6

To attend all targeted patrols and visits to special areas of interest and identified hot spots in consultation with the City and other agencies. Target to be 50 per month under standard hours and to rise proportionately with increased patrols, determined and measured as an output of service provision.

Key Performance Indicator 7

To attend all additional patrols over and above those outlined at clause 3bii) of the Contract "Standard Hours of Service Provision per year" and requested by the City.

Key Performance Indicator 8

Achieve a 75% satisfaction and acceptance rating from service recipients responding to follow-up by City staff.

Overall performance against these KPI's is summarised as follows. Areas shaded indicate that the KPI is taken on an annual basis (KPI 4), or the occasions where an additional service or request was added (KPI 7):

MONTH	KPI 1		KPI 2		KPI 3		KPI 4		KPI 5		KPI 6		KPI 7		KPI 8	
	Yes	No														
January 2004	✓		✓		✓				✓		✓				✓	
February	✓		✓		✓				✓		✓					X
March	✓		✓		✓				✓		✓					X
April	✓		✓		✓				✓		✓				✓	
May	✓		✓		✓				✓		✓				✓	
June	✓		✓		✓		✓		✓		✓				✓	
July	✓		✓		✓				✓		✓				✓	
August	✓		✓		✓				✓		✓				✓	
September	✓		✓		✓				✓		✓				✓	
October	✓		✓		✓				✓		✓				✓	
November	✓		✓		✓				✓		✓				✓	
December	✓		✓		✓				✓		✓				✓	
January 2005	✓		✓		✓				✓		✓				✓	
February	✓		✓		✓				✓		✓				✓	
March	✓		✓		✓				✓		✓				✓	
April	✓		✓		✓				✓		✓					X
May	✓		✓		✓				✓		✓				✓	
June	✓		✓		✓		✓	X	✓		✓				✓	
July	✓		✓		✓				✓		✓				✓	
August	✓		✓		✓				✓		✓				✓	
September	✓		✓		✓				✓		✓				✓	
October	✓		✓		✓				✓		✓				✓	
November	✓		✓		✓				✓		✓					X
December	✓		✓		✓				✓		✓		1		✓	
January 2006	✓		✓		✓				✓		✓				✓	
February	✓		✓		✓				✓		✓				✓	
March	✓		✓		✓				✓		✓				✓	
April	✓		✓		✓				✓		✓				✓	
May	✓		✓			X			✓		✓				✓	
June	✓		✓			X	✓		✓		✓				✓	

In the 29 months since the contract was awarded, there have been a total of 232 'check' points at which performance has been assessed. Of the 7 instances where the KPI was not met, 2 are the most recent and were at the request of the City (pending amendments to the Mayor's message in Welcome Packs for new residents), indicating that performance requirements were met on 98% of occasions.

Overall, it is considered that performance of the contractual requirements has been met.

Whilst there is not necessarily a direct link, City Watch can have an influence on crime. Crime statistics are used as a measure of the success of policing in an area and can be compared to other Police Districts to gauge overall success and identify crime trends. The following is an extract from the Police data and details the number of crime incidents in the City of Joondalup for the years 2003, 2004 and 2005:

Year	Incidents
2003	15,201
2004	12,110
2005	11,143

Link to Strategic Plan:

Provision of the City Watch Community and Security Patrol Service is in keeping with the City's Strategic Plan Key Focus Area 1. - Community Wellbeing:

- Outcome: The City is a safe and healthy City;
- Objective 1.4: Continue to implement the Safer Community Program.

The City Watch Community and Security Patrol Service is a key component of the Safer Community Program.

Legislation – Statutory Provisions:

The provision of this service is at the discretion of the Council, as there are no statutory obligations requiring the City to undertake this activity.

Risk Management considerations:

There are a number of risks associated with continuing or discontinuing the service. Given the most recent survey results and good performance indicators, cancellation of the service is not likely to be well received by the community, although the funds could be placed into capital works or some other service.

If discontinued, the City would need to make other provisions for some of the services undertaken that could not be readily discontinued, such as responding to alarm monitors or facilities checks.

Additional service/demands could be added to the service if the situation demands it, under existing contractual provisions.

Financial/Budget Implications:

Account No:	1682246200001
Budget Item:	City Watch Contract Services
Budget Amount:	\$1,815,032
YTD Amount:	\$ 302,670
Actual Cost:	\$ 66288

The City Watch contract costs approximately \$1,609,613 for a whole year, being provision for the community patrol service by the contractor, fuel costs of \$120,000 and \$50,000 for additional patrols over and above the specified hours. The other main components of the budget cover in house staff costs, public relations, promotions and communication costs including provision of the emergency telephone 1300 655 860 number.

Policy implications:

Not applicable.

Regional Significance:

The provision of community security patrols by neighbouring local governments is seen as important and making a strong contribution to safety and security within the region. The Cities of Bayswater and Joondalup provide contracted security patrols, the City of Stirling provides a dedicated in house patrol service and the City of Wanneroo has its Rangers attend to security and safety matters. The four cities comprise two Metropolitan Police Districts and have a total population in excess of half a million people.

Sustainability implications:

The Community Security Patrol Service assists with maintenance of a safe and secure social environment that contributes to building communities where residents' quality of life is enhanced or preserved.

Consultation:

Meeting Key Performance Indicator 4 of the contract requires the City to undertake independent market research surveys to determine satisfaction and awareness levels of the service.

In this regard, the City participates in an annual survey process of residents, where satisfaction with its services are assessed and compared to 12 other local governments who also participate. The results of the survey are shown with services placed on a grid comparing community levels of satisfaction with the importance placed on their provision.

The most recent survey was concluded in June 2006, it indicates that satisfaction levels are relatively high, with 72% of residents surveyed satisfied, 12% neutral and 16% dissatisfied.

This compares favourably with the 2005 result, which indicated satisfaction of 65%.

In terms of satisfaction and importance, the researchers assigned a 'monitor' recommendation with respect to the City Watch Service, indicating that while importance and satisfaction levels were not low, initiatives to increase awareness and effectiveness should not be discarded.

In this regard, anecdotal evidence suggests that there is a perception in the community that the City Watch Service and Officers should do more. This perception may be caused mainly through a misunderstanding of roles, responsibilities and legislative authority as compared to Police. The close liaison with Police and timely response to residents' requests for assistance, frequently see City Watch vehicles in the area of concern assessing the need for Police attendance and reporting back to Police. Where appropriate City Watch Officers will attend to the matter and this may have contributed to confusion in what are Police and City Watch roles.

It is recognised that the City Watch Community Security Patrol Service needs to have its profile raised to better inform the community of all aspects of the service and how it can assist residents. However, there is little point in promoting a service until a decision on the contract extension is made. Therefore, subject to the Council renewing the City Watch contract, it is proposed that a comprehensive Marketing Plan for the City Watch Community Security Patrol Service be prepared by officers to raise community awareness of what the service does and the benefits provided.

COMMENT

The Contractor has substantially met the Key Performance Indicators each month during operation of the contract. The service appears valued by the community, and as such extension of the contract for its full term is recommended. While the contract allows for 12-month extensions at the City's discretion, in practice review of performance is ongoing, and any issues that may arise can be resolved by management.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Simple majority.

MOVED Cr Jacob, SECONDED Cr Hollywood that Council EXERCISES its option to extend Contract 014-04/05 with Wilson Security Pty Ltd (previously NGR Guards and Patrols) for the provision of community security and patrol services in the City of Joondalup to 17 December 2009.

AMENDMENT MOVED Cr Hart, SECONDED Cr John that Point 1 be amended to read as follows, with the addition of a Point 2 to the Motion:

- 1 That Council EXERCISES its option to extend Contract 014-04/05 with Wilson Security Pty Ltd (previously NGR Guards and Patrols) for the provision of community security and patrol services in the City of Joondalup to 17 December 2007;
- 2 in conjunction with the next Ordinary Election, the City conducts a referendum on the provision of community security patrols. In particular, the referendum should seek views on:
 - Whether the service should be maintained, whether the service should be expanded, whether the contracted or whether the service should be ceased;
 - The amount people would be prepared to pay for an expanded service; and
 - Whether the service should be provided by a private contractor or whether it should be provided directly by the City, possibly through an expanded Ranger Services area.

Discussion ensued.

Mayor Pickard foreshadowed his intention to move a different Amendment should the Amendment under consideration not be successful.

The Amendment was Put and

LOST (2/10)

In favour of the Amendment: Crs Hart and John **Against the Amendment:** Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, Corr, Fishwick and Currie

AMENDMENT MOVED Mayor Pickard, SECONDED Cr McLean that Council:

- 1 **EXERCISES its option to extend Contract 014-04/05 with Wilson Security Pty Ltd (previously NGR Guards and Patrols) for the provision of community security and patrol services in the City of Joondalup for an additional 12 months to 17 December 2007;**
- 2 **REQUESTS the CEO to undertake a review comparing in-house provision as opposed to outsourcing the community security and patrol services, and that a report on the review findings be submitted to Council for consideration prior to the extension of the contract beyond 17 December 2007.**

Discussion ensued.

The Amendment was Put and

CARRIED (12/0)

In favour of the Amendment: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

AMENDMENT MOVED Cr Corr SECONDED Cr Magyar that Point 2 of the Motion be amended to read as follows:

- “2 REQUESTS the CEO to undertake a review comparing in-house provision as opposed to outsourcing the community security and patrol services, and that a report on the review findings be submitted to Council for consideration prior to the 2007/08 budget decision.”**

Discussion ensued.

The Amendment was Put and

CARRIED (12/0)

In favour of the Amendment: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

The Original Motion as amended, being:

- 1 **EXERCISES its option to extend Contract 014-04/05 with Wilson Security Pty Ltd (previously NGR Guards and Patrols) for the provision of community security and patrol services in the City of Joondalup for an additional 12 months to 17 December 2007;**
- 2 **REQUESTS the CEO to undertake a review comparing in-house provision as opposed to outsourcing the community security and patrol services, and that a report on the review findings be submitted to Council for consideration prior to the 2007/08 budget decision.**

was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

CJ163 - 09/06 CONSIDERATION OF THE OUTCOME OF PUBLIC ADVERTISING FOR PROPOSED DPS2 AMENDMENT 33 AND STRUCTURE PLAN NO. 7: LOT 4 (25) SHEPPARD WAY, MARMION – [88575] [18577]

WARD: South

RESPONSIBLE A/DIRECTOR: Mr Chris Terelinck
Planning and Community Development (Acting)

CJ060912_BRF.DOC:ITEM 11

PURPOSE

The purpose of this report is for Council to consider submissions received during advertising of the scheme amendment and structure plan and to consider whether to support the amendment and structure plan for final approval.

EXECUTIVE SUMMARY

The proposals relate to Lot 4 (25) Sheppard Way, Marmion, which contains an old service station building that has been converted for use as a dry cleaning business. The proposed scheme amendment and structure plan also relate to an adjoining Western Power transformer site (Lot 1), which is intended to be relocated at the applicant's expense to a small parcel of open space at Reserve 34962 (26) Cliverton Court, Marmion.

The intent of the proposals is to guide the future subdivision and redevelopment of the land in a coordinated and integrated manner to create a medium density mixed use residential development.

The proposed scheme amendment seeks to rezone the site from 'Commercial' to 'Mixed Use' and to increase the residential density code applicable to the land from R20 to R50. The proposed structure plan seeks to facilitate the redevelopment of the site and includes an indicative building footprint plan showing six two storey residential dwellings and two 'mixed use' buildings.

On 21 February 2006 Council resolved to commence advertising. Advertising closed on 17 May 2006 and 11 submissions were received, being six objections and five neutral submissions. The concerns about the proposed scheme amendment relate to the proposed increase in density from R20 to R50, preference to retain the Commercial zoning, the impact this development will have on the existing shopping centre and potential increases in traffic.

The main concerns about the structure plan relate to building height and the inclusion of a proposed tower element on the corner of Sheppard Way and Whiley Road, land use permissibility, and potential land use conflicts.

The assessment of the proposal is that it could be implemented so as to negate any of the substantive concerns mentioned, by the incorporation of various actions as stated in this report.

It is recommended that Council:

- adopts as final the scheme amendment without modification.
- adopts the structure plan with modifications relating to land use permissibility, building height, setback modifications and a new clause restricting the maximum number of dwellings permitted, and
- forwards both to the Western Australian Planning Commission (WAPC) for final adoption and certification.

BACKGROUND

Suburb/Location:	Lot 4 (25) Sheppard Way & Lot 1 (4) Whiley Road, Marmion
Applicant:	Urbanplan
Owner:	Lot 4: L Beardmore & E Marra; Lot 1: Western Power Corporation
Zoning:	DPS: Commercial
	MRS: Urban
Site Area:	Lot 4 – 2,000m ² . Lot 1 – 17.5m ²
Structure Plan:	Draft Sheppard Way Structure Plan No 7

At its meeting of 21 February 2006 (Item CJ018 – 02/06 refers), Council resolved to initiate this amendment and advertise the amendment and structure plan in the following terms:

- 1 *Pursuant to clause 9.4 of the City of Joondalup District Planning Scheme No 2, ADOPTS the draft Sheppard Way Structure Plan (Structure Plan No 7) as per Attachment 2 to Report CJ018-02/06 for the purpose of public advertising and make it available for public comment for 42 days, subject to modification of clause 1.5.2 vii to read “Residential parking shall be provided in accordance with the Residential Design Codes. Parking for other uses shall be assessed in accordance with the Scheme, and subject to landowner agreement, reciprocal parking with the adjoining shopping centre may be considered.”;*
- 2 *Pursuant to Section 7 of the Town Planning and Development Act 1928, AMENDS the City of Joondalup District Planning Scheme No 2 for the purposes of rezoning Lot 4 (25) Sheppard Way and Lot 1 (23) Whiley Road, Marmion from ‘Commercial’ with a density code of R20 to ‘Mixed Use’, with a density code of R50 for the purposes of advertising for a period of 42 days;*
- 3 *NOTES that the advertising of the scheme amendment and structure plan proposals are to occur concurrently;*
- 4 *Prior to the advertising period commencing, FORWARDS the proposed amendment to the Environmental Protection Authority in order to decide if an environmental review of the site is required;*
- 5 *ADVISES the applicant that all necessary approvals relating to the proposed relocation of the Western Power transformer infrastructure to Reserve 34962 (26) Cliverton Court (Cliverton Park), Marmion must be effected prior to Council further considering the draft structure plan and scheme amendment upon completion of the public advertising period.*

In accordance with resolution 4 above, the proposal was referred to the Environmental Protection Authority, who advised that an environmental review was not required. The scheme amendment and structure plan were then advertised for 42 days as required by resolution 2 above.

A development application was submitted to the Western Australian Planning Commission (WAPC) for the relocation of the Western Power transformer and was conditionally approved by the WAPC on 17 August 2006.

Location

The subject land is adjacent to the Marmion Shopping Centre with residential development opposite the site. Attachment 1 contains a locality plan and aerial map of the site. The site was previously occupied by a service station, which closed and the underground tanks removed in 2002. The buildings on the site are currently occupied by a dry cleaning premises.

DETAILS

The scheme amendment application proposes to rezone Lot 4 (25) Sheppard Way and Lot 1 (23) Whiley Road, Marmion from 'Commercial' R20 to 'Mixed Use' and rezone it from R20 (average lot size of 500m) to R50 (average lot size of 180m²). Attachment 2 contains the scheme amendment plans. The R50 density would allow the development of a maximum of 11 dwellings, while the current R20 density would allow the development of four dwellings.

The indicative plan which forms part of the structure plan application shows six, two-storey dwellings, and two 'Mixed Use' buildings with commercial tenancies on the ground floor and a residential dwelling above.

The proposed development will front Sheppard Way and Whiley Road with a common driveway from Sheppard Way servicing four dwellings, including the two Mixed Use buildings. Four separate driveways would service the other four residential dwellings (one on Sheppard Way and the remaining three on Whiley Road). While the plan is indicative only, it demonstrates the potential development of the lot (refer Attachment 4).

A Western Power transformer pad is located on Lot 1 Whiley Road and is also subject of this amendment. The applicant proposes to relocate the transformer to Reserve 34962 (26) Cliverton Court (Cliverton Park), Marmion and is approximately 15m² in area (refer Attachment 1). The relocation is dependant on a separate statutory process as it relates to development upon reserved land, which requires the approval of the WAPC. In accordance with the February 2006 Council resolution, the applicant lodged a development application to relocate the transformer and this was subsequently approved by WAPC on 17 August 2006.

Applicants' Submission

The applicants have raised the following comments to support the amendment and structure plan:

“(The structure plan) provides medium density residential housing in an urban infill site within a residential area. This helps reduce further urban expansion over greenfields sites and makes efficient use of the existing infrastructure and services in the neighbourhood.

(The subject land) is within cycling distance of the coast and has a full array of shopping and most community facilities next door.

Locating medium density households adjacent to the shopping centre and the bus routes servicing this area increases people's accessibility and mobility to services. The fact that the bus route links up to the railway line servicing Perth and also provides an alternative option for commuters working in Perth who may choose to use public transport to get to work over the private car.

The location of the development close to facilities also makes walking and cycling a viable option for short trips."

Consultation:

In accordance with the Council resolution, the scheme amendment and structure plan were advertised for a period of 42 days, with signs on site, a notice in the Joondalup Times and on the City's website and letters sent to surrounding landowners and service authorities. Eleven submissions were received, being four neutral submissions from service authorities, one neutral submission from a resident and six submissions objecting to the rezoning and/or various provisions within the draft structure plan. Attachment 5 is a summary of the submissions received. Full copies of all submissions have been placed in the Councillors' reading room for information.

In regard to the scheme amendment, the issues raised in the public consultation relate to both the rezoning from Commercial to Mixed Use and the recoding from R20 to R50. Specifically:

- The suitability of rezoning the subject land to allow for medium density residential development adjacent to a shopping centre, which operates up to 9pm, six days a week.
- The increase in density from R20 to R50
- The increased traffic as a result of the development
- The impact this will have on the shopping centre
- Objection to rezoning in its entirety.

The primary issues raised in regard to the structure plan as a result of the public consultation are:

- objection to the density of the development
- objection to the tower element on the corner of Sheppard Way/Whiley Road
- the suitability of permitting a dry cleaning establishment
- objection to nil rear setbacks
- objection to the permissibility of staging the development
- objection to a two-storey development, which will reduce the visibility of the shopping centre from Sheppard Way.

These issues are analysed in the comment section of the report.

Options:

Scheme Amendment

The options available to Council in considering the structure plan proposal are:

- Determine that the scheme amendment, without modification(s), is satisfactory, adopt it as final and forward to the WAPC for approval by the Minister for Planning & Infrastructure.

- Determine that the scheme amendment, with minor modification(s), is satisfactory, adopt it as final and forward to the WAPC for approval by the Minister for Planning & Infrastructure.
- Refuse to adopt the scheme amendment and forward it to WAPC for the Minister for Planning & Infrastructure to make a determination.

Structure Plan

The options available to Council in considering the structure plan proposal are:

- Determine that the structure plan, without modification(s), is satisfactory, adopt it as final and forward to the WAPC for endorsement.
- Determine that the structure plan, with minor modification(s), is satisfactory, adopt it as final and forward to the WAPC for endorsement.
- Refuse to adopt the structure plan.

Should Council require modifications to the structure plan (for example, to delete the tower component of the development) or refuse the structure plan, the applicant has a right to request the State Administrative Tribunal review the decision.

Policy implications:

Not applicable.

Risk Management considerations:

Not applicable

Legislation – Statutory Provisions:

Attachment 6 details the scheme amendment process. In accordance with the Town Planning Regulations, the scheme amendment was advertised for a period of 42 days.

Attachment 7 details the structure plan process. Clause 9.6 of DPS2 outlines that Council has 60 days to make a decision upon the close of the public comment period or longer if agreed to by the applicant. In accordance with clause 9.6.2, an extension of time up to an additional 60 days has been agreed to by the applicant.

Link to Strategic Plan:

The recommendation in this report is supported by the following objective and strategy in the City's Strategic Plan 2003 – 2008:

Objective 3.3	To continue to meet changing demographic needs.
Strategy 3.3.1	Provide residential living choices.

Financial/Budget Implications:

Not applicable

Regional Significance:

The proposal is unlikely to have any regional significance.

Sustainability implications:

The proposed structure plan and scheme amendment will facilitate residential dwellings and mixed use buildings at a medium density, promoting both economic and social sustainability.

The development of the medium density housing has advantages, including close proximity to a bus route on Sheppard Way, a nearby local park, a primary school and a local neighbourhood centre. This accords with strategy 3.3.1 “Provide Residential Living Choices” of the City’s Strategic Plan and the State Government policy – ‘Liveable Neighbourhoods Community Design Code’.

COMMENT

A range of issues was raised by the community during the public consultation period. The issues raised, together with responding comments in relation to those issues are as follows:

Scheme Amendment IssuesRezoning

In four of the submissions received, objection is raised to the rezoning to allow for residential development. Such concerns include the impact on the existing shopping centre, and the precedent for other centres to be similarly rezoned.

Comment

The shopping centre site and the adjacent lot accommodating the professional centre are both zoned Commercial. In one of the submissions it is identified that the centre has recently had a long-term vacancy. The structure plan allows for up to 200m² commercial floor space. There is another local centre within 750m of this site, being Duncraig Village, on the corner of Marmion Avenue and Burragah Way, Duncraig. It is considered that these sites should provide sufficient commercial zoned land to service the local centre needs of this locality.

In regard to compatibility of residential abutting onto the centre, it is noteworthy that the shopping centre, restaurant and specifically the liquor store, operates until 9pm, six days a week. The indicative building footprint plan identifies three dwellings adjacent to the liquor store. It is considered that, providing that prospective purchasers are aware that the centre does operate in the evenings at least six days a week, the uses can co-exist.

It is not considered that a precedent would be set for other centres to be rezoned, as each application must be considered on its own merit, and is not justified by other similar applications but on its individual planning merit.

Density

The increase in density from R20 to R50 is raised as a concern in two of the submissions.

Comment

The only site nearby that has a density of R50 is the Seacrest Retirement Village on the corner of Harman Road and Marmion Avenue, Sorrento. Another nearby site at 3 Hocking Parade Sorrento (adjacent to Sorrento Beach Resort) has been developed to an R40 density. The R50 coding would potentially allow up to 11 dwellings. However, the indicative building plan included in the structure plan shows only eight dwellings, which equates to an R40 density.

The applicant has advised that the R50 density has been requested in order to be able to meet the minimum and average lot size requirements under the R Codes given the configuration shown on the indicative plan (Attachment 4). Including a clause in the structure plan to restrict the maximum number of dwellings to eight would allow for development in accordance with the indicative building plan and give the flexibility to allow smaller minimum lot sizes under the R50 density. Therefore in order to address the concerns about density, it is recommended that the structure plan limit the number of dwellings to not more than eight.

Structure Plan Issues

Land Use Permissibility

Clause 1.5.2 xxiv of the structure plan details the land uses permitted and those excluded. The structure plan provides a list of permitted land uses and details a number of land uses that are excluded. However the structure plan only details four excluded uses and does not detail that the 30 other land uses ordinarily permitted or discretionary under the Mixed Use zone are not permitted. It is appropriate to clarify that, notwithstanding the uses that are ordinarily able to be considered in the Mixed Use zone, only those specified within the structure plan can be considered.

The draft structure plan lists a dry cleaner as a permitted land use. The submission from the Health Department of WA suggests the structure plan and amendment should comply with the Environmental Protection Authority guide regarding separation distances between industrial and residential land uses. This guideline recommends a separation of 100m between a dry cleaning premises and residential development, due to the potential noise and odour impacts associated with a dry cleaners. Table 1 of DPS2 lists a dry cleaners as a use not permitted (X) in a Mixed Use zone.

Comment

The applicant proposes a staged development with stage one being development of the lots fronting Whiley Road, and the existing dry cleaners still operating in the building on the remainder of the lot. Even if a dry cleaners use was listed as a prohibited use, this staged process could still occur as the dry cleaners would have non-conforming use rights. A non conforming use right means that an existing use, such as the dry cleaners, which have the necessary planning approvals in place, can continue to operate even if a scheme provision or structure plan provision is introduced that later prohibits that use.

In response to the Health Department concern, it is recommended that the structure plan be modified such that a dry cleaner is a prohibited (X) use. Given the above, the landowners have now advised that they intend to utilise one of the mixed-use tenancies for dry cleaning collection purposes only, with no dry cleaning being undertaken at the premises.

No suitable definition for such a land use is included within DPS2. A minor modification to the structure plan is therefore recommended to define a 'Dry Cleaning Agency' and identify this as a permitted (P) use within Clause 1.5.2 xxiv of the Structure Plan.

Further, it is considered that there was an oversight in not including dwellings in the list of permitted uses. It is recommended that single and grouped dwellings be permitted/discretionary uses in accordance with the Mixed Use zone under Table 1 and that the clause be reworded.

A chemist is a use that is not specifically listed in the Land Use Table of DPS2 because it is considered to be a shop. A proposed shop use is not supported in this type of development and therefore it is recommended that a chemist use be excluded from the list.

In summary, it is recommended that clause 1.5.2xxiv be modified to address the above matters.

Building Height

Three of the submissions express concern about the potential building height and/or concern the tower element will be used for signage purposes.

Comment

The natural ground levels drop three metres across the site, so there is potential for the strata development fronting Sheppard Way to be constructed at a substantially higher level as compared with the shopping centre. Therefore, the dwellings may reduce the visibility of a portion of the shopping centre from Sheppard Way. However, the subject property could presently be developed with a commercial use of a similar height and scale.

As the site has a fall across the lot of up to three metres this will result in the proposed rear strata lots being up to 12 metres above the existing ground level. In order to ensure that the development is of a height and scale that is commensurate with the surrounding locality, it is recommended that the clause be modified to also restrict development height to no more than 2 storeys. Further, the structure plan does not allow discretion to seek any increase in height above 9.5m and with the recommended variation this would similarly not allow for discretion to consider development of more than two storeys.

Concern is also raised in two submissions regarding the proposed tower element. The structure plan permits a tower element on the corner dwelling only to a maximum height of 11 metres. Clause 1.5.2 xii of the structure plan states that signage shall be located on the mixed-use buildings and therefore signage erected on the tower would not be supported, as the tower is for residential purposes only.

Notwithstanding, it is considered that a tower element is not essential to create an appropriate building design, and it is recommended that clause 1.5.2 xvii, which allows the tower element, be deleted. The height of all development on this site would therefore be restricted to not more than 9.5m above the kerb level and not more than two storeys.

Setbacks

One of the submissions raises concern about the proposed nil setback to the rear.

Comment

The provisions permitting a nil rear setback internal to the development are supported. The shopping centre site has existing car parking bays up to the rear boundary of this property.

Therefore, and in response to this submission, it is recommended that a provision be included in the structure plan requiring commercial buildings to be setback from the shopping centre to allow for pedestrian access between the existing car park and the frontage to the commercial tenancy.

In addition, clause 1.5.2 xi is proposed to be reworded to strengthen the requirement that buildings are to have major openings facing onto the shopping centre and therefore, ensures there will not be any blank walls abutting the centre.

Summary

In conclusion, it is recommended that:

- the scheme amendment be adopted for final approval without modification.
- the structure plan be adopted for final approval with modifications relating to land use permissibility, building height, setback modifications and a new clause being added limiting the number of dwellings to a maximum of eight.

ATTACHMENTS

Attachment 1	Location and Aerial site Plans
Attachment 2	Proposed Amendment No 33 To District Planning Scheme No 2 Zoning and R-Code Maps
Attachment 3	Draft Sheppard Way Structure Plan No 7
Attachment 4	Indicative building footprint – included in the structure plan
Attachment 5	Submission Table
Attachment 6	Town Planning Scheme Amendment process flowchart
Attachment 7	Structure Plan process Flowchart

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That Council:

- 1 ADOPTS for final approval without modification Amendment No. 33 to the City of Joondalup District Planning Scheme No. 2 which seeks to rezone Lot 4 (25) Sheppard Way and Lot 1 (23) Whiley Road, Marmion from 'Commercial' with a density code of R20 to 'Mixed Use', with a density code of R50;
- 2 AMENDS Attachment 3 to Report CJ-09/06 (The Sheppard Way Structure Plan No 7) as follows:
 - (a) The following definition to be inserted after 'Ground Level' under Clause 1.3 Definitions;

"DRY CLEANING AGENCY' means any land or building where clothes and fabrics are received from the general public for the purposes of cleaning off site."
 - (b) Clause 1.5.2 v. to be modified to read:

"Commercial buildings shall be setback from the shopping centre to allow for pedestrian access between the existing car park and the frontage to the commercial tenancy."
 - (c) Modify clause 1.5.2 xi to add in at the end of the point, the following:

"Specifically, buildings shall have habitable rooms and/or major openings facing both streets and/or the shopping centre, as well providing visually interesting elevations to both streets/the shopping centre."

- (d) Modify clause 1.5.2 xv to read as follows:

“The maximum Building Height, as measured from existing curb level shall be: wall height – 7 metres; Roof ridge – 9.5 metres, with all buildings being a maximum of two storeys;”

- (e) Delete clause 1.5.2 xvii relating to tower element and renumber all subsequent sub-clauses accordingly;
- (f) Clause 1.5.2 xxiv. of the structure plan relating to land use permissibility shall be deleted and replaced with the following:

Notwithstanding the land use permissibility outlined in Table 1 (The Zoning Table) of District Planning Scheme No. 2, the following uses are those permitted or discretionary:

Bank:	P
Grouped Dwelling:	D
Hairdresser:	P
Home Business – Category 1, 2 & 3:	P
Dry Cleaning Agency	P
Medical Centre:	P
Newsagent:	D
Office:	P
Single House:	P*

All other uses are not permitted (X)

Refer clause 3.2.2 of the Scheme for the meanings of the above symbols.

* In accordance with clause 2.3.3 of the Residential Design Codes, planning approval is required for the erection of a single house on lots less than 350m²;

- (g) Insert a new clause 1.5.2 xxvi that reads:

“The structure plan area shall accommodate a maximum of eight dwellings.”

- 3 RESOLVES that the Sheppard Way Structure Plan No. 7 document as modified in accordance with point 2 above, be adopted and submitted to the Western Australian Planning Commission for final adoption and certification;
- 4 Subject to certification by the Western Australian Planning Commission, ADOPTS the Sheppard Way Structure Plan No 7 and proposed modifications as an Agreed Structure Plan and authorises the affixation of the Common Seal to, and the signing of, the structure plan document;
- 5 NOTES the submissions received and ADVISES the submitters of Council’s decision.

MOVED Cr Currie, SECONDED Cr Fishwick that Council:

1 **ADOPTS** for final approval Amendment No 33 to the City of Joondalup District Planning Scheme No 2 which seeks to rezone Lot 4 (25) Sheppard Way and Lot 1 (23) Whiley Road, Marmion subject to the following modification:

(a) The density coding being R 40

2 **AMENDS** Attachment 3 to Report CJ-09/06 (The Sheppard Way Structure Plan No 7) as follows:

(a) The following definition to be inserted after 'Ground Level' under Clause 1.3 Definitions;

“DRY CLEANING AGENCY’ means any land or building where clothes and fabrics are received from the general public for the purposes of cleaning off site.”

(b) Clause 1.5.2 v. to be modified to read:

“Commercial buildings shall be setback from the shopping centre to allow for pedestrian access between the existing car park and the frontage to the commercial tenancy.”

(c) Modify clause 1.5.2 xi to add in at the end of the point, the following:

“Specifically, buildings shall have habitable rooms and/or major openings facing both streets and/or the shopping centre, as well providing visually interesting elevations to both streets/the shopping centre.”

(d) Modify clause 1.5.2 xv to read as follows:

“The maximum Building Height, as measured from existing curb level shall be: wall height – 7 metres; Roof ridge – 9.5 metres, with all buildings being a maximum of two storeys;”

(e) Delete clause 1.5.2 xvii relating to tower element and renumber all subsequent sub-clauses accordingly;

(f) Clause 1.5.2 xxiv. of the structure plan relating to land use permissibility shall be deleted and replaced with the following:

Notwithstanding the land use permissibility outlined in Table 1 (The Zoning Table) of District Planning Scheme No. 2, the following uses are those permitted or discretionary:

Bank:	P
Grouped Dwelling:	D
Hairdresser:	P
Home Business – Category 1, 2 & 3:	P
Dry Cleaning Agency	P
Medical Centre:	P
Newsagent:	D
Office:	P
Single House:	P*

All other uses are not permitted (X)

Refer clause 3.2.2 of the Scheme for the meanings of the above symbols.

- * In accordance with clause 2.3.3 of the Residential Design Codes, planning approval is required for the erection of a single house on lots less than 350m²;

(g) Insert a new clause 1.5.2 xxvi that reads:

“The structure plan area shall accommodate a maximum of eight dwellings.”

- 3 **RESOLVES** that the Sheppard Way Structure Plan No. 7 document as modified in accordance with point 2 above, be adopted and submitted to the Western Australian Planning Commission for final adoption and certification;
- 4 Subject to certification by the Western Australian Planning Commission, **ADOPTS** the Sheppard Way Structure Plan No 7 and proposed modifications as an Agreed Structure Plan and authorises the affixation of the Common Seal to, and the signing of, the structure plan document;
- 5 **NOTES** the submissions received and **ADVISES** the submitters of Council’s decision.

Discussion ensued.

The Motion was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

Appendix 9 refers

To access this attachment on electronic document, click here: [Attach9agn190906.pdf](#)

CJ164 - 09/06 PROPOSED FOURTEEN (14) GROUPED DWELLINGS ABOVE EXISTING COMMERCIAL TENANCIES (HEATHRIDGE CITY SHOPPING CENTRE) - 1-11/ 99 CARIDEAN STREET, HEATHRIDGE – [63542]

WARD: North-Central

RESPONSIBLE A/DIRECTOR: Mr Chris Terelinck
Planning and Community Development (Acting)

CJ060912_BRF.DOC:ITEM 13

PURPOSE

The purpose of this report is to request Council's determination of an application for planning approval to construct 14 grouped dwellings above an existing commercial development at Heathridge City Shopping Centre.

EXECUTIVE SUMMARY

The development is for the proposed addition of 14 residential dwellings above an existing commercial development, forming part of the Heathridge City Shopping Centre (HCSC). The proposal also includes a new public alfresco area in the forecourt of the shopping centre.

The development of residential land uses above commercial tenancies is quite unique outside of the Joondalup City Centre area.

Council is requested to exercise its discretion in relation to the grouped dwelling land use for the site, as well as a cash in lieu payment for a shortfall of 6 car-parking bays. Council is also requested to exercise its discretion in assessing the development criteria for setbacks, parking calculations and open space requirements under clause 4.2.1 of the Residential Design Codes 2002 (R-Codes), for mixed-use developments.

The proposed development will be a positive addition to the area and will assist in meeting key objectives of the City of Joondalup Strategic Plan. It will contribute to the diversity of housing choice, which will suit the needs of the changing demographics of the community.

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

BACKGROUND

Suburb/Location: Lot 740 (1-11/ 99) Caridean Street, Heathridge
Applicant: Peter Raynes Design Consultant
Owner: Strata Management for Heathridge City Shopping Centre
Zoning: **DPS:** Commercial R20
MRS: Urban
Site Area: 6012m²
Structure Plan: Not Applicable

The existing HCSC was developed in 1986. The subject site is adjoined by Heathridge Shopping Centre (Lot 741) to the east and a battleaxe shaped lot (Lot 745) to the south and west (refer Attachment 1).

Lot 745 is a “Community Purpose” site owned by the City of Joondalup. There is an existing “right-of-carriageway” over the access leg of Lot 745, which forms part of an agreement with the subject HCSC site (see attachment 3). This is currently being used as a rear access for the commercial units of the HCSC site. This main portion of lot 745 is not being used, and is currently a grassed area forming part of the adjoining public open space.

The development was previously approved by Council at its meeting of 9 September 2003 (CJ205 – 09/03). This approval was subject to a number of conditions. It is noted that the previous assessment was considered under the provisions of a multiple dwelling, within the Residential Design Codes 2002 (R-Codes). Since that time, and as a result of new case law, the proposal is now considered as grouped dwellings.

The previous approval was not acted upon and the statutory 2-year planning approval period for this development has since lapsed. Consequently, the applicant has now re-submitted the plans under cover of a new application for planning approval.

DETAILS

The application is for 14 new residential units above an existing commercial development. The 14 dwellings comprise of 6 three-bedroom, 2 two-bedroom and 6 single-bedroom dwellings. The existing commercial tenancies at the ground floor level are to remain. A new outdoor alfresco dining area is proposed for the existing restaurant.

Car parking for the dwellings is proposed to be located at the rear (south) of the site along with dedicated storage facilities for each unit. Access to the parking area is proposed along the existing service access roads to the west and east of the subject development. Customer parking for the commercial units will remain as existing at the front of the shopping centre.

The property is located in close proximity to schools, recreation parks and other retail shopping areas. The applicant believes that the siting of the development will negate any impact on the surrounding residential properties due to the distance of the development from the residential areas.

The applicant states *“the proposal will be more community friendly, by incorporating studio and family style living above the retails units, a concept used for centuries in Europe. The development will propagate a stronger commitment to the centre and its environment.”*

The applicant concludes that *“the unique design of the unit proposal, articulating the facades and levels, separate roofs over adjoining dwellings and creative use of materials and colour, will create a sense of identity for what is largely an undervalued and under developed area.”*

Options:

Council has the discretion to:

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

Link to Strategic Plan:

The City's Strategic Plan 2003 – 2008 contains the following objective and strategy:

Objective 3.3	To continue to meet the changing demographic needs of the community by providing residential living choices.
Strategy 3.3.1	Provide residential living choices.

Legislation – Statutory Provisions:

The development is subject to the provisions of the City's District Planning Scheme No 2 (DPS2) and the R-Codes.

The objectives of the "Commercial" zone pursuant to the provisions of Clause 3.7 of DPS2 aim to:

"provide for a wide range of uses within existing commercial areas, including retailing, entertainment, professional offices, business services and residential."

A grouped dwelling is classified as a "D" (discretionary) use under DPS2, which requires Council to exercise its discretion to approve or refuse an application, having regard to the provision of Clause 6.8, as follows:

6.8 Matters to be considered by Council

6.8.1 *The Council when considering an application for Planning Approval shall have due regard to the following:*

- (a) interests of orderly and proper planning and the preservation of the amenity of the relevant locality;*
- (b) any relevant submissions by the applicant;*
- (c) any Agreed Structure Plan prepared under the provisions of Part 9 of the Scheme;*
- (d) any planning policy of the Council adopted under the provisions of clause 8.11;*
- (e) any other matter which under the provisions of the Scheme, the Council is required to have due regard;*
- (f) any policy of the Commission or its predecessors or successors or any planning policy adopted by the Government of the State of Western Australia;*
- (g) any relevant proposed new town planning scheme of the Council or amendment or proposed Metropolitan Region Scheme Amendment insofar as they can be regarded as seriously entertained planning proposals;*
- (h) the comments or wishes of any public or municipal authority received as part of the submission process;*
- (i) the comments or wishes of any objectors to or supporters of the application;*
- (j) any previous decision made by the Council in circumstances which are sufficiently similar for the previous decision to be relevant as a precedent, provided that the Council shall not be bound by such precedent; and*
- (k) any other matter which in the opinion of the Council is relevant.*

4.11 Car Parking – Cash in Lieu or Staging

- 4.11.1 *The Council may permit car parking to be provided in stages subject to the developer setting aside for future development for parking the total required area of land and entering into an agreement to satisfactorily complete all the remaining stages when requested to do so by the Council;*
- 4.11.2 *Council may accept a cash payment in lieu of the provision of any required land for parking subject to being satisfied that there is adequate provision for car parking or a reasonable expectation in the immediate future that there will be adequate provision for public car parking in the proximity of the proposed development;*
- 4.11.3 *The cash payment shall be calculated having regard to the estimated cost of construction of the parking area or areas suitable for the proposed development and includes the value, as estimated by the Council, of that area of land which would have had to be provided to meet the car parking requirements specified by the Scheme. The cash payment may be discounted and may be payable in such manner as the Council shall from time to time determine;*
- 4.11.4 *Any cash payment received by the Council pursuant to this clause shall be paid into appropriate funds to be used to provide public car parks in the locality as deemed appropriate by Council.*

Clause 2.3.4 of the R-Codes allows for the exercise of discretion, which can be exercised having regard to the following:

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

Risk Management considerations:

The proponent has a right of appeal against Council's decision, or any conditions included therein, in accordance with the State Administrative Tribunal Act 2004 and the Planning and Development Act 2005.

Financial/Budget Implications:

Not Applicable.

Policy implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability implications:

It is considered that the proposal will assist in providing a more vibrant and interactive environment in the functioning of the shopping centre, with residents living on site, rather than having to commute to a shopping centre.

Consultation:

Letters advising of the proposal and inviting comment were sent to 150 surrounding and adjoining landowners. Additionally, an on-site sign and a newspaper advertisement advised of the proposed development and invited public comment. The public comment period was for 30 days from 21 March 2006 to 20 April 2006.

A total of 7 responses were received, including 3 objections and 4 non-objections.

Summary of Submissions Received	Technical Response
We require a strong watertight assurance that the parking areas of 89 Caridean Street, Heathridge will be 100% off-limits to any commercial vehicle parking during the development.	To avoid parking and access conflict between adjoining properties, any approval could be contingent on a construction management plan, which incorporates details of commercial vehicle parking and access during construction.
Although I object to this development, I doubt that it will have any effect on the outcome. Like the new development on the corner of Caridean Street & Admiral Grove, it will be very dense. Maybe the whole thing will fall down?	The zoning of the property allows for Commercial as well as consideration of Residential Development. The structural sufficiency of the proposed residential units will be required to meet the relevant Australian Standards prior to a Building Licence being issued.
Heathridge Primary School is next to the development. Please ensure that the residential units do not overlook the primary school buildings. The increase in parking and traffic around the school site should also be considered.	The location and orientation of the proposed development is such that the main focus of windows and balconies of the residential units is towards the car parking area to the north of the site. The traffic generating characteristics of a proposal of this size will not have any discernable impacts on the surrounding road network.
Development of the shopping centre is long overdue. It has been stagnant for some 20-years, whilst surrounding areas (Belridge) have started from scratch and boomed. I strongly encourage the development, and look forward to the City of Joondalup doing a streetscape makeover and upgrade of the whole shopping centre.	Noted.

COMMENT

The proposed development of residential land uses above commercial tenancies is not unusual within the City of Joondalup, however this type of development has usually occurred in the Joondalup City Centre area. Therefore it can be said that development of this kind within Heathridge, is relatively unique.

The design of this structure is such that it is more akin to that of a mixed-use development as it is a building that contains residential dwellings, in conjunction with commercial and non-residential uses. Mixed-use developments usually involve residential dwellings being built above the commercial tenancies. Such dwellings would normally be classified as Multiple Dwellings, as defined in the R-Codes. However, as no dwelling on the lot is vertically above part of any other residential dwelling, the proposal is required to be classified as a grouped dwelling development.

It is noted that six of the dwellings proposed as part of this development, are Single Bedroom Dwellings. Single Bedroom Dwellings as defined by the R-Codes are, *“dwellings that contain a living room and no more than one other habitable room that is capable of use as a bedroom.”*

Having regard to the above, the combination of new and existing land uses support the conclusion that the “Mixed Use” provisions of the R-Codes should be considered when assessing the proposal. The design and functioning of the proposed development has been completed in such a way that the development is more akin to that of a mixed-use development. Subsequently, the development criteria for setbacks, parking calculations, open space requirements and plot ratio have been assessed under clause 4.2.1 of the R-Codes, which provides development standards for the residential component of mixed-use developments.

Density and Development Potential

The subject site is zoned ‘Commercial’ with a density code of ‘R20’.

The area calculations for the grouped dwellings at the R20 coding requires an area of 500m² per dwelling.

The area requirements for single bedroom dwellings can be reduced by up to one third of the required lot area, pursuant to clause 3.1.3 of the R-Codes. In this instance, an R20 coded lot can be reduced in area to 333.33m² per unit, for single bedroom dwellings.

The following table below outlines the land area calculations for the proposed 8 grouped dwellings and 6 single bedroom dwellings:

Dwelling Type	Area Required
Grouped dwelling X 8 @ 500m ²	4000m ²
Single Bedroom Dwellings X 6 @ 333.33m ²	2000m ²
Total Area Required	6000m²
Total Area Provided	6012m²

Land Use

Pursuant to Table 1 of DPS2, the use of the subject site for the purposes of grouped dwellings is a “D” (discretionary) use. Under DPS2 a discretionary use is, *“A use class that is not permitted, but to which the Council may grant its approval after following the procedures laid down by subclause 6.6.2.”*

The consideration of a discretionary land use requires Council to exercise its discretion as to the approval or refusal of an application, having regard to the provisions of Clause 6.8 (Matters To Be Considered By Council) of DPS2.

In this instance the concept of grouped dwellings on a “Commercial” zoned site is supported, given that it would provide efficient utilisation and sharing of land and parking, is in close proximity to public open space and public transport (bus route) and provides a unique development for the shopping centre.

Open Space

The provision of residential dwellings above commercial tenancies does not allow dwellings to have ground level open space. This is similar to the situation for mixed-use developments within the Joondalup City Centre.

Subsequently the provision of open space for this development has been designed to meet the requirements of clause 4.2.1 of the R-Codes, “Dwellings in Mixed-use Developments”. This requires the outdoor living area for dwellings to have a balcony not less than 1.5m in depth and a minimum area of 4m². In this instance, each dwelling has been provided with a balcony area in excess of this minimum requirement.

The provision of open space in the form of balconies for each unit is considered to be appropriate for a mixed-use development, where residential land uses above commercial tenancies are built. This form of development is well established and has been successful within other parts of the City.

Parking (Commercial and Residential)

The existing shopping centre has a total of 109 car bays. The existing commercial land-uses within the centre make use of an area of approximately 1329m² of retail NLA (Net Lettable Area). As per Table 2 of DPS2 a total of 94 car bays are required based on a parking calculation of 7 bays per 100m² of NLA (shopping centres of less than 10,000m²). Therefore, the centre has an existing surplus of 15 car bays.

Clause 4.2.1 of the R-Codes outlines that the provision for car parking for dwellings may be reduced to one bay where on-site parking is available for other users, outside normal business hours. As there is parking available to visitors outside normal trading hours a requirement of one car bay per unit is acceptable. Therefore the residential component of this development would require the provision of 14 car bays.

The proposal also includes an additional alfresco area adjacent to the existing restaurant. The use of this area results in the loss of seven existing car bays. Typically, additional parking would be required for the use of an area for alfresco dining (Eg. Table 2 of DPS2, Restaurant = Greater of 1 bay per 5 of dining room or 1 bay per 4 guests). However, in this instance the alfresco area is for the purpose of public seating, and is not considered to intensify the commercial usage of the site. As a result additional parking would not be required for the proposed alfresco area.

Overall, the parking provision for the development will result in a shortfall of six car bays.

Land Use	Car Bays Required
Commercial parking @ 7 bays per 100sqm pursuant to Table 2 of DPS2 (1329m ² of NLA).	94 bays
Residential parking 14 dwellings @ (1 bay per dwelling pursuant to clause 4.2.1 of the R-Codes).	14 bays
TOTAL BAYS REQUIRED	108 BAYS
TOTAL BAYS PROVIDED (Includes loss of 7 car bays for alfresco dining)	102 BAYS (shortfall 6 car bays)

To cater for the shortfall in parking, a cash-in-lieu payment could be requested in accordance with clause 4.11 of DPS2. Alternatively, clause 4.5.3 allows the parking requirements to be varied after considering matters pursuant to clause 6.8 of DPS2 and that the Council is satisfied that the non compliance would have minimal adverse affect in terms of the amenity of the occupiers, inhabitants and users of the area.

Under Clause 4.11 of DPS2, Council may accept a cash payment in lieu of the provision for parking subject to being satisfied that there is adequate provision for car parking or a reasonable expectation in the immediate future that there will be adequate provision for public car parking in the proximity of the proposed development. Any cash payment received by the Council pursuant to this clause shall be paid into appropriate funds to be used to provide public car parks in the locality as deemed appropriate by Council.

In this instance the new development will increase the density of the site and subsequently have a direct impact on the intensity of the use of the site. Due to the nature of the development it can be expected that this will have the potential to increase the viability of the site. A shortfall in parking can negatively impact on the amenity of the occupiers, inhabitants and users of the area. Consequently, it is recommended that a cash in lieu payment be required under clause 4.11 of DPS2 for the shortfall of six car bays, which will allow the Council to respond to any parking issues in the future.

A cash in lieu payment for a commercial car bay within the City of Joondalup is currently \$20,000 per bay. Therefore, the cash in lieu payment for a shortfall of six car-parking bays for this development will total \$120,000.

To assist in ameliorating the shortfall of six car bays it is recommended that the applicant provide lockable storage areas and racks for bicycles to encourage the use of alternatives means of transport to and from the mixed-use development.

Access Agreements

Access to the site is provided via three separate driveways, with one being to the centre of the lot and the other two on the eastern and western sides of the site (see Attachment 1).

It is noted that two of the three driveways are located on adjoining properties and that these are used to gain access to the rear portion of the shopping centre to service the various commercial tenancies (bin and service yards). The subject site has an access agreement with Lot 745 (owned by the City of Joondalup) and has a reciprocal access and parking agreement with the adjoining shopping centre (Lot 741).

It is not expected that the subject development will restrict possible future development of the Lot 745. If approved, the existing access and parking agreements would need to be updated to reflect the additional parking and access requirements for the proposed dwellings and the rights of each party.

Alfresco Dining Area

An alfresco dining area has been proposed for the existing restaurant. No specific details outlining the likely number of tables and chairs have been provided. However, the applicant has previously outlined that this area would not be solely utilised for patrons of the restaurant, but rather it be used as a public seating area.

The concept of this public space is supported as it allows interaction of shoppers and those wishing to stop and rest whilst utilising these facilities, whether they are paying customers or general public.

Elevation Treatments

The form of the development in reference to the proposed elevations is considered to be acceptable with good use of windows, façade treatments and roof pitch. The use of treatments such as rendered brick walls, tiles to pitched roof, columns and selected decorative mouldings will create a modern integrated and attractive mixed-use development.

Landscaping

Landscaping has already been provided in the form of a landscaping strip within the front portion of the lot, as well as to the property's verge. Upgrading of the landscaping across the site would be required to ensure that landscaping on the verge and within the property is of a standard and extent that is commensurate with the standard of the development proposed. In the event that the proposed development is approved, a condition requiring a landscaping plan for these upgrades should be required.

Lighting

No details of car park lighting have been provided as part of the application. Previous comments from the community (identified in Council report CJ205 – 09/03) have outlined that the rear service yard areas are dimly lit after hours and this contributes to incidents of antisocial behaviour. It is considered appropriate to require details of lighting to be provided prior to the issue of a building licence.

Management Plans & Acoustic Reports

It is recommended that the applicant provide a construction management plan, operational management plan and an acoustic consultant's report to ensure that the development is capable of complying with various requirements, in the event that approval is considered by Council.

A construction management plan should be provided to ensure that during the construction process the existing tenants within the commercial units and that of the adjoining properties are not hindered.

Additionally, an operational management plan should also be submitted illustrating how the operational issues such as bin pick-up times, goods delivery times, restaurant operating hours, restaurant music, alfresco areas, odours and nuisance will be addressed.

Prior to the issuance of a building licence, an acoustic consultant's report should be submitted for all installations, activities and processes, giving sound level measurements both individually and in combination.

It is also recommended that the applicant be required to advise any prospective purchasers, in writing, that the residential units may be subject to activities, odour or noise not normally associated with a typical residential development. The purchasers should recognise and accept that, in selecting to reside in this locality, that noise, odour, traffic and other factors that constitute part of commercial activities are likely to occur, which are not normally associated with typical residential developments.

Conclusion

It has been determined that the development complies with the density provisions of the R-Codes. Having regard to clause 6.8 of DPS2, it is considered that the discretionary land use of grouped dwellings above existing commercial tenancies and assessment of the development requirements for the proposal under clause 4.2.1 of the R-Codes is acceptable.

It is considered that a cash in lieu payment of \$120,000 for the shortfall six parking bays is acceptable and should be paid into appropriate funds to be used to provide public car parks in the locality as deemed appropriate by Council.

Having considered the applicant's justification as well as the community's views and requests following public consultation, it is recommended that the application be supported subject to standard conditions and specific conditions addressing parking, lighting, landscaping and overall amenity of the centre.

ATTACHMENTS

Attachment 1	Location Plans
Attachment 2	Development Plans
Attachment 3	Existing Deed - Right of Carriageway plans

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Jacob, SECONDED Cr Magyar that Council:

1 EXERCISES discretion under clause 6.8, 4.11 and 4.5.3 of District Planning Scheme No 2 and clause 2.3.4 of the Residential Design Codes 2002 and determines that:

- (a) payment of \$120,000 for a shortfall of 6 car parking bays;**
- (b) assessment of the development requirements for the grouped dwellings under clause 4.2.1 (Dwellings in Mixed-use Development) of the Residential Design Codes 2002;**

is appropriate in this instance;

2 APPROVES the application dated 14 November 2005, submitted by Peter Raynes Designer, on behalf of the Strata owner(s) of Heathridge City Shopping centre, for a mixed use development incorporating an additional fourteen new grouped dwellings at Lot 740 (99) Caridean Street, Heathridge, subject to the following conditions:

- (a) Provide a minimum of 108 on-site car bays or alternatively, a cash in lieu payment is required under Clause 4.11 of the District Planning Scheme No. 2 for any shortfall in the total number of car parking spaces. The rate to be used for the calculation for the cash in lieu payment is \$20,000 per parking space;
- (b) Appropriate access and car parking easements to be prepared with the landowners of Lots 741 and 745 to reflect additional access and parking demands created by the proposed dwellings. The access and car parking easement documentation shall be completed to the satisfaction of the City prior to the occupation of the new dwellings, the granting of an easement in gross pursuant to section 196 of the Land Administration Act (at full cost of the owner) in favour of the City of Joondalup for Lot(s) 741, 745 and 740. For the purposes of this easement, it shall include land proposed for vehicular accessway(s), car parking areas and drainage where required for the benefit of the public at large. The easement must be registered on the title before the development is occupied;
- (c) A lighting plan shall be prepared for the subject site detailing existing and proposed additional lighting to upgrade and improve visibility and security for the site. Details shall be submitted to the satisfaction of the City prior to the issue of a building licence;
- (d) The lodging of detailed landscape plans, to the satisfaction of the City, for the development site and the adjoining road verge(s) with the Building Licence Application. For the purpose of this condition, a detailed landscaping plan shall be drawn to a scale of 1:100 and show the following:

 - (i) the location and type of existing and proposed trees and shrubs within the car park area;
 - (ii) any lawns to be established;
 - (iii) any natural landscape areas to be retained; and
 - (iv) those areas to be reticulated or irrigated;
- (e) Landscaping and reticulation to be established in accordance with the approved plans prior to the new development first being occupied and thereafter maintained to the satisfaction of the City;
- (f) The annotated “alfresco dining area” adjacent to the existing restaurant as marked in red on the approved plans shall be utilised for public enjoyment and a general open area which may accommodate seating. The public shall be able to utilise and use this area whether they are paying customers or not, at any of the commercial tenancies of the centre, and the area shall not be exclusively associated with any commercial tenancy;
- (g) The parking bay/s, driveway/s and points of ingress and egress to be designed in accordance with the Australian Standard for Off-street Car parking (AS2890). Such areas are to be constructed, drained, marked and thereafter maintained to the satisfaction of the City prior to the development first being occupied. These works are to be done as part of the building programme;

- (h) **The driveway/s and crossover/s to be designed and constructed to the satisfaction of the City prior to the occupation of the dwellings;**
- (i) **Car bay grades are generally not to exceed 6% and disabled car bay/s are to have a maximum grade of 2.5%;**
- (j) **Submission of a Construction Management Plan, to the satisfaction of the City, detailing phasing of construction, access, storage of materials, protection of pedestrians, footpaths and other infrastructure prior to the commencement of construction;**
- (k) **The applicant shall, in writing, advise prospective purchasers/ occupiers of the residential units that it may be subject to activities, odour or noise not normally associated with a typical residential development. The purchasers should recognise and accept that, in selecting to reside in this locality, that noise, odour, traffic and other factors that constitute part of commercial activities are likely to occur, which are not normally associated with typical residential developments;**
- (l) **Any roof mounted or freestanding plant or equipment such as air conditioning units, satellite dishes or radio masts to be located and screened so as not to be visible from beyond the boundaries of the development site;**
- (m) **No obscure or reflective glazing to be used in the shop fronts facing into the shopping centre;**
- (n) **The provision of at least three lockable bicycle parking facilities in the location/s marked in red on the approved plans prior to the development first being occupied and being to the satisfaction of the City;**
- (o) **The preparation of a signage strategy to the satisfaction of the City prior to the issue of a Building Licence ensuring that signage for the tenancies is uniform in their size and location;**
- (p) **Prior to the issue of the Building Licence, the Applicant and/ or Builder is to arrange and submit to the City, an Acoustics Consultant's Report on all installations, activities and processes, giving sound level measurements both individually and in combination. This report shall include the presence of tonal components, amplitude or frequency modulations or impulses to ensure noise emissions are in compliance with the requirements of the Environmental Protection Act 1986;**
- (q) **The applicant shall provide adequate bin storage facilities for commercial and residential units to the satisfaction of the City. Bin areas to consist of a concrete floor graded to an industrial floor waste connected to sewer;**
- (r) **The applicant is to submit a Management Plan for approval, to the satisfaction of the City, of how the operational issues such as bin pick-up times, goods delivery times, restaurant operating hours, restaurant music, alfresco areas, odours and nuisance will be addressed.**

Discussion ensued.

AMENDMENT MOVED Cr Corr that Point 2(n) of the Motion be DELETED and remaining clauses renumbered.

There being no Seconder, the Motion

LAPSED

Further discussion ensued in relation to the Motion.

The Motion as Moved Cr Jacob, Seconded Cr Magyar was Put and CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

Appendix 11 refers

To access this attachment on electronic document, click here: [Attach11brf120906.pdf](#)

Disclosure of interest affecting impartiality

Name/Position	Cr Russel Fishwick
Item No/Subject	CJ165-09/06 - Proposed Roof Over Portion of the Vehicle Exit Lane – Mullaloo Tavern – Lot 100 (10) Oceanside Promenade, Mullaloo
Nature of interest	Interest that may affect impartiality
Extent of Interest	A member of Cr Fishwick's family owns property within close proximity to the Tavern in Alice Drive, Mullaloo

CJ165 - 09/06 PROPOSED ROOF OVER PORTION OF THE VEHICLE EXIT LANE – MULLALOO TAVERN – LOT 100 (10) OCEANSIDE PROMENADE, MULLALOO – [02089]

WARD: North Central

RESPONSIBLE A/DIRECTOR: Mr Chris Terelinck
Planning and Community Development (Acting)

CJ060912_BRF.DOC:ITEM 14

PURPOSE

The purpose of this report is to request Council's determination of an application for Planning Approval for a proposed roof over a portion of the exit driveway on Lot 100 (No. 10) Oceanside Promenade Mullaloo.

EXECUTIVE SUMMARY

An application for Planning Approval has been received for a roof to be constructed over a portion of the southern driveway (exit lane) of the Mullaloo Tavern development. The structure is proposed to be setback 5.5 metres from the front boundary and 1.75 metres from the side boundary of the property. It is proposed that the roof structure will be located behind an existing column, which will partly screen the proposed addition from view from the street.

The structure has been proposed to improve the amenity for the adjoining residential property at No 6 Oceanside Promenade by reducing any noise that may emanate from the bottleshop or the exit driveway of the existing development. The proposal has the support of the adjoining neighbour.

The structure will require Council to exercise its discretion in relation to a front and side setback variation. The proposed setback variations would not adversely affect the adjoining property owner or the amenity of the area generally, and therefore, it is recommended that the application be supported.

BACKGROUND

Suburb/Location:	10 (100) Oceanside Promenade, Mullaloo
Applicant:	Pei Yin Chang / Perrine Architects
Owner:	Rennet Pty. Ltd.
Zoning:	DPS: Commercial
	MRS: Urban
Site Area:	2,377m ²
Structure Plan:	Not Applicable

13/08/02	Approval granted by the Council for a mixed-use development – tavern, shops and residential.
22/04/05	Planning application lodged for proposed shade sails over upper level car parking spaces, re-location of existing bi-fold tavern doors and a roof over a portion of the exit driveway.
28/07/06	Correspondence received formally separating application shade sail and roof cover into different applications and withdrawing of the proposal to re-locate bi-fold tavern doors.

The original 2005 planning application for the additions/alterations for the development contained three parts and these were:

- (a) relocation of a set of bi-fold doors on the tavern level to reduce the balcony area;
- (b) provision of shade sails on the upper level over car parking spaces; and
- (c) provision of roof cover over the exit driveway.

The owners have now decided to:

- (i) withdraw the request to re-locate the bi-fold doors as identified in a) above; and
- (ii) split parts b) and c) into two separate applications for planning approval.

In April 2006, the City issued a Stop Direction Notice to prevent the tavern from further trading due to non-compliance with certain conditions of planning approval relating to car parking. The owners appealed against the issue of that Notice. The SAT matter has reached a stage where both parties are awaiting a decision on the appeal.

Part b) relates to car parking spaces and as such, may be affected by the outcome from the SAT hearing and is therefore being held in abeyance pending the decision of the SAT.

However, part c) does not relate to car parking spaces and as such, is not affected by the issue of the Stop Direction Notice or the SAT hearing. Legal advice has confirmed that this part can be dealt with by Council.

DETAILS

The existing development site consists of two vehicular access points. The southern access point is the exit driveway for the development and abuts the boundary of the residential property at No 6 Oceanside Promenade. The roof cover is proposed to be located over this driveway.

Two substantial columns extend from the main building towards the southern boundary and over the exit driveway. The distance between the two columns is approximately 14.5 metres. The columns are setback approximately 1.3 metres from the southern boundary and approximately 4.8 metres and 20 metres from Oceanside Promenade respectively. The roof cover over the exit driveway is proposed to be located between these two columns and set back 1.75 from the southern boundary.

The overall dimensions of the roof cover are approximately 3.0 metres by 14.5 metres. The length is slightly longer along the main building due to the angled alignment of the rear column.

The main building abuts Oceanside Promenade and the southern side of the building is setback 4.8 metres from the common boundary (southern) with No 6 Oceanside Promenade. Further, the topography of the site at No 6 Oceanside Promenade is such that the dwelling is located at a higher level than the level of the exit driveway.

The proposed structure does not comply with the front setback (9.0 minimum) by 3.5 metres (38.8%) and the side setback (3.0m minimum) by 1.25 metres (42%). Planning Delegation permits the City to determine applications that have a maximum setback variation of 10% for non-residential buildings and as such, the matter is required to be determined by Council.

Link to Strategic Plan:

Objective 3.1

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

Legislation – Statutory Provisions:

Unless otherwise provided for in Part 3 of the DPS2, Clause 4.7 sets out the setback requirements for non-residential buildings. The site is located within the Commercial Zone. Part 3.7 – The Commercial Zone of the DPS2, does not establish setbacks for non-residential buildings in this Zone. As such, the setback standards of Clause 4.7 apply, which are shown below:

4.7 BUILDING SETBACKS FOR NON-RESIDENTIAL BUILDINGS

4.7.1 *Unless otherwise provided for in Part 3 of the Scheme, buildings shall be set back from property boundaries as follows:*

<i>Setback from street boundary</i>	<i>9.0 metres</i>
<i>Setback from side boundary</i>	<i>3.0 metres</i>
<i>Setback from rear boundary</i>	<i>6.0 metres</i>

Council has the discretion under Clause 4.5 of the DPS2 to vary the development standards for non-residential buildings (clause 4.7 of the DPS2) as follows:

4.5 VARIATIONS TO SITE AND DEVELOPMENT STANDARDS AND REQUIREMENTS

- 4.5.1 *Except for development in respect of which the Residential Planning Codes apply and the requirements set out in Clauses 3.7.3 and 3.11.5, if a development is the subject of an application for planning approval and does not comply with a standard or requirement prescribed under the Scheme, the Council may, notwithstanding that non-compliance, approve the application unconditionally or subject to such conditions as the Council thinks fit.*
- 4.5.2 *In considering an application for planning approval under this clause, where, in the opinion of Council, the variation is likely to affect any owners or occupiers in the general locality or adjoining the site which is subject of consideration for the variation, the Council shall:*
- (a) *consult the affected parties by following one or more of the provisions for advertising uses pursuant to clause 6.7.1 and*
 - (b) *have regard to any expressed views prior to making its decision to grant the variation.*
- 4.5.3 *The power conferred by this clause may only be exercised if the Council is satisfied that:*
- (a) *approval of the proposed development would be appropriate having regard to the criteria set out in Clause 6.8; and*
 - (b) *the non-compliance will not have any adverse effect upon the occupiers or users of the development or the inhabitants of the locality or upon the likely future development of the locality.*

Clause 6.6.2 requires that Council in exercising discretion to approve or refuse an application, shall have regard to the provisions of clause 6.8.1, as follows:

6.8 MATTERS TO BE CONSIDERED BY COUNCIL

- 6.8.1 *The Council when considering an application for Planning Approval shall have due regard to the following:*
- (a) *interests of orderly and proper planning and the preservation of the amenity of the relevant locality;*
 - (b) *any relevant submissions by the applicant;*
 - (c) *any Agreed Structure Plan prepared under the provisions of Part 9 of the Scheme;*
 - (d) *any planning policy of the Council adopted under the provisions of clause 8.11;*
 - (e) *any other matter which under the provisions of the Scheme the Council is required to have due regard;*
 - (f) *any policy of the Commission or its predecessors or successors or any planning policy adopted by the Government of the State of Western Australia;*
 - (g) *any relevant proposed new town planning scheme of the Council or amendment or proposed Metropolitan Region Scheme Amendment insofar as they can be regarded as seriously entertained planning proposals;*
 - (h) *the comments or wishes of any public or municipal authority received as part of the submission process;*
 - (i) *the comments or wishes of any objectors to or supporters of the application;*

- (j) any previous decision made by the Council in circumstances which are sufficiently similar for the previous decision to be relevant as a precedent, provided that the Council shall not be bound by such precedent; and
- (k) any other matter which in the opinion of the Council is relevant.

Risk Management considerations:

Not Applicable

Financial/Budget Implications:

Not Applicable

Policy implications:

Not Applicable

Regional Significance:

Not Applicable

Sustainability implications:

Not Applicable

Consultation:

The applicant has referred the plans to the owner of the abutting residential property at No 6 Oceanside Promenade, who stated:

"I have fully inspected the drawings showing the roof cover over the bottle shop exit lane and hereby give my authorisation for Rennet Pty Ltd to proceed with its construction."

COMMENT

The development proposal is to construct a roof between two existing columns and over an existing exit driveway. Clause 4.7 requires a front boundary setback of 9.0 metres whereas the development application is for a setback of 5.5 metres. Furthermore the side boundary setback requirement is 3.0 metres whereas the planning application is for a setback of 1.75 metres.

It is noted that the westernmost column to be used to support the roof cover is located closer to the street and southern side boundary than the proposed roof cover.

The size of the front column is such that it will partly screen the roof cover from view from the street, thereby negating any issues associated with the front setback variation. Consequently, the proposed roof covering will not adversely affect the appearance of the property.

The proposed roof cover will provide further noise attenuation to the residential property located at No 6 Oceanside Promenade from the impact of any noise that may emanate from the driveway or bottle shop area.

The adjoining residential property is located at a higher level than the proposed roof and as such, the reduced setback will not impact on that property.

It is considered that the proposed development will be of benefit to the residents living at the adjoining property and it will not have an adverse impact on the amenity of the area generally. As such, it is considered that the proposed setback variations will satisfy the criteria set out in Clause 4.5.3 to allow a setback variation and therefore, it is recommended that the application for planning approval be granted.

ATTACHMENTS

Attachment 1	Locality Plan
Attachment 2	Development Plan
Attachment 3	Photographs

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Jacob, SECONDED Cr Magyar that Council:

- 1 **EXERCISES discretion under Clause 6.8 and 4.5.3 of District Planning Scheme No 2 and determines that:**
 - (a) **the side setback of 1.75 metres in lieu of 3.0 metres; and**
 - (b) **the front setback of 5.5 metres in lieu of 9.0 metres**

are appropriate in this instance;
- 2 **APPROVES the application for Planning Approval dated 27 July 2006 submitted by Pei Yin Chang / Perrine Architects, the applicants on behalf of the owners, Rennet Pty Ltd for a proposed roof over a portion of the southern driveway on Lot 100 (10) Oceanside Promenade, Mullaloo, subject to the following conditions:**
 - (a) **The colour and design of the roof to complement the colour and design of the existing building; and**
 - (b) **All stormwater must be contained on site to the satisfaction of the City.**

Discussion ensued. To a query raised as to whether the owners of the adjoining property had been approached relevant to their endorsement of the roof proposal, it was advised that the neighbour had been spoken to on Tuesday 19 September 2006 and had indicated agreement to this application.

The Motion was Put and

CARRIED (9/3)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, Fishwick and Currie **Against the Motion:** Crs Corr, Hart and John

Appendix 12 refers

To access this attachment on electronic document, click here: [Attach12brf120906.pdf](#)

CJ166 - 09/06 INITIATION OF AMENDMENT TO DPS2 AND LOCAL PLANNING POLICY – SHORT STAY ACCOMMODATION – [72584]**WARD:** All**RESPONSIBLE
A/DIRECTOR:** Mr Chris Terelinck
Planning and Community Development (Acting)

CJ060912_BRF.DOC:ITEM 15**PURPOSE**

The purpose of this report is to recommend Council initiate an amendment to District Planning Scheme No 2 (DPS2) and a draft local planning policy relating to short stay accommodation, for the purpose of public advertising.

EXECUTIVE SUMMARY

Currently there is no specific land use in DPS2, and no local planning policy or guidelines, in relation to short stay accommodation. Short stay accommodation applications have been classified as a 'Residential Building' under DPS2, however, it is preferred that a more specific land use be adopted.

The current provisions within DPS2 and the Residential Design Codes do not provide specific requirements for short stay accommodation, and each proposal is assessed on its merits. The Hon Minister for Planning and Infrastructure also raised this issue with the Council in 2004 and requested that guidance be developed. As a result, an amendment to DPS2, supported by a draft policy, has been prepared for Council's consideration.

The amendment to DPS2 seeks to provide a definition of short stay accommodation and in which zones such accommodation would be permitted. The draft policy aims to provide parameters for the evaluation of proposals that may be lodged, addressing issues of location, density, and management.

It is recommended that Council initiate the proposed amendment to DPS2 (being Amendment No. 36) and draft Policy by seeking for public comment.

BACKGROUND

The Scheme has no definition for short stay accommodation. DPS2 gives the same meaning to a Residential Building as the definition contained within the Residential Design Codes 2002.

Neither the DPS2 nor the Residential Design Codes provide specific development standards and requirements for a Residential Building.

A 'Residential Building' is a discretionary use within the Residential, Mixed Use, Business, Commercial and Private Clubs and Recreation zones.

Following an inquiry into the Mullaaloo tavern development, which did not have any adverse findings against the City, the Minister for Planning and Infrastructure recommended that a policy be put in place to guide the development of short stay accommodation. Specifically, the Minister recommended:

“The introduction of measures to guide the development of short stay accommodation in those zones where such development is permissible. As a minimum, such measures should address the density of those forms of residential development for which there is currently no explicit density control.”

Currently, the DPS2 is silent on issues of permitted density and the cut off between a dwelling and a residential building (or other forms of temporary accommodation), mostly by virtue of the determination of what length of stay satisfies a reasonable test of being considered as permanent.

It could be stated that the DPS2 contains a ‘gap’ on this issue, however, it is notable that the Council has received only two applications over the past two years for short stay accommodation outside the City Centre area. In these circumstances, which are effectively rare applications, the Council is often required to consider applications on merit rather than merely in relation to standards. That is, if standards were developed for all matters, including those which may only occur once or twice, the process would become inefficient and cumbersome.

The two applications referred to above are:

- 3 Glenelg Place, Connolly. This proposal was to convert an existing medical centre into short stay accommodation. The proposal was refused by Council at its meeting of 26 April 2005. A subsequent appeal by the applicant to the State Administrative Tribunal was upheld, effectively reversing Council’s decision.
- 17 Foston Drive, Duncraig. This proposal is to utilise an existing residential dwelling for short stay accommodation. The proposal is yet to be determined.

DETAILS

Issues and options considered:

Proposed Amendment to DPS2

This proposal seeks to add the following definition into DPS2:

Short Stay Accommodation: means any land or buildings used for accommodation that may be occupied by a person or persons for a continuous maximum period of three months in a twelve-month period. If there are multiple stays by that person or persons within that twelve-month period, then there shall be a minimum of one month between each stay. The term excludes Motel, Hotel, and Bed and Breakfast.

In researching this issue, the policies and approach of other Councils were evaluated. A number of local authorities Town Planning Schemes define ‘short stay’ in a similar manner, including the Shire of Manjimup and Shire of Augusta-Margaret River. The proposed length of time for a ‘short stay’ is likely derived from the minimum length of a standard residential lease, being three months.

It is proposed that Short Stay Accommodation would be a prohibited (‘X’) use in the Residential, Special Residential, Service Industrial, and Rural zones, and a Discretionary (‘D’) use in the Mixed Use, Business, Commercial, and Private Clubs and Recreation zones.

A car-parking standard at the rate of 1 bay per unit is proposed. This ratio is similar to that of the accommodation component of a Motel under DPS2.

The proposed amendment to DPS2 is Attachment 1.

Draft Policy

The draft policy (Attachment 2) proposes guidelines for the operation of short stay accommodation. The policy provides guidance with regard to the management and record keeping processes. In addition the policy encourages short stay accommodation in areas of tourist potential and close to main access roads.

Options

In considering the draft local planning policy, Council can:

- Adopt the scheme amendment and/or policy for the purpose of public advertising
- Modify the scheme amendment and/or draft policy, then adopt it for the purpose of public advertising
- Not adopt the scheme amendment and/or draft policy.

Link to Strategic Plan:

Short stay accommodation is likely to be used as tourist accommodation and therefore links with Strategy 3.2 (Lifestyle) of the City's Strategic Plan, which is intended to develop and promote the City of Joondalup as a tourist attraction.

Legislation – Statutory Provisions:

Scheme Amendment

Part 5 of the Planning and Development Act 2005 enables Local Authorities to amend a Town Planning Scheme and sets out the process to be followed (Attachment 3 refers).

Should the Council support the initiation of the proposed amendment for the purposes of public advertising, the proposed amendment is required to be referred to the Environmental Protection Authority (EPA) to decide whether or not a formal environmental review is required. Should the EPA decide that an environmental review is not required, upon the City's receipt of written confirmation of this from the EPA, the City advertises the proposed amendment for a minimum of 42 days.

Upon closure of the advertising period, the Council considers all submissions received during the advertising period and resolve to either grant final approval to the amendment, with or without modifications, or refuse the amendment. The decision is then forwarded to the WAPC that makes a recommendation to the Minister for Planning and Infrastructure. The Minister can either grant final approval to the amendment, with or without further modifications, or refuse the amendment.

Draft Policy

Clause 8.11 of DPS2 outlines the provisions with respect to the preparation of local planning policies. Clause 8.11.1 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 in accordance with Clause 8.11.3 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 should not 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 policy.

Regional Significance:

Not applicable

Sustainability implications:

The proposed short stay accommodation policy could (if adopted) support tourism by providing alternative accommodation choices.

Consultation:

The Planning and Development Act 2005 require that, should Council adopt the amendment, it be advertised for a period of 42 days.

Notices would be placed in the local and state newspapers. The proposed amendment would also be displayed on the notice board at the Council administration building and on the City's website.

Clause 8.11.3 of DPS2 requires that the draft policy to be advertised for a twenty one (21) day period. A notice would be published in the local newspaper for two consecutive weeks, and a notice would also be placed on the City's website. In this instance, it is considered appropriate that the draft policy be advertised for 42 days, concurrently with the proposed scheme amendment.

COMMENT**Short Stay Accommodation in the Residential Zone**

Short stay accommodation differs from a standard residential dwelling in that the later is intended for occupation on a permanent basis.

In considering the location of short stay accommodation, the potential impact on existing residential areas is an important factor. By its nature, short stay accommodation provides for a transient cliental. It may be argued that adverse impacts on amenity have the potential to arise from short stay accommodation, such as excessive noise, anti-social behaviour, or overcrowding of dwellings. There are also the less tangible yet important social factors, such as a sense of community and security that comes from knowing your neighbours.

From this point of view, the location of short stay accommodation in the Residential and Special Residential zones is not supported.

It is worthy to note that Bed and Breakfast is a land use in DPS2 that is a discretionary ('D') use within the Residential Zone. The differentiation between Short Stay Accommodation and Bed and Breakfast accommodation is that the latter accommodation requires the

resident of the dwelling to be present as a permanent occupant of the dwelling. This allows for greater supervision of the visitors to the site, and is a generally smaller scale activity given that the permanent residents of the dwelling share the dwelling.

Draft Policy

The policy will provide guidance and attempt to ensure that short stay accommodation is appropriately managed.

Specifically, the policy would address:

- The management of the accommodation, including submission of a Management Plan (this includes requiring appropriate documentation to be kept by the proprietor of the accommodation, and the submission of a plan detailing how the accommodation will be managed and operated).
- The density of the development. As short stay accommodation are not 'dwellings' for the purposes of the Residential Design Codes, R-Codes densities (eg R20, R40) do not apply. However, for the purposes of assessment, equivalent densities could be used. For areas outside the City Centre, an equivalent maximum density of R40 (1 unit per 250 sqm) is suggested. In the City Centre, given that short stay accommodation should be expected and encouraged in the City Centre, the density applicable to be site is proposed.
- The preferred location of short stay accommodation. Appropriately located short stay accommodation has the potential to encourage tourist and economic opportunities in the City of Joondalup. To maximise this potential, the draft policy requires the applicant to demonstrate that the short stay accommodation meets the needs of the intended clients, by reason of being in close proximity to main road, public transport, education facilities, areas of tourist interest, or the city centre.

A good example of the location of short stay accommodation is the Sorrento Beach Resort, West Coast Drive, Sorrento, which is close to Hillarys Boat Harbour, the coast, and transport routes.

It is recommended that the amendment to DPS2 and draft policy be initiated for public advertising.

ATTACHMENTS

Attachment 1	District Planning Scheme Amendment No 36
Attachment 2	Draft Policy – Short Stay Accommodation
Attachment 3	Town Planning Scheme Amendment process flowchart

VOTING REQUIREMENTS

Simple majority

ADDITIONAL INFORMATION

Since the compilation of the agenda, it has become necessary to amend the definition of Short Stay Accommodation as follows. This affects both the report and Attachments 1 and 2 to this Item.

Short Stay Accommodation: means any land or buildings used for accommodation that may be occupied by a person or persons for a ~~continuous~~ maximum period of three months in a twelve month period. If there are multiple stays by that person or persons within that twelve month period, then there shall be a minimum of one month between each stay. The term excludes Motel, Hotel, Residential Buildings and Bed and Breakfast.

Note that during the public consultation period, the proposed policy and scheme amendment is subject to legal review and this definition may be further modified depending on the advice received.

MOVED Mayor Pickard, SECONDED Cr Amphlett that Council:

- 1 Pursuant to Part 5 of the Planning and Development Act 2005, ADOPTS the amendment to the City of Joondalup District Planning Scheme No 2 as outlined within Attachment 1 to Report CJ166-09/06 for the purposes of advertising for a period of forty-two 42 days;**
- 2 Prior to the advertising period commencing FORWARDS the proposed amendment to the Environmental Protection Authority in order to decide if an environmental review is required;**
- 3 In accordance with Clause 8.11.3 of District Planning Scheme No 2 ADVERTISES the draft Short Stay Accommodation Policy as per Attachment 2 to Report CJ166-09/06 concurrently with Amendment No 36 for public comment for a period of forty-two (42) days.**

Cr Magyar foreshadowed his intention to move a different Motion should the Motion under consideration not be successful.

MOVED Cr Park, SECONDED Mayor Pickard that Council DEFERS consideration of Initiation of Amendment to DPS2 and Local Planning Policy – Short Stay Accommodation to the Policy Committee.

The Motion was Put and

CARRIED (10/2)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Park, Amphlett, John, Corr, Fishwick and Currie **Against the Motion:** Crs Hart and Magyar

Appendices 13 and 17 refer

*To access this attachment on electronic document, click here: [Attach13agn190906.pdf](#)
[Attach17min190906.pdf](#)*

CJ167 - 09/06 CHANGE OF USE FROM SINGLE HOUSE TO UNLISTED LAND USE: LOT 102 (17) FOSTON DRIVE, DUNCRAIG – [20415]

WARD: South

RESPONSIBLE A/DIRECTOR: Chris Terelinck
Planning and Community Development (Acting)

PURPOSE

The purpose of this report is to request Council's determination of an application for Planning Approval for a change of use from a Single House to an unlisted land use at Lot 102 (17) Foston Drive, Duncraig.

EXECUTIVE SUMMARY

An application for Planning Approval has been received to change the land use of Lot 102 (17) Foston Drive, Duncraig, from Single House (for permanent occupation) to allow it to be used for short term rental. The proposed land use is not defined in the District Planning Scheme No. 2 (DPS2) nor does it fall within the interpretation of one of the use categories in the Zoning Table and therefore, the Council is required to determine the application having regard to the requirements of Clause 3.3 of DPS2.

The proposal was advertised for a period of 21 days. Five objections were received including a petition signed by 10 residents. The objections related to potential noise, increased traffic & parking, anti-social behaviour and location of the proposal.

At times, the proposal could be termed a "Residential Building" and at other occasions (depending on the nature of the relationship between the occupiers) it would fall outside that definition.

The proposed use is considered to be:

- (a) an unlisted land use; and
- (b) inconsistent with the objectives and purpose of the Residential Zone, as set out in the DPS2,

and on this basis, it is recommended that the application for Planning Approval be refused.

BACKGROUND

Suburb/Location: Lot 102 (17) Foston Drive Duncraig
Applicant: Karen Hope
Owner: Karen Hope
Zoning: **DPS2:** Residential
MRS: Urban
Site Area: 771 m²
Structure Plan: Not applicable

The subject property and surrounding area is zoned “Residential” with a density code of R20. The surrounding locality consists of single dwellings. The site is located on the northern side of Foston Drive, between Glengarry Drive and Doveridge Drive Duncraig.

The existing building, approved as a single house in 1983, has four bedrooms, a games room, family/meals/kitchen, lounge/dining and a carport. There is a swimming pool and a garage/outbuilding at the rear of the property.

In April 2006, the City received a complaint alleging that the dwelling at 17 Foston Drive Duncraig was being used as short stay accommodation without having Council approval. The allegation was confirmed following investigation by the City. The owner of the property was subsequently requested to submit a planning application for the unauthorised short stay accommodation.

The application for Planning Approval was submitted and the applicant advised the City that all current bookings had been cancelled until this matter was resolved.

The report on this planning application was considered at the Briefing Session held on the 1 August 2006, however the matter was withdrawn at the Council meeting held on the 29 August 2006 when Council resolved:

“That consideration of Change of Use from Single House to Residential Building (Short Stay Accommodation): Lot 102 (17) Foston Drive, Duncraig be DEFERRED to clarify any legal issues.”

This report is a revised report based on discussions with Council's legal adviser.

DETAILS

The proposed use, has the following key characteristics:

- 1 This proposal aims to offer exclusive use of the whole property, fully furnished and equipped as short stay accommodation, specifically designed to appeal to families. It has four double bedrooms.
- 2 The maximum number of permitted visitors will be eight per booking. There will be no “unrelated” visitors sharing the accommodation, as only one booking will be in place at any one time.
- 3 Stays will be for a minimum of 7 days and a maximum of 60 days.
- 4 No additional impact on amenities or traffic volume in the locality is expected and no additions, changes or modifications to the property are necessary.
- 5 The property is situated 200 metres from a bus stop on Glengarry Drive, which is west of the freeway between Hepburn Avenue and Warwick Road, and is less than ten-minute walk from Greenwood Train Station. Access to the Mitchell Freeway via Hepburn Avenue is approximately 1 km distant.
- 6 Bookings will be taken and confirmed in advance using the Internet and/or telephone. The property will be advertised on websites dedicated to short stay accommodation.

- 7 The occupier must agree to terms which stipulate
- The maximum number of permitted visitors
 - That parties and functions are not allowed
 - That any disturbance caused to neighbours including (but not limited to) noise may result in the termination of their stay and the loss of their bond.
- 8 There are no building additions or vehicle modifications necessary.
- 9 The entire property is proposed as short stay accommodation.

The applicant has responded with further justification, which is enclosed as Attachment 3, following objections raised during the public advertising period.

Link to Strategic Plan:

The proposal is linked to the following objective and strategy in the City's Strategic Plan 2003 – 2008:

- Objective 3.2 To develop and promote the City of Joondalup as a tourist attraction.
- Objective 3.3 To continue to meet changing demographic needs by providing residential living choices.

Legislation – Statutory Provisions:

The relevant provisions of DPS2 that control development within this zone and are applicable to the application for planning approval include the following:

Clause 3.3 of the DPS2 states the following:

3.3 UNLISTED USES

If the use of the land for a particular purpose is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the interpretation of one of the use categories the Council may:

- (a) *determine that the use is consistent with the objectives and purposes of the particular zone and is therefore permitted; or*
- (b) *determine that the proposed use may be consistent with the objectives and purpose of the zone and thereafter follow the procedures set down for an 'A' use in Clause 6.6.3 in considering an application for planning approval; or*
- (c) *determine that the use is not consistent with the objectives and purposes of the particular zone and is therefore not permitted.*

The purpose and objectives of the Residential Zone are set out below:

3.4 The Residential Zone

The Residential Zone is intended primarily for residential development in an environment where high standards of amenity and safety predominate to ensure the health and welfare of the population.

Residential development is provided for at a range of densities with a variety of housing to meet the needs of different household types. This is done through application of the Residential Planning Codes (R-Codes), and the allocation of a residential density code to an area of land.

Cultural and recreational development may be located where the Council considers the same to be appropriate in residential neighbourhoods within the Residential Zone.

The objectives of the Residential Zone are to:

- (a) maintain the predominantly single residential character and amenity of established residential areas;*
- (b) provide the opportunity for grouped and multiple dwellings in selected locations so that there is a choice in the type of housing available within the City; and*
- (c) provide the opportunity for aged persons housing in most residential areas in recognition of an increasing percentage of aged residents within the City.*

The R-Codes define a Residential Building as:

A building or portion of a building, together with rooms and outbuildings separate from such buildings but incidental thereto; such building being used or intended, adapted or designed to be used for the purpose of human habitation:

- Temporarily by two or more persons; or*
- Permanently by seven or more persons,*

who do not comprise a single family, but does not include a hospital or sanatorium, a prison, a hotel, a motel, or a residential school.

The R-Codes define a "dwelling" as follows:

A building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family.

Clause 6.6.2 requires that Council in exercising discretion to approve or refuse an application shall have regard to the provisions of Clause 6.8, which is shown below:

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.*

Risk Management considerations:

The proponent has a right of appeal against Council's decision, or any conditions included therein, in accordance with the State Administrative Tribunal Act 2004 and the Planning and Development Act 2005, if an adverse decision is made.

Financial/Budget Implications:

Not applicable.

Regional Significance:

Not applicable.

Sustainability implications:

Not applicable.

Consultation:

The proposal was advertised for public comment for a period of 21-days, from 21 June 2006 to 12 July 2006. A sign was placed on site and an advertisement was placed in the local newspaper, which invited public comment on the proposal. Five submissions of objection were received, including a petition (10-signatures). The various issues raised during the advertising period are outlined below:

- Parking & Traffic concerns;
- Devaluation of adjoining properties;
- Short stay accommodation use of building
- Possible noise & antisocial behaviour;
- Creating a precedent;
- Location of the proposal;
- Use of a website for advertising purposes.

COMMENT

Submission of Planning Application for Planning Approval

The need to lodge an application came as a consequence of a complaint in terms of the use of the site. An application for Planning Approval was made and advertising of the proposal was carried out, which resulted in a number of objections to the current use of the site. These issues are highlighted further in this report.

Response to objections

There were a number of issues raised during the consultation process and these are addressed below:

Parking & Traffic

Concerns were raised in regard to the shortage of parking spaces on the site and the traffic impact on Foston Drive.

Comment:

There is no parking standard prescribed for a land use of this type.

Devaluation of adjoining properties

No evidence was submitted in support of this objection.

Use of building

Concerns were raised that although the accommodation is for overseas visitors/travellers the building could also be used for other uses such as safe houses, prison release rehabilitation and drug rehabilitation.

Comment:

Planning Approval for a land use applies to the land and not the applicant of the proposal. That is, once the land use commences, that use could be operated by any future owner of the land. The applicant has advised that there may be up to eight visitors, all of whom will be related, with only one booking at any one time. However, as outlined above, there is no restrictions proposed that would limit use of the site to single families only. Consequently, the application is being determined on the basis that there could either be a single family or a group of unrelated people occupying the building.

Noise & Antisocial Behaviour

Several objections suggest that as the occupiers of the short stay accommodation will be transient, there is an increased risk for security, theft, noise disturbance and anti-social behaviour.

Comment:

The concerns of the adjoining residents are noted, however, the users of the short stay accommodation will have to abide normal laws, which govern any residential premise.

Create a precedent

There has been concern that the short stay accommodation will create a precedent, where approval of this proposal could be seen as encouraging other landowners to consider other business opportunities in the area.

Comment:

Although this concern is noted, each application is assessed on its own individual planning merits having regard to the purposes and objectives of the relevant zone and the orderly and proper planning of the locality.

In this instance, it is recommended that the proposal be refused on the basis that the proposed unlisted land use is inconsistent with the purpose and objectives of the Residential Zone and would be contrary to the orderly and proper planning of the locality.

Location of the proposal

There have been concerns raised about the suitability of the proposal within the residential area.

Investigation of the surrounding area has revealed that the prevailing land use is residential. The predominant density coding is R20, which is considered to be a “low density coding” under the RDC. The nearest commercial centre is located approximately 1 km away (Glengarry Neighbourhood Shopping Centre) with the Glengarry Primary School approximately 500 metres away.

The use of a property for the purposes of short stay accommodation is considered to be a purely commercial undertaking. Unlike a bed and breakfast, where the owners of the property reside in the dwelling, this dwelling is vacant unless it is being used for short stay accommodation purposes.

Comment:

It is considered that the proposed unlisted land use is inconsistent with the purpose and objectives for the Residential Zone. Such a use would be more appropriate in mixed use zones or commercial zones.

Use of a website

The issue of advertising the short stay accommodation on the Internet has raised doubts about the potential client base.

Comment:

This issue is noted, however, the method of advertising the short stay accommodation is not a planning consideration.

Proposed Use

The City undertook a review of its position in relation to the proposed use of No. 17 Foston Drive for short stay accommodation based on the likelihood that families may be staying at this property. In considering the correspondence submitted by the applicant in support of the application, the following points were noted:

- (a) the MRS Form 1 – Application for Approval to Commence Development identified the proposed land use as "Short Stay Accommodation";
- (b) wording used in the "Standard Terms & Conditions" contract which is to be signed by visitors, as identified in the applicant's letter dated 19 June 2006, does not place any restriction on the users of the building - that is, for families only;
- (c) the only restriction in the contract is that the maximum number of people that can be accommodated in the building is restricted to eight; and
- (d) advertising of the site on the web makes reference to a maximum of eight people only, with no restriction indicating that only families are permitted to stay there.

Legal advice was sought in relation to the consequences of a single family occupying the building rather than a group of up to 8 unrelated people. Having regard to this advice, the proposed use of the site was seen to be similar to a "Residential Building" but cannot be categorised as a "Residential Building". Therefore, it is considered that the application should be treated as an unlisted land use, as it cannot be reasonably determined as falling within any of the use categories identified in Table 1 – The Zoning Table of the DPS2.

If Council accepts that position, then Clause 3.3 of the DPS2 requires to the Council to make a determination on the suitability of the proposed use within that Zone, having regard to the objectives and purposes of that zone as follows:

If the use of the land for a particular purpose is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the interpretation of one of the use categories the Council may:

- (a) *determine that the use is consistent with the objectives and purposes of the particular zone and is therefore permitted; or*
- (b) *determine that the proposed use may be consistent with the objectives and purpose of the zone and thereafter follow the procedures set down for an 'A' use in Clause 6.6.3 in considering an application for planning approval; or*
- (c) *determine that the use is not consistent with the objectives and purposes of the particular zone and is therefore not permitted.*

Purposes and Objective of the Residential Zone

The purpose and objectives of the Residential Zone are set out in Clause 3.4 of the DPS2. For ease of reference, that clause has been reproduced below:

The Residential Zone is intended primarily for residential development in an environment where high standards of amenity and safety predominate to ensure the health and welfare of the population.

Residential development is provided for at a range of densities with a variety of housing to meet the needs of different household types. This is done through application of the Residential Planning Codes (R-Codes), and the allocation of a residential density code to an area of land.

Cultural and recreational development may be located where the Council considers the same to be appropriate in residential neighbourhoods within the Residential Zone.

The objectives of the Residential Zone are to:

- (a) maintain the predominantly single residential character and amenity of established residential areas;*
- (b) provide the opportunity for grouped and multiple dwellings in selected locations so that there is a choice in the type of housing available within the City; and*
- (c) provide the opportunity for aged persons housing in most residential areas in recognition of an increasing percentage of aged residents within the City.*

The purpose of the Residential Zone is intended primarily for residential development. Residential Development is to be provided for with a variety of dwelling types to meet different household types. This is to be achieved through the application of the R-Codes which provide for a range of densities (R10-R160) and dwelling types (single house, grouped dwellings, multiple dwellings, aged or dependent person dwellings and single bedroom dwellings).

The site and the surrounding locality are zoned Residential with a density coding of R20. The Zoning Table – Table 1 of the DPS2 identifies single dwellings as a "P" or permitted land use. Grouped Dwellings, Multiple Dwellings, and Special Purpose Dwellings (Ancillary Accommodation, Aged or Dependant Persons' Dwellings and Single Bedroom Dwellings) are only permitted within this zone at Council's discretion.

All these dwelling types are "dwellings", which are required by the R-Codes definition to be:

"...used for the purpose of human habitation on a permanent basis..."

The R-Codes or the DPS2 do not define what habitation on a "permanent" basis is. Several decisions made through the State Administrative Tribunal have sought to clarify this matter. In the hearing between The Owners of Strata Plan 18449 and City of Joondalup [2006] WASAT 101, the following statement was made in the decision:

- 23 *Similarly, in this instance, "residential" must be taken to mean the **use of a building for one's usual place of abode on a permanent basis or for a considerable time**. Therefore, the term "extended stay residential", is in itself a definition promoting the use of buildings as the occupier's usual place of abode for a considerable period of time. This is further reinforced by the temporal cap of up to two years, which is **considerably longer than some residential leases offered in Western Australia for buildings categorised as "single house", "grouped dwelling" and "multiple dwelling"....***

Note: emphasis added for this report.

The standard residential lease varies, but is generally for three months or longer. The proposal before Council seeks to provide accommodation on a short-term basis, for a period of between 7 days and 60 days. It would be expected that neither the occupants of the building nor the residents of the locality would see the use of this building being:

"for ones usual place of abode on a permanent basis or for a considerable time."

Therefore, it is considered that the use of a site for temporary accommodation would not meet the primary purpose of the Residential Zone, which could be interpreted to mean the provision of housing for human habitation on a permanent basis or a considerable period of time.

In terms of objective 3.4(a) of the Residential Zone, the proposed change of use will not change the character of the dwelling and as such, the locality. However, the short stay nature of the use of the site may affect the amenity of the established residential area. This would be in terms of the surrounding residents expectations of the:

- perceived character of the locality; and
- effect of the proposed use on the amenity of the area.

In relation to Objectives 3.4 (b) and (c) of the DPS2, these are not relevant in this matter as they relate to other forms of residential development that are covered by the R-Codes.

Having regard to the requirements of Clause 3.3 of the DPS2, it is considered that the proposed development is not consistent with the purposes and objectives of the Residential Zone and therefore, should be treated as a use which is not permitted within the Residential Zone.

Although Council may resolve that the use is not permitted (prohibited use) in the Residential Zone, such a resolution is still subject to review through the State Administrative Tribunal (SAT). On that basis, it is considered that the refusal should also address the issue of location of the proposed use, as discussed in the main report.

CONCLUSION

The proposed use has the potential to have a local impact on the surrounding properties. However, the nature of the proposed operation when measured against the purpose and objectives of the Residential Zone results in a proposed use that would be inconsistent with the purpose and objectives of the Residential Zone. Consequently, the application for Planning Approval should be refused.

Having regard to the legal advice that has been sought, comments received and the intent of the zone as described in the DPS, a revised recommendation is presented for consideration by Council which:

- (i) *identifies that the proposed use is an unlisted land use;*
- (ii) *determines that the unlisted land use is not consistent with the objectives and purposes of the particular zone and is therefore not permitted; and*
- (iii) *identifies that the location of this type of unlisted land use is inappropriate for this location.*

ATTACHMENTS

Attachment 1	Locality Plan
Attachment 2	Development Plans
Attachment 3	Applicant's response to objections

VOTING REQUIREMENTS

Simple Majority

MOVED Cr Fishwick, SECONDED Cr Currie that Council:

- 1 DETERMINES under Clause 3.3 of District Planning Scheme No 2 that:**
- (a) Short Stay Accommodation is deemed to be an unlisted use; and**
 - (b) the proposed use does not meet the objectives and purpose of the Residential Zone, and therefore, is not a permitted land use.**
- 2 Subject to Part 1 above, REFUSES the application for planning approval received on 26 April 2006, submitted by Karen Hope for the proposed change of land use from a Single House to an unlisted land use on Lot 102 (17) Foston Drive Duncraig as:**
- (a) the proposed unlisted land use is not a permitted land use under clause 3.3(c) of District Planning Scheme No. 2 as the proposed use is not consistent with the purpose and objectives for the Residential Zone;**
 - (b) having regard to the orderly and proper planning of the locality, the proposed unlisted land use is considered inappropriate having regard to the proposed use and its location within a single residential area.**
- 3 Advises the submitters of its decision.**

Discussion ensued.

Cr Magyar foreshadowed his intention to move a different Motion should the Motion under consideration not be successful.

The Motion was Put and

CARRIED (11/1)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Park, Amphlett, John, Hart, Corr, Fishwick and Currie **Against the Motion:** Cr Magyar

Appendix 16 refers

To access this attachment on electronic document, click here: [Attach16agn190906.pdf](#)

Disclosure of interest affecting impartiality

Name/Position	Mayor Troy Pickard
Item No/Subject	CJ168-09/06 - Condition of Hire for City Of Joondalup Facilities - Child Protection Policy
Nature of interest	Interest that may affect impartiality
Extent of Interest	Mayor Pickard is a Community Vision Inc Board Member.

CJ168 - 09/06 CONDITION OF HIRE FOR CITY OF JOONDALUP FACILITIES - CHILD PROTECTION POLICY – [36566]**WARD:** All**RESPONSIBLE A/DIRECTOR:** Mr Chris Terelinck
Planning and Community Development (Acting)

CJ060912_BRF.DOC:ITEM 16**PURPOSE**

To provide background information on the new *Working With Children (Criminal Record Checking) Act 2004* and to amend the City Policy 7-3 Community Facilities – Built.

EXECUTIVE SUMMARY

In 2004, Council adopted the Condition of Hire for City of Joondalup Facilities Child Protection Policy, which stated that all sport and recreation clubs/associations and community groups with members under 18 years of age, will be required to provide the City with a copy of their organisation's Child Protection Policy in order to make a permanent booking in one of the City's community facilities (Item CJ 269 – 11/04 refers).

In 2005, all of the City's Policies were reviewed (Item CJ064 – 04/05 refers), and a new Policy 7-3 Community Facilities – Built was created, including a clause detailing the requirements of community groups to submit a Child Protection policy to the City.

The State Government has since enacted the *Working With Children (Criminal Record Checking) Act 2004*, which officially came into effect on 1 January 2006. This Act requires all employees (paid and unpaid) to undergo a Working with Children Check. The implementation of these checks has been phased over the next five (5) years.

This Act means that the clause regarding Child Protection in the Council Policy 7-3 Community Facilities – Built needs to be amended to indicate that community groups and sporting clubs must comply with the Act. The City's role in regards to Child Protection is to advocate for safe environments, and offer advice and assistance to its community groups and sporting clubs.

It is recommended that Council AMENDS City Policy 7-3 Community Facilities - Built by altering the section titled Child Protection as shown on Attachment 1 to Report CJ168-09/06.

BACKGROUND

At its meeting on Tuesday 2 November 2004, Council adopted the "Condition of Hire for City of Joondalup Facilities Child Protection Policy" for inclusion into the City's Policy Manual (Item CJ 269 – 11/04 refers). The Policy stated that 'at the time of making a permanent booking for the use of a City of Joondalup facility, all sport and recreation clubs/associations and community groups with members under 18 years of age, will be required to provide the City with a copy of their organisation's Child Protection Policy. If the organisation does not have a current policy in place, a permanent booking will not be confirmed.'

At its meeting on Tuesday 26 April 2005, Council resolved to adopt a new framework for the development and review of policies at the City of Joondalup (Item CJ064 – 04/05 refers). A new City “Policy 7-3 Community Facilities – Built” was created, which states that ‘prior to making a permanent booking for the use of a City facility, all community groups and associations with members under 18 years of age are required to provide the City with a copy of their organisation’s Child Protection Policy.’

The State Government has enacted the *Working With Children (Criminal Record Checking) Act 2004* which came into effect on 1 January 2006. The Act has several implications for the City, and outlines that all people employed (paid or un-paid) in child related work on more than five days per year must have applied for a Working with Children Check, or already hold a current Assessment Notice by the date they are required to under the phasing-in arrangements.

All volunteers undertaking child related work for sport and recreation clubs/associations and community groups will need to apply for a Working with Children Check, but the timing of the application varies. The following rules apply:

- All volunteers starting a new position involving child related work after 1 January 2006 must apply for a Working with Children Check prior to starting work.
- All volunteers starting a new position involving child related work (8-12 years) after 1 January 2007 must apply for a Working with Children Check prior to starting work.
- All volunteers who start child related work involving children aged 8-12 years before 1 January 2007 must apply for a Working with Children Check between 1 January 2007 and 31 December 2007.
- All volunteers who start child related work involving children aged 13-17 years after 1 January 2008 must apply for a Working with Children Check prior to starting work.
- All volunteers who start child related work involving children aged 13-17 years before 1 January 2008 must apply for a Working with Children Check between 1 January 2008 and 31 December 2008.
- All volunteers starting a new position involving child related work before 1 January 2006 must apply for a Working with Children Check between 1 January 2009 and 31 December 2009.

It is the responsibility of all employers, community groups, and sport and recreation clubs/associations to make sure that all employees or volunteers undertaking child related work comply with Act, and obtain the Working with Children Check in accordance with the phasing in requirements.

A Working with Children Screening Unit has been established, currently within the Department for Community Development, to implement the *Working with Children (Criminal Record Checking Act) 2004*. The State Government has announced its intention that the responsibility for the Working with Children Checks will be transferred from the Department for Community Development to the Commission for Children and Young People, once that Office is established.

DETAILS

With the new *Working With Children (Criminal Record Checking) Act 2004* coming into effect on 1 January 2006, the City 'Policy 7-3 Community Facilities – Built' needs to be reviewed to reflect the legislative changes. The City's terms and conditions for the use of community facilities are to be amended to reflect the need to comply with the legislation.

Link to Strategic Plan:

Outcome

The City of Joondalup provides social opportunities that meet community needs.

Objectives:

- 1.3 To continue to provide services that meet the changing needs of a diverse and growing community.

Strategies

- 1.3.3 Provide support, information and resources.

Legislation – Statutory Provisions:

The State Government has enacted the *Working With Children (Criminal Record Checking) Act 2004*, which came into effect on 1 January 2006. The City is required to comply with this legislation in the delivery of its own programs and services, but is not required to enforce the legislation on its community user groups. This is the role of the State Government.

Risk Management considerations:

With the new *Working With Children (Criminal Record Checking) Act 2004* that came into effect on 1 January 2006, the enforcement of the Act is now the responsibility of the State Government. By changing the City Policy 7-3 Community Facilities to advise community groups and sporting clubs to comply with the new Act, the City is remaining proactive. The requirement of all facility users to comply with their obligations ensures that the issue of child protection remains at the forefront. Community groups and sporting clubs will be reminded that they are required to comply with current legislation, and this information will be included in the City's terms and conditions of hire for sporting grounds and facilities.

Financial/Budget Implications:

The City will not be responsible for meeting any of the costs of applying for the Working with Children Check, that are incurred by sport and recreation clubs/associations and community groups.

Policy Implications:

The clause in City 'Policy 7-3 Community Facilities – Built' that relates to Child Protection Policies is a City Policy and needs to be amended by a Council decision (see Attachment 1).

Appendix 14 refers

To access this attachment on electronic document, click here: [Attach14brf120906.pdf](#)

CJ169 - 09/06 COMMUNITY DEVELOPMENT STRATEGY – [07116]

WARD: All

**RESPONSIBLE
A/DIRECTOR:** Mr Chris Terelinck
Community Development (Acting)

CJ060912_BRF.DOC:ITEM 17

PURPOSE

To advise Council of the outcome of the community comment process and to seek endorsement of the Community Development Strategy.

EXECUTIVE SUMMARY

The Community Development Strategy is an overarching strategy supported by six plans, those being:

- Seniors Plan (endorsed November 2003)
- Access and Inclusion Plan (endorsed February 2004)
- Leisure Plan
- Families with Children Plan
- Cultural Plan, and
- Youth Plan

At the Council meeting in April 2006 (CJ060-04/06 refers) a draft copy of the Community Development Strategy was presented to the Council for consideration. The Council resolved that the draft document be advertised for public comment. The public comment process concluded on 13 June 2006.

A total of 46 responses were received and a summary of community responses are provided in attachment 2 to this report. A wide range of comments were received during the process, with the Youth Plan receiving the greatest number of responses. Other than grammatical or technical adjustments no revisions have been recommended.

Community Vision Inc provided a comprehensive written submission, however it is not proposed to amend based on the comments.

It is recommended that Council:

- 1 *ENDORSES the Community Development Strategy document as shown in Attachment 1 to Report CJ169-09/06;*

- 2 *NOTES the responses provided through the Community Comment process as shown in Attachment 2 to Report CJ169-09/06;*
- 3 *formally ACKNOWLEDGES those groups and individuals who provided comment.*

BACKGROUND

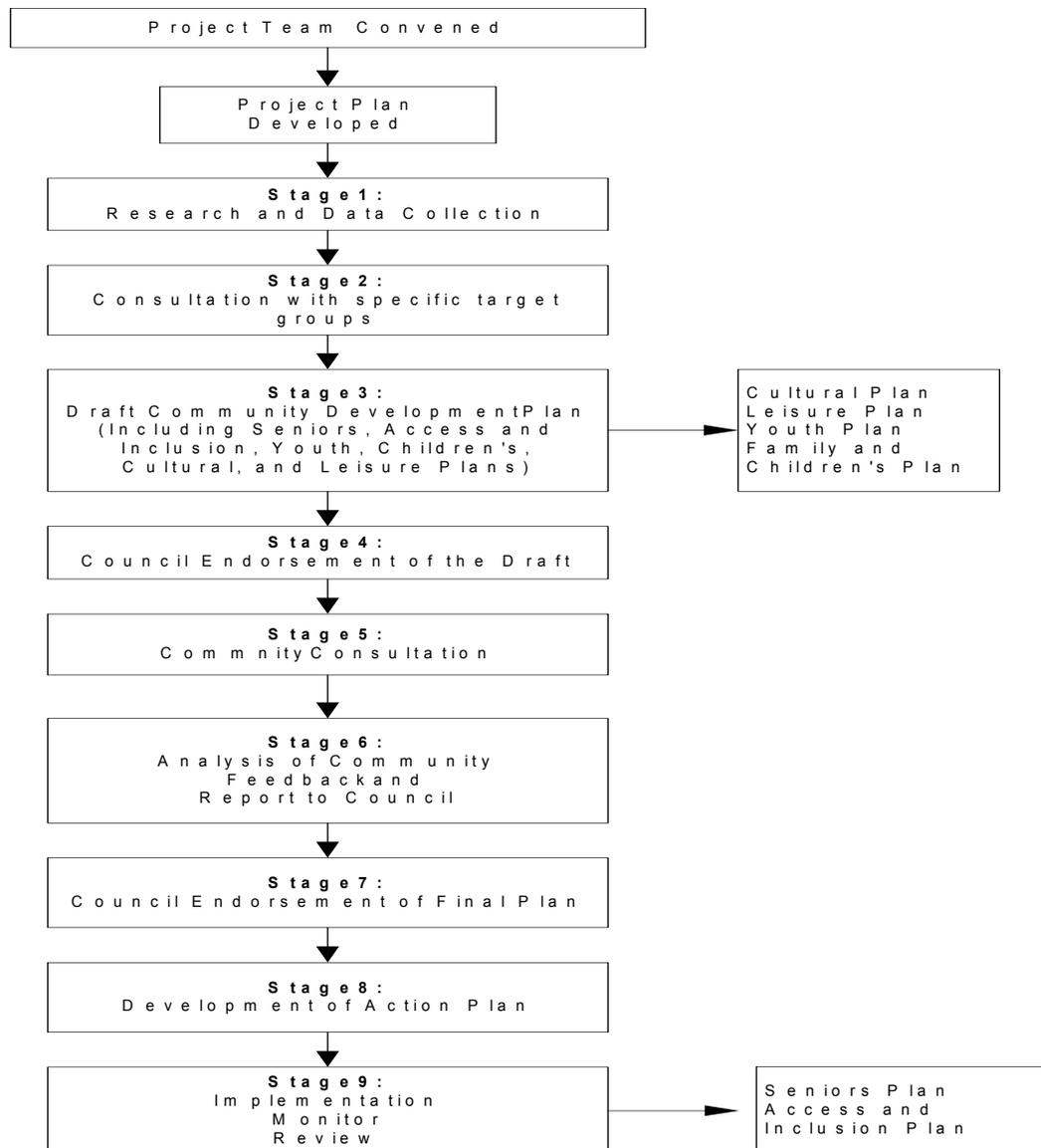
The Community Development Strategy provides an overall approach for the achievement of the City's social development goals for cultural and leisure programs, services and initiatives for seniors, young people, families with children and people with disabilities and/or access issues.

The objective of the Strategy is to bring together the City's social development plans. The Council has endorsed both the Seniors Plan and the Access and Inclusion Plan, in 2003 and 2004 respectively.

A public comment process was undertaken following Council endorsement of the draft Community Development Strategy in April 2006. The comment process was for a 60-day period (13 April 2006 to 12 June 2006).

The community comment process generated 46 responses from individuals and groups within the community. A summary of the responses received is provided in attachment 2.

The flow chart below outlines the process that has been followed to achieve the position that the project is now at. Stages one to six (with six being the review of the community comment process) have been completed.



DETAILS

The following methods were used to encourage community submissions on the Community Development Strategy:

- The Community Development Strategy document was made available on the City's web page, in addition to hard copies being obtainable at the libraries and leisure centres (copies of the document were forwarded to individuals and organisations upon request);
- A response form was developed to enable the community to comment on the Community Development Strategy document (available online and in hard copy);
- Advertisements informing the community of the Community Development Strategy and the opportunity for community comment were placed in the Community News in May 2006;

- Letters were sent to all community and sporting groups on the City's database advising them of the opportunity available to them to make comment on the Community Development Strategy document; and
- Copies of the strategy document were also sent to relevant State Government bodies such as: Department for Community Development, Department of Culture and the Arts and Department for Sport and Recreation.

Respondents were invited to either make comment on the whole document, or to focus on individual plans that were of interest or relevance to them.

A total of 46 responses were received:

- 9 on-line submissions;
- 37 written submissions using response form.

The City received an extensive submission from Community Vision Inc. The content of the submission is addressed within the comments provided on the community feedback (attachment 2).

Link to Strategic Plan:

- 1.2 To meet the cultural needs and values of the community.
- 1.3 To continue to provide services that meets the changing needs of a diverse and growing community.
- 3.3 To continue to meet changing demographic needs.

Legislation – Statutory Provisions:

The Local Government Act 1995 sets out a number of responsibilities for local government:

- (a) *Direct and control the City's affairs;*
- (b) *Is responsible for the performance of the City's functions;*
- (c) *Oversee the allocation of the City's finances and resources; and*
- (d) *Determine the City's policies.*

This role encompasses strategic planning mechanisms to ensure the continued sustainability of the organisation, the setting of strategic goals for the organisation and the monitoring of the City's performance against these strategic goals.

The State Disability Act (1993) requires all Local Governments to prepare Disability Plans. The City's Access and Inclusion Plan is the Disability Plan.

Risk Management considerations:

From a risk management perspective there are three key reasons that the City would undertake a social planning process of this complexity.

- Effective strategic and operational planning.
- Greater confidence in achieving planned strategic and operational planning.
- Improved decision-making processes.

Policy implications:

A Community Development policy has been developed. This policy was reviewed by the Policy Committee following a public comment period. This policy is the subject of a separate report to be presented to the Council on 19 September 2006.

Regional Significance:

The Community Development Strategy promotes a number of outcomes in relation to regional opportunities.

Sustainability implications:

The Community Development Strategy addresses social and community issues. The various components of the Strategy aim to:

- Strengthen the community so that members of the community are able to meet their own needs, achieve self reliance and meet their full potential; and
- Promote a socially just and equitable community, which is enriched by diversity and increased social participation by all groups.

COMMENT

The community submissions received were broad ranging and mostly supportive of the strategy. The submission received from Community Vision Inc was the only submission that was critical of the strategy.

The Seniors' Plan and Access and Inclusion Plan are not included in the strategy as they are due for review in 2006/07 and were not included for community comment. These plans will be the subject of public advertising as part of the review process.

ATTACHMENTS

Attachment 1 Community Development Strategy Document
Attachment 2 Summary of community submissions and the City's responses.

VOTING REQUIREMENTS

Simple Majority.

MOVED Cr Hart, SECONDED Cr John that Council:

- 1 ENDORSES the Community Development Strategy document as shown in Attachment 1 to Report CJ169-09/06;**
- 2 NOTES the responses provided through the Community Comment process as shown in Attachment 2 to Report CJ169-09/06;**
- 3 formally ACKNOWLEDGES those groups and individuals who provided comment.**

The Motion was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

Appendix 15 refers

To access this attachment on electronic document, click here: [Attach15agn190906.pdf](#)

Director, Corporate Services left the Chamber, the time being 2152 hrs.

**C67– 09/06 REQUEST FOR ANNUAL LEAVE - CHIEF
EXECUTIVE OFFICER - [98394] [98394B]**

WARD: All

**RESPONSIBLE
DIRECTOR:** Mr Garry Hunt
 Office of the CEO

PURPOSE

To give consideration to the request for annual leave submitted by the Chief Executive Officer.

EXECUTIVE SUMMARY

The Chief Executive Officer has requested annual leave for the period 4 October 2006 to 11 October 2006.

It is recommended that Council APPROVES the request from the Chief Executive Officer, Mr Garry Hunt, for annual leave for the period 4 October 2006 to 11 October 2006 inclusive.

BACKGROUND

The Chief Executive Officer commenced his employment with the City of Joondalup on 31 January 2005.

DETAILS

The Chief Executive Officer has requested annual leave for the period 4 October 2006 to 11 October 2006 inclusive. The CEO has delegated authority to appoint an Acting CEO for periods where he is absent from work while on leave, where such periods are for less than 35 days. The Directors of the City perform the Acting Chief Executive role on a rotational basis. The Director Corporate Services is the officer assigned to fill the role from 15 September until 16 December 2006

Issues and options considered:

During the employment of the CEO there will be periods of time where he will be absent from the City of Joondalup on annual leave.

The CEO, in accordance with his employment contract, is entitled to twenty five (25) days leave per annum.

Link to Strategic Plan:

Strategy 4.5.4 Implement best practice people-management policies and tools to assist in the achievement of the City's workforce objectives.

Legislation – Statutory Provisions:

Not Applicable.

Risk Management considerations:

Not Applicable.

Financial/Budget Implications:

Nil.

Policy Implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability Implications:

Not Applicable.

Consultation:

Not Applicable.

COMMENT

The CEO has an entitlement in accordance with his employment contract for periods of annual leave. The dates requested are conducive to the operations of the City.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Simple Majority.

MOVED Cr Hart, SECONDED Cr Hollywood that Council APPROVES the request from the Chief Executive Officer for annual leave for the period 4 October 2006 to 11 October 2006 inclusive.

The Motion was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Pickard, Crs Hollywood, McLean, Jacob, Magyar, Park, Amphlett, John, Hart, Corr, Fishwick and Currie

Director, Corporate Services entered the Chamber, the time being 2154 hrs.

MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

C68-09/06 NOTICE OF MOTION – CR S MAGYAR - [61581]

In accordance with Clause 26 of Standing Orders Local Law 2005, Cr S Magyar has given notice of his intention to move the following motion at the Council Meeting to be held on 19 September 2006:

That:

- 1 Council, BY AN ABSOLUTE MAJORITY, ESTABLISHES a Public Accountability Committee as recommended by the McIntyre Inquiry, Recommendation 13 to rebuild goodwill between the Council and Electors;*

- 2 the Terms of Reference for the Committee are:*

to liaise with any member of the public who is not satisfied that the response to their question at public question time has been fair and reasonable;

to review questions taken on notice and to request the CEO to change or modify the responses published in the agenda for the following meeting;

to review petitions received by Council and to appraise the appropriateness of the actions taken in response to the petition;

to advise Council on sections 1.3(2), 2.7 and 2.10 of the Local Government Act 1995 and on issues of accountability of Council to the local community;

- 3 APPOINTS the Mayor and one Councillor from each Ward to the Public Accountability Committee.”*

Cr Magyar submitted the following comments in support of his motion:

The Report of the Inquiry into the City of Joondalup, October 2005, recommended that:

“A committee of the Council of the City of Joondalup should be established to supervise the answering of public questions and report on and recommend action relating to the answers to questions to the Council.”

This recommendation of the Inquiry has not been considered by the Elected Members, only by the Commissioners.

Consideration of this motion will assist Elected Members to identify ways to improve the processes of Council.

The 1995 Local Government Act states among its intents is to increase accountability of local governments to their communities and to increase the community’s participation in the decisions and affairs of local government.

The Act also requires Elected Members to facilitate communication between the community and Council.

Finally, Council is responsible for the performance of the local government’s functions and Council directs and controls the local government’s affairs.

A Public Accountability Committee will assist Council and Elected Members to work towards the intent of the Act and assist in performing their roles as required under the Act.

It should be noted that this motion does not interfere with the Mayor's role regarding public question time as detailed in the Local Government Administration Regulations.

Officer's Comment:

Recommendation 13 of the McIntyre Inquiry report stated that "a Committee of the Council of the City of Joondalup should be established to supervise the answering of public questions and report on and recommend action relating to the answers to questions to the Council".

The City made a submission to the Minister for Local Government and Regional Development on the report in November 2005. In response to recommendation 13, the City commented that "this recommendation does not take into account the turn-around time for the answering of Council questions nor the fact that information with regard to answering questions will be obtained from officers regardless of a committee involvement. A committee would be time consuming and lead to delay in dealing with questions. The City currently has reviewed its public question time procedure".

The fourth term of reference, which relates to advising "Council... on issues of accountability of Council to the local community" is broad in its scope. In this regard, the City has an Audit Committee whose charter covers a wide range of matters. These include considering internal audit plans and arrangements, the critical analysis of internal or external audit reports and the monitoring of ethical standards. One particular duty is to "identify and refer specific projects or investigations deemed necessary through the Chief Executive Officer, the Internal Auditor and the Council, if appropriate". The Committee then oversees any subsequent investigation.

With such a broad charter for the Audit Committee, it would appear inefficient and would create duplication if an Accountability Committee were to be established to consider "issues of accountability".

It is also noted that the City's Code of Conduct requires Elected Members and staff to respect other people and to act with honesty and integrity. These requirements will exist whether or not an Accountability Committee is established.

MOVED Cr Magyar, SECONDED Cr Hart that:

1 Council, BY AN ABSOLUTE MAJORITY, ESTABLISHES a Public Accountability Committee as recommended by the McIntyre Inquiry, Recommendation 13 to rebuild goodwill between the Council and Electors;

2 the Terms of Reference for the Committee are:

to liaise with any member of the public who is not satisfied that the response to their question at public question time has been fair and reasonable;

to review questions taken on notice and to request the CEO to change or modify the responses published in the agenda for the following meeting;

to review petitions received by Council and to appraise the appropriateness of the actions taken in response to the petition;

to advise Council on sections 1.3(2), 2.7 and 2.10 of the Local Government Act 1995 and on issues of accountability of Council to the local community;

3 APPOINTS the Mayor and one Councillor from each Ward to the Public Accountability Committee.”

MOVED Cr Corr, SECONDED Cr Park that consideration of the establishment of a Public Accountability Committee be DEFERRED to the Policy Committee.

The Motion was Put and TIED (6/6)

In favour of the Motion: Crs Park, Amphlett, John, Hart, Corr, and Currie **Against the Motion:** Mayor Pickard, Crs Fishwick, Hollywood, McLean, Jacob and Magyar

There being an equal number of votes, the Mayor exercised his casting vote and declared the Motion **LOST**

MOVED Cr Jacob, SECONDED Cr Park that consideration of the establishment of a Public Accountability Committee be DEFERRED for six months.

The Motion was Put and TIED (6/6)

In favour of the Motion: Crs Currie, Corr, Amphlett, Park, Magyar and Jacob **Against the Motion:** Mayor Pickard, Crs Fishwick, Hart, Amphlett, McLean and Hollywood

There being an equal number of votes, the Mayor exercised his casting vote and declared the Motion **LOST**

The Motion as Moved Cr Magyar, Seconded Cr Hart was Put and LOST (3/9)

In favour of the Motion: Crs Hart, John and Magyar **Against the Motion:** Mayor Pickard, Crs Amphlett, Corr, Currie, Fishwick, Hollywood, Jacob, McLean, Park

ANNOUNCEMENTS OF NOTICES OF MOTION FOR THE NEXT MEETING

C70-09/06 NOTICE OF MOTION – CR B CORR - [61581]

In accordance with Clause 26 of Standing Orders Local Law 2005, Cr B Corr has given notice of his intention to move the following motion at the Council Meeting to be held on 10 October 2006:

“That the City SEEKS public comment for an advertised period of 28 days on a proposal to use the monies in the Community Facilities Fund (Kingsley) (which amounted to \$274,545.00 as at 30 June 2006) for an appropriate project within the suburb of Kingsley that will directly benefit the local Kingsley community.”

CLOSURE

Mayor Pickard commended the Elected Members on hearty and healthy debate during this Council meeting and extended an invitation to the members of the gallery to participate in refreshments at the conclusion of the meeting.

There being no further business, the Mayor declared the Meeting closed at 2224 hrs; the following Elected members being present at that time:

MAYOR T PICKARD
Cr K HOLLYWOOD
Cr T McLEAN
Cr A JACOB
Cr S MAGYAR
Cr J PARK
Cr G AMPHLETT
Cr M JOHN
Cr S HART
Cr B CORR
Cr R FISHWICK
Cr R CURRIE