

# CITY OF JOONDALUP

## MINUTES OF ANNUAL GENERAL MEETING OF ELECTORS HELD IN COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP ON MONDAY, 17 NOVEMBER 2003

### OPEN AND WELCOME

The Mayor declared the meeting open at 1900 hrs.

### ATTENDANCES

#### Mayor

D CARLOS

#### Elected Members:

Cr L PROSPERO	Lakeside Ward	<i>Absent from 2035 hrs to 2040 hrs</i>
Cr P KIMBER	Lakeside Ward	
Cr C BAKER	Marina Ward	
Cr T BREWER	Marina Ward	
Cr A NIXON	North Coastal Ward	<i>Absent from 2050 hrs to 2053 hrs</i>
Cr J F HOLLYWOOD, JP	North Coastal Ward	<i>Absent from 2332 hrs to 2335 hrs</i>
Cr A WALKER	Pinnaroo Ward	
Cr S HART	South Ward	
Cr M O'BRIEN, JP	South Ward	
Cr G KENWORTHY	South Coastal Ward	<i>Absent from 2111 hrs to 2114 hrs</i>
Cr J GOLLANT	South Coastal Ward	<i>Absent from 2029 hrs to 2033 hrs and from 2258 hrs to 2302 hrs</i>
Cr M CAIACOB	Whitfords Ward	
Cr C MACKINTOSH	Whitfords Ward	<i>Absent from 2235 hrs to 2239 hrs</i>

#### Officers:

Director, Corporate Services and Resource Management:	P SCHNEIDER
Director, Infrastructure & Operations	D DJULBIC
Acting Director, Planning & Community Development:	G HALL
Manager Audit and Executive Services:	K ROBINSON
Manager, Marketing Communications & Council Support:	B ROMANCHUK
Manager, Financial Services:	A SCOTT
Statutory Accountant:	D BROWN
Media Advisor:	L BRENNAN
Committee Clerk:	J HARRISON
Minute Clerk:	L TAYLOR

In attendance

Ms Leanne Karamfiles of Deloitte Touche Tohmatsu - Auditor

**MOVED Ken Zakrevsky, 49 Korella Street, Mullaloo, SECONDED David Davies, 5 Lytham Mews, Connolly that We the ratepayer electors of the City of Joondalup welcome any members of the printed press and electronic media at our meeting tonight and invite them to stay as long as they wish, as long as it is of interest to the general community.**

**The Motion was Put and**

**CARRIED**

**ATTENDANCES AND APOLOGIES****Leave of absence previously approved:**

Cr C Baker        22 October - 23 November 2003 inclusive

Apologies:        Cr P Rowlands  
                         Mr Denis Smith, Chief Executive Officer

Late Apology:    Cr M O'Brien

There were 185 members of the Public in attendance, 140 of whom signed the register to record their attendance. *For Attendance Register, click here: [attendance agm 171103.pdf](#)*

There were seven members of the Press in attendance.

**THE 2002/2003 ANNUAL REPORT, INCLUDING THE FINANCIAL STATEMENTS**

The Mayor advised that this meeting had been advertised in accordance with the Local Government Act 1995 on four occasions, being 23 October 2003, 30 October 2003, 6 November 2003 and 13 November 2003 in the Joondalup Community Newspaper.

**ADDRESS BY MAYOR DON CARLOS**

Welcome Councillors, residents and staff to this Annual General Meeting of the City of Joondalup.

As I said in the City's Annual Report, available to you this evening, I am pleased to report that the City is financially sound.

This allows us to progress many major projects upon which the City has embarked, including the refurbishment of the Craigie Leisure Centre at a cost of \$8.1 million.

Planning is already in full swing for the next Joondalup Festival, which was again an outstanding success, attracting some 100,000 people last year.

The Festival, and the City's array of arts and cultural events, is a sound springboard for plans for the Joondalup Regional Performing Arts Centre.

Major projects completed in this financial year include the \$8 million Eddystone Bridge, the Kingsley Memorial Clubrooms, in which the City invested \$150,000. May I say, the State Government also invested \$100,000, but something that is really wonderful to see, the general public both in kind and money contributed \$600,000 to this worthwhile club rooms.

The City announced that its new multi-million dollar Works Depot will be built at the northern end of the Mitchell Freeway at a cost of \$10 million.

Council has also approved funds for a major facelift of Sorrento Beach and another large project the Council is planning is the development of the Ocean Reef Boat Harbour.

The City has held discussions with the State Government on this very important project for the future of the Joondalup region and the State of Western Australia.

### **Video Presentation**

At this point a video presentation was given outlining the growth of the City of Joondalup and the various activities undertaken within the City.

### **GENERAL BUSINESS**

**Mr Noal Gannon, 79 Clontarf Street, Sorrento:**

- *Mr Gannon stated he had been a ratepayer within the City for 33 years, was a Justice of the Peace and has the honour of having a park in Duncraig bearing his name. He stated he is not and never has been a member of any political party.*

**MOVED Noal Gannon, 79 Clontarf Street, Sorrento, SECONDED Ken Zakrevsky, 49 Korella Street, Mullaloo that We the ratepayers of the City of Joondalup EXPRESS our appreciation of the actions of Mayor Don Carlos, and those Councillors who support him, in attempting to bring honesty and accountability to the top strata of the administration of this City despite the obstruction of the other Councillors who believe that by gagging other elected members and holding meetings behind closed doors they can pull the wool over the ratepayers' eyes no matter what the cost to ratepayers.**

**The Motion was Put and**

**CARRIED UNANIMOUSLY**

**MOVED Noal Gannon, 79 Clontarf Street, Sorrento, SECONDED Ken Zakrevsky, 49 Korella Street, Mullaloo that Mr Denis Smith, Chief Executive Officer of the City of Joondalup STAND ASIDE until such time as the controversy regarding his suitability for the position is resolved.**

Mr Gannon provided the following reasons in support of his motion:

- 1 he did not attend this most important meeting;
- 2 he does not appear to have the composure necessary for such an important position when as reported in the Wanneroo Times 11-17 November 2003 he reacted to a request for an interview from a TV crew by becoming “physically ill and emotionally distraught”;
- 3 he threatened to lock out elected Councillors from the Administration offices (Wanneroo Times 11-17 November 2003);
- 4 he communicates only through his lawyers when questioned about his qualifications (this at great expense to the ratepayers who pay his bills);
- 5 he does not accept the Mayor as a representative of all the ratepayers;
- 6 in the opinion of the Sunday Times (7 September 2003) “Joondalup Council Boss, Denis Smith should be awarded a degree for dishonesty. The Sunday Times has caught him out again.”

The following persons spoke to the Motion:

Mr J McNamara, Sorrento  
Ms C Woodmass, Kingsley

**Mr J McNamara, 39 Seacrest Drive, Sorrento:**

*Q1 Has the CEO, Mr Denis Smith been given formal written warnings of his incompetence in managing the City of Joondalup?*

*A1 Response by Mayor Carlos:* I personally have not given him formal warnings because as the Mayor I am only one person. My fellow Councillors have voted their support of Mr Smith. This has occurred, I believe in the last 12 months, on four occasions. So as the Mayor, I have no authority to issue such a warning to Mr Smith because we are an elected body and the democratic right of the Council is that it must be a Council decision.

**The Motion as Moved by Mr Gannon and Seconded by Mr Zakrevsky was Put and  
CARRIED**

**Three electors voted against the Motion.**

**MOVED Dr Marjorie Apthorpe, 69 Bacchante Circle, Ocean Reef, SECONDED  
Michael Norman, 8 Stockdale Avenue, Sorrento that Council:**

- 1 **IMMEDIATELY builds two east/west combined fire breaks, vehicle and pedestrian access tracks to connect the suburb of Iluka to the coastal dual-use path;**
- 2 **REOPENS pedestrian access to beaches now fenced off in Ocean Reef by re-establishing and upgrading the informal access tracks to a reasonable standard for public safety.**

Director, Infrastructure and Operations advised that a condition of the Iluka subdivision was that the developer provides two access tracks/firebreaks and he believed the developer will install those track/firebreaks within the next 6 to 12 months. In relation to the reopening of informal accessways that have been closed, these accessways have been closed for the following reasons:

- public safety, in view of the limestone cliff faces. To address the public safety issues, a coastal pathway has been built which has been fenced off and there are some links to the coastal pathway from the roads, which again is fenced.
- conservation and the closing up of many of the informal pathways to try and preserve the natural vegetation that is in the coastal corridor.

The Director Infrastructure and Operations stated that the City believes the coastal corridor is its jewel in the Crown.

Dr M Apthorpe spoke in support of the Motion and provided copies for elected members of the diagram map showing the accessways she made reference to.

**The Motion was Put and**

**CARRIED**

**MOVED Wayne Primrose, 16 Negresco Turn, Currambine, SECONDED Vincent Cusack, President, South Ward Ratepayers and Electors Association:**

- 1 that the parties refer the matter to an independent mediator appointed by the President of LEADR, (Lawyers Engaged in Alternate Dispute Resolution), whose fees are to be funded entirely by the City;**
- 2 that the parties participate meaningfully in the mediation process and in the best interests of the City;**
- 3 that to avoid further damage and embarrassment to the City, the CEO stands aside on full pay until the matter is resolved;**
- 4 the CEO not receive any further legal funding from the City on the basis that he is not entitled to do so according to Policy 2.2.8 – Legal Representation for Present and former Elected Members and Staff of the City.**

The following persons spoke to the Motion:

Mr W Primrose, Currambine  
Mr S Magyar, Heathridge  
Mrs Pat Worth, Ocean Reef

**Mr Hugh Reason, 12 Monteith Place, Kinross:**

*Mr Reason addressed the following questions to Cr Baker:*

*Q1 What place do political factions have in local government?*

*Q2 What benefit to the residents and ratepayers is the behaviour of such factions?*

*Q3 What qualifications does one require to become a member of such a faction?*

**The Motion as Moved by Mr Primrose and Seconded by Mr Cusack was Put and  
CARRIED**

**Four electors voted against the Motion.**

**Mr M Sideris, 12 Page Drive, Mullaloo:**

*Q1 On 30 September 2003, I asked a question relating to fringe benefit tax and was told it was deferred because there was a rescission motion placed before the Council. I repeat the question “Has Council now determined whether the payment of expenses to the CEO encompassed FBT and does the CEO’s contract provide for payment of FBT?” The response was – The City sought advice from Deloitte, and the advice received based on information provided to them was that the FBT was reduced to zero.*

*I wish to ask the Auditor how the payment of FBT was reduced to zero?*

*A1 Response by Auditor:* That question on FBT in particular relation to the CEO would be outside the normal scope of the audit.

The matter was referred to Deloitte’s tax experts, not to its auditing experts. The matter was on issues to do with employment contracts. There is an otherwise deductible rule which says that if it is deductible to the person, then there is no FBT payable on it, and that was the advice the City was acting on that suggested no FBT. There is an FBT liability but it is reduced to zero due to the otherwise deductible rule.

*Q2 Is GST applicable?*

*A2 Response by Mayor Carlos:* I would ask that the Auditor from Deloitte provide a written response to these questions raised by Mr Sideris.

*Q3 To Director, Corporate Services and Resource Management - Did you sight the appropriate form from the CEO declaring that the FBT was reduced to zero? I understand the ATO publishes a series of requirements and it is required that the CEO records and publishes that and submits it to the Office ie to you, so that you can then forward it through and deal with the matter correctly.*

*Cr Gollant left the Chamber at this point, the time being 2029 hrs.*

*A3 Response by Mayor Carlos:* I will take the question on notice and ask for the documents to be produced and I will arrange for you to look at these documents in my office within the week.

*Q4 I refer to the Annual Report and the requirements under Section 5.53 of the Local Government Act 1995, section (g) where within the Annual Report, you must indicate where payments are paid to employees. Can you direct me to the appropriate page where you refer to the payment of legal fees to the CEO?*

A4 The payments were not made to the CEO. The payments were paid to Blake Dawson Waldron for legal expenses.

Q5 *Did the CEO incur that expense, or did the City incur that expense?*

A5 The question will be taken on notice.

Q6 *Can you direct me in this Annual Report where you indicate compliance with Clause 7 of the National Competition Policy, which is that you indicate in this report how you did comply with the provisions last year and how you intend to comply with the provisions next year?*

A6 *Response by Mayor Carlos:* The question will be taken on notice and we will arrange for you to meet in my office in the next week.

*Cr Gollant entered the Chamber at this point, the time being 2033 hrs.*

**MOVED Mitch Sideris, 12 Page Drive, Mullaloo, SECONDED Steve Magyar, 31 Drummer Way, Heathridge that We the electors of the City of Joondalup REFUSE to accept this Annual Report on the basis of its lack of professionalism and incompleteness as a document representing what has occurred in the past in the City of Joondalup and what is proposed to occur in the future within the City of Joondalup.**

**The Motion was Put and**

**CARRIED**

**One elector voted against the Motion.**

*Cr Prospero left the Chamber at this point, the time being 2035 hrs.*

**Mr Keith Pearce, 19 Kilarney Heights, Kallaroo:**

Re: Kingsley Football Club – I have been asked by the committee to attend the meeting this evening to ask the Council to review the charges that are being proposed for the Kingsley Football Club for the next few years in relation to the use of the new clubrooms. It has been a long-standing tradition within this City that a club that contributed significantly towards the construction of an asset for the City would be given some consideration with regard to the costs of using that facility over the following few years. Kingsley Football Club is not being given that opportunity in relation to the clubrooms that have been built on Kingsley Reserve.

As the video that was shown earlier in the meeting so graphically showed, the Kingsley Football Club has suffered tremendously over the year and a lot of people have put a lot of time and effort into building a clubrooms as a memorial to the seven boys lost and to those that came back. No money at all has been collected from those sources to the Kingsley Football Club itself. All the money has either gone to the Bali fund, which is used to support the needs of those boys who were in the Sari Club at the time of the explosion, or the parents and relatives of those who didn't make it back. Not one cent has come to the club and the club has in fact had a number of costs associated with the Bali issue that has made it extremely difficult to function financially this year.

The City now has a community facility that is going to be used very widely and is worth \$1,000,000 and I understand the City of Joondalup contributed \$150,000 to that building. The Council has a \$1,000,000 building for \$150,000 outlay. The committee and myself believe that the Kingsley Football Club should be given some consideration with regard to the costs that are charged to it for the use of that facility for the next few years. I urge all Councillors to give that earnest consideration.

*Response by Mayor Carlos:* At the opening of the Kingsley Football Club the matter you have just spoken of was raised with me by a number of the members of the Football Club. I have asked the CEO to arrange a report to be submitted to Council for consideration.

*Response by Acting Director, Planning and Community Development:* The fees and charges that are charged on all community buildings throughout the City are set by the Council. They are the fees which the City, as the manager of the facilities, sets and applies to the clubs. I have requested the Kingsley Football Club and Mr Pearce to submit a written submission with regard to the Club's request to enable a report to be submitted to Council in this regard.

*Cr Prospero entered the Chamber at this point, the time being 2040 hrs.*

**MOVED Keith Pearce, 19 Kilarney Heights, Mullaloo, SECONDED Cr Mike O'Brien that the City of Joondalup GIVES consideration to charging a relatively low rent to the Kingsley Football Club for the next few years.**

**The Motion was Put and**

**CARRIED UNANIMOUSLY**

**Mr E Ellery, 2 Shorebird Parade, Woodvale:**

- *Mr Ellery spoke at length on issues relating to:*
  - *The CEO's employment;*
  - *His belief of dirty tactics during local elections;*
  - *The Mayoral car;*
  - *The Mayoral chain.*

**Ms K Woodmass, 25 Calbourne Way, Kingsley:**

*Cr Nixon left the Chamber at this point, the time being 2050 hrs.*

*Q1 Given that Mr Smith is unable to attend tonight's meeting, would it not have been possible to have his lawyers here in his place, since they are the only ones to answer any questions that are put in Mr Smith's direction to date?*

*A1 No response was provided to this question.*

*Q2 When Councillors nominated Cr O'Brien as a spokesperson on the Contract and Employment of the CEO, were they aware that he may not have been an appropriate person. At the AGM in 2000, he put the following motion: "Moved Mr O'Brien, Seconded Mr Sideris that this Annual Meeting of Electors of the City of Joondalup assembled on this Monday 18 December affirms that it has lost confidence in the Office of the Chief Executive of this municipality and calls upon the Minister of Local Government to immediately intervene and inquire into the City of Joondalup's current*



*administrative performance, with particular emphasis on the loss of morale amongst our employees.”*

A2 *Response by Cr O'Brien:* When I moved that motion I was an elector, not a Councillor of the City of Joondalup. At the time the issue was one of a \$27 flat tax that was imposed by the Commissioners and recommended by the then CEO to the Council, Mr Delahaunty. It was not a motion of no confidence in Mr Delahaunty, it was a motion of no confidence in the Office of the CEO, the administration that had supported the proposition and put it to the Commissioners. The Commissioners had endorsed it; the first Council had endorsed it and I was a ratepayer who was being flat taxed \$27, the same as anybody in a small unit. Whitford City Shopping Centre was also only being taxed \$27. The referendum put that to bed, as it is now a proportional tax and Whitford City Shopping Centre pays \$51,000 a year towards that activity of the municipality. As every tax ought to be, it is now proportional.

**MOVED Katherine Woodmass, 25 Calbourne Way, Kingsley, SECONDED Wayne Primrose, 16 Negresco Turn, Currambine that unless Council RESOLVES the CEO issue forthwith (prior to Christmas 2003) by listening to ratepayers, that they opt for a referendum of ratepayers to decide on what should happen in relation to this on-going saga. The referendum question should be decided in consultation with the ratepayers.**

**The Motion was Put and**

**CARRIED**

**One elector voted against the Motion.**

*Cr Nixon entered the Chamber at this point, the time being 2053 hrs.*

**MOVED Katherine Woodmass, 25 Calbourne Way, Kingsley, SECONDED Mitch Sideris, 12 Page Drive, Mullaloo that no matters of business regarding the CEO's contract or any other matter unless commercially sensitive are to go behind closed doors within the City of Joondalup indefinitely.**

**The Motion was Put and**

**CARRIED**

**One elector voted against the Motion.**

**MOVED Katherine Woodmass, 25 Calbourne Way, Kingsley, SECONDED Mitch Sideris, 12 Page Drive, Mullaloo that We the Electors of the City of Joondalup EXPRESS a vote of no confidence in the CEO due to his lack of accountability and credibility, mainly of his inability to be open and honest.**

**The Motion was Put and**

**CARRIED UNANIMOUSLY**

**Ms M Whitecunas, Southern Cross Circle, Ocean Reef:**

*Re: Ocean Reef Road Extension:*

I wish it to be known for the purpose of the public record that at last week's Council meeting (11 November 2003) there was a lot of people in general that were under the impression that the Ocean Reef Coastal Stakeholders Group was against this section of road going ahead. I wish to clarify that irrelevant of any of the individual people's personal beliefs, the group works for the good of the community and that public consultation means exactly that. That all views be heard, whether they are for or against anything before the final decision be made.

**Mr Graeme Hunt, 3 Page Drive, Mullaloo:**

- *Mr Hunt urged Councillors to reassess their position in relation to the matter of the CEO's Contract of Employment and bring this issue to a conclusion as soon as possible.*

Re: Level of Security in City of Joondalup – the Annual Report indicates an amount of \$4.6 million on law, order and public safety last year. I am asking what the ratepayers got for their money.

I have lived in Mullaloo and been a ratepayer for approximately 30 years. My family has grown up there, the whole family was active participants in and contributed to the Mullaloo Surf Life Saving Club and there was a time when we walked home from the club to our home some 400 metres away perfectly safely across Tom Simpson Park. Over recent years, the situation has changed, the level of trashing of the park and its smaller neighbour on the south side of the club has become distinctly offensive. In recent weeks we have seen mountains of bottles, broken glass, assorted garbage, a broken chair and I notice this evening a bicycle missing the front wheel propped against the tree.

*Q1 What is this patrol service doing, why is it not addressing these issues and when can we expect to see some action in the future?*

A2 Approximately half of the \$4.6 million was set towards the security patrols. The City has a contract with NGS and patrols are undertaken in every street in the City on every day, with a response time of less than 10 minutes on more than 80% of occasions. The City is seeing some reduction with regard to crime and disorder. Certainly, there are some restrictions in that City Watch officers do not have powers of arrest and are limited in some of the situations in which they can be involved.

*Q2 The Rangers have provision to issue infringement notices. Why is it that this does not happen? What is stopping our patrol service from doing this?*

A2 The Ranger Service has been retained and it still holds those existing authorities. The security service is additional to the Ranger Service.

**MOVED Graeme Hunt, 3 Page Drive, Mullaloo, SECONDED Mitch Sideris, President, Mullaloo Progress Association, Mullaloo that the:**

- 1 City officers responsible for security instruct our patrol services to conduct a more serious pattern of patrols along the beach front, particularly in regard to Tom Simpson Park and other areas;**
- 2 lighting in Tom Simpson Park and park area, Lot 1 Oceanside Promenade, Mullaloo be improved.**

The following persons spoke to the Motion:

Mr G Hunt, Mullaloo

Mr M Sideris, Mullaloo

**The Motion was Put and**

**CARRIED UNANIMOUSLY**

### **Special Meeting of Council**

Mayor Carlos advised that five Councillors had called a Special Meeting of Council for 9.00 pm this evening to discuss the matter pertaining to the CEO's employment.

Mayor Carlos stated that further questions could be taken at this point, but advised that at 2120 hrs he intended to adjourn the Annual General Meeting of Electors and open the Special Council Meeting at 2130 hrs.

**MOVED Cr Mike O'Brien, SECONDED Vincent Cusack, President, South Ward Ratepayers and Electors Association** that the Annual General Meeting of Electors continue and that the meeting scheduled for 9.00 pm be DEFERRED until the completion of this meeting.

Mayor Carlos advised that the Special Council Meeting must be opened before 2130 hrs.

**The Motion was NOT PURSUED.**

**Mr V Cusack, President, South Ward Ratepayers and Electors Association:**

During the Upper House Parliamentary Inquiry into the Local Government Act 1995, Clause 15 of the CEO's Contract of Employment was read out in full, as follows:

*"Subject to any express provision in this agreement to the contrary, each party shall bear its own legal and other costs and expenses relating directly or indirectly to the preparation of and performance of its obligations arising out of this contract"*

*(Transcript of Evidence, Tuesday 7 October 2003, page 17)*

*Q1 To each Councillor present this evening, were you aware of the existence and content of Clause 15 before voting on numerous occasions to authorise expenditure of ratepayers' money for the CEO's legal fees?*

A1 *Response by Cr Hart:* Mr Mayor, I was not aware of that clause in the first request we had, and I wasn't informed by the lawyers either.

*Response by Cr Walker:* I was not aware of that clause in the first request we had, nor was I informed by the lawyers. As soon as I found out about the clause, I ceased to vote for the payment of the CEO's legal fees.

*Response by Cr Caiacob:* Same comment, Mr Mayor.

*Response by Cr Hollywood:* I was not aware of that clause until recently and I have never voted for the legal fees of the CEO.

*Response by Cr O'Brien:* I was fully aware of that clause and the motion that was moved by the Council was a separate matter. The Council has the capacity to do that and it did that by a majority vote. I was aware of it, the same as every other Councillor who had been delivered a copy of the contract. If they hadn't read it, they should have, but it is in the contract, but it was a separate decision of Council and Council was competent to do that. This has been checked with the Department of Local Government, who advise that while they might not support it, the question was that we were not doing anything illegal.

Q2 *Did Council's solicitors inform this Council of the existence and content of Clause 15 at any time during their brief to the elected Council. If not, why not?*

A2 This question will be taken on notice.

Q3 *Are there any provisions in the Local Government Act 1995 which deals with the misapplication of Council funds?*

A3 There are provisions to deal with the misapplication of funds.

**Mr Boris Talevski, 71 Constellation Drive, Ocean Reef:**

As previously stated, I would urge the Councillors that Ocean Reef Road needs to remain open. I would ask the ladies who spoke previously on this issue, which road do they use to take the children to school?

*Cr Kenworthy left the Chamber at this point, the time being 2111 hrs.*

**Mrs M Zakrevsky, 49 Korella Street, Mullaloo:**

I wish to raise the matter of regular maintenance of assets such as the City's buildings and its coastal reserve referred to as "the jewel in the crown".

*Cr Kenworthy entered the Chamber at this point, the time being 2114 hrs.*

The Whitfords Senior Centre and Library, the Recreation Centres and the coastal reserve natural areas appear to have insufficient or no maintenance budgets. What is the point of having a coastal management plan that has recently won a prestigious environmental award for the City if there is an inadequate budget to implement basic requirements? The City is waiting on the developers of Iluka, Davidson and the Roman Catholic Archbishop to put in

accessways from Iluka to the dual-use path in the coastal reserve that does not belong to the developer. In view of the urgency for access to the dual-use path and the beaches for Iluka residents and for FESA in the event of fire, this matter should be under the City's control. How many months has it been since a report on the maintenance for Whitfords Library and the Seniors Centre was requested? Where are the priorities being placed by staff and Councillors when there is no shortage of money for Christmas dinner parties and hampers and legal advice, but there is a shortage of money for important basic needs, like access paths and building maintenance?

**MOVED Marilyn Zakrevsky, 49 Korella Street, Mullaloo, SECONDED Dr Marjorie Apthorpe, 22 Bacchante Circle, Ocean Reef that the maintenance of assets that ratepayers use be given highest priority and non-essential items like expensive entry statements and Christmas dinner parties be scrapped.**

**The Motion was Put and**

**CARRIED UNANIMOUSLY**

**MOVED Ken Zakrevsky, 49 Korella Street, Mullaloo, SECONDED Marie Macdonald, 5 Mair Place, Mullaloo that the ratepayers and electors insist that:**

**1 Council introduces as from 1 February 2004, the committee system covering the three Directorates, namely:**

**Corporate Services and Resource Management  
Planning and Community Development  
Infrastructure and Operations**

**This was initially to be introduced after the six month Briefing Session trial;**

**2 the Mayor to be automatically ex officio on every committee and attends such committee meetings as his other duties permit;**

**3 the Councillors elected to those committees will attend such, and failure to attend committee meetings without Leave of Absence will automatically be subject to the same terms as laid down in the Local Government Act 1995 in relation to attendance and necessity for Leave of Absence for Council meetings.**

Mr Zakrevsky spoke to the Motion.

**The Motion was Put and**

**CARRIED UNANIMOUSLY**

## **ADJOURNMENT OF MEETING**

Mayor Carlos **ADJOURNED** the meeting at 2120 hrs.

The Annual General Meeting of Electors **RESUMED** at 2234 hrs, with members of the public, staff, press and the following elected members being present:

MAYOR D CARLOS  
Cr P KIMBER  
Cr L PROSPERO  
Cr C BAKER  
Cr T BREWER  
Cr J F HOLLYWOOD, JP  
Cr A WALKER  
Cr S HART  
Cr M O'BRIEN  
Cr J GALLANT  
Cr G KENWORTHY  
Cr M CAIACOB  
Cr C MACKINTOSH

Mayor Carlos read the lost motion from the Special Meeting of Council held on 17 November 2003 in relation to JSC75-11/03 - Termination of Employment Contract – Chief Executive Officer of the City of Joondalup

*Cr Mackintosh left the Chamber at this point, the time being 2235 hrs.*

### **Mr Wayne Primrose, 16 Negresco Turn, Currambine:**

- *Mr Primrose spoke on the employment of the CEO and wondered whether Councillors who continue to support the CEO were properly informed on the issue.*

*Cr Mackintosh entered the Chamber at this point, the time being 2239 hrs.*

### **Mr S Magyar, 31 Drummer Way, Heathridge:**

I refer to the resolution of Council from last Tuesday, 11 November 2003 which dealt with the CEO issue and the formation of a Working Party outside the Local Government Act 1995 to deal with the matter of the CEO.

Will this Working Group be dealing with the question of “did the CEO mislead Council in his job application” and will it address these questions and try to deal with this matter honestly? I have great concerns for some of the Councillors who are continuously avoiding this issue that they are putting themselves in a position where under the Local Government Act 1995 people are required to act in good faith at all times. I as a ratepayer would support action to recover all the unnecessary expenses that this City has incurred due to the decisions that certain ratepayers have made in bad faith.

They have refused to deal with this issue properly and honestly and when they do that they are liable for all the costs incurred. I will be supporting forever into the future to recover the money that these people have wasted of ours.

**Mr V Cusack, President, South Ward Ratepayers and Electors Association:**

*Q1 Regarding the CEO's Contract of Employment, is there a clause which requests him to submit all documentary evidence for expenditure on his credit card?*

*A1 Response by Mayor Carlos: (Mayor Carlos read the relevant paragraph as follows – “the City may provide the CEO with one or more corporate credit cards. The CEO agrees that he will use such credit cards only for the payment of reasonable and necessary out of pocket expenses properly incurred in the performance of his obligations under this agreement and will provide the Mayor documentary evidence of these charged expenses. If the CEO complies with the requirements of this clause, the City agrees that it will pay all monies owing in respect of these corporate credit cards used by the CEO.”)*

During my time as Mayor I have never had any documents submitted to me in accordance with this clause of the CEO's contract and I did request Mr Smith to provide me with this.

*Q2 When the controversy first started here in WA, we were all as ratepayers handed a statement by Mr Denis Smith, currently General Manager of Warringah Council, NSW; appointed Chief Executive Officer, Joondalup City Council. The following statement is submitted in response to the allegations made in the West Australian newspaper on Saturday 23 September 2001. All Councillors, the media and ratepayers received a copy of this. A quote from the back page of the statement “I have never misused any Council credit card during my term at Warringah Council. In accordance with my contract, I submitted all necessary documentary evidence to the Mayor, who approved all expenditure. I also engaged the services of a solicitor to audit my accounts. He has provided written advice that I have met all obligations imposed on me under the terms of my contract of employment. He has also sighted credit card statements and evidence of payment of all conference costs that have been duly authorised by the Mayor. A copy of the letter from my solicitor setting out his findings has been submitted to the Joondalup Mayor and Deputy Mayor.”*

*My question to the Councillors who wish to continue this, can you please explain to us why?*

*A2 Response by Cr Baker: In relation to the credit card issue, the first time I knew of that was when I watched television the other night. I think that is the same with all Councillors here this evening. That is why we would prefer to be told before the media is told, but that is a matter for the Mayor. I certainly have no knowledge of that issue at all. As you are probably aware, the Working Party that has been referred to this evening is meeting at 8.30 am tomorrow morning. That Working Party has been established to review this whole issue, and the various options. One such option would be to terminate the CEO's contract. There would need to be terms and conditions applied to that.*

*Q3 Can I take from that Cr Baker that there may be a payout involved or anything along those lines?*

*A3 Response by Cr Baker:* That is a matter for the Council to resolve.

*Q4 The motion that was just read out, did that involve a three month salary payment?*

*Q4 Response by Mayor Carlos:* That is right, it did involve a three month payment. For your information, I have asked the administration to raise a motion which will be presented to the next Council meeting (because I believe that this Council administration has paid the CEO's credit cards illegally), to recover every dollar that has been paid up until 12 November 2003 because it should not have been reimbursed and may I say the Administration here has reimbursed something which is against his contract.

**Ms M Macdonald, 5 Mair Place, Mullaloo:**

*Q1 Under what authority were these credit cards paid? As an Accountant, I would have expected some sort of policy/authority on which to physically pay these amounts. I would expect the Auditors would be looking at these issues. How in fact were these payments authorised, if not through the contract that you are referring to?*

*A1* This question will be taken on notice.

**MOVED David Davies, 5 Lytham Mews, Connolly, SECONDED Marie Macdonald, 5 Mair Place, Mullaloo that We the electors of the City of Joondalup move a vote of no confidence in Crs Mackintosh, Gollant, Kenworthy, O'Brien, Brewer, Baker, Kimber and Prospero who voted to retain Mr Smith.**

**PERSONAL EXPLANATION – CR M O'BRIEN**

The question of this matter that arose this evening is one that required procedural fairness and in the terms of Court decisions on natural justice and that is the golden right that a person who is accused has a right to be heard. I don't give a damn whether it is a person who sweeps the streets, a person in an executive position or wherever they are. I will always stand by that principle. The same as when I was sitting in the Courts, that a person who is accused has a right to be heard and the Courts have upheld on consistent occasions those two golden rules – one the decision-maker must have no bias and secondly, the person affected by the decision has a right to be heard. They are the two principles of natural justice. That is the reason that I voted against this motion this evening, because the person accused had not been present.

**Mr V Cusack, President South Ward Ratepayers and Electors Association:**

*Q1 Cr O'Brien didn't extend the same courtesy to Cr Hart last week when the Special meeting was called. Why didn't you extend the same courtesy to Cr Hart?*

*A1 Response by Cr O'Brien:* There was no motion before the meeting last week as part of the request. It was an opportunity for matters to be heard.



**The Motion as Moved by D Davies, Seconded by M Macdonald was Put and  
CARRIED UNANIMOUSLY**

**PERSONAL EXPLANATION – CR BAKER**

The ratepayers present should be aware that at all material times the City of Joondalup has acted in accordance with legal advice rendered by this State's top Local Government lawyer. Prior to the Mayor giving notice to call this evening's meeting, I gave notice of a motion that I would be moving tomorrow morning at the Working Party meeting that deals with the same issue. Beyond that, the City has acted or the majority of the Councillors have acted at all times in accordance with this State's top local government lawyer, Neil Douglas, of King Edward Memorial Hospital Inquiry fame, and many other inquiries. Read the submission to the Upper House. As he said, the Councillors, a majority at least, have done nothing wrong at all. In terms of this scuttlebutt in the paper about us having to sack the CEO, or be sacked, you must be aware that in December last year, almost a year ago, Mayor Carlos (then a Councillor) wrote to the Minister and asked for the City to be sacked as far back as then. Not because of the Denis Smith issue, but because allegedly during a couple of Council meetings a couple of Councillors were not allowed to debate a notice of motion because they allegedly were speaking out of turn. I table this letter that the Council then wrote to the Minister last year in December.

*Cr Gollant left the Chamber at this point, the time being 2258 hrs.*

Cr Hart requested it be recorded that she has moved a motion for a second opinion because some Councillors were not confident in the advice received.

**Mr W Primrose, 16 Negresco Turn, Currambine:**

- *Mr Primrose suggested that if the second opinion was sought, the firm that is engaged is independent of the Council's panel.*

**Mr Ken Zakrevsky, 49 Korella Street, Mullaloo:**

We have just heard from Cr O'Brien that the person hasn't been heard. I ask you how many questions at Public Question Time for months on end have we asked and given the person the opportunity to make an honest statement? From the first day, the ratepayers would have said "look the man bottled himself into a corner, we accept his apology, let's get on with the job". But the problem was compounded because certain Councillors just would not listen no matter how rationally, how carefully advice was put forward. The next thing we are going to have here is a question of workers compensation. The stress factor came with the baggage from Warringah and that has been compounded, not by any ratepayer, not by specific Councillors, but the person himself. I specifically request that if there is a question of workers compensation, that specific brief be given to the representatives solicitor that that brief contain the originality of where the stress arose.

*Cr Gollant entered the Chamber at this point, the time being 2302 hrs.*

**MOVED Wayne Primrose, 16 Negresco Turn, Currambine, SECONDED Arthur Taylor, 5 Verden Lane, Kingsley that Cr Baker did not make a personal statement and that his comments be struck from the record.**

**The Motion was Put and**

**CARRIED**

**Mr Mitch Sideris, 12 Page Drive, Mullaloo:**

- *Mr Sideris spoke in relation to:*
  - *The role of the lawyers in providing advice to Council;*
  - *The issue of bank cards and statement;*
  - *Information provided within the Warrant of Payments;*
  - *The right of access by ratepayers to public documents.*

**MOVED Mitch Sideris, 12 Page Drive, Mullaloo, SECONDED Vincent Cusack, President, South Ward Ratepayers and Electors Association that all documents, all Warrants of Payments that are made available to Councillors including corporate card details are relisted and go back at least two years and fully expand every item detailed within that particular cheque number.**

**The Motion was Put and**

**CARRIED UNANIMOUSLY**

**Mr Arthur Taylor, 5 Verden Lane, Kingsley:**

*Q1 From the result of that previous motion, what will be done with the information? How is it going to be made public to every ratepayer of the City of Joondalup?*

*A1 Director Corporate Services and Resource Management advised the comments would be taken on board and considered.*

*Response by Mayor Carlos: I have been advised that I am not getting it because Mr Smith has directed Mr Schneider not to give it to me. I have been told by the staff of some of the expenditure that is there and we need to investigate it.*

**Mr Arthur Taylor, 5 Verden Lane, Kingsley:**

As a ratepayer, under the Local Government Act 1995 I am entitled to be provided with any financial information from this municipality. I would like details of all expenditure on the CEO's credit card since his appointment, in particular I would like to know whether there are any items for cosmetics, ladies fashions, massage services, motor vehicle repairs to any vehicle other than his Council issued car.

**Cr J Hollywood:**

I received a letter from Blake Dawson Waldron tonight. When the Mayor asked for the credit cards to be produced, this is the reply:

*“You are not entitled to direct that Mr Smith provide you with details concerning previous credit card purchases. Clause 7.2 of Mr Smith’s Contract of Employment sets out steps for Mr Smith to take relating to receipts of credit card details. It is for Council to decide what should happen if these steps do not occur. After all, the contract is Council’s contract with Mr Smith, and not yours and you do not have the authority to ask for these credit cards.”*

Mr Mayor, you have also stated this evening that in the contract of the CEO it states that the Mayor has the right to these credit cards, but this differs from the legal advice we have been getting for the past 12 months. I believe the advice we are getting from our lawyers is not correct and that is why tomorrow morning I will go to a meeting to look into the CEO’s contract.

**Mr Stephen Veness, 50 Korella Street, Mullaloo:**

The Australian Taxation Office can and would if asked, make the CEO produce all relevant documents if it was necessary.

**Mr Keith Campbell, 12a Austal Street, Mullaloo:**

*Q1 I would like to ask any of the Councillors that spoke for the motion in your meeting, are any of them prepared to stand up and give their reasons why they voted that way to dismiss Mr Smith?*

*A1 Response by Mayor Carlos:* I first became aware of Mr Smith when I was appointed to the Selection Committee to replace the former CEO of the City. I was concerned about the CEO and the high salary we were paying and I went along with this because I thought we were going to get a CEO with qualifications and I clearly said to the recruiters that we wanted someone with good qualifications. Before Mr Smith had even arrived here we had started getting back Press from the East. A number of people in this gallery raised questions saying we should not appoint Mr Smith because of the bad Press. The previous Director of Finance who was then the Acting CEO had quite a number of emails and letters from the East which said there was problems associated with Mr Smith. Mr Smith arrived because the previous Mayor didn’t wish to even acknowledge there was a problem. There was a problem at Warringah, there was a problem at Coffs Harbour, there was a problem at Baulkham Hills and there were problems at Campbelltown. I understand there was a problem at GHD. During my investigations over the last year, I have been told some many and varied things about the background to Mr Smith.

When he was appointed as the General Manager at Warringah, the similar six or seven mistakes were made. When he went to Coffs Harbour, he made similar mistakes on the CV that he gave Coffs Harbour. The current CEO of Coffs Harbour and the past CEO of Coffs Harbour have said the worst period of the Council was when Mr Smith was there. Councillors at Warringah are saying exactly the same thing. The worst

time they have ever had was during (and they have been sacked by the way). I would suggest to you this is probably the worst thing that has ever happened to Joondalup.

I will read from a Court case from 20 November 2002. The judge made the following comments after she had rubbished him for lying, for not telling the truth and for lying about his qualifications. They tried, they had him on the stand and he was not prepared to answer any of the questions. I believe, I honestly do believe that some of the questions he was asked, there is perjury involved, but no one wants to take any notice. But let me read:

*“The General Manager, meaning the CEO, was similarly more interested in helping his faction than in managing the potential diverse dispute between two Councillors, when after receipt of the 22 November 1999 letter from the plaintiff’s solicitors the defendant did in fact seek advice from the General Manager, Mr Smith. This was his opportunity to manage and to negotiate this dispute in the interests of both the Council and the community. It must be recalled this letter offered no apology, but advice of a Writ was on its way. Instead of giving her advice or information about investigations that might have been relevant to that advice, he blatantly told her to get herself a good lawyer.”*

He has been telling me he is going to put Writs on me for the last year and I challenged him to it. Because everything I have said is the truth and you can’t be liable for the truth. This is the problem that we have got and my fellow eight Councillors in this room are not prepared to face facts.

**Mr Hugh Reason, 12 Monteith Place, Kinross:**

*Earlier I directed the following three questions to Cr Baker:*

*Q1 What place do political factions have in Local Government?*

*Q2 What benefit to the ratepayers and residents of the City of Joondalup are these factions?*

*Q3 What qualifications do you require to become a member of one of these factions?*

*A1-3 Response by Cr Baker* I don’t believe there are any party political factions on Council. In terms of the factional issue, I am only aware of one faction, as described as the Mayor’s team. Most Councillors were invited to join that team. I believe Cr Prospero was and there were several others. Apparently, I am not in the team.

*Q4 So then you are not representing any political party in your position of a Councillor?*

*A4 Response by Cr Baker:* No, absolutely not.

*Q5 You are not a member of any political party?*

*A5 Response by Cr Baker:* Yes, I am. To my knowledge two other Councillors are. The Mayor is not a member of any political party, but he is affiliated with people who may be and, of course that may create the perception that he is. The same could be said of other Councillors here as well. That is the perception that is being created, and it’s simply not true. I am sure Cr Hollywood would vouch for that in terms of several

other Councillors as well. You can ask around the Council now and I would invite you to do that. Ask every Councillor on the Council if they are a member of a political party and if so, the particular political party and I think that will resolve that issue very quickly. That's the obvious question to ask.

*Q6 You are a member of a political party, obviously you are not ashamed of that?*

*A6 Response by Cr Baker: I haven't been to a political party meeting since, I think it was eight hours prior to the last State Election.*

**Mr Mike Norman, 8 Stockdale Avenue, Sorrento:**

I have many friends and associates from the Sorrento area who are not here this evening and their feeling is that there is something dishonest with the CEO. If my employer asked me to show my qualifications, whether they are relevant or not to the job, I would show them. I did speak to my local Councillor today to understand why she was voting to keep the CEO in. I respect those reasons, but certainly people are seeing this whole thing as a sham. They feel it is impacting on the credibility of this institution and that the matter should be dealt with. The Council should move on with a new CEO because this is an embarrassment to the City. There are lots of other important issues in this City than an issue about governance and the CEO. You need to move on so we can address the issues that really impact on the ratepayers and make sure that ratepayers' money is spent carefully.

**MOVED Steve Magyar, 31 Drummer Way, Heathridge, SECONDED Wayne Primrose, 16 Negresco Turn, Currambine that We the electors of the City of Joondalup hereby REQUESTS Council at its next meeting to instruct the CEO to OBEY the Local Government Act 1995, Section 5.92 and provide to the Mayor the required documents regarding his credit card.**

**The Motion was Put and**

**CARRIED UNANIMOUSLY**

*Cr Hollywood left the Chamber at this point, the time being 2332 hrs.*

**MOVED Steve Magyar, 31 Drummer Way, Heathridge, SECONDED John Massam, 46 Cobine Way, Greenwood that We the electors of the City of Joondalup hereby REQUEST the Minister for Local Government to look into the question of whether there has been any conniving or concurring to misapply funds to pay for the CEO's legal expenses contrary to the Local Government Act 1995 and whether this Council could then recover such funds from those Councillors.**

**The Motion was Put and**

**CARRIED UNANIMOUSLY**

**Mr Vincent Cusack, President, South Ward Ratepayers and Electors Association:**

*Q1 At the Meeting of Council on 18 February 2003 there was a censure motion against Cr Carlos, that was amended to include the following Point 3 to the motion:*

*“That Council authorises the CEO to seek and obtain legal advice from Blake Dawson Waldron, Solicitors or another recognised legal firm in relation to allegations made by Cr Don Carlos.”*

*Cr Baker, can you explain to me why you nominated the particular firm Blake Dawson Waldron which I believe the CEO is now currently using?*

*Cr Hollywood entered the Chamber at this point, the time being 2335 hrs.*

A1 *Response by Cr Baker:* That firm, like Minter Ellison, has several sections such as an industrial relations section and it is a reputable firm. It is one of the top six firms in the State.

Q2 *Do you have a figure in mind for the Committee tomorrow to pay out the CEO?*

A2 *Response by Cr Baker:* I would have to act in accordance with legal advice. I acknowledge that the Mayor has already said in his view that \$100,000 is the maximum. Cr Hollywood has said three months salary, but with no superannuation, no accrued annual leave, no accrued sick leave etc. It is really a matter of acting in accordance with advice. A Contract of Employment is just that, it is a contract. We have been acting in accordance with the legal advice we have received from the best local government lawyer in this State.

Q3 *Cr Baker, you said earlier that tonight was the first time you were aware of the credit card allegations?*

A3 *Response by Cr Baker:* Not tonight, I didn't see the news tonight. When I saw them first, I saw them on TV, that is correct.

Q4 *Will you be seeking advice from Minter Ellison on the possible and the likely breach of the CEO's contract before agreeing at the Committee tomorrow whatever the decision may be to terminate the CEO or give the CEO money, or whatever?*

A4 *Response by Cr Baker:* I am not sure what the allegation is regarding the credit cards. I think the allegation is just a general allegation of misuse, not a specific allegation.

Q5 *Is he not required to provide documentary evidence, that could be the potential breach?*

A5 *Response by Cr Baker:* No, I think the allegation is that he has misused his credit card.

*Response by Mayor Carlos:* I never said that, I said under the contract.

**Ms Pauline Floate, 18 Legana Avenue, Kingsley:**

Q1 *Despite everything that has been said about the CEO, despite the bad Press, despite the warning signs, somebody or people had a vested interest in making sure he came here. People still seem to have a vested interest in making sure he stays here. I am asking you Cr Baker, and then I would like to ask all the other Councillors who voted not to get rid of him, what is your vested interest in keeping him here?*

A1 *Response by Cr Baker:* It is not so much a vested interest in keeping Mr Smith at all. It is a vested interest in terms of acting in accordance with legal advice and we have got the best advice we can get.

### **CLOSE OF MEETING**

There being no further business, the Mayor declared the Meeting closed at 2340 hrs; the following elected members being present at that time:

MAYOR D CARLOS  
Cr L PROSPERO  
Cr P KIMBER  
Cr T BREWER  
Cr C BAKER  
Cr J F HOLLYWOOD, JP  
Cr A WALKER  
Cr S HART  
Cr M O'BRIEN  
Cr J GOLLANT  
Cr G KENWORTHY  
Cr M CAIACOB  
Cr C MACKINTOSH