

#### XIV. MOTIONS WITH NOTICE

##### 14.1 Constitutional Recognition of Local Government-Motion by Mayor Evans

#### **14.1: CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT**

##### **IN BRIEF**

- The Western Australian Local Government Association (WALGA) has requested Council to support a resolution to recognise local government in the Australian Constitution.

##### **ITEM 14.1: MOTION BY MAYOR EVANS VOTING REQUIREMENT: SIMPLE MAJORITY**

- 1. The City of Albany declares its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new Preamble to the Constitution if one is proposed, and calls on all political parties to support a referendum by 2013 to change the Constitution to achieve recognition.**
- 2. The Council requests the Mayor to communicate its support to relevant entities.**

##### **BACKGROUND**

During 2008 Australian Local Government Association (ALGA) took steps to secure a referendum which involved:

- Production of initial resource materials to assist Local Governments to conduct a conversation at the local level on the need for Constitutional recognition
- Zone or region level discussions, where appropriate, based on WALGA agenda items
- Statewide forum to determine a State Local Government position (resolved at Local Government Convention)
- A national experts forum a National Constitution Summit (Melbourne December 2008)

In 2009/10 ALGA focused advocacy around national political forums, political parties and key influential academics, while State Associations built up state profiling campaigns to improve the image and perception of their local government jurisdictions.

The ALGA Board further refined the national position in 2010 to focus specifically on financial recognition and the WALGA position was also aligned to this focus.

ALGA's position is that:

- The Federal Government has committed to a referendum on Constitutional recognition for Local Government, likely to be held in conjunction with the 2013 election.
- A national position was developed at the Local Government Constitutional Summit to be held in Melbourne in December 2008, and has been refined by the Australian Local Government Association (ALGA) Board to focus the referendum on financial recognition.
- ALGA has requested that all Local Governments formally resolve to support the conduct of the referendum.

Item 14.1 continued.

**DISCUSSION:**

On 24 March 2011, WALGA President, Mayor Troy Pickard, wrote to Council and requested Council:

- Support the ALGA campaign for the Constitutional recognition of local government;
- Call on the Federal Government to conduct a referendum to achieve the Constitutional recognition of local government at the 2013 federal election;
- Develop a local level campaign, in support of the national campaign, to inform the local community and garner its support;
- Acknowledge that funding implications need to be considered as part of the ongoing financial planning process.

A copy of the correspondence is attached.

**GOVERNMENT CONSULTATION**

No state government consultation has been conducted in response to this request.

**PUBLIC CONSULTATION / ENGAGEMENT**

No public consultation has been conducted in response to this request.

**STATUTORY IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

This item directly relates to the following elements from the Albany Insight ~ Beyond 2020 Corporate Plan...

*4. Governance. The City of Albany will be an industry leader in good governance and service delivery.*

*4.1 The City of Albany will be a cohesive Council delivering ethical and responsible government committed to excellence in board governance.*

**POLICY IMPLICATIONS**

WALGA's position is that the national policy position is consistent with the WALGA position and adoption of the recommendations will formalise Council's policy position and align it with the national campaign.

Item 14.1 continued.

### **RISK IDENTIFICATION & MITIGATION**

The risk identification and categorisation relies on the City's Risk Management Framework.

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
Activity not costed in current Budget.	Unlikely	Minor	Low	A budget line is allocated so Council clearly defines the City's costed involvement in this activity, which could include the items listed under Financial Implications.
Lack of community engagement	Unlikely	Minor	Low	Community consultation is conducted by the Federal Government as part of any referendum.

### **FINANCIAL IMPLICATIONS**

The costs associated with any local level campaign will be contingent on its extent and complexity. Expenditures could involve expenses such as forum consultant, catering and administrative charges (i.e. telephone calls, printing) if the Council thinks necessary.

### **LEGAL IMPLICATIONS**

There are no immediate legal implications related to this item; however, if the referendum was successful there would be a change to the Australian Constitution.

### **ALTERNATE OPTIONS**

Council can either support, or not, the WALGA request.

### **SUMMARY CONCLUSION**

The City of Albany is a member of the WA Local Government Association (WALGA).

<b>Consulted References</b>	Nil
<b>File Number (Name of Ward)</b>	GR.LRL.1 (All Wards)
<b>Previous Reference</b>	OCM 19/04/2011 Item 4.2

**XV. MOTIONS OF WHICH NOTICE WAS GIVEN AT THE PREVIOUS MEETING**

**15.1 NOTICE OF MOTION BY CR LEAVESLEY – REVOCATION OF ALAC GYMNASIUM RESTRICTIONS**

**NOTICE OF MOTIONS TO REVOKE A PREVIOUS DECISION OF COUNCIL BY COUNCILLOR LEAVESLEY**

In accordance with Regulation 10(1a) of the *Local Government (Administration) Regulations 1996*, we the undersigned hereby move to have the restrictions imposed on the Albany Leisure & Aquatic Centre (ALAC) Gymnasium Operations detailed at Report Item 16.1 which was moved at an ordinary meeting of council held on the 16 January 2007.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Reason:** The current restrictions impinge upon the commercial viability of the gymnasium and if left in place increase the commercial risk (business unit failure).

**ITEM 15.1: REVOCATION MOTION BY COUNCILLOR LEAVESLEY  
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**THAT the restriction imposed by the resolution of Council on 16 January 2007, detailed at item 16.1, Points 2 & 3, being:**

***“2. That the operations of the gymnasium be undertaken as follows:***

- i) Like manner to existing gymnasium facility,***
- ii) Same number and functionality of exercise stations,***
- iii) No specific memberships to gymnasium allowed – access only by general membership to ALAC for all facilities or casual usage fee.***

***3. That the operations of the general purpose area be undertaken as follows:***

- i) Seniors/Wellness/rehabilitation service section programs,***
- ii) Workshops/meeting space for sporting and community group meetings, coaching/accreditation training sessions, general community space and allied health service delivery.”***

**be REVOKED.**

*[Section 5.25 (1)(e) of the Local Government Act 1995 refers]*

**Reason:**

The restrictions imposed by Council on the operation of the ALAC gymnasium are unrealistic and unfair.

The restrictions impinge upon the commercial viability of the gymnasium and if left in place increase the commercial risk (business unit failure).

The City gymnasium can operate without these mandated restrictions and comply with national competition policy.

**XVI. URGENT BUSINESS APPROVED BY DECISION OF THE MEETING**

**16.1: NOTICE OF MOTIONS FROM COUNCILLOR LEAVESLEY**

**ITEM 16.1: PROCEDURAL MOTION BY COUNCILLOR LEAVESLEY  
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**THAT the Notice of Motion by Councillor Leavesley, in regards to the adoption of a Mandatory Training Policy for Elected Member be accepted as an urgent item.**

**Reason:**

The Notice of Motion has budgetary implications therefore, it is prudent to have this item accepted as a late item, under 3.11(4), being:

*“(4) The Council may, by absolute majority, dispense with the notice requirements of clause 3.11(1) where the Council is satisfied that the motion—  
(a) relates to a matter of urgency that complies with clause 3.6(2); and  
(b) could not reasonably be dealt with at the next ordinary meeting of Council.”*

This item does not breach clause 3.6(2), being:

*“(2) The determination of a matter or exercise of a discretion under the Town Planning Scheme is not permitted to be dealt with as urgent business, prior to the budget finalisation.”*

**ITEM 16.1: NOTICE OF MOTION 1 BY COUNCILLOR LEAVESLEY  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**In light of the recommendations and observations of the Best Practice Review 2010, Council adopts a mandatory training policy with regard to both all incoming Councillors and all existing Councillors after the October 2011 elections.**

**That the Mayor and Councillors training to include the following WALGA Elected Member training units:**

- **Councillor Roles and Responsibilities;**
- **Ethics and Conduct of an Elected Member;**
- **Financial Report and Budgets;**
- **Strategic Planning;**
- **Change Management;**
- **Policy Development;**
- **Land Use Planning;**
- **Sustainable Asset Management;**
- **CEO Performance Appraisals and Manage Conflict;**

**And;**

**That the City allocates appropriate financial resources in the 2011/12 Budget to enable this to take place.**

Item 16.1 continued.

**Reason:**

The Best Practice Review clearly identified the lack of Councillor training as a contributor to the challenges the city of Albany faces. By adopting this policy now all prospective Councillors will understand this training is required. Other Councils have conducted this training as a group in their Council Offices, greatly reducing the cost. We could also invite neighbouring councils to take part in training here in Albany and all benefit from the economies of scale.

**Officer's Comment:**

The Notice of Motion has budgetary implications therefore it is prudent for Council to be provided with that information prior to consideration of the motion. As the Council will not decide the budget until its June OCM, there is no urgency at this time to act on the motion. At the June OCM Council will be asked to make decisions on various competing budgetary priorities, and this is one of those priorities that should be considered in the context of the FULL budget. I recommend the motion be considered as part of the June OCM budget debate. In the meantime, the Councillor could make submissions to the Council Workshop and the Audit Committee meeting that will be organised to consider the budget recommendations by the City's Executive.

**16.2: NOTICE OF MOTION FROM COUNCILLOR D BOSTOCK**

**ITEM 16.2 NOTICE OF MOTION BY COUNCILLOR D BOSTOCK – ALAC  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**That part two of the Responsible Officer’s Recommendation detailed at Report Item 3.1 - Albany Leisure and Aquatic Centre is amended:**

**From:** *“That Council DIRECTS the Chief Executive Officer”*

**To:** *“That Council DIRECTS the Chief Executive Officer, in collaboration with any Councillor who wish to be involved, to:...”*

**Reason:**

There is a considerable amount of knowledge residing within the elected body which, in total, as accumulated close to 1000 years of experience. Councillors who have relevant skills may be prepared to assist without charge and, as representatives of the electorate, will be seen as providing valuable community input.

As for Rules of Conduct 9.1, I accept that without permission of Council it would not be permissible, which is why I am seeking such permission in this amended motion.

**Officer’s Comment:**

In accordance with The *Local Government (Rules of Conduct) Regulations 2007*, regulation 9 which states:

***“ 9. Prohibition against involvement in administration***

*(1) A person who is a council member must not undertake a task that contributes to the administration of the local government*

*unless authorised by the council or by the CEO to undertake that task.*

*(2) Sub regulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.”*

Restricting the CEO’s administrative decision-making conditional upon “collaboration with any Councillor who wishes to be involved” may be seen to amount to a contravention of the above Regulation.

**XVII. REQUEST FOR REPORTS FOR FUTURE CONSIDERATION.**

Nil.

**XVIII. ANNOUNCEMENT OF NOTICES OF MOTION TO BE DEALT WITH AT THE NEXT MEETING.**

**18.1: NOTICE OF MOTION FROM COUNCILLOR D BOSTOCK – RECYCLING STRATEGY**

**ITEM 18.1: NOTICE OF MOTION BY COUNCILLOR D BOSTOCK  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT the waste recycling strategy which will be presented at a future Councillor Workshop be prepared in collaboration with any Elected Member who wishes to become involved.**

**Reason:**

Recycling of waste involves the City in annual costs of several hundred thousand dollars. Councillors may have experience in managing such costs and should be encouraged to participate in staff deliberations at an early stage.

**Officer's Comment:**

Councillor Bostock gave notice at the Ordinary Meeting of Council held on 19 April 2011, which read as follows:

*“That Council institute a Committee, consisting of any member who wishes to be involved, to review the waste recycling operations in the city of Albany”*

Notice of Motion submitted in accordance with:

- a. Clause 5.4 of the *Standing Orders Local Law 2009*, being:  
**“5.4 Motions**
  - (1) *A member proposing a primary motion or amendment must state its substance before addressing the meeting.*
  - (2) *The presiding person or the meeting by resolution may require a complicated motion to be divided into two or more motions.”*
  
- b. The *Local Government (Rules of Conduct) Regulations 2007*, regulation 9 which states:  
**“ 9. Prohibition against involvement in administration**
  - (1) *A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task.*
  - (2) *Sub regulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.”*

**18.2: NOTICE OF MOTION BY COUNCILLOR LEAVESLEY – AGENDA BRIEFING**

**NOTICE OF MOTION TO REVOKE A PREVIOUS DECISION OF COUNCIL**

In accordance with Regulation 10(1a) of the *Local Government (Administration) Regulations 1996*, we the undersigned hereby move to have Report Item 4.1(i) – Local Public Notice – Council Meeting Calendar, which was moved at the Ordinary Council Meeting held on 15 February 2011, be reconsidered.

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Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ITEM 18.2: REVOCATION MOTION BY COUNCILLOR LEAVESLEY**

**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**THAT the Motion resolved at Report Item 4.1(i) – Local Public Notice – Council Meeting Calendar dated 15 May 2011 as follows:**

***“THAT Agenda Briefing session be held two weeks (14 days) prior to Ordinary meetings of Council. “***

**Be revoked.**

*[Section 5.25 (1)(e) of the Local Government Act 1995 refers]*

**Reason:**

It is my understanding that council has never operated before on a draft agenda basis. The ‘final agenda’ not being available until after the Agenda Briefing could lead to staff recommendations being amended to meet political pressures rather than the recommendations being the best professional advice. Compliance with our standing orders as I have understood them (and have been operated since their inception) is not possible under this draft agenda process. The whole purpose of the Agenda Briefing is to show open and accountable governance and allow the ratepayers/councillors the opportunity to have timely accurate information with the decision making process being equitable and transparent.

**ITEM 18.2: MOTION BY COUNCILLOR LEAVESLEY – BRIEFING AGENDA**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**Council resolve that the Agenda Briefing for the Ordinary Council Meeting be the 2<sup>nd</sup> Tuesday (7 days prior to the OCM) in the Month. That this Agenda is the final Agenda and the information provided by staff continues to be their unbiased professional opinion. This Agenda should be provided to Councillors and the public no later than 12 noon on the Thursday prior to the Agenda Briefing.**

**Reason:** Refer to revocation motion.

**18.3: NOTICE OF MOTION BY COUNCILLOR D BOSTOCK – GOVERNANCE MATTERS**

**ITEM 18.3: NOTICE OF MOTION BY COUNCILLOR D BOSTOCK  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**That the agenda for Councillor Workshops be set by councillors, to informally discuss governance matters.**

**Reason:**

There is at present no forum for councillors to meet, where they can consider the future long term development of our City, without being distracted by short term issues.

**Officer's Comment:**

The CEO has sought advice from Council Members regarding future Council Workshop briefing topics. Strong response was received to that request, and a list of proposed topics was provided recently to Council Members in that regard. All of those topics are strategic or of a high level operational nature. As no further feedback was received from Members in respect of that list of topics, the CEO is now preparing a forward timetable of items for consideration at future Council Workshops, based on that list. That timetable will be provided to Council Members in the near future.

Should Council wish to hold another meeting / forum (in addition to the Council Committee meeting, the Council Workshop, the Agenda Briefing session and Council meetings) to allow Councillors more time to meet to consider future long term development of the City and or governance matters, the CEO will facilitate organisation of that additional meeting.

**18.4: NOTICE OF MOTION BY COUNCILLOR LEAVESLEY – CODE OF CONDUCT**

**ITEM 18.4: NOTICE OF MOTION BY COUNCILLOR LEAVESLEY  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**In light of the recommendations and observations of the Best Practice Review July 2010, Council instructs the CEO to undertake research and prepare recommendations for a Councillor Workshop with regard to the City's Code of Conduct. In particular in relation to provisions when dealing with lobbyists, elected member dealings with developers/proponents, and employee liaisons with proponents. This work to be completed and the new code of conduct adopted prior to the October 2011 Local Government Elections.**

**That the City allocates appropriate financial resources in the 2011/12 budget to enable this to take place.**

**Reason:**

Extract from Best Practice Review: *"Including these provisions in the Code of Conduct will enhance transparency and bolster public confidence in the Council."*

**Officer's Comment:**

The Council has requested the CEO to:

1. Undertake a review of the Standing Orders, given the identified inadequacies and ambiguities within those local laws. Those reviewed Standing Orders will be considered by Council in the near future.
2. Support Council in undertaking a review of its Governance processes (including reviewing its Code of Conduct and governance policies). Further to the *Better Practice Review*, (Council has made a commitment to the Minister for Local Government that such Governance Review will be completed in the near future. (OCM 20 April 2010, Item 16.4.1.)

The CEO has commenced work on both those activities.

Completion of the review of the Code of Conduct should be possible for completion within the anticipated 2011/2012 budget.

**18.5: NOTICE OF MOTION BY COUNCILLOR J BOSTOCK – SCHEME AMENDMENT REQUESTS (SARs)**

**ITEM 18.5: NOTICE OF MOTION 1 BY COUNCILLOR J BOSTOCK  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**In line with the Better Practice Review and with immediate effect, Council discontinue the use of Scheme Amendment Requests (SARs) and only consider formal Scheme Amendments in accordance with legislation. Relevant City Policy and guidelines are to be amended accordingly.**

**Reason:**

Whilst the intent of an exploratory request might sound practical and save proponents time and money in preparing an application, Council are disadvantaged in attempting to make judgement without all the necessary facts. Since the process is not provided for in law, provisional “acceptance of permission” can increase expectation causing considerable potential for ambiguity and confusion with additional risk to litigation.

**Officer’s Comment:**

The Notice of Motion has minor budgetary implications. It would be prudent for Council to be advised of cost information prior to consideration of the motion, given the “tight” budget position - a potential revenue loss may be unacceptable.

At the June OCM Council will be asked to make decisions on various competing budgetary priorities, and this is one of matters that could be considered in the context of the FULL budget. I recommend the motion be considered as part of the June OCM debate. In the meantime, the Councillor could make submissions to the Council Workshop and the Audit Committee meeting that will be organised to consider the budget recommendations by the City’s Executive.

**18.6: NOTICE OF MOTION BY COUNCILLOR J BOSTOCK – COUNCIL CHAMBER CONFIGURATION**

**NOTICE OF MOTION 2 BY COUNCILLOR J BOSTOCK  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**In line with the Better Practice Review , the configuration of the Council Chamber is altered to better reflect the purpose and roles of those in attendance. No Councillors should have their backs to the public gallery and officer should be formally separated and sit apart from the decision making Council. The detailed plan to be formulated at the next Councillor Workshop and the changed implemented as soon as practicable.**

**Reason:**

The Ordinary Council Meeting is the instrument through which Council makes decisions and governs, thus the Chamber and its layout are significant in signalling the formality and importance of the occasion. The current seating arrangements do not allow the public to observe the decision making process and Councillors back to the public is disrespectful. Whilst the City Executive Directors are seated at the “head” of the Chamber there is the possibility of confusion as to their role in the proceedings. A simple seating rearrangement could open up the Chamber making the proceedings more accessible to the public and better reflect the governance role of the Mayor and Councillors.

**Officer’s Comment:**

While the CEO agrees with the Councillor that no Councillor should have their back to the public gallery, to configure the room with separate seating arrangements for Executives may cost more than \$10,000 (informal cost estimate previously sourced when Better Practice Review was released).

The CEO has considered rearranging the seating at the current table configuration, such that the four Executives sit with their back to the public gallery (with the CEO and minute secretary remaining seated near the Mayor). This change may only incur minimal expense. However, the CEO had decided to defer such rearrangement until after the October Council election.

At the June OCM Council will be asked to make decisions on various competing budgetary priorities, and this is one of matters that could be considered in the context of the FULL budget. I recommend the motion be considered as part of the June OCM debate. In the meantime, the Councillor could make submissions to the Council Workshop and the Audit Committee meeting that will be organised to consider the budget recommendations by the City’s Executive.

**IX. ITEMS TO BE DEALT WITH WHILE THE MEETING IS CLOSED TO MEMBERS OF THE PUBLIC**

**XX. NEXT ORDINARY MEETING DATE**

Tuesday 21 June 2011 at 7pm.

**XXI. CLOSURE OF MEETING**

**STATUS REPORT ON DEFERRED ITEMS  
FROM PREVIOUS MEETINGS**

<b>Meeting Date</b>	<b>Item Number</b>	<b>Details/Status</b>
15/06/2010	15.2.3	Lot 5 Rufus Street - Compensation for Subdivision Design Changes. <b>WAITING ON ADVICE FROM LGIS.</b>
16/11/2010	2.6	Surrender Lease over Hangar Site 2 at Albany Airport. <b>REQUIRES FURTHER CONSIDERATION BY COUNCIL.</b>
15/02/2011	4.11	Padre White Lookout Project. <b>CEO TO UNDERTAKE FURTHER INVESTIGATION OF THIS PROJECT, INCLUDING DETAILED BUDGET ANALYSIS FOR PROJECT SCOPE AND PROVIDE FURTHER ADVICE TO COUNCIL.</b>
19/04/2011	1.1	Adoption of Draft Local Planning Policy Manual. <b>RESPONSIBLE OFFICER RECOMMENDATION 2 WAS LAYED ON THE TABLE FOR FURTHER CONSIDERATION BY COUNCIL.</b>