

XIV. MOTIONS WITH NOTICE

Nil.

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

15.1: NOTICE OF MOTION FROM COUNCILLOR D BOSTOCK – RECYCLING STRATEGY

**ITEM 15.1: 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."*

15.2: 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.

Name: _____ Signature: _____ Date: _____

ITEM 15.2: 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 15.2: MOTION BY COUNCILLOR LEAVESLEY – BRIEFING AGENDA

VOTING REQUIREMENT: SIMPLE MAJORITY

Council resolve that the Agenda Briefing for the Ordinary Council Meeting be the 2nd 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.

Officer's Comment:

At its Ordinary Council Meeting of 21st June 2011 Council resolved.

- (i) Gives the opportunity to the Chief Executive Officer to fully implement the new process adopted by Council at the 15 February 2011 Ordinary Meeting of Council, being:

“Agenda Briefing session be held two weeks (14 days) prior to Ordinary meetings of Council”;

- (ii) Reviews the new process at the 11 October 2011 Ordinary Meeting of Council.

For this Motion to succeed a further revocation motion in respect of the above would be required.

The need for improvement within Council meeting processes and timelines was identified by the CEO shortly after her commencement in February 2011 and over the past three months, as she has observed increased numbers of Council meeting and Agenda Briefing sessions.

The intent behind the changes previously presented to Council was to allow Elected Members greater time to scrutinise Officer Reports and conduct appropriate additional research into the cause and effect of an Officer recommendation or Elected Member's motion.

There were recent queries raised by a Councillor at a Council meeting, regarding providing Officer Reports and Councillor Motions within required “notice” periods. As a consequence, the CEO identified a further deficiency within the Council Meeting process specifically relating to agenda development and release.

Those changes allow:

- In the subsequent week to the Briefing Session, the City's Officers will refine their reports to incorporate, where appropriate, more information to address feedback from the public and Council Members provided at the Agenda Briefing Session. Report refinement will allow Members to have the fullest available information they require to consider the recommendations to Council. This is what has occurred process wise for some time.
- The papers (including the Agenda) for the Council meeting will then be finalised on the Tuesday ONE week before the Council meeting, and distributed to Councillors and the public. This further allows both groups increased time to read, consider and discuss the papers, and prepare themselves for debate on any item.

At the Council meeting, the public will (like now) be able to question any Council paper.

The CEO's recommendation to Council has been that Council trial this process for six months.

The *Local Government Act 1995* and Regulations, and the Council's Standing Orders are not definitive on “notice” timeline requirements, as part of the Agenda development process, and this lack of clarity causes legal uncertainty. Accordingly, the CEO determined that to make that

process clearer, the agenda should be marked “draft” and all Officer Reports will also be draft documents, until the finalised agenda and Reports (and Council Member Motions) are distributed to Council Members and the public under the cover of the finalised agenda.

Under Clause 3.3(2) of the Standing Orders “the purpose of the agenda briefing session is to provide an opportunity for elected members and persons in the public gallery to ask questions on the content of the **proposed** agenda” – the use of the word “proposed” clearly indicates that any agenda that may be provided at an agenda briefing session is not the finalised document. The use of the word “proposed” supports the position that an agenda can be draft until the final distribution of the Council papers.

The CEO agrees with Council that significant work needs to be undertaken to make the Standing Orders much clearer, less ambiguous and provide definitive “rules” for meeting process. Until that occurs and new Standing Orders are made local law, the CEO proposes meeting processes improvements that are possible within the current Standing Orders should be embraced.

Ultimately, in support of the Council’s wish for increased transparency and quality of information provision for Albany’s citizens, clause 1.3 of the Standing Orders should be considered.

Clause 1.3 of the standing Orders state:

” (1) The purpose of (the Standing Orders) is to provide a set of procedures to assist in the good conduct of meetings of the Council....

(2) ...intended to result in:

- (a) better decision-making by the Council;
- (b) orderly and efficient conduct of meetings dealing with business of the Council;
- (c) greater community participation and understanding of the business of the Council; and
- (d) more open and accountable local government.”

Clause 1.3 forms the basis of Council’s recent decision for meeting process changes, including ensuring processes are in place to provide increased time for sharing and consideration of information that will go before Council at its meetings. The processes resolved by Council at their meeting of 15 February 2011 is intended to reflect and implement the spirit and intent of clause 1.3.

15.3: NOTICE OF MOTION BY COUNCILLOR D BOSTOCK – GOVERNANCE MATTERS

**ITEM 15.3: 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.

XVI. URGENT BUSINESS TO BE APPROVED BY DECISION OF THE MEETING

16.1 NOTICE OF MOTION BY COUNCILLOR DUFTY – REMOVAL OF POLICE OFFICERS FROM PCYC

**ITEM 16.1: DRAFT MOTION BY COUNCILLOR DUFTY
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

That Item 16.1 be ACCEPTED as an urgent item.

Councillor's Reason:

Given the recent decision that the local police officer will be removed from the Albany PCYC it's important to advise the Minister for Police and the Police Commissioner of Council's position on the matter and the value it places on the operation of the PCYC.

ITEM 16.1: NOTICE OF MOTION BY COUNCILLOR DUFTY

That Council write to the Hon. Minister for Police and the WA Police Commissioner requesting the reconsideration of the decision to remove police officers from PCYC centres, with particular reference to the Albany PCYC, as the decision will have a detrimental impact on the effective operation of the PCYC and be a retrograde step in the development of our youth within the City.

Councillors Reason:

The decision will destroy the operation of the Albany PCYC. The uniformed police officers have been instrumental in steering young people away from crime and it's critical they remain on-site. One child a year that doesn't turn to crime would more than cover the cost of wages for the police officer.

PCYCs are the link between the WA Police force and the community and have been instrumental in giving young people the opportunity to engage with society and provide a pathway to future employment.

**16.2 NOTICE OF MOTION BY COUNCILLOR D BOSTOCK –
REINSTATE AGENDA ITEM 5.6 FUNDING FOR MILLS PARK, LITTLE
GROVE**

**ITEM 16.2: MOTION BY COUNCILLOR D BOSTOCK
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

That Item 16.2 be ACCEPTED as an urgent item.

Councillor's Reason:

The residents of Little Grove have spent a considerable amount of time and effort in producing a comprehensive plan for the development of Mills Park and were naturally disappointed when the request for funding was withdrawn from the agenda, due to concerns over possible problems with native title claims. A brief history of the park may, however, serve to allay Council's fears on this score.

The land for the park was alienated from the Crown many years ago and was owned freehold by Mrs Mills, who, in 1975 bequeathed it to the Shire for use as a public recreation area. On amalgamation the park was transferred to the City of Albany and has been under our care and control since then.

In December 1996 the Native Titles Act was passed and this resulted in all land still under the control of the Crown (about 92% of all the land in WA) being subject to its provisions. Land which had already been vested in other authorities, such as Mills Park was, however, exempt and it would be a great pity if the City missed out on this substantial funding opportunity due to a misunderstanding of the legal position. According to the Manager of the Native Title Unit, Dept of Lands, native title claims over Mills Park have been extinguished so there is no reason why we should not approve the project for that reason.

I understand that the preparation for the project has already been substantially completed and all that is now required is the approval of Council.

The matter is urgent because the necessary application must be approved by the end of June.

Officer's Comment (F. James):

1. At the Ordinary Council Meeting of 21st June 2011, Councillor D Bostock sought endorsement by Council of a resolution to reinstate an Officer's Report in respect of Regional and Local Community Infrastructure Program Funding for Mills Park. (See page 191 of the June Council Minutes).

2. A request for the presentation of the above motion was received after 12 noon on 6th July 2011 (see clause 5.2 of Standing Orders) and accordingly for the motion to be considered, it would have to satisfy clause 3.6 of the Standing Orders (that is to be considered an "urgent" item requiring an absolute majority for consideration).

There is no "urgency" to this matter, as anticipated by the Standing Orders. The Mills park project is one of multiple projects that the City has considered for future work, subject to funding.

ORDINARY COUNCIL MEETING & BRIEFING
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REFER DISCLAIMER

There is no Council funding for the Mills park project allocated in the 2010/11 budget nor the 2011/12 draft budget.

16.3: CULL ROAD DEVELOPMENT

ALTERNATE MOTION BY COUNCILLOR J BOSTOCK

DATE & TIME REQUEST FOR MOTION RECEIVED: 12.31PM ON WEDNESDAY 6 JULY 2011

**ITEM 16.3: REQUEST FOR MOTION BY COUNCILLOR J BOSTOCK
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

Prior to further action to facilitate the sale of Stage 1A or any part of Cull Road, the CEO will evaluate our current position with regard to this major land transaction and formulate a revised Business Plan as required by the Local Government Act s 3.59.

Reason:

This project has been ongoing for a number of years, the original Business Plan being prepared in September 2006. In April 2009 Council resolved that significant changed circumstances demanded a revised Business Plan and that no sale of all or any part of Cull Road subdivision could take place until this was provided.

Since then Council contrary to that resolution approved the sale of Stage 1A, however the current depressed property market is resulting in those blocks being sold at a loss, it remains therefore essential that this business transaction is re-evaluated to ensure that we are acting in the best interests of our ratepayers and that our current action is the best possible business decision.

Officer Report (F JAMES):

Under s5.2(2) of the Standing Orders, a “request for an alternative motion must be received by the CEO or their delegate no later than 12 noon on the day following the relevant agenda briefing session”. The CEO has not provided delegation to any staff member. The request for this motion was received at 12.31pm on 6 July, and accordingly not in compliance with the Standing Orders. For Council to consider and support this motion, it would need absolute majority support under s3.6 of the Standing Orders, as an urgent item.

The report item 1.4 has been prepared to ensure that Council meets its obligations under Section 3.58 of the *Local Government Act 1995*. The Responsible Officer Recommendation ensures that Council can continue to sell the created lots (that have individual certificates of title) associated with Stage 1A, initially via public tender and if not sold by this process, private treaty. This recommendation is consistent with the previous Council resolutions of 20 July and 16 November 2010.

To date purchase interest remains constant although not excessive, probably indicating that the lots are selling at a price that is market value, not considered either too low or too high by buyers.

If the alternate motion is adopted the City would not be able to sell any lots that are not already under a contract for sale until a Business Plan was adopted. This would result in a loss of marketing momentum and reduces the ability for Council to reduce its debt through the sale of such lots during this period. The 2011/12 draft budget envisages continuing sales of Cull Rd lots, preferably as quickly as possible.

The Business Plan titled '*Major Land Transaction, Business Plan for the Subdivision of the property located at 34-66 Cull Road, Lockyer*' dated September 2006 and adopted 21 Nov 2006 proposed to sell Stage 1A lots only at this stage, which is being implemented. As per Council's resolution of 15 February 2011, the sale of the balance of Lot 9001 is to be deferred pending a review of development options for the land and further traffic and hydrology studies which will commence soon regarding Cull Rd. It would be appropriate to review the Business Plan after that.

The development of a Business Plan at this stage would achieve little. The costs incurred on the Cull Road to date are "sunk" costs, never to be recovered except through sale of lots. There is no intent at this point to consider sale of any lots beyond Stage 1A, or to incur any further expenses beyond those already spent or committed by Council. Accordingly, the best business option at this point would be to maximise the sales of the lots in Stage 1A to generate revenue as quickly as possible, which Council can use to pay down debt. Any delay in debt repayment incurs ongoing interest expense to the City.

16.4: REGIONAL CITIES ALLIANCE – UWA CONTRACT

ALTERNATE MOTION BY COUNCILLOR D BOSTOCK

DATE & TIME REQUEST FOR ALTERNATE MOTION RECEIVED: 12:06PM ON WEDNESDAY 6 JULY 2011

ITEM 16.4: ALTERNATE MOTION BY COUNCILLOR D BOSTOCK VOTING REQUIREMENT: ABSOLUTE MAJORITY

THAT COUNCIL DEFERS consideration of the item to SEEK written advice from the Department of Local Government as to whether this item can be considered without a rescission motion first being brought before Council.

Reason:

Council considered this particular proposal at the 21 June 2011 Ordinary Council Meeting and the motion was lost. In order to consider the proposal again, I am of the understanding that a rescission motion is required in accordance with Standing Orders 2009, clause 6.1 and that the legal advice received has not been subject to a tested definitive opinion in a court of law.

Officer Report (F JAMES)

Under s5.2(2) of the Standing Orders, a “request for an alternative motion must be received by the CEO or their delegate no later than 12 noon on the day following the relevant agenda briefing session”. The CEO has not provided delegation to any staff member. The request for this motion was received at 12.06pm on 6 July, and accordingly not in compliance with the Standing Orders. For Council to consider and support this motion, it would need absolute majority support under s3.6 of the Standing Orders, as an urgent item.

“Legal advice” is not able to be “subjected to a tested definitive opinion in a court of law”. The courts will only consider filed legal claims. Therefore, from a risk mitigation perspective the best the City can do is seek legal “advice” as it is not in a position to file a legal claim.

Further, on the Councillor’s reasoning, one could argue that the only truly “tested definitive opinion” of the law is the opinion of the High Court, the highest Court in Australia. The (im)practicalities of bringing a legal claim and appealing (eventually) to the High Court would be nonsensical.

As per legal advice received and distributed to all Councillors under confidential cover, Council does have the ability to consider the item at this Council meeting without the need for a rescission motion.

Staff have also contacted the Department of Local Government and received a similar view to that position found within the legal advice.

16.5: REGIONAL CITIES ALLIANCE – UWA CONTRACT

ALTERNATE MOTION BY COUNCILLOR J BOSTOCK

DATE & TIME REQUEST FOR ALTERNATE MOTION RECEIVED: 12.31PM ON WEDNESDAY 6 JULY 2011

ITEM 16.5: ALTERNATE MOTION BY COUNCILLOR J BOSTOCK (RECOMMENDATION 2) VOTING REQUIREMENT: ABSOLUTE MAJORITY

- 1) THAT **COUNCIL DOES NOT** endorse a forward budget commitment of four years, commencing in the 2011/12 financial year, for an amount of \$50,000 per year as the City of Albany's contribution towards the Regional Cities Alliance, including contributing to the partnership with the University of Western Australia to undertake research in regional development, urban planning and spatial analysis, with the aim of providing an explicit focus on the research needs of the Alliance. These needs being concentrated in:
 - Economic, demographic and social analysis;
 - Service and infrastructure planning and delivery;
 - Strategic urban and regional planning; and
 - Governance.
- 2) THAT **COUNCIL DOES NOT** agree to enter into a contract with the University of Western Australia, as part of its membership of the Regional Cities Alliance.

Reason:

This alternative motion is simply to uphold a previous majority vote of Council. At the June 2011 Ordinary Council Meeting Council spoke on this issue and by majority vote did not support this financial commitment.

The concerns raised at last month's meeting linger, whilst more information has been forthcoming, the direct benefit to our community remains obscure. It is important that our involvement with the alliance is mutually beneficial, but our need to work co-operatively must not override our duty to our ratepayers. It is clearly difficult to support this expenditure as essential, yet our current financial position demands observance of strict prudence. Reducing our debt and recovering financial security must be our absolute priority; this requires sacrifice and renders us unable to follow all opportunities.

This is our responsibility to our ratepayers; it is not a demonstration of our lack of commitment to the concept of the Regional Cities Alliance but a fiscally competent decision.

Officer Report (F JAMES)

Under s5.2(2) of the Standing Orders, a "request for an alternative motion must be received by the CEO or their delegate no later than 12 noon on the day following the relevant agenda briefing session". The CEO has not provided delegation to any staff member. The request for

this motion was received at 12.31pm on 6 July, and accordingly not in compliance with the Standing Orders. For Council to consider and support this motion, it would need absolute majority support under s3.6 of the Standing Orders, as an urgent item.

The effect of the resolution is that the City, as a non-contributing member, is highly unlikely to gain the benefit of the research that will be undertaken by UWA specifically for the Regional Alliance. Conversations with other Member Representatives of the Alliance have also indicated that to remain a member of the Alliance, Members expect full commitment to all initiatives.

16.6: INITIATION OF AMENDMENT – LOT 422 AFFLECK ROAD AND LOT 183 NANARUP ROAD, KALGAN

ALTERNATE MOTION BY COUNCILLOR J BOSTOCK

DATE & TIME REQUEST FOR ALTERNATIVE MOTION RECEIVED: 13:19 PM ON WEDNESDAY 6 JULY 2011

**ITEM 16.6: ALTERNATE MOTION BY COUNCILLOR J BOSTOCK
VOTING MAJORITY: ABSOLUTE MAJORITY**

That Council:

- 1) In pursuance of *Regulation 13(1)(b)* of the *Town Planning Regulations 1967* resolves **NOT TO PROCEED** with Amendment No. 307 to Town Planning Scheme No. 3 for the purposes of:
 - i. Rezoning Lot 422 Affleck Road and Lot 183 Nanarup Road, Kalgan from the ‘Special Rural’ zone and the ‘Rural’ zone to the ‘Special Residential’ zone.
 - ii. Amending Schedule IV – Special Residential Zones to include Special Provisions for Special Residential Area No. 21.
 - iii. Amending the Scheme Maps accordingly.
- 2) **ADVISE** the Western Australian Planning Commission that it does not wish to proceed with the amendment primarily on the basis that the proposed density as depicted on the Subdivision Guide Plan is inconsistent with the prevailing lot size found within the adjacent Special Rural Zone (Area No. 6 – Swan Point), and in turn will promote land use conflict.

Councillor’s Reason:

1. This site is adjacent to Oyster Harbour and the mouth of the Kalgan River, a listed wetland of regional significance. Department of Water highlighted that it is flood prone.
2. It is an environmental sensitive area of value for nature conservation and biodiversity.
3. Threatened species are known to occur within the vicinity, Western Ring Tailed Possum, Forest Red-tailed Cockatoo, Baudins Black Cockatoo, and Carnabys Black Cockatoo indicating a requirement to observe the Federal EPBC Act, before any development is considered.
4. The land is bordered to the West by Oyster Harbour, North, East and South are zoned Special Rural, Area 6 with detailed specification in TPS 3 in controlling development. Lot 422 stands as an oasis in our scheme indicating purposeful planning.
5. Scheme Amendments, particularly rezoning are the most fundamental and important step in planning and as such demand the closest scrutiny. In 2009 a SAR to rezone to Rural Residential was refused due to environmental concerns raised by Department of Environment and Conservation, Department of Water and Department of Planning, the

later particularly highlighting the land was unsuitable for higher density and were not supportive of the suggestion of “Future Urban”.

6. The current SAR is for Special Residential representing increased density.
7. Any alteration to the planning scheme must be done in relation to current conditions and thinking and in line with strategic planning.
8. ALPS, our local strategic plan details the area as suitable for “Special Residential” but this appears to be an anomaly as I have detailed below.
9. The Lower Great Southern Strategy which takes precedence depicts the area as “Agricultural Land of State and Regional Significance” This state document requires Local Governments to mark such areas as “Priority Agriculture” in their TPS and also requires recognition in ALPS. In April 2008 WAPC demanded modifications to ALPS, one of which was the inclusion of all Priority Agricultural areas to be in line with the State Strategy; this was agreed and endorsed by Council.
10. I note that our new Planning Scheme has protected this area it remains an oasis, being depicted as “General Agriculture” as a seriously entertained planning document Council must consider this, particularly when considering a change to our current scheme.
11. Thus the strategic direction is to maintain protection of this land and this is supported by Clause 8.3.5 in ALPS “Avoid the development of Rural Living areas on productive agricultural land, other important natural resource areas and areas of high bushfire risk, flooding and environmental sensitivity.”
12. ALPS also highlight the current oversupply of Special Rural and Special Residential Lots and warned that Rural Residential subdivision for speculative reasons can impact on agricultural land values and increase rates. ALPS supports the subdivision of EXISTING land zoned for Special Residential and Special Rural in the City’s current Town Planning Schemes and proof of demand before more lots are created.

In conclusion the land is environmental sensitive and is currently properly protected against inappropriate development. There is an oversupply of rural subdivisions; proliferation of unsold building blocks is detrimental to our economy, environment and is contrary to good planning. Being 18 kilometres from the City in flies in the face of our strongest planning imperative, that of consolidation.

Officer Report (G Bride)

Under s5.2(2) of the Standing Orders, a “request for an alternative motion must be received by the CEO or their delegate no later than 12 noon on the day following the relevant agenda briefing session”. The CEO has not provided delegation to any staff member. The request for this motion was received at 1.19 pm on 6 July, and accordingly not in compliance with the Standing Orders. For Council to consider and support this motion, it would need absolute majority support under s3.6 of the Standing Orders, as an urgent item.

The current proposal is consistent with Council’s adopted Albany Local Planning Strategy which identifies the land as being suitable for Special Residential development. The proposal has ensured lots on the periphery are at least 1 hectare, which is the minimum size associated with Special Rural development to reduce land use conflict and retain the amenity (as reasonably can be achieved for adjacent lots). The adjacent land holdings will be consulted when the document is advertised after the Environmental Protection Authority has considered whether the proposal should be formally assessed.

The proposal does pay due regard to the remnant vegetation found on the site and will involve the increase of the foreshore reserve in this area. The land capability study submitted with the report does identify that the land has good retention facilities for effluent disposal.

The new planning scheme has intentionally not sought to rezone land as identified in Council's Planning Strategy, as it is up to landowners to bring forward rezoning proposals with detailed land capability and environmental studies. The ALPS represents Council's position on the future use of the land. The proposal is to amend the current scheme.

The land is surrounded to the east and south by existing special rural development and to the north by smaller rural lots and therefore the need to retain the lot for agriculture production is limited.

16.7: 2011-12 BUDGET ADOPTION

ALTERNATE MOTION BY COUNCILLOR J BOSTOCK

DATE & TIME REQUEST FOR ALTERNATIVE MOTION RECEIVED: 12.31PM ON WEDNESDAY 6 JULY 2011

ITEM 16.7: ALTERNATE MOTION BY COUNCILLOR J BOSTOCK VOTING MAJORITY: ABSOLUTE MAJORITY

Whilst the decision of Council with regard to rate increase remains intact, thus allowing preparation of Rate Notices, Council require the CEO to amend the 2011-12 Budget to reflect the overriding need to observe cost saving measures and strict prudence; while maintaining or improving the current level of direct services to the community; providing inbuilt protection of city assets and a detailed planned reduction of our current debt. These priorities are to be delivered within the confines of the following limitations.

- 1. The CEO shall not cause or allow any organisational practice, activity, decision or circumstance that is contrary to Council priorities.**
- 2. The CEO shall not incur debt in an amount that cannot be repaid by certain and otherwise unencumbered revenues within 60 days.**
- 3. With respect to the actual ongoing financial conditions and activities the CEO shall not cause or allow the development of financial jeopardy or material deviation of actual expenditure from Council priorities and the adopted budget.**
- 4. The CEO shall not cause or allow City assets to be unprotected, inadequately maintained or unnecessarily risked.**
- 5. The CEO shall not enter into any grant or contract arrangements that could fail to protect or could jeopardise the delivery of community services and Council priorities.**
- 6. The CEO will not allow the use of long term reserves.**
- 7. The CEO will not conduct inter-fund shifting in amounts greater than can be restored to a condition of fund balance by certain or otherwise unencumbered revenues within 30 days.**
- 8. The CEO will not allow increased expenditure in administrative costs to adversely impact on our key responsibilities and direct provision of community services.**

Reason:

It has been suggested that we cannot afford asset management; it is in my view that to ignore this crucial aspect of responsibility is unacceptable; we must afford it and protect our long term future. Whilst we carry a large debt our ability to deliver to the community or take advantage of grant or other opportunities is severely compromised. Our priority therefore must be to improve and strengthen our financial position, this will not eventuate without serious steps to monitor and curtail our spending.

Strict prudence demands a paradigm shift in the way we view expenditure, we can no longer afford the luxury of running with every good idea, and we must concentrate on our core services and our responsibility to our ratepayers. Financial control must be a priority, all expenditure judged against, cost effectiveness, its benefit to the community and its necessity, “Can we live without it?”

Increased revenue should equate to an enhanced level of service, higher rates become more palatable when improvements to our roads, footpaths and services can be observed.

It is time for consolidation, to get back to basics; only with financial stability and proper delivery of principal services can we progress to the privilege of strategic planning and implementation of major projects and initiatives.

Officer’s Report (F James)

Under s5.2(2) of the Standing Orders, a “request for an alternative motion must be received by the CEO or their delegate no later than 12 noon on the day following the relevant agenda briefing session”. The CEO has not provided delegation to any staff member. The request for this motion was received at 12.31 pm on 6 July, and accordingly not in compliance with the Standing Orders. For Council to consider and support this motion, it would need absolute majority support under s3.6 of the Standing Orders, as an urgent item.

Section 2.7 (2) (a) of the *Local Government Act 1995* (the Act) refers to the role of Council:

2.7. Role of council

(1) *The council —*

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

(2) *Without limiting subsection (1), the council is to (a) **oversee** the allocation of the local government’s finances and resources*

Section 5.41(d) of the Act defines the functions of the CEO which include:

- Advising the Council in relation to the functions of a local government under the Act and other written laws
- Ensuring that advice and information is available to the Council so that informed decisions can be made
- Causing Council decisions to be implemented
- Managing the day to day operations of the local government
- Ensuring that records and documents of the local government are properly kept for the purposes of the Act and any other written law
- Performing any other function specified or delegated by the local government or imposed under the Act or any other written law, as a function to be performed by the CEO

A resolution that seeks to usurp the functions of the CEO would be contrary to legislation. Further, given Council is a governance body it, nor its individual members, are sufficiently “close” to the day to day operations of the City to fully appreciate the operational resource needs, risk management activities or operational fiscal processes of “running the business” of the City.

Consistent with the CEO's legislative functions, the CEO has advised Council over several budget workshops of the resources required for operations of the City, and processes the CEO intends to implement to improve financial stewardship and reporting.

Should Council choose not to allocate an adequate budget amount for provision of City services and functions, Council must also resolve what priority services and functions it will provide, and what services and functions it will limit the provision of, or cease to provide.

This motion, and the "limitations" stated to in the motion, refer to:

- "Council priorities", but it is unclear from the motion what those priorities are.

The City is currently conducting a strategic planning process, seeking community views on what should be the City's priorities. That community feedback will be considered shortly by Council, and Council will be requested to consider endorsement of the Strategic Plan which will set out community and Council recommended priorities.

- "Financial jeopardy and material deviation" although no definition is given on what constitutes such "jeopardy", or what would be considered "material".

A CEO cannot be expected to implement any Council decision where the terms are not definitively clear. Similarly, a CEO can only ensure assets are "protected", adequately maintained and not "unnecessarily risked" (as stated in this motion) if the CEO has clear guidance from Council on the level of protection, maintenance and risk the Council is prepared to bear.

Similarly, in respect of limitation 7 in the motion, it is unclear what the Councillor intends. The CEO is required to act within approved budget. Likewise, in limitation 8 in the motion, it is unclear what constitutes "administrative costs", nor what would constitute "adverse impact on...key responsibilities".

Under section 6.11 of the Act, which allows for the creation of Reserve accounts, an absolute majority decision of Council is required to use the funds in those Reserves for any other purpose than that for which the Reserve was established. Such a resolution includes the annual budget adoption – section 6.2 of the Act requires the budget to incorporate details of amounts to be set aside in, and used from Reserve accounts.

This legislative obligation is reinforced in the *Local Government (Financial Management) Regulations 1996*. Under Regulation 12, a payment may only be made from the municipal fund or the trust fund if the local government has delegated to the CEO the exercise of its power to make payments from those funds, or if the payment is authorised in advance by a resolution of the Council.

Transfers to and from Reserves occur of necessity during the normal course of the business of the City, in line with the approved budget. To impose any further restriction on the CEO beyond the rigorous safeguards stated in legislation would unnecessarily decrease the efficiency of the City's operations.

Under Local Government (Financial Management) Regulation 5, the CEO has certain duties:

5 . *Financial management duties of the CEO*

(1) Efficient systems and procedures are to be established by the CEO of a local government —

(a) for the proper collection of all money owing to the local government;

(b) for the safe custody and security of all money collected or held by the local government;

(c) for the proper maintenance and security of the financial records of the local government (whether maintained in written form or by electronic or other means or process);

(d) to ensure proper accounting for municipal or trust —

(i) revenue received or receivable;

(ii) expenses paid or payable; and

(iii) assets and liabilities;

(e) to ensure proper authorisation for the incurring of liabilities and the making of payments;

(f) for the maintenance of payroll, stock control and costing records; and

(g) to assist in the preparation of budgets, budget reviews, accounts and reports required by the Act or these regulations.

(2) The CEO is to —

(a) ensure that the resources of the local government are effectively and efficiently managed;

(b) assist the council to undertake reviews of fees and charges regularly (and not less than once in every financial year); and

(c) undertake reviews of the appropriateness and effectiveness of the financial management systems and procedures of the local government regularly (and not less than once in every 4 financial years) and report to the local government the results of those reviews.

These legislative obligations should be sufficient to provide Council with assurance that the CEO MUST act in the best interests of the City, including ensuring strong financial stewardship.

It is unclear from the Councillor's reasons who suggested to the Councillor that the City "cannot afford asset management" – the statement is incorrect. The CEO has advised Council that, given the City's asset value base, it will need to prioritise its asset management, making difficult decisions balancing replacement and maintenance. This draft budget proposes expenditure on asset management of \$7.5 million (net of external funding and including road maintenance).

The budget anticipates repayment of debt, thus over the long term improving and strengthening the City's financial position. This draft budget proposes net repayment of debt in the amount of \$3.3 million.

XVII. REQUEST FOR REPORTS FOR FUTURE CONSIDERATION.
Nil.

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

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

XX. NEXT ORDINARY MEETING DATE

Tuesday 16 August 2011 at 7pm.

XXI. CLOSURE OF MEETING

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

Meeting Date	Item Number	Details/Status
15/06/2010	15.2.3	Lot 5 Rufus Street - Claim for Subdivision Design Changes. CEO LIAISING WITH LAND OWNER/DEVELOPER REGARDING POSSIBLE SOLUTIONS.
16/11/2010	2.6	Surrender Lease over Hangar Site 2 at Albany Airport. REQUIRES FURTHER CONSIDERATION BY COUNCIL PENDING THE COMPLETION OF THE AIRPORT MASTERPLAN/BUSINESS PLAN.
15/02/2011	4.11	Padre White Lookout Project. CEO to undertake further investigation of this project, including detailed budget analysis for project scope and provide further advice to council. CEO HAS RECEIVED FURTHER ADVICE FROM GSDC, AND WORKS AND SERVICES TO CONSIDER.
19/04/2011	1.1	Adoption of Draft Local Planning Policy Manual. REGARDS HOLIDAY ACCOMMODATION AND FRENCHMAN BAY CARAVAN PARK POLICIES, THIS WILL BE PRESENTED TO JULY 2011 OCM (ITEMS 2.4 & 2.5)
19/04/2011	4.7	Audit Committee Recommendations. That Council request the Chief Executive Officer to further review the investment of Surplus Funds Policy through the Finance Strategy Committee, prior to recommendation to Council. PENDING.- AWAITING ENDORSEMENT OF CITY OF ALBANY STRATEGIC PLAN, BUDGET AND FIVE YEAR (FINANCE) PLAN.
17/05/2011	3.1	Albany Leisure and Aquatic Centre. That the Business Plan be Brought back to Council for the Approval of the Recommendation. PENDING COMPLETION OF BUSINESS PLAN. TO BE PRESENTED TO OCM.
July 2010	18.3	Notice of Motion by Councillor Paver-Review Standing Orders Local Law 2009 before the December 2010 Council Meeting. OUTSTANDING.- INSUFFICIENT STAFF RESOURCES AT PRESENT TO COMPLETE THIS WORK AND COUNCIL AWAITS THE MODEL STANDING ORDERS BY THE DEPT OF LOCAL GOVT.
21/06/2011	5.5	Public Closure of Clydesdale Road at South Coast Highway. LAI D ON THE TABLE FOR A PERIOD OF ONE MONTH FOR PUBLIC CONSULTATION. TO BE BROUGHT BACK TO THE AUGUST 2011 OCM.