



NORTHERN TERRITORY OF AUSTRALIA

No 6 of 1984

AN ACT

To amend the *Jabiru Town Development Act*

[Assented to 26 June 1984]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Jabiru Town Development Amendment Act 1984*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Jabiru Town Development Act* is in this Act referred to as the Principal Act.

4. DEFINITIONS

Section 3 of the Principal Act is amended -

(a) by inserting after the definition of "Chairman" the following:

"'Council' means the Jabiru Town Council established by this Act;"; and

(b) by inserting after the definition of "principal representative" the following:

"'town clerk' means the person appointed under section 29B(1) as the town clerk of Jabiru;".

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5. DELEGATION

Section 19A of the Principal Act is amended -

(a) by omitting from sub-section (1) "The Authority may" and substituting "Subject to sub-sections (4) and (5), the Authority may"; and

(b) by adding at the end the following:

"(4) Where the person to whom the Authority has, under sub-section (1), delegated a power or function is the Council, the Council may delegate the power or function to -

(a) one or more of the members of the Council; or

(b) a person who is a member of the staff of the Council.

"(5) The Authority may not delegate its power under section 23 or 29A, unless the Minister -

(a) and the participating bodies have agreed that; and

(b) has specified a date, by notice in the Gazette, on or after which,

the Authority may delegate the power."

6. NEW SECTION

The Principal Act is amended by inserting after section 19A the following:

"19B. DELEGATION SUBJECT TO POWER

"A delegation under section 19A shall be read and construed so as not to exceed the power of the Authority under this Act, to the intent that where a delegation would, but for this section, have been construed as being in excess of that power it shall nevertheless be a valid delegation to the extent to which it is not in excess of that power."

7. REPEAL AND SUBSTITUTION

Sections 23 and 24 of the Principal Act are repealed and the following substituted:

"PART IIIIAA - RATES AND CHARGES

"22. RATEABLE LAND

"(1) Subject to sub-section (2), all land provided with a utility service in Jabiru is rateable land.

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"(2) The Authority may, by notice in the *Gazette*, specify land in Jabiru which is provided with services but is not rateable land for the purposes of this Act.

"23. RATES AND CHARGES

"(1) The Authority may declare a rate or charge, including an annual rate or charge, in relation to a person who resides in or carries on business in Jabiru or has an interest in rateable land in Jabiru, or on a class of such persons or on any rateable land in Jabiru for -

- (a) the provision of a specific work or utility service; or
- (b) the funding of works and services generally, including the annual cost of performing, or providing for the performance of, its functions under section 15.

"(2) A rate or charge declared under sub-section (1) may -

- (a) include a component for the repayment of a loan and interest on the loan from the Authority to the Council;
- (b) be declared in relation to a person, whether or not that person uses the utility service, if any, to which it relates;
- (c) apply in relation to a period that commenced before the date on which the rate or charge is declared; and
- (d) be declared at different rates or amounts for different persons or classes of persons.

"(3) The Authority may exempt or partially exempt a person or class of persons from payment of a rate or charge that is declared under sub-section (1).

"24. COLLECTION OF RATES

"(1) Where the Authority has declared under section 23 a rate or charge, the Council or a prescribed person shall serve a prescribed notice of the rate or charge on the person who is liable for the payment of the rate or charge.

"(2) Where, in the opinion of the Council or a prescribed person, it is not practicable to serve a prescribed notice under sub-section (1) on a person by serving it personally or by post, the Council or prescribed person shall cause the notice to be published in the *Gazette* and it shall be deemed to have been served on the date on which it is so published.

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"(3) A rate or charge that is declared under section 23 becomes due and payable by a person on the expiration of the period of 28 days after the date upon which a notice under sub-section (1) of the rate or charge is served or deemed to be served on that person."

8. HEADING OF PART IIIA

The heading of Part IIIA of the Principal Act is amended by omitting "ADVISORY".

9. DEFINITIONS

Section 25A of the Principal Act is amended by omitting the definitions of "Council" and "Town Manager".

10. REPEAL AND SUBSTITUTION

Sections 25B, 25C and 25D of the Principal Act are repealed and the following substituted:

"25B. ESTABLISHMENT OF COUNCIL

"(1) There is established by this Act a corporation by the name of the Jabiru Town Council.

"(2) The Council -

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

"(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Council affixed to a document and shall presume that it was duly affixed.

"(4) In the exercise of its powers and the performance of its functions delegated to it under section 19A, the Council shall -

- (a) act in accordance with the provisions of the *National Parks and Wildlife Conservation Act 1975* of the Commonwealth in so far as that Act relates to Jabiru; and
- (b) not be subject to the direction of the Minister.

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"25C. COMPOSITION OF COUNCIL AND APPOINTMENT OF MEMBERS

"(1) Subject to sub-section (2), the Council shall consist of -

- (a) 5 members elected under this Act by persons residing within 10 kilometres of the Jabiru Police Station; and
- (b) 3 members appointed under sub-section (4) by the Minister.

"(2) The Minister may, by notice in the *Gazette*, determine that -

- (a) the number of elected members be increased to that specified in the notice;
- (b) the number of appointed members be decreased to that specified in the notice; or
- (c) there will no longer be appointed members.

"(3) The exercise of a power or the performance of a function of the Council is not affected by reason only of there being a vacancy or vacancies in the membership of the Council.

"(4) Subject to this section, the Minister may appoint a person, who need not be qualified for election as a member, to be a member of the Council.

"(5) The Minister may appoint a person to act as an appointed member's deputy in the event that the appointed member is unable to attend a meeting of the Council.

"25D. FUNCTION OF COUNCIL

"The function of the Council is to exercise a power or perform a function delegated to it by the Authority in so far as the power or function -

- (a) falls within the powers of the Authority under or by virtue of this Act;
- (b) is exercised or performed in or in relation to the area administered by the Authority; and
- (c) is or is in relation to a function specified in Schedule 5 of the *Local Government Act*.

"25DA. DISCLOSURE OF INTEREST

"(1) A member of the Council who is directly or indirectly interested in -

- (a) a contract made or proposed to be made by the Council; or

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(b) an existing or proposed project of the Council, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

"(2) A disclosure under sub-section (1) shall be recorded in the minutes of the Council and, unless the Council otherwise directs, the member shall -

- (a) not after the disclosure take part in any deliberation or decision of the Council relating to the contract or project, as the case requires; and
- (b) be disregarded for the purpose of constituting the quorum for any such deliberation or decision.

"(3) A member who has made a disclosure under sub-section (1), may not vote on any question relating to the giving to him of a direction under sub-section (2).

"25DB. PERSONAL LIABILITY OF MEMBERS, &c.

"A member or a member of the staff of the Council is not rendered personally liable for an action, claim or demand arising from a matter or thing done, or a contract entered into by -

- (a) the Council in good faith, in pursuance of this Act; or
- (b) a member or a member of the staff of the Council in good faith, in pursuance of and for the purposes of this Act and for and on behalf of the Council."

11. REPEAL AND SUBSTITUTION

Section 25F of the Principal Act is repealed and the following substituted:

"25F. FILLING OF CASUAL VACANCIES OF ELECTED MEMBERS

"(1) Where, within 18 months of the last general election, the office of an elected member becomes vacant or, under section 25C(2)(a), the Minister increases the number of elected members -

- (a) the town clerk shall prepare a list in accordance with sub-section (2); and
- (b) the Council shall consider the list referred to in sub-section (2) and co-opt the person who, according to the list, obtained the highest number of primary votes and who consents to being co-opted onto the Council.

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"(2) For the purposes of a list under sub-section (1), the town clerk shall ascertain the names of, and the number of primary votes received by, each candidate at the last general election and list, in order of receipt of the highest number to the lowest number of primary votes, the names of candidates who -

- (a) are not currently members of the Council;
- (b) are eligible to be elected as members of the Council; and
- (c) received more than 5% of the primary votes at the last general election.

"(3) Where, within 18 months of the last general election, the office of an elected member becomes vacant or, under section 25C(2)(a), the Minister increases the number of elected members and no person is available to be co-opted under sub-section (1), a supplementary election shall be held to fill the vacancy and the by-laws made under section 25K shall, so far as relevant, apply to a supplementary election as if it were a general election.

"(4) Where, more than 18 months after the last general election, the office of an elected member becomes vacant or, under section 25C(2)(a), the Minister increases the number of elected members, the vacancy shall not be filled until the next succeeding election under section 25E(2) takes place."

12. CHAIRMAN AND DEPUTY CHAIRMAN

Section 25H of the Principal Act is amended -

- (a) by omitting sub-section (2); and
- (b) by omitting from sub-section (3) "the commencement of this Part, and thereafter at its first meeting after".

13. MEETINGS OF COUNCIL

Section 25J of the Principal Act is amended -

- (a) by omitting sub-section (3)(a) and substituting the following:

"(a) 5 members including, subject to section 25C(2)(c), an appointed member shall form a quorum;"

- (b) by omitting from sub-section (3)(d) "Town Manager" and substituting "town clerk"; and

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- (c) by omitting from sub-section (4) "The Authority may, after consulting the Council, make by-laws regulating, subject to this section," and substituting "Subject to this section, the Council may determine".

14. HEADING OF PART IV

The heading of Part IV of the Principal Act is amended by omitting "MISCELLANEOUS" and substituting "FINANCIAL ARRANGEMENTS OF AUTHORITY AND COUNCIL".

15. APPLICATION OF MONEYS

Section 27 of the Principal Act is amended -

- (a) by inserting in paragraph (a) after "Authority" the words "or the Council incurred by the Council in performing its functions under this Act"; and
- (b) by inserting in paragraph (b) after "members" the words "of the Authority".

16. NEW SECTIONS

The Principal Act is amended by inserting after section 28 the following:

"28A. MONEYS OF COUNCIL

"The moneys of the Council include -

- (a) rates, charges, fees and fines collected or received by the Council in exercising the municipal powers or performing the municipal functions delegated to it by the Authority;
- (b) proceeds from the disposal of the property of the Council;
- (c) subsidies, grants or donations to the Council from the Commonwealth, Territory or another person;
- (d) a loan from the Territory to the Council, where the loan has been approved by the Authority;
- (e) loans from the Authority to the Council; and
- (f) all other moneys received by or on behalf of the Council under this Act or otherwise.

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"28B. ESTIMATES OF RECEIPTS AND EXPENDITURES.

"(1) The Council shall prepare statements, in such form as the Authority directs, of its estimated receipts and expenditures for each financial year and, if so directed by the Authority, for any other period and shall submit those statements to the Authority not later than such date as the Authority directs.

"(2) Where a statement of estimated receipts and expenditures is submitted to the Authority under sub-section (1), the Authority shall -

- (a) with or without amendment, approve the statement; and
- (b) give notice to the Council of its approval, with or without amendment.

"(3) Moneys shall not be expended by the Council in the exercise of its powers or the performance of its functions except in accordance with a statement, which has been approved under sub-section (2), of receipts and expenditures.

"(4) Where the Council -

- (a) after approval under sub-section (2) of a statement of receipts and expenditures, proposes to perform a function or activity not provided for in the statement; or
- (b) in a review of a statement of receipts and expenditures, is of the opinion that inadequate provision has been made for a function or activity or that the provision allowed for a function or activity is too high,

the Council may apply to the Authority to approve a variation of the statement.

"(5) Where the Council makes an application under sub-section (4), the Authority may -

- (a) approve, with or without amendment, the application or reject the application; and
- (b) give notice to the Council of its approval, with or without amendment, or rejection.

"28C. FINANCIAL STATEMENT AND ANNUAL REPORT

"(1) The *Financial Administration and Audit Act* does not apply to or in relation to the Council.

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"(2) The Council shall cause to be prepared, within 3 months immediately after the end of a financial year -

- (a) a prescribed financial statement, audited in accordance with the Regulations; and
- (b) a report of the Council's operations during the financial year.

"(3) The Council shall consider a prescribed financial statement and report referred to in sub-section (2) within 4 months immediately after the end of the financial year to which the financial statement and report relate and shall forward the financial statement and report to the Authority within 10 days after such consideration by it.

"(4) Where a prescribed financial statement and report are forwarded to the Authority under sub-section (3), it shall forward a copy of the financial statement and report to the Minister within 6 months of the end of the financial year to which the financial statement and report relate.

"(5) Where the Minister causes a copy of the annual report of the Authority to be laid before the Legislative Assembly, he shall cause a copy of the latest prescribed financial statement and report referred to in sub-section (4) to be laid before the Legislative Assembly at the same time.

"(6) The Regulations may prescribe another period for a requirement under this section to be complied with, except a requirement under sub-section (5), and where another period is so prescribed that period is an alternative period to the period specified in this section and the requirement need not be complied with until the expiration of the alternative period.

"28D. COUNCIL TO APPOINT AUDITOR EACH ALTERNATE YEAR

"(1) The Council shall, in August next after the commencement of the *Jabiru Town Development Amendment Act 1984* and then in August of each alternate year -

- (a) appoint a person to be the auditor of the finances of the Council; and
- (b) determine the amount of the fee to be paid to the auditor.

"(2) A person appointed as the auditor under this section shall hold office on and after 1 September next following his appointment until 31 August in the second year after his appointment.

"(3) Subject to section 28G, a person appointed as the auditor is eligible for re-appointment.

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"28E. COUNCIL TO FILL VACANCY OCCURRING IN OFFICE OF AUDITOR

"(1) Where a vacancy occurs in the office of the auditor, the Council shall, within 28 days after and including the date of that vacancy occurring -

- (a) appoint another person to that office; and
- (b) determine the amount of the fee to be paid to the person so appointed.

"(2) A person appointed under sub-section (1) shall hold office until the appointment of the auditor in whose stead he is appointed would have expired in accordance with section 28D(2).

"(3) The town clerk shall cause notice of the appointment of the auditor to be published in the *Gazette* within 14 days after the date of the appointment under sub-section (1).

"28F. ONLY QUALIFIED PERSONS TO BE APPOINTED AS AUDITOR

"(1) Subject to this section, the Council shall not appoint a person to be the auditor unless he is a member of an institute or association of accountants which the Chairman of the Authority has approved as an institute or association for the purposes of this section.

"(2) Where, on an application being made to him by the Council, the Chairman of the Authority is satisfied that -

- (a) no person who is a member of an approved institute or association of accountants is available for appointment as the auditor; and
- (b) a person nominated by the Council is competent to carry out the duties of the auditor,

he may approve of the appointment as the auditor of the person nominated, notwithstanding that the person is not a member of an approved institute or association of accountants.

"28G. PERSON DISQUALIFIED FROM BEING AUDITOR

- "(1) A person who -
- (a) is a member of the Council;
 - (b) holds an office of profit under, or at the disposal of, the Council other than as the auditor; or

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- (c) is directly or indirectly interested in a contract with, or employment under, the Council, other than as a shareholder in, or a member, director, manager or servant of, a company which consists of at least 20 registered shareholders or members, which is incorporated or registered in the Commonwealth, and which is concerned in a contract or dealing with the Council,

is disqualified from holding office as the auditor.

"(2) A person who -

- (a) is an undischarged bankrupt; or
- (b) has been sentenced to a term of imprisonment for an indictable offence, until that term expires,

is disqualified from holding office as the auditor.

"28H. TOWN CLERK TO INFORM COUNCIL OF CERTAIN MATTERS

"The town clerk shall inform the Council at the first meeting held after he becomes aware that the auditor -

- (a) is disqualified under section 28G from holding office as the auditor;
- (b) has died;
- (c) has become the subject of an order of a Magistrate under section 13 of the *Mental Health Act*;
- (d) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his creditors or has made an assignment of his remuneration for their benefit;
- (e) has been, or will be, absent from the Territory at a time at which a periodical audit has been, is or will be, appointed to be held by the Council; or
- (f) being in the Territory, has failed to attend at the time and place appointed by the Council for the holding of an audit after the town clerk has given 14 days notice of that proposed audit to the auditor.

"28J. COUNCIL TO DECLARE OFFICE OF AUDITOR VACANT IN CERTAIN CIRCUMSTANCES

"(1) At a meeting of the Council at which -

- (a) the Council accepts the resignation of the auditor; or

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- (b) the town clerk informs the Council of a matter pursuant to section 28H,

the Council shall, by resolution, declare the office of auditor to be vacant.

"(2) The office of auditor becomes vacant when -

- (a) the Council passes a resolution to that effect under sub-section (1); or
- (b) the term for which the auditor was appointed expires.

"28K. CHAIRMAN OF AUTHORITY MAY APPOINT AUDITOR IN CERTAIN CIRCUMSTANCES

"Where the Council fails to appoint an auditor in accordance with this Part, the Chairman of the Authority may, by notice in the *Gazette*, appoint an auditor and fix the fee to be paid to that auditor by the Council.

"28M. TERM OF OFFICE OF AUDITOR APPOINTED UNDER SECTION 28K

"An auditor appointed under section 28K shall -

- (a) subject to this Act, hold office until 31 August in the second year after his appointment; and
- (b) be paid by the Council such fee as is fixed by the notice referred to in that section.

"28N. AUDITOR MAY SUE FOR FEES

"An auditor, whether appointed by the Council or by the Chairman of the Authority, may sue for and recover as a debt fees due and payable to him by the Council.

"28P. DUTIES OF AUDITOR AS TO AUDIT

"The auditor shall inspect and audit the accounts of the Council at -

- (a) the times and in the manner prescribed; and
- (b) such other times as the Council directs.

"28Q. MANNER OF CARRYING OUT AUDIT

"The auditor shall make a full and complete audit of the statements and accounts of the Council and shall certify -

- (a) whether in his opinion the statements and accounts of the Council are full and fair statements and accounts, properly drawn up so as

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to exhibit a full and true view of the Council's affairs;

- (b) whether they are in accordance with the books of the Council and this Act and the Regulations; and
- (c) as to the amount which, in accordance with this Act, the Council may borrow from the Authority.

"PART V - MISCELLANEOUS".

17. NEW SECTIONS

The Principal Act is amended by inserting after section 29 the following:

"29A. STAFF OF COUNCIL

"(1) The Authority shall determine -

- (a) the number and classification of staff which may be employed by the Council; and
- (b) the terms and conditions upon which the Council may employ staff.

(2) The Council may employ staff only in accordance with a determination under sub-section (1).

"29B. APPOINTMENT, &c., OF TOWN CLERK

"(1) Subject to sub-section (2), the Council shall, in accordance with a determination under section 29A(1), appoint a person as the town clerk of Jabiru.

(2) The Council shall not appoint a person as town clerk, unless he -

- (a) has attained the age of 18 years; and
- (b) possesses qualifications that qualify him for appointment as a town clerk of a municipal body of a State or his appointment is approved by the Authority.

"(3) The Council shall not dismiss the town clerk, if he has held office as the town clerk for more than 12 months, without giving him at least 6 months notice, except on the ground of his -

- (a) incompetence;
- (b) having become bankrupt or insolvent or applied to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounded with his creditors or made an assignment of his remuneration for their benefit; or

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- (c) having failed properly to carry out duties which, under this Act, he is required to perform or which have been assigned to him by the Council."

18. PROCEEDINGS TAKEN BY AUTHORITY

Section 31A of the Principal Act is amended by omitting ", or the Chairman or a person authorized by the Authority" and substituting "or its Chairman, or the Council or its Chairman, or a person authorized by the Authority or Council".

19. REGULATIONS

Section 32 of the Principal Act is amended by adding at the end the following:

"(3) Without limiting the generality of sub-section (1), the Administrator may make regulations providing for or in relation to -

- (a) moneys of the Council; and
- (b) the preparation and auditing of prescribed statements."

20. FURTHER AMENDMENTS

The Principal Act is further amended as set out in Schedule 1.

21. TRANSITIONAL

(1) The persons who, immediately before the commencement of this Act, were -

- (a) elected members; or
- (b) appointed members,

of the Council as then constituted shall, upon that commencement, be deemed to be -

- (c) elected as members; or
- (d) appointed as members,

of the Council, as the case may be, under the Principal Act as amended by this Act, to hold office for the remainder of the period during which they would have been members of the Council had this Act not come into operation.

(2) The member of the Council who, immediately before the commencement of this Act, was the -

- (a) Chairman; or

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(b) Deputy Chairman,

of the Council as then constituted shall, upon that commencement, be deemed to be the Chairman or Deputy Chairman of the Council, as the case may be, under the Principal Act as amended by this Act.

(3) Upon the commencement of this Act -

(a) the assets of the Authority specified in Schedule 2 are transferred to and vested in the Council without further assurance and the Council shall have all powers necessary to take possession of, recover and deal with such assets; and

(b) the agreements specified in Schedule 3, to which the Authority was a party or which affected the Authority, and whether or not of such a nature that the rights, liabilities and obligations under the agreements could be assigned, shall have effect as if the Council were a party to or affected by the agreements instead of the Authority and as if for every reference (however worded and whether expressed or implied) in the agreements to the Authority there were substituted in relation to anything to be done on or after the commencement of this Act, a reference to the Council.

(4) The Authority shall indemnify the Council, and keep the Council indemnified, against any action, claim or demand brought or made against the Council in relation to an act done or omitted to be done by or on behalf of the Authority, being an action, claim or demand that, but for the operation of this Act, could be brought or made against the Authority.

(5) Neither the Authority nor the Council are liable for a duty, fee or other charge in relation to an asset transferred to or vested in the Council, or an agreement affected, by sub-section (3).

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SCHEDULE 1

Section 20

Provision	Amendment	
	omit	substitute
Section 25E(1)	"Town Manager"	"town clerk"
Section 25E(2)	"Subject to section 25D(1), an"	"An"
Section 31B	"Authority"	"Council"

SCHEDULE 2

Section 21(3)(a)

ASSETS

Vehicle	Registration Number
Tractor - MF184	853963
Tractor - MF275	850169
Hilux Utility	853300
Hilux Utility	853306
Mazda Station Sedan	853308
Dyna Tipper	853358
Hilux Utility	853825
Hilux Utility	854045
Hilux Utility	854380

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SCHEDULE 3

Section 21(3)(b)

AGREEMENTS

Date of agreement	Other contracting party or parties	Subject of agreement
29 July 1983	Group 4 Maintenance	Labour until 30 June 1985
7 November 1983	Gagudju Contracting Company	Garbage collection and disposal service until 30 June 1984
2 September 1983	G.E. Fordham	Hire of backhoe until 30 June 1984
16 August 1983	Heather Loane	Management of Jabiru Swimming Pool until 31 August 1984
21 October 1983	Jabiru Cleaning Service	Cleaning services until 30 September 1984
5 December 1983	Group 4 Maintenance	Mowing and slashing services until 5 December 1984
