
Shire of Kalamunda

Special Council Meeting

Minutes for 8 March 2011

INDEX

1.0	OFFICIAL OPENING	3
2.0	ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED.....	3
3.0	PUBLIC QUESTION TIME	4
4.0	PETITIONS/DEPUTATIONS	4
5.0	APPLICATIONS FOR LEAVE OF ABSENCE	4
6.0	CONFIRMATION OF MINUTES OF PREVIOUS MEETING	4
7.0	ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION ...	4
8.0	MATTERS FOR WHICH MEETING MAY BE CLOSED	4
9.0	DISCLOSURE OF INTERESTS	4
10.0	REPORT TO COUNCIL.....	5
	01. Hare Krishna Temple Development State Administrative Tribunal Hearing – Engagement of Legal Representation	7
11.0	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN.....	13
12.0	QUESTIONS BY MEMBERS WITHOUT NOTICE.....	13
13.0	QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN.....	13
14.0	URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION.....	13
15.0	MEETING CLOSED TO THE PUBLIC	13
16.0	CLOSURE.....	13

MINUTES

1.0 OFFICIAL OPENING

1.1 The Chairman opened the meeting at 7:15pm and welcomed Councillors, Staff and Members of the Public Gallery.

2.0 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED

2.1 Attendance

Councillors

Donald McKechnie	Chairman (Shire President)	North Ward
Sue Bilich		North Ward
Margaret Thomas		North Ward
Maureen Robinson		South West Ward
Frank Lindsey		South East Ward
Carol Everett		South East Ward
Martyn Cresswell		North West Ward
Dylan O'Connor		North West Ward
Allan Morton		South West Ward
Geoff Stallard		South East Ward

Members of Staff

Clayton Higham	Director of Planning & Development Services
Kevin O'Connor	Director of Community Development
Mahesh Singh	Director of Engineering Services
David Tomlinson	Manager Statutory Planning & Building
Michelle Clark	Executive Assistant
Sara Slavin	Minute Secretary

Members of the Public 2

Members of the Press 1

2.2 Apologies

Councillors

Noreen Townsend	South West Ward
-----------------	-----------------

Staff

James Trail	Chief Executive Officer
Darrell Forrest	Manager Governance
Steven Leeson	A/Director of Corporate Services

2.3 Leave of Absence Previously Approved

Nil.

3.0 PUBLIC QUESTION TIME

A period of not less than 15 minutes is provided to allow questions from the gallery on matters relating to the functions of this Committee. For the purposes of Minuting, these questions and answers are summarised.

3.1 Nil.

4.0 PETITIONS/DEPUTATIONS

4.1 Nil.

5.0 APPLICATIONS FOR LEAVE OF ABSENCE

5.1 Nil.

6.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

6.1 Not Applicable.

7.0 ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION

7.1 Nil.

8.0 MATTERS FOR WHICH MEETING MAY BE CLOSED

8.1 Nil.

9.0 DISCLOSURE OF INTERESTS**9.1 Disclosure of Financial and Proximity Interests**

- a. Members must disclose the nature of their interest in matters to be discussed at the meeting. (Sections 5.60B and 5.65 of the *Local Government Act 1995*.)
- b. Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Sections 5.70 and 5.71 of the *Local Government Act 1995*.)

9.1.1 Nil.

9.2 Disclosure of Interest Affecting Impartiality

- a. Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee had given or will give advice.

9.2.1 Nil.

10.0 REPORT TO COUNCIL

Please Note: declaration of financial/conflict of interests to be recorded prior to dealing with each item.

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

01. Hare Krishna Temple Development State Administrative Tribunal Hearing – Engagement of Legal Representation

Previous Items

Responsible Officer Director Planning & Development Services

Service Area Planning & Development Services

File Reference CN-01/159

Applicant S R M Bhamidipati

Owner Haladhar Holdings Pty Ltd

Attachment 1 State Administrative Tribunal Order – 2 March 2011

PURPOSE

1. To determine whether to engage legal representation in relation to the State Administrative Tribunal (Tribunal) hearing scheduled for 29 March 2011.

BACKGROUND

2. Following a Tribunal mediation hearing on 18 January 2011 and the Order that the Council be invited to reconsider its decision of 20 December 2010, the Council, at its meeting of 21 February 2011 resolved as follows:

“That Council:

1. Notes the revised plans and additional information received a result of the State Administrative Tribunal mediation process.
2. Pursuant to s31(2) and (3) of the State Administrative Tribunal Act 2004 (WA), sets aside its decision of 20 December 2010 and substitutes the following :-

Grant approval for the redevelopment of the existing place of worship on Lot 117 (159) Canning Road, Kalamunda (Lot 117) with revised plans received on 27 November 2010, attachment 2, subject to the following conditions:

- (a) Before the use of the re-development commences, 74 car parking bays, which meet the relevant Australian standard for access and manoeuvring, are to be constructed on Lot 117 and clearly marked.
- (b) (i) Prior to the commencement of the development, Lot 117 is to be amalgamated with Lot 116 (No 155) Canning Road, Kalamunda (Lot 116) to create a single lot, and 36 car parking bays are to be constructed on the land presently comprising Lot 116 in addition to the 74 bays required by the

preceding condition.

The 36 bays shall be constructed and marked out in accordance with a design approved by the Shire and the relevant Australian Standard.

- (ii) As an alternative to the requirements of the preceding paragraph the owner of Lot 117 and Lot 116 may enter into a legal agreement with the Shire, prepared by the Shire's solicitors at the owner's cost, which shall include provisions which:
- Allow a period of 12 months for the amalgamation of Lot 117 and Lot 116 to be effected.
 - Allow the deferral of the requirement to construct 36 bays until a reasonable time specified by the Shire after the completion of the amalgamation.
 - Authorise the Shire to do all things necessary to complete the amalgamation process, or to construct the car bays, at the cost of the owner in the event of the owner's default.
 - Require the owner to provide to the Shire before a building licence is issued an unconditional and irrevocable bank guarantee from an institution satisfactory to the Shire in the sum of \$581,040, being equivalent to the payment of cash-in-lieu of providing 36 car parking bays.
 - Allow the Shire to draw on the bank guarantee in the event the amalgamation is not effected in accordance with the deed, and to place that money in the car parking trust fund kept pursuant to clause 5.8.4(c) of the Shire of Kalamunda Local Planning Scheme No. 3.
 - Charge Lot 116 and Lot 117 in favour of the Shire and authorise the Shire to lodge an absolute caveat over those lots in order to protect the Shire's interests under the deed. The deed must be executed prior to the grant of a building licence.
- (iii) As an alternative to the requirements of the preceding paragraphs (i) and (ii), the owner of Lot 117 may pay to the Shire the sum of \$581,040, being equivalent to the payment of cash-in-lieu of providing 36 car parking bays as provided for in clause 5.8.4(c) of the Shire of Kalamunda Local Planning Scheme No. 3.
- (c) The applicant is to install and maintain mature screen planting

on the southern, western and eastern boundaries and within the rear parking area to the satisfaction of the Director of Planning and Development Services.

- (d) Provision of a colours and textures schedule for approval by the Director of Planning Development Services. The development shall subsequently be carried out in accordance with the approved schedule.
 - (e) The maximum total occupancy for the premises is 450 people at any one time.
 - (f) The Kitchen facilities approved as part of this facility may only be used for on site activities and shall not be used for the preparation of food to be consumed off site.
 - (g) Submission of a plan detailing the location of all external lighting, for approval by the Director of Planning Services. The lighting plan and subsequent lighting installed must demonstrate that any light spill to adjoining properties is minimised to acceptable levels. All external lighting must be installed in accordance with the approved plan.
 - (h) Construction work outside the period 7.00am to 7.00pm Monday to Saturday and at any time on Sundays and Public Holidays is not permitted.
 - (i) The proposed front fence is to be treated with anti-graffiti coating upon completion."
3. The Council's resolution was presented to a subsequent Tribunal mediation hearing on 25 February 2011. The Tribunal has made Orders (Attachment 1 refers) to the effect that the matter is to proceed to a substantive hearing to be held on 29 March 2011. The Order notes that the only issue in dispute is condition 2(b).
4. During the Mediation session the Senior Sessional Member conducting the mediation noted that the Shire could not be represented by the planning staff and requested information on who would represent the Shire to enable hearing and process dates to be established. Mr Steve Allering, Principal of Allering and Associates and an experienced advocate for Councils in these situations, was engaged to represent the Council.
5. After the mediation session the applicants planning representative advised the Director Planning and Development that his clients were engaging lawyers to lead their case at the hearing on the 29 March.

DETAILS

6. Craig Slarke, McLeods Barristers and Solicitors, has previously advised the Shire in relation to the conditions for the Hare Krishna Development, and therefore has some knowledge of the matter before the Tribunal. Mr Slarke is also a very experienced legal advocate, particularly at the Tribunal. In anticipation of a Council decision and the tight timelines for the hearing, Mr Slarke has been requested to advise of his availability and to provide an estimate of costs. He has indicated his availability and estimated a cost of between \$10,000 and \$15,000.

STATUTORY AND LEGAL IMPLICATIONS

7. In this case the Council has the right to choose whether it would like to be legally represented at the Tribunal.

POLICY IMPLICATIONS

8. Nil.

PUBLIC CONSULTATION/COMMUNICATION

9. Nil.

FINANCIAL IMPLICATIONS

10. Estimated costs are:
Legal Representation - \$10,000 - \$15,000
Planning Expert - \$9,000 plus GST and disbursements
Traffic Expert - \$9660 plus GST

Total \$28,660 - \$33,660 plus GST and disbursements

STRATEGIC AND SUSTAINABILITY IMPLICATIONS**Strategic Planning Implications**

11. Nil.

Sustainability ImplicationsSocial implications

12. Nil.

Economic Implications

13. Nil.

Environmental Implications

14. Nil.

OFFICER COMMENT

15. It would appear that the arguments at the Tribunal hearing are likely to revolve around planning and traffic issues, however, given that the applicant has engaged legal representation to lead their case it would be prudent for the Council to consider whether it should also have legal representation.

OFFICER RECOMMENDATION (01/2011)

1. That Council determine whether to engage legal representation for the Tribunal hearing, currently scheduled for the 29 March 2011, in relation to the Hare Krishna Temple development.

Moved: Cr Geoff Stallard moved the above on the basis the word “whether” was removed.

Seconded: Cr Margaret Thomas seconded on the basis the words “determine whether to” were removed. The Mover was in agreement to this minor adjustment.

Further changes were suggested by the Chairman. The wording of the motion to read:

That the Council authorise the CEO to engage McLeods Barristers & Solicitors, to represent the Shire in the State Administrative Tribunal matter, Shire of Kalamunda vs Haladhar Holdings Pty Ltd.

Both the Mover and Seconder agreed to the amended wording.

RESOLVED SCM 20/2011

1. That Council authorise the CEO to engage McLeods Barristers & Solicitors, to represent the Shire in the matter State Administrative Tribunal, Shire of Kalamunda vs Haladhar Holdings Pty Ltd.

Moved: Cr Geoff Stallard

Seconded: Cr Margaret Thomas

Vote: For
Cr Carol Everett
Cr Frank Lindsey

Cr Geoff Stallard
Cr Allan Morton
Cr Martyn Cresswell
Cr Dylan O'Connor
Cr Sue Bilich
Cr Margaret Thomas

Against

Cr Maureen Robinson
Cr Donald McKechnie

CARRIED (8/2)

11.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

11.1 Nil.

12.0 QUESTIONS BY MEMBERS WITHOUT NOTICE

12.1 Cr Martyn Cresswell

Q. Could Engineering Services please provide an updated report with regard to Kalamunda Road?

A. Taken on Notice.

13.0 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

13.1 Nil.

14.0 URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION

14.1 Cr Donald McKechnie advised all Councillors that a Citizenship Ceremony would take place on Wednesday 9 March at 7:30pm.

14.2 Cr Donald McKechnie congratulated Ms Jo Randall, a resident of Carmel, who has received a National Award in recognition of her work with the Madijitil Moorna Choir.

15.0 MEETING CLOSED TO THE PUBLIC

15.1 Nil.

16.0 CLOSURE

There being no further business, the Chairman declared the meeting closed at 7:40pm.

I confirm these Minutes to be a true and accurate record of the proceedings of this Council.

Signed: _____
Chairman

Dated this _____ day of _____ 2011

