
Shire of Kalamunda

Special Council Meeting

Agenda for 8 March 2011

NOTICE OF MEETING SPECIAL COUNCIL MEETING

Councillors

Notice is hereby given that the next meeting of the Special Council Meeting will be held in the Council Chambers, Administration Centre, 2 Railway Road, Kalamunda on:

8 March commencing at 7.15pm

For the benefit of Committee Members, staff and members of the public, attention is drawn to the following requirements as adopted by Council.

Open Council Meetings – Procedures

1. Standing Committees are open to the public, except for Confidential Items listed on the Agenda.
2. Standing Committees have a membership of all 12 Councillors.
3. Unless otherwise advised a Committee makes recommendations only to Full Council (Held on the third Monday of each month at 6.30 pm).
4. Members of the public are able to ask questions at a Committee Meeting, however, the questions should be related to the functions of the Committee.
5. Members of the public wishing to make a comment on any Agenda item may request to do so by advising staff prior to commencement of the Committee Meeting.
6. Comment from members of the public on any item of the Agenda is usually limited to 3 minutes and should address the recommendations (at the conclusion of the report).
7. It would be appreciated if silence is observed in the gallery at all times except for Question Time.
8. All other arrangements are in general accordance with Council's Standing Orders, the Policies and decision of person Chairing the Committee or Council Meeting.
9. Members of the public who are unfamiliar with meeting proceedings are invited to seek advice at the meeting by signalling to a staff member.

James Trail
Chief Executive Officer
3 March 2011

** Dinner will be served at 5.30pm **

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AGENDA

1.0 OFFICIAL OPENING

2.0 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED

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.

4.0 PETITIONS/DEPUTATIONS

5.0 APPLICATIONS FOR LEAVE OF ABSENCE

6.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

7.0 ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION

8.0 MATTERS FOR WHICH MEETING MAY BE CLOSED

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*.)

9.2 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.

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 Barristors 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 Implications

Social 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 the 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:

Seconded:

Vote:

SATState
Administrative
Tribunal
Western Australia

Planning and Development Act 2005

IN THE MATTER OF:

Haladhar Holdings Pty Ltd	Applicant
-and-	
Shire of Kalamunda	Respondent

Matter Number: DR 253 2010
Application Lodged: 25 August 2010

ORDER

On the application heard before Senior Sessional Member Rebecca Moore on 25 February 2011, it is ordered that:

1. The Tribunal notes that the respondent has reconsidered its decision at its meeting on 21 February 2011 and granted conditional development approval in accordance with revised plans received on 27 November 2010. The only issue in dispute between the parties is condition 2(b) which reads as follows:
 - (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 deeds. 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 the 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.
2. By 11 March 2011 the respondent must file with the Tribunal and give to the applicant an indexed and paginated bundle in chronological or other logical order of the documents it is required to file under s 24 of the *State Administrative Tribunal Act 2004* (WA) namely:
 - (i) a statement of the reasons for the decision; and
 - (ii) documents and other material in its possession or under its control which are relevant to the Tribunal's review of the decision (or the internet address of any document).
 3. If the applicant does not have ready access to the internet it may require the respondent to provide it within 7 days of request with a hard copy of any document for which only an internet address is provided in the respondent's bundle.
 4. The applicant must by 18 March 2011 file with the Tribunal and give to the respondent an indexed and paginated bundle in chronological or other logical order of the documents on which it proposes to rely in the proceeding (or the internet address of any document) not in the respondent's bundle.
 5. Where a party or expert witnesses are required by these orders to file a document with the Tribunal two copies of the document must be filed.
 6. Every document required by these orders to be filed with the Tribunal should:
 - (a) identify, on the first page, the SAT application number, the names of the parties, each party's reference (if known), the title of the document and, except where the document is filed jointly by expert witnesses, the name of the party by whom or on whose behalf the document is filed;
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13. The expert witnesses must each sign the joint statement at the conclusion of their conference. If the statement is in handwriting the expert witnesses must appoint one of them to generate a typed version of it and each must sign the typed document. The expert witnesses must file the joint statement with the Tribunal and give copies of it to the parties by 24 March 2011.
14. The matter is listed for a final hearing to commence at 11 am on 29 March 2011 for a duration of one day.


Senior Sessional Member Rebecca Moore



I certify the foregoing to be a true
and correct copy of the original


State Administrative Tribunal
Date: 2/3/11

- 11.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
- 12.0 QUESTIONS BY MEMBERS WITHOUT NOTICE**
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