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Shire of Kalamunda

# Special Council Meeting

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Agenda for 9 July 2012



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**shire of  
kalamunda**





**NOTICE OF MEETING  
Special Council Meeting**

Councillors

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

**9 July 2012 commencing at 6.30pm**

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

**Open Committee Meetings – Procedures**

1. All Council Meetings are open to the public.
2. All other arrangements are in accordance with Council's Standing Orders, Policies and decision of the Shire or Council.

James Trail  
**Chief Executive Officer**  
4 July 2012

\*\* 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**

2.1 Cr Geoff Stallard (Leave of Absence)

Cr Margaret Thomas (Apology)

### **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 Special Council Meeting. For the purposes of Minuting, these questions and answers are summarised.

### **4.0 PETITIONS/DEPUTATIONS**

### **5.0 DISCLOSURE OF INTERESTS**

#### **5.1 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*.)

#### **5.2 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.

### **6.0 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.**

**6.1. Disposal of Property – 33 Canning Road, Kalamunda**

Previous Items	OCM-11/2010, OCM-02/2011
Responsible Officer	Director Corporate and Community Services
Service Area	Economic Property & Procurement
File Reference	EI 1004
Applicant	N/A
Owner	Shire of Kalamunda
Attachment 1	Proposal to Dispose of 31 Canning Road, Kalamunda - Submission Table
Attachment 2	Copy of Petition
Attachment 3	Copy of Request for Special Electors Meeting

**PURPOSE**

1. To consider submissions on the proposed consideration for the disposal of 33 Canning Road in Kalamunda to Dome Coffees Australia Pty Ltd.

**BACKGROUND**

2. Council prepared an Expression of Interest for 31 Canning Road, Kalamunda and this was advertised in The West Australian Newspaper on 10 July 2010 and in the Midland Kalamunda Reporter on 13 July 2010.
3. The property was previously known as 31 Canning Road, Kalamunda, however due to a change to the title, is now described as 33 Canning Road Kalamunda.
4. At its meeting of 15 November 2010 Council considered the two submissions received and requested Dome Coffees Australia Pty Ltd submits a formal proposal.
5. At its meeting of 21 February 2011 Council resolved:
 

Resolved OCM 09/2011

  1. *That the Formal Proposal submitted by Dome Coffees Australia Pty Ltd be accepted.*
  2. *That the Shire of Kalamunda advises Dome Coffees Australia Pty Ltd of its intention to enter into a "Lease Agreement" subject to successful land acquisition from Departments of Lands, and Planning and Building approvals being given.*
  3. *That subject to the required approvals being forthcoming from the Department of Lands, Council approves the Chief Executive Officer finalising a lease agreement between the Shire of Kalamunda and Dome Coffees Australia Pty Ltd which incorporates the terms and conditions*

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*outlined in (Confidential GS 9/2011/Attachment 1).*

4. *That the cost for sewer extension be considered for inclusion in the 2010/2011 Budget during the current Budget Review process.*
6. Shire staff have been progressing a Lease with Dome Coffees Australia Pty Ltd.
7. Dome Coffees Australia Pty Ltd have been progressing works on the property at 33 Canning Road, Kalamunda and plan to open for business in mid to late July 2012.

#### **DETAILS**

8. Staff advertised the proposed disposal (by lease) of the land in the Kalamunda Reporter and Hills Gazette on 2 June 2012. Two submissions were received. One submission was in the form of a petition.

#### **STATUTORY AND LEGAL IMPLICATIONS**

9. Section 3.58(3) of the *Local Government Act 1995* states:
  - (3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —
    - (a) it gives local public notice of the proposed disposition —
      - (i) describing the property concerned; and
      - (ii) giving details of the proposed disposition; and
      - (iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;
  - and
  - (b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.

#### **POLICY IMPLICATIONS**

10. Shire of Kalamunda - Land Asset Management Policy.

#### **PUBLIC CONSULTATION/COMMUNICATION**

11. Advertisements were placed in the Kalamunda Reporter and the Hills Gazette on 2 June 2012.

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**FINANCIAL IMPLICATIONS**

12. The proposed lease would have a positive financial impact on the Council through improvements to a Shire asset and ongoing rental income in the order of \$1.5 million over the twenty year lease period..

**STRATEGIC AND SUSTAINABILITY IMPLICATIONS**

**Strategic Planning Implications**

13. The Shire of Kalamunda’s Strategic Plan 2009-2014:
- 2.1.1 Develop and implement a policy and structure to ensure the effective management of Shire owned and managed land and buildings.
  - 2.3.2 Maintain, refurbish or upgrade existing infrastructure to encourage increased utilisation and extension of asset life.

**Sustainability Implications**

Social Implications

14. The Dome Café will provide community space for meetings and gatherings.

Economic Implications

15. The development will generate rate income for the Shire, in addition to the other financial matters discussed in this report.

Environmental Implications

16. Nil

**OFFICER COMMENT**

17. The *Local Government Act 1995* requires Council to consider and respond to submissions made during a submission period.
18. The main objections were in regard to the land use, the competition to existing businesses and the amount of the lease.
19. The proposed land use (café) was approved by Council at its meeting of 20 February 2012. With regard to the competition that existing businesses face, this is not an issue to be considered by Council. The process of selecting Dome Coffees Australia Pty Ltd was through an open Expression of Interest. The use of the site as a café was the commercial decision of the applicant, not the Shire and the Shire cannot prohibit other cafés establishing on the grounds that they will be in competition against existing businesses.

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20. The amount of rent Dome Coffees Australia Pty Ltd is paying is based on the significant capital investment they are making in the Shire's building. This has meant that the Shire has not needed to borrow one million dollars to perform necessary works to bring the building into a state to enable it to be rented. These improvements included provision of universal access, toilets to Building Code Australian Standard and a commercial kitchen.
  21. The Shire also received a request for a Special Electors Meeting, which officers were verbally advised was in regards to the disposal of the subject property. The request was not in a valid format for the purposes of the *Local Government Act 1995* and also failed to generate the required number of signatures. The request is included as Attachment 2.

### **RECOMMENDATION**

1. That Council notes the submissions received and endorses the staff response in the submissions table.
2. That Council approves, in accordance with Section 3.58 (3) of *the Local Government Act 1995*, the disposal of 33 Canning Road, Kalamunda, to Dome Coffees Australia Pty Ltd.

Moved:

Seconded:

Vote:

**Proposal to dispose of 31 Canning Road, Kalamunda pursuant to s.3.58 of the  
Local Government Act 1995  
Submission Table**

	Details	Comment	Staff Comment	Recommendation
1.	K Mason	Objection		
		a) It has recently come to my attention that the Shire of Kalamunda has not only funded the development of this property to Dome's requirements but also is providing the property at rental terms much lower than market value.	a) The Shire has funded only connection to sewer, carpark upgrades and power upgrades. All other works have been undertaken at Dome's expense. The outlay by Dome on the refit of the building is in excess of \$1 million.	That the submission be noted
		b) Shire employees confirmed today that Dome have had keys to the property since February 2012 and that the rent free period has not yet come into effect. I ask, when will it and why have Dome received keys prior to the start of their lease if that is when the rent free period begins? It is clearly apparent that a rent free period has already begun.	b) The rent-free period is scheduled to commence upon the earlier of the Dome opening and 14 days from the completion of construction on the site. Dome received the keys in February 2012 to undertake construction work. This time is not the subject of the proposed lease.	
		c) If the tenancy of the property was finalised in February 2012, why was the Proposal to Dispose of Property not posted, as is required by law, in February 2012 instead of June 2012? This has allowed for the dealings to be finalised before the public has been allowed to comment or issue complaint submissions. The 4pm Monday, 18 June 2012 deadline issued has therefore been made redundant.	c) the Lease has not yet commenced. The lease cannot commence until after the requirements of s.3.58 of the Local Government Act are finalised.	

		d) What financial investment has the Shire of Kalamunda made in 31 Canning Road?	d) The Shire has contributed \$75,000 for connection to sewer and there is \$50,000 and \$30,000 budgeted for the repair of the adjoining car park and power upgrade respectively.	
		e) What investigation or resources were consulted when determining rental value and terms of 31 Canning Road?	e) Council received independent market valuations and legal advice.	
		f) What other responses did the Shire of Kalamunda receive in response to the Expressions of Interest in 31 Canning Road, and why was Dome's offer considered the most attractive when it came at great expense to rate payers?	f) Council advertised for Expressions of Interest ("EOI") in the site. Two expressions were received. The EOIs were from: <ol style="list-style-type: none"> <li>1. Dome Coffees Australia Pty Ltd.</li> <li>2. Kalamunda Kids.</li> </ol> Dome was invited to submit a formal proposal. Dome's proposal offered the greatest return on investment for the Shire.	
		g) Why is the Shire of Kalamunda financially involved with the opening of two cafes in Kalamunda in a short period of time (Zig Zag Café and Dome Café)?	g) The Shire's financial involvement is that of lessor. The Shire has no financial ownership of either business.	
		h) Does this financial involvement not constitute a breach of anti-competition regulation?	h) The Shire is not aware of any breaches of any legislation in this matter.	

		<p>i) As a local business owner and rate payer I am appalled that the Shire of Kalamunda has misused rates to "invest" in two cafes which I must now compete against, without the benefit of ridiculously low rent, rent free periods and customised fit outs.</p>	<p>i) The Shire has not misused rates in this regard. The opinion is noted.</p>	
2.	<p>Multiple (Petition) The petition included in attachment 2. <i>Many signatures have no further details and therefore the names of the petitioners are not included in this table.</i></p>	<p>Objection</p> <p>a) The proposal is inequitable and unfair to other local business owners.</p>	<p>a) The proposed disposal takes into account the initial investment in the Shire's building by Dome, as well as the ongoing lease income. Due to the advertising requirements of s3.58 of the Local Government Act the value of the upgrade works are not included in the proposed lease value.</p> <p>Local business owners had an opportunity to submit Expressions of Interest in the site when Dome made their submission. The process was open to all businesses.</p>	<p>That the submission be noted</p>





Shire of Kalamunda  
 2 Railway Road  
 Kalamunda WA 6076

RE: Objection to the advertised proposal to dispose of property and the Lease agreement with Dome Coffees Australia Pty Ltd.

The undersigned persons object to the proposal. The proposal is inequitable and unfair to other local business owners.

Date:	Name:	Address:	Signature:
18.6.12	Alexandra McCutcheon	7 BANCINN PI Maida Vale	<i>[Signature]</i>
18/6/12	SUSAN BORICH	7A REEVES PLACE SWANVIEW 6076	<i>[Signature]</i>
18/6/12	CHERYL BANCROFT	61 YARLWOOD WAY FORESTHILL	<i>[Signature]</i>
18.06.12	Penny Thomson	8 Lillians V	<i>[Signature]</i>
18.6.12	Sabine Klaess-Stephens	34 Bruce Rd Haida Vale	<i>[Signature]</i>
18.6.12	KATRINA MASON	73 THE PENINSULAS, WATTLE GROVE	<i>[Signature]</i>

RECEIVED FRONT COUNTER  
 DATE 18.6.12 TIME 3pm  
 RECEIVED BY *Carol Della Franca*

Therapy Group  
Pangarwanala

AS GOSAL

~~Signature~~ 41, MALUMBA CRES., LESMURDIE

T. V. M. L.

HILARY COOK 179 FALLS RD LESMURDIE ~~Signature~~

Lein huch 197 Bruce Rd Wadale ~~Signature~~

Heather Jackson

David Evans 24A SUNSET CRES Kalamunda ~~Signature~~

B. Kostera 13 Bogendore St Kalamunda ~~Signature~~

~~Signature~~ RICHARD STRUTI 223 Walnut Rd Bickley

~~Signature~~ KEVIN KAVANAGH 15 KACHAWOIA RD, KALAMUNDA.

~~Signature~~ DAVID, 2 KARU RD KALAMUNDA

~~Signature~~ Kenneth Hart, 231 Pickering Brook Rd, Pickering Brook.

~~Signature~~ BILL CHITTY 14 LEDGER RD GOOSEBERRY HILL

~~Signature~~ ANANDI WOLLAGE 9 NAIRN RD BICKLEY

~~Signature~~ Cammy Rd. Kalamunda ~~Signature~~

~~Signature~~ S. Burdovic 26 Brie Brie CRES KALAMUNDA WA

~~Signature~~ G MITCHELL 7 LOOKOUT RD KALAMUNDA

~~Signature~~ I.A. WERNIK 30 ROBINS RD KALAMUNDA

~~Signature~~ Bev 3 Valiant CRES Lesmurdie

~~Signature~~ GARDNER DRIVE GOOSEBERRY HILL

~~Signature~~ 50 NOEL RD. GOOSEBERRY HILL.

~~Signature~~ 10 TELLER ST GOOSEBERRY HILL

~~Signature~~ C. Hendry. 111, HEATH RD KALAMUNDA.

~~Signature~~ SCAWUT 4 GARDNER ST LESMURDIE

~~Signature~~ M. Atkins. 1 RECREATION RD KALAMUNDA.

~~Signature~~ 116 HEATH ROAD KALAMUNDA.

~~Signature~~ 4485 Thomas St Chudlow.

## Proposal to Dispose of Property

Shire of Kalamunda - Local Government Act 1995

The Shire of Kalamunda proposes to lease 721m<sup>2</sup> of land and building space in the former Kalamunda Police Station, 31 Canning Road, Kalamunda to Dome Coffees Australia Pty Ltd for a term of 20 years with options of 10 + 10 years commencing on or before 30 July 2012.

**Rental amount:** A straight line rental amount increasing annually, reflecting the value of improvements to be carried out at tenant's cost, and being rent free for the first 6 months after commencement of the lease, then \$1,250 plus GST for the second six months, rising incrementally to \$50,000pa plus GST in the 20th year.

**Market Value of Lease:** between \$68,250 and \$91,000 per annum.

Members of the public are invited to make submissions in relation to the proposal. Submissions should be addressed to the Shire of Kalamunda, 2 Railway Road, Kalamunda WA 6076 and will be received up to 4pm Monday, 18 June 2012.

[www.kalamunda.wa.gov.au](http://www.kalamunda.wa.gov.au)

shire of  
kalamunda





Further enquiries confirm that as a local private Shire resident or business operator you have the right to call a "Special Electors Meeting" by submitting a page with an objection/expression of concern to the shire with the support of no less that 100 supporting petitioners.

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 Joe Stillsma   
  
  
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 (High Wycombe)  
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 William   
 St. Sena Price  
 Jason   
  
  
  




**7.0 CLOSURE**