

# Special Council Meeting

Minutes for Thursday 2 August 2012



**shire of  
kalamunda**



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## AGENDA

### 1.0 OFFICIAL OPENING

The Deputy Shire President presided over the meeting as Chairman and opened the meeting at 6.00pm, welcoming Councillors, Staff and Members of the Public Gallery.

### 2.0 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED

#### 2.1 Attendance

##### Councillors

Sue Bilich		North Ward
Justin Whitten		South West Ward
Allan Morton	(Chairman) (Deputy Shire President)	South West Ward
Noreen Townsend		South West Ward
Geoff Stallard		South East Ward
John Giardina		South East Ward
Martyn Cresswell		North West Ward
Dylan O'Connor		North West Ward

##### Members of Staff

James Trail		Chief Executive Officer
Rhonda Hardy		Director Corporate and Community Services
Clayton Higham		Director Development & Infrastructure Services
Rajesh Malde		Manager Financial Services
Sam Assaad		Manager Infrastructure Operations
Michelle Clark		Executive Assistant to the CEO
Meri Comber		Governance Officer

**Members of the Public** 0

**Members of the Press** 0

#### 2.2 Apologies

##### Councillors

Donald McKechnie	(Chairman, Shire President)	North Ward
Margaret Thomas		North Ward
Bob Emery		North West Ward

##### Members of Staff

Darrell Forrest		Manager Governance
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#### 2.3 Leave of Absence Previously Approved

Nil.

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### **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 meeting. For the purposes of Minuting, these questions and answers are summarised.

3.1 Nil.

### **4.0 PETITIONS / DEPUTATIONS**

4.1 Nil.

### **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*.)

5.2.1 Nil.

#### **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.

5.2.3 Nil.

### **6.0 REPORTS TO COUNCIL**

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

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

**1. Lot 117 (159) Canning Road, Kalamunda - Haladhar Holdings (Hare Krishna) – Recommended Conditions to the State Administrative Tribunal**

Previous Items	OMC July 2010, December 2010 & March 2011
Responsible Officer	Director Development & Infrastructure Services
Service Area	Development Services
File Reference	CN-02/159
Applicant	S R M Bhamidipati
Owner	Haladhar Holdings
Attachment 1	Locality Map
Attachment 2	Approved Plans
Attachment 3	Conditions of consent granted by Council December 2010
Attachment 4	Draft Conditions recommended by the applicant's Solicitor
Attachment 5	Draft Conditions recommended by the Shire's Solicitor

**PURPOSE**

1. To consider draft conditions for the approved redevelopment of the Place of Worship at Lot 117 (159) Canning Road, Kalamunda (the Site). Refer to (Attachments 1 and 2). The conditions will be forwarded to the State Administrative Tribunal ("the Tribunal") for its consideration.

**BACKGROUND**

2. At its Ordinary meeting of July 2010 Council resolved to refuse the redevelopment of the Hare Krishna temple at the Site due to insufficient parking being provided and the impact the building would have on the amenity of the locality.
3. The applicant subsequently exercised their prerogative to appeal the decision to the Tribunal. Through mediation, the Tribunal issued orders that Council be invited to reconsider its decision. Following submission of revised plans, Council approved the proposal, subject to conditions, at its December 2010 meeting. Refer (Attachment 3).
4. The applicant then appealed to the Tribunal in respect to specific conditions of the approval in relation to amalgamation of adjoining sites to provide additional parking, or as an alternative provide a legal agreement in respect to cash in lieu of parking and use of kitchen facilities. The Tribunal has upheld the appeal and asked the parties to produce a draft set of consolidated conditions.

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5. In general terms, the Tribunal's decision is:
- a. The site is capable of accommodating sufficient visitors parking on site, and the amalgamation of the two adjoining lots owned by the applicant will not be necessary. As such a cash in lieu contribution for parking will not be required.
  - b. The applicant will be required to prepare a comprehensive Traffic Management Plan which will include notification to neighbours of high traffic demand.
  - c. Other additional conditions will be imposed confining the use of the land to the religious, related and incidental activities of the Hare Krishna movement, prohibiting simultaneous dual use of the hall and function room (without prior approval of the Shire) and regulating the number of weddings that may be held on site.
  - d. The kitchen facilities may only be used for on-site activities and may only be used for preparation of food for consumption off-site at no more than five local events per calendar year.

#### **DETAILS**

6. The applicant's solicitor has provided a draft set of conditions for consideration. Refer to (Attachment 4). The Shire's solicitor has reviewed the draft conditions and recommended modifications. Refer (Attachment 5).

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

7. If there is disagreement between the parties on the draft set of consolidated conditions, then the final form will be determined by the Tribunal.

#### **POLICY IMPLICATIONS**

8. Nil.

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

9. Public consultation was undertaken prior to the proposal being considered by Council and some members of the community participated in the appeal process. There has not been any public consultation in respect to the draft set of consolidated conditions.

#### **FINANCIAL IMPLICATIONS**

10. Substantial funds have been expended in the defence of the appeal. As the appeal has been determined, there is likely to be minimal additional legal costs in respect to finalising the matter.

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## **STRATEGIC AND SUSTAINABILITY IMPLICATIONS**

### **Strategic Planning Implications**

11. Nil.

### **Sustainability Implications**

#### Social Implications

12. Conditions have been included in respect to amenity issues including lighting, construction work and traffic management.

#### Economic Implications

13. Nil.

#### Environmental Implications

14. Nil.

### **OFFICER COMMENT**

15. Draft Conditions 1-12 are considered acceptable as they include conditions applied by the Council which were not disputed by the applicant, conditions previously agreed by consent orders and some additional conditions consistent with the Tribunal decision.
16. Effectively, issues in relation to the design and use of the building were dealt with through mediation and recommended conditions. Substantive issues of contention related to the adequacy of parking and traffic management have been determined by way of:
- a. That parking should be provided based on normal use rather than peak demands on special occasions. As such, the Tribunal determined that the parking provided on Lot 117 was adequate.
  - b. The applicant providing a traffic management plan addressing the manner in which additional parking is to be managed, that is for peak use such as festivals and weddings. This will include a letter drop in advance to nearby land owners. The consultation plan is shown in (Attachment 4), with properties proposed to be advised of events indicated by a red dot.



17. The Shire's solicitor has recommended a slight variation to the conditions recommended by the applicant. The changes are:
- a. Condition 13 – included reference that the Traffic Management Plan is to be approved by the Shire and that weddings would be included along with the festivals. Also, that the applicant is to comply with the Traffic Management Plan, rather than simply submit it.
  - b. Condition 14 – Reducing the proposed number of weddings per annum for 12 to one. The solicitor has recommended that the numbers of weddings be reduced based on evidence presented at the Tribunal hearing. The condition has been modified to cater for additional weddings subject to approval in advance from the Shire.
  - c. Condition 15 – The applicant's solicitor included a condition in relation to public consultation in respect of weddings. The Shire's solicitor has recommended that this be deleted as the reference to consultation in respect to weddings has been included in Condition 13.
18. It is recommended that Council instruct the Shire's solicitor to present the draft set of consolidated conditions to the Tribunal for its consideration.

#### **RECOMMENDATION**

That Council:

1. In respect to the appeal to the State Administrative Tribunal for Lot 117 (159) Canning Road, Kalamunda - Haladhar Holdings (Hare Krishna) instructs McLeods Solicitors to provide the State Administrative Tribunal with the draft set of consolidated conditions as contained in (Attachment 5) of this report.

Moved:

Seconded:

Vote: **LAPSED**

The Motion **LAPSED** as the Recommendation to Council did not receive a Mover or Seconded.

Cr Bilich moved an Alternative Motion which received a Secunder and was put to a Vote.

**RESOLVED (SCM 80/2012)**

That Council:

1. In respect to the appeal to the State Administrative Tribunal for Lot 117 (159) Canning Road, Kalamunda - Haladhar Holdings (Hare Krishna) instructs McLeods Solicitors to provide the State Administrative Tribunal with the draft set of consolidated conditions as contained in (Attachment 5) of this report, subject to the following amendment to condition 13.3 in (Attachment 5).

13.3 The manner and timing of which the properties identified by a red dot on the attached plan entitled "*Leaflet Drop to Properties with Red Dots*" are to be notified of each festival event and wedding **seven days in advance**.

Moved: **Cr Sue Bilich**

Seconded: **Cr John Giardina**

Vote: **CARRIED UNANIMOUSLY (8/0)**

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**7.0 MEETING CLOSED TO THE PUBLIC**

Nil.

**8.0 CLOSURE**

There being no further business, the Chairman declared the meeting closed at 6.03pm.

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

Signed:

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Chairman

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2012.