

MINUTES

OF THE

SPECIAL MEETING OF COUNCIL

HELD ON

28 JUNE 2011

AT 6.00PM IN THE COUNCIL CHAMBERS

MELVILLE CIVIC CENTRE

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MINUTES OF THE SPECIAL MEETING OF THE COUNCIL HELD IN THE COUNCIL CHAMBERS, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD, BOORAGOON, COMMENCING AT 6.00PM ON TUESDAY, 28 JUNE 2011.

1. OFFICIAL OPENING

The Presiding Member welcomed those in attendance to the meeting and declared the meeting open at 6:00pm. Mr J Clark the Governance and Compliance Program Manager read aloud the Disclaimer and then His Worship the Mayor, Russell Aubrey, read aloud the Affirmation of Civic Duty and Responsibility.

Affirmation of Civic Duty and Responsibility

I make this Affirmation in good faith on behalf of Elected Members and Officers of the City of Melville. We collectively declare that we will duly, faithfully, honestly, and with integrity fulfil the duties of our respective office and positions for all the people in the district according to the best of our judgement and ability. We will observe the City's Code of Conduct and Standing Orders to ensure the efficient, effective and orderly decision making within this forum.

2. PRESENT

His Worship the Mayor, Russell Aubrey

COUNCILLORS

WARD

Cr M Reynolds (Deputy Mayor)(from 6.04pm)	University
Cr C Robartson, Cr R Subramaniam	Bull Creek/Leeming
Cr N Pazolli, Cr P Reidy	Applecross/Mount Pleasant
Cr A Nicholson	City
Cr A Ceniviva (from 6.03pm)	City
Cr G Wieland, Cr J Barton	Bicton/Attadale
Cr C Halton (from 6.08pm)	Palmyra/Melville/Willagee
Cr B Kinnell	Palmyra/Melville/Willagee
Cr N Foxtton	University

3. IN ATTENDANCE

Dr S Silcox	Chief Executive Officer
Mr M Tieleman	Director Corporate Services
Ms C Young	Director Community Development
Mr S Cope	Director Urban Planning
Mr J Christie	Director Technical Services
Mr L Hitchcock	Executive Manager Legal Services
Mr B Taylor	Manager Information, Technology & Support
Mr J Clark	Governance & Compliance Program Manager
Ms C Rourke	Minute Secretary

At the commencement of the meeting there were no members of the public and no members from the Press in the Public Gallery. There were two staff members present in the Public Gallery, Mr K Yeoh, Senior Financial Accountant and Ms D Whyte, Senior Management Accountant.

4. APOLOGIES AND APPROVED LEAVE OF ABSENCE**4.1 APOLOGIES**

Nil

4.2 APPROVED LEAVE OF ABSENCE

Nil

5. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION) AND DECLARATIONS BY MEMBERS**5.1 DECLARATIONS BY MEMBERS WHO HAVE NOT READ AND GIVEN DUE CONSIDERATION TO ALL MATTERS CONTAINED IN THE BUSINESS PAPERS PRESENTED BEFORE THE MEETING.**

Nil

5.2 DECLARATIONS BY MEMBERS WHO HAVE RECEIVED AND NOT READ THE ELECTED MEMBERS BULLETIN.

Nil

6. QUESTION TIME

Nil

7. DECLARATIONS OF INTEREST

7.1 FINANCIAL INTERESTS

- Cr Barton C11/5159 and C11/5176
- Cr Pazolli C11/5159 and C11/5176
- Cr Reynolds C11/5159 and C11/5176

7.2 DISCLOSURE OF INTEREST THAT MAY CAUSE A CONFLICT

Nil

8. APPLICATIONS FOR NEW LEAVES OF ABSENCE

Nil

9. IDENTIFICATION OF MATTERS FOR WHICH MEETING MAY BE CLOSED

- **C11/5176 – Sale of Land to Alchera Living (Inc.)**
The matter is confidential in accordance with Section 5.23 (2) (h) of the Local Government Act 1995, legal advice obtained, or which may be obtained, by the Local Government and which relates to a matter to be discussed at the meeting.

10. REPORTS OF THE CHIEF EXECUTIVE OFFICER

A Notice of Rescission Motion relating to Item C11/5159 – City of Melville Aged Persons Homes Trust – Motion to Rescind, containing 1/3 of the number of offices of members of the Council, in accordance with Regulation 10 of the Local Government (Administration) Regulations 1996, was received from Cr Barton. The Members who signed the notice were: Cr Barton, Cr Kinnell, Cr Reynolds, Cr Robartson, and Cr Subramaniam.

Disclosure of Interest

Item No : C11/5159 & C11/5176
 Elected Member/Officer : Cr Barton
 Type of Interest : Financial
 Nature of Interest : Board Member of Alchera
 Request : Stay, discuss and vote
 Decision of Council : Stay, discuss and vote

Disclosure of Interest

Item No : C11/5159 & C11/5176
 Elected Member/Officer : Cr Pazolli
 Type of Interest : Financial
 Nature of Interest : Board Member of Alchera
 Request : Stay, discuss and vote
 Decision of Council : Stay, discuss and vote

Disclosure of Interest

Item No : C11/5159 & C11/5176
 Elected Member/Officer : Cr Reynolds
 Type of Interest : Financial
 Nature of Interest : Board Member of Alchera
 Request : Stay, discuss and vote
 Decision of Council : Stay, discuss and vote

At 6.05pm Cr Subramaniam moved, seconded Cr Robartson –

That in accordance with Section 5.68 (1) of the Local Government Act 1995 Cr Barton, Cr Pazolli and Cr Reynolds be allowed to stay, discuss and vote.

At 6.05pm the Mayor submitted the motion, which was declared

CARRIED (9/0)

C11/5159 – CITY OF MELVILLE AGED PERSONS HOMES TRUST - MOTION TO RESCIND (AMREC)

Ward : Applecross/Mt Pleasant
 Category : Operational
 Subject Index : Property /Land Administration
 Customer Index : City of Melville Aged Persons Homes Trust now Alchera Living
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : Item 1060 – City of Melville Aged Persons Homes Trust (Inc) – Lot 5 Collier Street, Applecross – Amalgamation/Transfer of Land - Council Meeting 17 November 1992
 Works Programme : Not Applicable
 Funding : Not Applicable
 Responsible Officer : Jeff Clark
 Governance & Compliance Program Manager

C11/5159 – CITY OF MELVILLE AGED PERSONS HOMES TRUST - MOTION TO RESCIND (AMREC)

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>when the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>when the Council review decisions made by Officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>when the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

KEY ISSUES / SUMMARY

- Item 1060 – Council Meeting 17 November 1992 – City of Melville Aged Persons Homes Trust (Inc) – Lot 5 Collier Street, Applecross – Amalgamation/Transfer of Land
- To rescind a 1992 Council resolution to transfer land to the City of Melville Aged Persons' Homes Trust free of consideration.

BACKGROUND

In 1992 (Item 1060 Ordinary Meeting of Council held 17 November 1992) the City of Melville resolved to transfer Lot 5 Collier Street, Applecross in fee simple to the City of Melville Aged Persons' Homes Trust (the Trust).

Both the Associations Incorporations Act 1997 and the Trust's amended constitution indicate that if the Trust is ever wound up, either voluntarily or by the Court any surplus assets would be distributed to any like organisation, which may not necessarily be within the City of Melville.

As no material action has been undertaken on implementing this 1992 resolution, the Council consideration is required to rescind the resolution.

C11/5159 – CITY OF MELVILLE AGED PERSONS HOMES TRUST - MOTION TO RESCIND (AMREC)

A plan of the site follows -



DETAIL

The City owns Lot 5 Collier Road, Applecross in fee simple being the whole of the land comprised in certificate of title Volume 1613 Folio 17 ("Lot 5") and an adjoining portion of a Right of Way on Diagram 62556. The City of Melville Aged Persons' Homes Trust has constructed a retirement village on Lot 5 with Council approval in 1983.

In November 1992 the Council resolved as follows to dispose of Lot 5 to the Trust for nil consideration –

"That Lot 5 Collier Street, Applecross be transferred to the City of Melville Aged Persons Trust (Inc) free of consideration but with the Trust meeting all transfer costs."

To affect the above resolution a solicitor was co-appointed by both the Trust and the City of Melville. Considerable research and investigation was undertaken by the solicitor to lift various caveats and a restrictive covenant that existed on the title and then in November 1999 the Trust registered a new constitution with the State Corporate Affairs. A dispute over this new constitution then delayed any action on implementing the 1992 Council resolution.

At the time of the 1992 Council resolution it was believed that under the then constitution that, should the Trust ever be wound up, either voluntarily or otherwise then the assets of the Trust would revert to the City of Melville or to a like organisation at least within the City of Melville. The amended constitution has removed the specific reference to the assets being transferred to a like organisation "within the municipal district of the City of Melville". The changes to the Associations Act do not permit transfer of assets held in an association, to a Local Government.

C11/5159 – CITY OF MELVILLE AGED PERSONS HOMES TRUST - MOTION TO RESCIND (AMREC)

The City was originally dealing with the City of Melville Aged Persons' Trust which has subsequently changed its name to Alchera Living (Inc) on 1 February 2008.

There is a need to rescind the original motion from 1992 to permit the Council to deal with the land subject to current negotiations.

PUBLIC CONSULTATION/COMMUNICATION

The Trust's Chief Executive Officer and members of the Board have been notified of the recommended action to rescind the 1992 motion at a meeting held on 27 January 2009. No community or public consultation has been carried out.

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

As part of previous negotiations, legal advice from the City's solicitors has been provided on 22 May 2007 concerning the City entering into a lease on Lot 5 Collier Street Applecross rather than transfer Lot 5 to the Trust.

The Local Government Act 1995 S 5.25 (1)(e) and the Local Government (Administration) Regulations 1996 at Regulation 10 requires one third of the Council members, inclusive of the mover of the motion, to sign a motion to rescind.

FINANCIAL IMPLICATIONS

Should the Council support the recommendation to rescind the motion, the current negotiations with Alchera Living (Inc) will be able to proceed. As the intent of the 1992 resolution was to transfer the land in fee simple at no cost, not at current market value, there will be a financial benefit to the City

The option to sell the land to Alchera Living (Inc) at a negotiated value would provide an opportunity for the City to apply funds received to purchase another income producing property.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

No strategic implications are applicable to this item.

Risk Statement	Level of Risk	Risk Mitigation Strategy
Risk of not resolving this matter prevents any different action from occurring.	Major consequences which are almost certain, resulting in a Extreme level of risk	Resolve to rescind the previous motion to remove uncertainty and permit negotiations for a sale of the land.

C11/5159 – CITY OF MELVILLE AGED PERSONS HOMES TRUST - MOTION TO RESCIND (AMREC)**POLICY IMPLICATIONS**

Policy CP-005 Property Retention and Disposal provides guidance in that the subject properties do not align with the visions and objectives as detailed in the City of Melville's Strategic Plan "to utilise land and building assets to maximise community benefit".

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

The Council may choose to continue on the path to provide Lot 5 Collier Street Applecross to Alchera Living (Inc) free of consideration. This option would be inconsistent with the intent of the Council over the past three years where litigation has been commenced to retain the site as an asset of the City.

Should the recommendation to rescind the motion from 1992 not be supported, the Council would be unable to proceed with a negotiated sale of Lot 5 as that action is contradictory to the existing motion from 1992.

CONCLUSION

The rescission of the 1992 resolution will clarify the status of the matter and assist negotiations for the sale Lot 5 Collier Street Applecross. The option to sell Lot 5 to Alchera Living (Inc) is consistent with current negotiations.

OFFICER RECOMMENDATION & COUNCIL RESOLUTION (5159)**ABSOLUTE MAJORITY**

At 6.06pm Cr Reynolds moved, seconded Cr Barton -

That by Absolute Majority Decision of the Council, Item 1060 of the Administration & Community Services Committee – 3 November 1992 meeting adopted at the Ordinary Meeting of Council held on 17 November 1992:

“That Lot 5 Collier Street, Applecross be transferred to the City of Melville Aged Persons Trust (Inc) free of consideration but with the Trust meeting all transfer costs.” be rescinded.

At 6.06pm the Mayor submitted the motion, which was declared

CARRIED BY ABSOLUTE MAJORITY (12/0)**COUNCIL RESOLUTION**

At 6.06pm Cr Reidy moved, seconded Cr Reynolds –

That the meeting be closed to the public to permit discussion of the confidential item in relation to Item: C11/5176 – Sale of Land to Alchera Living (Inc.) covered under Section 5.23 (2) (h) of the Local Government Act 1995.

At 6.06pm the Mayor submitted the motion, which was declared

CARRIED (12/0)

An Officer Report on this Item was forwarded to Elected Members under confidential cover on Monday 22 June 2011.

**CONFIDENTIAL ITEM C11/5176 – SALE OF LAND TO ALCHERA LIVING (INC) (AMREC)
(ATTACHMENT)**

At 6.08pm Cr Halton joined the meeting.

**OFFICER RECOMMENDATION & COUNCIL RESOLUTION (5176) ABSOLUTE
MAJORITY**

At 6.08pm Cr Reynolds moved, seconded Cr Robartson -

That by Absolute majority Decision, the Council:

- 1 **Accepts the offer of Alchera Living (Inc) to purchase the land on Lot 5 Collier Street Applecross being the whole of the land comprised in Certificate of Title Volume 1613 Folio 17 and Lot 603 (18) Hassell Crescent Bull Creek being the whole of the land comprised in Certificate of Title Volume 1620, Folio 728 and any buildings and improvements on Lot 603 from Alchera Living (Inc.) for the amount of \$4,500,000 (net of GST) on the following terms:-**
 - **A mortgage to be granted by the City of Melville to Alchera for the balance after a payment of \$500,000, being \$4 million secured by the two sites.**
 - **Following the payment of \$500,000 on settlement:**
 - **\$1,000,000 payable on 31 December 2011 plus accrued interest calculated at 3% per annum on the daily outstanding balance from the date of settlement.**
 - **\$1,500,000 payable on 31 December 2012 plus accrued interest calculated at 3% per annum on the daily outstanding balance from 1 January 2012.**
 - **\$1,500,000 payable on 31 December 2013 plus accrued interest calculated at 5% per annum on the daily outstanding balance from 1 January 2013.**
 - **The mortgage will provide for an early payment of outstanding amounts without penalty.**
 - **The Supreme Court action would be discontinued by both parties on the basis that Alchera withdraws its action and each party bears their own legal costs incurred.**
 - **The effective date of discontinuance of legal action will be the settlement date when the first payment is received.**

- 2 **Grants an extension of the lease of 18 Hassell Crescent Bull Creek on similar terms to the prior lease, from 21 June 2009 to either 31 December 2011 or settlement date of the purchase of 18 Hassell Crescent Bull Creek and Lot 5 Collier Street Applecross whichever is the first to occur.**

At 6.21pm the Mayor submitted the motion, which was declared

CARRIED BY ABSOLUTE MAJORITY (13/0)

COUNCIL RESOLUTION

At 6.21pm Cr Subramaniam moved, seconded Cr Reidy –

That the meeting come out from behind closed doors and the public be invited back into the meeting.

At 6.21pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

No members of the public or members of the press returned to the meeting.

11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

12. MOTIONS WITHOUT NOTICE BY ABSOLUTE MAJORITY OF THE COUNCIL

Nil

13. CLOSURE

There being no further business to discuss, His Worship the Mayor declared the meeting closed at 6.21pm.