

TOWN OF COTTESLOE



**SPECIAL COUNCIL MEETING**

# **MINUTES**

**SPECIAL MEETING OF COUNCIL  
HELD IN THE  
COUNCIL CHAMBERS, COTTESLOE CIVIC CENTRE  
109 BROOME STREET, COTTESLOE  
7.00 PM, MONDAY, 17 AUGUST, 2009**

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**1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS**

The Mayor announced the meeting opened at 7:07pm.

**2 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE  
(PREVIOUSLY APPROVED)**

**Elected Members**

Mayor Kevin Morgan	Presiding member
Cr Jay Birnbrauer	
Cr Greg Boland	
Cr Dan Cunningham	
Cr Jo Dawkins	
Cr Victor Strzina	
Cr John Utting	
Cr Jack Walsh	
Cr Ian Woodhill	
Cr Bryan Miller	

**Officers**

Mr Carl Askew	Chief Executive Officer
Mr Geoff Trigg	Manager Engineering Services
Mr Andrew Jackson	Manager Development Services
Miss Krystal Shenton	Executive Assistant

**Apologies**

Nil

**Officer Apologies**

Mr Graham Patrick	Manager Corporate Services
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**Leave of Absence (previously approved)**

Cr Patricia Carmichael

**3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

**4 PUBLIC QUESTION TIME**

**Q1.**Has the Council received and considered the contents of the email sent to north ward elected members and the Mayor on 2 August and forwarded to the CEO the following week.

**Answer:** The Mayor advised that the information had been received and presented to Council by the CEO as part of the attachments for tonight's council meeting.

**Q2.** What precedent will any decision to grant land or let land be taken by possession of by Florence Street residents have on any future claims for other parts of the laneway?

**Answer:** Whilst any precedent may have some relevance the matter of encroachment will be considered on a case by case basis and determined on merit. Council takes this matter very seriously.

Courtney Gibson, 73 Hawkestone Street, Cottesloe

**Q1:** Has the Council reconciled the claims and statements contained in the statutory declarations to Landgate, by the two Florence Street applicants to what the Council Meeting minutes contain dated 27 September 2005?

**Answer:** Yes, we have had officers go back over files for past information relating to these two properties. Council will not be giving away any land if we can avoid it.

**Q2:** The Statutory Declarations claim to have Council permission to build. Is this the case?

**Answer:** The Mayor advised that he was unable to respond at present however these issues will be part of the confidential report to be considered by council "in camera".

Andrew Stevens, 51 Hawkestone Street, Cottesloe

Mr Stevens stated that he felt that The Town of Cottesloe had mismanaged the Laneway issue for a long time. He said that what concerned him was that there had been a new house built, with a new double-bricked fence that had encroached recently onto the laneway and reduced the turning capacity for vehicles. He stated that this fence couldn't use the adverse possession rule.

**Q1:** Mr Andrews questioned how the fence could be approved by Council and if not approved it must be an "illegal" structure? This requires further investigation and a site survey is required.

**Answer:** The Mayor stated that we have these details and all related information and that the matter will be discussed by Council behind closed doors. Mr Stevens was advised that his concerns would be taken on board and considered.

## **5 PUBLIC STATEMENT TIME**

Simon Davies, 67 Hawkestone Street, Cottesloe

Mr Davies stated that this issue of the laneway went back as far as 2005 and whilst the Florence Street residents had been informed the Hawkestone residents were not. He expressed disappointed that the Council had neglected to invite Hawkestone residents into discussions. He said that the owners who had built into the laneway had been asked by Council to move out of the laneway in 2007. He said that this made the adverse possession claim void. Mr Davies urged Council to lodge a caveat to buy more time for consideration of the best way to fight the adverse claim.

Paul Southam, 292 Marmion Street, Cottesloe

Mr Southam stated that the rules should be fair for every resident. He encouraged the Council to lodge a caveat to have time to register its concerns. To lodge a caveat is difficult for an individual but not for council. It can be withdrawn prior to costs being incurred.

**6 APPLICATIONS FOR LEAVE OF ABSENCE**

Nil

**7 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

Nil

**7.1 SUSPENSION OF STANDING ORDER 12.1 – MEMBERS TO RISE**

**BACKGROUND**

At the September 2006 meeting of Council it was agreed that the suspension of Standing Order 12.1 be listed as a standard agenda item for each Council and Committee meeting.

Standing Orders 12.1 and 21.5 read as follows:

**Members to Rise**

Every member of the council wishing to speak shall indicate by show of hands or other method agreed upon by the council. When invited by the mayor to speak, members shall rise and address the council through the mayor, provided that any member of the council unable conveniently to stand by reason of sickness or disability shall be permitted to sit while speaking.

**Suspension of Standing Orders**

- (a) The mover of a motion to suspend any standing order or orders shall state the clause or clauses of the standing order or orders to be suspended.
- (b) A motion to suspend, temporarily, any one or more of the standing orders regulating the proceedings and business of the council must be seconded, but the motion need not be presented in writing.

**OFFICER RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Dawkins, seconded Cr Miller

**That Council suspend the operation of Standing Order 12.1 which requires members of Council to rise when invited by the Mayor to speak.**

Carried 10/0

**8 PETITIONS/DEPUTATIONS/PRESENTATIONS**

Moved Cr Boland, seconded Cr Strzina

That the petition on behalf of the Residents of Hawkstone Street and Florence Street regarding Landgate applications for title and possession of part of a land proposal 4319435 & 4279407 be accepted.

Carried 10/0

**9 REPORTS OF OFFICERS**

**9.1.1 FLORENCE STREET ADVERSE POSSESSION CLAIMS**

**File No:** SUB/260  
**Responsible Officer:** Carl Askew  
Chief Executive Officer  
**Author:** Geoff Trigg  
Manager Engineering Services  
**Proposed Meeting Date:** 17-Aug-2009

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**SUMMARY**

Letters have been received from Landgate giving details of two Adverse Possession Claims for portions of the area of Right of Way 20, for lot 5 (No 48) and lot 9 (No 40) Florence Street. To prevent these submissions proceeding, Council must lodge caveats and provide evidence as to why the cases for adverse possession are faulty.

**BACKGROUND**

A range of background information has been sent to all Councillors over the past two weeks. This information is included in the attachments.

**STRATEGIC IMPLICATIONS**

Management of lanes from all points of view – ownership, access/use, upgrading, abutting owners, adjoining development, planning, amenity, assets, etc.

**POLICY IMPLICATIONS**

Rights of Way/Laneways

**STATUTORY ENVIRONMENT**

Transfer of Land Act 1893, Section 222 and 223 apply (Attachments).  
Local Government Act 1995, Section 5.23.

**5.23 Meetings generally open to the public**

1. Subject to subsection (2), the following are to be open to members of the public —
  - a. all council meetings; and
  - b. all meetings of any committee to which a local government power or duty has been delegated.
2. If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following —
  - a. a matter affecting an employee or employees;

- b. the personal affairs of any person;
  - c. a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting;
  - d. legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;
  - e. a matter that if disclosed, would reveal —
    - i. a trade secret;
    - ii. information that has a commercial value to a person; or
    - iii. information about the business, professional, commercial or financial affairs of a person,  
where the trade secret or information is held by, or is about, a person other than the local government;
  - f. a matter that if disclosed, could be reasonably expected to —
    - i. impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;
    - ii. endanger the security of the local government's property; or
    - iii. prejudice the maintenance or enforcement of a lawful measure for protecting public safety;
  - g. information which is the subject of a direction given under section 23(1a) of the Parliamentary Commissioner Act 1971 ; and
  - h. such other matters as may be prescribed.
3. A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

**FINANCIAL IMPLICATIONS**

Nil if no caveat is submitted.

Substantial unbudgeted costs, probably in excess of \$20,000 if caveats are lodged and court action is involved. Additional costs may be significant, depending upon outcome of any court decision.

**SUSTAINABILITY IMPLICATIONS**

Nil

**CONSULTATION**

Council communicated with property owners fronting the north side of Florence Street in 2005, in regards to land included within their properties which were part of

Right of Way 20, as well as legal firms Watts & Woodhouse, Woodhouse Legal and McLeods to obtain legal advice.

**VOTING**

Absolute Majority

**OFFICER RECOMMENDATION**

**That Council consider the confidential report and recommendation as per attachments.**

Moved Mayor Morgan, seconded Cr Miller

In accordance with Standing Orders 15.10 "*That the Council meets behind closed doors – Effect of Motion*" (LG Act s5.23) that Council discuss the confidential report behind closed doors.

Carried 10/0

*All members of the public were requested to leave the chambers in order for the Council to consider the confidential report and associated legal advice. The gallery were advised that they were able to wait for Council to reconvene to hear the outcome, alternatively an offer was made to the residents present for Council to contact a representative after the meeting to advise them of the outcome of the Council meeting.*

*Cr Dawkins declared a Financial interest in the amendment due to ownership of a private laneway and left the meeting at 8:45pm.*

Carried 9/0

Moved Mayor Morgan, seconded Cr Miller

In accordance with Standing Orders 15.10 "That the Council meets behind closed doors – Effect of Motion" (LG Act s5.23) that Council re-open the meeting to the Public.

Carried 9/0

**COUNCIL RESOLUTION**

Moved Cr Birnbrauer, seconded Cr Woodhill

**That Council:**

- 1. Resolve to lodge caveats against both Adverse Possession claims relating to 40 and 48 Florence Street and have these caveats prepared and lodged by Councils legal representation.**
- 2. Notify affected Hawkstone Street and Florence Street residents of Councils decision.**
- 3. Investigate the length of time and location of the encroachments of the two involved properties, being No: 40 and 48 Florence Street, Cottesloe**



- 4. Obtain legal advice for consideration at the Council Meeting of the 24 August 2009**
- 5. Request the CEO to prepare a report on all known sites of potential adverse possession claims on all laneways**

**The substantive motion was put**

Carried 8/1

*Cr Dawkins returned to the meeting at 8:47pm*

**10 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**11 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING**

Nil

**12 MEETING CLOSURE**

The Mayor announced the closure of the meeting at 9:00pm

CONFIRMED: MAYOR ..... DATE: ..... / ..... / .....