



TAMALA PARK
Regional Council

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Our ref: 20.123.607/1501

ATTACHMENT 1

19 September 2011

Mr G Hunt
Chief Executive Officer
City of Joondalup
PO Box 21
JOONDALUP WA 6919

Dear Mr Hunt

**TAMALA PARK LANDHOLDING – LOT 9504 CERTIFICATE OF TITLE 2230 FOLIO 333
PROPOSED POWER OF ATTORNEY**

At its meeting on 18 August 2011 the Tamala Park Regional Council provided authorisation to seek a Power of Attorney covering all land dealings relating to the TPRC landholding from member Councils.

The Tamala Park Regional Council considered this Power of Attorney was necessary in order to avoid any potential issues in the future associated with land dealings with the Tamala Park project.

Attached is advice from McLeods Barristers and Solicitors which sets out the authority for the Power of Attorney. I have also attached the Power of Attorney prepared by McLeods.

I would appreciate if you could present this request for your Council's consideration and endorsement.

Should you have any questions please do not hesitate to contact me.

Yours sincerely

Tony Arias
CHIEF EXECUTIVE OFFICER

Encl: Advice from McLeods dated 9 September 2011
Power of Attorney Form (x 2)

TAMALA PARK REGIONAL COUNCIL (TPRC) COMPRISES 7 LOCAL AUTHORITY OWNERS

Please address all correspondence to:
Tamala Park Regional Council
Room 3, Scarborough Civic Centre, 173 Gildercliffe Street
SCARBOROUGH WA 6019
Email: mail@tamalapark.wa.gov.au
Phone: 9245 1368



Our Ref ND:TAMA-29441
Your Ref

9 September 2011

Mr T Arias
Chief Executive Officer
Tamala Park Regional Council
Room 3, Scarborough Civic Centre
173 Gildercliffe Street
SCARBOROUGH WA 6019



Stirling Law Chambers
220-222 Stirling Highway
Claremont WA 6010
Tel (08) 9383 3133
Fax (08) 9383 4935
Email: mcleods@mcleods.com.au

Denis McLeod
Neil Douglas
Fiona Grgich
David Nadebaum
Geoff Owen
Andrew Roberts
Craig Clarke
Peter Wittkuhn
Elisabeth Stevenson (Special Counsel)
David Nicholson (Senior Associate)
Peter Gillett (Senior Associate)

Dear Tony

Proposed power of attorney

You have sought my advice on the lawfulness and effectiveness of a proposal that each of the Participants of the Tamala Park Regional Council (TPRC) would execute a power of attorney with the objective of enabling the Council of the TPRC to sell land, within Tamala Park, that is jointly owned by the Participants (Tamala Park Land).

1. Legal framework

Each of the Participants is a joint owner of the Tamala Park Land. As you know, the *Local Government Act 1995* imposes restrictions on a local government's power to dispose of property (including land). In relation to the proposed disposition of the Tamala Park Land, each of the Participants is bound by the provisions of section 5.38 of the *Local Government Act 1995* to dispose of the land – or to ensure that the land is disposed of – only in accordance with one of the 3 ways set out in that section.

In that context, you have asked whether each Participant could execute a power of attorney enabling the TPRC to sell the Tamala Park Land.

There is no power in the *Local Government Act* itself expressly authorising a local government to execute a power of attorney to enable another person or body to sell land that is owned by that local government.

However, the establishment of a regional local government is one way in which the functions of a local government may be carried out by another. Section 3.61(1) of the *Local Government Act* enables two or more local governments (referred to as participants), with the Minister's approval, to 'establish a regional local government to do things, for the participants, for any purpose for which a local government can do things under [the *Local Government Act*] or any other Act'.

Clause 4 of the TPRC Establishment Agreement provides that the regional purpose for which the TPRC is established is –

- '(a) to undertake, in accordance with the objectives, the rezoning, subdivision, development, marketing and sale of the Land; and
- (b) to carry out and do all other acts and things which are reasonably necessary for the bringing into effect of the matters referred to in paragraph (a) ...'.

The objectives of the TPRC, referred to in clause 4(a), are set out in clause 5(a) as follows –

- '(i) to develop and improve the value of the Land;
- (ii) to maximise, within prudent risk parameters, the financial return to the Participants;
- (iii) to balance economic, social and environmental issues; and
- (iv) to produce a quality development demonstrating the best urban design and development practice'.

(The 'Land', referred to in clauses 4(a) and 5(a), is defined in clause 1 of the Establishment Agreement to include part of Lot 118 Mindarie. For the purposes of the power of attorney, the 'Tamala Park Land' is identical to the 'Land' as defined in the Establishment Agreement.)

In my view, these provisions of the TPRC Establishment Agreement, construed in the context of the provisions of the *Local Government Act* relating to the establishment of a regional local government, are broad enough to enable the Participants to execute a power of attorney in relation to the sale of the Tamala Park Land.

2. Power of attorney

Attached, for each of the 7 Participants, are 2 copies of a Power of Attorney. If the Participants agree with the Powers of Attorney, will you please arrange for each Participant to execute each of the 2 copies of the Power of Attorney that applies to that particular Participant.

These Powers of Attorney would give the Council of the TPRC powers in relation to the Tamala Park Land that include -

- (a) the execution of the transfer documentation;
- (b) the decision to sell, including decisions about the terms and conditions of sale;
- (c) the execution of the contract of sale documentation;
- (d) the execution of any remaining subdivisional documentation, including applications for new titles; and
- (e) the management and allocation of the proceeds of sale in accordance with the Establishment Agreement.

I trust this is sufficient for your present purposes but please let me know if I can be of any further assistance.

Yours sincerely



Neil Douglas
Partner

Contact: Neil Douglas
Direct line: 9424 6210
Email: neil.douglas@mcleods.com.au

BLANK INSTRUMENT FORM**POWER OF ATTORNEY**

(Note 1)

This Power of Attorney

is made on

2011

City of Joondalup of Boas Avenue, Joondalup, Western Australia (**Appointor**).**1. Defined terms**

In this Power of Attorney:

Land means Lot 9504 on Deposited Plan 52070 and being the land comprised within Certificate of Title Volume 2230 Folio 338 and, where the context so requires, includes any part or parts of the Land.

2. Appointment of Attorney

The Appointor appoints the Tamala Park Regional Council (a body corporate established under the *Local Government Act 1995*) of Room 3, Scarborough Civic Centre, 173 Gildercliffe Street, Scarborough, Western Australia (**Attorney**) to be the attorney for the Appointor to exercise the powers granted by this Power of Attorney.

4. Powers of Attorney

The Appointor grants to the Attorney the power to sell and deal with any part or parts of the Land which comprises or will comprise a lot or a strata lot under or by virtue of the *Transfer of Land Act 1893* and the *Strata Titles Act 1985* (Acts) of which the Appointor is the proprietor under the Acts and for that purpose:

- (a) to undertake the matters specified in the Schedule to this Power of Attorney;
- (b) to execute a document specified in the Schedule to this Power of Attorney (**Document**); and
- (c) do all things necessary or expedient to give effect to a Document including, but not limited to, completing any blanks and making any amendments, alterations and additions which may be considered necessary by the Attorney;

5. Extent of Powers

Each power granted under this Power of Attorney includes the powers:

- (a) to execute that power:
 - (i) wholly or in part;
 - (ii) in any manner; and
 - (iii) on terms and subject to conditions approved by the Attorney;

- (b) to do, execute and perform all things necessary or desirable in connection with that power;
- (c) to exercise that power and to do, execute and perform anything in connection with that power;
and
- (d) to vary, alter or annul anything done by the Attorney in connection with that power.

6. Reliance on Appointment

Any person, including the Registrar of Titles of Western Australia, dealing with the Attorney under this Power of Attorney is:

- (a) entitled to rely on execution of any document by that person as conclusive evidence that:
 - (i) this Power of Attorney has come into effect;
 - (ii) this Power of Attorney has not been revoked; and
 - (iii) that the power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that power; and
- (b) not required to make any inquiries in respect of any of the above matters.

7. Ratification

The Appointor undertakes to ratify all that the Attorney lawfully does or causes to be done under this Power of Attorney.

8. Indemnity

The Appointor indemnifies the Attorney in respect of any loss arising from any act done under this Power of Attorney.

9. Revocation

This Power of Attorney will remain in full force until the earlier of:

- (a) the date which is 10 years after the date of this Power of Attorney; or
- (b) the date on which notice of revocation of this Power of Attorney is received by the Attorney.

10. Interpretation

In this Power of Attorney, unless the context otherwise requires:

- (a) headings, underlines and numbering do not affect the interpretation or construction of this Power of Attorney;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- (e) a reference to any statute, regulation, proclamation or local law includes all statutes, regulations, proclamations or local law varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and local laws issued under that statute; and
- (f) the Schedule and Annexures (if any) form part of this Power of Attorney.

Schedule - Relevant Matters and Documents

(1) Any:

- (a) contract of sale (which includes without limitation the decision to sell, the selling price and the terms and conditions of sale);
- (b) transfer of land;
- (c) easement;
- (d) deed of surrender of easement;
- (e) application for surrender or extinguishment of easement;
- (f) caveat;
- (g) withdrawal of caveat;
- (h) application for new Certificates of Title for any subdivision of land;
- (i) application for subdivision;
- (j) deed of restrictive covenant;
- (i) surrender of restrictive covenant;
- (j) section 70A Notification;
- (k) section 165 Notification; and
- (l) deed of novation, deed of covenant or other deed

in respect of the Land or lots which are comprised of the Land.

(2) Any other document:

- (i) dealing with the development or subdivision of the Land, including documents required by all relevant authorities, including without limitation the local government, Western Power, Telstra, AlintaGas and Water Corporation; and
- (ii) in connection with the sale, transfer, subdivision or development,

of the Land or any part of the Land or lots which are comprised of the Land.

- (3) Any other document dealing with the management and allocation of proceeds of sale of the Land or lots which are comprised of the Land in accordance with the terms and conditions of the Establishment Agreement of the Tamala Park Regional Council, including without limitation the opening of accounts and depositing of monies in such accounts, and the withdrawal of such monies and the signing, acceptance or endorsement of all cheques in connection with the sale, transfer, subdivision or development of the Land or lots which are comprised of the Land.

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Executed by the Appointor as a Deed

THE COMMON SEAL of the **City of Joondalup** was affixed in the presence of:

Signature of Mayor

Full name of Mayor

Signature of Chief Executive Officer

Full name of Chief Executive Officer

INSTRUCTIONS

1. This form may be used only when a "Box Type" form is not provided or is unsuitable. It may be completed in narrative style.
2. If insufficient space hereon Additional Sheet Form B1 should be used.
3. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
4. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.

NOTES

1. Insert document type.
2. A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The address and occupation of the witness must be stated.

OFFICE USE ONLY

LODGED BY McLeods

ADDRESS 220 - 222 Stirling Highway
CLAREMONT WA 6010

PHONE No. 9383 3133

FAX No 9383 4935

REFERENCE No. TF: TAMA - 29441 (POA - Joondalup)
Contact: Trudi Firth

ISSUING BOX No. 346K

PREPARED BY McLeods

ADDRESS 220 - 222 Stirling Highway
CLAREMONT WA 6010

PHONE No. 9383 3133 FAX No. 9383 4935

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY.

TITLES, LEASES, DECLARATIONS ETC. LODGED HEREWITH

- | | |
|----------|-----------------|
| 1. _____ | Received Items |
| 2. _____ | Nos. |
| 3. _____ | |
| 4. _____ | |
| 5. _____ | |
| 6. _____ | Receiving Clerk |

Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register.

EXAMINED