

Please note: These minutes are yet to be confirmed as a true record of proceedings

SHIRE OF BUSSELTON

**MINUTES OF A MEETING OF THE BUSSELTON SHIRE COUNCIL
HELD ON 23 SEPTEMBER 2009**

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SHIRE OF BUSSELTON**MINUTES OF A MEETING OF THE BUSSELTON SHIRE COUNCIL HELD IN COUNCIL CHAMBERS, ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON WEDNESDAY, 23 SEPTEMBER 2009 AT 5:30 PM**

The Presiding Member opened the meeting at 5.42 p.m.

1. ATTENDANCE, APOLOGIES & LEAVE OF ABSENCE

Presiding Member: Cr Wes Hartley Shire President

Members: Cr Bethwyn Hastie
Cr David Binks
Cr Ian Stubbs
Cr Tom Tuffin
Cr Jackie Emery
Cr Bernie Masters
Cr Bev Clarke
Cr Don Hanran-Smith
Cr David Reid

Officers: Mr Andrew Macnish Chief Executive Officer
Mr Matthew Smith Director, Community and Organisational Development
Mr Nigel Bancroft Director, Lifestyle Development - until 8.45pm
Mr Oliver Darby Director, Community Infrastructure - until 8.45pm
Mr Paul Martin Manager, Economic Development - from 8.45pm until 9.08pm
Ms Lynley Rich Governance Manager

Apologies: Cr Anne Ryan

Leave of Absence: Cr Ross Bromell
Cr Rob Underdown

Media: "Busselton-Dunsborough Times"
"Busselton-Dunsborough Mail"

Public: 33

2. OPENING PRAYER

The Opening Prayer was delivered by Reverend Wayne Warfield of St Mary's Anglican Church, Busselton.

3. **PUBLIC QUESTION TIME**

- 3.1 Ellen Clayton from Ruabon referred to the South West Regional Airport Study of February 2009, specifically Page 84, which stated 2008 Busselton Airpark Proposal, Flight Training Centre, 120 Room Resort. Mrs Clayton asked if she could be told about the proposal and the Shire's involvement, with details of any decisions and negotiations to be included.

The question was taken on notice.

- 3.2 Frank Ketjen from Dunsborough and a candidate in the forthcoming Local Government Election for the Shire of Busselton asked if the Council thought there would be a more suitable location than Point Piquet for the construction of a disabled fishermen's platform due to issues between fishers and surfers.

Response: Director, Community Infrastructure

Officers recommend that a suitable location is identified. This is the first time that I have heard Point Piquet mentioned. It is intended that any such platform would be located in the southern area of Busselton, but as yet there is no prescribed location and this would be determined following public consultation.

- 3.3 Frank Ketjen asked if this area had been earmarked as a fishing sanctuary.

The question was taken on notice.

- 3.4 Frank Ketjen asked whether surfers would be asked about the location of a fishing platform and whether they could have input to the decision.

Response: Director, Community Infrastructure

Yes, they will have this opportunity as part of the public consultation process.

- 3.5 Ray McMillan representing the Busselton Chamber of Commerce asked why the motion that was passed by the Airport Advisory Group was not recognised as the views of the group and put forward as the notice of motion by Cr Tom Tuffin.

Response: Cr Tuffin

I could not put something up that was a 4-4 vote at the Airport Advisory Group. This notice of motion is not from the Airport Advisory Group, it is coming from me. However, it reflects very closely what came out of the Airport Advisory Group.

Cr Bev Clarke

The minutes of the Airport Advisory Group show that it was 5-4.

Response: Cr Tuffin

The voting was 4-4. A letter was received from one person indicating his wishes, but the vote at the meeting was actually 4-4. The person hadn't heard any of the debate.

Cr Clarke

Is a proxy vote allowable?

Mr McMillan

I would consider so.

Cr David Binks

Was the proxy vote from a member of the group?

Mr McMillan

The proxy vote was from a member of the Airport Advisory Group. It was from the Dunsborough Yallingup Chamber of Commerce and Industry's appointed delegate.

- 3.6 Richard Wain asked if the Council has considered that Point Piquet is one of the only areas for young surfers to learn to surf. Surfing brings in a lot of tourists and it is very important to consult with surfers regarding the proposed location of a fishing platform. Please consult with the surfing community and also note that there are important visual amenity issues to consider in any area of Meelup Park.

Response: Cr Bethwyn Hastie

There will be a lot of consultation in relation to this proposal, which is why I am advocating that only the planning occur in this financial year.

Cr David Binks

Is the proposal to construct this platform at Point Piquet?

Cr Hastie

No. The proposed process is about finding the right location for a disabled fishermen's platform.

4. SUMMARY OF RESPONSE TO PREVIOUS QUESTIONS TAKEN ON NOTICE

At the Council Meeting of 9 September 2009 a question from Councillor Bernie Masters was taken on notice. Cr Masters referred to an article in a local newspaper regarding a missing sign in Dunsborough. The sign was taken from Geographe Bay Road and was one that had been erected in accordance with the Reserves Vegetation Protection policy. He asked if he could have an update on this matter.

Response: Director, Lifestyle Development

The sign had been erected along the foreshore where remnant vegetation had been illegally removed. Officers were looking to find who had removed the sign, however, they have not been successful. The sign has been replaced.

5. APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

6. CONFIRMATION OF MINUTES**6.1 Minutes of an Ordinary Meeting of the Council held on 9 September 2009.**

C0909/323 Moved Councillor Masters, seconded Councillor Binks:

That the minutes of an Ordinary Council Meeting held at 5.30 p.m. on Wednesday, 9 September 2009, be confirmed as a true and correct record.

CARRIED 10/0

7. ANNOUNCEMENTS by the Presiding Member without discussion

The Presiding Member advised that on Sunday 20 September, 2009 he had the pleasure of being the Shire's representative at the opening of the Kwinana Freeway extension and the Forrest Highway. It took 1 hour and 35 minutes at the speed limit to get to Bunbury and just 2 hours and 10 minutes to arrive at the round about in Busselton. There is a guarantee of housing and other facilities on that route and it is a wonderful strategic development. It is very impressive and is the most important acquisition of infrastructure in this State in the past 100 years. It is destined to dramatically affect the population growth in our region.

8. PETITIONS AND MEMORIALS

Nil.

9. DECLARATION OF DUE CONSIDERATION

The Presiding Member requested Councillors to acknowledge, in accordance with Clause 8.1 of the Standing Orders, that they have given due consideration to the matters contained within the Agenda.

Declared Due Consideration	No Declaration
Councillor Wes Hartley	
Councillor Bethwyn Hastie	
Councillor David Binks	
Councillor Ian Stubbs	
Councillor Tom Tuffin	
Councillor Jackie Emery	
Councillor Bernie Masters	
Councillor Bev Clarke	
Councillor Don Hanran-Smith	
Councillor David Reid	

10. DECLARATIONS OF INTERESTS

10.1

DECLARATION OF INTEREST	
Name / Position	Councillor Wes Hartley
Item No. / Subject	16.5, Locke Estate Project Progress Report
Type of Interest	Interest Affecting Impartiality

10.2

DECLARATION OF INTEREST	
Name / Position	Councillor David Binks
Item No. / Subject	16.1, Small Local Projects Fund
Type of Interest	Interest Affecting Impartiality

11. PRESENTATIONS BY PARTIES WITH AN INTEREST

11.1 Mr Craig Robbins addressed the Council in accordance with Section 9 of the Standing Orders as a party with an interest in Item 13.1, Lot 3 (Hse 97) Caves Road, Abbey - 10 Chalets Within a Conservation Zone and Alteration to the Approved Site Plan. Mr Robbins, the proponent, was in agreement with an alternative motion proposed by Cr Masters for this item.

11.2 Mr Greg Chapman addressed the Council in accordance with Section 9 of the Standing Orders as a party with an interest in Items 16.7 and 18.4 Proposal for Rio Tinto to Undertake One Flight Per Week Prior to 7am from the Busselton Airport for a Six Month Trial and Busselton Regional Airport. Mr Chapman, representing the airport residents, was not in agreement with the Officer Recommendation for Item 16.7 or the notice of motion at Item 18.4.

- 11.3 Mr Brian Ravenscroft addressed the Council in accordance with Section 9 of the Standing Orders as a party with an interest in Item 16.1, Small Local Projects Fund. Mr Ravenscroft, representing the Cornerstone Church of Christ's Core Defensive Driving Program, was in agreement with Cr Binks' proposal to include an allocation to the program as a late item.
- 11.4 Ms Jeannie Hands addressed the Council in accordance with Section 9 of the Standing Orders as a party with an interest in Item 18.3, Youth Development Strategy. Ms Hands was in agreement with the proposed notice of motion.
- 11.5 Mr John Cannam addressed the Council in accordance with Section 9 of the Standing Orders as a party with an interest in Item 18.2, Disabled Fishermen's Platform. Mr Cannam, representing the Wheelchair Association, was in agreement with the proposed notice of motion.
- 11.6 Ms Ruth Morgan addressed the Council in accordance with Section 9 of the Standing Orders as a party with an interest in Item 18.2, Disabled Fishermen's Platform. Ms Morgan, representing St Ives and other respite care organisations, was in agreement with the proposed notice of motion.
- 11.7 Mr Rance Driscoll addressed the Council in accordance with Section 9 of the Standing Orders as a party with an interest in Item 18.3, Youth Development Strategy. Mr Driscoll was in agreement with the proposed notice of motion.

12. BUSINESS FROM PREVIOUS MEETING

Nil.

EN BLOC COUNCIL RESOLUTION

At this juncture Items 15.1, 16.2, 16.4 and 16.6 were considered in accordance with Clause 11.1 of the Standing Orders via an En Bloc resolution of Council.

C0909/324 Moved Councillor Hanran-Smith, seconded Councillor Hastie:

That the Officer Recommendations for Items 15.1, 16.2, 16.4 and 16.6 be adopted.

CARRIED 10/0

15.1 ENVIRONMENTAL POLICY AND MTA MANAGEMENT PLAN FOR MECHANICAL WORKSHOP MTA GREEN STAMP ACCREDITATION

SUBJECT INDEX:	Environmental Policy
STRATEGIC INITIATIVE:	4.3.4 Implement the Environmental Strategy
BUSINESS UNIT:	Planning and Infrastructure
SERVICE:	Council
DATE OF COMPLETION:	27 August 2009
VOTING REQUIREMENT:	Simple Majority
ATTACHMENT(S):	A. Environmental Policy. B Managing and Monitoring Environmental Impacts: A simple Environmental management Plan for Mechanical Repairers.

PRÉCIS

This report seeks approval from the Council to adopt the Environmental Policy for the Shire's mechanical workshop and depot wash down areas.

The Shire's mechanical workshop team has been implementing change to achieve Motor Trade Association (MTA) of WA Green Stamp Environmental Accreditation. In order to achieve the final step of level 3 accreditation, an Environmental Policy is required.

COUNCIL DECISION / OFFICER RECOMMENDATION

C0909/325 Councillor Hanran Smith, Councillor Hastie (En Bloc):

1. That the Council endorse the proposed Environmental Policy and mission statement for the Shire of Busselton's mechanical workshop (including the wash down bay).

CARRIED 10/0
EN BLOC

16.2 LOCAL LAW REVIEW - BUSSELTON REGIONAL AIRPORT LOCAL LAW 2009

SUBJECT INDEX:	Local Laws
STRATEGIC INITIATIVE:	5.1.3 Ensure regulatory requirements are met
BUSINESS UNIT:	Legal and Compliance
SERVICE:	Legal Services
DATE OF COMPLETION:	1 March 2009
VOTING REQUIREMENT:	Simple Majority
ATTACHMENT(S):	Proposed Busselton Regional Airport Local Law 2009

PRÉCIS

The Council has previously resolved to consider implementing an airport local law. The purpose of this report is for the Council to consider whether to commence the process of making the new local law pursuant to section 3.12 of the *Local Government Act 1995*. It is recommended that the Council commence the law-making process for the proposed *Shire of Busselton, Busselton Regional Airport Local Law 2009* "Airport Local Law".

COUNCIL DECISION / OFFICER RECOMMENDATION

C0909/326 Councillor Hanran-Smith, Councillor Hastie (En Bloc):

1. That the Council commences the law-making process, for the Airport Local Law 2009, the purpose and effect of the local law being as follows:

Purpose: To provide for the regulation, control and management of the Busselton Regional Airport.

Effect: To establish the requirements relating to regulation control and management of the Busselton Regional Airport.

2. That the Council authorise the CEO to carry out the law making procedure under section 3.12(3) of the *Local Government Act 1995* by following the procedures set out in sequence in the Act; by -
 - (a) giving Statewide public notice and local notice of the proposed local law; and
 - (b) giving a copy of the proposed local law and public notice to the Minister for Local Government.

3. That the CEO, after close of the public consultation period, submit to the Council for consideration a report on any submissions received on the proposed local law to enable the Council to consider the submissions made and to determine whether to make the local law in accordance with section 3.12(4).

CARRIED 10/0
EN BLOC

16.4 BUSSELTON CENTRAL BUSINESS DISTRICT SPECIFIED AREA RATE -
MEMORANDUM OF UNDERSTANDING

SUBJECT INDEX: SAR – Special Area Rate
STRATEGIC INITIATIVE: 3.1.2 Establish partnerships with key agencies to build economic development
BUSINESS UNIT: Legal and Compliance
SERVICE: Legal Services
DATE OF COMPLETION: 30 November 2009
VOTING REQUIREMENT: Simple Majority

PRÉCIS

The Shire of Busselton (“the Shire”) raises a specified area rate (“SAR”) each year for the purposes of promotion and betterment of the Busselton Central Business District (“Busselton CBD”). The monies collected from the SAR are made available to the Busselton Chamber of Commerce and Industry Inc. (“the Chamber”) for this purpose, pursuant to a Memorandum of Understanding (“MOU”) between the Shire and the Chamber.

The MOU technically expired on 30 June 2009 and the Chamber has indicated its desire to renew the MOU for a further four year period. The Chamber has indicated a desire to expand the operation of the SAR or a similar form of special rate, subject to consultation with effected ratepayers and other necessary statutory processes. A clause is proposed to be added to the new MOU requiring the Shire to give due consideration to this arrangement being implemented in the 2010/2011 financial year. There are also other minor changes proposed to the MOU as outlined in the report.

This report recommends that the Council agrees to enter into the new MOU (as attached to the report) with the Chamber.

COUNCIL DECISION / OFFICER RECOMMENDATION

C0909/327 Councillor Hanran-Smith, Councillor Hastie (En Bloc):

That the Shire enter into a new Memorandum of Understanding with the Busselton Chamber of Commerce and Industry Inc. in accordance with the following:

THE SHIRE OF BUSSELTON
- AND -
BUSSELTON CHAMBER OF COMMERCE AND INDUSTRY INC.

AGREEMENT

Prepared by: The Shire of Busselton
Southern Drive
BUSSELTON WA 6280

"Tax Invoice" has the meaning given to it in the GST Act;

"Term" means a term of four (4) years commencing on 30 June 2009.

1.2 Reference to any Statute or Act includes all statutes and acts (State and Federal) for the time being enacted, amending or modifying any statutes and all regulations, by-laws, requisitions or orders made under any statute from time to time by any statutory public or other competent authority and any statutes or acts enacted in substitution for any such statute or act.

1.3 The singular number includes the plural number and vice versa.

2. PURPOSE OF AGREEMENT

2.1 The purpose of this Agreement is to regulate any part of the Specified Area Rate paid by the Shire to the Chamber during the Term, but nothing in this Agreement requires or should be construed as requiring the Shire to raise the Specified Area Rate in any particular year during the Term or at all.

2.2 Subject to clause 2.1, the Shire will give due consideration to any proposal put to the Shire by the Chamber regarding the area, applicability and nature of any Specified Area Rate it proposes should be imposed by the Shire in any financial year during the Term, however nothing in this Agreement requires the Shire to agree with that proposal and impose the Specified Area Rate requested.

3. LOCAL GOVERNMENT ACT

This Agreement is construed as being subject to the Act and nothing in this Agreement requires the Shire to do anything that it is not lawfully permitted to do pursuant to the Act or which would otherwise be unlawful.

4. PROGRAMME OF SERVICES

4.1 Prior to the 1st day of April in each year of the Term, the Chamber will submit to the Shire a programme of works, services and facilities proposed to be provided by it within the Prescribed Area during the coming financial year commencing on the 1st day of July next following ("the Programme").

4.2 Prior to 15 July in each year of the Term the Shire will consider the Programme submitted by the Chamber and if it is satisfied that the Programme:

(a) proposes the provision of specific works, services or facilities within the meaning of section 6.37 of the Act;

(b) will be or is likely to be of special benefit to the persons who have paid the Specified Area Rate;

(c) does not include more than 10% of the total value of the programme for Administrative Expenses;

- (d) does not contain in the Shire's view an unreasonable allocation of funds to general or unspecific purposes.;
- (e) otherwise complies with the requirements of the Agreement and the Act;

it will approve the Programme or, if not all of the Programme, that part of the Programme which complies with this clause and provide the funding to the Chamber for the Programme or part of the Programme in accordance with this Agreement as and when required by the Chamber.

- 4.3 For the avoidance of doubt, clause 4.2 does not prevent the general allocation of funds in the Programme for each year for events funding provided that:
- (a) the Programme is in accordance with the requirements of the Agreement and the Act; and
 - (b) the money generally allocated to events funding is only spent on a specific work, service or facility for which the Specified Area Rate was imposed as required by s6.37(4) of the Act.

5. PAYMENT OF SPECIAL AREA RATE MONEY TO CHAMBER

- 5.1 The Chamber is entitled to receive payment of Specified Area Rate monies collected by the Shire on a quarterly basis in advance subject to:
- (a) the Chamber providing the Shire with a valid tax invoice for the amount sought;
 - (b) the amount sought being in accordance with a Programme approved under clause 4 of this Agreement; and
 - (c) the Shire having being paid the Specified Area Rate money sought by the Chamber.
- 5.2 The amount of payment sought by the Chamber each quarter can vary provided it is in accordance with clause 5.1 and the Agreement generally.
- 5.3 The Chamber shall be able to drawdown any funds held in the Reserve Fund referred to in clause 8.1 as from 1 July each financial year of the Term, to enable a continuation of its Programme of services, provided that the relevant Programme has been approved by the Shire in accordance with clause 4 of this Agreement.

6. CHAMBER COVENANTS

The Chamber agrees with the Shire as follows:

- 6.1 That the Chamber will expend the proceeds of the Specified Area Rate paid to it by the Shire only for the purposes of the Programme approved by the Shire;
- 6.2 That it will maintain such books of account of the receipt of the Specified Area Rate, and expenditure thereof, as will correctly record and explain the transactions of the Chamber which relate to the Specified Area Rate received by it.
- 6.3 That it will keep such books of account at its registered office, and will make the same available for inspection and for the taking of copies by any officer of the Shire authorised for that purpose by the Shire from time to time.
- 6.4 That it will furnish to the Shire true and fair accounts of and relating to the Specified Area rate received by it for each year ending 30th June, no later than the 30th September next following, accompanied by a certificate of a registered auditor reporting on such accounts.
- 6.5 The Chamber will provide a report to the Shire in September of each year of the Term detailing all Specified Area Rate monies spent during the previous financial year and purposes for which these monies were spent and how this relates to the Programme approved by the Shire for that year;
- 6.6 That, notwithstanding any approval which may have been given by the Shire, the Chamber will not expend any monies received by it by way of the proceeds of the Specified Area Rate except in providing a work, service or facility within the meaning of section 6.37 of the Act; and
- 6.7 The Chamber and the Shire otherwise agree to comply with all laws in force in Western Australia in relation to anything done by them in accordance with this Agreement.

7. SHIRE'S ADMINISTRATIVE COSTS

The Chamber and the Shire agree that the Chamber is entitled to receive 98% of the Specified Area Rate Funds and that the Shire can retain up to 2% of the Specified Area Rate funds raised in each financial year of the Term to be put towards payment of the Shire's administrative and other costs associated with raising and managing the Specified Area Rate and the terms of this Agreement.

8. RESERVE FUND

- 8.1 The Chamber and the Shire agree that any Specified Area Rate monies raised in any financial year during the Term which are not spent in that financial year will be held in a Reserve Fund established by the Shire for the same purpose as the Specified Area Rate itself and which otherwise meets the requirements of clause 6.37(2)(b) of the Act. The Chamber agrees to immediately return to the Shire at the end of each financial year during the Term any Specified Area Rate monies that are then held by the Chamber but have not been spent during that financial year.
- 8.2 The Shire and the Chamber agree that monies held in a Reserve Fund set up under clause 8.1 can be spent by the Chamber in subsequent financial years during the Term, subject to that expenditure being as part of an approved Programme in accordance with clause 4 of this Agreement. The Chamber will separately re-list any programmes to be carried over on any subsequent submissions to the Shire pursuant to clause 4.1 and the Shire will not unreasonably withhold approval for those carried forward items.
- 8.3 The Shire agrees to advance to the Chamber, if required by the Chamber, a sum of up to the amount available in the Reserve Fund referred to in clause 8.1 or \$10,000.00, whichever is the greater, in each year of the Term to allow the Chamber to continue to operate in accordance with this agreement for the period between 1 July and the receipt of Specified Area Rate funds in each year of the Term. The Chamber and the Shire agree that any money advanced under this clause:
- (i) must be spent by the Chamber as if it is Specified Area Rate funds covered by this agreement; and
 - (ii) can be recovered by the Shire from Specified Area Rate fund money, whether held in a Reserve Fund established under clause 8.1 or not.
- 8.4 The Shire agrees to credit interest earned on money in the Specified Area Rate Reserve Fund established under clause 8.1 to that Reserve Fund.

9. NO ASSIGNMENT OR SUB-LETTING

The Shire and the Chamber agree that both parties rights and obligations under this Agreement are not capable of being assigned or sub-let and both parties agree not to assign, sub-let or otherwise transfer any of their rights and obligations under this Agreement.

10. FURTHER ACTS

The parties shall make, execute and do all acts, deeds, documents and things and without limiting the generality of the foregoing execute and sign all documents, deeds, applications, forms and instruments which may reasonably be required to give full effect to this Agreement.

11. NO OTHER RELATIONSHIP

Neither party shall hereby in any way or for any purpose become a partner of the other party in the conduct of that party's business or otherwise or a joint venture or a member of a joint enterprise with the other party and nor is there any Employer/Employee relationship created between the Shire and persons doing anything on behalf of the Chamber or vice versa because of this Agreement.

12. PROPER LAW

This Agreement shall be governed by the laws in force in the State of Western Australia from time to time.

13. NOTICES

Any demand or notice to any party shall be validly made or given if purporting to be signed by the party or by that party's solicitor or any other person having that party's express or implied authority in writing such demand or notice is delivered or sent by post to the other party at that party's address herein stated and in the case of service by post such demand or notice shall be deemed to have been served on the date which such letter would in the ordinary course of post (including air mail if used) have arrived at the address to which it is sent notwithstanding actual non-delivery thereof.

14. COSTS OF AGREEMENT

Each party shall pay their own legal costs of and incidental to the instructions for and preparation and execution of this Agreement.

15. GST

The Chamber and the Shire acknowledge and agree that the payment of money under this agreement may be subject to GST and the parties agree to always comply in all respects with the requirements of the GST Act and acknowledge that any payment under this agreement may be withheld if the party seeking payment does not provide a Tax Invoice.

16. Variation

Any variation to this Agreement must be in writing and signed by the Chamber and the Shire.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT

The COMMON SEAL of the SHIRE OF]
BUSSELTON was hereunto affixed by]
authority of the Council in the presence]
of :]

Shire President

Chief Executive Officer

The COMMON SEAL of the BUSSELTON]
CHAMBER OF COMMERCE AND INDUSTRY INC. was]
hereunto affixed in the presence of:]

President

CEO

CARRIED 10/0
EN BLOC

16.6 PROPOSAL TO LEASE CARBUNUP HALL RESERVE 19338

SUBJECT INDEX:	Agreements / Contracts
STRATEGIC INITIATIVE:	2.1.2 Manage and maintain the Shire's assets for the amenity of the Community
BUSINESS UNIT:	Community Development
SERVICE:	Property Management
DATE OF COMPLETION:	31 December 2009
VOTING REQUIREMENT:	Simple Majority

PRÉCIS

The Shire of Busselton has been approached by the Yallingup Steiner School to lease the Caribunup Hall on Reserve 19338 for the purpose of operating its Playgroup. The Shire has a Management Order over this C class reserve. This report investigates the potential for the Shire to enter into an agreement and the terms on which this could be considered.

COUNCIL DECISION / OFFICER RECOMMENDATION

C0909/328 Councillor Hanran-Smith, Councillor Hastie (En Bloc):

1. That the CEO write to the Department for Regional Development and Lands to request alteration of the Management Order to support the Shire's Power to Lease of the Reserve 19338 for periods of up to 21 years subject to approval for the Minister for Lands.
2. That the Shire recommend to the Yallingup Steiner School that they perform a 'due diligence' assessment of the premises prior to confirming their intention to proceed with this application.
3. That subject to part 2, the Yallingup Steiner School be requested to submit a planning application for the proposed use of the Caribunup Hall and a portion of the Reserve 19338.
4. That upon receipt of a planning application the proposal be publicly advertised and any objections be reported back to the council.
5. That subject to achievement of parts 1, 2 & 3, and no objections received (part 4), the CEO be authorised to enter into a lease with the Yallingup Steiner School over a portion of Reserve 19338 as depicted on the attached plan, on terms generally consistent with the Shire's community leases but including;
 - (a) a 3 year lease term with two 3 year options
 - (b) lease fee of \$500 per annum plus outgoings
 - (c) the lessee to take responsibility for capital works including that of a structural nature and general maintenance of the premises.

- (d) the Shire have the ability to recover an amount equivalent to the actual costs incurred by the Shire for upkeep of the gravel car park should the additional use by the Yallingup Steiner School prove to be significant.
- (e) the lessee would have the ability to hire the hall to other community based users, but not sublet.
- (f) that the lessee submit an annual report to the Shire of any income received as a result of hiring the hall and how those funds have been expended on the maintenance and repairs of the hall.

CARRIED 10/0
EN BLOC

13. LIFESTYLE DEVELOPMENT REPORT**13.1 LOT 3 (HSE 97) CAVES ROAD, ABBEY - 10 CHALETS WITHIN A CONSERVATION ZONE AND ALTERATION TO THE APPROVED SITE PLAN**

SUBJECT INDEX:	Development / Planning Applications
APPLICATION NUMBER:	P6280
STRATEGIC INITIATIVE:	2.4.1 Support development that is contained in identified nodes with well defined boundaries
BUSINESS UNIT:	Statutory Planning
SERVICE:	Statutory Planning
DATE OF COMPLETION:	8 October 2009
VOTING REQUIREMENT:	Simple Majority
PROPOSAL:	10 chalets within the Conservation-zoned portion of the property and alteration to the approved site plan.
LOT SIZE:	7.87 Hectares
ZONE:	Conservation & Tourist
POLICIES:	SPP 6.1Leeuwin-Naturaliste Ridge Statement of Planning Policy Use of Reflective Building Materials Policy Busselton Wetlands Conservation Strategy Floodplain Development and Management Policy

Mr Craig Robbins had previously addressed the Council as a party with an interest in this matter. Refer Item 11.1.

PRÉCIS

This report responds to the Council's Resolution C0903/081 in relation to a proposed 10 chalet development within a Conservation zone, and alteration to the approved plans for the existing caravan park and rural holiday resort at Lot 3 Caves Road, Abbey.

The Council resolved that the application should be advertised and (relevantly) returned for further consideration if any objections were received. The Department for Environment and Conservation lodged an objection to the development.

The application has therefore been returned to the Council for further consideration. The recommendation is to refuse the application as there is no power under the Scheme to approve a Rural Holiday Resort in the Conservation zone.

OFFICER RECOMMENDATION

1. That Development Application P6280, proposing 10 chalets within a Conservation zone for Lot 3 Caves Road, Abbey, constitutes a Rural

Holiday Resort, a use prohibited in the Conservation zone under the Shire of Busselton Town Planning Scheme No. 20 and is inconsistent with the objectives and policies of the zone within which it is proposed to be located and as such is refused.

2. That the CEO issue the above refusal for the following reasons:
 - (i) In conjunction with existing chalet development on the site, the approval of 10 chalets in the Conservation zone would constitute a 'Rural Holiday Resort', a use specifically prohibited by the Scheme.
 - (ii) The proposed use is inconsistent with the Objective of the Conservation zone, as specified in Table 1 of the Scheme, whereby the intent is to restrict the type and scale of development to that which is compatible with the special aesthetic, ecological or conservation values. In adopting the Conservation zone it was recognised by the Shire that clearing and historical agricultural practices have affected the ecological and landscape value of parts of the Coastal Wetland System. Despite this, the Scheme's intent is to constrain the development potential of Conservation-zoned areas. An extension of the Rural Holiday Resort would not be compatible with the recognised conservation value of the Conservation-zoned portion of the lot.
 - (iii) The proposed use is inconsistent with Policy 1(a) of the Conservation zone, as specified in Table 1 of the Scheme, whereby development will only be considered where it can be demonstrated that such development can be carried out in a manner that does not detract from the scenic quality of the land. The scale of development proposed — 10 chalets — is considered to be excessive in the context of the area of land and will detract from the scenic quality of the land.
 - (iv) The proposed use is inconsistent with Policy 1(b) of the Conservation zone, as specified in Table 1 of the Scheme, whereby development will only be considered where such development is unlikely to have a significant detrimental effect on the growth of native plant communities, the survival of native wildlife populations and the provision and quality of habitats for both indigenous and migratory species. The application does not demonstrate that these requirements will be met.
 - (v) The proposed use is inconsistent with provision LUS 3.32 of State Planning Policy 6.1: Leeuwin-Naturaliste Ridge Statement of Planning Policy as the environmental values of the Wetland Amenity Area will not be protected.
 - (vi) The proposed use is inconsistent with the Busselton Wetlands Conservation Strategy as the proposed development is located

entirely on the Qw soil type while the Strategy requires that development be setback 20 metres from the Quindalup Wet Flats (Qw) soil type.

- (vii) The alteration to the approved site plan is dependent on the location of 10 chalets within the Conservation-zoned portion of the land, which is not supported.

MOTION

Moved Councillor Masters, seconded Councillor Tuffin:

That consideration of this item be deferred for a period of two months so that the proponent is given a further and final opportunity to negotiate a resolution to his proposal to construct 10 chalets within the conservation zoned section of his property.

AMENDMENT

Moved Councillor Masters, seconded Councillor Reid

That the words "for a period of two months" be deleted and replaced by the words "to a mutually agreeable date".

CARRIED 10/0

FORESHADOWED MOTION

During debate on this matter Councillor Hanran-Smith foreshadowed his intention to move the Officer Recommendation.

COUNCIL DECISION

C0909/329 Moved Councillor Masters, seconded Councillor Tuffin:

That consideration of this item be deferred to a mutually agreeable date so that the proponent is given a further and final opportunity to negotiate a resolution to his proposal to construct 10 chalets within the conservation zoned section of his property.

CARRIED 6/4

Dissenting Voters

Cr Don Hanran-Smith

Cr David Binks

Cr Bethwyn Hastie

Cr Bev Clarke

Note: As the motion was carried, Cr Hanran-Smith was not able to move the motion that he had previously foreshadowed.

14. SYSTEMS AND INFORMATION REPORT

Nil

15. COMMUNITY INFRASTRUCTURE REPORT**15.1 ENVIRONMENTAL POLICY AND MTA MANAGEMENT PLAN FOR MECHANICAL WORKSHOP MTA GREEN STAMP ACCREDITATION.**

This matter was considered earlier in the meeting, as part of the En Bloc resolution of the Council ([C0909/325, Page 7](#)).

16. COMMUNITY AND ORGANISATIONAL DEVELOPMENT REPORT**16.1 SMALL LOCAL PROJECTS FUND 2009/10 - NOS. 2 TO 4**

SUBJECT INDEX:	Sponsorship and Grant Applications
STRATEGIC INITIATIVE:	1.1.1 Encourage and Support Cultural Activities and Events
BUSINESS UNIT:	Finance
SERVICE:	Financial Management and Control
DATE OF COMPLETION:	Subject to receipt of all necessary information, funds will be provided as soon as practicable following this Council Meeting
VOTING REQUIREMENT:	Simple Majority

Mr Brian Ravenscroft had previously addressed the Council as a party with an interest in this matter. Refer Item 11.3.

DECLARATION OF INTEREST	
Name / Position	Councillor David Binks
Item No. / Subject	Item 16.1, Small Local Projects Fund 2009/10 - No 5
Type of Interest	Interest Affecting Impartiality
	Cr David Binks had previously indicated his intention to declare an interest in this matter with the introduction of a late item for funding for the Cornerstone Church of Christ Core Defensive Driving Program. He provided the following written declaration.
Declaration	With regard to the above item, I disclose that I have an association with Cornerstone Christian College as my children both attend the college. As a consequence there may be a perception that my impartiality on the matter may be affected. I declare that I will consider the item solely on its merits and vote or act accordingly.

PRÉCIS

The following allocations of funds for expenditure from the Small Local Projects Budget allocation have been proposed. Funds are available and expenditure is permissible under the Local Government Act 1995.

No	Councillor Making Request	Amount	Recipient	Purpose for which funds will be used
2	Cr Hastie	\$700	Busselton Woodturners' Group	Building of storeroom at Woodturners' premises
	Cr Clarke	\$500		
	Cr Underdown	\$500		
3	Cr Hanran-Smith	\$965	Possum Centre Busselton Inc.	To purchase brooder to aid in survival of orphaned Possum joeys
4	Cr Underdown	\$1,000	Rotary International Group Study Exchange 2009	To cover personal expenses towards the exchange. These costs include host gifts, uniforms, language courses / tutorials, equipment etc.,

OFFICER RECOMMENDATION

That the following amounts be allocated from the Council's Small Local Projects Budget Allocation:

No	Councillor Making Request	Amount	Recipient	Purpose for which funds will be used
2	Cr Hastie	\$700	Busselton Woodturners' Group	Building of storeroom at Woodturners' premises
	Cr Clarke	\$500		
	Cr Underdown	\$500		
3	Cr Hanran-Smith	\$965	Possum Centre Busselton Inc.	To purchase brooder to aid in survival of orphaned Possum joeys
4	Cr Underdown	\$1,000	Rotary International Group Study Exchange 2009	To cover personal expenses towards the exchange. These costs include host gifts, uniforms, language courses / tutorials, equipment etc.,

Note: Officers had provided an alternative recommendation for this item to clarify that the recommendation for funding for the Rotary International Group Study Exchange 2009 was \$500 from Councillor Clarke and \$500 from Councillor Hastie. Councillor Underdown did not propose funding for this.

Note: The Presiding Member had previously indicated acceptance for a late addition to the funding proposals from Councillor David Binks to, jointly with four other Councillors, provide funding for the Cornerstone Core Defensive Driving Program.

COUNCIL DECISION

C0909/330 Moved Councillor Hanran-Smith, seconded Councillor Masters:

That the following amounts be allocated from the Council's Small Local Projects Budget Allocation:

No	Councillor Making Request	Amount	Recipient	Purpose for which funds will be used
2	Cr Hastie	\$700	Busselton Woodturners' Group	Building of storeroom at Woodturners' premises
	Cr Clarke	\$500		
	Cr Underdown	\$500		
3	Cr Hanran-Smith	\$965	Possum Centre Busselton Inc.	To purchase brooder to aid in survival of orphaned Possum joeys
4	Cr Clarke	\$500	Rotary International Group Study Exchange 2009	To cover personal expenses towards the exchange. These costs include host gifts, uniforms, language courses / tutorials, equipment etc.,
	Cr Hastie	\$500		
5	Cr Binks	\$400	Cornerstone Church of Christ	Assist to establish Core Defensive Driving Program
	Cr Hartley	\$400		
	Cr Hastie	\$400		
	Cr Emery	\$400		
	Cr Masters	\$400		

CARRIED 10/0

16.2 LOCAL LAW REVIEW - BUSSELTON REGIONAL AIRPORT LOCAL LAW 2009

This matter was considered earlier in the meeting, as part of the En Bloc resolution of the Council ([C0909/326, Page 8](#)).

16.3 LUDLOW TOURISM PRECINCT DEVELOPMENT STUDY

SUBJECT INDEX:	Caravan Parks Tourism
STRATEGIC INITIATIVE:	3.2.1.3 Undertake A Feasibility Study For Ludlow Caravan Park
BUSINESS UNIT:	Economic Development
SERVICE:	Strategic Tourism Development
DATE OF COMPLETION:	31 August 2009
VOTING REQUIREMENT:	Simple Majority

PRÉCIS

The Council requested a feasibility study to be undertaken into the old mill site at Ludlow as a caravan park or tourist destination. This feasibility study has been undertaken by Officers and expert consultants with significant input from stakeholders via a community reference group. The feasibility has been documented by a site assessment and development plan. The feasibility study has identified that there is support for developing the site as a tourist precinct over the next 8 to 10 years.

The site referred to as Ludlow is Crown land and is currently under the management of the Department of Environment and Conservation (DEC). The proposed project is on the site adjacent to the Ludlow River and includes property in both the Shire of Busselton and the Shire of Capel. Land tenure issues form part of the preliminary planning requirements to investigate prior to commencement of any works.

This item seeks the Council's approval of the proposed project in principle and to commence with the planning development steps outlined in the report in 2009/2010 financial year. It is proposed to progress this planning process with DEC, Shire of Capel, Tourism WA, Heritage Council of WA, Department of Indigenous Affairs, Cable Sands and the Forest Products Commission under a Memorandum of Understanding to gain commitment from each organisation for the project.

OFFICER RECOMMENDATION

That:

1. the Council supports in principle the proposed Ludlow Tourism Precinct project;
2. the CEO invites the Department of Environment and Conservation, Shire of Capel, Tourism WA, Heritage Council of WA, Department of Indigenous Affairs, the Forest Products Commission and Cable Sands to be part of an MOU. The purpose of the MOU is to resolve land tenure, zoning, boundary re-alignment, heritage buildings and site rehabilitation. The draft MOU be presented to the Council by 31 December 2009, or as soon after as facilitating the constituent parties allows;
3. the CEO negotiate with the Forest Products Commission for the proceeds of timber sales from Lots PIN 527082/527077 to be assigned to the Ludlow project for the sole purpose of restoring heritage buildings;
4. a suitably qualified consultant be engaged to provide an independent assessment of the heritage buildings on the proposed site;
5. the CEO negotiates with the Health Department to determine an adequate mosquito control program and risk assessment procedures;
6. an amount of \$50,000 be proposed as part of the draft 2011/2012 budget for consideration to fund independent financial modelling for the staged project to commence in 2013.; and
7. the Corporate Plan item (3.2.1.3) in respect to this matter be changed from "Undertake a feasibility study for Ludlow Caravan Park" to "Ludlow Tourism Park Project Planning".

Note: Officers had provided an alternative recommendation for this item to ensure that no Shire funds will be expended until the MOU is executed and Officers and the Council are confident the major issues can be resolved. The revised recommendation provides for existing parts 1 and 2 of the Officer Recommendation to proceed and requires all other actions as recommended to only be undertaken when and if the MOU is executed.

COUNCIL DECISION / REVISED OFFICER RECOMMENDATION

C0909/331 Moved Councillor Hanran-Smith, seconded Councillor Masters:

That:

1. the Council supports in principle the proposed Ludlow Tourism Precinct project;
2. the CEO invites the Department of Environment and Conservation, Shire of Capel, Tourism WA, Heritage Council of WA, Department of Indigenous Affairs, the Forest Products Commission and Cable Sands to be part of an MOU. The purpose of the MOU is to resolve land tenure, zoning, boundary re-alignment, heritage buildings and site rehabilitation. The draft MOU be presented to the Council by 31 December 2009, or as soon after as facilitating the constituent parties allows;
3. the following be undertaken when and if the MOU is executed:
 - a. the CEO negotiate with the Forest Products Commission for the proceeds of timber sales from Lots PIN 527082/527077 to be assigned to the Ludlow project for the sole purpose of restoring heritage buildings;
 - b. a suitably qualified consultant be engaged to provide an independent assessment of the heritage buildings on the proposed site;
 - c. the CEO negotiates with the Health Department to determine an adequate mosquito control program and risk assessment procedures;
 - d. an amount of \$50,000 be proposed as part of the draft 2011/2012 budget for consideration to fund independent financial modelling for the staged project to commence in 2013.; and
 - e. the Corporate Plan item (3.2.1.3) in respect to this matter be changed from "Undertake a feasibility study for Ludlow Caravan Park" to "Ludlow Tourism Park Project Planning".

CARRIED 10/0

16.4 BUSSELTON CENTRAL BUSINESS DISTRICT SPECIFIED AREA RATE -
MEMORANDUM OF UNDERSTANDING

This matter was considered earlier in the meeting, as part of the En Bloc resolution of the Council ([C0909/327, Page 10](#)).

16.5 LOCKE ESTATE PROJECT PROGRESS REPORT

SUBJECT INDEX:	Agreements & Contracts Public Submissions / Community Consultation
STRATEGIC INITIATIVE:	
BUSINESS UNIT:	Community Development
SERVICE:	Property Services
DATE OF COMPLETION:	
VOTING REQUIREMENT:	Simple Majority

DECLARATION OF INTEREST	
Name / Position	Councillor Wes Hartley
Item No. / Subject	Item 16.5, Locke Estate Project Progress Report
Type of Interest	Interest Affecting Impartiality
Declaration	With regard to this item, I disclose that I am a Minister of the Uniting Church in Australia with particular responsibilities for the Busselton Parish and within such bounds the Locke Estate falls. The Uniting Church in Australia, Western Australia Synod, presently holds a lease over portion of the Locke Estate. My interest is that of an interest in common with any member of the Uniting Church in Australia or of any other church grouping presently holding a lease. I have no direct financial or other interest beyond this interest in common with respect to the Locke Estate. As a consequence there may be a perception that my impartiality on the matter may be affected. I declare that I will consider the item solely on its merits and vote or act accordingly.

PRÉCIS

In August 2008, the Council resolved to undertake two specific studies to inform the decision making process pertaining to the future usage of Reserve 22674, the Locke Estate. Additionally, a report detailing the progress made on these studies and any further information be bought to the Council by September 2009.

This report discusses the progress and makes recommendations on preliminary decisions required and further draws attention to matters to be considered in the subsequent report to be put to the Council in the next few months.

OFFICER RECOMMENDATION

1. The current Lessees of campsites on Reserve 22674, the Locke Estate, be offered the first right of refusal for new leases over their currently leased sites, conditional upon the following;
 - (a) all leases will be for a term of 21 years and subject to the approval of the Minister for Lands.
 - (b) that the new lease boundaries be generally consistent with the diagram attached (Attachment 1).
 - (c) a lease fee of \$800.00 per annum per site.
 - (d) to be eligible to apply for a lease, an applicant must meet the following criteria;
 - (i) a 'Not for Profit' Incorporated body with charitable, educational, and / or benevolent objectives.
 - (ii) have a preliminary Business Plan clearly setting out the services the organisation intends to provide and to whom those services will and will not be provided.
 - (iii) able to demonstrate that the organisation has the financial and business acumen to operate a campsite for the purposes stated in its Business Plan, and
 - (iv) in the case of an existing lessee, demonstrate compliance with their obligations under the current lease.
2. That within 4 months of the date of this resolution, any lessees that have not formally expressed their intention to take up the offer of a new lease over their current site will not be offered a new lease.
3. That any site remaining available following that date in part 2 will be publicly offered by Expression of Interest (EOI) to Incorporated community groups or organisations meeting the criteria set in part 1(d), and that applications as a result of the EOI and recommendations to lease be reported to the Council by April 2010.
4. That the Locke Estate Working Group (LEWG) be established by December 2009 and comprise a staff representative, two Councillors, representatives of three lessees and one community member not connected with any lessee group.
5. That the two Councillor nominations for inclusion in the LEWG be Councillor _____ and Councillor _____.

Note: Officers had provided a revised recommendation to better reflect the lease process requirements. Cr Bev Clarke had proposed an extra clause that she wished to move in addition to the Officer Recommendation. She therefore moved the revised officer recommendation with the addition.

MOTION

Moved Councillor Clarke, seconded Councillor Masters:

1. That the current Lessees of campsites on Reserve 22674, the Locke Estate, be offered the first right of refusal for new leases over their currently leased sites.
2. That the current lessees be given until the end of January 2010 to provide the Shire with an indicative application for lease, based on the following lease criteria;
 - a) all leases will be for a term of 21 years and subject to the approval of the Minister for Lands.
 - b) that the new lease boundaries be generally consistent with the diagram attached (Attachment 1), and
 - c) a lease fee of \$800.00 per annum per site.
3. That any site remaining available following that date in part 2 will be publicly offered by Expression of Interest (EOI) to incorporated community groups or organisations.
4. That all future lessees will be required to meet the following criteria;
 - (i) be a 'Not for Profit' Incorporated body with charitable, educational, and / or benevolent objectives;
 - (ii) have a Business Plan clearly setting out the services the organisation intends to provide and to whom those services will and will not be provided;
 - (iii) be able to demonstrate that the organisation has the financial and business acumen to operate a campsite for the purposes stated in its Business Plan; and
 - (iv) in the case of an existing lessee, demonstrate compliance with their obligations under the current lease.

Submission of this information will not be required until mid 2010.
- 5a. That the Road Reserve adjoining the western boundary of Reserve 22674 be made available for public access to the beach.
- 5b. This reserve to be fenced from the neighbouring blocks.
6. That the Locke Estate Working Group (LEWG) be established by December 2009 and comprise a staff representative, two Councillors, representatives of three lessees and one community member not connected with any lessee group.
7. That the two Councillor nominations for inclusion in the LEWG be Councillor _____ and Councillor _____.

Note: The Presiding Member advised that in accordance with Clause 18.15 of the Standing Orders the motion would be divided such that part 7 would be considered separately from parts 1-6.

MOTION

Moved Councillor Clarke, seconded Councillor Masters:

1. That the current Lessees of campsites on Reserve 22674, the Locke Estate, be offered the first right of refusal for new leases over their currently leased sites.
2. That the current lessees be given until the end of January 2010 to provide the Shire with an indicative application for lease, based on the following lease criteria;
 - a) all leases will be for a term of 21 years and subject to the approval of the Minister for Lands.
 - b) that the new lease boundaries be generally consistent with the diagram attached (Attachment 1), and
 - c) a lease fee of \$800.00 per annum per site.
3. That any site remaining available following that date in part 2 will be publicly offered by Expression of Interest (EOI) to incorporated community groups or organisations.
4. That all future lessees will be required to meet the following criteria;
 - (i) be a 'Not for Profit' Incorporated body with charitable, educational, and / or benevolent objectives;
 - (ii) have a Business Plan clearly setting out the services the organisation intends to provide and to whom those services will and will not be provided;
 - (iii) be able to demonstrate that the organisation has the financial and business acumen to operate a campsite for the purposes stated in its Business Plan; and
 - (iv) in the case of an existing lessee, demonstrate compliance with their obligations under the current lease.

Submission of this information will not be required until mid 2010.
- 5a. That the Road Reserve adjoining the western boundary of Reserve 22674 be made available for public access to the beach.
- 5b. This reserve to be fenced from the neighbouring blocks.
6. That the Locke Estate Working Group (LEWG) be established by December 2009 and comprise a staff representative, two Councillors, representatives of three lessees and one community member not connected with any lessee group.

AMENDMENT

Moved Councillor Masters, seconded Councillor Clarke:

That part 5a of the motion be amended by the addition of the words "or other suitable land within or adjoining the Road Reserve" after the words "Reserve 22674" and part 5b of the motion be amended by the addition of the words "if developed for public access is" between the words "reserve" and "to".

CARRIED 10/0

COUNCIL DECISION

C0909/332 Moved Councillor Clarke, seconded Councillor Masters:

1. That the current Lessees of campsites on Reserve 22674, the Locke Estate, be offered the first right of refusal for new leases over their currently leased sites.
2. That the current lessees be given until the end of January 2010 to provide the Shire with an indicative application for lease, based on the following lease criteria;
 - a) all leases will be for a term of 21 years and subject to the approval of the Minister for Lands.
 - b) that the new lease boundaries be generally consistent with the diagram attached (Attachment 1), and
 - c) a lease fee of \$800.00 per annum per site.
3. That any site remaining available following that date in part 2 will be publicly offered by Expression of Interest (EOI) to incorporated community groups or organisations.
4. That all future lessees will be required to meet the following criteria;
 - (i) be a 'Not for Profit' Incorporated body with charitable, educational, and / or benevolent objectives;
 - (ii) have a Business Plan clearly setting out the services the organisation intends to provide and to whom those services will and will not be provided;
 - (iii) be able to demonstrate that the organisation has the financial and business acumen to operate a campsite for the purposes stated in its Business Plan; and
 - (iv) in the case of an existing lessee, demonstrate compliance with their obligations under the current lease.

Submission of this information will not be required until mid 2010.

- 5a. That the Road Reserve adjoining the western boundary of Reserve 22674 or other suitable land within or adjoining the Road Reserve be made available for public access to the beach.
- 5b. This reserve if developed for public access is to be fenced from the neighbouring blocks.
6. That the Locke Estate Working Group (LEWG) be established by December 2009 and comprise a staff representative, two Councillors, representatives of three lessees and one community member not connected with any lessee group.

CARRIED 10/0

COUNCIL DECISION

C0909/333 Moved Councillor Hartley, seconded Councillor Hanran-Smith:

That consideration of the Councillor representatives on the Locke Estate Working Group is deferred until after the new Council is appointed following the October 17 2009 election.

CARRIED 10/0

16.6 PROPOSAL TO LEASE CARBUNUP HALL RESERVE 19338

This matter was considered earlier in the meeting, as part of the En Bloc resolution of the Council ([C0909/328, Page 18](#)).

Due to the common theme of the two items at 16.7 and 18.4 (notice of motion from Councillor Tom Tuffin), item 18.4 was brought forward to be considered at this juncture in conjunction with Item 16.7.

16.7 PROPOSAL FOR RIO TINTO TO UNDERTAKE ONE FLIGHT PER WEEK PRIOR TO 7AM FROM THE BUSSELTON AIRPORT FOR A SIX MONTH TRIAL

SUBJECT INDEX:	Airport Management
STRATEGIC INITIATIVE:	
BUSINESS UNIT:	Economic Development Infrastructure Planning
SERVICE:	Strategy Tourism Development
DATE OF COMPLETION:	
VOTING REQUIREMENT:	Simple, Absolute Majority

PRÉCIS

The Council's resolution C0905/144 directed the CEO to form an Airport Advisory Group (AAG) for the Busselton Regional Airport. The AAG's first item of business was to consider the proposal for a trial by Rio Tinto to operate one FIFO flight per week between the hours of 0500hrs and 0700hrs.

This report presents the AAG's minutes and recommendations for the Council's consideration on a proposal to allow a trial for six months for one FIFO flight per week between the hours of 0500 – 0700 from the Busselton Regional Airport.

OFFICER RECOMMENDATION**SIMPLE MAJORITY REQUIRED**

1. That the Council endorse a trial of 1 FIFO charter flight (Rio Tinto) per week between the hours of 0500 – 0700, on the provision that the CEO receives confirmation from the DEC stating no prosecution occurs during the 6 month trial for non-compliance of licence conditions.
2. That at the end of the trial, the CEO prepare a report to the Council on the implications of the trial and provide recommendations as to whether this should be continued. This report will include AAG feedback

ABSOLUTE MAJORITY REQUIRED

3. That the Council allocate the provision of \$15,000 funds to the Airport operations account (521-11151) from ex-Budget expenditure for community consultation/survey on the impacts and benefits of the FIFO trial.

18.4 **BUSSELTON REGIONAL AIRPORT****NoM NO:** 09/10: 13

Councillor Tom Tuffin had previously given notice of his intention to move the following motion at this Council Meeting:

MOTION

That the CEO request the Minister for the Environment to instigate a change to the current conditions of operations of the Busselton Regional Airport for a six months trial period as detailed in the attached document, headed Details of FIFO Trial.

As a concomitant part of this Trial the following action also be taken:

1. The CEO seek legal opinion on the legality of BRA being used for flight training under its current licence conditions, and report to Council as soon as practicable.
2. If flight training is permissible at the BRA the CEO instigates all measures available under law to limit the use of the Airport for flight training for aircraft above 2000 kg MTOW.
3. The CEO investigate the possibility of charging aircraft operators, who would normally pay landing fees under our current schedule of fees, an extra charge for
 - (a) use of the NDB for training purposes;
 - (b) use of the strip lights; and
 - (c) use of the runways by aircraft whose wheels don't actually touch the tarmac, but carry out a virtual "touch and go" exercise,and report to Council as soon as practicable.
4. The concerns of individuals affected by the airport operations be investigated and a report be provided to Council by the CEO on how these concerns have been addressed in the past and how they will be addressed in the future, other than by a Noise Management Plan.

5. Once an Noise Management Plan has been approved, Rio Tinto be asked by the CEO to instruct their Charter Operators to abide by the NMP as part of the Trial.

Note: Officers had provided a revised recommendation in relation to this item as the recommended conditions had inadvertently been omitted from the original recommendation.

MOTION

Moved Councillor Tuffin, seconded Councillor Masters:

That the CEO request the Minister for the Environment to instigate a change to the current conditions of operations of the Busselton Regional Airport for a six months trial period as detailed in the attached document, headed Details of FIFO Trial.

As a concomitant part of this Trial the following action also be taken:

1. The CEO seek legal opinion on the legality of BRA being used for flight training under its current licence conditions, and report to Council as soon as practicable.
2. If flight training is permissible at the BRA the CEO instigates all measures available under law to limit the use of the Airport for flight training for aircraft above 2000 kg MTOW.
3. The CEO investigate the possibility of charging aircraft operators, who would normally pay landing fees under our current schedule of fees, an extra charge for
 - (a) use of the NDB for training purposes;
 - (b) use of the strip lights; and
 - (c) use of the runways by aircraft whose wheels don't actually touch the tarmac, but carry out a virtual "touch and go" exercise,and report to Council as soon as practicable.
4. The concerns of individuals affected by the airport operations be investigated and a report be provided to Council by the CEO on how these concerns have been addressed in the past and how they will be addressed in the future, other than by a Noise Management Plan.
5. Once an Noise Management Plan has been approved, Rio Tinto be asked by the CEO to instruct their Charter Operators to abide by the NMP as part of the Trial.

FORESHADOWED MOTION

During debate on this matter Councillor Bev Clarke foreshadowed her intention to move the revised Officer Recommendation.

RECORD OF WORDS SPOKEN

During debate on this matter Councillor Tom Tuffin asked that it be recorded:

If this trial shows that there is an adverse effect for the residents then I will not support it continuing any further.

MOTION PUT

Moved Councillor Tuffin, seconded Councillor Masters:

That the CEO request the Minister for the Environment to instigate a change to the current conditions of operations of the Busselton Regional Airport for a six months trial period as detailed in the attached document, headed Details of FIFO Trial.

As a concomitant part of this Trial the following action also be taken:

1. The CEO seek legal opinion on the legality of BRA being used for flight training under its current licence conditions, and report to Council as soon as practicable.
2. If flight training is permissible at the BRA the CEO instigates all measures available under law to limit the use of the Airport for flight training for aircraft above 2000 kg MTOW.
3. The CEO investigate the possibility of charging aircraft operators, who would normally pay landing fees under our current schedule of fees, an extra charge for
 - (a) use of the NDB for training purposes;
 - (b) use of the strip lights; and
 - (c) use of the runways by aircraft whose wheels don't actually touch the tarmac, but carry out a virtual "touch and go" exercise,and report to Council as soon as practicable.
4. The concerns of individuals affected by the airport operations be investigated and a report be provided to Council by the CEO on how these concerns have been addressed in the past and how they will be addressed in the future, other than by a Noise Management Plan.

5. Once an Noise Management Plan has been approved, Rio Tinto be asked by the CEO to instruct their Charter Operators to abide by the NMP as part of the Trial.

LOST 4/6Dissenting Voters

Cr Bev Clarke
Cr Ian Stubbs
Cr Jackie Emery
Cr Bethwyn Hastie
Cr Don Hanran-Smith
Cr Wes Hartley

Note: As the motion was lost, Cr Clarke was able to move the motion that she had previously foreshadowed. She moved parts 1 and 2 of the revised officer recommendation only.

MOTION

Moved Councillor Clarke, seconded Councillor Hanran-Smith:

1. That the Council endorse a trial of 1 FIFO charter flight (Rio Tinto) per week between the hours of 0500 – 0700, on the provision that the CEO receives confirmation from the DEC stating no prosecution occurs during the 6 month trial for non-compliance of licence conditions.

The trial would be as per the recommendation from the Airport Advisory Group:

"That the Council accepts Rio Tinto's offer of a six month trial for a FIFO flight once a week between 5am and 7am with the following conditions imposed:

- (a) The draft Noise Management Plan is to be reviewed and finalised;
- (b) All mitigation issues that arise due to airport operations be listed and addressed;
- (c) Flight training be limited to the extent the law will allow;
- (d) The concerns of individuals affected by the airport be investigated and addressed immediately;
- (e) That Rio Tinto take a high level of responsibility in controlling their charter operators."

2. That at the end of the trial, the CEO prepare a report to the Council on the implications of the trial and provide recommendations as to whether this should be continued. This report will include AAG feedback.

7.25pm At this time the Presiding Member declared that the meeting would adjourn for a period of five minutes.

7.30pm At this time the meeting reconvened with all in attendance prior to the adjournment, with the exception of the Chief Executive Officer.

AMENDMENT

Moved Councillor Masters, seconded Councillor Tuffin:

That the motion be amended by the inclusion of a part 1(f) "That to the extent that flight training is permissible, the training aircraft be limited to 2000kg maximum take off weight, with the exception of Royal Flying Doctor Service training" and a new part 3 "During the trial officers are to investigate other options for the charging of aircraft operators".

CARRIED 8/2

Dissenting Voters

Cr Ian Stubbs

Cr Jackie Emery

7.35pm At this time the Chief Executive Officer returned to the meeting.

AMENDMENT

Moved Councillor Tuffin, seconded Councillor Masters:

That all words after the word 0700 in part 1 of the motion be deleted, with sub-clauses a) to f) to remain.

LOST 4/6

Dissenting Voters

Cr Wes Hartley

Cr Bethwyn Hastie

Cr David Binks

Cr Bernie Masters

Cr Bev Clarke

Cr Don Hanran-Smith

COUNCIL DECISION

C0909/334 Moved Councillor Clarke, seconded Councillor Hanran-Smith:

1. That the Council endorse a trial of 1 FIFO charter flight (Rio Tinto) per week between the hours of 0500 – 0700, on the provision that the CEO receives confirmation from the DEC stating no prosecution occurs during the 6 month trial for non-compliance of licence conditions.

The trial would be as per the recommendation from the Airport Advisory Group:

"That the Council accepts Rio Tinto's offer of a six month trial for a FIFO flight once a week between 5am and 7am with the following conditions imposed:

- (a) The draft Noise Management Plan is to be reviewed and finalised;
- (b) All mitigation issues that arise due to airport operations be listed and addressed;
- (c) Flight training be limited to the extent the law will allow;

- (d) The concerns of individuals affected by the airport be investigated and addressed immediately;
 - (e) That Rio Tinto take a high level of responsibility in controlling their charter operators.
 - (f) That to the extent that flight training is permissible, the training aircraft be limited to 2000kg maximum take off weight, with the exception of Royal Flying Doctor Service training."
2. That at the end of the trial, the CEO prepare a report to the Council on the implications of the trial and provide recommendations as to whether this should be continued. This report will include AAG feedback.
 3. During the trial officers are to investigate other options for the charging of aircraft operators.

CARRIED 8/2
Dissenting Voters
Cr Ian Stubbs
Cr Jackie Emery

RECORD OF WORDS SPOKEN

Following the debate on this matter Councillor David Binks asked that it be recorded:

I offer an unreserved apology for any offence caused to the Shire President or any other Councillor by my comments about the need to stop living in the past and to move forward.

COUNCIL DECISION

C0909/335 Moved Councillor Hanran-Smith, seconded Councillor Clarke:

ABSOLUTE MAJORITY REQUIRED

That the Council allocate the provision of \$15,000 funds to the Airport operations account (521-11151) from ex-Budget expenditure for community consultation/survey on the impacts and benefits of the FIFO trial.

CARRIED 8/2
Absolute Majority Achieved
Dissenting Voters
Cr Ian Stubbs
Cr Jackie Emery

17. CHIEF EXECUTIVE OFFICER'S REPORT

Nil

18. MOTIONS of which notice has been given**18.1 DONATION OF FEE - HIRE OF CHURCHILL PARK HALL**

NoM NO: 09/10: 10

Councillor Anne Ryan had previously given notice of her intention to move the following motion at this Council Meeting:

MOTION

That the Shire donates all fees raised from the hire of the Churchill Park Hall on the night of Friday, 16 October 2009, to the account of Mike and Ceri Drummond to add to the fundraising and donations by Shire employees to assist the Drummonds in their time of need.

MOTION LAPSED

Note: As Councillor Anne Ryan was not in attendance at the meeting and had not, as required by the Standing Orders, authorised another Councillor in writing to move this motion, it was unable to be considered at this meeting.

18.2 DISABLED FISHERMEN'S PLATFORM

NoM NO: 09/10: 11

Councillor Bethwyn Hastie had previously given notice of her intention to move the following motion at this Council Meeting:

MOTION

Moved Councillor Hastie, seconded Councillor Hanran-Smith:

That the Shire plan and design for a disabled fishing platform this financial year to be constructed in the 2010/2011 financial year. The location is to be determined at the planning stage but to be located somewhere in the Western Coastline / Dunsborough area.

AMENDMENT

Moved Councillor Hastie, seconded Councillor Hanran-Smith:

That a part 2 be added to the motion:

2. That \$10,000 from the Councillors' Strategic Fund 310.10000.3588.0000 be allocated to facilitate the planning and design to be carried out in the 2009/10 financial year.

CARRIED 10/0

AMENDMENT

Moved Councillor Hanran-Smith, seconded Councillor Binks:

That any disabled fishing platform be located outside the boundary of the Meelup Regional Park.

LOST 2/8
Dissenting Voters
Cr Wes Hartley
Cr Bethwyn Hastie
Cr Ian Stubbs
Cr Tom Tuffin
Cr Jackie Emery
Cr Bernie Masters
Cr Bev Clarke
Cr David Reid

COUNCIL DECISION

C0909/336 Moved Councillor Hastie, seconded Councillor Hanran-Smith:

1. That the Shire plan and design for a disabled fishing platform this financial year to be constructed in the 2010/2011 financial year. The location is to be determined at the planning stage but to be located somewhere in the Western Coastline / Dunsborough area.
2. That \$10,000 from the Councillors' Strategic Fund 310.10000.3588.0000 be allocated to facilitate the planning and design to be carried out in the 2009/10 financial year.

CARRIED 10/0

18.3 YOUTH DEVELOPMENT STRATEGY

NoM NO: 09/10: 15

Councillor David Binks had previously given notice of his intention to move the following motion at this Council Meeting:

MOTION

Moved Councillor Binks, seconded Councillor Clarke:

That the Council requires the CEO to prepare a report prior to 2 December 2009, regarding the implications of developing a strategic approach to Youth Development within the Shire.

The report is to include, but not be limited to:

- (a) Examples and Modus Operandi from other Shires that have developed a similar strategy;
- (b) Implications of employing a full time or part time Youth Development Officer to assist in the development and ongoing implementation of the Strategy;
- (c) Recommendations regarding the formation of a Stakeholders Working Group and its possible participants to assist with the development of the Strategy; and
- (d) Recommendations to enable the commencement of the development of the Strategy prior to April 2010.

AMENDMENT

Moved Councillor Binks, seconded Councillor Clarke:

That "2 December 2009" be changed to "1 March 2010".

CARRIED 10/0

COUNCIL DECISION

C0909/337 Moved Councillor Binks, seconded Councillor Clarke:

That the Council requires the CEO to prepare a report prior to 1 March 2010, regarding the implications of developing a strategic approach to Youth Development within the Shire.

The report is to include, but not be limited to:

- (a) Examples and Modus Operandi from other Shires that have developed a similar strategy;
- (b) Implications of employing a full time or part time Youth Development Officer to assist in the development and ongoing implementation of the Strategy;
- (c) Recommendations regarding the formation of a Stakeholders Working Group and its possible participants to assist with the development of the Strategy; and
- (d) Recommendations to enable the commencement of the development of the Strategy prior to April 2010.

CARRIED 10/0

18.4 BUSSELTON REGIONAL AIRPORT

NoM NO: 09/10: 13

This matter was considered earlier in the meeting, in conjunction with the consideration of Item 16.7 [\(C0909/334, Page 35\)](#).

At this time, in accordance with Section 4.2(b) of the Standing Orders, the Presiding Member allowed the introduction of a motion of urgent business proposed by Councillor Bernie Masters.

18.5 CONFIDENTIAL INFORMATION

NoM NO: 09/10: 18

Councillor Bernie Masters advised of his intention to move the following motion in accordance with the Presiding Member's ruling to allow its introduction to this meeting.

COUNCIL DECISION

C0909/338 Moved Councillor Masters, seconded Councillor Clarke:

That this Council:

1. notes the publication in the Busselton Dunsborough Mail of September 16, 2009, of an article relating to the Shire of Busselton Council meeting held on September 9, at which it was agreed in confidential session that the employment of the CEO Andrew Macnish was to be terminated;
2. notes that the article contained quotes and references to the confidential section of that meeting which could only have been provided to the newspaper's journalist Rob Bennett by a councillor or councillors;
3. expresses its extreme disappointment that the Busselton Dunsborough Mail has chosen to publish information that the council considers to be strictly confidential; and
4. hereby rebukes the councillor or councillors who provided confidential information to the newspaper, recognising that such action is contrary to the spirit in which local government and its councillors are expected by the community to conduct themselves and is illegal under section 5.105 of the Local Government Act 1995.

CARRIED 5/5

On the Casting Vote of the Presiding Member

Dissenting Voters

Cr David Binks

Cr Ian Stubbs

Cr Tom Tuffin

Cr Jackie Emery

Cr David Reid

PROCEDURAL MOTION

Moved Councillor Clarke, seconded Councillor Hastie:

That the meeting be closed to members of the public to allow discussion of matters confidential in accordance with Section 5.23(2)(c) and (e) and 5.23(2)(a) and (b) of the Local Government Act, being a contract entered into, or which may be entered into by the local government and information that has a commercial value to a person; and a matter affecting an employee and the personal affairs of a person.

CARRIED 10/0

8.45pm At this time the meeting was closed to members of the public. The Director, Lifestyle Development and the Director, Community Infrastructure left the meeting and did not return. The Manager, Economic Development entered the meeting.

19. CONFIDENTIAL REPORTS**19.1 LOT 431 QUEEN STREET, BUSSELTON**

SUBJECT INDEX:	Busselton Jetty and Foreshore Revitalisation
STRATEGIC INITIATIVE:	3.2.1 Build partnerships to promote and help fund our environmental and other assets to attract national and international tourism
BUSINESS UNIT:	Economic Development
SERVICE:	Strategic Tourism Development
DATE OF COMPLETION:	31 st December 2009
VOTING REQUIREMENT:	Absolute Majority

A confidential report in accordance with Sections 5.23(2)(c) and (e) of the Local Government Act 1995, being a contract entered into or which may be entered into by the local government and information that has a commercial value to a person was provided to Councillors, CEO, Directors, Executive Manager and Manager, Economic Development only.

8.46pm At this time the Governance Manager left the meeting.

8.48pm At this time the Governance Manager returned to the meeting.

COUNCIL DECISION / OFFICER RECOMMENDATION

C0909/339 Moved Councillor Hastie, seconded Councillor Masters:

1. That the CEO obtain a valuation for the sublease of Lot 431 Queen Street Busselton. **Simple Majority required.**

2. That the Council approve an over expenditure, as an addition to the current Busselton Foreshore Planning allocation, for an amount of \$11,000 for the purposes of obtaining a valuation of the sublease of Lot 431 Queen Street. **Absolute Majority required.**
3. That the CEO enter negotiations with the current sublessee of Lot 431 Queen Street Busselton to determine a potential price for acquisition of the sublease. The outcomes of these negotiations be reported to the Council for consideration. **Simple Majority required.**

CARRIED 10/0
Absolute Majority Achieved

9.08pm At this time the Director, Community and Organisational Development left the meeting. The Manager, Economic Development left the meeting and did not return.

19.2 APPOINTMENT OF SENIOR EMPLOYEE

A report confidential in accordance with Section 5.23(2)(a)&(b) of the Local Government Act 1995 in that it relates to matters affecting an employee and the personal affairs of a person was provided to Councillors and the Chief Executive Officer only.

COUNCIL DECISION / OFFICER RECOMMENDATION

C0909/340 Moved Councillor Hanran-Smith, seconded Councillor Clarke:

That the Council endorse the proposed reappointment of Mr Nigel Bancroft to the senior employee position of Director, Lifestyle Development on the terms and conditions outlined.

CARRIED 10/0

PROCEDURAL MOTION

Moved Councillor Hastie, seconded Councillor Binks:

That the meeting be reopened to members of the public.

CARRIED 10/0

9.24pm At this time the meeting reopened to members of the public. The Presiding Member did not read aloud the decisions of the Council as there were no members of the public who returned to the meeting.

20. **NOTICES OF MOTION** proposed for consideration at a future Meeting

Nil.

21. **QUESTIONS FROM MEMBERS WITHOUT NOTICE**

- 21.1 Councillor Don Hanran-Smith asked if it would be possible for all confidential items distributed to Councillors to have each Councillors' name on them and then be collected by the minuting officer after each meeting.

Response: Chief Executive Officer

This is a worthwhile initiative that used to be in place where I formerly worked. If it was desired that this be a formal requirement, it could be incorporated into the Standing Orders.

- 9.27pm At this time the Director, Community and Organisational Development returned to the meeting.

- 21.2 Councillor David Reid asked if the Shire is really at the point where the Port Geographe developer is about to walk away from negotiations with the Shire.

Response: Director, Community and Organisational Development

There was a mediation in the State Administrative Tribunal recently and these discussions are to continue. This relates to an artificial water body management plan that is crucial to the continuation of the development. The Shire is in the process of providing comments on this plan and the mediation is to reconvene in October. Negotiation is therefore continuing and the developer is not walking away.

- 21.3 Councillor David Reid asked if the Shire calling on the bank guarantees could lead to a huge litigation saga and the break down of negotiations with the developer.

Response: Director, Community and Organisational Development

There is an extended process before the Shire can call on the bank guarantee and this process has been commenced. The bank guarantee would only be called on in the circumstances that the developer's obligations were not met.

The process that has been commenced includes dispute resolution mechanisms, both informal and formal. It is evident that the Shire will know more about whether it is likely that this will escalate when it receives the developer's initial response to the commencement of the process.

It is an extended process that we will keep monitoring. If the process had not been commenced at this time, given that it is quite lengthy, the Shire could be in a position that works were so far behind if the developer was not meeting or was not intending to meet its obligations. The needs of the residents would then not have been met for some time and we would not be in a position to have them met.

- 21.4 Councillor David Reid asked if it is the case that every time a matter between Port Geographe and the Shire has been determined that the finding of the State Administrative Tribunal has gone against the Council.

Response: Director, Community and Organisational Development

Absolutely not. There has not been any SAT findings. There have been negotiated outcomes and agreement has been reached between the two parties. There have absolutely not been any findings against the Shire.

22. NEXT MEETING

Wednesday, 14 October 2009, commencing at 5.30 p.m.

23. CLOSURE

The meeting closed at 9.32p.m.

THESE MINUTES CONSISTING OF PAGES 1 TO 52 WERE CONFIRMED AS A TRUE

AND CORRECT RECORD ON _____

DATE: _____

PRESIDING MEMBER: _____