



**Shire of Busselton**  
*Geographe Bay*

**ADDENDUM NO. 1**  
to  
**Council Agenda**

*28 January 2009*

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

Issue Date: 21 January 2009

SHIRE OF BUSSELTON

COUNCIL MEETING TO BE HELD ON 28 JANUARY 2009

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**12. BUSINESS FROM PREVIOUS MEETING****12.1 CONFIDENTIAL REPORT RELATING TO CEO KPI 2.5**

**FILE NO:** MAN13  
**ATTACHMENT(S)** Copy of Confidential Report as provided with Agenda Papers for the Council Meeting on 10 December 2008 - again provided with this Addendum to the Chief Executive Officer, Directors and the Executive Manager, Systems and Information only.

A report, confidential under s.5.23 (2)e(ii) of the Local Government Act, being a matter that if disclosed would reveal information that has a commercial value to a person, was provided to Councillors, the Chief Executive officer, Directors and the Executive Manager, Systems and Information only, for consideration at the Council Meeting on 10 December 2008. At that meeting, the Council resolved (C0812/384) to refer the matter for consideration at the Council Meeting scheduled for 28 January 2009.

**18. MOTIONS of which notice has been given****18.1 SHORT STAY ACCOMMODATION USE - 'RESIDENTIAL' ZONED PROPERTIES**

NoM NO: 08/09: 10  
FILE NO: PAM11

*Councillor Anne Ryan has given notice of her intention to move the following motion at the Council Meeting on 28 January 2009:*

**MOTION**

*"That no prosecution pertaining to the short stay use of residentially zoned property be undertaken by the Shire of Busselton without the prior consideration of the Council. If a matter of this nature is to come before the Council, the owner of the property must be given no less than three weeks notice in writing that the matter will be on the Council agenda."*

**REASONS**

In some circumstances, it is possible that complaints made to the Shire about the short stay letting of properties in the residential zone are vexatious and the result of some other ongoing dispute between neighbours.

It would be a travesty for a case like this to go before a court if the owners of a property were not actually doing anything to affect the amenity of the area by allowing people to stay in their property, be it for monetary gain or not.

It must also be taken into account that sometimes, people staying in the property may be friends or relatives of the owners.

If it is decided by staff to bring a prosecution against an owner, it is absolutely essential that the facts and reasons justifying it be put before the Council to allow it to decide whether there is merit in pursuing what could be a very costly exercise for the Shire with significant policy implications that have the potential to affect a large number of ratepayers across the Shire as a whole.

It is also necessary to give the owner of the property adequate notice that the matter is to become before the Council to allow them to make a representation to the Councillors and three weeks is I believe fair and equitable.

**STAFF COMMENT (Lifestyle Development Directorate)**

The Council has passed a number of resolutions to amend the planning scheme (amendment 46) with the intent of increasing the flexibility for the use of residential properties for commercial tourist accommodation. To date this amendment has not been progressed by the Minister for Planning and as such the commercial letting of residential dwellings for tourist accommodation remains illegal under the town planning scheme.

There are also a number of breaches of this scheme requirement that have been recently investigated and the owners advised of their obligation under the town planning scheme. This is an ongoing process and in all cases involves verification of the complaint related to the commercial advertising of the premises for commercial short stay use. It is not considered that there is the potential for a prosecution to be launched for non-commercial use of such a premises as referred to in the reasons for the NOM. The launching of a prosecution under the town planning scheme is a significant matter and is only done so following verification of evidence by the Shire legal representatives. This is considered to be the appropriate process by which the strength of the case in respect to an alleged breach of the Town Planning scheme is established.

This does not prevent the matter also being considered by the Council given the allocation of resources that may be required as a follow on to such a case. Given the previous resolutions of the Council on this issue generally it has been the intention of planning staff to report an intended prosecution to the Council before this is commenced. Staff will however in all cases recommend action that is consistent with enforcing the requirements of the town planning scheme and this objective should also guide the decision making of the Council.

**18.2**      DEVELOPMENT APPLICATION - LOT 1 CAVES ROAD, ABBEY

NoM NO:                      08/09: 11

FILE NO:                      6216

*Councillor Anne Ryan has given notice of her intention to move the following motion at the Council Meeting on 28 January 2009:*

**MOTION**

*" That a report be brought to the Council for the meeting of 25 February 2009, on the current development application over Lot 1 Caves Road Abbey and the proponents application for 'ten chalets in a conservation zone and modification to the existing site plan' "*

**REASON**

The Proponents of the award-winning Peppermint Park Eco Village have been awaiting determination of this application in various forms for a number of years. They are now asking that it be brought to the Council for its determination.

**STAFF COMMENT (Lifestyle Development Directorate)**

There have been two applications relating to this property since 2007, essentially to resolve an issue regarding departure of development on the site from the approved development plan. The first application was withdrawn by the applicant on advice from Shire staff that it was unable to be approved. The determination of the current application is close to being finalised with a recommendation from the assessing officer for refusal of the application. Should the Council resolve to have the application considered by the Council, a report could not be presented for the Council meeting of 25 February 2009, but could be presented for the 11 March 2009 meeting.

18.3 LOT 16 WEST STREET, BUSSELTON

NoM NO: 08/09: 12  
FILE NO: 14696AMD

*Councillor Anne Ryan has given notice of her intention to move the following motion at the Council Meeting on 28 January 2009:*

**MOTION**

*"That a report be brought to the Council for the meeting of 25 February, 2009 on Lot 16 West Street, Busselton."*

**REASON**

The owners of the land have been trying to obtain information from staff as to their land and have had no satisfactory responses to date. Mr Watts addressed the Council on 3/12/2008 with his concerns and has had no contact since. Mr Watts expressed his dismay at the Director of Planning not attending the briefing session and despite the Acting Shire President advising that she would refer the matter on to Mr Bancroft nothing has eventuated.

**STAFF COMMENT (Lifestyle Development Directorate)****1. Director, Lifestyle Development**

An overview of recent action in respect to this property is presented below for the information of the Council. The proposed NOM is not however considered to be competent as it does not identify the purpose or subject matter for which the report is required to be presented to the Council other than simply identifying the property. It is also advised to the Council that there is no matter before the Shire at this time that requires determination and as such the purpose of a report to the Council is unclear.

In respect to the reasons for the NOM the landowners have been provided with advice from staff on the issues associated with the development of their land. They may not consider the responses satisfactory but this is not necessarily a matter within the control of the Shire or the Council and the Shire has been seeking written advice from the DEC on the matter, effectively on their behalf. The Director of Lifestyle Development was advised by the A/Shire President of the presentation of Mr Watts at the briefing session in December and was advised of the background to the issue and that there was no action required of the Shire.

## **2. Manager Strategic Planning and Sustainability)**

The landowner spoke to the Shire's Manager Strategic Planning and Sustainability regarding this matter in early January 2009. The key issue appears to be uncertainty regarding the setback from the adjoining wetland to any development on the site. As Shire officers understand it, the owners are seeking advice regarding the setback which will then assist in the selling of the site and their real estate agent has been in contact with Shire staff on the matter on a number of occasions.

In order to determine an appropriate setback the Shire is required to seek and consider the advice of the Department of Environment and Conservation ('DEC'). DEC also have independent powers to protect wetlands in this case.

The Shire has written to DEC twice seeking their advice regarding this matter, once in May 2007 and once in March 2008. The first letter was not responded to, but a response to the second letter was received in July 2008.

That response indicates that, unless a site specific assessment is undertaken, there should be a 50 metre setback between the wetland and any development. That would effectively mean that the site is undevelopable. The response sets out the process for undertaking a site specific assessment, but does not provide any advice regarding what the setback might be if a site specific assessment were undertaken. There is a note on the copy of the response in the file which indicates that the landowner had been made aware of the response.

In his recent discussion with the landowner, the Manager Strategic Planning and Sustainability discussed potential ways of resolving the issue. He indicated that, on the basis of his experience, it is unlikely that DEC would provide the kind of specific advice which the landowners are seeking without the provision of the additional information set out in their July 2008 letter. They discussed the possibility that this may be best achieved via a formal planning application process. Understandably, the landowner indicated that they were reluctant to do so, but had previously been given that advice verbally. They indicated, however, that they would give that option further thought.

## **3. Chief Executive Officer**

Records confirm the Council did not convene on the date stated (being 3 December 2008) and hence there can be no adverse reflection on the Director for alleged non-attendance on this day.

**18.4 OLD FIRE STATION - QUEEN STREET, BUSSELTON**

NoM NO: 08/09: 13  
FILE NO: 3112

*Councillor Anne Ryan has given notice of her intention to move the following motion at the Council Meeting on 28 January 2009. Further, she has made the following request: "I would appreciate the report being written in such a way as to not be confidential. I think the Council is well aware of the history of the building with the last two applications of tenants. New Councillors can read previous documents)."*

**MOTION:**

*"That a report be brought to the Council for the meeting of 11 March 2009, on the old Fire Station in Queen Street. The report to include but not be limited to:*

- (a) the difficulties that have ensued in trying to get a private tenant for the site (in generic terms only);*
- (b) how much it would cost to restore the site similar to that of the Ag Building;*
- (c) any issues which may hinder its restoration by the Shire and an approximate cost;*
- (d) any government grants such as Heritage which may be available; and*
- (e) the pros and cons of having the GBTA take over the site showcasing our region's (ie the Shire of Busselton) wine/food tastings (and any other product deemed to be appropriate) to visitors in an effort to be fully self-sufficient (and indeed a paying tenant in three to five years)."*

**REASON**

It is apparent that the Old Fire Station has been under-utilised for a very long time. Our main street is the 'face' of the Busselton township and no-one would doubt that the Ag Building is now a credit to the town with its restoration to former glory.

I do not believe that it would be errant of the Council to restore the building in an effort to showcase the site and indeed have the GBTA showcase its wares to visitors, but more importantly another asset that the locals can be proud of.

**STAFF COMMENT (Community and Organisational Development Directorate)**

The matters raised in this NOM have pre-empted a report from Property Services, scheduled for early 2009. The report would outline the work undertaken on the Old Fire Station to date and make recommendations to progress its development. The report is intended to be ready for the Council meeting of 25 March 2009. It would be difficult to bring this date forward due to the report being dependent upon negotiations with and information from third parties.

There are several pros and cons associated with the GBTA entering into a lease with the Shire over the Fire Station premises, including potential loss of revenue associated with a likely extended rent-free period.

As Shire staff are currently in discussions with two other potential lessees, the GBTA should be encouraged to submit a proposal outlining their intentions for the use of the building. This would allow adequate assessment of the proposal in light of alternative recommendations. If the GBTA proposal was submitted by early February, the encompassing report could be finalised by 6th March for the 25th March Council meeting.

**18.5**      RELOCATION OF JETTY MARKETS

NoM NO:                      08/09: 14  
FILE NO:                      3112

*Councillor Anne Ryan has given notice of her intention to move the following motion at the Council Meeting on 28 January 2009:*

**MOTION**

*"That a report be brought to the Council for the meeting of 11 March 2009, on the relocation of the Jetty Markets to a suitable site which mimics other 'profitable' tip shop ventures throughout Western Australia or indeed Australia."*

*The report to include but not be limited to:*

- (a) other 'tip shops' or "drop'n'shop' Reuse Centres such as Armadale;*
- (b) their structure, overheads, profits/losses;*
- (c) products sold/not sold (ie electrical goods);*
- (d) insurance issues (if any); and*
- (e) pros/cons of this venture.*

**REASON**

The Jetty Markets is a prime contributor to the restoring of the Jetty and is solely run by volunteers. They have been, for many years, unsure of their future home. The Council has already agreed to the private leasing of the site twice (but to date both have walked away). It would be a good exercise for the Council to look at recycling and making a profit. The following is from the City of Armadale's Website:

***"Drop 'n' Shop Reuse Centre***

*Help minimise waste and find a bargain at the City of Armadale's Drop 'n' Shop Reuse Centre at the Hopkinson Road Landfill and Recycling Facility in Brookdale.*

*Staffed by a team of volunteers and operated by the City of Armadale, the Drop 'n' Shop aims to return useable items to the community, rather than into landfill.*

*Forget throwing old or unused items into the rubbish bin – residents can take their reusable items for FREE to the Drop 'n' Shop and know they are helping the environment. Refurbishing and reusing household items and discarded building materials helps to conserve raw materials and save on the energy cost of producing new replacements. After sorting, cleaning, repairs or value-adding, Drop 'n' Shop goods are re-sold to the public at extremely competitive prices.*

*City of Armadale residents can bring a wide range of reusable goods to the shop, including furniture, kitchenware, garden items, bric-a-brac, building materials, equipment, tools, bikes, toys, books and clothing. Tyres, mattresses, computers or carpet are not accepted.*

*Stop in and browse among the huge range of items for a bargain buy!*

*The centre also runs a fun competition every second month with a prize for the person who has the most creative idea for reusing items they have bought at the Drop 'n' Shop.*

*Funds generated by the Drop 'n' Shop are used to operate the centre and for worthwhile community projects with an environmental theme. Volunteers for the Drop 'n' Shop are most welcome – phone manager Geoff Wheeler at the centre on 9399-6462 for details.*

*The City of Armadale Drop 'n' Shop is open Friday, Saturday and Sunday from 8.30am to 4.30pm."*

#### **STAFF COMMENT (Community and Organisational Development Directorate)**

Shire officers have had discussions with the Jetty Market operators on a couple of previous occasions regarding the relocation of the market. The need to discuss relocation with the market operators has not arisen recently due to the difficulties experienced in securing a suitable tenant for the Old Fire Station.

Generally the complications in sourcing a suitable site for the markets were due to their desire to; a) remain in the CBD and b) retain exclusive use of a building i.e. not co-locate with another similar business.

The availability of an area at the Busselton Waste Facility is possible but subject to advice by the Shire Waste Manager. However, there may be an area in Roe Terrace adjoining the Community Garden and this may prove to be a compatible grouping. The area has been viewed by other groups previously but the costs of land fill and surveying have been prohibitive.

If either of these sites were to be pursued a business case should be submitted by BJECA / Jetty Markets, identifying all related costs and the subsequent benefits of an operation of the type suggested in the NOM.

This project could not be progressed by the Property Manager in this financial year as resources are fully utilised carrying out planned activities contained within the 08/09 Corporate Plan. This project could be considered for progression within the next financial year, noting that the Property Manager would only be dealing with the site relocation component of the project. The more substantial components of the project, being recycling and business setup, would fall within the responsibility of Waste Management.

