



Shire of Busselton
Geographe Bay

ADDENDUM NO. 1
to
Council Agenda

11 March 2009

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

Issue Date: 9 March 2009

SHIRE OF BUSSELTON

COUNCIL MEETING TO BE HELD ON 11 MARCH 2009

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12. BUSINESS FROM PREVIOUS MEETING**12.1 CONFIDENTIAL MATTER - DISPOSAL OF LOTS 58 AND 59 CHAPMAN HILL ROAD AND LOT 60 QUEEN ELIZABETH AVENUE, AMBERGATE**

FILE NO: DEV4

**ATTACHMENT(S)
(CONFIDENTIAL):** A copy of the *confidential* report in relation to this matter, as issued with the Agenda for the 25 February Council Meeting, is attached for the information of Councillors, the Chief Executive Officer, Directors and the Executive Manager, Systems and Information only. The Attachment documents referred to in the report and which were provided to Councillors and the abovementioned staff with the 25 February Meeting Agenda, **have not** been re-issued on this occasion, but are available to view on the Councillors' Portal with the Agenda Attachments for the 25 February Council Meeting.

This matter, confidential under s.5.23(2)(c)(ii) of the Local Government Act 1995, being a matter that if disclosed would reveal information that has a commercial value to a person, was listed for the Council's consideration at its meeting on 25 February. At that meeting, the Council resolved (C0902/071) to refer it for consideration by the Council at its next Meeting on 11 March 2009.

12.2 ACCESS TO INFORMATION HELD BY THE LOCAL GOVERNMENT

FILE NO: COM1
ATTACHMENT(S) Advice "Access to Information by Councillors"
(CONFIDENTIAL): from Neil Douglas of McLeods Barristers and Solicitors

The attachment to this report has been marked confidential by the CEO and has been provided to Councillors, the CEO, Directors and Executive Manager, Systems and Information only. The advice, which was not provided as a confidential document by the solicitor, has been paraphrased in this report where appropriate. However, aspects of the advice extend to other matters arising from the consideration of correspondence associated with the initial request.

Therefore, only those aspects of the solicitor's advice that are specific to a) access to Lot 16 West Street file and b) access to information generally are included in this covering agenda item.

PRECIS

This information is provided to the Council as business from a previous meeting with regard to Council decision C0902/048. This decision required legal advice to be sought and in the event that the advice granted access to the file for Lot 16 West Street, the file being made available for the Councillors to peruse.

The advice has been received and is attached to this item. As a result of this, the Council is advised that part (b) of resolution C0902/048 cannot be carried out.

BACKGROUND

A Special Meeting of the Council was convened by the CEO on Monday, 23 February, 2009 after the required number of Councillors called the meeting by notice in writing. The meeting was called to consider conducting a review of the Standing Orders, changing the layout of the Council Chambers, obtaining Ron Back's governance workshop report, availability of the Lot 16 West Street file, provision of a report and/or figures that support the need for the proposed new administration centre and other general governance issues.

This report is specifically in relation to the availability of the Lot 16 West Street file and related access to information by Councillors and the Council generally.

The Council resolved (C0902/048):

- (a) *That legal advice on the matter of access to the file in relation to Lot 16 West Street and the matter of access to information in general be obtained from solicitors specialising in Local Government law and this be funded from COA 300.10500.3244. This advice will be sought within seven days.*

(b) In the event that the advice grants access in relation to Lot 16 West Street, that the CEO make available in the Councillors' room, the file relating to Lot 16 West Street to enable the file to be perused by Councillor Ryan and any other interested Councillors to enable Councillor Ryan and the other interested Councillors to perform their functions under the Local Government Act. The CEO to notify all Councillors by email when the file is available for perusal in the Councillors' room. The file is to remain in the Councillors' room for two full days. This decision is to be actioned by the CEO within seven days of the date of this meeting.

This matter was included in the notice for the Special Meeting of the Council following questions asked at a previous meeting of the Council (11 February, 2009) regarding a Councillor's specific request to access information. It was apparent the views of some Councillors regarding their rights under Section 5.92(1) of the Local Government Act were not in accordance with the Chief Executive Officer's application of this section of the Act, and the interpretation of this section in conjunction with Section 5.10 *The Role of the Councillors* and Section 5.41 *Functions of the CEO*, specifically part (h) as it pertains to records and documents of the local government.

The Council therefore resolved to seek an expert legal opinion on the specific matter of the Lot 16 West Street file and also access to information generally.

CONSULTATION

Not applicable.

STATUTORY ENVIRONMENT

Section 5.92(1) of the Local Government Act 1995 provides that: A person who is a Council member or a Committee member can have access to any information held by the Local Government that is relevant to the performance by the person of any of his or her functions under this Act or under any other written law.

This section of the Act is to be applied with regard to any other requirements of the Local Government Act 1995 and any other relevant written law. In giving the advice, the Solicitor has also given significant consideration to Sections 2.7, 2.10, 5.41(b) and 5.41(h) of the Local Government Act 1995, along with the Freedom of Information Act 1992, the Local Government (Administration) Regulations 1996 and the Local Government (Rules of Conduct) Regulations 2007.

FINANCIAL IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

This issue is important for the stakeholders in local government to understand. Pursuant to the advice, electors will now be fully aware that it is not the role of a Councillor to investigate a matter not before the Council. This will enable the Shire Councillors to educate the electorate that amongst other things, their access to information (other than that relating to matters before the Council) is only marginally more than that available to a member of the public.

POLICY IMPLICATIONS

Not applicable.

OFFICER COMMENT

The McLeods advice offers guidance with respect to the specific request from Cr Ryan and also the broader access issue. Importantly, what can be garnered from it also is the complex nature of the Local Government Act and its application.

The CEO's long-standing (and stated) position is that he is open to a Councillor's proposed justification to access information but takes a narrow definition in this regard amongst other things, to protect the Shire's exposure to the harshest penalties under the Act.

The advice indicates that the CEO guided by the legislation, has the statutory power to use his discretion in making the determination as to what is accessible.

The advice makes several conclusions. Broadly, a Councillor does not have the right to be given access on request to any document that the Councillor wishes to see. A Councillor's right of access is limited to information that is relevant to the performance of their statutory functions and a document will not satisfy the test of relevance simply because a Councillor believes or states that it is relevant to the performance of their functions.

It is necessary for the CEO to be satisfied that the relevant test has been met before giving such access and the CEO must consider whether there is sufficient connection between the documents and the performance by the Councillor of an identifiable statutory function.

The advice goes on to conclude, with specific regard to the file on Lot 16 West Street, Busselton, that the perusal of the file for the purpose of responding to questions from or requests for information by the owners of the lot are administration functions that are outside of the statutory functions of a Councillor or the Council. It was also lawful and proper for the officer to respond to the requesting Councillor to ask them to identify the basis for the request to access the information. Further to that, the requesting Councillor and any other Councillor have no right of access to this file.

OFFICER RECOMMENDATION

That the McLeods advice "Access to Information by Councillors" regarding Councillors' access to information held by the Local Government (Shire of Busselton) be acknowledged.

