



**Shire of Busselton**  
*Geographe Bay*

## **Council Agenda**

*25 March 2009*

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

## SHIRE OF BUSSELTON

### AGENDA FOR THE COUNCIL MEETING TO BE HELD ON 25 MARCH 2009

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**SHIRE OF BUSSELTON**

**MEETING NOTICE AND AGENDA – 25 MARCH 2009**

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**TO: THE SHIRE PRESIDENT AND COUNCILLORS**

**NOTICE** is given that a meeting of the Council will be held in the Council Chambers, Administration Building, Southern Drive, Busselton on Wednesday, 25 March 2009, commencing at 5:30 pm.

Your attendance is respectfully requested.

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**ANDREW MACNISH**  
**CHIEF EXECUTIVE OFFICER**

10 March 2009

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**A G E N D A**

1. **ATTENDANCE, APOLOGIES & LEAVE OF ABSENCE**

2. **OPENING PRAYER**

The Opening Prayer will be delivered by Greg Dudley of the Busselton Catholic Church.

3. **PUBLIC QUESTION TIME**

4. **SUMMARY OF RESPONSE TO PREVIOUS QUESTIONS TAKEN ON NOTICE**

5. **APPLICATIONS FOR LEAVE OF ABSENCE**

6. **CONFIRMATION OF MINUTES**

6.1 Minutes of an Ordinary Meeting of the Council held on 11 March 2009.

7. **ANNOUNCEMENTS** by the Presiding Member without discussion

8. **PETITIONS AND MEMORIALS**

9. **DECLARATION OF DUE CONSIDERATION**

The Presiding Member will request 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.

10. **DECLARATIONS OF INTERESTS**

11. **PRESENTATIONS BY PARTIES WITH AN INTEREST**

12. **BUSINESS FROM PREVIOUS MEETING**

### 13. LIFESTYLE DEVELOPMENT REPORT

#### 13.1 PROPOSED DISCOUNT DEPARTMENT STORE AND RESTRICTED BUSINESS CENTRE - LOT 17 WEST STREET AND LOTS 2, 3, 11 & 300 BUSSELL HIGHWAY, BUSSELTON

<b>FILE NO:</b>	14696
<b>PROPOSAL:</b>	Discount Department Store Restaurant Takeaway Food Outlet Professional Consulting Rooms Motor Vehicle and Marine Sales Premises Community Centre Showroom Bulk Store Plant Nursery Tavern
<b>LOT SIZE</b>	Lot 2 – 930m <sup>2</sup> Lot 3 – 2023m <sup>2</sup> Lot 11 – 2023m <sup>2</sup> Lot 17 – 81792m <sup>2</sup> Lot 300 – 4046m <sup>2</sup> Total land area = 9.08 ha
<b>ZONE:</b>	Restricted Business
<b>POLICIES:</b>	Car Parking Policy Percent for Art Policy
<b>ATTACHMENT(S)</b>	A – Location Plan B – Overall Site Plan C – Preferred Traffic Management Option D - Elevations

#### **PRÉCIS**

The Shire has received an application seeking planning consent for a Discount Department Store and Restricted Business Centre, including the uses 'Restaurant', 'Takeaway Food Outlet', 'Professional Consulting Rooms', 'Motor Vehicle and Marine Sales Premises', 'Community Centre', 'Showroom', 'Bulk Store', 'Plant Nursery' and 'Tavern'. The development will contribute a net lettable area of approximately 27,656m<sup>2</sup> of commercial floor space to the Busselton town centre, primarily for the sale of bulky goods. To provide an indication of the significant scale of this development, the Draft Commercial Strategy (2008) identifies a total of approximately 84,000m<sup>2</sup> of retail and other commercial floorspace in the Busselton Centre in 2006.

Traffic management has received a substantial amount of attention during the assessment process of this development application with a number of options being considered. A preferred option has been identified which will be subject to a Traffic Impact Assessment and Road Safety Audits to resolve any minor design issues.

The proposal has been forwarded to the Council for determination given that it is a significant development for the Shire and the Busselton town centre.

The development is considered to be generally compliant with the objectives of the Scheme and policies of the Shire and is therefore recommended for approval.

## **BACKGROUND**

7 September 1999 - District Town Planning Scheme No. 20 was gazetted which identified Lot 17 within the 'Residential' zone with a Residential Design Coding of 'R30'.

10 May 2006 – The Council resolved to adopt for final approval Scheme Amendment 72, which primarily proposed to rezone Lots 16 and 17 West Street, West Busselton from 'Residential' to 'Restricted Business', introduce 'Special Provisions' and 'Additional Use' provisions for a discount department store to Lot 17, and re-align the 'Wetland' area boundary in the locality. The Amendment was initiated in order to provide for future commercial development of the site in response to the shortage of 'Restricted Business' zoned land in the locality and the difficulty of developers in securing a suitable site for a discount department store ('DDS') in the town centre. The remainder of the land would then be available for 'showroom retail' and the other commercial uses that are already permitted in the 'Restricted Business' zone and for which there is significant demand. The site was situated within the Wetland area, however given that the characteristics of the land were different from the general characteristics on which the delineation of the land within the Wetland area was based. Accordingly the Amendment also re-aligned the boundary to generally coincide with the developable area of the site and adjacent land.

22 June 2007 – The notice of adoption of Scheme Amendment No. 72 by the Minister for Planning and Infrastructure was published in the Government Gazette.

## **PROPOSAL**

The subject application is for the proposed development of a 'Restricted Business Centre', providing for a wide range of uses compatible with the existing zone. The proposal will incorporate a number of properties, in aggregate totalling a land area of 9.08 hectares. The main portion of the land (Lot 17 West Street) is currently vacant with a small number of individual trees. The property has previously been grazed and has little to no understorey vegetation.

The proposed development will incorporate an aggregate gross floor area of 31,547m<sup>2</sup>, distributed across several separate buildings, with a net lettable area of approximately 27,656m<sup>2</sup> of commercial floor space.

The uses proposed to be accommodated on the site include a discount department store, restaurant, takeaway food outlet, professional consulting rooms, motor vehicle and marine sales premises, community centre, showroom, bulk store, plant nursery and a tavern.

A requirement of the Scheme is that public access and dual use path connections between Prince Regent Drive, Bussell Highway and West Street and development of the foreshore/drainage reserve are provided in the first stage of development as a minimum. It is also proposed that the discount department store be required in the first stage.

The applicant has advised that there is no intention to subdivide the property in the future and will hold the land ownership following development. The applicant has also indicated an intention to purchase and develop other adjacent properties where possible to develop and strengthen links to the Busselton CBD.

## STATEMENT OF IMPACT

Concern has been raised by surrounding landowners with regard to noise and dust during the construction period, particularly the adjacent vehicle sales businesses. The developer is required to adhere to the normal conditions of construction, which involves compliance with Local Laws and the *Environmental Protection (Noise) Regulations 1997*. Furthermore, a noise and dust management plan will be required prior to commencement of construction.

Increased traffic along Bussell Highway could also be perceived as an issue. The proponent and Shire officers have worked extensively to find a solution to this matter. This is discussed in further detail in the Clause 13 section of the report.

## CONSULTATION

As a number of the uses proposed are 'SA' uses requiring advertising, the proposal was advertised in accordance with Clause 12 of the Scheme for a period of 21 days. Notices appeared in the local paper on 12 and 14 November, 2008 and nearby land owners considered to be potentially affected by the proposal were notified directly.

Four submissions were received during this period, identifying concerns or objections. A summary of the issues raised during the referral period and the planning comments are as follows:

1. *Request the access between the business centre and Prince Regent Drive be reduced to a footpath. Concern with proposed access off Prince Regent Drive into the development for the following reasons:*
  - (i) *Prince Regent Drive will become a race track endangering local pedestrian traffic and the motorists will come to grief on the roundabout at Shannon Place.*
  - (ii) *If the access is built in by the developer and is unsafe it will be at the Council's (Ratepayers') expense to correct.*
  - (iii) *The clients of the (proposed) tavern leaving too late will use Prince Regent Drive to bypass breathalyser units.*

- (iv) The planned access will benefit very few people and will become a shortcut for speeding drivers avoiding the traffic lights.*
- (v) Residential area and commercial area should remain separated as much as possible.*
- (vi) One main access and two secondary access points should be adequate.*

This concern was considered by the Council during the amendment process for Scheme Amendment No. 72. As a result, the Scheme (pursuant to Schedule 7, Special Provisions) and the Land Use Concept Plan (adopted by the Council with Scheme Amendment No. 72) were modified to require the provision for public access and dual use path connections between Prince Regent Drive and Bussell Highway and West Street. These road connections are anticipated to improve traffic management in the locality by providing alternative routes and distributing traffic for residents within the area bounded by Bussell Highway in the north and the high school in the west. The road connection from Prince Regent Drive will be designed to discourage non-local traffic from using residential roads by the use of traffic management mechanisms and constructing it as an entry only and the use of speed humps and change of pavement. This connection is to be provided in the first stage of development and at the full cost of the developer.

- 2. The proposal refers to Lot 16 as part of the development which is not correct. The proposal includes walkway through Lot 16. Support not given to the construction of this on Lot 16 and if required it should be located outside Lot 16. No consent has been given for the construction of this walkway or the inclusion of such in the development plans.*

The Land Use Concept Plan requires the provision of a dual use path (DUP) connection from Prince Regent Drive to West Street. The DUP is currently shown to be located within the area of reserve connecting the existing DUP south of Prince Regent Drive to West Street. Whilst the site plan indicates the DUP to extend through Lot 16, it is acknowledged that Lot 16 does not form part of the current development proposal. There is provision in the current design for the DUP to terminate in the carpark of Lot 17. At such time as Lot 16 is developed the DUP will be extended in accordance with the Shire's requirements. In the interim, separate pedestrian access will be required to link to West Street.

- 3. Concern that adequate provision has not been made for the drainage of the area when the development is completed. Concern water runoff may flow or seep into adjacent properties, either over or through retaining walls.*

The developer is required to dispose of all stormwater on site. A detailed Stormwater and Drainage Management Plan is required by the Scheme to be undertaken for this development. Amongst other things, this Plan is to address the management of stormwater on site, the provision of nutrient and pollution stripping mechanisms and avoid adverse impacts on the adjacent

wetlands, including during construction. The plan (also called an Urban Water Management Plan) has been submitted to the Department of Water for consideration and will require approval of the Shire before a building licence is issued. Assessment of this plan will consider the issue raised.

4. *Engineered retaining walls to be installed along boundaries where required between Lot 17 and adjacent properties. One particular residential property owner has requested walls to extend 300 – 500mm beyond retaining height (to prevent water sheeting over the wall) with full height 1.8m Colorbond / Neetascreen fence above.*

Retaining walls greater than 500mm in height are required to have a building licence and be appropriately engineered. Further, any development is required to ensure that no stormwater enters an adjacent property and must be disposed of on site. The Department of Water have also acknowledged that the drainage should be designed and located such that there will be no impact on Lot 16 to the south-east of this development. These details are to be covered by the Urban Water Management Plan. As such, the Shire has no requirement to further enforce a greater height for the retaining wall than what is necessary for retaining fill. An agreement could however be made between the two landowners to increase the height of the wall. It should be noted that a 1.8 metre fence will be required on top of the retaining wall, along with a vegetated buffer of advanced trees to ensure the privacy of the existing dwelling is maintained.

5. *No information has been provided on lighting during construction and after development. Any such lighting should be designed in such a manner that it does not intrude upon adjacent properties (especially residential), particularly regarding privacy.*

Construction is not permitted to take place on the site other than between 7am and 7pm Monday to Saturday, therefore there should not be a requirement for lighting on the site during construction. The developer will however be required to provide street lighting internally within the development and this will be required to be done in a manner sensitive to surrounding residential properties and the wetlands.

6. *Dust and rubbish during construction and ongoing operation will impact on adjacent businesses associated with the selling, servicing and displaying of new and used vehicles. Existing fences could be damaged and a temporary security fence with a close net weave (to catch rubbish etc) should be erected.*

Under the Shire of Busselton Health Local Laws 1997 the builder is required to ensure that adequate provision is made for the disposal of builder's rubbish and refuse. The container used for this purpose is to be fitted with a lid and be located on the building site for the duration of construction works.

A dust management plan will be required as a condition of approval to address amelioration of dust issues during the construction phase of the

development and this will be required to be prepared and assessed taking into account adjoining land uses.

7. *Concern with noise levels during construction and ongoing operation in relation to adjacent residential uses.*

Noise from the site is required to comply with the *Environmental Protection (Noise) Regulations 1997* wherein construction activity causing noise is not permitted to take place other than between the hours of 7am to 7pm, Monday to Friday (excluding public holidays).

8. *Excavation works, dewatering, compaction and associated construction activities could cause settling to the property. Developers to be adequately protected by insurance, such that any damage to land or buildings on adjacent properties will be acknowledged and rectified and that such rectification and necessary insurances be put in place at the cost of the developer. Request condition for requirement of dilapidation survey be carried out on adjacent properties by the proponent.*

The Shire has no requirement for builders to provide building / construction insurance cover on a commercial development. Similarly, the Shire does not require a dilapidation survey to be undertaken. It is the responsibility of the builder to ensure the necessary insurances are in place and this may include the provision of a dilapidation survey as a requirement of the insurance provider.

9. *Concern with kangaroo management for the removal or relocation of the kangaroos that use the area for feeding.*

As a number of kangaroos currently use Lot 17 to feed, a Kangaroo Management Plan will be required to effectively manage the species during the construction phase. The site is proposed to be fenced during construction to deter fauna from accessing the site and normal construction activity will also dissuade animals from entering the site. The removal of the grasses will remove the incentive for the kangaroos to visit. Management may be required during the initial stages of revegetation works to protect plantings from grazing pressures.

The aims of the Kangaroo Management Plan will be to deter kangaroos from entering the development site both during and after the construction phase, propose a method for control of kangaroo abundance in the adjacent wetlands, and recommend ways forward for the cooperative management of overabundant animals. The Plan will be developed in consultation with the Shire and the Department of Environment and Conservation.

10. *Any planned signage should allow clear viewing access to our business.*

All signage will be subject to approval by the Shire and will be required to comply with the Shire's Local Law relating to signage.

11. *There is to be no interruption to essential services (power, water, sewerage etc).*

This issue comes under the control of the respective agencies, who would require a consistent supply of, or minimal disruption of, essential services to adjacent properties.

12. *Road layout / upgrades – customers and staff are to have full access to their own property at all times.*
13. *There needs to be a plan for building contractors parking so that it is organised in an orderly manner.*

Regarding the above two comments, the applicant / builder will adhere to normal conditions of construction. For any potential disruptions associated with upgrading of public roads, particularly at the development's access points, a traffic management plan will be submitted with engineering plans for comment and approval. It cannot be guaranteed that there will be no disruption to access and adjoining businesses.

The proposal was also referred to a number of government agencies. A response was received from Main Roads WA, the Water Corporation and the Environmental Protection Authority.

Main Roads WA advised they had no objection to the proposal and no further comments were offered.

Advice was received from the Water Corporation in relation to the existing sewer line that runs across the property, from Prince Regent Drive to West Street. The large building proposed in the south of Lot 17 would be located over the existing sewer line, therefore the Water Corporation advised that the applicant will be required to tunnel over the sewer, being an expensive option, or provide for the relocation of the sewer on an alternative route. The applicant has since advised that the sewer will be relocated along the internal access road that runs between Prince Regent Drive and West Street.

The Environmental Protection Authority advised that at the time of Scheme Amendment No. 72 the EPA authorised the alteration of the EPP Lake, under section 40(1)(a) of the *Environmental Protection Act 1986*, subject to a subdivision and Stormwater Management Plan. Accordingly, the EPA Service Unit forwarded the Urban Water Management Plan to the Department of Water for comment. The DoW has been working with the proponent's engineer to resolve any outstanding issues.

## **FINANCIAL IMPLICATIONS**

The cost of road upgrades and new dual use paths as a direct result of this development will be borne by the applicant. In this regard there are no identifiable financial implications to the Shire arising from this proposal.

## STRATEGIC IMPLICATIONS

The proposal is considered to be consistent with the relevant Strategic Objectives of the Shire of Busselton's Strategic Plan 2006-2011:

- \* *Facilitate and assist in the development of quality community facilities and services.*
- \* *To develop and maintain the Shire's assets and built environment to maximize public benefit now and into the future.*
- \* *Ensure development of the Shire recognises the unique character of the region and successfully balances.*
- \* *To promote an environment that supports and encourages business that contributes to the community and is in keeping with the environmental and cultural aspirations of the region.*
- \* *To minimise the adverse environmental impact of the activities of the Shire of Busselton and to encourage local businesses and the community to adopt practices that reduce their ecological footprint.*

Other outcomes of the Strategic plan are not considered to be compromised by the proposal.

## STATUTORY ENVIRONMENT

### Scheme Requirements

The subject properties are zoned 'Restricted Business' under the Shire of Busselton District Town Planning Scheme No. 20 (the Scheme). The proposed uses and their permissibility within the Restricted Business zone are outlined below:

Discount Department Store	AA*
Restaurant	AA
Takeaway Food Outlet	SA
Professional Consulting Rooms	SA
Motor Vehicle and Marine	SA
Sales Premises	
Community Centre	AA
Showroom	AA
Bulk Store	AA
Plant Nursery	SA
Tavern	SA

\*The use of 'Discount Department Store' is not listed within the Zoning Table of the Scheme, however is described within Schedule 4 as an 'AA' within the defined Additional Use' area on Lot 17.

Pursuant to Clause 21 of the Scheme, an 'AA' use may be carried out only with Planning Consent and a 'SA' use may be carried out only with Planning Consent issued after public advertising.

#### Clause 13 - Matters To Be Considered

Clause 13 of the Scheme provides several matters that are required to be considered in determining an application for Planning Consent. With reference to Clause 13(1) the following matters are considered relevant:

*“(a)(v) any Subdivision Guide Plan, Development Guide Plan, Structure Plan or other plan or Policy endorsed by the Council applying to or that is considered to relate to the land to which the development application relates.”*

A Land Use Concept Plan was adopted by the Council in May 2006 with Scheme Amendment No. 72. The Land Use Concept Plan applies a number of Planning Policy Statements relevant to the current application. The provisions of the Plan are discussed later in the report, under the heading Schedule 7 – Special Provisions.

*“(b) the impact of that development on the environment and, where harm to the environment is likely to be caused, any means that may be employed to protect the environment or to mitigate that harm;”*

The environmental issues on the site would appear to be relatively minor, noting that the site has been raised from natural ground level through the importation of fill and has been stock-grazed for many years. The two issues which are of some concern relate to the retention of stormwater drainage on site and protection of the adjacent wetlands and floodway.

The southern portion of the site is situated in a floodway and wetland area as designated under the Scheme. This portion of the site has been reserved for Recreation for buffer and drainage purposes. The site will require significant fill in order to raise finished floor levels to the required clearance, being a minimum of 2.28m AHD (Australian Height Datum) and this will need to be carefully managed, particularly in relation to the management of stormwater drainage and potential flooding from storm events.

The Special Provisions and Land Use Concept Plan require a Stormwater and Drainage Management Plan that addresses, amongst other things, the management of stormwater on site, the provision of nutrient and pollution stripping mechanisms and avoids adverse impacts on the adjacent wetlands, including during construction, to the satisfaction of the Department of Environment (now Department of Water - DoW) and the Shire. The DoW is currently engaged in dialogue with the developer to resolve any outstanding issues relating to the Plan (also called an Urban Water Management Plan - UWMP). A condition will require this plan to be approved by the DoW and the Shire prior issue of a building licence.

The wetlands directly to the south of Lot 17 contain a Conservation Category wetland as determined by the Department for Environment and Conservation's wetland mapping. A minimum setback of 50 metres is applied from a Conservation Category wetland, which on this lot falls within the area dedicated for Reserve. The proposal indicates this area for revegetation with public boardwalks and interpretive information. A small portion of car parking is included which incorporates permeable paving however this is subject to the DoW's approval of the UWMP.

*“(e) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of that development;”*

The foreshore reserve appears narrow in width and the wetlands are very close to the boundary of the site. A portion of the buildings and loading area is proposed within the designated area for the reserve and these should be relocated. The height of the building abutting also serves to dominate the space in terms of light, shade and visual amenity.

The building currently has its back to the proposed foreshore and has adjacent loading bay areas and parking. It is recommended that the buildings have a more tapered or softened interface with this foreshore reserve or a greater visual buffer to the south so the development does not dominate the wetlands landscape. The wetland / foreshore reserve is the only natural or cultural feature adjacent to the proposed development and should be highlighted as a feature from the building facing out to the foreshore rather than backing onto it. Large windows or possibly a café wrapping around the edge of the building so people can look out on to the foreshore will provide opportunities for interaction. Notwithstanding this, there should be no light shed into the wetlands area from the development at night. The applicant has advised that the portion of the design in question shall be modified so as to ensure the interface between the reservation and the buildings on site is activated.

*“(g) whether the land to which that application relates is unsuitable for that development by reason of its being, or being likely to be, subject to flooding, tidal inundation, subsidence, slip or bush fire or to any other risk;”*

Being adjacent to wetland, the surrounding area is relatively low lying. The minimum finished floor level is to be raised to at least 2.28m AHD, consistent with adjacent residential development which will require approximately 1.6 metres of fill. Due to requirements for drainage infrastructure is to be located above average annual maximum groundwater level, there is a possibility that the finished ground level is raised higher than 2.28m.

*“(i) whether the proposed means of entrance to and exit from that development and the land to which that application relates are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles within that development or on that land;”*

- (j) *the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system;”*

The traffic that will be generated by the development will be significant and traffic management has received a substantial amount of attention during the assessment process of this development application with a number of options being considered. The potential increase in traffic as a result of the commercial development with projected population increases have been modelled for various options to give confidence that an agreed outcome will not exacerbate traffic issues in the near to mid-term future.

The traffic management option found to minimise impact on the community would essentially be as follows:

- \* The main access to the commercial development will be from Bussell Highway at the eastern entrance. This entry will not be controlled by way of traffic signals or roundabout, however the right turn exit out of the development will be prohibited. This can be controlled by the use of signage and the design of kerbing.
- \* The secondary access to the development will be from West Street. This access will allow exits in both directions to allow vehicles travelling east to access the road network. Traffic would then be dispersed south down West Street, or north along West Street and then either east along Peel Terrace or to the traffic lights at West Street/Bussell Highway. Please note that although a roundabout has been shown at this location on the site plan, at this stage it is not seen as necessary to provide traffic signals or a roundabout.
- \* Another access to the development will be provided from Prince Regent Drive, as required by the Land Use Concept Plan. This entry will be one-way only and designed to prevent vehicles exiting from the development and into Prince Regent Drive. The location of this entry would encourage only local traffic, being those living in the area south of Bussell Highway and east of the high school. This entrance will give these residents ease of access to the commercial development and other locations to the east as opposed to a need to turn right onto the Highway.
- \* The western most access along Bussell Highway is to be a signalised ‘exit only’ from the development site to the highway. This would assist in distributing traffic exiting the development and particularly those vehicles travelling east. An advantageous outcome of this design is that it would provide a safe exit for those residents who currently turn right out of Court Street and Bovell Street by either giving them the option to turn right at the traffic lights, or the presence of the traffic lights creating a break in traffic flow along the Highway. This access has been restricted to exit only in order to reduce the delay

to vehicles travelling east/west along the Highway and therefore reducing traffic queues.

A Traffic Impact Assessment and Stage 2 and 3 Road Safety Audits are to be provided prior to any site works or building licence being issued which will resolve other design details of the proposal. Pedestrian and cyclist facilities are also required to be addressed. The Traffic Impact Assessment and Road Safety Audits are to be peer reviewed at the cost of the applicant.

*“(k) whether public transport services are necessary and, if so, whether they are available and adequate for that development;”*

South West Coach Lines runs the town bus services with several routes running near by to the proposed commercial development. The provision of additional commercial services is likely to strengthen the demand for public transport as more people require access into town. The developer is considering arrangement of a bus service to enter site along the main arterial route between Bussell Highway and West Street.

#### Table 1 (Zone Objectives and Policies)

The development is found to comply with the objectives and policies of the Restricted Business zone, in particular by providing for relatively low intensity commercial and retail uses with extensive floor space requirements which, by the nature of the activity conducted, require relatively direct and easy access to parking areas for loading purposes. The development also acknowledges the predominance of the town centre by strengthening pedestrian links to the main shopping precinct.

#### Clause 47 – Height of Buildings

The property currently has a 10 metre height limitation applied by Clause 47(2)(b) of the Scheme.

Notwithstanding this, Clause 47(4) accommodates approval of buildings in excess of 10m in height subject to the Shire being satisfied that the building height is consistent with the relevant assessment criteria specified under Clause 13 and the Performance Criteria specified under provision 3.7.1 (P1) of the Residential Design Codes (R-Codes).

Firstly, the assessment of the matters to be considered pursuant to Clause 13 above does not prevent the granting of planning consent for this proposal. Secondly, the requirements of the R-Codes only apply to Residential zoned properties, in any case the particular provisions 3.7.1 (P1) of the R-Codes are included as follows:

*“Building height consistent with the desired height of buildings in the locality, and to recognise the need to protect the amenities of adjoining properties, including, where appropriate:*

- \* *adequate direct sun light to building and appurtenant open spaces;*
- \* *adequate daylight to major openings to habitable rooms; and*
- \* *access to views of significance."*

The only occupied property to the south of Lot 17 is Lot 16 West Street. Although zoned Restricted Business, an existing dwelling currently has non-conforming use rights. Assessment of the proposed commercial development against the overshadowing provisions of the R-Codes indicates that the existing dwelling on Lot 16 will not be shadowed by the proposed development (this is based on a calculation of the vertical sun angle at midday on 21 June).

The components of the proposal in excess of 10 metres in height are the DDS building near West Street frontage and the building on the northern boundary of the site. These buildings will be approximately 12m in height or 13.6m above the natural ground level. In this regard it should be noted that adjoining residential development has already been filled to the required ground level. Given that these buildings are within the development and part of an overall complex the heights proposed are considered acceptable.

#### Part 7 – Specific Business Provisions

The development has been designed to provide service and loading areas for the large format tenancies in accordance with clause 66 and 67. Although the plans indicate a portion of the building and loading area for the southern most building is shown partly within the area designated for Reserve. These areas are required to be redesigned so as to be located outside of the Reserve.

The provision of parking is predominantly guided by the Shire's Car Parking Policy. Compliance with the Car Parking Policy is discussed later in the report.

#### Schedule 4 – Additional Uses

A component of Scheme Amendment No. 72 proposed the inclusion of an additional use (A64) over Lot 17 for a discount department store. In support of the amendment the applicant provided an independent analysis of the retail opportunities within the Shire, including an opportunity assessment which was completed in April 2004. The opportunity assessment included a survey of 300 randomly chosen residents within the Shire which indicated support for a DDS and demand for additional showroom retail floor space in the town, although not necessarily in this location.

The additional use specified by A64 was identified to be an 'AA' use for the purpose of Clause 21 of the Scheme. The Additional Use provisions also require the development to be in accordance with the Land Use Concept Plan adopted by the Council and the discount department store to have a gross leasable floor area of not less than 5,000m<sup>2</sup> and not more than 8,000m<sup>2</sup>. The application proposes a discount department store incorporating a gross leasable floor area of 7,500m<sup>2</sup> and is therefore compliant with the floor space requirements of Schedule 4.

### Schedule 7 – Special Provisions

The Special Provisions over Lot 17 (SP26) requires development within the property to be in accordance with the Land Use Concept Plan (LUCP) adopted by the Council as part of Scheme Amendment No. 72.

Investigation of environmental and water management issues have been undertaken by the applicant in formulating the development concept. An Urban Water Management Plan (UWMP) has been prepared consistent with water sensitive urban design, which is currently being assessed by the Department of Water. To accommodate an overland flow path during storm events, the car park areas will be graded to allow overland flow from north to south. The overland flow generated by storm events could be significant and the UWMP would need to adequately indicate how stormwater would be dealt with, particularly in relation to the fill level and the relative clearance to groundwater that would be available. In addition, the prevention of movement of any contaminated stormwater from the site to the adjacent wetland via groundwater or overland flow will need to be comprehensively addressed within the UWMP. A condition of approval will require the completion of the UWMP, consistent with the requirements of the LUCP and the Special Provisions, prior to the issue of a building licence.

The interface with residential development should aim to provide some privacy whilst avoiding areas susceptible to anti-social behaviour. The provision of low volume car parking areas mainly for staff along the western boundary and planting of landscape buffers predominantly with trees (the WA Peppermint tree) around these boundaries will assist with protecting the privacy of those residents. The location of low impact business such as a Medical Centre or Professional Consulting Rooms along the western boundary has been recommended to the applicant to reduce the impact on the adjoining residential area. The proposed Tavern will not be permitted within the area designated on the LUCP for sensitive design.

The southern portion of the site, indicated within the Scheme maps as Reserve, is required to be ceded to the Crown free of cost to be vested in the Shire. This area is required to incorporate wetland buffers, public access and stormwater drainage infrastructure. The 50m setback from the Swan Coastal Plain Conservation Category wetland boundary is to be ceded to the adjoining Nature Reserve. The boundary of the development and the 50m buffer is to be fenced by the proponent, which will be 1.5m high, black coated PVC galvanised wire mesh and black coated PVC galvanised posts and top rail.

In addition to this 50 metre setback a further area is to be ceded and will contain stormwater drainage infrastructure and the Shire's public access requirements. The drainage design proposed by the proponent and agreed by the Shire (on the advice from DoW) will dictate the required setback to enable the roof run-off outlet system to disburse the stormwater in a controlled manner to ensure there is no erosion or sediment mobilisation. The drainage design will also dictate the additional area required to accommodate the public access infrastructure. The drainage design release outlet(s) should be designed and located, such that there will be no impact on the separate land holding to the south-east of Lot 17.

A Wetland Management Plan will be required incorporating a Revegetation and Weed Management Plan and identifying the proposed public access and fence at the boundary of the wetland. An opportunity for seating and interpretive signage also exists within this area. The proponent is required to rehabilitate the wetland buffer area (ie. the area to be ceded to the Nature Reserve) and maintain it for 3 years.

The interface of the development with the wetlands is also required to be redesigned to be sympathetic to the existing values of the wetlands. As mentioned previously at the discussion of Clause 13, the southern most building should have a more softened frontage to the foreshore and a greater visual buffer so the development does not dominate the wetlands landscape. The loading area and associated accessway is required to be removed from the Reserve area.

Preparation of Dust and Noise Management Plans, addressing issues associated with the construction and ongoing operation of the development, shall be undertaken by the proponent prior to the issue of a building licence. This requirement is adequately addressed through the imposition of an appropriate condition on the Planning Consent.

In accordance with Planning Policy Statement 7 of the Land Use Concept Plan (associated with Amendment No. 72 to the Scheme) access through the site to/from Prince Regent Drive is to be designed to discourage non-local traffic from using residential roads. Designs could incorporate one way access (entry only), a less direct route through the car park and also various traffic calming devices. Further information will be provided at the detailed design stage for the building licence.

A requirement for a Community Facilities Contribution Plan is to be addressed, which provides for the establishment of a facility or part thereof of minimum 50m<sup>2</sup> of built floor space for community and civic use. The community purpose site has been indicated by the applicant as the 287m<sup>2</sup> triangular shaped building near the southwest corner of the development (adjacent to the internal road between Prince Regent Drive and West Street).

## **POLICY IMPLICATIONS**

### Development Guide Plan

A Development Guide Plan (DGP) was adopted by the Council in 1994 which covered a number of properties on the southern side of Bussell Highway, including Lot 143 (currently private dwelling) through to Lot 1 (currently Light Ideas). The intention of this DGP was to provide consistent front and rear setbacks and shared crossovers and parking areas.

In relation to the existing crossovers:

1. The existing crossover at the eastern end of Lot 300 (currently Busselton Mitsubishi) is shown as an entry/exit on the DGP. This will be removed and replaced with the development's main entry/exit point at the middle of Lots 11 and 300.
2. The existing crossover at the western end of Lot 11 (currently dental surgery and shared with Harvey Norman) is a temporary access, permitted at the time of development approval of these lots and will therefore require

removal. The owner of Lot 401 was advised when the temporary crossover was approved in October 2002, that this access must be closed and reinstated with car parking, landscaping and footpath when Lot 300 is redeveloped.

3. Crossover between Lots 1 and 3 is in the general vicinity of the entry/exit shown on the DGP (shown between Lots 3 and 4).

Where crossovers are to be removed, the developer will be required to reinstate kerbing, carparking, footpaths and landscaping in consultation with affected landowners. Some minor alterations may be required to the adjacent car parking areas as a result of the intersection designs, however access to all businesses along this stretch of Bussell Highway for staff and customers will be ensured.

The development will be required to comply with the standard requirement for a 3 metre wide landscape strip fronting Bussell Highway. Car parking is then provided in the front setback areas, with buildings having a setback from the Bussell Highway boundary no less than 21.5 metres. The rear setbacks are not considered to be of great consequence as the proposed buildings on Lots 11 and 300 will be integrated with the development at the rear (Lot 17).

#### Car Parking Policy

The vehicle movement and parking arrangements are designed to facilitate safe, efficient and secure access for users of the development. Although some minor modifications will be required at the detailed design stage, the key elements of the Shire's Car Parking Policy have been complied with.

In total, 1,162 car bays have been provided, including 20 disabled bays. The bays have been allocated so that 790 bays are located at ground level and 372 bays at roof top level. Given the application seeks the Council's approval for a range of uses across the site, the following provides an example of a scenario to demonstrate the car parking calculation.

Use	Floor Area (m <sup>2</sup> )	Ratio	Parking Spaces
Shop (DDS)	7,500	1 space per 30m <sup>2</sup> of 'gross leaseable area' plus 1 loading bay per development	250
Showroom	16,125	1 space per 50m <sup>2</sup> of 'gross leaseable area' plus 1 loading bay per development	322
Restaurant	1,612 (Assuming 80% of gross floor area open to public)	1 space per 6m <sup>2</sup> of public area	268
Takeaway Food Outlet	90 (Assuming 6 outlets each with 15m <sup>2</sup> queuing area)	1 space for every 1m <sup>2</sup> length of queuing area	90
<b>Total Required</b>			<b>930</b>
Provided			1,162
Surplus			+ 232

It is considered sufficient on-site parking is provided to readily accommodate anticipated demand generated by the development.

### Percent for Art Policy

The Percent for Art Policy requires a contribution of one percent of the estimated cost of development be provided towards the inclusion of artworks in built form and public spaces. Art work/s associated with the project are to be approved by the Shire before approval of a building licence and installed prior to the issue of a Permit to Use.

Public art elements which fulfil the requirements of the policy could include pavement treatments, balustrading and the development of cultural and historical themes throughout the development, in addition to sculptural forms.

The applicant has been advised that it is important that these considerations be addressed early in the design process, as the contribution will be more effectively applied to the benefit of the development if integrated early on. The applicant has advised that the project team is working towards engaging the services of Artsource (a non-government agency representing Western Australian visual artists and offering advice and a range of services), however no further communication has taken place with the Shire at this stage.

### Draft Local Commercial Planning Strategy (LCPS)

The LCPS is still in draft form and has not yet been adopted by the Council for formal consultation, therefore it is not a seriously entertained document. The Shire is currently in the process of incorporating consultation outcomes and developing the strategy further before it is considered by the Council for adoption for formal consultation. At this stage the document is only regarded as an informal guide at a staff level.

Several urban design principles were developed for the Busselton CBD, however, given the site is adjacent to the CBD some of the strengths/weaknesses, opportunities, vision and urban design principles could be considered applicable to this proposal.

Given the site is physically separated from the immediate town centre by the highway and the possibility that it may create some fragmentation of the town centre, it is considered crucial that detailed consideration be given to the integration of this site with the current retail core in Busselton.

The development provides excellent opportunities for cycling/pedestrian routes across the site to link to the CBD. Actual details of paths are to be provided as a condition of approval prior to the issue of a building licence. The applicant will also consider provision of secure bicycle parking in convenient and weather protected areas.

An opportunity exists to provide for an improved interface with the adjacent wetland and proposed foreshore reserve. This is one of the connecting elements of the CBD and a potential link to the eastern side of other parts of the CBD and townsite. The applicant has approached this issue by incorporating this element

into the site design and proposing wetland interpretive signs along the walk way within the Reserve at the southern portion of the site.

Similarly with heritage features, reflection in the design on the townsite's coastal seaside location and integration with the CBD is possible. The Council endorsed a Streetscape Manual in April 2008 to be used by the Shire and also to serve as a guide for private developers. The proponent has been encouraged to include street furnishings in designs consistent with the CBD, such as benches and secure bicycle parking. The proponent has advised they will give consideration to incorporating the streetscape manual even though it does not formally apply to the subject site. Architecturally, the development proposes continuous and light varied canopies, window elements, textured walls, shading elements, landmarks and urban vistas to reflect the coastal location of the area. Furthermore, proposing active and varied frontages with a traditional approach of modern and vibrant appearance will assist in providing a quality and active development.

#### Busselton Wetlands Conservation Strategy

The Strategy was adopted by the Western Australian Planning Commission (WAPC) in late 2004 to provide a framework to guide the sustainable land use and management of the biodiversity and environmental values of the Busselton Wetlands, which extend from the Broadwater Wetlands to the Wonnerup Estuary.

The area immediately adjoining the southern boundary of Lot 17 is identified in the Strategy as the New River Wetlands and is an existing Conservation/Recreation reserve.

The Strategy indicates that urban development should be confined to areas committed by zoning pursuant to the Scheme and any endorsed structure plans or planning strategies. The proposal has been designed in accordance with these guiding documents.

#### Designing Out Crime Principles (WAPC Publication)

Building design should front onto the wetlands and also the western car park to avoid creating 'dead areas' which can be susceptible to crime and unsociable activity. Consideration of 'designing out crime' guidelines should be incorporated and appropriate design and lighting will be necessary to address mass of buildings, inappropriate car use and security issues. The potential to increase night time activity within the development may also reduce the possibility of crime. Applicant's response not satisfactory on this issue. Consider double fronting of western buildings, medical type uses backing onto western boundary (loading/storage areas at the rear which can be locked up at night).

#### **OFFICER COMMENT**

It needs to be acknowledged that the site is to be used to provide a needed supply of restricted business floor space rather than additional conventional shops. There is considered to be ample land available in the existing Business zone in the adjacent town centre for shops and offices. It has been acknowledged during the

Scheme amendment process that it has been difficult to secure a site in the Business zone which is large enough to readily accommodate a 5,000m<sup>2</sup> discount department store and associated car parking.

To provide for robustness in the operation of the 'Restricted Business Centre' and given the number and variety of uses entertained, it is considered appropriate for the Council to consider a range of permissible uses across the site, thereby facilitating a smooth transition between successive tenancies as required, in response to market forces, without necessitating separate approval of the Shire each time a tenancy changes from one permissible use to another.

With this philosophy, the location of the specific uses have not been identified, other than the discount department store, shown as the eastern most, large format building, and the community purpose site, which is the triangular shaped building in the south western corner of the site (adjacent to the internal road between Prince Regent Drive and West Street). Similarly, flexibility is available for the smaller sized tenancies to have internal partitions removed to make way for larger tenancies as required.

A staging plan is required to be provided which is to include the DDS in the first stage, the road link from Prince Regent Drive to West Street and Bussell Highway, the development of the reserve (including rehabilitation, walk trail and fencing) and vegetation buffers adjacent to residential areas, including the existing dwelling at Lot 16 to the south east.

There is some concern that the existing laneway adjacent to Busselton Toyota (Lot 500 West Street) that intersects West Street and Peel Terrace may be used by customers of the Lot 17 development site and therefore be cause for concern from a traffic management point of view. While this laneway forms part of Lot 17, the vehicle sales businesses use the access to gain rear entry to their properties. There is no easement in place over the laneway and the developer has confirmed that a "gentleman's agreement" exists to continue use by other landowners. Following discussions between Shire officers and the landowner it was agreed that bollards would be placed at the western end of the laneway to prevent traffic from the Lot 17 development using this thoroughfare. This will still allow the vehicle sales businesses to utilise the laneway to access Peel Terrace. The developer is encouraged to formalise this arrangement by placing an easement over the laneway to the benefit of the adjacent landowners.

### Environment

Some initial concerns were held for the use of the 'Plant Nursery' in proximity to the wetland where the use of fertilisers and other associated chemicals may be used. The Department of Water's Water Quality Protection Note No. 32 *Nurseries and Garden Centres* provides a general guide to matters of environmental concern for governing bodies. Nurseries sited near conservation category wetlands should maintain an adequate vegetated buffer from their operations to the wetland to ensure that it's ecological value is preserved. Given that the nursery could not be located within the 50 metre wetland buffer any potential impacts from nutrients etc could be satisfactorily contained. A condition is recommended that detailed

design is provided to the Shire for approval prior to any nursery being located within the development area. This will ensure that adequate safeguards are in place to protect the wetland.

Regarding the wetlands walk trail, the developer has been encouraged to refer to documentation in the Shire's Trails Development Plan (Plan 6a New River East Trail) to ensure design of this walk trail is consistent with the TDP. It is acknowledged that the resultant trail will be of much higher standard than that envisaged within the TDP as it is required to function as a dual use path. The Shire has also encouraged liaison with the Busselton Wetlands Project Team to discuss designs and interpretive material to be included on the trail. The interpretive material could also include design outcomes of the water quality improvement/drainage system. The applicant has expressed a commitment to working with the Busselton Wetlands Project Team to ensure continuity of design.

Use of water as centre feature of the main internal roundabout is discouraged due to high ongoing maintenance and water use issues. A preference for an alternative public art feature being included would be a more appropriate outcome.

Further recommendations have been made to the developer regarding sustainability design. Detail on passive solar design, waste minimisation and recycling, water capture and reuse on site, use of recycled material and energy efficiency / generation are all items that should be considered and integrated into building design. Rating against the Green Star rating system is becoming increasingly important amongst commercial developments of this scale, which should be aiming for very high standards in sustainable design. This development is likely to be in operation for many decades to come in which the community will be expecting these principles to be part of everyday design. As an example, Orion development in Queensland has recently achieved a 6 star rating for their shopping centre development. The applicant has advised detailed design will take in to account the sustainability aspects of the project.

The development will require the relocation of the existing sewer and dewatering of the trench. As a result, an Acid Sulphate Soils assessment will be conducted prior to construction commencing on site.

#### **TIMELINE/S FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The officer recommendation if adopted will be implemented within two weeks of the Council resolution.

#### **VOTING REQUIREMENT**

Simple Majority

#### **OFFICER RECOMMENDATION**

1. That the Application submitted on 29 April 2008 proposing a Discount Department Store and Restricted Business Centre at Lot 17 West Street and Lots 2, 3, 11 and 300 Bussell Highway, West Busselton providing 27656m<sup>2</sup>

of NLA Floorspace is considered by the Council to be generally consistent with District Town Planning Scheme No. 20 the orderly and proper planning of that locality and the preservation of the amenities of that locality.

2. That Planning Consent be issued for the proposal referred in 1. above and include the following conditions:
  - (a) All development is to be in accordance with the approved Development Plan dated [REDACTED] (attached), including any amendments placed thereon by the Shire of Busselton and except as may be modified by the following conditions.
  - (b) A building licence application under the provisions of the Local Government Miscellaneous Provisions Act must be submitted to and approved by the Shire of Busselton prior to the commencement of any on-site works whatsoever.
  - (c) A building licence for the development should be obtained prior to [REDACTED] (*date two years from date of this advice*). This Planning Consent lapses if a building licence for the development has not been obtained by [REDACTED] (*date two years from date of this advice*). Further to this, if the development is not substantially commenced in accordance with the building licence by [REDACTED] (*date two years from date of this advice*), then this Planning Consent lapses at that date. With the permission of the Shire of Busselton, this Planning Consent may be extended.
  - (d) Occupation or use of the development shall not occur until the Shire of Busselton has issued, to the owner, a written Permit to Use for the development.
  - (e) Plans submitted with the building licence are to show finished ground levels and finished floor levels to the satisfaction of the Shire of Busselton.
  - (f) The colour of the roofing material being in accordance with the Shire's adopted policy on "The Use of Reflective Building Materials". Colour(s) should complement the locality and not be of undesirable impact. Details to be submitted with the building licence application.
  - (g) A geotechnical report covering the development area being prepared by the applicant at the applicant's cost and to the satisfaction of the Shire of Busselton. The report to be lodged with the building licence application, together with certification from a structural engineer that the design is suitable for the site conditions as outlined in the geotechnical report.
  - (h) Compaction and stabilisation must be carried out to the specifications and satisfaction of the Shire of Busselton. Details to be submitted with the building licence application.

- (i) The provision on-site of a minimum number of 1,162 carparking bays. The parking area(s), driveway(s) and point(s) of ingress and egress [including crossover(s)] to be designed, constructed, sealed, drained, marked and thereafter maintained to the specifications and satisfaction of the Shire of Busselton, in accordance with the Shire's Car Parking Policy. Details to be submitted with the building licence application.
- (j) Twenty (20) disabled parking bay(s), located convenient to the building entrance and with a minimum width of 3.6 metres, to be provided to the satisfaction of the Shire of Busselton. Details to be submitted with the building licence application.
- (k) A contribution of \$14,850 being made to the Shire of Busselton towards the Vasse Diversion Drain, prior to issue of a building licence.
- (l) The submission of a landscape plan using predominately locally native species to the satisfaction of the Shire of Busselton. The Plan should indicate the location and species of all trees to be removed and / or retained; the location and type of fencing to be installed; the location and type of reticulation to be installed; and the location and type of paving to be installed. The Plan should also include a plant schedule nominating each species, the spacings of each species, the numbers of plants required; and the size of each plant to be used at the time of planting, together with the anticipated height of each plant at maturity. The Plan should identify and include any adjoining road verges and include a minimum 3 metre wide landscape strip at the property boundaries with Bussell Highway and West Street. The Plan must be submitted and approved prior to the issue of a building licence.
- (m) Additional planting shall be implemented along the western boundary of the site and the boundary with Lot 16 West Street as shown on the site plan to the satisfaction of the Shire of Busselton for the purpose of ensuring an appropriate level of amenity and privacy to the adjoining residential properties. The planting should consist of advanced WA Peppermint trees (*Agonis flexuosa*), or other suitable locally native species (minimum 45 litre bag). Details to be incorporated into the Landscaping Plan and established prior to issue of a Permit to Use and thereafter maintained.
- (n) Landscaping and reticulation to be established in accordance with the approved plan(s) prior to issue of a Permit to Use and thereafter maintained to the satisfaction of the Shire of Busselton.
- (o) The development being connected to a reticulated water supply to the satisfaction of the Busselton Water Board prior to issue of a Permit to Use.
- (p) The development being connected to a reticulated sewer system to the satisfaction of the Shire of Busselton and the Water Corporation prior

to issue of a Permit to Use. Full plumbing details must be submitted with the building licence application.

- (q) The provision of suitably screened bulk bin areas to the specifications and satisfaction of the Shire of Busselton prior to issue of a Permit to Use. Details to be submitted with the building licence application.
- (r) The amalgamation of all the lots which the development is located upon to the satisfaction of the Shire of Busselton prior to the issue of a building licence, which will require submission of proof, to the Shire of Busselton, of the creation of a single title for the subject land.
- (s) The provision of bicycle parking facilities to the satisfaction of the Shire of Busselton. Details to be submitted with the building licence application.
- (t) The development being designed and constructed to allow easy access for people with disabilities to the satisfaction of the Shire of Busselton. Details to be submitted with the building licence application.
- (u) Prior to the issue of a building licence, the applicant shall provide a bond in accordance with Shire Policy to the value of \$40,000 with the Shire of Busselton. The bond may be in the form of cash, cheque or bank guarantee and is a performance guarantee against satisfactory completion of the conditions of Planning Consent. The performance guarantee will be refunded in full immediately the outstanding works are complete / established as appropriate to the condition(s). Any such bond is to be accompanied by a written authorisation from the owner of the land that the Shire of Busselton may enter the site to complete or rectify any outstanding work. The Shire of Busselton will recover the bond, or part of the bond, as appropriate, the cost to the Shire of Busselton, including administrative costs, of completing or rectifying any outstanding works.
- (v) Plans submitted with the building licence application are to demonstrate the following design changes being made to the satisfaction of the Shire of Busselton and as indicated in red on the approved plan:
  - i) The interface of the development with the wetlands is required to be redesigned to be sympathetic to the existing values of the wetlands. In this regard, the southern most building should have a softened frontage to the foreshore and a greater visual buffer so the development does not dominate the wetlands landscape.
  - ii) The southern most building and associated loading bay and vehicle access to be located out of the Reserve area.
  - iii) The buildings on the western portion of the site to have dual frontage to the west and east walls.

- iv) Bollards being placed at the western end of the existing informal laneway leading to Peel Terrace and adjacent to Lot 500 in order to prevent traffic from the Lot 17 development gaining access to West Street at this location.
- (w) A staging plan for the development being submitted and approved by the Shire of Busselton prior to the issue of a building licence. As a minimum, the first stage shall include the discount department store, road connections to West Street and Bussell Highway from Prince Regent Drive, development of the Reserve (including rehabilitation, walk trail and fencing) and vegetation buffers as required by Condition "m", above.
- (x) Submission of an Urban Water Management Plan to the satisfaction of the Shire of Busselton and the Department of Water to be approved prior to the issue of a building licence. The UWMP shall address, amongst other things, management of stormwater on site, the provision of nutrient and pollution stripping mechanisms, and avoid adverse impacts on the adjacent wetlands and Shire infrastructure, including during construction. The UWMP shall consider the Stormwater Management Manual for WA, the issues of fill levels, compaction requirements and drainage adjacent to existing development to ensure that impacts or damage does not occur, and ensure that no nutrients, pollution or sediment leave the site during or following development.
- (y) The proposed uses of 'Discount Department Store' and 'Tavern' will not be permitted in the area indicated on the Land Use Concept Plan as "Design to interface sensitively to residential development" or within 60m of the western and southern property boundaries.
- (z) Detailed design drawings of the proposed use of 'Plant Nursery' shall be submitted to the Shire of Busselton for approval prior to a building licence for the specific use. The detailed design drawings shall include methods of containment and reuse or recycling of wastewater and practices to minimise nutrient leaching, such as soil moisture controlled irrigation and leaching barriers.
- (aa) The establishment of a legal agreement with the Shire of Busselton, at the applicant's expense, in regard to the 50m setback area from the Swan Coastal Plain Conservation Category wetland boundary which shall be ceded to the adjoining Nature Reserve for vesting in the Department of Environment and Conservation pursuant to a subdivision application and under Section 152 of the Planning and Development Act 2005. Such land to be ceded free-of-cost and without any payment of compensation by the Crown. The legal agreement is to provide for the reserve area being ceded to the satisfaction of the Shire of Busselton prior to the issue of a building licence, which will require

submission of proof, to the Shire of Busselton, of the lodgement of the Diagram of Survey with Landgate.

- (bb) The establishment of a legal agreement with the Shire of Busselton, at the applicant's expense, in regard to the area of the foreshore and drainage reserve at the southern portion of the site which shall be determined by stormwater drainage infrastructure and public access requirements to the satisfaction of the Shire of Busselton. This area shall be ceded to the Crown for vesting in the Shire of Busselton pursuant to a subdivision approval and under Section 152 of the Planning and Development Act 2005. Such land to be ceded free-of-cost and without any payment of compensation by the Crown. The legal agreement is to provide for the reserve area being ceded prior to the issue of a building licence, which will require submission of proof, to the Shire of Busselton, of the lodgement of the Diagram of Survey with Landgate.
- (cc) The submission of a Wetland Management Plan to the satisfaction of the Shire of Busselton prior to the issue of a building licence. The Plan is to include a Revegetation and Weed Management Plan for the wetland buffer area, fencing, dual use path connection from Prince Regent Drive to West Street, seating and interpretive signage. The plan shall be implemented over the site prior to issue of a Permit to Use and maintained for a period of 3 years.
- (dd) A Dust Management Plan to be prepared and approved prior to the issue of a building licence and implementation of that Plan to be undertaken at each and every stage of the development of the site to the satisfaction of the Shire of Busselton. The Plan shall include provision of a dust bond the rate of \$0.25 per m<sup>2</sup> of disturbed area.
- (ee) A Noise Impact Assessment and Management Plan to be submitted and approved for the development to the satisfaction of the Shire of Busselton prior to the issue of a building licence. The Plan is to ensure that fill compaction and construction stage works are not carried out on Sundays or Public Holidays in order to maintain the amenity of adjoining residential areas. Details of acoustic control methods, noise management practices and materials used are to be included within the Plan.
- (ff) The preparation and implementation of a Community Facilities Contribution Plan to the satisfaction of the Shire of Busselton prior to the issue of a Permit to Use. The Plan is to provide for the establishment of a facility or part thereof of a minimum 50m<sup>2</sup> of built floor space for community and civic use.
- (gg) Road connections to West Street and Bussell Highway from Prince Regent Drive within the site shall be designed to discourage non-local traffic from using residential roads and shall include traffic management

mechanisms to the satisfaction of the Shire of Busselton. Details to be provided with the building licence application.

- (hh) The design and provision of street lighting along West Street for the full frontage of the development and internally within the development in accordance with the Australian Standard AS 1158.1-1986, Table 1.1, to the specifications of Western Power and to the satisfaction of the Shire of Busselton. Street lighting provided within the development shall be designed to avoid light spill to adjacent residential properties, including Lot 16 West Street, and the wetlands. Details of street lighting to be submitted with engineering design and approved by the Shire of Busselton prior to issue of a building licence.
- (ii) Arrangements being prepared, approved by the Shire, and implemented to the satisfaction of the Shire of Busselton for the upgrading and construction of all proposed access roads and crossovers to and from the development and any other roadworks required by the Shire associated with the development prior to the issue of any permit to use.

In this regard, a Traffic Impact Assessment ("TIA") and Stage 2 and 3 Road Safety Audits ("Audits") must be submitted by the Developer for the following roads and intersections including pedestrian, traffic light and cyclist facilities:

- i) Bussell Hwy including the:
  - A. Bussell Highway and western access;
  - B. Bussell Highway and eastern access;
  - C. Bussell Highway and Gale Street;
- ii) West St including the:
  - A. West Street and northern access;
  - B. West Street and southern access;
  - C. West Street and Peel Terrace intersection;
- iii) Prince Regent Street including the access from the cul-de-sac head;
- iv) West Street / Peel Terrace intersection;
- v) Bussell Highway / West Street traffic signals.

The TIA and Audits must be subject to an Independent Peer Review (appointed by the Shire), at the developers cost, to establish the accuracy of the models and to further qualify the recommendations put forward for traffic management. The TIA and Audits must be approved by the Shire prior to engineering works being submitted.

Subsequent to the approval of the TIA and Audits, detailed engineering drawings must be submitted by the Developer and approved by the

Shire prior to commencement of construction of any works onsite. The TIA, Audits and engineering drawings must ensure that road traffic congestion will be prevented and that the construction of the development will have no detrimental effect on traffic conditions.

- (jj) The following infrastructure upgrades are required as a direct consequence of the development. Detailed engineering plans shall be submitted and approved by the Shire of Busselton prior to issue of a building licence.
  - i) Rain stormwater drainage to be provided for the full frontage of West Street;
  - ii) Kerbing on the western side of West Street for the full frontage of the development;
  - iii) The West Street/Peel Terrace intersection to be upgraded to include a (northbound) dedicated right-hand turn lane into Peel Terrace.
- (kk) Dual use / pedestrian pathway system being provided in a location satisfactory to the Shire of Busselton which will assist in linking the site with community facilities and the CBD. Details in the form of a pedestrian access strategy shall be submitted for approval prior to the issue of a building licence. The following paths require construction as a direct result of this development:
  - i) A 2.0m wide path along Peel Terrace from West Street to Causeway Road (northern side) to connect into the existing path;
  - ii) A 2.5m wide path from the southern West St entrance to the existing traffic lights at the corner of Bussell Highway and West Street and continue along West Street to at least Prince Street (western side of West Street);
  - iii) At the southern portion of the development the dual use path is to be located within the area of Reserve and connect between the existing path to the west, located within the reserve adjacent Prince Regent Drive, and the existing path in West Street.
  - iv) Upgrading of the Bussell Highway DUP to provide a high amenity pedestrian connection into the CBD to the satisfaction of the Shire with a minimum path width of 2.5m.
- (ll) A Kangaroo Management Plan being submitted and approved by the Shire of Busselton on the advice of the Department of Environment and Conservation prior the issue of a building licence.
- (mm) Prior to commencement of the development, satisfactory arrangements shall be made with the Shire of Busselton to ensure compliance with

the Shire's Percent for Art Policy via appropriate on-site works up to a minimum value of 1% of the estimated development cost (to the satisfaction of the Shire and based on demonstrated contract values or estimates provided by a quantity surveyor, with such contract or estimates being no more than 3 months old at the time of payment and if such information is more than 3 months old, the value of the payment shall be indexed to the general construction industry index for Western Australia) and/or where the value of on-site works is less than that, a payment sufficient to bring the total contribution to 1% of the estimated development cost shall be made to the Shire pursuant to the Shire's Percent for Art Policy.

- (nn) Prior to occupation of the development, on-site works as agreed pursuant to condition "mm" shall be completed to the satisfaction of the Shire.

**14. SYSTEMS AND INFORMATION REPORT**

Nil

**15. COMMUNITY INFRASTRUCTURE REPORT**

Nil

**16. COMMUNITY AND ORGANISATIONAL DEVELOPMENT REPORT****16.1 SMALL LOCAL PROJECTS FUND 2008/09 - NOS. 16 TO 19****FILE NO:** GRT8

**ATTACHMENT(S):** A. Copy of request from Busselton Child Care Centre  
B. Copy of request from Yallingup LCDC

*Note: Cr Hanran-Smith has advised that he has an Interest Affecting Impartiality in relation to SLP request No. 16, in that he is a volunteer member of the Yallingup LCDC with no financial interest.*

**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
16	Cr Bethwyn Hastie	\$160	Busselton Child Care Centre	To participate in Fundamental Movement Skills Program
17	Cr Don Hanran-Smith	\$500	Yallingup Land Conservation District Committee	To help fund the purchase of a petrol-drive hedge trimmer, together with necessary personal protection equipment.
18	Cr Rob Underdown	\$750	Dunsborough T-Ball Club	For team of 12 players to compete in the State T-Ball Championships. The cost of accommodation in Perth is very high and very prohibitive towards country sporting teams representing their regions. These funds will help make the trip affordable for these members.
19	Cr Tom Tuffin	\$413.35	Citizens' Advice Bureau	Purchase of Laminator and laminating pouches

**BACKGROUND**

Council's Policy No. 202/1 is applicable.

**CONSULTATION**

Not applicable

**STATUTORY ENVIRONMENT**

Nil

**POLICY IMPLICATIONS**

Council's Policy No. 202/1 is applicable.

The intent of the Small Local Projects Fund is to provide Council with the ability to facilitate small local improvements and/or assist community groups to provide facilities/services or to carry out activities that are felt to be a positive contribution to their local area or the district as a whole.

It is not intended that allocations be contributed to single projects or single associations/causes, especially on a continuing basis, but that the funds be spread across a variety of purposes.

**FINANCIAL IMPLICATIONS**

On 13 August 2008, the Council resolved (C0808/237) to amend Policy 202/1 to facilitate an equal portion of any monies budgeted for small local projects to be available to each Councillor.

There are sufficient funds available within the portions allocated in the 2008/09 financial year for recommendation for disbursement by all of the requesting Councillors.

**STRATEGIC IMPLICATIONS**

Nil

**STAFF COMMENT**

Nil

**TIMELINE/S FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Subject to receipt of all necessary information, funds will be provided as soon as practicable following this Council Meeting.

**VOTING REQUIREMENT**

Simple majority.

**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
16	Cr Bethwyn Hastie	\$160	Busselton Child Care Centre	To participate in Fundamental Movement Skills Program
17	Cr Don Hanran-Smith	\$500	Yallingup Land Conservation District Committee	To help fund the purchase of a petrol-drive hedge trimmer, together with necessary personal protection equipment.
18	Cr Rob Underdown	\$750	Dunsborough T-Ball Club	For team of 12 players to compete in the State T-Ball Championships. The cost of accommodation in Perth is very high and very prohibitive towards country sporting teams representing their regions. These funds will help make the trip affordable for these members.
19	Cr Tom Tuffin	\$413.35	Citizens' Advice Bureau	Purchase of Laminator and laminating pouches

16.2 OLD FIRE STATION, BUSSELTON

**FILE NO:** 3112  
**ATTACHMENT(S):** Nil

**PRÉCIS**

This report advises the Council of current situation regarding occupancy of the Old Fire Station in Queen Street and makes recommendations for progressing the redevelopment plans.

**BACKGROUND**

The Old Fire Station, situated on Reserve 21531, 68 Queen Street, Busselton, has been occupied by the Busselton Jetty Environment and Conservation Association (BJECA) since 1993 under Licence agreements with the Shire.

On 27 January 2005 (C0501/011) the Council resolved not to renew the Licence agreement with BJECA for a further term, in favour of permitting the tenants to remain on a monthly basis while Shire staff implemented the Council's desire to attract a commercial use of this building.

At its meeting of 26 July 2006, the Council resolved (C0607/243) in part;

*"That a formal Expression of Interest be immediately undertaken towards the redevelopment and leasing of the 'Old Fire Station' on Reserve 21531 (68) Queen Street on the basis of the three preferred uses, being:*

- (a) A coffee / beverage operation selling prepared food and providing a retail outlet for local produce;*
- (b) A food outlet providing alfresco dining onto Mitchell Park to the southern side of the building and possibly to Queen Street; or*
- (c) A retail operation that contributes to the vibrancy of Queen Street and Mitchell Park."*

In the time following that resolution, two Expression of Interest processes were undertaken. Each of these processes resulted in a suitable proposal being received from local businesses wishing to undertake the redevelopment of the site and lease the premises from the Shire. Unfortunately, for different reasons, each withdrew from the process prior to a lease being finalised.

Additionally on 28 January 2009, NoM 08/09:13 requested the following information be reported to the Council;

*"(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)."*

These matters are discussed in the context of this report.

## **CONSULTATION**

A Shire officer has met with the Busselton Jetty Environment and Conservation Association (BJECA) to ascertain the needs of the current tenant of the premises, the Jetty Markets, in so far as their desire for relocation.

Additionally, consultation has been undertaken with a local commercial leasing professional, local business operators, the Geographe Bay Tourism Association and the Busselton Chamber of Commerce.

## **STATUTORY ENVIRONMENT**

The Shire's intention to enter into a lease with the proponent would be publicly advertised in accordance with Section 3.58 (3)(a) & (4)(a)(b) & (c) of the Local Government Act.

## **POLICY IMPLICATIONS**

The Shire's Purchasing Policy will apply when seeking and accepting quotations for any services required to further this project.

## **FINANCIAL IMPLICATIONS**

The financial implications of the Officer Recommendation are :

- a) funding the gas connection and minor building works from the 08/09 budget amount of \$20,000 provided for the Old Fire Station building,
- b) provision of up to \$20,000 (09/10) as a landlord contribution for the installation of a unisex disabled toilet,
- c) appointment of a commercial leasing agent, approximately \$3,500 (09/10),
- d) allocation of up to \$10,000 to professionally market the premises (09/10),
- e) relocation of the public telephones at a cost of approximately \$5,000.

- f) a rent free period of up to 12 months, to be negotiated, subject to the capital investment made by the tenant. (Therefore the Shire may not see a positive cash flow from this lease until 2011), and
- g) a reserve account would be established to quarantine all net income from this lease to be reinvested in the CBD as required by the DPI as a condition of the Shire's ability to lease the site commercially.

### **STRATEGIC IMPLICATIONS**

The commercial leasing of the Old Fire Station, is sustained by the Shire's Strategic Initiative to *'support long term investment opportunities.'*

### **OFFICER COMMENT**

In the past two years, several matters have contributed to the failure to attract and retain a prospective tenant for the Old Fire Station premises. These are noted with solutions;

- a) The building is currently occupied by the Jetty Markets and stock levels for this business have made it impossible for a prospective tenant to view the building and make an accurate assessment of restorative and modification work required. The relocation of the Jetty Markets could be undertaken in order to provide unfettered access to the entire building by the Shire and any prospective tenant. BJECA / Jetty Markets could be given ideally, three months notice to vacate the building (C0501/011). This could be extended to six months if the Council felt this was warranted, however this would extend the timeframes for meeting the Council's previously resolved objectives. The valuable contribution made by the Jetty Markets to the maintenance fund for the jetty over many years is well recognised.
- b) The age of the building and the Heritage implications have meant the inability to make an accurate structural assessment, raises additional concerns in relation to a) above.
- c) The Shire's intention to develop the lease around the eventual use, slowed negotiations beyond normal commercial timeframes and this could be at least partly addressed by the preparation of a draft commercial lease prior to marketing.

Additional assistance to the leasing process would be;

- i) the appointment of a local commercial leasing agent to handle incoming enquiries and lease negotiations
- ii) the development of a marketing plan including signage, local and statewide newspaper advertising
- iii) the Shire to undertake works which will contribute to the commercial letting of the premises; connection of natural gas, structural repairs and

maintenance, repair and repaint of the internal walls and repairs and maintenance of the timber floor.

- iv) works falling within the scope of the 2020 group for the upgrading of Queen St path and roadway, be given priority and undertaken prior to the end of this 08/09 financial year or early in the 09/10 financial year.
- v) three public telephones located adjacent to the building on Queen Street be removed and two phones relocated some 20 - 30 metres south.

In summary, the building needs to be made lease ready.

It may be possible to apply for a grant from Lotterywest to assist with the renovation and restoration of the building and this would be investigated for inclusion in the 09/10 budget.

An application from the GBTA for the lease of the premises would appear from discussions to be unlikely at this point, due to the costs of preparing the building for business. The organisation recognises the benefits of a commercial tenant occupying the premises and would be keen to assess the building and the business opportunity when it becomes available for lease.

#### The Draft Lease

The terms of the lease will have several key elements and once negotiated, the final document would be brought before the Council for approval prior to being signed by all parties.

The key elements of the lease will be;

1. the Term: the term of the lease is restricted by the Shire's Management Order over the reserve to 21 years. This would most likely be offered as a ten year initial term with an eleven year further optional term.
2. the Rent: rent will be subject to a valuation to ensure parity with other like venues within the locality. Some variations to the rent would be expected dependant upon the capital investment made by the ingoing tenant. A rent free period of up to 12 months could be expected.
3. the Use: The use of the premises would be restricted to one of the three preferred usages as per C0607/243.

#### **TIMELINE/S FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

A timeline to secure a quality tenant for the Old Fire Station premises would be as follows, (given three months notice);

March / April 2009 – Commence discussion with BJECA and the Jetty Markets to advise of the need to vacate the building and issue a notice to vacate.

April / June 2009 – Development of draft lease

June 2009 – Request for Quotations (Commercial Leasing Agent)

July 2009 – Appointment of Commercial leasing agent.

July 2009 – Marketing plan developed for implementation July 2009.

May / July 2009 – Gas connection to building and other minor works.

Aug / October 2009 – Marketing.

### **VOTING REQUIREMENT**

Simple Majority

### **OFFICER RECOMMENDATION**

1. That the CEO be authorised to;
  - a) Issue BJECA / Jetty Markets with a notice to vacate the Old Fire Station premises within three months.
  - b) Negotiate a suitable exit strategy with BJECA for assistance to relocate the Jetty Markets to other premises.
  - c) Conduct a civic reception to publicly thank the Jetty Market operators for their valuable contribution to the jetty maintenance.
2. That minor works, which will contribute to the commercial letting of the Old Fire Station, commence on and around the building as soon as practical, but prior to the end of the 08/09 financial year.
3. That amounts up to \$10,000 and \$3,500 respectively, be provided in the 09/10 budget to market the premises and contract a local commercial leasing agent to locate a suitable tenant and assist the Shire with the negotiation of a lease.
4. That \$20,000 be provided in the 09/10 budget to undertake works, or contribute to the costs incurred by the tenant, for the installation of a unisex disabled toilet.

16.3 2008 COMPLIANCE AUDIT RETURN

**FILE NO:** COM1  
**ATTACHMENT(S):** Nil

As the Compliance Audit was still being finalised at the time of Agenda preparation, this report will need to be circulated via an Addendum to the Agenda prior to 25 March 2009.

17. CHIEF EXECUTIVE OFFICER'S REPORT

Nil.

18. MOTIONS of which notice has been given18.1 AMENDMENT TO THE TOWN PLANNING SCHEME TO TAKE INTO ACCOUNT THE POSITIVE EFFECT THAT THE NABERS STAR RATING SCHEME WOULD HAVE ON THE COMMUNITY'S GREENHOUSE GAS EMISSIONS

NoM NO: 08/09: 22

*Councillor Don Hanran-Smith has given notice of his intention to move the following motion at the Council Meeting on 25 March 2009:*

**MOTION**

*That the Council requires the CEO to develop for the Council's further consideration a proposed amendment to the Town Planning Scheme that would require all new buildings in the Shire of Busselton - other than outbuildings, storage buildings and minor structures (such as antennas, plant rooms or similar) to achieve a minimum four star rating under the NABERS rating system and that incentives including but not necessarily limited to permissible development density, be provided for buildings that achieve a five star rating or more under the NABERS rating system.*

*If it is not practical, for time or financial reasons, that this can be achieved in the financial Year 2008/09, then it is further required that this project be incorporated in any draft 2009/2010 corporate presented to the Council for consideration.*

**REASONS:**

To help combat global warming.

The UK Government has recently adopted a policy on the subject. While we in Busselton are only a small fish in the global pond, there is an important point to be made and if we can agree on this proposed TPS amendment then we could promote it to all local governments in the State.

For information on the NABERS rating scheme you can go to [www.nabers.com.au](http://www.nabers.com.au). For the UK policy, go to [www.communities.gov.uk/documents/planningandbuilding/doc/Buildingagreenerfuture.doc](http://www.communities.gov.uk/documents/planningandbuilding/doc/Buildingagreenerfuture.doc).

**STAFF COMMENT (Chief Executive Officer)**

It is considered that building energy efficiency standards are more appropriately applied via State and/or National level legislation, most appropriately by the building codes. Standards should also be incrementally increased over time. This allows for an integrated response from the building industry, especially in terms of the development of trade and professional skills and supply chains. That process has begun to occur, but not sufficiently far or fast for some and Western Australia is lagging somewhat behind other jurisdictions on this issue. Whilst the broad sentiment of the Notice of Motion is supported, a detailed assessment of the impacts of such an amendment, from a cost-benefit perspective, is beyond the capabilities of Shire staff and the engagement of consultants to undertake such an analysis would be considerable. If the intent is more to signal that the Council considers this to be an important issue which is receiving insufficient attention, however, a fairly simple Town Planning Scheme amendment could be developed that could be advertised and then presented for consideration by the WAPC and Minister for Planning.

**19. CONFIDENTIAL REPORTS****19.1 LEGAL COSTS - SMITH'S BEACH SAT MATTER****FILE NO:** 5340**ATTACHMENTS:** Nil

A report, confidential under s.5.23(2)(d) of the Local Government Act 1995, being a matter for which legal advice has been obtained, or may be obtained by the local government and which relates to a matter to be discussed at the meeting, will be provided under separate cover via an Addendum to this Agenda to Councillors, the Chief Executive Officer, Directors and the Executive Manager, Systems and Information only.

The report was not ready in time to circulate with this Meeting Agenda but will be provided later in the week, when all information is at hand.

**20. NOTICES OF MOTION proposed for consideration at a future Meeting****21. QUESTIONS FROM MEMBERS WITHOUT NOTICE****22. NEXT MEETING**

Wednesday, 8 April 2009, commencing at 5.30 p.m.

**23. CLOSURE**

