



**Shire of Busselton**  
*Geographe Bay*

## **Council Agenda**

***23 September 2009***

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

## SHIRE OF BUSSELTON

### AGENDA FOR THE COUNCIL MEETING TO BE HELD ON 23 SEPTEMBER 2009

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**SHIRE OF BUSSELTON****MEETING NOTICE AND AGENDA – 23 SEPTEMBER 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, 23 September 2009, commencing at 5:30 pm.

Your attendance is respectfully requested.

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

8 September 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 Reverend Wayne Warfield of St Mary's Anglican Church, Busselton.

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 9 September 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 LOT 3 (HSE 97) CAVES ROAD, ABBEY - 10 CHALETS WITHIN A CONSERVATION ZONE AND ALTERATION TO THE APPROVED SITE PLAN**

<b>SUBJECT INDEX:</b>	Development / Planning Applications
<b>APPLICATION NUMBER:</b>	P6280
<b>STRATEGIC INITIATIVE:</b>	2.4.1 Support development that is contained in identified nodes with well defined boundaries
<b>BUSINESS UNIT:</b>	Statutory Planning
<b>SERVICE:</b>	Statutory Planning
<b>DATE OF COMPLETION:</b>	8 October 2009
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>PROPOSAL:</b>	10 chalets within the Conservation-zoned portion of the property and alteration to the approved site plan.
<b>LOT SIZE:</b>	7.87 Hectares
<b>ZONE:</b>	Conservation & Tourist
<b>POLICIES:</b>	SPP 6.1 Leeuwin-Naturaliste Ridge Statement of Planning Policy Use of Reflective Building Materials Policy Busselton Wetlands Conservation Strategy Floodplain Development and Management Policy
<b>ATTACHMENT(S):</b>	A. Proposed Site Plan B. Officer Report for 11 March 2009 C. External Legal Advice (CONFIDENTIAL in accordance with s.5.23(2)(d) of the Local Government Act 1995, being legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting. This attachment has been provided to Councillors, the CEO, Directors and the Executive Manager, Systems and Information only.) D. Permit to Use for 15 cabins

**PRÉCIS**

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

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

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

#### **PROPOSAL / BACKGROUND**

The existing use of the site consists of:

- i) various short-stay accommodation units (a mixture of cabins and chalets), which comprise a Rural Holiday Resort; and
- ii) a Caravan Park;

Both are located in the Tourist-zoned portion of the site (Attachment A). The current proposal is for 10 chalets to be constructed in the Conservation-zoned portion of the site. No additional management or recreational facilities are proposed to be developed in conjunction with the 10 chalets. As the development will depart from the existing approved plans for the development on the Tourist-zoned portion of the site, the applicant is also seeking to alter the approved site plan.

At its meeting of 11 March 2009, the Council considered a report recommending the refusal of both aspects of the application and resolved as follows:

C0903/081

1. *That the Officer Recommendation commencing on page 28 of the Agenda not be supported;*
2. *That the Council acknowledge that the proposed "10 Chalets within the Conservation zone" are an SA under the Scheme and can therefore be considered;*
3. *That the Council acknowledge the Shire's Local Rural Planning Strategy has no effect as the land is contained within the Urban precinct;*
4. *That the Council acknowledge the Rural Tourist Accommodation Policy has no effect and thus the density of development can be considered on merit;*
5. *That the Council acknowledge the merits of the 10 Chalets to be:*
  - (a) *already approved elsewhere within the site;*
  - (b) *the new location preserves existing caravan and camping sites;*
  - (c) *development does not require the removal of any vegetation;*
  - (d) *development is connected to all urban services;*
  - (e) *development is not located within the Wetland or Floodway Areas defined within DTPS 20; and*
  - (f) *the proponent operates an existing development which has been accredited by Eco Tourism Australia.*

- 6 *That the Council consent to the advertising of the proposal in accordance with the Scheme Provisions;*
7. *That if no relevant objections are received during the advertising period then planning consent is to be granted under delegated authority, inclusive of a footnote detailing the approval as being part of an existing development and thus is "substantially commenced";*
8. *That if relevant objections are received during the advertising period then the matter be bought back to Council for further consideration.*

Background information prior to 11 March, 2009 is provided in the previous officer report (Attachment B).

### **STATEMENT OF IMPACT**

Determination of the application consistent with the Scheme, which requires that it be refused, is obviously contrary to the objections of the landowner. It is however consistent with the Scheme, retaining the status quo in respect to development potential of the site and Shire advice provided to the landowner over a number of years.

Alternatively, approval of the application would have implications for the classification of uses under the Scheme and the overall operation of the Scheme. The Shire of Busselton has had a previous case where it was found by the Supreme Court to have acted ultra vires by issuing a planning consent for a use that was not permitted by the Scheme (Shire Of Busselton; Ex Parte Busselton Home Entertainment Pty Ltd & Ors). The planning consent was held invalid. To issue a planning consent, contrary to legal advice that this is not permitted by the Scheme, would have negative implications for orderly and proper planning within the Shire and be contrary to the strategic objectives of Organizational Wellbeing. Any approval would also have potential detrimental implications for any future owner or future development by the current owner and the Shire if investment was made on the basis of the approval.

### **CONSULTATION**

The Council resolved (C0903/081) that the application be advertised in accordance with Scheme provisions which provide:

- \* Clause 12 of the Scheme – referral to nearby landowners; and
- \* Clause 14 – consultation with other statutory, public or planning authorities.

Furthermore, Clause 28(8) of the Scheme requires that the Council must consider advice from the Department of Environment and Conservation, the Department of Water, and the Water Corporation prior to deciding whether to grant planning consent. As these agencies had not previously been consulted, the application was referred to them for their comment.

No written comments have been received from neighbours.

The Department of Environment and Conservation (DEC) lodged an objection to the proposal on the following grounds:

1. DEC's original support for the (caravan park and chalets) proposal was on the basis that there be no further development in the Conservation zone.
2. The development approval for both the caravan park and chalets required a Landscape Management Plan. The current development proposal is to occur in the revegetation area identified in the approved Landscape Management Plan and therefore cannot be supported.

Tourism WA made the following recommendations:

1. That the terminology 'General Camping Bays – Park Homes' not be used.
2. That Tourism WA has reservations regarding the viability of the proposed management arrangements given the small number of chalets proposed.
3. That further information be provided regarding provision of access for all guests to recreational facilities and an on-site caretaker.

#### STATUTORY ENVIRONMENT

1. Schedule 1 definitions of Use Class:

**Chalet Development** *is development (not being a "Rural Holiday Resort") designed for single occupancy and which comprises detached accommodation units, which may be fully self-contained or not, and which are generally of single storey or split level construction and a character not dissimilar to farm dwellings or cabins.*

**Rural Holiday Resort** *is any form of Rural Tourist Accommodation, except Caravan Parks and Camping Grounds, comprising more than 10 accommodation units, whether they be rooms, suites or chalets.*

**Caravan Park** *means a property licensed for the placement of caravans and may also include camping sites.*

2. Clause 21(3) relating to the permissibility of the Use Class;

The 'Rural Holiday Resort' Use Class is not permitted in the Conservation zone.

3. Clause 28 relating to development in a Wetland Area.

#### POLICY IMPLICATIONS

State Planning Policy 6.1: Leeuwin-Naturaliste Ridge Statement of Planning Policy (LNRSP)

The subject lot has the following LNRSP classification:

Landscape Class:	Travel Route Corridor & General Character
Landscape Character Unit:	Coastal Wetlands
Land Use Strategy (LUS)	Wetland Amenity Area

*LUS 3.28 Proposals for subdivision, development and land use within the designated Wetland Amenity Areas will be assessed for their compatibility with wetland conservation.*

*LUS 3.32 The environmental and recreational values of the Wetland Amenity Area will be protected while facilitating tourism development that responds to the natural and social values of the locality.*

### **Busselton Wetlands Conservation Strategy**

The Strategy dictates that development should not occur within the 'Rural and Wetland Amenity Area'. The proposed development is located within the Rural and Wetland Amenity Area.

### **FINANCIAL IMPLICATIONS**

There are no direct, identifiable financial implications to the Shire arising from this proposal.

### **STRATEGIC IMPLICATIONS**

The main Strategic Objectives of the Shire of Busselton's Strategic Plan 2006-2011 as relevant to the proposal are:

- \* *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.*

While the Plan's strategic objective recognises and encourages business, this is on the proviso that the business is in keeping with environmental aspirations. While the existing caravan park and chalets are marketed on an 'eco' theme as the proposed development does not comply with the Shire's statutory and strategic planning framework, State Planning Policy, or the Busselton Wetlands Conservation Strategy, it cannot be said to meet this objective.

- \* *To manage the business of the Shire in a responsible and accountable manner utilising organisational sustainability principles.*

One of the Strategic Initiatives is to ensure that regulatory requirements are met. Approval of a use that is specifically prohibited by the Scheme would not promote responsible and accountable business practice by the Shire or be consistent with Organizational Sustainability.

**OFFICER COMMENT**Use Class Classification

The Scheme seeks to regulate the development of tourist accommodation via a number of different use class classifications. Importantly, the Scheme seeks to differentiate between low-level tourism that comprises 10 accommodation units or less, and high-level tourism that comprises more than 10 units. A use class classification is an objective fact that is not influenced by the planning merits of a proposed development. The correct use class is Rural Holiday Resort. This classification is consistent with Windmill Holdings Pty Ltd and Shire of Busselton [2004] WATPAT 33 ('Windmill Holdings'). In Windmill Holdings the Tribunal found that the Shire must classify rural tourist accommodation that comprises more than 10 accommodation units as a Rural Holiday Resort.

The applicant's contention raised in response to this issue that the 10 chalets are a totally separate use from the rest of the rural tourist accommodation on the site is not valid on the following grounds:

- \* Both developments are for the same genus of use – short-stay accommodation for tourists.
- \* Both developments exist on the same land title.
- \* Day-to-day management is to be shared (Note: that the applicant states that there will be separate management arrangements but this only relates to the management of the 10 chalets being under a different financial management structure. The actual day-to-day management has been stated by the applicant in the Development Application as being shared).
- \* Recreational facilities are to be shared.
- \* Access to the site is via a shared driveway.
- \* All other services – water, electricity, sewerage – are shared.
- \* The applicant is seeking to have no time limit on construction on the basis that the 10 chalets are part of the existing development on site which has been 'substantially commenced'.

A second zone on a property is normally intended to constrain development on the basis of distinctly different physical features or to provide a buffer between incompatible uses, not to present the opportunity to double-up on the type of development permissible.

The inter-related use classes in the Scheme could easily be subverted if a proposed development was considered separate from an existing development simply on the basis that an off-the-shelf company was set up to manage it. For example, the Scheme distinguishes between a Medical Centre, which can have an unlimited number of practitioners, and Professional Consulting Rooms, which can

have a maximum of three practitioners. A Professional Consulting Rooms is a permissible use in a Residential-zoned area as the level of traffic and noise generated by patients visiting only three practitioners is deemed to be acceptable in terms of residential amenity. A Medical Centre is a prohibited use in a Residential-zoned area as the additional traffic and noise generated is not deemed acceptable in terms of residential amenity. If a large group of practitioners were to claim that they were simply three separate Professional Consulting Rooms (the same principle the applicant is seeking to apply), the surrounding residents would be subjected to the full impacts of what would actually be a Medical Centre. Obviously, the legislative intent of the Scheme to restrict the impact on residential amenity would be frustrated and such an approach could not be approved.

#### Applicant's Legal Advice

Legal advice and a response from the Shire's lawyers has been provided by the owner's legal representative on a number of occasions, dealing with various aspects of the development application process and the Council resolution. Staff have reviewed the legal advice and consider that none of the points raised have sufficient merit to alter their planning assessment. The major issues raised were:

1. The use class classification: For the reasons given above the applicant's legal advice that the use class is 'Chalet Development' is not correct.
2. A contention that C0903/081(7) did not constitute a delegation to officers: This contention is important to the applicant as it removes the ability of staff to exercise any judgement, particularly in the light of any advice that may be received from DEC. However, as the resolution specifically stated that (relevantly) '*planning consent is to be granted under delegated authority*', it is difficult to see how this contention could be supported in a legal challenge. In any event, the point is moot as objections were received and therefore C0903/081 (7) falls away in favour of C0903/081(8).
3. A contention that the Council has already granted Planning Consent and that there are no powers in the Scheme to revoke that Consent: This contention is incorrect for a number of reasons. Firstly, Clause 14(3) of the Scheme states (relevantly) that '*Planning Consent cannot be implied and is deemed to be granted only ... where the Council has issued a formal written document*'. As the Resolution was conditional on no objections being received, it became inoperable when objections were received. Therefore, Planning Consent cannot be implied to have been granted. Secondly, Council cannot be held to have reached a decision on the development application as Clause 28(8) requires Council to consider advice from various authorities **before** deciding whether to grant consent. Furthermore, staff have reservations as to whether the manner in which C0903/081(7) was worded is a valid exercise of the Council's power to delegate.
4. A contention that DEC's advice was received outside of the advertising period and therefore cannot be considered: There is no specified time period in the Scheme for seeking advice from relevant authorities. Therefore, the claim that DEC's advice is outside of the 'advertising period' is baseless.

Furthermore, administrative law is quite clear that a decision-making authority such as the Council must consider any material available to it at the time of making its decision. Therefore, the Council is not only able to, but must, consider the DEC's advice in reaching its decision.

### Options

Staff met with the applicant (the landowner's planning consultant) to discuss alternative development that would not constitute a Rural Holiday Resort as a continuation of previous attempts to assist the applicant in developing a compliant proposal for the site. It was felt that as the owner did not wish to construct the six quad-chalets already approved, then there was scope to reclassify the sixteen cabins (Attachment D) as park homes and, hencefore, part of the caravan park. This would then mean that there were only seven chalets in total approved for the site, leaving room for three additional chalets that could be located in the Conservation zone. There would also be space on the Tourist-zoned portion of the site where the six quad-chalets were intended to go that could be used for further caravan/camping bays.

The applicant has not availed themselves of this opportunity to legally locate three chalets in the Conservation zone. Instead they have simply proposed deleting the six quad-chalets from the approved site plan and replacing them with extra caravan/camping bays, while continuing to pursue an additional 10 chalets in the Conservation zone as originally proposed. The applicant has been advised to lodge a separate development application for the new proposal for extra caravan/camping bays, should they wish to pursue this option as it can be considered under the Scheme.

### **CONCLUSION**

The Department of Environment and Conservation have objected to the proposed development. That objection supports staff's concerns that the proposed development does not have planning merit when assessed against the Shire's planning framework. Staff have reiterated their advice to the proponent, and provided a SAT decision that confirms, that the proposed development constitutes a Rural Holiday Resort. However, the proponent has determined to proceed with the application. As a Rural Holiday Resort is specifically prohibited in the Conservation zone by the Scheme, the proposed development cannot be approved as a matter of law. Legal advice dealing with these issues is attached (CONFIDENTIAL Attachment C – provided to Councillors, the CEO, Directors and the Executive Manager, Systems and Information). It is also advised that the appropriate avenue for having issues associated with this matter further explored, if there are any issues of remaining concern to the Council is the SAT, and an appeal to SAT could only arise from a refusal of the application, as recommended.

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

Advice of the Council's decision will be communicated to the applicant within 15 working days.

**OFFICER RECOMMENDATION**

1. That Development Application P6280, proposing 10 chalets within a Conservation zone for Lot 3 Caves Road, Abbey, constitutes a Rural Holiday Resort, a use prohibited in the Conservation zone under the Shire of Busselton Town Planning Scheme No. 20 and is inconsistent with the objectives and policies of the zone within which it is proposed to be located and as such is refused.
2. That the CEO issue the above refusal for the following reasons:
  - (i) In conjunction with existing chalet development on the site, the approval of 10 chalets in the Conservation zone would constitute a 'Rural Holiday Resort', a use specifically prohibited by the Scheme.
  - (ii) The proposed use is inconsistent with the Objective of the Conservation zone, as specified in Table 1 of the Scheme, whereby the intent is to restrict the type and scale of development to that which is compatible with the special aesthetic, ecological or conservation values. In adopting the Conservation zone it was recognised by the Shire that clearing and historical agricultural practices have affected the ecological and landscape value of parts of the Coastal Wetland System. Despite this, the Scheme's intent is to constrain the development potential of Conservation-zoned areas. An extension of the Rural Holiday Resort would not be compatible with the recognised conservation value of the Conservation-zoned portion of the lot.
  - (iii) The proposed use is inconsistent with Policy 1(a) of the Conservation zone, as specified in Table 1 of the Scheme, whereby development will only be considered where it can be demonstrated that such development can be carried out in a manner that does not detract from the scenic quality of the land. The scale of development proposed — 10 chalets — is considered to be excessive in the context of the area of land and will detract from the scenic quality of the land.
  - (iv) The proposed use is inconsistent with Policy 1(b) of the Conservation zone, as specified in Table 1 of the Scheme, whereby development will only be considered where such development is unlikely to have a significant detrimental effect on the growth of native plant communities, the survival of native wildlife populations and the provision and quality of habitats for both indigenous and migratory species. The application does not demonstrate that these requirements will be met.
  - (v) The proposed use is inconsistent with provision LUS 3.32 of State Planning Policy 6.1: Leeuwin-Naturaliste Ridge Statement of Planning Policy as the environmental values of the Wetland Amenity Area will not be protected.

- (vi) The proposed use is inconsistent with the Busselton Wetlands Conservation Strategy as the proposed development is located entirely on the Qw soil type while the Strategy requires that development be setback 20 metres from the Quindalup Wet Flats (Qw) soil type.
- (vii) The alteration to the approved site plan is dependent on the location of 10 chalets within the Conservation-zoned portion of the land, which is not supported.

**14. SYSTEMS AND INFORMATION REPORT**

Nil.

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

This report had not been finalised at the time of Agenda preparation and will therefore need to be circulated via an Addendum to this Agenda before the Council Meeting on 23 September 2009.

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

<b>SUBJECT INDEX:</b>	Sponsorship and Grant Applications
<b>STRATEGIC INITIATIVE:</b>	1.1.1 Encourage and Support Cultural Activities and Events
<b>BUSINESS UNIT:</b>	Finance
<b>SERVICE:</b>	Financial Management and Control
<b>DATE OF COMPLETION:</b>	Subject to receipt of all necessary information, funds will be provided as soon as practicable following this Council Meeting
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENT(S):</b>	A. Letter from Woodturners' Group. B. Letter from Possum Centre Busselton Inc.

**PRÉCIS**

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

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

## 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 the 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.

At the time of preparation of this report, available funds for each Councillor's recommendation are as follows:

<b>Councillor</b>	<b>Amount Available</b> <b>\$</b>
Cr Hartley	* 2,000
Cr Hastie	2,500
Cr Binks	2,500
Cr Stubbs	2,500
Cr Bromell	2,500
Cr Ryan	2,500
Cr Tuffin	2,500
Cr Emery	2,500
Cr Masters	2,500
Cr Underdown	2,500
Cr Clarke	2,500
Cr Hanran-Smith	2,500
Cr Reid	2,500
<b>TOTAL FUNDS REMAINING</b>	<b>31,500</b>

- \* Cr Hartley's request for funding of \$500 for the Vasse Venturers will be considered by the Council on 9 September 2009. If this funding request is approved, the amount available for Cr Hartley's recommendation for disbursement will be \$2,000 at the time of the Council's consideration of this report on 23 September.

There are sufficient funds available within the portions allocated in the 2009/10 financial year for recommendation for disbursement by Crs Hastie, Clarke, Underdown and Hanran-Smith.

### **STRATEGIC IMPLICATIONS**

Nil

### **OFFICER COMMENT**

Nil

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

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

### **OFFICER RECOMMENDATION**

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

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

16.2 LOCAL LAW REVIEW - BUSSELTON REGIONAL AIRPORT LOCAL LAW 2009

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

**PRÉCIS**

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

**BACKGROUND**

On 27 May 2009, the Council resolved (C0905/188):

*"That the CEO prepare a draft new Shire of Busselton local law relating to the operations of the Busselton Regional Airport. The local law is to provide for such matters as are generally provided for in local laws relating to airport facilities including, but not limited to, providing for the laws surrounding the operations of the Busselton Regional Airport to the extent that they are not already covered by other laws in force in Western Australia in relation to airports. Where appropriate, the draft local law should provide legal force to appropriate requirements in airport related documents such as the Busselton Regional Airport Aerodrome Manual, the schedule of fees and charges as they relate to the airport and the proposed noise management plan. The draft local law is to be the subject of a report to the Council no later than September 2009."*

This resolution was made via a notice of motion and in response to issues regarding the regulation of the Busselton Regional Airport. Accordingly, a draft Airport Local Law has been prepared for the consideration of the Council based on other existing local laws relating to airports in Western Australia.

As this proposed local law covers areas not covered by any other existing local laws with the Shire of Busselton, no current local laws are repealed by this local law.

## CONSULTATION

The proposed Airport Local Law will be advertised publicly for a minimum of six weeks in accordance with the requirements of section 3.12(3)(a) of the *Local Government Act 1995*.

A further report will be presented to the Council following this period for the Council to consider any submissions received during advertising before it may resolve to make the local law.

Internal consultation has occurred in the preparation of the local law to date. The lawmaking process provides for public advertising.

## STATUTORY ENVIRONMENT

The Shire is required under the Local Government Act 1995 to review its local laws every 8 years. The proposed local law has been identified as an area in which regulation may be required.

The procedure for making local laws is set out in Section 3.12 of the *Local Government Act 1995* and regulation 3 of the *Local Government (Functions and General) Regulations 1996*.

The process is commenced by the person presiding at the Council meeting giving notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner. For the purpose of section 3.12, the person presiding at a Council meeting is to give notice of the purpose and effect of a local law by ensuring that —

- (a) the purpose and effect of the proposed local law is included in the agenda for that meeting; and
- (b) the minutes of the meeting of the Council include the purpose and effect of the proposed local law.

The purpose and effect of the local law is as follows:

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

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

The local law will then be advertised in accordance with Section 3.12(3) which involves giving state wide public notice in relation to the local law and allowing at least 6 weeks from the date that notice is given for the public to make submissions. A copy of the local law is also provided to the Minister for Local Government.

Following this process, the proposed local law will then be referred back to the Council for consideration of any submissions received in relation to the local law and for the Council to resolve whether or not to make the local law by absolute majority decision.

### **POLICY IMPLICATIONS**

Shire Policy 124 – Guiding Principles for Management of the Facility concerns the Busselton Regional Airport. The proposed local law is not inconsistent with the policy and may supplement the aims of the policy in terms of providing good governance of the facility.

### **FINANCIAL IMPLICATIONS**

\$15,000 has been allocated in the 2009/10 budget for the preparation and advertising of this local law. A portion has been spent on drafting the local law and the remaining advertising and gazettal costs will be paid from the remaining funds.

### **STRATEGIC IMPLICATIONS**

One of the Shire's strategic objectives is "to manage the business of the Shire in a responsible and accountable manner utilising organisational sustainability principles". To achieve this, the Shire has a strategic initiative to "ensure regulatory requirements are met".

### **OFFICER COMMENT**

The proposed Airport Local Law provides for the ability to regulate a range of activities associated with the Busselton Regional Airport and is based on the Shire of Leonora Airport Local Law which appears to be one of the more recent and comprehensive Airport local laws.

#### Part 2 – Aircraft

The local law states the rights of aircraft owners to land, service and depart from the airport and for passengers and freight to embark and disembark from the aircraft subject to compliance with the local law and Air Navigation Laws.

The Airport Manager or an authorised person may close the airport if necessary for safety or other operational reasons.

#### Part 3 – Business

The requirement to obtain a permit under the Shire Property Local Law is specified to apply under this local law to the hiring of vehicles. However, taxis will be exempt from the requirement to obtain a permit.

#### Part 4 – Entry Restrictions

A person must not enter upon Airport Land without the written approval of the Airport Manager or authorised person unless they are authorised to do so under the local law, permitted to do so under a permit or written agreement, a passenger in an aircraft lawfully using the Airport, or a person greeting or seeing off a passenger.

The Council may make a determination setting aside any part of the airport to which entry is prohibited absolutely or subject to exceptions. This power cannot be delegated. This would allow the Council to, for example, determine that certain days and times cannot be used for flight training. The mechanism for doing this would be under the Shire Property Local Law, however, the Airport Local Law supplements the Shire Property Local Law in terms of what can be the subject of a determination. There may be some issues in terms of whether this may be inconsistent with Federal or State laws, however, the Shire will review these issues during advertising and report back to the Council. It is considered that if advice is received that suggests this clause is invalid then the clause could be removed without the need for further advertising.

However, for safety or other operational reasons, the Airport Manager or CEO may, on a temporary basis prohibit access absolutely or subject to exceptions. This is considered necessary for safety concerns due to the time in which it takes to put an urgent matter before the Council. However, the Shire would be required to give appropriate notice of such a decision.

Animals are not permitted in the Airport unless under certain specified circumstances. A person must not, without the written approval of the Airport Manager or authorised person, bring on to the Airport a Prohibited Chemical.

Various provisions, in addition to those provided for in the Shire Property Local Law, in relation to inappropriate behaviour on airport land are included.

#### Part 5 – Parking

The ability to park at the airport is clarified with various prohibitions on parking provided.

#### Part 6 – Enforcement

This part provides for the enforcement mechanisms for the local law. If damage is done to Airport property then the Shire may recover from the person responsible the costs of replacing or reinstating the works. Breaches of permits also allow the Shire to take remedial action and recover the costs of doing so as a debt due or allows for a notice to be issued.

Various offences are created. A maximum penalty of \$5,000 would be available to the court in the case of a prosecution and for continuing offences maximum daily penalties of \$500 are available. Infringement penalties are also created.

### Other proposed conditions

The Council resolution also referred to other documents that could be included in a local law of this kind to give legal force to those documents such as the Busselton Regional Airport Aerodrome Manual, the schedule of fees and charges and the proposed Noise Management Plan.

The majority of the content of the Aerodrome Manual is seen as an administrative document and accordingly not ideally suited to become legally binding. Additionally, advice from McLeods suggests that it would be difficult to incorporate other documents into a local law by reference, particularly if the document is only a draft form. This would be seen to be uncertain by the Joint Standing Committee on delegated legislation as external documents can be varied without going through the stringent tests to which local laws are usually subject. Alternately it is preferable to state exactly the matters that the local law seeks to regulate.

In relation to fees and charges the Local Government Act 1995 already provides for the legal basis to levy fees and charges. No additional local law provisions are required to give legal force to these charges.

### NCP testing

The proposed local law will need to be reviewed in accordance with the *National Competition Policy Guidelines Local Law Review Guidelines*.

The Council at this stage is simply considering whether to place the local law for advertising and retains the ability to reconsider any aspects of the local law before finally making the local law. However, any significant amendments would need to be re-advertised.

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

Within three weeks of the Council decision the Airport Local Law will be advertised for public comment. A further report to the Council will be submitted within 3 months of the close of the advertising period.

### **OFFICER RECOMMENDATION**

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

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

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

2. That the Council authorise the CEO to carry out the law making procedure under section 3.12(3) of the *Local Government Act 1995* by following the procedures set out in sequence in the Act; by -
  - (a) giving Statewide public notice and local notice of the proposed local law; and
  - (b) giving a copy of the proposed local law and public notice to the Minister for Local Government.
  
3. That the CEO, after close of the public consultation period, submit to the Council for consideration a report on any submissions received on the proposed local law to enable the Council to consider the submissions made and to determine whether to make the local law in accordance with section 3.12(4).

16.3 LUDLOW TOURISM PRECINCT DEVELOPMENT STUDY

<b>SUBJECT INDEX:</b>	Caravan Parks Tourism
<b>STRATEGIC INITIATIVE:</b>	3.2.1.3 Undertake A Feasibility Study For Ludlow Caravan Park
<b>BUSINESS UNIT:</b>	Economic Development
<b>SERVICE:</b>	Strategic Tourism Development
<b>DATE OF COMPLETION:</b>	31 August 2009
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENT(S):</b>	<ol style="list-style-type: none"><li>1. Ludlow Tourism Precinct Site Assessment</li><li>2. Ludlow Tourism Precinct Development Plan</li><li>3. Heritage Council of Western Australia – Survey of Place Map</li><li>4. Department of Environment and Conservation – Site Plan</li><li>5. AMD Chartered Accountants Financial Review Report</li><li>6. Stakeholders and Partners Flowchart</li><li>7. Site Maps<ol style="list-style-type: none"><li>(a) Ludlow Site Study</li><li>(b) Ludlow Site Plan Stage 1</li><li>(c) Ludlow Site Plan Stage 2</li><li>(d) Ludlow Site Plan Stage 3</li><li>(e) Land Tenure Plan</li></ol></li></ol>

**PRÉCIS**

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

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

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

## BACKGROUND

At the Council meeting on the 25<sup>th</sup> June 2008 the Council resolved (C0806/192):

- "1. That Council resolve that the Bunker Bay site has been fully investigated and is considered not suitable as a site for a future caravan park in the Shire of Busselton*
- 2. That the CEO prepares a report for Council consideration on the land tenure issues arising out of this report in respect to Reserve 21751 and Ludlow.*
- 3. That Council endorses the scope of the feasibility into Ludlow as a caravan park as outlined in this item.*
- 4. That a reference group of key stakeholders be established to provide advice to the officer undertaking the feasibility study into the Ludlow site as a caravan park or tourism destination.*
- 5. That Cr Bethwyn Hastie and Cr Don Haran-Smith be appointed a to the reference group.*
- 6. That as part of the feasibility into the Ludlow site Officers review and report on the options and associated issued of land tenure of the site in consultation with DEC."*

Quotations were obtained for a proposal to develop a site assessment and a concept-business-feasibility plan to set out steps to adopt re-developing the site as a viable and sustainable tourism facility. MarkeTrade were engaged to undertake the study to:

1. Conduct a site assessment examining the physical characteristics, risk, issues and opportunities;
2. Identify any potential flaws that may have the potential to restrict development; and
3. Investigate the steps to adopt in establishing the site as a viable caravan park and sustainable tourism facility.

## CONSULTATION

Consultation has been progressed with many community and government organisations to undertake the feasibility study. The comprehensive list of community groups, state government representatives and non government representatives attached at Attachment 6 were engaged with.

The initial workshop with 37 attendees from industry, government and officers was conducted by Liz Jack from the Centre of Sustainable Tourism on 12<sup>th</sup> August 2008.

A Reference Group was established from the initial workshop attendees comprising Councillors Bethwyn Hastie and Don Hanran-Smith and:

- \* local historians Evelyn Brand and Frank Mouritz, Busselton Dunsborough Historians and Busselton Historical Society
- \* Ludlow resident and representing the Noongar community and Friends of the Tuart Forests, Amanda Bell,
- \* long term local resident from pioneering family, Cheryl Campbell,
- \* representatives from government departments:
  - Department of Environment and Conservation, Greg Mair, Brad Commins
  - South West Aboriginal Land and Sea Council, Marissa Maher, Sue Callan, Daniel Garlett
  - Department of Education and Training, Richard Bloor
  - Tourism Western Australia, Mark Exeter, Robin Inkpen
  - SWDC Tuart Response Group, Gayle Gray
  - SWDC, Jane Manning
- \* Shire of Capel, Andrew Ross
- \* Geographe Bay Tourism Association, Matt Walker, Natalie Venosi, Clive Johnson
- \* Busselton Chamber of Commerce and Pro Busselton, Ray McMillan
- \* WA Caravan and Camping Association, Ted Walker
- \* Busselton Dunsborough Environment Centre, Uta Wicke, Alison Cassenet
- \* Busselton Naturalise Club, Bernie Masters.

Local residents have been advised in writing of the study for the proposed project being undertaken by the DEC and through contact with local resident Amanda Bell. According to local resident and reference group member Cheryl Campbell, historically the residents have been opposed to any future development but now consider the environmental and heritage considerations are paramount and agree there is a considerable need for a caravan park and camping grounds in the Shire.

The Senior Heritage Officer, Heritage and Culture for the Department of Indigenous Affairs, Denis Callaghan, offered his support for the project and also assistance when required from the Department.

The South West Aboriginal Land and Sea Council indicated that the site offered opportunities for Aboriginal song and dance and cultural activities and possible employment. Also it could enhance a pride in Aboriginals through training programs, create a good community feeling and become a great pathway for cultural collaboration.

The contribution of comments and information gathered from consultation with those organisations has been invaluable and noted and incorporated into the report. Feedback has been received on potential risks, historical, natural and social possibilities of the site as a destination.

## **STATUTORY ENVIRONMENT**

The main statutory issue to resolve is land tenure. The feasibility study recommends the Shire secure 57.5 hectares of land for the long term development of the site. This parcel is represented in attachment 7C. The land identified in this site currently comprises a number of lots with varying status and purpose. Structures include some disused mill buildings, DEC storage, part time engineering workshop and tenanted mill housing.

The Ludlow settlement sits on part of State Forest 2 and upon Reserve 868 (Forest Department Quarters and Public Recreation). The area of interest comprises eight land titles that are zoned mostly state forest along with a crown reserve and unallocated crown land, which is owned by the State or the Crown and mostly managed by the DEC or vested with the Shire of Capel.

The ideal is to have the entire site identified as one single reserve vested in the Shire for a defined purpose. This will ensure security of tenure for the Shire protecting any investment made in the site. This may take some years to achieve as it involves excising land from State Forest (requiring approval of both Houses of Parliament), reaching agreement with a neighbouring local government authority, the Department of Environment and Conservation and the Heritage Council of WA.

As outlined in the report it is proposed the Council enter a Memorandum of Understanding with the Department of Environment and Conservation, the Shire of Capel, the Heritage Council of Western Australia, Tourism Western Australia and the Forest Products Commission for the project to resolve land tenure issues. This will allow the progression of the planning phases while these issues are resolved.

A significant portion of the land for the feasibility study of the proposed site at Ludlow falls in the Shire of Capel. The CEO of the Shire of Capel has advised that informal discussions with the Council indicated that they had no concerns with a feasibility study being undertaken although their involvement would be minimal and of a non-financial nature. They also indicated that should the Shire of Busselton wish to resolve land tenure issues that a more formal request would need to be provided so a report can be considered by the Council. The Shire of Capel believes that the site has great heritage and tourism potential and would not want this to be diminished.

Preliminary research has indicated that there are no Native Title issues to be addressed although an Aboriginal Heritage Survey is recommended to be undertaken in conjunction with the Department of Indigenous Affairs in 2010/2011. The survey will be required to conform to the Site Identification methodology under Section 18 of the Aboriginal Heritage Act 1972 whereby sites are identified and defined so that the project can be managed within the Act.

Planning approvals will also be required to be secured. The site is currently reserved for recreation under the TPS 20. The development plan outlines the process required to change the zoning to Tourism. This will commence in 2013 at the commencement of Stage One.

An asset of the site is its history. The old mill and settlement was added to the Register of Heritage Places on a permanent basis on 22<sup>nd</sup> August 2006. With this however came limitations on how the site can be used. Initial consultation with the Heritage Council of WA identified their preferred maintenance of the existing forester huts in their present location and that further consultation would be required should the huts require to be relocated on the site as indicated in the proposed study. The development plan recommends the Heritage Council be engaged with in the coming year to negotiate a suitable outcome for all parties in respect to this matter.

It is recommended the Shire invite the Heritage Council of Western Australia to be part of a MOU to allow for project planning to continue, while these statutory issues are resolved.

On the Inventory of the Australian Heritage Places it states that

*"The area is of considerable historical significance. The development of the landscape is typical of landscape evolution in other settled coastal areas of the south-west of the State. The history ranges through Aboriginal occupancy, French exploration, early British settlement, timber milling and the development of coastal wetlands and inland areas for agricultural purposes."*

The Heritage Council of Western Australia (HCWA) recognises that while nature based tourism remains its key priority, that cultural heritage – indigenous, art, historic and built environment – contributes to sustainable tourism. They advised the importance of a Conservation Plan and a site plan to address both the built and natural environment issues that could accurately identify the elements of the site.

As can be seen there are some significant issues to resolve to progress this project.

## **POLICY IMPLICATIONS**

Nil

## FINANCIAL IMPLICATIONS

\$45,000 was allocated in the 2008/2009 financial year to undertake the feasibility. The feasibility has been conducted within budget.

\$160,000 is required to commence site improvements and to assess the structure of the heritage buildings prior to the commencement of the project.

An amount of \$25,000 is included in the 2009/2010 budget to undertake preliminary planning processes for the proposed project. Officers are recommending this be allocated to appoint an architect or building inspector to assess the heritage buildings and determine a cost to repair and restore to a suitable standard. A "one-off" grant for \$135,000 from either the State or Federal government will be sought to commence site improvements after the DEC have rehabilitated the site.

The main financial implications associated with the project commencing in 2013 are the;

1. Initial capital costs estimated for each stage as follows:
  - (i) Stage One - \$3.178 Million
  - (ii) Stage Two - \$1.778 Million
  - (iii) Stage Three - \$2.17 Million

It is proposed to fund the project in a staged way and largely from grant funding. It is recommended that the Shire contribute \$150,000 over three years as contributing funds in those applications in 2010 – 2013.

Further grant funding is proposed to be applied for from various sources including Lotterywest, Royalties for Regions, TQUAL program, Heritage Project (Jobs Fund) and the Indigenous Heritage Program. It is also aimed to secure loan funds through government infrastructure programs to fund the capital cost for the development. Progress of the project may be impacted should these funds not become available at the times required.

The consultants have also recommended negotiating with the Forests Product Commission for proceeds of timber sales to be assigned for the sole purpose of restoring the heritage buildings.

Further details of the financial implications can be seen in the financial strategy in the report.

2. Operating costs. Projections based on a viability assessment indicated the project is able to:
  - (i) meet loan repayments,

- (ii) be self funding and
- (iii) not expected to rely on recurrent funding from the Shire or short term loans.

The table below indicates the trading projections for the project for the first ten years.

FINANCIAL SUMMARY YEARS 1-10	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Number of Camp/Tent/Caravan Bays	150	150	150	295	295	295	295	295	295	295
Number of Forester's Huts	6	6	6	6	6	6	8	8	8	8
Average Annual Occupancy	33%	38%	44%	45%	45%	46%	44%	43%	44%	45%
Average Daily Site Yield	\$10.44	\$12.28	\$14.24	\$19.63	\$19.82	\$20.22	\$19.21	\$22.33	\$23.23	\$23.46
Annual Accommodation Revenue	\$588,678	\$688,753	\$798,954	\$1,095,606	\$1,106,562	\$1,117,628	\$1,061,746	\$1,222,757	\$1,271,667	\$1,284,384
Annual Operating Revenue	\$594,565	\$699,085	\$810,938	\$1,117,518	\$1,128,693	\$1,151,156	\$1,093,599	\$1,271,667	\$1,322,534	\$1,335,759
Annual Operating Expense	\$385,935	\$403,295	\$440,687	\$492,698	\$499,628	\$514,006	\$507,625	\$564,689	\$588,518	\$603,047
Annual Operating Profit (EBITDA)	\$208,630	\$295,790	\$370,252	\$624,820	\$629,065	\$637,150	\$585,973	\$706,978	\$734,016	\$732,712
Interest + Dep'n + Replacement Prov.	\$368,648	\$355,936	\$452,465	\$499,552	\$480,853	\$603,965	\$661,170	\$636,348	\$611,527	\$586,706
Net Profit / Loss	-\$160,018	-\$60,146	-\$82,214	\$125,268	\$148,212	\$33,185	-\$75,197	\$70,629	\$122,489	\$146,006
Net Cash Surplus / Deficit	-\$185,324	-\$93,644	-\$171,823	\$85,838	\$96,008	-\$59,954	-\$108,381	\$20,489	\$54,376	\$58,841
Economic Value Added	\$20,895	\$88,709	\$150,679	\$267,990	\$253,067	\$249,261	\$53,249	\$142,362	\$142,783	\$115,622
Return on Investment [EBITDA / CAP. EMPL.]	7%	9%	10%	11%	10%	10%	7%	8%	7%	7%
Internal Rate of Return [20yrs]	6%									
Net Present Value [20yrs]	\$144,662									

Stage One of the project is proposed to commence in 2013 after the completion of the preliminary process.

This table demonstrates that the project would be self funding after year 3 with an average return on investment of 8.6% over ten years. From years one to three Marketrade recommend the net cash deficit be debt financed secured from government at inter-government rates. The project loan totalling \$7.12 million will require three "tranches of funding over 6 years repayable over 15 years at 6% government rate.

AMD Chartered Accountants were engaged to conduct a review of the financial components of the Development Plan and have provided an assessment of the reasonableness of the assumptions and estimates used by the consultants. Their report is attached at attachment 5 and includes the following recommendations:

- \* A provision for site specific issues such as securing tenure, zoning, boundary realignment and site rehabilitation.
- \* A verification of the Capital costs that are based on estimates.
- \* The inclusion of a provision for escalation in costs above the 40% contingency allowed.

- \* A clarification on the inclusion on the status of the GST.
- \* Obtaining a QS report to include cost escalations with renewable energies.
- \* A sensitivity analysis is performed to assess the impact of changes in the occupancy rates taken from updated Tourism WA statistics.
- \* An undertaking to prepare detailed monthly cash flow projections for a minimum of two years
- \* Provide a more detailed review of utility charges and service costs
- \* Ensure the projected overhead costs and insurances are reasonable

The AMD report concludes that the above recommendations should be implemented prior to further commitment to the project. Officers consider these issues can be progressing while the MOU is in place during the planning development phase and prior to the Council's commitment to secure land tenure and proceed with the staged development.

DEC has advised that approximately \$80,000 has been spent in the last two years on maintenance costs at the site. Part of these costs relate to the upkeep of the tenanted huts. Officers are recommending these matters be investigated in the project planning stages.

### **STRATEGIC IMPLICATIONS**

The diversity and long range opportunities of this project address objectives and initiatives of two of the five key strategic focus areas from the Shire's Strategic Plan 2006 – 2011 (Strategic Plan) as revised in May 2008.

1. From the Focus area of Community and Social Well Being objectives and initiatives from the Strategic Plan include:

*"Support the provision of a range of healthy recreation, entertainment and lifestyle opportunities.*

*Build and recognise the value of our cultural heritage.*

*Continue to work with CALM and other environmental agencies to manage mosquito numbers and reduce incidence of mosquito borne illnesses."*

2. From the Strategic Plan the Business and Economic Well Being objectives and initiatives include:

*"To promote the Shire of Busselton as the preferred destination within Western Australia for visitors seeking to experience food and wine, recreation, culture and nature based attractions.*

*Recognise the Shire's wetlands as a tourist attraction.*

*Build partnerships to promote and help fund our environmental and other assets to attract national and international tourism."*

#### **OFFICER COMMENT**

Officers are recommending the Council endorse the scope of the proposed project which will be developed gradually over a period of eight to ten years.

Prior to commencing Stage One specific site issues need to be managed and resolved including tenure, zoning, boundary re-alignment, heritage buildings, water licence rights and site rehabilitation. These issues will be investigated and resolved through a Memorandum of Understanding with DEC, Shire of Capel, Tourism WA, Heritage Council of WA, Department of Indigenous Affairs, Cable Sands and the Forest Products Commission.

The MOU would have the objectives to allow for preliminary investigations for:

1. Land tenure with DEC and Shire of Capel to not include certain property lots in future extensions of the Ludlow National Park for a period of one year.
2. Heritage implications and options
3. Indigenous issues
4. Caravan Park studies
5. Site contamination remediation
6. Mosquito control program
7. Flora and Fauna studies
8. Securing water license rights
9. Site remediation to occur

Following this period, if no future problems are identified it is recommended that a lease be drawn up between the Shire and the DEC to allow for the project to proceed during land tenure processes.

Should any situation arise that would impede the project to go forward then the Shire would have the option not to negotiate the lease. This lease would be an interim arrangement prior to securing the vesting of the site.

#### **RISKS**

The major risks for the site are possible site contamination and the presence of mosquitoes.

The site is not listed on the DEC's Reported Sites Register as a contaminated site, although it is an area of interest to the DEC. The soil sampling and analysis undertaken by the consultant is the only process in determining any contamination on the site and is reported in the Site Assessment Report (Attachment One).

DEC may accept the current Site Assessment Report and its recommended remediation program but should they determine the site require more investigation a Certificate of Contamination Audit will be required. This can only be issued by the Department of Environment and Conservation. Under the Contaminated Sites Bill 2000, the only people who can apply for a certificate are the owner or occupier of the land, a person who is responsible for remediation of a site or the recipients of an investigation notice.

Should the Shire of Busselton become the lessee of the site the onus would be on the Shire to apply for the certificate. Officers are proposing this matter be negotiated with DEC prior to undertaking an MOU or as an adjunct to the lease. The soil sampling undertaken by the consultant and the interpretation of the results in the report by ENV Australia would need to be submitted to the DEC prior to application for a certificate.

Other waste deposited as landfill on the old Capel River alignment could be removed by DEC as part of the agreement to the MOU or Lease.

The site is under risk of Ross River Virus and the Barmah Forest Virus. A detailed explanation and health recommendations are covered in the Site Assessment Report (Attachment One).

The consultants recommend that the Shire should demonstrate careful planning as an important part of integrated mosquito management and consult with a university to assist in the information gathering and research.

To prevent exposure to prospective visitors and users to the site of the RR/BF viruses' measures will include but not be limited to:

- \* Warnings (via signs and pamphlets)
- \* Advice to prospective clients about the risk of mosquitoes and mosquito borne diseases during spring and summer, and the need for appropriate clothing and screened camping equipment
- \* Larval and adult mosquito control (acceptable to relevant environmental agencies)
- \* Provision of adequately maintained mosquito proof enclosures and repellents for guests during spring and summer
- \* Mosquito avoidance measures for clients undertaking the proposed guided walks, tours and similar activities during the spring and summer period

Consultation and negotiations with the Health Department, both Shires and the DEC regarding the health risk and management of mosquito control are also required to be addressed prior to any casual camping taking place. Strategies will need to be in place for the health and welfare of any workers and volunteers on the site.

Conversely the mosquito breeding season is also a positive for tourism attraction.

The Vasse Wonnerup Wetlands system is included on both the List of Wetlands of International Importance (and Ramsar Convention) and on the Register on the National Estate (Giblett and Webb, 1996). The wetland system is unique in WA as an example of a system of formerly estuarine basins now functioning as seasonal brackish lakes. It provides a significant habitat for waterbirds and has high species diversity (78 species recorded) and abundance (33,000 birds counted in January 1986). (ANCA,1996). Twenty One of these species are accorded international protection under the Japan Australia Agreement on Migratory Birds (JAMBA).

Ducks and swans are prevalent all year round with 15,000 to 25,000 waders migrating during the "mozzie" season attracting ornithological groups. These groups are keen to further promote the site during the migration season as a "must see" tourist destination. Bird watching is the second to food and wine as the highest reason for tourist destinations. (Ornithological Society of Western Australia)

The visitor numbers to the wetlands centre adjacent to the Iluka mine site averaged 2,000 – 3,000 per year with approximately 50% of the numbers being school students tied into an education program. Iluka stated that due to limited specialised staff availability the numbers were restricted and that more visitors could have been catered for. The site and its proximity to the wetlands offers an opportunity to develop a permanent wetlands site complete with bird hides to further develop a destination for school groups and the community.

## TOURISM

Ludlow is potentially a unique tourism precinct, camping area and nature based Caravan Park and provides a significant scope to host an integrated tourism facility. The diverse attractions to the site include its:

- (a) environmental aspect, wetlands, forest, beach and mill settlement
- (b) education, sporting, recreation, environmental
- (c) heritage features; mill structures, forestry settlement houses, office and school; and
- (d) cultural and indigenous significance;

Officers believe that there is possibly no more area, other than the jetty, that typifies cultural heritage as much as the old mill site at Ludlow. The forestry settlement at Ludlow dates back to 1908.

National Tourism Alliance 2009 – 2014 Future Directions stated that “space and solitude and other nature based experiences will be drivers for many desirable tourism offers and Australia’s long and successful history of “scenic preservation” has created an economically viable means to both preserve and enhance our natural heritage”.

The Ludlow site offers the tourism industry an enviable opportunity to develop a unique nature based holiday site with its proximity to the Vasse Wonnerup Wetlands, Forest Beach and trails through the Tuart Forest and the old rail systems. The Ruabon-Tutunup Railway Reserve forms a continuous corridor from the Ludlow Tuart Forest to the Whicher Range and includes a series of wetland mosaics and rare and endangered flora. The railway reserve connects to other rail trails throughout the region offering connection to the Bibbulmun and Munda Biddi walk trails.

The site is part of the Geographe Bay catchment area of Vasse-Wonnerup which incorporates the Vasse, Sabina, Abba and Ludlow rivers which is well known for its diversity of flora and fauna. It is less than 10 minutes drive, or 30 minutes walk, through the wetlands to the Salmon Fishing grounds along the Geographe Bay coastline. Forest Beach is one of the few remaining beaches where vehicular use for recreational and fishing enthusiasts is allowed.

The Ludlow Tuart Forest National Park (952ha) contains a highly significant stand of Tuarts (1739 registered), which are unique in the world. It is the only remaining Tall Tuart Forests in the World and is therefore one of the rarest ecosystems left on earth. The area is habitat for a number of rare and endangered and vulnerable species including:

- \* Carnaby’s Black cockatoo
- \* The Chuditch,
- \* Brush-tailed Phascogale,
- \* Western Ring-tailed Possum and
- \* Brush Wallaby.

Also of significance on the site is a large stand of pines once milled on the site, an arboretum and a rare large Bunya pine. The study has also maintained a “green corridor” through the site to allow for ease of movement for native wildlife without disruption to their natural migration patterns.

## CARAVAN PARKS

Tourism WA gave a perspective overview of the caravan park situation indicating that caravan parks, especially on privately owned land were disappearing, particularly in coastal areas. Most caravan parks that were left are on Crown land and not on privately owned sites. Between 1997 and 2007, Busselton lost an alarming 30% capacity of caravan and camping sites. Existing park owners are in support of new park developments provided pricing is maintained at market levels, especially during low shoulder seasons.

The WA Caravan and Camping Association encourage the development of new sites and commented that the Ludlow site could be promoted as a recreational leisure park rather than just a caravan park.

The findings of the report indicate that the site is sustainable as a combined tourist development and caravan park but that a stand alone use as a caravan park would not be sustainable. The advantages that this site offers are many and varied and the variety of activities available along with the unique location offer the visitor to the region a unique experience. There is the potential to market the experience to take full advantage of the many opportunities that the site has to offer.

## ENVIRONMENTAL EDUCATION

The Inventory of the Australian Heritage Place states that the Ludlow Tuart Forest is;

*“Within easy access of Perth, the area is a valuable site for students of geography, botany, geology, zoology, history and landscape processes”.*

A representative from the Department of Education and Training (DET) stated that Ludlow may be of interest to both primary and secondary schools. He stated the importance of developing a sustainable education program or project as green issues are big in schools and many do not get the chance to “green up” their schools. He also added that Pemberton and Bridgetown may be good education links and partners as over the years there has been a loss of school camps and the camp schools focus is on physical education and sustainable gardening. Initial discussions with DET identified an opportunity to have environmental education camps placed on the curriculum for all primary school children with the State.

In addition, an educational representative child psychologist thought that the Police may be interested in utilising the Ludlow camp grounds as space to deal with kids with social behavioural problems.

## CONCLUSION

The consultants have provided a concept plan that is sensitive to the issues that the site presents. They have designed caravan and camping facilities that are low-medium density with generous buffer zones between sites. The “eco-park”

design uses renewable technologies to achieve sustainability, minimising operating costs and improving viability.

The consultants concluded from their comprehensive study of the site that the site tenure, rezoning, boundary and site rehabilitation issues can be managed. Also that local community groups can be encouraged to support the longer terms aims of the project and that the Shire should proceed in establishing with what they call "a leading eco-park facility" at Ludlow by 2013.

The MOU between the DEC, Shire of Capel, Tourism WA, Heritage Council of WA, Department of Indigenous Affairs and the Forest Products Commission, Cable Sands and the Shire of Busselton would allow the progression of the preliminary stages of the development to be completed. This would clearly outline the feasibility of the project and its benefit to the Shire of Busselton and assist in the Council's decision making process to progress with securing the tenure of the land required.

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

It is hoped that Stage One of the proposed project will commence by 2013.

Prior to this a pre-construction phase will be required. Planning development steps need to be addressed to assess the risks and issues identified in the report.

The consultants have developed a comprehensive Action Plan tabled in the report (see Attachment 2) to address the priorities in the 2009 – 2010 financial years. The actions outlined aim to cover all the preliminary requirements that need to be undertaken to enable Councillors to be fully informed of all the measures required prior to a decision being made to complete land tenure negotiations.

Officers would expect to have a draft MOU negotiated with the DEC, Shire of Capel, Tourism WA, Heritage Council of WA, Department of Indigenous Affairs, Cable Sands and the Forest Products Commission for the Council's consideration by 31 December 2009.

#### **OFFICER RECOMMENDATION**

That:

1. the Council supports in principle the proposed Ludlow Tourism Precinct project;
2. the CEO invites the Department of Environment and Conservation, Shire of Capel, Tourism WA, Heritage Council of WA, Department of Indigenous Affairs, the Forest Products Commission and Cable Sands to be part of an MOU. The purpose of the MOU is to resolve land tenure, zoning, boundary re-alignment, heritage buildings and site rehabilitation. The draft MOU be presented to the Council by 31 December 2009, or as soon after as facilitating the constituent parties allows;

3. the CEO negotiate with the Forest Products Commission for the proceeds of timber sales from Lots PIN 527082/527077 to be assigned to the Ludlow project for the sole purpose of restoring heritage buildings;
4. a suitably qualified consultant be engaged to provide an independent assessment of the heritage buildings on the proposed site;
5. the CEO negotiates with the Health Department to determine an adequate mosquito control program and risk assessment procedures;
6. an amount of \$50,000 be proposed as part of the draft 2011/2012 budget for consideration to fund independent financial modelling for the staged project to commence in 2013.; and
7. the Corporate Plan item (3.2.1.3) in respect to this matter be changed from "Undertake a feasibility study for Ludlow Caravan Park" to "Ludlow Tourism Park Project Planning".

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

<b>SUBJECT INDEX:</b>	SAR – Special Area Rate
<b>STRATEGIC INITIATIVE:</b>	3.1.2 Establish partnerships with key agencies to build economic development
<b>BUSINESS UNIT:</b>	Legal and Compliance
<b>SERVICE:</b>	Legal Services
<b>DATE OF COMPLETION:</b>	30 November 2009
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENT(S):</b>	1. Proposed New Memorandum of Understanding between Shire of Busselton and The Busselton Chamber of Commerce & Industry Inc.

### **PRÉCIS**

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

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

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

### **BACKGROUND**

In early 2001, the Chamber canvassed community attitudes as to the introduction of an SAR within the Busselton CBD. It was proposed that the funds raised would be utilised for accelerated improvement of the townscape and for town centre promotions.

Consequent to a report to the Council on this matter in May 2001, it endorsed issuing of Local Public Notice inviting submissions with respect to the introduction of a specified area rate in the Busselton CBD (C015/287).

At its meeting of 10 October 2001, the Council resolved (C0110/529) to enter into an MOU with the Chamber for the purpose of allowing the expenditure of funds generated by a specified area rate to be utilised by the Chamber for the

purposes of promotion and betterment of the Busselton CBD. Following subsequent negotiations between the Shire and the Chamber, the MOU was formalised in March 2002.

Subsequent to the signing of the initial MOU in March 2002, changes relating to the SAR programme instigated a desire for both the Shire and the Chamber to enter in to a new agreement. In compiling the amended MOU, a number of meetings were held between Shire staff and Chamber representatives to ensure that the amended document was acceptable to both parties. The amended MOU was presented to the Council in September 2003, where it was resolved (C0309/379) that the Shire enter in to a new MOU with the Chamber, for a period of 3 years. The new MOU was signed on 16 October 2003.

Further minor amendments to the MOU were presented to, and endorsed by Council, at its meeting of 27 October 2004 (C0410/367).

The MOU was again renewed in July 2006, at which time the Council endorsed (C0607/730) that it be extended for a further three (3) year period.

The Council has also previously resolved on 28 January 2009 (C0901/029) with respect to the potential negotiation of a new three (3) year agreement in relation to the Busselton Ironman from 2010 "That the Council propose to IMG to retain the existing arrangement regarding supply of 500 room nights with any shortfall to be funded by the Chamber of Commerce through the existing Specified Area Rate.

## **CONSULTATION**

Consultation has occurred between Chamber representatives and Shire staff in respect to the renewal of the MOU beyond 2009. At meetings with Shire staff the Chamber has indicated a desire to significantly expand the operation of the SAR beyond the existing Busselton CBD area to possibly take in a range of tourist and potentially some commercial properties in different areas across the Shire.

While it is understood there have already been discussions between the Busselton Chamber and the Dunsborough Yallingup Chamber of Commerce in relation to this concept, as well as some discussions with the Geographe Bay Tourism Association, representatives of the Chamber and Shire staff both agreed that the concept would require extensive consultation with effected ratepayers and other stakeholders before implementation. For this reason, implementation of this concept prior to the 2009/10 financial year was not possible. The Chamber has, however, sought an amendment to the MOU to require the Shire to give due consideration to the possibility of an expanded arrangement occurring from the 2010/11 financial year (i.e. during the last three (3) years of the proposed term of the new MOU).

The Chamber has also sought some other minor amendments to the MOU which are detailed in the report.

## **STATUTORY ENVIRONMENT**

A local government can impose specified area rates under and in accordance with the provisions of section 6.37 of the Local Government Act 1995. The agreement is primarily intended to ensure that section 6.37 is complied with in the use of the Specified Area Funds raised in relation to the Busselton CBD.

In particular, clause 4 of the agreement is designed to ensure that the funds are spent on meeting the cost of the provision of specific works, services or facilities within the Busselton CBD such that section 6.37(1) is complied with. Section 6.37(1) requires that a local government be satisfied that a specified area rate imposed on a portion of its district will result in the provision of specific works, services or facilities which the rate payers or residents of that portion of the district have benefited or will benefit from, have access or will have access to or have contributed or will contribute to the need for.

Notably, section 6.37 (2) of the Act requires that the local government either use all the money from the Specified Area Rate for the purpose which the rate is imposed in the financial year in which the rate is imposed or place the money in a reserve account established by the local government under section 6.11 of the Act for the purpose for which the Specified Area Rate is raised. For this reason clause 7 of the agreement requires the Chamber to immediately repay any Specified Area Rate monies not spent during a financial year at the end of that financial year to the Shire, so that the Shire can hold that money in a reserve fund that meets the requirements of section 6.37 (2) of the Act.

An assessment will need to be made of whether the Chamber's revised proposal can be carried out purely as a Specified Area Rate under Section 6.37 of the Local Government Act. It may well be that, in order to carry out the revised Chamber's proposal, the Shire would need to impose Differential General Rates under section 6.33 of the Local Government Act based on the zoning of properties under the Shire of Busselton District Town Planning Scheme No. 20, or indeed a combination of a differential general rate and a Specified Area Rate that applies to particular defined areas in the Shire. It is proposed that these issues will be investigated during the 09/10 financial year, and legal advice sought if necessary.

## **POLICY IMPLICATIONS**

Nil

## **FINANCIAL IMPLICATIONS**

Monies raised under an SAR are in addition to general rates revenue and, as such, do not form part of the Shires operational funding requirements.

Financial implications for the Shire are essentially limited to administration costs in governing the specified area rate, cognisant of Local Government Act requirements and the MOU between the Shire and the Chamber (e.g. reviewing budgets).

Pursuant to Clause 7 of the MOU, the Shire is entitled to retain 2% of the specified area rate funds raised each year to offset administration costs.

Consideration would need to be given to whether any additional money should be retained for administration costs, including consultation costs (as it is with planning applications) should the Chamber's expanded SAR proposal proceed. This can be negotiated with the Chamber as part of the process of investigation of the revised proposal.

### **STRATEGIC IMPLICATIONS**

The raising of the SAR, which funds the related activities of the Chamber, aligns with a number of the key result areas contained within the Council's Strategic Plan 2006-2011 including;

- \* Community and Social Well Being  
Foster vibrant cultural activities that celebrate diversity and a sense of community
  
- \* Business and Economic Well Being  
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 particularly by establishing partnerships with key agencies to build economic development  
  
To promote the Shire of Busselton as the preferred destination within W A for visitors seeking to experience food and wine, recreation, culture, heritage and nature based attractions
  
- \* Organisational Well Being  
To manage the business of the Shire in a responsible and accountable manner utilising organisational sustainability principles

### **OFFICER COMMENT**

The proposed new MOU has terms which are almost identical to the MOU which expired on 30 June 2009.

The most significant alteration is the inclusion of amendments requiring the Shire to give due consideration to any proposal put by the Chamber to expand the scope and area of operation of the Specified Area Rate, possibly including the imposition of other Specified or Differential Rates as part of this agreement, if the proposal is lawful and considered reasonable by the Shire to do so. Such a proposal could operate at the earliest from the 2010/11 financial year.

The Chamber sought a more definite commitment in this regard, however, it should be noted that even the previous MOU referred to the prescribed area for the purposes of that MOU as being that portion of the Shire as from time to time identified by resolution of the Council for the purpose of making a Specified Area Rate, as, the act of setting a Specified Area Rate involves the exercise of a

statutory discretion of the Shire, exercised by the Council, which can not be fettered by a legal agreement. Thus, in effect, the Council make a decision each financial year whether or not the Specified Area Rate arrangement under the agreement will continue in that financial year and in what form. The proposed new clause 2.2 of the MOU, however, will ensure that the Shire is required to give proper consideration to any proposal put by the Chamber in this regard.

The fact that there is some flexibility in relation to the proposal enables consultation to be carried out with effected ratepayers and stakeholders and also proper consideration to be given to the exact form in which such an arrangement could be put in place.

The other significant change requested by the Chamber is an ability for it to draw on reserve funds from 1 July in each financial year of the term to enable the continuation of its program of services on an annual basis, in accordance with clause 8.2 of the MOU. This would in effect enable the Chamber to draw on unspent SAR monies from previous years to fund a full program of operations in each financial year, should there be any delay in the Shire setting its annual budget and therefore collecting rates in that financial year. This change is supported as it would enable the Chamber to lawfully draw upon reserve funds that are set aside for the purposes of the SAR to carry out approved operations in accordance with the SAR, given that SAR funds can only be spent in accordance with a Chamber budget which has been approved by the Council for each financial year.

The other changes sought by the Chamber are very minor, involving additions to the name and signing clauses of the Chamber and the inclusion of a clause requiring any amendments to the agreement to be in writing.

Another matter the Council should consider is its previous resolution that funding of any shortfall relating to the provision of room nights that may have been required under the new Busselton Ironman contract with IMG, come from the Specified Area Rate. If thought necessary by the Council, a clause requiring this could be included in the MOU. At this stage, such a clause is not being proposed for the following reasons:-

1. IMG are unlikely to be involved in any new contract for the Busselton Ironman and whether or not room nights would form part of such a contract is at this stage unknown and the subject of negotiation with the World Triathlon Corporation, the owners of the Busselton Ironman; and
2. It is possible an arrangement of this type could be given effect during the term of the MOU by either altering the purpose for which the SAR is set or the amount of the SAR in a particular financial year or by requiring the inclusion of particular items in the program of services of the Chamber under clause 4 of the MOU.

If the Council felt that a more definitive clause in relation to this issue needed to be included in the new MOU then it could resolve accordingly.

Other than these issues, the proposed new MOU is the same as the previous MOUs between the Chamber and the Shire under which the SAR arrangement has operated very successfully.

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

A new SAR MOU would be forwarded to the Chamber for execution within two (2) weeks of the date of the Council resolution.

#### **OFFICER RECOMMENDATION**

That the Shire enter into a new Memorandum of Understanding with the Busselton Chamber of Commerce and Industry Inc. in accordance with the document which is Attachment 1 to this report.

**16.5** LOCKE ESTATE PROJECT PROGRESS REPORT

<b>SUBJECT INDEX:</b>	Agreements & Contracts Public Submissions / Community Consultation
<b>STRATEGIC INITIATIVE:</b>	
<b>BUSINESS UNIT:</b>	Community Development
<b>SERVICE:</b>	Property Services
<b>DATE OF COMPLETION:</b>	
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENT(S):</b>	'A' Proposed 'Conservation Areas' 'B' Site Survey

**PRÉCIS**

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

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

**BACKGROUND**

In January 2007, the Council resolved to commence the 'Community and Stakeholder Consultation into the Future use of the Locke Estate'. The project subsequently commenced on the 7<sup>th</sup> February 2007, with the intention of providing land use concepts for consideration by the Council. The project was completed in December 2007 with the final report presented to the Council in February 2008. 17 recommendations were developed directly as a result of the consultation with the various stakeholder groups, and a 'broad brush' concept developed, which consisted of;

- a) a number of community run campsites
- b) incorporation of a 'Dual Use Path' through the site
- c) a caravan / camping park taking up no greater than 1/4 of the developable area
- d) a large group campsite capable of catering to the needs of larger booking numbers
- e) any remaining area to be allocated via an Expression of Interest process.

The report was deferred (C0802/078), to allow the Councillors an opportunity to further workshop the many issues involved. At the workshop on 7th May 2008, Councillors discussed concerns relating mainly to the recommended 'broad brush' concept. The general consensus was that decisions regarding the adoption of a final use should be delayed until more detailed information was available on which to base this decision. It was considered that each of the 17 recommendations had merit; however some recommendations were considered imperative regardless of what the end use of the land would be. It was these 'non-negotiable'

recommendations that Councillors felt were required to be undertaken as soon as practical with the view that outcomes of these studies would assist the Council to determine the most appropriate use of Reserve 22674, which resulted in the following Council resolution (C0808/265) ;

1. *That the Shire informs the Department for Planning and Infrastructure of its intention to seek to retain the management of Reserve 22674 as per recommendation 1 of the report presented to the Council on 27 February 2008, "the Future Use of the Locke Estate" (the previous report).*
2. *That the Shire undertakes an Environmental Management Plan to the value of \$30,000, over Reserve 22674 to ensure the protection of remnant vegetation, identification of degraded areas suitable for development and the retention and enhancement of habitat for the Western Ringtail Possum as outlined in recommendations 3, 4 & 5 of the previous report.*
3. *That a detailed infrastructure and services survey, up to the value of \$15,000, be undertaken over the Reserve 22674 as per recommendation 9 of the previous report.*
4. *That a report in relation to the progress of these studies be presented back to the Council by September 2009 and if the studies have been completed by then, that a subsequent recommendation for the use of the land be included in that report.*

**CARRIED 7/4**

In the ensuing months, Parts 1, 2 & 3 of the resolution were completed and the results are presented for the Council's consideration.

## **CONSULTATION**

The recommendations in this report have been developed from and referenced to, the recommendations resulting from the community consultation undertaken in 2007 and the workshop with Councillors in 2008. Additionally, key staff have been consulted where appropriate.

## **STATUTORY ENVIRONMENT**

Section 3.54 of the Local Govt Act authorises the Shire to control and manage reserve land vested in or placed under its control. The Locke Estate, Reserve 22674, is under the care and control of the Shire of Busselton under a Management Order with Power to Lease for a designated purpose for periods of up to 21 years.

## **POLICY IMPLICATIONS**

Nil

## **FINANCIAL IMPLICATIONS**

A lease fee of \$800.00 per annum per site is recommended. The consultation and subsequent recommendations in 2007, clearly expressed a desire for an improved system of management for the reserve and more proactive management by the Shire, of the uses and activities undertaken by the lessees. Factors such as the establishment and administration of the Locke Estate Working Group (LEWG), enhanced fire management of the conservation areas and the compliance requirements of a new lease are examples of the service levels that will be expected of the Shire over the next 21 years. This was also evident in recommendations of the draft Environmental Management Plan. It is appropriate therefore to resource the Shire for provision of these services.

## **STRATEGIC IMPLICATIONS**

The following Strategic Objectives apply to the Locke Estate project;

*"To develop and maintain the Shire's assets and built environment to maximise public benefit now and into the future"* and

*"Create harmony and unity within the community through open communication, participation and accurate representation."*

## **OFFICER COMMENT**

The original 'broad brush' concept developed and presented to the Council in February 2008, consisted of;

- a) a number of community run campsites
- b) incorporation of a Dual Use Path through the site
- c) a caravan / camping park taking up no greater than 1/4 of the developable area
- d) a large group campsite capable of catering to the needs of larger booking numbers
- e) any remaining area to be allocated via an Expression of Interest (EOI) process.

The development of a concept for land use is a subjective process and although based on a foundation of some 17 recommendations resulting from almost a year of community and stakeholder consultation, it is clear that there are wide and varying views as to the most appropriate use for the Reserve 22674, the Locke Estate.

With the exception of the development of a public caravan / camping park (c) above, which the Council resolved not to include in the final concept, the originally proposed model still reflects the wishes of the broader community and as such remains the preferred model for the future. With the removal of the caravan park concept, each of the remaining components can exist in a concept not dissimilar to the current layout and use.

- a) Community run campsites; the number of campsites should remain the same or similar to the current 16 sites. Allowances can be made for the merging of two campsites into one for a single purpose, if that was proposed by a potential lessee. The size of the campsites should be reduced and be somewhat in line with the area of each campsite which remains following the removal of the 'Conservation Area' proposed in the Environmental Management Plan (EMP). An exception should be made in the case of the eastern most (current Girl Guides) campsite where the EMP recommendation is for the whole of the site to become 'Conservation Area'. This particular site has been well managed with clearing of natural vegetation kept to a minimum. The lease area of this site should consist of the vicinity of the current buildings allowing fair and reasonable space for access and egress, parking, recreation and walk trails somewhat in line with the proposed leased area indicated on Attachment 'A'. (This is in line with Recommendation 3.)

It is recommended that the existing lessees be offered first right of refusal to enter into a new lease of their currently occupied site. Assessment criteria should be set, against which approval could be granted, for instance the groups must;

- \* *be a 'Not for Profit' Incorporated body with charitable, educational, and / or benevolent objectives.* This would (should) capture all the current lessees.
- \* *have a plan for the future, akin to a strategic or business plan, at the time of application.* The opportunity to lease a campsite which will be utilised by various members of the community is a privilege and although the Shire is not responsible for the day to day operations of the campsite it is prudent that the Shire provides this opportunity to a well resourced, financially viable and professional organisation that has the capacity to manage and maintain the site over the next 21 years.
- \* *demonstrate that it had a specific purpose and or service to provide to the community* e.g. provision of respite to families with a disabled family member. In which case it would be expected that the business plan would demonstrate a site design inclusive of wheelchair accessible pathways and accommodation. A generic 'provision of cheap holiday accommodation' would not be an acceptable purpose.

A long standing concern of the Shire has been that there is anecdotal evidence of some campsite operators providing accommodation to general holiday makers who do not meet the criteria specified in the lease and are financially able to utilise commercial caravan parks for their annual holidays. This is extremely difficult to police and is a cause of some animosity between lessees.

Commercial park operators have stated that they are not too concerned with losing some patrons during the summer as they are well booked in any case, in the off season though it impacts upon the commercial sector as they have vacancies and some Locke campsites are full due

to their low fees. For this reason, it is recommended that the number of caravan sites per campsite be reduced and in some cases eliminated depending on the proposed use of the particular site. This would be negotiated in consultation with the individual lessees. Should a lessee wish to operate a site as a caravan park it could be approved, but the lessee will have to comply with Caravan Park Regulations to the same extent as a commercial caravan park operator. Additionally, all existing privately owned caravans would be removed by the lessee prior to the commencement of the new lease term as this practice has been an issue in the past as it provides an advantage to the van owner and is contrary to the approved lease purposes.

- \* *demonstrate compliance with the current lease conditions and obligations.* (in the case of existing lessees reapplying for a new lease)

Some of the conditions of the lease particularly those dealing with 'Permitted Use' have been interpreted loosely by some lessees over the years. It is also a considerable drain on the Shire resources to police or monitor compliance of some conditions. An appropriate relationship based on mutual agreement between the Shire and the lessees is essential to the smooth management of the Locke Estate. (This is in line with Recommendation 11)

It is understandable that lessees may have some hesitation regarding an application for a new lease and their ability to give a commitment, given that only some of the lease requisites will be known i.e. the potential lease boundary, the lease fee and the term. Therefore the Shire would expect an indicative acceptance only, subject to further development of the conditions.

- b) Incorporation of a 'Dual Use' Pathway; the inclusion of a dual use pathway with a foreshore alignment into the Locke Estate final design is consistent with the Leisure Services Plan – Recommendation 16.2.1 *Establish a continuous cycle/walk trail from Busselton to Dunsborough along the foreshore reserve* and adopted by the Council as per decision C0702/030.
- c) Caravan / Camping Park; Removed (C0808/265).
- d) Large Group Campsite; the provision of one larger campsite which would cater mostly to schools and large sporting or hobby groups could be encouraged by the merger of two or more current sites. This opportunity could be available to sites which have an adjoining vacant site.
- e) Remaining sites to be allocated via EOI; At least one vacant site exists, the former St Johns Ambulance site. Over the years some organisations have written to the Shire to apply for a lease over this site, this has not been encouraged due to the uncertainty of the overall future use of the reserve. However it is recommended that once the current lessees have had an opportunity to accept or decline the Shire's offer of a new lease, public advertising should be undertaken for the purpose of leasing any remaining

site(s). Any proposed new lessee would also comply with the assessment criteria and obligations imposed on current lessees in their applications.

Two studies have been undertaken in recent months, a) an Environmental Management Plan which was presented to the Council in July 2009 and advertised for public comment, and b) a Site Survey, the results of which are contained attached to this report as Attachment B.

- 1) **Environmental Management Plan:** The draft EMP was adopted by the Council for advertising (C0907/261) in July 2009. The closing date for submissions was the 28th August 2009 with comments and submissions currently being compiled for presentation to the Council on a date corresponding with the presentation of the final Locke Estate report. The only recommendation from the EMP to be incorporated, at this stage, into the recommendations of this report is that of the proposed 'Conservation Areas'. This has been included due to the relevance of this factor to a lessee's determination of whether to apply for a lease site. The proposed leased area would have to be known to a lessee in order for them to develop a preliminary Business Plan for the site.
- 2) **Site Survey:**

*"Recommendation 9: (Land Use and Environment)*

***"A detailed infrastructure and services survey be undertaken and recommendations made on the removal or upgrade of buildings and services, with particular regard to foreshore setback recommendations environmental management issues such as energy and water use, nutrient inputs and health issues for Geographe Bay.***

*Information gleaned from an infrastructure and services survey will provide a basis from which it will be possible to move forward with future design plans. It is envisaged that the survey will identify infrastructure across the site and the building report would make recommendations as to the viability of this infrastructure. Particular attention can then be paid to infrastructure falling within the new setback areas. This information will assist in the development of the Reserve Management Plan which will further define useable and developable areas and be a major contributor in formulating the final site design."*

The Site Survey was completed in February 2009 and is included as Attachment B. Essentially, the survey was undertaken to plot the proposed setback line as per Recommendations 7 and 9 of the original report to the Council.

*"Recommendation 7: (Land Use and Environment)*

***"Development setbacks as a guide for concept planning purposes be adopted as follows:***

***Lessees/land users be allowed to keep existing buildings within 50 metres of the 2003 vegetation line only at the discretion of the management authority, if it is deemed not to increase the threat of erosion, and subject to a site infrastructure survey.***

***All new permanent infrastructure to be a minimum of 50m from the foreshore vegetation line, 20m from Caves Road and 7.5m from side boundaries."***

*The Shire has the ability to determine setback issues via Scheme provisions, Development Guide Plans/Structure Plans, and development approval conditions. The WAPC endorsement of Scheme amendments and DGPs/Structure Plans is required.*

**Recommendation 9: (Land Use and Environment)**

***"A detailed infrastructure and services survey be undertaken and recommendations made on the removal or upgrade of buildings and services, with particular regard to foreshore setback recommendations environmental management issues such as energy and water use, nutrient inputs and health issues for Geographe Bay."***

*Information gleaned from an infrastructure and services survey will provide a basis from which it will be possible to move forward with future design plans. It is envisaged that the survey will identify infrastructure across the site and the building report would make recommendations as to the viability of this infrastructure. Particular attention can then be paid to infrastructure falling within the new setback areas. This information will assist in the development of the Reserve Management Plan which will further define useable and developable areas and be a major contributor in formulating the final site design."*

It is recommend that the site survey pertaining to each leased site be discussed with the relevant lessees and that discussion would determine the ongoing management of the infrastructure within the proposed setback. The aim would be for the lessee to remove within 3 years of the date of commencement of the new lease, any infrastructure that:

- a) is beyond minor maintenance, and/or
- b) no longer contributes to the purpose of the leased area.

Additionally, all septic tanks within the setback should be removed within 1 year of the date of commencement of the new lease. A building that requires a waste disposal system and does not meet the removal criteria of a) & b) above, can be connected to an alternative waste disposal system approved by the Shire. No new accommodation or significant buildings would be permitted to be built within this area.

The lease fees for the Locke Estate sites should reflect an amount that represents the community nature of the purpose of the lease but cover the

Shire's costs to administer the leases. As discussed earlier, Shire resources required to adequately manage the reserve and deliver the level of service the community has expressed its desire to see, will involve an increased financial and time allocation. Typical management requirements will be, lease development, regular site inspections, particularly in the initial years, financial management, health and building inspections and meeting attendance. A lease fee of \$800.00 per annum plus outgoings such as rubbish collection is recommended. As a comparison, if in accounting terms we considered the currency value doubles every seven years, the one hundred dollars per annum lease fee established nearly 21 years ago would be equivalent to approximately \$800.00 in today's dollars.

Additionally, each lessee could contribute an amount each year for the protection of the coastline adjoining the reserve with the funds being quarantined by the Shire in a Restricted Asset Account specifically for this purpose. The Shire would not contribute to the cost of the coastal protection as per the Council decision C0802/075, but could hold and administer the funds, apply to the Dept Transport on behalf of the lessee's for a Coastal Protection Grant and participate in the regulation of any works. This would be a matter for the lessees to determine based on their desire to protect their assets.

In order to progress the decision making for the many issues yet to be considered, it is recommended that a working group be established and meet within the next two months. The Locke Estate Working Group (LEWG) should initially comprise a staff representative (Shire Property Officer) two Councillors, representatives of three lessees and one community member not connected with any lessee group. It would be envisaged that once the new lease conditions and methods of operation had been established there would not be a requirement for any Councillors to participate in the group as the matters dealt with by the LEWG would be of an operational nature.

The LEWG would consult with the lessees and make recommendations to the Council on the future methods of lease management and operations similar to that suggested previously as Recommendation 2;

**"Recommendation 2**

*Establish an independent standing committee of community leaders to monitor the declared purposes and practices of lessees or land users on behalf of the Shire Council or managing authority."*

The LEWG would not have decision making powers and all major decisions would still be brought to the Council. The initial purpose of the LEWG would be to establish, in consultation with the lessees, the operational guidelines for occupation of the site including use, environmental obligations and overall site design.

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

The result of the Council Resolution would be formally communicated to the Minister for Lands and the current lessee's by mid October 2009.

A call for nominations for the community representative to participate in the LEWG would be advertised within two weeks of this resolution and the first meeting held by December 2009.

### **OFFICER RECOMMENDATION**

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

4. That the Locke Estate Working Group (LEWG) be established by December 2009 and comprise a staff representative, two Councillors, representatives of three lessees and one community member not connected with any lessee group.
5. That the two Councillor nominations for inclusion in the LEWG be Councillor \_\_\_\_\_ and Councillor \_\_\_\_\_.

**16.6 PROPOSAL TO LEASE CARBUNUP HALL RESERVE 19338**

<b>SUBJECT INDEX:</b>	Agreements / Contracts
<b>STRATEGIC INITIATIVE:</b>	2.1.2 Manage and maintain the Shire's assets for the amenity of the Community
<b>BUSINESS UNIT:</b>	Community Development
<b>SERVICE:</b>	Property Management
<b>DATE OF COMPLETION:</b>	31 December 2009
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENT(S):</b>	1.Aerial Photo Reserve 19338 2.Photo Caribunup Hall

**PRÉCIS**

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

**BACKGROUND**

The Caribunup Hall is located on the corner of Caves Road and Wildwood Road in Caribunup. The designated 'Purpose' of the reserve under the Management Order is 'Agricultural Hall site' and the Town Planning Scheme (TPS) zoning is 'Public Purpose'.

Yallingup Steiner School (YSS) began as a playgroup in 1988 before locating to the former Yallingup Primary School site in 1989 eventually purchasing the school site from the State Government. In 1994 the YSS became a registered Kindergarten and Primary School servicing the area from Busselton to Margaret River.

The YSS is a 'not for profit', incorporated body, governed by the parents of students in the school. The school appears to have a viable financial standing, as their accounts are independently and professionally audited each financial year. Seventeen staff are employed by the school, including eleven teachers, four administration staff and two maintenance/cleaning staff.

The YSS currently hires a portion of the Kent Street Family Centre for two half days per week to operate the Busselton Playgroup, catering for around thirty six families. With the growth of the Vasse and Busselton areas, the YSS anticipates an increase in demand for their services and believes that they can cater for a larger number of families given an appropriate venue.

The Caribunup Hall has been underutilised for some time. From December 2007 to date there have been only six bookings, mainly for state and federal election purposes.

## **CONSULTATION**

The Department for Planning and Infrastructure, now the Department of Regional Development and Lands (DRDL) was consulted regarding this proposal and the Shire has received correspondence indicating that Power to Lease over the Reserve 19338 would be supported by the agency with any lease being subject to the approval of the Minister for Lands.

Key Shire officers have been consulted regarding this proposal in so far the frequency of use, level of maintenance of the hall, the impact of increased traffic to the carpark and compliance of the proposed use under the TPS.

Local public advertising of this proposal, although not a statutory requirement, is recommended enabling the Shire to receive any submissions in support or opposition to this application.

## **STATUTORY ENVIRONMENT**

When disposing of property whether by sale, lease or other means a Local Government is bound by the requirements of section 3.58 of the Local Government Act. However 3.58 (5)(d) provides exclusions to this process under Regulation 30(2)(b)(i) & (ii) of the Local Government (Functions & General) Regulations. This section states "disposal of land to incorporated bodies with objects of benevolent, cultural, educational or similar nature and the members of which are not entitled to receive any pecuniary profit from the body's transactions, are exempt from the advertising and tender requirements of section 3.58 of the Local Government Act."

The constitution of the YSS is such that this exemption would apply.

Reserve 19338 is a C class reserve under a Management Order to the Shire of Busselton. Power to Lease is not included in the Management Order at the present time; however the DRDL has indicated its support for this inclusion allowing the Shire to lease the reserve for periods of up to 21 years.

Use and development of the site will also need to comply with the requirements of the Shire's TPS. The land is identified as 'Public Purpose' reserve in the Scheme. Use of the land as proposed would require the prior issuing of planning approval, but the Shire does have the discretion to approve the proposed use.

## **POLICY IMPLICATIONS**

Nil

## **FINANCIAL IMPLICATIONS**

The proposal to lease the Carburnup Hall would be financially beneficial to the Shire in so far as Shire expenditure to maintain and service the hall would be reduced. In the 08/09 Financial Year, actual expenditure, excluding wages and overheads was \$8,370 with \$9,150 budgeted for the 09/10 FY. These amounts

include an estimated portion for the public toilets on the site and therefore it is anticipated that the actual saving would be in the vicinity of between \$4,000 and \$5,000 per annum. It is difficult to ascertain the exact amounts as services are generally applied to both buildings. A more precise figure would be available if the public toilets and the hall premises are separated financially and this would be done if the lease proposal was approved.

In most of the Shire's community leases, the Shire has responsibility for capital maintenance and structural repairs, however in this case, the YSS propose and the Shire agrees that capital maintenance will be the responsibility of the YSS. The reason for this is, in situations where a lessee has exclusive use and control over a building or site and has the financial standing to take the responsibility, it is appropriate for the lessee to do so. It is common for lessees in this situation to apply for grants or loans to manage and grow their own facilities. Under the lease agreement the lessee would assume responsibility for any capital improvements and repairs, and the maintenance of the hall and the fenced playground area. The YSS is also aware that they may be required to construct toilet facilities for the use of staff and children on the site.

The increase in usage of the gravel carpark area off Wildwood Rd by the parents and staff of the YSS could adversely impact on the current level of maintenance of the carpark. It would be recommended that the carpark maintenance be monitored by the Property Manager for the first three year term and if necessary an annual contribution would be sought from the YSS in each of the further terms, to enable the Shire to recover the cost of the additional maintenance.

### **STRATEGIC IMPLICATIONS**

The proposal to lease the Carburnup Hall is supported by the following Strategic Objective;

*'To develop and maintain the Shire's assets and built environment to maximise public benefit now and into the future.'* The benefit of the proposal is twofold; the Shire is able to utilise the human and financial resources available to it in a more positive way by applying the resources to other facilities with higher utilisation. Secondly, the YSS is able to access a building that is strategically well placed for them in both a physical and cultural sense.

### **OFFICER COMMENT**

Carburnup Hall exists as Place 414 on the Heritage Council of WA's (HCWA) database; it is not 'Heritage Listed'. The HCWA describes the Carburnup Hall as *'a simple weatherboard and iron community hall with modest gabled roof and covered verandah.'* It was constructed in 1920 and appears in the Shire of Busselton Municipal Inventory of Heritages Places.

YSS is a private education facility that offers an alternative to the mainstream state or private school system.

The proposal by the YSS to lease the Carburnup Hall is considered appropriate and beneficial for the Shire and the YSS. Under the TPS, the use of a portion of the

reserve i.e. the hall, as a private school could be considered on application by the YSS. While it is not a requirement of the Shire as land owner to submit a Development Application (DA) for works or use on reserve land under its control, it is the practice generally adopted by the Shire. In this situation where the Shire is requested to consider a change of use, it is appropriate that the proponent submit the DA on behalf of the Shire.

Due to the low level of usage of the hall, disadvantage to the community is anticipated to be minimal if any. This however, will be evident following public advertising of the proposal which is recommended to take place subsequent to the submission of a formal planning application from the YSS.

The YSS proposes to lease the hall and fenced playground area for 3 years with two further 3 year options at \$150.00 per annum. Given the YSS ability to produce income, the annual lease fee charged to the school should exceed that charged to small community groups and therefore a \$500 per annum lease fee is recommended. The school would assume all maintenance and repairs, including those of a structural nature although any work to be undertaken would be subject to Shire approval.

The YSS has inspected the hall and the grounds and has stated that they are prepared to lease the premises in an 'as is' condition. However, the suitability of the premises for the proposed use is not assured by the Shire and the lease carries a clause to that effect. As previously discussed, the YSS would be undertaking the responsibility of capital maintenance and structural repairs and therefore the Shire recommends, the YSS undertake a 'due diligence' assessment of the premises prior to committing to this agreement.

In their application, the YSS has committed to make the hall available on a hire basis to other community users during times when not being utilised by the school programs. This requirement would be incorporated into the terms of the lease agreement. All funds received from this source would be required to be used towards the upkeep of the building and leased area.

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

Completion of this recommendation will be dependant upon the submission of a planning application by the proposed lessee however it is anticipated that it would be completed by May 2010.

#### **OFFICER RECOMMENDATION**

1. That the CEO write to the Department for Regional Development and Lands to request alteration of the Management Order to support the Shire's Power to Lease of the Reserve 19338 for periods of up to 21 years subject to approval for the Minister for Lands.
2. That the Shire recommend to the Yallingup Steiner School that they perform a 'due diligence' assessment of the premises prior to confirming their intention to proceed with this application.

3. That subject to part 2, the Yallingup Steiner School be requested to submit a planning application for the proposed use of the Carburnup Hall and a portion of the Reserve 19338.
4. That upon receipt of a planning application the proposal be publicly advertised and any objections be reported back to the Council.
5. That subject to achievement of parts 1, 2 & 3, and no objections received (part 4), the CEO be authorised to enter into a lease with the Yallingup Steiner School over a portion of Reserve 19338 as depicted on the attached plan, on terms generally consistent with the Shire's community leases but including;
  - (a) a 3 year lease term with two 3 year options
  - (b) lease fee of \$500 per annum plus outgoings
  - (c) the lessee to take responsibility for capital works including that of a structural nature and general maintenance of the premises.
  - (d) the Shire have the ability to recover an amount equivalent to the actual costs incurred by the Shire for upkeep of the gravel car park should the additional use by the Yallingup Steiner School prove to be significant.
  - (e) the lessee would have the ability to hire the hall to other community based users, but not sublet.
  - (f) that the lessee submit an annual report to the Shire of any income received as a result of hiring the hall and how those funds have been expended on the maintenance and repairs of the hall.

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

<b>SUBJECT INDEX:</b>	Airport Management
<b>STRATEGIC INITIATIVE:</b>	
<b>BUSINESS UNIT:</b>	Economic Development Infrastructure Planning
<b>SERVICE:</b>	Strategy Tourism Development
<b>DATE OF COMPLETION:</b>	
<b>VOTING REQUIREMENT:</b>	Simple, Absolute Majority
<b>ATTACHMENT(S):</b>	A: Proposal from Rio Tinto B: Minutes of Airport Advisory Group (16 July 2009) C: Minutes of Airport Advisory Group (11 August 2009) D: Airport Residents Group Newsletter E: Environment Statement 399

### PRÉCIS

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

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

### BACKGROUND

#### *Fly In Fly Out*

Fly in and Fly out (FIFO) operations has been operating at the Busselton Regional Airport (BRA) for some time.

Currently four FIFO flights per week operate from the BRA. This includes 2 flights on a Tuesday for Rio Tinto and 2 flights on a Wednesday for Byrnescut. One flight represents an arrival and departure. Specific details of the charter flights and passenger numbers are listed below;

	Rio Tinto	Byrnescut Mining
Arrival / Depart Times	A:700hr D: 730hr A:1330hrs D1400hrs	A: 1200hrs D1230hrs A: 1730hrs D1800hrs
Charter Operator / Aircraft used	Skywest F100	Beech KingAir 200
Approx number of passengers	200	10 - 20

When Rio Tinto commenced FIFO they expressed a desire to commence earlier flights from 0500hrs (rather than 0700hrs). The feedback at the time was that this matter would be addressed in the Noise Management Plan which was being

developed at the time. Further Rio Tinto made it clear that their objective was to undertake two flights per week in the long term with the objective of employing up to 600 local employees.

Recently Rio Tinto submitted a formal application to the Council to consider undertaking a trial of a pre 0700 flight. (Attachment A)

The FIFO flights are also supported by the Geographe Bay Tourism Association who provide the ground handling operations. This includes the checking in, baggage handling and ground services for the FIFO charter flights. GBTA currently employ six people to support the two scheduled flights per week and have invested in staff training and provision of equipment to provide these services. The requirement to support FIFO charter flights has also enabled GBTA to support other charter flights using the BRA and hence establishing a sustainable income and employment opportunity.

#### Busselton Airport Advisory Group

The formation of the Busselton Regional Airport Advisory Group (AAG) was as a result of the Council Resolution C0905/144 of 13 May 2009, as below;

- “2. That as soon as practicable the CEO form an Airport Advisory Group with representatives invited from:*
  - (a) Busselton and Dunsborough Chambers of Commerce (one representative);*
  - (b) GBTA (one representative);*
  - (c) Busselton Aero Club (one representative);*
  - (d) a member of the public appointed by this Council. (one representative);*
  - (e) two members of the group representing affected members of the public, i.e. the Airport’s Residents’ Group (two representatives);*
  - (f) two Councillors appointed by the Council.*
- 3. That the Group be authorised to co-opt other temporary members to provide expertise when, and if it is required. (for example EPA, FIFO operators and CASA).*
- 4. That the Group be requested to develop - as a matter of priority, and using the draft plan provided in the Agenda for the May 13th meeting as a basis for discussion,- a Draft Noise Management Plan to be submitted to Council as soon as possible.*
- 5. That the Group be requested - also as a matter of priority – to consider the Section 46 Application as outlined in the Agenda papers for the 13 May*

*2009 meeting and to submit a report to the Council on the outcomes arising from this consideration.*

6. *That the Group be authorised to consider any issue involving the operations and development of the Airport and report regularly to the Council on the results of their discussions, and that these issues include, but not be limited to, the development of a Fly Neighbourly Agreement (FNA) and the long term future of a Busselton Regional Airport.*
  
7. *That:*
  - (a) *the Airport Advisory Group consider as its first item of business the proposal made by Rio Tinto to allow for an interim trial of one flight per week being allowed to operate between the hours of 0500hrs and 0700hrs on weekdays;*
  
  - (b) *the group report back to the Council with its recommendations within one month of the formation of the Group; and*
  
  - (c) *the Council decides its course of action on this issue at the earliest possible time after receiving the Advisory Group's recommendation."*

The Shire contacted all the abovementioned organisations and advertised for nominations for the public representatives. A report was presented back to the Council with nominations on 24 June 2009 and the Council resolution C0906/244 resolved that the following members be accepted for the AAG;

<b>Community Organisation</b>	<b>Group</b>	<b>/</b>	<b>Council appointed member</b>
Busselton Chamber of Commerce	&	Dunsborough	Ray McMillan (BCCI) John McCallum (DYCC)
GBTA			Natalie Venosi
Busselton Aeroclub			Ross Beatty
Two members of the public			Andrew Svalbe Peter Stark
Two members from the Airport Residents Group			Ellen Clayton Greg Chapman
Two Councillors			Cr Tom Tuffin Cr Jackie Emery

The first meeting was held on the 16 July 2009 at the Shire offices, whereby the chairperson (Cr Tom Tuffin) and vice chairperson (Cr Jackie Emery) were elected and the group's role, purpose and Terms of Reference were adopted. The minutes from the first meeting are in Attachment B.

The AAG's first item of business was to consider and report back to the Council, the proposal for Rio Tinto to trial a FIFO flight once a week between the hours of 0500 and 0700. After discussion and debate of the proposal, the AAG Chair proposed;

*“That the Airport Residents Group representatives go back to their members to ascertain if they would be interested in a six month trial of one day a week 0500hrs – 0700hrs commencement time and that at the end of this trial period the situation to be reviewed; and*

*That the legalities of cutting down on twin engine and jet training flights be investigated.*

*Reports on these two proposals to be discussed at the next meeting.”*

The AAG’s second meeting was held on the 11 August 2009 to further consider the proposed Rio Tinto trial and formulate the groups report to the Council. The minutes of the meeting held on the 11 August 2009 can be viewed in Attachment C.

All members except Mr John McCallum representing the Dunsborough Yallingup Chamber of Commerce & Industry were present at the meeting held, however Mr John McCallum had provided a proxy vote to Cr Tuffin prior to the meeting.

After discussions on the proposed trial the AAG were asked to vote on the following question;

“The recommendation to the Council:

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

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

The resulting votes were recorded:

<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAINING</b>
GBTA –Natalie Venosi	Shire of Busselton Councillor – Cr Emery	Shire of Busselton Councillor – Cr Tuffin
BCCI – Ray McMillan	Airport Residents Group – Ellen Clayton	
Busselton Aero club – Ross Beatty	Airport Residents Group – Greg Chapman	
Public Representative –	Public Representative –	

<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAINING</b>
Andrew Svalbe	Peter Stark	
DYCCI – John McCallum (proxy vote)		
<b>Total FOR = 5</b>	<b>Total AGAINST = 4</b>	<b>ABSTAINING = 1</b>

### **CONSULTATION**

At the AAG meeting held on the 11 August 2009, the Airport Residents Group (ARG) presented the results of a survey that they had performed of “residential areas affected by airport operations”. The survey carried out by the ARG involved compiling and distributing a newsletter with information from the Busselton Airport Residents Group to residences that were within proximity of the BRA, within the BRA circuit or landing and departure flight paths for both runway 03 & 21 and where the resident was listed in the Residential White Pages. The newsletter distributed is included as Attachment D. The results from the ARG survey as recorded by the AAG minutes are as follows;

- \* 250 newsletters were emailed, posted or dropped to residents
- \* 474 responses were received (the newsletter asked the resident to list the number of people at each address, that number of people recorded at each residence represented the position to the question asked, hence the number of responses is greater than the newsletters distributed)
- \* 398 of 474 (83%) were against the questions surveyed
- \* 76 of 474 (17%) were in favour of the question surveyed

Consultation has also occurred with the Department of Environment and Conservation (DEC). Advice on how such a trial could be carried out with DEC and EPA approval has been sought and the DEC have advised that to change the current conditions of the BRA would involve a Section 46 application which is a significant process. The suggestion from the DEC is the Shire request the DEC and the Minister not to prosecute the Shire for a period of six months while the trial takes place. DEC have advised this may be supported if a range of measures are put into place to determine impacts and gain the communities view prior to any permanent change to the conditions. Consultation with the DEC and EPA is continuing on this matter.

### **STATUTORY ENVIRONMENT**

The BRA is regulated by Civil Aviation Safety Authority in accordance with the Civil Aviation Act 1988.

The BRA also operates under conditions prescribed by the Minister for the Environment, Statement No. 399 of the Environmental Protection Act 1986. Statement 399 can be viewed as Attachment E.

A variation to 4-2 of Statement 399 was applied and agreed to by the Minister for Environment in September 1997, stating the following:

"Pursuant to Condition 4-2 of Implementation Statement 399 given under Part IV of the Environmental Protection Act 1986 in respect of the Busselton Regional Aerodrome on 16 October 1995, variation is hereby granted to the Shire of Busselton to allow a limited number of flights per day at the Busselton Regional Aerodrome at a noise level above 65dB LA<sub>slow</sub> subject to the following restrictions –

1. the variation applies between the hours of 0700 and 2200 hours on any day;
2. the number of flights is limited to two per day;
3. the noise level of a flight conducted under the variation shall not exceed 80dB when measured as a LA<sub>slow</sub> value within 15 metres of a building that is directly associated with a noise-sensitive use on a noise-sensitive premises, in accordance with Part 3 of the Environmental Protection (Noise) Regulations 1997."

In addition, the EPA guidance statement on noise is to;

*"To protect the amenity of nearby residents from noise impacts resulting from activities associated with the BRA by ensuring noise levels meet statutory requirements and acceptable standards."*

(Environmental Protection Authority 2007, Guidance for the Assessment of Environmental Factors, draft No 8 Environmental Noise)

Typically to change any of the ministerial conditions (ie. hours of operation) of the BRA, the Minister for the Environment would require a Section 46 application from the Shire of Busselton. A Section 46 application requires the DEC to determine the process and requirements for the EPA in assessing the application; this can be a lengthy and detailed process.

Hence, on advice from the DEC, the Shire of Busselton would need to approach the DEC and EPA and request confirmation in writing that if a trial were to proceed for a six month period, the EPA and Minister for the Environment would not prosecute the Shire of Busselton for non compliance with the existing ministerial and licence conditions. This confirmation would need to be received prior to any trial commencing.

## **POLICY IMPLICATIONS**

Council Policy 124 – Busselton Regional Airport - Guiding Principles for Management of the Facility,

Council Policy 123/5 – Heliports.

## FINANCIAL IMPLICATIONS

FIFO has already contributed to the Shire's and regional economy. The potential however is significant. Rio Tinto alone has a target of 600 employees from the region. Even if only half of those people were employed from the Busselton Shire, that makes Rio the largest employer in the Shire. Attempts have been made to determine an appropriate economic multiplier to calculate the benefit 600 employees could bring to the region. If a conservative multiplier of 3.5 is used, this could mean that 600 jobs from Rio are potentially worth \$210 million annually to the economy (600jobs x \$100,000pa salary x 3.5).

The current income to the Shire of Busselton relating to the Rio Tinto FIFO charter flights is estimated to be in the region of \$73,000 per year. This includes the landing fees charged to SkyWest and the associated car parking fees collected from passengers.

The trial will not have any direct impacts in increasing or reducing the expected landing fees and car parking fees collected, however there is a financial impact on staff wages by operating prior to 0600hrs. One Shire officer will be required to be onsite from approximately 0400hrs and paid at the rate of time and a half until 0600hrs.

The outcome of the trial to be determined by the Council at a later date has a direct impact on the future potential increased earnings of the BRA.

### *Current budget*

The 2009/10 has \$70,000 allocated to noise monitoring. This amount was budgeted to allow for monitoring to be performed at the previously identified noise sensitive residences and BRA runway, and for predictive modelling to be carried out. The results from the noise monitoring and modelling are expected to be used in any considerations for noise mitigation strategies. Quotations are now being sought for the engagement of noise acoustic specialists. If any additional sites for noise monitoring are to be included then additional funds will be required.

In addition, the 2009/10 budget has an allocation of \$120,000 for the implementation of noise mitigation strategies such as noise insulation.

### *Unbudgeted Items*

If the Council endorse the FIFO trial, the Shire officer's would like to perform some public consultation on the impacts and benefits of the trial. Consultation could be performed by Shire staff and results collected and analysed internally or subsequently an independent survey be carried out. It is expected that independent, broader community consultation towards the end of the trial is estimated to cost \$15,000

## STRATEGIC IMPLICATIONS

This proposal is considered relevant to the Shire's Strategic Plan 2006 - 2011:

- 1. Strategic Focus: Community and Social Well Being:**  
Strategic Objectives: Facilitate and assist in the development of quality community facilities and services.  
Strategic Initiative: Nil, but does match objectives.
- 2. Strategic Focus: Built and Physical (Infrastructure) Well Being:**  
Strategic Objective: To develop and maintain the Shire's assets and built environment to maximise public benefit now and into the future.  
Strategic Initiative: Manage and maintain the Shire's assets for the amenity of the community.

## OFFICER COMMENT

Shire officers support the proposed FIFO trial and the recommendations that were considered by the AAG, including:

- (a) "The draft NMP is to be revised and finalised."

The draft Noise Management Plan will be reviewed and considered by the AAG in at it's next meeting.

- (b) "All mitigation issues that arise due to the airport operations be listed and addressed."

Officers believe that potential exists to obtain assistance from Rio Tinto and other mining companies interested in establishing FIFO to implement noise mitigation strategies at effected households. This would most likely be possible if it meant that mining companies could commence FIFO operations at the BRA from 5am onwards.

- (c) "Flight training be limited to the extend the law will allow."

The Shire is currently seeking legal advice on this matter.

- (d) "The concerns of individuals effected by the airport operations be investigated and addressed immediately."

During the trial the Shire's officers would engage with residents affected by the airport. A complaints procedure would be in place for residents to lodge concerns and voice issues. The Shire would also commit to holding a number of public meetings throughout the trial to receive community feedback. This consultative approach would enable the Shire to record the public's concerns and support and develop strategies to improve the situation where required.

- (e) "The Rio Tinto takes a high level of responsibility in controlling their charter operations."

Rio Tinto has supported this approach and has offered to cooperate in what ever way they can to reduce impacts upon residents. They have offered to adjust flight paths where approved by AirServices Australia (ASA) and if the situation warranted it could investigate returning to the use of BAe146 airplanes. Officers are proposing these options be explored during the trial to determine if any options can be implemented to reduce the impact upon residents.

Clearly the future development of FIFO operations from the airport is linked to a pre 7am commencement. Given the number of mining companies and major projects being undertaken in the North West of Western Australia, Officers believe that there is the potential for multiple flights per week within a relatively short period of time. This highlights the importance of completing such a trial and collecting accurate and relevant information during the trial so that the Council can consider and make a final decision on whether FIFO flights can continue pre 0700hrs post the trial.

Officers are proposing that if the Council approves the trial the following methodology is put in place, recurring throughout the trial.

#### Approach

- \* identify any alternative flight paths with less impact and apply to ASA
- \* install noise monitoring equipment at selected households and BRA sites
- \* arrange times and days of flights pre 7am
- \* publish this information on website
- \* publish schedule of community meetings and complaints procedure on website

#### Deploy

- \* conduct the six months trial in accordance with agreed parameters

#### Results

- \* review results of noise monitoring
- \* engage with the community to understand extent of through
  - website feedback
  - public meetings
  - Airport Advisory Group meeting
  - Independent survey at the end of the trial to allow residents to provide informed feedback. The results of this survey would be presented to the Council.

### Improve

- \* Look for opportunities to reduce impacts.
- \* Analyse data collected (noise monitoring, community feedback) to present to the Council for decision on continued FIFO flights pre 0700.
- \* Prepare report to the Council on recommendations for noise mitigation strategies and potential costs.

Without a trial the Council can not be sure to have accurate information on the benefits, implications and communities opinion about any potential impacts of a pre 7am start.

This information would enable the Council to make an informed choice about whether this should continue. On this basis Officers are recommending the proposed FIFO trial be implemented.

The Financial Implications section of this report includes the provision of funds for an external consultant to perform community consultation or survey on the impacts and benefits of the FIFO trial. This task can be completed by Shire staff and hence not require additional funds to be allocated, however the officers have suggested an independent consultant so that there is no perception of bias in the results. The council are asked to consider their preference in either the community consultation being performed internally by Shire staff or externally at cost to the Shire under the officer recommendation.

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

Implementation of commencement of the one flight a week between the hours of 0500 – 0700hrs could occur as soon as the DEC and EPA have provided written confirmation of non prosecution during the trial period and SkyWest, Rio Tinto and GBTA can arrange for the scheduled flights to start.

Quotations are currently being sought from noise acoustic specialists and will be put into place as soon as practicable.

All other strategies to be carried out during the trial such community consultation and complaints procedures can all be implemented prior to the start of the trial.

### **OFFICER RECOMMENDATION**

### **SIMPLE MAJORITY REQUIRED**

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

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

**ABSOLUTE MAJORITY REQUIRED**

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

17. **CHIEF EXECUTIVE OFFICER'S REPORT**

Nil

18. **MOTIONS** of which notice has been given

18.1 **DONATION OF FEE - HIRE OF CHURCHILL PARK HALL**

NoM NO: 09/10: 10

*Councillor Anne Ryan has given notice of her intention to move the following motion at the Council Meeting on 23 September 2009:*

**MOTION**

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

**REASON:**

A group of community members wish to hold a fundraiser night for Ceri Drummond and I seek the Council's contribution for the inaugural Bogan Bingo night.

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

The provision of a donation in this form is supported.

18.2 DISABLED FISHERMEN'S PLATFORM

NoM NO: 09/10: 11

*Councillor Bethwyn Hastie has given notice of her intention to move the following motion at the Council Meeting on 23 September 2009:*

**MOTION**

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

**REASON:**

Fishing is a very popular pastime here in the Shire and provides enjoyment for young and old, local residents and tourists.

The nature of our coastline particularly to the West and South Coast prevents disabled members of our community from participating in this sport easily. The newly refurbished Busselton Jetty will of course provide access to disabled fishermen (or women), but this leaves the West Coast and Dunsborough area without this type of facility. Correctly promoted this would be a valuable asset to the shire encouraging additional tourism to the area, encouraging outdoor activities and promoting equal opportunity use of what our coastline has to offer. It is understood that significant planning will be required and that is why I suggest that planning and design is carried out this financial year with construction the next. The location will be an essential part of the planning and I have been very broad with the location.

**STAFF COMMENT**

Staff comments in relation to this Notice of Motion had not been prepared at the time of Agenda preparation and will therefore need to be circulated via an Addendum to this Agenda before the Council Meeting on 23 September 2009.

18.3 YOUTH DEVELOPMENT STRATEGY

NoM NO: 09/10: 15

*Councillor David Binks has given notice of his intention to move the following motion at the Council Meeting on 23 September 2009:*

**MOTION**

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

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

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

**REASON:**

The young people in the Shire of Busselton represent a significant asset, both present and future, to our community. It is important that we carefully consider their well being and sound development in a long term, strategic manner.

There are a number of organisations within the Shire that work towards the healthy development of the community's young people. Their singular efforts are significant, however a strategic and collaborative approach may increase the effectiveness of their work and increase the efficient use of funds provided to these organisations.

The employment of an officer dedicated to the development and ongoing implementation of a Youth Development Strategy is vital, would be far more cost effective over the long term than utilising consultants, and provide a strong link between the Shire, those organisations and our youth.

This motion is requesting the CEO to provide the Council with sufficient information to determine the effectiveness of developing such a strategy, with the aim being to commence the development process prior to April 2010.

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

Community Development staff actively support the concept of further developing the Shire's strategic response to the needs of the youth sector. However it would not be possible to resource this request in the time frame proposed, given that it

has not been incorporated in unit business plans and acknowledging the impending 'Leavers Week' demands placed on Community Development staff during October and November.

Should the Council wish staff to proceed with a report of this nature, it is recommended that the presentation of the desired report be delayed until the end of February 2009, thus allowing staff time to complete the review and yet still allow consideration by the Council prior to the development of the 2010/11 draft budget.

18.4 BUSSELTON REGIONAL AIRPORT

**NoM NO:** 09/10: 13  
**ATTACHMENT(S)** A. Details of FIFO Trial

*Councillor Tom Tuffin has given notice of his intention to move the following motion at the Council Meeting on 23 September 2009:*

**MOTION**

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

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

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

### Rationale

Busselton Regional Airport is far from being the first airport in Australia to experience problems arising from the noise associated with airport operations and Western Australia is not immune to such problems. Recently, residents in the hills near Perth International have been raising objections to new flight paths, and in 2006 protests from people living near the Murray Fields Airport (near Mandurah) led to quite low noise level limits being imposed. (60dB generally with a top of 65dB for training aircraft.) Regrettably, quite often the problem spawns a division in the community between those who favour an airport for the economic and social benefits it brings and those whose lifestyles are reduced to varying extents by the proximity of an airport. The formation of an Advisory Group has provided a forum for the various parties to discuss the problem in a constructive and cooperative manner, and hopefully will bring about an optimum solution.

### The Trial

This motion has its genesis in the resolution discussed and voted on at the last *Busselton Regional Airport Advisory Group* meeting. However, the support for it by those in attendance was not a majority; four voting for a Trial and four against. (The Chair abstained and one member was absent.) As a result, this Motion. does not reflect any established position of *Busselton Regional Airport Advisory Group* on this issue.

Among the major sources of information provided to the Group were:

1. A representative from Rio Tinto who addressed the meeting and indicated that early flights (5.00am to 7.00am) out of Busselton would be of major benefit in enabling the company to coordinate the operation of their mines in the Pilbara region. He requested that, at a minimum, a six month's trial of one early flight per week be conducted. However, it was also indicated that to expand the FIFO operations it was likely that two flights per week would be necessary in the future.
2. At the first meeting of *Busselton Regional Airport Advisory Group* the Airport Residents' Group representatives were asked to sound their members out on their feelings about such a Trial. In response, the Group, on their own volition, conducted a survey of nearly all the residents in the suburbs that they considered would be affected by the Trial. The results were overwhelmingly against a Trial;
  - \* The return response was 58% representing 474 members of the community.
  - \* 16% representing 76 community members supported the trial.
  - \* 84% representing 398 community members do not support the trial.

It is important to note that the survey was not conducted by *Busselton Regional Airport Advisory Group* or the Shire and nor does it represent anything like the entire population of the Shire, however, it is reasonable to believe that the results do reflect the views of a majority of the residents likely to be affected by early morning flights. A copy of the survey form used will be given to all Councillors.

**Present situation:**

The representatives of the Airport Residents' Group have indicated that they understand that the residents have no objection to FIFO or RPT flights conducted under the current conditions. (i.e. 65dB Max with up to 80dB being permitted on two movements per day- between the hours of 7.00 am and 10.00pm). They have also indicated that they are unlikely to object if more than two flights per day of up to 80dB are allowed providing they are between 7.00am and 10.00pm. However, they are strongly opposed to the current Training Flights and to the proposal to extend the hours of airport operation to 5.00am. They maintain that a Trial, once commenced, will become an expectation by the FIFO operatives and would become permanent.

**Other Aspects of the Motion**

The other aspects of this Motion are concomitant to the Trial. They are predicated on the assertions by the Airport Residents' Group to the effect that it is the "heavy" twin engined training aircraft that arrive in an ad-hoc fashion and fly circuits over, or near, residents houses for a minimum of an hour, that cause the greatest disturbance to their lifestyles. It is possible that such activity is illegal under the airport's licencing conditions, and as this has not been confirmed one way or the other, it is essential, before proceeding any further, that the legality, or otherwise, of this operation is established. Hence the first point. (1)

Paragraphs 2 and 3 become relevant only if flight training is legal. If it is legal then it is the intention of these two paragraphs to limit, as far as possible, the amount of training conducted by commercial training companies that have been using BRA constantly for training their students.

A difficulty arises because it is not the intention of the Motion to prevent flight training by light and ultra light aircraft such as are likely to be used by the Busselton Aero Club. Paragraph 2 is intended to distinguish between heavier training aircraft as operated by several of the flying schools and those that are likely to be operated by the Busselton Aero Club, and limit the former and allow the latter.

Paragraph 4 ensures that the Council is fully informed on the nature of the complaints from residents and how they are being handled. It is possible that considerable sums may be involved with either relocation of residents or sound insulation of affected houses. Furthermore, given the results of recent medical research, compensation payouts for those who can demonstrate that their health has been deleteriously affected by airport noise that exceeds the licence conditions, is not beyond the realm of possibility. For these reasons it is essential

that Council is kept fully informed on the nature of the complaints and any possible actions being proposed or arising from the complaints.

Paragraph 5. *Busselton Regional Airport Advisory Group* has set itself the task of examining, in detail, the Draft NMP as devised by Stratagen and making recommendations to Council concerning its implementation. If agreement can be reached on the Plan and all approvals gained, during the Trial (if it proceeds) then it would be highly desirable for the Trial to be conducted according to the measures in the Plan. This would increase the reliability of the Trial results. Rio Tinto have indicated that they would be prepared to assist as much as possible with the Trial.

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

A separate report on this Agenda (Item 16.7 refers) provides further background in relation to this issue. Basically the Officer Recommendation on the report is similar to this Notice of Motion, however, there are some additional items in each of the Notice of Motion and the report. These additional items are generally not in conflict, however, it is recommended that the Agenda item and Notice of Motion be considered at the same time during the meeting.

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

This report, confidential under s.5.23(2)(c) of the Local Government Act 1995, being a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting, was not ready at the time of Agenda finalisation. It will be provided to Councillors, the Chief Executive Officer, Directors and the Executive Manager, Systems and Information only, via an Addendum to this Agenda, prior to the Council Meeting on 23 September 2009.

19.2 APPOINTMENT OF SENIOR EMPLOYEE

This report, confidential in accordance with Section 5.23(2)(a)&(b) of the Local Government Act 1995 in that it relates to matters affecting an employee and the personal affairs of a person, had not been finalised at the time of Agenda preparation. It will be circulated via an Addendum to this Agenda to Councillors, the Chief Executive Officer and the Director, Lifestyle Development only.

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

21. **QUESTIONS FROM MEMBERS WITHOUT NOTICE**

22. **NEXT MEETING**

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

23. **CLOSURE**

