

17.1 BUSSELTON JETTY REBUILD AND FORESHORE REVITALISATION

REPORTING OFFICERS: Chief Executive Officer - Andrew Macnish;
 Director, Community & Organisational
 Development - Matthew Smith; Director,
 Lifestyle Development - Nigel Bancroft; Director,
 Community Infrastructure - Mark Goodlet;
 Executive Manager, Systems & Information -
 Cheryl Ling; Economic Development Manager -
 Paul Martin

FILE NO: DEV 3

ATTACHMENT(S): State's offer;
 Jetty licence;
 BJWG participants;
 Busselton foreshore concept plan;
 Consultation report;
 Youth consultation report;
 Invited comment responses;
 Relevant decisions of Council.

This report is provided to Council accompanied by a declaration in accordance with Section 5.70(2) of the Local Government Act 1995, that one of the Officers providing input into the report Paul Martin, owns a residential property in the CBD. The property is his place of residence.

PRÉCIS

This item presents the State Government offer for the rebuilding of the Busselton Jetty for Council's consideration in a wider context of overall project implications.

The report represents significant investigation and a number of decisions over the past 18 months, in particular C0508/273 and also one of its most recent decisions C0707/168. (A copy of all jetty related Council resolutions is appended to this report at Attachment H).

This item should be read in the context of a related Council decision C0707/167 that required the Busselton Jetty Advisory Committee (BJAC) to undertake tasks that might also assist Council in its decision-making. Some of the BJAC recommendations have not been supported at an officer level pending the outcome of the Council's deliberation on this report.

This report recommends that the Council formally accepts the offer it received from the State Government on 6 August, 2007 (copy attached at Attachment A) and secures the development and acceptance of a Project Agreement with the State.

There are a number of aspects of the State Government's offer that Officers do not concur with, however, on balance it is considered that by securing the State's offer on the understanding of agreement with a range of

supplemental points as discussed in this report, there would be sufficient benefit for the Shire to proceed with the project.

This report makes note of project related matters that have continued to be debated as late as the last few weeks. In particular, the proposed jetty licence and maintenance obligations and the project agreement are discussed as these were particular requirements of past Council decisions.

The report outlines that Council has two options in respect to the scope of the Jetty Rebuild that achieve a long term sustainable future for the Jetty.

At the time of writing this item the position on funding from the Federal Government was not known. With the State seeking a response to its offer by the end of September, Council is asked to consider this offer now, and make a decision in a manner that has the capacity to deal with any offer from the Federal Government, which this item provides.

This project has been of significant community interest over the past two years. Council's consideration of this matter will provide direction to the project for the future and particularly to the Shire's representatives continuing to attend the Busselton Jetty Working Group (BJWG).

As a by product of providing a response to the State's offer, the following related issues are discussed with an opportunity for Council to express its view for the first time:

- * The scope of the rebuild;
- * Future management of the Jetty;
- * Project management of the rebuild of the Jetty;
- * Shire's role in or as a result of the land development project;
- * Potentially impacted groups relocation.

BACKGROUND

Given the Jetty's long history in the Busselton community and its recent rebuild opportunity profile, the background section of this report is compartmentalised as follows:

- * Tenure;
- * Operations and development;
- * Structural and rebuild issues;
- * Jetty maintenance;
- * Funding the rebuild;
- * Foreshore revitalisation and links to the CBD.

TENURE

In 1988, Council resolved to accept \$500,000 from the State and entered into a license agreement with the State for the Jetty in perpetuity.

This was in response to the State's position that it was considering demolition, thus ensuring that the 120-year-old Busselton jetty was not simply left to collapse from its declining state of repair.

The clear message delivered through the State's actions was effectively that it recognised it had some responsibility for the condition of the jetty (it owns the structure and it contributed funds to address its structural integrity issue). It became party to a licence in perpetuity underpinned by the fact there would be a jetty (and one continuing to be owned by the state). The State was looking for the local community through its representative local government to take responsibility for operating the jetty (including its maintenance) in a manner that would see its benefit maximised and thus increase its chances for a long term existence.

The State and Shire agreed to a new reserve boundary and consequently a new district boundary for the Shire's Town Planning Scheme to recognise the ongoing existence of the jetty and the baths area on the original Queen Street alignment.

The State entered into a licence agreement (1988) with the Shire to operate the jetty in perpetuity and the Shire committed to be responsible (amongst other things) for its ongoing maintenance. The licence is attached at Attachment B.

The Shire and State representatives agree that the original licence was an inadequate document and that it requires renegotiating. Fortunately, the Shire did not contract itself to any obligations under any sub-license to the current jetty operator. Hence, the shire is able to enter the licence renegotiations unencumbered.

OPERATIONS AND DEVELOPMENT

The Shire has allowed the Busselton Jetty Environment and Conservation Association (BJECA) to occupy and operate the Busselton Jetty with limited direction for many years. The Council has historically had a Busselton Jetty Advisory Committee (BJAC) to consider jetty related matters. At different times this has either been a committee of management or advisory status, (management committees have a delegated decision making ability). Members of the Council-constituted committees have historically also been part of the BJECA executive.

Council has recognised that there needs to be an arrangement in place that specifies the role and responsibilities, and the relationship the jetty operator has with the jetty licensee (the Shire). This arrangement has been termed a 'commercial agreement' recognising the requirement for the need to derive profit through commercial activities to underpin the long term viability of the jetty.

The local community through the Shire and its operator BJECA has transformed the Jetty from a dilapidated port Jetty that ceased operations in the 1970s to a tourism icon. This has occurred through operating the Jetty as a business and commercialising the Jetty experience.

In 2001 the interpretive centre (IC) was opened using \$260,000 funding from the State Government and \$150,000 from BJECA.

In 2003 the under water observatory (UWO) was opened. It was built at a cost of \$3.48 million using a combination of Federal Government funding of \$1,177,272, State Government funding of \$1,000,000, Shire funding of \$150,000 and a contribution from BJECA of \$1,156,241.

The UWO provided a significant tourist attraction justifying the jetty's ongoing functional presence. It also underpinned a significant revenue stream for the Shire to utilise in the jetty's ongoing maintenance. Through the Shire's ability to make (site entry local) laws and set fees accordingly, it has allowed BJECA stewardship of jetty operating funds with discretion to apply them to operate and maintain the jetty.

Neither the UWO nor the IC were adequately incorporated into the jetty licence. Theoretically, as each attaches to the jetty owned by the State and the sea bed, again, owned by the State, and are outside the Shire's gazetted district, they are most likely owned by the State.

There has also been some discussion regarding the maintenance undertaken by the Shire over the last 17 years. Since 1988, the Shire has made all reasonable efforts to keep and maintain the jetty in a state of good and substantial repair, order and condition. Over \$4 million has been spent on maintenance and renewal over this period which is the equivalent of almost \$5 million in present day value (average of \$301,822 per annum). BJECA has estimated this has resulted in 47% of the jetty being rebuilt in the last 17 years by the local community which is an excellent effort considering the structure's age. BJECA is to be thanked and is appreciated for its efforts in this regard.

In addition to these cash figures, the Shire has also provided significant in kind support in the region of \$0.5 million over the years. This has included senior officer time estimated at approximately 4 hours per week and the foregoing of a commercial rent on the 'Old Fire Station', prime CBD real estate in the main street of Busselton (Queen Street), which has been provided to BJECA at a peppercorn rent. This has allowed BJECA to undertake fundraising activities for jetty restoration.

STRUCTURAL AND REBUILD

At the time of handover from the State Government to the Shire, \$500,000 was provided to the Shire to carry out repairs to the jetty. This was done and since that time between the financial year 1989/90 to 2004/05 an average (net present value) \$300,000 pa was spent in maintaining the jetty.

Despite these efforts a full structural assessment of the jetty, carried out in 2005 by BG&E Consultants, identified significant structural problems. A risk assessment was also carried out at this time and on this basis BG&E recommended that the jetty be closed to the train.

BG&E was subsequently commissioned to design the refurbishment project based on a timber pier system, with steel beams spanning the piers and a concrete deck. The design also included a new 4m wide Section 2 alongside the existing jetty. (Section 2 is the part of the Jetty between the interpretive centre and the change in direction commonly referred to as the skeleton jetty.)

An outline of Council meetings dealing with the Busselton Jetty since January, 2004 is provided below (in addition all relevant Council resolutions have been appended in chronological order at the end of this report.)

On 22 September, 2004 Council authorised the CEO to choose selection criteria for a tender for the design consultant and for the structural assessment for the Jetty refurbishment.

In May 2005 Council endorsed the priority of developing the "Busselton Jetty Business Plan" (C0505/146).

In May 2005 Council resolved as follows (C0505/162):

1. *That Council endorse for public consideration the attached concept designs pertaining to the Busselton Jetty's Skeleton Jetty (Section 2) and the northern end (Section 10) and details of all estimated costings and required repair works for the remainder of the Jetty. These designs, details of repair works and estimated costings to be advertised for public comment for a period of 28 days. During that time, the abovementioned information is to be displayed in appropriate public places, including the Jetty Interpretive Centre if BJECA is in agreement. During this time, the Busselton Jetty Management Committee conduct a public workshop to assist in the detailed information being made available to the public.*
2. *That following this period of consultation, Council be provided forthwith with a report from the Busselton Jetty Management Committee which considers all the submissions and makes recommendations for progressing detailed design and costings and the development of tender documentation.*

The explanatory note to the resolution read; "Council amended the Officer Recommendation as it considered that the community should have the opportunity to consider all the designs put forward and be able to make fully informed submissions prior to Council consideration of the best options".

The officer recommendation did not include a public consultation process. In accordance with recommendation 1 above the concepts were advertised and a public workshop was conducted in the Council Chambers on Tuesday June 14, 2005 at 5.30pm. Approximately 40 people were in attendance. Public comment closed on 28 June, 2005 and 11 submissions were received. The results were put back to Council in a report on 26 October, 2005.

In August 2005 the Council determined the objectives of the Busselton Jetty Advisory Committee, including a development/review of a restoration and management plan for the jetty (C0508/251). Building material of the jetty was not identified as a matter for specific consideration.

In October 2005 Council resolved to consider the construction materials to be used in the jetty refurbishment for the jetty's section 10, the northern end (item 13 below) when it required the CEO to continue discussions with the Busselton Jetty Taskforce on the matter and then report back to Council, through BJAC, to formally adopt these changes (C0510/446 (in part)):

1. *That Council endorse 'Option 1 - 4m wide Separate Jetty' for the Skeleton Jetty section of Busselton Jetty for detailed design and costings for inclusion in tender documentation.*

This option is a composite steel/timber design with new steel stringers (beams) spanning between the piers and new steel half caps (beams across the top of the piers) with the remainder of the pier in timber, including the cross bracing, the whaling and the piles. This became the preferred option.

On 20 December, 2006 Council dealt with the issue of the timber sub-structure material and in summary determined to keep the piers in timber out to the end of section 2. The remainder would be progressively replaced in timber at the appropriate time. This decision came at the recommendation of the DPI who, after extensive consultation at officer level, wanted the whole of the sub-structure to be built in steel because of durability and whole of life cost savings. Council resolved as follows (C0612/380):

That Council:

1. *agrees to incrementally construct the Busselton jetty substructure in steel, commencing with sections 3, 5 and 10 in the current refurbishment project with the exception of the sections identified in Item 2;*
2. *agrees to retain the Busselton jetty substructure in timber for sections 1 and 2 and the area surrounding the Underwater Observatory;*
3. *instructs the CEO to undertake the design and documentation process for recommendation parts 1 and 2;*
4. *requests a 50% contribution from BJECA towards recommendation part 3;*
5. *undertakes the estimate for section 10, the northern end of the jetty as requested by the Department for Planning and Infrastructure.*
6. *agrees to construct Section 10 and other small sections where practicable with significant decking areas in timber, to retain its heritage and cultural value.*

BG&E was subsequently engaged to bring the design into conformance with this recommendation and is nearing completion of this design.

JETTY MAINTENANCE

The cost of maintenance of the jetty has been the subject of a report by BG&E.

The Department of Planning and Infrastructure completed a "*Timber vs Steel Piles Cost Comparison*" report in August 2006, that examined both the initial cost of construction for timber and steel and the maintenance costs for both materials. While determining that the cost of construction in steel was about 5% higher initially, the report demonstrated that the ongoing maintenance costs for steel were significantly lower than for timber.

The report also provided an assessment on the BG&E maintenance plan and noted a number of key differences including:

- * Wrapping of the timber piling with Denso each 15 years at a cost in today's value of \$683,800 at years 15, 30 and 45, totalling \$2,051,400 over the 50 year cycle.
- * A steel corrosion protection of in-situ blasting and painting of steel beams and half-caps at year 25 has been added costing an extra \$588,333.
- * Contingency costs have been added and set at 10% for years 0 to 25 and 20% for years 26 to 50.
- * Additional replacement of timber piles in year 40 costing \$430,193.

Other factors that have increased the cost of ongoing maintenance have included:

- * The cost escalation factor since the original whole of life maintenance plan was done by BG&E.
- * The cost of maintenance of the interpretive centre, the underwater observatory and a train depot have been included.
- * The cost of the change to include the timber jetty sub-structure out to the end of section 2.
- * The modelling parameters used including the rate of interest and the rate of return.

It is clear that although \$300,000 was spent annually (NPV) in the past 15 years by the Shire on maintenance of the jetty, it still requires a major upgrade. This leads to the observation that considerably more will be required, estimated to be \$1 million annually combined, in maintenance and the sinking fund, to ensure the future of the jetty. With a value of about \$30 million for the jetty and other associated infrastructure, \$1 million annually represents an expenditure of only 3.3% of the total cost of the facilities. In a harsh ocean environment this is considered very reasonable.

Once the design has been finalised and the funding secured for the jetty, the whole of life maintenance plan is to be updated to reflect the latest construction materials and costs. The whole of life maintenance plans for the underwater observatory and interpretive centre are in the process of being finalised now by BG&E. This will then be able to be compared against the income required and reviewed in five years.

FUNDING THE REBUILD

The significance of the jetty and the exercise to sustain it gave rise to a request for funding assistance to the State and Federal Governments. Two years ago, Council resolved to seek a one third contribution from each of the other two tiers of government. It estimated the total cost of construction commencing in Spring 2006 would be \$18m. Unfortunately, consideration of funding and related matters has meant construction may not commence in earnest until Spring 2008 - 3 years after the \$18 million rebuild cost was estimated. Although this estimate included an allocation for escalation, costs have increased in the intervening period.

Council's consideration of borrowing up to \$6m as its contribution resulted from a process in accordance with the Local Government Act seeking community comment on the borrowing.

This approach was based upon the opinion that all tiers of government had a responsibility to secure the future sustainability of this icon as evidenced by the condition for co-commitments from other levels of government.

Repaying this loan was factored into the Shire's five year financial plan which was subsequently endorsed by Council.

This commitment from the outset has assisted in securing a commitment from the State Government and resulted in positive discussions with the Federal Government.

The final amount required for the rebuild would not be known until the project had been tendered and, in reality, the project was completed and the new asset handed over. This means there may very well be a requirement for the Council to finance more (than the earmarked \$6m with cash contributions) funds in the future.

Following Council resolution CO508/273 the CEO wrote to the State to seek a 1/3 contribution towards the cost of the Jetty Rebuild, estimated at that point to be \$18 million. It appears from subsequent actions that the State progressed on an assumption the contribution requested from it was \$6 million, rather than 1/3 of whatever the total cost of the rebuild might be.

The Minister for the South West made a statement when the Cabinet meeting was in Busselton in October 2005 that it would consider making its contribution using the proceeds of development of foreshore land.

The State established its own internal investigative team which advised the Minister (of the SW) how best to proceed. This group utilised the services of LandCorp which is the State's land development arm. Upon investigating this matter (the report is confidential and has not been provided to Shire representatives) the State made a presentation to the Shire Council on 7 April, 2006 where it established a position that it would not consider a cash donation rather, it was to link any up front financial contribution to rebuild the jetty to developing crown land with some nexus to the jetty.

On 12 April, 2006 Council resolved (CO604/117) to agree in principle to the development of the identified parcels subject to a number of conditions and to progress the investigation of the feasibility of this occurring.

Subsequently, Council resolved on 24 May, 2006 (CO605/170) to appoint the Shire President, Crs Philippa Reid and Alan MacGregor, the CEO and the Director, Lifestyle Development as the Shire representatives on the BJWG.

The State established the BJWG which included representatives from the State and the Shire. It commenced its meetings on 30 May, 2006 and members were required to sign confidentiality agreements in order to participate in debate that would involve commercially sensitive information. The Shire representatives who have participated on the BJWG are listed in Attachment C.

Facilitated by a South West Development Commission (SWDC) cash injection of up to \$500,000, the BJWG undertook planning, investigation and a public consultation exercise in gauging reaction to a proposal for LandCorp to develop four precincts; the jetty foreshore, Queen Street, Kookaburra Caravan Park and Churchill Park in line with Council resolution CO604/117.

All meetings of the BJWG are comprehensively minuted through the resources of the SWDC. These have not been made publicly available but they have been the subject of FOI applications and this statutory process has been complied with.

Outcomes from the BJWG's activities led the participating State representatives to advise the Cabinet with the result being the State's written conditional offer attached in Attachment A and a copy of the proposed Concept Plan - Attachment D.

It is clear from this offer and public statements from the Minister responsible that the State will not consider a cash contribution towards the Jetty untied to land development.

The following are the benefits of the State offer provided by the State Government for information as part of Council's consideration of the offer:

- * The State Government will provide \$6 million in advance of land development proceeds to the refurbishment of the jetty;

- * Four additional lots owned by the State will be made available as ground leases to contribute to the ongoing maintenance of the jetty. Together with the existing ground leases this should contribute an estimated \$20 million over the fifty year maintenance plan;
- * The project will direct surplus dividends normally payable to the State Government to the Shire once the State Government has recouped its advance. This will be limited to the actual cash contribution of the Shire to the project including tender preparation and design, construction and interest payments and to the surplus funds raised by the project;
- * The project will contribute an estimated \$20 million in public infrastructure both in the foreshore precincts and in the cost of relocated new sporting facilities;
- * The project will reduce Council exposure to contingent liabilities associated with renewal of the foreshore area including repairs and upgrades, and the cost of repair/upgrade to sporting facilities at Churchill Park;
- * The project will provide the foundation for long term recreational facilities development through the initial relocation of facilities to a larger area;
- * The Shire will benefit from an increase in its rate base with marginal increases in the cost of servicing;
- * The Shire's objectives in relation to economic and cultural development will be met;
- * The outcome will be a high quality development that will stimulate private sector investment and provide a foundation for new jobs particularly for young people;
- * Current enclosed areas on the foreshore notably the jetty lay down area and the Nautical Lady will have the potential for greater public use;
- * Accessibility to the central area of Churchill Park will improve as a consequence of the removal of barriers and fencing.

THE FEDERAL GOVERNMENT REQUEST

A delegation of Federal Government Senators attended Busselton in September 2006 to learn about the need to rebuild the Jetty from Shire, BJECA and stakeholder representatives including Chamber of Commerce, Geographe Bay Tourism Association and Pro Busselton.

This meeting resulted in the Shire sending a delegation to Canberra in October 2006 to seek feedback on the best manner in which to approach the Federal Government to seek a contribution towards the project. The delegation included Cr Philippa Reid, Cr Anne Ryan, the Shire's Economic Development Officer, the Vice President of BJECA and the General Manager of Geopraphe Bay Tourism Association.

Based upon advice received during this process an application was submitted to the Regional Partnerships funding program for \$4 million in December 2006 following consideration by the South West Area Consultative Committee in November 2006 where it received support and the highest priority for the region.

Correspondence was also sent to Hon Fran Bailey, Minister for Tourism and Hon Ian Campbell, Minister for Environment and Heritage seeking the additional funding required to make up a requested 1/3 contribution from the Federal Government towards the Jetty Rebuild in line with the Council resolution.

The Shire was advised the only other opportunities to receive funding for the Jetty Rebuild from the Federal Government (other than Regional Partnerships) was from the Heritage Investment Initiative and the Australian Tourism Development program. The heritage program had a cap for each project of \$500,000, however the Jetty was not eligible as it is not listed on the State Heritage Register. A previous application under this program was unsuccessful. The Australian Tourism Development Program (with a maximum grant of \$100,000) was required to have a discrete project to a maximum of this value. Consultation between Officers, BJECA and Aus Industry representatives failed to determine an element of the project which would be likely to have some success and therefore an application was not submitted.

During this time the Hon Malcolm Turnbull was promoted to Minister for Environment and Heritage and therefore correspondence was subsequently forwarded to his office seeking commitment from his portfolio towards the project. Correspondence has been received advising there is no opportunity to provide funding from his portfolio for the Jetty Rebuild project.

A delegation of stakeholders including BJECA and the Shire attended a luncheon with the Hon Mark Vaile, Deputy Prime Minister and Minister for Transport and Regional Services in February 2006 to make him aware of the project and the Jetty's importance. The Minister is a key part of the decision-making process in respect to the Regional Partnerships application.

A second delegation recently went to Canberra (funded by BJECA) comprising the Shire President, CEO and Executive Officer of BJECA. This delegation met with a range of people including Minister Fran Bailey, DOTARS representatives (who administer the Regional Partnerships Program) and the Principal Private Secretary to the Prime Minister. The purpose of this delegation was to address issues that had been raised during

the assessment process and demonstrate commitment to the application and the project.

It is certain that the Federal Government is aware of the Jetty and its importance to the Shire, region and the State. It is also understood that all funding avenues seeking Federal Government contribution towards the project have been exhausted and the final opportunity available is the Regional Partnerships application and any funds potentially forthcoming directly from the office of the Prime Minister.

Officers were recently advised the application is in the final stages of assessment. It is hoped a decision on a contribution from the Federal Government will be known prior to the end of September 2007. Officers have recently been responding to questions from the federal government representatives about the impacts on the project scope of them providing \$4 million as opposed to \$6 million (as a condition in the State's offer).

OTHER FUNDING OPPORTUNITIES

At its meeting on 25 July, 2007 Council resolved to investigate all other options available to it in respect to the Jetty Rebuild. Officers have undertaken this investigation in the context of the pressing timeframe and the results of which were part of the item presented to Council at its meeting of 22 August, 2007.

It is clear that the only option Council has which is sufficiently developed to consider against the State's offer is the Shire borrowing to cover the entire costs of the rebuild. It is unlikely the Federal Government will provide a contribution not tied to a contribution from the State. Therefore, should Council reject the State's offer, it may also rule out a contribution from the Federal Government.

Should Council resolve to go it alone (and borrow the full Jetty rebuild cost), the following impact upon ratepayers would be felt. Importantly, the figures in the table do not include the ongoing annual amounts required to be generated and placed into the Jetty maintenance fund. At approximately \$1 million per year, this additional amount would add to the ratepayer burden, especially given the likelihood the four new crown lease reserves would not be available to offset it. This rate rise has been calculated at 1.6%.

Note that a shorter term borrowing would unfairly burden current ratepayers given the community is going to have a long term benefit and it seems only fair to amortised payments over the longer term life of the Jetty.

Lending institutions are reluctant to fix a rate of borrowing beyond 20 years and if Council wanted to borrow beyond that point it is likely the lender would want to renegotiate the loan after 20 years.

Therefore, the full cost option Council would be advised to consider the State Government's offer against is a 20 year term. On this basis the costs of borrowings in line with the scope options are presented in the table below:

Amount Borrowed	20 Years (7.25%)	
	Annual Repayment (P & I)	%age Increase in Rates
\$12M	1,141,187	2.55%
\$18M	1,711,780	4.88%

The impact this may have on the average rate in the Shire in addition to current planned rate rises in the 5 year financial plan can be identified as follows:

	2007/08	2008/09	2009/10	2010/11	2011/12
Annual Rate Increase	Base Year	As per Model (9%)	8%	9%	7%
<i>Average Rate (\$) payable Current Adopted 5YFP</i>	1,230	1,340	1,447	1,578	1,688
Loan of \$12M Repayable over(7.25%):					
20 Years	1,230	1,372	1,481	1,615	1,728
Loan of \$18M Repayable over (7.25%):					
20 Years	1,230	1,400	1,512	1,648	1,764

Should Council wish to borrow more than \$6 million to fund its contribution towards the Jetty Rebuild it will need to undertake a process of advertising and seek public submissions in accordance with the Local Government Act.

FORESHORE REVITALISATION AND LINKS TO THE CBD

The initial work undertaken by the State in investigating possible land development options to fund its contribution to the jetty rebuild and follow on work by the Jetty Working Group was undertaken within the context of previous studies that have identified the benefits of a revitalised foreshore area with stronger links to the Busselton CBD.

This included the Foreshore Development Study (1989) which promoted the development of Stanley and Queen Streets with fronting commercial development to provide stronger links to the foreshore. This included options for redevelopment of Signal Park, encouragement of greater

commercial development on the Town Beach foreshore area and portion of the tennis courts site.

The Town Centre Guide Plan (Jan 2004) while primarily associated with the detail of CBD development also identified the need to increase the lineage of the CBD to the Foreshore and the need for greater commercial activity on the main town foreshore area although with Signal Park retained as open space.

The Shire's Cultural Plan (Sept 2005) identifies the benefit of the developing cultural precinct at the northern end of Queen St and the strengthening of this linking through to Signal Park and the foreshore.

The Leisure Service Plan (Oct 2005) noted a number of issues that required resolution in the Foreshore area including the removal or redevelopment of the Nautical Lady, the provision of commercial facilities on foreshore area and concluded that a Master Plan for the Foreshore area was required to guide ongoing use and development.

While the principle for greater connection between the town centre and foreshore, along with increased commercial opportunities on the foreshore, has been identified in a number of studies the extent of this has only been explored in any detail in the preparation of the Jetty Working Group concept plan. The issues that arise from this proposal will need to be reviewed in detail in assessment of any application received from LandCorp for rezoning of various parts of the foreshore reserve to facilitate the proposed development.

CONSULTATION

Despite comments in the media, this project has had extensive consultation and opportunity for members of the community to have input, perhaps more than any other project in the Shire's recent history.

The consultation commenced with the community survey in 2005 where the following comment was proposed, "I would support some commercial development of the main foreshore to encourage tourism and assist in the funding of the Jetty maintenance". Overall 71% of respondents agreed with this statement.

This response provided the foundation for the State Government to consider its contribution towards the Jetty Rebuild from the development of land on the foreshore.

It is acknowledged the level of development proposed by the State Government may be beyond some people's interpretation of the statement, however, the concept has received support from the wider community by virtue of the Shire survey response.

Following this the Busselton Jetty Working Group conducted briefings and workshops with stakeholders and community members to develop and have comment on the concept plan.

Following the finalisation of the draft concept plan, 18,000 copies of the plan and a comment form were posted to every person on the electoral role. In addition to this, copies of the forms and the plans were placed on the Shire website, displays in the Shire Offices and at the Busselton Library.

The key points of this consultation are summarised as follows however is explained fully in the report on the consultation attached at Attachment E:

- * A response of 1190 submissions represents less than 7% of the 18,000 submissions posted out.
- * Of the submissions received two were petitions with a total of 918 signatures. One petition objected to the sale of Churchill Park, the second objected to the sale of Churchill Park and Kookaburra Caravan Park. These petitions have not been checked for any duplication of signatures.
- * The responses were almost divided in their objection vs support and conditional support for the proposal. The exception to this was in relation to Churchill Park which was not well supported. At the time of the consultation the relocation options for those users of Churchill Park had not been resolved. It is unclear what, if any, effect this may have had on submissions received.

Copies of the submissions are available in the Councillors office for review by elected members.

Over the course of the project Officers and State Government representatives have held a significant number of meetings with stakeholders and representatives of clubs and organisations most effected.

Officers are not going to attempt to summarise the positions of these organisations as part of this item, rather provide those organisations an opportunity to provide their comments directly to Council.

Southern Rip undertook some consultation about the project and a copy of its report is attached for reference at Attachment F.

Following Council resolution C0707/167, Officers have written to the following organisations and provided them an opportunity to have comment on the options available to the Shire at this time:

- * Busselton Chamber of Commerce;
- * Geographe Bay Tourism Association;
- * Busselton Dunsborough Environment Centre;
- * Busselton 2020;
- * BJECA;
- * BJAC;
- * Southern Rip.

The responses to this request attached at Attachment G. It is proposed to provide these organisations an opportunity to address Council directly, as parties with an interest in consideration of this item.

In addition to these responses Council has received one formal petition relating to the project on 31 January, 2006 which had 934 signatures and was objecting to the sale of Churchill Park. These signatures have not been checked to identify any duplication of signatures from those submitted as part of the submission process. As previously stated at this time the relocation options for Churchill Park were not fully developed. It is unclear what impact this may have.

More recently those sporting groups which would be affected by a redevelopment of Churchill Park have been part of extensive consultation to determine how their needs could be met particularly on land south of Sir Stewart Bovell Park. A summary of these issues will be addressed later in the item.

Officers are not going to proclaim to be able to comment on the views of these clubs and sporting groups. Rather it is proposed they also be provided the opportunity to provide their comments directly to Councillors in an organised forum prior to Council's consideration of this item.

At the request of local residents an Electors' Meeting was scheduled for the evening of Monday 10 September, 2007. The outcomes of this meeting will be reported to Council in accordance with the requirements of section 5.33 of the Local Government Act. This will occur at the same meeting to which this report is being presented and will be forwarded as a late item to comply with this requirement.

Should the project proceed, officers are recommending that the community stakeholders have further opportunity to be involved in the refining of the concept plan into development outcomes.

STATUTORY ENVIRONMENT

In a governance context, Council is wearing a number of hats, (in no particular order);

1. A 'partner' in a development related project that will help ensure the jetty is rebuilt;
2. The custodian of community values and in particular, a requirement to make value based judgements against the degree to which heritage is affected and is developed and the likelihood of recouping financial outlays;
3. An asset manager of both the jetty and community land with implications for significant sums indefinitely;
4. A statutory decision-maker and regulator;
5. A financial responsibility to the ratepayers of today and tomorrow.

Council is charged under the Local Government Act with the general 'good governance' responsibility and hence must balance the sometimes competing roles as mentioned above. It must also be mindful of decisions made which financially commit future Council and ratepayers.

In addition to Council's broad areas of interest that it is required to take into account when dealing with aspects of this project, it will also be required to make a number of decisions strictly on planning grounds as part of the statutory planning process involved. The primary part of this process will be Council's consideration of a request from LandCorp for the initiation of a rezoning of the land to facilitate the proposed development outcome. In conjunction with this application there will also be a request for Council to relinquish the various vestings/management orders for Crown reserves it holds that are required to be amended in their purpose or cancelled to allow the development to proceed. The preparation of the application by LandCorp will commence and be guided by Council's determination on the State's offer.

In terms of the overall project proceeding, the Council decision on the initiation of an amendment to the Town Planning Scheme, or otherwise, is fundamental and on this basis the project agreement (proposes to) link(s) the Council decision on this to the release of project funds for commencement of construction works. Pursuant to part 5 of the Planning and Development Act 2005 the sole authority for initiating an amendment to a TPS rests with the responsible Local Government. It should, however, be noted that following initiation and advertising of an amendment the decision on final approval modification of that amendment, or a decision to refuse the amendment rests with the Minister for Planning. Irrespective of any linking of the overall project to the amendment process Council will still need to determine any application from LandCorp for amendment of the scheme on land-use planning grounds.

Relinquishment of the Shire's management orders (as will be required) is also an important component of the decision-making process. The Minister (with concurrence of Parliament for Class A reserves) does have the power to vary/ cancel these without the agreement of Council pursuant to the Land Administration Act 1997 but this would not be consistent with the State's commitment that the project would only proceed with the Council's support.

In terms of the process likely to be involved this may be affected by any resolution Council may make in respect to land matters pursuant to this item. It is however currently understood to be as follows:

- 1) Based on the outcome of the Cabinet consideration of the project and any resolution of Council from this meeting the Jetty project working group to provide advice to LandCorp on the development proposal to be progressed.

- 2) LandCorp to progress work on background information and assessment associated with the proposal as required to support an application to the Shire for initiation of the required amendment of Town Planning Scheme 20 to facilitate the development proceeding. In conjunction with an application from DPI - Land Assets in respect to the required modifications to management orders the application from LandCorp would then be lodged with the Shire.
- 3) The LandCorp application to be assessed by Shire Planning staff as per any other application for a scheme amendment and a report and recommendation presented to Council for consideration. This would probably occur concurrently with reporting and determination on required changes to management orders for Crown reserves assuming the request is received from the State concurrently.
- 4) Council would then determine the LandCorp application, and depending on the decision, the required scheme amendment process would then be undertaken. In summary, where Council had resolved to initiate all or part of the amendment referral to the EPA to determine the required level of environmental assessment of the proposal would then be required. Compliance with conditions for environmental review would then be undertaken prior to public advertising. The responsibility for completing the environmental review would rest with the applicant (LandCorp).

Where the application proceeded to public advertising the outcomes of this would then be reported back to Council for consideration and recommendation to the Minister on whether the amendment should be proceeded with, modified, or not proceeded with. However, as outlined above, the final decision on this then rests with the Minister and the Minister's final determination may not be consistent with the Council resolution on the matter. Given the nature of the proposed amendment it is considered that the minimum time for it to be finalised would be likely to be at least 12 months from lodgement or significantly longer if a formal environmental review is required.

- 5) If the amendment proceeds to final approval this would then provide the framework within which a development plan would be finalised and subdivision (land development and servicing works) and development applications are then proceeded with. It is understood that LandCorp will be submitting applications and undertaking works associated with the subdivision of the land but that created lots would be on sold and actual development undertaken by third parties. The shire would then deal with individual development applications in the normal manner, subject to the controls and guidelines established for the various precincts through the rezoning/planning process.

One of the development parameters proposed is detailed design guidelines to ensure that development particularly on the foreshore area reflects its high amenity location, strong public/community function and focus, and reflects and enhances the specific character of this area of the Busselton foreshore.

The provision of a high amenity redeveloped public foreshore is a central plank of the State's promotion of the project. While this can be delivered in a formal statutory sense as part of the subdivision process there are limits to the scope of conditions that can be imposed in this process and it is considered that a formal contributions and foreshore landscaping agreement would be required as part of the project documentation.

POLICY IMPLICATIONS

Council entered into a Memorandum of Understanding (MOU) with the State Government in May 2005. The following is a quote from page 5 of this document:

"Initial Project

The first project which will be developed under this MOU is a development plan for the Busselton Jetty, including the development of land parcels jointly identified by the Shire of Busselton and the State Government that can be used to fund the rebuilding of the Jetty and the building of public open space infrastructure adjacent to the Jetty.

The plan will also incorporate redevelopment of the linkages between the foreshore and the Queen Street area of the Busselton Town Centre and address project impacts on the remainder of the CBD."

FINANCIAL IMPLICATIONS

Given its statutory (financial) governance responsibilities Council cannot disregard its considerations surrounding recouping of a \$6M outlay. Recouping all or part and timing of this must be a conscious consideration of the Council in addition to the extent of land development it facilitates via scheme amendment (that will facilitate the quantum and timing of the recouping).

The State has indicated it requires its outlay to be recouped first and only then can the Shire consider applying to recoup its upfront contribution from what remains of the land development surplus monies after the State takes its 30% (of all profit) tax equivalent and LandCorp takes its 35% dividend.

This approach is outlined by the step by step example below (for illustrative purposes this example assumes the en globo value of all land to be sold to LandCorp for development to be \$3m which has not been verified):

- * Federal Government pledges a grant (payment timing TBC) of \$4m;
- * Shire contributes to a Jetty Rebuild Fund (JRF), a borrowed amount of \$6m;

- * State's offer conditions satisfied, it contributes to a JRF, an amount of \$6m;
- * LandCorp reimburses State for the development lands (englobo value) est \$3m^;
- * State is still out of pocket \$3m (and the Shire \$6m);
- * Shire seeks jetty operations money held by BJECA redirected to JRF of \$1m;
- * Shire is able to source another \$1m from donations/grants etc;
- * Total of JRF at this point is \$18m;
- * Sufficient finances to go to market perhaps with compartmentalised tender;
- * Total tender result say \$22m;
- * Project redefinition to delete Section 10 thus saving \$3m;
- * Council resolves to commit shire to an additional \$1m;
- * Tender awarded for \$19m fully funded by JRF;
- * Jetty Construction commences - est. 18 month construction period;
- * Jetty construction project management costs (est. 2%) are tracked (\$0.4m);
- * LandCorp obtains all necessary approvals and development project commences;
- * Sporting groups are relocated to like for like facilities#;
- * Project duration est. 5 years, lots are created, cleared and sold;
- * All project costs recouped by LandCorp incl. project management and interest~;
- * After project costs have been recouped, further sales result in 'surplus' funds (the project cash flow emerging from the red and going into the black);
- * The shire's interest accrued on its total jetty expense of \$7.4m for 5 years is \$2.6m meaning the shire must recoup \$10m from the project to break even. To achieve this the project would need to generate \$37 million in surplus which would be allocated on the following basis.
- * As and when a calculation is done for surplus allocations:
 - The first \$8.6m of surplus is allocated as such:
 - 30% (\$2.6m) tax equivalent payable to State
 - 35% (\$3m) dividend payable to LandCorp
 - 35% (\$3m) payable to State to recoup its out of pocket \$3m
 - The next \$28.6m of surplus thereafter is allocated as such:
 - 30% (\$8.6m) tax equivalent payable to State
 - 35% (\$10m) dividend payable to Landorp
 - 35% (\$10m) payable to Shire to recoup its total contribution
 - For all surplus thereafter, the allocation should be:
 - 30% tax equivalent payable to State
 - 70% payable to the party/s that contributed to relocation payments over and above that indicated in LandCorp feasibility.

LandCorp is therefore motivated to achieve timely and sufficient profit to ensure the Shire is not out of pocket. (This would be reasonable given the LandCorp Board's instruction was to consider a project feasibility for a project to raise the necessary funds for an \$18m jetty rebuild). Any overwhelmingly conservative estimations built into the LandCorp feasibility model that resulted in a project surplus amount greater than that which had

already reimbursed it for the project costs and risk should not be something that rewards LandCorp but more appropriately be something that is used to pay back bona fide project cost.

This will help ensure LandCorp is not motivated to overdevelop (ie commence a project estimating surpluses of more than \$37.2m) and the Shire is motivated to monitor LandCorp's project finances to ensure ratepayers are not losing access to an asset (public funds generated) within the Shire. Such a funding model will help deflect any criticism of the project that (latent) local land value once realised, would be siphoned out of the shire.

Safeguarding this model's (distribution) integrity (pursuant to the annual independent audit) will need to be facilitated by an appropriately worded clause in an agreement with the State. It is recommended this clause protect the Council's ability to hand the jetty licence back.

^ In a funding recoup timing context, the Council would ordinarily have to be satisfied this is a fair englobo value however this clause provides Council a review mechanism which negates this concern early in the project.

"Like for like facilities" has been a verbal commitment from the State (former Minister of the SW) and accordingly, estimates of the financial implications were factored into the LandCorp project financial feasibility. These were observed at the time by two Shire representatives and accordingly, so was the projected project surplus. Should the relocation indicate an increased quality of facility and/or increased cost of this relocation exercise then decisions will have to be made as to where this funding will come from. It will be recommended that it not be automatic that LandCorp unilaterally make this determination directly impacting projected project surplus funds. To do so would deny the Council the opportunity to choose between the funds flowing to the benefit of the individual sporting group as opposed to the general ratepayer saddled with the jetty construction debt repayments.

~ It is understood, LandCorp impute an internal rate of return to apply to its costs of accessing held funds where others might use bank debt and pay interest.

The above example can be used to illustrate where project surplus cash (if attained at nearly \$37.2M) would finally reside and the cash end state after recouping of project costs (including costs of jetty rebuilding) of the three participating parties would be:

State	\$11.2M (in tax equivalents)
LandCorp	\$13m** (a % of which LandCorp pays to State in an annual dividend. The remainder will be used to fund future projects to operate LandCorp)
Shire	\$nil

** This assumes LandCorp recoups its project funding 'interest' as a cost before surplus funds are generated (from which it then takes a 35% dividend and also from which the Shire can only then recoup its interest and other costs).

On the surface, it appears that because of this land development project, the State could eventually profit to the tune of roughly \$11m. It must be remembered however that the local community (Shire) will gain the following:

- * A link from the foreshore to the CBD (which the State will fund upfront);
- * An increased ratebase by an estimated \$1.8M per annum;
- * New sporting facilities located where sporting groups can better plan for their future (to the value estimated in the LandCorp feasibility);
- * A new vibrant foreshore precinct with high public amenity value - something which the Shire has not been able to achieve to date (which the State will fund upfront);
- * New/upgraded service infrastructure;
- * An actual project conducted under the MOU with the State, (which now with the benefits of a better understanding of how each other works will foster future projects).

The State's offer of \$6m has always been based upon a best estimate of rebuild construction cost of \$18m and an expectation the Federal Government would fund one third of this. The work of the BJWG has taken much time and during this period, general cost escalation has tracked at about 1% per month. The degree to which this has been mirrored in a marine context is not known. It is likely, however, that any tender for the entire project will exceed this amount and also that the Federal Government will not immediately fund the full \$6m requested (perhaps only the \$4m DOTARS application). This will mean a reconsideration of the project scope and possibly its staging.

There is a risk to the Shire that the land development project's profits will not be sufficient to enable the Shire's outlay of rebuild debt and project management costs and interest to be recouped. Without detailed scrutiny of the LandCorp project feasibility, (a commercial-in-confidence document), it would perhaps be safe to assume that possibly only half of the Shire's project expenditure would be recouped. Examples of this risk include the inability of the State to deliver A class reserve based development and not being able to overcome any critical environmental barriers.

The Shire did not ask the State for \$6m per se, it asked it for a one third contribution to rebuild the jetty. In addition, the Shire did not ask the State for a contribution for it (the Shire) to rebuild the jetty, only that the jetty be rebuilt. One could logically assume the State would be the construction contract Principal given it owns the jetty. The State is the landlord and has granted the Shire care, control and maintenance of the State's asset. Council will have to agree (as the tenant) to be the Contract Principal as the State's representatives have stated they would not recommend to the State that it takes that risk.

Those same representatives have however offered to form a committee of support to bolster the Shire in its role as Contract Principal. This support group has been recommended to Council.

Should the Council agree the Shire will be the Contract Principal for the jetty construction tender, it will have to resource the construction project's project management. Project Management is a bona-fide project cost (in the same way that contractors and salaried officers are paid by LandCorp to manage development projects and LandCorp retains project funds to meet these ongoing expenses). The construction project management cost will therefore need to be recorded and separated from the Shire's regulatory involvement. The project management cost will therefore become an expense item recoupable under the Project Agreement to be agreed with the State. This has been recommended.

Scope and staging consideration will be the primary concern of the Construction Principal and if this is to be the Shire, Council will be in full control of the final project that is awarded to the successful tenderer.

Should Council agree to the Shire committing to financially underpinning the JMF, it would be forgoing the discretion of \$82,779 (2007/08) of combined annual rent payments from the Goose and Equinox restaurants (and also eradication of the rent from the Nautical Lady of \$28,549). The Goose and Equinox net revenue together with new crown lease revenue from four sites developed/created from the land development project would be used, together with jetty operations profits to grow the JMF.

Increased public activity and presence by virtue of the increased vitality envisaged will mean a higher servicing cost for the foreshore/reserve, (this has not been quantified) that have formerly offset the \$287,690 p.a. reserve maintenance expense.

Shire officers will have to run the tenders for disposal of the new four ground leases and presumably also manage those leases. There will be additional human resourcing implications for overseeing the jetty construction project management, tending to relocation issues for sporting groups and caravan park occupants (including negotiating new leases), maintaining a presence on the JWG or whatever this group becomes and overseeing compliance with the jetty maintenance fund and tourism business plan. These issues have not been costed at this point and although not confirmed at this juncture, are not expected to be recoupable as bonafide project costs.

The Shire's auditing firm, AMD, prepared a maintenance cost model showing revenues and costs associated with the Jetty. The model was based on maintenance costs estimated in a report provided to Councillors on 28 July attached to the AMD financial projections. There are many factors to this model and minor changes in each have significant impacts upon the final amount in the JMF. The work undertaken by AMD was designed to

demonstrate how sensitive the model is to minor variations, and hence should be used as a management tool.

Officers have undertaken further liaison with AMD to determine the impact of minor changes to any of these variables. The conclusion to this investigation is that Council would be wise to use the pessimistic option identified to ensure it is covering maintenance requirements into the future. The five year review of the maintenance fund as proposed is designed to address all of these issues and changes could be made to the amount set aside annually after this date. Should Council resolve to progress with the State's offer Officers would undertake further investigation of these aspects with AMD prior to Council's agreement to the maintenance costs.

The State's representatives have interpreted the AMD model requires the shire to lodge all net proceeds of the jetty's operations plus all the rental income from the 6 foreshore leases into the JMF. Shire representatives maintain their commitment was to recommend to Council that it be agreeable to financially underpin the JMF to the worst case scenario degree estimated in the AMD schedule tabled at BJWG meetings. That would mean Council would have discretion to use any surplus funds (greater than the AMD JMF model) bearing in mind the Council would be responsible for imparting the maintenance plan even if the cost was above what was held in the JMF.

As a result of this difference of view, the BJWG has suggested there be a five year review clause written into the operative conditions of the JMF. This will allow the Council the ability to redirect some of the jetty operations profits to a broader tourism objective (that still benefits the jetty) but only if the JMF is in a sufficiently healthy position to fund the projected maintenance expenses. It is recommended Council agree to forwarding all six net lease rentals and all jetty operations net surpluses into the JMF but that the 5 year review clause clearly states that upon an updated whole of life maintenance calculation pursuant to a new design and a re-examination of costs and revenues, that unless the projected maintenance requirement reasonably justifies otherwise, then the Shire will re-divert some funds to wider tourism pursuits that would still have a beneficial nexus to the Jetty.

The Shire is required to underwrite the Jetty maintenance so that it will be sustained forever. The maintenance model gave options for funding the replacement as opposed to only maintenance of the UWO or IC. Only maintaining the UWO and IC (not replacing them) required (pessimistically) an estimated year 1 amount of \$407,000 in addition to the estimated net surplus from jetty operations. If Council wished the fund to be accumulated such that it prepared for the replacement of UWO, IC and train infrastructure then the amount per annum would increase to \$502,400 above jetty operations projected net surplus levels. The second figure is not recommended as it is expected tourism product will change in 50 years and the replacement decisions would be made at that time on a business case scenario.

It should be noted that if the Shire committed to the rebuilding of the jetty it would expect not to pay the GST component of \$1.6M factored into the estimated total cost of \$18M.

STRATEGIC IMPLICATIONS

The Busselton Jetty is a significant icon for the community, the region and the State of Western Australia. It:

- * Is the 4th highest visited attraction in WA;
- * Attracts an estimated 400,000 visitors annually - 280,000 of those are paying;
- * Is estimated to contribute between \$7-\$10 million annually to the local economy by Tourism WA when rebuilt;
- * Is a key attraction to the Shire's \$200 million tourism industry;
- * Provides an environment for over 300 marine species via essentially a 1.3 hectare shaded reef;
- * Is a key aspect of the Shire's history and culture;
- * Provides low cost recreational and social value to members of the Busselton community.

The rebuilding of the Jetty is in the Shire's Strategic and Corporate plan as a key project.

The sustainability of the Jetty into the long term must be the priority of Council given the importance the structure has on the local and regional economy, heritage, environment and socially. This requires a comprehensive approach to long term funding (as embodied in the State's proposal), and will not be effectively achieved by short term stop-gap measures as these would have a considerable greater and possibly unachievable long term cost.

It is acknowledged that there are short term considerations to getting the train operating again, however, this does not address long term needs and sustainability of the jetty. Opportunities to address projects such as this with a level of support from both the State and the Federal Government are rare, therefore, the challenge for Council is to use this opportunity to negotiate a way forward which is in the long term best interests of the community and the region through retention of the jetty.

Much comment has been made about the need to separate the rebuilding of the Jetty from the revitalisation of the foreshore and while this may have been desirable it is not currently an option if a contribution from the State is to be realised which is considered to be an economic essential. However, it is also clear the community and stakeholders have foreseen some revitalisation of the foreshore and linking to the CBD for some time as outlined previously.

It is considered a priority must be to ensure that Busselton has an active and vibrant CBD into the future that has the attraction compete favourably with the developing areas of Airport North, Ambergate and Vasse in terms of servicing the local population and the increasing competition at all levels for the tourist dollar.

The challenge for Council in consideration of the State's proposal is to consider whether the level of development on the foreshore is within community values and in the long term interests of the town, Shire and the region. While Council is not making a determination on future zoning of the land at this point, it needs to be acknowledged for the project to progress, consistency of decisions will be required. Any foreshore development to be successful would require the concurrence of the State. In the proposal mooted, the State's involvement is fundamental.

OFFICER COMMENT

The Officer comment relevant to this report will establish the ideals by which Officers believe the project should move forward. It will then assess the State Government's offer against these parameters, identifying common ground and areas of difference which could be addressed in negotiation of a project agreement should Council choose to move forward with the State Government's offer. It should be noted that the Minister has alluded to the offer as one in which parameters are not negotiable. Officers have, therefore, had to be mindful of progressing matters within this framework.

TENURE

Negotiations with the State regarding the tenure of the Busselton Jetty have centred around a new licence agreement relating to the jetty structures and the creation of a reserve area which incorporates the jetty structures, the UWO, the interpretive centre and a surrounding curtilage area. The Jetty Licence Agreement will relate to the jetty structures themselves and will be loosely based on the existing licence agreement, being likely to include obligations on the Shire to maintain the jetty structures and to seek the State's consent prior to any alterations or additions to the jetty structures or the surrounding area. The State has indicated that the maintenance obligation is likely to be supplemented by an obligation to comply with the asset management plan which is being prepared for the Jetty, referred to earlier in this report as the JMF. It should be noted that an asset management obligation is considerably broader than purely a maintenance obligation and the obligation is likely to include:

- * Compliance with the asset management plan;
- * The establishment and management of the trust fund required to be established to hold the monies to be put aside for the Jetty in accordance with the asset management plan; and
- * The designation of a person or entity containing a number of persons to manage the trust fund in accordance with the rules established.

The Jetty Licence Agreement or associated agreements are also likely to include an obligation to comply with the Tourism Business Plan for the Jetty which was prepared under the auspices of the Jetty Working Group. The intention is that revenue raised from activities carried out in accordance with the business plan, together with lease revenues to existing and for new foreshore lease sites that are proposed as part of the Jetty redevelopment would be directed into the asset management fund. Ultimately the State

has indicated that the Shire is likely to have an obligation on it to put aside the required amounts in the asset management fund, regardless of whether or not those amounts are raised from the proposed foreshore lease sites and the tourism business activities. In return the Shire has sought in negotiations with the State to have an ability to use excess funds at its discretion for the benefit of tourism projects in the Shire generally. This point is still under negotiation.

In relation to the purpose of the reserve including and surrounding the Jetty, the Shire has indicated to the State that it would like to ensure that the reserve purpose is sufficiently broad to encompass a range of activities that might be carried out on or involving the jetty associated with meeting the Shire's obligations under the tourism business plan and the JMF. A reserve purpose that includes reference to tourism is essential and if possible the Shire would like to see some mention of the ability to carry out commercial activities that are associated with and beneficial to overall tourist objectives associated with the jetty. The Shire does not believe there would be a difficulty in the state agreeing to a fairly broad and all encompassing reserve purpose that relates to a future jetty reserve, given that there are already numerous constraints and approval requirements that will be placed on the Shire under the Jetty Licence and as a result of its obligations to comply with the various plans and statutory requirements that apply to the Jetty (the asset management plan, tourism business plan, the Jetties Act, the possible obligations resulting from the creation of a marine reserve etc).

Another issue under negotiation in relation to a Licence Agreement is the Shire's request to ensure that the insurance requirements in the commercial agreement relating to the jetty are sufficiently broad to enable alternative insurance arrangements to be investigated and agreed between the Shire and the Minister. This may involve self insurance using jetty reserve funds, given the potential for private structural insurance premiums to be prohibitive in cost.

JETTY OPERATIONS

The considerable obligations that are likely to be placed on the Shire under the Licence Agreement and other agreements associated with this project reinforce the need to have a detailed commercial agreement with the operator of the Jetty to provide clarity on responsibilities of each of the parties in relation to a series of matters including:

- (a) the nature of the commercial operator's tenure over various facilities on the Jetty, particularly the UWO and Interpretive Centre;
- (b) the types of activities the commercial operator can carry out with and without approval from the Shire and the manner in which those activities are to be carried out;
- (c) the assignment of legal liability and responsibility for statutory compliance associated with the various activities that could be carried out on the Jetty including the train;

- (d) the receipt and allocation of monies associated with those activities and related issues, such as GST;
- (e) the ability to set fees and the approvals required for this and the matters that must be considered by the commercial operator if it has the ability to set fees;
- (f) issues relating to asset integrity and security and the relationship between the asset management requirements for the Jetty and related risk management issues and the commercial activities on the Jetty; and
- (g) the relative rights and liabilities between the Shire and the commercial operator and the insurance requirements arising as a result of these, taking into account the nature of the activities carried out on the Jetty.

The key issue for negotiation will be the generation, receipt and allocation of funds associated with Jetty operations, given the extensive obligations that are likely to be placed on the Shire to create and maintain the JMF.

COMMERCIALISATION AND DEVELOPMENT

The Jetty is a significant tourism icon for both the Shire and the State. It attracts an estimated 400,000 visitors a year and arguably underpins the Shire's \$200 million tourism industry.

As with all tourism product the Jetty needs constant reinvention to keep it interesting, modern and meeting visitor demands. BJECA has done well in this regard by helping to facilitate the actualisation of the interpretive centre and under water observatory to the tourism experiences available.

The ideal situation would be the continual introduction of new aspects to the tourism product, be they infrastructure or service based over the coming years. These aspects obviously can only be added if they are commercially viable.

The viability of this asset, like others of the Shire, is dependant upon the strength of the tourism industry. Officers believe in the future a percentage of surplus of the Jetty (and other commercial operations including the Kookaburra Caravan Park and the Airport) should be directed into supporting the development of the tourism industry in the region.

It must be acknowledged that not all the uses on the Jetty are tourist based. A significant number of local residents use the Jetty for recreational purposes and these interests need to be balanced with tourism uses into the future.

JETTY REBUILD OPTIONS

Several scenarios exist with respect to the rebuild options for the jetty, based on the amount of funding received. These include:

- * **Do nothing** – eventually the jetty would become unsafe even for pedestrians and would have to be closed. The underwater observatory would need to have a landing constructed and the interpretive centre would need to maintain at least section 1 of the jetty. There would be demolition costs to the shire for the jetty under the terms of existing licence. The all up cost for this option may be in the order of \$1,000,000. This is a not a sustainable option for the jetty and it may have a significant impact on the financial viability of the underwater observatory, particularly when section 10 is lost and the end section ecosystem collapses. The knock on effect would be the loss of interest in the interpretive centre and the economic loss to the shire.
- * **Do just enough to get the train running and increase maintenance costs marginally** - This approach is not considered feasible by Shire staff for the following reasons:
 1. It would effectively be patching up, or bandaiding, parts of the jetty that require complete rebuilding.
 2. The money spent on this option would then be wasted in the rebuilding works as the most critical sections require complete rebuilds. It is like patching up a condemned building and then demolishing it soon after to rebuild it.
 3. It would in no way change the need for a large capital expenditure at some point in the near future, however, it may well add to the overall cost as construction costs continue to escalate. The patch up option has clear sustainability issues. The evidence of the past is that even while the Shire was spending \$300,000 per year on the jetty maintenance, the jetty was developing serious structural problems, now requiring serious funding to rectify them.
 4. The Shire may find the risk level unacceptable to it given the temporary nature of the works. An example of this already exists at the end section (10) of the jetty, at which some stabilisation work has been carried out, but the engineers have still assessed the risk as too great to allow public access on or under this section.
 5. The efforts of the engineers engaged to carry out the major refurbishment design would be delayed by the patch up option if this were pursued, as noted above, with potential cost escalation issues.

6. While not speaking on behalf of the DPI it is very unlikely that the DPI would support a stop gap measure such as this.
 7. The Office of Rail Safety would also need to be satisfied of the safety of the jetty upon which the train is running and although they would rely on independent certification from a structural engineer to guarantee the safety of the train, they have indicated that they would wish to view the plans to satisfy themselves.
 8. The loss of income that would be incurred by requiring parts of the jetty to be closed in ongoing summers would be significant.
 9. The cost of mobilisation and demobilisation for projects such as this are significant, because of the need to bring barges and personnel with expertise from long distances. Remobilising and demobilising several times would be expensive and would mean that the ongoing costs could be significantly greater than carrying out the work as one project.
 10. Attracting well financed contractors, with the necessary skills to carry out this project, is more likely with a large multi-million contract than a small one. The industry is currently competing for good contractors, particularly with the mining industry boom and the ability to attract a good contractor is enhanced by the scale of the project.
 11. It is very unlikely that a new larger capacity train could be built for the jetty as the extra loads induced by the train could well be unacceptable on the jetty.
- * **Get the Train Running** – Sections 2, 3 & 5 need the most urgent reconstruction work, with minor repair work of the other sections of the jetty. This would cost between \$11 and \$13 million. The following comments are noteworthy:
1. A new whole of life maintenance plan would need to be produced to ascertain ongoing maintenance costs. There would be the need for an accelerated whole of life plan, with higher annual premiums and further access disruptions in the coming years.
 2. Section 10, which is in very poor condition, would need to be considered for separate funding, possibly through a connection to its environmental values as part of the sanctuary zone of the new marine park.
 3. The non-completion of the swimming platforms would compromise the recreational use of the jetty.

- * **Fully Refurbish the Jetty, Except Section 10** – Should the final price of the jetty be about \$3 million more than is available in funding this option should be considered.
 1. This would achieve the train and pedestrian access functions of the jetty.
 2. The diving community would remain barred from access under the end section 10.
 3. Should this section remain in disrepair it will collapse and the underwater ecosystem would be lost. This would threaten the financial sustainability of the underwater observatory.
 4. Section 10, which is in very poor condition, would need to be considered for separate funding, possibly through a connection to its environmental values as part of the sanctuary zone of the new marine park.

- * **Fully Refurbish the Jetty** – this would include new sections 2, 3, 5 and 10, and repair of the remaining sections.
 1. This would achieve the train and pedestrian access functions of the jetty.
 2. The diving community would gain access to section 10.
 3. The design criteria for the new train can be met.

Of the five options listed above only the last three are considered sustainable. These three options should be considered in the light of the funding made available to the project. Ultimately the full refurbishment of the jetty is the best option, with the lowest ongoing whole of life costs and excellent utility.

ANALYSIS OF THE STATE'S PROPOSAL

The State has made an offer of \$6M up front funding conditional upon a proposal to develop public lands within a short distance of the jetty structure. The offer is provided at Attachment A.

The following comments are made against the respective conditions of the offer and makes comment thereto:

1. *No funding will be provided until concept planning is completed, and the Shire has agreed to relinquish its various vestings and control orders over subject lands and has initiated a rezoning of the subject lands.*

There are two aspects to this condition, the vestings and control orders and also the rezoning. The only downside to Council relinquishing the relevant

vestings is that it would have to discontinue the existing power to lease within the reserves and hence not be able to collect rent from the Goose, Equinox or Nautical Lady. This totals \$111,328 per year, (2007/2008). It would also mean the Shire would not be able to continue to operate the Kookaburra Caravan Park. For these reasons, the Project Agreement will need to specify that the Shire is able to operate the newly created beachfront caravan park on the same terms.

The project agreement will also need to ensure the Shire has sufficient scope defined under the new reserves created to manage the jetty and land over which it will secure new management orders. Council will also have to establish a term for which the Power to Lease the new Reserves will apply.

The condition's requirement for relinquishment will also facilitate the redirection of rent revenue from the Goose and Equinox, together with 4 new facilities into a jetty maintenance fund (JMF). This fund would need to be established. Council would also be agreeing to transfer ownership (free) of that portion of Churchill park to the State identified for development.

It is recommended the undeveloped portion of the Park, ie, that amount containing the hall/changerooms and oval etc. remain in Shire ownership but not as a crown grant in trust, rather as an unencumbered (but still reserved) in fee simple (thereby ensuring full control in its future). The second aspect of this condition is addressed in comments pertaining to the second condition below.

2. The Shire undertakes to progress the rezoning of the subject lands through to finalisation in a timely manner.

It is understood that 'progressing the rezoning' refers to the rezoning procedure (as opposed to researching the rezoning application or the actual decision to initiate). This procedure involves initiating an amendment to the Shire's Town Planning Scheme (TPS) pursuant to receiving an adequately researched rezoning application from LandCorp and a Council decision to initiate the amendment. After initiation and any environmental processes, the proposal is advertised for public comment and a report cognisant of those comments is again placed before the Council for it to determine adopting the amendment. The condition is considered acceptable as part of the overall project if supported by Council but it needs to be noted that agreement to such cannot fetter Council's requirement to deal with any actual rezoning application on its planning merits.

It is assumed that although the State's condition requires the Council to initiate the TPS amendment, and this is the fundamental trigger for the project, and progress the associated process in a timely manner through to finalisation, it does not expressly stipulate the Council must adopt the amendment for final approval. To do so could be seen as an attempt to fetter the Council's quasi-judicial role in determining TPS amendments.

The rezoning process allows the Planning and Infrastructure Minister to intervene to make a determination that the amendment will be adopted. But she is only able to do this once the Council has initiated the amendment. Presumably, she would also need justification in this regard and it would be contrary to the State's commitment that the project would only proceed with community support. Should Council not see fit to initiate the amendment, the project could not proceed under the current terms of offer. The only option then would be for LandCorp to prepare a scheme for adoption directly by the Minister which requires justification pursuant to the Act, or through the establishment by the State of a specific redevelopment authority.

The Council is only able to consider the rezoning once a proper application is lodged with the shire. This will contain all the usual and necessary proposal details enabling it to be assessed at an officer level and a report prepared for the Council to consider. Until this happens, Council is not able to undertake any decision on the rezoning other than to give conceptual (only) support to the proposal in the context of the State's offer and commit to an expeditious process. The Shire offers development proponents the ability to have their proposals dealt with by a dedicated resource (employed by the Shire), thus ensuring the quickest passage of the process. This comes at an agreed fee payable in advance.

3. *Sufficient aspects of the land development are initiated for rezoning by the Shire, including Churchill Park, for a viable project.*

This condition seeks to ensure financial viability for the land development project. It recognises different aspects of the whole project have varying levels of both cost and revenue. For example, the foreshore precinct might have a high cost of providing public infrastructure and this would need to be balanced by another part of the project that had a higher net revenue (return from projected lot sales). Without the supporting financial analysis of the development project (held in commercial confidence by LandCorp), Council would not be aware of the profitability of various precincts and their importance to the overall project.

The condition does include the need for Council to include Churchill Park in the rezoning initiation. It remains to be seen, but in theory, this clause provides the ability of the State to withdraw or modify its offer if not all of what is proposed is initiated. Similarly, neither does it seem to limit Council's ability to chop and change the exact make up of the land parcels to be developed (although Churchill Park is to be included). As has been previously outlined the foreshore redevelopment is a concept that has been endorsed in a number of planning documents by Council. It is an essential component of the creation of an area of high activity and vitality on the foreshore that will assist long term returns from the jetty and to the jetty maintenance.

The redevelopment of the Kookaburra Caravan Park sites are, however, a component that does not appear to be essential as part of the project based on the conditions. A number of the environmental and social concerns with

the project relate to this component and it is not directly linked to the jetty. The Council would still retain the potential to develop a further facility as proposed based on the current reservation of the land and therefore, this may be the area where Council has greatest potential to vary the project scope and still proceed.

4. The LandCorp Board approves the preliminary business case for the resulting land development.

Following on from the above comment, LandCorp's Board will make a determination of whether to proceed with the project, again, presumably, based on its overall profitability (including its risk exposure). It is assumed the LandCorp Board would not give the final signoff to conduct the project unless and until the Council initiates an acceptable rezoning (which is also a condition of the State's offer).

While Council can agree to (conditionally) accept the State's offer, it must recognise that no funds would change hands until satisfaction of the conditions precedent including the advertising of the TPS amendment.

5. The Shire assists in the negotiations with existing lessees with respect to any termination, assignment, relocation or other arrangements arising as a result of the project.

Existing commercial lessees affected in some way within the proposed development area are: Nautical Lady, The Goose, The Equinox, Bunbury Surf Life Saving Club (on behalf of the Busselton Junior Surf Lifesaving Club), Busselton Tennis Club and the Busselton Soccer Club. It is understood negotiations will be conducted with the Nautical Lady to establish a fair price to be paid for lease termination. While the Shire can lend support in this regard, it is understood the negotiations would be conducted by or on behalf of the State.

It is accepted that the Shire's Manager, Community Development will apply his expertise to renegotiating suitable outcomes with the remainder of these organisations.

6. The Shire signs a project agreement with the State which clearly sets out objectives, roles, and responsibilities.

This is a very necessary condition the Council should support. Interestingly, when the MOU was developed with the State (9 May 2006) it agreed to the timely implementation of major initiatives and specific projects agreed to by the parties of the MOU. Specifically on page 5 of that MOU, "The first project which will be developed under this MOU is a development plan for the Busselton Jetty, including the development of land parcels jointly identified by the Shire and State Government that can be used to fund the rebuilding of the jetty and building of public open space infrastructure adjacent to the jetty. The plan will incorporate redevelopment of linkages between the foreshore and the Queen St area..."

7. *The Shire notes its ongoing responsibility to maintain the asset in accordance with the 1988 license agreement and signs a new license agreement to reflect a requirement to operate the Jetty in accordance with an agreed and funded maintenance plan.*

Acknowledging anything from the past is a moot point except to note that in the opinion of the officers, the Shire has never had the responsibility (under the lease or otherwise) for the structural reconstruction of the jetty. What is important is that Council is sufficiently happy to sign off on a new licence agreement that contains a clause(s) to ensure the jetty is operated in accordance with an agreed and funded maintenance plan. The proposed licence has yet to be drawn up but is expected to retain the same clause as in the 1998 agreement describing the Shire's responsibility to ensure the jetty is maintained in a state of good repair.

8. *The Shire endorses a maintenance plan and associated business plan to demonstrate how it will manage the asset into the future to the satisfaction of the working group.*

The BJWG has overseen the development of a maintenance expenditure plan demonstrating the annual quantum of funds required to be dedicated for maintenance purposes. Council will have to be satisfied the Shire has the financial capability to agree to this requirement.

Officers feel the maintenance expenditure model (AMD) and tourism business plan guiding jetty operations are sound and should be complied with. Given the underlying assumptions that have been articulated, Council should be confident the Shire does have the financial capability to agree to this condition.

9. *The Shire agrees to use the lease income from sites dedicated as ground leases in the foreshore area, including existing ground leases, specifically for Jetty maintenance in accordance with the maintenance plan.*

There are 6 ground lease sites understood to be the subject of this condition. Two already exist where their next rental return will be transferred to the JMF fund. These are the Goose and the Equinox. The other four ground lease sites are numbered 4, 7, 8, and 10 in the attached BJWG land development concept plan. The other four ground leases will result from the outcome of the disposal procedure (presumably a tendering situation) of the sites. It will, therefore, be in the Shire's best interests to run these tenders expeditiously. This assumes the sites will be made available as early as possible in the development project. This should be reflected in LandCorp's staging plans.

10. *The Shire obtains quality assurance through the State Government's quality assurance accreditation program for the operation of the Jetty tourism product.*

To comply with this condition the Shire would pass on responsibility for accreditation to any tourism operators on the Jetty under the National Tourism Accreditation Scheme run by Tourism Council WA through the commercial agreement. (BJECA is currently accredited).

11. The Shire commits \$6 million to the Jetty restoration project.

Council has already resolved to commit up to \$6m (from borrowings) to fund its contribution to the expected \$18m rebuild. If after going to the market (tender), the costs have escalated, the State has indicated the responsibility to meet those additional costs be solely met by the Shire. This absolute position of the State's is considered unreasonable and was certainly not envisaged at the outset when approaching the State.

The Shire is not approaching this project as one where the State is 'bailing out'. The approach is one of partnership of recognising shared responsibility to rebuild the icon. Applying this principle gives rise to equal sharing of agreed cost escalation and also cost overrun should contingencies be exhausted in the construction project. Council will nonetheless have to accept this aspect of the offer it wishes to benefit from the totality of the State's offer.

12. The Commonwealth Government commits \$6 million to the Jetty restoration project.

This condition may have to be renegotiated according to how much is forthcoming from the Federal Government or alternatively, the project staged or re-scaled/tailored to the known/agreed project budget. As such, it is recommended Council request of the Minister the State's acceptance that this condition will have to be reconsidered if/when the Federal Government's position is known to be a grant less than the \$6M to the project.

13. The Shire accepts responsibility for any scope or cost increases for the Jetty refurbishment and for meeting any shortfall in Jetty maintenance.

The Shire will have control over meeting its obligations under the maintenance plan if it administers the JMF. The State has been very clear that all necessary future maintenance is solely a Shire responsibility and more so - it is also responsible for funding the necessary maintenance as and when it is due.

Should the Council agree, the Shire will be the Principal in the jetty construction contract. Council will have the full control over the scope and timing of the rebuild works. As such it will be in control of decisions on scope/cost increase. This applies to condition 14 below as well.

14. The Shire accepts responsibility for any funding gaps in the Jetty refurbishment, including any shortfall that may result from a lack of Commonwealth commitment to the project. (Note: This will require the State Government to reassess the risk and viability of the project.)

It is not understood why the State would wish to reassess the risk and viability of the project if the Shire agrees to accept responsibility for any funding gaps.

TENURE

The key difference between the State's offer and a "normal" Jetty Licence is that the State's offer of a Jetty Licence for the Busselton Jetty is likely to include asset management plan obligations which, involving an element of asset replacement, are likely to be more extensive than normal maintenance obligations as well as obligations to comply with the Tourism Business Plan.

The downside of this is that the Shire runs a greater risk in that it would have to put more money aside in the Jetty asset management fund each year and it will have greater accountability to the State and external parties with respect to the creation and maintenance of that fund. However, the creation of that fund will go a long way towards ensuring the preservation of the Jetty as an asset into the long term future and in requiring the creation of that fund the State is also offering the Shire opportunities in the form of the 4 new commercial leases and the Tourism Business Plan to raise greater revenues in order to maintain the fund.

The tenure arrangements proposed by the State and in particular the creation of a reserve incorporating all of the Jetty structures, UWO and interpretive centre and a curtilage around those areas are beneficial to the Shire in that they result in the resolution of unresolved tenure issues regarding the UWO and a portion of the interpretive centre. The creation of the reserve, particularly if the reserve is created with a management order which includes an ability for the Shire to use the reserve broadly for tourism related purposes, is also likely to result in the Shire and the commercial operator of the Jetty having a greater ability to carry out a range of activities on and around the Jetty for the benefit of the Jetty and the area generally.

The renegotiation of the Jetty Licence also provides an opportunity to obtain less restrictive structural insurance requirements in relation to the Jetty.

JETTY OPERATIONS

The commercial agreement will now become a critical document given the State's requirement for the Council to agree to solely financially underpin a maintenance fund (JMF) indefinitely. The agreement will specify the manner and quantum of the financial return to the Shire from jetty operations. It will establish the responsibility for the operator to ensure compliance with licence conditions and also any railway and safety regulations.

It will be imperative for the commercial agreement to have sufficient scope as to allow for innovative ideas to increase revenue (and decrease costs) such that profit returns to the Shire are maximised. In this respect, the State has required a tourism business plan to be followed and will reserve

the right to audit performance against that business plan. The onus will be on the Shire and more particularly the Shire's jetty operator to implement innovative and profitable activities that do not contravene any specified constraints or tourism business plan revenue potential.

It could be argued it is not core Shire business to operate tourism and Jetty maintenance operations, and that these functions be contracted in. However, it is an option to establish an administrative structure internally for jetty management purposes which would have the benefit of returning all profit to the Shire. Any third party would presumably see a percentage of profit retained by that third party.

If the Shire contracts the jetty operation function to a third party, it will likely progress this via a business plan process under the Local Government Act Section 3.58. Exemptions exist however for disposal to an entity, whether incorporated or not, that exist for charitable, recreational or cultural purposes under Part 6, Section 30(2)(b) of the Local Government (Functions and General) Regulations.

The post construction jetty operations will have new licence requirements, new tourism business plan requirements, new maintenance plan requirements and is also likely to have heritage restrictions, a newly defined reserve purpose, updated rail safety obligations and a new workshop and train specifications. As such, Council is advised to consider how best to implement a jetty operations regime to ensure all new obligations are met and innovative thinking is promoted to underpin increased revenue. Whether this is best done internally, by contracting a not-for-profit group (such as BJECA) or contracting a commercial operator is yet to be explored.

In the short term, there is no change recommended to BJECA's current operation other than to pass on any of the above requirements that are imposed on the Shire prior to the operations of the rebuilt jetty. To this end, the aspects of a commercial agreement to be negotiated with BJECA for a projected reconstruction term (estimated to be three years) include but will not be limited to:

- * Abide by the shire's entry fee parameters;
- * Ensure safe public access/egress;
- * Comply with any specified operating parameters;
- * End of year percentage of surplus returned to the Shire via audited accounts;
- * Shire approval for any capital purchase;
- * Submitting of a development application for any proposed new development;
- * Irrevocable commitment of \$1 million currently held from Jetty operations surpluses.

JETTY REBUILD OPTIONS

The Jetty rebuild tender scope will depend upon the construction budget. This will only be known once the Shire has received the Federal Government position and secures the \$1 million of funds from jetty operations held by BJECA.

It would be reasonable to foresee the tender being compartmentalised to allow Council flexibility in funding the rebuild. These construction options have been discussed earlier in this report.

The State Government's offer reflects the full refurbishment plan that was developed and costed in 2005. Combined with an equal grant from the Federal Government, shire funding and a BJECA contribution the project could proceed to full tender. The actual construction price would then be determined through the tender process.

JETTY MAINTENANCE

The State Government's offer addresses the important issue of whole of life financial sustainability by providing an ongoing funding source for the jetty. This will be needed to ensure that the jetty is maintained in good order indefinitely, and that the train depot, the underwater observatory and the interpretive centre will be maintained for their full design lives.

COMMERCIALISATION AND DEVELOPMENT

The State's offer requires implementation of the Tourism Business Plan developed by the Centre for Sustainable Tourism. A copy of this plan was distributed to Councillors as part of the information pack and is also available on the website.

The implementation of this plan in accordance with the State's offer will see new tourism product implemented and improvements made to packaging and pricing structures.

The longer term infrastructure upgrades and additions need to be considered. Funding of these structures agreed to by Council could occur in the following manner:

- * Through any surpluses in the maintenance fund which are achieved. Officers are recommending Council adopt the pessimistic scenario and then review this at the end of 5 years to determine how the allocations relate to projected expenses.
- * From a percentage of turnover from the Jetty operations. This could be an element of the commercial agreement.

The infrastructure aspects of new product need further investigation. It is proposed this can occur during the rebuild construction phase and in liaison with the Jetty operators.

RELOCATION OF SPORTING GROUPS

As investigation continued into the possibility of developing Churchill Park, consultation was undertaken with affected sporting clubs to investigate relocation options.

Officers from across the Shire developed various options for possible relocation of some or all groups. These investigations centred on the most favored option from a planning and overall logistical point of view being the land immediately south of Sir Stewart Bovell complex. The extension of this site to incorporate new users builds upon the strategic nature of this site as a district and possibly regional recreation facility.

Representatives of the Busselton Jetty Working Group undertook initial discussion with the landowners involved. Interest was received about the possibility of selling, however further consultation has not occurred pending the consideration of the State's offer by Council.

CCS Strategic Management (same consultant who undertook the Leisure Services Plan) was engaged to develop a relocation option for the Trotting Club with input from relevant Shire Officers to this site. Of those users of Churchill Park this was the only user interested in exploring this option.

Following the announcement of the State's offer all of the users of Churchill Park affected by the proposal have expressed interest in relocation to this location. A draft master plan of this site has been prepared following consultation with users by CCS Strategic Management and Officers.

Further refinement of this master plan is being made after which it will be circulated to those groups involved for comment and to Councillors as part process of consideration of the State's offer.

The initial feasibility of the project has indicated to the Busselton Jetty Working Group there is capacity in the project to fund like for like replacement of sporting facilities. Any development beyond like for like will be required to be funded by the Shire. Officers expect the Shire would be involved in this aspect of the project should the State's offer be progressed and to this end there is a related recommendation.

RESERVES TO BE CREATED AND THEIR PURPOSES

The project will result in the redefinition of Reserve land within the development area. It is proposed to create a new jetty reserve that will include the UWO and IC (currently these structures are outside the reserve area). It is suggested the new caravan park be on its own reserve and the balance of the foreshore land in that precinct remain as recreation. The jetty foreshore precinct will need to be encapsulated by a reserve that accommodates the 6 mooted crown leases and it is suggested that signal park have its own reserve. The following list gives the more technical detail that Council is recommended to endorse;

Jetty Reserve

To include the jetty and a working curtilage, the IC, the UWO, the abutment, the old baths area to the west and to the high water mark or other logical line to abut the foreshore reserve. The reserve to have a purpose that facilitates the jetty's commercial tourism operation as well as heritage and recreation. There would need to be a power to lease for 49 years, (reflecting the asset management plan timeframes).

Signal Park Reserve

It is proposed to have this reserve purpose defined as recreation without a power to lease but with a power to licence. This means the Shire can licence desired short term events or activities within the reserve purpose.

Foreshore Reserve

This area will include the two existing and four new crown lease sites. At this point, the Equinox has not been established as a crown lease, rather the shire has used its power to lease and constructed its own lease directly with the Equinox under its management order. The State may wish the Shire to convert its lease to one of a crown lease status in future.

It is therefore proposed that the reserve purpose remain as recreation but with sufficient scope to allow limited development to enable the Shire to utilise new rent (from uses of café, kiosk, restaurant) to pay for the maintenance of the reserve. In this respect, it is noted that annual maintenance costs of the foreshore reserve currently run at \$287,690 and this was offset by rent from the Goose and Equinox. The newly proposed licence agreement is likely to propose this rent to be redirected into the JMF. Accordingly there would be a need to ensure the Shire has power to lease for an extended period for designated commercial sites.

* The 07/08 Shire budget indicates the following costs attributable to the current foreshore reserve;

R732	Beach front surrounds	157,425
B732	Beach front toilets	58,770
B731	Beachfront Kiosk	1,820
R893	Yoganup/Skate park	69,675
	Total \$	<u><u>287,690</u></u>

It is possible these and other related annual costs will increase with the increased amenity and visitation created from the redevelopment.

Caravan Park Reserve

It is proposed this should be on its own dedicated reserve for the purpose of caravan park and camping. It would require a power to lease of 50 years to provide the best commercial options for Council for future management.

Barnard Park Reserve

It is proposed when redefined, this recreation reserve carry with it a power to licence in order to facilitate the hosting of recreation related events.

Scout Hall

This is currently a crown grant in trust not a reserve. The Busselton Surf Club has approached the shire for any assistance it might give to work with Scouts to secure a suitable premises and as such possibly co-locate. Surf Club membership is increasing and this site represents an excellent location for a headquarters. It also means there would be a realistic relocation option as the Club currently has a lease for land housing a storage shed immediately below the Nautical Lady. The basic details of the lease are:

LESSEE Bunbury Surf Lifesaving on behalf of Busselton Junior Surf Lifesaving

TERM 5 years

EXPIRY 31 January 2009

OPTION 5 years

EXPIRY 31 January 2014

It is therefore proposed that the State be requested to expand or abut another community purposes site/reserve. This would need a power to lease for the Club's ability to run a kiosk to help fund its operation (which is envisaged to include summer beach patrols). Rent albeit envisaged as minimal, would be directed to (immediate) foreshore maintenance.

REVITALISATION OF THE FORESHORE AND LINKS TO THE CBD

The State's offer achieves the link between the CBD and revitalises the foreshore. How the proposal fits within a planning framework would be considered at the rezoning stage of the process.

CONCLUDING COMMENTS

Officers believe the offer from the State Government not only achieves a mechanism ensuring the sustainability of the Jetty into the future but also is the only chance the Shire has at this present time to develop State Government owned land to create a vibrant Jetty foreshore and link to the CBD, all of which have been a priority for some time.

While Officers acknowledge there are some down sides and issues which require further resolution, on balance the State has provided Council with a sound offer. On this basis the recommendation is to accept the State's and continue to negotiate a good outcome for the Shire and community.

WHERE TO FROM HERE

The following is a list of issues Officers believe should be discussed and resolved as part of any agreement with the State:

- * An annual independent audit of the project. As with any project or investment of significant size, regular monitoring of the progress and potential returns is prudent for a number of reasons. An audit would identify any opportunities for staged repayment of contributions of both the State and the Shire, thus providing an increase in the options available to the Shire to manage the scope of the rebuild project and any cost overruns and to satisfy the community that the project is progressing and what the prospects are for the quantum and timing of the recouping and funds.
- * Compliance with the asset management plan and the establishment and management of the trust fund required to be established to hold the monies to be put aside for the jetty in accordance with the asset management plan and the designation of a person or entity containing a number of persons to manage the trust fund in accordance with the rules established.
- * The maintenance fund be reviewed after 5 years to determine if contributions are adequate and if there is any opportunity to redirect funds into other tourism related costs that have some benefit to the jetty and broader tourism opportunities. Officers would also undertake further work with AMD to refine the maintenance fund model prior to commitment by Council.
- * The Shire agrees to be principal of the tender providing both DPI and SWDC participate in the project management group and agree to provide [removable] specialist technical support or assistance reasonably required to progress and manage the tender.
- * The State to use its best endeavours to provide as much certainty as possible on the likely returns that might be available to the Shire at the time the Shire considers awarding the construction tender.
- * The ongoing role and composition of the Busselton Jetty Working Group and the associated subcommittees.
- * Relocation of sporting groups - the Council will determine if any funds over and above the level already contained in the project feasibility (ie like for like) will be redirected from project costs to fund any relocation. The Council also reserves the right to acquire the new relocation land.
- * Council reserves the right to not proceed with the relocation of the caravan park should it find at the rezoning process the environmental issues are significant. Should this occur Council reserves the right to

review developing the caravan park on the proposed new site in addition to the existing sites at its own expense.

- * The involvement of the Shire, stakeholders and community in the refining of the concept plan into development outcomes. Officers would propose to the State that the community be heavily involved in the process to ensure that the character and culture of Busselton are retained. As part of this aspect officers would also seek a commitment from LandCorp for a permanent project office presence in Busselton to assist in community engagement.

Council should consider this report and await any news from the Federal Government (expected imminently). Council should be mindful of any constructive outcome from the special meeting of electors on 10 September, 2007 (to be presented to this meeting as a late item). In the meantime, the Minister should be invited to respond to any Council resolution requiring further consideration from the State. Accordingly, the Minister should be invited to meet with the Council such that this might facilitate more efficient discussions leading to the agreement for all aspects of the project agreement.

TIMELINE/S FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Should Council wish to progress with the State's offer, Shire representatives on the Busselton Jetty Working Group would negotiate a draft project agreement with the State Government addressing the issues raised by Council.

It would be envisaged this draft project agreement would come to Council for consideration in October.

VOTING REQUIREMENT

Simple Majority

OFFICER RECOMMENDATION

That Council accept the State's conditional (14 point) offer with thanks and communicate this to the Minister for the South West together with its understanding that working within the framework of the State's position, the following values/matters underpin the Shire's acceptance:

1. The Shire accepts and undertakes it has a shared responsibility together with the State to use its best endeavours to help ensure the jetty is rebuilt and thereafter operated in a sustainable manner in perpetuity.
2. The Shire recognises the Busselton Jetty is a critical element of the local, regional and State tourism and heritage infrastructure and ensuring its sustainability will occur through a pursuit of business excellence in jetty operations and complementary tourism support.

3. The Shire acknowledges this to be the foundation project conducted under the MOU with the State (May 2006) and looks forward to similar significant projects in the future.
4. The Minister for the South West be requested to reconsider condition number 12 of the State's offer pursuant to the outcome of the Federal Government position on its funding contribution.
5. The Shire enters into a Project Agreement with the State that contains the following and this document be drafted through the BJWG:

Jetty Maintenance Fund (JMF)

This fund will be used solely to fund maintenance on the Busselton Jetty and to comply with the jetty maintenance plan. This includes the maintenance of the UWO and the IC but not to the extent either of these two structures are replaced or demolished.

Net returns from Jetty operations together with those from the 2 existing (Goose and Equinox) foreshore leases plus the four new crown lease sites will be directed into the JMF. This fund will be established and administered to the satisfaction of both parties including its audit, however, the JMF will contain a clause that after five years of fund operation, it requires review. Unless this review demonstrates the continued justification of contribution of all monies it was established to receive then the Shire reserves the right to redirect surplus (to the projected JM plan needs) funds for the purpose of promoting and facilitating tourism within the shire (broad sense) which must still have a nexus to the jetty's operation. It is suggested this figure could approximate 15% of total annual contributions but pursuant to the bona-fides of its application it need not be this high. The JMF will be deemed to commence for the purpose of this five year review, if not already commenced, from the day of handover of the rebuilt jetty.

Definition of Reserves Purpose/s

For any and all reserves amended or created, the new reserve purpose shall be as indicated on page 41 and 42 of this report subject only to minor facilitative amendment for which the CEO has discretion to negotiate. In addition, applications for enterprises made under existing and/or new management orders will not be prejudiced by State agency value judgements, only whether they comply with the agreed purpose.

Annual Audit report of Land Development project status

An agreed independent auditor shall provide an audit statement to the Council about the project status including all details/projections on the quantum and timing and risk factors and other relevant variables for the recouping of the party's project cost contributions. This audit shall also be continued on an annual basis to the completion of the project whereupon a recalculation of the original englobo land value shall be made and for this to be used in recalculating and reconciling the recouping payments. The State shall ensure all necessary data is

made available in a timely manner to the appointed auditor to enable this audit to occur. The state to use its best endeavours to provide as much certainty as possible on the likely returns that might be available to the Shire at the time the Shire considers awarding the construction tender.

Distribution of Land Development project surpluses

Distribution of land development project surpluses shall be on the basis of a 30% tax equivalent to the State, a 35% dividend to LandCorp and 35% dividend to the State until the State is repaid its \$6m (net of any amount it has already been recouped from the englobo land purchase). Once project surpluses reach the point where the state has recouped its \$6m outlay in this regard, the 35% State dividend shall flow to the Shire. After the Shire has recouped all of its project costs (including construction project management and interest), any project surpluses thereafter will be used to pay for any relocation costs over and above those estimated in the LandCorp project feasibility already cited.

Jetty Licence

A jetty licence shall be prepared at the State's cost (not a project cost) that shall contain a remedial clause that should the State not ensure the facilitation of all the conditions it is obligated to fulfil under the project agreement, then the Shire reserves its right to hand back the jetty licence at no cost to the Shire and with no further obligations other than to hand back full control of the jetty operations and six foreshore leases to the State.

The jetty licence shall also contain a clause that allows the Shire the ability to self insure under LG Act S6.32(3)(a). The Council retains the right not to replace all or part of the jetty should all or part of it be removed through a catastrophic event or other act of God.

The new jetty licence shall take effect from the date of handover of the newly constructed jetty. At or prior to that time, the State shall handover the UWO and IC as vacant possession.

Town Planning process

LandCorp and the State will conduct the land development project in accordance with standard statutory processes and not as a public work and will secure with the Shire the use of a paid dedicated officer to expedite the planning assessment process should the best endeavours of the Shire's resources at the time be insufficient due to other operational workloads.

Churchill Park

Ownership of the undeveloped/recreational balance of Churchill Park shall remain with the Shire but not as a crown grant in trust, but in unencumbered fee simple and continue to be reserved for recreation under the TPS. The Shire will pay for the administrative component of the application for this new arrangement but shall pay no transfer fee or equity to the State.

Busselton Surf Club

A community purposes site/lease/reserve to be created adjacent to the Scout Hall with a power to lease to enable the club to run a kiosk. Rent (mimimum) would be directed to the immediate foreshore maintenance.

Independent dispute resolution mechanism

There is to be an agreed independent dispute resolution mechanism as part of the project agreement. Each party will bear its own costs in attending to the project agreement and its implementation.

Jetty Construction Principal

The Shire will be the Principal for the Jetty construction project and any out of pocket cost in contracting expertise shall form a project cost recoupable under the funding model. Tender documentation shall be a project cost. Agreement to being the Principal is undertaken on the understanding the DPI and SWDC continue to participate in facilitating excellent project management oversight/co-ordination through specialist technical support to the Shire.

Relocation funds

Land development project funds over and above those earmarked in the Landcorp feasibility already cited shall not be committed from the project without the resolution of Council. In addition, Council reserves the right to be the body/entity to acquire any land for the purpose of accommodating the relocated groups.

6. The jetty Commercial agreement to be negotiated with BJECA have as a condition precedent and independent to any dealings with the State, Council shall require its BJAC to negotiate with BJECA to irrevocably commit its \$1m of retained jetty operations funds for the jetty rebuild construction fund.
7. The CEO negotiate the jetty commercial agreement with BJECA for a term to coincide with the end of jetty construction rebuild and that BJECA must commit as part of the agreement to compliance with the JMF and Tourism Business Plan.
8. Should the federal government not grant the Shire the \$4 million DOTARS request then the CEO request the BJWG to re-scope the project to (sustainably) get the train running again and structure the tender accordingly. The letter requesting the Minister to reconsider the State's condition number 12 (Federal Government funding) would also allude to a re-scope project worth approximately \$13 million (comprising the \$6 million Shire, \$6 million State, and \$1 million BJECA.)