



COUNCIL MEETING 25 MARCH 2009

En Bloc Council Resolution

RECOMMENDATION

That the Officer Recommendations for **Item 16.3** be adopted.

Items to be dealt with by separate resolution, without debate

Item No. and Title	Page No.	Reason for Separate Resolution
Item 16.1 - Small Local Projects Fund 2008/09 - Nos. 16 to 19	32-34	Cr Hanran-Smith will declare an Interest Affecting Impartiality in relation to SLP No. 16.

Items Identified for Debate (Pulled Items)

Item No and Title	Pulled By	Page No	Reason	Alternative Motion
13.1 - Discount Department Store and Restricted Business Centre - Lot 17 West Street and Lots 2, 3, 11 & 300 Bussell Highway, Busselton	Staff	4 - 31	Refer Appendix 1	<u>Revised Officer Recommendation</u> - refer Appendix 1.
16.2 - Old Fire Station, Busselton	Cr Stubbs	35-39	<p>If the Council adopts the Officer Recommendation, this time next year the Council could be faced with the following:</p> <ul style="list-style-type: none"> * The BJECA markets may be a thing of the past because they have been told to vacate the Old Fire Station with no other accommodation provided. * The Shire may have expended in excess of \$70,000 on the premises and trying to attract a tenant. * There may be no tenant and an empty Old Fire Station. 	<ol style="list-style-type: none"> 1. That the Council decline to accept the Officer Recommendation. 2. That the Council discontinue plans to actively seek a new tenant for the Old Fire Station but should a sound tenancy proposal be received by the Shire in the future, it be submitted to the Council for consideration. 3. That \$20,000 be provided in the 2009/10 Budget to undertake works or contribute to costs of a tenant in the event that a sound tenancy proposal is received in the 2009/10 financial year.

Item No and Title	Pulled By	Page No	Reason	Alternative Motion
16.2 - Continued	Cr Stubbs	35-39	This does not appear to be a prudent way to go. I believe the Jetty Markets should be allowed to continue and if and when the Shire receives a sound tenancy proposal the matter could then be considered by the Council.	

**ITEM 13.1 - Proposed Discount Department Store and Restricted Business Centre -
Lot 17 West Street and Lots 2, 3, 11 & 300 Bussell Highway, Busselton**

REVISED OFFICER RECOMMENDATION

1. That the Application submitted on 29 April 2008 proposing a Discount Department Store and Restricted Business Centre at Lot 17 West Street and Lots 2, 3, 11 and 300 Bussell Highway, West Busselton providing 27656m² of NLA floorspace is considered by the Council to be generally consistent with District Town Planning Scheme No. 20 the orderly and proper planning of that locality and the preservation of the amenities of that locality.
2. That Planning Consent be issued for the proposal referred in 1. above and include the following conditions:
 - (a) All development is to be in accordance with the approved Development Plan dated [REDACTED] (attached), including any amendments placed thereon by the Shire of Busselton and except as may be modified by the following conditions.
 - (b) A building licence application under the provisions of the Local Government Miscellaneous Provisions Act must be submitted to and approved by the Shire of Busselton prior to the commencement of any on-site works whatsoever.
 - (c) A building licence for the development should be obtained prior to [REDACTED] (*date two years from date of this advice*). This Planning Consent lapses if a building licence for the development has not been obtained by [REDACTED] (*date two years from date of this advice*). Further to this, if the development is not substantially commenced in accordance with the building licence by [REDACTED] (*date two years from date of this advice*), then this Planning Consent lapses at that date. With the permission of the Shire of Busselton, this Planning Consent may be extended.
 - (d) Occupation or use of the development shall not occur until the Shire of Busselton has issued, to the owner, a written Permit to Use for the development.
 - (e) Plans submitted with the building licence are to show finished ground levels and finished floor levels to the satisfaction of the Shire of Busselton.
 - (f) The colour of the roofing material being in accordance with the Shire's adopted policy on "The Use of Reflective Building Materials". Colour(s) should complement the locality and not be of undesirable impact. Details to be submitted with the building licence application.

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

- (q) The provision of suitably screened bulk bin areas to the specifications and satisfaction of the Shire of Busselton prior to issue of a Permit to Use. Details to be submitted with the building licence application.
- (r) The amalgamation of all the lots which the development is located upon to the satisfaction of the Shire of Busselton prior to the issue of a building licence, which will require submission of proof, to the Shire of Busselton, of the creation of a single title for the subject land.
- (s) The provision of bicycle parking facilities in accordance with the Traffic Impact Assessment and Road Safety Audits required by condition (ii) below. Details to be submitted with the building licence application.
- (t) The development being designed and constructed to allow easy access for people with disabilities in accordance with Australian Standard 1428.1 and the Disability Discrimination Act 1992. Details to be submitted with the building licence application.
- (u) Prior to the issue of a building licence, the applicant shall provide a bond in accordance with Shire Policy to the value of \$40,000 with the Shire of Busselton. The bond may be in the form of cash, cheque or bank guarantee and is a performance guarantee against satisfactory completion of the conditions of Planning Consent. The performance guarantee will be refunded in full immediately the outstanding works are complete / established as appropriate to the condition(s). Any such bond is to be accompanied by a written authorisation from the owner of the land that the Shire of Busselton may enter the site to complete or rectify any outstanding work. The Shire of Busselton will recover the bond, or part of the bond, as appropriate, the cost to the Shire of Busselton, including administrative costs, of completing or rectifying any outstanding works.
- (v) Plans submitted with the building licence application are to demonstrate the following design changes as indicated in red on the approved plan:
 - i) The interface of the development with the wetlands is required to be redesigned to be sympathetic to the existing values of the wetlands. In this regard, the southern most building should have a softened frontage to the foreshore and a greater visual buffer so the development does not dominate the wetlands landscape.
 - ii) The southern most building and associated loading bay and vehicle access to be located out of the Reserve area.
 - iii) The western frontage of the buildings on the western Bussell Highway access to the site to be modified to provide a high level of amenity to the west wall or to provide an active frontage to the accessway. The wall treatment shall present a high level of appearance as appropriate to address interface and amenity issues.

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

drainage infrastructure and public access requirements to the satisfaction of the Shire of Busselton. This area shall be ceded to the Crown for vesting in the Shire of Busselton pursuant to a subdivision approval and under Section 152 of the Planning and Development Act 2005. Such land to be ceded free-of-cost and without any payment of compensation by the Crown. The legal agreement is to provide for the reserve area being ceded prior to the issue of a building licence, which will require submission of proof, to the Shire of Busselton, of the lodgement of the Diagram of Survey with Landgate.

- (cc) The submission of a Wetland Management Plan to be approved by the Shire of Busselton prior to the issue of a building licence. The Plan is to include a Revegetation and Weed Management Plan for the wetland buffer area, fencing, dual use path connection from Prince Regent Drive to West Street, seating and interpretive signage. The plan shall be implemented over the site prior to issue of a Permit to Use and maintained for a period of 3 years.
- (dd) A Dust Management Plan to be prepared and approved prior to the issue of a building licence and implementation of that Plan to be undertaken at each and every stage of the development of the site to the satisfaction of the Shire of Busselton. The Plan shall include provision of a dust bond the rate of \$0.25 per m² of disturbed area.
- (ee) A Construction Management Plan to be submitted and approved prior to the issue of a building licence. The Plan is to detail methods to mitigate off site impacts during the construction stage, particularly with regard to the wetlands and adjacent residential properties. The Plan shall include, but not be limited to, ensuring that fill compaction and construction stage works are not carried out on Sundays or Public Holidays in order to maintain the amenity of adjoining residential areas and protection of wetland and reserve areas from construction machinery. Details of acoustic control methods, noise management practices and materials used are to be included within the Plan.
- (ff) The preparation and implementation of a Community Facilities Contribution Plan that provides for the establishment of a facility or part thereof of a minimum 50m² of built floor space for community and civic use. The Plan to be approved by the Shire of Busselton prior to the issue of a Permit to Use.
- (gg) Road connections to West Street and Bussell Highway from Prince Regent Drive within the site shall be designed to discourage non-local traffic from using residential roads and shall include traffic management mechanisms to the satisfaction of the Shire of Busselton. Details to be provided with the building licence application.
- (hh) The design and provision of street lighting along West Street for the full frontage of the development and internally within the development in accordance with the Australian Standard AS 1158.1-1986, Table 1.1, to the specifications of Western Power and to the satisfaction of the Shire of Busselton. Street lighting provided within the development shall be designed to avoid light spill to adjacent residential properties, including Lot 16 West Street, and the wetlands. Details of street lighting to be submitted with engineering

design and approved by the Shire of Busselton prior to issue of a building licence.

- (ii) Arrangements being prepared, approved by the Shire, and implemented to the satisfaction of the Shire of Busselton for the upgrading and construction of all proposed access roads and crossovers to and from the development and any other roadworks as determined by the Traffic Impact Assessment and Road Safety Audits, as required to be undertaken as a direct result of the development prior to the issue of any permit to use.

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

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

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

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

- (jj) The following infrastructure upgrades are required as a direct consequence of the development. Detailed engineering plans shall be submitted and approved by the Shire of Busselton prior to issue of a building licence.
 - i) Stormwater drainage to be provided for the full frontage of West Street;

- ii) Kerbing on the western side of West Street for the full frontage of the development;
- (kk) Dual use / pedestrian pathway system being provided in a location satisfactory to the Shire of Busselton which will assist in linking the site with community facilities and the CBD. Details in the form of a pedestrian access strategy shall be submitted for approval prior to the issue of a building licence. The following paths require construction as a direct result of this development:
- i) A 2.0m wide path along Peel Terrace from West Street to Causeway Road (northern side) to connect into the existing path;
 - ii) A 2.5m wide path from the southern West St entrance to the existing traffic lights at the corner of Bussell Highway and West Street and continue along West Street to at least Prince Street (western side of West Street);
 - iii) At the southern portion of the development the dual use path is to be located within the area of Reserve and connect between the existing path to the west, located within the reserve adjacent Prince Regent Drive, and the existing path in West Street.
 - iv) Upgrading of the Bussell Highway DUP to provide a high amenity pedestrian connection into the CBD to the satisfaction of the Shire with a minimum path width of 2.5m.
- (ll) A Kangaroo Management Plan being submitted and approved by the Shire of Busselton on the advice of the Department of Environment and Conservation prior the issue of a building licence.
- (mm) Prior to commencement of the development, satisfactory arrangements shall be made with the Shire of Busselton to ensure compliance with the Shire's Percent for Art Policy via appropriate on-site works up to a minimum value of 1% of the estimated development cost (to the satisfaction of the Shire and based on demonstrated contract values or estimates provided by a quantity surveyor, with such contract or estimates being no more than 3 months old at the time of payment and if such information is more than 3 months old, the value of the payment shall be indexed to the general construction industry index for Western Australia) and/or where the value of on-site works is less than that, a payment sufficient to bring the total contribution to 1% of the estimated development cost shall be made to the Shire pursuant to the Shire's Percent for Art Policy.
- (nn) Prior to occupation of the development, on-site works as agreed pursuant to condition "mm" shall be completed to the satisfaction of the Shire.

REASON

A complete alternative Officer recommendation has been provided as a number of minor changes are proposed. These are as detailed below and have arisen from discussion with the Applicant's consultant following consideration of issues raised in the proponents

'briefing note' on the recommendation and are primarily aimed at improving the clarity of the conditions.

Condition (g) – requiring the submission of a geotechnical report has been deleted. This will not remove the requirement for a geotechnical report to be completed at the building licence stage. The geotechnical report provides the soil classification necessary to ensure that the design of footings and the slab will comply with the Building Code of Australia and Australian Standard 2870.

Condition (l) – replacement of the words "the satisfaction of" with "*be approved by*".

Condition (m) – replacement of the words "as shown on the site plan to the satisfaction of the Shire of Busselton" with "*as shown on the approved plan*".

Condition (n) – replacement of the words "to the satisfaction of the Shire of Busselton" with "*in accord with the approved landscaping plan*".

Condition (r) – at the time of submitting the revised Officer Recommendation officers were still waiting on legal advice in relation to the amalgamation of the land holdings versus the satisfaction of the condition by way of a deed of agreement, or easements registered by way of absolute caveats. Therefore this condition has not changed.

Condition (s) – replacement of the words "to the satisfaction of the Shire of Busselton" with "*in accordance with the Traffic Impact Assessment and Road Safety Audits required by condition (ii) below*".

Condition (t) – replacement of the words "to the satisfaction of the Shire of Busselton" with "*in accordance with Australian Standard 1428.1 and the Disability Discrimination Act 1992*".

Condition (v) – deletion of the words "being made to the satisfaction of the Shire of Busselton and".

Condition (v) iii) – the condition requiring dual frontage for the western most buildings has been reworded to include an option to not have an active frontage but require a design with a high level of appearance.

Condition (x) – replacement of the words "and the Department of Water" with "*generally in accordance with the Department of Water guidelines*".

Condition (cc) – replacement of the words "the satisfaction of" with "*be approved by*".

Condition (ee) – deletion of wording specific to Noise Impact Assessment as any activities on site is controlled by the *Environmental Protection (Noise) Regulations 1997*. The intent of the condition to control construction activities to reduce impact on neighbouring properties and the wetlands remains, while the condition has been clarified. Further, the words "Noise Impact Assessment and" has been replaced with "*Construction*" and "for the development to the satisfaction of the Shire of Busselton" has been deleted.

Condition (ff) – Rearrangement of the wording of the condition to ensure the intent of the condition is clarified.

Condition (ii) – replacement of the words “required by the Shire associated with the development” with *“as determined by the Traffic Impact Assessment and Road Safety Audits, as required to be undertaken as a direct result of the development”*.

Condition (jj) iii) – deletion of portion of the condition relating to the intersection of West Street and Peel Terrace to include a (northbound) dedicated right hand turning lane into Peel Terrace. This is adequately covered by condition (ii) regarding road upgrade requirements.

The original condition numbering has been retained for ease of reference given that two conditions have been deleted (conditions (g) and (jj) iii)).