

Please note: These minutes are yet to be confirmed as a true record of proceedings

**SHIRE OF BUSSELTON**

**MINUTES OF A SPECIAL COUNCIL MEETING HELD ON 15 JUNE 2009**

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**SHIRE OF BUSSELTON****MINUTES OF A SPECIAL COUNCIL MEETING HELD IN COUNCIL CHAMBERS,  
ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON MONDAY,  
15 JUNE 2009 AT 2:30 PM**

The Presiding Member opened the meeting at 2.35 p.m.

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

Presiding Member: Cr Wes Hartley Shire President

Members: Cr Bethwyn Hastie  
Cr David Binks  
Cr Ian Stubbs  
Cr Tom Tuffin  
Cr Jackie Emery  
Cr Bernie Masters  
Cr Bev Clarke  
Cr Don Hanran-Smith  
Cr David Reid

Officers: Mr Matthew Smith Acting Chief Executive Officer  
Mr Nigel Bancroft Director, Lifestyle Development  
Ms Jenny Mathies Admin. Officer - Governance

Apologies: Cr Anne Ryan

Leave of Absence: Cr Ross Bromell  
Cr Rob Underdown

Media: "Busselton-Dunsborough Times"  
"Busselton-Dunsborough Mail"  
WIN Television

Public: 14

**2. PURPOSE OF THE MEETING**

To consider a modified development guide plan for Location 413, Smith's Beach, as proposed by officers.

**3. PUBLIC QUESTION TIME**

The Presiding Member requested anyone with questions to ask of the meeting to present those questions. No questions were forthcoming, however a question was accepted later in the meeting ([page 4](#)).

#### 4. **DECLARATION OF DUE CONSIDERATION**

The Presiding Member requested Councillors to acknowledge, in accordance with Clause 8.1 of the Standing Orders, that they have given due consideration to the matters contained within the Agenda.

<b>Declared Due Consideration</b>	<b>No Declaration</b>
Councillor Wes Hartley	
Councillor Bethwyn Hastie	
Councillor David Binks	
Councillor Ian Stubbs	
Councillor Tom Tuffin	
Councillor Jackie Emery	
Councillor Bernie Masters	
Councillor Bev Clarke	
Councillor Don Hanran-Smith	
Councillor David Reid	

#### 5. **DECLARATIONS OF INTERESTS**

##### 5.1

<b>DECLARATION OF INTEREST</b>	
<b>Name / Position</b>	Councillor Tom Tuffin
<b>Item No. / Subject</b>	Item 7.1, Draft Development Guide Plan (Outcome of Mediation) - Sussex Location 413 Smiths Beach, Yallingup (Consideration for Endorsement for Issue of State Administrative Tribunal Consent Orders)
<b>Type of Interest</b>	Interest Affecting Impartiality

#### 6. **PRESENTATIONS BY PARTIES WITH AN INTEREST**

6.1 Mr Lawrie Schlueter addressed the Council in accordance with Section 9 of the Standing Orders as a party with an interest in Item 7.1, Draft Development Guide Plan (Outcome of Mediation) - Sussex Location 413 Smiths Beach, Yallingup (Consideration for Endorsement for Issue of State Administrative Tribunal Consent Orders). Mr Schlueter, representing the Smith's Beach Action Group, firstly asked that the Smith's Beach Action Group's condolences to the Box family be placed on record. Mr Schlueter was generally not in agreement with the Officer Recommendation.

6.2 Mr Michael Swift addressed the Council in accordance with Section 9 of the Standing Orders as a party with an interest in Item 7.1, Draft Development Guide Plan (Outcome of Mediation) - Sussex Location 413 Smiths Beach, Yallingup (Consideration for Endorsement for Issue of State Administrative Tribunal Consent Orders). Mr Swift of Michael Swift and Associates, Town Planning Consultants representing Canal Rocks Pty Ltd, was generally in agreement with the Officer Recommendation.

Note: At this juncture, Mr Ron Glencross advised that he wished to ask a question. The Presiding Member noted that he had previously called for indications from members of the public wishing to ask questions during Public Question Time, but had received no response. Mr Glencross advised that he had not heard this. The Presiding Member agreed, in accordance with Section 4.2 of the Standing Orders, to rearrange the order of business to allow Mr Glencross to ask a question at this juncture.

**3.1 Mr Ron Glencross:**

I am concerned about Delegated Authority in this development to the CEO. Delegated Authority is a matter of trust. Trust is earned. Has the Council, on behalf of the community, established that trust to this Delegated Authority decision?

***Response – Presiding Member:***

*Your question will be determined in the voting of Councillors on Recommendation 3 later this afternoon.*

**Councillor Ian Stubbs:**

That is not necessarily the case.

**7. BUSINESS OF THE MEETING**

**7.1 DRAFT DEVELOPMENT GUIDE PLAN (OUTCOME OF MEDIATION) - SUSSEX LOCATION 413 SMITHS BEACH, YALLINGUP (CONSIDERATION FOR ENDORSEMENT FOR ISSUE OF STATE ADMINISTRATIVE TRIBUNAL CONSENT ORDERS)**

<b>SUBJECT INDEX:</b>	Land Use & Planning Control
<b>APPLICATION NUMBER:</b>	P4056
<b>STRATEGIC INITIATIVE:</b>	2.4.1: Support development that is contained in identified nodes with well defined boundaries.
<b>BUSINESS UNIT:</b>	Strategic Planning and Sustainability
<b>SERVICE:</b>	Strategic Planning
<b>DATE OF COMPLETION:</b>	30/12/2009
<b>VOTING REQUIREMENT:</b>	Simple Majority for recommendations 1 and 2. Absolute majority for recommendation 3.
<b>PROPOSAL:</b>	A modified Development Guide Plan (DGP) for Sussex Location 413 Smiths Beach Road, Yallingup which establishes an Identified Developable Area (IDA) of 12.8 Ha which is proposed for 3.8 Ha of Residential and 9 Ha of Tourist development, an area of 21.1 HA as national park extension and approximately 1 Ha as foreshore reserve.

<b>LOT SIZE:</b>	40.468 hectares
<b>ZONE:</b>	'Tourist' 'Additional Use (No. 36)' 'Recreation' reserve
<b>POLICIES:</b>	<ol style="list-style-type: none"> <li>1. <i>State Sustainability Strategy 2002</i></li> <li>2. <i>State Planning Policy 2.6 – State Coastal Planning Policy 2003</i></li> <li>3. <i>State Planning Policy 3 - Urban Growth and Settlement 2006</i></li> <li>4. <i>Statement of Planning Policy 6.1 – Leeuwin- Naturaliste Ridge Policy</i></li> <li>5. <i>Shire of Busselton Local Rural Planning Strategy 2006</i></li> <li>6. <i>Leeuwin-Naturaliste Region Plan – Stage One</i></li> <li>7. <i>WAPC Policy No. DC 6.1 – Country Coastal Planning Policy 1989</i></li> <li>8. <i>The combined methodologies for Loc 413 (2004).</i></li> </ol>

*Mr Lawrie Schlueter and Mr Michael Swift had addressed the Council earlier as Parties with an Interest in this matter (refer to Items 6.1 and 6.2 of these Minutes).*

<b>DECLARATION OF INTEREST</b>	
<b>Name / Position</b>	Councillor Tom Tuffin
<b>Item No. / Subject</b>	Item 7.1, Draft Development Guide Plan (Outcome of Mediation) - Sussex Location 413 Smiths Beach, Yallingup (Consideration for Endorsement for Issue of State Administrative Tribunal Consent Orders)
<b>Type of Interest</b>	Interest Affecting Impartiality
<b>Declaration</b>	With regard to the above item, I disclose that I have an association with the Friends of the Cape to Cape Walk Track. This track runs in close proximity to the development for a considerable distance. I am a member of the Friends of the Cape to Cape Walk Track and have, from time to time, done paid consultancy work for that Group. As a consequence there may be a perception that my impartiality on the matter may be affected. I declare that I will consider the item solely on its merits and vote or act accordingly.

## **PRÉCIS**

The proposed DGP (Agenda Attachment B) the subject of this report is a significantly modified DGP from that advertised for public comment in 2007 (Agenda Attachment C) and the amended DGP considered by the Council in December 2008. This DGP is the outcome of recent mediation through the

State Administrative Tribunal and seeks to address the primary concerns as expressed by the Council on the 2007 plan, and in many of the submissions received on that plan, of the Western extent and scale of development. The DGP is recommended for endorsement, subject to modifications, for the purpose of settlement of the current legal action between the applicant and the Shire, the next step of which is the hearing due to commence on 22 June 2009. Formal approval of the DGP would be achieved through the State Administrative Tribunal (SAT) by way of consent orders following the Council's endorsement of the DGP for this purpose. The plan would then be forwarded to the Western Australian Planning Commission (WAPC) for consideration of final approval as required by Town Planning Scheme 20 (the TPS).

The modified DGP (Agenda Attachment B – B2) replaces the advertised DGP (Agenda Attachment C – C2) for the purpose of the Council's consideration of the matter.

The technical documentation outlining the investigations associated with the development of the advertised DGP and the numerous detailed outcomes of this process have not been amended to reflect the modified DGP. This would occur to the extent necessary following and as a condition of endorsement of the DGP, and would in any event be required for submission of the DGP to the WAPC. The applicant has confirmed that the information and commitments in the DGP report as advertised are still valid to the extent that they are applicable to the revised plan. The timeframes of the recent mediation and scheduled hearing have not allowed for review of this documentation to date. This issue has been dealt with in the mediation and if SAT consent for the DGP is issued the proceedings will be left open to provide a formal framework for this to occur and allow any disputes in finalisation of this documentation to also then be assisted by SAT if required.

This report does not provide a fully detailed analysis of the planning framework relevant to this site. This has been done most recently in previous reports to the Council meetings of 13 December 2006 and 17 December 2008, as available on the Shire web site. This report does outline the significant changes to the proposed development of the site from the advertised DGP and the basis for its recommendation for endorsement to settle the current matter.

This modified DGP no longer provides for development on the significant headland landscape feature central to the site with all but a portion of the southern flank of this and all land to the west now proposed for ceding for consolidation of the National Park. For ease of reference this means that development is now largely contained within the eastern amphitheatre and all building is to be located on or east of the central firebreak. The significance of this change is demonstrated in the modified DGP Identified Developable Area (IDA) of 12.8ha against the advertised DGP IDA of 21.3ha (a 40% reduction). The consistency of the DGP with the applicable state and local statutory and strategic planning framework which

provides an emphasis on protection of the environmental and landscape values of the site has therefore significantly improved.

**COUNCIL DECISION / OFFICER RECOMMENDATION**

C0906/218 Moved Councillor Hanran-Smith, seconded Councillor Masters:

**SIMPLE MAJORITY REQUIRED**

1. That the Council require the CEO to instruct the Shire's legal representatives to settle SAT Matter No. DR 303 of 2008 with respect to Loc 413 Smiths Beach Rd by way of a SAT consent determination approving the modified DGP plans (Smiths Beach Development Guide Plan (with the conditions thereon): [Mediated Plan], Sheet 1 of 3, Plan No. 160-60H (08062009); Special Height Control Area Map, Sheet 2 of 3, Plan No. 160-61K and IDLA Plan, Sheet 3 of 3, Plan No. 160-73E) subject to modification of the southern boundary of the foreshore reserve west of the access road to increase the area of the reserve by approximately 1450m<sup>2</sup> to provide adequate land for long term foreshore recreation purposes.
2. That the SAT consent determination referred to in 1 above include withdrawal of SAT Matter DR 31 of 2009 as relates to the December 2008 modified plan.

**ABSOLUTE MAJORITY REQUIRED**

3. That the CEO be delegated authority to approve any required SAT consent orders for the remaining DGP documentation and any modified conditions relating to the modified DGP plans the subject of the consent determination in 1 above.

**CARRIED 10/0  
BY ABSOLUTE MAJORITY**

**RECORD OF WORDS SPOKEN**

Councillor Masters requested, in accordance with Clause 20.3 of the Standing Orders, that the following words be recorded in the Minutes:

*"If after the proposal is put to the SAT and there are any significant modifications or conditions relating to the modified Development Guide Plan, the expectation is that these modifications will come back to the Council for its consideration."*

**RECORD OF WORDS SPOKEN**

The Presiding Member requested, in accordance with Clause 20.3 of the Standing Orders, that the following words be recorded in the Minutes:

*"I have spoken previously of the pressure put on the Planning Department of this Shire in relation to this issue and I want to pay tribute once again to*

*Nigel Bancroft and his officers. They have done this local government proud and despite the unheralded criticism of these officers in the public enquiries relating to this matter, their professional integrity and conduct throughout has been above reproach.*

*Today's decision draws a line in the sand as to how this local government authority feels about its coastal resources. We have recently seen Victoria ban all coastline developments, including canal developments. Once these pristine coastal areas are developed, they are gone forever. The pressure of a population of potentially half a million in the region south of Mandurah will see more and more pressure of this type put on subsequent Councils.*

*This decision of the Council today draws a line in the sand as to how we feel about this issue in the South West and I would urge all Councillors and members of the public to support us in this regard."*

**8. CLOSURE**

The meeting closed at 3.03 p.m.

THESE MINUTES CONSISTING OF PAGES 1 TO 8 WERE CONFIRMED AS A TRUE AND	
CORRECT RECORD ON _____	
DATE: _____	PRESIDING MEMBER: _____